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THE RHETORIC OF MODERATION: DESEGREGATING THE SOUTH DURING THE DECADE AFTER *BROWN*

*Davison M. Douglas**

The choice is not between segregation and integration; it is between some integration and total integration. . . . [If we resist all integration], it is a foregone conclusion that the winner will be total integration, or that the schools will be closed. . . . Token integration . . . will save the state and save the schools. . . . This is *moderation*.

—North Carolina State Judge Braxton Craven, 1960¹

I. INTRODUCTION

For decades, the South's² massive resistance to the Supreme Court's *Brown v. Board of Education*³ decision has fascinated scholars.⁴ In the wake of the Supreme Court's decision striking down

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¹ Braxton Craven, *Legal and Moral Aspects of the Lunch Counter Protests*, CHAPEL HILL WKLY., Apr. 28, 1960, at 1B (emphasis added).

² Unless otherwise noted, for purposes of this Article references to the "South" include the eleven states of the old Confederacy: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

³ 347 U.S. 483 (1954).

⁴ See, e.g., NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950's* (1969); JAMES W. ELY, *THE CRISIS OF CONSERVATIVE VIRGINIA: THE BYRD ORGANIZATION AND THE POLITICS OF MASSIVE RESISTANCE* (1976); ROBIN L. GATES, *THE MAKING OF MASSIVE RESISTANCE: VIRGINIA'S POLITICS OF PUBLIC SCHOOL DESEGREGATION, 1954-1956* (1962); BENJAMIN MUSE, *TEN YEARS OF PRELUDE: THE STORY OF INTEGRATION SINCE THE SUPREME COURT'S 1954 DECISION* (1964); BENJAMIN MUSE, *VIRGINIA'S MASSIVE RESISTANCE* (1961); REED SARRATT, *THE ORDEAL OF DESEGREGATION: THE FIRST DECADE* (1966); FRANCIS M. WILHOIT, *THE POLITICS OF MASSIVE RESISTANCE* (1973); J. HARVIE WILKINSON, III, *FROM BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978* (1979); Alexander M. Bickel, *The Decade of School Desegregation: Progress and Prospects*, 64 COLUM. L. REV. 193 (1964); Walter Gellhorn, *A Decade of Desegregation—Retrospect and Prospect*, 9 UTAH L. REV. 3 (1964); Robert B. McKay, "With All Deliberate Speed": Legislative Reaction and Judicial Development 1956-1957, 43 VA. L. REV. 1205 (1957); Robert B. McKay, "With All Deliberate Speed": A Study of School Desegregation, 31 N.Y.U. L. REV. 991 (1956); J. Harvie Wilkinson, III, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA. L. REV. 485 (1978); Note, *The Federal*

school segregation, more than half of the states of the old Confederacy—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia—defied the Court by denying the legitimacy of the *Brown* decision and doing all that they could to resist its implementation; two other southern states—Arkansas and Florida—also engaged in some defiance of the Court, although they allowed pupil mixing in at least a few of their schools without a court order to do so. Each of these states enacted an interposition resolution claiming the *Brown* decision to be illegitimate and unworthy of compliance;⁵ each also enacted substantial legislation aimed at thwarting efforts to integrate schools within their borders.⁶ And, at least in the short term, this defiance

Courts and Integration of Southern Schools: Troubled Status of the Pupil Placement Acts, 62 COLUM. L. REV. 1448 (1962).

⁵ *Interposition and Nullification—Alabama*, 1 RACE REL. L. REP. 437 (1956) (joint resolution declaring *Brown* decision “null and void”); *Interposition and Nullification—Arkansas*, 1 RACE REL. L. REP. 1116 (1956) (constitutional amendment approved by voters); *Interposition and Nullification—Florida*, 2 RACE REL. L. REP. 707 (1957) (joint resolution); *Interposition—Louisiana*, 1 RACE REL. L. REP. 753 (1956) (joint resolution); *Interposition and Nullification—Mississippi*, 1 RACE REL. L. REP. 440 (1956) (joint resolution); *Interposition and Nullification—South Carolina*, 1 RACE REL. L. REP. 443 (1956) (joint resolution); *Interposition and Nullification—Virginia*, 1 RACE REL. L. REP. 445 (1956) (joint resolution).

The legislatures of Texas and North Carolina did not adopt an interposition resolution. The Tennessee House of Representatives adopted an interposition resolution, but it was not ratified by the Senate. *Interposition and Nullification—Tennessee*, 2 RACE REL. L. REP. 228 (1957).

⁶ The following are examples of some of this legislation. *Public Schools—Alabama*, 1 RACE REL. L. REP. 717 (1956) (discussing Act No. 117, Apr. 14, 1956 which required local school boards to provide segregated schools for those parents who want them); *Public Schools—Arkansas*, 2 RACE REL. L. REP. 453 (1957) (discussing Act No. 84, Feb. 26, 1957 which eliminated compulsory attendance law where attendance in a racially mixed school is required); *Public Schools—Arkansas*, 4 RACE REL. L. REP. 390 (1959) (discussing Act No. 151, Mar. 3, 1959 which provided for payment of tuition to private schools for students assigned to integrated schools); *Public Schools—Florida*, 2 RACE REL. L. REP. 1149 (1957) (discussing Chapter 1975 of the 1957 Acts, Oct. 25, 1957 which provided for closing of schools when federal military forces are employed near a school); *Compulsory Attendance—Florida*, 4 RACE REL. L. REP. 753 (1959) (discussing Chapter 59-412, June 19, 1959 which eliminated compulsory attendance law where attendance in a racially mixed school is required); *Public Schools—Georgia*, 1 RACE REL. L. REP. 418 (1956) (discussing Act No. 11, Feb. 6, 1956 which granted the Governor discretion to close local schools); *School Closing—Georgia*, 4 RACE REL. L. REP. 181 (1959) (discussing Act No. 7, Feb. 3, 1959 which authorized tuition grants when schools are closed); *Public Schools—Louisiana*, 1 RACE REL. L. REP. 239 (1956) (discussing Act 555, 1954 which provided that operation of integrated school violates criminal code); *Public Schools—Louisiana*, 1 RACE REL. L. REP. 728 (1956) (discussing House Bill No. 438, June 21, 1956 which eliminated compulsory attendance law for integrated schools); *Public Schools—Mississippi*, 1 RACE REL. L. REP. 422 (1956) (discussing House Bill No. 31, Feb. 24, 1956 which repealed requirement of compulsory education); *Public Schools—Mississippi*, 2 RACE REL. L. REP. 480 (1957) (discussing Chapter 254, 1956 which prohibited any state official from attempting to integrate the schools); *Public Schools—South Carolina*, 1 RACE REL. L. REP. 241 (1956) (discussing Acts of 1955 which eliminated funding for any school to which a student had been transferred under court order); *Public Schools—Virginia*, 1 RACE REL. L. REP. 1091 (1956) (discussing Chapter 56, 71, Sept. 29, 1956 which mandated cutoff of state funds to school districts with integrated schools and contained a provision for tuition grants to those students whose public schools are closed).

succeeded. On the fifth anniversary of the *Brown* decision, no black child had ever attended school with white children in any of these defiant states with the limited exceptions of Virginia and Arkansas. On the tenth anniversary of *Brown*, still no black child in Mississippi had ever attended school with white children and only a handful of black children in the other defiant states had gained entry into a white school.⁷ Much of the scholarship of the post-*Brown* era has attempted to explain this massive resistance and to speculate on the reasons for its success.⁸

However, not every southern state pursued a strategy of complete resistance to the *Brown* decision. Scholars have paid less attention to those few southern states that engaged in token integration during the first few years after *Brown*. The white political leaders in these "moderate" states—primarily North Carolina, Tennessee, and Texas—appeared to accept, at least in principle, the *Brown* decision's legitimacy while seeking to avoid its reach.⁹

⁷ SOUTHERN EDUC. REPORTING SERV., STATISTICAL SUMMARY OF SCHOOL SEGREGATION-DESEGREGATION IN THE SOUTHERN AND BORDER STATES 27, 29 (1965).

⁸ See generally BARTLEY, *supra* note 4; MUSE, TEN YEARS OF PRELUDE, *supra* note 4; WILHOIT, *supra* note 4; WILKINSON, *supra* note 4; JENNIFER L. HOCHSCHILD, THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION (1984).

Much of this scholarship has focused on the role of the Supreme Court in this process. Some scholars have laid part of the blame for the success of massive resistance at the feet of the Supreme Court for its refusal to confront the resistance to its mandate in *Brown* in a meaningful way. STEPHEN L. WASBY ET AL., DESEGREGATION FROM BROWN TO ALEXANDER: AN EXPLORATION OF SUPREME COURT STRATEGIES (1977); WILKINSON, *supra* note 4, at 78-79. More recently, at least two scholars have argued that the successful resistance to *Brown* demonstrates the comparative insignificance of the courts in fostering racial change in this country as compared to the legislative and executive branches of government. 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).

⁹ BARTLEY, *supra* note 4, at 144; WILKINSON, *supra* note 4, at 78-79. This distinction between "moderate" and "defiant" states is admittedly somewhat simplistic. Political leaders in all 11 southern states opposed pupil mixing; they differed, however, in the extent to which they were willing to go to preserve segregated schools.

As a general rule, the defiant states placed no limitations on their willingness to resist the *Brown* decision whereas political leaders in the moderate states were willing at least to some modest extent to balance their desire to avoid all pupil mixing with other concerns. Yet within all of the moderate states, there were those who favored resistance to the *Brown* decision at all costs. For example, in east Texas, resistance was far stronger than in the western part of the state. Likewise, in each of the "defiant" states, a handful of white leaders opposed massive resistance.

For purposes of this Article, the distinction between the moderate and defiant states is measured in terms of (1) at what point in time the state engaged in token integration without court order; (2) whether the state adopted an interposition resolution challenging the authority of the Supreme Court; and (3) the nature of the legislative agenda adopted in the state following the *Brown* decision.

In addition to the 11 states of the old Confederacy, there were 6 other "border" states along with the District of Columbia that required segregated schools and 4 other states that permitted localities to segregate their schools at the time of the *Brown* decision. These border states deseg-

Why did white leaders in the moderate states of the upper South respond to *Brown* with less outright defiance than their deep-South brethren? The most obvious response is to suggest that the intensity of opposition to racial integration varied among the southern states.¹⁰ Yet those variations, although present to some extent, do not fully account for the “moderation” of the upper South. Political leaders in the more moderate states steadfastly opposed pupil mixing; what distinguished them from their more defiant colleagues was their appreciation of the costs of defiance and their willingness to balance other concerns against their desire to prevent all pupil mixing.

First, politicians in the more moderate states understood that token integration, couched in the language of acceptance of the high Court’s mandate, could actually fend off more extensive judicially-imposed pupil mixing. This understanding was well-founded. On the tenth anniversary of *Brown*, two of the most defiant states—Louisiana and Virginia—had a higher percentage of black students attending integrated schools than did some of the moderate states¹¹ due to adverse court decisions compelling desegregation.¹² By the same token, those moderate states such as North Carolina that adopted pupil assignment plans in response to the *Brown* decision seemed to accept the inevitability of pupil mixing and subsequently engaged in voluntary token integration. These states thereby successfully avoided judicially compelled integration throughout the 1950s and retained almost totally segregated school systems until the mid-1960s.¹³

regated their schools more quickly than did the states of the old Confederacy, although at least in some instances, with an eye toward minimizing integration. MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 22-24; SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 26-28; Mary L. Dudziak, *The Limits of Good Faith: Desegregation in Topeka, Kansas, 1950-1956*, 5 LAW & HIST. REV. 351 (1987).

¹⁰ Most of the scholarship of the post-*Brown* era in the South has not emphasized the distinction between defiant states and moderate states, focusing instead on the various forms of massive resistance throughout the region. Most of these scholars note, however, that the intensity of opposition to *Brown* did vary throughout the region, with the states of the deeper South (along with Virginia) generally more defiant than the states of the upper South. See, e.g., BARTLEY, *supra* note 4, at 16 n. 50; MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 16-37; WILHOIT, *supra* note 4, at 27-40; WILKINSON, *supra* note 4.

¹¹ On the tenth anniversary of the *Brown* decision, a higher percentage of black students attended integrated schools in the defiant states of Louisiana (.6%) and Virginia (1.6%) than in the moderate state of North Carolina (.5%). SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 29.

¹² *Adkins v. Newport News Sch. Bd.*, 148 F. Supp. 430 (E.D. Va.), *aff’d*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957); *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337 (E.D. La. 1956), *aff’d*, 242 F.2d 156 (5th Cir.), *cert. denied*, 354 U.S. 921 (1957).

¹³ In North Carolina, for example, no litigation seeking the admission of black students into white schools would be successful until the 1960s, notwithstanding the fact that the NAACP filed more school desegregation lawsuits in North Carolina than in any other southern state during the 1950s and the fact that in at least some of the school districts black students were required to

Second, political leaders in the moderate states better understood the economic costs of massive resistance than did their colleagues in the defiant states. During the first decade following the *Brown* decision, many southern business leaders, keenly interested in attracting new business to the region, feared that racial strife would have an adverse impact on economic development efforts.¹⁴ In the moderate states, these business leaders effectively influenced governmental policy on school desegregation in the direction of voluntary token integration and away from statements defying the Supreme Court. Hence, tokenism, clothed in the rhetoric of moderation, became an effective tool in the moderate southern states to attract new business in the late 1950s and early 1960s.¹⁵

Expressions of "moderation" in the post-*Brown* South thus did not reflect an acceptance of racial desegregation. Rather, "moderation," at the level of both rhetoric and action, became the means by which certain white southern leaders sought to avoid extensive pupil mixing imposed by the courts and to facilitate economic growth.¹⁶

attend school in another county because of the absence of any schools for black students within their home county. See *infra* text accompanying notes 166-71.

¹⁴ A number of scholars have recently examined the degree of support among southern white business leaders for desegregation efforts as a means of facilitating economic growth in their region. Although these business leaders did not initiate desegregation efforts, in many southern communities they did help facilitate desegregation and quicken its pace. The pressure of the courts, the federal government, and black protest groups created an environment whereby business leaders helped their communities embrace limited desegregation in the service of broader community interests. See, e.g., DAVID R. COLBURN, *RACIAL CHANGE AND COMMUNITY CRISIS: ST. AUGUSTINE, FLORIDA, 1877-1980* (1985); ELIZABETH JACOWAY & DAVID R. COLBURN, *SOUTHERN BUSINESSMEN AND DESEGREGATION* (1982) (containing essays on the roles of business leaders in desegregation efforts in fourteen southern cities); ROBERT NORRELL, *REAPING THE WHIRLWIND: THE CIVIL RIGHTS MOVEMENT IN TUSKEGEE* (1985).

¹⁵ Throughout this century, southern business leaders have sought to attract new capital to the region as a means of fostering economic growth. See generally JAMES C. COBB, *THE SELLING OF THE SOUTH: THE SOUTHERN CRUSADE FOR INDUSTRIAL DEVELOPMENT 1936-1980* (1982) (describing efforts in the South to encourage industrial expansion in the region by attracting outside capital). Southern states such as Virginia that engaged in resistance to the *Brown* decision experienced a decline in economic growth during the late 1950s whereas states such as North Carolina that appeared to accept the realities of the *Brown* decision enjoyed substantial economic growth during the same period. See *infra* text accompanying notes 135-40.

¹⁶ To be sure, the racial climate in the moderate southern states had traditionally been less harsh than in the more defiant states. For example, in the moderate states, the disparities between the public financing of black and white schools had traditionally been smaller than in the defiant states. See, e.g., HARRY S. ASHMORE, *THE NEGRO AND THE SCHOOLS* 159 (1954). Likewise, a higher percentage of black adults were registered to vote in the more moderate states. See, e.g., STEVEN F. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969* (1976); PAUL LUEBKE, *TAR HEEL POLITICS: MYTHS AND REALITIES* 114 (1990) (stating that North Carolina had by far the highest percentage of black registered voters of any southern state in 1960). Finally, with the exception of Texas, incidents of racial violence, particularly lynchings, had typically been less frequent in some of the more moderate states. See, e.g., LUEBKE, *supra*, at 102; George C. Rable, *The South and the Politics of Antilynching Legislation, 1920-1940*, 51 J.S. HIST. 201 (1985).

These leaders understood that appeals to “moderation,” coupled with token integration, could thwart most pupil mixing while preserving important economic goals.¹⁷ To be sure, these moderates strenuously avoided overt defiance of judicial authority; within the constraints of that authority, however, they carefully sought to keep school desegregation to a minimum.

This Article examines the way in which “moderation” functioned during the first decade after *Brown* by focusing primarily on one of the moderate southern states: North Carolina. The selection of North Carolina as a state of primary emphasis is deliberate. On the eve of the *Brown* decision, North Carolina enjoyed a public perception as being the most racially moderate of all southern states.¹⁸ Likewise, in the aftermath of *Brown*, North Carolina was perceived as assuming a more moderate response to *Brown*—at the level of both political rhetoric and action—than any other southern state.¹⁹ Coupled with this image as the most racially progressive of southern states, however, was the reality that North Carolina engaged in virtually no pupil mixing during the first decade after *Brown*, even less than the defiant states of Virginia and Louisiana.²⁰ Contrary to the experience in some of the defiant states, North Carolina’s pupil assignment statute repeatedly passed judicial muster,²¹ thereby keeping the state’s schools al-

¹⁷ See Dudziak, *supra* note 9 (providing a parallel discussion of the efforts of school board members in a border state—Kansas—to limit pupil mixing).

¹⁸ See, e.g., CHARLES S. JOHNSON, INTO THE MAIN STREAM: A SURVEY OF BEST PRACTICES IN RACE RELATIONS IN THE SOUTH 31 (1947); V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 206 (1949).

¹⁹ Several factors contributed to that perception. First, the North Carolina General Assembly’s legislative response to *Brown* was less extreme than every other southern legislature and it was one of only a few southern legislatures not to adopt an “interposition” resolution defying the *Brown* decision. See *supra* note 5 and accompanying text. In addition, North Carolina was the only southern state not to adopt any legislation restricting the activities of the NAACP during the 1950s. See *infra* notes 144-47 and accompanying text. Moreover, at no point did a North Carolina governor urge defiance of the Supreme Court, unlike the governors of many other southern states. North Carolina’s governors argued instead for minimizing the impact of the *Brown* decision through lawful means, couched in the language of “moderation.”

Furthermore, three North Carolina cities—Charlotte, Greensboro, and Winston-Salem—were among the first in the South to desegregate their schools without court order in September 1957. The relatively peaceful desegregation in these school systems stood in sharp contrast with the simultaneous and far more tumultuous desegregation in Little Rock and helped North Carolina capture nationwide and even worldwide attention as a southern state that had taken a different course in race relations. See *infra* notes 172-83 and accompanying text. Finally, in 1961, one North Carolina school system became the first in the South to convert to a pupil assignment plan based completely on geography rather than on race. See *infra* note 191.

²⁰ By the tenth anniversary of *Brown*, only .5% of the state’s black population attended school with white children. SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 29. In over 75% of the state’s school districts, no black child attended a desegregated school. 11 of the 16 southern and border states had a higher percentage of black students in white schools than did North Carolina in 1964. *Id.*

²¹ See *infra* note 188.

most completely segregated for ten years and vindicating the hopes of those "moderates" who argued that token integration would fend off more intrusive judicial measures. At the same time, utilizing its reputation for moderation in racial matters, North Carolina enjoyed vibrant economic growth during the late 1950s and early 1960s, in contrast to some other southern states that engaged in well-publicized acts of defiance.

This Article concludes that the concept of "moderation" in the post-*Brown* South, particularly in North Carolina, was a malleable concept, skillfully used to deflect widespread pupil integration. Resistance to *Brown* was far more spectacular in the defiant southern states such as Virginia and Louisiana, but equally effective in states such as North Carolina that understood the value of tokenism and appeals to moderation.²²

II. THE SOUTH'S RESPONSE TO *BROWN*

The initial reaction to the *Brown* decision varied throughout the South. Some southern leaders immediately spoke the language of defiance. Senator James Eastland of Mississippi announced that "the Supreme Court of the United States in the false name of law and justice has perpetrated a monstrous crime."²³ Mississippi Governor Hugh L. White stated that "we're not going to pay any attention to the Supreme Court's decision. We don't think it will have any effect on us down here at all."²⁴ In fact, no black child would attend school with a white child in Mississippi for over a decade. Other states, such as Georgia and South Carolina, had already taken action in anticipation of the Supreme Court's decision by abolishing the constitutional requirement of public education.²⁵

Yet in much of the South, even in states that would eventually engage in massive resistance, the voice of defiance, at least initially,

²² The use of tokenism to deflect challenges of exclusion extends well beyond the school desegregation context of the 1950s. See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* 140-61 (1987).

²³ DAVID R. GOLDFIELD, *BLACK, WHITE, AND SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE 1940 TO THE PRESENT* 75 (1990).

²⁴ SARRATT, *supra* note 4, at 1.

²⁵ MUSE, *TEN YEARS OF PRELUDE*, *supra* note 4, at 21; BARTLEY, *supra* note 4, at 54. South Carolina Governor James Byrnes announced the following before the Court released its decision: "If the Court changes what is now the law of the land, we will, if it is possible, live within the law, preserve the public-school system, and at the same time maintain segregation. If that is not possible, reluctantly we will abandon the public-school system." MUSE, *TEN YEARS OF PRELUDE*, *supra* note 4, at 22. After the Court rendered its decision, Georgia Governor Herman Talmadge announced: "[t]here will never be mixed schools while I am governor. . . . The United States Supreme Court by its decision today has reduced our Constitution to a mere scrap of paper." *Constitution Ruined, Says Georgia Governor*, *DURHAM MORNING HERALD*, Mar. 18, 1954, at 1.

was not heard. Louisiana Senator Russell Long announced that "although I completely disagree with the decision, my oath of office requires me to accept it as the law."²⁶ In Virginia, the state that would ultimately devise and lead the South's strategy of massive resistance, Attorney General Lindsay Almond, Jr. claimed that "Virginia will approach the question realistically and endeavor to work out some rational adjustment." Virginia Governor Thomas Stanley promised to "work toward a plan which will be acceptable to our citizens and in keeping with the edict of the court."²⁷ In Arkansas, which would be home to one of the most celebrated instances of defiance in 1957 with the integration of Little Rock's Central High School, Governor Francis Cherry announced that "Arkansas will obey the law. It always has."²⁸ Likewise, in Alabama, first Governor Gordon Persons and then Governor Jim Folsom responded to *Brown* without defiance, refusing initially to enact any special legislation in response to the decision and then adopting a pupil placement statute modeled after North Carolina's, which on its face appeared racially neutral.²⁹

In time, however, much of the South hardened in its resolve to oppose the *Brown* decision. Such resistance was fueled by the understanding that a firm stance on segregation was politically popular among white voters. Within three months, the Louisiana legislature censured the Supreme Court for its "usurping of power."³⁰ Virginia's Governor Stanley announced in June 1954 his desire to "use every legal means at my command to continue segregated schools."³¹ By November 1954, several southern states had enacted legislation to forestall implementation of *Brown*. For example, Louisiana enacted a statute requiring the continuation of segregated schools;³² Georgia made it a felony for any public official to spend money on an integrated school;³³ and Mississippi allowed local school districts to close public schools in the face of desegregation initiatives³⁴ and ultimately made it unlawful for a white person to attend an integrated school.³⁵

²⁶ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 20.

²⁷ *Id.* at 21. Stanley also commented that his state would find a way to satisfy the Court. CHARLES P. ROLAND, THE IMPROBABLE ERA: THE SOUTH SINCE WORLD WAR II 35 (1975).

²⁸ WILHOIT, *supra* note 4, at 31.

²⁹ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 61-62; WILHOIT, *supra* note 4, at 32-34. Many regarded Alabama, at least initially, as a moderate southern state. But in time, Alabama would adopt a posture of resistance. Indeed, no black child would attend school with a white child in Alabama until 1962. SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 27.

³⁰ Louisiana, S. SCH. NEWS, Sept. 3, 1954, at 13.

³¹ Virginia, S. SCH. NEWS, Sept. 3, 1954, at 13.

³² BARTLEY, *supra* note 4, at 74; *Public Schools—Louisiana*, 1 RACE REL. L. REP. 239 (1956) (discussing Act 555 of 1954).

³³ BARTLEY, *supra* note 4, at 75.

³⁴ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 24.

³⁵ BARTLEY, *supra* note 4, at 76-77.

Following the Supreme Court's second *Brown* decision in May 1955,³⁶ segregationist feeling in much of the South noticeably increased. During the first three months of 1956, the legislatures of Alabama, Georgia, Mississippi, South Carolina, and Virginia enacted a total of forty-two prosegregation statutes.³⁷ Likewise, Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia all adopted resolutions of interposition declaring the *Brown* decision null and void and interposing the authority of the state between the high Court and the people of the state. Eventually, eight southern states drafted some type of interposition measure.³⁸

Even those "moderate" southern political leaders who initially refused to speak in defiance of the Court did not embrace pupil mixing. Florida's Governor LeRoy Collins, who won the title of "the moderate Southern Governor" during the mid-1950s, claimed that "we can preserve segregation" and sponsored a number of bills in the Florida General Assembly that, while moderate in comparison to those in other state legislatures, sought to do just that.³⁹ Indeed, no black child in Florida would attend an integrated school until 1959.⁴⁰

III. NORTH CAROLINA'S "MODERATE" RESPONSE TO *BROWN*

As most of the South began to articulate its policy of massive resistance, the more moderate states of the upper South, particularly North Carolina, Tennessee, and Texas, avoided outright statements of defiance. North Carolina in particular measured its response to the unwelcome *Brown* decision against larger state goals: the desire to preserve a vibrant economic base and the desire to avoid judicial intervention in the operation of the schools. In so doing, the state continued certain traditions established during the pre-*Brown* era.

A. North Carolina During the Pre-*Brown* Era

Throughout the pre-*Brown* era, North Carolina was regarded as the region's most racially moderate state, particularly in matters of education.⁴¹ The state's political leaders, although strong proponents of racial segregation, had supported black education during the half century prior to *Brown* at levels exceeding that of most other southern

³⁶ *Brown v. Board of Educ.*, 349 U.S. 294 (1955).

³⁷ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 66. See *supra* note 6 for examples of a few of these statutes.

³⁸ See *supra* note 5; BARTLEY, *supra* note 4, at 131; MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 71-72.

³⁹ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 60.

⁴⁰ SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 27.

⁴¹ KEY, *supra* note 18, at 206; JOHNSON, *supra* note 18, at 31.

states.⁴² Moreover, the North Carolina General Assembly took additional action during the late 1930s and 1940s that significantly improved the status of black education. However, in so acting, the General Assembly was clearly motivated by the desire to undermine NAACP-sponsored litigation that threatened federal court intervention in the operation of North Carolina's education system.

In 1939, the North Carolina General Assembly established some of the South's first state-supported graduate and professional programs for black students in response to the United States Supreme Court's 1938 decision in *Missouri ex rel. Gaines v. Canada*.⁴³ In *Gaines*, the Court ordered the state of Missouri either to admit a black student to the state's white law school or make some other provision for his education. Since no southern state, including North Carolina, provided any such educational opportunities for black students, all were vulnerable to similar legal challenges and the General Assembly acted to avert litigation forcing the integration of its graduate schools.⁴⁴

Successful litigation in other jurisdictions also prompted the North Carolina General Assembly to take action with regard to unequal teacher salaries. In 1940, the United States Court of Appeals for the Fourth Circuit held in a Virginia case that teacher salary disparities violated the Equal Protection Clause of the Fourteenth Amend-

⁴² A 1927 NAACP study of southern school financing concluded that disparities in terms of expenditures, average class size, and average teacher salaries between black and white schools were smaller in North Carolina than in any other southern state. *The Negro Common School in North Carolina*, 34 *THE CRISIS* 79 (May 1927); *The Negro Common School in North Carolina*, 34 *THE CRISIS* 117 (June 1927); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at 5-6 (1987). In 1929, Oswald Garrison Villard made a similar claim in a *Harper's* article. Oswald Villard, *The Crumbling Color Line*, *HARPER'S MAG.*, July 1929, at 156. This relatively strong support for black education would continue throughout the pre-*Brown* period. In 1935-36, for example, according to the United States Office of Education, average expenditures for white children in North Carolina were more than twice that of black children, but that gap was the smallest of any of the seven states examined in the South. CHARLES S. JOHNSON, *BACKGROUND TO PATTERNS OF NEGRO SEGREGATION* 14 (1943). Also in 1937-38, white teacher salaries in North Carolina were about 45% higher than black teacher salaries, according to the United States Office of Education—again the smallest gap of any of the nine southern states examined. *Id.* at 16.

⁴³ 305 U.S. 337 (1938).

⁴⁴ Epps v. Carmichael, 93 F. Supp. 327 (M.D.N.C. 1950) (discussing actions of North Carolina General Assembly); Augustus Burns, *North Carolina and the Negro Dilemma, 1930-1950*, at 131 (1968) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)). The quick action of the General Assembly in response to the *Gaines* decision reflected a calculated desire to prevent judicially-compelled integration of North Carolina's white colleges and universities. Indeed, shortly after the *Gaines* decision, Pauli Murray, a black woman and later distinguished lawyer and poet, sought admission to the University of North Carolina Law School. MORTON SOSNA, *IN SEARCH OF THE SILENT SOUTH: SOUTHERN LIBERALS AND THE RACE ISSUE* 85-86 (1977). Even though Murray decided not to challenge her exclusion in the courts, the lack of a law school for black students had left the state vulnerable in light of the *Gaines* decision.

ment.⁴⁵ The decision enjoyed wide publicity and the NAACP subsequently won similar victories in other states throughout the South.⁴⁶ Cognizant of the potential for similar litigation in North Carolina, the State Superintendent of Public Instruction persuaded the General Assembly to increase the pay of black teachers.⁴⁷ As a result, throughout the 1940s, the North Carolina General Assembly appropriated increasingly larger sums of money to provide for the ultimate equalization of black and white teacher salaries.⁴⁸ By 1945, black teachers in North Carolina were actually earning more than white teachers because of their higher qualifications, despite the fact no litigation challenging unequal teacher salaries had ever been filed in the state.⁴⁹

Finally, litigation filed by the NAACP in the late 1940s challenging the unequal expenditures for black and white schools in North Carolina⁵⁰ and threats by the organization to seek the admission of

⁴⁵ *Alston v. School Bd.*, 112 F.2d 992 (4th Cir. 1940). See generally Bruce Beezer, *Black Teachers' Salaries and the Federal Courts Before Brown v. Board of Education: One Beginning for Equity*, 55 J. NEGRO EDUC. 200 (1986); TUSHNET, *supra* note 42, at 58-65, 78-80, 90-92, 95-103.

⁴⁶ Black teachers eventually won equalization suits in six southern states—Virginia, Florida, Louisiana, Kentucky, Tennessee, and Texas. JOHNSON, *supra* note 18, at 137; JOHN H. FRANKLIN, *FROM SLAVERY TO FREEDOM: A HISTORY OF AMERICAN NEGROES* 536-37 (1947).

⁴⁷ Nathan C. Newbold, *Some Achievements in the Equalization of Educational Opportunities in North Carolina*, 9 EDUC. F. 451 (1945).

⁴⁸ *Id.*

⁴⁹ NORTH CAROLINA ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, *EQUAL PROTECTION OF THE LAWS IN NORTH CAROLINA* 102 (1962). Just six years earlier, in 1939, white teachers in North Carolina had earned 38% more than black teachers. ASHMORE, *supra* note 16, at 159; PUBLIC EDUCATION IN THE SOUTH TODAY AND TOMORROW: A STATISTICAL SURVEY 59 (Ernst W. Swanson & John A. Griffin eds., 1955).

Prior to the successful salary equalization litigation in other states, there had been a serious but unsuccessful effort in North Carolina to equalize teacher salaries. In 1934 and 1935, a biracial Commission for the Study of Problems in Negro Education appointed by Governor John C.B. Ehringhaus had revealed significant disparities between black and white teacher salaries and recommended that those disparities be completely eliminated within three to five years. Report of Governor's Commission for the Study of Problems in the Education of Negroes in North Carolina 96 (1935) (unpublished manuscript, on file with the North Carolina Collection, University of North Carolina (Chapel Hill)); Governor's Commission for the Study of Problems in the Education of Negroes in North Carolina: Summarized Reports of Subcommittees and Recommendations (1934) (unpublished manuscript, on file with the North Carolina Collection, University of North Carolina (Chapel Hill)). The North Carolina General Assembly, however, ignored the Commission's recommendations. Absent any judicial precedent compelling such salary equalization, the Commission's recommendations carried little weight.

⁵⁰ In the late 1940s, the national NAACP's litigation strategy expanded to include challenges to unequal elementary and secondary school facilities. In several North Carolina cities, local NAACP branches threatened litigation if conditions in black schools did not improve. RALEIGH NEWS & OBSERVER, June 12, 1946; Burns, *supra* note 44, at 88-89. Although most local branches of the organization ultimately declined to initiate litigation, a few lawsuits were filed. In 1951, a federal court found that black schools in Durham were indeed unconstitutionally underfunded. *Blue v. Durham Pub. Sch. Dist.*, 95 F. Supp. 441 (M.D.N.C. 1951). Other suits

black students into white schools if these inequalities persisted⁵¹ induced the North Carolina General Assembly to appropriate increasingly larger sums of money for black schools. This increase in appropriations had tangible results. Whereas in 1940 the state spent seventy-one percent more per white pupil than per black pupil, by 1952 the difference was seventeen percent—the lowest in the South.⁵²

But North Carolina's support for black education during the pre-*Brown* era did not translate into support for integrated schools. Putting small children of different races together in a classroom ran afoul of southern social mores in a way that equalizing school expenditures or teacher salaries did not. To challenge public school segregation was to challenge a foundation stone of southern culture that divided even those of liberal sensibilities. In 1949, for example, the progressive North Carolina Commission on Interracial Cooperation dissolved after nearly three decades due to internal disagreements over the wisdom of racial integration.⁵³ Similarly, in June 1950, Willis Smith defeated Frank Porter Graham in a bitterly contested Democratic runoff primary for the United States Senate in which Smith's allies charged that if Graham was elected, pupil mixing would follow.

were filed challenging unequal support for black schools in Wilson, High Point, Washington County, Old Fort, Lumberton, and Gaston County. *Winborne v. Taylor*, 195 F.2d 649 (4th Cir. 1952); *Joyner v. McDowell County Bd. of Educ.*, 92 S.E.2d 795 (N.C. 1956); GREENSBORO DAILY NEWS, Apr. 12, 1950; RALEIGH NEWS & OBSERVER, Feb. 16, 1950; Burns, *supra* note 44, at 100-01; Letter from Donald Ramseur to Kelly Alexander (Feb. 3, 1955) (on file with the Kelly Miller Alexander, Sr. Papers, Atkins Library, University of North Carolina at Charlotte).

⁵¹ North Carolina State NAACP President Kelly Alexander, for example, in his 1949 address to the state NAACP convention, called for "a county by county campaign" to fight segregated education in North Carolina: "This fight should include court action on the elementary, secondary and university level. The goal is an integrated school system." Kelly Alexander, Address to Annual North Carolina Conference of NAACP Branches 6 (June 23, 1949) (unpublished manuscript, on file with the Kelly Miller Alexander, Sr. Papers, Atkins Library, University of North Carolina at Charlotte). For the next several years, Alexander would repeat that call in his annual presidential address. See Kelly Alexander, Address to Annual North Carolina Conference of NAACP Branches 6 (June 1, 1950) (same); Kelly Alexander, Address to Annual North Carolina Conference of NAACP Branches 5 (Oct. 17, 1952) (same).

⁵² UNITED STATES COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS U.S.A., PUBLIC SCHOOLS, SOUTHERN STATES, 1962, at 64 n.2 (1962); *North Carolina*, S. SCH. NEWS, Sept. 3, 1954, at 10. Between 1940 and 1952, per pupil expenditures on black students in North Carolina increased 462% while per pupil expenditures on white students increased 285%. UNITED STATES COMM'N ON CIVIL RIGHTS, *supra*.

⁵³ Throughout its tenure, this biracial organization of distinguished North Carolina educators and church leaders confronted an array of racial issues; integration proved to be its death knell. See generally Elizabeth Earnhardt, *Critical Years: The North Carolina Commission on Interracial Cooperation, 1942-1949* (1971) (unpublished M.A. thesis, University of North Carolina (Chapel Hill)) (describing the final years of the Commission and the effects of integrationist efforts).

Even Frank Porter Graham, perhaps the South's leading racial liberal, held the line against racial integration during his tenure as president of the University of North Carolina during the 1930s and 1940s. SOSNA, *supra* note 44, at 85-86.

Smith's racial charges undoubtedly influenced the election.⁵⁴ Thus, although North Carolina adjusted more easily to changing racial demands than did other southern states during the pre-*Brown* era, the state shared the region's deep aversion to the racial mixing that *Brown* seemed to demand.

B. North Carolina's Initial Response to Brown

Political leaders in North Carolina initially responded to the *Brown* decision in subdued tones. Most of the state's politicians, reflecting the sentiment of the state's white population, opposed school integration. But most were also unprepared to engage in hopeless defiance of the high Court that could hurt the state's broader interests. Hence, for the next several years, the state's political leaders sought to avoid as much integration as possible while taking no action that would undermine the state's education system or reputation for moderation on matters of race. Effectively utilizing limited token integration, North Carolina's leaders would pursue a course of well-publicized "moderation" in contrast to its more obstreperous southern neighbors.

Upon learning of the *Brown* decision, North Carolina Governor William Umstead, although noting that he was "terribly disappointed" by the decision,⁵⁵ refused to counsel defiance of the high Court, stating instead that the "Supreme Court of the United States has spoken"⁵⁶ and that "[t]his is no time for rash statements or the proposal of impossible schemes."⁵⁷ Two days later, Irving Carlyle, a prominent North Carolina attorney and Democratic leader, addressed the North Carolina Democratic Convention and urged the state to obey the decision: "as good citizens we have no other course except to obey the

⁵⁴ JULIAN M. PLEASANTS & AUGUSTUS M. BURNS III, FRANK PORTER GRAHAM AND THE 1950 SENATE RACE IN NORTH CAROLINA 194-99, 215 (1990); MICHAEL MYERSON, NOTHING COULD BE FINER 33 (1978). One pro-Smith handbill asked voters if they wanted "Negroes going to white schools and white children going to Negro schools." *Id.*

⁵⁵ Umstead 'Terribly Disappointed' Man, DURHAM MORNING HERALD, May 18, 1954, at 1; North Carolina, S. SCH. NEWS, Sept. 3, 1954, at 10.

⁵⁶ WILLIAM UMSTEAD, PUBLIC ADDRESSES AND PAPERS OF WILLIAM BRADLEY UMSTEAD, GOVERNOR OF NORTH CAROLINA, 1953-1954, at 201 (David Corbitt ed., 1957).

⁵⁷ William B. Umstead, A Statement by Governor William B. Umstead 2 (May 27, 1954) (unpublished transcript, on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.). Governor Umstead did announce that in light of the Supreme Court's decision to postpone consideration of the remedy issue the state's schools would continue to operate on a segregated basis. North Carolina, S. SCH. NEWS, Sept. 3, 1954, at 10.

However, the day after the decision was announced, the Greensboro (N.C.) School Board became one of the first in the United States to resolve to study ways of complying with the decision; the Board chair announced that "we must not fight or attempt to circumvent this decision." North Carolina, S. SCH. NEWS, Sept. 3, 1954, at 10.

law laid down by the United States Supreme Court.”⁵⁸ The convention adopted a resolution affirming “the supremacy of the law for all citizens.”⁵⁹ The resolution was not an endorsement of *Brown*, but it did reflect the fact that much of the political leadership of North Carolina did not care to flout the Supreme Court’s authority.⁶⁰

Within weeks of the *Brown* decision, Governor Umstead, in his first significant response to the decision, directed the North Carolina Institute of Government, a branch of the University of North Carolina, to prepare a report analyzing *Brown* and outlining possible responses to the decision. The selection of the Institute to prepare the state’s initial analysis of *Brown* was significant. The Institute, under the leadership of Director Albert Coates, had since the 1930s offered the state an impressive array of critical analyses of public policy issues.⁶¹

Governor Umstead met with Coates and his assistant, James Paul, to discuss their work. He articulated his fear that a demagogue might exploit the school desegregation issue for political advantage in North Carolina and thus do serious damage to the state and its reputation. Umstead reminded Coates and Paul that the 1950 Democratic primary between Graham and Smith⁶² had unleashed a great deal of

⁵⁸ WILLIAM CHAFE, *CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA AND THE BLACK STRUGGLE FOR FREEDOM* 65–66 (1980). Some have suggested that his candor cost Carlyle appointment to the vacant U.S. Senate seat. John Batchelor, *Save Our Schools: Dallas Herring and the Governor’s Special Advisory Committee on Education* 24 (1983) (unpublished M.A. thesis, University of North Carolina at Greensboro).

⁵⁹ CHAFE, *supra* note 58, at 66.

⁶⁰ Just as the state’s politicians were addressing the question of school desegregation, so were the state’s religious institutions. Imbued with considerable moral authority in a deeply religious region, the various religious groups within the state divided on the issue. This division reflected the conflict between decades of segregationist traditions and a moral disquiet with racial separation. The Western North Carolina Conference of the Methodist Church met in the fall of 1954 and considered a very mild resolution that would have expressed “sympathy” for public school administrators sorting out desegregation problems and would have recognized “the obligation of all citizens to obey the law of the land” and that the issue must be resolved “in the light of the teachings of Jesus Christ.” *North Carolina*, S. SCH. NEWS, Nov. 4, 1954, at 13. The resolution failed; the Conference instead resolved much more weakly to ask its various constituent institutions to “study” the issue. *Id.* The *Southern Presbyterian Journal*, a semi-official organ of the southern Presbyterian Church, a leading denomination in the state, deplored the destruction of “racial integrity as it has developed in the province of God” and contended that school segregation “is not unChristian.” *N.C. Courts Block Efforts to Prevent Desegregation*, S. SCH. NEWS, Sept. 1957, at 15. The General Assembly of the denomination, however, opposed school segregation.

On the other hand, the Episcopal Diocese of North Carolina in June 1954 adopted a resolution asking Episcopalians to “work toward an orderly transition to an integrated public school system.” *North Carolina*, S. SCH. NEWS, Sept. 3, 1954, at 10. The Catholic bishop in North Carolina required the immediate desegregation of Catholic high schools in the state following the first *Brown* decision. *North Carolina*, S. SCH. NEWS, Oct. 1, 1954, at 11.

⁶¹ See generally ALBERT COATES, *THE STORY OF THE INSTITUTE OF GOVERNMENT* (1960).

⁶² See *supra* text accompanying note 54.

racial bitterness, which had caused the state great harm. The Governor feared that the *Brown* decision, if mishandled, could cause similar problems.⁶³

Within three months, the Institute submitted a lengthy and detailed analysis of the Court's decision and the various legal responses available to the state.⁶⁴ The report, written in large measure by Paul, who had recently finished a clerkship with United States Supreme Court Chief Justice Fred Vinson, was one of the most balanced and dispassionate analyses of the *Brown* decision prepared during the 1950s. This achievement was all the more remarkable in light of the rancor of much of the contemporaneous discussion of the decision throughout the South.

The Institute report analyzed several of the proposed responses to *Brown* that were gaining favor in other southern states, such as the creation of a state-supported private school system and the utilization of private school tuition grants. The report concluded that the constitutionality of such proposals was doubtful⁶⁵ and that, in order for the state to avert judicial challenge to its pupil assignment scheme, some black students must receive assignments to white schools.⁶⁶ Although the report did not make explicit recommendations, it suggested that the state refrain from openly defying the Supreme Court because such action would result in "litigious harassment, damage suits, and possibly considerable court supervision." The authors instead encouraged a program of gradual desegregation that would allow "a minimum of court interference and a minimum of sudden change."⁶⁷ The Institute report clearly contemplated some desegregation, in marked contrast to the declarations of several other southern states, although it recognized that such desegregation efforts would take time given the political realities of the mid-1950s.⁶⁸

⁶³ Telephone Interview with James Paul, Professor of Law, Rutgers Law School (Feb. 24, 1993).

⁶⁴ JAMES PAUL & ALBERT COATES, *THE SCHOOL SEGREGATION DECISION* (1954).

⁶⁵ The Institute report relied on an earlier Fourth Circuit decision, *Kerr v. Enoch Pratt Free Library*, 149 F.2d 212 (4th Cir. 1945), which dealt with the constitutionality of racially based exclusions from publicly supported institutions. The *Kerr* decision made it likely that public support for racially restrictive private schools would be found unconstitutional.

⁶⁶ PAUL & COATES, *supra* note 64, at 90-92. That conclusion was a reasonable reading of *Brown*, but it overestimated the willingness of the federal courts in the near future to scrutinize closely the actions of southern school boards.

⁶⁷ *Id.* at 118.

⁶⁸ See *supra* text accompanying notes 30-38. Paul's brief tour in the South would end when he returned to his native Pennsylvania and joined the faculty of the University of Pennsylvania Law School in 1955.

C. The Pearsall Committee

In August 1954, having received the Institute report, Governor Umstead appointed a nineteen-person committee—including three black members—under the leadership of former Speaker of the House Thomas J. Pearsall to study the desegregation issue. Umstead presented the Pearsall Committee with copies of the Institute's report and emphasized the report's gradual approach.⁶⁹ Pearsall announced at the outset that his primary goal was to preserve the public schools, an obvious reference to the discussion in many southern states about abandoning the public school system.⁷⁰

Throughout the fall, as the Committee did its work, Umstead continued to resist pressure from segregationists to publicly defy the Supreme Court. In September 1954, for example, Umstead refused to endorse a petition from a large number of his constituents favoring the continuation of school segregation.⁷¹ When other southern politicians joined the call for defiance, Umstead resisted such action and sought to defuse any racial demagoguery that could harm the state.⁷²

⁶⁹ Batchelor, *supra* note 58, at 32. Umstead also presented the Committee members with a copy of Harry Ashmore's *The Negro and the Schools*, a 1954 Ford Foundation study of desegregation which detailed the broad discrepancies between black and white education in America. ASHMORE, *supra* note 16, at 33-34. Having examined previous desegregation efforts outside of the South, the Ashmore study concluded that "it is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are opposed to the move." *Id.* at 81-82. That aspect of the Ashmore study would be used by desegregation opponents to legitimate a lack of integration in the face of community opposition.

⁷⁰ *North Carolina*, S. SCH. NEWS, Sept. 3, 1954, at 10.

⁷¹ *North Carolina*, S. SCH. NEWS, Oct. 1, 1954, at 11.

⁷² Although North Carolina's leaders publicly eschewed defiance, they did seek to persuade the United States Supreme Court to reject school desegregation in the rehearing on the *Brown* case. In the fall of 1954, the state's Attorney General submitted a brief to the Court on the remedy question in the *Brown* case which argued that desegregation was simply not feasible in North Carolina. The brief, drafted in large measure by segregationist Beverly Lake, an Assistant Attorney General, concluded that desegregation would cause substantial disruption and even violence in North Carolina's schools based on a survey of the opinions of law enforcement officers and school superintendents. Brief of Harry McMullan, Attorney General of North Carolina, Amicus Curiae, in 49A LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW 983-85 (Philip Kurland & Gerhard Casper eds., 1975). Any attempt to desegregate the schools, Lake argued, could lead to the abandonment of public education. In a statement that betrayed a profound misunderstanding of the direction that school desegregation law would take, Lake concluded that in the state's cities with significant residential segregation, the *Brown* decision would have little impact. He worried instead about rural North Carolina where blacks and whites lived in desegregated residential patterns and where a race-neutral pupil assignment plan would result in extensive desegregation. Brief of Harry McMullan, Attorney General of North Carolina, Amicus Curiae, *supra*, at 985; *North Carolina*, S. SCH. NEWS, Dec. 1, 1954, at 11. Ironically, Lake had initially opposed appearing in the *Brown* case, fearing that the state's appearance would give the Supreme Court jurisdiction over North Carolina schools. Letter from James Paul to author (Sept. 20, 1993) (on file with *Northwestern University Law Review*).

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The Pearsall Committee completed its report four months later on December 30, 1954. Governor Umstead had died on November 7, so the Committee submitted its report to his successor, Governor Luther Hodges, a former textile executive who had entered politics in 1952 with his election as Lieutenant Governor. Hodges perceived himself as a businessman first and foremost; indeed, he entitled his autobiography, published a few years after his tenure as Governor, *Businessman in the Statehouse*.⁷³ Throughout his six years as Governor, Hodges was an aggressive proponent of economic development; one of his lasting legacies was the creation of Research Triangle Park west of Raleigh for the purpose of promoting corporate and government research.⁷⁴ Hodges's concern for the way in which his policy decisions affected business animated his administration, including his treatment of the desegregation issue.

At first blush, the Pearsall Committee's report seemed to dash any hope that the state might move toward substantial desegregation, gradual or otherwise. The Committee, including the three black members, unanimously concluded that "the mixing of the races forthwith in the public schools throughout the State can not be accomplished and should not be attempted" because it "would alienate public support of the schools to such an extent that they could not be operated successfully."⁷⁵ Although the use of the word "forthwith" introduced a degree of ambiguity into the Committee's conclusions, leaving open the question whether the Committee contemplated the eventual desegregation of the schools, the report expressed strong opposition to school desegregation.

On the other hand, the report avoided recommending any legislative action such as school closings or the use of private school tuition grants, which were gaining popularity in other southern states and which might undermine the public schools. Indeed, the only legislative action that the Committee recommended was the transfer of authority over pupil assignments from the state to local school boards.⁷⁶

That the state would take such a strong position in its *Brown* brief was not surprising. The Governor and the Attorney General had studiously avoided counseling defiance of the Supreme Court, but they were quite anxious to avoid pupil mixing by any lawful means available.

⁷³ LUTHER HODGES, *BUSINESSMAN IN THE STATEHOUSE: SIX YEARS AS GOVERNOR OF NORTH CAROLINA* (1962).

⁷⁴ JACK BASS & WALTER DeVRIES, *THE TRANSFORMATION OF SOUTHERN POLITICS* 229-30 (1976).

⁷⁵ *North Carolina*, S. SCH. NEWS, Feb. 3, 1955, at 14. Although the Committee recommendation was unanimous, there was some dissent. One white member, Dallas Herring, did not want to join the report, but did so under pressure to make the report unanimous. Batchelor, *supra* note 58, at 100-01.

⁷⁶ On the widely discussed school closing question, the Committee recommended that the public school system be preserved, although it did note that "abandoning or materially altering" the public school system might eventually be necessary. *North Carolina*, S. SCH. NEWS, Feb. 3, 1955, at 14.

The report thus set the state on a course that it would follow for the next several years: avoid the strident responses to *Brown*, which might damage the state's moderate reputation, but minimize as much as possible the amount of school desegregation.⁷⁷

When the North Carolina General Assembly convened its regular legislative session in January 1955, one of the legislature's primary items of business was consideration of the Pearsall Committee's report. Governor Hodges endorsed the report as an appropriate and "moderate" response to the crisis brought about by the *Brown* decision. Hodges, echoing the concern of his predecessor Umstead, announced that the recommendations outlined in the report "protect what we think are our rights without any demagoguery."⁷⁸ On March 30, 1955, the North Carolina General Assembly enacted legislation that vested local school boards with exclusive authority over pupil assignments.⁷⁹ The statute expressly directed local school boards not to consider race as an assignment criteria.⁸⁰ Assistant Attorney General Beverly Lake informed the Supreme Court in oral argument in April

⁷⁷ The support of the Committee's three black members, although troubling to many in the black community, particularly the NAACP, was not surprising. Each of the three was employed by the state and hence disinclined to dissent from the majority view. Moreover, two of the three black members were heads of all-black state colleges that had benefitted from the legacy of segregated education in the state.

The NAACP issued a statement claiming that the three "were not free to express their personal opinion" and did not reflect "the majority opinion of fellow Negroes of North Carolina." Kelly Alexander, Implementation of the United States Supreme Court Decision of May 17, 1954 in North Carolina 11 (1954) (unpublished manuscript, on file with the Kelly Miller Alexander, Sr. Papers, Atkins Library, University of North Carolina at Charlotte). Yet the latter claim was open to question. An American Institute of Public Opinion Survey found in February 1956 that only 53% of southern blacks polled supported the *Brown* decision—in large measure because of fear of mistreatment of black children in white schools. Richard Lamanna, *The Negro Public School Teacher and School Desegregation: A Survey of Negro Teachers in North Carolina* 54 (1966) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)). Although the support of southern blacks for school desegregation would dramatically increase over the course of the next few years, during the first few years after *Brown*, the NAACP's integrationist agenda was not shared by all members of the black community.

⁷⁸ *North Carolina*, S. SCH. NEWS, Feb. 3, 1955, at 14.

⁷⁹ N.C. GEN. STAT. § 115-176 (1955). The statute gave local school boards "full and complete" authority to enroll school children and provided that the school board's "decision as to the enrollment of any pupil in any such school shall be final." *Id.* In making these decisions, school boards were directed to consider "the orderly and efficient administration" of the schools, "the effective instruction of the pupils," and the "health, safety, and general welfare of such pupils." N.C. GEN. STAT. § 115-177 (1955).

Although many southern states chose to wait for the Supreme Court's remedial decision in the *Brown* case before taking legislative action, the North Carolina state legislature, pursuant to the recommendations of the Institute of Government, preferred to go ahead and grant local school boards discretion in making pupil assignments to avoid the possibility of one lawsuit desegregating all of the state's schools.

⁸⁰ N.C. GEN. STAT. § 115-176 (1955).

1955 during the second *Brown* case that the statute would permit a local school board to operate mixed-race schools.⁸¹

Although the new legislation appeared racially neutral and hence moderate in comparison to the legislative enactments in several other southern states, in fact it contained certain features that inhibited widespread desegregation. First, the legislation decentralized assignment authority making it impossible to challenge pupil assignments without bringing suit against each individual school board. Second, the legislation established a complicated system of administrative appeals through which challenges to school board assignments had to be made and transfer requests filed. No black student could legally challenge an assignment to a segregated school unless that student had faithfully adhered to all specified administrative procedures. Many black children would lose their opportunity to challenge a school assignment because they failed to comply with some detail of the administrative appeal process. Thus, while on its face the legislation appeared to constitute an abandonment of previous race-based pupil assignments, in practice every school board in the state would continue to assign students to school on the basis of race until the early 1960s.⁸² At the same time, most school boards would deny all requests filed by black students to transfer to a white school.⁸³

Yet the actions of the North Carolina General Assembly were perceived as moderate and enlightened when compared to that of most other southern states. Unlike some other southern state legislatures, North Carolina's General Assembly had resisted efforts to enact a constitutional amendment abolishing the requirement of public schools and providing tuition grants to parents who wished to place their children in private schools. In addition, the Assembly had rejected legislation providing that any school district which permitted desegregation be denied state funds.⁸⁴ Governor Hodges, concerned about the negative impact these proposals would have on the state's relatively strong public school system and hence economic climate, labeled them "extreme and untimely."⁸⁵ Hodges ultimately persuaded the legislators who sponsored these bills to withdraw them pending

⁸¹ Oral Argument, *Brown v. Board of Educ.* (Apr. 13, 1955), in *LANDMARK BRIEFS AND ARGUMENTS*, *supra* note 72, at 1227.

⁸² See *infra* note 188.

⁸³ See *infra* text accompanying notes 170-71.

⁸⁴ *North Carolina*, S. SCH. NEWS, Mar. 3, 1955, at 13; *North Carolina*, S. SCH. NEWS, Apr. 7, 1955, at 12. Other states would take a different course. Louisiana and South Carolina, for example, enacted legislation in 1954 and 1955, respectively, requiring a fund cutoff for schools that desegregated. *Education: Public Schools—Louisiana*, 1 RACE REL. L. REP. 239 (1956); *Education: Public Schools—South Carolina*, 1 RACE REL. L. REP. 241 (1956).

⁸⁵ *North Carolina*, S. SCH. NEWS, Mar. 3, 1955, at 13. North Carolina had long recognized the relationship between a strong public school system, an educated workforce, and economic progress. In 1950, for example, North Carolina ranked fifth in the nation in percentage of in-

the Supreme Court's upcoming remedial decision in the *Brown* case.⁸⁶ Hodges understood that delegation of assignment authority to local school boards would achieve the same results as the proposed constitutional amendment, but without the rancor and damage to the public schools that would accompany outright defiance. Recognizing the broader economic interests at stake, the Governor sought to avoid harm to the state that would ensue should the General Assembly abolish the constitutional requirement of a public education system.

D. The Second Pearsall Committee

Yet one year later, in 1956, the North Carolina General Assembly enacted a more ambitious legislative program aimed at reducing the threat of school desegregation and which appeared at first blush to embrace certain of the more extreme positions taken in other states. In the spring of 1955, the North Carolina General Assembly had created a second education commission, also known as the Pearsall Committee, to make further study of the desegregation question.⁸⁷ In April 1956, this second Pearsall Committee, working in close consultation with Hodges, issued its report, which explicitly expressed a desire to maintain segregated schools:⁸⁸

The educational system of North Carolina has been built on the foundation stone of segregation of the races in the schools. . . . The

come spent on public education. *North Carolina: The Integration Issue*, RALEIGH NEWS & OBSERVER, Mar. 15, 1956.

⁸⁶ *North Carolina*, S. SCH. NEWS, Apr. 7, 1955, at 12. Hodges later commented that: "[a]bolition of the public schools . . . is a last-ditch and double-edged weapon. If that weapon is ever used in North Carolina, its result will be appalling in ignorance, poverty, and bitterness." Luther Hodges, Address on State-Wide Radio-Television Network, (Aug. 8, 1955) in 1 MESSAGES, ADDRESSES, AND PUBLIC PAPERS OF LUTHER HODGES, GOVERNOR OF NORTH CAROLINA, 1954-1961, at 210 (James W. Patton ed., 1960).

The pragmatism of the North Carolina General Assembly was perhaps best manifest in one final piece of legislation enacted in 1955: a statute providing for the termination of all teacher contracts at year end, subject to renewal on a one-year basis. Attorney General Harry McMullan promoted that legislation, arguing that the courts were likely to disallow the current dual school system and that some teachers would lose their jobs if black and white schools were merged. *North Carolina*, S. SCH. NEWS, June 8, 1955, at 13. By terminating teacher contracts, the state could avoid contractual liability for teacher layoffs should a court order a school system to consolidate its schools. Moreover, the Supreme Court had still not announced its remedial decision in *Brown*, and many feared that the Court might order immediate desegregation. The statute reflected a legislature prepared to adapt itself to the realities of desegregation, not one prepared to avoid desegregation at all costs.

⁸⁷ Governor Hodges appointed seven white men to the new Committee, later explaining that black members would have been under too much pressure from outside groups to push for immediate desegregation. HODGES, *supra* note 73, at 83.

⁸⁸ In December 1955, the Advisory Committee notified Hodges, in advance of the release of its report, that its proposal would maintain support for the public schools but deflect as much integration as possible. *N.C. is Told 1955 'Assignment' Statute Provides Best Defense*, S. SCH. NEWS, Feb. 1956, at 12.

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Supreme Court of the United States destroyed the school system which we had developed—a segregated-by-law system. . . . [The Committee is] proposing the building of a new school system on a new foundation—a foundation of no racial segregation by law, but assignment according to natural racial preference and the administrative determination of what is best for the child.⁸⁹

In a reversal from the prior year, the Committee's "Pearsall Plan" provided for constitutional amendments allowing both private school tuition grants for parents whose children were assigned to a desegregated school and local referenda whereby a community could decide whether to close its schools instead of desegregating them.⁹⁰ Both the Governor and the General Assembly had rejected school closing legislation a year earlier, but now the Pearsall Plan gave local communities the option of taking that course of action.

Governor Hodges publicly embraced the Pearsall Plan with its more extreme provisions.⁹¹ It was a clear reversal for the Governor. One year earlier, Hodges had successfully led an effort to defeat school closing legislation.⁹² Now, Hodges supported a constitutional amendment permitting the closure of the public schools. When Hodges went before the General Assembly during the summer of 1956 to defend the Pearsall Plan, he offered a much more aggressive defense of racial segregation than he had in 1955: "It is my firm belief that . . . the people of North Carolina expect their General Assembly and their governor to do everything legally possible to prevent their children from being forced to attend mixed schools against their wishes."⁹³

The General Assembly ratified the Pearsall Plan following a special four-day session in July 1956 and submitted the proposed constitutional amendments to the electorate for a statewide vote. Two months later, in September 1956, the voters of North Carolina approved the constitutional amendments allowing tuition grants and local referenda on school closings by a four-to-one margin.⁹⁴

⁸⁹ *Report of the North Carolina Advisory Committee on Education, Report*, 1 RACE REL. L. REP. 581, 582-85 (1956).

⁹⁰ *Id.* at 585.

⁹¹ *N.C. Advisory Committee Asks 2 Constitutional Amendments*, S. SCH. NEWS, May 1956, at 6.

⁹² Moreover, in June 1955, in a statewide broadcast, Hodges had told the state that if school boards failed to make a start toward compliance, they might face legal action forcing the admission of black students to white schools. Luther Hodges, Address over Statewide Radio-Television Network (June 6, 1955), in *MESSAGES, ADDRESSES, AND PUBLIC PAPERS*, *supra* note 86, at 152.

⁹³ Luther Hodges, Message to the Special Session of the General Assembly (July 23, 1956), in *MESSAGES, ADDRESSES, AND PUBLIC PAPERS*, *supra* note 86, at 33.

⁹⁴ *N.C. Adopts 'Pearsall Plan' By 4 to 1; Challenge Quickly Filed in U.S. Court*, S. SCH. NEWS Oct. 1956, at 7. Of the state's major newspapers, only the *Charlotte Observer*, *Raleigh Times*,

Although the Pearsall Plan seemed to mark a significant shift in the public policy of North Carolina on the segregation issue, in fact, the plan did far less than the legislative schemes that had been adopted in other southern states. Four states abolished state constitutional requirements of public education.⁹⁵ Six states passed legislation to withhold aid from schools that desegregated.⁹⁶ Eight states enacted interposition resolutions urging either outright defiance of the Supreme Court's *Brown* decision or at least every possible action to avoid its reach.⁹⁷ Ten states passed legislation that inhibited the activities of the NAACP.⁹⁸ North Carolina was the only southern state to take none of those actions. Indeed, North Carolina's General Assembly enacted fewer statutes and promulgated fewer resolutions throughout the 1950s than did any other southern state legislature in response to *Brown*.

Moreover, on close inspection, the Pearsall Plan promised more than it actually delivered. The plan did not mandate school closings in the face of desegregation; it merely permitted a local referendum on the question in the school board's discretion. The distinction was an important one. On at least one occasion, when a citizens' group sought a school closing referendum over token integration, the local school board simply denied the request.⁹⁹ Indeed, no school was ever closed in North Carolina under the closing provision. By comparison, legislation enacted in other southern states, such as Virginia, *required*

and *Winston-Salem Journal* opposed the plan. *N.C. Editors State Pearsall Plan Views*, DURHAM MORNING HERALD, Sept. 6, 1956, at 3A.

⁹⁵ JOHN B. MARTIN, *THE DEEP SOUTH SAYS "NEVER"* 11 (1957). The four states were Georgia, Alabama, Mississippi, and South Carolina.

⁹⁶ The states were Arkansas, 3 RACE REL. L. REP. 1042 (1958); Georgia, 1 RACE REL. L. REP. 421 (1956); Louisiana, 1 RACE REL. L. REP. 239 (1956); Mississippi, 3 RACE REL. L. REP. 553 (1958); South Carolina, 1 RACE REL. L. REP. 241 (1956); and Virginia, 1 RACE REL. L. REP. 1091 (1956).

⁹⁷ See *supra* note 6. Governor Hodges was sharply criticized for the state's failure to enact an interposition resolution. Letter from Lunsford Crew to Luther Hodges (Jan. 30, 1956) (on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.).

⁹⁸ Wilma C. Peebles, *School Desegregation in Raleigh, North Carolina, 1954-1964*, at 56 (1984) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)). The 10 states were Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, Texas, and Virginia. Six of these states passed particularly onerous legislation that obliged the NAACP to disclose its membership lists. WASBY ET. AL, *supra* note 8, at 181-92. See generally Walter Murphy, *The South Counterattacks: The Anti-NAACP Laws*, 12 W. POL. Q. 371 (1959).

⁹⁹ *Charlotte Parents Initiate Moves Aimed at Utilizing Pearsall Plan's Provisions*, S. SCH. NEWS, Aug. 1958, at 15. The statute provided that the School Board had the authority to call for a referendum upon being presented with a petition by 15% of the registered voters residing in the area in question. Moreover, the school closing referendum could be restricted to the closure of a single school, as opposed to the closure of all of the schools in the school system. Robert Wettach, *North Carolina School Legislation—1956*, 35 N.C. L. REV. 1, 7 (1956).

that schools close in the face of desegregation orders.¹⁰⁰ Dozens of schools were eventually closed throughout the South in order to avoid desegregation.¹⁰¹

Likewise, no student ever received a private school tuition grant in North Carolina, even though thousands of these grants were provided in other southern states.¹⁰² When a student finally requested a private school tuition grant in North Carolina, the grant provision was deemed unconstitutional in a court challenge.¹⁰³ Significantly, the attorney arguing that the tuition grant provision was unconstitutional had been a member of the Pearsall Committee responsible for its adoption.

Accordingly, the Pearsall Plan did not reflect a major shift in the views of the state's political leadership on the issue of school integration. Rather, it reflected the increasing militancy of southern segregationists and the need to defuse the pressure to take more extreme action. In effect, the tuition grant and school closing components of the Pearsall Plan served a symbolic function: they placated segregationists, but left the state's public schools essentially untouched. Hodges referred to the school closing and tuition grant provisions as "safety valves."¹⁰⁴ Pearsall himself later explained his perceptions of the Committee's motivations: "What we were doing was buying time. The people had to have a psychological safety valve. They had to

¹⁰⁰ Virginia's pupil placement statute was declared unconstitutional in January 1957 in large part because of the mandatory school closing provision. *Adkins v. School Bd. of Newport News*, 148 F. Supp. 430 (E.D. Va.), *aff'd*, 246 F.2d 325 (4th Cir. 1957).

¹⁰¹ *Lawyer Recalls 'Buying Time' for Integration*, RALEIGH NEWS & OBSERVER, Nov. 7, 1976, at 1. Moreover, when a few North Carolina school districts admitted black students to white schools for the first time in 1957, Governor Hodges did nothing to stop it, noting that the placement statute gave local school boards the authority to make their own decisions.

While Hodges sat silent, Governor Faubus of Arkansas, also a southern "moderate" governor, threw his state into an uproar by seeking to prevent the simultaneous desegregation of the Little Rock schools. Whereas Faubus legitimized violent resistance to desegregation in Arkansas by his conduct and statements, Hodges avoided the issue. Arkansas would experience a substantial downturn in new business investment in the several years following the Little Rock crisis, but North Carolina, under the leadership of its "businessman in the statehouse," experienced no such downturn. ANTI-DEFAMATION LEAGUE, *THE HIGH COST OF CONFLICT: A ROUNDUP OF OPINION FROM THE SOUTHERN BUSINESS COMMUNITY ON THE ECONOMIC CONSEQUENCES OF SCHOOL CLOSINGS AND VIOLENCE* 1 (1963).

¹⁰² *Editorial—First Job of Both Races: to Retain Public Schools*, CHARLOTTE OBSERVER, Nov. 14, 1963, at 2B.

¹⁰³ *No Surprise Involved in End to Plan*, RALEIGH NEWS & OBSERVER, Apr. 5, 1966, at 1.

¹⁰⁴ Luther Hodges, Address Before Combined Parent-Teacher Associations of Cabarrus County (Apr. 20, 1956), in *MESSAGES, ADDRESSES AND PUBLIC PAPERS*, *supra* note 86, at 331. State Treasurer Edwin Gill emphasized this point in a radio address in September 1956:

It is the hope of the supporters of the Pearsall Plan that under its terms no single school will be closed, and that it will be unnecessary to provide a single educational expense grant. In other words, the Pearsall Plan is offered as a last resort if other programs fail. That is why the provisions for educational expense grants and local option are called *safety valves* to be used only when all other means have failed to give relief to deeply-felt emotions and

know that if things really got terrible, they could close the schools. . . . The plan gave desperate people something to hang onto while we proceeded, little by little, with integration."¹⁰⁵ Although Pearsall's comments were clearly self-serving, he was probably on target. Desegregation would inevitably come to North Carolina, but the Pearsall Plan gave the state's political leaders an opportunity to appease segregationist sentiment without unduly disrupting the state's public schools.

To be sure, the southern mood on desegregation had noticeably stiffened by 1956.¹⁰⁶ Although there had been some resistance to *Brown* during the first year following the decision, many southern politicians, understanding that political capital could be gained from resistance, began to take more aggressive postures of defiance in early 1956. Beginning in February of that year, one southern state legislature after another passed nullification or interposition resolutions defying or at least challenging the Supreme Court's authority and they passed more extensive legislation undermining efforts to desegregate the schools.¹⁰⁷ During the first three months of 1956, the legislatures of Alabama, Georgia, Mississippi, South Carolina, and Virginia—five of the most defiant states—enacted a total of forty-two pro-segregation statutes.¹⁰⁸

Moreover, in March 1956, 92 of the 106 southern members of Congress signed a "Southern Manifesto" which claimed that *Brown* was illegitimate and that they would do everything they could to re-

other pent-up feelings that might otherwise explode and be destructive of the public schools.

Edwin Gill, Radio Address 4 (Sept. 6, 1956) (unpublished manuscript, on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.) (emphasis in original).

¹⁰⁵ *Lawyer Recalls 'Buying Time' for Integration*, RALEIGH NEWS & OBSERVER, Nov. 7, 1976, at 1.

¹⁰⁶ Public opinion polls are but one indicator of the changing mood. In 1954, 24% of southerners approved of the *Brown* decision; by May 1955 (before the second *Brown* decision) that figure had dropped to 20%. MELVIN TUMIN, SEGREGATION AND DESEGREGATION: A DIGEST OF RECENT RESEARCH 105-07 (1957). In 1954, 15% of white southerners indicated that they would not object to sending their children to an integrated school; by 1959, that figure was 8%. Hazel Erskine, *The Polls: Race Relations*, 26 PUB. OPINION Q. 137, 140-41 (1962).

¹⁰⁷ See *supra* notes 5 and 6. Arkansas, a relatively moderate state by southern standards, provides a good example of shifting moods on the race issue. In 1956, Governor Orval Faubus won re-election as the moderate candidate, defeating a challenge from a segregationist opponent. Yet less than a year later, Faubus shifted his position, personally directing an extraordinary effort to thwart the desegregation of the Little Rock schools in defiance of a judicial order. Faubus's blandishments on the segregation issue would win him several more terms in the governor's mansion. J.W. PELTASON, FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION 32 (1961).

¹⁰⁸ MUSE, TEN YEARS OF PRELUDE, *supra* note 4, at 66.

verse it.¹⁰⁹ All but three members of the North Carolina delegation signed the Manifesto.¹¹⁰ The Manifesto legitimated defiance. As one contemporary noted, "[T]he true meaning of the Manifesto was to make defiance of the Supreme Court and the Constitution socially acceptable in the South—to give resistance to the law the approval of the Southern Establishment."¹¹¹

At the same time, the White House remained aloof from school desegregation efforts, giving further encouragement to those urging resistance. President Eisenhower steadfastly and repeatedly refused to endorse the *Brown* decision. Eisenhower also declined to authorize procedures for investigating complaints arising out of desegregation efforts, and he refused to seek enforcement legislation from Congress. Public opinion polls taken in the summer of 1955 indicated that the public perceived the President as encouraging the maintenance of racial segregation.¹¹² In February 1956, when questioned about the various interposition resolutions enacted in southern states challenging the Supreme Court's authority, Eisenhower responded weakly that the issue was "filled with argument on both sides"; one month later, he declined comment on the Southern Manifesto.¹¹³

As a result of the more aggressive activities of segregationists, pressure increased on southern politicians to take additional action against the threat of pupil mixing. In large measure, the Pearsall Committee's 1956 proposals were intended to mute the demands of North Carolina segregationists, such as Assistant Attorney General Beverly Lake, who were ready to abandon the public school system over the issue of segregation and who were building a political base around that issue. In July 1955, Lake made a widely publicized speech in which he called for an amendment to the state constitution that

¹⁰⁹ The Manifesto read in part as follows:

We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people.

...

We commend the motives of those states which have declared the intention to resist forced integration by any lawful means.

...

We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

102 CONG. REC. 4515-16 (1956).

¹¹⁰ One North Carolina member, Congressman Cooley, called the Manifesto "a dangerous document, calculated to aggravate the situation"; Cooley also concluded that it held out false hope of legal resistance to *Brown*. *Cooley Terms Racial Document 'Dangerous,'* DURHAM MORNING HERALD, Mar. 14, 1956, at 1A.

¹¹¹ GOLDFIELD, *supra* note 23, at 65 (quoting Anthony Lewis).

¹¹² ROBERT F. BURK, *THE EISENHOWER ADMINISTRATION AND BLACK CIVIL RIGHTS* 144-45, 152-53 (1984).

¹¹³ *Id.* at 160-62.

would abolish the requirement of public schools.¹¹⁴ In August 1955, within weeks of Lake's speech, Hodges hinted in a statewide address that school closing might ultimately be required if his program of voluntary segregation failed: "[I]f we are not able to succeed in a program of voluntary separate school attendance, the State within the next year or so will be face to face with deciding the issue of whether it shall have some form of integrated public schools or shall abandon its public schools."¹¹⁵

Governor Hodges changed his posture on the school closing and tuition grant issues to deflect the attacks of segregationists such as Lake. He justified his shift to a conference of editorial writers in May 1956: "If I hadn't come out for [the Pearsall Plan], a racist would have run against me [for Governor] and torn our state apart with hatred."¹¹⁶ Hodges thwarted that threat by simply embracing certain aspects of the segregationist agenda while positioning both himself and the Pearsall Plan as the "moderate" alternative. As Lake became more vocal during the summer of 1955 on the segregation question by attacking the NAACP, Hodges increased his own attacks on the NAACP as an "extremist" organization composed of outsiders who did not represent the views of most black North Carolinians. Moreover, Hodges supported Lake in the face of calls by the NAACP for Lake's removal.¹¹⁷ In so doing, Hodges recognized that Lake was a potent political force who gave expression to the resentments of many white citizens. Pearsall later explained: "We didn't want Lake fired

¹¹⁴ *Dr. Beverly Lake Amplifies Upon Position Taken in Asheboro Speech*, RALEIGH NEWS & OBSERVER, July 20, 1955; HODGES, *supra* note 73, at 84; John Batchelor, *Rule of Law: North Carolina School Desegregation from Brown to Swann, 1954-1974*, 178-85 (1992) (unpublished Ed. D. dissertation, North Carolina State University).

Segregationists other than Lake also promoted the closure of the schools to avoid desegregation. W.C. George, an anatomy professor at the University of North Carolina and later president of the segregationist Patriots of North Carolina, argued that the preservation of racial purity required the abandonment of the public school system: "[W]e consider it more important . . . to preserve the white and Negro races than to maintain the public school system." Charles Dunn, *An Exercise of Choice: North Carolina's Approach to the Segregation-Integration Crisis in Public Education 80-81* (1959) (unpublished M.A. thesis, University of North Carolina (Chapel Hill)).

¹¹⁵ LUTHER HODGES, Address on State-Wide Radio-Television Network (Aug. 8, 1955), in MESSAGES, ADDRESSES, AND PUBLIC PAPERS, *supra* note 86, at 206.

¹¹⁶ May 1956 Statement to Editorial Writers Conference, *quoted in* Confidential Memorandum from Harry Golden to George Mitchell (May 23, 1956) (on file with the Kelly Miller Alexander, Sr., Papers, Atkins Library, University of North Carolina at Charlotte). Pearsall later commented: "The last thing we wanted was for someone to run [for Governor in 1956] on the race issue. That would force people to take positions and use rhetoric that we didn't want If segregation got in the race, Hodges would [have had to] become more radical." *Lawyer Recalls 'Buying Time' for Integration*, RALEIGH NEWS & OBSERVER, Nov. 7, 1976, at 1. A significant portion of the electorate opposed pupil mixing and in much of the state segregation was potentially an explosive issue, particularly in eastern North Carolina.

¹¹⁷ *Hodges Defends Lake in Squabble*, CHARLOTTE NEWS, July 18, 1955.

because he would be a martyr and a symbol. He could probably have gotten elected governor, and a segregationist would have destroyed everything."¹¹⁸

Hodges's fears concerning Lake's political popularity were not unfounded. Lake was well known throughout the state and by 1955 had emerged as the critical spokesman for the pro-segregation position in the state. Although several of the state's newspapers attacked Lake as an extremist, particularly when he called for school closing legislation,¹¹⁹ Lake enjoyed considerable popular support.¹²⁰ Ultimately, Lake decided not to enter the 1956 gubernatorial race, but Hodges did have to fend off a primary challenge during which he was attacked for his "very lukewarm stand" on the desegregation issue.¹²¹ In those same 1956 primaries, only one of the three North Carolina congressmen who had refused to sign the Southern Manifesto rebuking *Brown* won renomination in campaigns dominated by the "Manifesto issue"; the one survivor assured voters that notwithstanding his failure to sign the Manifesto, he favored the continuation of segre-

¹¹⁸ *Lawyer Recalls 'Buying Time' for Integration*, RALEIGH NEWS & OBSERVER, Nov. 7, 1976, at 1.

¹¹⁹ *Editorial—A New Voice for the Extremists*, CHARLOTTE NEWS, July 15, 1955, at 6A; *Editorial—Inciting the Extremists*, RALEIGH NEWS & OBSERVER, July 15, 1955, at 4.

¹²⁰ Within weeks of Lake's address, over 300 North Carolinians established the Patriots of North Carolina, a statewide segregationist organization, and announced a plan seeking state support for private schools. *Patriots of North Carolina to Promote Segregation Plan*, RALEIGH NEWS & OBSERVER, Aug. 23, 1955; Batchelor, *supra* note 114, at 188-91. Lake also began receiving hundreds of letters of support. *Lawyer Recalls 'Buying Time' for Integration*, RALEIGH NEWS & OBSERVER, Nov. 7, 1976, at 1. Many North Carolinians signed petitions urging Lake to challenge Hodges in the 1956 Democratic primary for governor. Letter from Lunsford Crew to Luther Hodges (Jan. 30, 1956) (on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.). Lake eventually entered the Democratic primary for governor in 1960, capturing 44% of the vote. EARL BLACK, *SOUTHERN GOVERNORS AND CIVIL RIGHTS: RACIAL SEGREGATION AS A CAMPAIGN ISSUE IN THE SECOND RECONSTRUCTION* 219 (1976).

A survey of attitudes in 1955 toward desegregation in the Piedmont county of Guilford, home to the city of Greensboro, found that 43% of the white respondents favored closing the public schools in order to avoid desegregation and 56% of the white respondents favored withholding state funds from schools in order to prevent desegregation. MELVIN M. TUMIN, *DESEGREGATION: RESISTANCE AND READINESS* 34, 37, 45 (1958). Such strong anti-integration sentiment in one of the state's more racially moderate regions indicated the degree of support for segregation throughout the state.

¹²¹ *N.C. Court Upholds Pupil Assignment in Initial Test*, S. SCH. NEWS, Apr. 1956, at 11. During the campaign, certain conservative political leaders such as State Representative Byrd Satterfield, who a year earlier had proposed the constitutional amendment abandoning the requirement of public schools, likened Hodges to the leaders of the NAACP in his support for school desegregation, an attack that could hardly have been more damning. *Special Session of N.C. Legislature Predicted After Segregation Report*, S. SCH. NEWS, Jan. 1956, at 4. Satterfield later indicated that the only way to keep black children out of white schools was "to battle them at the doors." *N.C. Governor, in Election Bid, Suggests New School Laws*, S. SCH. NEWS, Mar. 1956, at 16.

gated schools.¹²² Hodges and the General Assembly well understood that segregation was a potent political issue in North Carolina in 1956.

E. The Nature of North Carolina's "Moderation"

As North Carolina's leaders debated the wisdom of the Pearsall Plan during the summer of 1956, participants on both sides in the debate sought to characterize their views as the "moderate" position. To parry the efforts of those segregationists seeking more extreme action, the Pearsall Plan's proponents described the plan as a "moderate" step. State Senator Terry Sanford, one of the more progressive politicians in the state and Hodges's successor as Governor in 1960, championed the Pearsall Plan as advancing the cause of "moderation, unity, understanding, and good-will."¹²³ William Joyner, Vice-Chair of the Pearsall Committee and a prominent North Carolina lawyer, promoted the plan as "the moderate course."¹²⁴ The state's leading newspapers urged passage of the Pearsall Plan as a moderate response to the desegregation problem. The *Greensboro Daily News*, for example, editorialized: "North Carolina wants no violence, and North Carolina wants no abandonment of its public school system. The path is tortuous and narrow. But with *moderation*, goodwill, understanding and wise, sound and far-seeing statesmanship we can and shall tread it safely."¹²⁵

Significantly, politicians who opposed the Pearsall Plan on the ground that it could undermine public education also claimed to represent the "moderate" course. Irving Carlyle, for example, one of the plan's chief opponents, urged North Carolinians to follow the route of "moderation and not one of extremism" and to defeat the plan.¹²⁶

That the politicians of the day would claim to represent the "moderate" position speaks much about North Carolina and its self-perceptions during the 1950s. Throughout much of the South, those politicians who called unapologetically for defiant segregation were winning elections. Yet the rhythmic chants of segregationists such as

¹²² *Two N.C. Solons Losers on Issue of 'Manifesto'*, S. SCH. NEWS, June 1956, at 8.

¹²³ *Pearsall Plan: The Spirit of Moderation*, GREENSBORO DAILY NEWS, Sept. 2, 1956, at 6. See also Terry Sanford, Speech to Junior Women's Club (Aug. 20, 1956) (unpublished manuscript, on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.) (urging a "spirit of moderation").

¹²⁴ *Pearsall Plan is Legal, Joyner Tells Assembly*, RALEIGH NEWS & OBSERVER, July 26, 1956, at 1.

¹²⁵ *Editorial—Saturday's Election*, GREENSBORO DAILY NEWS, Sept. 10, 1956, at 6 (emphasis added).

¹²⁶ *Carlyle Calls for Defeat of Pearsall Group Plan*, WINSTON-SALEM J., July 3, 1956, at 1. See also Letter from Irving Carlyle to Luther Hodges (July 5, 1956) (on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh N.C.) (urging moderation).

Georgia Governor Ernest Vandiver—"not one, no, not one"¹²⁷—were not spoken by most North Carolinians who captured high political office. North Carolina politicians made competing claims of taking a "moderate" position on racial issues.¹²⁸

William Chafe has aptly described the "civility" of much of the post-*Brown* debate in North Carolina over civil rights issues, where appearances of moderation often proved more important than realities.¹²⁹ To be sure, most white North Carolinians were no different than their southern neighbors in their opposition to pupil mixing. Governor Hodges adamantly opposed pupil mixing,¹³⁰ pleading time and again with the state's black population to accept voluntary segregation as a means of avoiding social strife. What distinguished Hodges and the majority of white politicians in North Carolina from their counterparts in many other southern states, however, was a recognition that more was at stake than merely preserving racial segregation.

At an early date, much of the state's business and political leadership recognized that defiant resistance to school desegregation, including school closings, could potentially damage the state's economic future. As early as 1956, several prominent newspaper editors urged the state to adapt itself to school desegregation demands for economic reasons. Reed Sarratt, executive editor of the *Winston-Salem Journal and Sentinel*, noted that the state's failure to adapt to the *Brown* decision would cause "untold damage . . . to our economy."¹³¹ C.A. McKnight, editor of the *Charlotte Observer*, made a similar claim.¹³² Likewise, North Carolina Attorney General Malcolm Seawell told a

¹²⁷ Calvin Trillin, *Remembrance of Moderates Past*, THE NEW YORKER, Mar. 21, 1977, at 85. Vandiver was governor of Georgia from 1959 until 1963.

¹²⁸ Appeals to "moderation" were made in other of the nondefiant states. In February 1956, for example, as much of the South debated interposition, the *Memphis Commercial Appeal* called for the formation of an organization of "moderates" to resist those "who might seek to impose radicalism of any sort on the rest of us." 'Moderation' is Key to North's Development in Tennessee, S. SCH. NEWS, Mar. 1956, at 15.

¹²⁹ CHAFE, *supra* note 58. The discussion of school desegregation throughout the state during this time period bore the same quality.

¹³⁰ Hodges remained firmly committed to the principle of segregation throughout his tenure as Governor. As his administrative assistant Paul Johnston would explain to many constituents: "You may be assured . . . that Governor Hodges will continue to do everything in his power to keep the races separated in all walks of life." Letter from Paul Johnston to Emma Byers (May 29, 1956) (on file with Luther Hartwell Hodges Papers, North Carolina State Archives, Raleigh, N.C.).

¹³¹ Charlotte-Mecklenburg Council on Human Relations, Voices of Moderation (July 1956) (unpublished manuscript, on file with Frederick Douglass Alexander Papers, Box 121-86, Atkins Library, University of North Carolina at Charlotte).

¹³² Editor Sees Race Relations Hurt, DURHAM MORNING HERALD, Mar. 12, 1956, at 8A. The Southern Regional Council by early 1956 called on chambers of commerce throughout the South to urge "sensible" solutions to the desegregation problem as a matter of "long-range economic benefit to the region." North Carolina Council on Human Relations, *Integration Issue in the*

group of bankers that although he objected to the *Brown* decision, defiance was inappropriate because of the social and economic havoc it could cause the state.¹³³ The Charlotte-Mecklenburg Council on Human Relations circulated a speech delivered by the executive vice-president of the Baton Rouge Chamber of Commerce in 1956 in which he predicted the economic costs of resistance to *Brown*: "Boycotts, economic reprisals, the possibility of abandoning our public schools, incidents of violence, irresponsible statements—these are new factors which will now be give consideration by industry and business when they consider a Southern location."¹³⁴

By the late 1950s, business leaders throughout the South were well aware of the economic impact of defiant opposition to the *Brown* decision. The severe downturn in new business that accompanied the resistance to school desegregation in Little Rock was widely publicized.¹³⁵ Likewise, Virginia, which adopted a statewide policy of massive resistance, experienced a sharp decline in new business growth. During the first three years of the 1950s, Virginia added approximately 31,000 manufacturing jobs per year; during the last three years of the 1950s, after implementation of the state's widely publicized program of massive resistance, Virginia added approximately 5,000 new manufacturing jobs per year.¹³⁶ Martin Gainsburgh, chief economist

New York Times, HUM. REL. BULL., Mar. 1956, at 5 (on file with Frederick Douglass Alexander Papers, Box 121-86, Atkins Library, University of North Carolina at Charlotte).

¹³³ Malcolm Seawell, *North Carolina at a Crossroad*, 14 NEW SOUTH 3 (1959).

¹³⁴ Charlotte-Mecklenburg Council on Human Relations, *Role of Business Leaders* (1956) (unpublished manuscript, on file with the Frederick Douglass Alexander Papers, Box 121-86, Special Collections, Atkins Library, University of North Carolina at Charlotte). The Southern Regional Council echoed a similar theme in 1956, calling on Chambers of Commerce throughout the South to urge "sensible" solutions to the desegregation problem as a matter of "long-range economic benefit to the region." ATLANTA CONST., Feb. 27, 1956, quoted in ANTI-DEFAMATION LEAGUE, *supra* note 101, at 33.

¹³⁵ Both Arkansas in general and Little Rock in particular experienced a significant reduction in new business as a result of its staunch resistance to the integration of Central High School in 1957. In 1958, Arkansas received only \$25 million in new plant investment. In comparison, North Carolina received over 10 times that amount. Preston Holmes, *Credit in the Development of the South*, U. VA. NEWSL., Oct. 15, 1959, quoted in ANTI-DEFAMATION LEAGUE, *supra* note 101, at 1. Indeed, in 1958 and 1959, no new industrial plants moved to Little Rock; over the prior eight years, an average of five new plants had located in the city each year bringing with them about 300 new jobs per year. NASHVILLE TENNESSEAN, May 31, 1959, quoted in ANTI-DEFAMATION LEAGUE, *supra* note 101, at 11-12. One Little Rock bank executive commented: "I personally know of a firm employing several hundred people which had taken the preliminary steps to move to Little Rock. A poll of key employees led them to abandon the plan when wives of the executives feared that public school opportunities would be denied their children." ANTI-DEFAMATION LEAGUE, *supra* note 101, at 14. After the Little Rock school crisis of 1957-1958, two members of the Little Rock Chamber of Commerce traveled throughout the South speaking about the impact of that city's racial problems on recruitment of new business. See COBB, *supra* note 15, at 125.

¹³⁶ ANTI-DEFAMATION LEAGUE, *supra* note 101, at 8. Other parts of the South would also experience downturns in business growth as a result of racial strife during the late 1950s and

for the National Industrial Conference Board, explained the economic impact of defiance: "[Businesses] eliminate from further consideration areas which have this school problem, because of the friction involved in them and the difficulty of getting top personnel to move to such places with their children."¹³⁷

Governor Hodges, one of the region's most active gubernatorial business recruiters, was particularly sensitive to the impact of the region's racial problems on the recruitment of new capital. At least one company during Hodges's tenure as Governor expressly declined to locate in North Carolina because of the state's perceived racial problems.¹³⁸ Both Hodges and his successor in the Governor's mansion, Terry Sanford, aggressively used the state's reputation for racial moderation to recruit new industry.¹³⁹ Both men recognized that overt resistance to the *Brown* decision could cause economic damage to the state. North Carolina's "moderation" ultimately produced tangible economic benefits. Preston Holmes, a Richmond banker, contrasted North Carolina's "moderation" with Arkansas's defiance in a 1959 article: "North Carolina, with legal compliance with the Supreme Court decision and little social unrest, had new plant investment in 1958 totaling \$253 million, while Arkansas, with its massive resistance and unsettled conditions, had only \$25.4 million in 1958 compared with . . . \$131 million in 1956."¹⁴⁰

early 1960s. According to a representative of the state's Industrial and Agricultural Development Commission, resistance to school desegregation in Nashville cost the state new capital. ATLANTA J.-CONST., Mar. 30, 1958, *quoted in* ANTI-DEFAMATION LEAGUE, *supra* note 101, at 6. As New Orleans engaged in massive resistance to prevent the admission of a handful of black children into white schools, a Tulane economist predicted that the defiance would cost the city millions of dollars per year as "[n]ational publicity about schools closing would strongly deter new industrial or business development from outside the state." ANTI-DEFAMATION LEAGUE, *supra* note 101, at 18. In Birmingham, the violent resistance to the Freedom Riders in the spring of 1961 cost the city potential new capital in excess of \$40 million, according to a *Wall Street Journal* report. *Many Southerners Say Racial Tension Slows Area's Economic Gains*, WALL ST. J., May 26, 1961, at 1.

Moreover, in addition to the loss of new capital, many southern businessmen worried about the loss of an educated workforce in the wake of school closures. *See, e.g.*, ATLANTA J., Jan. 20, 1960, *quoted in* ANTI-DEFAMATION LEAGUE, *supra* note 101, at 33.

¹³⁷ ATLANTA CONST., Feb. 27, 1959, *quoted in* ANTI-DEFAMATION LEAGUE, *supra* note 101, at 33. To be sure, some observers have concluded that southern cities overestimated the importance to which industries that came South during the 1950s and 1960s attached to a city's race relations. *See, e.g.*, James C. Cobb, *Yesterday's Liberalism*, in SOUTHERN BUSINESSMEN AND DESEGREGATION 166-67 (Elizabeth Jacoway & David R. Colburn eds., 1982); A.C. Flora, *Industrial Location in South Carolina*, 10 BUS. & ECON. REV. 1 (1964). Nevertheless, certainly the perception existed in the wake of the Little Rock experience that racial strife affected a city's ability to recruit new business.

¹³⁸ COBB, *supra* note 15, at 123.

¹³⁹ *Id.* at 147.

¹⁴⁰ ANTI-DEFAMATION LEAGUE, *supra* note 101, at 1.

There was a second reason for North Carolina's more moderate response to *Brown*. The state's political leaders understood that legislative pronouncements and resolutions expressing defiance of *Brown* could lead to judicial intervention in the state's school system, resulting in even more widespread pupil mixing. Indeed, North Carolina's political leadership, while consenting to the school closing and tuition grant features of the Pearsall Plan, well understood that the plan must not operate as a device to maintain rigid segregation. As the state in the pre-*Brown* period had opened graduate programs for black students, improved black teacher salaries, and increased expenditures for black schools in order to avoid judicial intervention,¹⁴¹ many North Carolinians now understood the need to engage in token desegregation to avoid judicial meddling in pupil assignments.

In a widely publicized speech to the North Carolina State Bar in November 1956, two months after the enactment of the Pearsall Plan, William Joyner, the Vice-Chair of the Pearsall Committee and a distinguished Raleigh attorney, noted that several other southern states had vowed never to admit a black child to a white school. According to Joyner, those states would eventually face either the abandonment of public education or court-mandated integration; neither option was acceptable. Joyner, who described himself as a "man in the middle" on the desegregation issue, stated:

[S]ome mixing in some of our schools is inevitable and must occur. . . . I do not hesitate to advance my personal opinion and it is that the admission of less than one percent, for example, one-tenth of one percent of Negro children to schools theretofore attended only by white children, is a small price to pay for the ability to keep the mixing within the bounds of reasonable control. . . .

One of the nightmares which besets me on a restless night is that I am in a Federal court attempting to defend a school board in its rejection of a transfer [to a white school] requested by a Negro student, when a showing is made in that court that nowhere in all of the State of North Carolina has a single Negro ever been admitted to any one of more than 2,000 schools attended by white students.¹⁴²

Subsequently, Joyner told Kenneth Whitsett, Mecklenburg County head of a segregationist organization called the Patriots of North Carolina, that the "sacrifice of some children to mixed schools must be made so that many other children will not similarly be subjected to the evils of mixed schools."¹⁴³ Joyner's comments reflected the pragmatism of white political leadership in North Carolina in the 1950s.

¹⁴¹ See *supra* text accompanying notes 43-52.

¹⁴² *The Middle Road is Best*, CHARLOTTE OBSERVER, July 28, 1957, at 2B; 3 *N.C. Cities Assign 12 Negroes to Previously All-White Schools*, S. SCH. NEWS, Aug. 1957, at 3.

¹⁴³ SOUTHERN REGIONAL COUNCIL, SPECIAL REPORT ON CHARLOTTE, GREENSBORO, AND WINSTON-SALEM, NORTH CAROLINA 2 (1957) (on file with the NAACP Papers, Box III-A-105, Library of Congress, Washington, D.C.). Joyner made the comments in response to Whitsett's

Likewise, North Carolina was the only southern state to resist passing legislation inhibiting the activities of the NAACP. In May 1957, the North Carolina General Assembly, prompted by Assistant Attorney General Lake, considered legislation to require the organization to disclose its membership lists and to prohibit the organization from paying litigation costs.¹⁴⁴ In significant measure, the General Assembly rejected the proposed legislation because of fear of judicial intervention in the state's school desegregation efforts. State Representative Frank Snapp of Charlotte, one of the primary opponents of the anti-NAACP legislation in the state House, argued that not only would the legislation cause "bitterness and disunity" and "open the way for economic reprisals" against NAACP members,¹⁴⁵ it might also lead a federal court to scrutinize more closely the state's recently passed pupil assignment plan. Snapp claimed that the bill "is uncon-

opposition to the admission of four black students into three all-white senior and junior high schools in Charlotte.

¹⁴⁴ Governor Hodges, having been accused by his conservative critics of being unduly sympathetic to the NAACP, threw his weight behind the proposal, arguing that the organization was an outsider interfering with North Carolina's efforts to work out its school problems. *9 Representatives Would Tell NAACP to Bare Member List*, RALEIGH NEWS & OBSERVER, May 7, 1957; *Editorial—Unnecessary Law*, ASHEVILLE CITIZEN, May 11, 1957, at 4 (reprint of editorial from *Winston-Salem J.*); *Administration Measures are Directed at NAACP*, RALEIGH NEWS & OBSERVER, May 17, 1957, at 1.

The NAACP had long been subject to vocal attack in North Carolina. Both Hodges and the Pearsall Committee on several occasions attacked the organization for its aggressive integrationist posture. Segregationist Beverly Lake was even more strident in his attacks on the organization:

The NAACP is our enemy, not the Negro people. We shall fight the NAACP county by county, city by city and, if need be, school by school and classroom by classroom to preserve our public schools. . . .

It will be a bitter and costly fight. We can also make it a costly one for our enemies, both foreign and domestic.

Wake County Takes Far-Reaching Step, S. SCH. NEWS, Aug. 1955, at 3. Lake ultimately helped draft the anti-NAACP legislation, claiming that it would help prevent an "unspeakable tragedy"—amalgamation of the races. *NAACP Head Says Bills Won't Stop Clamor for Equality*, RALEIGH NEWS & OBSERVER, May 29, 1957, at 3.

The North Carolina chapter of the NAACP attempted to fend off the legislative efforts. State President Kelly Alexander, seeking to appeal to the anti-communist feelings of most North Carolinians, told the North Carolina General Assembly that his organization had fought against communism's "efforts to capitalize on the justifiable resentment Negroes feel against segregation and discrimination," and that the legislation threatened the state's "reputation for friendly race relations." Kelly Alexander, Statement of North Carolina State Conference of Branches, NAACP, to North Carolina General Assembly (May 28, 1957) (unpublished manuscript, on file with the NAACP Papers, Box III-A-279, Library of Congress, Washington, D.C.). Ultimately, the North Carolina General Assembly defeated the proposed legislation.

In light of the defeat of the anti-NAACP legislation, the organization remained a viable force in North Carolina. The NAACP would enjoy much greater success in the 1960s. In 1963 alone, 10 North Carolina school districts desegregated after initial pressure of one form or another from the NAACP. NAACP, IN FREEDOM'S VANGUARD: NAACP REPORT FOR 1963, at 9 (1964).

¹⁴⁵ *Racial Bill Approved by Group*, CHARLOTTE OBSERVER, June 6, 1957, at 5A.

stitutional on its face [A]ll we are doing is putting the State to a court test We've been fortunate in this matter, but if the federal court knocks this down it will set a pattern, our school laws on the subject would be in danger."¹⁴⁶ Snepp had a keen sense of the broader picture. Taking retributive action against the NAACP could undermine the more important goal of fending off judicial interference with the pupil assignment process.

At the same time, others feared the legislation could damage the state's reputation for racial moderation, causing untoward economic consequences. In Charlotte, from which came many of the bill's most avid opponents, the *Charlotte Observer* claimed that the legislation would harm "North Carolina's good name as a progressive, enlightened, fair state."¹⁴⁷ To be sure, North Carolina's failure to take retributive action against the NAACP can be attributed in part to a less harsh racial environment within the state. Nevertheless, the desire of the state's political leaders to avoid both judicially-mandated pupil integration and damage to the state's economically beneficial moderate reputation on racial matters were critical factors as well.

F. Reasons for North Carolina's Moderation

Why did Hodges and the North Carolina "moderates" ultimately prevail over Lake and those North Carolinians calling for a more defiant response to the *Brown* decision? Why did North Carolina not adopt the more extreme segregationist measures adopted in other southern states? The answer lies in large measure in two factors: the domination of North Carolina politics for much of this century by a business and financial elite committed to economic advancement and the avoidance of racial strife, and the relative political insignificance of the heavily black, rural counties of eastern North Carolina.

Unlike many southern states, North Carolina, with a relatively small slave population, had no rural planter elite that dominated the state's politics during the antebellum or Reconstruction eras.¹⁴⁸ Instead, a financial and business elite emerged in the late nineteenth and early twentieth centuries as a "progressive plutocracy," which dominated the state's politics for much of this century.¹⁴⁹ This business

¹⁴⁶ NAACP North Carolina State Conference of Branches, Action Letter (June 1, 1957) (unpublished manuscript, on file with the NAACP Papers, Box III-A-279, Washington, D.C., Library of Congress); *Anti-NAACP Bill In Trouble*, RALEIGH NEWS & OBSERVER, May 31, 1957, at A3.

¹⁴⁷ Editorial—*It is Not Worthy of this State*, CHARLOTTE OBSERVER, June 4, 1957, at 2C.

¹⁴⁸ Thad L. Beyle, *The Paradox of North Carolina*, in *POLITICS AND POLICY IN NORTH CAROLINA* 4 (Thad L. Beyle & Merle Black eds., 1975).

¹⁴⁹ KEY, *supra* note 18, at 214. Following Key's 1948 classic work, *Southern Politics in State and Nation*, scholars have debated whether Key's characterization of North Carolina as "progressive" is accurate. See, e.g., LUEBKE, *TAR HEEL POLITICS*, *supra* note 16, at 1; Paul Luebke, *Corporate Conservatism and Government Moderation in North Carolina*, in 1 *PERSPECTIVES ON*

elite committed itself to the aggressive promotion of industrial growth.¹⁵⁰ Indeed, during the first half of this century, North Carolina enjoyed a substantially greater increase in its manufacturing activity than did any other southern state.¹⁵¹

North Carolina's business and political elite understood early on the relationship between economic prosperity and positive race relations. Throughout the first half of this century, North Carolina's political leaders, although unwavering proponents of racial separation, supported black education for reasons of paternalism and the potential economic benefits to the state. In 1902, Governor Charles Aycock and his allies helped defeat a proposed state constitutional amendment that would have allowed the division of school monies based on the respective contributions of the two races, arguing in part that underfinancing black schools might encourage black emigration from the state, thereby eliminating a necessary part of the workforce.¹⁵² Concerns about black emigration were legitimate; in the wake of ratification of an amendment to the North Carolina Constitution disfranchising black voters in 1900, large numbers of North Carolina blacks, including one retiring congressman, left the state in search of better opportunities in the North, creating labor shortages in some areas.¹⁵³ Similarly, for most of the first half of this century, North Carolina maintained a smaller gap in per pupil expenditures for black and white children than did any other southern state and was the first

THE AMERICAN SOUTH: AN ANNUAL REVIEW OF SOCIETY, POLITICS AND CULTURE 107 (Merle Black & John Shelton Reed eds., 1981); BASS & DEVRIES, *supra* note 74, at 229; Beyle, *supra* note 148, at 1; Preston W. Edsall & J. Oliver Williams, *North Carolina: Bipartisan Paradox, in THE CHANGING POLITICS OF THE SOUTH* 366 (William C. Havard ed., 1972). Most would concede, however, to the extent that "progressive" is defined in terms of promoting industrial expansion, the state has indeed been progressive for much of this century. Luebke, *Corporate Conservatism and Government Moderation in North Carolina*, *supra*, at 107-08.

¹⁵⁰ For example, North Carolina initiated one of the South's most aggressive highway building projects during the 1920s and spent a higher percentage of the state's wealth on public education than virtually every other southern state. KEY, *supra* note 18, at 211; LUEBKE, *TAR HEEL POLITICS*, *supra* note 16, at 9. As a result, by the middle of the twentieth century, North Carolina had one of the best road systems in the South and ranked fifth in the nation in the percentage of its income spent on public education. *North Carolina: The Integration Issue*, RALEIGH NEWS & OBSERVER, Mar. 15, 1956.

¹⁵¹ KEY, *supra* note 18, at 209-10.

¹⁵² LOUIS R. HARLAN, *SEPARATE AND UNEQUAL: PUBLIC SCHOOL CAMPAIGNS AND RACISM IN THE SOUTHERN SEABOARD STATES, 1901-1915*, at 40 (1958); W.E.B. DU BOIS & AUGUSTUS G. DILL, *THE COMMON SCHOOL AND THE NEGRO AMERICAN* 50 (1911). To be sure, notwithstanding the defeat of the constitutional amendment, black schools lagged far behind white schools in terms of per pupil expenditures due in large measure to the broad discretion local school boards exercised in the disbursement of educational monies. One 1909 study suggested that black schools in North Carolina received even *less* money than they would have under a separate taxation plan. CHARLES L. COON, *PUBLIC TAXATION AND NEGRO SCHOOLS* 7-8 (1909).

¹⁵³ Janette Thomas Greenwood, *Bittersweet Legacy: The Black and White "Better Classes" in Charlotte, North Carolina, 1850-1910*, at 534-36 (1991) (unpublished Ph.D. dissertation, University of Virginia).

southern state to provide graduate education programs for black students.¹⁵⁴ Moreover, repression of the black vote was less severe in North Carolina than in other southern states; for much of the pre-*Brown* era, a higher percentage of blacks were registered to vote than in any other southern state.

This racial paternalism may have been influenced by lawyers' traditionally dominant role in North Carolina's politics. For the first half of this century, every governor of North Carolina was a lawyer, as were large numbers of the state's leading legislators. These politician-lawyers were particularly sensitive to threats of judicial intervention in the state's educational system.¹⁵⁵ As a result, North Carolina responded more quickly than did most southern states to changing legal expectations pertaining to the financing of black education during the late 1930s and early 1940s, and pupil mixing in the 1950s.¹⁵⁶

North Carolina's racial "moderation" was also influenced by the fact that the majority black counties in eastern North Carolina did not exert the same degree of political influence as did similar "black belt" areas in other southern states. Political scientists have long recognized a correlation in southern voting patterns between areas of high black population and support for segregationist measures.¹⁵⁷ In North Carolina, political power for most of this century has been linked to the business and financial interests of the state's central Piedmont section, as opposed to the rural farming areas of the state's eastern counties.¹⁵⁸ Moreover, a strong Democratic party organization for much of the first half of this century helped reduce the threat of extremists—on racial or other issues—seizing political power. This distribution of political power in North Carolina stands in sharp contrast to the more defiant southern states of the deep South or Virginia, where political power was far more likely to be linked to rural counties with high black populations.¹⁵⁹ Indeed, North Carolina had a smaller black population than did most of the defiant states of the South and substantially fewer majority black counties. In 1950, for example, less

¹⁵⁴ See *supra* note 42. Governor Clyde Hoey supported the establishment of graduate programs for black students noting that "North Carolina does not believe in social equality between the races, but we do believe in equality of opportunity in their respective fields of service." CLYDE HOEY, ADDRESSES, LETTERS AND PAPERS OF CLYDE ROARK HOEY, GOVERNOR OF NORTH CAROLINA, 1937-1941, at 38 (David Corbitt ed., 1944).

¹⁵⁵ Edsall & Williams, *supra* note 149, at 371; Beyle, *supra* note 148, at 4.

¹⁵⁶ See *supra* text accompanying notes 43-52. Newspapers may have also played a role since many of the state's leading newspapers expressed views, particularly on matters of race, that tended to be more liberal than many of their southern counterparts. Beyle, *supra* note 148, at 3; JACK CLAIBORNE, THE CHARLOTTE OBSERVER: ITS TIME AND PLACE, 1869-1986 (1986).

¹⁵⁷ See, e.g., BLACK, *supra* note 120, at 53, 67, 81, 94, 101, 114; KEY, *supra* note 18, at 229.

¹⁵⁸ KEY, *supra* note 18, at 217-18; Beyle, *supra* note 148, at 5.

¹⁵⁹ Moreover, legislative apportionment schemes favoring rural counties contributed to this domination by segregationist interests in other southern states until the 1960s when the Supreme Court struck down these schemes in *Baker v. Carr*, 369 U.S. 186 (1962).

than ten percent of the state's counties were majority black; each of the six most defiant southern states had a significantly higher percentage of majority black counties than did North Carolina.¹⁶⁰

Significantly, the only election in the post-*Brown* South in which a moderate segregationist defeated a militant segregationist in a head-to-head primary election was the 1960 Democratic runoff primary for governor of North Carolina when Terry Sanford defeated Beverly Lake.¹⁶¹ Lake enjoyed strong support in the state's black belt counties, but Sanford's strong support in the Piedmont and the western section of the state allowed him to capture his party's nomination.¹⁶² Sanford presented himself as a candidate who understood the necessity of token integration in the service of larger interests:

Nobody likes the Supreme Court decision and nobody intends to let the NAACP dominate North Carolina, but it is not going to serve any constructive purpose to keep saying this over and over. The more we stir it up, the harder it is going to be to keep the Supreme Court out of North Carolina's affairs. [Lake's] approach is leading us to closed schools or mixed schools, and we have got to stop his approach.¹⁶³

In a state where the preservation of racial separation at all costs was no longer the highest goal, Sanford captured well over half the votes cast.¹⁶⁴

IV. THE RESULTS OF MODERATION IN NORTH CAROLINA

A. North Carolina's Token Integration

North Carolina's "moderate" response to *Brown* did not mean that black children were welcome in the state's white schools. Indeed, ten years after the *Brown* decision, less than one half of one percent of the schoolchildren in the state attended school with a child of another race. Other southern states that engaged in more strident resistance actually had more children attending integrated schools in 1964 than did North Carolina.¹⁶⁵ How did North Carolina's course of "moderation" result in the retention of segregated schools?

¹⁶⁰ ASHMORE, *supra* note 16, at 173-204. Even Virginia, which had a smaller black population than North Carolina on a statewide basis, had a substantially higher percentage of counties with a majority black population than did North Carolina. *Id.* These counties, most of which were located in southern Virginia, exercised substantial political power.

¹⁶¹ BLACK, *supra* note 120, at 217-19. Lake did carry the black belt counties in eastern North Carolina and also did well among lower class whites in the Piedmont section of the state. NUMAN V. BARTLEY & HUGH D. GRAHAM, *SOUTHERN POLITICS AND THE SECOND RECONSTRUCTION* 76 (1975).

¹⁶² Although Sanford was clearly more racially moderate than Lake, he nevertheless made clear that he opposed "mixing the races in the schools." BLACK, *supra* note 120, at 218.

¹⁶³ *Id.*

¹⁶⁴ Sanford captured 56% of the vote in the runoff against Lake and in November 1960 was elected governor. BLACK, *supra* note 120, at 219.

¹⁶⁵ See *supra* note 11.

In effect, North Carolina “succeeded” in retaining segregated schools because it understood that voluntary token desegregation and avoidance of statements of defiance would allow the state to continue with segregated schools without judicial interference. Following enactment of the 1955 pupil assignment statute that vested local school boards with the discretion to make pupil assignments on a nonracial basis, every North Carolina school board ostensibly abandoned race-based school assignments.¹⁶⁶ Yet in reality, most of the state’s school boards would continue to assign children to school on the basis of their race until the mid-1960s.¹⁶⁷ Black children who lived within walking distance of a white school were frequently assigned to a distant and inferior black school.¹⁶⁸ In a few instances, where a school system provided schools only for white children, black children were required to travel by bus to schools in neighboring counties.¹⁶⁹

The pupil assignment statute did give black children the right to request a transfer to a white school and a number of black students initially assigned to black schools sought such transfers. However, none of the fifty black students who requested a transfer to a white school during the first two school years under the new placement statute was successful.¹⁷⁰ Even counties that offered no education for

¹⁶⁶ Prior to *Brown*, every school district in North Carolina, as throughout the South, had assigned students to school based upon their race. Daniel J. Meador, *The Constitution and the Assignment of Pupils to Public Schools*, 45 VA. L. REV. 517 (1959).

¹⁶⁷ A few North Carolina school districts began to assign students on the basis of geography rather than race in the early 1960s. For example, Chapel Hill did so in 1961. See *infra* note 191. Charlotte did likewise in 1962, although on a limited basis, with a plan that encompassed only a fraction of the school district’s schools.

¹⁶⁸ Such was the case, for example, in Charlotte. *Morrow v. Mecklenburg County Bd. of Educ.*, 195 F. Supp. 109 (W.D.N.C. 1961).

¹⁶⁹ Most typically this happened in the state’s western counties with small black populations. Such children sometimes faced as much as an 80 mile round trip to school along narrow mountain roads. *Griffith v. Board of Educ. of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960).

¹⁷⁰ North Carolina Advisory Committee, *Equal Protection of the Law in Education in North Carolina* (1960) (unpublished manuscript, on file with the NAACP Papers, Box III-A-288, Library of Congress, Washington, D.C.).

The Wake County School Board did announce in August 1955 that beginning with the 1956-1957 school year, race would no longer be a factor in school assignments. *North Carolina’s Wake County Takes Far-Reaching Step*, S. SCH. NEWS, Aug. 1955, at 3. Notwithstanding that pronouncement, neither the Wake County nor any other North Carolina school board assigned a black student to a white school or granted a transfer request of a black student for the 1956-1957 school year.

Transfers were denied for a number of reasons. In one county, the request to transfer was denied because the black student had expressed a desire to transfer to a “white” school; the Board determined it could not make “assignments based on race” and denied the transfer. A.B. Cochran, *Desegregating Public Education in North Carolina*, in *POLITICS AND POLICY IN NORTH CAROLINA* 198, 200 (Thad L. Beyle & Merle Black eds., 1975). Other requests were denied because the black child requested any “desegregated school” instead of a specific school. *Board Tells Parents of Negroes Why Reassignments Were Not Made*, CHARLOTTE OBSERVER, Aug. 20, 1957, at 3A.

black children denied transfer requests.¹⁷¹ By the summer of 1957, no school board in North Carolina had ever assigned a black child to a white school and no school board had ever granted a black child's transfer request to attend a white school.

In time, however, many North Carolinians argued that continued refusal to admit black students to white schools could leave the state's school systems exposed to judicial challenge.¹⁷² Accordingly, some of the state's political leaders, including Pearsall Committee Vice Chair Joyner, urged several of the state's local school boards to admit a few black students into white schools to demonstrate to the courts that North Carolina's pupil assignment system was not designed to preserve segregated schools. Ultimately, three North Carolina school boards—Charlotte, Greensboro, and Winston-Salem—became among the first in the South to desegregate their schools voluntarily when they simultaneously announced in July 1957 that they had granted the transfer requests of twelve black students to white schools.¹⁷³ That this early desegregation would come in these three cities was not surprising. Each was a Piedmont city, removed from the large black population of eastern North Carolina; each constituted one of the state's largest urban areas; and each had a thriving local economy. All of these conditions contributed to an environment where modest racial change was most likely.¹⁷⁴

In agreeing to voluntary desegregation in the summer of 1957, these three school boards operated with the understanding that their action would fend off more extensive court-ordered desegregation. The Charlotte School Board, for example, announced that in granting the transfers, it had acted to "preserve the public schools of Charlotte."¹⁷⁵ Several of the state's newspapers argued that the token inte-

¹⁷¹ For example, black children in the mountain town of Bryson City sought to attend a local white school to avoid a 45 mile round trip to a black school in Sylva, located in a neighboring county. The request was denied. *N.C. Pupil Assignment Faces Test*, CHARLOTTE OBSERVER, July 21, 1957, at 2D.

¹⁷² See *supra* text accompanying notes 142-43.

¹⁷³ Beginning in 1955, the three school boards had met secretly to discuss the eventual desegregation of their respective school systems. During the spring and summer of 1957, the three boards agreed to accept the transfer requests of a few black students to white schools for the 1957-1958 school year. The three boards decided that each would announce on July 23 that the transfer requests of 12 black students in the three cities had been granted. Charlotte granted five of 45 transfer requests; Greensboro granted six of 13 transfer requests; Winston-Salem granted one of four transfer requests. 3 *N.C. Cities Assign 12 Negroes to Previously All-White Schools*, S. SCH. NEWS, Aug. 1957, at 3.

¹⁷⁴ See generally William Coogan, *School Board Decisions on Desegregation in North Carolina* (1971) (unpublished Ph.D. dissertation, University of North Carolina (Chapel Hill)) (analyzing conditions under which desegregation more likely); Lamanna, *supra* note 77 (analyzing conditions favorable to desegregation).

¹⁷⁵ 3 *N.C. Cities Assign 12 Negroes to Previously All-White Schools*, S. SCH. NEWS, Aug. 1957, at 3.

gration would forestall widespread pupil mixing. The *Charlotte News* claimed that "the Charlotte City School Board has acted to preserve the schools. It has acted to prevent massive court-decreed integration."¹⁷⁶ The *Charlotte Observer* described the voluntary desegregation as a "legal and effective instrument for keeping desegregation a limited and selective process" thereby avoiding "an inevitable court order for mandatory desegregation," and enhancing "the progressive tradition of the three communities and of this state."¹⁷⁷ The *Raleigh Times* suggested that the three school boards' action "will make it possible for schools in areas where integration is surely not possible or even feasible to continue completely separate schools. This action has been taken for the benefit of the whole school system of the state, not just for the benefit of the 12 Negro children involved."¹⁷⁸

Many of the state's political leaders also hoped that the decision of the three boards would fend off broader, court-imposed desegregation orders.¹⁷⁹ State Representative Edward Yarborough of Franklin County, Chair of the state House Education Committee and a member of the Pearsall Committee, commended the three school boards for their decision: "I think it certainly strengthens our hands in the courts because it shows we have non-discriminatory laws, administered by local boards."¹⁸⁰

When schools opened in the fall of 1957, North Carolina was one of only four southern states, along with Arkansas, Texas and Tennessee, to admit black students into white schools.¹⁸¹ Moreover, the relatively peaceful integration of the North Carolina schools stood in sharp contrast to that in Little Rock and won the state national and even worldwide acclaim. In the fall of 1957, for example, the Voice of America contrasted the North Carolina and Arkansas desegregation experiences, citing North Carolina as indicative of the real sentiment of the country.¹⁸² Over the next several years, a time when many

¹⁷⁶ *Id.* at 5.

¹⁷⁷ Editorial—*Wisdom, Courage, and Law Dictate a School Decision*, CHARLOTTE OBSERVER, July 24, 1957, at 2B. Fred Helms, a prominent Charlotte attorney and a member of the original Pearsall Committee, told a civic club audience that business and professional persons should lead the community in acceptance of desegregation. North Carolina's "course of moderation" would succeed, urged Helms, whereas courts would strike down the more extreme school statutes in other states. *State School Policy Hailed by Speaker*, CHARLOTTE OBSERVER, Aug. 2, 1957, at 1B. Helms further noted that: "If the pupils in our schools and the great mass of moderates can be left free from extremists, agitation, intolerance and prejudices, our problems will be reduced to a minimum." S. SCH. NEWS, Sept. 1957, at 15.

¹⁷⁸ 3 N.C. Cities Assign 12 Negroes to Previously All-White Schools, S. SCH. NEWS, Aug. 1957, at 3.

¹⁷⁹ *Integration Seen Bolstering Law*, CHARLOTTE OBSERVER, July 24, 1957, at 2A.

¹⁸⁰ 3 N.C. Cities Assign 12 Negroes to Previously All-White Schools, *supra* note 178.

¹⁸¹ SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 26. In addition to these four states, however, all of the border states had integrated at least some of their schools. *Id.*

¹⁸² Marion Wright, *Integration and Public Morals*, NEW SOUTH, Nov. 1957, at 7.

southern cities reported downturns in business growth as a result of racial problems, chambers of commerce in the state's leading cities reported generous increases in new business.¹⁸³

The voluntary desegregation of these three school systems, however, did not bring broader desegregation to North Carolina. During the same summer that the three urban school boards granted the twelve transfer requests, the requests of almost two hundred other black students throughout the state,¹⁸⁴ even those living in counties with no black schools, were denied.¹⁸⁵ Moreover, even in the three desegregated school systems, the degree of desegregation did not increase during the next few years; by the spring of 1959, fewer black students were attending white schools in North Carolina than in September 1957.¹⁸⁶ Indeed, by 1960, no school board in North Carolina

¹⁸³ See, e.g., Charlotte Chamber of Commerce, CHARLOTTE (Jan. 1962, Jan. 1963, Aug. 1963) (on file with the Frederick Douglass Alexander Papers, Box 114A-1, Atkins Library, University of North Carolina at Charlotte).

¹⁸⁴ Throughout the state, 184 requests for transfers by black students were denied during the summer of 1957. North Carolina Advisory Committee, *supra* note 170. See, e.g., *66 School Applications Rejected*, CHARLOTTE OBSERVER, Aug. 6, 1957, at 1B; Larry Jinks, *Students May Ask for Reassignment*, CHARLOTTE OBSERVER, Aug. 3, 1957, at 1B.

¹⁸⁵ *All-White School Eyed by Negroes*, CHARLOTTE OBSERVER, July 10, 1957, at 6A. In counties that had no black schools, black children were transported to schools in neighboring counties.

¹⁸⁶ For example, the following year, the Charlotte School Board assigned no additional black students to a white school and approved only two out of 23 transfer requests filed by black students; once again, only four black students attended a white school in Charlotte that year. In 1959, the Charlotte School Board denied every transfer request, continuing its policy of denying all transfer requests of black students who lived closer to their assigned black school than to the desired white school. Only one black student attended a white school in Charlotte during the 1959-1960 school year, three fewer than two years earlier. *Three Localities Begin Desegregation; Total Now Stands at Seven*, S. SCH. NEWS, Sept. 1959, at 10.

Greensboro, one of the other North Carolina cities to desegregate in 1957, was also slow to expand from the initial token desegregation. In 1963, six years after the first desegregation, only 19 black children attended white schools in Greensboro and all of these were in the same school. CHAFE, *supra* note 58, at 151-52.

Finally, during the 1959-60 school year, school boards outside of the original three cities granted transfer requests of black students for the first time: Durham, High Point, Wayne County, and Craven County. The Wayne County and Craven County school systems were the sites of major military installations and the desegregation in those counties took place at schools attended primarily by the children of military personnel, many of whom were non-southerners. Indeed, a school at the Fort Bragg military installation operated by the federal government had been desegregated in 1951. JEFFREY J. CROW ET AL., *A HISTORY OF AFRICAN AMERICANS IN NORTH CAROLINA* 167 (1992); ASHMORE, *supra* note 16. More black students in those two school systems attended white schools in 1959-60 than in all other school systems in the state combined. American Friends Service Committee, Newsletter (Oct. 1959) (on file with the North Carolina Collection, University of North Carolina (Chapel Hill)); North Carolina Advisory Committee, *Equal Protection of the Laws* (1960) (unpublished manuscript, on file with the NAACP Papers, Box III-A-288, Library of Congress, Washington, D.C.).

By 1960, six years after the *Brown* decision, only 34 of over 300,000 black students in North Carolina attended school with white children and these 34—all of whom had to file a transfer

had ever initially assigned a black student to a white school and most of the hundreds of transfer requests filed by black students had been denied.¹⁸⁷ At the same time, no court had ever found a North Carolina school system to be unconstitutionally segregated¹⁸⁸ even though the NAACP initiated more school desegregation litigation in North Carolina during the 1950s than in any other southern state¹⁸⁹ and a few courts had found unlawful school segregation in other southern states.¹⁹⁰ The obvious fact that every North Carolina school board was continuing to maintain a dual assignment system by initially assigning children only to schools of their own race went uncorrected by the courts until the early 1960s.¹⁹¹ Token integration, unaccompanied by defiant rhetoric, enabled the state to escape judicial intervention in a manner that other, more defiant southern states did not.¹⁹² North Carolina's policy of moderation stood vindicated.

request—were located in only 7 of the state's 174 school districts. SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 28.

¹⁸⁷ Guy Munger, *Integration Held Slow in N.C.*, GREENSBORO DAILY NEWS, Oct. 2, 1960, at 1. Moreover, almost half the total number of transfer requests that had been granted were in Wayne and Craven Counties and involved primarily the children of non-southern military personnel. North Carolina Advisory Committee, *supra* note 170.

¹⁸⁸ Both the North Carolina Supreme Court and the United States Court of Appeals for the Fourth Circuit found the North Carolina assignment plan to be constitutional as written. The Fourth Circuit found the plan facially constitutional, leaving open the question of whether it would be applied by local school boards in a constitutional manner. *Carson v. Warlick*, 238 F.2d 724, 728 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957). The North Carolina Supreme Court upheld the constitutionality of the statute, as well, noting that:

nothing in the *Brown* case requires that children of different races be taught in the same schools. The doctrine therein declared, to be put into effect in specific cases 'with deliberate speed' as conditions may warrant, is that no child, whatever his race, may be excluded from attending the school of his choice solely on the basis of race.

Constantian v. Anson County, 93 S.E.2d 163, 167 (N.C. 1956).

Indeed, no North Carolina court ruled in favor of black students seeking admission to a white school until 1960 and then only for a handful of children in Yancey County who had been required to make an 80 mile trip on mountain roads to attend a black school in a neighboring county. *Griffith v. Board of Educ.*, 186 F. Supp. 511 (W.D.N.C. 1960).

¹⁸⁹ Pete Gilpin, *N.C. Leads South in Desegregation Cases Pending or Proposed*, NAACP Told Here, ASHEVILLE CITIZEN, Oct. 10, 1959, at 10.

¹⁹⁰ See *supra* note 12.

¹⁹¹ In 1961, a court in a North Carolina school desegregation case found for the first time that a black child had been denied assignment to a white school because of his race. *Vickers v. Chapel Hill City Bd. of Educ.*, 196 F. Supp. 97, 101 (M.D.N.C. 1961). Although not required to do so by the court order, the Chapel Hill Board of Education responded by becoming the first school district in the South to adopt a plan of assigning black students to school on a geographic rather than racial basis, which resulted in several black students attending a majority white school. Davis B. Young, *Historic Integration Plan Adopted for Chapel Hill School District*, CHAPEL HILL WKLY., July 6, 1961, at 1. Nevertheless, the Chapel Hill school district, home to the University of North Carolina, was unusually liberal relative to much of the state.

¹⁹² The state's cynical manipulation of moderation did not escape the notice of the Charlotte-Mecklenburg Council on Human Relations: "[I]t seems increasingly clear that initial token desegregation, rather than paving the way for future compliance, is becoming a means of evasion of

B. Why North Carolina's Token Integration Succeeded

But if the *Brown* decision declared segregated education unconstitutional, why did the lower courts in North Carolina, charged with carrying out the *Brown* mandate, refuse to require school boards to cease race-based pupil assignments and to grant the transfer requests of black students? The reasons are essentially threefold: the failure of the Supreme Court to insist on meaningful desegregation, the dearth of plaintiffs ready to challenge segregation practices, and the willingness of the lower courts to conclude that token integration and the absence of statements of defiance indicated that the state was operating its schools in a nondiscriminatory manner.

First, the Supreme Court failed to give lower court judges detailed guidance in enforcing the *Brown* mandate. Although the second *Brown* decision in 1955 concerned itself in large measure with the issue of enforcement, the decision offered little in terms of specific direction. In a statement that offered great comfort to southerners intent on resisting compliance, the Court noted: "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems. . . ."¹⁹³ Significantly, the Court did not impose any timetable on desegregation efforts, rejecting the Justice Department's proposed ninety-day timetable for the submission of desegregation plans.¹⁹⁴ The Court instead merely indicated that school boards should make a "good faith" start toward desegregation and should proceed "with all deliberate speed." Not surprisingly, the second *Brown* decision was greeted with relief throughout the South.¹⁹⁵

Furthermore, following the second *Brown* decision, the Supreme Court largely abandoned the school desegregation field for the next several years, seriously undermining compliance efforts.¹⁹⁶ Between 1955 and 1960, the Supreme Court issued only one full opinion in a public school desegregation case—in the crisis situation of Little Rock¹⁹⁷—and a few other per curiam decisions and affirmances.¹⁹⁸

the law." Charlotte-Mecklenburg Council for Human Relations, *School Board Must Move Toward Full Compliance*, NEW SOUTH, Dec. 1959, at 11.

¹⁹³ *Brown v. Board of Educ.*, 349 U.S. 294, 299 (1955).

¹⁹⁴ Brief of the United States on the Further Argument of the Questions of Relief, *Brown v. Board of Education*, in 49A LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW, *supra* note 72, at 768.

¹⁹⁵ WILKINSON, *supra* note 4, at 64.

¹⁹⁶ Admittedly, during this time period the Court was active in striking down state-supported segregation in a broad range of public facilities. See *Boynton v. Virginia*, 364 U.S. 454 (1960) (buses); *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54 (1958) (parks); *Gayle v. Browder*, 352 U.S. 903 (1956) (buses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (public golf courses); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955) (beaches).

¹⁹⁷ *Cooper v. Aaron*, 358 U.S. 1 (1958).

For the most part, the Court's decisions came in extraordinary cases where the very authority of the federal courts was challenged and Supreme Court intervention demanded. Otherwise, the Court remained silent on a large number of issues concerning school desegregation, such as the need for plaintiffs to exhaust administrative remedies before seeking judicial relief and the validity of one-grade-per-year desegregation plans, notwithstanding widely divergent decisions in the lower courts on these and other issues.¹⁹⁹ In cases where the Court did speak, it reaffirmed the general principles of *Brown*, but declined to offer specific guidance to lower courts on how to enforce

¹⁹⁸ Besides the full opinion in *Cooper*, the Court issued five per curiam decisions between 1955 and 1960 in school desegregation cases. Two were earlier procedural decisions in the *Cooper* case. *Aaron v. Cooper*, 357 U.S. 566 (1958) (refusing to stay district court order prior to consideration by court of appeals); *Aaron*, 358 U.S. 1 (1958) (announcing decision in *Cooper* pending later full opinion). Two were per curiam affirmances of three-judge court decisions declaring unconstitutional certain state statutes that interfered with school desegregation. *United States v. Louisiana*, 364 U.S. 500 (1960) (per curiam) (affirming lower court decision striking down a Louisiana statute which asserted that Supreme Court decisions in school segregation cases were a usurpation of state power); *Faubus v. Aaron*, 361 U.S. 197 (1959) (per curiam) (affirming lower court decision striking down an Arkansas statute giving the Governor the authority to close schools that were scheduled for desegregation). Finally, the Court affirmed a three-judge court's determination that the Alabama pupil placement statute was constitutional on its face. *Shuttlesworth v. Birmingham Bd. of Educ.*, 358 U.S. 101 (1958) (per curiam).

At the same time, between 1956 and 1958, the Court denied certiorari in at least a dozen school desegregation cases. Jack Greenberg, *The Supreme Court, Civil Rights and Civil Dissonance*, 77 *YALE L.J.* 1520, 1524 n.10 (1968).

¹⁹⁹ On at least three occasions, the Court declined to review conflicting lower court decisions regarding the constitutionality of a one-year-at-a-time desegregation plan. In two of the cases, the lower court approved of such a plan, while a third court disapproved. *Kelley v. Board of Educ.*, 270 F.2d 209 (6th Cir.), *cert. denied*, 361 U.S. 924 (1959) (approves); *Slade v. Board of Educ.*, 252 F.2d 291 (4th Cir.), *cert. denied*, 357 U.S. 906 (1958) (approves); *Evans v. Ennis*, 281 F.2d 385 (3d Cir. 1960), *cert. denied*, 364 U.S. 933 (1961) (disapproves).

Likewise, the Court denied review in two cases in which lower courts had differed on the need for desegregation plaintiffs to exhaust administrative remedies before filing suit. The Fifth Circuit held that exhaustion of state remedies was not required before initiating litigation. *See, e.g., Mannings v. Board of Pub. Instruction*, 277 F.2d 370 (5th Cir. 1960). The Fourth Circuit disagreed. *Carson v. Warlick*, 238 F.2d 724 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); *Holt v. Raleigh City Bd. of Educ.*, 265 F.2d 95 (4th Cir.), *cert. denied*, 361 U.S. 818 (1959). Not until 1963 did the Supreme Court consider the exhaustion of remedies issue and hold that exhaustion of state remedies was not a prerequisite to a suit in federal court seeking injunctive relief in a school desegregation case. *McNeese v. Board of Educ.*, 373 U.S. 668 (1963).

Finally, the Court failed to resolve the split in the lower courts on the permissibility of allowing transfers from a school where a student was in a racial minority to one where a student was in a racial majority. The Sixth Circuit permitted such transfers, *Kelley v. Board of Educ.*, 270 F.2d 209 (6th Cir.), *cert. denied*, 361 U.S. 924 (1959), but the Fifth Circuit did not. *Boson v. Rippy*, 285 F.2d 43 (5th Cir. 1960).

On occasion, some justices tried to have the Court consider additional school cases, but without success. *See, e.g., Kelley v. Board of Educ.*, 361 U.S. 924 (1959) (Justices Warren, Douglas, and Brennan dissenting from denial of certiorari in case in which lower court approved a plan allowing minority to majority transfers).

its mandate. Calls for the high Court to offer more guidance to lower courts went unheeded.²⁰⁰

The Supreme Court had initiated a "second reconstruction" with the *Brown* decision, but had left it to southern federal judges to supervise the accompanying social revolution with little guidance or support. The failure of the Court to at least reconcile conflicting lower court opinions, if not offer further guidance as to what *Brown* required, made the job of the federal district court judge charged with the responsibility of overseeing desegregation decrees all the more difficult.²⁰¹ As a consequence, in the face of considerable local pressure from segregationists,²⁰² many state and federal judges simply refused to order school boards to desegregate their schools.

The second reason for the dearth of successful school desegregation lawsuits in North Carolina during the first decade after *Brown* was the difficulty in bringing such litigation. Many black parents did not wish to send their children to white schools because of fears of mistreatment and hence had no interest in litigation seeking to force such admission. Moreover, several of the black parents who did sign petitions asking for desegregation or file lawsuits in the early years after *Brown* were subjected to harassment or some type of retaliation that discouraged further litigation.²⁰³ The difficult transfer procedures that the courts obliged black students challenging their pupil assignments to follow, coupled with the substantial expense and expertise required to support litigation, made it virtually impossible to mount a

²⁰⁰ See, e.g., Bickel, *supra* note 4, at 209 ("It will be beneficial if the Court gives a new and unified sense of direction to the lower judges, and it will, incidentally, also be helpful if the Court exerts itself to keep the few opposition judges in line.").

This reluctance continued in the 1960s. The Court issued only two full opinions in southern school desegregation cases from 1960 to 1964, one in the exceptional Prince Edward County, Virginia, school closing case, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964), and the other one striking down minority-to-majority transfer provisions that gave students the right to leave a desegregated school, but no corresponding right to enter one. *Goss v. Board of Educ.*, 373 U.S. 683 (1963). The Court did issue per curiam opinions in a few other cases, most of which pertained to the fierce resistance to school desegregation attempts in Louisiana. See, e.g., *Calhoun v. Latimer*, 377 U.S. 263 (1964); *St. Helena Parish Sch. Bd. v. Hall*, 368 U.S. 515 (1962); *City of New Orleans v. Bush*, 366 U.S. 212 (1961); *Orleans Parish Sch. Bd. v. Bush*, 365 U.S. 569, *aff'd sub nom. City of New Orleans v. Bush*, 366 U.S. 212 (1961).

²⁰¹ See generally PELTASON, *supra* note 107; JACK BASS, *UNLIKELY HEROES: THE DRAMATIC STORY OF THE SOUTHERN JUDGES OF THE FIFTH CIRCUIT WHO TRANSLATED THE SUPREME COURT'S BROWN DECISION INTO A REVOLUTION FOR EQUALITY* (1981).

²⁰² See PELTASON, *supra* note 107, for discussion of pressure on southern judges to resist implementation of the *Brown* decision.

²⁰³ See, e.g., Letter from L.R. McKnight to Kelly Alexander (Sept. 14, 1954) (on file with the Kelly Miller Alexander, Sr. Papers, Atkins Library, University of North Carolina at Charlotte); Minutes, N.A.A.C.P. Board of Directors, Nov. 9, 1959 (on file with the NAACP Papers, Box III-A-279, Library of Congress, Washington, D.C.) (NAACP offers financial assistance to black parent who faced foreclosure in retaliation for his request for a transfer of his children to a white school); Lamanna, *supra* note 77, at 57.

successful legal challenge to a pupil assignment without some type of organizational support. Moreover, until the 1964 Civil Rights Act authorized the Justice Department to file school desegregation suits, the NAACP was the only organization committed to challenging school segregation through litigation.²⁰⁴ Even though the North Carolina General Assembly ultimately declined to enact anti-NAACP legislation, the attacks on the organization and its members in North Carolina restricted its effectiveness and undermined the willingness of black plaintiffs to step forward and pursue legal remedies.²⁰⁵ By 1960, the NAACP had managed to bring only eleven school desegregation lawsuits in the entire state of North Carolina.²⁰⁶

The final reason why North Carolina's "moderate" response to the *Brown* decision survived judicial challenge until the 1960s was the ability of local school boards to utilize both the complicated transfer process and the few instances of token integration to deflect claims that the state still maintained a dual school system. The North Carolina courts established early on that black plaintiffs seeking assignments to white schools would be entitled to no judicial relief unless they went through the detailed transfer and administrative appeal process established by the state pupil assignment statute.²⁰⁷ This exhaustion requirement proved to be a major hurdle; virtually every judicial

²⁰⁴ And yet the NAACP was under constant attack in the South throughout the 1950s as the organization faced a region-wide campaign to crush it. The more typical elements of the struggle were legislative attempts to require the organization to disclose its membership lists and to prevent the organization from financing litigation. WASBY ET AL., *supra* note 8, at 181-92; Murphy, *supra* note 98. Although virtually all of this legislation was eventually declared unconstitutional by the Supreme Court, the legislation effectively ended NAACP activity for a few years in much of the South, particularly in Alabama. Southern NAACP membership declined by almost 40% between 1955 and 1957. ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 33 (1984); NAACP, *PROGRESS AND PORTENTS: NAACP ANNUAL REPORT FOR 1958*, at 5 (1958).

²⁰⁵ Moreover, the organization experienced other forms of harassment in the state. Shortly after the second *Brown* decision in 1955, a white segregationist group, the Patriots of North Carolina, filed charges with the Secretary of State's office alleging that the organization had failed to register with the state as an out-of-state organization seeking to influence public policy; the organization ultimately agreed to pay a \$500 fine for failure to register. *State NAACP Unit Failed to Register, Eure is Informed*, DURHAM MORNING HERALD, Nov. 15, 1955, at 10; *\$500 Check Paid State by NAACP*, RALEIGH NEWS & OBSERVER, Apr. 2, 1957, at 1.

²⁰⁶ See *supra* note 189.

²⁰⁷ For example, in *Carson v. Board of Educ.*, 227 F.2d 789, 790 (4th Cir. 1955), the Fourth Circuit held that "[w]here the state law provides adequate administrative procedure for the protection of such rights, the federal courts manifestly should not interfere with the operation of the schools until such administrative procedure has been exhausted and the intervention of the federal courts is shown to be necessary." See also *Carson v. Warlick*, 238 F.2d 724, 727 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); *Covington v. Edwards*, 165 F. Supp. 957, 959 (M.D.N.C. 1958), *aff'd*, 264 F.2d 780 (4th Cir. 1959), *cert. denied*, 361 U.S. 840 (1960); *Holt v. Raleigh City Bd. of Educ.*, 164 F. Supp. 853, 862 (E.D.N.C. 1958), *aff'd*, 265 F.2d 95 (4th Cir.), *cert. denied*, 361 U.S. 818 (1959); *Joyner v. McDowell County Bd. of Educ.*, 92 S.E.2d 795 (N.C. 1956); *Constantian v. Anson County*, 93 S.E.2d 163 (N.C. 1956).

challenge to school segregation considered by a North Carolina state or federal court during the 1950s was ultimately dismissed on the grounds that the plaintiff had failed in some manner to exhaust administrative remedies.²⁰⁸ At the same time, the fact that such transfers were possible and that a few black students did actually receive transfers enabled the courts to conclude that the North Carolina assignment plan passed constitutional muster, despite the fact that every school child in North Carolina was still assigned to school on the basis of race.²⁰⁹ Thus, by 1960, no North Carolina federal or state court had ever ruled in favor of a black plaintiff in a school desegregation case.²¹⁰ By the same token, courts during the 1950s struck down pupil assignment practices in other southern states that had excluded *all* black children from white schools as part of a well-orchestrated strategy of massive resistance, and ordered black students admitted into

²⁰⁸ The United States Commission on Civil Rights concluded in a 1962 study that the principal obstacle to desegregation in the South was the requirement that black plaintiffs adhere to the complicated administrative processes contained in the pupil placement statutes, UNITED STATES COMM'N ON CIVIL RIGHTS, *supra* note 52, at 15.

²⁰⁹ Significantly, shortly after the three North Carolina school systems opened in the fall of 1957 with limited desegregation, a three-judge court in Alabama considered the constitutionality of the Alabama pupil placement statute. Pursuant to that statute, no black child had ever been assigned to a white school, but the state argued that such assignments were certainly possible. In upholding the constitutionality of the Alabama statute as written, the court noted that the North Carolina placement statute, similar to the Alabama one, had resulted in admission of black students to white schools. *Shuttlesworth v. Birmingham Bd. of Educ.*, 162 F. Supp. 372, 381-82 (N.D. Ala. 1958). The United States Supreme Court affirmed the three-judge court's decision. *Shuttlesworth v. Birmingham Bd. of Educ.*, 385 U.S. 101 (1958) (per curiam).

In denying black plaintiffs a right to attend a white school, the courts relied in large measure on an early and important gloss on the *Brown* decision from one of the South's most distinguished judges—John Parker of Charlotte. Parker had served more than 30 years on the United States Court of Appeals for the Fourth Circuit and had been nominated for a seat on the United States Supreme Court by Herbert Hoover. Parker, in language that was seized upon throughout the South as casting an important limitation on *Brown*, wrote the following in 1955:

[The Supreme Court] has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains *The Constitution, in other words, does not require integration. It merely forbids discrimination.*

Briggs v. Elliott, 132 F. Supp. 776, 777 (E.D.S.C. 1955) (emphasis added). Parker's dicta would be cited again and again throughout both North Carolina and the South for the next decade as legitimating assignment plans pursuant to which no black child was ever assigned to a white school.

²¹⁰ There had, however, been a number of attempts to desegregate the schools in North Carolina, all of which the courts rejected. See, e.g., *Carson v. Warlick*, 238 F.2d 724, 727 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); *Covington v. Edwards*, 165 F. Supp. 957 (M.D.N.C. 1958), *aff'd*, 264 F.2d 780 (4th Cir.), *cert. denied*, 361 U.S. 840 (1959); *Holt v. Raleigh City Bd. of Educ.*, 164 F. Supp. 853 (E.D.N.C. 1958), *aff'd*, 265 F.2d 95 (4th Cir.), *cert. denied*, 361 U.S. 818 (1959); *Joyner v. McDowell County Bd. of Educ.*, 92 S.E.2d 795 (N.C. 1956); *Constantian v. Anson County*, 93 S.E.2d 163 (N.C. 1956).

white schools.²¹¹ North Carolina, which studiously avoided pronouncements of defiance in conjunction with well-publicized acts of token integration, had demonstrated that a carefully orchestrated policy of “moderation” could well serve both the cause of segregation as well as the state’s economic interests.

V. CONCLUSION

The South successfully resisted meaningful implementation of the *Brown* decision until the mid-1960s.²¹² Most southern states did so in dramatic fashion, publicly pledging with great fanfare to resist all attempts to force pupil mixing on an unwilling region. Yet a few southern states like North Carolina assumed a posture of “moderation” in the wake of the *Brown* decision, motivated by a desire to preserve the economic benefits of a progressive reputation on matters of race and to prevent extensive court-ordered desegregation.

Ultimately, this policy of moderation succeeded. Lower courts throughout the 1950s refused to strike down North Carolina’s pupil placement system notwithstanding the fact that virtually no black children ever won entry into a white school. North Carolina’s perceived willingness to comply with the *Brown* decision allowed the state to mask its own form of resistance, which, though not as dramatic as that of its southern neighbors, was equally effective. By the end of the first decade after *Brown*, the schools of North Carolina were no more integrated than those of the more defiant southern states.²¹³ Nevertheless, North Carolina had managed to preserve its moderate racial image and was enjoying the benefits of that image in terms of increased new business. In a region historically beset with profound ironies when it came to matters of race, this result could not have been surprising.

²¹¹ For example, in January 1957, a federal judge in Norfolk declared the Virginia pupil placement statute—pursuant to which no black student had ever entered a white school—unconstitutional, a decision that the Fourth Circuit affirmed a few months later. *Adkins v. School Bd. of Newport News*, 148 F. Supp. 430 (E.D. Va.), *aff’d*, 246 F.2d 325 (4th Cir.), *cert. denied*, 355 U.S. 855 (1957). Similar actions were taken in Louisiana and Arkansas. *See United States v. Louisiana*, 364 U.S. 500 (1960) (per curiam); *Faubus v. Aaron*, 361 U.S. 197 (1959).

²¹² Efforts to increase southern school desegregation received an enormous boost when Congress enacted the Civil Rights Act of 1964. Title VI of that statute provided that no recipient of federal funds could discriminate on the basis of race. As a result, the Department of Health, Education, and Welfare (HEW) began an extensive effort to compel southern school districts to end their segregative practices in exchange for the continued receipt of federal funds. The amount of school desegregation in the 11 states of the old Confederacy dramatically increased after 1964 in response to HEW pressure. *See generally* GARY ORFIELD, *THE RECONSTRUCTION OF SOUTHERN EDUCATION* (1969); James R. Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967).

²¹³ Similarly, the schools of the other moderate states of Tennessee and Texas were still almost completely segregated by the tenth anniversary of the *Brown* decision. SOUTHERN EDUC. REPORTING SERV., *supra* note 7, at 29.