

1997

The Limits of Law in Accomplishing Racial Change: School Segregation in the Pre-Brown North

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Repository Citation

Douglas, Davison M., "The Limits of Law in Accomplishing Racial Change: School Segregation in the Pre-Brown North" (1997).
Faculty Publications. 118.
<https://scholarship.law.wm.edu/facpubs/118>

THE LIMITS OF LAW IN ACCOMPLISHING RACIAL CHANGE: SCHOOL SEGREGATION IN THE PRE-BROWN NORTH

Davison M. Douglas*

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INTRODUCTION

During the past forty years, courts have been widely celebrated as important agents of racial change, with *Brown v. Board of Education*¹ as the paradigmatic example of the ability of the judiciary to foster racial progress in the face of significant cultural and political opposition.² Yet in recent years, numerous scholars have questioned the ability of courts to function as a significant force for racial progress without broad political and cultural support. Some of these scholars have concluded that the traditional emphasis on the role of the courts—especially the *Brown* Court—in securing racial gains is overstated and that certain aspects of racial reform, such as southern school desegregation, did not take place in this country until the elective branches of government embraced the desegregation agenda in the mid-1960s.³ These scholars suggest that courts—even the Supreme Court—are considerably more limited in their ability to engender social reform in the absence of significant popular support than we have previously imagined.⁴ Other scholars, associated with the critical race theory

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

2. See, e.g., ARYEH NEIER, ONLY JUDGMENT: THE LIMITS OF LITIGATION IN SOCIAL CHANGE 9 (1982) ("Since the early 1950s, the courts have been the most accessible and, often, the most effective instrument of government for bringing about the changes in public policy sought by social protest movements."); HARRELL R. RODGERS, JR. & CHARLES S. BULLOCK, III, COERCION TO COMPLIANCE 123-24 (1976) (celebrating role of courts and particularly the *Brown* decision in the campaign for racial equality); J. HARVIE WILKINSON, III, FROM BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION 3, 6 (1979) (describing *Brown* as "the most important political, social, and legal event" of this century); Erwin Chemerinsky, *Can Courts Make a Difference?*, in REDEFINING EQUALITY (Neal Devins & Davison M. Douglas eds., forthcoming 1997) (championing potential of courts to foster significant racial change); Robert M. Cover, *The Origins of Judicial Activism in the Protection of Judicial Minorities*, 91 YALE L.J. 1287, 1316 (1982) (describing *Brown* as a "paradigmatic event"); C. Herman Pritchett, *Equal Protection and the Urban Majority*, 58 AM. POL. SCI. REV. 869 (1964) (underscoring importance of *Brown* decision to racial advances).

3. See, e.g., GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (1991); Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7 (1994); Michael J. Klarman, *How Brown Changed Race Relations: The Backlash Thesis*, 81 J. AM. HIST. 81 (1994). Only a few southern black schoolchildren—less than 1%—won entry into an integrated school during the first decade after the *Brown* decision. In 1964, pressured by the demands of the civil rights movement and the violent reaction to that movement, Congress enacted the Civil Rights Act of 1964, which provided in part for the withholding of federal funds from southern schools that refused to desegregate. As a result, southern school desegregation dramatically increased. GARY ORFIELD, THE RECONSTRUCTION OF SOUTHERN EDUCATION (1969); SOUTHERN EDUC. REPORTING SERV., STATISTICAL SUMMARY OF SCHOOL SEGREGATION-DESEGREGATION IN THE SOUTHERN AND BORDER STATES 27-30 (1965); James R. Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967).

4. See, e.g., ROSENBERG, *supra* note 3, at 49-55, 82.

movement, go even further and conclude that the inherent conservatism of courts inhibits their willingness to produce meaningful change on behalf of racial minorities.⁵ Both groups of scholars suggest that courts alone are unable to bring about significant racial change and that political activism and private initiatives are more promising means of ensuring racial gains.⁶

Although the issue of the ability of courts to effectuate racial change has received considerable scholarly attention in recent years, less attention has been paid to the ability of law more broadly defined—as manifest in legislative and executive actions as well as court decisions—to foster social reform.⁷ The capacity of statutory law to promote social change appears obvious, because statutes presumably reflect the majoritarian support that makes the underlying change possible. Yet statutory enactments that seek to reverse longstanding social and cultural patterns—particularly those associated with race—often fail to achieve their desired effect. Many such statutes do not reflect broad support for reform. Some proponents of racial reform legislation seek the political or social benefits to be gained from their support for such measures, but lack a real commitment to the sub-

5. DERRICK A. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) (pessimistic view of ability of law to achieve racial justice); RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994) (suggesting failure of social reform through law because of inherent limits of legal process in accomplishing change); GIRARDEAU A. SPANN, *RACE AGAINST THE COURT: THE SUPREME COURT AND MINORITIES IN CONTEMPORARY AMERICA* 3 (1993) ("The inevitability of Supreme Court review is likely to have an adverse effect on minority interests because the Supreme Court has been structured to operate in a manner that is inherently conservative. . . . [T]he Court's inherent conservatism impairs minority efforts to achieve racial equality."); Richard Delgado & Jean Stefancic, *The Social Construction of Brown v. Board of Education: Law Reform and the Reconstructive Paradox*, 36 W.M. & MARY L. REV. 547 (1995) (describing resistance to judicial racial reform); Linda S. Greene, *Race in the 21st Century: Equality Through Law?*, 64 TUL. L. REV. 1515 (1990) (questioning the ability of African Americans to receive justice in the courts). See generally Stuart Scheingold, *Constitutional Rights and Social Change: Civil Rights in Perspective*, in *JUDGING THE CONSTITUTION: CRITICAL ESSAYS ON JUDICIAL LAWMAKING* 73, 74–75 (Michael W. McCann & Gerald L. Houseman eds., 1989) (describing "democratic" and "hegemonic" perspectives on constitutional rights; the former celebrates the role of the courts in black liberation, the latter concludes that courts have not only failed to liberate blacks, they have contributed to black oppression).

6. An increasing number of scholars encourage African Americans to rely not on the courts for racial progress but on their own community-based private and political initiatives. See, e.g., GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); SPANN, *supra* note 5; Charles F. Abernathy, *When Civil Rights Go Wrong: Agenda and Process in Civil Rights Reform*, 2 TEMP. POL. & CIV. RTS. L. REV. 177, 201–02 (1993).

7. A few scholars—from both the left and the right—have argued that the Civil Rights Act of 1964 failed to achieve workplace equality, thereby implicitly critiquing the ability of at least this one statute to accomplish racial change. See, e.g., DERRICK A. BELL, *RACE, RACISM AND AMERICAN LAW* (1992); RICHARD A. EPSTEIN, *FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS* (1992).

stance of the legislation. Hence, with some civil rights legislation, proponents claim victory, but leave behind insufficient enforcement mechanisms that founder under cultural and political opposition to the legislated change.

This Article seeks to broaden the conversation regarding law and racial change by examining the interplay between legal rules—as manifest in both court decisions and statutes—and racial progress in the context of the campaign against school segregation in northern states prior to the Supreme Court's decision in *Brown v. Board of Education*.⁸ During the last three decades of the nineteenth century, virtually every northern state prohibited school segregation by statute and the vast majority of state courts, when called upon, enforced those statutes by requiring school integration. With this type of "legal" support for pupil mixing, one might expect to find thoroughly desegregated northern school systems. Indeed, many observers have mistakenly interpreted the enactment of the extensive state antisegregation legislation as evidence that officially sanctioned school

8. The dramatic campaign to desegregate southern schools culminating in the Supreme Court's *Brown v. Board of Education* decision has received considerable—and ongoing—scholarly attention. See, e.g., JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961* (1994) [hereinafter TUSHNET, *MAKING CIVIL RIGHTS LAW*]; MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987) [hereinafter TUSHNET, *THE NAACP'S LEGAL STRATEGY*]; Michael J. Klarman, *Civil Rights Law: Who Made It and How Much Did It Matter?*, 83 GEO. L.J. 433 (1994).

Very little attention, however, has been paid to efforts to desegregate northern schools before the *Brown* decision. This lack of attention on northern school segregation during the pre-*Brown* era is unfortunate, because the struggle against northern school segregation was qualitatively very different from its southern counterpart. In the South, school desegregation efforts—particularly those of the National Association for the Advancement of Colored People (NAACP)—focused on securing incremental legal precedents as part of a gradual attack on the constitutionality of state segregation statutes. In contrast, the North's greatest barrier to integrated schools was not legal in nature, but cultural. Most northern states prohibited school segregation by statute in the nineteenth century, but significant elements of both the black and white community favored separate schools for black children.

Moreover, most of the scholarly focus on the role of the NAACP in abolishing segregated schools has emphasized the organization's southern efforts. The NAACP's simultaneous campaign to desegregate northern schools has gone largely unnoticed. Both Mark Tushnet's and Richard Kluger's excellent accounts of the NAACP's campaign against segregated education focus exclusively on the organization's activities in southern states. Neither addresses the NAACP's simultaneous campaign against segregated schools in northern states. See KLUGER, *supra*; TUSHNET, *THE NAACP'S LEGAL STRATEGY*, *supra*. Similarly, neither GREENBERG, *supra*, nor TUSHNET, *MAKING CIVIL RIGHTS LAW*, *supra*, deals with the northern campaign against segregated education.

segregation⁹ came to an end in the North by the close of the nineteenth century.¹⁰ Yet despite this legal support for school integration, government sponsored school segregation—such as the assignment of black children to separate “colored” schools or classrooms—persisted in open defiance of state law in many northern communities until the late 1940s and early 1950s. This Article explores the reasons for this dissonance between legal rule and social reality and seeks to provide insight into the broader question of how law affects racial change.

This Article focuses primarily on desegregation efforts in four states: New Jersey, Pennsylvania, Ohio, and Illinois. The focus on these states is

9. Northern school districts segregated black and white schoolchildren through a variety of devices. Some northern school segregation, later denominated “de facto segregation,” was caused by residential segregation, especially in northern cities. Indeed, as northern ghettos grew in size—particularly during the 1950s and 1960s—most northern school segregation could be attributed to residential segregation. The migration of hundreds of thousands of southern blacks to northern cities during the first half of the twentieth century led to significant residential segregation in those cities. As a result, by the middle of the twentieth century, most northern school segregation—particularly in cities—was due to segregated housing patterns. WILKINSON, *supra* note 2, at 195. See generally KENNETH L. KUSMER, *A GHETTO TAKES SHAPE: BLACK CLEVELAND, 1870-1930* (1976); GILBERT OSOFSKY, *HARLEM: THE MAKING OF A GHETTO* (1963); ALLAN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO 1890-1920* (1967).

But much northern school segregation during the pre-Brown era was far more deliberate, in clear violation of state law prohibiting racial separation. School administrators in dozens of northern school districts assigned black children to separate “colored schools” irrespective of geographic location in a manner identical to the southern pattern. Other northern school administrators assigned black and white children to separate classrooms within the same school building, or placed black children into separate annexes, adjacent to a main school building reserved for white children. This Article deals with this deliberate form of school segregation.

10. See, for example, Christine H. Rossell, *The Convergence of Black and White Attitudes on School Desegregation Issues During the Four Decade Evolution of the Plans*, 36 WM. & MARY L. REV. 613 (1995), in which Professor Rossell claims that the paucity of school desegregation litigation in the North during the 1950s and 1960s was due to the fact that litigation during those years was limited to states that “had at some time operated a dual school system.” *Id.* at 617; see also *Booker v. Board of Educ.*, 212 A.2d 1, 8 (N.J. 1965) (claiming that New Jersey’s “policy against racial discrimination and segregation in the public schools has been long standing and vigorous” since the 1881 statute prohibiting school segregation); GUNNAR MYRDAL, *THE AMERICAN DILEMMA* 879 (1944) (noting that in the North, “Negroes have practically the entire educational system flung open to them without much discrimination”); Howard K. Beale, *The Needs of Negro Education in the United States*, 3 J. NEGRO EDUC. 8, 10 (1934) (“Through most of the North there is no segregation in the public schools . . .”). Even educational officials share this myopia concerning the fact of officially mandated segregation in northern schools during the pre-Brown era. In the 1970s and 1980s, the Ohio State Board of Education denied knowledge of school segregation in Ohio schools during this century. This denial was particularly striking given the fact that its predecessor State Department of Education had, until 1955, required local school districts to submit regular reports setting forth the number of children attending “separate schools for colored children.” *Penick v. Columbus Bd. of Educ.*, 663 F.2d 24, 27-28 (6th Cir. 1981), cert. denied, 455 U.S. 1018 (1982).

deliberate. Each of these states abolished segregated schools by statute during the 1870s and 1880s, and in each, the vast majority of judicial challenges seeking to enforce those statutes succeeded. Yet despite unambiguous legislation that mandated integrated schools and a court system prepared to uphold these legislative prohibitions, many local school districts in each of these states operated segregated schools in open defiance of state law until the early 1950s. Although other northern states also enacted antisegregation legislation during the nineteenth century and in some instances failed to enforce that legislation,¹¹ it was in these four states, because of their large black populations and their proximity to the South, that the dissonance between legal rule and social reality was the greatest.

The northern school desegregation experience suggests that although statutory law reflects the values of dominant political coalitions at a particular moment in time, statutes do not necessarily evidence broad cultural support for the regulated matter, making enforcement difficult. Northern state legislatures did enact antisegregation statutes in the late nineteenth century, but those statutes did not reflect a real commitment to school integration. Rather, they reflected a combination of political expediency and the inefficiency of dual schools at a time when black enrollments were small. This limited commitment to pupil mixing further eroded in the wake of the migration of hundreds of thousands of southern blacks into northern communities during the first half of the twentieth century.

At the same time, although African Americans had agitated for the enactment of antisegregation legislation, the northern black community was by no means uniform in its support of pupil mixing. Many African Americans opposed school integration, fearing—with good reason—a decline in black teacher jobs, mistreatment of black students, and the loss of black-controlled institutions if schools were integrated. In literally dozens of northern school districts, the African-American community bitterly divided over the issue of school segregation during the seventy-five

11. For example, several New York school districts also preserved officially sanctioned school segregation until well into the twentieth century notwithstanding a statutory prohibition of such segregation. See, e.g., CARLETON MABEE, *BLACK EDUCATION IN NEW YORK STATE* 258–60 (1979) (discussing twentieth-century school segregation in New York); NAACP Press Release, *Jail Threat, Mass Meeting Highlight Hillburn Jim Crow School Muddle* (Sept. 24, 1943) (on file with NAACP Papers, Box 11-B-145, Library of Congress, Washington, D.C.) (discussing segregation in Hillburn, New York school district). See generally Mary L. Dudziak, *The Limits of Good Faith: Desegregation in Topeka, Kansas, 1950–1956*, 5 L. & HIST. REV. 351 (1987) (discussing school segregation in Kansas).

years prior to the *Brown* decision, making enforcement of the antisegregation legislation even more difficult.¹²

Eventually, the political and cultural environment in the North changed, creating support for integration. By the 1940s, northern black political power had dramatically increased as a result of several years of black migration. Moreover, encouraged by the NAACP, increasing numbers of African Americans demanded integrated schools. Anxious both to secure black electoral support in a climate of growing partisan competition for the black vote and to defuse racial tensions in several northern cities, white politicians took various actions in the late 1940s favorable to desegregation efforts, including the threat of withholding educational monies from recalcitrant school districts. As a result of this new white support for school desegregation, by the time of the *Brown* decision, only a handful of northern school districts maintained officially sanctioned school segregation in defiance of state law. Yet at the same time, these desegregation initiatives left untouched the increasingly prevalent urban segregation caused not

12. This division within the black community over the issue of segregation has been an undercurrent in twentieth-century African-American intellectual history. Although the integrationist vision of the *Brown* decision has dominated this country's intellectual discourse about race for much of this century, a substantial dissenting tradition, represented by individuals such as W.E.B. Du Bois and Malcolm X, and organizations such as the Congress of Racial Equality, has persisted until the present. See, e.g., Congress of Racial Equality, *A True Alternative to Segregation: A Proposal for Community School Districts* (February 1970), in Brief for CORE as Amicus Curiae, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (No. 281), in *THE DEVELOPMENT OF SCHOOL Busing AS A DESEGREGATION REMEDY* 259 (Davison M. Douglas ed., 1994) (arguing that those African Americans who favored pupil mixing as a way of achieving equality "are suffering from self-hatred, the legacy of generations of brainwashing. They have been told—and they believe—that it is exposure to Whites in and by itself that makes Blacks equal citizens."); MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X* 300–07 (1966); W.E.B. Du Bois, *Does the Negro Need Separate Schools?*, 4 J. NEGRO EDUC. 328, 335 (1935) (reluctantly endorses school segregation to avoid mistreatment of black children).

For current examples of this criticism of unbridled integrationism, see *Missouri v. Jenkins*, 115 S. Ct. 2038, 2062 (1995) (Thomas, J., concurring) ("[T]he theory that black students suffer an unspecified psychological harm from segregation that retards their mental and educational development. . . . not only relies upon questionable social science research rather than constitutional principle, but . . . also rests on an assumption of black inferiority."); HAROLD CRUSE, *PLURAL BUT EQUAL* (1987) (attacking notion that "separateness is inherently to mean inferiority"); Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 531–32 (1980) (questioning educational benefits of pupil mixing); Alex M. Johnson, Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again*, 81 CAL. L. REV. 1401, 1403 (1993) (urging "the maintenance and operation of separate institutions that allow African-Americans to join together"). See generally David J. Garrow, *On Race, It's Thomas v. An Old Ideal*, N.Y. TIMES, July 2, 1995, § 4, at 1. Much of the contemporary debate concerning the desirability of full racial assimilation has intellectual antecedents in the northern black community of the pre-*Brown* era.

by explicit racial separation but rather by residential segregation.¹³ Thus, white politicians of the late 1940s captured black political support by championing school desegregation initiatives that eliminated the most blatant instances of school segregation but that left untouched the expanding racial separation of northern schoolchildren.

The campaign to desegregate northern schools exposes the difficulties of legal rule and judicial decision forcing racial change. Just as the *Brown* decision failed to desegregate southern schools during the 1950s and early 1960s until both the President and Congress committed themselves to racial desegregation with the enactment and enforcement of the Civil Rights Act of 1964,¹⁴ so court decisions and statutes could not eliminate officially sanctioned northern school segregation during the pre-*Brown* era until a political environment developed in which majoritarian interests were served by desegregation.¹⁵ The enactment of the antisegregation legislation had been an important first step in the campaign against officially mandated segregation in northern schools, but the campaign would need seventy years of cultural and political change to achieve the necessary convergence of both black and white support to achieve success. And even then, that success, as has been true of so many racial "gains" in this country's history, proved somewhat hollow as it left untouched the burgeoning growth of northern school segregation that resulted from residential segregation.

I. LEGAL RESTRAINTS ON SCHOOL SEGREGATION IN THE NINETEENTH-CENTURY NORTH

Most northern states established public schools during the first half of the nineteenth century, but African-American schoolchildren did not

13. See *supra* note 9.

14. See *supra* note 3.

15. This convergence of interests is similar to the convergence noted by Bell, *supra* note 12, which made the *Brown* decision possible. Since *Brown*, other legal campaigns have helped to secure social change in this country, but such campaigns have enjoyed complete success only to the extent that they have captured significant political and cultural support. Perhaps the most recent example of this phenomenon has been the campaign for gay rights of the 1980s and 1990s; most of the successes of this movement have been because of changing cultural attitudes and political influence as opposed to courtroom victories. Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique*, 21 N.Y.U. REV. L. & SOC. CHANGE 567 (1994-95).

enjoy the full benefits of the nascent public school system.¹⁶ In some states, black children were excluded from the public schools altogether,¹⁷ while in others, black children were relegated to separate and inferior schools.¹⁸ Throughout the antebellum era, the overwhelming majority of those northern black children who attended school did so on a segregated basis.

Between 1865 and 1890, most northern states enacted legislation abolishing segregated education.¹⁹ This legislation, however, did not reflect a

16. For an excellent overview of the rights of blacks in the North in the antebellum era, see Paul Finkelman, *Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North*, 17 RUTGERS L.J. 415 (1986). For an overview of legal challenges to racial discrimination in the nineteenth century, see J. MORGAN KOUSSER, *DEAD END: THE DEVELOPMENT OF NINETEENTH-CENTURY LITIGATION ON RACIAL DISCRIMINATION IN SCHOOLS* (1986).

17. Ohio, for example, generally excluded black children from the public schools until the late 1840s and Illinois did likewise until the 1860s. See *infra* text accompanying notes 47 and 66-67.

18. New York permitted segregation of schoolchildren by virtue of legislation enacted in 1841 and 1864. BUREAU OF EDUC., *HISTORY OF SCHOOLS FOR THE COLORED POPULATION* 361 (1871). Both Hartford and New Haven, Connecticut operated segregated schools until the Connecticut legislature mandated mixed schools by statute in 1868. BUREAU OF EDUC., *supra*, at 328, 334-35. Providence, Rhode Island also operated segregated schools during the antebellum era. LEON F. LITWACK, *NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES, 1790-1860*, at 150-51 (1961).

A few northern states—Maine, Vermont, New Hampshire, and Massachusetts—operated integrated schools by the eve of the Civil War. BUREAU OF EDUC., *supra*, at 352; Leslie H. Fishel, Jr., *The North and the Negro, 1865-1900: A Study in Race Discrimination* 169, 174 (1953) (unpublished Ph.D. dissertation, Harvard University) (on file with the Harvard University Library). Massachusetts abolished school segregation by means of statutory prohibition in 1855 and the other three states operated mixed schools even though no statute compelled integration. CARTER GODWIN WOODSON, *THE EDUCATION OF THE NEGRO PRIOR TO 1861*, 325 (1919).

19. Massachusetts was the first state to prohibit school segregation by statute in 1855. FRANKLIN JOHNSON, *THE DEVELOPMENT OF STATE LEGISLATION CONCERNING THE FREE NEGRO* 124 (1918). Other northern states enacted legislation during the postbellum era banning segregated schools: Connecticut (1868) ("[N]o person shall be denied admittance to . . . any public school in the school district where such person resides . . ."), see Appendix to the Supplemental Brief for the United States on Reargument at 185, *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (No. 1); Rhode Island (1866) ("No exclusion from school on account of race or color shall be allowed."), *id.* at 352; Michigan (1867) ("No separate school . . . shall be kept for any persons on account of race or color."), *id.* at 275-76; New York (1873) ("No citizen of this State shall, by reason of race, . . . be excluded from the full and equal enjoyment of any accommodation furnished by . . . officers of common schools and public institutions of learning."), *id.* at 313; Illinois (1874) ("[A]ll . . . boards of education . . . are prohibited from excluding any . . . child from [any public] school on account of the color of such child."), *id.* at 211; Minnesota (1877) (imposing fine for excluding children from school on account of color), *id.* at 279; New Jersey (1881) ("[N]o child . . . shall be excluded from any public school in this state on account of . . . color."), *id.* at 309; Pennsylvania (1881) ("It shall be unlawful for any school director . . . to make

broad reordering of northern white attitudes towards racial equality. Rather, it reflected a combination of Reconstruction-era idealism, the calculated desire of certain legislators to secure the electoral support of black voters, and the unwelcome expense of retaining a dual school system. Few northern school districts had a large black population in the nineteenth century, making white legislators more inclined to support modest pupil mixing.

This lack of full support for school integration was reflected in the failure of many school districts to comply with the new antisegregation measures. Despite these statutory bans on school segregation, many northern school districts retained separate schools, particularly in those parts of the North contiguous with southern states where southern segregationist sentiment was strongest and black enrollments were largest. Many local school administrators simply ignored the new statutes, which could be enforced only through individual litigation. Although a few lawsuits were filed seeking to enforce the new legislation, virtually all of which were successful, this litigation affected only a few black children. As a result, by the dawn of the twentieth century, school segregation persisted in many northern school districts in violation of state law.²⁰

any distinction whatever, on account of or by reason of the race or color of any pupil . . . [in] any public or common school."), *id.* at 346-47; and Ohio (1887) (repealing earlier statute that permitted school boards to segregate schools), *id.* at 333; see also JOHNSON, *supra*, at 96, 126-27, 128, 143, 150, 164-65, 174. A few northern states—Maine, Vermont, and New Hampshire—apparently never operated segregated schools. Appendix to the Supplemental Brief at 252, 381, 305, *Brown* (No. 1) (noting that Maine had no distinctions in its original Constitution of 1820; Vermont and New Hampshire had similar backgrounds). One northern state, Indiana, expressly permitted segregation by statute. *Id.* at 217-18. An 1869 Indiana statute mandated school segregation, *id.* at 221-22; an 1877 statute permitted school segregation, *id.* at 223; JOHNSON, *supra*, at 100. Although New York did prohibit school segregation, it permitted black children to attend segregated schools on a voluntary basis. *Id.* at 33.

Certain western states also prohibited school segregation by statute during the postbellum era: Colorado (1876); California (1880); Idaho (1889); Utah (1895); New Mexico (1901). *Id.* at 126-27, 128, 150, 165. Arizona prohibited segregation in 1901, but then allowed it by statute in 1909. *Id.* at 68.

20. Other civil rights legislation of this time period was also not enforced. See CLEMENT ALEXANDER PRICE, *FREEDOM NOT FAR DISTANT* 132 (1980) (lack of enforcement of 1884 New Jersey legislation banning discrimination in public accommodations); GILES R. WRIGHT, *AFRO-AMERICANS IN NEW JERSEY: A SHORT HISTORY* 54 (1988) (same); Marion Thompson Wright, *New Jersey Laws and the Negro*, 28 J. NEGRO HIST. 156, 191-92 (1943) (same).

A. Enactment of Antisegregation Legislation

1. New Jersey

During the antebellum era, New Jersey offered limited public education.²¹ Most schools were racially segregated and black schools, if available at all, were typically inferior to their white counterparts.²² In 1850, the New Jersey General Assembly expressly sanctioned school segregation by granting Morris Township the authority to establish separate schools for black and white children.²³ Thirteen years later, in 1863, the state superintendent of public instruction announced that all local school trustees had the authority to segregate their schools, thereby giving legitimacy to school segregation throughout the state.²⁴ This widespread segregated and unequal education in New Jersey was due in large measure to the state's conservative racial attitudes. Many New Jerseyans, particularly those living in the southern counties of the state, had close family and business ties

21. The New Jersey state legislature first offered support for public education in 1829. WRIGHT, *supra* note 20, at 32. An 1844 provision in the New Jersey constitution provided that the public school system be "for the equal benefit of all the people of the state" but despite that provision, the exclusion of black children from public schools was common. MARION M. THOMPSON WRIGHT, *THE EDUCATION OF NEGROES IN NEW JERSEY* 120-48 (1941); John Robert Anderson, *Negro Education in the Public Schools of Newark, New Jersey During the Nineteenth Century* 51 (1972) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library).

22. SPENCER R. CREW, *BLACK LIFE IN SECONDARY CITIES: A COMPARATIVE ANALYSIS OF THE BLACK COMMUNITIES OF CAMDEN AND ELIZABETH, N.J. 1860-1920*, at 128 (1993) (segregated school for black children in Camden not established until 1860, 20 years after establishment of white schools); Malcolm Conner, *A Comparative Study of Black and White Public Education in Nineteenth Century New Brunswick, New Jersey* 13, 183 (1976) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library) (inferior black schools in antebellum New Brunswick); Roland H. Daniels, *A Case Study of Desegregation in the Public Schools of Trenton, New Jersey* 32 (1959) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library) (school segregation in Trenton); Julia C. Harvey, *The Evolution of Public Education in Jersey City* 60-64 (1931) (unpublished Ph.D. dissertation, New York University) (on file with the New York University Library) (school segregation in Jersey City). In some communities, black children received an education only if they were willing to pay tuition. WRIGHT, *supra* note 20, at 32. Private schools, often operated by religious organizations, also tended to be segregated. NELSON R. BURR, *EDUCATION IN NEW JERSEY 1630-1871*, at 70, 82, 295 (1942).

23. WRIGHT, *supra* note 21, at 141.

24. *Id.* at 141-42.

with southerners and were sympathetic with southern racial mores, including segregation and slavery.²⁵

During the decade following the Civil War, efforts by African Americans to integrate public schools met with success in many northern New Jersey communities. In most of these school districts, there were few black schoolchildren, and the continued operation of a dual school system proved both expensive and inefficient.²⁶ At the same time, in southern New Jersey—where African Americans were far more populous²⁷—school segre-

25. New Jersey was one of the last northern states to abolish slavery. Although New Jersey enacted a gradual slavery abolition plan in 1804, by 1860, there were still 18 slaves living in the state. BUREAU OF EDUC., *supra* note 18, at 400. New Jersey was also one of the most cooperative states in complying with the federal Fugitive Slave Act. WRIGHT, *supra* note 20, at 28.

Emancipation did not alter New Jersey's racial attitudes; many New Jerseyans opposed emancipation and sought to bar the migration of emancipated slaves to the state. Throughout the 1850s, the New Jersey state legislature made regular appropriations to support the recolonization of New Jersey blacks in Africa. Lee Hagan et al., *New Jersey Afro-Americans: From Colonial Times to the Present*, in THE NEW JERSEY ETHNIC EXPERIENCE 64, 75-77 (Barbara Cunningham ed., 1977); Anderson, *supra* note 21, at 84-86. Moreover, the legislature passed resolutions in 1863 disputing President Abraham Lincoln's power to free slaves pursuant to the Emancipation Proclamation. Clement Alexander Price, *The Strange Career of Race Relations in New Jersey History*, in THE BLACK EXPERIENCE IN SOUTHERN NEW JERSEY 10, 13 (1985). New Jersey was also one of the last states to ratify the Thirteenth and Fifteenth Amendments and revoked its initial ratification of the Fourteenth Amendment. WRIGHT, *supra* note 20, at 29 (New Jersey ratifies Thirteenth Amendment in January 1866 after it had already become part of Constitution and is one of last states to ratify Fifteenth Amendment); Abner J. Gaines, *New Jersey and the Fourteenth Amendment*, 70 PROC. N.J. HIST. SOC'Y 37, 42-43, 53-54 (1952) (New Jersey revokes initial ratification of Fourteenth Amendment). Moreover, the state did not remove restrictions on black voters from the state constitution until 1875. Marion Thompson Wright, *Extending Civil Rights in New Jersey Through the Division Against Discrimination*, 38 J. NEGRO HIST. 91, 93 (1953). That New Jersey would eventually prove to be one of the most resistant northern states to school integration is not surprising.

26. WRIGHT, *supra* note 21, at 154-57. During these years, Paterson, Newark, and Jersey City desegregated their schools because of pressure from the black community and the expense of operating a dual school system. Conner, *supra* note 22, at 15 (Paterson integrated its schools in 1872); Fishel, *supra* note 18, at 183, 198-99 (Newark integrated its high school in 1871 and elementary schools in 1872); Harvey, *supra* note 22, at 126-27 (Jersey City integrated its schools in 1877).

Not all of these efforts succeeded. The New Brunswick Board of Education rejected petitions by black parents to integrate schools during the 1870s. Conner, *supra* note 22, at 219-24. Similarly, Englewood rejected integrated schools by referendum in 1878. Anderson, *supra* note 21, at 58. The Englewood school superintendent commented in 1879: "Many of the colored people . . . refused to send their children to the [segregated] school. But when they learned . . . there was no redress to be had in the court for their supposed wrongs, they were willing to quietly discuss the matter for an amicable settlement." Fishel, *supra* note 18, at 200 (footnote omitted).

27. In 1870, almost 40% of the state's black population lived in the state's five most southern counties. WRIGHT, *supra* note 20, at 39 tbl.6.

gation persisted, and many new segregated black schools were established during the first decade after the War.²⁸

In early 1881, conflict over school segregation came to a head when black parents in the town of Fair Haven in central New Jersey, dismayed by the appalling condition of the local black school, sought entry for their children into the local white school.²⁹ When the white community rebuffed their efforts,³⁰ a Republican legislator introduced legislation prohibiting the exclusion of children from school on the basis of their race. Within a month, the legislation, with broad Republican support, passed both houses of the legislature.³¹

The new antisegregation legislation, however, did not reflect broad support for integrated education. The facts of the Fair Haven situation were particularly compelling—the town had only one dismal black school that was subsequently destroyed in a fire.³² Moreover, the Fair Haven schools remained segregated after the enactment of the legislation following the construction of a new black school.³³ Most of the legislation's suppor-

28. Fishel, *supra* note 18, at 183, 202.

29. The controversy arose when the teacher at the black school, disgusted with the school's poor physical condition, resigned her post and thereby forced the closure of the school. The efforts of the black children to gain entry into the only other school in town were rebuffed. WRIGHT, *supra* note 21, at 163–71; *The Fair Haven School War*, MONMOUTH DEMOCRAT (Freehold, N.J.), Mar. 10, 1881, at 2; *Monmouth County*, WKLY. ST. GAZETTE (Trenton, N.J.), Mar. 3, 1881, at 8.

30. *The Race War at Fairhaven*, NEW BRUNSWICK TIMES, Mar. 24, 1881, at 3; *Monmouth County*, *supra* note 29, at 8.

31. WRIGHT, *supra* note 21, at 163–71; *Colored Children in Public Schools*, NEW BRUNSWICK TIMES, Mar. 18, 1881, at 2. The statute provided that “no child between the age of five and eighteen years of age shall be excluded from any public school in this state on account of his or her religion, nationality or color.” *State ex rel. Pierce v. Union Dist. Sch. Trustees*, 46 N.J.L. 76, 78 (N.J. 1884), *aff’d*, 47 N.J.L. 348 (N.J. 1885). The statute was amended in 1903 to impose a criminal sanction on school officials who excluded children from public schools on account of their race. JOHNSON, *supra* note 19, at 144–45; Vishnu V. Oak & Eleanor H. Oak, *The Illegal Status of Separate Education in New Jersey*, 47 SCH. & SOC’Y 671 (May 21, 1938). There is no evidence of any such prosecutions.

32. WRIGHT, *supra* note 21, at 163–71.

33. Just one month after the New Jersey legislature enacted antisegregation legislation, Fair Haven established a new separate school for black children to the satisfaction of both the black and white communities. WRIGHT, *supra* note 21, at 169–71; *The Fair Haven School*, MONMOUTH DEMOCRAT (Freehold, N.J.), May 5, 1881, at 2. General Clinton B. Fisk, a prominent New Jersey leader who exerted strong influence in the Fair Haven black community, counseled against school integration and urged instead the acceptance of a new black school. WRIGHT, *supra* note 21, at 169–71; *The Fair Haven School Meeting*, MONMOUTH DEMOCRAT (Freehold, N.J.), Apr. 7, 1881, at 2. Likewise, one month after the passage of the new statute, the black community of Long Branch, also in Monmouth County, asked for a separate black school. WRIGHT, *supra* note 21, at 160, 171.

ters were legislators representing northern counties where few segregated schools remained;³⁴ most of the legislators from the state's southern and central counties—where school segregation was most entrenched—opposed the legislation, and those counties refused to comply with it. Communities throughout southern and central New Jersey retained segregated schools and established new ones in defiance of the statute throughout the latter years of the nineteenth century.³⁵

2. Pennsylvania

A few Pennsylvania communities established public schools in the 1820s, but most educated only white children.³⁶ Those districts that did provide schooling for black children did so on a segregated basis. The Pennsylvania General Assembly legitimized this pattern of segregation by enacting legislation in 1854 that required school segregation in school districts with more than twenty black children.³⁷ As a result, in some

34. The 1881 legislation did help accelerate the trend towards integrated schools in northern New Jersey where school segregation was already in decline. As a result of the 1881 statute, communities throughout northern New Jersey discontinued their segregated schools. CREW, *supra* note 22, at 135 (Rahway, 1882; Elizabeth, early 1880s); WRIGHT, *supra* note 21, at 175–76, 198; Conner, *supra* note 22, at 287–89 (New Brunswick, 1881); Fishel, *supra* note 18, at 200 (Englewood, 1884).

35. WRIGHT, *supra* note 21, at 171–72, 175–76, 198. By the end of the century, Salem County, in the southern part of the state, had seven black schools. *Id.* at 175. Camden, home to the state's largest black population, retained its black schools in the wake of the 1881 legislation. CREW, *supra* note 22, at 129–31; see also PAUL ROBESON, *HERE I STAND* 18 (1958) (describing segregated schools in Princeton during first decade of twentieth century).

Moreover, beginning in the 1890s, the state of New Jersey assumed operation of an industrial school for black children at Bordentown. Wynetta Devore, *The Education of Blacks in New Jersey, 1900–1930: An Exploration in Oral History* 189–221 (1980) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library). Bordentown, with strong black support, remained a black vocational school until its closure in 1955. *Id.* at 193–94, 204.

36. Philadelphia was an exception; black children had received public schooling in Philadelphia as early as 1822. W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* 84 (1899); RICHARD R. WRIGHT, JR., *THE NEGRO IN PENNSYLVANIA: A STUDY IN ECONOMIC HISTORY* 125 (1964).

37. The 1854 statute provided that

[T]he directors or controllers of the several districts of the State are hereby authorized and required to establish, within their respective districts, separate schools for . . . negro and mulatto children, whenever such schools can be so located as to accommodate 20 or more pupils; and whenever such separate schools shall be established and kept open four months in any year, the directors or controllers shall not be compelled to admit such pupils into any other schools of the district.

BUREAU OF EDUC., *supra* note 18, at 374; VINCENT P. FRANKLIN, *THE EDUCATION OF BLACK PHILADELPHIA: THE SOCIAL AND EDUCATIONAL HISTORY OF A MINORITY COMMUNITY, 1900–1950*, at 230 n.24 (1979); see also DU BOIS, *supra* note 36, at 88.

communities, black children had no opportunity for an education, as they were excluded from white schools and no black schools were provided.³⁸ Not surprisingly, reports of the superintendent of common schools in Pennsylvania from 1866 to 1870 make no mention of black education at all.³⁹

During the 1870s, the number of separate black schools in Pennsylvania steadily increased.⁴⁰ At the same time, under pressure from black voters and white Republicans following the lead of the Radical Republicans in the United States Congress, the Pennsylvania legislature considered legislation to repeal the 1854 statute requiring school segregation.⁴¹ Finally, in 1881, after a Pennsylvania county court declared the 1854 segregation legislation unconstitutional,⁴² the legislature enacted legislation making it unlawful to discriminate on a racial basis in the administration of the public schools.⁴³

Notwithstanding the 1881 statute abolishing segregation and a favorable judicial interpretation of that statute in 1882,⁴⁴ the overwhelming majority of the state's school districts retained segregated schools.⁴⁵ As in New Jersey, the antisegregation legislation in Pennsylvania did not reflect a

38. Fishel, *supra* note 18, at 202–05. Moreover, those black schools that were established—typically in the larger cities—were generally inferior to their white counterparts. *Id.* at 204–05. As one contemporary complained, teachers in black schools were often those white teachers who were found to be “unacceptable” to teach in white schools. *Id.* at 206.

39. *Id.* at 202–03 n.136.

40. *Id.* at 203–05.

41. IRA V. BROWN, *THE NEGRO IN PENNSYLVANIA HISTORY* 53–54 (1970). The state senate passed such legislation in 1874, but the bill failed in the state house. FRANKLIN, *supra* note 37, at 34.

42. BROWN, *supra* note 41, at 53–54. The court held that the 1854 statute violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. It was one of only two such decisions in the nineteenth century. The other decision was by a state district court judge in Kansas in 1881, who held that school segregation in Ottawa, Kansas also violated the Equal Protection Clause. See ANDREW KULL, *THE COLOR-BLIND CONSTITUTION* 102–04 (1992); Andrew Kull, *A Nineteenth-Century Precursor of Brown v. Board of Education: The Trial Court Opinion in the Kansas School Segregation Case of 1881*, 68 CHI.-KENT L. REV. 1199, 1206 (1993).

43. The 1881 law provided that it would be “unlawful for any school director, superintendent or teacher to make any distinction whatever on account of, or by reason of, the race or color of any pupil or scholar who may be in attendance upon, or seeking admission to, any public or common school maintained wholly or in part under the school laws of this commonwealth.” BROWN, *supra* note 41, at 53; DU BOIS, *supra* note 36, at 88–89.

44. In 1882, when a school district excluded a black child from a white school because of his race, a Pennsylvania court ordered the school district to admit the child in accord with the 1881 law. *Kaine v. Commonwealth*, 101 Pa. 490 (1882).

45. Fishel, *supra* note 18, at 318–19; Etta L. Williamson, *The History of the Separate Public Schools for Negroes in Pennsylvania* 68 (1935) (unpublished M.A. thesis, Howard University) (on file with the Howard University Library). To be sure, a few Pennsylvania communities, such as Pittstown, did allow black children to attend mixed schools. *Id.* at 319.

broad reordering of racial attitudes. Rather, it probably reflected a desire among some white legislators to attract black electoral support without a significant commitment to integration. In much of the state, particularly in the state's southern counties, white school officials simply ignored the new legislation and rebuffed efforts by black parents to enroll their children in mixed schools.⁴⁶ By the end of the nineteenth century, the 1881 legislation had done little to end segregated schools in Pennsylvania.

3. Ohio

During the antebellum era, most Ohio school districts excluded black children from public schools.⁴⁷ This hostility towards African Americans in Ohio was due to the fact that many of the state's white residents had immigrated from southern states—particularly neighboring Virginia and Kentucky—bringing with them racist attitudes.⁴⁸ Moreover, many Ohioans feared that free blacks would flood the state from the South; some

46. JUDY JOLLEY MOHRAZ, *THE SEPARATE PROBLEM: CASE STUDIES OF BLACK EDUCATION IN THE NORTH, 1900-1930*, at 86-88 (1979) (noting white resistance in Philadelphia).

47. Thomas Paul Kessen, *Segregation in Cincinnati Public Education: The Nineteenth Century Black Experience* 23 (1973) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with the University of Cincinnati Library); Mame Charlotte Mason, *The Policy of Segregation of the Negro in the Public Schools of Ohio, Indiana, and Illinois* 14 (1917) (unpublished M.A. dissertation, University of Chicago) (on file with the University of Chicago Library). This discriminatory treatment towards African Americans was not new to Ohio. The Ohio legislature had promulgated some of the harshest "Black Laws" of all northern states in the early nineteenth century that excluded blacks from voting, jury service, and offering testimony against a white person, and that restricted the settlement of blacks in the state without securing a surety bond. FRANK U. QUILLIN, *THE COLOR LINE IN OHIO: A HISTORY OF RACE PREJUDICE IN A TYPICAL NORTHERN STATE* 22-25 (1913); David A. Gerber, *Education, Expediency, and Ideology: Race and Politics in the Desegregation of Ohio Public Schools in the Late 19th Century*, 1 J. ETHNIC STUD. 1, 9 (1973); John Roy Squibb, *Roads to Plessy: Blacks and the Law in the Old Northwest: 1860-1896*, at 7-8, 10-11 (1992) (unpublished Ph.D. dissertation, University of Wisconsin) (on file with the University of Wisconsin Library).

48. QUILLIN, *supra* note 47, at 25, 65. On the other hand, the Western Reserve section of northeast Ohio, having been settled by abolitionist-inclined New Englanders, was much more sympathetic to African Americans. *Id.* at 33, 158; WOODSON, *supra* note 18, at 329-30; Gerber, *supra* note 47, at 3. Some black children attended integrated schools during the antebellum era in the Western Reserve. FREDERICK A. MCGINNIS, *THE EDUCATION OF NEGROES IN OHIO* 44-45 (1962); QUILLIN, *supra* note 47, at 33, 45-47, 70. Cleveland, located in the Western Reserve, admitted black children to white schools in the late 1840s and employed black teachers in integrated schools in the 1850s. KUSMER, *supra* note 9, at 15-16; Gerber, *supra* note 47, at 3, 13. Most of the delegates from the Western Reserve to the state's 1851 constitutional convention supported integrated schools. KUSMER, *supra* note 9, at 72-75.

southern Ohio communities actually prevented any black person from settling within their borders throughout the nineteenth century.⁴⁹

Yet black Ohioans enjoyed support from the state's Whig and Free-Soil parties, leading in 1848 and 1849 to the repeal of most of the harsh "Black Laws"⁵⁰ as well as the enactment of legislation providing public education for black students.⁵¹ This education legislation, however, required segregated schools in any school district with at least twenty black children.⁵² School districts with few black children generally made no provision for their education, often requiring these children either to forego formal schooling or to travel long distances to a school in a neighboring school district.⁵³ As a result, in 1871, whereas two-thirds of white school-age children attended school, only about a quarter of African-American children did so.⁵⁴

49. QUILLIN, *supra* note 47, at 160; Gerber, *supra* note 47, at 11. Moreover, some Ohio communities forbade blacks from establishing their own schools and used violence to prevent such instruction. MCGINNIS, *supra* note 48, at 38; QUILLIN, *supra* note 47, at 47-48.

50. See *supra* note 47.

51. QUILLIN, *supra* note 47, at 82-83. As a result of the 1849 legislation, blacks could enter the state and give testimony against whites, but they still could not vote or serve on juries. *Id.* at 37.

52. Squibb, *supra* note 47, at 11-12. The 1848 legislation provided for the establishment of schools for black children in districts with more than 20 black children if property tax on black-owned property could support such schools. MCGINNIS, *supra* note 48, at 31-32. In 1849, the statute was amended to mandate the provision of black schools in districts with more than 20 black children unless the local community was willing to have integrated schools. *Id.* at 32; Kessen, *supra* note 47, at 43. The statute was further amended in 1853 to require separate black schools in districts with more than 30 black children. MCGINNIS, *supra* note 48, at 33; Mason, *supra* note 47, at 14-15.

53. An 1865 report by the Ohio Commissioner of Education revealed that of the state's 626 school districts that contained black children, only 121 operated black schools. Gerber, *supra* note 47, at 3.

54. Fishel, *supra* note 18, at 235; Mason, *supra* note 47, at 17. Some of this poor attendance, however, was because of the need of many black children to work to help support their families.

In addition, black schools, often housed in shacks behind black churches during the antebellum era, were generally far inferior to their white counterparts. Gerber, *supra* note 47, at 4-5. The Ohio Commissioner of Common Schools commented in an 1859 report that "[m]any of the [black] schools are kept in mere sheds and basements without decent furniture. . . . Their teachers, whether white or colored, are, with few exceptions, poorly qualified and are employed because they can be had at small salaries." Mason, *supra* note 47, at 16.

The end of the Civil War did not enhance the position of African Americans in Ohio. The state rejected black suffrage in a statewide referendum in 1867, reversed its initial ratification of the Fourteenth Amendment in 1868, and refused to ratify the Fifteenth Amendment in 1869. In 1870, Ohio finally ratified the Fifteenth Amendment by one vote, only after a requisite number of other states had already given their support. QUILLIN, *supra* note 47, at 98-102.

During the 1870s and early 1880s, many African Americans sought to enroll their children in white schools through school board petitions and lawsuits. Only a few school districts responded favorably to these petitions,⁵⁵ and all of the litigation failed.⁵⁶ But those black Ohioans who favored integrated schools exercised their newly won right to vote to elect legislators sympathetic to civil rights issues.⁵⁷ During the 1880s, both the Democratic and Republican parties, anxious to court the black vote, supported desegregation initiatives.⁵⁸ In 1887, the long struggle against school segregation came to fruition as the state legislature repealed the earlier legislation that had required segregated schools.⁵⁹ The support for the statute was largely regional: Northeast Ohio—settled in large measure by New Englanders⁶⁰—tended to support the antisegregation legislation;

55. Columbus, for example, finally permitted black children to attend white elementary schools in 1882, having rejected earlier integration efforts. OHIO ST. J., Sept. 6, 1881 (petition for integration presented to Columbus Board of Education by black parent, threatening litigation); *School Privileges for Colored Children*, COLUMBUS STATESMAN, Sept. 3, 1878 (unsuccessful attempt to enter white school to avoid long walk to black school in Columbus); Richard Clyde Minor, *The Negro in Columbus, Ohio 149-51* (1936) (unpublished Ph.D. dissertation, Ohio State University) (on file with the Ohio State University Library) (integration of Columbus schools). Springfield adopted a geographic attendance zone system pursuant to which a few black children entered white schools in 1885. *Mixes the Schools*, CLEVELAND GAZETTE, June 20, 1885, at 2.

56. U.S. v. Buntin, 10 F. 730, 735-36 (C.C.S.D. Ohio 1882) (federal court rejects Clermont County integration effort); *Ohio ex rel. Ganes v. McCann*, 21 Ohio 198, 211 (1871) (Ohio Supreme Court rejects challenge to school segregation on Fourteenth Amendment grounds); *Ohio ex rel. Lewis v. Board of Educ.*, WKLY. CIN. L. BULL., June 7, 1876, at 139-40 (1876) (trial court rejects integration effort in Cincinnati); *The Gazaway Case*, CLEVELAND GAZETTE, Feb. 16, 1884, at 1 (trial court rejects integration attempt in Springfield); *An Outrageous Decision: A Strong Argument for Mixed Schools*, CLEVELAND GAZETTE, June 7, 1884, at 2 (trial court rejects integration attempt in Jackson Township); S.F. PAC. APPEAL, June 28, 1873, at 2 (state trial court rejects Clermont County integration attempt).

57. MCGINNIS, *supra* note 48, at 59; Kessen, *supra* note 47, at 132. Black political power had substantially increased following the extension of the franchise to black voters in 1870 and the immigration of thousands of African Americans into the state following the war. The black population in Ohio increased by 72% between 1860 and 1870. Gerber, *supra* note 47, at 6.

58. For example, Democratic Governor Hoadley supported the elimination of segregated schools, recognizing that black votes had been critical to his 1883 election. Mason, *supra* note 47, at 18-20; Michael Harlan Washington, Sr., *The Black Struggle for Desegregated Quality Education: Cincinnati, Ohio 1954-1974*, at 45-47 (1984) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with the University of Cincinnati Library).

59. MCGINNIS, *supra* note 48, at 30-34, 57-63; Squibb, *supra* note 47, at 173-75. One year later, the Ohio Supreme Court interpreted the new statute as banning school segregation, noting that while boards of education possessed power to make school assignments, "such power cannot be exercised with reference to the race or color of the youth; . . . separate schools for colored children have been abolished [by the 1887 legislation]." *Board of Educ. v. State*, 16 N.E. 373 (Ohio 1888) (per curiam).

60. See *supra* note 48.

much of southern Ohio—settled by southerners⁶¹—voted in opposition. Moreover, the burden of operating a dual school system influenced many of the legislation's supporters.⁶²

In the wake of the antisegregation legislation, many school districts abolished their segregated schools,⁶³ but many others, particularly in the southern counties of the state, ignored the new statute.⁶⁴ An early twentieth-century study of Ohio race relations aptly noted that "legal provisions intended to establish racial equality are either observed or ignored according as the white element in the several communities may determine."⁶⁵

4. Illinois

Illinois provided very limited education for black children during the antebellum era.⁶⁶ In most Illinois counties, black children received no public education at all until after the Civil War.⁶⁷ The Illinois superin-

61. QUILLIN, *supra* note 47, at 25, 65.

62. DAVID A. GERBER, *BLACK OHIO AND THE COLOR LINE 1860-1915*, at 195 (1976); Kessen, *supra* note 47, at 134; Squibb, *supra* note 47, at 179. Several Ohio communities had already integrated their schools in the early 1880s because of the expense of maintaining dual schools. Gerber, *supra* note 47, at 8.

63. Following the legislative repeal of the school segregation statute, schools in Bellefontaine, Circleville, Crestline, Dayton, Findlay, Marietta, Marion, Piqua, Rendville, Springfield, Steubenville, Troy, and Wooster were integrated. See MCGINNIS, *supra* note 48, at 62-63, 67; Squibb, *supra* note 47, at 173, 179. Moreover, the legislation strengthened recently integrated schools in Athens, Lancaster, Mt. Vernon, Marysville, and Upper Sandusky. *Id.* at 179.

64. These recalcitrant communities included Avondale, Bainbridge, Chillicothe, Gallipolis, Hillsboro, Lockland, New Richmond, Oxford, Wilmington, and Xenia. GERBER, *supra* note 62, at 266; QUILLIN, *supra* note 47, at 94 n.11, 95; Fishel, *supra* note 18, at 323-24; Squibb, *supra* note 47, at 180. Other communities opened white schools to black students but retained black schools as well. *Id.* at 180. For example, Cincinnati renamed its separate black schools "Voluntary Branch Schools" and did not phase them out until the twentieth century. Washington, *supra* note 58, at 50. Even in those communities such as Chillicothe and Xenia that did not explicitly exclude black children from white schools, racially gerrymandered attendance zones accomplished similar goals. GEORGE DAVID, *SOCIAL EFFECT OF SCHOOL SEGREGATION IN XENIA, OHIO 14-15, 23-24* (Howard D. Gregg ed., 1932); GERBER, *supra* note 62, at 265-66 (Chillicothe); QUILLIN, *supra* note 47, at 96 (Xenia).

65. QUILLIN, *supra* note 47, at 125.

66. In its first public school law of 1825, Illinois made no provision for the education of black students. The Illinois constitution of 1848 referred only to white children whenever addressing the issue of education. Squibb, *supra* note 47, at 112-13.

67. By the 1860s, a few Illinois communities had begun to provide separate schools for African Americans. Squibb, *supra* note 47, at 112. Chicago, for example, established a black school in the mid-1860s. Mason, *supra* note 47, at 28. By the late 1860s, a number of other Illinois communities had done likewise, including Alton, Decatur, Galesburg, Jacksonville, Peoria, Quincy, and Springfield. Squibb, *supra* note 47, at 112. The small black population in

tendent of public instruction described the state of black education in 1866: "For the education of . . . [black] children the general school law of the State makes, virtually, no provision. By the discriminating terms employed throughout the statute, it is plainly the intention to exclude them from a joint participation in the benefits of the free school system."⁶⁸ This exclusion of black children from public schools was consistent with the general hostility displayed towards free blacks in Illinois; in 1853, Illinois enacted legislation that made it a "misdemeanor for a negro to come into the state with the intention of residing."⁶⁹

In the aftermath of the Civil War, pressure mounted in Illinois to make provisions for black education. In 1869, black leaders from throughout the state convened to demand equal school privileges, and these demands won support among many of the state's white Republicans.⁷⁰ The state constitutional convention of 1869, with strong Republican support, included a provision in the new state constitution that provided that "all children" were entitled to a common school education.⁷¹ Although that provision settled the issue of black entitlement to education, it left open the question of school segregation. In 1874, the Illinois General Assembly resolved the segregation issue by enacting legislation that explicitly prohibited the exclusion of any child from a school because of race.⁷² The statute was supported by both Republicans and Chicago Democrats; Democrats from rural southern Illinois were in strong opposition.⁷³

Local school officials in Illinois divided on the issue of pupil mixing in the wake of the 1874 antisegregation legislation. Some school districts,

many Illinois communities meant that black children were often left out of the school system. The superintendent of public instruction of Illinois estimated in 1868 that fewer than half of the state's black children attended public school. BUREAU OF EDUC., *supra* note 18, at 343.

68. BUREAU OF EDUC., *supra* note 18, at 342. Two years later, the state superintendent of public instruction reported that "children of color are not included in the numerical basis upon which either their country superintendent or the township trustees apportion the school fund." MEYER WEINBERG, *A CHANCE TO LEARN: THE HISTORY OF RACE AND EDUCATION IN THE UNITED STATES* 68 (1977).

69. JOHNSON, *supra* note 19, at 96.

70. ST. CLAIR DRAKE & HAROLD R. CAYTON, *BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY* 44 (1945).

71. Squibb, *supra* note 47, at 113-14.

72. The statute was entitled "An act to protect colored children in their rights to attend public schools" and provided that "all directors of schools, boards of education, or other school officers . . . are prohibited from excluding, directly or indirectly, any such child from such school on account of the color of such child." *People ex rel. Longress v. Board of Educ.*, 101 Ill. 308, 314 (1882). Shortly before enactment of the statute, the Illinois Supreme Court had noted in dicta in *Chase v. Stephenson*, 71 Ill. 383, 385 (1874), that it might be permissible for a school district to establish segregated schools.

73. Squibb, *supra* note 47, at 131-32.

particularly in the northern section of the state, chose to integrate their schools.⁷⁴ School districts in southern Illinois, many of whose white residents had immigrated from the South,⁷⁵ and to which thousands of emancipated slaves had moved following the end of the Civil War,⁷⁶ generally retained segregated schools until well into the twentieth century.⁷⁷

Thus, at the end of the nineteenth century, segregated schools remained in much of New Jersey, Pennsylvania, Ohio, and Illinois in defiance of state antisegregation legislation. The legislatures in these states had taken action to eliminate segregated schools, but the legislation did not reflect broad support for school integration. Rather, it reflected a political opportunity for many white legislators to gain black support and practically operated merely to create local choice: Those local school districts that found segregated schools inefficient could operate their schools on an integrated basis whereas those who wished to retain segregation could simply do so. As a result, by the end of the nineteenth century, many northern black schoolchildren remained in unlawfully segregated schools.

B. African-American Attitudes Towards School Segregation

The African-American community divided over the appropriate response to the continuation of school segregation in violation of the new state antisegregation laws. Many African Americans accepted and even preferred segregated schools, unwilling to antagonize the white community and embracing segregation as beneficial both to their children and to black teachers for whom segregated schools provided jobs. Others opposed segre-

74. SPEAR, *supra* note 9, at 6; Fishel, *supra* note 18, at 221; Thomas Dean Hamblin, *Drive the Last Nail: John M. Palmer and the Blacks in Illinois and Kentucky 85-88* (1976) (unpublished M.A. thesis, Southern Illinois University) (on file with the Southern Illinois University Library). By 1874, of the 67 Illinois counties that had a black population, 10 provided only segregated schools, 41 provided only integrated schools, and 16 provided both integrated and segregated schools. Fishel, *supra* note 18, at 217 n.32.

75. See, e.g., Squibb, *supra* note 47, at 4.

76. For example, in the three most southern counties in Illinois—Pulaski, Massac, and Alexander—the black population increased from 206 to 5654 between 1860 and 1870. The black population would continue to increase for the next several decades; by 1900, African Americans constituted 30% of the population of these three counties. Shirley Jean Motley Carlson, *The Black Community in the Rural North: Pulaski County, Illinois, 1860-1900*, at v (1982) (unpublished Ph.D. dissertation, Washington University) (on file with the Washington University Library). These counties would be among the most resistant to school integration in the North until the 1950s.

77. WEINBERG, *supra* note 68, at 68; Squibb, *supra* note 47, at 136. One southern Illinois school superintendent suggested in 1874 the provision of black education in Illinois through the establishment of "asylums . . . the same as for the blind and other unfortunates." Fishel, *supra* note 18, at 220 n.43.

gation, and sought to gain access for their children to mixed schools. This division in the northern black community over the wisdom of school integration would persist until the middle of the twentieth century.

The broad support among African Americans for school segregation existed because of several factors. Throughout the North, few white school officials permitted black teachers to teach in mixed schools;⁷⁸ when schools were integrated, black teachers were usually fired. In Ohio, for example, following passage of the 1887 antisegregation legislation, hundreds of black teachers lost their jobs and left the state to pursue teaching opportunities in segregated southern school systems.⁷⁹ As the Cincinnati school superintendent explained: "Negroes gave up their teachers when they gave up separate schools"⁸⁰ Realizing the effect of integration on their livelihood, black teachers—particularly in Ohio—were among the strongest opponents of desegregation legislation.⁸¹ Other African Ameri-

78. MOHRAZ, *supra* note 46, at 87. As one white leader in Philadelphia commented in 1896, expressing a sentiment widely held throughout the North: "[I]t is taken for granted that only white teachers shall be placed in charge of white children." MOHRAZ, *supra* note 46, at 87.

79. Squibb, *supra* note 47, at 195. Following the enactment of the antisegregation legislation, the Springfield, Ohio, school district discharged every black teacher. AUGUST MEIER & ELLIOTT RUDWICK, *ALONG THE COLOR LINE: EXPLORATIONS IN THE BLACK EXPERIENCE* 291 (1976). When black teachers in some communities lobbied to keep their jobs, school officials indicated that jobs would be saved only through the restoration of segregated schools. Washington, *supra* note 58, at 50.

80. Squibb, *supra* note 47, at 195. In Ohio, for the first three decades after passage of the 1887 statute, only Cleveland, Columbus, and Youngstown used black teachers in integrated classrooms. GERBER, *supra* note 62, at 265.

81. GERBER, *supra* note 62, at 200-01; Washington, *supra* note 58, at 29-30. For example, when the Ohio state legislature first considered legislation abolishing segregated schools in 1878, black teachers led a lobbying effort to defeat the legislation. Gerber, *supra* note 47, at 10-11. Again, in 1884, when the state legislature considered repealing earlier legislation requiring segregated schools, some of the strongest opposition came from black school teachers; their opposition helped kill the proposed legislation. *The School Question: The Ignominious Part Being Played by Colored Teachers Who Oppose the Ely and Littler Bill*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2; *Mixed Schools*, CLEVELAND GAZETTE, Feb. 16, 1884, at 2; Kessen, *supra* note 47, at 133. One Ohio black teacher explained: "To mix the schools will be virtually dismissing all the colored teachers from the profession. We have many teachers who have labored hard to make themselves proficient in the art of teaching. To repeal [the segregation law] will bring upon them an unjust hardship." *Mixed Schools: Mr. Ira A. Collins Answered*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2. Black teachers from Cincinnati, home to the state's largest black population, were particularly strong in their opposition to school integration. Gerber, *supra* note 47, at 19. The opposition of black teachers to school integration also helped defeat desegregation measures at the local level. When the Dayton School Board considered school integration in 1884, the opposition of black teachers helped defeat the proposal. GERBER, *supra* note 62, at 206; see *The Democrats Sanction the Black Laws*, CLEVELAND GAZETTE, Apr. 12, 1884, at 2 (criticizing self-interested black teachers).

cans recognized the important role that black teachers played in the social and political fabric of the black community and feared that the loss of black teachers would strip the community of many of its natural leaders.⁸²

Moreover, many African Americans favored the retention of segregated schools because of fear of mistreatment of their children in mixed schools at the hands of white teachers and classmates. Some feared their children would be harassed because they could attend school only sporadically because of family demands and also because they were often ill-dressed.⁸³ Others feared retaliation from angry whites if they insisted on pursuing their right to an integrated education.⁸⁴ Many of the black supporters of segregated schools had grown up with segregation in the South and were less desirous of mixed schools.⁸⁵

As a result, many African Americans opposed school desegregation and hence sought either circumvention of the antisegregation legislation or its repeal. In several communities throughout the North, black parents

82. As one black teacher commented: "I know of no better scheme to reduce the most intelligent classes of colored people to penury and want, or to drive them from the state to become the victims of southern cruelty and barbarism." Quoted in Gerber, *supra* note 47, at 11.

83. One black teacher explained the benefits of segregation: "Colored people, as a rule, are poor, and their children are not as well clad as the white children with whom they would be compelled to associate in mixed schools and the colored children will feel they are not wanted. These things will seriously embarrass colored children—in fact, many will absent themselves entirely." *Mixed Schools*, *supra* note 81, at 2. Another black teacher characterized the struggle to preserve segregated schools as "our battle for the education, health and happiness of our little colored children, more than half of whom cannot afford to dress in the White folks' fashions or be prompt and regular in attendance at the White folks' schools." Gerber, *supra* note 47, at 28 n.40.

84. GERBER, *supra* note 62, at 264 (violence accompanies integration in Felicity, New Richmond, and Ripley, Ohio); QUILLIN, *supra* note 47, at 94–95 (same); WEINBERG, *supra* note 68, at 68 (whites use violence in Springfield and Jo Daviess County, Illinois, to prevent the entry of black children into white schools); *The White-Caps Warn Us*, CLEVELAND GAZETTE, Jan. 12, 1889, at 2 (noting threats of violence against blacks in Felicity, Ohio, seeking to integrate white schools); CLEVELAND GAZETTE, Dec. 8, 1888, at 2 (same); Fishel, *supra* note 18, at 217–19 (same); see also CREW, *supra* note 22, at 182 (noting violence in Camden towards blacks attempting to exercise right to vote).

Whites in some areas used economic pressure to force African Americans out of the community and hence out of the public schools. Squibb, *supra* note 47, at 183–84. In Oxford, when blacks brought legal action to end school segregation, one white merchant fired all of his black employees. RAYFORD W. LOGAN, *THE NEGRO IN AMERICAN LIFE AND THOUGHT: THE NADIR 1877–1901*, at 235 (1954). Some white landowners refused to renew leases to black tenants, forcing black families to abandon communities under threat of school integration. QUILLIN, *supra* note 47, at 94; *Cin. Enquirer*, Feb. 15, 1889. Some Ohio communities prevented black families from settling within their borders. HANNIBAL G. DUNCAN, *THE CHANGING RACE RELATIONSHIP IN THE BORDER AND NORTHERN STATES* 33 (1922).

85. Squibb, *supra* note 47, at 186–88.

explicitly petitioned for the establishment of segregated schools;⁸⁶ in Ohio, for example, many blacks supported legislation to permit the retention of segregated schools upon the petition of the majority of black parents in a school district.⁸⁷ Although these repeal efforts failed, the lack of broad support for school integration in both the white and black communities severely undermined compliance with the new statute, and school segregation remained widespread.

On the other hand, many African Americans in the nineteenth century did favor school integration, arguing that segregation condemned them to second-class citizenship.⁸⁸ As one black leader explained, with segregation, "[t]he White child imbibes the false idea that the color of his skin makes him the colored child's superior, while the colored child grows sour under the weight of the invidious distinctions made between him and the White child, and in many cases . . . loses that ambition which would be the greatest spur to his success in life."⁸⁹ Other blacks recognized that segre-

86. CREW, *supra* note 22, at 130-31 (black support for segregated schools in Camden, New Jersey); MOHRAZ, *supra* note 46, at 87 (black leaders in Philadelphia petition local school authorities to establish more black schools in the late nineteenth century); WRIGHT, *supra* note 21, at 169-72 (after passage of 1881 legislation, black community in Brown's Point, Matawan, and Fair Haven, New Jersey, request segregated schools); Gerber, *supra* note 47, at 11, 22 (black community in Dayton asks local school board to preserve black schools; board establishes separate classrooms by race within same building); August Meier & Elliott Rudwick, *Negro Boycotts of Jim Crow Schools in the North, 1897-1925*, 5 INTEGRATED EDUC. 57, 64 (Aug.-Sept. 1967) (same); Anderson, *supra* note 21, at 72 (editor of *Trenton Sentinel*, a black newspaper, urges Princeton blacks in 1881 to accept segregated schools); Conner, *supra* note 22, at 284, 287 (black support for segregated schools in New Brunswick in early 1880s); Evelyn Blackmore Duck, *An Historical Study of a Racially Segregated School in New Jersey from 1886 to 1955*, 39-41 (1984) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library) (opposition by blacks in Mt. Holly, New Jersey to efforts of black parent to enroll his child in a white school); Kessen, *supra* note 47, at 135 (black community in Cincinnati pressures board of education to retain black schools following the 1887 legislation; about 90% of Cincinnati's black children remain in black schools the first year); Washington, *supra* note 58, at 54 (same). See generally David M. Ment, *Racial Segregation in the Public Schools of New England and New York, 1840-1940* (1975) (unpublished Ph.D. dissertation, Columbia University) (on file with the Columbia University Library) (describing black support for school segregation in New York).

87. *Mixed Schools: Are What Afro-Americans in Ohio Desire and Will Have*, CLEVELAND GAZETTE, Mar. 18, 1890, at 2; "Separate Schools": A Bill Introduced Providing for Them—What We Must Do, CLEVELAND GAZETTE, Mar. 15, 1890, at 2.

88. MCGINNIS, *supra* note 48, at 57-58; Gerber, *supra* note 47, at 13.

89. Gerber, *supra* note 47, at 14. The *Cleveland Gazette*, a black newspaper edited by Harry Smith, was a consistent and strong voice against school segregation. The *Cleveland Gazette* castigated those in the black community who favored the retention of segregated schools as "a nuisance to the community in which they live. . . . Negroes who oppose mixed schools . . . should be treated as enemies to their race." *Mixed Schools*, CLEVELAND GAZETTE, Jan. 12, 1889, at 2; see also *Springfield, The Democrats Sanction the Black Laws*, CLEVELAND GAZETTE, Apr. 12, 1884,

gated schools invariably meant unequal schools and the necessity for many black children to travel long distances to attend a segregated school.⁹⁰ This division in the black community over the wisdom of school integration would continue well into the twentieth century.

C. Enforcement of Antisegregation Legislation

None of the antisegregation legislation provided any penalty for failure to comply, leaving it to individual black parents to file litigation to gain entry for their children into white schools. Some African Americans did file litigation to enforce the new antisegregation legislation. Although virtually all of these lawsuits were successful, the litigation had little impact on entrenched patterns of segregation. Neither statute nor judicial decision could crack the wall of segregation in many northern school districts.

Litigation efforts failed because of the small number of lawsuits filed and the success of whites in resisting court orders requiring integration. During the quarter century following the passage of antisegregation legislation, African Americans in New Jersey and Pennsylvania filed only three lawsuits challenging school segregation;⁹¹ although a few more lawsuits were filed in other states, particularly Ohio, they had little impact on overall patterns of segregation.

This dearth of litigation reflected the ambivalence in the African-American community about school segregation and the expense and difficulty of mounting a legal challenge against a school district determined to maintain segregation. There were few black lawyers in much of the North until the twentieth century and no organization financially able and

at 2; CLEVELAND GAZETTE, Mar. 22, 1884, at 1; *Mixed Schools*, CLEVELAND GAZETTE, Feb. 14, 1885, at 2.

90. Gerber, *supra* note 47, at 2, 9–10; *The School Question*, CLEVELAND GAZETTE, Sept. 22, 1883, at 2.

91. In New Jersey, the first lawsuit came shortly after the enactment of the 1881 antisegregation legislation. In that case, the New Jersey Supreme Court held that, in accord with the new legislation, a black child could not be excluded from a white school that was the nearest to his residence. *State ex rel. Pierce v. Union Dist. Sch. Trustees*, 46 N.J.L. 76 (N.J. 1884), *aff'd*, 47 N.J.L. 348 (N.J. 1885); *Colored Children in the Public Schools*, 6 N.J.L.J. 286 (1883). A second lawsuit was filed in the early twentieth century. *Stockton v. Board of Educ.*, 59 A. 1061 (N.J. 1905).

In Pennsylvania, black parents filed only one legal challenge. *Kaine v. Commonwealth*, 101 Pa. 490 (1882); MOHRAZ, *supra* note 46, at 92 (noting that blacks in Philadelphia did not press for integration during the late nineteenth century). A few blacks did agitate against segregated schools—as in Chester and Uniontown during the 1890s—but no additional legal challenges were filed. Fishel, *supra* note 18, at 319.

institutionally committed to challenging racial segregation.⁹² Moreover, lawsuits to secure the entry of a few children into a white school had limited effect, as desegregation orders applied only to the plaintiffs themselves. Class actions would not be available for several decades.

Those African Americans who did file litigation to enforce antisegregation laws met resistance. In Ohio, for example, although several African Americans brought legal challenges to the retention of segregated schools—most of which were successful⁹³—some recalcitrant school boards found ways of avoiding compliance with adverse court decisions and left segregated schools intact.⁹⁴ Moreover, in some Ohio communities, whites vigorously resisted mixed schools with violence or economic retaliation towards the families of those children who chose to exercise their right to enter a white school.⁹⁵

One of the most dramatic instances of white defiance of legal authority took place in Alton, a southern Illinois town near St. Louis. In 1896, the Alton superintendent of schools segregated the town's schoolchildren by

92. MOHRAZ, *supra* note 46, at 88. In 1890, Pennsylvania had only four black attorneys, whereas New Jersey had only three. U.S. BUREAU OF THE CENSUS, THE STATISTICS OF THE POPULATION OF THE UNITED STATES 1890, Part II, 586, 602 tbl. 116. In Pennsylvania and New Jersey, at no time during the pre-Brown era did black lawyers account for more than one-half of 1% of the bar. 3 U.S. BUREAU OF THE CENSUS, 1940 CENSUS OF POPULATION 58, 181 tbl. 13. In Ohio and Illinois, black attorneys first constituted 1% of the bar in 1940, but by the time of the Brown decision, were still less than 2% of the bar. *Id.* at 671, 868; 2 U.S. BUREAU OF THE CENSUS, 1950 CENSUS OF POPULATION, ILLINOIS 285 tbl. 77, OHIO 366 tbl. 77. In addition, desegregation litigation was expensive. As one observer noted in 1913, "[w]hen we look back over these court decisions [in civil rights challenges] and see . . . the amount of litigation necessary, and consider how unable the negroes generally are to bear the expense of going to law, there can be but one conclusion arrived at; and that is that equal rights . . . for blacks and the whites is a myth." QUILLIN, *supra* note 47, at 120.

93. Board of Educ. v. State ex rel. Gibson, 16 N.E. 373 (Ohio 1880) (successful litigation in Oxford); *Mixed Schools*, CLEVELAND GAZETTE, Apr. 6, 1889, at 2 (successful litigation in New Richmond); *Another Victory for Equal Rights*, CLEVELAND GAZETTE, Dec. 24, 1887, at 2 (successful litigation in Yellow Springs); *School Board Case*, CLEVELAND GAZETTE, Dec. 17, 1887, at 2 (successful litigation in Xenia); *It Is Your Duty*, CLEVELAND GAZETTE, May 11, 1889 (successful litigation in Felicity).

94. For example, after litigation forced the integration of the Xenia schools, the local school board racially gerrymandered the school district to preserve segregated schools. DAVID, *supra* note 64, at 14-15; QUILLIN, *supra* note 47, at 96-97. The school board in New Richmond closed the town's schools for the remaining year following a court decision requiring integration. Squibb, *supra* note 47, at 182; *Mixed Schools*, *supra* note 93. Likewise, the school board in Felicity closed a white school after a black child successfully sued for the right to attend the school. *It Is Your Duty*, *supra* note 93, at 2; Squibb, *supra* note 47, at 183. Both New Richmond and Felicity also used intraschool segregation to evade pupil integration. *Id.* at 182-83.

Similarly, in Quincy, Illinois, African Americans successfully challenged school segregation, but local school officials circumvented the court order to comply with the antisegregation law. *People ex rel. Longress v. Board of Educ.*, 101 Ill. 308 (1882); Squibb, *supra* note 47, at 145.

95. See *supra* note 84.

assigning all black children to a segregated school.⁹⁶ Although Alton, unlike most southern Illinois communities, had operated integrated schools since the 1860s, an influx of southern whites and the pressure of real estate interests who sought to attract white residents from nearby St. Louis helped push the community towards segregation.⁹⁷ In response, one black parent, securing the legal assistance of former Illinois Governor and United States Senator John Palmer, filed a legal action seeking to compel the admission of his children to white schools in accord with the state statute.⁹⁸ Despite a clear violation of the Illinois antisegregation law and five favorable state supreme court decisions, the litigation failed to integrate the Alton schools as both the trial court and the school board refused to comply with directions from the state supreme court to integrate the schools.⁹⁹ The Alton experience underscored the limits of litigation to secure desegregated schools in the face of virulent white opposition. Notwithstanding the work

96. August Meier, *Early Boycotts of Segregated Schools: The Alton, Illinois Case, 1897-1908*, 37 J. NEGRO EDUC. 394, 395 (1968). The mayor of Alton told a group of black leaders that "I propose to keep the niggers out of schools with white children . . . if I have to use every policeman I have got in the city to do it." Meier & Rudwick, *supra* note 86, at 58.

97. Meier, *supra* note 96, at 395; Meier & Rudwick, *supra* note 86, at 57; Minnie Bibb in *White School*, N.Y. AGE, Oct. 1, 1908, at 1; Hamblin, *supra* note 74, at 97; Squibb, *supra* note 47, at 151.

98. Hamblin, *supra* note 74, at 98; Meier, *supra* note 96, at 397-98. Unlike African Americans in most other northern states, black parents in Illinois seeking to challenge school segregation enjoyed legal representation by prominent white lawyers. Palmer represented black children seeking admission to white schools on at least two occasions. Hamblin, *supra* note 74, at 98; Squibb, *supra* note 47, at 146. In addition to filing the lawsuit, blacks in Alton organized a boycott of the black schools coupled with a sit-in at the white schools. Although the sit-ins were thwarted by the local police, the boycott would continue until 1908. Meier, *supra* note 96, at 396-97.

99. Seven times over the course of 10 years, the plaintiffs in Alton presented their case to a jury; twice the jurors could not agree, and five times they rendered verdicts upholding school segregation. The Illinois Supreme Court reversed all five jury verdicts on the grounds that the trial judge committed serious error, including the exclusion of highly relevant evidence and erroneous instructions to the jury. Four times the Illinois Supreme Court set aside the verdict and ordered a new trial. *People ex rel. Bibb v. Mayor*, 84 N.E. 664 (Ill. 1908); *People ex rel. Bibb v. Mayor*, 77 N.E. 429 (Ill. 1906); *People ex rel. Bibb v. Mayor*, 70 N.E. 640 (Ill. 1904); *People ex rel. Bibb v. Mayor*, 61 N.E. 1077 (Ill. 1901); *People ex rel. Bibb v. Mayor*, 54 N.E. 421 (Ill. 1899). On the fifth occasion, in 1908, the Illinois Supreme Court—exasperated with the unwillingness of the trial court to comply with its rulings—simply issued its own writ of mandamus requiring the admission of the black plaintiffs into the white schools. *People ex rel. Bibb v. Mayor*, 84 N.E. 664, 667 (Ill. 1908). The Illinois Supreme Court characterized the lower court proceedings as "a deplorable disregard for the law and for the rights of citizens." *Id.* at 666.

But the writ was never enforced. The school board determined that the decision applied only to the plaintiff children—who, after 10 years of litigation, had exceeded the school age—and retained segregated schools. The plaintiff ultimately left the state for Ohio. Meier & Rudwick, *supra* note 86, at 58-59; William R. Ming, *The Elimination of Segregation in the Public Schools of the North and West*, 21 J. NEGRO EDUC. 265, 269 (1952).

of some of the best legal talent in Illinois and the support of the state supreme court, the white community successfully dodged school integration in Alton. The dismal results of the Alton litigation discouraged further challenges to school segregation; for more than forty years, no African American would file litigation seeking school integration in Illinois.¹⁰⁰

At the end of the nineteenth century, African Americans in the North had presumably captured a significant legal victory in the form of antisegregation legislation and consistent judicial enforcement of that legislation. Those legal victories, however, did not translate into the eradication of segregated education in northern states. The legislation was enacted over the dissent of many white school officials who simply refused to comply with this challenge to established racial mores. Moreover, enforcement of the new legislation, dependent on individual lawsuits, proved cumbersome. African-American schoolchildren had won the legal right to an integrated education during the last quarter of the nineteenth century, but it would take more than a half century before that right translated into social reality.

II. THE TWENTIETH-CENTURY CAMPAIGN AGAINST NORTHERN SCHOOL SEGREGATION

The fleeting political influence that African Americans enjoyed in most northern states following the end of the Civil War that resulted in antisegregation legislation had begun to fade by the early twentieth century. During the first few decades of this century, white-black relations in northern states deteriorated in the wake of the arrival of hundreds of thousands of southern blacks in search of better economic opportunities.¹⁰¹ This tremendous influx of southern blacks exacerbated racial tensions, and many local school officials, who had tolerated school integration when the number of African Americans was relatively small, began to insist on racial

100. Moreover, black children would not attend integrated schools in Alton until 1950. See Meier, *supra* note 96, at 398-402.

101. Between 1910 and 1940, approximately 1.8 million blacks left the South for the North in pursuit of better jobs. DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970*, at 78 tbl. 5.2 (1982). The majority journeyed to six states: New York (371,800); Illinois (238,500); Pennsylvania (204,500); Ohio (180,800); Michigan (152,800); and New Jersey (101,000). *Id.* at 80.

This deterioration in black-white relations in northern states was influenced in part by the segregationist furor that swept the South in the 1890s and early years of the twentieth century. Eugene A. Hatfield, *The Impact of the New Deal on Black Politics in Pennsylvania 1928-1936*, at 20 (1979) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)) (on file with the University of North Carolina (Chapel Hill) Library).

separation.¹⁰² As early as 1906, the *New York Commercial* predicted this trend towards segregation, noting that "Northern sentiment on the race question is not at bottom a million miles away from Southern sentiment."¹⁰³

A. Increase in Northern School Segregation

Between 1910 and 1940, the number of segregated schools in the North dramatically increased, even in communities where school integration had been common since the antebellum era. In New Jersey, for example, school segregation, already widespread in the state's southern counties by the end of the nineteenth century, substantially increased during the first four decades of the twentieth century as school officials in many communities formally established dual school systems in which school assignments were based on race rather than geography.¹⁰⁴ A 1925 report found school segregation particularly widespread in the state's southern counties at the elementary school level: "From the university town of Princeton, including the capital city of Trenton, southward to Cape May, every city or town with a considerable Negro population supports the dual

102. Even in states that had long operated integrated schools, the arrival of southern blacks prompted a call for segregated schools. CHARLES KELLOGG, NAACP: A HISTORY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, 1909-1920, at 194 (1967) (segregation in Connecticut); see also W.E.B. Du Bois, *The Tragedy of "Jim Crow,"* 26 CRISIS 169, 170 (1923) (noting increase in school segregation throughout the North following the Great Migration); Emma Lou Thornbrough, *Segregation in Indiana During the Klan Era of the 1920's*, 47 MISS. VALLEY HIST. REV. 594, 601-03 (1961) (increase in school segregation in Indiana during the 1920s).

103. *Jim Crow School in New Jersey*, DAILY NEWS & OBSERVER (Raleigh, N.C.), Feb. 18, 1906, at 4.

104. A 1954 study noted the striking similarities between segregation in New Jersey and the South:

While most of New Jersey is geographically above the Mason-Dixon line, the history of its public school education, especially at the elementary and junior high school levels, has had more in common with states below than above this line. In the southern counties both basic policies and prevailing practices have been essentially similar to those of the Southern states.

SCHOOLS IN TRANSITION: COMMUNITY EXPERIENCES IN DESEGREGATION 121 (Robin M. Williams, Jr. & Margaret W. Ryan eds., 1954). This increased segregation was in clear violation of the state's antisegregation law. As one lawyer noted in 1906, New Jersey schools were characterized by "theoretical admission of colored children to white schools by terms of legislation and simultaneously of actual exclusion by method of administration." Linton Satterthwait, *The Color-Line in New Jersey*, 35 ARENA 394, 395 (1906). Eight years later, another observer noted that New Jersey "makes a great variety of laws, and the communities pick from the mass those that please them, and do not repudiate the rest, but just forget to pay attention to them." WILLIAM E. SACKETT II, MODERN BATTLES OF TRENTON 375 (1914).

educational system, with a building for its white and a building for its Negro pupils of the grammar grades."¹⁰⁵ Between 1919 and 1935, the number of separate schools for African-American children throughout the state increased by thirty-five percent,¹⁰⁶ and these numbers would continue to increase until the early 1940s.¹⁰⁷ At the same time, school segregation steadily increased in Pennsylvania during the early years of this century, primarily at the elementary school level and particularly in the eastern and southern counties of the state.¹⁰⁸

105. Lester B. Granger, *Race Relations and the School System: A Study of Negro High School Attendance in New Jersey*, 1925 OPPORTUNITY 327. Two southern counties, Burlington and Gloucester, segregated black students not only at the elementary school level but also at the high school level. WEINBERG, *supra* note 68, at 75. Yet the increase in school segregation was not confined to schools in southern New Jersey; during the two decades following World War I, school boards in northern New Jersey began to segregate their schools in response to an increase in the African-American population. REPORT OF THE NEW JERSEY STATE TEMPORARY COMMISSION ON THE CONDITION OF THE URBAN COLORED POPULATION 38-42 (1939) [hereinafter REPORT OF THE N.J. TEMPORARY COMMISSION]; WRIGHT, *supra* note 21, at 188-94.

106. WRIGHT, *supra* note 21, at 185; Eleanor H. Oak & Vishnu V. Oak, *The Development of Separate Education in New Jersey*, 59 EDUC. 109, 110 (1938).

107. Marion T. Wright, *Racial Integration in the Public Schools of New Jersey*, 23 J. NEGRO EDUC. 282, 282 (1954). Segregation increased in New Jersey not only in the schools but in public accommodations as well. The New Jersey legislature weakened its public accommodations antidiscrimination legislation in 1917 and public accommodations segregation persisted until well into the 1940s.

108. HORACE MANN BOND, *THE EDUCATION OF THE NEGRO IN THE AMERICAN SOCIAL ORDER* 378 (1966). Towns throughout eastern Pennsylvania established or retained separate schools—Carlisle, Chester, Coatesville, Frankford, Germantown, Lansdown, Sharon Hill, Swarthmore, and West Chester. DUNCAN, *supra* note 84, at 39-40; Hatfield, *supra* note 101, at 205-06. By 1925, almost one-third of Philadelphia's black students attended single-race schools. W.A. Daniel, *Schools*, in NEGRO PROBLEMS IN THE CITY 178-82 (Thomas Woofter ed., 1928). In York, following the arrival of many southern African Americans during World War I, the school superintendent abandoned geographic assignments and began assigning black elementary schoolchildren to separate schools. Elementary school segregation increased in York throughout the 1920s and would continue until the 1950s. *World War II Brought Change in Jim Crow School Pattern*, GAZETTE & DAILY (York, Pa.), July 1, 1954; Letter from S.B. Randolph to National Office of the NAACP (July 1944) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

During the 1920s and 1930s, some Pennsylvania communities introduced segregation at the junior and senior high school levels for the first time as well. Chester, which had segregated its elementary schools in 1912, MOHRAZ, *supra* note 46, at 92, established a segregated junior high school in 1929 and a segregated senior high school in early 1934. The Chester School Board assigned all of the town's black children to Frederick Douglass High School and all of the white children to Chester High School. *Murray v. School Dist. of the City of Chester*, Bill of Complaint, May 29, 1934 (on file with Arthur Spingarn Papers, Box 33, Library of Congress, Washington, D.C.); Reese L. Hammond, *Chester Creates First Jim Crow High School in State*, PHILA. TRIB., Feb. 22, 1934, at 1; Hatfield, *supra* note 102, at 205-06. A white school official in Chester described his efforts to secure black support for this school segregation:

Some of us went to some of the influential Negroes and told them, conditions being as they were, we thought it would be better to establish some separate schools for the colored people in the lower grades. That would give some of the colored people positions as

In Ohio, school segregation increased during the first four decades of this century, even in communities such as Cleveland and Columbus that had eliminated segregated schools during the nineteenth century. Cleveland reversed a longstanding trend of integrated schools during the 1910s and 1920s, prompting a local black newspaper, the *Call & Post*, to comment in 1928: "Daily it becomes more apparent that the virus of southern race prejudice is bearing its malignant fruit in this cosmopolitan city of Cleveland. With amazing rapidity it is spreading through the very arteries of this city—once famous for its liberality to minority groups."¹⁰⁹ The Columbus Board of Education, which had desegregated its schools and used racially mixed faculties in the 1880s, resegregated many of its schools during the first half of the twentieth century through racially gerrymandered school district lines and the assignment of teachers on a racial basis.¹¹⁰

teachers in the colored schools. They agreed to this and they were established.

DUNCAN, *supra* note 84, at 39. The Philadelphia suburb of Berwyn established a segregated high school in 1931. Hatfield, *supra* note 101, at 206. Pittsburgh did likewise in the 1930s. BOND, *supra*, at 378.

In addition, segregated black schools were often inferior to their white counterparts. In 1915, the town of Morton condemned its school building, built a new school for white children, and returned the black children to the condemned building. G. Edward Dickerson & William Lloyd Imes, *The Cheyney Training School*, 26 *CRISIS* 18, 19–20 (May 1923).

109. KUSMER, *supra* note 9, at 187. Cleveland had been one of the most staunchly integrationist cities in the country since the 1840s, but during the 1910s, a few Cleveland principals segregated black children into separate classrooms within integrated schools. Moreover, the city's trade schools excluded black students on the grounds that trade unions would not permit black workers to secure skilled labor jobs. The trend towards segregation increased during the 1930s as thousands of black immigrants settled in the city. During that decade, the board began to assign most black high school students to Central High School, even those that lived closer to other high schools, and to permit white students who lived near Central to transfer to other schools. Also during the 1930s, the board stopped assigning black teachers to predominantly white schools, placing them instead in black schools. *Id.* at 182–84 n.17.

110. In 1909, the Columbus School Board established a new elementary school in the middle of a black neighborhood and gerrymandered the school's attendance zone to preserve its racial character. As a result, the new school—Champion Elementary—was more than 90% black, whereas two other elementary schools, each about three blocks away, were less than 4% black. Columbus Board of Education Minutes, Sept. 30, 1907, May 11, 1908, June 8, 1908, *cited in* Testimony of W.A. Montgomery, Appendix, at 368–71, *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979); Respondents' Brief at 14–15, *Penick* (No. 78-610); GERBER, *supra* note 62, at 266–67; Minor, *supra* note 55, at 147–53. Many African Americans, fearing that the school's placement would lead to school segregation, had petitioned the school board—unsuccessfully—to build the school elsewhere, claiming that "the boundary lines of certain school districts in this city [had already] been drawn as to segregate colored children." Respondents' Brief at 14 n.12, *Penick* (No. 78-610). In addition to this racial gerrymandering, the school board reassigned black elementary school teachers from throughout the system to Champion Elementary School and thereafter stopped using black teachers in integrated classrooms. Minor, *supra* note 55, at 153. Beginning in 1916, the school board informed black teaching applicants that Champion was the only school at which African Americans would be hired. Respondents' Brief at 15, *Penick* (No. 78-610).

School district lines would remain racially gerrymandered and no black teacher would teach white children in Columbus until the 1950s.

In other Ohio cities, such as Dayton and Cincinnati, segregationist sentiment increased as well. Dayton, which had always been resistant to pupil mixing, increased school segregation during the 1910s and 1920s through the use of racially segregated classrooms in mixed schools.¹¹¹ During the 1930s, the Dayton School Board went further, establishing separate junior and senior high schools for black children.¹¹² Dayton continued to operate segregated schools and to exclude black teachers from teaching white children pursuant to an explicit "segregation policy" until the early 1950s.¹¹³ Similarly, in Cincinnati, although the school board had eliminated many separate black schools after the enactment of the 1887 antisegregation legislation, the board reestablished several black schools during the first two decades of the twentieth century.¹¹⁴ The Cincinnati School Board would continue to exclude several black

In the 1920s, the Columbus School Board grew bolder in its segregation efforts, expanding its use of gerrymandered school districts and racially explicit teacher assignments to preserve the racial integrity of the city's schools. In addition, in 1925, the school board established a "portable school" for black students in a mostly white neighborhood in the northern section of the city, staffed by black teachers, rather than assign these children to a nearby white elementary school. Junior high school students in this area were sent down to Champion rather than to nearby white schools. A 1931 report from the Ohio Director of Education to the governor found that 1269 black children in Columbus attended "special schools for colored children." *Penick v. Columbus Bd. of Educ.*, 519 F. Supp. 925, 929 (S.D. Ohio 1981), *aff'd*, 663 F.2d 24 (6th Cir. 1981), *cert. denied*, 455 U.S. 1018 (1982).

111. The Dayton School Board established separate classrooms for black children in mixed schools in 1912, a practice it had used in the nineteenth century. *Brinkman v. Gilligan*, 583 F.2d 243, 249 (6th Cir. 1978), *aff'd sub nom Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979); *Board of Educ. v. State ex rel. Reese*, 151 N.E. 39 (Ohio 1926). Six years later, in 1918, the school board assigned all black children at Garfield Elementary School to an annex behind the main school building where white children received their instruction. *Brinkman*, 583 F.2d at 249 n.19.

112. *Brinkman*, 583 F.2d at 249-50; Brief for the United States as Amicus Curiae at 25, *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979) (No. 78-627); BOND, *supra* note 108, at 380. Dayton maintained one high school to which all black students in the city were automatically assigned regardless of their proximity to white schools until September 1954. No white students were assigned to this school. In addition, the athletic teams of this high school could not compete with other (white) teams in the city until 1947; they were required instead to play black high schools from other Ohio cities. *Brinkman*, 583 F.2d at 249.

113. Not until 1952 did the Dayton Board of Education permit black teachers to teach white children. *Brinkman*, 583 F.2d at 247 & n.11. As a result, until that date, no white student could lawfully attend a school that employed a black teacher. *Id.* at 250; *Brinkman v. Gilligan*, 503 F.2d 684, 697 (6th Cir. 1974).

114. Even in residentially integrated areas of the city, the school board maintained separate white and "colored" schools. Washington, *supra* note 58, at 83.

elementary schools, designated "Separate Schools," from the city's general geographic assignment plan until the early 1950s.¹¹⁵

Finally, in southern Illinois, many school districts—which had never complied with the 1874 antisegregation legislation—continued to operate segregated schools and would continue to do so until the eve of the *Brown* decision.¹¹⁶ By 1950, school segregation was more pervasive in southern Illinois than in any other part of the North. Pressure for school segregation also dramatically increased in Chicago during the early twentieth century in response to the arrival of thousands of African Americans, leading to extensive racial gerrymandering of school attendance lines. One white leader in Chicago announced in 1909 that "[i]t is only a question of time when there will be separate schools for Negroes throughout Illinois."¹¹⁷

This segregation took many forms: separate schools, separate buildings on the same plot of land, and separate classrooms within the same building.¹¹⁸ Moreover, separate usually meant unequal, as black schools were

115. *Id.* at 101, 103. The Cincinnati School Board also prevented black teachers from teaching in integrated schools until the early 1950s. *Id.*

116. A 1952 study found that 11 of the state's 102 counties—all in the southern section of the state—still operated officially mandated segregated schools, educating about 10,000 black children. Ming, *supra* note 99, at 268. These school districts varied as to whether they required segregation in all 12 grades, as did Cairo and East St. Louis, or whether they required segregation only for students below the high school level, as did Alton, Edwardsville, and Harrisburg. Bonita H. Valien, *Racial Desegregation of the Public Schools in Southern Illinois*, 23 J. NEGRO EDUC. 303, 304 (1954).

Moreover, this extensive school segregation was recognized by state education authorities. In 1947, the Illinois state school directory listed black and white schools separately for those southern counties that maintained segregated schools. WEINBERG, *supra* note 68, at 71. As late as the early 1950s, the Illinois superintendent of public instruction employed a black assistant to administer the services of the state superintendent's office for segregated black schools. Ming, *supra* note 99, at 269.

117. MOHRAZ, *supra* note 46, at 100. Chicago whites sought both school board action and a city charter amendment to reverse a half-century history of integrated schools. SPEAR, *supra* note 9, at 345. Although black resistance prevented such action, the school board did allow the gerrymandering of school attendance zones to increase racial cohesion. MOHRAZ, *supra* note 46, at 98–100; SPEAR, *supra* note 9, at 204–05. At the same time, white community groups, such as the Hyde Park Improvement Protective Club, took aggressive actions to drive black families out of white neighborhoods. *Id.* at 22–23, 201.

118. In New Jersey, segregation took place through separate schools and racially separate classrooms within integrated schools. INTERRACIAL COMMITTEE OF THE NEW JERSEY CONFERENCE OF SOCIAL WORK, *THE NEGRO IN NEW JERSEY* 37 (1932); REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105, at 39; CHARLES S. JOHNSON, *THE NEGRO IN AMERICAN CIVILIZATION* 268–69 (1930); Oak & Oak, *supra* note 106, at 111; Devore, *supra* note 35, at 101–02, 144–45. In some schools, not only were black and white children taught in separate classrooms, but the school playground was divided by a heavy wire screen to keep the children apart. E. George Payne, *Negroes in the Public Elementary Schools of the North*, 140 ANNALS AM. ACAD. POL. & SOC. SCI. 224, 227 (Nov. 1928).

generally inferior to their white counterparts.¹¹⁹ In the wake of this rush towards school segregation, the antisegregation legislation of the nineteenth century was largely forgotten.

B. White Support for School Segregation

This impetus towards increased school segregation had many causes. First, as thousands of southern blacks migrated to the North during the early twentieth century, particularly during and after World War I, northern whites increasingly demanded school segregation. A 1932 study of New Jersey schools, for example, found that in those communities in which the black population reached ten percent, pressure to segregate black children substantially increased.¹²⁰

Many white school officials argued that the newly arrived black schoolchildren, who had received minimal education in the South, were ill-prepared to attend school with whites, thereby necessitating segre-

In Pennsylvania, segregation took place both through racially separate schools and racially separate classrooms within integrated schools. For example, Swarthmore established segregated classrooms in 1913, Letter from Theodore O. Spaulding, Counsel, NAACP, to Roy Wilkins, Assistant Secretary, NAACP (Mar. 25, 1940) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.), and Downingtown did likewise in 1919, Letter from W.M. Gilmore, Math-Science Instructor, Downingtown Industrial School, to Constance Baker Motley, Assistant Special Counselor, NAACP (Feb. 22, 1950) (same). Although the Pennsylvania state legislature enacted legislation in 1925 to prohibit such segregation, the new legislation was ignored. Spaulding Letter, *supra*; Gilmore Letter, *supra*. Article on Segregation in Northern Schools (untitled, n.d.) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

In Illinois, some school districts established separate schools while others maintained segregated classrooms in mixed schools. Valien, *supra* note 116, at 304. Some school districts provided no high school education for black children, requiring them to travel to segregated high schools in neighboring counties. *Id.*

119. See, e.g., REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105, at 39 (noting that segregated black schools were often overcrowded); Amended Petition, *Worthy v. Board of Educ.* (1927) (on file with Arthur Spingarn Papers, Box 35, Library of Congress, Washington, D.C.) (alleging inferior segregated school in South Toms River); JOHNSON, *supra* note 118, at 268 (noting "grossly inferior accommodations" in New Jersey's separate black schools); George Chester Morse, *New Jersey, New Laboratory in Race Relations*, 13 NEGRO HIST. BULL. 156, 157 (1950) (noting inequality of segregated black schools in southern New Jersey).

120. WRIGHT, *supra* note 21, at 192.

gation.¹²¹ The superintendent of Trenton schools explained his support for segregation in 1927:

The problem of retardation is more serious among colored children than among any other racial group. I am inclined to believe that the further extension of segregation . . . is the only real practical solution. . . . [T]he low educational age of most of those coming from the South . . . adds materially to our problem.¹²²

Other school officials were more openly racist in their resistance to pupil integration. A white school principal complained of a challenge to school segregation lodged by black parents in Toms River, New Jersey, in 1927:

I've just returned from a trip to Texas, and, believe me, they know how to treat colored people down there. I kept my eyes open and learned a few things about how to handle them. Why, if these people had done in Texas what they've done here, or had done it in any of the Southern states, they'd have been lynched. They would have gone to whatever school the whites told them to and be mighty glad to have the chance.¹²³

Similarly, a white principal in Atlantic City explained his support for school segregation: "I believe in segregation. . . . [Black children] are like little animals. There is no civilization in their homes. They shouldn't hold up white children who have had these things for centuries. They are

121. See SPEAR, *supra* note 9, at 204; Daniel, *supra* note 108, at 175–76; *The Segregation of Negro Children at Toms River, N.J.*, 25 SCH. & SOC'Y 365 (1927); August Meier & Elliott M. Rudwick, *Early Boycotts of Segregated Schools: The East Orange, New Jersey, Experience, 1899–1906*, 7 HIST. EDUC. Q. 22, 23–24 (1967). Studies of black children in northern schools who lagged significantly behind their peers indicated that the vast majority of such children had been born in the South. JOHNSON, *supra* note 118, at 270. The poor educational background of these black children was exacerbated by the fact that many of them were obliged to assist in the economic support of their families. Payne, *supra* note 118, at 231–32.

122. Payne, *supra* note 118, at 230. Just a few years earlier, Trenton had built a new black school to which junior high children from throughout the city were assigned, continuing a long practice in the state's capital city of school segregation. *Id.* at 227; Daniels, *supra* note 22, at 37.

123. Rollo Wilson, *Citizens Protest to Governor*, PITT. COURIER, Apr. 2, 1927, at 1, 8. Not surprisingly, many black leaders called New Jersey the "Mississippi of the North." Morse, *supra* note 119, at 156.

not as clean. They are careless about their bodies. Why should we contaminate our race?"¹²⁴

At the same time, the Ku Klux Klan experienced a resurgence in the North during the 1920s and 1930s that led to increased pressure for school segregation. In many northern communities, the Klan pressured school officials to establish or maintain segregated schools, and in some communities, Klan members served as school superintendents.¹²⁵ For example, in 1922, the rare hiring of a black teacher to teach white children in Hackensack prompted a Ku Klux Klan parade in opposition and a barrage of threats.¹²⁶ In Ohio, the Klan urged increased school segregation and a ban on interracial marriage throughout the 1920s and early 1930s.¹²⁷

C. African-American Attitudes Towards Increased School Segregation

As it had in the nineteenth century, the northern African-American community sharply divided over the question of how to respond to this advancing tide of segregation. In many northern communities, African Americans enthusiastically supported school segregation and, on several occasions, petitioned local school officials to establish segregated schools.¹²⁸ Several factors caused these conservative attitudes. First,

124. CHARLES S. JOHNSON, *PATTERNS OF NEGRO SEGREGATION* 198 (1943). The New Jersey State Temporary Commission on the Condition of the Urban Colored Population found widespread support for segregation among New Jersey school superintendents in 1938. REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105, at 45. The president of the Westhampton Township (N.J.) Board of Education announced that "[o]ur plan is to have a separate school for colored children from the first grade through high school. The reason is because the colored children are objectionable." *Id.* at 41.

125. In Columbus, New Jersey, a local Klan leader served as school superintendent. JOHNSON, *supra* note 118, at 267. In Springfield, Ohio, the school superintendent who vigorously opposed school integration, was a Klan member as were two members of the school board. Judge A. N. Summers, CLEVELAND GAZETTE, Mar. 3, 1923.

126. E. FREDERIC MORROW, *WAY DOWN SOUTH UP NORTH* 94-95 (1973). Similarly, in 1936, the Klan threatened to intervene in a school segregation dispute in East Orange, New Jersey. *Black Legion Shows Hand in New Jersey School Teacher Campaign*, NORFOLK J. & GUIDE, Aug. 22, 1936, at 10.

127. See, e.g., *Kluxers out in the Open: To Fight for "Jim Crow" Schools and Against Intermarriage*, CLEVELAND GAZETTE, Oct. 3, 1931, at 1; CLEVELAND GAZETTE, Feb. 21, 1925, at 2 (discussing "Jim Crow" school bills). In Tuscarawas County, Ohio, for example, African Americans petitioned for a segregated school in the wake of Klan activity. Diana H. Priest, *A Historical Study of the Royal Elementary School 84* (1993) (unpublished Ph.D. dissertation, University of Akron) (on file with the University of Akron Library).

128. In New Jersey, see WRIGHT, *supra* note 21, at 186-87 (African Americans in Salem County and Ocean County successfully petition local school authorities to establish segregated schools); Oak & Oak, *supra* note 106, at 112 (black support for segregated education in Lakewood, Pennsgrove, and Swainton); Devore, *supra* note 35, at 149, 168, 192-93 (black sup-

many African Americans continued to favor segregated schools in order to provide jobs for black teachers,¹²⁹ since few northern school districts allowed blacks to teach in racially mixed schools.¹³⁰ One educator in

port for segregated schools in Cinnaminson). Several local school officials claimed in 1947 that they retained segregated schools at the request of black parents who preferred their children to be taught by black teachers in black schools. Gloster B. Current, *Exit Jim-Crow Schools in New Jersey*, 56 *CRISIS* 10, 11 (1949); Noma Jensen, *Current Trends and Events of National Importance: A Survey of Segregation Practices in the New Jersey School System*, 17 *J. NEGRO EDUC.* 84, 84 (1948).

In Pennsylvania, see *Agitation Unnecessary: No Danger of Philadelphia School Board Establishing Separate Schools*, *N.Y. AGE*, Nov. 5, 1908 (noting that group of black ministers led petition drive to establish a segregated school in Philadelphia); Gilmore Letter, *supra* note 118 (noting that black parents in 1918 successfully requested school board to establish racially separate classrooms in integrated school in Downingtown).

In Ohio, see Reid E. Jackson, *The Development and Character of Permissive and Partly Segregated Schools*, 16 *J. NEGRO EDUC.* 301, 307 (1947) (African Americans petition Columbus School Board to convert a white elementary school in a changing neighborhood to a black school); *A Sermon for All of Our People*, *CLEVELAND GAZETTE*, May 1, 1927, at 1 (blacks in Mansfield petition school board for separate school; blacks support segregated schools in Cincinnati); Minor, *supra* note 55, at 154 (support among blacks in Columbus for school segregation).

129. See REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105, at 42 (noting support of New Jersey blacks for segregation in order to support black teachers); MOHRAZ, *supra* note 46, at 24 (noting support among Philadelphia blacks for school segregation to provide job opportunities for black teachers); SPEAR, *supra* note 9, at 62 (many Chicago blacks favored segregation as a means of providing employment for black teachers); Daniel, *supra* note 108, at 181 (same); *The Negro and the Northern Public Schools*, 25 *CRISIS* 205 (1923) (noting that many northern blacks favored segregated schools in order to provide employment for black teachers); L.D. Reddick, *The Education of Negroes in States Where Separate Schools Are Not Legal*, 16 *J. NEGRO EDUC.* 290, 297-98 (1947) (noting that blacks favor segregated schools to provide jobs for black teachers and to avoid mistreatment of black children in white schools); "School Segregation of Negroes Holds in New Jersey's 'South'," *Sunday Call's Story Relates*, *N.J. HERALD NEWS*, Apr. 7, 1945, at 1 (noting that many blacks in Bordentown, New Jersey, favor retention of black schools to preserve teacher jobs); see also MORROW, *supra* note 126, at 90-92 (describing opposition of blacks in Hackensack, New Jersey, to efforts by black teacher in 1920s to secure teaching post in white school).

130. For example, in New Jersey, in 1939, over 95% of the black teachers taught in segregated schools. REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105, at 42. See, e.g., *East Orange May Finally Get Teachers*, *NORFOLK J. & GUIDE*, Aug. 8, 1936, at 8 (East Orange finally hires first black teacher to teach all-black class); *Must Pay the Teacher*, *CLEVELAND GAZETTE*, Mar. 3, 1923, at 2 (black teacher in Trenton, inadvertently hired to teach white children, is fired).

In virtually every Pennsylvania school district, black teachers were prevented from teaching white students. Kenneth L. Kusmer, *The Black Urban Experience in American History*, in *THE STATE OF AFRO-AMERICAN HISTORY: PAST, PRESENT, AND FUTURE* 91 (Darlene Clark Hine ed., 1986). By the late 1940s, Pittsburgh and Philadelphia were the only two school districts in the state to permit black teachers to teach white children. See *Congratulations to Philadelphia*, 44 *CRISIS* 241 (1937) (Philadelphia permits black teacher to teach white children for first time in 1937); NAACP, *Race Policies and Practices: A Survey of Public School Systems in Pennsylvania* (1948) (on file with NAACP Papers, Box 11-B-146, Library of Congress, Washington, D.C.) (Pittsburgh is only surveyed school district that permits black teachers to teach white children). Pittsburgh did not hire its first black teacher until 1933. IRA DE A. REID, *SOCIAL CONDITIONS OF THE NEGRO IN THE HILL DISTRICT OF PITTSBURGH* 88 (1930); Kusmer, *supra*, at 100.

Bordentown, New Jersey, explained the exclusion of black teachers from integrated schools in the mid-1940s: "We couldn't have a colored teacher in a mixed class in Bordentown. The people would not accept it."¹³¹ Not surprisingly, throughout the first half of this century, black teachers were among the most forceful proponents of school segregation in northern states.¹³²

Moreover, many African Americans continued to fear, with some basis, mistreatment of their children in white schools.¹³³ Blacks in Salem County, New Jersey, for example, requested a segregated school in 1924, complaining of the fact that black children "were mistreated in the white schools and were indoctrinated with feelings of racial inferiority."¹³⁴ In those communities that did operate mixed schools, reports of mistreatment

Many Ohio school districts would not permit black teachers to teach in mixed schools. See *supra* text accompanying notes 110-113.

131. "School Segregation," *supra* note 129, at 1, 3.

132. See Clement A. Price, *We Knew Our Place, We Knew Our Way: Lessons from the Black Past of Southern New Jersey*, in *BLACKS IN NEW JERSEY 1986 REPORT: A REVIEW OF BLACKS IN SOUTH JERSEY* 18-19 (Bruce Ransom ed., 1986) (same); New Jersey State Conference of NAACP Branches, *A Survey of the Public School Systems in the State of New Jersey*, 1-2 (1947) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.) (noting the influence of black teachers and principals on the continuation of segregation because of fear of job loss) [hereinafter *N.J. Public School Survey*]; Eleanor Hill Oak, *The Development of Separate Education in the State of New Jersey* 32-33, 44 (1936) (unpublished M.A. thesis, Howard University) (on file with the Howard University Library) (noting support of black teachers for segregation). Certain black educators were particularly influential voices for continued segregation. For example, William Valentine, head of the all-black Bordentown Manual Training School in New Jersey, opposed integration efforts. Ezola Bolden Adams, *The Role and Function of the Manual Training and Industrial School at Bordentown as an Alternative School, 1915-1955*, 141-42 (1977) (unpublished Ed.D. dissertation, Rutgers University) (on file with the Rutgers University Library).

Black teachers and principals did suffer as a result of integration efforts. Between 1945 and 1951, a period of extensive school desegregation in the elementary schools of southern New Jersey, the number of black teachers declined even though the total number of teachers increased. Wright, *supra* note 107, at 285.

133. WRIGHT, *supra* note 21, at 160, 173-74, 200; *Education*, 24 *CRISIS* 252 (1922) (noting that black parents often preferred segregated schools because of fears of mistreatment); Vincent P. Franklin, *The Persistence of School Segregation in the Urban North: An Historical Perspective*, 1 *J. ETHNIC STUD.* 51, 60 (1974); Charles H. Thompson, *Court Action the Only Reasonable Alternative to Remedy Immediate Abuses of the Negro Separate School*, 4 *J. NEGRO EDUC.* 419, 427 (1935) (noting acceptance of segregation by northern blacks because of concerns of mistreatment in mixed schools); Devore, *supra* note 35, at 140.

In addition, many blacks argued that those children who attended segregated schools tended to remain in school longer than those children who attended mixed schools. ROBERT RUSSA MOTON, *WHAT THE NEGRO THINKS* 112-13 (1929). One black businessman in Indianapolis explained: "I think most Negroes do better in their own schools. When they get into white schools they aren't welcomed and they begin to feel self-conscious." JOHNSON, *supra* note 124, at 292; see also JOHNSON, *supra* note 118, at 268 (many Pennsylvania blacks believed that segregation provides a more supportive environment for black children).

134. Devore, *supra* note 35, at 106.

of black students were common.¹³⁵ Eventually, some prominent black leaders who had long fought for school integration, such as W.E.B. Du Bois, concluded that the psychological damage inflicted on black children in racially mixed schools and the resulting dropout rates outweighed the advantages of school integration.¹³⁶

Much of the black support for school segregation came from new southern migrants, who were more accustomed to segregation and feared mistreatment of their children by white teachers in mixed schools.¹³⁷ The *Cleveland Gazette*, a strong opponent of segregated schools, attacked southern blacks for petitioning the Cincinnati School Board for a segregated school in 1935: "What a pity they cannot be shipped back South where they belong and which they never should have left. . . . For a 'Negro' teacher they would trade vitally essential rights and privileges of all

135. DUNCAN, *supra* note 84, at 39 (Pennsylvania); MORROW, *supra* note 126, at 18–19 (describing mistreatment of black children in integrated school in New Jersey); Daniel, *supra* note 108, at 178–82 (Pennsylvania); *Little Hitlers in School System*, N.J. HERALD NEWS, Feb. 22, 1941, at 8 ("[White] teachers in the Trenton schools have a reputation for gross prejudice against colored children.").

136. Du Bois, *supra* note 12 (endorsing school segregation to avoid mistreatment of black children); W.E.B. Du Bois, *Postscript*, 41 CRISIS 85 (1934) (noting mistreatment of black children in northern mixed schools); W.E.B. Du Bois, *The Tragedy of "Jim Crow"*, 26 CRISIS 169, 170–71 (1926) (same). See generally Mark Tushnet, *The Politics of Equality in Constitutional Law: The Equal Protection Clause*, Dr. Du Bois, and Charles Hamilton Houston, 74 J. AM. HIST. 884, 891–96 (1987). Moreover, many black educators argued that black children fared just as well—if not better—in segregated northern schools as they did in integrated schools. See, e.g., Mary R. Crowley, *Cincinnati's Experiment in Negro Education: A Comparative Study of the Segregated and Mixed School*, 1 J. NEGRO EDUC. 25 (1932); L.A. Pechstein, *The Problem of Negro Education in Northern and Border Cities*, 30 ELEMENTARY SCH. J. 192 (1929); J. St. Clair Price, *The Problem of Voluntary Race-Segregation*, 3 J. NEGRO EDUC. 269 (1934); Mary R. Crowley, *Comparison of the Academic Achievements of Cincinnati Negroes in Segregated and Mixed Schools* (1931) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with the University of Cincinnati Library); Inez B. Prosser, *Non-Academic Development of Negro Children in Mixed and Segregated Schools* (1933) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with the University of Cincinnati Library). Elmer Curry, a prominent black minister and educator in Ohio in the early twentieth century, spoke widely in favor of separate schools as better learning environments for African-American students. GERBER, *supra* note 62, at 393–95. Jennie Porter, a prominent Cincinnati educator, held a similar view. Gail Estelle Berry, *Wendell Phillips Dabney: Leader of the Negro Protest* 55 (1965) (M.A. thesis, University of Cincinnati) (on file with the University of Cincinnati Library).

137. Black support for school segregation was greater in Ohio than in most northern states, making desegregation efforts particularly difficult. Much of this support came from recent black migrants from the South, who believed that their children would receive better treatment in segregated schools. "Whither Are We Drifting?", CLEVELAND GAZETTE, Oct. 21, 1933, at 2.

Two observers in 1937 concluded that the dearth of litigation in New Jersey challenging school segregation was due to the fact that a significant percentage of the black population came from the South where patterns of segregation were more entrenched. Oak & Oak, *supra* note 31, at 672–73; see also Meier & Rudwick, *supra* note 121, at 32 (blacks in East Orange who recently migrated from the South were more likely to accept segregation).

our people of Cincinnati."¹³⁸ In many communities, sharp splits developed over school segregation between established blacks who favored integration and poorer southern immigrants who favored segregation.¹³⁹

On the other hand, many African Americans staunchly opposed the spread of segregated schools, arguing that segregation would restrict opportunities for black children.¹⁴⁰ As one black leader of the antisegregation

138. CLEVELAND GAZETTE, May 18, 1935, at 2. *The Chicago Defender*, an important black newspaper, was another strong voice against school segregation. MOHRAZ, *supra* note 46, at 101. The *Defender* explained its preference for mixed schools: "Nothing is better for both races than mixed schools where the children are given opportunities to know each other and dispel some of the prejudices they have which are based entirely on ignorance." MICHAEL W. HOMEL, *DOWN FROM EQUALITY: BLACK CHICAGOANS AND THE PUBLIC SCHOOLS 1920-41*, 151 (1984); *Self-Segregation*, CHI. DEFENDER, Nov. 27, 1926, Part 2, at 2.

139. For example, in parts of Illinois, blacks who had migrated from the South favored school segregation while longtime Illinois residents did not. See, e.g., MOHRAZ, *supra* note 46, at 101 (the Southern Society of Chicago, composed of whites and blacks who had migrated from the South, favored segregated schools; longtime Chicago blacks opposed segregation); Letter from Leon Harris, President, National Federation of Colored Farmers, to Arthur Spingarn, Chairman, National Legal Committee, NAACP (Nov. 20, 1939) (on file with NAACP Papers, Box II-L-40, Library of Congress, Washington, D.C.) (describing support of southern blacks for school segregation in Moline). One Illinois NAACP leader announced in 1923 that "I am free to say that those who desire separate schools are invited to return at once to Alabama, Georgia, Mississippi, and Louisiana." HOMEL, *supra* note 138, at 151-52.

In New Jersey, the established black middle class in the state's northern counties attacked the Bordentown School for Colored Youth, an industrial school modeled on Tuskegee Institute, because of its perpetuation of segregation. Price, *supra* note 132, at 19; see also Meier & Rudwick, *supra* note 121, at 23 (describing split among black community in East Orange over issue of integrated schools).

140. Many leading black educators such as Horace Mann Bond of Lincoln University and Dwight Holmes, Dean of the College of Education at Howard University, were forceful opponents of school segregation. See BOND, *supra* note 108, at 383-90 (excellent discussion of arguments concerning values and detriments of school segregation); *Attacks Segregation!*, CLEVELAND GAZETTE, Aug. 13, 1932, at 2 (quoting Holmes: "First, segregation always implies inequality of status and that one group is dangerous to the other; second, segregation always means inferior accommodations for those segregated, and third, segregation prevents the races from knowing each other through the usual means of communication."); Horace Mann Bond, *Only Way to Keep Public Schools Equal Is to Keep Them Mixed*, AFRO-AM., Mar. 5, 1932 (arguing that separate schools are inferior).

The *Journal of Negro Education*, published by the Howard University College of Education, devoted a 1935 issue to the question of school segregation. Several authors argued that although black children did sometimes suffer mistreatment in mixed schools and black teachers were generally denied the opportunity to teach in mixed schools, the advantages of integration outweighed these disadvantages. See, e.g., Maceo W. Hubbard & Raymond Pace Alexander, *Types of Potentially Favorable Court Cases Relative to the Separate School*, 4 J. NEGRO EDUC. 375 (1935);

campaign in Berwyn, Pennsylvania, explained: "When you segregate a group of people you limit their opportunity; you limit their goal. Segregated schools mean inferior schools. . . . It would be idiotic to acquiesce in a system of education patterned after the policy of the average theatre, restaurant and church."¹⁴¹

Some African Americans who opposed school segregation initiated litigation challenging segregated schools. Most of these lawsuits succeeded,¹⁴² but they were few in number,¹⁴³ and the recalcitrant posture of many white school boards kept segregated schools intact in many communities where courts ordered compliance with the antisegregation legislation.¹⁴⁴ Litigation on behalf of individual children was expensive

Thompson, *supra* note 133, at 427–33. Many black newspapers were also forceful opponents of school segregation. One of the strongest voices was the *Cleveland Gazette*, which sharply criticized W.E.B. Du Bois for his "foolish and very harmful effort to encourage our people to accept segregation, especially 'jim crow' schools." CLEVELAND GAZETTE, July 10, 1935, at 2.

141. Williamson, *supra* note 45, at 75.

142. See, e.g., *Hedgepeth v. Board of Educ.*, 35 A.2d 622 (N.J. 1944) (Trenton, New Jersey); *Patterson v. Board of Educ.*, 164 A. 892 (N.J. 1933), *aff'd*, 169 A. 690 (N.J. 1934) (Trenton, New Jersey); *Raison v. Board of Educ.*, 103 N.J.L. 547, 137 A. 847 (1927) (Toms River, New Jersey); *Board of Educ. v. State ex rel. Reese*, 151 N.E. 39 (Ohio 1926) (Dayton, Ohio); *Court Refuses to Stand for Segregation in Public Schools*, COLO. STATESMAN, Jan. 25, 1919 (on file with NAACP Papers, Box I-C-405, Library of Congress, Washington, D.C.) (Gallipolis, Ohio); Joseph H. Rainey, *Segregation Ends in Public Schools of Two Townships*, PHILA. REC., May 1, 1934, at D9 (Berwyn, Pennsylvania); *School Fight Is Won by Abington Parents*, PHILA. TRIB., Sept. 26, 1940, at 1 (Abington Township, Pennsylvania); *School Segregation*, 31 CRISIS 230 (1926) (Shaker Heights, Ohio); *Win Boro School Ban Case*, PITT. COURIER, Dec. 17, 1930, at 1 (Pittsburgh, Pennsylvania).

143. For example, no litigation was brought in Illinois between 1900 and 1945 challenging school segregation. In New Jersey, only six judicial challenges to segregated education—virtually all of which were successful—were brought between 1900 and 1945. The reported decisions indicate only five such challenges. *Hedgepeth*, 35 A.2d 622 (successful challenge to racial segregation in Trenton); *Patterson*, 164 A. 892 (successful challenge to exclusion of black children from swimming pool at Trenton High School); *Raison*, 137 A. 847 (successful challenge to exclusion of black children from white school in Toms River); *Stockton v. Board of Educ.*, 59 A. 1061 (N.J. 1905) (challenge to segregation in Burlington dismissed for failure to exhaust administrative remedies). One additional lawsuit, a 1928 challenge to segregation in Atlantic City, did not result in a reported decision. Letter from J.C. Edwards, President, Citizens' Committee, to NAACP (Feb. 26, 1930) (on file with NAACP Papers, Box I-D-44, Library of Congress, Washington, D.C.); Letter from Eugene R. Hayne, attorney, to NAACP (Sept. 26, 1928) (same).

144. For example, in Dayton, the Ohio Supreme Court issued a decision in 1926 striking down school segregation in that city, but the Dayton School Board refused to comply with the decision. See *infra* note 209 and text accompanying notes 206–209. The Illinois Supreme Court's desegregation order of 1908 in the Alton case was also never enforced. See *supra* note 99.

and difficult in the face of opposition from both white school officials and many in the black community. Some African Americans who challenged school segregation suffered economic or physical retaliation, further discouraging litigation efforts.¹⁴⁵ Moreover, there were relatively few black attorneys in the North until the middle of the twentieth century.¹⁴⁶

At the same time, many black parents were not aware of their legal right to have their children receive an integrated education.¹⁴⁷ This ignorance of the nineteenth-century antisegregation legislation was not surprising given the wide disregard for that legislation by many northern school boards. Even the United States Bureau of Education was confused. In a 1917 report, the Bureau made the preposterous claim that Pennsylvania, Ohio, and Illinois have "no law governing the separation of the races in the public schools," ignoring the fact that each of those states prohibited school segregation by statute.¹⁴⁸

Northern school desegregation efforts did increase during the 1920s and 1930s, in large measure because of the encouragement of local NAACP branches. Beginning in the 1920s, local branches of the organization, with limited support from the national office, encouraged school desegregation efforts in a number of northern communities.¹⁴⁹ But many NAACP

145. See, e.g., Letter from J.C. Edwards to Mr. Andrews (Oct. 20, 1928) (on file with NAACP Papers, Box I-D-44, Library of Congress, Washington, D.C.) (black parent who filed lawsuit seeking an integrated education for her children suffered financial retribution).

146. In New Jersey, for example, the U.S. Census Bureau reported only a handful of black attorneys until 1950: 1910 (15), 4 U.S. BUREAU OF THE CENSUS, 1910 U.S. CENSUS OF POPULATION 491 tbl. VII; 1920 (19), 4 U.S. BUREAU OF THE CENSUS, 1920 U.S. CENSUS OF POPULATION 975 tbl. 1; 1950 (38), 2 U.S. BUREAU OF THE CENSUS, 1950 U.S. CENSUS OF POPULATION, N.J. 224 tbl. 77.

147. A 1947 NAACP survey in New Jersey found that most black parents were not aware of their legal right to send their children to school on a nonracial basis. *N.J. Public School Survey*, *supra* note 132, at 2.

148. DEPARTMENT OF THE INTERIOR, BUREAU OF EDUC., *NEGRO EDUCATION: A STUDY OF THE PRIVATE AND HIGHER SCHOOLS FOR COLORED PEOPLE IN THE UNITED STATES* 677, 683, 688 (1917). The report explained the existence of segregated schools in those states as due to "common consent." *Id.*

149. For example, in New Jersey, local branches of the NAACP supported challenges to school segregation in Camden, Toms River, and Atlantic City. In 1923, the Camden branch of the NAACP petitioned the local school board for school integration. Press Service of the NAACP, *Fought School Segregation in New Jersey; Colored Man Now on School Board* (Feb. 9, 1923) (on file with NAACP Papers, Box I-C-288, Library of Congress, Washington, D.C.). In 1927, the NAACP supported litigation that successfully desegregated schools in South Toms River. NAACP Annual Report, *Two Supreme Court Victories 4-5* (1927) [hereinafter NAACP Annual Report] (on file with NAACP Papers, Box I-A-25, Library of Congress, Washington, D.C.). In 1927, the NAACP supported litigation against the Atlantic City School Board. Press Release, N.A.A.C.P. *Aids Fight on Atlantic City Segregation* (Dec. 23, 1927) (on file with NAACP Papers, Box I-D-44, Library of Congress, Washington, D.C.).

branches refused to support desegregation litigation;¹⁵⁰ moreover, those branches that did wish to litigate were hampered by the lack of broad support in the African-American community for school desegregation and limited financial and legal resources. As a result, the sporadic litigation of the 1920s and 1930s had only a limited impact on the advancing tide of northern school segregation.

D. The 1940s' Campaign Against Northern School Segregation

For the first four decades of this century, northern school segregation steadily increased. The decade of the 1940s, however, marked a watershed in the campaign against northern school segregation; by the early 1950s, virtually all officially sanctioned school segregation in the North had been eliminated. This long awaited convergence of legal rule and social reality resulted from two conditions. First, enhanced black political power led to significant state governmental support for school integration. Second, the national office of the NAACP embarked in the 1940s on an extensive effort to win support in the northern black community for its integrationist vision coupled with an aggressive litigation and political pressure campaign.¹⁵¹

The 1940s witnessed an array of political and cultural changes in northern states that led to increased white support for desegregation. Since World War I, hundreds of thousands of African Americans had migrated into northern states; the number of new arrivals sharply increased during World War II as southern blacks sought jobs in northern wartime industry.¹⁵² This population shift resulted in enhanced black political power, as both political parties competed for the northern black vote. At the same time, burgeoning racial tensions and fears of black radicalism motivated many whites to support civil rights initiatives, as did the wartime hypocrisy

In some northern communities, such as Hartford, the effort to segregate black children during the first few decades of the twentieth century led to the establishment of an NAACP local branch to fight these efforts. KELLOGG, *supra* note 102, at 194.

150. In Dayton, for example, the local NAACP branch refused to support desegregation litigation in the mid-1920s. The national office of the NAACP eventually supported the litigation. See *infra* text accompanying note 207. Similarly, in Illinois, local NAACP branches expressed little interest in desegregation litigation throughout the first half of the twentieth century. See *infra* text accompanying notes 227-228.

151. The NAACP's campaign against segregated education in the North, unlike its southern campaign, was not geared towards altering constitutional doctrine concerning racial segregation; rather, it was directed at securing black support for integrated education and encouraging African Americans to insist, through litigation and political pressure, on integrated schools.

152. See MCADAM, *supra* note 101, at 80.

of fighting Nazi racism in Europe while preserving racial segregation at home in America.¹⁵³ As a result, during the 1940s, white-black political coalitions successfully secured the enactment of antisegregation statutes and ordinances in many northern states and cities that barred racial discrimination in public accommodations, employment, education, and housing. Many of the new statutes provided for enforcement through administrative agency as opposed to private lawsuit, greatly enhancing their effectiveness. In particular, legislation providing for the withholding of state education funds from recalcitrant school districts afforded a powerful new weapon in the campaign against school segregation.¹⁵⁴

At the same time, beginning in the mid-1940s, the national office of the NAACP, spurred by tremendous wartime increases in membership,¹⁵⁵ entered the northern school desegregation fray. Prior to this time, most NAACP involvement in the school desegregation issue had been by local branches whose commitment to desegregation activity varied widely. Thurgood Marshall, legal director of the NAACP, announced in 1947 that his office would expend considerable resources challenging northern school segregation: "In spite of state statutes designed to prevent discrimination or segregation of the races in its school systems, these vicious practices are put

153. See generally Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61 (1988); Peter J. Kellogg, *Civil Rights Consciousness in the 1940s*, 42 HISTORIAN 18, 31-33 (1979); Robert J. Norrell, *One Thing We Did Right: Reflections on the Movement*, in NEW DIRECTIONS IN CIVIL RIGHTS STUDIES 65, 68 (Armstead L. Robinson & Patricia Sullivan eds., 1991). A black newspaper in New Jersey explained the influence of the war: "as the fight is made to keep without the forces of oppression as symbolized by Nazism and Fascism we find within the borders of our country enemies equally as vicious—namely, prejudice, discrimination, segregation." *Hits Schools at Bordentown*, N.J. HERALD NEWS, Apr. 14, 1945, at 1, 3.

154. ROBERT FREDERICK BURK, *THE EISENHOWER ADMINISTRATION AND BLACK CIVIL RIGHTS* 92 (1984); MCADAM, *supra* note 101, at 77-86; PAULI MURRAY, *STATES' LAWS ON RACE AND COLOR* (1951); HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY 1954-1980*, at 18 (1981); Meyer Pesin, *Summary, Analysis and Comment on 'Anti-Discrimination' or 'Fair Employment Practices' Legislation of New Jersey*, 68 N.J.L.J. 1, 3 (July 5, 1945). The push for this legislation was aided by the fact that many northern cities during World War II established special community relations committees to help reduce growing racial tensions that in a number of instances had erupted into riots. These committees urged the enactment of both local ordinances and state antidiscrimination legislation to defuse racial conflict. DUANE LOCKARD, *TOWARD EQUAL OPPORTUNITY: A STUDY OF STATE AND LOCAL ANTIDISCRIMINATION LAWS* 19-20 (1968).

155. NAACP membership throughout the country dramatically increased from 1940 to 1945, influenced in significant measure by wartime egalitarian ideology. MCADAM, *supra* note 101, at 103-05.

into effect in far too many Northern states, and the NAACP shall concentrate within the next few years on breaking down such practices."¹⁵⁶

Although the national office of the NAACP had primarily concerned itself with southern school segregation during the 1930s, and did so primarily through litigation, beginning in the mid-1940s, it devoted increasing attention to northern schools. In time, the national office of the NAACP would emerge as the leading voice in opposition to northern school segregation.¹⁵⁷ The NAACP's northern desegregation campaign bore a quality very different from its southern campaign. In the South, the NAACP could do little more than file lawsuits, seeking favorable judicial precedents that might chip away at the underpinnings of the segregationist edifice. In the North, where favorable state laws and judicial precedents were already in place, much of the organization's efforts focused on changing attitudes within the black community concerning segregation, encouraging blacks to demand their legal right to an integrated education. The ensuing shift in black attitudes about segregation, which translated into political gains such as fund-withholding legislation, proved to be crucial to the eventual success of the desegregation campaign.

1. The Campaign Against School Segregation in New Jersey

Substantial progress against entrenched school segregation did not take place in New Jersey until the 1940s. Indeed, in 1940, there were more segregated schools in New Jersey than at any time since the enactment of the 1881 antisegregation legislation. During the 1940s, however, integrated schools became a reality in much of New Jersey for the first time.

156. NAACP Press Release (Sept. 18, 1947) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.). Marshall further explained the national office's interest in northern school desegregation litigation: "We are actively engaged in litigation to break down segregation in public schools in the South. There could be no justification for our tolerating segregated schools in the 'North.'" Letter from Thurgood Marshall to James X. Ryan, District Director, Junior Achievement Inc. (Feb. 10, 1949) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

157. See W.E.B. Du Bois, *The Tragedy of "Jim Crow,"* 26 CRISIS 169, 170 (1923) (noting opposition of NAACP to northern school segregation). The NAACP's mouthpiece, *The Crisis*, continually condemned segregation in northern schools, noting that "of all evils, segregation in education is one of the greatest and this evil cannot be outweighed by the few benefits which result from separate schools" such as jobs for black teachers. *The Negro and the Northern Public Schools*, 25 CRISIS 205, 205 (1923).

As a result of the migration of over 100,000 African Americans into New Jersey between 1910 and 1940, African Americans had gained considerable political influence.¹⁵⁸ At the behest of black citizens, the New Jersey General Assembly created a new state agency in 1938, the New Jersey State Temporary Commission on the Condition of the Urban Colored Population, which issued a lengthy report in 1939 that detailed the extent of school segregation in New Jersey and recommended further investigation of the issue.¹⁵⁹ The Commission's report was highly significant; although it led to no immediate action, it did mark the first time that an official government commission had addressed the issue of school segregation in New Jersey.

In the mid-1940s, this enhanced political power led to even greater gains. In 1945, the New Jersey General Assembly enacted legislation that prohibited discrimination in employment and established a state administrative agency, the Division Against Discrimination, to investigate complaints of discrimination and to educate the public concerning the law.¹⁶⁰

In the meantime, during the 1940s, the NAACP stepped up its efforts to challenge school segregation in New Jersey.¹⁶¹ In 1947, with the support of the national office, the New Jersey state conference of the NAACP conducted a survey of school segregation,¹⁶² which found that more than fifty New Jersey school districts still operated segregated schools, most of

158. MCADAM, *supra* note 101, at 80.

159. REPORT OF THE N.J. TEMPORARY COMMISSION, *supra* note 105; Thomas D. Samford, Anti-Discrimination Policy in New Jersey: A Study in Administration and Application of Anti-Discrimination Policy by the New Jersey Division Against Discrimination 20 (1955) (unpublished senior thesis, Princeton University) (on file with the Princeton University Library). The Commission enjoyed some success attacking segregation. In 1944, the Commission helped force the integration of dormitories at Glassboro Teachers College, a state-supported college. O.W. Brown, *The State We're in*, N.J. HERALD NEWS, Dec. 15, 1945.

160. Samford, *supra* note 159, at 20-70; Henry Neville Tiftt, Jr., A Report of the Activities of the Division Against Discrimination in New Jersey, 1945-1951, at 11-13 (1951) (unpublished senior thesis, Princeton University) (on file with the Princeton University Library).

161. The national office of the NAACP had not played an active role in New Jersey prior to the mid-1940s; some critics speculated that this absence was due to the influence of William Valentine, head of the segregated Bordentown Manual Training School. *Wonders if NAACP Pulling Punches*, N.J. HERALD NEWS, Feb. 16, 1946, at 1, 2.

162. In June 1946, the national NAACP urged that state chapters of the organization "immediately undertake a nationwide survey of education facilities for Negroes in all grades" as a prelude to a massive attack on school segregation. In response, the New Jersey state conference of the NAACP agreed to conduct a major study of school segregation in the state under the supervision of a staff member from the national office. The national office targeted New Jersey for its initial survey because of the state's favorable political climate. Current, *supra* note 128, at 10.

which were in the state's southern counties.¹⁶³ In response, the national office of the NAACP initiated a major effort to encourage all local New Jersey branches of the organization to lobby state and local officials to eliminate school segregation and to solicit the support of churches, labor unions, and other local organizations likely to be sympathetic to the cause of integrated education.¹⁶⁴ At the same time, the New Jersey state conference of the NAACP urged black parents to withhold their children from segregated schools as a way of applying further pressure on state and local school authorities.¹⁶⁵

Several local NAACP branches undertook aggressive action against school segregation. In Camden, for example, home to one of the state's largest black populations, the local branch of the NAACP urged the school board to end Camden's long tradition of segregated schools. When the school board, which made pupil assignments on a racial basis, disingenuously responded that segregation persisted because black parents had not requested transfers to white schools, the Camden NAACP undertook an extensive public relations effort urging black parents to enroll their children in their neighborhood school as opposed to a more distant black school.¹⁶⁶ As a result of this effort, several hundred black children

163. N.J. *Public School Survey*, *supra* note 132, at 2; Jensen, *supra* note 128. This segregation took various forms. Some local school districts excluded black schools from geographic assignment plans while others segregated students into different classrooms within the same building. Report of New Jersey School Desegregation (n.d.) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.); Memorandum from Franklin H. Williams, Special Counsel, NAACP, to Thurgood Marshall (Sept. 15, 1947) (same). A few school districts used racially gerrymandered school district lines to preserve segregation. Letter from Florence H. Leverett to Ruby Hurley (Aug. 27, 1945) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.) (describing racial gerrymandering in Hackensack).

The survey revealed not only the extent of segregation but the support for segregation among many New Jersey African Americans. In many communities, black teachers and principals still favored segregated schools because of fear of job loss if schools were integrated. Current, *supra* note 128, at 11; Jensen, *supra* note 128, at 84.

164. Letter from Gloster B. Current, Director of Branches, to All New Jersey Branches (Apr. 21, 1947) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.).

165. Report of New Jersey School Desegregation, *supra* note 163; Current, *supra* note 128, at 11.

166. NAACP leaders placed advertisements in Camden's newspapers shortly before the opening of schools in 1946 and 1947 urging parents to insist on mixed schools. They also asked local black ministers to encourage their parishioners to insist on an integrated education. The national office of the NAACP supported these efforts by offering legal assistance to any child whose request to enter a white school was denied. At the same time, the Camden branch initiated a public relations effort to convince black teachers to seek employment in white schools and

attended integrated schools for the first time in Camden in 1946 and 1947.¹⁶⁷

In the meantime, state NAACP leaders lobbied government officials to oppose school segregation. These lobbying efforts paid dividends as the Division announced its opposition to school segregation and urged adoption of a constitutional provision prohibiting racial discrimination in all aspects of public life at the state's constitutional convention of 1947. After the convention adopted a new state constitution that was the first in the nation to expressly prohibit school segregation,¹⁶⁸ Governor Alfred Driscoll directed the Division Against Discrimination to take aggressive action to enforce the new constitutional mandate.¹⁶⁹ Two decades earlier, in 1927, another New Jersey governor, Harry Moore, had ignored black pleas for

promised legal support for those who did. Current, *supra* note 128, at 11; Letter from Juanita E. Dicks, Camden Branch Secretary, NAACP, to Gloster Current (Nov. 11, 1948) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.).

167. Dicks Letter, *supra* note 166. Other NAACP local branches took action as well. Long Branch had maintained an all-black and inferior elementary school apart from the general geographic assignment plan since the 1880s. The local NAACP branch urged parents to withhold their children from this school and to send their children to white schools. When about 60% of the black parents withheld their children from the all-black school in the fall of 1947, the school board responded by including the black school in the general geographic district plan. Current, *supra* note 128, at 11; Long Branch Asked to End 'Segregation,' ASBURY PARK PRESS, Sept. 4, 1947; Williams Memorandum, *supra* note 163; Letter from Stanford Welker, President, Long Branch Branch, NAACP, to Franklin H. Williams (Sept. 8, 1947) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.). In Trenton, the local NAACP branch supported successful litigation in state court challenging the existence of a segregated junior high school to which virtually all of the city's black children were assigned. *Hedgepeth v. Board of Educ.*, 35 A.2d 622 (N.J. 1944); Marion Thompson Wright, *New Jersey Leads in the Struggle for Educational Integration*, 26 J. EDUC. SOC. 401, 403 (1953); Daniels, *supra* note 22, at 45, 65-66; Letter from Henry J. Austin, President, Trenton Branch, NAACP, to Thurgood Marshall (Oct. 13, 1943) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.); Letter from James E. King, President, Atlantic City Branch, NAACP, to Roy Wilkins, Assistant Secretary, NAACP (Mar. 18, 1944) (same). Thereafter, the NAACP helped persuade the Trenton Board of Education to establish geographic districts for all of the city's schools; in 1946, Trenton for the first time operated a school system with a single geographic attendance plan for children of all races and for the first time assigned black teachers to white schools. *Integration in Trenton*, 83 SURVEY 56 (1947); Daniels, *supra* note 22, at 70-71, 76, 114-16.

168. The constitutional convention of 1947 was called in response to the widespread feeling that New Jersey's state government operated in an inefficient manner. Both the Division and the state conference of the NAACP urged the convention to adopt a strong constitutional provision prohibiting racial discrimination in all aspects of public life. PRICE, *supra* note 20, at 248-49; Wright, *supra* note 167, at 405-06. The relevant constitutional provision provided that:

No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

Wright, *supra* note 25, at 101.

169. SCHOOLS IN TRANSITION, *supra* note 104, at 29; Samford, *supra* note 159, at 84-85.

mixed schools;¹⁷⁰ in the late 1940s, Driscoll fully embraced the integration issue. Driscoll's enthusiasm for civil rights issues reflected the increased political power of African Americans.¹⁷¹

Given the failure of private litigation to secure compliance with the 1881 antisegregation statute, Driscoll's decision to give the Division enforcement authority—including the ability to withhold state funds from recalcitrant school districts—proved highly significant.¹⁷² In early 1948, the Division, at the urging of the NAACP, conducted a survey of school segregation and found that forty-three school districts in the southern region of the state still operated racially segregated schools as a result of officially sanctioned segregation policies.¹⁷³ Armed with the ability to withhold funds,¹⁷⁴ the Division met with recalcitrant school districts during the spring and summer of 1948 to urge desegregation. The Division's conciliation efforts enjoyed significant success; by September 1948, thirty of the forty-three districts had decided to comply with the state antisegregation law.¹⁷⁵ Moreover, many school districts began to use black teachers in integrated school settings for the first time.¹⁷⁶

The Division ultimately declined to exercise its power to withhold state funds to force pupil mixing, believing that such action might engender bitterness in local communities.¹⁷⁷ Such a decision arguably delayed desegregation in the remaining school districts. Anxious to spur integration, the NAACP filed litigation in August 1948 asking the Division to withhold funds from the Camden schools, because the Camden School Board had refused to establish a unitary geographic assignment plan that

170. NAACP Annual Report, *supra* note 149, at 5.

171. The enforcement of the antisegregation mandate was aided by Governor Driscoll's considerable talents as a negotiator. Driscoll did not believe in coercion, but in accomplishing his goals through persuasion and conciliation. DUANE LOCKARD, *THE NEW JERSEY GOVERNOR: A STUDY IN POLITICAL POWER* 119–20 (1964).

172. Philip Greenwood, *How History Was Made in State of New Jersey*, 57 *CRISIS* 277, 278 (1950) (recognizing the expensive and burdensome nature of enforcing civil rights statutes through litigation). See generally Wright, *supra* note 25, at 104–05 (discussing importance of administrative enforcement of antisegregation provision).

173. Joseph L. Bustard, *The New Jersey Story: The Development of Racially Integrated Public Schools*, 21 *J. NEGRO EDUC.* 275, 278 (1952).

174. New Jersey enacted legislation providing that state aid could be withheld from any county that did not comply with the antisegregation law. *SCHOOLS IN TRANSITION*, *supra* note 104, at 22–23; Samford, *supra* note 159, at 86.

175. *SCHOOLS IN TRANSITION*, *supra* note 104, at 125; Wright, *supra* note 107, at 283. Many school districts experienced substantial cost savings through the elimination of wasteful dual schools. *SCHOOLS IN TRANSITION*, *supra* note 104, at 124; Bustard, *supra* note 173, at 281.

176. Prior to 1948, only 2% of all teachers in the state were black and most of them taught in segregated schools. *SCHOOLS IN TRANSITION*, *supra* note 104, at 123.

177. *Id.* at 124–25.

included all students.¹⁷⁸ The litigation proved decisive; shortly after the NAACP filed its complaint, the Camden School Board voted to end segregation by eliminating dual school districts.¹⁷⁹ Between 1948 and 1951, the Division persuaded ten more school districts to eliminate school segregation,¹⁸⁰ leaving only three school districts operating officially sanctioned segregated schools.¹⁸¹

For more than sixty years, the promise of the 1881 legislation banning school segregation in New Jersey had gone unrealized. Yet in just three years, the threat of loss of state funds for education accomplished what the 1881 legislation and a handful of favorable court decisions had failed to secure: the end to officially sanctioned segregation in New Jersey. For almost seventy years, the African-American community of New Jersey had the "law" on its side in the form of favorable legislation and judicial precedents, but could not use the law to overcome segregationist sentiment in many of the state's southern school districts. The changed politics of the 1940s, manifest in Governor Driscoll's willingness to use the state's fund-withholding authority, coupled with the organizational commitment of the NAACP created what was lacking in 1881: a political and social environment in which the antisegregation mandate of 1881 could finally be enforced.

The successful use of fund-withholding legislation in New Jersey tracks in remarkable fashion the use of fund-withholding legislation in the 1960s

178. Although the Camden School Board had permitted black students to enroll in white schools in 1946 and 1947, the board retained a dual assignment system. The litigation sought to force the board to establish one assignment plan encompassing all schools. Dicks Letter, *supra* note 166.

179. Current, *supra* note 128, at 12-13; NAACP Statement on Camden School Case (Aug. 25, 1948) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.); "School Desegregation Efforts in Camden" (n.d.) (same); Dicks Letter, *supra* note 166.

180. Bustard, *supra* note 173, at 280. Mt. Holly continued to operate segregated classrooms until 1950, defying the Division. Threatened legal action by the Division and a pupil boycott in September 1950 proved decisive as the school board relented and integrated the schools. SCHOOLS IN TRANSITION, *supra* note 104, at 169-71; Wright, *supra* note 107, at 283; Samford, *supra* note 159, at 87.

181. Cinnaminson Township, for example, initially voted to end segregation but under public pressure relented and decided to retain segregated schools for another few years. Report on School Segregation in New Jersey (n.d.) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.). East Berlin retained segregated schools until a fire in 1953 destroyed the black school, forcing integration. Wright, *supra* note 107, at 284. In addition, some school districts used racial gerrymandering to preserve segregated schools until after the *Brown* decision. ALBERT P. BLAUSTEIN, CIVIL RIGHTS U.S.A.: PUBLIC SCHOOLS CITIES IN THE NORTH AND WEST, 1963: CAMDEN AND ENVIRONS 42-43 (1963) (Woodbury); Wright, *supra* note 107, at 286 (same); Walker v. Board of Educ., 1 RACE REL. L. REPTR. 255 (1956) (disallowing gerrymandering in Englewood); Englewood School Bias Charges, 61 CRISIS 608 (1954) (Englewood).

to desegregate southern schools. In 1964, Congress, in part in response to the failure of the *Brown* decision to lead to meaningful southern school desegregation, enacted Title VI of the Civil Rights Act of 1964, which provided for the withholding of funds from school districts that retained segregated schools. As a result of this legislation and its effective enforcement by the U.S. Office of Education, southern school desegregation dramatically increased during the post-1964 period in striking contrast to the paucity of desegregation during the first decade following the *Brown* decision. This desegregation success reflected growing political support for school desegregation that manifested itself in both congressional legislation and executive enforcement. As in New Jersey, a clear legal rule prohibiting school segregation went unenforced until political support for desegregation was sufficiently great to support effective enforcement.¹⁸²

2. The Campaign Against School Segregation in Pennsylvania

During the 1920s and 1930s, a few local NAACP branches in Pennsylvania—primarily in the Philadelphia and Pittsburgh metropolitan areas—challenged school segregation. In 1925, for example, the Philadelphia branch of the NAACP advised black parents to boycott a new school to which the school board had decided to assign only black children; the boycott forced a reversal of school board policy and the integration of a few schools.¹⁸³ In 1932, the Pittsburgh branch of the NAACP helped organize litigation that successfully challenged the exclusion of two black children from a white high school.¹⁸⁴ Also in 1932, more than 200 black children in the Philadelphia suburb of Berwyn began a two-year boycott of

182. See *supra* note 3.

183. SIXTEENTH ANNUAL REPORT OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE 11 (1926); *Colored Parents in Arms as School Board Starts Race Segregation Here*, PHILA. TRIB., Sept. 12, 1925, at 1; *Parents Force Education Board to Back-Down*, PHILA. TRIB., Oct. 10, 1925, at 1; *School Segregation*, 26 CRISIS 230 (1926). Thereafter, the local NAACP branch, along with the Public School Defense League of Philadelphia and *The Philadelphia Tribune*, sponsored community meetings to educate African Americans about efforts to end official segregation in the city's schools and to raise money to finance legal efforts challenging segregation. FRANKLIN, *supra* note 37, at xvii; Letter from Forrester B. Washington, Director, Atlanta School of Social Work, to Walter White, Executive Secretary, NAACP, NAACP (Sept. 10, 1930) (on file with Arthur Spingarn Papers, Box 92, Library of Congress, Washington, D.C.). *The Tribune*, a black-owned newspaper, remained a strong supporter of school desegregation efforts in Philadelphia throughout the pre-*Brown* era. FRANKLIN, *supra* note 37, at xvii.

184. *The Pittsburgh N.A.A.C.P.*, 40 CRISIS 58, 70 (1933); *Win Boro School Ban Case*, PITT. COURIER, Dec. 17, 1932, at 1. After a local court ordered the entry of the two children, the school board chose not to appeal and immediately admitted the children.

segregated schools in Easttown and Tredyffrin Townships. Although several parents were jailed for violating truancy laws, NAACP-backed litigation ultimately prevailed as the black children were finally permitted to enter an integrated school.¹⁸⁵ Some of these efforts, however, brought retribution. When a group of black parents sued the Chester School Board for maintaining segregated high schools, the school board retaliated by failing to renew the contracts of fifty black teachers.¹⁸⁶

These various legal challenges allowed a few additional black children to attend integrated schools, but school segregation remained pervasive in much of the state by the early 1940s. As it had in New Jersey, the national office of the NAACP initiated a major effort in Pennsylvania in the late 1940s to challenge school segregation.¹⁸⁷ In the spring of 1948, the NAACP conducted an extensive survey of school segregation in Pennsylvania,¹⁸⁸ similar to the one conducted the prior year in New Jersey. The NAACP found that more than a quarter of the surveyed school districts maintained some form of formal separation between black and white students: either segregated schools or segregated classes within schools.¹⁸⁹

185. Joseph H. Rainey, *Segregation Ends in Public Schools of Two Townships*, PHILA. REC., May 1, 1934, at D9; NAACP Press Release, *Two-Year Fight Against Jim Crow School Is Won* (May 5, 1934) (on file with NAACP Papers, Box I-D-48, Library of Congress, Washington, D.C.); Raymond Pace Alexander, *Outline of the School Situation in Easttown and Tredyffrin Townships* (Oct. 18, 1933) (same). The litigation was financed by the Bryn Mawr branch of the NAACP with support from the national office of the organization. N.A.A.C.P. 25TH ANNUAL REPORT FOR 1934, at 20 (1934); N.A.A.C.P. 24TH ANNUAL REPORT FOR 1933, at 19-20 (1933); *Surprise Angle Arises in School Jim-Crow Probe*, PITT. COURIER, Dec. 31, 1932, at 4; Hatfield, *supra* note 101, at 206-07. A few years later, in 1940, a threatened NAACP-supported lawsuit ended junior high school segregation in Abington Township. *Parents Win School Fight*, PITT. COURIER, May 12, 1940, at 5; *School Fight Is Won by Abington Parents*, PHILA. TRIB., Sept. 26, 1940, at 1.

186. *Legal Action Decides Fate of Teachers*, PHILA. TRIB., July 19, 1934, at 1; *'No Turning Back,' Says Pastor, Expressing Residents' Attitude in Chester, Pa., School Fight*, PHILA. TRIB., July 19, 1934, at 1. Moreover, segregation continued in Chester at the elementary school level until after the *Brown* decision in 1954. Letter from A.H. Showalter, Superintendent of Schools, to Chester School Board (Sept. 13, 1954) (on file with NAACP Papers, Box II-A-228, Library of Congress, Washington, D.C.); Memorandum from John W. Flamer, Assistant Field Secretary, NAACP, to Gloster B. Current (June 3, 1954) (same).

187. NAACP Press Release (Sept. 18, 1947) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

188. NAACP, *Race Policies and Practices: A Survey of Public School Systems in Pennsylvania* (1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.) [hereinafter NAACP Pa. School Survey]. The NAACP was assisted by the Presbyterian Church, the Educational Equality League, and Lincoln University. *Id.*

189. Washington, Downingtown, Kennett Square, Avondale, and Aliquippa operated segregated classrooms within integrated schools with black teachers teaching only black children. In some of these segregated classrooms, black children of various ages and ability were combined in one room, resulting in an educational experience not only separate but inferior to that offered to white students. Letter from William M. Gilmore to Gloster B. Current (Jan. 21, 1950) (on file

Armed with this survey, NAACP leaders in Pennsylvania met with members of the state legislature in June 1948 and urged the enactment of new legislation to end school segregation.¹⁹⁰ Unlike in New Jersey, however, such lobbying efforts failed as the legislature refused to take additional action against segregation.

In 1948, Marian Perry of the national legal staff of the NAACP convened a group of black attorneys and representatives of NAACP branches in Pennsylvania to discuss ways of attacking segregated schools. Perry recommended conferences with local school officials urging integration, and litigation if those conferences failed.¹⁹¹ Perry, however, soon learned that the Pennsylvania black community was not united in its desire to file litigation challenging school segregation. Many of the state's NAACP leaders favored instead continued lobbying for additional legislation that would impose criminal sanctions on local school officials who defied the state's antisegregation law.¹⁹² Although Perry argued that additional legislation was unnecessary given the clear prohibition of school segregation in Pennsylvania law, the state NAACP president informed her that most black attorneys in Pennsylvania were "weak or afraid to try these cases" and that additional legislation that would place enforcement responsibility with the state was therefore necessary.¹⁹³

But several prior efforts to commence antisegregation litigation had already failed. For example, in 1945, the black community had petitioned

with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.) (Downington schools). Carlisle, Chester, Morton, West Chester, and York operated all-black elementary schools. The survey also found widespread teacher segregation, with only about a third of the school districts employing black teachers and only one—Pittsburgh—permitting black teachers to teach white children. NAACP Pa. School Survey, *supra* note 188.

Other school districts, not investigated by the NAACP, maintained similar practices. Williamsport, for example, placed black first, second, and third graders in a separate classroom in an integrated school. Memorandum from Ruby Hurley, Youth Secretary, NAACP, to NAACP Legal Department (Nov. 22, 1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from Marian Wynn Perry, Assistant Special Counsel, to Madison A. Bowe, President, Williamsport Branch, NAACP (Dec. 17, 1948) (same).

190. NAACP Press Release, *Urge Investigation of Pennsylvania Schools* (June 10, 1948); Letter from Franklin H. Williams to Joshua O. Thompson, President, Pennsylvania State Conference of Branches, NAACP (June 7, 1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

191. NAACP Press Release (Oct. 6, 1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

192. Memorandum to Files from Marian Wynn Perry (Jan. 21, 1949) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from Marian Wynn Perry to Joshua O. Thompson (Dec. 7, 1948) (same); Letter from Joshua O. Thompson to Marian Wynn Perry (Dec. 3, 1948) (same); Memorandum from Marian Wynn Perry to Gloster Current (Nov. 24, 1948) (same).

193. Letter from Joshua O. Thompson, *supra* note 192.

the Harrisburg School Board to end pupil and faculty segregation.¹⁹⁴ When the school board rejected the petition, the local branch of the NAACP secured a commitment from the NAACP's national office in 1947 to help file a lawsuit.¹⁹⁵ No litigation was initiated, however, because of the difficulty of finding a suitable plaintiff.¹⁹⁶ A similar result was reached in the nearby community of Steelton. There, a black parent did initiate litigation in 1947 to secure admission for his daughter to a white school, but subsequently relocated to another city and the lawsuit was discontinued.¹⁹⁷ In both Harrisburg and Steelton, the lack of support in the black community for mixed schools severely hampered litigation efforts.¹⁹⁸ The national office of the NAACP offered assistance for legal challenges to school segregation in Bryn Mawr, York, Lower Oxford, and Downingtown, but no litigation was filed in any of these communities.¹⁹⁹

194. Petition to Clarence Zorger, Superintendent of Schools, Harrisburg, Pennsylvania (Oct. 18, 1945) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.). At that time, Harrisburg permitted no black teachers to teach white children and required almost all of the city's black children to attend segregated schools through the use of dual assignment zones. NAACP Press Release (Sept. 18, 1947) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Memorandum from Franklin H. Williams to Thurgood Marshall (Oct. 4, 1947) (same).

195. NAACP Press Release (Sept. 18, 1947) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from Franklin H. Williams to Superintendent, Harrisburg School District (Sept. 17, 1947) (same); Letter from Franklin H. Williams to Millicent Ulen (Apr. 22, 1947) (same); Letter from F.D. Gholston, President, Harrisburg Branch, NAACP, to Thurgood Marshall (Feb. 3, 1947) (same).

196. Letter from Franklin H. Williams to Justin Carter, Jr. (Oct. 7, 1947) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

197. Letter from George Kunkel to Franklin Williams (Oct. 13, 1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Memorandum from Franklin H. Williams to Thurgood Marshall (Oct. 4, 1947) (same); Letter from George A. Jones to Franklin H. Williams (July 1, 1947) [hereinafter Jones Letter] (same).

198. Jones Letter, *supra* note 197 (noting lack of unity among blacks in Harrisburg and Steelton on issue of school integration). Similarly, support among African Americans for the retention of segregated classrooms in mixed schools in Downingtown hampered desegregation efforts. Letter from William M. Gilmore to Constance Baker Motley, Assistant Special Counsel, NAACP, (Feb. 22, 1950) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Letter from William M. Gilmore to Gloster B. Current (Jan. 21, 1950) (same).

199. Letter from William M. Gilmore to Constance Baker Motley (Mar. 2, 1950) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Constance Baker Motley to William M. Gilmore (Jan. 30, 1950) (same); Letter from Franklin H. Williams to Horace Mann Bond, President, Lincoln University (Aug. 12, 1948) (same); Letter from Thurgood Marshall to Warren F. Chew, President, Bryn Mawr Branch, NAACP (Sept. 21, 1945) (same); Letter from Edward R. Dudley, Assistant Special Counsel, to S.B. Randolph, Reverend, Bethel A.M.E. Church (Aug. 14, 1944) (same).

A few desegregation efforts succeeded. In Williamsport, the local branch of the NAACP in 1948 petitioned the school board to end student and faculty segregation in that community. As a result, the school board agreed to stop pupil segregation at the end of the 1948-1949 school year. Letter from Madison A. Bowe, President, Williamsport Branch, NAACP, to Ruby Hurley

By the time of the *Brown* decision in 1954, several Pennsylvania school districts still maintained officially sanctioned segregated schools.²⁰⁰ The difference between the desegregation campaigns in New Jersey and Pennsylvania is striking. Even though New Jersey had a history of more extensive school segregation as well as fewer desegregation lawsuits than Pennsylvania, school segregation ended in New Jersey sooner than in Pennsylvania. The difference between the two states was due to the fact that African Americans in New Jersey were able to exercise greater political influence, leading to crucial support from the state government for desegregation. In Pennsylvania, proposed legislation that would have imposed criminal sanctions on recalcitrant local school officials failed for lack of support. Forced to rely exclusively on individual litigation, Pennsylvania desegregation advocates secured full compliance with the 1881 antisegregation legislation considerably later than their New Jersey counterparts.

3. The Campaign Against School Segregation in Ohio

White insistence on school segregation in Ohio significantly increased during the first four decades of the twentieth century. Met with minimal resistance, school officials throughout the state steadily expanded the number of segregated schools. Although a few local branches of the NAACP opposed this increase in segregation, their opposition was hardly sufficient to thwart the spread of racial separation.

During the late 1930s and early 1940s, the national office of the NAACP joined the Ohio school desegregation fight. In 1939, a group of black parents secured the assistance of Cincinnati lawyer Theodore Berry to file a lawsuit challenging the Wilmington School Board's decision to send all black children in Wilmington to a black elementary school instead of to

(Nov. 10, 1948) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Memorandum from Marian Wynn Perry to Gloster Current (Nov. 4, 1948) (same).

200. Chester eliminated racially gerrymandered school districts and racially motivated student transfers in the fall of 1954 under threat of litigation. *Board Votes 7-2 to End Segregation in Schools*, CHESTER TIMES, Aug. 24, 1954; *Chester Board Agrees 7-2 to End Segregation*, CHESTER EVENING BULL., Aug. 24, 1954. Steelton ended its practice of racially segregating elementary school children shortly after the *Brown* decision. *Segregation in Steelton Schools Ends*, PATRIOT (Harrisburg, Pa.), Aug. 4, 1954; *Segregation Is Ruled out by Steelton School Board*, EVENING NEWS (Harrisburg, Pa.), Aug. 4, 1954, at 27. In York, the school board finally included two black elementary schools in the city's geographic assignment plan and allowed black teachers to teach white children after the *Brown* decision. DAVID LOTH & HAROLD FLEMING, *INTEGRATION NORTH AND SOUTH* 9-10 (1956); *High Court Rule Puts Focus on York Issue*, GAZETTE & DAILY (York, Pa.), June 29, 1954. School segregation also ended in Pennlynn, Ambler, and Willow Grove after the *Brown* decision. LOTH & FLEMING, *supra*, at 9-10.

schools nearest their homes.²⁰¹ Berry solicited the involvement of Thurgood Marshall of the NAACP's national legal department. Marshall, who at the time was unfamiliar with the legal status of school segregation in Ohio, took special interest in the case and filed an amicus brief on behalf of the black litigants.²⁰² The litigation, however, caused sharp division in the Wilmington black community as many African Americans feared that it would antagonize whites and prompt retaliation against black teachers.²⁰³ As a result, Berry had great difficulty securing testimony from Wilmington blacks necessary to prove the extent of the school segregation; without that testimony, the case was lost.²⁰⁴

Shortly thereafter, Marshall encouraged the national legal committee of the NAACP to focus its attention on school segregation in Ohio. Although most of the national legal staff's energies had theretofore been devoted to southern school segregation, Marshall explained that "it is just as important to fight the segregated school system in the North and West as it is to fight for equal schools in the South."²⁰⁵ But the support of African Americans for school segregation made such desegregation efforts difficult; in two cities, Dayton and Springfield, even local NAACP branches refused to support desegregation efforts.

The city of Dayton illustrates the problems confronting Marshall. In 1924, the Dayton School Board established segregated classrooms at an integrated elementary school, triggering deep division in the black community.²⁰⁶ Many blacks favored the segregated classrooms; those in opposition, unable to secure the support of the local NAACP branch, sought the

201. Letter from Theodore M. Berry to Thurgood Marshall (Nov. 9, 1939) (on file with NAACP Papers, Box I-D-99, Library of Congress, Washington, D.C.). Berry, who was head of the Cincinnati branch of the NAACP, would become Cincinnati's first black mayor in 1972. Washington, *supra* note 58, at 95.

202. Letter from Thurgood Marshall to Theodore M. Berry (Nov. 21, 1939) (on file with NAACP Papers, Box I-D-99, Library of Congress, Washington, D.C.).

203. Berry Letter, *supra* note 201.

204. *State ex rel. Lewis v. Board of Educ.*, 28 N.E. 2d 496 (Ohio 1940); Memorandum to the Members of the National Legal Committee from Thurgood Marshall (July 17, 1940) (on file with NAACP Papers, Box I-D-99, Library of Congress, Washington, D.C.); Letter from Thurgood Marshall to Theodore M. Berry (July 16, 1940) (same).

205. Memorandum to the Members of the National Legal Committee from Thurgood Marshall (July 17, 1940) (on file with NAACP Papers, Box I-D-99, Library of Congress, Washington, D.C.).

206. Many African Americans supported the segregation; a national NAACP leader reported at the time that the segregation was due to "a request of colored people who desired colored teachers" for their children. Meier & Rudwick, *supra* note 86, at 64.

assistance of the NAACP's national office.²⁰⁷ The national office intervened, supporting a legal challenge that eventually succeeded.²⁰⁸ Despite this victory, school segregation continued virtually unabated as the Dayton School Board, supported by a large segment of the black community, simply ignored the court decision.²⁰⁹ Almost two decades later, when Marshall arrived in Dayton, black support for school segregation remained strong. Marshall complained in 1945 that:

The biggest problem in Dayton is not a legal problem but is a problem of educating the Negro community to be in a frame of mind to fight segregated schools. The majority of the Negroes in Dayton are in favor of segregated schools and if this were not so, it would have been impossible to establish them.²¹⁰

207. *Id.* at 64–65.

208. *Board of Educ. v. State ex rel. Reese*, 151 N.E. 39 (Ohio 1926); Meier & Rudwick, *supra* note 86, at 65–66; “Jim Crow” Schools Again Barred, CLEVELAND GAZETTE, Feb. 20, 1926, at 1; No Legal Ohio “Jim Crow” Schools!, CLEVELAND GAZETTE, Jan. 16, 1926, at 1; “Told Them So”!, CLEVELAND GAZETTE, Jan. 16, 1926, at 2; Letter from Roy Wilkins, Assistant Secretary, NAACP, to Raymond Pace Alexander, attorney (Sept. 8, 1932) (on file with NAACP Papers, Box 1-D-48, Library of Congress, Washington, D.C.).

209. Letter from Marian Smith Williams, Chairman, Citizens’ Committee, to Roy Wilkins (Jan. 18, 1946) (on file with NAACP Papers, Box 11-B-146, Library of Congress, Washington, D.C.). One of the more prominent proponents of school segregation in Dayton was Frederic MacFarlane, principal of a black high school and well-known local leader. *Brinkman v. Gilligan*, 583 F.2d 243, 249 (6th Cir. 1978); Meier & Rudwick, *supra* note 86, at 67; *Dayton Kluxers Get Very Busy*!, CLEVELAND GAZETTE, Mar. 5, 1927, at 1; Al Dunmore, *Objectively Yours*, PITT. COURIER, Jan. 5, 1946; *More “Jim Crow” Schools*, CLEVELAND GAZETTE, May 22, 1926, at 1; Letter from Marian Smith Williams to W.E.B. Du Bois (Aug. 6, 1945) (on file with the NAACP Papers, Box 11-B-146, Library of Congress, Washington, D.C.).

Similar disdain for a school desegregation order took place in Springfield. In 1922, the school board in Springfield resegregated its schools by creating an all-black elementary school in response to an influx of southern blacks into the city. The national office of the NAACP offered its support for a legal challenge, but the local branch was split on the issue and hence no action was taken. Eventually, a group of blacks favoring school integration formed a civil rights protective league and in the fall of 1922 organized a boycott of the segregated school and sought and obtained an injunction from a local court barring the segregation. The Springfield School Board, however, ignored the court order and refused to admit the black children to the city’s white schools; in addition, it dismissed all of the black teachers at the segregated school. Although the recalcitrant school board was voted out of office in the fall of 1923 and the new board members voted to comply with the court order, a liberal allowance of transfers for white students coupled with a denial of transfers for black students kept the school almost completely segregated. MEIER & RUDWICK, *supra* note 79, at 300–03; Meier & Rudwick, *supra* note 86, at 60–63; *The Victory at Springfield*, 26 CRISIS 200 (1923); “Told Them So”!, *supra* note 208, at 2.

210. Memorandum from Thurgood Marshall to Walter White (Nov. 6, 1945) (on file with NAACP Papers, Box 11-B-146, Library of Congress, Washington, D.C.).

Marshall tried to find a local black lawyer in Dayton to file a desegregation lawsuit, but with no success.²¹¹ Segregation would continue in Dayton until after the *Brown* decision.

Perhaps the greatest division in the Ohio black community over school segregation took place in Cincinnati. Many African Americans in Cincinnati strongly favored segregated schools and had petitioned the school board for segregated schools on two occasions during the first two decades of the century.²¹² One of the most forceful proponents of school segregation in Cincinnati until her death in 1936 was a black principal, Jennie Porter. For more than two decades, Porter, who argued that black children suffered mistreatment in mixed schools, promoted segregated schools as vital to the development of both the black community and black children.²¹³ Other African Americans, under the leadership of Wendell Dabney, editor of a black newspaper, *The Union*, vigorously opposed school segregation. Dabney, who believed that school segregation would lead to other forms of segregation, blamed African Americans for the city's increasing school segregation:

211. *Id.* The inability of the NAACP to challenge school segregation in Dayton weakened the local branch and led to a sharp decline in NAACP membership in mid-1940s at a time when NAACP membership was increasing throughout the North. Memorandum from Walter White to Thurgood Marshall (Oct. 29, 1945) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

212. Washington, *supra* note 58, at 57-58, 86.

213. Porter extolled the black school as providing broad benefits to the black community: "The new school is used as a socializing agency, not only for the children, but also for the adults of the community. Under its guidance and control, come parents and children alike to engage in social recreation, literary programs, dancing, plays, and games." Jennie D. Porter, *The Problem of Negro Education in Northern and Border Cities* 144 (1928) (unpublished Ed.D. dissertation, University of Cincinnati) (on file with the University of Cincinnati Library). Yet Porter, in her enthusiasm for segregated education, ignored the historic discrimination against black children in Cincinnati, claiming in 1928: "The [Cincinnati] Board of Education and the Superintendent of Schools have always stood for absolute equality of opportunity for white and Colored children alike, without any discrimination because of color." *Id.* at 132-33.

Porter was closely associated with the School of Education at the University of Cincinnati, which was an important center of segregationist educational theory in the 1920s and 1930s. MCGINNIS, *supra* note 48, at 67-69. In addition to Porter, several other students and faculty at the University lauded the advantages of school segregation. Dean Louis Pechstein argued that "the aims of education may be best realized by Negroes in separate public schools." Pechstein claimed that "greater inspiration, greater racial solidarity, superior social activities, greater retention, and greater educational achievement are possible for Negroes in separate public schools than in mixed schools." Pechstein, *supra* note 136, at 192. Mary Agnes Roberts Crowley's 1931 study found that the academic gains of black students were essentially the same in segregated as in mixed schools. Crowley, *supra* note 136. Inez Prosser's 1933 study found that black children experienced a more favorable personality development in black schools. Prosser, *supra* note 136. These studies had a significant influence on the determination of school officials in many parts of Ohio to retain segregated schools. MCGINNIS, *supra* note 48, at 70.

[O]ur colored citizens are responsible for the present lamentable condition! Many of them want colored schools and the whites everywhere welcome opportunities for segregation! . . . The knowledge that Negro teachers and principals could be more easily placed in Colored Schools, has caused them to work towards that end rather than in the right direction.²¹⁴

Dabney, who founded a local NAACP branch in 1915 to fight school segregation, repeatedly locked horns with Porter over the segregation issue.²¹⁵ In time, the conflict between Porter and the NAACP grew so severe that she forbade her teachers from joining the organization.²¹⁶ Ultimately, the NAACP reached an accommodation with Porter pursuant to which the organization did not attack school segregation directly but instead sought to secure employment for black teachers in mixed schools.²¹⁷

Dismayed at the resistance to school desegregation in the Ohio black community, Marshall traveled to Ohio in 1946 to arouse interest in a com-

214. Washington, *supra* note 58, at 88. In 1926, Dabney published a book in which he blamed both whites and blacks for segregation:

The whites generally favor separate schools. Regarding Negroes as being inferior, they deplore any association with them, except upon the basis of master and man, employer and servant. They are wise enough to realize that the doctrines of subserviency can not be enforced if white children are schooled with the colored, since school association and competition breed a spirit of equality. . . . Separate schools could neither be established nor maintained under law, were it not for the solicitation of many colored people who, through selfishness, ignorance or cowardice, submit to such conditions as the easiest method of getting colored teachers appointed.

WENDELL P. DABNEY, CINCINNATI'S COLORED CITIZENS: HISTORICAL, SOCIOLOGICAL AND BIOGRAPHICAL 149 (1926).

215. Berry, *supra* note 136, at 56; Washington, *supra* note 58, at 83. Under Dabney's leadership, the local NAACP branch interjected itself into a number of school segregation battles. When the Cincinnati School Board announced plans to establish another segregated black school during World War I, the NAACP announced its opposition and threatened litigation if the board proceeded with its plans. Both the NAACP and Porter presented the school board with counter-petitions on the segregation issue: Porter presented the school board with a petition with over 6400 signatures endorsing the new school, while the NAACP, inspired by a visit from Walter White, executive secretary of the NAACP, gathered over 3600 signatures on a counter-petition expressing opposition. *Id.* at 86. The school board ultimately adopted the Porter position and proceeded to establish the segregated school. *Id.* On another occasion, in 1926, the local NAACP branch opposed efforts, with some success, by the school board to transfer black children thought to be discipline problems from mixed schools to segregated schools. *Id.* at 85.

216. *Id.* at 94.

217. *Id.* at 97-98. In 1934, for example, the NAACP protested the exclusion of blacks from the school board's teacher training programs. The protest failed, as the school board candidly noted that black teachers in Cincinnati would be assigned only to black schools and those schools did not require additional teachers at that time. *Id.* at 98.

prehensive legal campaign against school segregation²¹⁸ and shortly thereafter dispatched attorney Robert Carter from the national office to assist in the Ohio campaign.²¹⁹ Like Marshall, Carter expressed frustration with the significant support among so many African Americans in Ohio for school segregation and the "fear on the part of the [Ohio] lawyers" to file desegregation lawsuits.²²⁰ When the national office sent a field secretary to investigate school segregation in Chagrin Falls, just east of Cleveland, the town's black teachers resented the "interference."²²¹ Similarly, when a local civil rights organization, the Future Outlook League, successfully sued the Mansfield School Board in 1945 for establishing separate classes for black children in a mixed school, several of the school's black teachers announced that "their rights were disregarded" in the lawsuit and that they would "not teach white children."²²²

Officially sanctioned school segregation persisted in a number of Ohio school districts until the early 1950s and in some instances until after the *Brown* decision.²²³ Moreover, the Ohio State Board of Education contin-

218. Dunmore, *supra* note 209; Letter from Miley O. Williamson, Executive Secretary, Dayton Branch, NAACP, to Thurgood Marshall (June 7, 1945) (on file with the NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.). Marshall convened a meeting in Columbus to assess the Ohio situation at which he secured the agreement of various branches of the NAACP to engage in a fundraising campaign to support a legal effort against segregated schools and a public relations campaign to increase black support for the effort. Press Release, War on School Jim Crow Mapped (Jan. 17, 1946); Williams Letter, *supra* note 209. The NAACP prepared a short manual for local branches outlining methods of challenging school segregation in Ohio. Branch Action to Eliminate Segregated Schools (n.d.) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

219. Carter proposed filing "as many case[s] simultaneously within the state attacking segregation in the school system as possible." This would be done to show that they were determined to fight segregation throughout the state. Letter from Robert L. Carter to J. Maynard Dickerson, President, Ohio State Conference of Branches, NAACP (May 14, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.); Memorandum from Robert Carter, Bainbridge School Situation (n.d.) (same).

220. Letter from Robert L. Carter to George V. Johnson, attorney (Sept. 14, 1946) (on file with NAACP Papers, Box II-B-146, Library of Congress, Washington, D.C.).

221. Black parents had petitioned the school board to establish "their own school" in Chagrin Falls in the 1930s. The school board complied, establishing an overcrowded, understaffed, "ram shackled" school, as compared to the nearby white school housed in a modern building with superior equipment and adequate staffing. Memorandum from Noma Jensen, Assistant Field Secretary, NAACP, Summary of Activities in Chagrin Falls, Mansfield, Warren, Columbus and Cleveland, Ohio and Detroit, Michigan (n.d.) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

222. *Id.*

223. By the early 1950s, officially sanctioned segregation continued in Chagrin Falls, Cincinnati, Columbus, Dayton, Hamilton, Hillsboro, Middletown, and Oxford. *Penick v. Board of Educ.*, 663 F.2d 24, 28 (6th Cir. 1981); *Brinkman v. Gilligan*, 583 F.2d 243, 249 (6th Cir. 1978); *Clemons v. Board of Educ.*, 228 F.2d 853, 855 (6th Cir. 1956); Press Release, War on School Jim Crow Mapped by Ohio NAACP (Jan. 17, 1946) (on file with NAACP Papers, Box II-B-146,

ued to ask local school boards to report the number of black children attending "separate schools for colored children" until 1955.²²⁴ As in Pennsylvania, the lack of broad support in the black community for desegregation and ongoing resistance in the white community undermined litigation efforts. The inability of the NAACP leaders to secure the support of the state government, as they had in New Jersey, made desegregation efforts difficult. Not surprisingly, in many Ohio communities, serious desegregation efforts did not take place until after the *Brown* decision; indeed, more school desegregation litigation was filed in Ohio during the post-*Brown* era than in any other northern state.

4. The Campaign Against School Segregation in Illinois

Throughout the first half of this century, school segregation persisted unabated in the southernmost counties of Illinois. By 1950, school segregation was more pervasive in southern Illinois than in any other part of the North, and unlike in other areas, local NAACP branches had expressed little interest in challenging this racial separation.²²⁵ Following the unsuccessful ten-year legal campaign to desegregate the Alton schools in the early twentieth century,²²⁶ no African American filed a legal challenge to school segregation in southern Illinois until 1948.

As the national office of the NAACP expanded its school desegregation activities in the North during the 1940s, NAACP leaders recognized that Illinois posed a particularly difficult hurdle. Thurgood Marshall described the situation to NAACP Executive Secretary Roy Wilkins in 1948:

The segregated schools in South Illinois are not only illegal but they have been declared illegal by Illinois cases. They are a disgrace to

Library of Congress, Washington, D.C.); Williams Letter, *supra* note 209 (discussing a legal strategy to attack school segregation in Ohio).

224. *Penick*, 663 F.2d at 28.

225. In northern Illinois, a few local branches of the NAACP had sought greater pupil mixing. For example, in Moline, in northern Illinois, the local branch of the NAACP successfully negotiated school integration in 1940. Letter from Leon R. Harris, President, Tri-City Branch, NAACP, to Thurgood Marshall (Jan. 3, 1940) (on file with NAACP Papers, Box II-B-138, Library of Congress, Washington, D.C.). Similarly, in 1936, the Chicago branch lobbied local school and city officials in nearby Kankakee, as well as the governor, to allow black children to swim with white children at a high school in the Illinois town. Their efforts succeeded, as the Kankakee school officials reversed their segregationist policy. *Along the N.A.A.C.P. Battlefield*, 43 *CRISIS* 182 (1936). But no Illinois branch filed litigation seeking integrated schools until the late 1940s.

226. See *supra* text accompanying notes 96–100.

the state and even more so a disgrace to the NAACP and especially the Illinois State Conference of Branches. The Legal Department has repeatedly tried to get started on these cases and has never been able to move to first base because of the practically non-existent State Conference. Unless and until we can get the State Conference willing to cooperate, there is nothing the Legal Department can do.²²⁷

Because the national office relied on local plaintiffs and attorneys to file desegregation lawsuits, the lack of support for pupil mixing among local NAACP leaders was a major blow to the national office's litigation campaign.²²⁸ Marshall confessed to Wilkins: "I am beginning to doubt that our branch officers are fully indoctrinated on the policy of the NAACP in being opposed to segregation. It is therefore obvious that we need to educate our branch officers and in turn the membership, and finally, the people in the need for complete support in this all-out attack on segregation."²²⁹

As a result, the NAACP's national legal department directed Gloster Current, national director of local branches, to build support among Illinois NAACP leaders for school desegregation²³⁰ and dispatched two staff members to southern Illinois to stir community interest in integration.²³¹ At the same time, the national office offered its assistance to local branches

227. Memorandum from Thurgood Marshall to Roy Wilkins (Dec. 14, 1948) (on file with NAACP Papers, Box II-B-138, Library of Congress, Washington, D.C.).

228. As Milton Konvitz, an attorney in the national office, explained in 1944: "It is not up to the National Office but to the local branch to initiate the proceedings which may result in a case. All that we can do is render whatever assistance may be indicated." Letter from Milton R. Konvitz to James E. King, President, Atlantic City Branch, NAACP (Apr. 6, 1944) (on file with NAACP Papers, Box II-B-144, Library of Congress, Washington, D.C.).

229. Memorandum from Thurgood Marshall to Roy Wilkins (Oct. 28, 1947) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.); *see also* Letter from Thurgood Marshall to Leon Harris (Nov. 30, 1939) (on file with NAACP Papers, Box II-C-40, Library of Congress, Washington, D.C.) (describing attitudes of many blacks in Illinois who "foolishly believ[e] that segregation benefits Negroes").

230. Franklin Williams, an attorney in the national legal department charged with fighting northern school segregation, told Current that he "would like to be able to file suit in as many of these [northern] States as possible and as quickly as possible," but that the lack of support at the local level made it difficult to do so. Williams asked Current to work specifically with the state conference of the Illinois NAACP to build support for desegregation litigation. Memorandum from Franklin H. Williams to Gloster Current (July 10, 1947) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.).

231. Proposed Community Action Research in Harmonious Desegregation 3 (n.d.) (unpublished report) (on file with NAACP Papers, Box II-B-137, Library of Congress, Washington, D.C.); Press Release, Cairo Public Schools Open Second Year of Integration (Sept. 10, 1953) (on file with NAACP Papers, Box II-A-229, Library of Congress, Washington, D.C.).

interested in filing litigation. Between 1948 and 1953, the national office supported litigation efforts in five southern Illinois school districts.²³²

In the meantime, the NAACP's desegregation campaign in Illinois received an enormous boost from the Illinois General Assembly. In 1949, the state legislature, at the behest of a longtime black representative from Chicago, Charles Jenkins, enacted legislation requiring the withholding of state education funds from any school district in which children were excluded from a school because of race.²³³ This legislation reflected the increased political power of black voters in Illinois fueled by the significant expansion of the state's black population between 1910 and 1950.²³⁴ The fact that blatant school segregation, characterized by separate schools and classrooms for black children, was primarily a problem in Illinois's rural southern counties facilitated efforts to win support for the legislation. Urban legislators could support the fund-withholding legislation, recognizing that it would have no effect on their districts' schools. Although many urban schools were becoming increasingly segregated in the late 1940s, virtually all of this segregation was because of residential patterns and hence unaffected by the fund-withholding legislation.

The new legislation offered a significant opportunity for challenging school segregation, as many southern Illinois school boards would not wish

232. The organization supported litigation against East St. Louis in 1948, Alton in 1950, Harrisburg in 1951, Cairo in 1952, and Tamms in 1953. Ming, *supra* note 99, at 270; Memorandum from June Shagaloff, Field Secretary, NAACP, to Henry L. Moon (Sept. 18, 1953) (on file with NAACP Papers, Box 11-A-229, Library of Congress, Washington, D.C.).

233. SCHOOLS IN TRANSITION, *supra* note 104, at 27, 93; Valien, *supra* note 116, at 303. The Illinois Commission on Human Relations in 1947 had urged the Illinois Superintendent of Public Instruction to take action against school segregation in southern Illinois by withholding state monies to these school districts. The state superintendent, however, had no legal authority to withhold state funds, which led to legislative efforts to grant the superintendent such authority. WEINBERG, *supra* note 68, at 71.

Twenty years earlier, another African-American representative, Charles Griffin, successfully pushed through the Illinois legislature legislation that provided that no school that excluded students because of their race could be considered a school in good standing and that the students of such schools could not take examinations for licenses to practice their trades or professions in Illinois. This legislation, however, did not affect segregation patterns in Illinois. *Ohio Should Have Such a Law*, CLEVELAND GAZETTE, July 30, 1927, at 2.

234. The Illinois black population increased from 109,000 in 1910 to 646,000 in 1950. 1 U.S. BUREAU OF THE CENSUS, 1910 U.S. CENSUS OF POPULATION 191 tbl. 42, at 191; 2 U.S. BUREAU OF THE CENSUS, 1950 CENSUS OF POPULATION, ILLINOIS 59 tbl. 14. The 1948 presidential election revealed in dramatic fashion the electoral power of black voters; Truman carried Illinois by 30,000 votes; black voters in the second ward of Chicago provided Truman with a 60,000-vote margin. Ming, *supra* note 99, at 268-69.

to run the risk of losing substantial state support for public education. In East St. Louis, for example, the new legislation had an immediate impact. In 1948, with substantial assistance from the national office, the local NAACP branch had filed the first lawsuit challenging school segregation in Illinois in almost half a century.²³⁵ When the state announced that an adverse judicial determination would cost the city almost \$700,000 in education monies in accord with the new fund-withholding law, the East St. Louis School Board agreed to integrate its schools.²³⁶

Two years later, in 1951, the state legislature, again at the behest of Representative Jenkins, strengthened its fund-withholding mandate by requiring local school superintendents to file sworn statements guaranteeing the operation of a nondiscriminatory school system and establishing a legislative committee to investigate compliance.²³⁷ The legislative decision to force superintendents to certify compliance with the state antisegregation law increased pressure on recalcitrant school districts. Some school superintendents, under threat of personal liability for state funds disbursed, refused to release state funds to certain schools under their jurisdiction.²³⁸

But a few southern Illinois school districts persisted in their resistance to pupil mixing. The primary holdouts were in Alexander and Pulaski

235. The national office dispatched several prominent black leaders to East St. Louis, including Gloster Current, national director of local branches for the NAACP, Executive Secretary Roy Wilkins, Robert Carter of the national legal department, and William R. Ming, Jr., of the University of Chicago Law School and a member of the NAACP national legal committee, to assist in the litigation. Memorandum from Gloster Current to Henry L. Moon (Feb. 10, 1949) (on file with NAACP Papers, Box 11-B-137, Library of Congress, Washington, D.C.). Anxious to preserve local support for the desegregation effort, Thurgood Marshall assured the East St. Louis branch that "[t]he Branch will, of course, get full credit for the case. Your attorney will get full credit for handling the case." Letter from Thurgood Marshall to David Owens, President, East St. Louis Branch, NAACP (Feb. 28, 1949) (on file with NAACP Papers, Box 11-B-137, Library of Congress, Washington, D.C.).

236. *East St. Louis Will End School Race Segregation*, N.Y. TIMES, Dec. 22, 1949, at 8. The East St. Louis School Board had also experienced difficulty selling education bonds because of the new state law. Ming, *supra* note 99, at 270; Press Release, E. St. Louis Ends Segregated Schools (Dec. 22, 1949) (on file with NAACP Papers, Box 11-B-137, Library of Congress, Washington, D.C.).

237. HARRY S. ASHMORE, *THE NEGRO AND THE SCHOOLS* 73 (1954); SCHOOLS IN TRANSITION, *supra* note 104, at 93; Justin Fishbein, *School Segregation Is Still an Issue in S. Illinois*, CHI. SUN TIMES, June 20, 1954, at 3; Valien, *supra* note 116, at 303.

238. For example, the Madison County school superintendent withheld funds from the Alton schools, which had resisted school desegregation for more than half a century. Ming, *supra* note 99, at 271.

Counties in the southern tip of the state—particularly the town of Cairo.²³⁹ Cairo, Illinois's southernmost community with a long history of racial friction, continued to maintain a dual school system, with grossly inferior black schools, notwithstanding the certification of the Cairo Board of Education that its schools were in compliance with the state's antisegregation law.²⁴⁰

In January 1952, the NAACP's national office dispatched two staff members to Cairo to stir interest in school desegregation. At a mass meeting, the NAACP urged black parents to request transfers for their children to white schools at the onset of the second semester in late January. The African-American community in Cairo bitterly divided over the NAACP's integration efforts. Upper- and middle-class black families—particularly ministers, teachers, and principals—uniformly refused to seek transfers, afraid to upset the racial status quo. One black minister aggressively lobbied African Americans not to seek transfers, reminding them of their dependency on the white community and disparaging the NAACP as an outside group, uninterested in the welfare of local blacks. Black educators predicted mistreatment of black children in integrated schools and a loss of jobs if segregated schools were eliminated.²⁴¹

A few black children did enroll in white schools in Cairo in late January 1952 for the first time in the city's history.²⁴² In response, many black families were victims of acts of terror. A bomb exploded on the back steps of one black family's home and crosses were burned in the yards of others.²⁴³ The NAACP urged the intervention of the Illinois attorney general whose pressure led to the indictment and conviction of the bomb-

239. Valien, *supra* note 116, at 305. In these counties, a legislative investigating committee found, "[n]either the County Superintendent of Schools nor the District Superintendents, nor the School Trustee Boards are doing anything about obeying the law." *SCHOOLS IN TRANSITION*, *supra* note 104, at 93; Valien, *supra* note 116, at 305.

240. *SCHOOLS IN TRANSITION*, *supra* note 104, at 93–94.

241. *Id.* at 95–100. These fears were legitimate. Many black teachers in southern Illinois did lose their jobs in the wake of school integration in the early 1950s. Fishbein, *supra* note 237, at 6; Letter from Faith Rich to Gloster Current (Sept. 12, 1954) (on file with NAACP Papers, Box II-A-226, Library of Congress, Washington, D.C.).

242. Valien, *supra* note 116, at 305.

243. *SCHOOLS IN TRANSITION*, *supra* note 104, at 99–100. These acts of terror would continue. In November 1953, shots were fired at the home of one of the NAACP's attorneys. *Cairo Gripped by a Reign of Terror Against Anti-Bias Supporters*, *CRUSADER*, Nov. 14, 1953, at 2 (on file with NAACP Papers, Box II-A-229, Library of Congress, Washington, D.C.).

ers.²⁴⁴ At the same time, both state police and FBI agents came to Cairo to prevent further threats and violence.²⁴⁵ Despite these threats, a few black children persevered and the Cairo schools remained integrated.²⁴⁶

The state fund-withholding legislation played a central role in the desegregation of the remainder of the southern Illinois school districts. In 1952, the NAACP filed litigation demanding that the state superintendent of public instruction withhold all state education monies from Alexander County. As a result of this litigation, the state superintendent withheld funds from every Alexander County school district; shortly thereafter, each of these school districts chose to comply with the state antisegregation statute.²⁴⁷ At the same time, fund-withholding pressure from the state superintendent of education forced the desegregation of the schools in nearby Metropolis.²⁴⁸ In the fall of 1954, the last two southern Illinois towns—Brookport and Mounds—opened their white schools to black schoolchildren.²⁴⁹

The successful desegregation of the schools in southern Illinois was due in large measure to the altered political climate in Illinois in the late 1940s and early 1950s that led to the fund-withholding legislation. Even though virulent white resistance had kept these schools segregated since the nineteenth century and had dissuaded any black challenges, the enhanced political power of African Americans, particularly in Chicago, had led to significant legislation and administrative enforcement that, in combination with NAACP efforts, successfully desegregated the downstate Illinois schools. The speed with which these school districts finally desegregated in the early 1950s was a function of the willingness of state legislators and education officials to withhold education funds from defiant school districts. Although the NAACP's litigation efforts played an important role in the enforcement of the state legislation, without the commitment of

244. Shortly thereafter, several black leaders and a white NAACP attorney were arrested and charged with conspiring to endanger the "life and health" of black children by "unlawfully, willfully and wickedly forc[ing] the said children" to attend mixed schools. The criminal charges were eventually dropped, as were charges against the alleged bombers and cross burners. *SCHOOLS IN TRANSITION*, *supra* note 104, at 101-02; Ming, *supra* note 99, at 270-71.

245. ASHMORE, *supra* note 237, at 73; 'Dynamite Arrow in Race Dispute,' *LIFE*, Feb. 1, 1954 at 25 (on file with NAACP Papers, Box II-A-229, Library of Congress, Washington, D.C.).

246. By the end of the 1951-1952 school year, 17 of the more than 100 students who originally sought transfers remained in mixed schools. *SCHOOLS IN TRANSITION*, *supra* note 104, at 102.

247. Press Release, More Than 100 Negro Students Attending Formerly All-White Public Schools Without Incident in Cairo, Illinois (Sept. 10, 1953) (on file with NAACP Papers, Box II-A-229, Library of Congress, Washington, D.C.); Shagaloff Memorandum, *supra* note 232.

248. Fishbein, *supra* note 237, at 6.

249. LOTH & FLEMING, *supra* note 200, at 7.

state education officials to withhold funds, the NAACP would have had far more difficulty enforcing the nineteenth-century mandate against segregation in what was undoubtedly the most recalcitrant area in the North.

CONCLUSION

The ongoing and blatant segregation of many northern black schoolchildren until the middle of the twentieth century constituted a remarkable disregard for both statutory rule and judicial decision. The persistence of school segregation and the difficult struggle of the African-American community to overcome that segregation reveals much about the nature of racial change in this country and the role of law in securing that change.

Legal prohibitions operate in a complex social and political context. Cultural patterns, particularly those associated with race, have been remarkably resistant to change in this country's history, as entrenched racial attitudes have often proven impervious to the demands of court decisions and statutory enactments.²⁵⁰ The nineteenth-century antisegregation legislation failed for almost seventy-five years to eliminate officially sanctioned segregation in certain northern school districts because of the opposition of white school officials and the lack of broad political and cultural support for pupil mixing. Many of those legislators responsible for the enactment of the legislation did not possess a deep commitment to school integration; having captured the political benefits of backing such legislation, the desire to secure enforcement quickly waned.

The successful end to officially sanctioned school segregation in the North resulted from a convergence of white and black support for racial integration in the late 1940s. Many white politicians, such as Governor Driscoll of New Jersey, perceived a political advantage to be gained from aggressively enforcing the nineteenth-century desegregation legislation. At the same time, a growing number of African Americans, at the urging of the NAACP, became convinced of the advantages of integrated schools and decided to apply political pressure to secure them.

This convergence of NAACP pressure and white political support for enforcement of the antisegregation laws was aided by the fact that by the

250. The *Brown* decision is an excellent example of this phenomena. The decision struck down segregated schools, but had little impact on southern schools for more than a decade. See Delgado & Stefancic, *supra* note 5, at 551 ("It is as though legal decisions take place against a gravitational field, with the pull being toward the familiar, toward stasis," thereby explaining the difficulties of a decision like *Brown* making significant racial change.); Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92, 93-94 (1994) (noting dearth of southern school desegregation during first decade after *Brown*).

late 1940s, noncompliance with the nineteenth-century legislation in much of the North—particularly New Jersey and Illinois—was primarily an issue in rural and small-town school districts. An increasing number of urban schools were becoming racially identifiable but largely as a result of residential segregation rather than explicit racial exclusion. Thus state officials could aggressively support fund-withholding legislation, recognizing that most school segregation would be unaffected. Legislators could claim credit for bringing the Cairos of the world into line, with no worry that their initiatives might challenge school attendance patterns in their own districts.

What does the campaign against northern school segregation teach those interested in fostering racial change? As Derrick Bell has previously argued, the likelihood of racial reform is greatest when the reform in question serves white interests.²⁵¹ During the 1940s, the northern African-American community successfully utilized a variety of tactics—political mobilization, litigation, and a campaign to build popular support for desegregation—to create an environment in which reform served white interests. The desire of white politicians to garner black political support, defuse NAACP agitation, and stem black unrest generated sufficient support for desegregation initiatives that helped end blatant segregation in many northern school districts. The northern desegregation experience thus suggests that the best strategy for securing racial reform is to utilize a variety of tactics—including but not limited to traditional litigation campaigns—to build political and cultural support for the reformist agenda.²⁵² Establishing rights through litigation (or legislation) is usually essential to racial reform; moreover, in some instances, as in the pre-*Brown* South, litigation is the only avenue available for pressing racial demands. But litigation and even legislative strategies are not likely to translate into meaningful change unless they are reinforced by broader cultural support.

African Americans are acutely familiar with the illusions of legal gains that never translate into tangible reform. Racism is profoundly entrenched in American life, and law, though essential, is but one piece of a broader struggle to undermine its influence.

251. See Bell, *supra* note 12.

252. The modern campaign for gay rights has followed this multivariable approach. For example, the campaign for the legitimation of gay marriage involves litigation (in Hawaii), lobbying efforts before city councils, state legislatures, and Congress, and a broad campaign to build popular support for the marital rights of gays and lesbians. See generally Thomas B. Stoddard, *Why Gay People Should Seek the Right to Marry*, in *LESBIAN AND GAY MARRIAGE* 13 (Suzanne Sherman ed., 1992); Wolfson, *supra* note 15.