# SCHOOL DISTRICT CONSOLIDATION: A METHOD FOR ACHIEVING SCHOOL DESEGREGATION

In *Bradley v. School Board of Richmond*,[1] black parents sued the School Board of the City of Richmond, the school boards of two adjoining counties and the State Board of Education in a class action to consolidate the three local school districts into a unitary system.[2] Plaintiffs alleged a denial of equal protection of the laws because the maintenance of separate districts by the state resulted in racially identifiable districts in the Richmond area. Since 1955, the percentage of blacks in Richmond had risen from 43.4 per cent to 70 per cent, while that of Henrico and Chesterfield counties dropped from 20.4 per cent and 10.4 per cent, respectively, to approximately nine per cent. The schools within each district reflected this racial distribution. These changes in housing patterns made less drastic judicial remedies, such as zoning, pairing and intra-district busing, ineffective in eliminating the dual school system within the metropolitan area. Each school district had achieved satisfactory desegregation within its own jurisdiction but was incapable of doing so for the entire "community of interest" due to the uneven distribution of blacks and whites among those districts. Thus, the federal district court in *Bradley* found that the existing distribution of school divisions constituted de jure segregation. No other remedy being sufficient, the court ordered defendants to consolidate the three school districts and eliminate racially identifiable schools within the single jurisdiction.

On appeal, a divided Court of Appeals for the Fourth Circuit reversed the district court's finding of de jure segregation and held that the consolidation order had therefore exceeded the court's "power of intervention."[3] The court remarked that the causes of de facto segre-

1. 338 F. Supp. 67 (E.D. Va. 1972).

2. Plaintiffs originally sued only the Richmond School Board. After considerable litigation, defendant compelled the joinder of the adjoining Henrico and Chesterfield County School Boards and the Virginia State Board of Education.

3. 462 F.2d 1058 (4th Cir. 1972). Only the two counties and the State Board appealed from the district court judgment. The city School Board was named a respondent.

gation in Richmond were "simply not known" and that there was no evidence of interaction between state and local boards. The majority emphasized that no board could consolidate on its own motion and that school administration was an exclusively local concern. Consolidation was also impractical since the tax bases and electorates of each district were different, and undesirable since parental participation in school affairs would be reduced.[4]

Finding only de facto segregation, the *Bradley* court felt bound by *Spencer v. Kugler*[5] in which blacks sought to consolidate several New Jersey school districts but failed because the district court found no evidence of de jure segregation. The Supreme Court summarily affirmed *Spencer's* holding that de facto segregation was not actionable.[6]

Significantly, however, the circuit court overturned only the district court's determination of fact in *Bradley*. The court did not hold that consolidation was an improper remedy in the presence of de jure segregation. Since *Bradley* is being appealed to the Supreme Court, and similar suits have been filed in other cities, the propriety of consolidation as an equitable remedy is still unresolved.

Assuming the existence of de jure segregation, the remedy applied by the district court is appropriate, considering the broad injunctive powers that have been used to effectuate desegregation orders. The historic case of *Brown v. Board of Education (Brown I)*[7] first established that racial segregation violated the fourteenth amendment, but did not offer specific judicial remedies. The second case by that name *(Brown II)*[8] expanded *Brown I* and required school boards to propose, "with all deliberate speed,"[9] desegregation plans which local courts could reject or enforce with appropriate equitable remedies.

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4. The dissent found action and inaction by state and local authorities over a long period of time to be sufficient evidence of de jure segregation. The dissenting judge was not influenced by the inconvenience of consolidation because such procedures were actually contemplated by the Virginia statutes and could still be utilized with sufficient cooperation. *Id.* at 1075, 1079.

5. 326 F. Supp. 1235 (D.N.J. 1971), *aff'd mem.*, 404 U.S. 1027 (1972). The dissenting judge in *Bradley* thought *Spencer* was not controlling. He felt that in *Spencer* there was no history of state-imposed segregation among the school districts. *Spencer* merely rejected an arbitrary racial balance for its own sake. 462 F.2d at 1079.

6. 404 U.S. 1027 (1972).

7. 347 U.S. 483 (1954).

8. 349 U.S. 294 (1955).

9. *Id.* at 301.

Delays prevented the full implementation of *Brown I,* however, until 1968 when the Supreme Court, in *Green v. New Kent County School Board,*[10] invalidated a "freedom of choice" plan submitted by the defendant school board. This plan purported to implement desegregation by allowing pupils to attend any school of their choice, but the Court rejected it because results would come too slowly. Reaffirming *Brown II,* the Court emphasized that "[t]he burden on a school board today is to come forward with a plan that promises realistically to work . . . *now* . . . until it is clear that state-imposed segregation has been completely removed."[11] In accordance with *Green,* the Court in *Alexander v. Holmes County School Board*[12] denied motions for additional time to obey lower court orders because "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools."[13]

Continued dilatory tactics by recalcitrant school boards, however, eventually called for a much stronger equitable remedy—the forced busing of students within a school district. The Supreme Court unanimously upheld this measure in *Swann v. Charlotte-Mecklenburg Board of Education,*[14] and granted lower courts a broad mandate for fashioning equitable remedies, including altering attendance zones to allow pairing of non-contiguous zones, busing, establishment of faculty ratios, regulation of school construction and optional majority to minority transfer plans. In response to objections that these measures created hardships for school boards, children and their families, the Court remarked that "[t]he reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed."[15] The Court also construed 42 U.S.C. § 2000c-6,[16] which forbade forced busing to achieve

10. 391 U.S. 430 (1968).

11. *Id.* at 439.

12. 396 U.S. 19 (1969).

13. *Id.* at 20.

14. 402 U.S. 1 (1971).

15. *Id.* at 31. Oddly enough,the Fourth Circuit, in *Bradley,* relied on language in *Swann* to establish the limits of equitable powers which, in its opinion, the district court had exceeded. 462 F.2d at 1069.

16. 42 U.S.C. § 2000c-6 (1970) reads in part:

[N]othing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring

a "racial balance," to be a limitation intended only to prevent expansion under the Civil Rights Act of 1964 of existing injunctive powers of a federal district court.[17]

Plaintiffs considered these remedies insufficient, however, because firmly established housing patterns and years of de jure segregation had resulted in racially identifiable school districts.[18] Accordingly, plaintiffs in *Bradley* prayed for consolidation to insure the immediate operation of a unitary school system throughout the Richmond area in compliance with *Brown II* and the *Green* and *Alexander* cases.

The district court remedy is significant in that it extends the duties of the state and local boards in eliminating racially identifiable schools to include the consolidation of local districts through existing statutory procedures.[19] Never before had a state been ordered to consolidate school districts that coincided with city and county boundaries. This could result in reducing the flight of whites from the city into the suburbs; by relocating, white parents could no longer escape from integrated schools since busing would extend beyond the old districts.[20] This remedy has since been applied to northern cities

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the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, *or otherwise enlarge the existing power of the court* to insure compliance with constitutional standards. (Emphasis added.)

17. President Nixon has proposed legislation creating a "moratorium on busing" which would prevent federal courts from ordering the forced transportation of students. H.R. 13,916, 92d Cong., 2d Sess. (1972). Although the constitutionality of the moratorium is questionable, there are also proposed constitutional amendments to prohibit busing. *See, e.g.*, H.R.J. Res. 30, 92d Cong., 1st Sess. (1972); S.J. Res. 165, 92d Cong., 1st Sess. (1972).

18. *See generally* Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 HARV. L. REV. 564 (1965), for a discussion of the many factors contributing to segregated schools.

19. VA. CODE ANN. §§ 22-30,-100.1 (1969), *as amended*, (Supp. 1971). Originally, the State Board could initiate consolidation, but after being joined with the counties and the city as a defendant, the legislature amended the statutes to require local consent. *Id.* § 22-30. Since the amendment made consolidation more difficult, but not impossible, it is unclear how the General Assembly hoped to prevent forced consolidation by the federal district court. Since all three local boards were parties defendant with the State, mutual cooperation was insured.

20. Note, *Swann v. Charlotte-Mecklenburg Board of Education: Roadblock to the Implementation of Brown*, 12 WM. & MARY L. REV. 838, 856 (1971). The district court found that whites were fleeing to the suburbs while blacks were forced to stay in Richmond because of private and state segregation policies. The fourth circuit rejected this theory as unsupported with statistics showing a fairly insignificant rate of student transfers from the city to the counties. 462 F.2d at 1066.

as well. In *Bradley v. Milliken*,[21] a federal district court ordered the consolidation of several Detroit area school districts for similar reasons.

The effect of the district court ruling on multi-jurisdiction urban areas, however, remains less clear.[22] Federal courts could order consolidation of several districts when all are located in one state; but urban areas such as Washington, D.C., Kansas City and others overlap state lines. The forced consolidation of school districts created by different states might well be unconstitutional.

Significantly, the district court and the dissenting judge of the Fourth Circuit relied on the established principle that the burden of desegregation is on the state and not just the local school boards.[23] Because school districts are created by the legislature to implement statewide policies, they are not real municipal entities but are only "quasi-corporations."[24] As such, they are never truly local despite coincidence with city and county boundaries. Because a state may not delegate its authority to local subdivisions in order to insulate itself from judicial intervention, the Eighth Circuit has held that a previous consolidation order must be enforced even though it contravened state law.[25]

Considerable precedent also exists for the interference by federal courts with the boundaries of school districts, though most decisions have not gone beyond the lower courts as yet.[26] However, in *Brown II*, the Supreme Court stated that lower courts might consider the "revision of school districts" to insure compliance with the fourteenth

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21. 345 F. Supp. 914 (E.D. Mich. 1971). This decision was rendered subsequent to the district court decision in Richmond, but before its reversal by the Fourth Circuit was announced.

22. *Swann v. Charlotte-Mecklenburg Board of Education: Roadblock to the Implementation of Brown, supra* note 20, at 857.

23. *See, e.g.*, Smith v. North Carolina State Bd. of Educ., 444 F.2d 6 (4th Cir. 1971); United States v. Texas Educ. Agency, 431 F.2d 1313 (5th Cir. 1970); Franklin v. Quitman County Bd. of Educ., 288 F. Supp. 509 (N.D. Miss. 1968); Lee v. Macon County Bd. of Educ., 267 F. Supp. 458 (E.D. Ala.), *aff'd sub nom.*, Wallace v. United States, 389 U.S. 215 (1967).

24. L. GARBER & N. EDMUND, THE LAW RELATING TO THE CREATION AND DISSOLUTION OF SCHOOL DISTRICTS 3 (1962). *See also* Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), *and* Note, *Municipal Corporations—Power of the Legislature to Alter Municipal Boundaries*, 21 LA. L. REV. 676 (1961).

25. Haney v. County Bd. of Educ., 429 F.2d 364 (8th Cir. 1970).

26. *See* notes 28, 29, 31-33 *infra*.

amendment.[27] Similarly, other circuits have enjoined the division of larger districts into several smaller units where such a division would encourage segregation.[28] On two occasions the Fourth Circuit declined to do so,[29] but was later reversed by the Supreme Court which upheld district court findings of segregation.[30] In other circuits, federal courts have also ordered neighboring school districts to pair

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27. 349 U.S. at 300-01.

> [Courts] may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, *revision of school districts* and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and *revision of local laws and regulations* which may be necessary in solving the foregoing problems. (Emphasis added.)

*Id.*

28. Lee v. Macon County Bd. of Educ., 448 F.2d 746 (5th Cir. 1971); Stout v. United States, 448 F.2d 403 (5th Cir. 1971); Aytch v. Mitchell, 320 F. Supp. 1372 (E.D. Ark. 1971); Burleson v. County Bd. of Election Comm'rs, 308 F. Supp. 352 (E.D. Ark.), *aff'd*, 432 F.2d 1356 (8th Cir. 1970). In *Stout* and *Lee* the original school districts coincided with county lines; the splinter districts would not have done so.

29. Separation was permitted in United States v. Scotland Neck City Bd. of Educ., 442 F.2d 575 (4th Cir. 1971), where the number of blacks in the original district would increase only three per cent, and in Wright v. County School Bd., 309 F. Supp. 671 (E.D. Va. 1970), *rev'd sub nom.*, Wright v. Council of City of Emporia, 442 F.2d 570 (4th Cir. 1971), where the number of blacks would increase by six per cent. In both cases, the Fourth Circuit applied the following test:

> If the creation of a new school district is designed to further the aim of providing quality education and is attended secondarily by a modification of the racial balance, short of resegregation, the federal courts should not interfere. If, however, the primary purpose for creating a new school district is to retain as much of separation of the races as possible, the state has violated its affirmative constitutional duty to end state supported school segregation. The test is much easier to state than it is to apply.

*Wright v. Council of City of Emporia, supra* at 572. These cases were not, however, cited by the Fourth Circuit in its reversal of *Bradley*.

30. United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484 (1972); Wright v. Council of City of Emporia, 407 U.S. 451 (1972). The Supreme Court held that federal courts must be guided not by the state's motivation, but by the effects of its action. In reversing the Fourth Circuit, the Court remarked:

> We hold only that a new school district may not be created where its effect would be to impede the process of dismantling a dual system. And in making that essentially factual determination in any particular case, "we must of necessity rely to a large extent, as this court has for more than 16 years, on the informed judgment *of the district courts in the first instance* and on courts of appeals." (Emphasis added.)

407 U.S. at 470, *citing* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 28 (1971).

facilities,[31] act jointly under one board[32] and collaborate on separate desegregation plans.[33]

The district court relied heavily on the decision in *Haney v. County Board of Education*.[34] The Eighth Circuit in that decision ordered the merger of adjacent school districts because existing boundaries encouraged segregation. Those districts, however, were very irregular in shape and corresponded only to segregated housing patterns. In contrast, those in *Bradley* were coincidental with long established city and county boundaries. Other cases have supported forced consolidation by dicta. A district court in *Calhoun v. Cook*[35] suggested the possibility of merger and, upon remand from the Fifth Circuit, proceeded to enter supplementary conclusions of law upon that issue.

The district court order in *Bradley* would not adversely affect the administration of public schools in the Richmond area.[36] The consolidated district would not be unusual in its geographic area or size of enrollments in comparison to other Virginia school districts.[37] On previous occasions the State Board had encouraged the crossing of district lines to maintain segregation. It had previously permitted consolidation, operation of joint schools and inter-district contracts. Furthermore, all three districts had used busing for years. The district court merely compelled the state to perform those functions for purposes of desegregation. The boundaries of Richmond and the two counties also served no valid educational purpose and had been

31. Robinson v. Shelby County Bd. of Educ., 330 F. Supp. 837 (W.D. Tenn. 1971).

32. Taylor v. Coahoma County School Dist., 330 F. Supp. 174 (N.D. Miss. 1971).

33. United States v. Crockett County Bd. of Educ., Civil No. 1663 (W.D. Tenn., filed ———, 1967).

34. 410 F.2d 920 (8th Cir. 1970).

35. 332 F. Supp. 804 (N.D. Ga.), *vacated in part*, 451 F.2d 583 (5th Cir. 1971). The "comment" by the district court noted that "[i]n terms of efficiency, taxes, and quality education, such consolidations normally produce long-range improvements." 332 F. Supp. at 809. The supplementary conclusions of law ordered upon remand by the Fifth Circuit have not yet been entered.

36. The district court makes no discussion of possible "political question" issues. Presumably such an argument would be precluded by Baker v. Carr, 369 U.S. 186 (1962), and Gomillion v. Lightfoot, 364 U.S. 339 (1960).

37. Before consolidation, the Richmond district was 63 square miles with 47,824 students; the Henrico district, 244 square miles with 34,080 students; and the Chesterfield district, 445 square miles with 24,069 students. After consolidation, the new district would be 750 square miles with 104,000 students. Another Virginia district, Fairfax county, encompasses 135,000 students and there are six others with area in excess of 700 square miles. 462 F.2d at 1062 n.16.

modified frequently. Even boundaries based on natural or man-made obstacles are not permissible if the effect of such boundaries is to foster racially identifiable schools.[38] While redistricting may be a relatively new remedy in school desegregation cases, the Supreme Court has upheld the judicial reorganization of state political subdivisions in other areas of the law. In *Reynolds v. Sims*[39] and *Avery v. Midland County*,[40] state and local legislative districts were redrawn to effectuate court orders enforcing the equal protection clause. Similarly, a federal court in *Gomillion v. Lightfoot*[41] prevented a municipality from gerrymandering voting districts so as to deny blacks equal voting rights under the fifteenth amendment. The court also denied that municipal boundaries involved a non-justiciable political question.

Although relied upon by the district court, these cases are not directly in point insofar as *Reynolds* and *Avery* involved only electoral districts and not governmental units possessing a measure of local autonomy. The *Gomillion* case involved only one municipality, while *Bradley* affected three independent districts. But these cases do establish the general principle that if a state contravenes the fourteenth amendment in exercising control over its political subdivisions, then the federal courts may compel a reorganization.

The future of *Bradley* is uncertain. The Fourth Circuit reversed only the district court's finding of de jure segregation in Richmond and did not address itself to the propriety of consolidation where

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38. Davis v. Board of School Comm'rs, 402 U.S. 33 (1971) (highway as boundary); Henry v. Clarksdale Munic. Separate School Dist., 409 F.2d 682 (5th Cir. 1969) (railroad tracks); United States v. Greenwood School Dist., 406 F.2d 1086 (5th Cir. 1969) (river). In *Greenwood*, the court noted that "[G]eographic zoning is acceptable only if it tends to disestablish rather than reinforce the dual school system of segregated schools." *Id.* at 1093.

39. 377 U.S. 533 (1964). Concerning reapportionment of state legislative districts, the Court remarked:

> A state may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivisions or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.

*Id.* at 578-79. But the Court later qualified this by adding, "[w]hatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts. . . ." *Id.* at 579.

40. 390 U.S. 474 (1968).

41. 364 U.S. 339 (1960).

state-imposed segregation does exist. In addition, many of the precedents relied upon by the district court in *Bradley* came from other circuits. The Fourth Circuit has also been frequently reversed by the Supreme Court in its review of district court desegregation orders.[42] On appeal, the Supreme Court may uphold the district court findings and, if so, will necessarily have to rule on the consolidation issue. But even if the Court should uphold the reversal of *Bradley*, *Milliken* and other consolidation cases, the lower courts may eventually force a decision on the issue of consolidation.

The uncertainty is further complicated by the change in membership of the Supreme Court since *Swann* and by the growing pressures for a constitutional amendment to prohibit busing. If such an amendment were adopted it would not affect forced consolidation per se, but would render the remedy nugatory since such an enormous school district could not be easily desegregated without busing.[43]

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42. *See* note 30 *supra*.

43. One effect of *Bradley* is the busing of students over a much larger area than in previous instances.