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Minnie Liddell's Forty-Year Quest for Quality Public Education Remains A Dream Deferred

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INTRODUCTION

This Article is a historic account of the hopes and dreams that a mother had for her children and her efforts to make those hopes and dreams come true. The mother, Minnie Liddell, never imagined, when she first became a mom in 1959, or years later after the birth of her fifth child, or even after she filed a lawsuit against a city school district, that she would become a pioneer and icon in the school desegregation history of St. Louis, Missouri. She really only wanted a quality public education for her children, for black children, for all children. This Article will tell the story of Mrs. Liddell's quest for a quality education for her children, and it will take a look at where that journey stands today.

Minnie Liddell came to St. Louis with her mother, from Mississippi, just months after her birth.[1] As she grew and attended the St. Louis public school system, it was clear to her teachers that she was a smart child. Because of segregation laws in St. Louis, however, Minnie was confined to both segregated and unequal schools. When her mother became ill in Minnie's junior year of high school, Minnie dropped out of school to work full time. Shortly thereafter she met and married her future husband. The couple's first child was born in 1959, the second in 1960, the third in 1961, the fourth in 1963, and her fifth child in 1976.[2] The mother of five not only worked hard but

1. Dale Singer, *Mother on the March Portraits of St. Louis; Fourth in a Series, Minnie Liddell*, ST. LOUIS POST-DISPATCH, May 31, 1998, at D1 [hereinafter Singer, *Mother on the March*]. Throughout this Article, I will refer to Minnie Liddell interchangeably as Minnie Liddell, Mrs. Liddell, and mostly just "Minnie." This latter reference is not a sign of disrespect. Everyone interviewed for this article, including Mrs. Liddell's youngest son, Michael Liddell, told me that she would always tell people to call her "Minnie."

2. Singer, *Mother on the March*, *supra* note 1.

she went on to receive her high school equivalency degree. She even studied to become a paralegal.[3] As her children began to reach school age, she started to become very concerned about the quality of education her children would receive. She did not want her children to attend the unequal schools of her past. In her day, the "white schools were better equipped, better maintained and received new textbooks while the black students were often housed in inferior, overcrowded schools and had to make do with books previously used by white students."[4] She did not want this for her children.

Minnie Liddell wanted a quality education for her children and the other black children in her community. It was these children, after all, who even upon a cursory glance, one could see were not getting anywhere near the same benefits as white children. And so, Mrs. Liddell's journey began eighteen years after *Brown v. Board of Education* (*Brown I*) was decided.[5] On February 18, 1972, Minnie Liddell and several other concerned African-American parents filed a class action lawsuit against the Board of Education for the City of St. Louis in St. Louis federal district court. The purpose of that lawsuit, as expressed by Minnie Liddell on so many occasions, was to obtain a quality education for her children and "all other school age children and their parents similarly situated in the City of St. Louis."[6] That lawsuit played out in the courts for over a quarter of a century.

Washington University School of Law marked the fortieth anniversary of the filing of the lawsuit with a commemorative conference in honor of Minnie Liddell, her life, and her work on behalf of the children of St. Louis City public schools. This Article, a product of that conference, will recount her struggle and will look at where St. Louis stands today on the path to a quality education.

This Article is divided into three parts. Part I will recount the historic twenty-seven-year journey of the *Liddell* case. I will explore the circumstances that led Minnie Liddell to galvanize parents and

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3. Robert W. Tabscott, *Minnie Liddell's Quest*, ST. LOUIS BEACON (Sept. 29, 2009), https://www.stlbeacon.org/#!/content/20621/minnie_liddells_quest.

4. GERALD W. HEANEY & SUSAN UCHITELLE, UNENDING STRUGGLE: THE LONG ROAD TO AN EQUAL EDUCATION IN ST. LOUIS 15 (2004).

5. Brown v. Bd. of Educ. (*Brown I*), 347 U.S. 483 (1954).

6. Complaint, Liddell v. Bd. of Educ., No. 72C100(1) (E.D. Mo. 1972) [hereinafter Complaint].

ultimately file a lawsuit against the Board of Education of the City of St. Louis.[7] That lawsuit was not resolved until two important Supreme Court decisions in the 1990s laid the foundation for public school districts to extricate themselves from continued and potentially unending desegregation efforts. Those cases provided fodder for the Attorney General of the State of Missouri to move to declare that the public schools in St. Louis had reached a unitary status, i.e., were no longer dual education systems based on race. The Attorney General's actions renewed efforts to bring closure to the litigation, and all parties, over thirty in number by this time, agreed to settle the case once and for all.[8] Part II will look more closely at where the journey for a quality public school education finds itself in St. Louis today. This will require a look at three events: (1) the St. Louis Public School District's (SLPSD) loss of accreditation in 2007; (2) the aftermath of a 2010 Missouri Supreme Court decision, *Turner v. School District of Clayton* (*Turner*)[9] —an opinion that appeared to give hope that Minnie Liddell's dream of a quality education was finally to materialize, though as explored, *infra*, that hope was both short-lived and illusory; and (3) the October surprise: the granting of provisional accreditation status to the SLPSD. Part III will conclude with the sad reality that St. Louis children remain plagued with substandard and segregated public education, and neither the presence nor repeal of the statute at the heart of *Turner* nor the granting of provisional accreditation to the SLPSD has changed this fact. Quality education remains a dream deferred *forty years* after Minnie Liddell's crusade began.

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7. Complaint, *supra* note 6. The history of this lawsuit, from its beginning in 1972 through the final settlement in 1999, is expertly and meticulously told in the book, *Unending Struggle: The Long Road to an Equal Education in St. Louis*. *See* HEANEY & UCHITELLE, *supra* note 4.

8. Liddell v. Bd. of Educ., No. 4:72CV100 SNL, 1999 WL 33314210 (E.D. Mo. Mar. 12, 1999) (Memorandum and Order Approving Settlement Agreement).

9. 318 S.W.3d 660 (Mo. 2010).

I. THE HISTORIC STRUGGLE IN ST. LOUIS FOR A QUALITY EDUCATION: MINNIE LIDDELL'S JOURNEY

> *So I simply started ringing doorbells and talking to my—because all of us up in that area were being put out of that school. And I began to walk and ring doorbells and see if other parents were as upset by this as I was.*[10]

Missouri, formerly a slave state, at one time prohibited the education of black children.[11] After the Civil War, Missouri laws were changed so that African-American children could be educated, but they were to be educated separately from white children.[12] Separate education by race was incorporated into the state's constitution in 1875, and that provision remained a part of the Missouri Constitution until its repeal in 1976, over twenty years after the Supreme Court ruled in *Brown I* that separate education was inherently unequal and violated the United States Constitution.[13] All five of Minnie Liddell's children were born after *Brown I* was

10. HEANEY & UCHITELLE, *supra* note 4, at 2 (quoting Minnie Liddell).

11. In 1847, the Missouri General Assembly passed a law succinctly stating that, "[n]o person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, § 1, 1847 Mo. Laws 103. *See also* Adams v. United States, 620 F.2d 1277, 1280 (8th Cir. 1980).

12. With the end of the Civil War in 1865, various laws relating to slavery were changed in Missouri. Most importantly for this purpose, not only was slavery abolished in the revised Missouri Constitution, but a provision was inserted legalizing the education of African-American children. While the provision did not require segregation, it often led to segregation. The constitution then provided that "separate schools *may* be established for children of African descent." MO. CONST. 1865, art. IX, § 2 (emphasis added). "Inserting the word 'may' in this provision, while indicating a vague conviction toward Negro schools, opened the way for white and black students to attend the same school in scattered instances." Henry Carson Williams, The Status of Minority Public Education in Missouri from 1820 to 1954: A Legal History 60 (1977) (unpublished Ph.D. dissertation, St. Louis University) (on file with author). An amendment was offered that would substitute the word "shall" for "may," but it was defeated by a vote of thirty-two to eight. Arthur Eugene Lee, Public Education in Post-Bellum Missouri 11 (1976) (unpublished Ph.D. dissertation, University of Missouri-Columbia) (on file with author). The mandatory language eventually ruled the day. The constitution was amended again in 1875. This time it required segregation of the races: "separate free public schools *shall* be established for the education of children of African descent." MO. CONST. 1875 art. XI, § 3 (emphasis added).

13. *Brown I*, 347 U.S. 483 (1954). The Attorney General of Missouri declared Missouri's constitutional separation provision "unenforceable" immediately after *Brown I* was decided. It would be a full twenty-three years before the Missouri Constitution was amended. *Adams*, 620 F.2d at 1280.

decided and during a time when the state constitution still gave constitutional validity to educational segregation based on race.

Unlike the school boards of many southern states, the Board of Education of the City of St. Louis did prepare for desegregation before *Brown I* was actually decided.[14] The Board adopted a three-step plan that would phase in integration between 1954 and 1956.

> The first step provided for desegregation at the junior college, teachers college level and in those classes which provided services on a city-wide basis. . . . The second step provided for desegregation of all high schools (except for the technical high schools) and also for desegregation of the adult education program. The third step provided for desegregation of the two existing technical high schools and all regular elementary schools.[15]

The plan went further to abolish all references to race and assigned students to schools based on where the students lived.[16] While the steps appeared racially neutral and integrative, the Board also enacted "general principles" to help guide the integration process. While the principles were generally designed to relieve overcrowding, those not interested in integration found ways to take advantage of the loopholes and keep their children in chosen schools.[17] New attendance zones also maintained the racial color lines of the past. The plan, then, actually did nothing to integrate schools. As the Eighth Circuit described:

> After *Brown*, the St. Louis Board of Education declared that it would implement a plan designed to desegregate its system. The heart of that plan was said to be the "neighborhood school concept." School attendance zones were redrawn and students were generally assigned to schools close to their homes. The zones were nearly identical with the boundaries of racially identifiable neighborhoods. Moreover, a "continuation transfer" option was made available to all students then

14. *Adams*, 620 F.2d at 1280.
15. Liddell v. Bd. of Educ., 469 F. Supp. 1304, 1316 (E.D. Mo. 1979).
16. *Id. See also Adams*, 620 F.2d at 1281.
17. HEANEY & UCHITELLE, *supra* note 4, at 11, 72–79.

> enrolled, permitting them to remain in the school in which they were then enrolled until graduation, unless overcrowding would result.
>
> The new plan did not change the segregated nature of the St. Louis school system. . . . [S]chools that had all-black student and faculty populations prior to *Brown* continued to be all black or virtually all black after the 1955 plan went into effect. Most pre-*Brown* white schools located in the black neighborhoods, however, turned virtually all black immediately after the plan was implemented.[18]

Additionally, most of the city's black public school students, even after *Brown I*, attended schools in old, dilapidated buildings, their textbooks were both used and outdated, their classrooms were substantially overcrowded, and their teachers did not always have the same educational readiness or credentials as white teachers.[19] This is

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18. *Adams*, 620 F.2d at 1281 (footnotes omitted) (emphasis added).

19. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4, at 14–15, 71–72, 75. Many of these problems persisted even in the late 1980s. Consider the following:

> The schools have not received major repairs in the memory of most of the staffs. Roofs leak in over half the schools. The leaks receive only temporary attention. In classroom after classroom, in gymnasiums, in libraries and study halls and in cafeterias, water is everywhere. It drips from the ceiling, down the walls and even from light fixtures.
>
> Cans, buckets and other receptacles are all over. A sixth grader in a reading class leans over in her chair to avoid the steady drip of water going into a bucket at her feet.
>
> Some of the plumbing is intolerable. On one occasion in a school when the water was flushed from a urinal, portions came down a wall in the room below, while a devoted teacher was attempting to teach her students in that room.
>
> Ceiling tile in many rooms no longer exists or is so permeated with water that it hangs perilously. Plaster falls to the floor sometimes placing the student or teacher in some danger.
>
> Paint peels from many walls and exposes the plaster or wall board and sometimes the studs.
>
> Many buildings are old and dilapidated and were designed for education seventy-five years ago. Some have no gymnasiums. Others have gymnasiums, but the ceilings are only seven or eight feet high. In many schools, a student must bend or duck going from some rooms to others to avoid hitting exposed pipes or mechanical supports.

Liddell v. Bd. of Educ., 674 F. Supp. 687, 689 (E.D. Mo. 1987); *see also* Rogers, *16 Schools Ordered Closed*, ST. LOUIS POST-DISPATCH, Sept. 4, 1987, at 1A, col. 1; Rogers, *Judge's Homework Pays Off In School Plan*, ST. LOUIS POST-DISPATCH, Sept. 6, 1987, at 1C, cols. 2–4.

the environment Minnie Liddell faced as her children prepared to attend the St. Louis city public schools.[20]

Minnie and her husband Charles lived in north St. Louis city throughout their children's public school years. In the early 1960s, as is the case now, north St. Louis city was inhabited predominately by black residents. While some believe that housing patterns are the result of choice,[21] choice really cannot be advanced as a credible response to the situation in St. Louis in the late twentieth century. Rather, after Reconstruction, after World War II, and during Jim Crow, various governmental policies (at all levels: federal, state, local), as well as the private actions of many in power, steered and controlled the confinement of the black population to the north St. Louis area.[22] The results of those policies remain in effect today.[23]

The couple's oldest child, Craton, was born in 1959. His elementary school experience provides a perfect example of how black children attending public schools in St. Louis attended assigned schools at the whim of the Board of Education of the City of St. Louis. Craton attended one school for kindergarten, another school for first, second, and third grades, and a third school for fourth and fifth grades.[24] He often attended overcrowded schools in dangerous

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20. Singer, *Mother on the March*, *supra* note 1, at D1.

21. Parents Involved in Community Schools v. Seattle School District No. 1 (*PICS*), 551 U.S. 701, 750 (2007) (Thomas, J., concurring) ("Although presently observed racial imbalance might result from past *de jure* segregation, racial imbalance can also result from any number of innocent private decisions, including voluntary housing choices." (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 25–26 (1971); Missouri v. Jenkins, 515 U.S. 70, 116 (1995)).

22. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4, at 16 (footnotes omitted) where the authors noted:

> The demographics and city planning strategies of St. Louis help to explain the slowness and ineffectiveness of the integration process. Local, state, and federal governments all played a part in perpetuating segregation after 1954. The city of St. Louis failed to enforce building codes in predominantly black neighborhoods, insurance companies and lenders "redlined" certain neighborhoods, and newspapers continued to print "colored" housing ads separately from ads for whites.

See also Shelley v. Kraemer, 334 U.S. 1 (1948). For an excellent discussion of the role governments and private industry played in limiting black mobility, economic growth, and educational opportunity, see COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY (Glenda Gilmore et al. eds., 2008).

23. *See, e.g.*, GORDON, *supra* note 22.

24. Singer, *Mother on the March*, *supra* note 1. Transfers were hard on the children and

buildings with inadequate resources. To relieve the overcrowding, the Board resorted to a policy of old known as "intact busing."[25] Intact busing:

> [I]s a technique that daily sends an entire class of students, with their teacher, from an overcrowded school to a vacant classroom elsewhere. The technique was used to combat overcrowding in the pre-*Brown* era with white students being bused to white schools and black students to black schools. Because the 1954–1956 redistricting temporarily reduced overcrowding, intact busing was used sparingly from 1955 to 1957. In 1959, however, intact busing again became significant and over 1,000 students were so bused. This number grew to more than 6,000 by 1963. The bused students were treated administratively as part of the school from which they came rather than the school to which they were sent. Consequently, they often arrived, recessed, ate lunch and departed on different schedules than the other students in the receiving school. They thus became an isolated subset of the school in which they were housed. Significantly, in the post-*Brown* era most of the students affected by this policy were black students sent to white schools.[26]

Black parents were vehemently opposed to intact busing.[27] Below reflects a sample of the concerns parents had with the way their children were treated:

> [B]lack and white children had separate lunch periods . . . and drank from water fountains at designated times[.] [B]lack children were required to wait for school buses outside of the schoolyard while white children played inside the yard[.] [W]hite children were taught by white teachers and black

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parents. News reporter Dale Singer noted that in addition to the multiple transfers of the children, the overcrowded conditions, lack of resources, dilapidated surroundings, and the stonewalling by the Board of Education, some of the Liddell children were beaten up by classmates in the different schools. The Liddell parents even had their car tires flattened one night as they attended at PTA meeting at one of the schools. *Id.*

25. *Adams*, 620 F.2d at 1288.
26. *Id*. (emphasis added).
27. HEANEY & UCHITELLE, *supra* note 4, at 77.

> children by black teachers. Others allege that black children had to enter the school building through a separate door.[28]

Craton Liddell, too, was subjected to intact busing.[29] Of course, even intact busing was not a final solution, and it was not long before he and his siblings were reassigned again, this time to the Yeatmann elementary school. Despite the fact that Yeatmann was overcrowded, Minnie Liddell was pleased with the school because it was in a new building, it was closer to home, and the principal cared about the children.[30] The Liddell children were not at Yeatmann long before yet another dreaded transfer notice came in the mail: the children would be transferred to Bates elementary, a school much farther away from the Liddell home and in an area Minnie Liddell later described as "bombed out."[31] Indeed, the Bates school had previously been closed because of its poor condition, a condition that had not changed when the Board of Education decided to relocate students there.[32]

The constant transferring of her children and the overcrowded conditions and dilapidated buildings weighed heavily on Minnie, and she had had enough. Minnie started ringing doorbells, talking to her neighbors and polling her neighborhood to see if other parents were as tired as she was with the instability and inferior education that their children were receiving. With Minnie's persistence and guidance, parent meetings were held, and a group known as the Concerned Parents of North St. Louis (Concerned Parents) was formed with Minnie Liddell as its leader.[33] The parents were very concerned about a pattern they noticed: although school boundary lines were constantly changing, those changes always managed to keep black children in black schools, or, in the case of intact busing, in segregated classrooms. The Concerned Parents attempted to meet with the School Board but were ignored. There were four black school board members at the time, but they "not only skipped the

28. *Id.* (footnotes omitted).
29. *Id.* at 15.
30. Singer, *Mother on the March*, *supra* note 1.
31. *Id.*
32. HEANEY & UCHITELLE, *supra* note 4, at 15.
33. Singer, *Mother on the March*, *supra* note 1.

[requested] meeting; they ignored the invitation."[34] As Minnie would later say: "The board really thought that if they ignored us, we would go away. That was the way they had handled parents' protests in the past. They would just wait you out."[35]

These parents, however, with Minnie as their leader, would not go away. Minnie vowed to be a "fly in the authorities' butter milk."[36] The parents took up pickets outside of the school and eventually boycotted by withdrawing their children from school and homeschooling them. Half of the student body participated in the boycott and stayed home. Overcrowding was solved temporarily, but many parents were forced to capitulate, and their children ended up taking the bus to the overcrowded, structurally unsound Bates elementary school across town.[37] The rest of the parents continued with their boycott—lasting six weeks in total—until school officials agreed to send the children to another school.[38] The parents were allowed to pick whatever school they wanted. The Liddells chose Simmons elementary, which was the school Charles Liddell had attended.[39] The Board refused to provide transportation for any school other than Bates, however, so Charles Liddell drove his children back and forth to school every day. Then a funny thing happened: the School Board attempted to relocate a small group of white students from one school in south St. Louis to another school in the same area. When the parents of these children protested, all efforts to transfer the students immediately ceased, and the white parents were given what they wanted.[40] This did not sit well with black parents in north St. Louis. Refueled by this indignation, the Concerned Parents renewed their demands to fight for better schools in their community. They continued, however, to face resistance from the School Board. As Minnie recalled:

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34. *Id.*
35. *Id*.
36. Tabscott, *supra* note 3.
37. Singer, *Mother on the March*, *supra* note 1.
38. *Id*.
39. HEANEY & UCHITELLE, *supra* note 4, at 18.
40. Singer, *Mother on the March*, *supra* note 1.

> They'd sit there real stone-faced. Then the president hit the gavel and he said, "Next!" I kind of changed the structure of their meetings, though. They couldn't make me sit down. I talked as long as I wanted to, and I said what I wanted to say. I think [the president of the Board] thought I was crazy for a long time. The more we were rebuffed, the more angry I became. I saw these people with the total control of my children's lives and futures in their hands, and none of them really gave a damn.[41]

A point came in time when the School Board agreed to meet privately with the Concerned Parents but only with Minnie and her husband. In that meeting, the acting Superintendent told Mrs. Liddell that he had "been working in this school system for twenty-seven years [and she wouldn't be able to] change a thing. . . . [She couldn't] change anything in this system."[42] It was after this meeting, Mrs. Liddell later recalled, that she decided to change things.[43] The first meeting of parents was at Minnie Liddell's house.[44] The group grew, and they looked to the community for support. To their surprise, they met great resistance again. Many in the black community were not responsive,[45] the four black school board members would not meet with the parents,[46] black teachers were offended because they believed the parents were questioning their competency,[47] and the NAACP specifically turned the parents away.[48] Of that rejection, Mrs. Liddell recalled as follows:

> [The president of the local chapter of the NAACP] looked at us like we was crazy. He said, "Schools in St. Louis are not segregated. The NAACP took care of that in the '60s. We met

41. *Id.*
42. HEANEY & UCHITELLE, *supra* note 4, at 19.
43. *Id.*
44. Interview with Michael Liddell, in St. Louis, Mo. (May 19, 2011) [hereinafter Liddell Interview].
45. Tabscott, *supra* note 3.
46. *See supra* note 34 and accompanying text.
47. HEANEY & UCHITELLE, *supra* note 4, at 80.
48. *Liddell*, 469 F. Supp. at 1310 n.1.

> with them and they changed their policy." I told [him] they may have changed their policy, but that is all they changed.[49]

The parents found two lawyers, William Russell and Joseph McDuffy, who agreed to represent the parents pro bono if they agreed to help with the research and raise money to cover the court filing fee. And the parents did: they held barbeques, dances, and bake sales to raise the money, and the lawsuit was filed on February 18, 1972.[50] A few short years later, the parties entered into a Consent Decree. The Decree was published in the *St. Louis Daily Record*, and a ninety-day period was provided for others to file suggestions to the desegregation plan set forth therein.[51] Several groups, including most importantly, the St. Louis Chapter of the NAACP, objected and moved to intervene in the lawsuit.[52] Although the intervention motions had the effect of stopping the Decree from going into effect as such, the Board did implement many of the intra-district remedies envisioned by that decree, including a very successful form of intra-district magnet schools.[53]

The district court initially denied the motions to intervene as untimely, but that ruling was overruled by the Eighth Circuit.[54] Intervention by the NAACP completely changed the dynamics of the case. Minnie Liddell and the Concerned Parents were primarily focused on a quality education. For them, this meant up-to-date

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49. HEANEY & UCHITELLE, *supra* note 4, at 87.

50. Dale Singer, *Symposium Will Look Back 40 Years at School Desegregation Case*, ST. LOUIS BEACON (Mar. 20, 2012), https://www.stlbeacon.org/#!/content/23434/minnie_031912?cover page=414.

51. Liddell v. Bd. of Educ., 469 F. Supp. 1304, 1389–90 (E.D. Mo. 1979). Interestingly, the magnet schools concept, which was a part of this Decree and eventually became an important part of the inter-district settlement, was Minnie's idea. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4, at 86.

52. HEANEY & UCHITELLE, *supra* note 4, at 86. Recall that the NAACP earlier rejected Mrs. Liddell's request for help. *See, e.g.*, Singer, *Mother on the March*, *supra* note 1.

53. Interview with Kenneth Brostron, Attorney for the Board of Education, City of St. Louis during the *Liddell* lawsuit, in St. Louis, Mo. (May 31, 2012) [hereinafter Brostron Interview].

54. Although the motions were originally denied by the district court because they were untimely filed, the Eighth Circuit reversed. *See* Liddell v. Caldwell (*Liddell I*), 546 F.2d 768, 774 (8th Cir. 1976), *cert. denied*, 433 U.S. 914 (1977). The teachers' unions were also denied intervention by the district court, but they never appealed. *See, e.g., Liddell*, 469 F. Supp. at 1310.

school books in satisfactory conditions, adequate resources, qualified and well paid teachers, structurally sound facilities, and safe transportation when required.[55] Mrs. Liddell was concerned with "parity in the expenditures for public schools" and "she swore [that] to the day of her death . . . she would be kicking and screaming to achieve equality in education for all children."[56] She also was an advocate of neighborhood schools.[57] She liked her children being close to home and preferred quality education close to home.[58] The NAACP, though, was concerned not just with quality schools but with integrated schools.[59] With the larger focus on integration and with a much smaller white student population then living in the City of St. Louis, neighborhood schools really were not an option.[60] Both the NAACP and the Board of Education for the City of St. Louis, then, forced consideration of inter-district relief by separately filing lawsuits against twenty-three suburban districts near the St. Louis City borders claiming that they, too, had participated in the racial segregation of students in the metropolitan St. Louis area.[61] Aside from the various governmental policies that intensified segregation throughout St. Louis,[62] there was evidence to support the theory that

55. Liddell Interview, *supra* note 44. Of course, this was not the first time that the NAACP goals differed from those of black parents in school desegregation efforts. For a similar account of the struggle between black parents in Atlanta and the NAACP, see TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT (2011).

56. Singer, *Mother on the March*, *supra* note 1.

57. Editorial, *Craton Liddell's Legacy*, ST. LOUIS POST-DISPATCH, Jan. 20, 2003, at B6 [hereinafter *Craton Liddell's Legacy*].

58. Liddell Interview, *supra* note 44.

59. Interview with Michael Middleton, Attorney for the NAACP during the *Liddell* lawsuit, in Columbia, Mo. (July 29, 2009). The NAACP's financial resources were much greater than those of the *Liddell* plaintiffs' lawyers. The size, financial benefits, and experience of the NAACP, while often a source of tension with the *Liddell* plaintiffs, ultimately ruled the day. And this, Michael Middleton believes, was ultimately for the best. Mr. Middleton is convinced that without the NAACP, the *Liddell* plaintiffs' lawyers simply would not have been able to withstand the Goliath strength of the State of Missouri and Board of Education of the City of St. Louis. Mr. Middleton also believed then, and believes now, that an integrated school system is better than a non-integrated one. *Id*.

60. *Liddell I*, 546 F.2d at 772 ("the total student population for the school term of 1975–1976 was 88,499 with the ratio of students being approximately 70% black and 30% white").

61. Brostron Interview, *supra* note 53.

62. *See generally* GORDON, *supra* note 22.

suburban school districts had also participated in unlawful racial segregation. As the Eighth Circuit noted:

> St. Louis County suburban school districts, pursuant to state law prior to *Brown*, collaborated with each other and with the City of St. Louis to ensure the maintenance of segregated schools. *See* Act of April 9, 1917, *1917 Mo. Laws 498* (repealed 1957) (providing for the "Colored Consolidated High School District" of St. Louis County); Act of February 17, 1865, § 13, *1865 Mo. Laws 170* (repealed 1957) (providing, *inter alia*, for the inter-district transfer of "colored children"). Included among the pre-*Brown* practices of these districts was the assignment and transportation of black students living in the suburbs to black schools in the City.[63]

The lawsuit, however, toiled in the system for five years before a trial was finally held. During that five-year period, the Liddells had to get a second telephone line because Minnie was fielding so many calls about the case. Some of those calls included very nasty ones which hurled venom and vile, "nigger this, and nigger that," slurs, and even threats.[64] Craton also hated his name on the case, and he did not appreciate the extra attention.[65] Minnie's children begged her to walk away because of the toll the case had on their family and their social lives, but she told them walking away was something she could not do.[66] Finally, after five years of waiting, the first day of the trial began:

> Bernice Yarber, whose daughter Deborah also was a plaintiff in the case, had shopped with Minnie for a three-piece red suit to make a majestic impression on the witness stand. "She was very stately," Yarber said. "She walked into a building that belonged to her, in front of a judge whose salary she paid." Dorothy Springer, a white parent who started as an antagonist and ended up a friend—as well as a member of the School Board—was in the courtroom the day that Minnie walked in. It

63. *Adams*, 620 F.2d at 1293.
64. Singer, *Mother on the March*, *supra* note 1.
65. *Craton Liddell's Legacy*, *supra* note 57.
66. Singer, *Mother on the March*, *supra* note 1.

> was Oct. 20, 1977. "She filled the doors," Springer said. "It almost looked like the doors weren't big enough for her presence. Her voice was firm. It had conviction. It had compassion."[67]

But the trial was a severe disappointment. Proceedings on the merits of potential constitutional violations on the part of the suburban districts were stayed early on in the litigation.[68] The trial proceeded against the Board of Education of the City of St. Louis and the State of Missouri. After a thirteen-week trial with forty witnesses, 1,200 trial exhibits and over 7,000 pages of transcript, the district court found no constitutional violation by the Board of Education.[69] The Eighth Circuit reversed. It specifically found that both the Board of Education of the City of St. Louis and the State had maintained racially segregated educational systems.[70] The case was remanded to the district court with a strong manifesto:

> Segregation in the elementary and secondary schools in St. Louis must now be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.[71]

Shortly after the case was returned to the district court, a desegregation planning committee was established, which included Minnie Liddell and nineteen others. The job of the committee was to produce a citywide busing plan to be executed a few months later in time for the next academic year. The meetings included black parents

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67. *Id.*

68. *See* D. Bruce La Pierre, *Voluntary Inter-district School Desegregation In St. Louis: The Special Master's Tale*, 1987 WIS. L. REV. 971, 979–80 n.25 (1987); s*ee also* Liddell v. Bd. of Educ., 677 F.2d 626, 640 n.38 (8th Cir. 1982), *cert. denied*, 459 U.S. 877 (1982) (assuring the suburban districts that inter-district liability issues would only be determined after a full hearing on the merits).

69. *Liddell*, 469 F. Supp. at 1364–65.

70. *Adams*, 620 F.2d at 1291, *cert. denied*, 449 U.S. 949 (1980).

71. *Adams*, 620 F.2d at 1291–92.

on the north side of town and white parents on the south side of town. The meetings were regular, and some found them volatile. They ended, though, with newfound friendships among black and white parents who realized that they all just wanted a quality education for their children. Although it took time to get there, common ground was found, and the members of the committee celebrated this recognition by joining hands around a large conference table, black and white together, and singing "We Shall Overcome."[72]

As it turned out, however, citywide busing simply did not go over well. Aside from the fact that white student enrollment fell by the thousands between the 1971–72 school year and the 1978–79 school year, many white parents simply continued their hostility to efforts to integrate the city schools.[73] So many white families ran away from public schools during this time that even the Catholic and Lutheran schools in the city were forced to halt "the admission of public school students who were trying to avoid desegregation."[74] People could still move out of St. Louis, of course, and they did so, leaving fewer and fewer whites remaining and making integration within the district more and more difficult. The *Liddell* lawsuit was still active, and both the NAACP and the Board of Education for the City of St. Louis continued their pressure for inter-district relief. The district court judge warmed to this idea, and a court order in June of 1980 proved instrumental in laying the framework for an inter-district desegregation plan. The court's order included remedies for voluntary inter-district busing, diversity training, curriculum improvements, community relations, and the integration of school teachers. It also ordered the State and the Board of Education to make every effort to work with the suburban districts to create a voluntary desegregation program between the districts for implementation by the 1980–81 school year, and it ordered these groups to submit a larger, more permanent plan for desegregation between the city and suburban districts.[75] In an effort to assuage public concern, the

72. Singer, *Mother on the March*, *supra* note 1.
73. HEANEY & UCHITELLE, *supra* note 4, at 92–93.
74. *Id*. at 92.
75. Liddell v. Bd. of Educ., 491 F. Supp. 351, 353–54 (E.D. Mo. 1980). Although the district court's order was progressive and promising, it left over 30,000 black children in all-black schools. This was the reason behind the district court's order to the defendants to look

district court judge immediately appointed an interracial citizens' advisory committee to provide public education and awareness surrounding the process.[76]

A phenomenal account of the litigation has been told in the book: *The Unending Struggle: The Long Road to an Equal Education in St. Louis*.[77] The first judge on the case, district court Judge Meredith, was forced to step down for health reasons after eight years of presiding over the case. He was replaced by district court judge William Hungate, who was on the federal bench less than a year before his assignment to the already famous *Liddell* case.[78] By the time Judge Hungate was assigned to the case, the parties not only included the original parties to the lawsuit, but also the NAACP, the United States Department of Justice, the Board of Education of the City of St. Louis realigned as a plaintiff,[79] the State of Missouri, dozens of suburban school districts, and the Special School District.[80]

As the case continued to make its way through the system, a law school professor wrote an article in the local newspaper expressing frustration that the case was moving too slowly and boasting that he thought the case could be settled. The next thing this professor knew, Judge Hungate called him on the telephone, questioned him, and then said: "so you think you can settle the case? I'd like to see you try. I am appointing you as a Special Master on the case, effective immediately."[81] That law professor, Washington University School of Law professor D. Bruce La Pierre, has written a detailed account of his experience as Special Master.[82] The appointment of the Special

more closely at inter-district involvement, voluntary or otherwise. This prompting ultimately became the basis of inter-district focus and its prominent role in the 1983 Settlement. La Pierre, *supra* note 68, at 975–87.

76. HEANEY & UCHITELLE, *supra* note 4, at 96. Then-Washington University School of Law Dean Edward T. Foote chaired this committee. Dr. Gary A. Orfield was the court-appointed expert and was retained to provide advice in preparing a desegregation plan. *Id.*

77. HEANEY & UCHITELLE, *supra* note 4.

78. *Id.* at 107.

79. *Id.* at 991.

80. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4; *see also* THE ST. LOUIS COMMUNITY MONITORING AND SUPPORT TASK FORCE 53 (unpublished 2009/2010 Annual Report To The Community) (on file with author) [hereinafter *Annual Report*]; La Pierre, *supra* note 68, at 990–92.

81. Interview with D. Bruce La Pierre, in St. Louis, Mo. (Feb. 10, 2011).

82. La Pierre, *supra* note 68.

Master and the district judge's threats that he would consider a mass consolidation of the various school districts into one large metropolitan district with a uniform tax base if an inter-district violation were found (portending a remedy before a resolution of liability), signaled to all that the court was very serious about its hopes for a settlement. The threat of mass consolidation outraged the suburban school districts, the Attorney General of Missouri, and many members of the public.[83]

Even with such a threat, though, hundreds of hours were logged by the Special Master attempting to settle the case.[84] An agreement, a seventy-five-page, single-spaced document, was ultimately signed by the plaintiffs[85] and the over twenty suburban school districts.[86] The agreement, implemented in the 1983–84 school year,[87] had three major components:[88] (1) it provided for the voluntary inter-district transfer of 15,000 black students living in St. Louis City to suburban

83. *Id.* at 991–92; *see also* HEANEY & UCHITELLE, *supra* note 4, at 118. The district court's threats not only drew the ire of the suburban districts, but also that of Attorney General John Ashcroft, various state legislatures, and even resulted in death threats made against the judge. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4, at 118–19.

84. Interview with D. Bruce La Pierre, *supra* note 81. See La Pierre, *supra* note 68, at 995–1000, for a detailed explanation of the hundreds of hours of work invested by law professor D. Bruce La Pierre to turn the proposed settlement into a reality.

85. Two groups of plaintiffs, the City of St. Louis and the United States, did not sign the agreement. The district court noted that after being allowed to intervene in the case in 1977, the two plaintiffs not only declined "to join in this effort to settle the case," but also were "reluctant either to litigate or to settle." Liddell v. Bd. of Educ., 567 F. Supp. 1037, 1040–41 (E.D. Mo. 1983), *aff'd as modified*, 731 F.2d 1294 (8th Cir. 1983) (en banc), *cert. denied*, 469 U.S. 816 (1984).

86. *Liddell*, 567 F. Supp. at 1040. The Eighth Circuit modified the original settlement agreement in several ways, the most important of which were as follows: (1) it limited transfers of black students from the city into the county to 15,000; (2) it denied the proposal that the State pay for county-to-county transfers; and (3) it denied the provision for State funding of county magnet schools. *Liddell VII*, 731 F.2d at 1309–12. The State of Missouri did not approve of the settlement. HEANEY & UCHITELLE, *supra* note 4, at 123. Despite its refusal to sign, the State was ordered to share in the costs of the intra-district transfer costs and to pay all of the inter-district transfer costs. *See Liddell*, 567 F. Supp. at 1055; HEANEY & UCHITELLE, *supra* note 4, at 125. After all was said and done, the State of Missouri would ultimately pay out approximately $2 billion, through the fiscal year 2010, in this desegregation case. *See* E-mail from Robin Coffman, Chief of Staff, Mo. Comm'r of Educ. Office, to author (May 23, 2012, 11:41 A.M. CST) (on file with author) [hereinafter Coffman E-mail May 23].

87. HEANEY & UCHITELLE, *supra* note 4, at 130; La Pierre, *supra* note 68, at 1013.

88. In addition to its major provisions, the agreement also established hiring goals for black teachers and administrators, created a voluntary teacher exchange program between the city and the county, and had elaborate finance provisions. La Pierre, *supra* note 68, at 1001.

schools;[89] (2) it provided for the establishment and growth of magnet schools in the city;[90] and (3) it envisioned quality education improvements and capital improvements for the estimated 10,000–15,000 children who, even after transfers and magnet schools, would remain in segregated schools in the city.[91] So, as it turned out, Professor La Pierre was correct. He was able to settle the case. And that settlement turned out to be the largest, most comprehensive, and most successful school-choice plan of its era.[92] Four of the Liddell children were finished with public school by the time this settlement was penned. The Liddells' youngest child, Michael, was in elementary school.[93]

Less than ten years after this historic settlement, the United States Supreme Court issued a series of opinions that began to rein in efforts

89. The agreement included plan ratios and goals for the transfer of black students into suburban schools. For example, suburban districts with low minority enrollments agreed to increase their percentages of black students to at least 15 percent beyond their current minority ratio up to a 25 percent maximum. The plan was capped so that minority students, resident and nonresident combined, would not make up more than 25 percent of student enrollment. HEANEY & UCHITELLE, *supra* note 4, at 123; La Pierre, *supra* note 68, at 1001. An organization known as the Voluntary Inter-district Coordinating Council was established to supervise the student transfers, among other things. La Pierre, *supra* note 68, at 1001. It was renamed the Voluntary Inter-district Choice Corporation (VICC) in 1999. For a history of VICC, see *Historical Background*, VOLUNTARY INTERDISTRICT CHOICE CORPORATION, http://www.choicecorp.org/HistBack.htm (last visited July 08, 2012).

90. Under the original terms of the agreement, magnet schools were to be racially balanced at 50 percent black, 50 percent white, with a 10 percent variance. La Pierre, *supra* note 68, at 1004.

91. *Id.* at 1005. *See also Liddell VII*, 731 F.2d at 1312–15. This third aspect of the settlement never operated as efficiently as was planned. Funding and goals likely were the problem. As the Special Master noted: there never was a "generally accepted comprehensive description of the approved quality education component." La Pierre, *supra* note 68, at 1030. This made assessment problematic. It took many years for the Board to comply with the court directives to reduce pupil/teacher ratios to twenty-four to one. The capital improvements aspects of the settlement were deemed by the Special Master to be "a complete failure." *Id.* at 1032. The State's obligation, initially, was to match funds raised by the Board of Education through bond issues. However, the Board was never able to obtain voter approval. "Although these bond issues have been supported by the predominately black north side, they have failed to garner adequate support on the predominately white south side." *Id.* at 1033 (footnote omitted). Recall the deplorable conditions of the city schools in 1987. *Id.* The court eventually removed the matching limitation in place and required the State to pay now rather than later. It also found that the Board did not have to pass a bond. It would pay for improvements, over time, out of existing revenue. *Id.* at 1035.

92. HEANEY & UCHITELLE, *supra* note 4, at 129, 202; *Craton Liddell's Legacy*, *supra* note 57.

93. Singer, *Mother on the March*, *supra* note 1.

to desegregate schools.[94] Specifically, in *Oklahoma City Board of Education v. Dowell*,[95] the Court limited an earlier Supreme Court precedent. In *Brown I*, the Court held that "[s]eparate educational facilities are inherently unequal."[96] A dozen years later, and still holding steadfast to the legacy of *Brown I*, the Court, in *Green v. County School Board of New Kent*,[97] clarified how far school districts needed to go to comply with *Brown I*. *Green* held that school boards were obligated to eliminate dual racial segregated education systems "*root and branch*."[98] But the elimination of segregation at its root and at its branch was no longer the goal in 1991. Rather, *Dowell* allowed school districts to file motions declaring that *they had done all they could to make the district a unitary one, even if the district was still, in fact, racially segregated*.[99] Good-faith efforts replaced complete elimination. Elimination of the vestiges of past discrimination *to the extent practical* was sufficient to satisfy the Constitution.[100] *Freeman v. Pitts*,[101] decided the next year, gave States the power to obtain relief from desegregation orders *incrementally*. In other words, declarations that dual and segregated areas of the system were

94. In 1974, the Supreme Court held, in *Milliken v. Bradley*, 418 U.S. 717, 752 (1974), that it was constitutionally impermissible to impose an inter-district remedy for an intra-district violation in the absence of any claim or finding that all districts included within the district court's order engaged in unconstitutional behavior. This was a blow to the desegregation effort, since many urban areas were faced with declining white student enrollment and white flight to suburban areas. *Looking To The Future Voluntary K–12 School Integration: A Manual For Parents, Educators, and Advocates* 7 (2005), http://www.naacpldf.org/files/case_issue/Voluntary_K-12_School_Integration_Manual.pdf [hereinafter *Looking to the Future*]. More devastating, many civil rights supporters argued, were back-to-back Supreme Court cases decided in the 1990s: *Bd. of Educ. v. Dowell*, 498 U.S. 237 (1991) and *Freeman v. Pitts*, 503 U.S. 467 (1992). *See Looking to the Future*, *supra*, at 8; *see also* CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF *BROWN V. BOARD OF EDUCATION* 256–61 (2004).

95. 498 U.S. 237 (1991).

96. 347 U.S. at 495. One year later, *Brown v. Bd. of Educ.* (*Brown II*), 349 U.S. 294, 301 (1955), found that school boards should admit students to public schools "on a racially nondiscriminatory basis with all deliberate speed."

97. 391 U.S. 430 (1968).

98. *Id.* at 437–38 (emphasis added).

99. In explaining the difference between a unitary system and a dual one, *Dowell* stated: "Courts have used the terms 'dual' to denote a school system which has engaged in intentional segregation of students by race, and 'unitary' to describe a school system which has been brought into compliance with the command of the Constitution." *Dowell*, 498 U.S. at 246.

100. *Id*. at 249–50.

101. 503 U.S. 467 (1992).

eliminated, eased or otherwise addressed, to the extent practical, could be sought even if other areas of the same system were still dual in nature.[102]

Almost immediately after *Dowell*, the Attorney General of Missouri filed the first of what would eventually number three motions to have the SLPSD declared unitary.[103] The filing of these and similar motions[104] resulted in a three-week hearing.[105] A finding

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102. Specifically, the Court held as follows:

> . . . in the course of supervising desegregation plans, federal courts have the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations. While retaining jurisdiction over the case, the court may determine that it will not order further remedies in areas where the school district is in compliance with the decree. That is to say, upon a finding that a school system subject to a court-supervised desegregation plan is in compliance in some but not all areas, the court in appropriate cases may return control to the school system in those areas where compliance has been achieved, limiting further judicial supervision to operations that are not yet in full compliance with the court decree.

Id. at 490–91.

103. Liddell v. Bd. of Educ. (*Liddell XXIX*), 126 F.3d 1049, 1053 (8th Cir. 1997). The first motion was filed in October of 1991, a revised motion was filed in May of 1992, and a third motion was filed in November of 1993. A hearing was held in March of 1996. *Id.* at 1053–54.

104. There were other motions filed by the State to eliminate, terminate, or otherwise reduce its financial obligations under the 1983 Settlement Agreement. For example, in January of 1996, the State filed a motion to terminate the voluntary transfer of students as set forth in the 1983 Settlement. This motion relied heavily on a then-recent Supreme Court decision, *Missouri v. Jenkins* (*Jenkins III*), 515 U.S. 70 (1995). The district court in Kansas City found that the Kansas City School District did segregate children in public schools on the basis of race. Efforts to desegregate were nearly impossible given the racial composition of the Kansas City school district. The district court struggled to find ways to lure white children from suburban schools back to Kansas City for integration purposes. The court decided to turn the Kansas City School District into one big magnet school district in order to lure the white students from the suburbs into the city schools. This decision led to one of the most expensive and exhaustive efforts to make the Kansas City School District the best in the nation. The Supreme Court overturned this remedy as well beyond what was needed to remedy the intra-district constitutional violation. *Id.* Justice O'Connor, who concurred in the plurality opinion in *Jenkins III*, explained that the case stood for the proposition that a school district's constitutional violations did not transcend the geographical boundaries of the district. Thus, remedies could not include districts not alleged or proven to be constitutional violators. *Id.* at 113. In *Liddell*, the district court denied the State's motion as premature. Fourteen months later, the State filed a near identical motion asking that all efforts to recruit and admit new students into the transfer program cease and desist pursuant to *Jenkins III*. The motion was again denied and affirmed on appeal. *Liddell XXIX*, 126 F.3d at 1054–58. Regarding *Jenkins III*, the Eighth Circuit stated as follows:

> A premise of *Jenkins III* was that the trial court specifically found that no inter-district violation had taken place. No such determination has been made here. To the contrary,

that unitary status had been reached in the SLPSD would have ended all efforts theretofore put in place to desegregate the public schools in St. Louis. Indeed, as Chief Justice Roberts would later say in *Parents Involved in Community Schools v. Seattle School District No. 1*,[106] once unitary status has been reached, the school district has "remedied the constitutional wrong that allowed race-based assignments."[107] Given the movement of thousands of black children into suburban schools and white students into urban schools on a daily basis, it was very clear that a finding of unitary status would have resulted in complete resegregation the minute inter-district efforts ceased. To avoid this outcome, the district court judge appointed a "Settlement Coordinator" to help facilitate a more fathomable conclusion to the quarter-century-old case.[108] This coordinator, Dr. William Danforth, former Chancellor of Washington University in St. Louis, proceeded to shepherd a final resolution. He would later explain his role as follows:

> The first goal was to prevent disaster. Let's say, if the case had come to an end with no settlement agreement, the court had ended it, about twelve thousand kids would have come from the county to the city, the city would have had less money to take care of them than it had before they came, and no facilities. So the settlement basically continued the good programs instituted under the court order.[109]

In addition to avoiding disaster, Chancellor Danforth sought independence from the court's supervision; he sought a settlement that would have finality;[110] and he sought a settlement that would

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> from the beginning the plaintiffs asserted inter-district violations. Rather than contest these allegations, the County District entered into a settlement agreement under which they agreed to accept a significant number of transfer students and in return were promised judgments relieving them from any possible constitutional violations.

Id. at 1058 (emphasis added).

105. *Liddell XXIX*, 126 F.3d at 1054.

106. 551 U.S. 701 (2007).

107. *Id.* at 721.

108. *Id.*

109. HEANEY & UCHITELLE, *supra* note 4, at 193.

110. The agreement was projected to continue "at least ten years from the effective date of the Agreement." Agreement Among Participating School Districts 59 (1999) (unpublished

continue to allow voluntary participation in desegregation efforts and allow the State to phase out its funding obligations under the 1983 Settlement.[111] A new corporation also was to be formed to take the place of the court's supervision of the program.[112]

By 1996–97, the health of the fifty-seven-year-old Minnie Liddell had taken an irreversible turn for the worse. No woman on her mother's side had ever lived past the age of forty, and some say that the family's history of bad health finally caught up to Mrs. Liddell. Although she survived diabetes and multiple surgeries in a short four-year span, by 1996 she was suffering and attempting to recover from various ailments including appendicitis, a heart attack, a stroke, and multiple hospitalizations.[113] Despite these health challenges and others, like the fact that the left side of her face was rendered immobile after her stroke, or that she lost control over her left eye as a result of damage to her optic nerve, or that sores on her feet made it almost impossible for her to stand, much less to walk,[114] she still

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settlement agreement) (on file with author) [hereinafter 1999 Settlement Agreement]; *see also* HEANEY & UCHITELLE, *supra* note 4, at 199–200.

111. The State's financial obligation in the desegregation case was substantial. *See, e.g.*, Coffman E-mail May 23, *supra* note 86. The fact that it fought and appealed virtually every decision in the case played a large part in the dollars ultimately spent on the case. *See, e.g.*, HEANEY & UCHITELLE, *supra* note 4, at 200:

> [A]lthough the state obeyed every court order either before or after it exhausted its appeals to higher courts, it resisted every step of the way. The state filed numerous appeals to the United States Court of Appeals, and the parties petitioned the U.S. Supreme Court on five occasions. The state argued repeatedly that the court did not have the authority to order the state to fund the inter-district programs, and that the costs to the state were too high and without precedent. While complaining about the high costs of the desegregation program, the state spent over $8 million pursuing these legal actions.

HEANEY & UCHITELLE, *supra* note 4, at 200 (footnotes omitted).

112. The "New Entity," as it was referred to in the 1999 Settlement Agreement, provided that this entity would "receive, hold and disburse all funds pertaining to transfer students (including for transportation) generated under SB 781 (and enactments made therein) and all funds relating to the transfer program received pursuant to the 1999 Settlement Agreement or otherwise." 1999 Settlement Agreement, *supra* note 110, at 56. The "New Entity" was incorporated as the "Voluntary Interdistrict Choice Corporation." *See Annual Report*, *supra* note 80, at 60.

113. Singer, *Mother on the March*, *supra* note 1. Mr. Liddell, too, began to suffer from multiple sclerosis and leukemia. With Mrs. Liddell now immobile herself, her daughter moved in with her parents to help them out. *Id*.

114. *Id.*

found the strength to attend a hearing before various state legislators in 1997, with her son Craton. The meeting was of marathon length, and she did not get a chance to speak until after midnight. Although her words were slurred from her stroke, she made it clear that it was a sad day for her and for the children of St. Louis:

> I got out of my sickbed hoping I would hear something new and different, but I didn't. . . . I hear the state still trying to deny their guilt in perpetuating segregation in 100-and-some years in the state of Missouri, mandated by law. . . . We are asking for the same thing today, 25 years later, as we were asking in 1972: that is a quality, integrated education.
>
> Everyone wants to know whether integration works. Well, I can tell you what don't work—segregated education didn't work. It didn't work for me and it didn't work for a lot of black people. You owe it to the children of St. Louis to provide them some choices and a quality education. And if you don't see that happens, all of us are going to pay for it. Each and every one of us is going to pay for it.[115]

Despite her plea and her twenty-five-year battle, the end was neither smooth nor easy. Settlement took a few more years to mature; it involved intense politics; it required action by the state legislature;[116] it required acceptance by the state's governor; it required voter approval of a sales tax; it required the approval of the plaintiffs; it required the approval of over twenty-five defendants;

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115. Editorial, *Minnie Liddell's Legacy*, ST. LOUIS POST-DISPATCH, Apr. 1, 2004, at C10.

116. The "SB 781 was passed as one component of settling a long-running federal desegregation lawsuit regarding the City of St. Louis public schools." Bd. of Educ. v. Mo. State Bd. of Educ., 271 S.W.3d 1, 5 (Mo. 2008). This landmark legislation provided, among other things, for:

> approximately $40m per year in state funds for the St. Louis city schools in the condition that (1) on or before March 15, 1999, the state attorney general notify the revisor of statutes that a "final judgment" had been entered in this case as to the State and its officials, and (2) the voters of the City of St. Louis pass a sales or property tax which would generate approximately $20m per year for the public schools.

Liddell v. Bd. of Educ., No. 4:72CV100 SNL, 1999 WL 33314210, at *2 (E.D. Mo. Mar. 12, 1999) (Memorandum and Order Approving Settlement Agreement).

and it required the approval of the federal judge who then presided over the case.[117]

Fortunately, however, Minnie Liddell lived to see the final settlement of the case. Health struggles continued to take their toll, but she was able to attend the final hearing on the case. The Honorable Stephen N. Limbaugh, Sr., who presided over the fairness hearing, fondly remembered Minnie Liddell, making her way slowly to the stand to testify.[118] By this time, in 1999, Mrs. Liddell's youngest child, Michael, had already graduated from high school.[119] Although Michael benefited from the long-standing lawsuit and was a successful graduate of the public school system, Mrs. Liddell still testified and shared her story about her long journey for quality education. She could have easily stayed home, but she did not. This was a true testament to what she had said all along: she was not just in this for her kids. She cared about the education of all children in St. Louis. As her son said at the March 2012 conference at Washington University School of Law in his mother's honor: "It wasn't just about [the Liddell] family. It was about kids who hadn't even been born yet."[120] After recounting her then almost thirty-year battle to obtain quality education for the children of St. Louis, Minnie Liddell ultimately gave her blessing to the settlement. Although the State "fought desegregation every step of the way,"[121] starting with Attorney General John Ashcroft and continuing with then-Attorney

117. *See generally* HEANEY & UCHITELLE, *supra* note 4, at 193–201. Judge Limbaugh stated that after giving her blessing to the settlement, Minnie Liddell reminded the judge that he had another interest in settling the case: "Judge, I have survived every judge who has presided over this case but you. The odds are not in your favor." Interview with Stephen N. Limbaugh, Sr., Judge, in St. Louis, Mo. (Feb. 17, 2012) [hereinafter Limbaugh Interview].

118. Limbaugh Interview, *supra* note 117.

119. Michael graduated from a magnet school, Central Visual and Performing Arts High School, in 1994. E-mail from Michael Liddell, to author (Oct. 1, 2012, 17:04 CST) (on file with author).

120. Dale Singer, *Education Trends Could Jeopardize Gains Won by Liddell Case, Speakers Say*, ST. LOUIS BEACON (Mar. 23, 2012), https://www.stlbeacon.org/#!/content/23595/wash_u_ symposium_on_liddell_case.

121. Interview with D. Bruce La Pierre, *supra* note 81; Robert Joiner, *For Susan Uchitelle, A Quality Education For All Children Is Always Worth Fighting For*, ST. LOUIS BEACON (Sept. 21, 2009), https://www.stlbeacon.org/#!/content/20695/for_susan_uchitelle_quality_education_for_ all_children_is_always_worth_fighting_for; HEANEY & UCHITELLE, *supra* note 4, at 186, 188, 193.

General Jay Nixon,[122] it was at this hearing that, for the first time in the history of the case, Mrs. Liddell heard an apology from the State for having supported segregated schools.[123] The Liddell children have always believed that the litigation caused their mother's life to take an irreversible turn for the worse. They express some joy, though, from the fact that she lived to hear the State admit that it was wrong.[124] The 1999 Settlement provided some closure to the decades-old litigation. The closure was viewed by some as a positive step, but others, including the Special Master of the 1983 Settlement, viewed this closure as an abandonment of the commitment to desegregation.[125]

Unlike the 1983 Settlement Agreement, the 1999 Settlement Agreement had a termination date. It was set to expire at the end of the 2008–09 school year. And, in fact, it did. That was the last year of the State's financial obligation under the settlement.[126] The 1999

122. *See, e.g.*, Liddell v. Bd. of Educ., 126 F.3d 1049, 1053–56 (8th Cir. 1997).

123. Then-Attorney General Jay Nixon apologized on behalf of the State. Limbaugh Interview, *supra* note 117; *see also* HEANEY & UCHITELLE, *supra* note 4, at 184.

124. Liddell Interview, *supra* note 44.

125. One who voted favorably for the sales tax increase necessary to replace some of the state dollars lost under the 1999 Settlement Agreement was quoted as saying the following: "I voted yes, but I vote incredibly sadly. It's a poor solution to a complex problem. The end of desegregation is very sad." Dale Singer, *City Voters Support Tax Hike to End Desegregation*, ST. LOUIS POST-DISPATCH, Feb. 3, 1999, at A1. The Special Master of the 1983 Settlement also was not happy with the 1999 Settlement. In an interview a few years after the settlement, Professor La Pierre remarked as follows, "[after the settlement,] they had a party in the Chase Park Plaza to celebrate, and I thought the party was wildly inappropriate, because what we were celebrating was abandoning our commitment rather than staying with the commitment." HEANEY & UCHITELLE, *supra* note 4, at 202.

126. E-mail from Robin Coffman, Chief of Staff, Mo. Comm'r of Educ. Office, to author (May 31, 2012, 14:41 CST) (on file with author) [hereinafter Coffman E-mail May 31]. The state continues to pay a flat $7,000 for every black student from St. Louis city that transfers to a participating suburban district. Interview with Kelvin Adams, Superintendent, St. Louis Public School District, in St. Louis, Mo. (May 31, 2012) [hereinafter Adams Interview]; *see also* E-mail from David Glaser, Chief Executive Officer, VICC, to author (July 3, 2012, 11:38 CST) (on file with author). Of course, under state law, the state is already obligated to pay SLPSD monies per pupil, for every child who attends the SLPSD. *See* MO. REV. STAT. § 163.031 (2011). Instead of sending that money to the SLPSD, it sends it to the district where the child is attending. There are over five hundred districts in the state of Missouri. The per pupil cost to educate a child ranges vastly from as low as $4,731.83 in the Hope Academy District in Kansas City to a high of $32,224.33 in DeLaSalle Charter School. *See School Finance; Current Expenditure per ADA for FY2011*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (June 18, 2012, 3:00 PM), http://mcds.dese.mo.gov/quickfacts/Pages/District-and-School-Information.aspx. In the metropolitan St. Louis area, there are twenty-five school districts. The highest per

Settlement Agreement did include a separate agreement entered into by participating school districts allowing for an extension of the ten-year maximum.[127] An extension was entered into in July 2007, which extended the voluntary participation to the 2013–14 school year.[128]

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pupil cost within that group is $154,184.14, from the Special School District. *Id.* The next highest within that group is $18,065.88 from the Clayton School District, and the lowest is $8,439.71 from the Bayless school district. *Id.* Under the 1999 Settlement Agreement, however, participating suburban districts, with otherwise empty seats, agreed to accept the $7,000 and fill the seat with a VICC transfer student. Adams Interview, *supra*.

127. Paragraph 8 of the 1999 Settlement Agreement provides as follows: "[t]here shall be a ten-year maximum on the acceptance of new transfers from either the City or the County, which maximum may be extended or modified by the New Entity as permitted by law." 1999 Settlement Agreement, *supra* note 110, at 59. Paragraph 2 of the 1999 Settlement Agreement defines the "New Entity" as follows:

> On or before July 1, 1999 the Participating Districts shall, pursuant to the "subject to" provision in the last sentence of R.S.Mo. § 162.1060.2(1), establish a New Entity (whether a new not-for-profit corporation, unincorporated association or other) which shall receive, hold and disburse all funds pertaining to transfer students (including for transportation) generated under SB 781 (and enactments made therein) and all funds relating to the transfer program received pursuant to the 1999 Settlement Agreement or otherwise. The New Entity shall operate the transfer program provided for herein and do all things incident thereto. Governance, representation and "weighted" voting for the New Entity shall be as described for the statutory corporation in the last two sentences of R.S.Mo. § 162.1060.1, albeit the statutory corporation will not be used by the Participating Districts. All Participating Districts shall be members of or otherwise participate in the New Entity, but in no event will the weighted voting count any student more than once.

Id. at 56. VICC was created as the New Entity and was incorporated as a non-profit organization in June of 1999.

128. *See Frequently Asked Questions*, VOLUNTARY INTERDISTRICT CHOICE CORPORATION, www.choicecorp.org/FAQ.pdf (last visited July 08, 2012). Although the ten-year period was set to expire at the end of the 2008–09 school year, VICC, pursuant to its authority under Paragraph 8 of the 1999 Settlement Agreement, extended acceptance of new transfer students through the 2013–14 school year. *Id.* It is anticipated that another extension will occur sometime at the end of 2012. E-mail from David Glaser, Chief Executive Officer, VICC, to author (Feb. 21, 2012, 11:00 CST) (on file with author) [hereinafter Glaser E-mail Feb. 21]. Although another extension may indeed occur, the program has dwindled to a shell of its former self. At its highest point, it transferred 13,493 black children from the city into the county and 1,449 white children from the county into the city. *Id.* The figures for the 2010–11 school year show that 5,882 black children transferred from the city into the county, and 142 white children transferred from the county into city magnet schools. *Id.* According to the latest figures, 500 children graduated out of the program and 700 new children were newly admitted. Consequently, a net loss of 100 spaces occurred in 2011–12. *Id.* For data on all transfers from 1981 (when the program was only intra-district in nature) through the 2011–12 school year (including the inter-district transfers), see Glaser E-mail Feb. 21, *supra.*

Today, fourteen of the original twenty-four districts continue voluntary participation under the extension.[129]

In the twenty-seven-year span of the lawsuit, it would be heard by four different district court judges: Chief Judge of the Eastern District of Missouri James Meredith, 1972–80; District Court Judge William Hungate, 1980–85; District Court Judge Stephen N. Limbaugh, Sr., 1985–91 and 1998–2005; and District Court Judge George F. Gunn, Jr., 1991–98. All of the judges, with the exception of Judge Stephen N. Limbaugh, Sr., who is currently a practitioner at a major law firm in St. Louis, would both predecease the closure of the case and Minnie Liddell.[130]

II. A LOOK AT WHERE QUALITY EDUCATION STANDS TODAY IN ST. LOUIS

Of course, by 1999, the children in whose names the *Liddell* lawsuit was filed were out of the public school system. Michael Liddell, Minnie and Charles' youngest child, graduated from high school in 1994.[131] For almost thirty years Minnie Liddell *was* the desegregation movement in St. Louis. She started the grassroots movement to change the public school system in St. Louis, she led the Concerned Parents group, and she became the lead plaintiff on the case. Once that lawsuit was filed, and for its entire twenty-seven-year lifespan, it was Minnie who attended virtually every deposition, every hearing—court, legislative, or otherwise—and she attended the trial. She was the one who was interviewed, appeared on television, testified before legislators, sat on panels, and sat on committees.

129. Today the following school districts participate in the voluntary transfer program: Affton, Bayless, Brentwood, Clayton, Hancock, Kirkwood, Lindbergh, Mehlville, Parkway, Pattonville, Rockwood, Valley Park and Webster Groves and the Special School District (SSD). Ladue and Ritenour, former participants, recently stopped taking new students. Two other districts, Pattonville and Lindbergh, have indicated that they will no longer accept new transfer students after the students currently enrolled in the program graduate. *See generally Voluntary Transfer Program Handbook; For City Families Transferring to County Schools; 2012–2013*, VOLUNTARY INTERDISTRICT CHOICE CORPORATION, www.choicecorp.org/CICOhb.pdf (last visited Aug. 08, 2012) [hereinafter *Transfer Handbook*].

130. *See, e.g.*, La Pierre, *supra* note 68, at 971, 977 n.11; HEANEY & UCHITELLE, *supra* note 4, at 162–63, 201.

131. *See supra* note 119.

Described as a tireless warrior,[132] she was respected by those whom she fought against. For example, the very lawyer assigned to represent the School Board at the time, Kenneth Brostron, recalled the first time he met Mrs. Liddell: "[I] met Mrs. Liddell in 1982 at a midnight negotiating session. . . . She walked into the room, she looked me right in the eye and said, 'Make sure that you do what's right.' And without missing a beat, I said, 'Yes ma'am.'"[133] The School Board chairman, Donald Schafly, who did not appreciate what he believed to be Minnie's confrontational style, had this to say about Minnie Liddell's effect on his career-long tenure on the board:

> I had had confrontations with Minnie Liddell long before she filed her lawsuit. On numerous occasions, she had addressed the board—always with caustic criticism. I must admit that as a public critic in front of the usual board audience, she was effective. She was a large woman who moved slowly, with dignity and self-assurance, and voiced her criticism in a deep, rolling voice.
>
> Early in 1981, when I announced I was not going to run again for the board, Minnie, at a board meeting, summoned me with her usual imperious gesture. "Dan," she said, "I want to talk to you." I assumed, of course, that once again there was something we were doing to which she objected. To my astonishment, she seized me by the arm and said, with some intensity, "Dan, you've got to run again. We need you." It was perhaps the finest compliment I had received in my entire board service.[134]

She also taught her own lawyers a thing or two about preparing witnesses. In the early 1990s, for example, when a new young lawyer was brought onto the plaintiffs' team to help the then-ailing William Russell, that new lawyer, William Douthit, had to prepare Minnie for

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132. Shera Dalin, *Spearheaded Lawsuit over Desegregation Liddell Suit Led to City-County Transfer Plan*, ST. LOUIS POST-DISPATCH, Mar. 29, 2004, at A1.

133. Jake Wagman, *Friends, Family, Even A Former Adversary Honor School Crusader*, ST. LOUIS POST-DISPATCH, Apr. 3, 2004.

134. Dale Singer, *Decision Raised Hope for Millions*, ST. LOUIS POST-DISPATCH, May 4, 2004, at A1.

a hearing. He was nervous and did not know exactly how to prepare Minnie for her testimony. Attorney Russell told him: "Don't worry. Minnie will tell you what to do. You just listen to her."[135]

From all accounts she was the most vocal and active participant in the litigation throughout its lifespan. But by the late 1990s, when Minnie and her husband began to suffer a series of health setbacks, they were forced to scale back all of their civic activities. As she admitted in 1997: "I'm not able to get out there and fight any more. It's going to take those young parents now who have the stamina, the physical fitness and the anger that's necessary to get out there and fight for their kids."[136] Not long after that statement, a series of tragedies befell the Liddell family. Craton Liddell, the child in whose name the case was originally filed, died in 2002 at the young age of forty-three. While still dealing with the grief of losing her first child, Minnie's husband, Charles Liddell, Sr., died the very next year in 2003. These losses and the stress on her health took their ultimate toll on her too, just a few months later. In 2004, at sixty-four years old, Minnie Liddell died in her sleep.[137]

By the time of her demise, the SLPSD was in trouble.[138] In 2007, less than ten years after the official end of the litigation and the signing of the historic inter-district settlement, the SLPSD was stripped of its accreditation.[139] This Part will look briefly at the events leading to the SLPSD's loss of accreditation in 2007. It will also look at an option, born from the lapse in accreditation, which purported to provide children in the unaccredited SLPSD the opportunity to receive a quality education. Finally, it will consider the recent grant of provisional accreditation to the SLPSD and whether that newly bestowed status changes the reality for St. Louis public school students.

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135. Interview with William Douthit, in St. Louis, Mo. (May 7, 2009).

136. Singer, *Mother on the March*, *supra* note 1.

137. *Scholarship Will Honor Desegregation Pioneer Minnie Liddell Harris-Stowe Pays Tribute to Advocate for Black City Students*, ST. LOUIS POST-DISPATCH, Mar. 30, 2004, METRO section.

138. *See* Kim Bell, *St. Louis Schools Getting Worse*, ST. LOUIS POST-DISPATCH, Nov. 5, 2005, at 12.

139. Steve Giegerich, *Amid Anger, Tears, State Takes Control*, ST. LOUIS POST-DISPATCH, Mar. 23, 2007, at A1.

A. The Loss of Accreditation

The State Board of Education sets out guidelines for the accreditation of public schools in Missouri.[140] In order to be accredited in Missouri under standards as they existed in 2006–07 (and still exist today),[141] school districts must meet fourteen annual performance standards, or points. The fourteen standards are in the following areas: (1) Missouri Assessment Program (MAP) Grades 3–5 Mathematics; (2) MAP Grades 3–5 Communication Arts; (3) MAP 6–8 Mathematics; (4) MAP Grades 6–8 Communication Arts; (5) Mathematics Grades 10 Algebra I; (6) Communication Arts Grade 11 EOC English II; (7) ACT; (8) Advanced Courses; (9) Career Education Courses; (10) College Placement; (11) Career Education Placement; (12) Graduation Rate; (13) Attendance Rate; and (14) Subgroup Achievement.[142]

Based on this fourteen point system, schools are either accredited (9–14 of the fourteen points), provisionally accredited (6–8 of the fourteen points), or unaccredited (0–5 of the fourteen points).[143]

Although classified as an accredited district in the 1993–94 school year,[144] SLPSD students were clearly suffering academically a few short years later. Indeed, even in 1996 as then-Washington University Chancellor William Danforth was being selected as the Settlement

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140. *See What Happens When A School Becomes Unaccredited?*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (May 2012), http://dese.mo.gov/divimprove/sia/msip/documents/unaccreditedschool.pdf.

141. E-mail from Robin Coffman, Chief of Staff, Mo. Comm'r of Educ. Office, to author (Oct. 9, 2012, 10:56 CST) (on file with author).

142. For a detailed listing and explanation of these fourteen standards, see *Understanding Your Annual Performance Report (APR)*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (July 19, 2012), http://dese.mo.gov/divimprove/sia/dar/documents/understanding-your-apr-2012-2013.pdf. *See also* Adams Testimony, *infra* note 157, at 441–43.

143. *See 2012 School District Performance and Accreditation: A presentation to the State Board of Education*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. 109 (Sept. 18, 2012), http://dese.mo.gov/stateboard/meetings/September/documents/ClassificationofSchools.pdf; *see also What Happens When A School Becomes Unaccredited?*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (May 2012), http://dese.mo.gov/divimprove/sia/msip/documents/unaccreditedschool.pdf.

144. E-mail from Robin Coffman, Chief of Staff, Mo. Comm'r of Educ. Office, to author (Oct. 4, 2012, 14:43 CST) (on file with author) (attaching St. Louis Public School Performance and Accreditation: State Board of Education Meeting, Mar. 22, 2007, at 2) [hereinafter Attachment to Coffman E-mail Oct. 4].

Coordinator for the final settlement of the *Liddell* case, he observed that "if you were a ninth-grade male in a non-magnet school in the city, in one of the city high schools . . . the chances of your graduating from the St. Louis public schools were under 15 percent."[145] By the time the 1999 Agreement was being inked, the Commissioner of the Department of Elementary and Secondary Education stated that the SLPSD was hanging on to accreditation "by its fingertips."[146] In actuality, hanging on by its fingertips was not only overly generous but also technically untrue. In the 1998–99 school year, the SLPSD actually *did* qualify for unaccredited status.[147] The 1999 Settlement Agreement, however, contained a provision requiring the postponement of unaccreditation in order to allow the City time to work on deficiencies within the district.[148] And it further provided that "[i]n no event will the State Board declare the St. Louis Public Schools to be unaccredited at any time prior to the end of the 2001–02 school year."[149] Although the State Board was in possession of evidence establishing that the SLPSD should be reduced to unaccredited status, the Board complied with the Settlement mandate by tabling the vote on accreditation until 2002.[150] By the 1999–2000 academic year, the district was labeled provisionally accredited, and it retained that status until the 2004–05 school year.[151] By 2005–06, however, the district, once again, qualified for unaccreditation.[152] The district was spiraling downward.[153] The State Board finally recommended to the Missouri

145. *See* HEANEY & UCHITELLE, *supra* note 4, at 193.

146. *School Officials Hope for Partial Accreditation*, ST. LOUIS POST-DISPATCH, Sept. 14, 2000.

147. Attachment to Coffman E-mail Oct 4, *supra* note 144, at 2.

148. 1999 Settlement Agreement, *supra* note 110, at 20–21.

149. *Id.* at 22.

150. Attachment to Coffman E-mail Oct. 4, *supra* note 144, at 2.

151. *Id.*

152. *Id*. at 3.

153. Bell, *supra* note 138 ("If the district had to undergo accreditation review this year, it would drop to unaccredited status."). *See also Public Education and Black Male Students: A State Report Card*, SCHOTT FOUNDATION FOR PUBLIC EDUCATION 37 (2d ed. 2005), *available at* http://www.schottfoundation.org/drupal/publications/State%20Report%20Card%202nd%20editi.pdf (in the 2001–02 school year, nearly 75 percent of black males in St. Louis Public Schools did not graduate from high school with their cohorts). An increase from 29 percent graduation levels in the 2001–02 school year to 33 percent in the 2009–10 school year is certainly a trajectory in the right direction, but it is still woefully low. *See The Urgency of Now:*

Department of Elementary and Secondary Education (DESE) "that the St. Louis public school district should be unaccredited."[154]

A mere eight years after the 1999 Settlement Agreement became effective, the SLPSD lost its accreditation,[155] the SLPSD's "elected school board was stripped of its power, and a three-member 'Special Administrative Board' was established."[156] The loss of accreditation and takeover were attributed to three factors: unstable leadership, financial problems, and underperforming students.[157] Before the takeover, the SLPSD had "frequent turnover and infighting on the elected school board[,][158] . . . an unnervingly short term for

The Schott 50 State Report on Public Education and Black Males, SCHOTT FOUNDATION FOR PUBLIC EDUCATION 25 (2012), *available at* http://www.schottfoundation.org/urgency-of-now.pdf [hereinafter *Urgency Now*].

154. Bd. of Educ. v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6 (Mo. 2008).

155. *Id.* at 5; *see also Missouri Comprehensive Data System*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (June 19, 2012, 10:47 AM), http://mcds.dese.mo.gov/quickfacts/SitePages/DistrictInfo.aspx?ID=bk810003009300630013000300230 0.

156. Sylvia Maria Gross, *Lessons from the Takeover of St. Louis Public Schools*, KANSAS CITY PUBLIC MEDIA, Nov. 7, 2011, *available at* http://www.kcur.org/post/lessons-takeover-st-louis-public-schools. Each Special Administrative Board Member is appointed—one by the governor, one by the mayor of St. Louis, and the third by the president of the St. Louis Board of Aldermen. The members have three-year terms. Although their term expired in 2010, the Missouri State Board of Education recently extended their oversight to June 30, 2014. *See* Editorial, *Good Governance Our View: Debate on St. Louis Public Schools Oversight Should Begin Now*, ST. LOUIS POST-DISPATCH, Feb. 21, 2011, at A16; Andrew Fowler, *Continuity is SLPS: DESE Recommends SAB Continue Governing For At Least 3 Years*, ST. LOUIS AM., Dec. 2–8, 2010, at A1.

157. Dale Singer, *St. Louis Schools Cite Progress Toward Accreditation*, ST. LOUIS BEACON (July 1, 2012), https://www.stlbeacon.org/#!/content/14242/st_louis_schools_cite_progress_toward_accreditation [hereinafter Singer, *Accreditation Progress*]. *See also* Adams, Test. Tr. 440, Mar. 7, 2012 [hereinafter Adams Testimony].

158. The recent history of the St. Louis Public School Board has been both dysfunctional and shameful. This history includes outright fistfights, highly questionable spending, profanity-laced public tirades and personal conduct by various board members, and even the commitment to a mental facility of one board member. For a sense of the chaos that publicly played out on televisions and in newspapers from 2001 until the SAB took over, see Jake Wagman, *School Board Member Says He May Kill Himself*, ST. LOUIS POST-DISPATCH, Jan. 26, 2005, at B02; Jake Wagman, *Arrests, E-Mails Continue Seven-Seat Circus*, ST. LOUIS POST-DISPATCH, Oct. 12, 2003, at B5; Jake Wagman, *4 Are Arrested at City School Board Meeting; Former Vashon Security Guard Jumped on Table, Sparking Scuffle*, ST. LOUIS POST-DISPATCH, Oct. 8, 2003, at D2; Jake Wagman, *Aldermen Also Ask If School Contract Was Rushed; District's Board Selected NY Turnaround Firm For $5 Million Project; Review of Bids Took 11 Days*, ST. LOUIS POST-DISPATCH, June 9, 2003, at B1; Jake Wagman, *Member of St. Louis School Board Was Committed for Mental Illness; Involuntary Treatment Was Part of Conspiracy, She Says*, ST. LOUIS POST-DISPATCH, May 6, 2003, at A1; Rick Pierce, *Ex-School Board Member Gets Consulting Contract; Strategic Vision President Says She Was Approached to Train School*

superintendents,"[159] as well as a "negative fund balance of $12.4 million in 2007–08."[160] In regards to student achievement, the DESE Annual Performance Report indicated that the SLPSD met four of the fourteen Missouri School Improvement Standards in 2005–06.[161] Four dropped to two in 2007.[162] In addition to "financial problems and administrative instability,"[163] and the possession of a mere two of fourteen points towards accreditation, consider also:[164]

> 1—In 2006 only 84.3 percent of the SLPSD teachers were certified,[165] as compared to 96.7 percent for the State of

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Principals; Bids Are Not Required For Work, ST. LOUIS POST-DISPATCH, Dec. 6, 2001, at C3; Rick Pierce, *School Board Shows Signs of Splintering*, ST. LOUIS POST-DISPATCH, Sept. 9, 2001, at B4; Rick Pierce, *St. Louis School Board Paid $79,000 For Trips In Past Year; That is Double The Amount In Budget For Travel; Hammonds Promises Change*, ST. LOUIS POST-DISPATCH, July 6, 2001, at B1; Amy Hilgemann, Editorial, *Do City Schools Measure Up?: Money Goes into the Wrong Hands*, ST. LOUIS POST-DISPATCH, June 7, 2001, at B7; Rick Pierce, *2 New Members Help Broaden Rift on St. Louis School Board; They Criticize Operations*, ST. LOUIS POST-DISPATCH, June 6, 2001, at B1.

159. Singer, *Accreditation Progress*, *supra* note 157. The turnover of St. Louis Public School superintendents alone is telling. In the five-year period before current Superintendent Kelvin Adams was hired, the SLPSD had six different superintendents. *See* Malcolm Gay, *State Takes Control of Troubled Public Schools in St. Louis*, N.Y. TIMES, Mar. 23, 2007, *available at* http://www.nytimes.com/2007/03/23/us/23missouri.html.

160. *See* Singer, *Accreditation Progress*, *supra* note 157.

161. Attachment to Coffman E-mail Oct. 4, *supra* note 144, at 2; *see also Final 2006 District Summary of Annual Performance Report (APR) 4th Cycle*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (Mar. 5, 2007), http://dese.mo.gov/planning/profile/apr/2006s115115.html [hereinafter *2006 SLPSD APR*].

162. *Final District Summary of Annual Performance Report (APR) 4th Cycle*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (Dec. 14, 2007), http://dese.mo.gov/planning/profile/apr/2007s115115.html [hereinafter *2007 SLPSD APR*].

163. *St. Louis Loses Accreditation*, MO. STATE TEACHERS ASS'N (Mar. 22, 2007), http://www.msta.org/news/?ID=1363.

164. The following data has been taken from Kelvin R. Adams, *District Data Profile St. Louis Public Schools*, ST. LOUIS PUBLIC SCHOOLS (2009), http://www.slps.org/cms/lib03/MO01001157/Centricity/Domain/13/DistrictDataProfile2009-2010wMSIPstandards.doc [hereinafter *St. Louis District Profile*].

165. *St. Louis District Profile*, *supra* note 164. The Missouri Department of Elementary and Secondary Education (DESE) defines Certification Status of Teachers as:

> The percentage of teachers in the district who have regular teaching certificates; temporary authorization or special assignment certificates; and those with substitute, expired or no certificates. As required by federal law, the percentage of all classes taught by "highly qualified teachers" is reported. A highly qualified teacher is one who: has at least a bachelor's degree; has demonstrated content expertise by passing a state-approved test or has completed an academic major or coursework equivalent to a major; and who holds full certification for his or her current teaching assignment.

> Missouri.
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> 2—ACT scores in 2006 were 16.3 for the SLPSD as opposed to 21.6 for the state.
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> 3—The graduation rate, according to SLPSD data, was 56.2 percent for SLPSD graduates, as compared to 85.8 percent for the State of Missouri.
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> 4—Attendance rates totaled 88.7 percent for SLPSD children as compared to the state average of 94.1 percent in 2006. At the time, in order to meet adequate yearly progress standards in elementary and middle schools, the attendance rate had to be at the level of 93 percent or higher or show improvement from the past year.[166]
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> 5—Finally, students in the SLPSD had high discipline incident rates, equaling 6.3 percent in 2006, in contrast to the state average of 2.1 percent.[167]

Things were bad. It should have come as no surprise, then, when the district was stripped of accreditation.

Id. at 8.

166. *Id.* at 17.

167. *Id.* at 2. The Schott Foundation for Public Education has as its mission "to develop and strengthen a broad-based and representative movement to achieve fully resourced, quality pre K–12 public education." *See* SCHOTT FOUNDATION FOR PUBLIC EDUCATION, http://www.schottfoundation.org/about/ (last visited Nov. 1, 2012). The organization publishes reports every year on the status of black and Latino males in public schools vis-à-vis the performance of white non-Latino males in identical categories. The organization very recently started tracking discipline incidence data. The most up-to-date data they have is for the 2009–10 academic year. *See Urgency Now*, *supra* note 153. Most shockingly, it ranks Missouri as fifth in the nation for the highest suspension rates for black students. *See Urgency Now*, *supra* note 153, at 36. With respect to out-of-school suspensions for black boys in St. Louis, for example, the report states:

> The number of out-of-school suspensions given to Black male students in St. Louis was equivalent to 39% of the district's male, Black student population. The number of out-of-school suspensions given to Latino male students in the district was equivalent to 13% of that group's population. The number of out-of-school suspensions given to male White students in St. Louis was equivalent to 13% of the district's White, male, non-Latino enrollment in the 2009–10 school year, as reported to the Office of the Civil rights of the U.S. Department of Education.

See The Urgency of Now: Missouri, SCHOTT FOUNDATION FOR PUBLIC EDUCATION 3–4 (2012), http://www.blackboysreport.org/states/missouri.pdf.

The statute created to facilitate the 1999 Settlement Agreement, known as SB 781, provided for this contingency.[168] Specifically, the bill laid the foundations for an overlay district, known as the transitional school district (TSD), with its own transitional school board, known as the Special Administrative Board (SAB). The TSD replaced the SLPSD, and the SAB, in all substantial respects,[169] replaced the existing elected Board. The job of the SAB was to do what was necessary to regain accreditation for the district.[170] The SAB continues to govern the SLPSD today, and in fact, was recently extended for an additional term.[171]

B. Turner v. CSD

> *It's wrong they're not obeying the Supreme Court. It's wrong they're not obeying the statute. It's wrong they're not providing a decent education for children in St. Louis.*[172]

If a school was ever rendered unaccredited in the state of Missouri, a Missouri statute provided that the children who resided in the school's district could either attend some other accredited school in the same district or attend an accredited school in an adjoining district.[173] By its own terms, then, the statute only applies if and when

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168. The SB 781 was signed into law by then-Governor Mel Carnahan on June 23, 1998. Bill Bell, Jr., *Carnahan Signs Bill for Ending Desegregation Case*, ST. LOUIS POST-DISPATCH, June 24, 1998, at 24. The legislation was codified at MO. REV. STAT. §§ 135.348, 160.011, -.526, -.538, -.540, -.542, 161.220, -.527, 162.081, -.571, -.581, -.601, -.621, -.626, -.935, -.1060, -.1100, 163.011, -.021, -.031, -.161, 165.011, -.016, -.122, 166.260, -.275, 168.221, -.231, 170.250, 178.930 -939 (1998).

169. *See*, *e.g.*, Bd. of Educ. v. Mo. State Bd. of Educ., 271 S.W.3d 1, 18 (Mo. 2008) (the relevant statutory law in Missouri vests all powers of the elected school board in the SAB "except that the [elected] board retains the powers of audit and public reporting[.]").

170. *See* MO. REV. STAT. § 162.1100 (2000).

171. See *supra* note 156 for the details on the SAB extension.

172. Elisa Crouch, *Whatever the Outcome, Clayton Tuition Lawsuit Has Hefty Tab*, STLTODAY.COM (Mar. 13, 2011), http://www.stltoday.com/news/local/education/whatever-the-outcome-clayton-tuition-lawsuit-has-hefty-tab/article_0d21c09a-d430-5634-89d2-4a6e96e0b179.html (quoting Dr. Jane Turner, lead plaintiff in the *Turner* case) [hereinafter Crouch, *Whatever the Outcome*].

173. MO. REV. STAT. § 167.131 (2000). Section 167.131 was originally enacted in 1931. It was amended in 1993 and then made part of the Missouri Outstanding Schools Act. The original text of 1931, as well as the 1993 amendments are *infra* note 185. The Outstanding Schools Act was enacted to improve the quality of education for Missouri students. It included "provisions relating to reduction in class size, the A+ program, funding for parents as teachers

a given district is unaccredited. Under the statute, the transferor school district has no discretion as to whether to accept the student or not, and the unaccredited school (or district, as the case may be) must bear the financial cost of that transfer.[174]

Once the SLPSD lost accreditation in 2007, a parent who lived in the SLPSD wrote the superintendent of one of the districts adjoining the SLPSD, the Clayton School District (CSD), and asked the CSD to start billing the SLPSD for her children's tuition. This parent, Dr. Jane Turner, was a former resident in the CSD community, and her children formerly attended school in that district. She subsequently married a St. Louis circuit court judge.[175] St. Louis City judges must live in St. Louis, so Dr. Turner relocated to St. Louis City.[176] She kept her children, however, in the CSD. Because her children attended public school in a district in which they did not reside, she had to pay non-resident tuition fees for her children to attend school.[177] Once the SLPSD lost accreditation, Mrs. Turner sought confirmation from the CSD that it would look to the SLPSD for its tuition, pursuant to

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and early childhood development, teacher training, the upgrading of vocation and technical education, measures to promote accountability and other provisions." MO. REV. STAT. §§ 160.500-.538, -.545, -.550, 161.099, -.610, 162.203, -.1010, 163.023, 166.275, -.300, 170.254, 173.750, 178.585, -.698 (2012). The statute also contains several provisions addressing school funding, as well as amended tax rates and deductions.

174. MO. REV. STAT. § 167.131 (2000).

175. Interview with Elkin Kistner, Attorney for Plaintiffs, in Clayton, Mo. (June 21, 2012) [hereinafter Kistner Interview].

176. Crouch, *Whatever the Outcome*, *supra* note 172.

177. MO. REV. STAT. § 167.151(1), entitled "Admission of Nonresident and Other Tuition Pupils—Certain Pupils Exempt From Tuition—School Tax Credited Against Tuition—Owners of Agricultural Land in More Than One District, Opinions, Notice Required, When[:] 1. The school board of any district, in its discretion, may admit to the school pupils not entitled to free instruction and prescribe the tuition fee to be paid by them, except as provided in sections 167.121 and 167.131." Some districts in Missouri, like the Ladue school district for example, do not allow a non-resident to pay tuition to attend school in the district. *See, e.g.*, *Frequently Asked Questions*, LADUE SCHOOLS, http://www.ladueschools.net/district/content/main/faqs.shtml (last visited Nov. 7, 2012). In order to determine the tuition amount applicable in a given district, one would need to visit the website for the particular district. In Clayton, the tuition amount varies depending on the grade the child is in. *See, e.g.*, *Tuition*, SCHOOL DISTRICT OF CLAYTON, http://www.clayton.k12.mo.us/tuition (last visited Nov. 7, 2012). Districts base non-resident tuition amounts on current expenditure amounts per average daily attendance. These amounts vary in Missouri by district. *See generally School Finance Report*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (Nov. 4, 2012, 10:11 AM), http://mcds.dese.mo.gov/guidedinquiry/District%20and%20School%20Information/School%20Finance%20Report.aspx [hereinafter *School Finance Report*].

section 167.131.[178] Despite precedent for such billings,[179] the superintendent refused. Dr. Turner and three other similarly situated plaintiffs then filed suit in a St. Louis County Court against the CSD and the SLPSD, and its temporary successor, the TSD,[180] seeking a declaration that the CSD had to seek payment not from them but from the unaccredited SLPSD pursuant to Missouri Statute Section 167.131.[181]

I will briefly describe how the Missouri courts have handled this litigation. Although filed in 2007, the litigation is currently before the Missouri Supreme Court for a second time. As will be discussed *infra*, the SLPSD recently was awarded with provisional accreditation, having obtained points within the 6–8 point range for provisional status.[182] While it appears likely that no other St. Louis public school student will (or can) seek transfer under the statute at issue in *Turner* at this particular juncture, the statute is still worth discussing. There are several other unaccredited districts within the state of Missouri that undoubtedly have parents interested in the reach of section 167.131.[183] Moreover, because of the potential damage the statute could have on St. Louis (and indeed, may still have on either St. Louis or other districts and cities within such districts) the effects, as proven at trial, of the damaging reach of section 167.131 on the district, on students, and on the St. Louis community should be told. And indeed, as advanced below, no matter how the issues in *Turner* are resolved in the courts, and despite the

178. Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 663 (Mo. 2010).

179. Not only had the CSD billed the Wellston School District under section 167.131 for the thirteen Wellston students who transferred to the CSD after Wellston lost accreditation in 2003, but another district in Missouri, the Wyaconda School District, also had to pay a nearby accredited district under section 167.131 to educate its students after it lost accreditation in 2006. *See* Crouch, *Whatever the Outcome*, *supra* note 172. The Wyaconda School District then contained thirty-five students, considerably smaller than the SLPSD. *See* Coffman E-mail May 31, *supra* note 126.

180. Throughout the remainder of this Article, the terms SLPSD and the TSD will be used interchangeably. Recall that the SLPSD is unaccredited, and an overlay district, the TSD, is currently acting on its behalf.

181. *Turner*, 318 S.W.3d 660 (Mo. 2010); *see also* Crouch, *Whatever the Outcome*, *supra* note 172; Paul Hamper, *Parents Want City Schools To Pay Clayton Tuition*, ST. LOUIS POST-DISPATCH, Nov. 15, 2007, at C1.

182. Recall the fourteen-point system used to determine a district's status as accredited, provisionally accredited, and unaccredited. *See supra* notes 142–43.

183. *See, e.g.*, *infra* note 272.

provisional accreditation of the SLPSD, the central issue of this Article remains: has quality education been obtained for the children of St. Louis?

Let's turn, for a moment, to the statute at the heart of *Turner*. The statute was originally enacted in 1931. The reproduction below demonstrates the changes between the 1931 version and the 1993 version. The strikeouts represent the text removed, and the bolded text represents the language added in 1993:

> 167.131. 1. The board of education of each district in this state that does not maintain an ~~approved high school offering work through the twelfth grade~~ **accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo,** shall pay the tuition of **and provide transportation consistent with the provisions of section 167.241,**[184] **RSMo, for each** pupil resident therein ~~who has completed the work of the highest grade offered in the schools of the district and~~ who attends an ~~approved high~~ accredited school in another district of the same or an adjoining county, ~~or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered~~.
>
> 2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the ~~high~~ **district's grade level grouping which includes the** school attended. The cost of maintaining **a grade level**

184. Section 167.241 deals with "Transportation of Pupils to Another District." It was modified as part of the 1993 Act. The strikeouts represent the text removed and the bolded text represents the language added in 1993:

> 167.241. Transportation for pupils whose tuition the district of residence is required to pay by section 167.131 or who are assigned as provided in section 167.121 shall be provided by the district of residence; however, in the case of pupils covered by section 167.131, the district of residence shall be required to provide transportation only to ~~high schools~~ **school districts accredited** ~~meeting minimum classification standards adopted~~ by the state board of education **pursuant to the authority of the st**at**e board of educ**at**ion to classify schools as established in section 161.092, RSMo,** and those ~~high schools~~ **school districts** designated by the board of education of the district of residence.

1993 MO. LEGIS. SERV. 380 (West).

> **grouping** ~~the high school attended~~ shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements. The term "debt service", as used in this section, means expenditures for the retirement of bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the **grade level grouping** ~~school attended~~ shall be determined by dividing the cost of maintaining the ~~high school~~ **grade level grouping** by the average daily ~~high school~~ pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the **public** school of his or her choice~~; but no school shall be required to admit any pupil~~.[185]

Plaintiffs in *Turner* sought a declaration that section 167.131: (1) allows pupil residents in an unaccredited school district to attend an accredited school in the same or adjoining county; (2) mandates that the unaccredited district pay the tuition for that student to the receiving school; and (3) mandates that the receiving school admit any such student.[186] The defendants, the CSD and the SLPSD, responded as follows: (1) that section 167.131 should only apply if a particular school is unaccredited but not if an entire district is unaccredited; (2) that because there were some accredited schools within the SLPSD the statute should not apply; (3) that the 1999 settlement in the *Liddell* case and the corresponding legislation accompanying that settlement, SB 781, specifically governed the transfer of SLPSD children,[187] and thus, since it was enacted after

185. *Id.*; 1931 MO. LAWS 343.

186. *Turner*, 318 S.W.3d at 663.

187. The SB 781, unlike section 167.131, is strictly limited to the transfer of black students out of the city and into county schools and white students out of the county into city magnet schools. The purpose of this statute was to aid in remedying unconstitutional racial segregation. Transferring white students out of the city and into the already predominately white suburban schools under section 167.131, would, then, according to the defendants, go against the purpose of the remedy enacted in SB 781. The funding schemes also differed. SB 781 was designed to provide more resources to city schools and created a special corporation designed to implement

1993, it should take precedence over the earlier enacted section 167.131; and (4) that the Missouri Safe Schools Act, enacted in 1996, gave school districts discretion in admitting non-resident students to their schools.[188]

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and fund the program ("VICC"), but if the provision in section 167.131 were followed, resources would be depleted from the city schools. Transportation of students under the two statutes also is dealt with differently. Under SB 781, VICC would provide transportation at no cost to the parent, or the city, but under section 167.131, the entire cost of transportation would be absorbed by the city. Memorandum in Support of Defendant School District of Clayton's Motion to Dismiss and for Summary Judgment at 5–6, Turner v. Clayton Sch. Dist., No. 07SL-CC00605 (St. Louis Cnty. Ct. Jan. 22, 2008). Moreover, the CSD predicted that implementing section 167.131 would have another more direct effect on the transfers under SB 781: "participating St. Louis County school districts would be likely to discontinue participation in the program [under SB 781] to accommodate the increasing number of city students choosing to transfer to county schools under Section 167.131." *See id.* at 8. Finally, the CSD argued that SB 781 already provided for what was to happen if SLPSD ever became unaccredited. Section 162.1100 provides for the SAB to assume obligations and take steps towards regaining accreditation. MO. REV. STAT. § 162.1100 (2000). The SAB cannot do its job if students *and money* are fleeing the district because of section 167.131. *Turner*, 318 S.W.3d at 667.

188. *Turner*, 318 S.W.3d at 665–67. The Missouri Safe Schools Act is codified at MO. REV. STAT. §§ 160.011–.457, 167.020–.627. It passed in 1996 after a student at a high school in Missouri was raped and killed by another student who had just transferred to the school only the day before. The attacker had transferred after being suspended from his home school. *See Turner*, 318 S.W.3d at 671 n.2 (Breckenridge, J., dissenting). Section 167.020 sets up three ways in which a child can attend a school in a given district. The child must: (1) be a resident in the school district; (2) request and receive a waiver of the residency requirement; or (3) fall into a small category of exemptions. Specifically, MO. REV. STAT. § 167.020 provides, in relevant part, as follows:

> 2. In order to register a pupil, the parents or legal guardian of the pupil or the pupil himself or herself shall provide, at the time of registration, one of the following:
>
> (1) Proof of residency in the district . . .; or
>
> (2) Proof that the person registering the student has requested a waiver under subsection 3 of this section within the last forty-five days . . . .
>
> * * *
>
> 6. Subsection 2 of this section shall not apply to a pupil who is a homeless child or youth, or a pupil attending a school not in the pupil's district of residence as a participant in an inter-district transfer program established under a court-ordered desegregation program, a pupil who is a ward of the state and has been placed in a residential care facility by state officials, a pupil who has been placed in a residential care facility due to a mental illness or developmental disability, a pupil attending a school *pursuant to sections 167.121 and 167.151*, a pupil placed in a residential facility by a juvenile court, a pupil with a disability identified under state eligibility criteria if the pupil is in the district for reasons other than accessing the district's educational program, or a pupil attending a regional or cooperative alternative education program or an alternative education program on a contractual basis.

The trial court ruled in the defendants' favor,[189] and the plaintiffs appealed to the Missouri Court of Appeals.[190] Because of the importance of the issue, the Court of Appeals transferred the case to the Missouri Supreme Court.[191] The Missouri Supreme Court promptly reversed and remanded the case back to the trial court.[192] The Missouri Supreme Court found that the plaintiffs were bound by the enforceable tuition agreements they entered into and were not entitled to restitution for tuition paid.[193] Going forward, however, the court also held that for any academic year in which the SLPSD remained unaccredited and for which no tuition agreement was in effect: section 167.131 applied to the SLPSD/TSD;[194] it applied whether only one school in the district was unaccredited or the entire district was unaccredited;[195] the statute did indeed give a child living in an unaccredited school district the exclusive right to transfer to an accredited school in the same or an adjoining county at the expense of the unaccredited;[196] SB 781 did not conflict with section 167.131;[197] and the Missouri Safe Schools Act was not relevant in this particular case.[198] This opinion sent shock waves around the state.[199]

MO. REV. STAT. § 167.020 refers to two other Missouri statutory provisions: MO. REV. STAT. § 167.121, which allows a student not living within a given school district the opportunity to attend that school district by entering into a tuition agreement with the receiving district; and MO. REV. STAT. § 167.151, which provides, among other things, that school districts have discretion in admitting students and also lays out the circumstances under which a district can and cannot charge tuition.

189. Turner v. Clayton Sch. Dist., No. 07SL-CC00605 (St. Louis Cnty. Ct. Oct. 23, 2008).

190. Turner v. Clayton Sch. Dist., No. ED92226, 2009 WL 1752140 (Mo. Ct. App. June 23, 2009). The court found no contingency in the contract that would relieve the plaintiffs from paying the agreed upon amount. Moreover, the court said that "logistically, the Transitional School board cannot be obligated to pay a tuition that Appellants are already contractually obligated to pay." *Id.* at *4.

191. Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 663 (Mo. 2010).

192. *Turner*, 318 S.W.3d at 663.

193. *Id*. at 669–70.

194. *Id*. at 665.

195. *Id.*

196. *Id*. at 664–65.

197. *Id*. at 665–66.

198. *Id.* at 668–69. Specifically, the court labeled the Safe Schools Act as a general statute and section 167.131 as a specific one, and the specific would govern over the general. *Id*. Moreover, the court found that because the language in section 167.131 is clear, there was simply no need to refer to another similar statute. *Id*. at 670.

199. Newspapers, letters to the editor, and blogs were all abuzz after the *Turner* decision

On remand and four years after the lawsuit was originally filed, taxpayers for both the city of St. Louis and the city of Clayton were allowed to intervene.[200] As it turns out, this intervention was the only means for defendant school districts to raise constitutional concerns against the statute.[201] Plaintiffs, though, vehemently opposed intervention at such a late date, and after the case had already gone up to the Missouri Supreme Court, but their opposition was to no avail.[202] The case proceeded to trial with a focus on three issues:

> 1) whether section 167.131 is a violation of the Hancock Amendment to the Missouri Constitution, 2) whether compliance with section 167.131 by the SLPSD and the CSD is impossible and 3) whether the sole remaining plaintiff owed the CSD tuition for the two and a half years the plaintiff's

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came down. The legislature spent two full legislative terms trying to change the court's opinion. For an example of the discussions between 2010 and 2012 surrounding the ramifications of *Turner*, see, e.g., Elisa Crouch, *Call to Act on School Transfers*, ST. LOUIS POST-DISPATCH, Jan. 12, 2012, at 4A [hereinafter Crouch, *Call to Act*]; Virginia Young, *Debate Could Affect 72,000 Students Here*, ST. LOUIS POST-DISPATCH, Feb. 24, 2011, at 2A. Several bills were subsequently introduced in the legislature. An example of the legislation considered by the respective houses is as follows: in the Senate, there was SB 14, sponsored by Senator David Pearce. This bill would have provided more local control to receiving districts. SB 369, sponsored by Senator Jane Cunningham, provided for more local control with receiving districts, created a scholarship program for students in accredited districts, and provided boundaries for where children from unaccredited districts could attend school. House Representative Tishaura Jones introduced HB 473. This bill, known as "Reform Lite," dealt primarily with statewide charter school expansion. HB 1740, sponsored by House Representative Scott Dieckhaus, provided for a passport scholarship program, providing grants to students residing in unaccredited districts that the students could use to attend other accredited schools. For an idea of the politics surrounding the *Turner* fix, see Virginia Young, *Education Panel is Retooled for Reform*, ST. LOUIS POST-DISPATCH, Jan. 6, 2012, at A1; Virginia Young, *Missouri Schools Face Influx of Students From Failing Districts*, STLTODAY.COM (May 6, 2011), http://www.stltoday.com/news/local/education/missouri-schools-face-influx-of-students-from-failing-districts/article_0c01e977-27ff-5ae5-9c410a172417ca44.html.

200. *See* Turner v. Clayton Sch. Dist., Nos., 12SL-CC00411, 07SL-CC00605, Order (St. Louis Cnty. Ct. July 22, 2011).

201. As is now clearly established in Missouri, only taxpayers, and not school districts, have standing to raise constitutional claims based on the Hancock Amendment to the state's constitution. King-Willmann v. Webster Groves Sch. Dist., 361 S.W.3d 414 (Mo. 2012).

202. *See* Plaintiff/Counterclaim Defendant Breitenfeld's Post-trial Brief at 8-9, Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012) [hereinafter Plaintiff's Post-trial Brief].

> children attended schools in the CSD under tuition agreements.[203]

Let me first briefly identify the Hancock Amendment concerns. At trial, defendants argued that section 167.131 violated a 1980 amendment to the Missouri Constitution known as the Hancock Amendment.[204] The Hancock Amendment provides, in part, that:

> [p]roperty taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. *The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing,* or from shifting the tax burden to counties and other political subdivisions.[205]

The question before the trial judge in *Turner* was whether, by virtue of the post-1980 changes made to section 167.131,[206] a new activity, expanded service, or increase was required, and if so, whether the State provided funding for such new activity, expanded service, or increase.

The CSD and its taxpayers argued that requiring the CSD to build buildings and hire teachers was well in excess of its own taxing

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203. Turner v. Clayton Sch. Dist., Nos. 12SL-CC00411, 07SL-CC00605, slip op. at 15–16 (St. Louis Cnty. Ct. May 1, 2012). This Article will only briefly explore the first two arguments tried in the court.

204. *See, e.g.*, Post-trial Brief of School District of Clayton and Its Taxpayers at 21, Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012) [hereinafter Clayton's Post-Trial Brief]; *see also* Post-trial Brief of SLPS Parties Relating to Hancock Amendment Issues, Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012) [hereinafter SLPS Hancock Brief].

205. MO. CONST. art. X, § 16 (emphasis added). This italicized language is developed more fully in section 21 of the amendment. That section provides:

> The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

MO. CONST. art. X, § 21.

206. *See supra* note 185 and accompanying text for the text of section 167.131 in both the 1931 and 1993 versions.

power and was an unfunded mandate in violation of the Hancock Amendment.[207] The SLPSD and its taxpayers argued that thousands of students, for whom it received no funding from the state,[208] would be eligible to transfer at the total expense of the SLPSD.[209] Both the plaintiff and the State of Missouri rebutted defense arguments that section 167.131 violated the Missouri Constitution. Both were united in their positions that providing education was not a new or expanded activity and thus did not trigger scrutiny under the state's constitution.[210]

A second argument advanced at trial by the defendants was that compliance with section 167.131 would be impossible.[211] Crucial to this argument was the testimony of a defense expert witness, Dr. Terrence Jones. Dr. Jones was hired to determine the number of school-age children residing in the SLPSD who might transfer to suburban schools if afforded the opportunity provided for under the statute. After determining, based on the 2005–09 American Community Survey conducted by the U.S. Census Bureau, that approximately 56,619 school-age children lived in the City of St. Louis, Dr. Jones then had a random telephone survey conducted.

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207. *See, e.g.*, Clayton's Post-Trial Brief, *supra* note 204, at 2.

208. *See* Banks, Test. Tr. 375–76, Mar. 6, 2012 [hereinafter Banks Testimony].

209. *See, e.g.*, Clayton's Post-Trial Brief, *supra* note 204; SLPS Hancock Brief, *supra* note 204, at 10. Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012). *See also* Adams Testimony, *supra* note 157, at 453; Banks Testimony, *supra* note 208, at 375. For more information on the Hancock Amendment, see generally Dale C. Doerhoff, *Hancock Amendment Struggle Continues*, 50 J. MO. B. 65 (1994); Ronald K. Rowe II, *Beyond Equality and Adequacy: Equal Protection, Tax Assessments, and the Missouri Public School Funding Dilemma*, 75 MO. L. REV. 1037 (2010). As Professor Colin Gordon has noted:

> Hancock limited growth in state taxes to the rate of growth in family income and prohibited new or increased local taxes without popular approval. This led to a greater reliance on local licenses and fees for service, and to a zero-sum logic that targeted the revenues from any new tax and matched it with relief from another tax—as in a small increase in the state sales tax (1982) whose proceeds were split between state aid to education and a property tax rollback. In effect, Hancock furthered the transformation of the property tax from a source of local revenue to a fiscal tool of the state.

GORDON, *supra* note 22, at 56 (footnote omitted).

210. *See* Plaintiff's Post-trial Brief, *supra* note 202, at 9; State Defendants' Post-trial Brief at 6, Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012) [hereinafter State Post-Trial Brief].

211. Turner v. Clayton Sch. Dist., Nos. 12SL-CC00411, 07SL-CC00605, slip op. at 15–16 (St. Louis Cnty. Ct. May 1, 2012).

Based on 601 completed interviews from that survey, he prepared a report of his conclusions.[212] In his report, Dr. Jones estimated that 27.8 percent or 15,740 students would transfer under the statute.[213] Of these numbers, Dr. Jones testified that 22.7 percent, or approximately 3,567 students, would transfer to the CSD.[214] The CSD has approximately 2,500 students in its district.[215] Dr. Jones's estimate, then, could double the CSD student population overnight.[216] The

212. *See* E. Terrence Jones, *Transferring To St. Louis County Schools: How Many City of St. Louis Students Would Make the Change?* (2011) (unpublished report) (on file with the author), *available at* http://www.claytonschools.net/cms/lib/MO01000419/Centricity/Domain/1/JonesReport_12012011_Rev.pdf [hereinafter *Jones Report*]. Dr. Jones worked with the lawyers for the defense to determine subject matter applicability. After creating the questions, he hired a telephone survey company to actually conduct the telephone interviews. Jones, Test. Tr. 75, Mar. 5, 2012 [hereinafter Jones Testimony].

213. The report indicated the following:

Estimated Transfer Rate		
St. Louis Public Schools	29.5%	(+/- 3.6%)
Charter Schools	24.1%	(+/- 3.4%)
Private/Parochial Schools	19.4%	(+/- 3.2%)
VICC Participants	42.7%	(+/- 3.9%)
Estimated Transfer Numbers		
St. Louis Public Schools	8,318	(+/- 1,015)
Charter Schools	1,746	(+/- 247)
Private/Parochial Schools	2,757	(+/- 455)
VICC Participants	2,248	(+/- 205)
Children W/ Special Needs	3,157	(+/-2,801 & 3,513).

See Jones Report, *supra* note 212, at 11–12. Jones testified that all of his numbers for private and parochial school students included homeschooled students. Jones Testimony, *supra* note 212, at 84.

214. *Jones Report*, *supra* note 212, at 9. The *Jones Report* also found:

> 12.1% would transfer to the Kirkwood School District; 11.8% would transfer to the Lindbergh School District; 11.2% would transfer to the Rockwood School District; 11.1% would transfer to "some other" School District; 11.0% would transfer to the Ladue School District; 7.3% would transfer to the Brentwood School District; and 12.8% did not know or did not answer.

Id. With respect to the figures for Clayton, the report indicated as follows:

> Among the 27.8% transfer rate group, 22.7% selected the Clayton School District as their first choice. That yields a 6.3% transfer rate for the Clayton School District. Applying this rate to the 56,619 City students yields a transfer estimate of 3,567. Incorporating the sampling error (plus-or-minus 1.9% at the 95% confidence level), the bracketed estimate is between 2,491 and 4,643, with 3,567 being the best estimate.

Id. at 11.

215. Wilkinson, Test. Tr. 163, Mar. 5, 2012 [hereinafter Wilkinson Testimony].

216. Clayton's Post-Trial Brief, *supra* note 204, at 21.

testimony adduced by defendant CSD and its taxpayers at the trial was that based on these estimates, it would be impossible for the CSD to plan for such a contingency.[217]

The SLPSD raised different impossibility concerns, a key argument being that compliance with section 167.131 would cause the SLPSD to go bankrupt. Specifically, section 167.131 applies to all children who live in the City of St. Louis whether they attend public school in St. Louis or not. Of the 56,619 school-age children living in St. Louis, thousands do not attend public schools in St. Louis but, rather, attend private and parochial schools, and of those, an estimated 7,000 would take advantage of the statute and transfer.[218] The significance of this data, if reliable, is that there is a significant population, including charter school students, private school students, and homeschooled students, for whom the St. Louis school district currently receives no funding from the State.[219] Under section 167.131, the SLPSD, as the unaccredited district, would have to pay tuition to the receiving district, in this case the CSD. This figure, the SLPSD contended, could be between $260 million and $280 million.[220] The SLPSD would add on to this another $40-$60 million in transportation costs if the SLPSD were also required to provide the transportation for each of the potential 15,750 students living in St. Louis who would be likely to transfer.[221] SLPSD

217. *Id*. at 21–22. As an example, Dr. Wilkinson testified to the inability to know how many additional teachers one would need to hire, textbooks to order, and additional resources. Depending on the numbers, additional classrooms and even school buildings or other meeting space would be required immediately. Wilkinson Testimony, *supra* note 215, at 191–93.

218. *Jones Report*, *supra* note 212, at 11–12. *See also* Adams Testimony, *supra* note 157, at 452–53.

219. The SLPSD receives money from the State of Missouri for each student who attends public school in the SLPSD. If a student does not attend school in the SPLSD, then the district receives no state money for that student. *See* MO. REV. STAT. § 163.036, -.021 (2012). *See also* Banks Testimony, *supra* note 208, at 376. The *Jones Report*, then, if accurate, would portend a significant monetary outlay by the SLPSD to any other receiving district under section 167.131 for students who do not attend school in the SLPSD.

220. *See* Post-Trial Brief of SLPS Parties Relating to Impossibility of Compliance with § 167.131 at 4, Turner v. Clayton Sch. Dist., No. 12SL-CC00411 (St. Louis Cnty. Ct. Apr. 10, 2012) [hereinafter Post-Trial Brief of SLPS re: Impossibility].

221. *Id*. at 5. Whether the SLPSD is statutorily required to provide for the transportation of each child who seeks to transfer under section 167.131 also was contested. The SLPSD argued it was only obligated to choose one district for which it was obligated to provide transportation. Students who elected to transfer to that district would thus have transportation. Students who

contended that this would deplete its finances, leaving it unable to adequately educate the remaining students who did not transfer under section 167.131.[222] The Superintendent of the SLPSD, Kelvin Adams, testified that it would be impossible to educate children who remained in the SLPSD if it had to pay for transfers pursuant to section 167.131.[223]

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did not elect to attend that district would be left to get to school on their own. This meant parents or other caregivers would have to transport the students, or the student might possibly be able to rely on the public transportation system. Of course, under this interpretation, the number of students likely to transfer, indeed able to transfer, would be limited to those with access to transportation. This cuts against the predominately low-income children in the district. This is not to say that low-income necessarily means one does not have access to transportation, but it does increase the likelihood that one does not have access to transportation. The plaintiffs, however, argued that the SLPSD would have to transport children to whatever school they decided to attend. *See* Kistner Interview, *supra* note 175. The statutory language on transportation of students under section 167.131 can be found at *supra* note 184.

222. Post-Trial Brief of SLPS re: Impossibility, *supra* note 220, at 6.

223. *Id*. at 5–6. Additionally, the SLPSD argued that the obligation of section 167.131 made it impossible to regain accreditation for the SLPSD to do its job. *Id*. at 7–10. It also contended that compliance with the statute was in direct conflict with its obligations under the 1999 Settlement in *Liddell*. In other words, how can the SLPSD work towards desegregation while simultaneously contributing to segregation by paying for white students in St. Louis City to attend schools in St. Louis County? Finally, the SLPSD argued that complying with section 167.131 would leave no provisions for children with special needs in St. Louis. According to the SLPSD, section 167.131 does not deal with the education of children with special needs. While the SLPSD has a federal obligation to educate such children within its district, SLPSD believes it is not clear that it has this right if the children voluntarily transfer to another district. *Id.* at 13–14. To the extent there is an obligation to provide special needs services to every child, no matter where that child attends school, the SLPSD says this is impossible. *Id*. at 10–12. It cannot send support to every single school district a child decides to transfer to, in order to service that child. The receiving school district, according to the SLPSD, has no obligation to provide special services to these children. There is a huge risk that these children will be lost in the shuffle:

> [SLPSD] faces the impossible choice of either complying with § 167.131 for all students and thereby attempting to shoulder the enormous burden of providing special services in every school in St. Louis County where [SLPSD]-resident special needs children decide to attend, or following the letter of IDEA and the state statutes and regulations and offer FAPE ["a free and appropriate public education"] only in its own facilities whenever such a placement would be appropriate. If [SLPSD] choose the latter course, it will, in effect, be telling children with disabilities to choose between attending a County school or receiving special services, because SSD [the Special School District] will not provide services to City residents in County schools and [SLPSD] cannot.

Id. at 12.

The plaintiff and the State of Missouri argued that impossibility could only be raised as a defense in a contract action.[224] This was not a contract action. Moreover, both agreed that even if impossibility could be used as a defense in the case, impossibility could not be based on speculation.[225] This was particularly true given that as of the date of the trial, only a few parents had even inquired as to the possibility of transferring their children into schools within the CSD.[226]

On May 1, 2012, judgment was entered in favor of the defendants.[227] As relates to this Article, the trial court found that section 167.131 was a violation of the Hancock Amendment to the Missouri Constitution because it was an unfunded mandate;[228] and that it was impossible for the defendants to comply with section 167.131.[229] Because the case involves the constitutionality of a statute, the appeal went directly to the Missouri Supreme Court.[230]

C. St. Louis Gains Provisional Accreditation

As discussed earlier,[231] the Special Administrative Board (SAB) has governed the SLPSD since 2007 when the district last lost

224. *See, e.g.*, *supra* note 210.

225. For example, the State admitted that the number of transfers might be such that payment by the SLPSD becomes impossible, but went on to argue that this "is not, however, an issue that can be decided today. A determination of that issue would require a real set of facts, not a hypothetical projection." State Post-Trial Brief, *supra* note 210, at 20.

226. *See, e.g.*, Kistner Interview, *supra* note 175; *see also* Wilkinson Testimony, *supra* note 215, at 227 (noting that there have been only two hundred to three hundred inquiries over the past five years). Moreover, CSD officials admitted that it was *possible* to educate somewhere between 300–999 students with short notice. State Post-Trial Brief, *supra* note 210, at 22. The reliability of the numbers in the *Jones Report* is crucial.

227. Turner v. Clayton Sch. Dist., Nos. 12SL-CC00411, 07SL-CC00605 (St. Louis Cnty. Ct. May 1, 2012).

228. *Id.* at 13.

229. *Id.* at 14. There were two other findings not relevant to this Article but, ironically, they may play a role in the continued life of the case during the appeal. One was the finding by the trial court that the sole remaining plaintiff owed the CSD tuition for all of the year's tuition agreements that were in effect while the SLPSD was unaccredited. Second was the trial court's finding that based on the fact that the defendants prevailed on the constitutional issue, they were entitled to costs and attorneys' fees. *Id.* at 16.

230. MO. CONST. art. V, § 3 (2011). Notices of appeal have been filed. Notice of Appeal, Turner v. Clayton Sch. Dist., No. 07SL-CC00605 (St. Louis Cnty. Ct. June 4, 2012).

231. *See supra* notes 169–71 and accompanying text.

accreditation. Since the current superintendent, Kelvin Adams, and the SAB have been in place, the district has made progress. First, unlike prior years,[232] the leadership shown by Superintendent Adams and the SAB has been strong, steady, consistent, functional, and productive. Second, the district is now financially stable.[233] Additionally, there have been four years of consistent increases in academic achievement levels, the number of graduates, and attendance.[234] The district has doubled its accreditation points since 2009.[235] The African-American students attending magnet schools in the district have even outperformed the VICC transfer students on standardized testing.[236] Other supports have been put in place including support to teachers, principals, and the addition of all-day pre-kindergarten classrooms.[237] As a result of this progress, the district was granted provisional accreditation in October of 2012.[238]

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232. *See supra* note 158.

233. *See* Press Release, St. Louis Office of Public Information, Julie Linder, SLPS Receives $96.1 Million from Desegregation Capital find Money Allocated over 3-Year Period to Fund Academic Programs and Stabilize Finances (Nov. 21, 2011) (on file with author) [hereinafter Press Release].

234. Adams Testimony, *supra* note 157, at 435–38.

235. *See, e.g.*, Elisa Crouch, *St. Louis Schools Are Near Reaccreditation, Data Show*, STLTODAY.COM (Jan. 18, 2012), http://www.stltoday.com/news/local/education/st-louis-schools-are-near-reaccreditation-data-show/article_312a4e1c-8635-55ca-a302-dc11b1018da9.html [hereinafter Crouch, *St. Louis Near Reaccreditation*]; *SLPS Gets 6 Accreditation Points From DESE, Shows Academic Improvement For Four Consecutive Years*, ST. LOUIS AM. (Sept. 19, 2011), http://www.stlamerican.com/news/local_news/article_1f29e11c-e308-11e0-8c2c-001cc4c002e0.html; *see also* Adams Testimony, *supra* note 157, at 446.

236. Elisa Crouch, *Blacks' Test Scores Show Some Schools In City Excel*, STLTODAY.COM (May 11, 2012), http://www.stltoday.com/news/local/education/blacks-test-scores-show-some-schools-in-city-excel/article_8857f7ac-8f1a-5165-b5d2-69dd0b834738.html ("[D]ata, provided by St. Louis Public Schools, show that black students in the district's magnet and choice programs outpaced transfer students on eight of 12 measures of the state test last year, as well as the high school English and math exams."); *see also 2011 Map Test Index Analysis; VICC Students Compared to SLPS African American Magnet School Students*, ST. LOUIS PUBLIC SCHOOLS (2012), http://www.slps.org/cms/lib03/MO01001157/Centricity/Domain/3/2012/2011%20MAP%20TEST%20INDEX%20ANALYSIS1.pdf.

237. *See, e.g.*, Adams Testimony, *supra* note 157, at 458–59. A communal effort and network, including a support network, engaged parents, teachers who have expectations of them, and "wraparound services" will help children stay focused, engaged, and in school. Dr. Adams defines wraparound services as those that include a host of services needed in the communities where the children live. They include medical and mental health services, case management, and attention to housing and employment needs. Adams Interview, *supra* note 126.

238. Jessica Bock, *State Board Gives Provisional Accreditation for St. Louis Public*

Although there is some reason to celebrate the grant of provisional status, this decision is not without controversy, nor is the district completely out of danger.[239] Examples of some of the challenges that remain include the following: (1) Some think the decision was purely political. Not wanting to take the risk of waiting to see if the Missouri Supreme Court would affirm the trial court's ruling that the statute was unconstitutional as applied to the CSD and the SLPSD, some believe the State Board simply decided it was safer to award provisional accreditation.[240] (2) Some believe provisional accreditation sends the wrong message to parents concerning the quality of St. Louis schools. Responses from two parents are illustrative of these concerns. One parent stated that "[t]he reclassification of the Saint Louis Public Schools by the Missouri State Board of Education really doesn't change much for my kids or me . . . . It doesn't change the fact that in my son's 3rd grade class, only 3 percent of students are on grade level."[241] Another parent wrote an open letter to the State Board asking that it not award provisional accreditation to the district. In support of his argument, he stated:

> State Education Commissioner Chris Nicastro indicated last month that St. Louis Public Schools must show persistent

Schools, STLTODAY.COM (Oct. 16, 2012), http://www.stltoday.com/news/local/education/state-board-gives-provisional-accreditation-for-st-louis-public-schools/article_27dc696e-596a-5c4f-a5ad-e5c8d224971f.html#.UH20wxY2kDM.email.

239. As Washington University Professor of Education and Urban Studies William Tate observed: "The way you have to think of it is, it's not pretty yet, but it's moving in the direction of where there is possibly hope." *Id.* SAB member Melanie Adams stated similarly: "There is not a person in this district who believes the district has arrived at some point, and that this is the final frontier . . . . This is simply, look at the scores, validate the work that has taken place. This is an interim step." *Id*.

240. None of my sources wish to go on record for this proposition. The timing does strike one as interesting. This is particularly true since the Commissioner of Education for the State of Missouri has said repeatedly over the past few months that she would want to see several years of consistent performance before a change in the district's status. *See, e.g.*, Joe Robertson, *In Missouri's School Performance Reports, KC Gets a Better Score*, KANSAS CITY STAR, Aug. 14, 2012 (quoting Commissioner Nicastro: "We're looking for sustained improvement over time," she said. "We want at least three years of data. . . . One year of fluctuation does not long-term improvement necessarily make.").

241. *CEAM Responds to SLPS Classification*, CHILDREN'S EDUCATION ALLIANCE OF MISSOURI (Oct. 16, 2012), http://www.childrenseducationalliance-mo.org/accountability-transparency/msip5/ceam-responds-to-slps-classification.

> improvement over time before changes are made to [its] accreditation status, and rightfully so. Despite last month's headlines that [the SLPSD] had made some minor improvements, there were other areas that actually fared worse than previous years: In math for example, scores dropped from 30% of students on grade level in 2011 to 27% this past year. Students who scored at grade level in reading dropped from 32% in 2011 to 30% in 2012. Other indicators continue to remain poor: the district's graduation rate has remained steady at just over 50% and the average ACT score has held at about 16.
>
> Because Missouri doesn't rate individual schools, parents must rely on the district's accreditation status to make a determination about the quality of an individual school. If the state board were to give [the SLPSD] its accreditation back, parents and the public will be misled about the quality of the district, thereby making the complicated process of identifying the educational option for their child even more difficult.[242]

(3) Additionally, some controversy remains with respect to cheating allegations at various elementary schools with the resulting crackdown seeking dramatic drops in scores.[243] (4) There is also some controversy involved with the district's strategy for one of the fourteen performance standards, and that is testing only those

242. Andrew Hesse, *An Open Letter to the Missouri State Board of Education*, CHILDREN'S EDUCATION ALLIANCE OF MISSOURI (Sept. 16, 2012), http://www.childrenseducationalliance-mo.org/accountability-transparency/an-open-letter-to-the-missouri-state-board-of-education. Moreover, although based on 2008–09 data, there is some evidence that many underperforming schools are contained within certain zip codes. Four such zip codes, for example, had no schools within the zip code that met at least half of the Annual Proficiency Target tests in Communication Arts and Math. Schools that met at least half of the Annual Proficiency Target in Communication Arts and Math, "meaning that in 2008 at least 25.5 percent of students were proficient or above in Communication Arts and at least 22.5 percent of students were proficient or above in Math," are defined in the report as Tier I Schools. The report not only found a dearth of Tier 1 schools, but it also found several instances where thousands of children resided in districts where there was a complete lack of neighborhood performing schools. *See* IFF, THE CITY OF ST. LOUIS MO., PUBLIC SCHOOL IN ST. LOUIS: PLACE, PERFORMANCE (2011), http://stlouis-mo.gov/government/departments/mayor/documents/upload//STL-Place-Performance-Promise.pdf.

243. Bock, *supra* note 238.

students likely to pass.[244] (5) Moreover, as revealed by the Schott Foundation for Public Education in its latest report, black males in St. Louis suffer the worst, and they are suffering at alarming, astounding, and heartbreaking rates. For example, in addition to the fact that out-of-school suspension rates for black males in the state and in St. Louis are *among the highest in the nation*,[245] only 33 percent of black males in St. Louis graduated with their cohorts in the 2009–10 school year,[246] and the achievement gaps for students at or above proficiency in reading and in math for black males and white males was 25 percent and 31 percent, respectively.[247]

While accreditation is a step in the right direction, there is strong evidence here that accreditation does not mean quality has been obtained. They are not one and the same. The journey continues. So, although now provisionally accredited, the SLPSD still has a very long way to go. This struggle for quality education is an old story, a long battle, and it is still ongoing.

III. THE DREAM REMAINS ELUSIVE

> *Beyond our personal disappointment for our situation, there's an enormous sense of injustice for all the kids that are trapped in the city unaccredited school district. . . . By the time it's reaccredited, these kids would have spent well over half their school life in an unaccredited or provisionally accredited school system. And they have no way out.*[248]

Although there were big hopes for the *Liddell* settlement, the reality is that the settlements of the case did not result in the perceived gains. Dr. William Danforth stated that there were really two promises contained within the 1999 Settlement Agreement. One

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244. *Id.* ("Gains in Algebra I test scores—one of the state's performance standards—could be attributed to the district's strategy of testing only those who are likely to pass. Other students wait to take the test until they receive extra help in the subject. Although the state requires the district to administer the test before a student graduates, the district's dropout rate is high.").

245. *See supra* note 167.

246. *See Urgency Now*, *supra* note 153, at 25.

247. *See The Urgency of Now: Missouri*, SCHOTT FOUNDATION FOR PUBLIC EDUCATION 1–2 (2012), http://www.blackboysreport.org/states/missouri.pdf.

248. Crouch, *Whatever the Outcome*, *supra* note 172 (quoting former plaintiff William Drendel).

was that the school system would do what it agreed to do, and two, that it would accomplish its mission.[249] While Dr. Danforth believes that the system has, by and large, done what it promised, it has not accomplished what it hoped. Attendance, graduation, and academic achievement levels remain troublesome, even in 2012 and even though the district is now provisionally accredited.

The minute the SLPSD lost accreditation in 2007, section 167.131 was there, presumably as a safety net of sorts, to save children and thus finally provide, once and for all, the quality education long sought. But the red herring of the statute was revealed at closer look. Section 167.131 really is nothing more than a mirage. The statute, at best, can provide a path to a quality education for some children: i.e., those children whose families not only want to invoke the statute but also are in a position to do so. Those children will be provided with an opportunity for a quality education. But what about the remaining students? What fate befalls those who either cannot or otherwise do not take advantage of the benefits section 167.131 has to offer?

Let us consider, for a moment, what could happen if the Missouri Supreme Court upholds the constitutionality of the statute in *Turner*. There is some chance that such a decision will hurt both the SLPSD and St. Louis. The transfer of children under the statute financially weakens the district where those children live. Now, it is very true that there is simply no way to know how many children would take advantage of section 167.131. The only thing that currently exists on this point is the report prepared by the defense expert Dr. Jones in the case.[250] Assuming some students do transfer, some of those seeking transfer will undoubtedly be children the SLPSD is already educating, others might include students currently participating in the voluntary transfer program from the 1999 Settlement Agreement.[251]

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249. Interview with Dr. William Danforth, in St. Louis, Mo. (July 30, 2009) (on file with author).

250. The *Jones Report* can be found at *supra* note 212.

251. Children who participate in the voluntary transfer program are assigned to one of four attendance zones. Based on the child's residence, an attendance zone for transfer purposes is assigned. With some minor exceptions, children participating in the program have to attend the suburban school district associated with their zone. *See Transfer Handbook*, *supra* note 129, at 5. This controls how many transfers a given school can receive at any time. There is a chance, of course, that a student who currently attends one school under the voluntary transfer program would elect to transfer to another school, a school of her choice. While the number of students

Other potential transfers could hail from private schools, parochial schools, charter schools,[252] and might even include currently homeschooled students. There may be others, like the children in *Turner*, who currently attend suburban schools pursuant to tuition agreements between their parents and those schools. Not every student will transfer. Indeed, thousands are likely to remain in the SLPSD.[253]

Now, St. Louis's allocated dollars from the State are based on the school's average daily attendance.[254] If a student lives in the SLPSD but does not attend a SLPSD school, SLPSD receives no state money for that child.[255] If that same child transfers pursuant to section 167.131, every dollar in tuition that the SLPSD has to pay the receiving district is purely out of the SLPSD operating budget with no help from the State.[256] Using the two children who remained in the *Turner* case at the time of trial as an example, the SLPSD would have to write a check of $40,057.38 to the CSD for these children with no reimbursement from the State.[257] Depending on how many students

who may elect to do that is unknown, there clearly is some number. *Jones Report*, *supra* note 212, at 11, actually forecasted that 2,248 students would elect to transfer.

252. *See, e.g.*, Elisa Crouch, *St. Louis Firefighters Sue School Districts Over Transfers*, STLTODAY.COM (Jan. 25, 2012), http://www.stltoday.com/news/local/education/st-louis-firefighters-sue-school-districts-over-transfers/article_2a2af1c8-4622-11e1-89dc-0019bb30f31a.html#ixzz1zO9HHKph. St. Louis firefighters have to live in St. Louis. Many of them do not send their children to the public schools in St. Louis, opting instead to pay parochial school tuition or enter into tuition agreements with suburban school districts as the parents did in the *Turner* case. *See also* Heather Hollingsworth, *NAACP Questions St. Louis Charter School Closures*, KMOV.COM (Apr. 22, 2012), http://www.kmov.com/news/just-posted/NAACP-weighs-in-on-St-Louis-charter-closures-148458865.html (explaining that after the state closed six charter schools in St. Louis, the NAACP questioned why the 3,500 children affected have not been allowed to transfer to accredited districts pursuant to the *Turner* decision and considering litigation).

253. Superintendent Kelvin Adams testified that of the 8,313 students that the SLPSD currently educates who it is believed would transfer under section 167.131, another 16,600 students would remain in the district. Adams Testimony, *supra* note 157, at 465, 474.

254. In 2011, the state funded 14.8 percent of the $15,861 average daily attendance expenditure of the St. Louis City District, which equals $2,347.43. *See School Finance Report*, *supra* note 177. Currently, the SLPSD receives $3,620.27 per pupil for weighed average daily attendance in its schools from the State. *See* Banks Testimony, *supra* note 208, at 386–87.

255. Banks Testimony, *supra note* 208, at 375–76; *see also* Adams Testimony, *supra* note 157, at 452–53.

256. Banks Testimony, *supra* note 208, at 375–77.

257. *Id.* at 382.

transfer, the costs of transfer could bankrupt the school district.[258] Moreover, even if one only considers the children that the SLPSD currently is educating, there is still a loss to the district's operating revenues.[259] Expenses in this case would not decrease because the children go elsewhere. The district would still have to provide the same level of resources to the other children in the district (teachers, transportation, and other resources) whether a given child attends school in the SLPSD or in the receiving district.[260] Although the SLPSD has recently become financially solvent,[261] sending money out of the district will not help St. Louis on its journey to providing a quality education for its children.[262]

With less money available, it simply becomes harder for the SLPSD to educate the children who remain in the St. Louis public schools.[263] There is some irony in the fact that despite the *Liddell* settlements of 1983 and 1999 and the triggering of section 167.131, poor African-American children find themselves in struggling and under-resourced public schools. The 1983 *Liddell* Settlement, recall, resulted in three types of relief for students: magnet schools, inter-district transfers, and capital improvements and other resource infusions to the children who would neither participate in the magnet schools nor participate in the transfer program.[264] The children in this latter category never got all that they were promised.[265] Many of these children graduated from or otherwise left schools that were not

258. Adams Testimony, *supra* note 157, at 475, 511.

259. *Id.* at 453, 455–56.

260. *Id.* at 455.

261. *See* Press Release, *supra* note 233.

262. Adams Testimony, *supra* note 157, at 453–54, 479. Additionally, section 167.131 does no good for receiving districts. The statute is simply silent on whether a student has to apply for admission before some deadline, how many may apply before space is exhausted, and the like. While many challenge the *Jones Report* as being overblown in terms of actual transfer possibilities, the reality remains that the statute takes away all of the normal tools in place for schools to prepare for increases in student populations. Such surprises are not good for anyone.

263. Adams Testimony, *supra* note 157, at 475–78. *See also* Susan Carlson, *Guest Commentary: Time For A Turner Fix*, STLTODAY.COM (May 8, 2012), http://www.stltoday.com/news/opinion/guest-commentary-time-for-a-turner-fix/article_8cf291ff-cb87-5fa2-9d24-7a3812490c7.html ("[A]llowing students to transfer out [of an unaccredited district] should not come at a cost of draining an unaccredited school district of the financial resources needed to provide a quality education to students who remain."); *see also Jones Report*, *supra* note 212.

264. *See, e.g.*, La Pierre, *supra* note 68, at 1001.

265. *Id.*

providing them with a quality education. The students in the SLPSD at the time of the 1999 Settlement Agreement also found themselves attending schools in a technically unaccredited school district.[266] And, section 167.131, if upheld, may see thousands of children leave their school district to take advantage of the statute while thousands are left behind.[267] With the limited dollars allocated for those who remain being mailed to neighboring suburbs, these children are assured of continued second-class citizenship. One must wonder how many of these children are either relatives or descendants of those left behind in 1983, 1999, and 2007.

A potential irony in the implementation of section 167.131 is that if Dr. Jones's conclusions are correct, the statute could promote more segregated public schools in both the city and in the receiving suburbs. According to Dr. Jones, a high percentage of white students would transfer to suburban schools.[268] The SLPSD is comprised of over 81 percent African-American students[269] and is engaged in voluntary efforts to desegregate its schools. Dr. Jones testified that 18,563 of the 56,619 students living within the SLPSD are white and 26 percent, or 4,937, would transfer to suburban schools if given the opportunity afforded under section 167.131.[270] To the extent any of these 4,937 students currently attend schools in the SLPSD, the result would leave even fewer integration options. Section 167.131 allows the subsidizing of these children into already highly segregated suburban schools.[271]

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266. *See supra* note 144.

267. *See supra* note 253.

268. Jones Testimony, *supra* note 212, at 86; *see also* Adams Testimony, *supra* note 157, at 468.

269. The very latest statistics, as of October of 2012, indicate that the SLPSD is 82 percent African-American, 3 percent Hispanic, 3 percent Asian, and 12 percent Caucasian. It is a majority minority district. Eighty-eight percent of the students in the district also qualify for free and reduced lunch. *See* E-mail from Linda Riekes, Development and Partnership Officer, SLPSD, to author (Oct. 12, 2012, 17:09 CST) (on file with author) (attaching St. Louis public school demographics as of October 12, 2012). *See generally District Demographic Data*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (July 06, 2012, 11:47 AM), http://mcds.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/District%20Demographic%20Data.aspx [hereinafter *District Demographic Data*].

270. Jones Testimony, *supra* note 212, at 86.

271. *See District Demographic Data*, *supra* note 269 (showing the following, approximate demographic makeup of suburban districts: Bayless 150 black, 1,200 white; Brentwood 190 black, 590 white; Clayton 550 black, 1,800 white; Hancock Place 250 black, 4,000 white;

Section 167.131 is unhealthy for the City of St. Louis as well.[272] St. Louis's population has been in decline for the past several decades. The recent 2010 Census data shows the St. Louis population at 319,294. This is down 8.3 percent from the 2000 Census.[273] The latest numbers, taken in July of 2011, reveal an additional decline: 318,069, down from 319,294.[274] The new numbers are a continued reflection of the 2010 Census, when St. Louis County fell below one million residents, and the city of St. Louis continued a sixty-year drop.[275] At its peak in 1950, St. Louis had 856,796 residents, and it was one of the ten largest cities in the country.[276] Now, it is a shell of its former self. Moreover, "[n]ot surprisingly given its politics and

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Ladue 600 black, 2,800 white; Lindbergh 400 black, 5,000 white; Mehlville 950 black, 9,000 white; Parkway 2,700 black, 11,500 white; Rockwood 2,400 black, 18,100 white; Valley Park 250 black, 900 white; Webster Groves 1,900 black, 3,000 white). Of course, not all suburban school districts in the St. Louis metropolitan area are majority white. In theory, then, a student could transfer to a black suburban district. It does happen to be the case, however, that the suburban districts with the highest student performance on the statewide Missouri Assessment Program testing figures are primarily white school districts. *See APR Summary Report—K–12—Public*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (July 06, 2012, 2:00 PM), http://mcds.dese.mo.gov/guidedinquiry/APR%20%20State%20Accountability/APR%20Summary%20Report%20-%20K-12%20-20Public.aspx?rp:COUNTY_DISTRICT_CODE=048914 [hereinafter *APR Summary Report*].

272. Of course, there are other school districts within the state, too, that currently are unaccredited or in danger of losing accreditation. Currently, three of Missouri's 522 school districts—Normandy, Kansas City, and Riverview Gardens—are unaccredited. *State Board Supports Accreditation Legislation*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC. (Feb. 21, 2012), http://dese.mo.gov/news/2012/accreditation-legislation.htm; Dale Singer, *Normandy Schools Lose Accreditation*, ST. LOUIS BEACON (Sept. 17, 2012), https://www.stlbeacon.org/#!/content/27048/normandy_accreditation_decision_091412. Two more, exclusive of St. Louis, are provisionally accredited—Calhoun R-VIII and Swedeborg—while three others are on the brink of provisional accreditation—Hickman Mills, University City, and Winfield R-IV. *See Unaccredited and Provisionally Accredited—State Board Decides*, MISSOURI NEA (Sept. 20, 2011), http://www.mnea.org/Missouri/News/Unaccredited_and_provisionally_accredited_State_Bo_187.aspx.

273. *U.S. Census Bureau Delivers Missouri's 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting*, 2010 CENSUS (Feb. 24, 2011), *available at* http://2010.census.gov/news/releases/operations/cb11-cn49.html2010 (showing St. Louis population figures).

274. Doug Moore, *St. Louis Region's Population Growth Lagging That of Nation*, STLTODAY.COM (Apr. 5, 2012), http://www.stltoday.com/news/local/metro/st-louis-region-s-population-growth-lagging-that-of-nation/article_5d588480-a6fb-51d9-acf7-7d821cd8337b.html#ixzz1zVbHB7Pj. A statistician with the Census Bureau stated that the 318,069 figure is determined by taking 2010 Census numbers, adding births, subtracting deaths, and tracking migration both from within the country and internationally. *Id*.

275. *Id*.

276. *Id.*

demographics, St. Louis [also] retained (decade after decade) its dubious distinction as one of the nation's most segregated metropolitan areas,"[277] a distinction it continues to hold in the twenty-first century.[278] For decades, private discrimination, racial zoning, state-enforced restrictive covenants, redlining by banks and realtors, incentives by the federal government, and a host of other public policies in St. Louis, all combined to keep African-Americans trapped in certain neighborhoods, as well as in the poor and segregated schools that Minnie Liddell's children faced in the 1960s and 1970s. Historian Colin Gordon noted in a recent visit to St. Louis:

> The sociological work of the 1970s—much of it done in St. Louis—which plumbed the motives of families of ordinary means, found that black and white families wanted exactly the same things. They wanted safer neighborhoods and better schools. But the policies opened those opportunities to white residents but not to black for what were the decisive decades, from the 1920s to the 1970s, in the shaping of the region.[279]

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277. GORDON, *supra* note 22, at 11.

278. Gus Lubin & Christine Jenkins, *The 22 Most Segregated Cities in America*, BUSINESS INSIDER (Apr. 1, 2011), http://www.businessinsider.com/most-segregated-cities-in-america-2011-3?op=1. St. Louis ranked sixth out of twenty-two cities, and its white-black dissimilarity score rated a whopping 70.6 percent. *Id*. This means that 70.6 percent of one group would have to move in order to have a positive effect on racial desegregation in a given tract of land! Moreover, white flight out of the city has been documented in St. Louis for every decade since the 1940s. *See* GORDON, *supra* note 22, at 22–38. This trend continued in the 2010 Census data. *See* Doug Moore, *Census Shows City Is 'Hollowing Out'*, STLTODAY.COM (Feb. 25, 2011), http://www.stltoday.com/news/local/metro/article_4af01497-bca8-5b63-8cc6-1c724c11dd08.html ("The population loss in both the city and the county came from substantial drops in their white population. . . [but u]nlike towns in the Metro East, such as Belleville, the gain of blacks and other minorities in St. Louis County was not enough to offset the loss of whites.").

279. Mary Delach Leonard, *History Raises Painful Issues Regarding the City's Economic Struggles*, ST. LOUIS BEACON (Jan. 26, 2011), https://www.stlbeacon.org/#!/content/17139/inteview_with_colin_gordon. The correlation between a quality education and employment remains true in 2012. African-Americans continue to struggle with employment opportunities, in large measure, because of their lower educational attainment. *See, e.g.*, U.S. DEP'T OF LABOR, THE AFRICAN AMERICAN LABOR FORCE IN THE RECOVERY, http://www.dol.gov/_sec/media/reports/blacklaborforce/ (last visited July 08, 2012); Alexis Garrett Stodghill, *African-American Unemployment: Connected to Low High School Graduation Rates?*, THE GRIO (Jan. 10, 2012), http://thegrio.com/2012/01/10/african-american-unemployment-connected-to-low-high-school-graduation-rates/.

People are moving out of St. Louis, and the problems of the SLPSD clearly have to be part of the reason why. "[T]he city wants to grow . . . but it will not until there is a better choice of quality schools."[280] While we have a long way to go, and a viable school district may not be the lone, silver bullet, no one should doubt that a viable school district can help substantially in any rebirth of the city.[281]

Of course, the concerns advanced are only worth worrying about if the Missouri Supreme Court upholds the validity (and its prior 2010 interpretation) of section 167.131. But what if the court affirms the trial court decision? Would this decision result in quality education for the children of the SLPSD? The answer, unfortunately and sadly, is not today. As demonstrated earlier, the district, although moving towards full accreditation, is far from being able to say it provides a quality education to all of its students. Gains are being made, but they take time. How much time is, unfortunately, the unknown variable.[282] A real risk exists, then, that by the time gains

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280. Alex Ihnen, *In St. Louis Population Decline No Longer Good or Bad, "It Just Is,"* NEXT STL (Apr. 5, 2012), http://nextstl.com/greater-stl-missouri/in-st-louis-population-decline-no-longer-good-or-bad-qit-just-isq (quoting Jeff Rainford, Chief of Staff for St. Louis Mayor Francis Slay).

281. There are other troublesome aspects of section 167.131. For example, the statute covers any child living within the district even if that child does not attend the troubled school. I am not advocating the exclusion of those children, but I think a priority should be given to the children who then currently attend the troubled schools. The statute also has the effect of rendering the protections of the Safe Schools Act meaningless. Recall that the Safe Schools Act was enacted to give schools some notice and discretion as to who they are willing to admit. *See, e.g.*, *Turner*, 318 S.W.3d 660, 671 n.2 (Mo. 2010) (Breckenridge, J., dissenting). Section 167.131 removes all discretion from the receiving district and thus renders the protections of the statute a nullity.

282. C.E.O. of the Schott Foundation, John H. Jackson, recently stated at a Congressional Black Caucus legislative conference that:

> The progress among blacks closed the racial divide on graduation rates by 3 percentage points over nine years to a 26 percentage-point gap. "*At this rate it would take 50 years for black males to graduate at the same rate as white males*. . . . I don't think the country can wait. I don't think any parent or student can wait for half a century to have the same opportunities, education, jobs as their white male counterparts."

Suzanne Gamboa, *High School Graduation Rate For Black Males Trails White Students*, HUFFINGTON POST (Sept. 19, 2012), http://www.huffingtonpost.com/2012/09/19/black-male-hs-graduation-_n_1896490.ht ml?ir=Education (emphasis supplied).

are made, the children currently in the SLPSD, and maybe even their children, will be long gone from the system.[283]

CONCLUSION

Forty years after Minnie Liddell started her journey for a quality education, the settlement agreement she worked for twenty-seven years to obtain is being phased out,[284] the SLPSD is not academically stable, the legislative front is quiet,[285] and it is very unclear what the

283. Lawsuits involving public education equity, adequacy, and desegregation lawsuits are often decades old. Of course, you have *Liddell* as an example. See also, *e.g.*, *Abbott ex rel. Abbott v. Burke*, 20 A.3d 1018 (N.J. 2011), and *Sheff v. O'Neil*, No. X07CV894026240S, 2010 WL 1233971 (Conn. Super. Ct. Feb. 22, 2010). These two cases are representative of the length of time it takes cases dealing with these issues to make their way through the judicial system. Imagine the toll that the litigation must have on the families and imagine the tremendous sense of dreams deferred for the named plaintiff children who age out of public secondary education while the cases continue to toil in the system. Relief for these children, too, remains elusive. Consider also *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). Decided in 1973, the issue at the heart of that case, equity in public education, *continues* to be fought at the state level. *See, e.g.*, Edgewood Independent Sch. Dist. v. Meno, 917 S.W.2d 717 (Tex. 1995) (*Edgewood IV*); West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis, 107 S.W. 3d 558 (Tex. 2003); *see also* Michael Heise, *The Story of* San Antonio Independent School Dist. v. Rodriguez*: School Finance, Local Control, and Constitutional Limits*, *in* EDUCATION LAW STORIES 51 (Michael A. Olivas & Ronna Greff Schneider eds., 2007). Let us assume, also, that a decision is reached in less than ten years. How long does it take before the decision is implemented and results are obtained? Plaintiffs won an equity case in New York almost ten years ago. Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326 (N.Y. 2003). Yet, by all accounts, New York is still one of the largest underperforming school districts in the nation. *See, e.g.*, *The Urgency of Now: New York*, SCHOTT FOUNDATION FOR PUBLIC EDUCATION (2012), http://www.blackboysreport.org/states/new-york.pdf; *see also A Rotting Apple: Education Redlining in New York City*, SCHOTT FOUNDATION FOR PUBLIC EDUCATION, http://schottfoundation.org/drupal/docs/redlining-full-report.pdf [hereinafter *A Rotting Apple*]. It makes you wonder: do plaintiffs really ever win?

284. Once reaching a high of almost 13,000 African-American students transferred from city schools to county schools and just under 1,500 white students transferred from county schools to city schools, in the 2010–11 school year, 5,882 African-American students transferred from city schools to county schools, and 142 white students transferred from the county into city magnet schools. Glaser E-mail Feb. 21, *supra* note 128.

285. The Missouri legislature purportedly attempted to "fix" *Turner* for two consecutive years to no avail. They even ended sessions early as if there was no more work to be done. *See, e.g.*, Virginia Young, *Missouri Legislature Fails to Pass China Hub Incentives, Local Control*, STLTODAY.COM (May 14, 2011), http://www.stltoday.com/news/local/govt-and-politics/article_645de951-67f3-5bc7-bc34-550b9391e39d.html; *Missouri Legislature Officially Ends 2011 Session*, COLUMBIA MISSOURIAN (May 27, 2011), http://www.columbiamissourian.com/stories/2011/05/27/missouri-legislature-officially-ends-2011-session.). No other legislation attempting to fix *Turner* passed. *See* Virginia Young, *Legislature Leaves Some Unfinished Business*, STLTODAY.COM (May 20, 2012), http://www.stltoday.com/news/local/metro/legisla

Missouri Supreme Court will do with the *Turner* appeal. (For example, now that the SLPSD is provisionally accredited, will it continue to decide the case (including the constitutionality of the statute or impossibility defenses), or will the court dismiss the case as moot? The latter route would leave the trial court's determination that the statute is unconstitutional in place, thereby forcing other parents in unaccredited districts in the state to bear the emotional drain and expense of fighting this battle all over again.)[286] Moreover, might the legislature still try, yet a third time, to find a way to insure that the Missouri Constitution's promise of a free public education includes some acceptable definition of quality education so that generations of people do not have to keep litigating this question? These are just a few of the unknowns in this continually evolving saga.[287]

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ture-leaves-some-unfinished-business/article_26d6fc74-db9f-56b5-9800-ec979a812360.html; *see also* Elisa Crouch, *School Transfer Case Set to Open*, ST. LOUIS POST-DISPATCH, Mar. 5, 2012, at A1. This twenty-four-month period of failed legislation has caused some to wonder aloud whether race has something to do with this. The overwhelming majority of children trapped in unaccredited districts in Missouri are black and attend school in predominantly black school districts. Missouri state legislatures are overwhelmingly non-urban, white male. *See, e.g.*, Editorial, *Our View, The Nicastro Fix Time for Education Commissioner to Stand for Kids*, ST. LOUIS POST-DISPATCH, May 3, 2012, at A14; *see also* Hollingsworth, *supra* note 252.

286. Kansas City, the second-largest school district in the state of Missouri, remains unaccredited. Litigation over section 167.131 continues to thrive in districts on that side of the state. A split opinion was recently rendered on the constitutionality of section 167.131. The court held in that case that depending on where and how it is applied, the statute violates the Hancock Amendment in some transfer cases but not in others. *See* Blue Springs R-IV Sch. Dist. v. Sch. Dist. of Kansas City Mo., No. 1116-CV 34463 (Cir. Ct. Jackson Cnty., Mo. Aug. 16, 2012). *See also* Dave Jordan, *Judge Issues Split Decision in Kansas City Schools Student Transfer Case*, KCTV 5 NEWS (Aug. 16, 2012, 1:46 PM), http://www.kctv5.com/story/19296204/judge-issues-split-decision-in-kansas-city-student-transfer-case.

287. Of course, in addition to the battle for quality schools, the battle for integrated schools also looms large in St. Louis. The district is over 80 percent black and on free and reduced lunch. *See supra* note 269. We must not forget that quality schools should also include integrated schools. Yet, litigants have been stymied since 2007 in their attempts to use race to integrate K–12 public schools. *See PICS*, *supra* note 21. *PICS* applied a strict scrutiny test to the use of race to integrate public K–12 schools. With respect to the two school districts before that Court, in neither case did the Court find that the school district's use of race passed was narrowly tailored to achieve a compelling government interest. *Id.* at 720. For more on the *PICS* case, see, e.g., Preston C. Green, III, Julie F. Mead, & Joseph O. Oluwole, Parents Involved, *School Assignment Plans, and the Equal Protection Clause: The Case for Special Constitutional Rules*, 76 BROOKLYN L. REV. 503 (2011); Erica Frankenberg, Genevieve Siegel-Hawley & Adai Tefera, *School Integration Efforts Three Years After* Parents Involved, THE CIVIL RIGHTS PROJECT (2010), http://civilrightsproject.ucla.edu/legal-developments/court-decisions/school-integration-efforts-three-years-after-parents-involved/teferea-school-integration-three-years-after.pdf; Charles E. Dickinson, *Accepting Justice Kennedy's Challenge: Reviving*

This state of affairs should make us wonder aloud how forty years could have gone by and there be so little progress to show for all of the time, the effort, and the expense.[288] Sure, in many ways things are absolutely better than they were in 1972. But sadly, in some very important ways they are not.[289] Noted Civil Rights Attorney Frankie Freeman, while Commissioner of the U.S. Civil Rights Commission once said:

> [W]e are now on a collision course that may produce within our borders two alienated and unequal nations confronting each other across a widening gulf created by a dual educational system based upon income and race. Our present school crisis is a human crisis, engendered and sustained in large part by the actions, the apathy, or the shortsightedness of public officials and private individuals. It can be resolved only by the commitment, the creative energies, and the combined

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Race-Conscious School Assignments in the Wake of Parents Involved, 93 MINN. L. REV. 1410 (2009); Maurice R. Dyson, *De Facto Segregation & Group Blindness: Proposals for Narrow Tailoring Under a New Viable State Interest in* PICS v. Seattle School District, 77 UMKC L. REV. 697 (2009); Kimberly J. Freedman, Parents Involved in Community Schools v. Seattle School District No. 1*: A Return to a Separate and Unequal Society?*, 63 U. MIAMI L. REV. 685 (2009); Rachel F. Moran, *Rethinking Race, Equality, and Liberty: The Unfulfilled Promise of* Parents Involved, 69 OHIO ST. L.J. 1321 (2008); Jonathan L. Entin, Parents Involved *and the Meaning of* Brown*: An Old Debate Renewed*, 31 SEATTLE UNIV. L. R. 923 (2008); john a. powell & Stephen Menendian, Parents Involved*: The Mantle of* Brown*, The Shadow of* Plessy, 46 U. LOUISVILLE L. REV. 631 (2008). Integration may need to come another way. Consider, for example, the data on the use of socioeconomic demographics to integrate schools. *See generally* THE FUTURE OF SCHOOL INTEGRATION: SOCIOECONOMIC DIVERSITY AS AN EDUCATION REFORM STRATEGY (Richard D. Kahlenberg ed., 2012).

288. A similar sadness comes to mind when one considers the day *Brown I* was decided and then fast forwards to the results in the twenty-first century. Consider the words of former U.S. Senator from Missouri Thomas Eagleton: "If someone had told us in 1954 what the situation would be in 2004, I would have told them, 'You're out of your mind. This is a landmark case, one that will trigger the fall of racial barriers.'" Jake Wagman, *Struggle Against Segregation Goes On. Many Still go to School With Those Who Look Like Them*, ST. LOUIS POST-DISPATCH, May 16, 2004, at A1.

289. St. Louis was recently identified as being one of the top ten most segregated cities in America. *See, e.g.*, Earl Ofari Hutchinson, *Still Segregated After All These Years*, ST. LOUIS AM. (Apr. 7, 2011), http://www.stlamerican.com/news/columnists/article_141b844e-60ca-11e0-8a4e-001cc4c03286.html; *see also* Chris Smith, *BBC Reports Delmar Is A Racial Dividing Line In St. Louis* (Mar. 14, 2012), http://fox2now.com/2012/03/14/bbc-reports-delmar-is-a-racial-dividing-line-in-st-louis/. *See also supra* note 278 and accompanying text.

> resources of concerned Americans at every level of public and private life.[290]

These words were written in 1967. The sad reality, as Mrs. Freeman noted at the commemoration of the *Liddell* lawsuit at Washington University School of Law in March of 2012, is that she could have written those same words today.

I am not quite sure what we have learned from the past forty years of struggle for quality education in St. Louis. There are obviously hard lessons about the toll on families, on health, on lives, on futures, on dreams. There are hard lessons about the inability of the law to solve all problems. And there are hard lessons about the enduring stigma of race.[291] Quality education remains elusive in 2012, though. This we know for sure. And Minnie would not like it one bit. One of her most prophetic statements was made in 1996 when she told legislators that if the issue of quality public education were not addressed we would all "pay for it."[292] And that we are. Aside from the challenges in public education nationally,[293] St. Louis today is, per capita, one of the most dangerous cities in the nation.[294] I think we all know the correlation between education and crime.[295]

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290. U.S. COMM'N ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS: SUMMARY OF REPORT BY THE U.S. COMM'N ON CIVIL RIGHTS NO. 7, 21 (CCR Clearinghouse Publ'n) (1967).

291. As cities become more and more segregated, so do their schools. St. Louis is an example of that. *See* OGLETREE, *supra* note 94, at 261–64. But even in completely integrated cities, segregated education thrives. Consider the following on the growing segregation of the New York City public school system:

> In the broad resegregation of the nation's schools that has transpired over recent decades, New York's public-school system looms as one of the most segregated. While the city's public-school population looks diverse—40.3 percent Hispanic, 32 percent black, 14.9 percent white and 13.7 percent Asian—many of its schools are nothing of the sort. About 650 of the nearly 1,700 schools in the system have populations that are 70 percent a single race, a New York Times analysis of schools data for the 2009–10 school year found; more than half the city's schools are at least 90 percent black and Hispanic.

N.R. Kleinfield, *A System Divided: 'Why Don't We Have Any White Kids?'*, N.Y. TIMES, May 13, 2012, at MB1. *See also A Rotting Apple*, *supra* note 283.

292. *See, e.g.*, *supra* note 115 and accompanying text.

293. *See generally, e.g.*, OUR PROMISE: ACHIEVING EDUCATIONAL EQUALITY FOR AMERICA'S CHILDREN (Maurice R. Dyson & Daniel B. Weddle eds., 2009).

294. Paul Friswold, *St. Louis Is the Third-Most Dangerous City*, RIVERFRONT TIMES BLOGS (June 14, 2012), http://blogs.riverfronttimes.com/dailyrft/2012/06/st_louis_third-most_

Twenty-seven years after the filing of her lawsuit, Minnie said "this has been a long time coming, yet we have just begun."[296] Little did Minnie, or any of us, realize that some thirteen years *after* her statement, the beginning has barely begun.

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dangerous_city.php?page =2.

295. *See, e.g.*, Randall G. Shelden, *Education as Crime Prevention*, CENTER ON JUVENILE & CRIMINAL JUSTICE (Apr. 1, 2011), http://www.cjcj.org/post/juvenile/justice/education/crime/prevention.

296. Rick Pierce & Carolyn Bower, *Settlement is Reached in Desegregation Case*, ST. LOUIS POST-DISPATCH, Jan. 7, 1999, at A1 (quoting Minnie Liddell shortly after the 1999 Settlement Agreement was approved by Judge Limbaugh).