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SCENES FROM THE SOUTHSIDE: A DESEGREGATION DRAMA IN FIVE ACTS

*Jennifer E. Spreng***

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* BRUCE HORNSBY AND THE RANGE, *SCENES FROM THE SOUTHSIDE* (1988) (RCA) (long playing album by nationally popular Virginia musicians).

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PROLOGUE: THE STRIKE

The action for desegregated public schools in Prince Edward County, Virginia began on April 23, 1951 when the students of the all-black R.R. Moton High School walked out of their school of their own accord and refused to return until its extreme physical inequalities with the all-white Farmville High School were eliminated.¹ The school building was in good condition, but it had been built for a maximum capacity of 180 students. More than 400 were enrolled in 1951.² Teachers held classes in the auditorium, hallways and buses, but the straws that broke the camel's back were the "tar paper shacks"³ in the front of the main building. The school board had provided the tar paper buildings to catch some of the main building's overflow and was unaware that they had come to symbolize black frustrations over inequalities in the county's schools. By contrast, all-white Farmville High, built about the same time as Moton, boasted a gymnasium, cafeteria, auditorium with fixed seats, infirmary, locker rooms, and importantly, no tar paper buildings.⁴

On May 3, 1951, students and parents met with NAACP lawyers Oliver Hill and Spotswood Robinson, who agreed to file a lawsuit on the children's behalf. The lawyers insisted that they were not interested in a claim to force the Prince Edward School Board to provide equal facilities under the *Plessy v. Ferguson* "separate but equal" doctrine.⁵ The NAACP would only assist the community if it was ready for the long struggle to achieve desegregated schools.⁶

It was.

1. BOB SMITH, *THEY CLOSED THEIR SCHOOLS* 39-43 (1965) (hereinafter "SMITH"). Junior Barbara Rose Johns, niece of famed black minister and civil rights activist Vernon Johns, masterminded the walkout. *Id.* at 27.

2. *Id.* at 15. When the school was built twelve years earlier, school officials failed to anticipate the surge in interest in secondary education among blacks after the Second World War. Even so, School Superintendent T. J. McIlwaine, while pleased that Prince Edward had one of the twelve best high schools for blacks in the state, was disappointed that more money had not been made available for the building. *Id.* at 14-15.

3. The local NAACP leader, Reverend L. Francis Griffin, said in an interview that when he first saw the structures he thought they were chicken coops. *Id.* at 14-15.

4. *Id.* at 13-14.

5. 163 U.S. 537 (1896).

6. SMITH, *supra* note 1, at 58-60.

I. INTRODUCTION: NOT JUST A STORY, BUT A DRAMA

Thus began the fight for integrated⁷ public schools in Prince Edward County, Virginia. It was fought in the courtrooms of Washington, D.C. and Richmond, Virginia, as well as in the dusty byways of Virginia's tobacco-studded Southside region,⁸ and it produced two Supreme Court desegregation opinions, *Brown v. Board of Education*⁹ and *Griffin v. School Board*.¹⁰ Though the initial scene in the Prince Edward school integration epic reads like many other such stories throughout the South, it quickly took on a uniquely perverse character.

With their opening salvo in 1951, Prince Edward's black students were the true pioneers of the elementary and secondary school desegregation movement, taking their decisive action years before students in Little Rock,

7. This article does not use "desegregation" and "integration" interchangeably. It uses "desegregation" to mean roughly what the Civil Rights Act of 1964, 42 U.S.C. § 2000c (1994) defines it to mean: "the assignment of students to public schools and within such schools without regard to their race, color, religion, sex, or national origin . . ." "Integration" refers to a situation in which meaningful numbers of whites and blacks attend school together, though not necessarily in proportions reflecting the racial balance in the community. Under these definitions, a desegregated school could conceivably be 100% black. In the Prince Edward situation, where the public schools were desegregated for years before more than a handful of whites enrolled, but where whites almost uniformly attended a deliberately all-white private school, I do from time to time refer to the schools as "segregated," which in effect they were.

8. The Southside is the northernmost tip of the South's Black Belt, which laces through the center of the Carolinas, Georgia and the Deep South. This long strip of counties is characterized by a higher percentage of blacks in its population than other areas of the South as well as its dark soil. J. HARVIE WILKINSON, III, FROM *BROWN TO BAAKE: THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978*, 70 (1979) (hereinafter "WILKINSON"). As Farmville resident John Fox described the character of the region, "I always used to say you can go down to Alabama and be in the Deep South, but you don't have to travel that far; you can come to Farmville." Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

The Black Belt was also disproportionately represented in state legislatures of the South. WILKINSON, *supra*, at 70-71. Black Belt communities, such as Selma, Alabama, or Albany, Georgia, and those of the Mississippi Delta, resisted integrated schools and voting rights more fiercely than anywhere else in the South. See, e.g., NUMAN BARTLEY, *THE RISE OF MASSIVE RESISTANCE* 82-107 (1969). "Most dreaded [for black belt whites] was the prospect of Negro domination in all its forms," Judge Wilkinson writes, "political, economic, social, and sexual." WILKINSON, *supra*, at 71. Adam Fairclough explains that the Southern Christian Leadership Council, in particular, chose to target Black Belt communities, such as Selma, because the dismal level of race relations in those places would be most likely to produce the shocking violence which would crystalize the stakes of the civil rights movement for Northern citizens and politicians. ADAM FAIRCLOUGH, *TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR.* 225-29 (1987).

9. 347 U.S. 483 (1954).

10. 377 U.S. 218 (1964).

Arkansas,¹¹ for example, began to think seriously about attending school with whites. It took twenty years of their own litigation, and then fifteen more years of Internal Revenue Service action to eliminate segregated education from Prince Edward County.¹² Though black citizens cultivated strong allies in the federal government during those bitter thirty-five years, they still had to endure not only the frustrating vagaries of Fourteenth Amendment litigation but an educational disaster. Whites closed the public schools for four years, established a private white academy, diverted property tax revenues from public schools, and resisted even the most innocuous court efforts to educate whites and blacks together.¹³ Implausibly, the white citizens of this tiny, impoverished, Virginia county succeeded for more than thirty years to thumb their noses at an increasingly exasperated federal government.

The government's white antagonists were well situated for such a struggle. Prince Edward lies in Virginia's Fourth Congressional District, the cradle of "massive resistance" to school desegregation.¹⁴ With fewer than 16,000 residents (and only fifty-five percent of them white),¹⁵ the county was sufficiently small and homogeneous to establish an alternate private school system and maintain the unswerving loyalty of virtually all the local white parents.¹⁶ Because of the county's large black population, many white citizens feared integration¹⁷ enough to pay hefty tuitions after the Supreme Court turned off the faucet of state aid.¹⁸ The resistance project also had tacit support from a state by no means anxious to see the feds win.¹⁹

11. For a first hand account of early school desegregation effects in Little Rock, see MELBA PATILLO BEALS, *WARRIORS DON'T CRY* (1994).

12. Prince Edward still has numerous home schooled children, and children educated in tiny religious schools, which are probably not integrated. Though a source of some angst among county educators, they are a small proportion of the total. Interview with Edwilda Isaacs, in Farmville Va. (Aug. 3, 1995). Prince Edward County Elementary School Self Study 21, (1988-89).

13. See *infra* part II.

14. BENJAMIN MUSE, *VIRGINIA'S MASSIVE RESISTANCE 6-11* (1961) (hereinafter "MUSE").

15. SMITH, *supra* note 1, at 3-4.

16. The county's population had increased to merely 17,320 by 1990. Timothy Phelps, *A Model for the Nation; Virginia County has High-Quality, Integrated Schools*, *NEWSDAY*, May 17, 1994, at A6 (*Brown vs. Board*, 40 Years Later. Third in a series).

17. Journalist Benjamin Muse credits fear of revolutionary social change in Black Belt counties with causing many Southerners to believe "compliance [with *Brown*] is impossible." MUSE, *supra* note 14, at 11.

18. *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178 (E.D. Va. 1969) finally invalidated all possible state and local aid to the Prince Edward Academy, but ten years later, more than 60% of the county's white children were still enrolled there. Kenneth Bredemeier, *Pr. Edward School Tax-Exempt Status is Revoked by IRS*, *WASH. POST*, Oct. 14, 1978, at C1.

19. In *Harrison v. Day*, 106 S.E.2d 636 (Va. 1959), for example, the Virginia Supreme

Nevertheless, by 1991, the Prince Edward County public school population was thirty-eight percent white,²⁰ and the county's private Academy had admitted a handful of black students.²¹ In this most recalcitrant of counties, school segregation was over.

This paper will show that integration could not have occurred in Prince Edward's schools without the acquiescence of the county's white citizens. The judicial and executive branches did increase the cost of segregated education in Prince Edward by removing state and federal subsidies, and thus, they put incredible financial pressure on Prince Edward's white citizens. Nevertheless, these white citizens were equally determined to resist. Years passed before meaningful integration occurred, and when it did, it occurred on white citizens' terms. The Prince Edward experience teaches that problems of racial tension may have legal components, but they ultimately have political and social solutions.

Even if Prince Edward's struggle over school integration from 1951 to the present day had nothing to teach about the roles of private individuals and public institutions in American race relations, it would still captivate. Prince Edward's experience is not merely a story; it is one of the great dramas of American history. It has gone relatively unnoticed in civil rights literature, perhaps because it is not the story of marquee players. Those whose stubborn pursuit of tragically incompatible convictions brought the county first to disaster, and later to a miraculous resurrection, were ordinary Americans daily confronted with frightening imperfections in their community, their families, and themselves. As one parent from the crucial 1970s period remembers his experience:

[L]iving in this community was hard, because it caused you to compromise your principles, and you did some things that in other areas you

Court of Appeals stated when overturning the massive resistance legislation:

[W]e deplore the lack of judicial restraint evinced by [the Supreme Court] in trespassing on the sovereign rights of this Commonwealth reserved to it in the Constitution of the United States. It was an understandable effort to diminish the evils expected from the decision in the *Brown* case that prompted the enactment of the statutes now under review.

Id. at 647; see also JAMES W. ELY, JR., *THE CRISIS OF CONSERVATIVE VIRGINIA: THE BYRD ORGANIZATION AND THE POLITICS OF MASSIVE RESISTANCE 173-74* (1976) (describing Governor Harrison's political resistance to desegregation) (hereinafter "ELY"); Brief on Behalf of the State Board of Education and Superintendent of Public Instruction of the Commonwealth of Virginia, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 594).

20. The ratio of blacks and whites in Prince Edward was almost the exact opposite. Wilbur B. Brookover, *Education in Prince Edward County, Virginia, 1953-1993*, 62 J. NEGRO ED. 149, 152 (1993).

21. Sandra Evans, *Era Ends at Once-Segregated Va. School; Prince Edward Academy Admits Blacks, but Some Question Motives*, WASH. POST, Dec. 15, 1986, at A1.

would not have. You did some things that you rationalized by saying it was better for your children, and I think there was some truth in that, but you were doing them as a violation of what you believed in. That was hard.²²

In Prince Edward County, the otherwise mundane effort to make a community work helped change a nation and may provide a beacon to a better future.

Part II of this article describes the black students' court battle for desegregated public schools in Prince Edward County through *Brown v. Board of Education*,²³ Virginia's massive resistance,²⁴ the Prince Edward School closings,²⁵ the rise of Prince Edward Academy,²⁶ the fight to reopen the public schools,²⁷ culminating in *Griffin v. School Board*,²⁸ and finally the effort to dam up the stream of public dollars to the county's all-white private schools.²⁹ Part III demonstrates that white citizens' individual, private decisions integrated the public schools over the next fifteen years, after courts had created the environment which made this private action both possible and likely.³⁰ Part IV describes the Prince Edward Academy's losing quarrel with the IRS over its tax-exempt status and assesses the current state of the county's educational institutions and their effect on the entire community.³¹ The conclusion notes that these macabre chapters in Prince Edward's history may now be ending much as they began: on the cusp of yet another decision about the future of R.R. Moton High School.³²

II. LITIGATION

A. Scene One: *Brown v. Board of Education*

In 1951, Prince Edward's black school system was advanced compared to that of other poor, rural counties in the state, largely due to the efforts of education advocates in the black community. R. R. Moton,³³ the county's

22. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

23. See discussion *infra* part II.A.

24. See discussion *infra* part II.B.

25. See discussion *infra* part II.C.

26. See discussion *infra* part II.D.

27. See discussion *infra* part II.E.

28. See discussion *infra* part II.F.

29. See discussion *infra* part II.G.

30. See discussion *infra* part III.

31. See discussion *infra* part IV.

32. See discussion *infra* Epilogue.

33. The school was named after Robert Russa Moton, a former president of Tuskegee

first black high school, had finally been built in 1939 after the persistent crusading and financial support of the Martha E. Forrester Council, a local branch of the National Council of Negro Women devoted to improving educational opportunities for black children.³⁴ Prior to 1939, black teenagers carpooled to neighboring counties or attended the few classes available in the Mary E. Branch Elementary School, which were supported by private funds.³⁵ Though its facilities were not up to the standards of all-white Farmville High School, by 1951 Moton was considered one of the best black high schools in Virginia.³⁶

Most important, a new high school was already on the drawing board.³⁷ Unfortunately, in early 1951 negotiations between the county's white elected officials and the black community bogged down, despite prior progress on funding and siting issues.³⁸ Many thought that without something to break the stalemate, perhaps no new black high school would ever be built.

That "something," the strike, was junior Barbara Johns' idea.³⁹ She selected a trusted friend from each of the school's five grades to organize the student body for the big day.⁴⁰ Teachers were supplied with assembly

University and Prince Edward resident. Jarl K. Jackson & Julie L. Vosmik, *National Register of Historic Places Registration Form*, Dec. 1994, at 8.

34. Interview with Vera Allen, in Farmville, Va. (Aug. 3, 1995). See also SMITH, *supra* note 1, at 14. The council had raised money for auditorium chairs, a stage curtain, and a grand piano. Donald Baker, *Support for a Va. School and Its History Lesson*, WASH. POST, Mar. 6, 1995, at B3.

Martha E. Forrester was a colorful character in her own right. "She was always busy demanding things," Edwilda Isaacs remembers.

She was very tall and very lanky and had the longest fingernails you ever wanted to see. And she walked on a cane, and I said that whenever she and her ladies came, and she would poke her long finger in your face and bang her cane on the floor, you were sort of compelled to go ahead and do what she wanted. But these little ladies have been fighting for education in this county for seventy-five years.

Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995).

35. Interview with Vera Allen in Farmville, Va. (Aug. 3, 1995); See also SMITH, *supra* note 1, at 14. Prior to 1939, the tenth and eleventh grades operated in Mary Branch Elementary School only after local citizens raised the money for teachers' salaries. See also SMITH, *supra* note 1, at 14.

36. SMITH, *supra* note 1, at 14-15.

37. SMITH, *supra* note 1, at 19-26.

38. For an excellent account of the negotiations, see SMITH, *supra* note 1, at 19-26.

39. Johns was the niece of celebrated black minister Vernon Johns, an early civil rights activist and the controversial immediate predecessor to Dr. Martin Luther King at the Dexter Avenue Baptist Church. See TAYLOR BRANCH, *PARTING OF THE WATERS: AMERICA IN THE KING YEARS* (1988). Local ministerial groups recently erected a historical monument at Vernon John's gravesite near the intersection of state routes 665 and 666. Jamie C. Ruff, *Vernon Johns: hero to civil rights: Marker Dedication Tomorrow Honors Black Minister*, RICHMOND TIMES DISPATCH, Apr. 22, 1994, at B4.

40. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995).

announcements supposedly initialled by principal Boyd Jones.⁴¹ A phone call reporting a fictitious disciplinary incident at the railway station pulled the principal away from the school just before the bell rang to call the school the "assembly."⁴² Teachers dutifully brought their classes to the auditorium only to find that the students had taken control.⁴³ Barbara Johns delivered a stirring speech to rally her troops, and the students immediately decided to skip lunch as a gesture of defiance.⁴⁴ They spent the afternoon demonstrating outside the school and waiting for the official reaction.⁴⁵

Retaliation was swift and, in some cases, severe. The student leaders marched from the school to the School Board office in the courthouse for a meeting with school officials the next day. "The thing that they did first of all was to find out who you were, and who your parents were," recalls Edwilda Isaacs, the strike's eighth grade leader and daughter of a Prince Edward teacher.

Then once they had names, they proceeded to take action. My mother lost her job. She not only lost her job, but they took away her [teaching] license in the state of Virginia. So she had to leave the state of Virginia to work, and it was more than ten years before she was able to come back to Virginia to work. She went to North Carolina to work, so when we were teenagers, we only saw our mother Friday night when she came in to spend the weekend with us, and then she left sometime mid-day Sunday to go back.⁴⁶

In other counties, parents of striking students might have shunted them back to school in the face of such reprisals, but Prince Edward's blacks were less susceptible than most to that type of pressure. A substantial proportion of the county's black parents were independent farmers and small businesspeople who could risk standing up to the white community to obtain better schools and public services.⁴⁷ The charismatic local NAACP leader

41. SMITH, *supra* note 1, at 37.

42. There is speculation about whether Jones had truly been fooled by the call. Barbara Johns did consult trusted teachers who urged her to go ahead with the strike, and it would be unlikely if the plan had not filtered back to the principal. Yet he insists that it did not. SMITH, *supra* note 1, at 62. The school board did not believe these protestations and fired him a few months later. SMITH, *supra* note 1, at 70-71.

43. SMITH, *supra* note 1, at 37.

44. SMITH, *supra* note 1, at 39.

45. SMITH, *supra* note 1, at 39-40.

46. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995).

47. See SMITH, *supra* note 1, at 52. The black farmer class in Prince Edward, a considerable group, was, and continues to be, a source of black leadership. Though talented blacks do leave the county at alarming rates, there is a magnetism in Prince Edward's soil that has helped to keep some of those citizens or at least to lure them back. Reverend Vernon Johns was an example of this phenomenon in the 1940s and 50s and Lacy Ward,

Reverend L. Francis Griffin also emerged to help unify the community for a long war of attrition.⁴⁸ Therefore, despite the obvious drawbacks, Prince Edward's blacks were enthusiastic about the coming litigation.⁴⁹

Prince Edward's plaintiffs filed the cause of *Davis v. County School Board* on May 8, 1951, requesting either an injunction against segregated educational facilities or a decree noting and correcting inequalities between white and black schools.⁵⁰ They did not win at trial. The district court found that because of segregation, Virginia's schools for blacks were equal or superior to white schools and also employed many more black teachers than all the non-segregating states combined.⁵¹ The court concluded that neither race was "hurt [n]or harm[ed]" by segregation in the schools, and thus it did not violate the Fourteenth Amendment.⁵² The plaintiffs appealed to the United States Supreme Court, where the case was consolidated with four others and styled *Brown v. Board of Education*.⁵³

district representative for Congressman Lewis Payne, is an example in the 1990s. Ward comes from a family with three farms in the county; though he has lived in many other places, family and property interests have drawn him back several times. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995). Another example is Reverend Willie Boulden, who left Prince Edward to get a high school education in the school closing era and recently returned to build a home on his family's land. He is now active in the movement to preserve Moton High School. Interview with Reverend Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

48. SMITH, *supra* note 1, at 7. Not only did Reverend L. Francis Griffin help to unify the community, but his children served as named plaintiffs in much of the litigation that resulted from the strike. SMITH, *supra* note 1, at 7.

49. They were so enthusiastic, in fact, that the NAACP attorneys who came to Farmville to tell the students to return to school "didn't have the heart to say no," recalled Oliver Hill, who with Spottswood Robinson filed the suit on May 23, 1951. Margaret Edds, *Virginia Case a Catalyst for Change*, VA. PILOT & LEDGER STAR, May 15, 1994, at A1. The attorneys did not consider a Southside school district an ideal starting point for desegregation litigation. *Id.*

50. *Davis v. County Sch. Bd.*, 103 F. Supp. 337, 338 (E.D. Va. 1952). Section 140 of Virginia's constitution had been unchanged since 1902, insisting that "[W]hite and colored children shall not be taught in the same school." *Id.* (quoting VA. CONST. of 1902, § 140).

51. *Davis*, 103 F. Supp. at 340.

52. *Id.* The court did order that the black schools' buildings, facilities, curricula and buses be brought up to the standard of the white schools' in order to make the county's separate schools equal. The district court ordered the defendants to continue their plans to build a new high school. *Id.*

53. Noting *Davis*' factual similarity with *Brown v. Board of Education*, 98 F. Supp. 797 (D. Kan. 1951) (from Topeka, Kansas) and *Briggs v. Elliott*, 103 F. Supp. 920 (E.D.S.C. 1952) (from Clarendon County, South Carolina), the Supreme Court decided to hear all three together with *Bolling v. Sharpe* (decision reported at 347 U.S. 497 (1954)), which was then working its way through the federal courts in the District of Columbia. *Brown v. Board of Education*, 344 U.S. 1 (1952). A similar case in the state courts of Delaware was also decided with the *Brown* cases, *Belton v. Gebhart*, 87 A.2d 862 (Del. 1952).

On May 17, 1954, the Supreme Court released its first *Brown* decision [*Brown I*], which held that educational facilities separated by race were inherently unequal and racial segregation in education violated the plaintiffs' Fourteenth Amendment rights to equal protection of the laws.⁵⁴ A year later the Court remanded the cases, vesting the district courts with broad equitable powers to reconcile local needs and obstacles while overseeing desegregation "with all deliberate speed."⁵⁵ The Court required that the defendant school districts make a "prompt and reasonable start toward full compliance," but stated that they might receive additional time if needed.⁵⁶

The flexibility in the second *Brown II's* decision remedial mandate had several benefits.⁵⁷ First, it mollified a South outraged by *Brown I*.⁵⁸ Second, it gave the South the opportunity to solve its "segregation problem" through the local political process.⁵⁹ Most importantly perhaps, *Brown II* obscured the fact that the Court lacked the power to protect the rights it had just announced.⁶⁰ Certainly neither the president nor Congress was champing at the bit to enforce the decision.⁶¹ *Brown II* bought time for popular support to coalesce.

Unfortunately, the decision also had serious disadvantages. The "all deliberate speed" mandate was a limited barometer of the Supreme Court's

54. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

55. *Brown v. Board of Educ.*, 349 U.S. 294, 299-300 (1955) (on May 31, 1955) [hereinafter *Brown II*]. Between the first and second *Brown* opinions, defendants in Kansas, Delaware, and the District of Columbia as well as school districts in other parts of the country, took "substantial steps" to eliminate school segregation, but defendants in South Carolina and Virginia chose to sit tight and wait for Court orders. *Id.* at 301.

56. *Id.*

57. Not all agree that *Brown II* had any benefits. Some commentators argue that the Supreme Court's failure to order immediate desegregation did nothing more than postpone enforcement of blacks' constitutional rights. See, e.g., Charles L. Black Jr., *The Unfinished Business of the Warren Court*, 46 WASH. L. REV. 3 (1970).

58. WILKINSON, *supra* note 8, at 64. Not all Southern states initially dug in their heels against the *Brown* decisions, but even where leaders were prepared to comply at first, the "spirit of cooperation" evaporated over the next year. SMITH, *supra* note 1, at 83-86.

59. Some of the border states took immediate steps to begin desegregating, and others followed soon afterwards. WILKINSON, *supra* note 8, at 65. Yet while the Court may have tried to "soften the blow" in *Brown II*, its rhetoric had hardened two years later in *Cooper v. Aaron*, 358 U.S. 1 (1958), issued in the wake of the violence and public resistance to desegregation in Little Rock, Arkansas. J. B. PELTASON, FIFTY-EIGHT LONELY MEN 192 (1961).

60. See REMOVING A BADGE OF SLAVERY: THE RECORD OF *BROWN V. BOARD OF EDUCATION* 175 (Mark Whitman ed., 1993); WILKINSON, *supra* note 8, 63.

61. See WILKINSON, *supra* note 8, at 76. Judge Wilkinson points specifically to President Eisenhower's coolness to the *Brown* decisions and the timorous Civil Rights Act of 1957 from Congress. WILKINSON, *supra* note 8, at 76. Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92, 116 (1994) (hereinafter "Douglas, *Rhetoric*").

expectations for both judges and litigants.⁶² The broad equity powers bestowed upon federal district court judges left them badly exposed to local vituperation without a concrete Supreme Court mandate for cover.⁶³ Moreover, too many Southern communities used the decision's flexibility to hide behind token integration, thus stemming the tide of the genuine variety.⁶⁴ As a result, real integration in Southern communities, including Prince Edward,⁶⁵ simply did not occur.⁶⁶

B. Scene Two: Massive Resistance

Strict segregation was still a relatively new phenomenon in 1951, having dominated Southern life for about two generations.⁶⁷ During the 1940s, it had been dealt three serious body blows.⁶⁸ First was the Second

62. WILKINSON, *supra* note 8, 65, 80-82; ELY, *supra* note 19, at 188. The primary result in the *Davis* litigation was that the district court delayed making a desegregation order, which could not have been what the Supreme Court intended. *Davis v. County Sch. Bd.*, 142 F. Supp. 616, 616 (E.D. Va. 1956).

63. *Davis*, 142 F. Supp. at 616.

64. WILKINSON, *supra* note 8, at 75; Douglas, *Rhetoric*, *supra* note 61 (describing North Carolina's successful use of token integration as a strategy to avoid integration across-the-board).

65. See, e.g., *Allen v. County Sch. Bd.*, 164 F. Supp. 786, 790 (E.D. Va. 1958); *Davis v. County Sch. Bd.*, 149 F. Supp. 431, 435 (E.D. Va. 1957). In both cases, Judge Sterling Hutcheson vents his frustration at the Supreme Court and the Fourth Circuit Court of Appeals for providing no doctrinal guidance in fashioning a remedy in Prince Edward County, where school closures will inevitably result from any desegregation order.

66. A state that took a different approach to Virginia's, North Carolina, provides a case in point. See Douglas, *Rhetoric*, *supra* note 61. North Carolina's leaders decided to deal with the *Brown* decision pragmatically, accepting token integration when necessary to avoid school closings, violence, or other forms of backlash, which might halt economic growth. Douglas, *Rhetoric*, *supra* note 61, at 95-96. Ironically, fewer black children in North Carolina were attending public schools with whites than in Virginia by 1964, and North Carolina never resorted to private tuition grants to mollify anxious white parents. Douglas, *Rhetoric*, *supra* note 61, at 95, 114.

67. C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH, 1877-1913*, 354-55 (1951). Races were generally separated in the late 1880s. EDWARD L. AYERS, *THE PROMISE OF THE NEW SOUTH 136-37, 432-37* (1992).

68. See generally Michael J. Klarman, *Brown, Racial Change and the Civil Rights Movement*, 80 Va. L. Rev. 7 (1994), for the theory that broader social change in the decades prior to *Brown* would have produced significant civil rights progress absent *Brown*. Important changes occurred in the 1930s as well. Political pundit and historian Michael Barone discusses the importance of black sports figures Jesse Owens's and Joe Louis's victories over German athletes as national morale boosters. MICHAEL BARONE, *OUR COUNTRY: THE SHAPING OF AMERICA FROM ROOSEVELT TO REAGAN* 212-13 (1990). Barone quotes a War Office pamphlet on Louis's exploits:

[our] champion knocked out the German champion in one round. Sergeant Joe Louis is now a champion in an army of champions. Joe Louis doesn't talk much, but he talks truly. He talks for 13,000,000 Negro Americans, for all American

World War, which opened many blacks' eyes to a world without segregation and prompted President Harry S. Truman to order what became the successful integration of the United States military.⁶⁹ Second was the "Great Migration" of blacks from the South, which translated into a deluge of new Northern voters that both parties jostled to win over.⁷⁰ Third was a series of state and federal court cases questioning the equality of state-funded university educational services for blacks.⁷¹

Of course, *Brown* raised the stakes in Southern communities, and they reacted differently to the Court's desegregation mandate. By 1956, schools in border states⁷² such as Missouri, Oklahoma, and West Virginia⁷³ were almost totally desegregated.⁷⁴ Delaware, Maryland and Kentucky had also

citizens, when he says: "We're going to do our part, and we'll win 'cause we're on God's side."

Id. (quoted in JOHN MORTON BLUM, *V WAS FOR VICTORY* 195 (1986)).

69. BARONE, *supra* note 68, at 212-13, 351. Barone suggests that the smooth integration of the military led some political leaders of the 1960s to think that in the long run Southerners could be made to accept integration in more intimate areas as well. They were probably right. In the short run, however, integration of the military hardened white Southerners' opposition to integration in the early 1950s, just in time for *Brown*. BARONE, *supra* note 68, at 241. See generally Klarman, *Brown, Racial Change, supra* note 68, at 14-22.

70. Klarman, *Brown, Racial Change, supra*, note 68 at 30-31.

71. Just a year before *Brown*, the Supreme Court held that separate law schools maintained by the state solely for blacks violated the equal protection of the laws, because such institutions could not offer the prestige and facilities of all-white schools. *Sweatt v. Painter*, 339 U.S. 629 (1950); cf. *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (black student could not be segregated within state-operated law school). In 1938 the Court had also held that it was unconstitutional for the state to provide funds for blacks to attend law school out of state as opposed to providing the facilities themselves. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); see also *Sipuel v. Board of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948). The courts were also addressing other aspects of race relations, outlawing, for example, the all-white primary in 1944. *Smith v. Allright*, 321 U.S. 649 (1944). Though in the university cases, NAACP lawyers had argued that it was not necessary for the court to overturn *Plessy v. Ferguson*, 163 U.S. 537 (1896), by the time the Supreme Court heard *Sweatt*, it was plain that litigation and jurisprudence was perhaps moving inexorably in that direction or, at a minimum, in the direction of rendering it irrelevant. See Constance Baker Motley, *The Historical Setting of Brown and Its Impact on the Supreme Court's Decision*, 61 *FORDHAM L. REV.* 9 (1992). The NAACP had success in state courts and with other state political bodies to gain law school admissions and pay equalization. See *Pearson v. Murray*, 182 A. 590 (Md. 1936); MARK TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, 21-22 (1994).

72. I am using "border states" to differentiate Kentucky, Missouri, Delaware, Oklahoma and the city of Washington, D.C. from upper-South states such as Virginia, Arkansas, and North Carolina, which went to great lengths to resist implementing *Brown*.

73. For a first hand discussion of the conduct of West Virginia's desegregation, see HENRY LOUIS GATES, *COLORED PEOPLE* (1994).

74. WILKINSON, *supra* note 8, at 69-70.

made considerable progress.⁷⁵ Nevertheless, the deeper South would not be so compliant. Tepid but effective techniques such as pupil assignment laws blocked black attempts to enroll in white schools.⁷⁶ After passing a resolution censuring the Supreme Court, Louisiana made it a misdemeanor even to assign a black child to a white school.⁷⁷ Georgia went so far as to make it a felony to appropriate public money for integrated schools,⁷⁸ and considered another proposal to remove all blacks from the state.⁷⁹ As late as 1962, no black student was attending school with whites in Mississippi, Alabama, or South Carolina.⁸⁰

Brown I initially ruffled few feathers in Virginia.⁸¹ Desegregation seemed possible in many of the state's communities; some, such as the Washington D.C. suburbs, might even have welcomed it.⁸² Soon after *Brown II*, a Governor-appointed commission developed a moderate, local-option scheme to decentralize the response to the desegregation mandate.⁸³ Virginians voted two to one in favor of a constitutional convention to adopt the necessary amendments.⁸⁴

Local option was no option for hard-line segregationists. Southsiders feared a "domino effect": desegregation in northern and western districts that would sweep like a wave across Black Belt communities.⁸⁵ To white Southsiders, that was "simply . . . something that could not happen,"⁸⁶ and they quickly began a campaign for tougher anti-integration measures.⁸⁷

75. WILKINSON, *supra* note 8, at 70.

76. Douglas, *Rhetoric*, *supra* note 61, at 92; WILKINSON, *supra* note 8, at 84. Florida, Alabama, Mississippi, and North Carolina passed laws governing pupil assignment with extensive administrative "remedies," making a federal court hearing to challenge an assignment prohibitively expensive for most blacks. BARTLEY, *supra* note 8, at 77-78.

77. This last provision was passed on the theory that it was not a form of segregation by race, but rather an exercise of state police power. BARTLEY, *supra* note 8, at 74-75.

78. BARTLEY, *supra* note 8, at 75.

79. SMITH, *supra* note 1, at 83.

80. WILKINSON, *supra* note 8, at 65.

81. See MUSE, *supra* note 14, at 4-10; SMITH, *supra* note 1, at 84-86.

82. Just before the *Brown* decision was handed down, Dowell J. Howard, the state's Superintendent of Education, estimated that gradual segregation could be accomplished in two-thirds of the state. MUSE, *supra* note 14, at 4. Arlington, for example, moved to desegregate in the fall of 1956, before the state legislature halted those efforts. MUSE, *supra* note 14, at 24.

83. The "Gray Plan," named for the commission's chairman, state senator Garland Gray, would have vested additional powers in local school boards, developed pupil assignment programs, relaxed compulsory attendance regulations, and permitted state and local tuition grants for students seeking a hiatus from integrated schools. BARTLEY, *supra* note 8, at 108-10.

84. MUSE, *supra* note 14, at 19.

85. WILKINSON, *supra* note 8, at 71.

86. MUSE, *supra* note 14, at 13.

87. PELTASON, *supra* note 59, at 208.

When powerful Democratic machine boss Senator Harry Byrd announced that he opposed *Brown*, public opinion of moderate approaches turned sour.⁸⁸

In 1956, Southside Virginians pushed a hard-line anti-integration package through the legislature.⁸⁹ Its purpose was to centralize the resistance effort at the state level and provide a barrier against the feared domino effect.⁹⁰ The legislation required that the Governor take control of integrated schools⁹¹ and close them if necessary to halt desegregation.⁹² It authorized state tuition grants,⁹³ required localities to fund tuition grants for students assigned to integrated schools,⁹⁴ and permitted counties to levy taxes to fund the grants if they did not fund public schools.⁹⁵ The legislature later provided for even more drastic situations, denying schools state aid if they permitted integration⁹⁶ and authorizing the state to close schools occupied by federal troops.⁹⁷ As journalist Benjamin Muse described the barrage of anti-integration measures, "Virginia dug itself in behind the battlements of massive resistance and waited for the attack."⁹⁸

Reaction in Prince Edward, more immediately affected than any other Virginia county, was more cerebral. Throughout the *Davis* litigation, the county had continued building its new \$800,000 high school for blacks, and whites now seemed dismayed that blacks wanted more.⁹⁹ Though the Farmville *Herald* editorialized against *Brown*, few readers responded in

88. See MUSE, *supra* note 14, at 4-10; SMITH, *supra* note 1, at 84-86. Byrd's power over Virginia politics had been dying out until he weighed in on *Brown*; massive resistance resurrected his political machine. Klarman, *Brown, Racial Change*, *supra* note 68, at 105-06.

89. MUSE, *supra* note 14, at 28-34. Black Belt politicians had disproportionate power all across the South, and in Virginia, the Fourth District where Prince Edward County was located was particularly powerful. MUSE, *supra* note 14, at 6; see also WILKINSON, *supra* note 8, at 70-71.

90. See MUSE, *supra* note 14, at 29.

91. 1956 Va. Acts. Ex. Sess., ch. 68, p. 69; VA. CODE ANN. § 22-188.4ff(3) (Supp. 1958).

92. 1956 Va. Acts. Ex. Sess., ch. 68, p. 69; VA. CODE ANN. § 22-188.4(3) (Supp. 1958).

93. 1956 Va. Acts. Ex. Sess., ch. 68, p. 69; VA. CODE ANN. § 22-188.9 (Supp. 1958); 1956 Va. Acts. Ex. Sess., ch. 56, p. 56; VA. CODE ANN. § 22-115.19 (Cum. Supp. 1958).

94. 1956 Va. Acts. Ex. Sess., ch. 56, p. 56; VA. CODE ANN. § 22-115.10ff (Cum. Supp. 1958).

95. 1956 Va. Acts. Ex. Sess., ch. 58, p. 59; VA. CODE ANN. § 22-115.1f (Cum. Supp. 1958). School closings were anticipated.

96. 1958 Va. Acts, ch. 642, p. 967.

97. 1958 Va. Acts. Ex. Sess., ch. 41, p. 26; VA. CODE ANN. § 22-188.41ff (Cum. Supp. 1958). This was clearly a reaction to the federal troops in Little Rock's Central High School.

98. MUSE, *supra* note 14, at 34.

99. SMITH, *supra* note 1, at 103-04.

print.¹⁰⁰ Plans were developing privately for a coordinated resistance strategy. White Prince Edwardians had no intention of desegregating their public schools, but neither did they intend to react in haste and repent at leisure.

An oddity of intergovernmental relationships in Virginia would help make resistance possible. Local responsibility for Virginia schools was divided at the county level between the county board of supervisors, which actually governed the county, and the school board. Like separation of powers at other levels of government, it had the effect of tempering change. The supervisors appropriated funds. School boards managed the schools. The supervisors were democratically elected, and thus could be swayed by public opinion, but in the 1950s, school boards were appointed by school trustee electoral boards, which were themselves appointed by the local circuit court judges.¹⁰¹ Partly because they did not have the responsibility to make the tough financial decisions, Virginia school boards often functioned as a "rubber stamp" for school administrators instead of making policy in their own right.¹⁰² While neither the school nor county board members in Prince Edward during the 1950s could have been characterized as "integrationists," it quickly became evident that their priorities were different. "Our aim through the whole process was to operate public schools as long as we could operate racially segregated public schools," according to former school board chairman Dr. Calvin Bass.¹⁰³ Neither the county board nor many of the county's citizens shared this sentiment.

On May 31, 1955, the day the Supreme Court issued its *Brown II* decision, Prince Edward's Board of Supervisors voted not to fund the public schools in 1955-56.¹⁰⁴ This would protect the School Board from court decrees and, if necessary, protect the county from the School Board.¹⁰⁵ Leading segregationists knew they needed a better long-term solution to the

100. SMITH, *supra* note 1, at 87-88.

101. ELY, *supra* note 19, at 200; RAYMOND WOLTERS, *THE BURDEN OF BROWN: THIRTY YEARS OF SCHOOL DESEGREGATION* 125 (1984). This appointment process insulated school boards from normal democratic pressures. In 1979, Prince Edward residents passed a referendum that authorized the supervisors to appoint the school board.

102. The "rubber stamp" problem has continued to this day. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995). School boards "have a lack of legitimacy that they would not have if they were elected," according to Hendley, a fifteen-year county board member. *Id.*

103. Jamie Ruff & Kathryn Orth, *Social Fabric Ripped Apart: Prince Edward Cut Off Money for Its Public Schools*, RICH. TIMES-DISP., May 15, 1994, at A11.

104. SMITH, *supra* note 1, at 101.

105. SMITH, *supra* note 1, at 102.

crisis, however.¹⁰⁶ A group called the “Defenders of State Sovereignty and Individual Liberties”¹⁰⁷ provided it a week later.

Though the Defenders operated statewide, it was primarily a Southside group. The Prince Edward whites who helped to form the Defenders reflected their county’s determined, but measured, response to the integration threat. They were impressed by the NAACP’s success in promoting its agenda “in an orderly way, legally, and with plenty of money and smart lawyers.”¹⁰⁸ They wanted to do the same thing on behalf of segregation.

Defenders sought mainstream support and studiously shunned the violence and overt race hatred of the Ku Klux Klan and the White Citizen’s Councils.¹⁰⁹ Many Defenders viewed themselves as friends to the black community¹¹⁰ and insisted that their primary concern was political, not racial.¹¹¹ “It wasn’t a matter of who was going to go to school with whom, it was a matter of who had the power—the federal government or the state,” explained Robert Taylor, an important leader in the Prince Edward School Foundation, one of the Defenders’ progeny.¹¹² Robert Crawford, a former Prince Edward School Board chairman and one of the prime movers behind

106. SMITH, *supra* note 1, at 103-04.

107. J. Barry Wall, Jr., a Farmville attorney and the local newspaper’s editor’s son suggested the “Defenders of State Sovereignty” part of the organization’s name, while members from Petersburg, Va., added the second part. SMITH, *supra* note 1, at 90. Later, his father pointed out to Bob Smith that the Confederate Monument in Farmville was adorned with the moniker “Defenders of State Sovereignty” and concluded that “we just unconsciously lifted it from that.” SMITH, *supra* note 1, at 106.

108. SMITH, *supra* note 1, at 87. This quote is from Defenders’ president Robert Crawford quoting J. Barrye Wall, the extremely influential editor of the FARMVILLE HERALD. According to Bob Smith, “Wall made the HERALD into an instrument of the will of the Foundation’s attorneys.” SMITH, *supra* note 1, at 160. Wall played a critical role in marshalling support for private schools through the Prince Edward Schools Foundation and in enforcing segregation. *See generally*, SMITH, *supra* note 1, at 156-63.

109. SMITH, *supra* note 1, at 98.

110. Defenders’ president Robert Crawford, School Board chairman in the 1940s, was “always plugging for the equal in separate but equal,” according to NAACP leader L. Francis Griffin, and Crawford was “the one in the white community to whom Negroes would turn most readily for help.” Blacks were genuinely disappointed when Crawford joined the Defenders. SMITH, *supra* note 1, at 95. Yet, Crawford was deathly afraid of “amalgamation” of the races and was a staunch segregationist. SMITH, *supra* note 1, at 92-99. Benjamin Muse calls him a man of “integrity,” but could not deny the “sincerity of his segregationist views.” MUSE, *supra* note 14, at 9-10.

111. The Defenders’ original “statement of beliefs” discussed states’ rights, strict constitutional interpretation, private enterprise, and decentralization, with segregation slipped in at the end “almost as an afterthought.” SMITH, *supra* note 1, at 98. Later, the Prince Edward School Foundation constantly reiterated the same theme; that Prince Edward was not “stemming the black tide,” but rather “turning back the minions of the federal oligarchy.” SMITH, *supra* note 1, at 189.

112. Ruff & Orth, *Social Fabric*, *supra* note 103, at A11.

the original Moton High School project was named the Defenders' president.¹¹³

Defenders laid the groundwork that Prince Edward would ultimately use to resist integration. They envisioned a private foundation which could set up schools at a moment's notice if a court ordered Prince Edward's public schools desegregated.¹¹⁴ "All" they needed was funding and popular support. They got both when the Board of Supervisors cut off funding for public schools. Amid the chaos, they quickly organized a meeting of interested citizens to "guarantee white teachers' salaries" in case schools closed from lack of funds.¹¹⁵

Fifteen hundred people jammed the Defenders' mass meeting.¹¹⁶ Of the \$233,000 estimated necessary to guarantee salaries, the new foundation collected more than \$50,000 the next day, and half before July.¹¹⁷ The Prince Edward School Foundation had been born.¹¹⁸ By creating a truly private structure, the Defenders had sown seeds that would bear the fruit of successful resistance.¹¹⁹

C. Scene Three: Backlash Against Massive Resistance

Deliberate delay, not "deliberate speed," marked the desegregation "effort" in Prince Edward County after *Brown*. In July, 1955, the district court decided that it was too late to order the Prince Edward public schools to desegregate for the 1955-56 school year, and the Prince Edward Board of Supervisors responded by appropriating public school monies on a month-to-month basis.¹²⁰ As a result, communities such as Norfolk, Front Royal, Charlottesville and the Washington suburbs played out the next act of the drama in Virginia.¹²¹

113. SMITH, *supra* note 1, at 89-90.

114. SMITH, *supra* note 1, at 124.

115. SMITH, *supra* note 1, at 104.

116. SMITH, *supra* note 1, at 116-25.

117. SMITH, *supra* note 1, at 123.

118. Two days after the meeting, the group's charter was granted. SMITH, *supra* note 1, at 124.

119. The structure continued to grow over the next four years. The Prince Edward School Foundation began recruiting the teachers for private schools in case the public schools closed. The Foundation also purchased supplies and made plans for facilities in case those were needed. PELTASON, *supra* note 59, at 218. There was a feeling of inevitability about the Foundation's work.

120. PELTASON, *supra* note 59, at 14.

121. See generally MUSE, *supra* note 14.

It did not take long for many Virginians to tire of massive resistance.¹²² Soon many were searching for a way out. In some places, the weapon of choice was simply to let integration proceed smoothly. Arlington and Floyd counties, one a cosmopolitan Washington D.C. suburb and the other a secluded hamlet in the Southwest Virginia mountains, integrated in 1959 and 1960 with "extraordinary ease."¹²³ Both had black populations of under five percent.¹²⁴ Arlington whites in particular had overwhelmingly opposed any resistance which could have threatened their public schools.¹²⁵

Other weary resisters simply climbed out of their trenches. Warren County, nestled in the idyllic Shenandoah Mountains with a black population of under ten percent, was a case in point. In 1958, Warren County High School became the first school to close under the massive resistance laws,¹²⁶ and four-fifths of the 1,000-student white school population cheerfully shifted to brand-new private schools.¹²⁷ Parents were so satisfied with their makeshift private schools that when the court ordered the public high school reopened in the early spring, none returned. Yet if outsiders thought Warren County was a "symbol of the South's determination to preserve and maintain states' rights,"¹²⁸ they were sorely mistaken. A desire for stability explained white parents' inertia.¹²⁹ At the beginning of the next school year more than half of the private school population streamed back to integrated public schools as cheerfully as they had left.¹³⁰

122. The counties where school closings threatened first, Warren, Albemarle, Arlington, Alexandria, Floyd and Norfolk City, were by no means hotbeds of massive resistance. The movement might not have died as quickly had the initial battles been fought in the black belt where zeal for massive resistance was strongest. ELY, *supra* note 14, at 75. There is evidence to suggest that a majority of Virginians favored massive resistance even as state officials were working to undermine it. ELY, *supra* note 19, at 79. Nevertheless, "massive resistance collapsed because whites broke ranks." WOLTERS, *supra* note 101, at 93.

123. MUSE, *supra* note 14, at 155-56.

124. MUSE, *supra* note 14, at 56, 156.

125. MUSE, *supra* note 14, at 56-57, 137 (describing the moderate "Arlington Committee to Preserve Public Schools" which had widespread support in the county).

126. Michael Paul Williams, *Ruling Left a Wide Legacy*, RICH. TIMES-DISPATCH, May 15, 1994, at A10.

127. These were established specifically to thwart court-ordered desegregation with generous financial backing from the Virginia Education Fund as well as the local for the Textile Workers of America. MUSE, *supra* note 14, at 158.

128. MUSE, *supra* note 14, at 148 (quoting Senator Strom Thurmond).

129. One wise ninth-grade teacher explained that whites stayed in private schools: because we're convinced that it is for the welfare of the youngsters not to be disrupted again this year. If those kids had no private school, they would have gone to the public school today. I'd like to think that we'll all be together at the high school next year.

MUSE, *supra* note 14, at 147-48.

130. MUSE, *supra* note 14, at 154-55.

Some whites even challenged school closings in court. When a federal district court ordered the Norfolk School Board to assign black children to white schools, the Board complied and slammed right into the massive resistance bulwark. Governor Lindsey Almond closed the affected schools, divested the Board of its authority and power, and took control.¹³¹ The closings displaced 9,900 white students, and stopgap measures such as tutoring sessions and out-of-district enrollments simply could not accommodate the avalanche.¹³² The city was too large for the Warren County solution.

Norfolk's white children were in a state of intellectual chaos. Despite a local vote endorsing the school closings by a 3-2 margin,¹³³ six thousand Norfolk parents and numerous teachers requested that the Governor reopen the schools.¹³⁴ Business leaders feared that federal military installations and their \$1.3 million annual education subsidy might be at risk,¹³⁵ and many considered the \$172,000 per month bill to keep the schools closed absurd.¹³⁶ A significant proportion of Norfolk's white residents were transplanted northerners unwilling to sacrifice for segregation¹³⁷ when a mere seventeen black enrollments in white schools would satisfy federal courts.¹³⁸ Dissident parents finally resorted to court action to roll back the tide of massive resistance.

Governor Almond was the state's point-man on segregation, and it was on him that the dissatisfaction centered. Despite having ridden the segregationist wave to office, in 1959 he concluded that the only way to defeat integration "was to close down every single, solitary [public] school in this state and keep them closed" and that was too high a price to pay to avoid what he believed would be mere token integration.¹³⁹ That year the

131. *James v. Almond*, 170 F. Supp. 331, 334-35 (E.D. Va. 1959).

132. MUSE, *supra* note 14, at 79. By mid-October, only 3,000 students were enrolled in private tutoring groups, 500 were attending neighboring public schools, and 900 were attending night classes at a nearby high school. MUSE, *supra* note 14, at 79. Many Norfolk teachers refused to participate in tutoring programs in order to stiffen the resolve of parents to resist massive resistance. PELTASON, *supra* note 59, at 213.

133. PELTASON, *supra* note 59, at 215. The referendum sent mixed signals. The outcome seemed to favor the segregationists, but at best it revealed strong opposition to massive resistance if that cost the city its schools. Moderates also argued that many of the city's young naval families, who were unlikely to have deep sympathy for the segregationist cause, failed to vote because they had too recently arrived in town. PELTASON, *supra* note 59, at 215.

134. PELTASON, *supra* note 59, at 215.

135. PELTASON, *supra* note 59, at 215.

136. MUSE, *supra* note 14, at 109.

137. PELTASON, *supra* note 59, at 217-18.

138. *James*, 170 F. Supp. at 334.

139. WOLTERS, *supra* note 101, at 93 (quoting Lindsey Almond).

Virginia Supreme Court of Appeals held most of the massive resistance legislation unconstitutional in a case initiated by the Governor.¹⁴⁰ Left intact were State and local tuition-grant and tax-credit programs for families wishing to send their children to private schools.¹⁴¹

At about the same time, the federal courts gave massive resistance a similar drubbing in the Norfolk case.¹⁴² The federal district court characterized the white plaintiffs locked out of public schools as "the subjects of discrimination [who] are unable to obtain the benefits of public taxation on the same basis as the parents of other children similarly situated."¹⁴³ Though there was no federal right to public education, if the state chose to provide educational services, it had to do so equally.¹⁴⁴ The court insisted that as long as a locality maintained or operated public schools, "no one public school or grade in the county or city may be closed to avoid the effect of the law of the land while other public schools or grades remain open at the expense of the taxpayers."¹⁴⁵

What if a locality chose not to operate any public schools? The court had not decided this important question, because only some of the Norfolk schools had closed while others had remained open. Yet it left a critical unexplored area in the jurisprudence ripe to be tested by eager segregationists. As it turned out, Prince Edward's whites were more than eager to explore this potential loophole.¹⁴⁶

D. Scene Four: Back to Court

At first, Prince Edward seemed oblivious to these exciting events. Massive resistance was alive and well there. In 1957, nine months after the black plaintiffs renewed their suit, Federal District Court Judge Sterling

140. *Harrison v. Day*, 106 S.E.2d 636 (Va. 1959); PELTASON, *supra* note 59, at 216-17. The massive resistance legislation had empowered the Governor of Virginia to close public schools ordered desegregated by federal courts. The new power was based on two Virginia constitution provisions, one requiring that the state "establish and maintain an efficient system of public free schools throughout the state" and another stating that "[w]hite and colored children shall not be taught in the same school." *Harrison*, 106 S.E.2d at 642. The State argued in *Harrison* that the two were tied (an efficient system was necessarily a segregated system) and thus when *Brown* overturned the segregation requirement, it implicitly overturned the requirement that Virginia establish and maintain public schools. *Id.* The Virginia Supreme Court of Appeals held otherwise, however. *Id.* at 644.

141. *Harrison*, 106 S.E.2d at 644.

142. *James*, 170 F. Supp. at 331.

143. *Id.* at 338.

144. *Id.* at 339.

145. *Id.* at 338.

146. See SMITH, *supra* note 1, at 152.

Hutcheson¹⁴⁷ decided that the state of race relations in Prince Edward County made it inappropriate for him to fix a specific time limit for the county's school officials to comply with the *Brown* ruling.¹⁴⁸

The ruling was not disingenuous. Hutcheson found *Brown's* elastic remedial mandate frustrating,¹⁴⁹ and he was uncomfortable with his role as a policymaker in the process.¹⁵⁰ His opinion surveyed the history, culture, and current conditions in Prince Edward, just as *Brown II* seemed to encourage.¹⁵¹ Like the 1952 *Davis* court of which he had been a member, Hutcheson now focused on improved conditions in black schools and the large percentage of black teachers in the county, which he believed would decline if schools were integrated.¹⁵² He knew Prince Edward's threat to close the public schools was real, and he was anxious to avoid forcing the issue.¹⁵³ He concluded that "[a]ction which might cause mixing the schools at this time, resulting in closing them, would be highly and permanently injurious to children of both races."¹⁵⁴

The Fourth Circuit promptly reversed Hutcheson's ruling.¹⁵⁵ The Court held as follows:

The fact that the schools might be closed if the order were enforced is no reason for not enforcing it. A person may not be denied enforcement of rights to which he is entitled under the Constitution of the United States because of action taken or threatened in defiance of such rights.¹⁵⁶

147. Judge Hutcheson had been a member of the original three-judge court that found segregation constitutional in Prince Edward County. *Davis v. County Sch. Bd.*, 103 F. Supp. 337, 338 (E.D. Va. 1952). In 1956, that court disbanded, leaving Judge Hutcheson in charge of desegregation. *Davis v. County Sch. Bd.*, 142 F. Supp. 616, 620 (E.D. Va. 1956). Hutcheson was a segregationist and no supporter of the *Brown* decision, but he had played hardball in the past with Southern school boards in equalization cases. ELY, *supra* note 19, at 195. Hutcheson had once fined a school board for failing to support a bond issue for black schools. SMITH, *supra*, note 1, at 146. Nevertheless, he now hoped "to do as little as possible to amplify" the *Brown* decision. ELY, *supra* note 19, at 195 (quoting James J. Kilpatrick).

148. *Davis*, 149 F. Supp. 438-39.

149. *Id.* at 436. "[T]he District Courts are confronted with the necessity of following an uncharted course in applying the sole legal principle announced in the First *Brown* case." *Id.*

150. *Id.* at 435. "It is elementary law that one deprived of a right guaranteed by the Constitution ordinarily is afforded immediate relief . . . [but] the Supreme Court in this case has seen fit to specifically declare that . . . the exercise of that right must be deferred." *Id.*

151. See *Brown II*, 349 U.S. at 299-300.

152. See *Davis*, 149 F. Supp. at 436-39.

153. *Id.* at 438-40.

154. *Id.* at 439.

155. *Allen v. County Sch. Bd.*, 249 F.2d 462, 465 (4th Cir. 1957).

156. *Id.* at 462. Notably, Judge Wilkinson argues that the tentativeness of the Supreme Court's *Brown II* holding was just that, a denial of immediate enforcement of constitutional

Blacks and whites could voluntarily choose to attend separate schools, but legal segregation would have to be removed "without further delay."¹⁵⁷

On remand, Judge Hutcheson heard more disturbing evidence of county-wide unrest, threats of violence, and the inability of county officials to cope.¹⁵⁸ His opinion complained that even though he had acted within *Brown II*'s "wide latitude for the exercise of discretion," he had been overruled by a panel "equally abstentious in charting a course" for school desegregation.¹⁵⁹ He repeatedly cautioned against immediate, or even swift, desegregation in Prince Edward, predicting that such a "sudden and determined effort to enforce upon the people a code of morality" was doomed to failure.¹⁶⁰ Nevertheless, Judge Hutcheson did order Prince Edward to comply with *Brown II* by 1965, ten years after that decision had been handed down.¹⁶¹

The Fourth Circuit's impatience with the continued delays in Prince Edward was mounting, undoubtedly fuelled by the backdrop of events in Warren County, Norfolk and Northern Virginia. Now the court criticized Judge Hutcheson even more sharply.¹⁶² It pointed out that the Supreme Court had specifically held that threats to public peace did not outweigh the constitutional right to desegregated public schools¹⁶³ in the Court's reaction to the violence accompanying desegregation of Little Rock Central High School the previous year.¹⁶⁴ The Fourth Circuit was adamant that the situation in Prince Edward was not different in kind. It demanded that the District Court order the School Board to desegregate the county's high schools in September 1959 and plan on desegregating the elementary schools soon after.¹⁶⁵

rights because of action threatened or taken in defiance of those rights. WILKINSON, *supra* note 8, at 64. "There had to be, then, some . . . reason for the patient tenor of the *Brown II* opinion. And that was, as even the least artful soul might guess, the continued prospect of southern obstruction." *Id.*

157. *Allen*, 249 F.2d at 465.

158. *Allen*, 164 F. Supp. at 788-89.

159. *Id.* at 790.

160. *Id.* at 792 (likening desegregation to Prohibition).

161. *Id.* at 794.

162. *Allen v. County Sch. Bd.*, 266 F.2d 507, 510 (4th Cir. 1959).

163. *Id.* at 510-11.

164. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958). *Cooper* arose out of the Little Rock Central High School crisis when the city's school board, initially enthusiastic about desegregation, requested a two-year delay, because of massive street riots and disturbances in the schools. See, e.g., FRANCIS WILHOIT, *THE POLITICS OF MASSIVE RESISTANCE* 176-82 (1973). The Supreme Court replied that "the constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature." *Id.* at 16.

165. *Allen*, 266 F.2d at 511. Judge Hutcheson retired from the bench after this ruling

Unfortunately, the School Board did not have the power to operate desegregated public schools, because it could not appropriate the needed funds. The District Court did not enter an immediate desegregation order in the Prince Edward case until April 22, 1960,¹⁶⁶ but local officials had already taken matters into their own hands. On June 2, 1959, the Board of Supervisors of Prince Edward County announced that it would not appropriate funds to operate public schools in the county the following year.¹⁶⁷ School board members' efforts to change the Supervisors' minds over the summer failed.¹⁶⁸ That fall, white children attended private schools operated by the Prince Edward School Foundation, and most black children stayed home.¹⁶⁹ As J. B. Peltason wrote ominously in 1971: "unless the

came down. ELY, *supra* note 19, at 195.

166. Allen v. County Sch. Bd. of Prince Edward County, 28 F.R.D. 358, 359 (E.D. Va. 1961).

167. SMITH, *supra* note 1, at 151. The previous month, the Board of Supervisors had passed a resolution declaring the board's policy not to levy taxes for desegregated public schools in response to a request from 4,000 white citizens. Allen v. County Sch. Bd., 28 F.R.D. 358, 363 (E.D. Va. 1961) (summarizing the federal government's complaint in intervention).

168. SMITH, *supra* note 1, at 155. With appropriations being made on a month-to-month basis, School Board Chairman and Hampden-Sydney College Professor Calvin Bass argued that the public schools should remain open until a white school actually received an application from a black student. See SMITH, *supra* note 1, at 152-53. Bass also worked privately with Longwood College Dean C. D. G. Moss and two very different black opinion-makers, conservative businessman Willie Redd and Reverend L. Francis Griffin of the NAACP, to develop a controversial proposal under which the schools would remain open, but the black community would not press the desegregation issue for three years. SMITH, *supra* note 1, at 155. It is unclear whether Griffin signed off on the agreement or not, but Moss and Bass took it to Governor Lindsey Almond, who agreed to help broker a settlement between the Foundation and public-school supporters. SMITH, *supra* note 1, at 153-54. The Foundation leaders refused to meet with the governor. SMITH, *supra* note 1, at 155. The pro-public school forces failed because they lacked the necessary knowledge of the black community to make it their ally, the local newspaper was working aggressively against them, and state government officials refused to help without participation of Foundation leaders. See generally SMITH, *supra* note 1, at 152-56.

Bass, Moss, and others suffered personally and professionally for their efforts on behalf of public schools. Many mistook Bass's support for public schools for support for integration. "I had people who would rather walk across the street than speak to me. I had my life threatened. That gives you an idea of how intense people's feelings were," he told the *Richmond Times-Dispatch*. Ruff & Orth, *Social Fabric*, *supra* note 103, at A11. Dr. Moss's position at Longwood College, a state-supported institution was regularly threatened. He lost his high standing in his local church and in the community. SMITH, *supra* note 1, at 212-24. One school board member, who told J. B. Peltason that the Foundation schools could not provide the same quality education as the public schools, refused to permit his name to be used in Peltason's book for fear of reprisals. See PELTASON, *supra* note 59, at 220.

169. Black strategists were afraid to accept the Prince Edward Schools Foundation's offer to establish private schools for blacks, in case it derailed the movement to reopen the public schools, but they also miscalculated how long the schools would remain closed. SMITH,

federal judiciary intervenes it is unlikely that the public school system will be restored."¹⁷⁰

E. Scene Five: Cut and Come Again

The closings caught the black community by surprise. "It was shocking," remembers Reverend Willie Boulden, a high school student in 1959.¹⁷¹ "The principal . . . called us to the auditorium and he was talking to all the students and telling them about how the schools were closed, 'but don't worry about it.'"¹⁷²

Worry soon set in.

Whites reacted differently. After the Supervisors failed to appropriate monies for the public schools, the Prince Edward School Foundation sprang into action. There was neither a mere intellectual test of an abstract constitutional principle nor a pragmatic political ploy. They intended to succeed as an example for all southern communities,¹⁷³ and they organized their activities accordingly. Prior to 1870, most Southern schools were private academies.¹⁷⁴ Many Foundation leaders believed that the public school era would turn out to have been merely "a . . . brief interlude in the history of southern education."¹⁷⁵

supra note 1, at 197. Nearby black colleges and adjoining public school systems educated a few of the black youngsters, and the American Friends Service Committee placed others in homes in the North where they could attend school. SMITH, *supra* note 1, at 198. A significant minority of the county's black children attended "training centers," but these served more as morale boosters than educational institutions. Most children received no formal education at all. SMITH, *supra* note 1, at 195-99.

170. PELTASON, *supra* note 59, at 220.

171. Interview with Reverend Willie Boulden, in Worsham, Va. (August 7, 1995).

172. *Id.*

173. SMITH, *supra* note 1, at 188. At least in the beginning, many Defenders and Foundation supporters believed they were developing a blueprint for resistance that other Southern communities could follow. SMITH, *supra* note 1, at 188. Visits of representatives from other counties reinforced the sense that Prince Edward was leading a legal crusade. SMITH, *supra* note 1, at 188-89. Yet it quickly became evident that other resisters did not plan to follow. According to Bob Smith, the Foundation supporters, "clung stubbornly to the concept that Prince Edward was a great testing ground and that it would amount to a kind of legal genocide to drop the case in court and reopen the schools." SMITH, *supra* note 1, at 161.

174. WOLTERS, *supra* note 101, at 95.

175. WOLTERS, *supra* note 101, at 95.

In Prince Edward Academy's¹⁷⁶ inaugural school year, white parents shunned available state and county funds, thus keeping the project pure of any constitutionally suspect "public action."¹⁷⁷ Instead, Foundation supporters called in the musty pledges from 1955,¹⁷⁸ and took advantage of donations that poured in from across the country.¹⁷⁹ The Supervisors cut taxes by fifty-three percent, thereby freeing up funds which could flow through private individuals to the school.¹⁸⁰ Volunteers built desks and the Foundation held classes in churches, homes and even a blacksmith's shop instead of the idle public school buildings.¹⁸¹ Opening ceremonies in September 1959 were held in a movie theater.¹⁸²

The Foundation did not remain "pure." The private school began charging tuition after its first year of operation,¹⁸³ and to pay it, parents and other donors sought refuge in Virginia's tuition-grant program as well as similar local programs.¹⁸⁴ In the first year, local tax credits put \$58,000 back into the Foundation's contributors' pockets,¹⁸⁵ and the grant programs

176. WOLTERS, *supra* note 101, at 94. By the end of the first year the eight schools in the Foundation system were known as "Prince Edward Academy," as they would be for almost forty years. WOLTERS, *supra* note 101, at 94. They also received full accreditation from the State of Virginia. WOLTERS, *supra* note 101, at 94.

177. MUSE, *supra* note 14, at 150. Of course, public funding, such as the state tuition grant program, probably would not have been available, because the Academy was unaccredited and in any case did not charge tuition, but the Foundation was anxious to avoid constitutional attacks before the project even got off the ground. MUSE, *supra* note 14, at 150. Muse points out that the only local funding appropriated for schools of any kind was the debt service on the new black high school! MUSE, *supra* note 14, at 150.

178. SMITH, *supra* note 1, at 152.

179. ELY, *supra* note 19, at 137; SMITH, *supra* note 1, at 166.

180. MUSE, *supra* note 14, at 150. Of course, this was an indirect public subsidy.

181. SMITH, *supra* note 1, at 165, 167. The Foundation was not completely pure as far as state action was concerned. For example, the Jaycees obtained a piece of land for a football field, erected bleachers and other amenities, and as one observer recalled, "one night the lights and poles were up around Farmville High school and the next morning before daylight they were up around the Foundation field." SMITH, *supra* note 1, at 166. For more examples of the volunteer spirit that fueled the Foundation schools, see WOLTERS, *supra* note 101, at 94-95.

182. SMITH, *supra* note 1, at 167. Sadly, this theatre has since been demolished. It was located just across the street from the church of Reverend L. Francis Griffin, the local NAACP leader.

183. *Allen v. County Sch. Bd. of Prince Edward County*, 198 F. Supp. 497, 501-02 (E.D. Va. 1961).

184. *Id.* These included a tax credit and a tuition grant. *Id.* The tax-credit ordinance provided a credit, not to exceed 25% of the total county real and personal property taxes for contributions made to private nonprofit nonsectarian schools in Prince Edward County, of which the Foundation schools were the only ones. *Id.* at 501. Of course, this was nothing more than an indirect tax levy for the Foundation schools; had the public schools existed, the same funds would have gone to them.

185. *Id.* at 501.

reimbursed white parents for ninety percent of their children's tuition.¹⁸⁶ Thus, the programs helped the private school to obtain more resources than through private fundraising, and then they redistributed those funds to make sure even poor whites could attend the Academy.¹⁸⁷

The tuition grants and tax credits gave white residents access to much needed funds, but they also provided blacks with the key to reopening the litigation.¹⁸⁸ In 1960, the black schoolchildren filed an amended supplemental complaint alleging that the county's white residents were using state dollars and other state action to keep the county's educational institutions segregated.¹⁸⁹ The complaint specifically alleged: (1) that the failure to maintain public schools in Prince Edward violated Virginia's constitution¹⁹⁰ as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment;¹⁹¹ (2) that state and local tuition grants were directly and indirectly supporting the Prince Edward School Foundation; and (3) that the county was reimbursing citizens and providing tax credits for payments to

186. *Id.* at 501-02. In the 1960-61 school year, the Foundation schools charged \$240 tuition in the elementary schools and \$265 in the high school. The local tuition grant was \$100 per student, and from all sources, grants paid \$225 for elementary tuition and \$250 for high school students. *Id.*

187. Some Prince Edward residents, such as high-income school parents and nonparents, had funds which under a normal tax regime would have been available for schools, but which could not be made available through tuition or other private means. Charging tuition also made state funds available through tuition grants.

188. Foundation leaders did not believe that a court would hold that the county must tax its citizens to provide public schools. SMITH, *supra* note 1, at 152. Though this is essentially what the Supreme Court did in 1964. See *Griffin*, 377 U.S. at 233-34. They undoubtedly thought tax credits and tuition grants would be considered less objectionable, see Brief on Behalf of the State Board of Education and Superintendent of Public Instruction of the Commonwealth of Virginia, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 594), but the Supreme Court ultimately enjoined them as well. *Id.* at 234.

189. Amended Supplemental Complaint, at 20, 27, in RECORDS AND BRIEFS OF THE SUPREME COURT, *Griffin v. School Bd.*, 377 U.S. 218, (1964) (No. 592) [hereinafter Amended Supplemental Complaint].

190. VA. CONST. § 129 states, "The General Assembly shall establish and maintain an efficient system of public free schools." *Id.*

191. The last portion of § 1 the Fourteenth Amendment includes the Due Process and Equal Protection Clauses and states: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

the Foundation schools.¹⁹² The complaint finally claimed that all this had been done to circumvent the April 1960 desegregation order.¹⁹³

The district court held that the county tuition grants and tax credits were unconstitutional in application, and it enjoined the Board of Supervisors from approving and paying out county funds through the programs.¹⁹⁴ Because state regulations did not permit the state to provide grants to students ineligible to attend public schools, it also enjoined Prince Edward officials from processing or approving state tuition grant applications as long as Prince Edward's public schools remained closed.¹⁹⁵ Thus the court destroyed much of the Prince Edward Academy's financial support.

None of this softened the resolve of the white Prince Edwardians for whom the Academy had become an important source of community pride.¹⁹⁶ Numerous local and statewide political figures lent support to a \$200,000 scholarship drive so that the "test case for Southside Virginia and the entire South" could go forward.¹⁹⁷ When the school board unexpectedly refused to sell Farmville High School,¹⁹⁸ the Foundation swung into another \$300,000 fund drive to build its own school.¹⁹⁹ With numerous donations

192. Amended Supplemental Complaint, at 20-28. The plaintiffs also alleged that the school board officials planned to sell the public school buildings which they had permitted to fall into disrepair, but this allegation may have been merely a procedural ploy, as it was the only count against the school board, the defendant in the original litigation and it thus permitted the plaintiffs to file a supplemental amended complaint, instead of a new lawsuit. *See id.* at 26; Brief for Respondents, County School Board of Prince Edward County, Virginia, and T.J. McIlwaine, Jr., Division Superintendent of Schools of Said County, Griffin v. County Sch. Bd., 377 U.S. 218 (1964) (No. 592).

193. Amended Supplemental Complaint, at 27.

194. *Allen*, 198 F. Supp. at 503. Raymond Wolters points out that though Virginia had many segregation academies in the 1960s, only Prince Edward parents were barred from receiving tuition grants. WOLTERS, *supra* note 101, at 115. He chalked up the discrepancy to the courts' desire to use financial pressure against the Academy, located in a county without public schools. WOLTERS, *supra* note 101, at 115-16. Yet discrimination can be justifiable where important differences are at stake, and in the Prince Edward case, the important difference was that the public schools were closed in order to defy a specific desegregation order, while other schools were eventually reopened after only brief periods of closure.

195. *Allen*, 198 F. Supp. at 503-04.

196. WOLTERS, *supra* note 101, at 96. According to an editorial in the FARMVILLE HERALD, Prince Edward's efforts were "encouraged and admired privately by more people than any other county in the nation." WOLTERS, *supra* note 101, at 96.

197. SMITH, *supra* note 1, at 187-88 (quoting Blanton Hanbury, former public school board chairman and president of the Prince Edward School Foundation). *See supra* note 173 (explaining Prince Edwardians' belief that the Foundation schools would serve as a model to others resisting implementation of *Brown* in the South).

198. All the school board members resigned rather than sell the buildings. Brookover, *Education in Prince Edward*, *supra* note 20, at 150.

199. SMITH, *supra* note 1, at 186.

of both time and labor, a \$400,000 suburban-style campus was ultimately built for \$250,000 cash.²⁰⁰

Of course, the notion that Prince Edward was really a test case for the South was wholly divorced from reality by 1961. The *Farmville Herald's* editor J. Barrye Wall claimed that the real issue was one of "judicial tyranny:" "Can a federal court order the Board of Supervisors of Prince Edward County to assess taxes from the people of Prince Edward to pay for integrated public schools."²⁰¹ Yet as Bob Smith sagely realized in the early 1960s, the answer to that question mattered only to counties that wished to close schools, and as became painfully clear as the months inched forward, *no other county wanted to do so.*²⁰² For all the talk of legal crusades and debates about federalism, the only practical reason to keep the schools closed was to ensure that no whites would attend school with blacks.

That was enough inspiration for the Foundation's leaders and other white Prince Edwardians who at heart were desperately frightened of integration.²⁰³ Though legal advisors hinted that reopening public schools might make the case easier litigate, community leaders refused to relent, partly because it seemed the antithesis of the legal issue they were championing, but also because they knew that some whites would willingly

200. SMITH, *supra* note 1, at 186; WOLTERS, *supra* note 101, at 96.

201. SMITH, *supra* note 1, at 189.

202. No state or county followed Prince Edward by closing its schools under similar circumstances. SMITH, *supra* note 1, at 189. States chose to close individual schools in individual districts, but no other district seriously considered an end to public education. Though, throughout the 1960s and 1970s, delegations from numerous Southern cities did visit the Academy, but it seems unlikely that many of these truly intended to close public schools. WOLTERS, *supra* note 101, at 95-96.

203. See SMITH, *supra* note 1, at 188-191 (contrasting the HERALD's legalistic editorials with the Academy's graduation speaker who warned that the issue at stake was no less than "racial amalgamation"), see also SMITH, *supra* note 1, at 93-97 (comparing Robert Crawford's underlying fear of "amalgamation" with his fiscal conservatism and concerns about the "radical left"). J. HARVIE WILKINSON, III, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA L. REV. 485, 496-99 (1978). In his oral argument to the Supreme Court in *Brown*, Prince Edward's attorney Archibald Robertson noted that "Negroes constitute 22 per cent of the population of Virginia, but 78 per cent of all cases of syphilis and 83 per cent of all cases of gonorrhea occur among Negroes." L. FRIEDMAN, ED., ARGUMENT: THE ORAL ARGUMENT BEFORE THE SUPREME COURT IN *BROWN V. BOARD OF EDUCATION OF TOPEKA* 1952-55, at 428. NAACP attorney Oliver Hill agreed that illegitimate births and that sexually transmitted diseases were problems in the black community, but he insisted that "the first step in eradicating this evil is the elimination of racial segregation—its breeding place." WOLTERS, *supra* note 101, at 79. While some blacks argued that association with whites would help their children's educational and social development, whites uniformly feared their children would regress as a result. WOLTERS, *supra* note 101, at 83. For a discussion of roots of Southern white fear of blacks and how segregation itself fed it, see W. J. CASH, *THE MIND OF THE SOUTH* 311-19 (1941).

return to public schools.²⁰⁴ The Foundation's fundraising efforts had uncovered pockets of recalcitrance among the county's white residents who complained anonymously of "Hitler-like tactics" and told tales of "special committees . . . [that] paid calls on families not contributing a 'fair share' to the school operation costs."²⁰⁵ A handful of families refused need-based scholarships rather than take handouts; these white children simply went without schooling as long as public schools were closed, but might have quickly enrolled there if they reopened.²⁰⁶ The price of resistance in Prince Edward was rising steadily higher.²⁰⁷

The federal court's decision did not reopen the public schools. It merely reframed the issue as whether "the public schools . . . [can] be closed in order to avoid the racial discrimination prohibited by the Fourteenth Amendment,"²⁰⁸ and noted that any decision would require determining whether Virginia was truly operating a local option²⁰⁹ school system which permitted Prince Edward County to close its schools.²¹⁰ This was a state law question, so the federal court abstained while the action moved to the Virginia state courts.²¹¹ Soon afterwards, the Virginia Supreme Court of Appeals held that the Prince Edward Board of Supervisors had neither a constitutional nor statutory duty to levy taxes and appropriate monies to support public schools.²¹²

The Fourth Circuit next held that the school closings did not violate the 1960 order to end discriminatory practices in the county's public schools,

204. SMITH, *supra* note 1, at 190.

205. SMITH, *supra* note 1, at 186-87 (quoting John A. Hamilton, associate editor, LYNCHBURG NEWS).

206. Mary Beth Joachim, *Adults Recall 'Lost' Childhood: Segregation of '50s Hurt Their Schooling*, DALLAS MORN. NEWS, Mar. 26, 1995, at 1A.

207. Many, including Longwood College's Dr. Moss, an important public school supporter, thought the end of the tuition grants would destroy the Foundation schools. Of course, it did not, but these moderate forces properly recognized a victory when they saw one. SMITH, *supra* note 1, at 187.

208. *Allen*, 198 F. Supp at 501.

209. *Griffin v. Board of Supervisors*, 322 F.2d 332, 341 (4th Cir. 1963).

210. *Allen*, 198 F. Supp. at 501.

211. *Id.*

212. *Griffin v. Board of Supervisors*, 124 S.E.2d 227, 231 (Va. 1962). Unfortunately, the plaintiffs failed to present all the issues of concern to the federal courts to the state court, such as (1) whether Virginia or any of its agencies had an affirmative duty to operate public schools in the county; or (2) whether Virginia could operate public schools in other parts of the state while the Prince Edward schools remained closed. *Griffin*, 322 F.2d at 334 n.3. A displeased District Court Judge Lewis would have dismissed the complaint or continued to abstain had the defendants filed an appropriate answer or countersuit as he had urged in his previous opinion and order. *Allen*, 207 F. Supp. at 350. They did not, so he decided the federal issues anyway. By the time the case reached the Fourth Circuit again, another state court action was pending in the Virginia Supreme Court of Appeals.

because without schools, such discrimination could not exist.²¹³ In the same vein, closing the schools did not deny plaintiffs equal protection of the law, because Prince Edward citizens were receiving equal public educational services—none.²¹⁴ By this time, another case was pending in the Virginia courts, and the Fourth Circuit noted that if the state court held that Prince Edward was required to operate public schools, the tax credit and tuition grant programs might be evidence that the county was indirectly operating the Foundation schools.²¹⁵ That interpretation would permit the federal courts to order the Foundation schools either to give up state aid or to integrate as the county's true public schools.²¹⁶ Moreover, if Prince Edward actually had a state duty to operate free public schools under section 129 of Virginia's Constitution,²¹⁷ a Virginia court might order the county to operate them.²¹⁸ Until the Virginia courts provided answers, there was nothing the parties could do but wait.

F. Scene Six: The Executive Branch and the Virginia State Courts Act

For the second time, forces outside the courtroom eclipsed what was going on inside. Ever since the *Davis-Allen-Griffin* litigation recommenced in 1961, the president and the Justice Department had felt pressure to do "something"²¹⁹ about Prince Edward County. The problem was "what." The District Court had spurned the Attorney General's effort to intervene in the litigation in 1961.²²⁰ Private groups urged the federal government to

213. *Griffin*, 322 F.2d at 337.

214. *Id.* The court cited numerous cases in which Southern municipalities chose to close recreational facilities in order to avoid court orders to integrate them. *Id.*

215. *Id.* at 340.

216. As quasi-public schools, the Foundation schools would then be under the jurisdiction of the district court's April 1960 order to desegregate.

217. *See supra* note 190 for text of that section.

218. *See Griffin*, 322 F.2d at 340. Such a result would be less likely to offend Virginians who were particularly touchy where federalism issues were concerned. The Defenders, for example, were required to sign a statement in their membership forms that "I believe the segregation of the races is a right of the state government; in the sovereignty of the several states, and in the freedom of the individual from government controls." ELY, *supra* note 19, at 31. *See also* SMITH, *supra* note 1, at 236 (discussing the executive branch's hesitance to enter the fray in Prince Edward "in the face of southern sentiment for states' rights"). Also not to be ignored is that the Fourth Circuit doubted whether it could order the public schools reopened in light of the Eleventh Amendment, *Griffin*, 322 F.2d at 335, though the Supreme Court decided it could with minimal analysis. *Griffin*, 377 U.S. at 228.

219. NEIL V. SULLIVAN, BOUND FOR FREEDOM 36 (1965) (quoting Special Assistant William Van Heuvel); SMITH, *supra* note 1, at 236-37.

220. *Allen v. County Sch. Bd.*, 28 F.R.D. 358, 366 (E.D. Va. 1961). This attempt to come to black Prince Edwardians' aid also produced serious political fallout. Bob Smith

provide some form of schooling for black children in Prince Edward, but it was never politically expedient to do so.²²¹

Those private groups filled part of the void themselves. Early on, blacks made a tactical decision not to establish their own private schools for fear that this would dampen the public outcry against the closings or damage the legal action's prospects.²²² Instead, more than sixty high school students enrolled at the African Methodist Episcopal institution Kittrell College in North Carolina soon after the county's public schools closed.²²³ In 1960, the National Council of Negro Women also set up "training centers" for black children to teach handicrafts, sports and occasional dollops of arithmetic and reading.²²⁴ Most centers were overcrowded, and attendance was uneven.²²⁵ In 1962, affiliates of the Negro Virginia Teachers' Association arranged for other students to live away from home and attend local public schools.²²⁶

The American Friends Service Committee established a similar program for sixty-seven others.²²⁷ One of those was Willie Boulden. Before catching on to the with the American Friends program, he wandered up and down the east coast with friends and relatives looking for a school system that would enroll him.²²⁸ They all knew about the Prince Edward story, and refused to

theorizes that the Kennedy effort contributed to the liberal Lieutenant Governor A.E.S. Stephens's loss in the 1961 gubernatorial election. SMITH, *supra* note 1, at 191-92.

221. SMITH, *supra* note 1, at 236-37.

222. WOLTERS, *supra* note 101, at 102-03, 197-98. Foundation leaders offered to help blacks set up their own private school system, to be known as "Southside Schools," with tuition grants and other contributions. SMITH, *supra* note 1, at 171. Their NAACP lawyer, Oliver Hill urged them not to take the offer:

All you will lose will be one or two years of Jim Crow education. But at the same time, in your leisure, you can gather more in basic education than you would get in five years of Jim Crow schools. . . . A private school is being organized for one of two reasons . . . either white schools are failing, need bolstering, need money, or because the white people are afraid of the pitiless spotlight of public opinion on Prince Edward.

SMITH, *supra* note 1, at 173. Martin Luther King, Jr. spoke to black Prince Edwardians in the same vein. SMITH, *supra* note 1, at 198. Some believed that the Southside Schools were merely a first step to obtaining tuition grants for whites. WOLTERS, *supra* note 101, at 105. Southside Schools ultimately received just one application and thus never materialized. WOLTERS, *supra* note 101, at 104. In retrospect, the NAACP's insistence that no formal education be provided had a severe price, but when the black community had to make that decision, no one understood how long the public schools would remain closed. SMITH, *supra* note 1, at 197-98. It is also impossible to know whether the Supreme Court would have acted with the same urgency had private education been available to black children.

223. SMITH, *supra* note 1, at 170; WOLTERS, *supra* note 101, at 104.

224. SMITH, *supra* note 1, at 197; WOLTERS, *supra* note 101, at 103.

225. WOLTERS, *supra* note 101, at 103. WILKINSON, *supra* note 8, at 99.

226. WOLTERS, *supra* note 101, at 104.

227. WOLTERS, *supra* note 101, at 104.

228. Interview with Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

give refuge one whose parents did not pay taxes in their district. When he arrived back in Virginia he discovered that he was signed up for the American Friends program, and he was going to Dayton, Ohio.²²⁹ "I went by faith really," he remembers, "I was young and I didn't know anything else to do."²³⁰

The Dayton program was well organized. Boulden lived with two different families during the two years he spent in Ohio, and he enrolled in Dayton's integrated Roosevelt High School. The American Friends arranged regular religious and social events for the displaced students, found them jobs during the school year and in the summer, recruited merchants to provide free clothing and supplies, and made sure the students could return to Virginia for Christmas.²³¹ As a result of his experience with the American Friends program, Boulden graduated from high school, worked in upstate New York one summer, briefly attended college, and got a job as a civilian employee in the military. "On the whole, I think the experience helped me," he says. "Had I stayed here, I certainly wouldn't have experienced many of the things that I have experienced."²³² Despite all these efforts, only 5.6% of Prince Edward's black school-aged citizens attended school regularly from 1959-63.²³³

As the litigation remained mired in procedural wrangling and the public schools failed to reopen, public opinion shifted in the black students' favor.²³⁴ When a May 1963 University of Michigan study revealed an intellectual disaster among the county's black youth,²³⁵ Attorney General

229. *Id.*

230. *Id.* Willie Boulden had much to learn. For example, until he moved to Ohio he never knew how to use a telephone. *Id.*

231. *Id.*

232. *Id.* Others have voiced a similar view, but some claim that the trauma of living away from home destroyed their chances of finishing school. Mary Beth Joachim, *Adults Recall "Lost" Childhood. Segregation of '50s Hurt Thier Schooling*, DALLAS MORN. NEWS, Mar. 26, 1995, at A1.

233. WOLTERS, *supra* note 101, at 104.

234. Public opinion was changing on civil rights issues generally, in no small measure due to high profile protests and violence in the deep South. Confrontations over integration of the Universities of Mississippi and Alabama, the violent showdown in Birmingham, and the shooting of Mississippi NAACP leader Medgar Evers preceded opening day of the Prince Edward County Free Schools by months. See WILHOIT, *supra* note 164, at 192-200. These events so changed the political landscape that President John Kennedy announced a civil rights initiative that summer, as well as initiating the Free Schools project. BRANCH, *supra* note 39, at 808-09, 856, 882-87; Carl M. Brauer, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION, 244-64 (1977).

235. ROBERT L. GREEN ET AL., *THE EDUCATION OF CHILDREN IN A DISTRICT WITHOUT SCHOOLS* (1964). The study's distressing findings estimated that the average IQ of the future black students was a mere 69 or "borderline defective." Dr. Neil Sullivan, first Superintendent of the Free Schools, later learned, however, that many children had not

Robert Kennedy appointed a special assistant, William J. Vanden Heuvel, to stanch the bleeding.²³⁶ No federal funds would be available, but Vanden Heuvel would have access to the weight of the President's fundraising and organizational muscle.²³⁷ To his surprise, state officials were quite cooperative.²³⁸

Free Schools Superintendent Neil V. Sullivan began working in late August 1963 and in less than three weeks, he traversed the same ground as the Foundation in 1959.²³⁹ It was a Herculean task. Public school Superintendent T.J. McIlwaine agreed to let the "Free Schools" use public facilities, but after three years of disuse they needed substantial repairs.²⁴⁰ Unlike the Foundation Schools, the Free Schools had no ready-made faculty, because most former public school teachers had found jobs in the Academy or other school districts. In addition, Sullivan had to find buses and bus drivers, books and school supplies, and advertise the school system to the 1,500 students he hoped would enroll on opening day. Like the Foundation, the Free Schools benefitted from the generosity of donors all over the country,²⁴¹ as well as the excitement of the historical moment.²⁴² School superintendents loaned teachers, college administrators mobilized education students, and some educators came out of retirement or gave up permanent jobs to work in the Free Schools.

The first days of school confirmed that the damage from the past three years was horrifying. Teachers could not group children accurately by age, because many children did not know how old they were. When the teachers tried to use standardized tests to group by ability, they found that not only could many children not write their names on standardized tests, some children did not know what their names were!

understood what "circling their answer" or "turn the page" meant, and virtually none of the young children could hold a pencil or read the test questions. "Thus, there was little doubt that unfamiliarity with procedures which are normally taken for granted in most intelligence tests had hurt many of the children's scores." SULLIVAN, *supra* note 219, at 106-08.

236. SMITH, *supra* note 1, at 237.

237. SMITH, *supra* note 1, at 237.

238. SMITH, *supra* note 1, at 237-38.

239. This preparation period is described in detail in Dr. Sullivan's book, BOUND FOR FREEDOM. See SULLIVAN, *supra* note 219.

240. McIlwaine did not believe blacks would attend the Free Schools. SULLIVAN, *supra* note 219; see also SMITH, *supra* note 1, at 240.

241. Leonard Bernstein and the New York Philharmonic helped obtain band instruments, for example. SULLIVAN, *supra* note 219.

242. When a book publisher balked at filling the Free Schools' order for fears of nonpayment, Sullivan convinced him to send the shipment by arguing that the publisher would forever be known for participating in the historic venture. SULLIVAN, *supra* note 219.

Before the day was over, it had been forcibly brought home to us that a majority of our students under twelve didn't know left from right, back from front, or top from bottom. And getting them to say even a word or two was next to impossible. They mumbled. They used signs. In short, they seemed to have lost all ability to communicate.²⁴³

Things were little better in the high school. Yet, as the school year progressed, Dr. Sullivan was impressed by the students' desire to persevere. Teachers claimed they could "'see' learning . . . as surely and as dramatically as the film of a time-lapse camera 'sees' growth occur in a plant."²⁴⁴ When a water shortage threatened to close the high school for a few days, a student committee asked the superintendent to open the doors anyway; they would handle toilet problems by dividing the woods behind the school between boys and girls. Even supporters would criticize Sullivan's extremely progressive approach to education, but given the challenge and the tools he had available, Sullivan laid a useful foundation on which future public schools could build.²⁴⁵

Whether free education for blacks in Prince Edward would continue beyond the 1963-64 school year depended on the outcome of the pending litigation. The Virginia Supreme Court of Appeals acted again in late 1963.²⁴⁶ It held that Virginia's Constitution and statutes had established a "local option" system that permitted localities to decide whether to operate public schools or not.²⁴⁷ This decentralized system vested exclusive power

243. SULLIVAN, *supra* note 219, at 109.

244. SULLIVAN, *supra* note 219, at 127.

245. His prior school district was a national leader in the use of media, new math, ungraded classrooms and the inquiry method of teaching social and natural sciences, and these techniques came with Sullivan to Prince Edward. The Free Schools spent twice as much per pupil as the Academy, and Sullivan used the funds to broaden his students' horizons with high-profile trips to New York City, Washington, D.C., and other local historical sights to meet dignitaries of national and international stature. Yet as Longwood's Dean Moss, a Free Schools supporter whose son graduated from the institution, argued, "[t]he Free Schools . . . spent a lot of money on 'show-off programs' But it wasn't good basic education." WOLTERS, *supra* note 101, at 108-10.

246. County Sch. Bd. v. Griffin, 133 S.E.2d 565 (Va. 1963).

247. *Id.* at 580. This had been the defendants' argument to the Fourth Circuit Court of Appeals. The court agreed that the Virginia Constitution did require the General Assembly to "provide for and maintain the public school system," but that it had fulfilled that duty by enacting the state's school code. *Id.* at 573 (quoting Scott County Sch. Bd. v. Scott County Bd. of Supervisors, 193 S.E. 52, 53 (Va. 1937)).

to operate schools in local officials.²⁴⁸ The state did not have power to take over local schools and run them if local districts did not.²⁴⁹

The Virginia Constitution also authorized the General Assembly to appropriate money for local public schools in the manner "it deemed best." Matching local appropriations with state funds was consistent with that constitutional mandate, but local fundraising was discretionary.²⁵⁰ If a locality appropriated no funds for schools, it would receive no state funds other than minimal amounts required elsewhere in the Constitution.²⁵¹ These would be insufficient to operate a school system,²⁵² but there was nothing the state could do to compel the local officials to appropriate more.²⁵³

The court also found nothing remiss in the State's tuition grant program, even if grants were paid to families in counties where the public schools were not functioning.²⁵⁴ Accepting public funds did not convert the Foundation's schools into state schools by subterfuge.²⁵⁵

And what of the Constitution's requirement that the state operate an "efficient system" of public schools? The Virginia court held that the

248. The State Board of Education's duties were to divide the state into districts, certify the qualified individuals for division superintendents, manage the school fund, make rules and regulations for the schools as authorized by the General Assembly, and to select textbooks and other teaching implements. VA. CONST. of 1902 art. IX, § 132.

249. Nor was it the state's duty, if the local officials refused to operate schools. *Griffin*, 133 S.E.2d at 578. This was consistent with the court's analysis when it struck down the "massive resistance" legislation four years earlier. *Harrison*, 106 S.E.2d at 636. In that case, the court had held that the centerpiece statute, which took authority from local school boards and vested it in state officials, violated the Virginia Constitution's provision vesting supervisory power over local schools in local school boards. *Griffin*, 133 S.E.2d at 575.

250. *Id.* at 576-77. The constitution "authorized" localities to raise funds for education, but the court held that this was a discretionary grant of power. VA. CONST. of 1902, art. IX, § 136.

251. Section 135 of the Virginia Constitution provided:

The General Assembly shall apply the annual interest on the literary fund; that portion of the capitation tax provided for in the Constitution to be paid into the State treasury, and not returnable to the counties and cities; and an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, for the equal benefit of all the people of the State, to be apportioned on a basis of school population

VA. CONST. of 1902, art. IX, § 135. Even with the addition of the statutory "forest reserve fund," Prince Edward received about \$42,000 from the state for its public schools each year from 1961-62. See *Griffin*, 133 S.E.2d at 575-76.

252. Prince Edward used its "constitutional minimum" for administration, maintenance of buildings, insurance, and debt service on its buildings, one of which was the new Moton High School! See *Griffin*, 133 S.E.2d at 575-76. In 1960-61, Prince Edward received a total of \$42,004.40 from the state and in 1961-62 it received \$41,541.27; the School Board spent all but \$156.28 of those funds. *Id.*

253. *Id.* at 576.

254. *Id.* at 579.

255. *Id.* at 580.

General Assembly, not the constitution, would define "efficient."²⁵⁶ What the state should do if the General Assembly uncovered an inefficiency existed was a matter of legislative discretion.²⁵⁷ By implication, the situation in Prince Edward did not constitute an inefficiency; even if it had, the court could only have ordered the General Assembly to correct it if "it clearly appear[ed] that the system ha[d] broken down and adherence to it amount[ed] to a disregard of constitutional requirements."²⁵⁸ The court also stated:

If the Constitution makes it the duty of the General Assembly to take over and operate the schools in Prince Edward County, it would have the same duty with respect to all other counties and cities of the State. The result would be a centralization of control and of operation foreign to the spirit as well as the letter of the Constitution, and the destruction of the system adopted in good faith obedience to the requirements of the Constitution and used now for more than sixty years. We think it clear that the Constitution as written does not make that requirement.²⁵⁹

Thus, the controlling state law questions now had answers. Neither local nor state officials had any obligation to operate public schools in Prince Edward County under state law. It remained to be seen what federal law required.

G. Scene Seven: *Griffin v. County School Board*

"In view of the long delay in the case since our decision in the *Brown* case and the importance of the questions presented,"²⁶⁰ the United States Supreme Court granted certiorari in *Griffin v. County School Board* even before the Fourth Circuit's final action.²⁶¹ The Court's impatience foreshadowed the decision to come.²⁶²

The petitioner-schoolchildren's brief focused on three issues:²⁶³ that the school closings denied them their equal protection and substantive due

256. *Id.* at 577.

257. *Id.* at 578.

258. *Id.* This was clearly intended as a lax test, for one could have made the argument that the statewide system had broken down in Prince Edward.

259. *Id.* at 578.

260. *Id.*

261. *Griffin v. County Sch. Bd.*, 375 U.S. 391, 401 (1964).

262. *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964).

263. Brief for Petitioners at 31, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) [hereinafter Petitioners' Brief]. The United States's *amicus curiae* brief supplemented the Petitioners' arguments. Brief for the United States as *Amicus Curiae*, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) [hereinafter Government's Brief].

process rights to desegregated public educational facilities;²⁶⁴ that the school closings also violated their equal protection rights based on geography, and that this was being used for the malign purpose of thwarting the state's duty to provide desegregated education,²⁶⁵ and that the school closings and subsidies were intended to and in fact did accomplish the unconstitutional purpose of providing education to whites while denying it to blacks.²⁶⁶ They requested that the court enjoin all these activities.²⁶⁷

The respondents filed four briefs.²⁶⁸ Each tried to shift the blame for the failure to provide schools for blacks on the others.²⁶⁹ The State Board argued it was not responsible because only the Board of Supervisors could levy taxes, and only the local school board could operate Prince Edward's

264. The due process argument arose from the Supreme Court's decision in *Cooper v. Aaron*, 358 U.S. 1 (1958), that the right not to be segregated was in fact a fundamental due process right such that the state had a duty to initiate desegregation. Petitioners' Brief at 20, *Griffin*, (No. 592).

265. *Id.* at 22-26.

266. *Id.* at 32.

267. *Id.* at 31.

268. These were: Brief for Respondents, County School Board of Prince Edward County, Virginia, and T. J. McIlwaine, Jr., Division Superintendent of Schools of Said County, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) (hereinafter School Board's Brief); Brief on Behalf of the State Board of Education and Superintendent of Public Instruction of the Commonwealth of Virginia, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) (hereinafter State Board's Brief); Brief for the Board of Supervisors of Prince Edward County, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) (hereinafter County Board's Brief); and Memorandum on Behalf of Respondents in Reply to the Supplemental Memorandum of the United States as *Amicus Curiae*, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592) (hereinafter Supplemental Brief) (traversed issues concerning the inability to give a remedy and the three-judge court requirement). The City of Charlottesville also filed an *amicus* brief in support of the state's scholarship program, Brief *Amicus Curiae* Submitted by the City of Charlottesville in Support of the Constitutionality of the Virginia State Scholarship Program, *Griffin v. County Sch. Bd.*, 377 U.S. 218 (1964) (No. 592).

Respondents relied primarily on procedural arguments: that the Petitioners' amended supplemental complaint stated a new cause of action and thus should be dismissed, School Board's Brief at 28, *Griffin* (No. 592); that a three-judge district court should have been convened to decide the constitutionality of various Virginia statutes as applied to Prince Edward County, State Board's Brief at 29, *Griffin* (No. 592); and that the Petitioners had no standing to request that the court enjoin operation of the tuition grant statutes, on the theory that the statutes did not deny constitutional rights and therefore, Petitioners had demonstrated no injury in fact. County Board's Brief at 88, *Griffin* (No. 592). The respondents may have had the better of some of these arguments, but as Judge Wilkinson points out, these procedural points were going to fall on deaf ears: "The object of *Griffin*, as it virtually had to be, was to get Prince Edward in line, never mind how." WILKINSON, *supra* note 8, at 100.

269. The Government was quick to point out this game of hot potato in its brief. Government's Brief at 20, *Griffin* (No. 592). "The fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by the fragmentation of decisionmaking," it wrote, placing the blame on Virginia's shoulders on the theory that education's importance made it a matter of statewide concern. *Id.* at 20-21.

public schools.²⁷⁰ The Prince Edward School Board explained that it was not enforcing discrimination in its schools, because no public schools were operating in Prince Edward, the County Board, of course, having chosen not to fund them.²⁷¹

The Board of Supervisors was determined that it would not be the place where the buck stopped. Refusing to provide funds for public schools enhanced parental and associational liberties, a positive constitutional objective.²⁷² Blacks had been offered the same public tuition grants as whites, and they had received permission to use public school facilities if they wanted to set up their own schools.²⁷³ Thus, any educational inequality was the black community's fault, not the Board of Supervisors'.²⁷⁴

Only the State Board of Education addressed the proposition that Prince Edward's public schools could be closed while other public schools in the state remained open, insisting that local option did not offend the Fourteenth Amendment.²⁷⁵ Local option was not geographical discrimination, the state board argued,²⁷⁶ and numerous cases held that localities might decline to offer public services to avoid integration.²⁷⁷ Local option also had a long history in Virginia; it was not merely a device to evade the state's duties under *Brown*.²⁷⁸

After the voluminous briefing,²⁷⁹ the Court required only five terse pages to decide the constitutional issues. It held that when the state and county closed Prince Edward's public schools while public schools were available everywhere else in the state, they violated the black students' equal

270. School Board's Brief at 27-29, *Griffin* (No. 592). Thus, the State Board concluded that the schoolchildren had failed to state a claim for which relief could be granted against it.

271. *Id.* at 41, 44-45.

272. County Board's Brief at 48-57, *Griffin* (No. 592).

273. *Id.* at 83. The State Board made a similar argument. State Board's Brief at 43, *Griffin* (No. 592).

274. See County Board's Brief at 82, *Griffin* (No. 592).

275. State Board's Brief at 45-84, *Griffin* (No. 592). The Board of Supervisors discussed many of the related and subissues in its brief.

276. *Id.* at 50-53. State Board's Brief at 50-53, *Griffin* (No. 592)

277. *Id.* at 53-63. All the cases the state board cited to support the latter proposition involved public recreational facilities. Both the petitioners' and the United States' briefs argued that the importance of public education made closing schools differentiable from closing other public services such as pools or libraries. Petitioners' Brief at 21-22, *Griffin* (No. 592); Government's Brief at 26, *Griffin* (No. 592). The emphasis on the importance of education also suggested an argument that the petitioners had a federal right to public education, something that the court did not hold. Petitioners' Brief at 21, *Griffin* (No. 592).

278. State Board's Brief at 65-66, *Griffin* (No. 592).

279. The County Board's brief apologized for its length. County Board's Brief at 106, *Griffin* (No. 592).

protection rights.²⁸⁰ Virginia law treated black students in Prince Edward County differently than other students in other parts of the state: it consigned them either to segregated, pseudo-public schools or to no schools at all.²⁸¹ The Court found:

Prince Edward's public schools were closed and private schools operated in their place with state and county assistance, for one reason, and one reason only: to ensure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school.²⁸²

Where a local option system served to perpetuate segregation, it was simply unconstitutional.²⁸³ Thus, the Court upheld the district court's injunction against paying out tuition grants and tax exemptions, and stated that on remand the District Court might directly order the Board of Supervisors to levy taxes and the School Board to reopen the public schools "if necessary to prevent further discrimination."²⁸⁴

H. Scene Eight: Wearing Down Resistance

The next battleline was quickly drawn. Only a few days after the Supreme Court released its opinion, the district court judge informed the parties that he intended to issue an immediate order and asked them to update him on the progress made to reopen the public schools.²⁸⁵ The Board of Supervisors responded that it had not appropriated any monies for public schools and did not intend to do so until a scheduled meeting with the court.²⁸⁶ It also inquired as to the possible penalties for noncompliance. The School Board reported that it had begun making plans to accommodate 1600 students in the fall. Almost two times that number of children lived in the district.²⁸⁷

The district court immediately ordered the Board of Supervisors to appropriate "reasonably necessary" funds to open and operate the county's

280. *Griffin*, 377 U.S. at 225. The Court also held the complaint did not state a new cause of action, *id.* at 226-27, the suit was not barred by the Eleventh Amendment, *id.* at 228, no three-judge court had been necessary at the district court level, *id.* at 227-28, and the need for abstention was past. *Id.* at 229.

281. *Id.* at 230.

282. *Id.* at 231.

283. *Id.* at 232.

284. *Id.* at 232-33.

285. *Griffin v. Board of Supervisors*, 339 F.2d 486, 489 (4th Cir. 1964) (quoting unpublished district court order).

286. *Id.*

287. *Id.*

public schools.²⁸⁸ The Board met on June 23, 1964 and appropriated \$189,000 for the public schools and \$375,000 for tuition grants, even though expected enrollments at public and private schools in the county were equal.²⁸⁹

The plaintiff students then moved that the District Court permanently enjoin tuition grant processing, forbid discrimination in teacher assignment and employment, and order the Board of Supervisors to appropriate sufficient funds to reopen the public schools on a nondiscriminatory basis.²⁹⁰ The State Board of Education countered by authorizing retroactive reimbursement of Prince Edward parents' tuition payments to the Academy while the public schools had been closed.²⁹¹ Plaintiffs requested an immediate hearing,²⁹² and obtained an order from Judge Spencer Bell of the Fourth Circuit Court of Appeals to restrain payment of the grants in the meantime.²⁹³ At the hearing, the defendants consented to a permanent injunction against retroactive grant reimbursement,²⁹⁴ but the court did not enter an order concerning future grants.²⁹⁵ It also postponed action on the adequacy of the Board of Supervisors' appropriation for public schools until experiential evidence was available.²⁹⁶

Plaintiffs appealed. Fourth Circuit Judge Clement Haynsworth tried to obtain a stipulation from the defendants that they would not pay out scholarship grants until the court could hear the appeal.²⁹⁷ This defendants would not give. As the district court later learned on remand, the Board of Supervisors had met with interested citizens on August 4 to discuss how the county might avoid the effect of an adverse ruling by paying the tuition grants before a court could issue an injunction.²⁹⁸ They decided to increase the grants to \$310 for high school students and \$290 for elementary school students and to authorize immediate payment.²⁹⁹ At a special 8:00 a.m. Board meeting on August 5, the Board increased the grants and authorized

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* at 489-90. The district court set July 9 as a hearing date. The State Board's authorization had been passed on July 1.

293. *Id.* at 490.

294. *Id.* at 493.

295. *Id.*

296. *Id.*

297. *Id.*

298. *Griffin v. County Sch. Bd.*, 363 F.2d 206, 209 (4th Cir. 1966) (quoting extensively from unpublished district court findings in a contempt proceeding against the Board of Supervisors).

299. *Griffin*, 339 F.2d at 490.

half payment by September 1, 1964, the other half to be available by January 1, 1965. Even before the Board took official action, volunteers were spreading the news, processing applications, and making out checks. During the night of August 4-5, Prince Edward citizens filed 1,217 tuition grant applications, and the next morning, the county sold bonds in Richmond to cover the grants. Most of the checks were cashed at 9:00 a.m. at local banks.³⁰⁰ The Fourth Circuit Court of Appeals took an unsympathetic view of these shenanigans, and ultimately cited the Supervisors with contempt of court.³⁰¹

The substantive issue on appeal sounded a familiar tune: whether state and county tuition grant programs could be used to support schools whose admissions policies discriminated on the basis of race.³⁰² The court noted that the "private" Foundation schools were supported almost entirely by public funds, the faculties were virtually identical to the faculties of the former white public schools, and the students the same students who had attended those schools.³⁰³ "In the circumstances disclosed in the present case[], there is a transparent evasion of the Fourteenth Amendment," the court charged.³⁰⁴ "The involvement of public officials and public funds so essentially characterizes the enterprise . . . that the Foundation schools must be regarded as public facilities . . ." ³⁰⁵ The court told the District Court to enjoin the County Board from processing or approving applications for grants to be used in segregated schools that were "in effect, an extension of the public school system."³⁰⁶

The court got the opportunity to chip a little more at the Academy's financial foundation when the plaintiff schoolchildren next brought suit attacking the Virginia tuition grant law as facially unconstitutional.³⁰⁷ The district court did not go that far, but held instead that using grants in a private, segregated school was unconstitutional if grant revenue constituted

300. *Id.*

301. *Id.* at 494. The Fourth Circuit remanded the action to determine whether the board deserved a civil contempt citation for paying out the monies that were the subject matter on appeal. *Id.* At the same time, the district court had been "fully empowered" to cite the defendants for contempt of court if the payment also violated the order not to pay tuition grants for the year 1963-64, but the court did not do so. *Griffin*, 363 F.2d at 210.

302. Two school systems were at issue in the case, Prince Edward County and Surry County. The facts of both cases were substantially similar, though Surry County had not closed its public schools.

303. *Griffin*, 339 F.2d at 492.

304. *Id.*

305. *Id.*

306. *Id.* at 493.

307. *Griffin v. State Bd. of Educ.*, 239 F. Supp. 560 (E.D. Va. 1965).

the preponderance of the school's support.³⁰⁸ This ruling limited public grant funding to less than one half of the Foundation schools' budget, and increased the strain on parents' pocketbooks, particularly now that they were paying taxes again to support public schools.

After years spent raising the "constitutionality threshold" of the tuition grant program, the Griffins finally put those funds out of the Academy students' reach in 1969, only months after their football team enjoyed its first undefeated season.³⁰⁹ Attorneys for the schoolchildren argued that new Supreme Court precedent had rendered state tuition grant programs unconstitutional if *any* funds ended up in segregated schools' coffers.³¹⁰ The district court agreed, and forbade Virginia from paying grants after June 30, 1969.³¹¹

III. INTEGRATION

Thus, the litigation ended. Prince Edward's schools were not integrated in any meaningful way. It would have been possible, as some did, to argue that the entire effort had been a failure.³¹² In effect, Prince Edward's blacks

308. *Id.* at 565.

309. WOLTERS, *supra* note 101, at 96.

310. *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178, 1181 (1969). The Supreme Court cases cited were *Poindexter v. Louisiana Finance System Committee*, 275 F. Supp. 833 (E.D. La. 1967) *aff'd*, 389 U.S. 571 (1968) and *J. Arthur Brown v. South Carolina State Board of Education*, 296 F. Supp. 199 (D.S.C.), *aff'd*, 393 U.S. 222 (1968). These cases summarily held that state tuition grant programs were facially unconstitutional.

311. *Griffin*, 296 F. Supp. at 1183.

312. At the end of his THEY CLOSED THEIR SCHOOLS, Bob Smith made the point with a tantalizing hypothetical:

Suppose . . . that the segregationists of Prince Edward County had said that they would accept Judge Hutcheson's decision calling for desegregation ten years from the Supreme Court's decree of 1955. And suppose that the NAACP had decided that in view of this willingness, it would not appeal the decision. The public schools of Prince Edward County would have remained open. The white leadership of the county could have applied one of two approaches: they could have opened a dialogue with the real Negro leadership of the county to assure a minimum of integration in the public schools in 1965—a few Negro students moving to formerly all-white public schools; or they could have set about establishing a private school system to open in 1965 with tuition grants. . . . In other words the segregationists could have had in 1965 precisely what they got in 1964—without the tremendous cost in terms of money, suffering, and effort and without ever closing any schools.

The NAACP could have had in 1965 precisely what it got in 1964 without the staggering loss of education to the Negro children of the county and without the misery undergone by the entire Negro community.

SMITH, *supra* note 1, at 260-61. Of course, as the defenders feared in the 1950s when these strategic decisions were made, there was a real risk that more than a handful of whites would

had struggled for almost twenty years to achieve less than what they had in 1950: segregated schools and now a significant population of deliberately undereducated young adults, whose futures held the prospect of "dead-end jobs in a geographic area where economic prospects are dim."³¹³ For those whose standard for success in Prince Edward was genuine integration, the late 1960s and early 1970s must have seemed very grim. In retrospect, however, these views turned out to be remarkably short-sighted.

A. Scene One: Stalemate

Prince Edward Academy unveiled a new grammar school in 1967 and new gymnasium and assembly room in 1974,³¹⁴ but one could not avoid noticing that the Academy lacked the facilities of the public schools whites had abandoned. The old Farmville High School's gymnasium, cafeteria, locker rooms, infirmary and auditorium with fixed seats had inspired Barbara Johns to initiate the 1951 Moton High School strike, but even in the 1980s, the Academy had neither a cafeteria³¹⁵ nor fixed seats in its auditorium.³¹⁶

Academy parents were pleased with the school's back-to-basic philosophy.³¹⁷ More than half of the students enrolled in the high school's college preparatory program and standardized test scores were impressive.³¹⁸

go to public schools if available from 1959-65. See *supra* note 203 (discussing white fears of integration) and *infra* notes 415-418 (discussing segregation laws as "subsidy" to segregated education). This was really another version of the "domino theory." See *supra* text at note 85. Given the goal of resisting any integration, even voluntary integration, it is difficult to believe white leaders would have compromised on token integration.

313. Margaret E. Hale-Smith, *The Effect of Early Educational Disruption on the Belief Systems and Educational Practices of Adults: Another Look at the Prince Edward County School Closings*, 62 J. NEGRO EDUC. 171, 187 (1993).

314. WOLTERS, *supra* note 101, at 96. The school taught that frugality was a virtue. Students can learn "just as much at a 50 cent desk as in one of those \$25 'units' you find in the public schools," Headmaster Robert Redd told Raymond Wolters. WOLTERS, *supra* note 101, at 96.

315. A cafeteria with a federally funded school lunch program that would have made the price of meals affordable might have given Washington control over Academy admissions policy. Headmaster Redd told a WASHINGTON POST reporter in the early 1980s that the Academy's history was a "crusade" against such "federal interference." Fred Hiatt, *Farmville's School Without Blacks; Prince Edward County: 2 Separate Races 2 Separate Schools*, WASH. POST, Jan. 25, 1982, at A1; see also, 42 U.S.C. § 2000d (1994).

316. WOLTERS, *supra* note 101, at 96.

317. The school taught reading with the phonics method, which teaches children how to "sound-out" words though the national trend was to use the "look-say" memorization approach. See WOLTERS, *supra* note 101, at 97. The Academy's Headmaster told Raymond Wolters that the school's high literacy rate contributed to its low-dropout and high attendance rates. WOLTERS, *supra* note 101, at 97.

318. WOLTERS, *supra* note 101, at 97. Science Research Associates (SRA) standardized

Strict discipline permitted students to leave belongings unattended without fear of theft.³¹⁹ Moreover, since the old public system had been "modest in [its] educational standards," the private schools did not suffer by comparison.³²⁰

By contrast, the new public schools' first decade was somewhat rocky. Test scores were dismal.³²¹ Married adults with children attended classes to recoup the education they had missed.³²² Chaos of open classrooms and academic mediocrity reigned.³²³ Public school math teacher Vanessa Venable remembers one of her thirteen-year-old students at a blackboard soon after the schools reopened, weeping uncontrollably because she could not add 34 and 26. For several minutes, teacher and pupil stood and wept together.³²⁴

Black leaders quarrelled with the first two public-school superintendents, both white. The disparaging attitudes of the first, Bryant Harper, angered local blacks.³²⁵ They also battled the efforts of the second, Ronald Perry, to attract whites to the public schools.³²⁶ Though 90 white students enrolled by the end of his tenure, Perry finally concluded that neither Prince Edward's whites nor blacks wanted integrated public schools.³²⁷

achievement test scores rose while scores in the rest of the country declined, and an impressive number of students were recognized as national merit scholars based on SAT scores. WOLTERS, *supra* note 101, at 97. In part, [this is a result of] the Academy's odd demographics: its significant number of students from intellectually sophisticated college faculty families. As long as the schools in the county were segregated in effect, the public schools' test scores could not benefit from that demographic boost. Cf. Brookover, *Education in Prince Edward*, *supra* note 20, at 159 (arguing that the same demographic group is inflating Prince Edward's public schools' test scores now after considerable integration).

319. WOLTERS, *supra* note 101, at 98.

320. PELTASON, *supra* note 59, at 220.

321. In 1972, for example, Prince Edward's test scores were among the lowest in the state. WOLTERS, *supra* note 101, at 119.

322. Jamie Ruff, *Course Explores Still-painful Prince Edward Schools Struggle*, RICH. TIMES-DIS., Feb. 19, 1995, at C1. Lacy Ward, a seventh-grader in 1972-73, recalls that some of the students in his classes were as old as twenty. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

323. Lance Morrow, *Prince Edward and the Past: Massive Resistance Has Faded, but Something Hidden Remains*, TIME, Nov. 20, 1989, at 58; personal memories of author.

324. Morrow, *supra* note 323, at 58.

325. Harper lived in a segregated community, attended an all-white church, and made disparaging comments about black students' intellectual abilities. WOLTERS, *supra* note 101, at 117.

326. WOLTERS, *supra* note 101, at 117.

327. Brookover, *Education in Prince Edward*, *supra* note 20, at 151; WOLTERS, *supra* note 101, at 117. If Perry's experience mirrored other parts of Virginia, then his assessment was probably correct. According to Professor Ely, the civil rights movement was too weak in Virginia to sustain a long-term school integration campaign. "Voluntary integration just

James Anderson succeeded Perry in 1972. As superintendent of a neighboring school system, he had been one of the few administrators in the region who permitted his students to compete with Prince Edward's in athletics.³²⁸ Anderson not only started out on the right foot with black leaders, but Farmville's white business leaders also gave him their support.³²⁹ Anderson told *The FARMVILLE HERALD* that year that "I am not going to encourage anyone to do anything. I believe it should be up to the individual parent to determine where his own children should go to school."³³⁰ Instead, he planned to focus on academic achievement.³³¹

B. Scene Two: White Flight Prince Edward-Style

Faculty members of Prince Edward's two colleges, Hampden-Sydney and Longwood, finally broke the stalemate.³³² Most faculty parents unenthusiastically patronized the Academy during the 1960s,³³³ and when Longwood opened an integrated laboratory school in 1969, it was immediately deluged with faculty applications.³³⁴ The new school "was definitely

wasn't working," the Virginia Pupil Placement Board Chairman said in 1966, "[t]he Negroes just weren't asking to go to school with the whites, at least not in numbers sufficient to satisfy the federal government." ELY, *supra* note 19, at 201. Cf. Robin Farmer, "Clustering" *Split City: Separation in Schools Sparked Political Storm*, RICH. TIMES-DISP., May 16, 1994, at A1 (noting that in the 1990s, the Richmond School Board Chairman does not believe integration is an important goal for most parents).

328. Phelps, *supra* note 16, at A6.

329. Phelps, *supra* note 16, at A6. Anderson, who was born in Farmville, was from a well-known Southside family, and he attributes his support to that fact. Phelps, *supra* note 16, at A6; see also WOLTERS, *supra* note 101, at 119.

330. WOLTERS, *supra* note 101, at 119 (quoting *FARMVILLE HERALD*, July 19, 1972, at A17).

331. WOLTERS, *supra* note 101, at 119.

332. Isolated five miles outside Farmville, Hampden-Sydney is a conservative, classical school, steeped in southern heritage and largely disinterested in social change. See SMITH, *supra* note 1, at 209. Longwood, primarily a state teachers' college, faced constant pressure to sing to segregationist legislators for its supper. SMITH, *supra* note 1, at 209. As a result, no serious dissent movement blossomed on either campus while the public schools were closed, but the upheaval cost both schools in talented faculty members and in damage to their academic reputations. WOLTERS, *supra* note 101, at 100. Dr. Heinemann believes that the school closings made faculty recruitment almost impossible for Hampden-Sydney during the 1950s and 60s. Most of the new faculty of the period were older academics looking for a rural environment in which to retire; younger candidates "wouldn't even consider coming to Prince Edward." Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

333. WOLTERS, *supra* note 101, at 122.

334. Wolters explains that true integrationists did not view the Campus School as a panacea. It was mostly a school for professors' children, and though the school had a 10-

a dodge," says Dr. Heinemann, whose children attended elementary school there, "but it served a purpose of being a transitional facility that made it easier for some of these local people to place their children in an integrated situation, though it was only 10-20%."³³⁵ Nevertheless, the Campus School was at best a temporary and limited solution, because it could accommodate only a small enrollment, and it did not offer high school classes.³³⁶

In 1974, a group of professors collectively decided to enroll their older children in the public high school.³³⁷ More professors and other white citizens independently enrolled their children in the primary grades at about the same time.³³⁸ This apparent change in white citizens' behavior was the culmination of more subtle changes over a longer period. Many of these parents were northerners or had come of age at the height of the civil rights struggle.³³⁹ The two local colleges were growing³⁴⁰ and Farmville's economy was also opening,³⁴¹ both bringing more outsiders and outsiders' impatience with segregation into town. Even some native Farmville businesspeople were privately sympathetic to the integration for economic reasons.³⁴² Superintendent Anderson had restored order to the public school

15% quota for black children, in a county where 40-50% of the school-age population was black this was of limited utility. WOLTERS, *supra* note 101, at 122.

335. Interview with Dr. Ron Heinemann, in Farmville, Va. (Aug. 5, 1995).

336. *Id.*

337. *See id.* These high school parents approached Superintendent Anderson that summer, and afterwards enrolled their children in the public schools.

338. Thomas Mayfield attributes the flow of whites to Prince Edward public schools to high tuition at the Academy, changes in the administration, the demise of the Campus School, and a declining fear of social ostracism. Interview with Thomas Mayfield, in Farmville, Va. (Aug. 4, 1995).

339. Lacy Ward, a high school student in the mid-1970s, remembers that all his white classmates were either children of Longwood or Hampden-Sydney faculty or only recent residents of Prince Edward County. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995); *accord* personal memories of the author; *see also*, Phelps, *supra* note 16, at A6. Other parents, more southern in outlook or with more rooted social ties in the community, kept their children enrolled at the Campus School or Academy, but over the next ten years, many of their children ultimately transferred to the public schools. Not surprisingly, the schools debate divided parents and Balkanized children, even when they lived in the same neighborhoods. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

340. Interview with Dr. Ron Heinemann, in Hampden-Sydney Va. (Aug. 5, 1995). Survival instincts caused the schools to expand during the 1970s and Longwood even became a coeducational institution. Additional students and faculty increased the need for all sorts of commercial and professional services which in turn increased the number of outsiders in Farmville. *Id.*

341. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995). Fox remembers that when he moved to town there were only two supermarket grocery stores, both chains, but very few other such businesses. His Drug Fair was one of the first nonindigenous businesses in town. *Id.*

342. A few Farmville businessmen had formed an alliance with the intellectual

system,³⁴³ and changes in the state constitution had opened the door to new funding sources.³⁴⁴ Moreover, Longwood's laboratory school was not long for this world; it closed in the mid-1970s, and absent an option other than the Academy, many of those students enrolled in the public schools.³⁴⁵

Ever-rising Academy tuition was also an important factor.³⁴⁶ The Academy was a serious drain on many families' budgets,³⁴⁷ and poor whites had begun to trickle back to public schools even before the mass movement of faculty children. Thomas Mayfield explains the perceived thinking of whites as follows:

If I send my child to the public school, I'm going to have more money to spend for other things. I'm a taxpayer. If my child can get a free

community in 1960 to open the public schools for blacks. They knew that if the schools closed the community would lose \$500,000 in the purchasing power of black teachers. WOLTERS, *supra* note 101, at 100. As John Fox, a new businessman in town at the time, explained, "it's not that they wanted to change but that they had to—to survive. Especially merchants." Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

343. Dr. Heinemann believes this change was particularly important to local college professors:

Rural schools generally are not the equal of suburban schools . . . so you are forced in a way to tolerate a less satisfying educational experience for your children than the one you hoped they would have, just because you are in this rural location. If indeed rural schools are at the bottom . . . you have even greater reservations about sending your children to those schools.

Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995). He also points out that white parents' concerns about education quality frequently masks subtle racism, so objective proof that the public schools are comparable in quality to an all-white institution helps blunt subconscious racism. *Id.*

344. After their feuding with Harper and Perry, black leaders largely supported Anderson, even when he implemented controversial policies such as strict ability grouping. WOLTERS, *supra* note 101, at 119-21. In 1979, Reverend Griffin called the Anderson administration "the best we've had." WOLTERS, *supra* note 101, at 121. See also Phelps, *supra* note 16, at A16.

345. Phelps, *supra* note 16, at A16. Dr. Heinemann notes that the Campus School provided many white parents with their first experiences of integrated education, and when their children graduated from elementary school, "the majority black high school [became] a realistic option." Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

346. "Whites still feel the same way about us," Reverend Griffin said in the late 1970s, "but they don't want to pay the high tuition at Prince Edward Academy." WOLTERS, *supra* note 101, at 122.

347. Tuition had originally been set at \$280 for the high school and \$255 in the elementary school. WOLTERS, *supra* note 101, at 99. Of course, Foundation schools organizers had planned, early on, that tuition grants would cover the overwhelming bulk of these amounts. WOLTERS, *supra* note 101, at 100. Not only did the courts slam the door on that prospect in the 1960s, but tuition continued to rise to \$1,075 in 1980s. WOLTERS, *supra* note 101, at 100. The Academy hired as many parents as possible and some children obtained scholarships, but the financial burden on parents in this relatively poor county was extreme. See WOLTERS, *supra* note 101, at 100.

education, why shouldn't I send my child to public school—the black is not going to rub off on my child—they are human beings like we are so what's the big deal?³⁴⁸

Even so, it still remained a big deal for some. One white parent insisted that “we may be eating an awful lot of rabbit, but we're going to make it,” while her children went without shoes in the summer to pay for tuition.³⁴⁹ Academy parents insisted that they valued education more than “luxuries,” but what some Prince Edwardians called luxuries were necessities to others.

One of Prince Edward's new residents was Pennsylvanian John Fox, who moved his family to the Southside in the summer of 1973 to become manager of Farmville's Drug Fair store. His son Patrick was five and started kindergarten that fall in the Prince Edward public schools, one of two white students in his class.³⁵⁰ Fox had the strong personality necessary to buck social pressure, and even though local whites welcoming the new family to town urged the Foxes to send their children to the Academy, “we decided we were going to do what we wanted for our kids.”³⁵¹ Later, he delighted in thanking his Academy customers for paying taxes so his children could get a good education.³⁵²

White seepage back into the Prince Edward public schools mirrored parents' reaction to school closings in other Virginia cities, where residents

348. Interview with Thomas Mayfield, in Farmville Va. (Aug. 4, 1995). Another black public school administrator had a similar view at the time: “[w]e're going to win this one. [Tuition] has . . . a lot of white daddies hurting and a lot of white mommies working.” WOLTERS, *supra* note 101, at 99 (interview with Clarence Penn).

Academy tuition almost certainly mattered to poor white families, and by the mid-1970s it had risen enough to be a serious concern even to professional white parents. Nevertheless, it is interesting to compare white and black perceptions. Mayfield believes money was crucial; Lacy Ward believes the presence of college professors' children eliminated much of the social stigma in the white community to attending public schools, *see* Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995). Heinemann, a white parent who actually made these choices, believes that improvements in the schools were the crucial factor along with proof from the Campus School experience that integrated education could really work. Interview with Dr. Ron Heinemann, in Farmville, Va. (Aug. 5, 1995). It would be unwise both to infer too much from one parent's opinion, or to assume even that he could identify precisely what motivated his decisions twenty years ago. Heinemann also believes that concerns about “school quality” frequently mask white racism. Nevertheless, the dichotomy is interesting.

349. WOLTERS, *supra* note 101, at 99-100 (quoting from Nancy Holman, Prince Edward Academy parent, July 27, 1979).

350. Patrick Fox may be the first white student to graduate from Prince Edward County High School after starting in the integrated Prince Edward schools as a kindergartner and attending all the way through twelfth grade.

351. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

352. *Id.*

found they valued the convenience of free public schools more than they valued segregation.³⁵³ Large cities had rejected the private Academy option to maintain segregation, because the task of coordinating a large, diverse population and obtaining sufficient resources was too formidable.³⁵⁴ Many communities faced with a choice between token integration or no public schools discovered substantial support for public schools.³⁵⁵

Similar forces were at work in Prince Edward, but their effects were delayed by local idiosyncracies. Long-term, high-cost resistance strategies must have seemed unnecessary in communities such as Floyd and Warren Counties with their tiny black populations, but in Prince Edward where proportions of blacks and whites in the population were more equal, resistance took on profound urgency for most whites.³⁵⁶ Prince Edward was also emphatically not the diverse, moderate white community of Norfolk;³⁵⁷ instead, it was small, insular, frightened and easily organized. During the fifteen years between 1959 and 1974, however, the county's economy and intellectual life broadened. Pluralism broke down social barriers that had scarcely existed in Norfolk.

Finally, once the Academy survived the reopening of the public schools, another serious barrier to integration became apparent: that small numbers of whites would have to integrate an all-black, disorganized, school system. Though small groups of blacks had been integrating all-white schools for years, they were not champing at the bit to volunteer for such crusades.³⁵⁸ There was no reason to think whites would feel differently.

353. See PELTASON, *supra* note 59, at 195.

354. The success of private academies seems roughly related to the number of students to be served in a community. For example, in Warren County, Virginia, where only 1,000 high school students were displaced by school closings, the private academy succeeded in accommodating 780 students, though it ultimately did not survive for other reasons. MUSE, *supra* note 14, at 112. On the other hand, the private academy system was a dismal failure in Norfolk where there were displaced 10,000 students to educate. As Mr. Muse explains:

It was one thing to bring together public-spirited citizens to meet an urgent need in a small community where "everyone knew everyone else," and where the extent of the participation of each prominent resident was generally known; it was quite another to unite divergent elements and coordinate leadership in a city of 275,000 population.

MUSE, *supra* note 14, at 113.

355. PELTASON, *supra* note 59, at 195; see also MUSE, *supra* note 14, at 148 (describing how whites voluntarily desegregated public schools in Warren County when they reopened, despite a viable private academy alternative).

356. See *supra* text and notes at 84-88. (discussing fear of integration in Prince Edward).

357. Trying to compel city schools such as Norfolk's to close was segregation's downfall, according to PELTASON, *supra* note 59, at 195. Even though Norfolk was more moderate than Prince Edward, all-white academies did spring up to protect unwilling families from integration, and they had considerable staying power.

358. Professor Ely notes that in Virginia, blacks simply were not applying to attend all-

The Prince Edward public school situation was threatening to whites, and consolidating a group to jump into the fray together is probably what made integration possible in the 1970s. Though the early integrators paid a social price for enrolling their children in public schools, they also created an appendage to Prince Edward's social fabric: a community of "respectable" whites in the public schools that others were later willing to join.³⁵⁹

Integration of the public schools was no great "victory"³⁶⁰ to local blacks—it had happened too long after the school had reopened—and some blacks quickly found downsides to white integration of what had been *their* schools before the 1970s. They questioned whether school administrators were overly accommodating to the needs of new white students as opposed to those of what was still the overwhelming black majority.³⁶¹ Assignment of whites into just a few grade school classes came under fire. Under the leadership of Anderson and curriculum director Vera Allen,³⁶² the public schools had adopted a placement scheme tracked according to ability.³⁶³ A substantial portion of the white students who entered the public system in the 1970s came from intellectually sophisticated backgrounds, while too many of their black classmates' parents had suffered the intellectual sting of the school closings.³⁶⁴ That white children ended up clustered together in

white schools in large numbers. He argues that the civil rights movement was not strong enough in the state to sustain a long-term school integration campaign. ELY, *supra* note 19, at 201; *cf.* BEALS, *supra* note 11, at 46 (discussing reservations of blacks in Little Rock to test the waters at all-white Central High School). Apparently the thought that whites might volunteer to integrate majority-black schools was so far outside the realm of possibility that "no one ever seriously considered" the idea. ELY, *supra* note 19, at 201. Further, white parents who might have been quite willing to have their children attend school with black children in a general sense probably did not have in mind allowing their children to become a 5 or 10% minority with no prospect on the horizon of the statistics becoming more equal. See Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1996) (arguing that the opportunity to attend the 10-20% black Campus School eased many whites into a willingness to send their children to the 10-20% white public schools).

359. WOLTERS, *supra* note 101, at 122.

360. Interview with Thomas Mayfield, in Farmville, Va. (Aug. 4, 1996). "[Blacks] viewed it as the normal flow of things," Mayfield remembers, because it occurred gradually over many years. "The first day of school in '64 you didn't have [integrated schools]. If you had an overwhelming 40% or 30% of the white population enrolling the public school [in '64], you could say you had a victory—but that didn't happen that way." *Id.*

361. This criticism had its roots in Superintendent Ronald J. Perry's administration when whites claimed he hired disproportionate numbers of black teachers so that "white students and their parents would feel comfortable and safe in coming to the public schools" and became "obsessed" with undermining the Academy. WOLTERS, *supra* note 101, at 117 (quoting Reverend L. Francis Griffin).

362. This is the same Vera Allen who had been fired from her job in the public schools in 1951 in retaliation for her daughter Edwilda's participation in the Moton strike.

363. See WOLTERS, *supra* note 101, at 119-20.

364. See, e.g., Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995) ("[P]eople

the higher tracks is not surprising, though anecdotal evidence suggests that administrators clustered white students for social reasons as well.³⁶⁵

In part, the new white parents were simply more aggressive about petitioning school administrators for changes that would benefit their children. As black school administrator Thomas Mayfield explained:

You can't come into my house and take over, because I won't let you. So if that feeling was among the blacks about the whites coming in and taking over, then its because they let them come in and take over. If you stay away and don't participate . . . naturally you will have someone else to put themselves in the forefront.³⁶⁶

John Fox got a slightly different impression, however. When Patrick first started kindergarten, the Foxes lived only a few minutes from Prince Edward Elementary, but their son rode more than an hour each day to school. Upon inquiry, the Foxes discovered that the school bus picked up Patrick and another boy first in the morning before traveling ten miles to collect children in the outlying community of Prospect. John Fox pointed this out to school administrators, and Patrick's stop was moved from first to last on the route without disruption. "I don't know whether that was accommodating us or pure common sense," Fox says, but "if [a white parent] had a complaint, they listened to the complaint They wanted white people in the school."³⁶⁷

White parents developed the zeal of converts toward the public schools and integrated institutions generally.³⁶⁸ Some flouted unwritten mores by inviting blacks to otherwise segregated social activities.³⁶⁹ Whites came to

who had the best minds left [Prince Edward] and didn't come back . . . those who were the most disadvantaged stayed, and they didn't do real well in school and now their children are in school. Their children don't see the significance of education, because their parents didn't have one."). Professor Hale-Smith reports that of the young people who received no significant education between 1959-63, 51% eventually completed 12 or fewer years of school, while the result of those who participated in the American Friends Service Committee's residential program was only 24%. Hale-Smith, *supra* note 313, at 180. It would be unwise to read more into this result than it proves; the American Friends participants undoubtedly did not represent a cross section of the county's black young people. Some of the difference in the educational achievement of the two groups probably would have existed anyway.

365. Conversation with Nancy Iverson, in Hampden-Sydney, Va. (Aug. 2, 1995). Apparently clustering was based as much on class as race; elementary school officials told parents that their children were being assigned to classes with children from the "best" black families. *Id.*

366. Interview with Thomas Mayfield, in Farmville, Va. (Aug. 4, 1995).

367. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

368. WOLTERS, *supra* note 101, at 125.

369. My mother, for example, took my first grade teacher as a guest to my otherwise all-white dancing class recital held in the Academy auditorium, and was amused at the horrified

dominate an active PTA.³⁷⁰ Many took jobs as teachers, administrators and coaches in the public schools.³⁷¹ John Fox was instrumental in forming the first extracurricular integrated sports league in Prince Edward during the 1970s.³⁷² In an interesting reversal, the social stigma in the academic community eventually attached to families in the Academy, not the public schools.³⁷³

For the more socially aware high schoolers, these early years of integration were complicated. Lacy Ward, now the district representative in Farmville for Congressman Lewis Payne but then on his way to graduating valedictorian of Prince Edward County High School class of 1978, remembers little racial tension. He speculates that this was because blacks were still so firmly in the majority: the minority group "can be subdued and you don't have friction bubbling up," under those conditions, he points out.³⁷⁴ To the extent that he recalls friction, he says it arose because white classmates, most of whom were children of professors or other professionals, achieved more in the classroom, and "[t]here's always going to be animosity when students perform better than others."³⁷⁵

White public high schoolers may have seen things differently. Raymond Wolters interviewed white students in the late 1970s who told him that they resented "a situation where students disliked you if you wouldn't pretend you're dumb,"³⁷⁶ and felt the black students resented them even

reaction of other members of the audience. Conversation with Nancy Iverson, in Hampden-Sydney, Va. (Aug. 2, 1995). Mrs. Iverson also recalls that her children were often not invited to parties and other social events given by Academy children they knew outside of school for fear that they would introduce an undesirable element to the proceedings. *Id.*

370. Interview with Thomas Mayfield, in Farmville, Va. (Aug. 4, 1995). Mayfield remembers that while blacks were very active in the PTA soon after the schools reopened, as whites participated in greater numbers, blacks seemed to drop out.

371. For example, Diane Fox enjoyed a long career as a teacher in the public schools, and Nancy Iverson, mother of another 1974 first-grader, rose through the administrative ranks to become principal of Prince Edward Elementary and later the school district's Director of Instruction. John Fox helped form the first integrated baseball league in the county. Interview with John Fox, in Farmville, Va. (Aug. 7 1995). Ron Heinemann coached high school soccer while his son was a student, and he points out that at the level of extracurriculars, white parents sometimes needed to help the school system provide the extracurricular opportunities of interest to white children. Interview with Dr. Ron Heinemann, in Farmville, Va. (Aug. 5, 1995).

372. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

373. Interview with Sandra Heinemann, in Farmville, Va. (Aug. 5, 1995).

374. Interview with Lacy Ward, in Farmville Va. (Aug. 4, 1995).

375. *Id.*

376. WOLTERS, *supra* note 101, at 123 (quoting Kate Young). Young was valedictorian of Prince Edward County High School the year after Lacy Ward.

Though I have relied on Wolters' work to some degree, my personal memories and subsequent research confirm that it tells only part of the story. Wolters' original research failed to identify many of the dimensions of the dynamic mid-1970s period in the

more in return.³⁷⁷ Nevertheless, he also noted that many white students of the period graduated with fond memories of their public school years, appreciative of their ability to form positive relationships with blacks.³⁷⁸ That view would be echoed a decade and more later.³⁷⁹

By the late 1970s, "white domination" of the high school had become a hot issue.³⁸⁰ Whites proved that they could give as good as they got during the racially charged 1979 class officer elections by walking out of a heated campaign assembly they found offensive, threatening to transfer to the Academy, and refusing to ride school buses for the rest of the year. The candidate who created the issue ultimately lost the election, and the school rode out the storm.³⁸¹

Incidents like these were not serious in a school where racial separation was in fact less extensive than in other integrated high schools, but they did reveal uncertainty in the black community. Some continued to object to ability grouping,³⁸² disciplinary policies they claimed discriminated and forced blacks to accommodate white sensibilities,³⁸³ and the loss of a culturally black focus in the schools.³⁸⁴ James Ghee, a local black activist and attorney who had been educated through the American Friends Service Committee program while the schools were closed, told Raymond Wolters in 1980s that predominantly black schools should help black students identify positively with their race.³⁸⁵ Edwilda Isaacs, now a respected Prince

development of the public schools. For example, Wolters focusses on the white exodus to the public high school, but appears to have missed the perhaps more interesting white infiltration of the elementary school at the same time. Also, he interviewed public school students and parents from Longwood, but no one from Hampden-Sydney, whose faculty had arguably become more militant in its support for public education in the county at the time Wolters was writing.

377. WOLTERS, *supra* note 101, at 123 (quoting Robin Lockwood, fourth in her 1978 graduating class).

378. WOLTERS, *supra* note 101, at 123.

379. Dr. Heinemann says that "in terms of . . . just learning to live with one another in a school environment, I think it was a very positive experience," for his children who attended the high school a decade later. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

380. See WOLTERS, *supra* note 101, at 124. Eric Griffin, Reverend Griffin's son, gave a fiery speech on the subject that almost provoked an "interracial melee" until Vader Colbert, the black captain of the football team gave an extemporaneous address on behalf of integration. WOLTERS, *supra* note 101, at 124.

381. WOLTERS, *supra* note 101, at 124.

382. WOLTERS, *supra* note 101, at 124. This policy remains largely in effect, partly due to teacher preference. Brookover, *supra* note 20, at 155-57.

383. WOLTERS, *supra* note 101, at 124. Attorneys from the Virginia Legal Aid Society claimed that the discipline policy reflected whites' "super-sensitivity about black troublemaking." WOLTERS, *supra* note 101, at 124.

384. WOLTERS, *supra* note 101, at 118.

385. WOLTERS, *supra* note 101, at 118-19.

Edward educator, laments that extensive emphasis on black culture and history during her days at Moton High School is gone from the Prince Edward public schools. A recent teachers' workshop offered a prize for anyone who could name twenty-five black achievers outside the sports and entertainment industries. Only one person could do it. "It's because they are not being taught," she explains.³⁸⁶

Perhaps the real problem was a growing dissonance between black and white parents' vision for the public schools. By the time whites began to champion integration, blacks seemed to have lost interest in that goal and moved onto other priorities.³⁸⁷ Perhaps integration had never been the ultimate goal anyway. As Thomas Mayfield recalls, "all we ever wanted was an equal opportunity and the only way you could get to a level playing field was to get the schools integrated."³⁸⁸

Nevertheless, in Prince Edward, blacks were reaping what they had sown. They had convinced a significant group of whites with growing social power to become deeply committed to school integration. As would become apparent, if it was not already, that group would dominate many of the county's social, political, and cultural institutions for years to come.

Though white and black parents may have had their differences, they were natural allies against the power structure that propped up the Academy and kept public school appropriations stingy.³⁸⁹ In the late 1970s, Reverend Griffin noticed less hostility between blacks and whites than between liberal whites and Academy supporters.³⁹⁰ During a 1979 referendum campaign,

386. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995). Though the high school once taught the history of the school closings as part of the Virginia history curriculum, it no longer does. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

387. See *supra* note 327 (discussing failure of blacks to apply to white schools); Jack E. White, *Why We Need To Raise Hell: It's Not Only White Racists Who Shun Poor Black Kids. So Do Wealthy Blacks*, TIME, Apr. 29, 1996, at 46.

388. Interview with Thomas Mayfield, in Farmville, Va. (Aug. 4, 1995). Integrated schools were the key to equal employment opportunity and equal treatment in public accommodations according to Mayfield. Reverend Griffin echoed that view in a 1979 interview. WOLTERS, *supra* note 101, at 118. A black commentator in *Time Magazine*, while urging increased interest in integration recently underscored this view: "All of us need a jolting reminder that integration's real purpose was not to produce Norman Rockwellish racial brotherhood. It was a strategy to ensure that black children, especially poor ones, would receive the same quality of instruction, textbooks and facilities that white children do." White, *supra* note 387, at 46. On the other hand, *Brown I* was litigated on the theory that integration was a constitutional good in itself and that it was the only way to improve black students' self-esteem.

389. See Hiatt, *supra* note 315, at A1. According to Hiatt, in the early 1980s, Prince Edward ranked only 112th out of 136 Virginia school districts in the proportion of local wealth spent on public schools. See Hiatt, *supra* note 315, at A1.

390. WOLTERS, *supra* note 101, at 125.

public school parents joined forces to give the democratically elected Board of Supervisors the power to appoint School Board members.³⁹¹

A sea-change in County Board politics followed when that political alliance continued. A prime example was Dr. Bill Hendley, a lifelong southerner and chairman of Hampden-Sydney's economics department. Hendley won his first election to the County Board in the early 1980s with a majority cobbled together from Hampden-Sydney neighbors and black voters, forty percent of his district, which "was delivered to [him]."³⁹² Other candidates who supported the public schools had the same experience, and they wrested power on the county board and school board from "the old guard."³⁹³

This new alliance masked a chasm in the white community. As whites in the public school bonded socially among themselves and politically with blacks, Academy whites had "their own little social group," that still exists today, centered in Farmville's white professional and commercial class.³⁹⁴ Parents' decisions to send their children to one school or another became much broader permanent social choices. Dr. Ron Heinemann remembers what happened to children who had been close friends at the Campus School but enrolled in different schools later:

These people were no longer your closest friends and you had very limited association with them. That was a part of the lingering division in this community. The Academy was a direct holdover from the days of the school closings, and the Academy and the public schools would not mix.³⁹⁵

391. WOLTERS, *supra* note 101, at 125. By contrast, an earlier such referendum had failed to pass in Surry County, linked to Prince Edward in litigation. ELY, *supra* note 19, at 200; Griffin v. Board of Supervisors of Prince Edward County, 339 F.2d 486 (4th Cir. 1964). Thus, while Surry's blacks had used the vote to take over most aspects of county government, whites continued to dominate the school board, even though most white children attended private schools. ELY, *supra* note 19, at 200-01.

392. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 5, 1995).

393. Hendley recalls that during his first term as a county board member, for the first time since the 1940s the board voted to appropriate all the funds requested by the school board. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 5, 1995).

394. See interview with Sandra Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995). I recall being cast as an outsider in girl scout troops and dance classes, and I was rarely invited to the homes of Academy children I knew. Those children would sneak peeks in my school books and give me curious sidelong glances when they thought I was not looking. I lived barely a mile from some of them and we lived in the same county of 15,000 people, but I or they could have been from Mars for all we understood of each other.

395. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995). Dr. Heinemann did point out that children who attend different schools infrequently have close associations, even in less racially charged communities. *Id.*

The presence of a critical mass of whites in the public schools changed the balance of education power in Prince Edward. When "respectable college professors" began patronizing the public schools, other whites followed in significant numbers.³⁹⁶ Though less than six percent of the student population in the public schools was white in 1971-72,³⁹⁷ the proportion was about twenty-three percent and growing in 1980.³⁹⁸

C. Scene Three: Who Pushed the Dominos?

Results arising a decade and a half after Prince Edward's public schools reopened present questions about the role the courts can and should play in integrating public schools.³⁹⁹ Even in the early 1960s commentators realized the limits of court power to meet *Brown's* implicit goals. As early as 1961,

396. See WOLTERS, *supra* note 101, at 122.

397. Brookover, *Education in Prince Edward*, *supra* note 20, at 151.

398. WOLTERS, *supra* note 101, at 121.

399. "I think its unrealistic for anyone to put their hopes and all their dreams into one court decision. A court decision cannot end racist practices that quickly," said Linda Byrd-Hayden, Executive Secretary of the Virginia Conference of the NAACP on the decision's fortieth anniversary. Williams, *Ruling left*, *supra* note 126, at A1 (including comments to similar effect by James Farmer, a founder of the Congress of Racial Equality).

There is a considerable academic debate on the significance of litigation in the civil rights movement. For recent arguments minimizing that significance, see, e.g., Michael Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7 (1994). Professor Klarman argues that transformative racial change would have occurred in the south in the long run without *Brown*, though the violence and political polarization *Brown* triggered probably hastened change. *Id.* at 149-50. This interpretation, challenges the thinking of even those most intimately involved with the civil rights movement. Motley, *supra* note 71, at 9 (though recognizing the importance of political trends such as the desegregation of the army in 1948, arguing its significance as "putting a hole in the dam of segregation" after which "even the Supreme Court's 'all deliberate speed' doctrine could not hold back the dawn of a new day"); David J. Garrow, *Hopelessly Hollow History: Revisionist Devaluing of Brown v. Board of Education*, 80 VA. L. REV. 151 (1994) (citing statements and activities of Montgomery bus boycotters such as Reverend Ralph Abernathy, Reverend Martin Luther King, Jr., Rosa Parks, and Jo Ann Robinson suggesting *Brown's* inspirational power). Yet, it still preserves a key role for the timing of racial change in the South. In other places, Professor Klarman has questioned the civil rights litigation generally on the progress made by the civil rights movement, particularly in the area of school desegregation. Michael Klarman, *Civil Rights Law: Who Made It and How Much Did It Matter*, 83 GEO L. REV. 433 (1994) (review of MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961 (1994)); see also, GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE (1991). These views have produced considerable debate among commentators. See, e.g., Garrow, *supra*; Gerald N. Rosenberg, *Brown is Dead! Long Live Brown!: The Endless Attempt to Canonize a Case*, 80 VA. L. REV. 161 (1994); Mark Tushnet, *The Significance of Brown v. Board of Education*, 80 VA. L. REV. 173 (1994); Michael J. Klarman, *Brown v. Board of Education: Facts and Political Correctness*, 80 VA. L. REV. 185 (1994).

one commentator wrote: "Even if the federal judges support the contentions of the Negro plaintiffs, there is such a wide gulf in Prince Edward between the requirements of the law and the balance of political forces that it is doubtful whether antisegregation judicial decrees could have any major impact."⁴⁰⁰ Another gleaned lesson the following lesson from the years of massive and passive resistance in Virginia:

In a democratic society judicial relief is only as effective as public backing will allow. The ability of judges to bring about a fundamental alteration of school policy relies in the last analysis upon the mobilization of forces outside the courtroom. Sound laws must proceed from the shared values and attitudes of the community.⁴⁰¹

These observations ring true in light of the Prince Edward experience.⁴⁰² In the 1950s, Prince Edward County lacked the shared values and political balance that could make school integration possible. By the 1970s, this was beginning to change. In Prince Edward, individual people mattered more than law.

The question "why Prince Edward?" still confounds the county's residents.⁴⁰³ Prince Edward was at the confluence of the forces of and emanating from massive resistance, but that resistance was waning by the time the Board of Supervisors effectively closed the schools. Perhaps Prince Edward is an accident of history, but Hampden-Sydney history professor Ron Heinemann, who has studied the period as an academic and lived its aftermath as a parent, notes the mettle and vision of so many players in the

400. PELTASON, *supra* note 59, at 220.

401. ELY, *supra* note 19, at 201-02.

402. Works applying this principle to the school desegregation effort generally include Richard Delgado & Jean Stefancic, *The Social Construction of Brown v. Board of Education: Law Reform and The Reconstructive Paradox*, 36 WM. & MARY L. REV. 547, 548-51 (1995) (applying this general principle to the entire school desegregation effort); RICHARD DELGADO & JEAN STEFANIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGINATION* (1994); ROSENBERG, HOLLOW HOPE, *supra*, note 399. *See also* WILLIAM LASSER, *THE LIMITS OF SUPREME COURT POWER* 250-55 (1988). *But see* Neal Devins, *Review Essay of The Hollow Hope: Can Courts Bring About Social Change?* 80 CAL. L. REV. 1027 (1992) (agreeing that there are limits to court power to bring about social change but highlighting the importance of the following: court participation in "constitutional dialogue," direct impacts on some government behavior such as legislation, providing a threat of legal action which sometimes prompts voluntary change, imposition of remedies that sometimes work on recalcitrant districts in the school desegregation area and pointing out that "*Brown* and the busing controversy are also about politics; but when it comes to race and schooling, '[p]olitics and law . . . each reshapes the other.'").

403. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995). Heinemann, a history professor at Hampden-Sydney College is an expert on the operation of the Byrd machine in the mid-twentieth century as well as a parent of two 1980s graduates from Prince Edward County High School.

drama, particularly Barbara Johns and the students who organized the original Moton strike.⁴⁰⁴ Importantly, the strike forced both the black and the white communities to begin planning early for desegregation, and in the case of whites, to construct some protective institutions.⁴⁰⁵ Both communities were also endowed with creative, determined, "contemplat[ive]" leaders.⁴⁰⁶ The racism of the white community was "genteel," not violent,⁴⁰⁷ and not surprisingly, whites appeared to acquiesce in blacks' choice of an almost mediievally chivalric battleground: the federal courts.

Court action made a difference, but it was not the deciding difference, because the real battleground was the hearts and minds of the county's white citizens. Rulings in the *Davis-Allen-Griffin* litigation did create a legal climate in which changing white attitudes might produce integration. Court action also played a significant role in molding white attitudes by removing state subsidies for segregated education⁴⁰⁸ and making influential moral statements.⁴⁰⁹ Nevertheless, none of this legal activity guaranteed that integration would occur. Private decisions of individual white parents, not federal government power, ultimately integrated Prince Edward's public schools.

The federal courts' role in school integration is sharply defined and limited by the Fourteenth Amendment.⁴¹⁰ Federal courts may act to control

404. *Id.*

405. *Id.*

406. *Id.* Lacy Ward calls Prince Edward a "passive community . . . [where] people still contemplate things." Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

407. "The genteel sort [of racism] may be the most hostile of all because it purports to be kindness, when in fact it's not very kindly." Interview with Dr. Ron Heineman, in Hampden-Sydney, Va. (Aug. 5, 1995).

408. See *supra* part II and *infra* part III.C; see also Devins, *supra* note 402, at 1045-46. Court action did not eliminate all government subsidies. For example, the Academy never paid local property taxes, and the public schools' access to state funding was minimized by the Academy, because state funds were available on a formula based on the percentage of a county's school population attending public schools. Hiatt, *supra* note 315, at A1; *NAACP Leader Declines to Attend Academy Orientation*, UPI, Feb. 18, 1986.

409. As Professor Alexander Bickel argued, announcing the *Brown* decision alone had a considerable effect on the public, because of public respect for the Supreme Court as an institution. Authority can produce as many results as raw power. ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 245-46 (Vail Ballou Press 1986). While this arguably had precisely the opposite effect on Prince Edwardians in the 1950s, it probably had a considerable effect on the whites who sent their children to Prince Edward's public schools in the 1970s. See WOLTERS, *supra* note 101, at 122.

410. Section 1 of the Fourteenth Amendment states in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

public, but not private action where Fourteenth Amendment rights are at stake.⁴¹¹ Moreover, court action may be only used to remedy past discrimination.⁴¹² Local authorities or other elected bodies retain plenary power over education policy.⁴¹³ Thus, if individuals are determined to engage in racial discrimination without enlisting public institutions to assist or even by thwarting public institutions, federal courts acting alone lack the power to stop them.⁴¹⁴ Thus in Prince Edward, federal courts had the power to order the public schools to reopen and accept students of both races on an equal basis, but they could not order whites to attend those schools.⁴¹⁵ Only whites could make that choice. And of course, whites did not attend them; almost universally they enrolled at the Academy.

School segregation laws were a legislative expression of Virginia public opinion on race issues prior to 1954. Yet they were even more than an expression; segregation laws insured that no white parent could make a private decision to dissent and send a white child to school with blacks. The segregation laws were the ultimate government subsidy of segregated

U.S. CONST. amend XIV, § 1.

Further, law is only one aspect of legally dominated social issues such as segregation. See Delgado & Stefancic, *Social Construction*, *supra* note 402, at 548-51. "For social reform to happen, 'everything must change at once,' but in the law doctrines such as stare decisis, standing, mootness, ripeness, and political question mean that the law cannot change everything at once." See Delgado & Stefancic, *Social Construction*, *supra* note 402, at 551.

411. See U.S. CONST. amend XIV. This reflects the fact that the American government is federal in nature with two partially interconnected spheres of government power. Moreover, court power to control public action must be remedial. See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971).

412. *Swann*, 402 U.S. at 16.

413. As the *Swann* Court explained: "Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults." *Id.* Even so, only local education authorities would have the power to design and implement a pupil assignment policy intended to produce truly plural school environments absent a finding of a constitutional violation requiring such a remedy. *Id.* The past constitutional violation is a crucial element; under the current reading of Fourteenth Amendment requirements, such a plan could conceivably be unconstitutional unless narrowly tailored to remedy specific violations. See *e.g.*, *Adarand v. Peña*, 115 S. Ct. 2097 (1995); *Richmond v. Croson*, 488 U.S. 469 (1989); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

414. By contrast, Congress has the power to enforce the Fourteenth Amendment's equal protection guarantee and can sometimes reach beyond the realm of the federal courts. U.S. CONST. amend IV, § 5; see, *e.g.*, Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*; Douglas Laycock, *RFRA, Congress, and the Ratchet*, 56 MONT. L. REV. 145 (1995). Note, of course, that the Congress is a democratically elected branch, and thus requires some critical mass of public opinion to support its activities, even if not always an absolute majority.

415. See ROBERT MCCLOSKEY, *AMERICAN SUPREME COURT 12-13* (1960).

schools, because they effectively created a monopoly of that type of education.

While the courts could not directly affect private decisions to send children to segregated schools, they could do so indirectly by attacking those schools' various public subsidies.⁴¹⁶ *Brown* removed the segregation requirement, but resisting Southerners, fearful even of token integration, quickly developed creative new schemes to siphon public funds for segregated private schools and to make integrated education marginally less attractive to fellow whites.⁴¹⁷ Thus when federal courts struck down the tuition grant and tax credit programs and ordered Prince Edward County to reopen its public schools, they were sanitizing segregated schools of this indirect public support. Thus, at the same time social paradigms were changing, white parents in Prince Edward county were facing tough financial choices as well. By increasing the price of resistance, sanitization made segregated education marginally less attractive to all the county's white education consumers. This gave free public schools an advantage.⁴¹⁸ Thus, courts cajoled, and cajoled persuasively, but they did not force.

Congress also got into the cajoling act in other districts with the Civil Rights Act of 1964.⁴¹⁹ The Act played only a minor role in Prince Edward, but it did make the Academy ineligible for the federal school lunch program and other public funds.⁴²⁰ Through other provisions, the Act threatened that

416. It is very important to reiterate here that the Supreme Court cannot integrate anything, public or private, because integration of any facility requires that people of all races use the facility, and that in the case of state institutions, that the state or locality involved does not close it. Many jurisdictions closed public recreational facilities rather than integrating them in the wake of desegregation orders. *E.g.*, *Palmer v. Thompson*, 403 U.S. 217 (1971) (following a court decision invalidating segregation of Jackson, Mississippi's public swimming pools, Supreme Court held a municipal decision to close all pools). Of course, what the *Griffin* Court specifically held was that this strategy was unconstitutional to defeat desegregation orders. *Griffin*, 377 U.S. 218 (1964).

417. See *supra* notes and accompanying text at 91-98, 183-186.

418. See *Green v. Kennedy*, 309 F. Supp. 1127 (1970) (quoting from a Mississippi academy's fundraising letter that stated in lieu of state tuition grants "unless we receive substantial contributions to our Scholarship Fund, there will be many, many students, whose minds and bodies are just as pure as those of any of their classmates and playmates . . . , who for financial reasons alone, will be forced into one of the intolerable and repugnant 'other schools,' . . . or into dropping out of school entirely"). See also WALTER E. WILLIAMS, *THE STATE AGAINST BLACKS* 140-145 (1982). Professor Williams has done important research on a number of government programs from minimum wage to taxicab licensing regulation which shows that such government action unwittingly (or wittingly in some cases) serves to decrease the costs of discriminatory behavior. "Discriminated-against people generally do better under a system where there is market allocation of goods and services," he concludes. *Id.* at 142.

419. Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. § 1971, 1975a-1975d, 2000a-2000h-6).

420. See *Hiatt*, *supra* note 315, at A1; 42 U.S.C. § 2000d (1994).

school districts would lose federal education funds if they failed to meet Department of Health, Education and Welfare guidelines for school integration.⁴²¹ Like *Brown*, the 1965 and 1966 guidelines produced much weeping and gnashing of teeth in the South, and in many cases, blacks and poor whites were most disadvantaged when school districts lost federal funding.⁴²² Yet the guidelines did help solve problems *Brown* had failed to address: they gave judges a standard by which to measure compliance; they exerted the full weight of non-Southern public opinion against recalcitrant school districts; and they permitted federal judges to share the desegregation burden with other government officials.⁴²³ Most importantly, they were effective. In 1964, only 2.3% of Southern blacks attended school with whites; by 1966, that figure was 12.5%.⁴²⁴

Prince Edward's whites were initially well situated to thwart these pressures. The Defenders of State Sovereignty and later the Prince Edward School Foundation worked hard to mobilize public opinion without provoking hysteria. By avoiding court-ordered integration until 1959, community support for the private school idea grew deeper roots, and segregationists used the time well for planning. Further, the county's small size, relative homogeneity, and the widespread and deep-seeded philosophical opposition to desegregation in Black Belt communities also helped garner unqualified support for the private school option.⁴²⁵

The Defenders' key ally was the Prince Edward County Board of Supervisors, a municipal institution that was helpful at least in the short run. When the Fourth Circuit ordered the county to operate the schools on a desegregated basis, the Supervisors refused to appropriate funds for public education, a subsidy of private discrimination equivalent to the discredited segregation laws. The Supervisors' action literally removed integrated public education from the education marketplace in Prince Edward. Thus, whites had no choice—not that they were seeking one—but to attend the

421. Civil Rights Act of 1964, tit. VI, § 602, 42 U.S.C. § 2000d-1 (1994). The Act also gave the Justice Department standing to initiate school desegregation suits. *Id.* tit. IV, § 407(a)(2), 42 U.S.C. § 2000c-6(a) (1994).

422. WILKINSON, *supra* note 8, at 535-36.

423. WILKINSON, *supra* note 8, at 535-37.

424. WILKINSON, *supra* note 8, at 537.

425. See discussion *supra* note 8 and text accompanying notes 85-87. Though individual whites opposed the school closings, there was no chance they could have succeeded in stopping them, even if their sentiments had been harnessed into a movement. See SMITH, *supra* note 1; WOLTERS, *supra* note 101, at 100-01. Moreover, because uncompromising opposition to integration was localized where it was in the majority, it wielded power disproportionate to its numbers in the society as a whole. BICKEL, *supra* note 409, at 251; see discussion *supra* note 8. Black Belters had the same effect in Virginia politics on a broader range of issues. See WILKINSON, *supra* note 8, at 70.

private schools. This had the benefit of substantially reducing the organizational cost of coordinating resistance.⁴²⁶ On the other hand, courts could reach the Supervisors' action, while individual whites were insulated from legal attack. The Foundation schools lost some of their advantage when the Supreme Court provided the district court with the power to reopen the schools.

The Foundation's job of organizing private individuals to maintain segregation became even more complicated when the courts turned off the faucet of public funding. By holding public tuition grants and tax credits for Foundation contributions unconstitutional, federal courts dumped most of the Academy's cost squarely on parents' and private contributors' shoulders. In the late 1960s, the Fourth Circuit went a step further and blocked the Academy's access to all public funds.⁴²⁷ Tuitions increased, and the financial burden required a greater commitment to segregated education than some parents were ultimately willing to make.⁴²⁸ As Southern novelist Walker Percy wrote, economic necessity would ultimately integrate the South if moral suasion failed: "Show me an A&P today that is losing money because it is not hiring blacks and I'll show you an A&P tomorrow that has hired blacks and, what is more, where blacks and whites get along fine."⁴²⁹ By pulling the institutional and financial foundation out from under the Academy, the courts pushed whites toward the public schools.⁴³⁰

In Prince Edward, white parents had no realistic alternative to the ever more expensive Academy other than the county's public schools, though many tried desperately to find one. Longwood's laboratory school, for example, had a waiting list so long that a number of children put on the list at birth were not admitted as first graders. Segregation based on residential patterns did not exist in Prince Edward, and it could not have easily

426. It is, after all, much easier to compel whites to attend segregated schools if segregated schools are the only legal education option available.

427. This step-by-step continual movement to a stricter rule reflects Professor McCloskey's explanation that the Supreme Court

being an American institution, is obliged always to reckon with America and her propensities; and America is a nation that moves hesitantly and changes gradually. In spite of our occasional frenzies, the great alteration in the Republic's development have been the result of long experience and slowly growing conviction.

MCCLOSKEY, *supra* note 415, at 227.

428. Cf. PELTASON, *supra* note 59, at 193, 195.

429. Walker Percy, *Questions They Never Asked Me*, 88 *ESQUIRE* 170-94 (1977), reprinted in PERCY WALKER, *SIGNPOSTS IN A STRANGE LAND* 397-423, 415-16 (1991).

430. WILLIAMS, *supra* note 418, at 143 ("Herein lies the power of the market. People can offset some of their handicaps by offering a higher price for what they buy or a lower price for what they sell.")

reseggregated the public schools, because all the students attended one central complex.⁴³¹ Other private school options were hours away, and neighboring counties' public schools were no more attractive than Prince Edward's. Under these almost scientifically controlled conditions, integrated public schools were almost inevitable once whites' dissatisfaction with the Academy rose to the critical level. The key was fertilizing that dissatisfaction.

In Virginia districts where more alternatives were available, integration was not inevitable, nor did it necessarily occur.⁴³² At the same time Prince Edward's whites were making their first tentative steps back to public schools, white parents in Norfolk and Richmond were abandoning theirs where black student populations approached fifty percent.⁴³³ Even in relatively moderate Norfolk where whites had fought for token integration to keep public schools open in the 1950s, its federal judge lamented in 1969 that federal pressure for increased integration had the city's whites on the run to neighboring suburban Virginia Beach.⁴³⁴ He counseled that if Norfolk hoped to preserve public acceptance of desegregation, "radical[]" proposals such as busing had to be avoided.⁴³⁵ A different judge⁴³⁶ later ordered

431. The public schools did use annex buildings for a few grades, but basically every student in the same grade attended the same school. Phelps, *supra* note 16, at A6. Thus, whites were unable to circumvent desegregation orders as they did in New Kent County with pupil placements. See *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430 (1968). Further, all Prince Edward students are bused to the same locations as those in their same grades, so this possibility never enflamed parents against public schools. Phelps, *supra* note 16, at A6; see LINO A. GRAGLIA, *DISASTER BY DECREE: THE SUPREME COURT DECISIONS ON RACE AND THE SCHOOLS* 104-59 (1976) (describing court ordered busing efforts in the South and the white resistance which scuttled many of them); WILKINSON, *supra* note 8, at 150-52 (describing efforts of Richmond, Virginia whites to avoid the effects of future busing).

Of course, whites might have used the county's power structure that they still controlled to reorganize the school system's facilities so that public schools could be operated on an effectively segregated basis. Aside from the fact that the courts might have been able to block such an effort, it would also have been very expensive in terms of acquiring additional school buildings. To resegregate according to residence would have required many whites to move. Though this was something whites did in other cities where busing threatened, the Academy's availability as a "haven" for recalcitrant whites made such a drastic approach unnecessary. In this indirect way, the Academy may have "saved" the chance for future integration in the public schools.

432. See WILKINSON, *supra* note 8, at 131-249. See also GRAGLIA, *DISASTER BY DECREE*, *supra* note 431.

433. ELY, *supra* note 19, at 197.

434. *Beckett v. School Bd.*, 302 F. Supp. 18, 30 (E.D. Va. 1969).

435. *Id.* at 25, 30-31.

436. Judge Walter Hoffman had seen Norfolk's desegregation effort through the 1950s and 60s, but Judge John MacKenzie ultimately ordered busing in 1972. *Brewer v. School Bd. of the City of Norfolk*, 456 F.2d 943 (1972).

busing,⁴³⁷ and the public school population transformed from majority white to majority black in about a decade.⁴³⁸

"Getting tough" with recalcitrant whites did not necessarily help. Though the city of Richmond annexed a predominantly white area at the beginning of the 1970s, proportional enrollments of blacks in its public schools continued to decline as white families streamed to private schools and the suburbs.⁴³⁹ Busing was the immediate culprit, and Judge Robert Merhige's busing order to the Richmond schools graphically demonstrated the practical limits of court power to compel integration.⁴⁴⁰ Though the city purchased fifty-six new busses to comply with the order, "Richmond's white schoolchildren could not be compelled to ride them."⁴⁴¹ Citizens who did not move could literally "see" neighborhoods becoming blacker just as Neil Sullivan's teachers had been able to "see" learning in the Prince Edward Free Schools.⁴⁴² The percentage of whites in the Richmond schools declined from 35.8% in 1970-71 to thirteen percent in 1986-87.⁴⁴³ As a practical

437. *Brewer*, 456 F.2d at 947-48.

438. Lino Graglia, *The Busing Disaster*, 2 KAN. J. L. & PUB. POL. 13, 20 (1992).

439. ELY, *supra* note 19, at 198. Robert Pratt explained that school integration was not the only reason for "white flight" from Richmond to suburban Chesterfield and Henrico Counties during the mid-to-late 1970s, but opposition to busing was a substantial contribution to this trend. ROBERT A. PRATT, *THE COLOR OF THEIR SKIN: EDUCATION AND RACE IN RICHMOND, VIRGINIA, 1954-89*, 61-62 (1992).

440. *Bradley v. School Bd. of Richmond*, 325 F. Supp. 828 (E.D. Va. 1971). The Supreme Court put its imprimatur on the busing remedy two weeks later in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). Judge Wilkinson asks rhetorically, "[w]hy, one wonders, did the Court choose busing among all the remedial alternatives available? Moreover, why was that choice unanimous? . . . Is not a modest plan that will succeed preferable to massive integration that will disrupt, embitter, and ultimately resegregate." WILKINSON, *supra* note 8, at 161, 191. Professor Lino Graglia insists that the primary flaw in the busing remedy is that it is not actually a remedy at all; it is merely integration by compulsion. *See, e.g.*, Lino A Graglia, *The "Remedy" Rationale for Requiring or Permitting Otherwise Prohibited Discrimination: How the Court Overcame the Constitution and the 1964 Civil Rights Act*, 22 SUFFOLK U. L. REV. 569 (1988).

441. PRATT, *supra* note 439, at 57. A few years later when Judge Merhige ordered that the suburban school districts merge with Richmond, "mass hysteria" enveloped the entire metropolitan area. PRATT, *supra* note 439, at 65. The merger never occurred, however, because the Fourth Circuit Court of Appeals reversed the ruling, and an evenly divided Supreme Court affirmed. Nevertheless, even the threat of merger pushed ever more whites to private schools. PRATT, *supra* note 439, at 65. *See also* WILKINSON, *supra* note 8, at 150-52.

442. One black schoolgirl recalled that in less than two years, her block went from being almost totally white to totally black. PRATT, *supra* note 439, at 96.

443. PRATT, *supra* note 439, at 65, 93. It would be mistaken to attribute this entire shift to white flight, but most of it does stem from white emigration. PRATT, *supra* note 439, at 62. Interestingly, however, the percentage of white students in the suburban Richmond public schools also declined from 90% in the early 1970s to 70% in the late 1980s. PRATT, *supra* note 439, at 65, 92. Middle class blacks were fleeing inner-city Richmond as well.

matter, that made integration in Richmond hopeless.⁴⁴⁴ Merhige later ordered that children should be bussed to and from the suburban Chesterfield and Henrico county districts, provoking an immediate mass exodus as well as demonstrations,⁴⁴⁵ but the Supreme Court confirmed that this remedy was outside the scope of not just the judge's practical power, but his legal power as well.⁴⁴⁶

What private academies and other private institutions where whites substantially outnumbered blacks were to rural integration, white suburbs were to urban integration: a means for whites to control on an individual basis when and under what conditions school integration would occur, if at all.⁴⁴⁷ White parents in Prince Edward who would ultimately choose public school education for their children could enroll them in the Academy or Longwood's laboratory school until they were "ready" for public schools. By contrast in Richmond, where busing orders threatened to send large numbers of white children to overwhelmingly majority-black schools immediately, parents found private schools that could accommodate their children or simply moved to districts with public schools more to their liking. But moving to a gleaming suburb with an equally gleaming public school is a more permanent commitment than enrolling in an expensive and precariously situated private school. Not surprisingly, Prince Edward's public schools integrated during the 1970s, while Richmond's did not.⁴⁴⁸

Williams, *Ruling Left Wide Legacy*, *supra* note 126 at A10. Without making a conclusive in-depth analysis of this interesting trend, one can speculate that over time, areas where whites are skeptical of integration may accept it if it occurs in an unthreatening way—such as where the black population is largely middle class and much smaller than the white population. See White, *supra*, note 387, at 46. If true, this observation would support this article's thesis—that integration occurs when and under the conditions whites choose.

444. Williams, *Ruling Left Wide Legacy*, *supra* note 126, at A1; PRATT, *supra* note 439, at preface & 72. See James S. Kunen, *The End of Integration a Four-Decade Effort is Being Abandoned, As Exhausted Courts and Frustrated Blacks Dust Off the Concept of "Separate but Equal,"* TIME, Apr. 29, 1996, at 38 (quoting sociologist David Armor).

445. *Bradley v. School Bd. of Richmond*, 338 F. Supp. 67 (E.D. Va. 1972); PRATT, *supra* note 439, at 68-71.

446. *School Bd. of City of Richmond v. State Bd. of Educ. of Va.*, 412 U.S. 92 (1973), *aff'g by equally divided court*, *Bradley v. School Bd. of Richmond*, 462 F.2d 1058 (4th Cir. 1972); see also Milliken v. Bradley, 418 U.S. 717 (1974) (holding court-ordered, inter-district busing unconstitutional).

447. See ELY, *supra* note 19, at 198-99.

448. This is not to say that busing had no successes. Between 1968 and 1976, the Southern and border-state schools became the most integrated in the United States, largely because of busing. See, e.g., David S. Tatel, *Desegregation Versus School Reform: Resolving the Conflict*, 4 STAN. L. & POL'Y REV. 61, 62 n.14 (1993). This is still the case. But comparing Richmond, a busing disaster, to Charlotte, where the remedy worked, albeit with difficulty, confirms this article's basic thesis. See Davison Douglas, *The Quest for Freedom in the Post-Brown South: Desegregation and White Self-Interest*, 70 CHI.-KENT L. REV. 689 (1994). North Carolina and Charlotte in particular had embraced token integration

The Prince Edward experience dramatizes two steps necessary to integrate public schools within the American constitutional framework: (1) elimination of segregation's public institutional support to make integration both possible and perhaps even attractive, and (2) changes in white attitudes toward integration. These steps may bleed together, because the first can help bring about the second and vice versa, but the first does not guarantee that the second will occur.⁴⁴⁹ In the Prince Edward case, courts completed the first step through the *Davis-Allen-Griffin* litigation of 1951-1969.⁴⁵⁰

to preserve a social climate into which they might attract business and tourists. Douglas, *Rhetoric, supra* note 61, at 119-25; Douglas, *Quest, supra*. Charlotte integrated lunch counters, restaurants, hospitals and other public accommodations with a minimum of fanfare. Douglas, *Quest, supra*, at 713-19, 725-40. Charlotte even became the first Southern city to voluntarily desegregate its schools. Douglas, *Quest, supra* at 690-91.

Though Charlotte's school integration "was truly token," by 1971, the notion of blacks and whites attending school together was not completely foreign. Douglas, *Quest, supra* at 711, 740-44. The school board itself had proposed a significant desegregation plan to the courts in *Swann*. See *Swann*, 402 U.S. at 7-9. Yet even the more dramatic busing plan proposed by the court-appointed expert suggested a target white-black population for the schools of only 71-29%. *Id.* at 9 & n.4. In other words, many white parents in Charlotte could be confident that their children would remain in predominantly white schools. Richmond parents could be fairly certain that the long run held the opposite in store. Busing initially stumbled in Charlotte because the business and civic leaders who had negotiated past desegregation deals vacated the field during the busing conflict. Douglas, *Quest, supra* at 740-54. In the long run, however, it is still not surprising that busing worked in Charlotte while it failed in Richmond.

This is not a paean to the notion that white and black population percentages tell the whole story. See Graglia, *Busing Disaster, supra* note 438, at 20 (describing how busing caused whites to flee from Oklahoma City where they were 77% of the population in 1971). There is no such simple formula to determine when a desegregation remedy will work and when it will not. The point is that a wide range of factors, including consensus concerns about the business climate, can working together make otherwise recalcitrant whites willing to attend integrated public schools. On the other hand, if circumstances tip the scales the other way and whites are determined to resist, they can and will. Further, some forms of resistance are also more harmful than others. If the available means of resistance permit whites to leave public schools but return later without much upheaval, they may. Completely moving out of district, however, obviously makes return to those schools much less likely. Thus, when whites feel "they have no way out," they take the drastic steps they took in cities such as Richmond, leaving the hope of integration later virtually nil. Courts and most federal government action within our constitutional scheme is incapable of stopping it except by avoiding it in the first place.

449. Public institutional support for segregation might continue while integration occurs, but white support for integration would probably blunt or ultimately eliminate it.

450. William Lasser argues that the nature of the American system is that it tends to submerge fundamental conflict and fails to adjust to social change incrementally. Thus, "periodic disruption of the political system" occurs while "it seeks to readjust to emerging demands and tensions." LASSER, *supra* note 402, at 251. Ours is very much a system of plateauing social change. Yet, from this perspective, the delay in implementing *Brown*, in Prince Edward and the nation, is not evidence of Supreme Court failure, but is simply the way the system operates.

School integration still required revolutionary social change, however, which in turn required public support, or at least public acceptance.⁴⁵¹ Though the court action made integration more plausible by raising segregation's price, the five-year gap between 1969 and 1974 suggests that the court's action did not guarantee that it would occur on a mass scale.⁴⁵²

Whites were in control of their destinies in Prince Edward. They integrated the county's public schools entirely on their own terms. Other cities' experiences with busing and white flight suggest that this has been true elsewhere. To resurrect segregationists' domino-theory metaphor: courts may set up the dominos, but whites determine when and under what conditions they fall.

IV. DESEGREGATION

A. Scene One: Private School Crisis

Given the infamous 1960s, it is easy to overstate the scale of change in Prince Edward County during the 1970s. Though thirty-six percent of whites were attending the public schools by the end of the decade, Prince Edward Academy still boasted almost 1,000 students.⁴⁵³ The county's public schools might be integrated, but for many white youngsters, segregation was still a fact of life.

Nevertheless, the calm after the storm of the *Davis-Allen-Griffin* litigation was short-lived. The Foundation's legal troubles recommenced in 1970, when a United States District Court preliminary injunction prohibited the IRS from according tax-exempt status to racially discriminatory private schools in Mississippi.⁴⁵⁴ Soon afterwards, the IRS announced that private

451. LASSER, *supra* note 402, at 250, 255; ELY, *supra* note 19, at 201-02. Robert McCloskey's *AMERICAN SUPREME COURT* argues that the Court is "alive to such realities as the drift of public opinion and the distribution of power in the American Republic." MCCLOSKEY, *supra* note 415, at 255. The clash between popular sovereignty and fundamental law left unresolved in the Constitution requires that court decisions be made with an eye to popular opinion. MCCLOSKEY, *supra* note 415, at 224. Thus, Judge Wilkinson's fear of "southern stubbornness" may be the best explanation for *Brown II*'s milquetoast remedial guidelines. See WILKINSON, *supra* note 8, at 75. Integration could not occur until this stubbornness was overcome.

452. The Supreme Court's flexible remedial mandate in *Brown II*, which "thrice suggested that varied local problems and obstacles might require a varied pace of school desegregation," seems to have foreseen the substance if not the magnitude of the problem. See WILKINSON, *supra* note 8.

453. Bredemeier, *supra* note 18, at C1. Of the public school population, 76% were black and 24% were white. Bredemeier, *supra* note 18, at C1.

454. *Green v. Kennedy*, , 309 F. Supp. 1127 (1970).

schools must adopt, administer and advertise a non-discriminatory admissions policy to retain tax-exempt status.⁴⁵⁵ Technically, the Academy was in compliance, because it was subject to an injunction forbidding it from discriminating on the basis of race in its admissions decisions.⁴⁵⁶ Because blacks never embarrassed the Academy by applying for enrollment, its compliance-by-default was never tested.⁴⁵⁷

The Foundation steadfastly refused to comply affirmatively,⁴⁵⁸ and in 1978, the IRS revoked its tax exemption.⁴⁵⁹ Even then the Foundation would not submit. "We're discriminatory as hell," attorney George Leonard told reporters when he filed a free speech claim against the requirement that the Academy publicize a nondiscriminatory policy,⁴⁶⁰ "We're goddamned if we're going to tell everyone that we were hypocrites all these years," by denying the school's philosophy that whites and blacks should be educated separately.⁴⁶¹

Leonard's were famous last words, for the challenge did not succeed. The District Court held that the definition of tax-exempt status was

455. The IRS formalized this policy in Rev. Rul. 71-447, 1971-2 C.B. 230, after the policy change announced in IRS News Release, July 7, 1970 (quoted in *Bob Jones Univ. v. United States*, 461 U.S. 574, 578 (1983)) was upheld by the district court and summarily affirmed by the Supreme Court. *Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971), summarily *aff'd sub nom.* *Coit v. Green*, 404 U.S. 997 (1971) (lacking precedential value, because when it affirmed *Green*, no controversy remained). See also *Prince Edward Sch. Found. v. Commissioner*, 478 F. Supp. 107 (D.D.C. 1979).

456. Due to an intervention by the Southern Independent School Association, of which the Academy was a member, the Academy was bound by a permanent injunction against racial discrimination in admissions at private, commercially operated, nonsectarian schools. *Gonzales v. Fairfax-Brewster Sch., Inc.*, 363 F. Supp. 1200, 1205 (E.D. Va. 1973), *aff'd sub nom Runyon v. McCrary*, 427 U.S. 160 (1976).

457. *Evans, Era Ends, supra* note 21, at A1.

458. The Foundation refused to change its actual admissions procedure of having the Board of Directors screen applications, and informed the IRS of this fact. As a result, the IRS concluded that the Foundation "had not affirmatively shown that its school had adopted a racially nondiscriminatory admissions policy, nor had it publicly avowed such a policy." *Prince Edward Sch. Found. v. Commissioner*, 478 F. Supp. 107, 109-10 (D.D.C. 1979).

459. *Id.*; *Bredemeier, supra* note 18.

460. *Bredemeier, supra* note 18 at C1. The Supreme Court had previously upheld a district court ruling that all-white segregation academies could not exclude blacks under their First Amendment associational rights. *Runyon v. McCrary*, 427 U.S. 160, 176 (1976) (holding that 42 U.S.C. § 1981-1982 forbids private, commercially operated, nonsectarian schools from denying admission to black students). Thus, the associational liberties theory was unavailable, and the Foundation could fight only the publication requirement.

461. *Bredemeier, supra* note 18, at C1. *Bredemeier* also quotes Leonard as insisting that "we believe blacks deserve a different type of education than whites. We strongly believe whites among whites and blacks among blacks get a better education." *Bredemeier, supra* note 18 at C1. This was a Prince Edward School Foundation frontal assault on federal power.

appropriately consistent with federal policy favoring racial desegregation.⁴⁶² One year later, the Court explicitly upheld the IRS' ruling.⁴⁶³

Academy backers showed a brave face. "We've survived worse than this," Headmaster Robert Redd told the WASHINGTON POST after a Reagan administration policy which would have restored the exemption was reversed in the face of pressure from civil rights groups.⁴⁶⁴ Enrollment was down,⁴⁶⁵ and worse, many parents who in the past would have been ripe for the Academy's plucking were sending their children to public school.⁴⁶⁶ Teacher salaries were a fraction of what could have been earned in public schools.⁴⁶⁷ 1982-83 tuition was \$1,375 in a county where the average per capita income was about \$6,000 per year.⁴⁶⁸ Something had to give.

In 1984, Foundation officials decided to regain its tax-exempt status, well aware that the only way to do so was to admit blacks to the student body.⁴⁶⁹ Upon receiving proof that the school had appointed one black member to its Board of Directors and hoped to admit its first black students

462. *Prince Edward Sch. Found.*, 478 F. Supp. at 111 (citing *Green v. Connally*, 330 F. Supp. 1150 (D.D.C.), *aff'd per curiam sub. nom.*, *Coit v. Green*, 404 U.S. 997 (1971)). The court held further that retroactive revocation to 1970, when the policy changed, was not improper, because the Foundation had received notice of the change, an opportunity to explain its own admission policy, and the Foundation had declined to do so, stating it did not intend to change its policy. *Id.* at 113.

463. *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983). After an unreported circuit court opinion affirmed the ruling, the Supreme Court refused to grant certiorari in the Prince Edward case. See *Prince Edward Sch. Found. v. United States*, 450 U.S. 944 (1981) (Rehnquist, J., dissenting). *Bob Jones* confirmed that the IRS did have the power to promulgate the new policy. *Bob Jones*, 461 U.S. at 599. Bob Jones University made a substantial claim to a free exercise exemption from the IRS's Revenue Ruling. That it was denied by an eight to one decision is testament to the wide latitude the Court was prepared to give the IRS in fighting segregated educational institutions through the tax code.

464. Hiatt, *supra*, note 315, at A1.

465. Hiatt, *supra* note 315, at A1; Jonathan L. Entin, *Defeasible Fees, State Action, and the Legacy of Massive Resistance*, 34 WM. & MARY L. REV. 769, 774-75 (1993).

466. Prince Edward's deputy revenue commissioner, Linda Burger, and her husband, an Academy alumnus, sent their kindergartner to public school in 1981, as did other Farmville professionals, despite ugly comments from Academy backers. Hiatt, *supra* note 315, at A1. One 1994 school board member told *Newsday* reporter Timothy Phelps that sales clerks who knew she sent her children to the public schools would refuse to wait on her. Phelps, *supra* note 16, at A6. See also Strat Douthat, *Southern Schools: A Report Card on Reform Part III: Segregation Academies Play to Smaller Audiences*, AP, (Mar. 16, 1986) available in WESTLAW, ASSOCPR File, 1986 WL 3051382.

467. Hiatt, *supra* note 315, at A1.

468. The average white income was almost surely more, however. Leon Daniel, *Segregation Survives in County that Fought School Integration*, UPI, Oct. 21, 1983; Hiatt, *supra* note 315, at A1.

469. Entin, *supra* note 465, at 774-75. The Academy was facing a serious enrollment crisis. For a school that had once boasted 1,350 students, its 1986-87 enrollment, 665, was a disaster. Evans, *Era Ends*, *supra* note 21, at A1.

in the fall of 1986, the IRS made Prince Edward Academy tax exempt again.⁴⁷⁰

Farmville's blacks were unimpressed. "The school has found a 'face,'" the Virginia NAACP leader and Farmville resident James Ghee said of the school's new black board member Edgar Berry, "a black person who will window-dress for them so they can meet the minimum requirements of the IRS to maintain their tax-exempt status. There has been no change."⁴⁷¹ Berry argued that Prince Edward's blacks were reacting too cynically. "They lost their perspective and have drifted from integration to retaliation," he explained soon after his appointment.⁴⁷² The Academy admitted five black students for the 1986-87 school year,⁴⁷³ though only one was a Prince Edwardian.⁴⁷⁴ The new policy provoked little resistance from Academy parents or students.⁴⁷⁵

The Academy maintained a role in the community, but that role was deteriorating more and more into a bit part. Only one-fifth of Prince Edward's white school-aged children were enrolled at the Academy,⁴⁷⁶ and

470. Nancy Scannell, *Private Academy Names Black Director, IRS Says; Va. School's Tax-Exempt Status Retained*, WASH. POST, Apr. 16, 1986, at C6.

471. Scannell, *supra* note 470, at C6. Carl Eggleston, the first black member of Farmville's town council, echoed that view: if Prince Edward Academy was really breaking with the past, "[i]t should have a new management, a new board of directors and a new name," he told *The Washington Post*. Evans, *Era Ends*, *supra* note 21, at A1.

472. Sandra Evans, *4 Blacks Now Attending Once All-White Academy*, WASH. POST, Oct. 19, 1987, at D4. Berry was not a Prince Edward resident. Instead, he hailed from nearby Cumberland County, having moved to Virginia from New York a few years before his appointment to the Academy board. Scannell, *supra* note 470. Because Berry was of Jamaican descent, Ghee claimed he could not understand Southern blacks. "He thinks he's different. He doesn't associate with them," Ghee told the WASHINGTON POST. Scannell, *supra* note 470.

473. Evans, *Era Ends*, *supra* note 21. Only one of the black students was a Farmville resident. Evans, *Era Ends*, *supra* note 21. The school admitted no additional black students for 1987-88, and lost one of the original five due to high tuition costs. Evans, *4 Blacks*, *supra* note 472, at C6.

474. Evans, *Era Ends*, *supra* note 21, at A1. Interestingly, that student's mother was a teacher in the Prince Edward public schools. Evans, *Era Ends*, *supra* note 21, at A1.

475. Evans, *Era Ends*, *supra* note 21. One student interviewed did speculate that the genial atmosphere would fade if black enrollment increased above token levels. Evans, *Era Ends*, *supra* note 21.

476. Wilbur B. Brookover, *Prince Edward County, Virginia, 30 Years After: "A Pretty Good Place to Live"*, 62 J. NEGRO EDUC. 162, 166 (1993). There is a very small group of children in Prince Edward who attend boarding and day schools outside the county and others who are educated at home and in tiny religious schools. See Self Study, *supra* note 12, at 21. Edwilda Isaacs believes that race is at least one factor in some of their parents' educational decisions, though in at least some cases that seems unlikely. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995); see also Douthat, *supra* note 466. The self study identified two such schools, Prospect Christian, serving a tiny community in the western portion of the county with eight students, and New Life Christian. Self-Study, *supra*

60% of its 650 student 1989-90 enrollment was from outside Prince Edward County.⁴⁷⁷ Less than 40% of the public school student body was white, but this accounted for more than 850 students.⁴⁷⁸

B. Scene Two: Public School Renaissance

After 1975, the public schools underwent a renaissance. The high school's comprehensive curriculum now boasts a robust college preparatory program, instruction in five foreign languages, special education services, numerous athletic opportunities,⁴⁷⁹ and a wide range of vocational programs.⁴⁸⁰ Gifted students take courses at Hampden-Sydney and Longwood colleges.⁴⁸¹ The debate team and yearbook staff are consistent award winners,⁴⁸² the debaters, recent state champions, savor victories over Prince Edward Academy.⁴⁸³ In 1993, the boys basketball team advanced to the semifinals of the Group A state basketball tournament.⁴⁸⁴

High-profile projects make the Free Schools' jet-setting look very tame. Ten science and Russian students at Prince Edward County High School attended an international session of the Cosmonautic School in Krasnoyarsk-45 Siberia in 1996.⁴⁸⁵ Classmates schemed for six years to study primate

note 12 at 21. The proportion of parents deliberately avoiding the county's public schools for whatever reason might be closer to 25%. Nevertheless, the statistics still illustrate a telling story of change in the county.

477. Brookover, *supra* note 476, at 152.

478. Brookover, *supra* note 476, at 152.

479. These include sports with particular interest to white students such as soccer, tennis and golf. Phelps, *supra* note 16, at 58.

480. Phelps, *supra* note 16, at A6; Brookover, *Education in Prince Edward*, *supra* note 20, at 154-55.

481. Phelps, *supra* note 16, at A6; Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

The local colleges' interest and support for the public schools is not merely altruistic or a self-interested effort to look after their employees' children. "Hampden-Sydney had a debt to pay," says Dr. Heinemann. "It had done nothing. Longwood had the same debt to pay. Here you have two institutions of higher learning and they stand by and do nothing [during the school closing period]. Unconscionable." Interview with Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

482. Morrow, *supra* note 323, at 58.

483. Phelps, *supra* note 16, at A7.

484. See *Prince Edward Falls in OT*, RICH. TIMES-DISPATCH, Mar. 19, 1993, at E6.

485. *A Real Field Trip: to Siberia Prince Edward Group Going to Space School*, RICH. TIMES-DISPATCH, May 15, 1996, at B4.

behavior for three weeks in Tanzania in 1995.⁴⁸⁶ In both cases, students earned a substantial portion of funds for the trips themselves.

Elementary school administrators have aggressively sought grant aid and participation in state-wide projects in order to implement progressive educational programs,⁴⁸⁷ which makes up for relatively low per-pupil funding in Prince Edward.⁴⁸⁸ The administration and faculty has implemented a program of multi-graded, team-taught classes with interwoven curricula for children from ages four through eight.⁴⁸⁹ In the 1990s the county also unveiled a new middle school and a \$3.5 million extension for the elementary school.⁴⁹⁰

Achievement test scores hover around the state median, and the range is wide.⁴⁹¹ Since many students' achievement is very high, this necessarily means that a significant group does not do as well. Education experts hypothesize that this group is predominantly black,⁴⁹² and one criticism of

486. Jamie Ruff, *Impossible Dream a Reality, Students Africa-Bound: Primates Here We Come!*, RICH. TIMES-DISPATCH, Dec. 10, 1995, at C1. The group had attended Jane Goodall Institute seminars around the country and studied chimpanzees as part of a special science curriculum, the African Primate Environmental Studies program (APES). *Id.*

487. In 1992, the school received a \$200,000 state grant to develop an early childhood program. Jamie C. Ruff, *Prince Edward Schools Get Grant*, RICH. TIMES-DISPATCH, July 10, 1992, at B4. The school district had earlier been selected as a Xerox-Virginia Department of Education "Commitment to Quality" program Quality Management training site, and these two projects have blended together. Nancy Iverson, *Prince Edward County Elementary School Early Childhood Demonstration Grant Proposal*, May 25, 1992. It has also enthusiastically implemented the Virginia Department of Education "World Class System of Education for Virginia by the Year 2000 Program." *Id.*

488. Per-pupil funding was \$4,043.23 in 1990-91. Iverson, *Proposal*, *supra* note 487.

489. See Nancy R. Iverson & Mary Dawson Jackson, *Using Quality Teams to Link Division and Site-Based School Renewal Efforts*, May 10, 1994 (paper prepared for Virginia Quality Schools Network Conference, available from Prince Edward Elementary School, Farmville, Va.); Iverson, *Proposal*, *supra* note 487. The point of these efforts is to develop "curricula and scheduling which support integrated units of study characterized by hands on experiences and topics that relate to children's daily lives." Iverson, *Proposal*, *supra* note 487. As a practical matter, this means that "[w]hen children study season changes they will read, write, listen, measure, count, observe, build, draw, and sing about the changes that mark the seasons." Iverson & Jackson, *supra*. The school has changed its assessment techniques for the youngest students, exemplified by new report cards that report individual progress but do not compare children. *Prince Edward Creates New Report Cards*, VA. J. OF EDUC., Apr. 1994, at 24. The new techniques permitted parents to opt for multi-age grouping as opposed to the old tracking within age groups, and developed a School Improvement Team of staff, parents, and other community members. Iverson & Jackson, *supra*.

490. Overton McGehee, *School's Name Opens Wounds*, RICH. TIMES-DISPATCH, May 10, 1990, at B9; Kathryn Orth & Jamie Ruff, *Public, Private Schools: Rivals?*, RICH. TIMES-DISPATCH, May 16, 1994, at A10 (caption accompanying article).

491. Brookover, *Education in Prince Edward*, *supra* note 20, at 158. See also Morrow, *supra* note 323, at 58.

492. Brookover, *Education in Prince Edward*, *supra* note 20, at 159.

the Prince Edward public schools is that this group may not be well served. "If they're not preparing you for college, they're not doing anything," Lacy Ward says, though he emphasizes that Prince Edward is one of many school systems with the same problem.⁴⁹³ Some black educators wonder whether their white colleagues are emotionally and culturally able to help marginal black students develop their talents,⁴⁹⁴ but white parents have the similar concerns about certain black teachers.⁴⁹⁵ On the other hand, though blacks are disproportionately underrepresented in the college preparatory classes, they are a substantial minority of the enrollment.⁴⁹⁶

Race relations are generally positive within the school system and between educators and the local community, but Prince Edward is by no means a "color-blind" county.⁴⁹⁷ The Michigan State study indicated that students and sometimes even teachers self-segregate in social settings.⁴⁹⁸ John Fox recalls that his children had close friends of both races; he regularly came home from work to find them camped on his front porch with his son and daughter.⁴⁹⁹ On the other hand, the Heinemanns do not recall this type of mixing; neither did middle class whites socialize with farmers' children.⁵⁰⁰

493. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

494. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995). For example, Isaacs explained:

Part of the culture of [black] children is call-and-response kind of thing. They go to church and the minister's talking and they answer back. There's a lot of talking out. So when they come to school and they start talking out, the teacher is not prepared to handle it as a cultural thing; she handles it as a misbehavior thing. . . . [B]lack teachers who know this as a cultural thing [] don't seem to have as many problems as teachers who don't

495. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

496. Brookover, *Education in Prince Edward*, *supra* note 20, at 156. Brookover reports, for example, that nine of 33 students in a 1991-92 trigonometry/solid geometry class were black and 26 of 69 students in a college preparatory chemistry class were black. Brookover, *Education in Prince Edward*, *supra* note 20, at 156.

497. Brookover, *Education in Prince Edward*, *supra* note 20, at 159-60. Professor Brookover does argue that though differentiation within the school system is not based upon race, since race and class correlate in Prince Edward, grouping and class placement that perpetuate class distinctions also perpetuate racial distinctions. Brookover, *Education in Prince Edward*, *supra* note 20, at 160. The 1988 self-study indicated community satisfaction with the elementary school, at least. Self Study, 1988-89, *supra* note 12 at 41-42.

498. Brookover, *Education in Prince Edward*, *supra* note 20, at 159-60.

499. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995).

500. Interview with Dr. Ron Heineman, in Hampden-Sydney, Va. (Aug. 5, 1995). Too much should not be made of these differing perspectives. Fox believes that white children who started in public schools kindergarten and first grade fit into the interracial social scene better than those who transferred from the Campus School or the Academy later. Interview with John Fox, in Farmville, Va. (Aug. 7, 1995). Also, Farmville is a multiracial community, while Hampden-Sydney is not, and therefore Farmville children were more likely

School officials walk a fine line to nurture good interracial relations and to avoid the appearance of white preference. They also maintain a delicate numerical balance between blacks and whites in administration, faculty and other areas in which racial representation can be controlled without interfering with pedagogical aims.⁵⁰¹

Breaches, or perceived breaches of this balance do not pass without comment.⁵⁰² Many blacks think whites have more power in local political bodies that control school activities.⁵⁰³ White parents of college-bound children do appear to be tightening their grip on the reins of school administration, but it is not clear this has racial overtones.⁵⁰⁴ Moreover, fewer school issues now polarize the community based on race. Whites may

to interact with black children outside of school than their Hampden-Sydney classmates.

501. Brookover, *Education in Prince Edward*, *supra* note 20, at 153-54. For example, a publicity photograph taken during the groundbreaking for the new elementary school addition pictured both boys and girls and all the races represented in the Prince Edward student body. Orth & Ruff, *Public, Private Schools*, *supra* note 490, at A10 (accompanying photograph includes black, white, hispanic, and Asian children). In addition, race is perhaps the primary consideration when the county board makes school board appointments, though it is by no means the only one. Interview with Dr. William Hendley, in Hampden-Sydney, Va., (Aug. 5, 1995). Dr. Hendley notes, for example, that even black county board members will support white school board candidates if the white candidate has children in the schools, while the black candidate does not. *Id.*

502. During Superintendent Perry's tenure, Moton High School and the two Branch Elementary schools had been renamed after the county so that they would not be racially identifiable. Overton McGehee, *Schools's Name Open's Wounds*, RICH. TIMES-DISP., May 10, 1990, at B9. Both were named after notable black educators from Prince Edward county. Thus, an early 1990s attempt to name the new middle school after Superintendent Anderson got a very cold shoulder from black leaders. McGehee, *supra*; see also, Ruff, *Prince Edward Schools Get Grant*, *supra* note 487, at B4 (NAACP leaders complaining that black teachers are not permitted to lead academic extracurricular activities and that curricular changes will deny black students opportunities to develop musical and artistic talents in the middle school).

503. Brookover, *A Pretty Good Place to Live*, *supra* note 476, at 167.

504. Dr. Hendley blames class differences. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995). Lacy Ward looks to a lack of voluntary parental involvement, and he shares Thomas Mayfield's view that if blacks lack influence, they in part have themselves to blame:

Classes are still clustered, because [white] parents will say "I want certain teachers." These are the parents who are showing an interest in their kids. But if no one else is coming in and saying "I want something" and the only variables [administrators] have to look at are these, then [clustering] is what is going to happen. But for the most part people will sit back and say nothing and say "I've been abused." Well no. The rules are if you want something you tell somebody. At the time of my interview with Hendley, the county board was considering candidates for the open school board seat in majority-black district. The leading candidates were a black educator and a white doctor, but a swing black vote on the board favored the white candidates because he had children in the children in the schools while the black candidate did not.

Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

have more power because they are voluntarily more active, but "everyone wants black votes now," Hendley says; due to the decline of the community's black leadership, they are "a large, unspoken-for group."⁵⁰⁵ Partly as a result, the county board and school board rarely make decisions that are unacceptable to the county's minority of black voters.⁵⁰⁶

Today the student population of the public schools is about 60% black and 40% white.⁵⁰⁷ The school buildings, constantly being expanded, are "bursting at the seams."⁵⁰⁸ Even in light of their atypical history, the Michigan State study concluded that the Prince Edward public schools are "fairly typical" of desegregated schools.⁵⁰⁹

C. Scene Three: Knight in Shining Armor

Despite regaining its tax-exempt status, the Foundation's and the Academy's financial ills seemed terminal by the early 1990s. Then a miracle cure appeared in the form of Atlanta businessman and philanthropist J. B. Fuqua. Fuqua's medicine was so strong that his patients died and were reborn into the Rural Education Foundation and "Fuqua School," institutions committed to providing technology-based education within a "family atmosphere and caring environment" to children of all races.⁵¹⁰

Fuqua was born and raised in Prince Edward County and had previously donated considerable resources to Hampden-Sydney College and Duke University.⁵¹¹ One of his primary goals in making his \$10 million gift

505. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995).

506. Brookover, *A Pretty Good Place to Live*, *supra* note 476, at 167. Both Hendley and Mayfield agree that whites dominate the educational leadership in Prince Edward simply because they choose to be more active.

507. Brookover, *A Pretty Good Place to Live*, *supra* note 476, at 166. The proportion of blacks to whites in the county's population was almost the exact opposite. Phelps, *supra* note 16, at A6.

508. Jamie C. Ruff & Kathryn Orth, *County May Feel a Ripple Effect: Schools Modernizing*, *Prince Edward Says*, RICH. TIMES-DISPATCH, Sept. 5, 1993, at C1.

509. Brookover, *supra* note 20, at 160. This includes occasional but minimal interracial bitterness and tracking on the basis of ability, which has had the effect of making some college preparatory courses for top students disproportionately white. Brookover, *supra* note 20, at 157, 169. Self-segregation also occurs for social and extracurricular purposes. Brookover, *supra* note 20, at 159-60.

510. Fuqua School Admission Information, 1995-96, available from *Fuqua School*, Farmville, Va. Fewer than two students must share each computer at Fuqua School, and the school boasts a considerable network of video and telecommunications equipment, including facilities for creating local programming on campus. *Technologically Advanced Classrooms: A Window on the World*, Fuqua School Admissions Packet, available from Fuqua School, Farmville, Va.

511. Fuqua has given more than \$1 million to Hampden-Sydney and \$10 million to the now-Fuqua School of Business at Duke. He has also donated to Longwood College, though

to the shell of Prince Edward Academy was to help wipe its racist taint from the community.⁵¹²

Local blacks doubt he can do it. Their bitterness toward what they view as Fuqua's attempts to rehabilitate the Academy is pronounced. Nevertheless, Lacy Ward believes that eventually Fuqua School will be fully integrated.⁵¹³ A few of Fuqua's black students and parents report some of the same social pressures that kept whites in the Academy in the 1960s,⁵¹⁴ and like whites of the 1960s, blacks will decide if and when Fuqua School can play a useful role in their children's educations.

White public school backers are also perturbed by the Fuqua donation. Hampden-Sydney religion professor Bob Rogers, one of the first whites to send his children to the public schools said after the announcement of Fuqua's gift that "I wish he had considered the needs of all the children in the area—black and white; and the preponderance of the students are in public school."⁵¹⁵ Ron Heinemann believes there is a role for private experimental education in rural communities, but "I would have preferred that the Academy just die. That would have been the way to cut it from its history It was a shame that Mr. Fuqua stepped in and propped it up and merely changed the name."⁵¹⁶ "We're masters at rationalizing the things that we do," Sandra Heinemann points out; she thinks that the technology and resources at Fuqua School will attract parents looking for an excuse not to send their children to public schools.⁵¹⁷ Fuqua also irritated many public school backers when he said competition from Fuqua School would indirectly improve the public schools by fostering competition; most public school backers do not think they need the help.⁵¹⁸

a considerably smaller sum. Wes Allison, *Giving Something Back: School is Beneficiary of Fuqua's Success*, RICH. TIMES-DISPATCH, Jan. 9, 1994 at C1.

512. Wes Allison & Kathryn Orth, *Fuqua Envisions School as Boon to County: He's Seeking to Erase Racist Image of Former Prince Edward Academy*, RICH. TIMES-DISPATCH, Jan. 9, 1994, at C4.

513. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

514. One black Fuqua upper school student told the RICHMOND TIMES-DISPATCH that her black friends call Fuqua "that white school" and ask her if her enrollment there makes her think "you're better than us." Kathryn Orth, *Problems Accompany Progress at Fuqua School Big Endowment Resulted in Better Equipment, Higher Average Scores*, RICH. TIMES-DISPATCH, Aug. 22, 1995, at B1. Another black parent said she had been "chastised" by neighbors for sending her child to Fuqua. Kathryn Orth, *Students Celebrate First Day at Fuqua*, RICH. TIMES-DISPATCH, Aug. 26, 1993, at B4.

515. Kathryn Orth & Jamie Ruff, *Academy Renamed in Benefactor's Honor: Fuqua Hopes 'to close door' on Past Divisions*, RICH. TIMES-DISPATCH, Aug. 24, 1993, at B4.

516. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

517. Interview with Sandra Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

518. Allison & Orth, *Fuqua Envisions Boon*, *supra* note 512, at C4. Many of Fuqua's new programs such as multi-age classrooms and a middle school have already been in place

Fuqua School will be nothing if not different from Prince Edward Academy, however. Gone is the back-to-basics philosophy that was the Academy's hallmark: Fuqua School is laden with computer and telecommunications technology, multi-age classrooms and a middle school experiment.⁵¹⁹ Gone also is the siege mentality. The school's current president Ruth Murphy has released recently improved standardized test scores to the press, something the Academy never did.⁵²⁰ She stresses her desires for "a new spirit of openness" and links with the public schools and local colleges.⁵²¹ On a less positive note, the local commitment to and interest in the school may have declined somewhat since the transformation.⁵²²

J. B. Fuqua has earmarked vastly increased sums for minority scholarships and recruitment.⁵²³ The school will need them: lower school tuition plus fees was more than \$4,000 in 1995-96, while upper school parents paid about \$4,500, but it costs \$6,000 per year to educate a child at Fuqua School.⁵²⁴ Though Murphy boasts of the considerable sacrifices

in the public schools for several years. See *supra* notes and text at 479-490. The district also has a technology plan to put computers in every classroom. Allison & Orth, *supra* note 512, at C4.

519. Orth, *Problems Accompany Progress*, *supra* note 514, at B1. Note that these are programs the public schools have already implemented.

520. Orth, *Problems Accompany Progress*, *supra* note 514, at B1. Test scores jumped dramatically in the first two years of the Fuqua School's existence, and Murphy says she held her test scores back to avoid comparisons with the public schools. Orth, *Problems Accompany Progress*, *supra* note 514, at B1.

521. Interview with Ruth Murphy, in Farmville, Va. (Aug. 8, 1995). Murphy says that she hopes to rid the school's administration of the "secretive, top-down" management of its segregation academy days, and that the school can share its technological resources with the rest of the community. *Id.*

522. Alumni giving has not increased as Murphy had hoped, because Fuqua's donation has eliminated the urgency that others with fewer resources contribute. Interview with Ruth Murphy, in Farmville, Va. (Aug. 8, 1995). Murphy is now considering corporate funding resources, as well. *Id.* Some actually resent the radical changes in the school, and Murphy says she has learned to be very sensitive with alumni. *Id.* Parent involvement may have dropped off as well, but Murphy says the school is "rekindling that." *Id.* Generous faculty salary increases have also dampened the need for local educators with intense commitment to the school. See Orth, *Problems Accompany Progress*, *supra* note 514, at B1; Allison & Orth, *Fuqua Envisions Boon*, *supra* note 512, at C4.

523. Donald P. Baker, *A \$10 Million Gift of Inclusion: Donation to Prince Edward Academy Covers Minority Scholarships*, WASH. POST, Aug. 24, 1993, at B1; Sec. 170(b)(1)(A)(ii)—EDUCATIONAL INSTITUTIONS, *Successor to Foundation Formerly Disqualified for Racial Discrimination Now Qualifies as Charity*, DAILY REP. EXECS., Aug. 31, 1993, at 167.

524. FUQUA SCHOOL CHARGES, TERMS, AND ENROLLMENT PROCEDURES, 1995-96. FUQUA SCHOOL ADMISSIONS PACKET, 1995-96, available from Fuqua School, Farmville, Va. Enrollment is down slightly, and parents told Murphy high tuition is the culprit. Orth, *Problems Accompany Progress*, *supra* note 514, at B1.

parents make to bring their children to the school from as much as an hour's drive away, increases in out-of-county enrollments coupled with relatively stable total enrollments simply means that fewer Prince Edwardians patronize the school.⁵²⁵ Time and demographic changes may be on Fuqua's side, however; "unfamiliar with the Academy's history [newcomers] don't see the stigma attached to the Academy that it has had and still does have in terms of its racial policies. So they feel no qualms about shifting or moving their children to that institution," Ron Heinemann says.⁵²⁶

Fuqua School has failed to attract minority faculty, and Murphy admits that many parents still choose her school for racial reasons.⁵²⁷ Minority enrollment has doubled to twenty-six blacks and fourteen Asians, but this increase has not come easily;⁵²⁸ "we have not done a very good job with this."⁵²⁹ Changes in the public schools and at Fuqua School do not necessarily mean that Prince Edward's school desegregation story is over.

V. CONCLUSION: A BEGINNING, NOT AN END

The Prince Edward school desegregation saga has come full circle, back to R. R. Moton High School and a disagreement about how that facility could best be used. An amazing number of characters are the same. Led by the Martha E. Forrester Council of Women, the group that was instrumental in convincing the county to build Moton in the first place, Vera Allen, Edwilda Isaacs, Thomas Mayfield, Willie Boulden, and others who experienced the strike and the school closings are active in a movement to preserve Moton as a museum and historic site. Others, such as some county board members and administrators at Longwood, not all of them white, argue that sale of the land would serve the community best by financing

525. Interview with Ruth Murphy, in Farmville, Va. (Aug. 8, 1995). The Academy relied on out-of-county enrollments for many years to keep the size of the student body from declining too rapidly. As for out-of-county enrollments, public school superintendent Anderson reports the same phenomenon in his schools. Ruff & Orth, *County May Feel Ripple*, *supra* note 508, at C1.

526. Interview with Dr. Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995).

527. Interview with Ruth Murphy, in Farmville, Va. (Aug. 8, 1995). The Durham school system, where Murphy was assistant superintendent before coming to Fuqua School, is majority black but also has numerous students from academic families, so she undoubtedly has insights into the dynamics of the Prince Edward public schools, and certainly has no patience with segregation academies. My interview with her suggested that her Prince Edward experience has helped her to understand the complex dimensions of the forces which gave birth to the progenitor of the school she now heads. *Id.*

528. *Id.* Edgar Berry, chairman of the general and minority financial aid committees identifies the problem as a lack of acceptance of the school in the Prince Edward minority community. *Id.*

529. Interview with Ruth Murphy, in Farmville, Va. (Aug. 8, 1995).

additions to the public schools' crowded buildings or by assisting local education in other ways.⁵³⁰ As in the past, the tone of the debate will be controlled and genteel, but the emotional investment is already considerable.⁵³¹ How Prince Edward resolves this issue could be a turning point for the future of interracial relations in the county.

For years, the 1939 Moton High School, christened "Farmville Elementary" in the early 1970s, housed the county's fifth graders. The decaying school was closed at the end of the 1995 school year.⁵³² When built, Moton was on the outskirts of Farmville; now its site is Farmville's prime undeveloped piece of real estate.⁵³³ The county would like to sell both the Moton site and the nearby playing fields for \$1.1 million to finance school buildings.⁵³⁴

According to Dr. Hendley, most county board members would like to see the Forrester Council purchase the building and Longwood the fields. Recently the board agreed to sell Moton to the Council if it could raise \$200,000 of the county's \$300,000 price tag by December 31, 1997. The building "retains a remarkable degree of integrity" making it well suited to be preserved as a historical site.⁵³⁵ Unfortunately, architectural integrity does not mean there is no work to be done.⁵³⁶

Dr. Hendley left the county board in 1995 and will not be there when it sells the land.⁵³⁷ He hopes the preservation project will succeed, but he

530. See Donald P. Baker, *Support for a Va. School and Its History Lesson*, WASH. POST, Mar. 6, 1995, at B3; Bill Baskerville, 1996 WL 4415399, AP, Feb. 26, 1996.

531. Just as it was at the height of the integration struggle, Lacy Ward notes that "this is still a very passive community. It is not a very confrontational place. People still contemplate things. There's still a very deliberative process to everything." Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

532. Baker, *Support for a Va. School*, *supra* note 34, at B3; Kathryn Orth, *School's Days are Over: Farmville Elementary was Site of Historic Struggle*, RICH. TIMES-DISP., June 16, 1995, at B4.

533. Jamie C. Ruff, *Longwood Seeks Help to Get Land*, RICH. TIMES-DISP., Dec. 3, 1995, at C8.

534. Jamie C. Ruff, *Saving Moton School is Hope: Effort Underway in Prince Edward*, RICH. TIMES-DISPATCH, Feb. 22, 1995, at B1.

535. Jackson & Vosmik, *supra* note 33, at 5-6. Of course, one reason the building retains its architectural integrity is that it was never significantly improved for use as a school. See Jackson & Vosmik, *supra* note 33, at 5-6 (explaining that many of the building's educational and structural features are original).

536. Orth, *School's Days*, *supra* note 532, at B4. The Council also faces at least a \$500,000 bill to refurbish the property for use as a museum.

537. Hendley's decision not to run for reelection to the county board in 1995, is a testament to the changes that have occurred in Prince Edward even over the past twenty years. He lost some of his interest in county board work simply because the issues of national magnitude that had drawn him into politics were no longer on the county's front burner. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995). The county board's primary concerns now are economic development and the need to draw purse

wonders in the back of his mind whether it is a good solution to a subtly complex "resource allocation problem" in a very poor county.⁵³⁸ It is a problem with no easy solution.

County board members have other concerns. Many of the members of the Council are senior citizens and some fear that even if they raise money to buy and refurbish the building, they will lack the funds and manpower to keep it open far into the future.⁵³⁹ One board member has also said that the building is "a constant reminder, like rubbing salt in a wound."⁵⁴⁰ Thomas Mayfield can see why whites might feel this way, stating, "It's an eyesore and a mindsore It's a reminder of the stupidity of those who perpetuated the closing of schools and segregation."⁵⁴¹

Relations between the county board and those interested in preservation have been dicey, much as they were in 1951 when the new Moton High School was on the drawing boards. Some are concerned that the school was not properly maintained prior to its closure in 1995.⁵⁴² At the last minute the county board also attempted to frustrate the school district's five-year effort to have the building placed on the National Register of Historic Places.⁵⁴³ Only the direct intervention of Virginia Historic Preservation Review Board historians with federal authorities ensured that the building received the national designation, which would protect it from demolition by a state buyer such as Longwood College.⁵⁴⁴ During that dispute, Reverend Willie Boulden told the Keeper of the National Register that the county board's action, in conjunction with the school system's late-1960s

more tightly, which are "very much the same issues as other poor, rural counties." *Id.*

538. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995).

Suppose you could raise \$1 million for the preservation of that building. Is that a better use of that \$1 million than for black scholarships for college? That's a hard trade off. One doesn't want to ignore history, but how much do you spend that could be spent in dealing with the very real problems we have now that will carry their legacy into the future?

Id.

539. Interview with Dr. William Hendley, in Hampden-Sydney, Va. (Aug. 7, 1995).

540. Baker, *Support for a Va. School*, *supra* note 34, at B3 (quoting Hugh Carwile).

541. Baskervill, *supra* note 530.

542. See Letter from Willie S. Boulden to C. Larry Philbeck (Mar. 1, 1995) and Letter from Town of Farmville Building Inspection Department to Prince Edward County Board of Education (Mar. 13, 1995).

543. The state Historic Preservation Review Board unanimously recommended that Virginia nominate the Moton School for the National Register in early 1995, although the county board had requested that the Board defer its decision. Thereafter, the Department of Historic Resources refused to forward the nomination until Review Board members intervened directly with federal authorities. Moton was ultimately placed on the Register, but the episode fueled suspicion and resentment in the black community. Baskervill, *supra* note 530. Interview with Rev. Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

544. Baskervill, *supra* note 530.

decision to rename the public school buildings for their locations rather than famous black educators, constituted "a policy of erasing black heritage and practicing historical discrimination."⁵⁴⁵

Some black history has to remain in the county, and just because something is "black" or associated with blacks [people say] "I'm going to destroy it" or "I don't want it" or maybe "I don't want this around because I don't want the memory."⁵⁴⁶

The organizers of the preservation effort question the supervisors' good faith. They note that Prince Edward is participating in the inter-county "Lee's Retreat" historic drive promotion,⁵⁴⁷ and argue that the Moton project would fit into the county's efforts to boost tourism.⁵⁴⁸ On the other hand, Edwilda Isaacs says civil rights enthusiasts are not the kind of tourists the county wants.⁵⁴⁹ Willie Boulden finds sinister the supervisors' last minute attempt to keep the school off the National Register.⁵⁵⁰ Blacks and whites involved with the preservation effort will be furious if the county ultimately sells the land to developers who raze the building.

545. Letter from Willie S. Boulden to Carol D. Shull (Aug. 1, 1995) (private papers of Willie S. Boulden) (emphasis added). The decision to change the name of the school buildings is usually defended as an effort to be inclusive, but Boulden believes there was fear that whites would not want to attend schools named after blacks. He thinks the failure to preserve Moton along with the name changes are part and parcel of an attempt to destroy the black community's sense of itself, just as was done during the years of slavery. Interview with Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

546. Interview with Rev. Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

547. Bill Hendrick, *Where Lee Once Fleed, Tourists Soon May Flock: Tune in and Drive Route General Took*, SAN DIEGO UNION-TRIB., July 16, 1995, at F12. The drive follows the route of the confederate army retreat from the siege of Petersburg to Appomattox, where General Robert E. Lee surrendered to U.S. General Ulysses S. Grant. The route passes through Farmville, where both Lee and Grant stayed during the war, as well as the Sailor's Creek Battlefield at the edge of the county. *Id.*

548. Most of the historic sites in the Southside that have been preserved relate to the Civil and Revolutionary Wars. Patrick Henry lived in Prince Edward, and at the intersection of three counties is Saylor's Creek Battlefield, the final massacre of Confederate soldiers before Appomattox, which is also nearby. See Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995). Another tourist attraction is Price Edward's good reputation for fishing. Henry Christner, *Angling Its Way Onto Map: Prince Edward County Rises from Obscurity as Fishing Spot*, RICH. TIMES-DISPATCH, Feb. 12, 1995, at D16.

549. "They knocked their school [Farmville High School] down, because people come and they want to know; they want to see. So they decided to knock their building down, that way if the building's not there, there's nothing for anyone to see." Isaacs believes the same motives are behind the effort to sell Moton High School. Interview with Edwilda Isaacs, in Farmville, Va. (Aug. 3, 1995).

550. "If they knew it was going up for nomination, within the first year they should have known which way they wanted to go." Interview with Rev. Willie Boulden, in Worsham, Va. (Aug. 7, 1995).

The old all-white Farmville High School has already met a similar fate. Used by Longwood College for storage for many years, the building was finally demolished in 1993.⁵⁵¹ In 1980, Edna Allen-Bledsoe,⁵⁵² a student at Moton High School in 1959 and now a Longwood faculty member, entered the building for the first time in search of office equipment.

I don't know how long I was in there, but I became transfixed. . . . The building was so beautiful. It had this atrium where I think they used to eat lunch. . . . And the boards had never even been erased. It looked like something had swooped in and picked everybody up and then just swooped out.

By golly, we were separate, but we damn sure weren't equal.⁵⁵³

Lacy Ward mourns the passing of Farmville High School and worries about the future of Moton, because both are pivotal parts of Prince Edward's blacks' and whites' shared history.⁵⁵⁴

Although you might not look at Barbara Johns as a founder of Fuqua School, if you really look at the history of it, you have to say she was a precursor to that whole school system. I don't know if [Academy backers] admit that or not, but that's their history. Their history starts not because of something they did, but because of something that was done. . . . I think the [Moton museum] should preserve the strike and the closings and also should mention the school system it gave birth to.⁵⁵⁵

He hopes that renovating and displaying Moton High School is taken as an opportunity to heal remaining schisms between the county's citizens by reminding them of their shared history just as integrating the public schools has influenced his and other younger Prince Edwardians' perspectives of each other.⁵⁵⁶ Even today, Prince Edwardians are consumed by the

551. Ruff & Orth, *County May Feel Ripple*, *supra* note 508, at C1.

552. Edna Allen-Bledsoe is the younger daughter of Vera Allen, former Director of Instruction in the Prince Edward public schools, and sister of Edwilda Isaacs, currently a teacher in the same system.

553. Mary Beth Joachim, *Remembering Brown: Healing And Learning*, FARM. HERALD, May 20, 1994, at A1.

554. Ward says that "a lot of people in the white community look at [selling Moton] as erasing the past as was done to Farmville High School." Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

555. *Id.*

556. *Id.* Some older blacks think younger blacks care less about their heritage. Though Ward was the only black of his generation who regularly attended preservation planning meetings during the early part of the fundraising effort, he says local twenty-and-thirty somethings care about the county's history but for different reasons. "Most black members of the community probably want to see [Moton] preserved as a guilt center," but younger blacks and whites "see it more as preserving it for the importance of what grew out of it, not

divisiveness of their tragic history, but at some point that must end. "How long do we want to remember that history? How long should that history be a factor in determining where we send our children to school?" Ron Heinemann asks.⁵⁵⁷ If Ward's vision for Moton becomes reality, it could be a healthy step forward for still uncertain race relations in the county.

The past represents considerable progress. The federal courts played an important role in the Prince Edward integration drama by sanitizing the public sector of discriminatory support for segregated education in Prince Edward, thus creating the legal environment in which voluntary integration might occur.⁵⁵⁸ It also articulated the principles the IRS used to halt its own financial support for private discrimination.⁵⁵⁹ On the other hand, though both actions presented Prince Edward's whites with tough choices, neither forced whites to enroll their children in the public schools or accept minority students at the Academy. Whites were ultimately in control of the timing and circumstances of integration in the county. In Prince Edward, school integration, though painful in so many ways, has been a successful and voluntary process that has changed the racial, political, and social culture of the community.

More than thirty years after the Virginia Supreme Court of Appeals ruled it unconstitutional in the rest of the state, massive resistance to school desegregation in "the town that time forgot"⁵⁶⁰ is unmistakably over.⁵⁶¹ Certainly painful scars remain from the bitter desegregation struggle,⁵⁶² and

necessarily how terrible it was, but that it was something significant in the history of the nation and it happened in Prince Edward County." *Id.*

557. Interview with Ron Heinemann, in Hampden-Sydney, Va. (Aug. 5, 1995). On the other hand, Lacy Ward argues that dropping the school closings from the Virginia history curriculum at the high school was a mistake. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995). Prince Edward needs to find a happy medium between forgetting its history and being slavish to it.

558. See *supra* notes and text at 416-431.

559. See *supra* part IV.A.

560. Conversation with Kate Iverson, in Hampden-Sydney, Va. (Aug. 1986). Iverson, who entered the public schools in 1974 as a first grader, was salutatorian of the Prince Edward County High School class of 1986.

561. This is not necessarily to suggest that racial tension is entirely a thing of the past in Prince Edward County. For example, as late as 1989, the Southern Christian Leadership Conference, Citizens for a Better America, and local citizens sued the Virginia State Board of Elections, local election boards, and members of appointing bodies for local school boards for constitutional and Voting Rights Act violations related to the appointive system for school board member selection in four Virginia counties, including Prince Edward. The defendants won on all counts. See *Irby v. Virginia State Bd. of Elections*, 889 F.2d 1352 (4th Cir. 1989). On the other hand, Professor Brookover discovered serious discussion of a white and black church merger, which would be unimaginable even now, except that it is being considered. Brookover, *Prince Edward County*, *supra* note 20, at 167.

562. See, e.g., Constance Johnson, *The Sad Way Kids Look at Integration*, U.S. NEWS,

the Moton High School preservation project may determine whether those scars will be reopened, or whether they will in time fade away. In any case, there is considerable cause for optimism.

Hear Lucie Zehner, an Academy alumna whose three children all attend Prince Edward County public schools: "I don't know what I would have done 15 years ago, but now I have no problem sending my children to the public schools," she says. "We feel not only are our children getting a good education but that we are making a statement by sending them to public schools."⁵⁶³

Hear Lacy Ward, 1978 valedictorian of Prince Edward County High School whose two daughters attend public schools: "The problem was economic disparity," he says. "Personally I know that can be overcome with education. . . . Race is still going to hold you back from realizing your full potential, but education can put you on a higher level than perhaps your family has been on."⁵⁶⁴

Hear long-time Farmville mayor and school closings supporter J. David Crute on segregation: "Today it's different. It doesn't seem to make much difference."⁵⁶⁵

Hear journalist James J. Kilpatrick, one of Virginia's most vocal champions of massive resistance:

In the old days, blacks and whites saw each other through a glass barrier; we never really touched I know integration has been a good thing in terms of human relations and the basic dignity of people. You will see black and white families that are actually friends now. That's a good thing.⁵⁶⁶

May 23, 1994, at 33; Morrow, *supra* note 323, at 58. Johnson interviewed numerous children from the districts that participated in the *Brown* decision, and heard comments that are particularly discouraging in light of the litigation strategy in *Brown* to show that segregated schools were damaging to blacks' self-esteem. Johnson's interviews suggest that in this area there has been little improvement, though given the history of white flight from majority black schools in Prince Edward, this might not be surprising. One Prince Edward County Elementary student told her: "I know that some black people study hard, but white people just seem to get better grades. Black people have to sacrifice to get jobs, and white people don't have to do any of that." Another said more chillingly: "I don't really like white people that much. They are just beating black people at everything." Johnson, *supra*. Only time will tell whether changes in white attitudes in the county will have a salutary effect on these children's world views.

563. Douthat, *Southern Schools*, *supra* note 466.

564. Interview with Lacy Ward, in Farmville, Va. (Aug. 4, 1995).

565. Phelps, *supra* note 16, at A6.

566. Tom Sherwood & Mary Battiata, *Race Relations in Virginia: No Desegregation of the Heart Yet; Virginia School Integration: 25 Years Later*, WASH. POST, Feb. 1, 1984, at A12. On the other hand, Wilbur Brookover found only a limited amount of interracial socializing in Prince Edward during his study. Brookover, *A Pretty Good Place to Live*,

Perhaps most notably, hear *The Farmville Herald*, once an organ of the Prince Edward Schools Foundation and now a champion of the public schools, on integration in both the public schools and the town: "We need to embrace this accomplishment. Broadcast it. Celebrate it. . . . We are reaching out to join hands and build up together. Not all of us. But many of us. It is a beginning, not an end."⁵⁶⁷

EPILOGUE: THE TRUST

In almost bizarre fashion, the Prince Edward School Foundation found itself back in the Virginia Supreme Court in 1989 defending the proposition that the Fourteenth Amendment outlawed race discrimination resulting from state law.⁵⁶⁸ The Foundation was a named beneficiary of a 1968 testamentary trust "so long as" it admitted "only members of the White Race" to its schools.⁵⁶⁹ In 1987, the successor trustee brought suit in Virginia state court to find out who should receive the trust income since both the Foundation and several alternate beneficiaries all accepted black students.⁵⁷⁰ Only the final alternate beneficiary, Hermitage Methodist Homes of Virginia, had never had a discriminatory admissions policy.

The Virginia educational trusts statute in effect when the decedent executed the trust did not permit gifts to integrated schools.⁵⁷¹ The Foundation argued that in 1956 when the trust was executed, the discriminatory statute had been the only statutory means of making an educational trust.⁵⁷² However, the Foundation said that the law violated the Equal Protection rights of the desegregated Foundation and its students "to be free from state-compelled racial discrimination." Therefore, the discriminatory portions of the will were "illegal, invalid and unenforceable" and the Foundation urged that the court apply *cy pres* principles to give effect to the settlor's general charitable intent.⁵⁷³

supra note 476, at 167.

567. J. Kendall Woodley, *Brown v. Board, Forty Years Later: Promises to Keep*, FARM. HERALD, May 20, 1994. Woodley, the HERALD's editor, is a white member of the local branch of the NAACP. Phelps, *supra* note 16, at A6.

568. *Hermitage Methodist Homes v. Dominion Trust*, 387 S.E.2d 740 (Va. 1990).

569. *Id.* at 741.

570. *Id.* at 742.

571. *Triplett v. Trotter*, 193 S.E. 514 (1939) (construing the statute to this effect). It was later repealed as a new statute reenacted without the discriminating provision. VA. CODE ANN. § 55-26.1 (Michie Repl. 1995); *Hermitage Methodist Homes*, 387 S.E.2d at 742.

572. *Hermitage Methodist Homes*, 387 S.E.2d at 744.

573. *Id.* at 742. This entire argument would seem more plausible if the beneficiary schools had not virtually all been segregation academies, and the will had not been revised

The court assumed without deciding that the offending provisions were void, but it decided the case in Hermitage's favor anyway. It characterized the "whites only" language as a special limitation,⁵⁷⁴ which "marks the utmost time of continuation of the estate."⁵⁷⁵ Since the limitation was unlawful, the court had to terminate the gift.⁵⁷⁶ All of the gifts limited by the "whites only" condition, such as Prince Edward School Foundation's, failed, leaving only Hermitage Methodist Homes as a beneficiary.⁵⁷⁷ Therefore, the court awarded the trust income to Hermitage and the Foundation went away with nothing.⁵⁷⁸ Perhaps mercifully, the United States Supreme Court refused to grant certiorari.⁵⁷⁹

with the same language in 1964. See Entin, *supra* note 465, at 779-80. Cf. *Evans v. Abney*, 396 U.S. 435, 441 (1970) (failure to apply *cy pres* to integrate a public park left in trust for whites only does not violate the Fourteenth Amendment where evidence suggests settlor would rather have trust fail if particular purpose cannot be accomplished).

574. *Hermitage Methodist Homes*, 387 S.E.2d at 746. For criticism of this characterization, see generally Entin, *supra* note 465.

575. *Hermitage Methodist Homes*, 387 S.E.2d at 745 (quoting 1 MINOR ON REAL PROPERTY § 525, at 690 (Ribble ed., 1928)).

576. *Id.* at 746.

577. *Id.* at 747.

578. *Id.* at 747.

579. *High Court Upholds Idea Discriminatory Wills Are Illegal*, UPI, Oct. 9, 1990, available in LEXIS, Nexis Library, UPI File.