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## A Tragic Decision

The story of the decline and fall of Syracuse is a tale of despair that afflicted much of urban America—especially cities in the Northeast and Midwest. These powerhouses of the industrial revolution changed the face of America in the nineteenth century, as workers left farms and immigrants came from abroad to seek higher paying jobs in the new factories. Industrial cities were the objects of a second great migration during and after World War II, when millions of blacks came north seeking those same jobs—now opened to them by federal laws that barred racial discrimination in defense plants or in any firm that received federal contracts.

The reasons why cities like Syracuse imploded are complex. They were hobbled by state laws that prohibited annexation or made it difficult, greatly reducing the tax base as new plants were built in suburbs where land was cheaper and taxes lower. They were swamped with brownfields saturated with chemical wastes from old industries. In Syracuse, the Solvay Process company, for example, left small mountains of pollutants on the shores of Onondaga Lake from its soda ash production. The urban infrastructure of dense older cities—from sewage pipes to roads and bridges—started to crumble and was costly to repair or replace. Cities failed to attract new industries and to make a

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transition to a more information-based economy. From 1970 to 2000 the Syracuse metropolitan area lost 30 percent of its manufacturing jobs, while Raleigh's industrial based grew by 93 percent. Northern and midwestern cities suffered from political corruption, bloated bureaucracies, and a failure of vision. In the last quarter of the twentieth century, the suburban middle class pictured cities as having a deserted downtown, abandoned houses, drug traffic, drive-by shootings, and concentrations of poor and minority children in bad schools. All of those things were true of Syracuse.

Nevertheless, the notion of middle-class flight has been overstated. Most people living in suburbs today were born there, although their parents or grandparents may have fled the city. Some left out of fear or racism: polls taken in the 1960s and 1970s showed that many whites did not want to live near blacks. The most common reasons cited were a drop in property values and an increase in crime.<sup>1</sup> Yet most of the people who held these views were not conscious racists, any more than I was when I bought a house in Skaneateles in 1972. They saw themselves as playing their part in the American dream: moving up to a higher standard of living, providing a safer environment for their children, and owning a half-acre of bliss. And—no small matter—they sought to enroll their children in newly minted public schools where parents would have a voice, which was not the case in an urban bureaucracy.

Perhaps these upwardly mobile migrants did not perceive or understand the long-term consequences when cities like Syracuse were unable to enrich their tax base and reduce concentrations of the poor by annexing suburban school districts. Not all suburbanites were aware of racist redlining practices that kept blacks from getting mortgages in the city, owning their own homes, and taking pride in the maintenance of their urban neighborhoods. Some may not have known the degree to which

suburban zoning policies prevented poor and black people from buying affordable homes in affluent communities. Or how difficult it was for a poor or minority person to use a federally subsidized housing voucher to rent a home in the suburbs. Or the horrendous effects of destroying neighborhoods in the name of urban renewal, only to concentrate poor minorities in huge, barren housing projects overrun by gangs.

The result of these policies was to create an invisible wall between cities and suburbs. On one side of the wall were greater and greater concentrations of the poor and minorities—those with the greatest needs and a smaller tax base to provide resources. By the year 2000, more than half the children in Syracuse public schools were poor and minority, and three quarters of all fourth and eighth grade students failed state tests in reading and mathematics. On the other side of the wall, in the suburbs, where less than 2 percent were black and only 4 percent lived in poverty, 70 to 85 percent of schoolchildren passed the same tests. In Raleigh's schools—where city and suburban children were merged in a single countywide school system—more than 90 percent of students in grades 3 through 8 passed statewide exams by 2003. In the 1990s as New York and other states began to publish the scores for all their schools—with whole sections of newspapers devoted to detailing the results—not only suburban parents but more and more of those in the city concluded they would be bad parents if they did not make every effort to keep their children out of city schools.

#### Prescriptions for Urban Ills

Syracuse is a textbook example of misbegotten efforts to save America's cities through urban renewal in the 1960s. In retrospect, these federally funded programs look more like a trans-

portation plan than anything that could be called renewal. Neighborhoods of the poor were bulldozed to provide more parking spaces for suburban commuters. Interstate highways made it easier for them to get to their offices by day, or to the symphony in the evening, and back home again without having to rub elbows with the city's poorest citizens. Later, as offices moved from cities to shinier accommodations in the suburbs, even the parking lots became empty eyesores.

In a new effort to revitalize the city beginning in the late 1990s, many reports were written and many experts spoke. Andres Duany came to present a plan based on the "New Urbanism." A team of architects spent a week assessing Syracuse and talking with local leaders about remedies. An "Under 40" group was formed to hear what would keep young talent from abandoning the city. Syracuse leaders joined together to form "20/20" whose aim was to develop a vision for the future. On one occasion the city convention center opened a kind of bazaar featuring various kinds of urban improvements. As citizens came through the door they were given tokens and invited to vote on their favorite reform by dropping the tokens into receptacles displayed at each booth. Apparently the Syracuse cyclists were well organized. The biggest vote by far was for more bike paths.

Major effort was expended on economic development. By 2006 New York's Empire Zone program provided tax breaks totaling more than \$500 million annually to aid businesses to expand or relocate in high-poverty areas. But the program was flawed and produced few new jobs. One investigation showed that many businesses in the Syracuse area and elsewhere simply reincorporated under a slightly different name in a newly declared Empire Zone, claiming to start with zero employees, then "adding" those already hired at the old firm along with some new hires—what critics called "a change of shirt" that actually

did little to revitalize the community.<sup>2</sup> Syracuse gave tax breaks to the developers of Destiny USA who promised in the early 1990s to build not only a mall but a Disney-size development on the shores of Onondaga Lake that would be filled with office buildings, hotels, upscale restaurants, an aquarium, and a new harbor with 144 boat slips that would draw 35 million visitors a year. Fifteen years later it was still just a shopping mall.<sup>3</sup>

A Miami investor, Eli Hadad, created great excitement by purchasing sixteen historic buildings downtown, which he planned to turn into high-end apartments and condominiums, or so he said. A few years later nothing had been done, and he sold them all. Some empty-nesters had begun to return to the city but on nothing like the scale Hadad imagined. The distinguished 600-room Hotel Syracuse closed in 2004. A downtown arts corridor, announced with great fanfare, faltered when financing fell through. The biggest downtown employer, Excellus Blue Cross, moved to the suburbs. The assessed value of Syracuse's downtown properties fell by half, from \$1.5 billion in 1976 to \$729 million in 2007. This devaluation meant a loss of \$28 million a year in tax revenues that could have helped rebuild Syracuse's schools and parks.<sup>4</sup>

In 2006, nearly fifty years after Raleigh established its Research Triangle Park linking North Carolina State to Duke University in Durham and the University of North Carolina at Chapel Hill, Syracuse announced its own triangle linking Syracuse University with the University of Rochester and Cornell University. However, this initiative focused on the humanities, not on the kinds of scientific research and technological innovation that drew new firms to Raleigh. While a new humanities center was a worthwhile enterprise, it did not do much for economic development.<sup>5</sup> A few new firms came to Syracuse, but the area continued to lose some of its biggest employers, and in the case of

Carrier Air Conditioning Syracuse's loss was North Carolina's gain. Bristol Meyers Squibb pharmaceutical company kept some of its Syracuse operation in business but chose to build a new \$660 million plant for 550 workers in Massachusetts. Nestle Chocolate closed the doors on 467 employees. Nearly 300 people lost jobs when Syracuse China, one of the city's oldest firms, shut down in 2008.

Some developments, such as a new convention facility named Ocenter, were built and took off. What had been largely a warehouse district in downtown Syracuse was developed into a lively arts and entertainment district called Armory Square. Clinton Square in the heart of the city underwent a major redesign, with water fountains programmed to create different patterns of spray similar to those in New York's Lincoln Center. It became a place where people wanted to gather and where music festivals drew large crowds. A decades-long effort to clean up Onondaga Lake started to show results as fish returned to what had been one of the most polluted lakes in the nation. Syracuse University established a new bus route called the Connective Corridor that made it easier for the university's 15,000 students to connect with downtown.

Decline was reversed in Westcott and a few other neighborhoods in Syracuse. As citizens pushed the city to improve code enforcement, streets were repaved and crumbling sidewalks re-stored. Low-cost loans and grants, both state and federal, helped low-income homeowners to paint their houses, repair sagging porches, replace leaky roofs, and fix broken plumbing. Some new housing went up on cleared lots in the city. But these neighborhood improvements were marginal. The city as whole was still depressed. More than a thousand houses in the inner city were vacant and boarded up, and the landscape throughout the city was pockmarked with vacant lots. There was no significant

return of young homesteaders or the middle class to Syracuse. Its overall population continued to decline in the early years of the twenty-first century, with the sharpest drop among those aged 18–24. Nearly half of Syracuse's ninth graders failed to graduate from high school.

The economic health of the city was among the worst in the nation. A 2007 study by the Brookings Institution ranked all cities in the United States on two indicators of economic success. The first measured growth in employment and in annual payroll. The second measured economic well-being based on median family income, the depth of poverty in each city, and unemployment. Of the 302 cities with more than 50,000 residents, Syracuse ranked 297th on growth and 279th on well-being. Raleigh ranked 13th on growth and 24th on well-being.<sup>5</sup>

#### Why Revitalization Efforts Failed

Like most of the distressed cities on the bottom third of the Brookings list, Syracuse failed to rebound because it did the conventional things to draw the middle class back into the city. It built a glamorous new convention center and opened a new art museum. It encouraged entrepreneurs to develop restaurants and jazzy new boutique venues in old historic districts. It supported gentrification of architecturally distinctive neighborhoods. But these were cosmetic applications to the face of a dying city. Syracuse failed to touch the cancer that was growing and destroying it from the inside—its failing public school system. Virtually every major report on the urban crisis in America has pointed to the necessity of restoring safe neighborhoods and good schools. But you don't get one without the other. You don't get good neighborhoods or attract new firms to a city with bad schools. And you don't get good schools by simply pour-

ing money into institutions that have become repositories of the city's poorest citizens.

But that's what schools in Syracuse and many cities had become at the end of the twentieth century, and money was seen as the "solution" to disastrous educational outcomes. The mayor's reelection report card, "Syracuse Is the Shining Light," noted that funding had increased 25 percent from 2001 to 2006, and listed this among the city's major achievements. But the report card said nothing about the high failure rates of Syracuse students on state math and reading exams.<sup>7</sup> Even with enormous increases in funding, salaries for teachers in Syracuse and other urban systems were far below those in affluent suburban schools where teaching conditions were better.<sup>8</sup>

Teacher turnover rates were also highest in urban schools. As a rule, good teachers do not want to work in schools with high concentrations of poverty because they face insurmountable odds. Children who are undernourished and in poor health, who don't get regular checkups for physical, dental, or eye care, whose families are frequently evicted, leading to higher rates of absenteeism, who are kept at home to mind younger children because parents or guardians are working, who have been arrested, who join gangs, intimidate other students, abuse drugs, and threaten teachers—these are not the kinds of students likely to perform well on mandated state tests or succeed in a college-prep curriculum. Many such children are unable to read at anything approaching grade level. A report by the Public Policy Institute of California showed that the average reading level of tenth graders in high-poverty schools is about the same as that of fifth graders in the most affluent schools.<sup>9</sup>

Funds to put health clinics in urban schools, to pay teachers a premium for teaching in high-poverty areas, to invest in early childhood education, after-school programs, and summer classes,

and to provide vouchers for more stable housing are desperately needed and are money well spent.<sup>10</sup> These steps will ameliorate the conditions in urban schools, but they will not provide educational opportunities equal to those of children in suburban schools. Schools in cities like Syracuse that have essentially become segregated institutions for the poor cannot be equalized solely by pumping more dollars into them. Syracuse already spends more per pupil than does Raleigh, but its results for poor and black children are shameful in comparison.

What Raleigh did—and what cities like Syracuse should have done—was to break down the invisible wall between city and suburbs to ensure that every school had a healthy mix of children by race and socioeconomic class. In the merged Raleigh-Wake County school system, no schools had the failure rates that were common in Syracuse. Revitalization in Syracuse failed because most of its schools were identified as repositories for minorities and the poor. No matter how many new convention centers might be built, the middle class was unlikely to be drawn to a city where it could not, in good conscience, send its children to public school. Neighborhoods would not flourish there, technology firms would not locate there, and the so-called “creative class” would not become urban pioneers there.

Syracuse tried at one point to balance its schools racially and economically. In the late 1960s, under the force of a state law, Syracuse adopted a plan to desegregate its city schools. When the plan was fully implemented in the early 1970s, some city high schools, like Hamilton, went from 90 percent white to 50 percent black practically overnight. Schools and teachers were unprepared for such massive change, and riots broke out in two high schools. If racial desegregation had occurred on a metropolitan basis and had included the county school population, which was 92 percent white, the proportion of black and poor children in each school would have dropped to the single digits.

Desegregation would not have swamped the resources of any school or upset each school's ability to peacefully absorb a small proportion of new students.

While some white flight began with the onset of the desegregation plan in Syracuse, the major emptying out of the city by middle-class whites did not come until the 1970s, after a series of Supreme Court decisions forced desegregation on northern cities. Though it is now difficult for many to recall, for more than two decades after the 1954 *Brown* decision, segregation was widely regarded solely as a southern problem. Racial apartheid—laws promulgating separate schools for blacks and whites—was a southern creation, and virtually all the cases seeking to overturn segregated schools that reached the Supreme Court came from southern and border states. In the view of pious northerners, it was the South that had a problem with the separation of people by race, not the North.

The Court struck down those apartheid laws in the *Brown* decision, but only minimal desegregation took place until 1968, when the Court ~~lost its patience and said it was no longer enough~~ to simply allow black students to apply to white schools but that school boards had an affirmative obligation to desegregate schools. In *Green v. County School Board of New Kent County*, a rural school district south of Richmond, the Court ruled that the School Board must “come forward with a plan that promises realistically to work, and . . . to work now.”<sup>11</sup> It was a major shift that turned desegregation from a trickle to a flood in many southern school districts.

Three years later, the Court went further, ordering county-wide busing to achieve desegregation in Charlotte, North Carolina. Charlotte and its surrounding Mecklenburg County had merged years earlier for reasons having nothing to do with desegregation. Under a minimalist integration plan, its schools had remained largely segregated, although now within one school

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district. Two thirds of the black students attended all-black schools. District Judge James B. McMillan's remedy divided the county school zones into pie-shaped wedges extending from the center of the city outward into the suburbs, so that every school would be racially balanced. Blacks made up 29 percent of the total school population, and under the new busing plan black enrollment within each school would range from 9 to 38 percent. Although the Fourth Circuit Court of Appeals struck down McMillan's busing plan, it was later upheld by the Supreme Court, which accepted not only the need for widespread busing between Charlotte and its suburbs but also the principle of achieving a reasonable racial balance in all schools throughout the county.<sup>12</sup>

*Notes*  
*Mr. Boston*

The Supreme Court first ordered school desegregation in the North in a 1973 case that arose in Denver. It was also the Court's first ruling that began to erase the distinction between de jure and de facto discrimination. While no law in Denver separated the races (de jure segregation), the actual or de facto segregation in schools was the result of manipulation of student attendance zones, school site selection, and feeder patterns designed to keep blacks out of white schools. It was the intent of those policies that mattered, not the language. Government policies in the North were having the same effect as the laws in the South that had been struck down—they were establishing dual school systems, and therefore they required the same remedy.<sup>13</sup> But the remedy in Denver's case was restricted to the city's school system, and did not include the suburbs.

### The Tragic Case of Detroit

The following year the Court heard an appeal to reverse the metropolitan desegregation plan in Detroit, which would have inte-

grated the city's students with those in suburban schools, based on a logic similar to that in the Charlotte case. But the Court refused to apply the logic of the Charlotte decision to Detroit and instead struck down the Detroit desegregation plan. It was a tragic decision that in many ways sealed the fate of cities in the North. Arguably, more than any other single factor, the Detroit ruling ensured that black and poor children in cities like Syracuse would continue to be segregated and that city school systems would have no power to merge with suburban schools.

The Supreme Court overturned Detroit's metropolitan desegregation plan by a narrow 5-4 decision. But for one vote, a middle-class exodus would have been greatly curtailed. Some families would have continued to depart for the suburbs no matter what the Supreme Court decided. But other parents would have thought, why abandon the city if our children can attend the same schools as those in the suburbs, which will be equally integrated on a much fairer basis than an integration plan restricted to the city only. In fact, that is what happened in Raleigh, where city property values rose after the merger with the county schools.

Though Detroit was a much larger city than Syracuse, its history of racial segregation was similar. The state of Michigan fixed the city's boundaries in 1926 when it adopted restrictive annexation laws limiting expansion of the city and ensuring that postwar growth would occur in legally separate suburbs. Detroit was only 4 percent black in 1930, but President Roosevelt's 1941 executive order forbidding racial discrimination in defense industries brought tens of thousands of blacks to Detroit in the 1940s and thereafter. Restrictive covenants, white preferences, and discrimination by real estate brokers kept them within clearly defined black neighborhoods in the inner city.

By 1970, the population of Detroit was 40 percent black, and

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its school-age population was 52 percent black. Detroit obtained \$360 million in federal funds for a model schools program in the 1960s, but it did little to change opportunities for African American children. In litigation that led to the Detroit decision, an NAACP legal team contended that the apartheid housing system was due to deliberate policies. Attorneys for the plaintiffs documented dozens of actions by city officials to maximize segregation by redrawing attendance boundaries and by establishing transfer policies that allowed white children to escape from predominantly black schools.<sup>14</sup> They also showed that the state of Michigan had taken action to unlawfully maintain segregated schools when the legislature nullified a plan to integrate Detroit's schools in the spring of 1971.<sup>15</sup>

The case was heard by Federal District Court Judge Stephen Roth, a conservative among Michigan Democrats whose decision surprised many. Judge Roth left no doubt that he was convinced of the evidence:

The city of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the large metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record, there can be no other finding.

In light of the eventual reversal of this opinion, it is important to note that Judge Roth's findings were not restricted to the city of Detroit. He also pointed to segregative policies pursued at the state and federal level that created a deep divide between north-

ern cities and their suburbs. His finding that these government policies constituted a form of de jure segregation throughout the metropolitan area broke new ground:

Government actions and inactions at all levels, Federal, State, and local, have combined with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation through the Detroit metropolitan area. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community . . . as we know the choice of residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, that is, racially and economically harmonious. The conditions created continue.<sup>16</sup>

Roth concluded that a desegregation plan limited to the city of Detroit simply would not work. Its public schools were approaching a two-thirds black enrollment. Integration solely within the city would not achieve a fair balance of white and black students, and, he predicted, it would lead to more white flight and ever-greater concentrations of minority and poor pupils.

Even before Judge Roth announced a remedy in 1972, the Detroit School Board voted not to contest his finding of de jure segregation. The board urged Roth to develop a metropolitan remedy that would include busing across city-suburban boundaries. Roth eventually approved a plan that divided the metropolitan area into 17 moderately sized school districts, each containing a strong majority of white suburban students and a slice of the increasingly black central city. Each of the districts would be about 25 percent black. The faculty of each school would be at least 10 percent black and the student enrollment would be between 20 and 31 percent black.<sup>17</sup> It was remarkably similar

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to the remedy the Supreme Court had approved in Charlotte, where the city and its suburbs were divided into pie-shaped zones.

Immediately, opponents wildly exaggerated the amount of busing that the Detroit plan would require. Many newspapers uncritically published reports saying that more than 300,000 pupils out of 780,000 in all seventeen districts would be bused, neglecting to mention that most of these students in both the city and its suburbs were already being bused short distances to school. A more realistic estimate would entail the busing of about 40,000 additional black students and a similar number of whites.<sup>18</sup>

Suburban districts opposing the plan joined the State of Michigan in an appeal. A three-justice panel of the Sixth Circuit Court of Appeals upheld Judge Roth's ruling. The plaintiffs then filed for a rehearing before the full Appeals Court, which in 1973 also affirmed Roth's finding that unconstitutional violations were committed by state officials and agreed the metropolitan area desegregation plan was the only feasible solution.

The U.S. Supreme Court heard the case in 1974 and reversed Roth's decision by a 5 to 4 vote. The majority disagreed that state policies and the history of racial residential segregation stemming in part from actions of government agencies constituted de jure segregation that justified a metropolitan desegregation remedy. The Court ruled that such a remedy could be justified only if it were shown that suburban school districts had barred black students from attending suburban schools. Hence, the desegregation remedy could be applied only to schools within the city of Detroit, which had committed de jure violations by gerrymandering school boundaries and adopting other discriminatory policies.

The Supreme Court's majority opinion also argued that the consolidation of suburban and city school districts would be disruptive and "give rise to an array of other problems in financing and operating this new school system." It raised questions about the status of school boards in the consolidated districts and asked who would determine curricula, "establish attendance zones, purchase school equipment, locate and construct new schools, and indeed attend to all the myriad day-to-day decisions that are necessary to school operations?" The Court's majority did not acknowledge that New York City and other large school districts had solved such problems, and that Charlotte had done so under the Court's own order.<sup>19</sup>

Justice Byron White, writing the dissenting opinion joined by Justices William Brennan, William Douglas, and Thurgood Marshall, concluded "that deliberate acts of segregation and their consequences will go unremedied, not because a remedy would be infeasible or unreasonable in terms of usual criteria governing school desegregation cases, but because the remedy would cause what the Court considers to be undue administrative inconvenience to the State." White was "even more mystified as to how the Court can ignore the legal reality that the constitutional violations, even if occurring locally, were committed by government entities for which the State is responsible and that it is the state that must respond to the command of the Fourteenth Amendment." The dissent concluded that a metropolitan remedy is "well within . . . the powers of the State." In his concurring dissent, Justice Marshall proved correct: "Because of the already high and rapidly increasing percentage of Negro students in the Detroit system, as well as the prospect of white flight, a Detroit-only plan simply has no hope of achieving actual desegregation."<sup>20</sup>



### The Nixon Court

The narrow decision to quash the Detroit metropolitan desegregation plan was rendered by five judges, four of whom President Nixon had appointed: Warren Burger, Harry Blackmun, Lewis F. Powell Jr., and William Rehnquist. While Nixon stated publicly that his intention was to appoint strict constructionists without any test of their views on particular cases, his private transcripts revealed that he applied a severe test to each of the nominees he considered: the candidate must be against busing. Nixon's practice of taping his White House conversations gave a rare glimpse into how he packed the Supreme Court against busing. On September 29, 1971, the morning after Judge Roth announced his decision, Nixon was meeting with his top aide and chief of staff, Bob Haldeman, who told him that the Detroit decision ordered "forced busing," a term Nixon often used, and then said: "Wait until you get your Court, maybe you can get it turned around."

With the opportunity to appoint two justices that fall, Nixon considered more than a score of nominees. He eventually appointed Rehnquist and Powell. Fearing that his earlier record as head of the Richmond School Board during its resistance to desegregation and his membership in an all-white country club would derail his nomination, Powell hesitated to accept. Rehnquist, who was then an assistant attorney general in the Justice Department, had been accused of harassing black voters at the polls in Phoenix, Arizona, in 1968, and in 1952 when he was a clerk for Supreme Court Justice Robert Jackson he had recommended against the *Brown* desegregation decision.<sup>21</sup> "Separate but equal" facilities were all that the Constitution required. Rehnquist had written in a memorandum. Under questioning during his Senate confirmation hearings, Rehnquist admitted he had written the memo but claimed that it did not reflect his own po-

sition; he was merely summarizing Jackson's position. A law clerk who served with Rehnquist at the time testified that these were Rehnquist's own views. In the end, both nominees were confirmed.

Nixon repeatedly applied the anti-busing test to any candidate under consideration for the Court. In one exchange with Haldeman while they were waiting for Attorney General John Mitchell to enter the Oval Office, Nixon said, "Whatever happens in the [1972] election, we will have changed the Court. I will have named four and, Potter Stewart becomes the swing man. He's a God damn weak reed, I must say. But if we can get him on board, we'll have the Court." Soon after Mitchell took his seat, Nixon turned to the business of Supreme Court appointments, and to ensuring that conversations about his real criteria would be kept private: "With regard to this Court thing, John, of course, you and I have got to decide who we tell, so we'll get all the in-put we can. But just the two of us will talk." Then Nixon cut to the real litmus test: "I don't care if he's a Democrat or a Republican . . . within the definition of conservative, he must be against busing, and against forced housing integration [through vouchers]. Beyond that, he can do what he pleases."

Nixon was making sure that he would not have to ask any nominee about his stand on busing, while directing Mitchell and key aides to apply that test to any potential appointment they brought to the president's desk. Because of the possible retirement of a second justice, Mitchell suggested to Nixon that he might make a "double play."

Nixon: Well, even then I don't want a liberal.

Mitchell: Oh no, no.

Nixon: I don't want a liberal.

Mitchell: Absolutely not.

Nixon: I just feel so strongly about that. I mean, when I think what the busing decisions have done to the South, and what it could do with de facto busing [in the North].

Mitchell: I agree.

Before Mitchell left, Nixon underlined his instructions once again: "I want you to have a specific talk with whatever man you consider. And I have to have an absolute commitment from him on busing and integration. I really have to. Go out and tell 'em that we totally respect his right to do otherwise, but if he believes otherwise, I don't want to appoint him to the Court."<sup>22</sup>

Nixon got the Court he wanted. The four justices he appointed—replacing liberal judges of the Warren Court, including Chief Justice Earl Warren himself, along with Abe Fortas, Hugo Black, and John Marshall Harlan—radically changed the direction of the U.S. Supreme Court and provided the majority to stop desegregation at the city line in the North. The Warren Court had ordered desegregation of city and suburbs in Charlotte in 1968, but Nixon's Court refused to do so in 1974 in Detroit.

Ironically it was one of Nixon's appointees, Lewis F. Powell Jr., who made one of the sharpest attacks on the false logic of the distinction the Court had drawn between de jure and de facto segregation. In his opinion in the Denver case, "concurring in part and dissenting in part," Powell wrote:

We must recognize that the evil of operating separate schools is no less in Denver than in Atlanta. In my view we should abandon a distinction which long since has outlived its time, and formulate constitutional principles of national rather than merely regional application. . . . I would not . . . perpetuate the *de jure/de facto* distinction nor would I leave to petitioners the initial tortuous effort of identifying "segregative acts" and deducing "segregative intent." I would hold, quite simply, that where segregated public schools exist within a school district, there is a prima facie case that the duly constituted public authorities are sufficiently responsible to

warrant imposing upon them a nationally applicable burden to demonstrate that they nevertheless are operating a genuinely integrated school system.

Powell went on to note "in decreeing remedial requirements for the Charlotte-Mecklenburg school district," the Court "dealt with a metropolitan, urbanized area in which the basic causes of segregation were generally similar to those in all sections of the country." However, in the Detroit decision Powell contradicted himself, voting with the majority against a metropolitan remedy on the grounds that suburban school districts had not been guilty of de jure discrimination. Powell feared that busing on the scale required in Detroit would be too disruptive, and he was especially reluctant to order busing of elementary school children.<sup>23</sup>

Justice William Brennan tried to win Powell over, noting that he and Powell agreed on the illogic of the de jure/de facto distinction. In a memo circulated to Powell and the other justices, however, Brennan recognized that while they could agree on the causes of segregation, they could not agree on the remedy:

Although Lewis [Powell] and I seem to share the view that de facto segregation and de jure segregation (as we have previously used those terms) should receive like constitutional treatment, we are in substantial disagreement, I think, on what that treatment should be. Unlike Lewis, I would retain the definition of the "affirmative duty to desegregate" set forth in our prior cases. Lewis's approach has the virtue of discarding an illogical and unworkable distinction, but only at the price of a substantial retreat from our commitment of the past twenty years to eliminate all vestiges of state-imposed segregation in the public schools. In my view, we can eliminate the distinction without cutting back on our commitment, and I would gladly do so.<sup>24</sup>

But Powell voted with the Nixon majority in the Detroit case. Only a week after the Supreme Court overruled Judge Roth, the

U.S. House of Representatives passed a bill placing restrictions on busing to achieve school integration. Although it was not as strong as the bill Nixon had earlier endorsed, *The New York Times* noted that the Court's decision "banning the busing of children across school district lines for desegregation in Detroit had made it easier for the House to accept" an anti-busing bill. Senator John L. McClellan of Arkansas, in a hearing on equal educational opportunity, accused the federal government of "monumental hypocrisy" in forcing southern schools to desegregate to a level that was intolerable in the North. Mixing sarcasm with extensive citations of "flagrant violations," McClellan assailed both Democratic and Republican administrations for failing to act against what he called officially sanctioned school segregation in the North.<sup>25</sup>

McClellan and Nixon both read the polls, and they knew a major shift in attitudes about school desegregation was under way. The North had no Jim Crow laws, but it had plenty of racism. In 1942 only 38 percent of white Americans agreed that whites and blacks should go to the same schools. It was not until 1956, two years after the Supreme Court outlawed school segregation in the South, that 50 percent of whites agreed that both races should attend the same schools, rising to 86 percent by 1972 and 96 percent by the end of the century.<sup>26</sup>

While there was wide agreement on the principle of racially integrated schools, there was bitter disagreement about how it should be achieved. In the 1960s, polls asking whites whether the government should intervene to bring about school integration revealed a major split between attitudes in the North and the South. In 1966, when most in the North saw resistance to school integration as primarily a southern problem, 60 percent of northern whites agreed that "Washington should see to it that white and black children go to the same schools"; only 35 percent of those in the South held this view. By 1976, two years

after the Supreme Court banned metropolitan busing in Detroit, northern support for government intervention to integrate schools dropped to the same low level as in the South.<sup>27</sup>

Although Black Power advocates argued against integration and in favor of keeping blacks in their neighborhood schools, a majority of African Americans continued to agree that government should intervene to bring about integration. But even black support dipped from 86 to 76 percent after the Supreme Court's Detroit decision. Asked specifically about cross-district busing in 1974, the year of much media coverage of the Detroit decision, 63 percent of blacks said they were in favor of "busing black and white children from one school district to another" to achieve racially desegregated schools, compared with only 15 percent of whites.<sup>28</sup>

George C. Wallace, the segregationist governor of Alabama, playing to white anxieties about integrated housing and desegregated schools, made an impressive showing in a number of Democratic presidential primaries in 1972, earning more than 40 percent of the vote in Maryland, Michigan, and Wisconsin.<sup>29</sup> By the mid-1970s even liberal Democrats, especially those dependent on white suburban votes, were condemning busing. Senator Joseph R. Biden Jr., Democrat from Delaware at the time, attracted other liberals to an amendment that would "prevent Federal bureaucrats from ordering busing." Senator Jacob Javits, a liberal New York Republican who would not go along, said of those who did, "They're scared to death of busing."<sup>30</sup>

Earlier, Senator Abraham Ribicoff of Connecticut had also risen to speak against the hypocrisy of condemning segregation only in the South:

Unfortunately as the problem of racial isolation has moved north of the Mason-Dixon line, many northerners have bid an evasive farewell to the hundred-year-old struggle for racial equality. Our

motto seems to have been "Do to southerners what you do not want to do to yourself." Good reasons have always been offered, of course, for not moving vigorously ahead in the North as well as the South. First, it was that the problem was worse in the South. Then the facts began to show that was no longer true. We then began to hear the *de facto-de jure* refrain. Somehow residential segregation in the North was accidental or *de facto* and that made it better than the legally supported *de jure* segregation in the South. It was a hard distinction for black children in totally segregated schools in the North to understand, but it allowed us to avoid the problem.<sup>31</sup>

Justice Powell took pleasure in quoting Senator Ribicoff, who, like himself, also recognized the unfairness of applying a different standard in the North than in the South. But Nixon's test for his Supreme Court appointees had triumphed. As Haldeman had predicted, Nixon got his Court. And the Nixon Court never approved metropolitan desegregation in the North.<sup>32</sup>

## 6

### What Should We Hope For?

Four years after Supreme Court Justice Lewis Powell Jr. supplied the deciding vote that quashed the Detroit metropolitan desegregation plan, he shifted his view closer to the position of the liberal minority on the Court on the issue of affirmative action. Powell again provided the deciding vote in a 5-4 decision that allowed colleges and universities to use race as a factor in college admissions.<sup>1</sup> It is tempting to speculate that he might have voted differently on metropolitan desegregation if he had remained on the Court long enough to see the success of city-suburban busing in Raleigh and Charlotte.

In 1954 virtually all members of the United States Senate and the House of Representatives from the Old South had signed the "Southern Manifesto" in opposition to the Supreme Court's decision outlawing school segregation in *Brown v. Board of Education*. Despite this strong initial resistance, large-scale metropolitan desegregation was eventually achieved in the South. Would the anti-busing frenzy have resulted in a "Northern Manifesto" if the Supreme Court had ordered school desegregation in metropolitan Detroit? Would the Supreme Court have voted differently or would public reaction to metropolitan desegregation have been different if we had known then what we know now?

Hope and Despair

in the American City

Why there are  
no bad schools  
in Raleigh

Gerald Grant

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