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The Charlotte-Macklenburg Case - Its Significance for Northern School Desegregation

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Brown v. Board of Education[1] stands for the proposition that the equal protection clause prohibits the operation of a "dual school system" and requires the conversion of that system into a "unitary nonracial school system." Under a dual system, students are assigned to schools on the basis of their race in order to segregate them. That is clearly impermissible. But what is a permissible basis for assigning students to schools under a "unitary nonracial school system"? This seems to be the central riddle of the law of school desegregation.

There is one easy answer to this question: Under a "unitary nonracial school system" students may be assigned to schools on the basis of any criterion other than race. But there is an understandable reluctance to accept this answer. This stems from the fact that even if some seemingly innocent criterion is substituted for race as the basis for assignment, virtually the same segregated patterns of student attendance that existed under the dual system might result—whites in one set of schools and blacks in another. Moreover, there are reasons to be concerned with this result, even assuming race is not the basis for assignment. The concern might be predicated on a fear of "evasion"—if the school board is allowed to use any criterion other than race, it might be able to accomplish the same thing as it did under the dual school system. The concern with the result might also be based on the view that a segregated student attendance pattern alone—without regard to the basis for assignment—gives rise to an inequality. The segregation might stigmatize the blacks, deprive them of educationally significant contacts with the socially and economically dominant group, and reduce the share of resources allocated to black schools simply because they are attended only by members of the minority group.

But, of course, the picture is not all one-sided. There are several countervailing factors that have the effect of diluting this concern

† Professor of Law, The University of Chicago. This article is a modified version of a statement delivered to the Select Committee on Equal Educational Opportunity of the United States Senate on June 15, 1971.

1 347 U.S. 483 (1954); 349 U.S. 294 (1955).

with the mere result—the segregated pattern of student attendance. One is the uncertainty surrounding the central empirical proposition that a segregated pattern of student attendance itself leads to inferior education for blacks. Another is the price of a remedial order eliminating the segregated school pattern. Such an order would probably divert financial resources because of the expense of transportation and frustrate the intense associational desires of large parts of the community. A court aware of these costs is likely to feel a need to justify its action in terms that have the quality of a moral imperative. A justification couched in terms of the wrongness of excluding individuals from a school because of their race—the classic concept of racial discrimination—certainly has that flavor. But one cast primarily in terms of the alleged inferiority of racially homogeneous schools does not.

These conflicting considerations account for the uncertain nature of the law of school desegregation. The controversy has in large part been over two approaches—one that forbids only the use of the racial criterion as the basis of assignment (sometimes referred to as a de jure approach), and the other that focuses on the result, the segregated patterns themselves (sometimes referred to as a de facto approach).[2] It is the latter approach which presents the greatest challenge to the school segregation of the North, for the assumption is that students in the North are assigned to schools, not on the basis of race, but instead on the basis of a seemingly innocent criterion—geographic proximity. The controversy between these two approaches is far from resolved, but there has been a historical trend. I would like to suggest that the trend of school desegregation doctrine has been one in which the courts have rejected an approach that forbids only the use of race and have moved in the direction of the result-oriented approach.

I

The first significant development in Supreme Court doctrine occurred in 1968 in *Green v. New Kent County School Board.*[3] There the criterion for student assignment was individual choice. Under the Board's plan, no student was assigned to a school on the basis of his race. Instead, all students, black and white, were assigned on the basis of their own choice. The result was that some blacks attended the formerly all-white school, most blacks remained in the black school, and no whites attended the black school. The Court declared that in the school system before it, freedom-of-choice was an impermissible

2 These issues are surveyed in more detail in an earlier article of mine, *Racial Imbalance in the Public Schools: the Constitutional Concepts*, 78 HARV. L. REV. 564 (1965).

3 391 U.S. 430 (1968).

basis for assigning students to schools. The freedom-of-choice plan, the Court concluded, had failed to "work." It had failed to produce a "unitary nonracial school system"—a system, so the Court said, in which there are not black schools and white schools, but just schools.

Despite the captivating quality of these phrases, they do not indicate the basis for invalidating the choice plan. The Court said that it was not ruling freedom-of-choice plans unacceptable in all circumstances, but it failed to identify the particular circumstances that rendered the New Kent County plan unacceptable. The Court carefully avoided resting its decision on the view that the result was the product of threats or that procedural irregularities of the plan interfered with the exercise of choice. However, the Court did not say that a student assignment plan would be deemed to "work" only when it produces an integrated pattern of student attendance—when it eliminates, to the extent possible, the all-black school. The message that emerges from *Green* is a negative one—that a school board does not fulfill its duty to convert to a unitary system by substituting for a racial criterion one that is innocent on its face. In effect, the Court rejected the simple formula that reduced the equal protection clause to a prohibition against the use of race as a basis of assignment and thereby permitted the use of any other criterion. In 1968 this was a considerable achievement.

Further movement in this direction occurred this past term when in *Swann v. Charlotte-Mecklenburg Board of Education*[4] the Supreme Court once again considered the adequacy of student assignment plans. The Court reaffirmed *Green*'s rejection of the view that only the use of race is forbidden but took four additional steps.

First, the seemingly innocent criterion held inadequate in *Charlotte-Mecklenburg* was not the freedom-of-choice criterion of *Green* but one more common in the North—assigning students to the schools nearest their homes. This holding was not premised on a finding that the proposed geographic zones were "gerrymandered" in the *Gomillion v. Lightfoot*[5] sense. Instead, *Charlotte-Mecklenburg* holds that even if geographic proximity, not race, were the basis for the zones and thus for assignments, the Board's duty to convert to a "unitary nonracial school system" would not be satisfied.

Why is the use of this seemingly innocent criterion—geographic proximity—impermissible? The Court did not answer this question merely by pointing to the resulting segregated pattern of student atten-

4 Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971).

5 364 U.S. 339 (1960).

dance. The existence of this segregation was an important factor in its analysis, but the Court added another ingredient. It sought to show that the Board of Education was to some degree responsible for the segregation, thereby making it "state-imposed segregation." For this purpose, it focused attention on the Board's past wrongdoing. The Court saw a causal connection between the Board's past discrimination and present segregation, and on the basis of this connection attributed responsibility to the Board for the segregation.

Two types of connections are suggested in the opinion: (1) The past discriminatory conduct of a school board might have contributed to the creation and maintenance of segregated residential patterns which, when coupled with the present use of geographic proximity as the basis for assignment, produce segregated schools. The assumption is that, under the dual system, schools are racially designated as "white" or "black" and are located in different geographic areas, and that in the past racial groups chose to live near "their" particular schools. That choice might have been motivated by the desire of families to live close to the schools which their children attended, or it might have reflected the belief that the racial designation of a school also racially designated the residential area. (2) Prior decisions by a school board regarding the location and size of schools might in part explain why assigning students to the schools nearest their homes will result in racially homogeneous schools. Under the dual school system, school sites were selected and the student capacity of schools determined with a view toward serving students of only one race. These past policies are important because assignment on the basis of geographic proximity will not result in a racially homogeneous school unless, in addition to the existence of residential segregation, the school is so small that it serves only a racially homogeneous area or so situated that it is the closest school to students of only one race.

The second advance of *Charlotte-Mecklenburg* relates to the fact that these causal connections between past discrimination and present segregation are no more than theoretical possibilities and obviously involve significant elements of conjecture. The Court's response was to announce an evidentiary presumption that in effect resolves all the uncertainties against the school board. The Court quite consciously avoided holding that segregated student attendance patterns are, in themselves, a denial of equal protection, and instead emphasized the role that past discriminatory conduct might have played in causing those patterns. But the Court also said that it was prepared to presume an impermissible cause from the mere existence of segregation:

> Where the school authority's proposed plan for conversion

> from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.[6]

Concededly, the school board has the opportunity to show that the consequence—segregated schools—is not caused by its discriminatory action and that it is therefore not responsible for the segregation. In that sense the distinction between cause and consequence is preserved. But the distinction is likely to become blurred because the burden cast on the board is a heavy one. The burden cannot be discharged simply by showing that the school segregation is produced, given the segregated residential patterns, by assigning students on the basis of a criterion other than race, such as geographic proximity. The school board will also have to show that its past discriminatory conduct—involving racial designation of schools, site selection, and determination of school size—is not a link in the causal chain producing the segregation. This will be very difficult to do, and the difficulty of overcoming a presumption will tend to accentuate the fact that gives rise to it, namely, the segregated patterns, and this will be reflected in the board's assignment policies. Greater attention will be paid to the segregated patterns.

The third development relates to what the Court said must be done to eliminate these patterns—everything possible. Prior to *Charlotte-Mecklenburg* it was generally assumed that even if attention were focused on the result and a school board were obliged to eliminate the segregated pattern, the extent of the obligation would be simply "to take integration into consideration." Under this formulation of the remedial obligation, integration would be one value, along with others (such as minimizing the time and expense of transportation and avoiding safety hazards), that must be considered in designing attendance plans. There would be a rough parity among these values. In *Charlotte-Mecklenburg* the Court constructed a hierarchy among these values in which integration assumes a role of paramount importance. The Court declared that "the greatest possible degree of actual desegregation" must be achieved. The practicalities of the situation must, of course, also be taken into account, but the Court made clear that

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6 402 U.S. at 26.

if there is a conflict between integration and other values, integration will generally prevail.

Thus, the remedial plan in *Charlotte-Mecklenburg* requires a massive, long-distance transportation program: Students living closest to inner-city schools are to be assigned to suburban ones and students living closest to suburban schools are to be assigned to inner-city ones. True, this is the plan that had been formulated by the district court, and there is considerable language in the Supreme Court's opinion about the broad discretion that the district court has in fashioning a remedy. But the discretion the Court vests in the district court goes only to the question of how integration shall be achieved—the details of the remedial plan (such as which particular schools shall be paired for the transportation program). The lower court has no discretion to alter or disregard the central remedial obligation—achieving the greatest possible degree of actual desegregation—and the plan it approves will be measured by that stringent standard. That is why in a companion case involving Mobile, Alabama, the Supreme Court rejected a desegregation plan that allowed some all-black schools to remain in operation.[7] The elimination of that residue of segregation required assigning students across a major highway that divided the metropolitan area. For the Fifth Circuit, this factor constituted a sufficient practical barrier to relieve the school board of its obligation to remove all remnants of segregation from the system.[8] Nevertheless, the Supreme Court remanded because "inadequate consideration was given to the possible use of bus transportation and split zoning."[9]

Fourth, *Charlotte-Mecklenburg* is significant because it validates the use of race in student assignments when the goal is integration rather than segregation. In this context there is little room for the pretense of color blindness. In part this was anticipated in 1969 in *United States v. Montgomery County Board of Education*,[10] a case involving faculty assignments. There the Court affirmed a desegregation order requiring that teachers be assigned so that the proportion of white and black teachers in the system as a whole would be mirrored in each school. The achievement of that goal, in the face of preexisting segregated patterns, required that in the process of deciding where to assign teachers some weight be given to each faculty member's race. Similarly, in *Charlotte-Mecklenburg* the Court recognized that the achievement of student integration requires that race play some role in the process of deciding

7 Davis v. Board of School Comm'rs, 402 U.S. 33 (1971).

8 *Id.* at 36.

9 *Id.* at 38.

10 395 U.S. 225 (1969).

to which school a student will be assigned, and for that reason the Court permitted the use of this criterion.

This aspect of *Charlotte-Mecklenburg* undermines the constitutional basis for one objection that had frequently been voiced against remedial programs—whether court-ordered or voluntarily adopted—that were designed to eliminate segregation. More broadly, it indicates a conceptual departure from the approach to school desegregation that focuses exclusively on the racial criterion. In effect, it says that the prohibition of the equal protection clause against the use of race as a basis of assignment cannot be understood independently of the result. The prohibition against the use of race is linked to the result. Race is a forbidden criterion for assignment when it is used to produce segregation, but not when it is used to produce integration.

II

These four doctrinal advances of *Charlotte-Mecklenburg* occurred in response to a situation, not readily found in the North, in which a school board had maintained a "dual school system" in the recent past. The opinion appears to be further limited in its application by its emphasis on *recent*, as opposed to *ancient*, history. It suggests that the rules announced may be only transitional requirements.[11] Moreover, this concern with history has an analytical basis. It is used to attribute responsibility. The Court's insistence that the school board be responsible for the segregation is satisfied in *Charlotte-Mecklenburg* by finding a pattern of past discriminatory conduct. In time, however, the legacy of past discrimination may become so attenuated that it will be unrealistic to presume the existence of any causal connection between it and the present school segregation.

Nevertheless, it should be emphisized that this concern with recent past discrimination does not confine *Charlotte-Mecklenburg* to the

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11 The passage, which was obviously tacked onto the end of the opinion, indicating that it may have been exacted at the last moment in exchange for someone's vote, reads:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

402 U.S. at 32.

South. Until a few years ago, Southern school districts openly maintained dual school systems, and therefore the existence of past discriminatory practices can be established by admission. In Northern systems, there is no such admission. But that, of course, does not mean that the past discriminatory practices of the *Charlotte-Mecklenburg* type did not occur. It only means that they are more difficult, though not impossible,[12] to prove. In my judgment, a very close, hard look at the construction policies of Northern school systems would reveal numerous instances in which school boards in the recent past have chosen sites and determined capacity with an eye toward serving racially homogeneous areas—often called "neighborhoods." Instead of formally and openly designating a newly constructed school as the Negro school, a school board may have called it the Lincoln School or the Booker T. Washington School and staffed it only with black teachers.[13] The same message is conveyed.

Thus, there are some situations where, because of their recent past discrimination, Northern school systems can be assimilated to the Southern systems, and where the rules of *Charlotte-Mecklenburg* are therefore clearly applicable. But beyond that, one cannot simply say that *Charlotte-Mecklenburg* "outlaws" the school segregation of the North. Because of its focus on past discrimination, the case does not lend itself to a blanket judgment about the North, as it does with respect to the South. The net effect of *Charlotte-Mecklenburg* is to move school desegregation doctrine further along the continuum toward a result-oriented approach, but the progression is not complete. Additional steps are required. It seems to me, however, that over time this move will probably be made and that, in retrospect, *Charlotte-Mecklenburg* will then be viewed, like *Green*, as a way-station to the adoption of a general approach to school segregation which, by focusing

12 *See, e.g.*, United States v. School Dist. 151, 286 F. Supp. 786 (N.D. Ill. 1968) (preliminary injunction), *aff'd*, 404 F.2d 1125 (7th Cir. 1968), *on remand*, 301 F. Supp. 201 (N.D. Ill. 1969) (permanent injunction), *aff'd with modification*, 432 F.2d 1147 (7th Cir. 1970). Following the *Charlotte-Mecklenburg* decision, the Supreme Court denied the school board's application for certiorari. 39 U.S.L.W. 3482 (U.S. May 3, 1971).

13 While *Charlotte-Mecklenburg* dealt primarily with student assignment, in my judgment the most difficult aspect of school desegregation, it also reaffirmed previous doctrine requiring the desegregation plan to liquidate all aspects of the dual system, including faculty segregation. This has considerable significance for the North. The Court wrote:

> In *Green*, we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system. 391 U.S., at 435. Independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown.

402 U.S. at 18.

on the segregated patterns themselves, is more responsive to the school segregation of the North.

This forecast is based in part on my view that the Court will want to avoid the appearance of picking on the South. This appearance is derived from the fact that segregated patterns of student attendance are no less severe in Northern cities than in Southern ones. Under *Charlotte-Mecklenburg*, Southern school systems are obliged to eliminate those patterns and to achieve the greatest possible degree of integration. But there is no similar blanket judgment about those patterns in the North. A complicated analysis of causation might, under the *Charlotte-Mecklenburg* theory, serve to justify the differential treatment afforded these otherwise identical patterns. But such an analysis is not likely to be understood or even believed by most people. And no national institution can afford to be unresponsive to the popular pressures likely to be engendered by an appearance of differential treatment of certain regions of the country. Even the Supreme Court is not immune from such pressures, particularly when they become identified with the ideal of equal treatment.

The forecast is based also on my view that the predominant concern of the Court in *Charlotte-Mecklenburg* is in fact the segregated pattern of student attendance, rather than the causal role played by past discriminatory practices. I realize that in *Charlotte-Mecklenburg* the Court used past discrimination to attribute responsibility to the Board for the school segregation, but this theory for attributing responsibility seems contrived. Although the existence of past discrimination cannot be denied, the Court made no serious attempt either to determine or even to speculate on the degree to which it contributes to present segregation. Nor did the Court attempt to tailor the remedial order to the correction of that portion of the segregation that might reasonably be attributable to past discrimination. The Court moved from (a) the undisputed existence of past discrimination to (b) the *possibility* or *likelihood* that the past discrimination played *some* causal role in producing segregated patterns to (c) an order requiring the complete elimination of those patterns. The existence of past discrimination was thus used as a "trigger"—and not for a pistol, but for a cannon. Such a role cannot be defended unless the primary concern of the Court is the segregated patterns themselves, rather than the causal relation of past discrimination to them. The attention paid to past discrimination can be viewed as an attempt by the Court to preserve the continuity with *Brown* and to add a moral quality to its decision.

The Court is not likely to abandon its requirement that a school board be responsible for the segregated patterns before it is ordered

to eliminate them. This requirement, however, need not foreclose any doctrinal advance. An alternative theory for attributing responsibility exists—one that is equally applicable to North and South and well rooted in other areas of the law, such as torts. This theory would hold the school board responsible for the foreseeable and avoidable consequences of its own action. In this context, the pertinent action of the school board is its choice of a criterion for student assignments. The board decides how students are to be assigned. The result of using a criterion such as geographic proximity in a system with residential segregation is foreseeable; and in most instances there are reasonable measures that the board could adopt, if not to eliminate, then at least to mitigate the result that flows from the use of that criterion.

This theory for attributing responsibility is not without limitations. For example, the causal chain linking the school board's decision to assign on the basis of geographic proximity and the school segregation might be broken if it could be presumed that present residential segregation is truly voluntary. Moreover, the board might be relieved of responsibility if there were no "reasonable" steps it could take to avoid school segregation. For this reason, this theory might be viewed as holding the school board to a lesser standard than that of *Charlotte-Mecklenburg*, which, through the triggering action of past discrimination, requires the board to take every *possible* step to eliminate segregation. However, this difference in standards roughly parallels tort rules which hold a person responsible for *all* the consequences of an intentional wrongdoing but which limit liability to the proximate consequences when the wrongdoing is not intentional. In this area a rule that requires the school board to take reasonable steps—as opposed to all possible steps—to eliminate segregation seems to be the more sensible one and therefore the one that will predominate. It does not rest on the unrealistic assumption that all present segregation is a consequence of past wrongdoing, and it gives a more balanced appraisal to competing values that should be taken into consideration in assigning students to schools. In any event, the general effect of the theory would be to focus attention on the segregated patterns themselves and to bridge the doctrinal gap between *Charlotte-Mecklenburg* and an approach to school desegregation that emphasizes primarily the result.

Admittedly, this theory for attributing responsibility does not require the construction of a causal chain that includes a racially discriminatory act in the past. But, analytically, that should be unnecessary. The equal protection clause requires that some government

agency be responsible for the unequal treatment, but it does not require that the responsibility be predicated on a causal chain involving an earlier discrimination. It does not require double discrimination. There is no need to search for a second discrimination if it is determined that the segregated patterns themselves render the education afforded blacks inferior and thus are a form of unequal treatment. Under this approach the central dispute would be over the factual assertion that segregated education is inferior. Indeed, this is what the dispute should be about.

The Court in *Charlotte-Mecklenburg* appears to have avoided this dispute by relying on past discrimination. Arguably, the denial of equal protection in *Charlotte-Mecklenburg* originated in past discriminatory school construction practices and, although the Court was no longer able to stop those practices, the injunction it issued could be viewed as an attempt to undo the effects of the past wrong. Under this interpretation, the school segregation was a present effect of the past denial of equal protection, and not itself a denial of equal protection. But this interpretation of *Charlotte-Mecklenburg* does not seem persuasive. It seems much more plausible that the segregated patterns themselves, and not the past construction practices, are viewed as the denial of equal protection. To regard all school segregation as simply an "effect" of the past denial of equal protection requires the positing of an unproved and unlikely causal connection between the two. Furthermore, there is no reason why the courts should use their remedial powers to correct the effect of a past wrong unless that effect is itself harmful or disadvantageous. Thus, at the very least, there is an implicit judgment in *Charlotte-Mecklenburg* that segregation itself is harmful or disadvantageous. And if the segregation is viewed as particularly harmful or disadvantageous to blacks, then it can be construed as a form of unequal treatment. Under this interpretation, the only question remaining is whether the school board is responsible for it. In *Charlotte-Mecklenburg* the Court attributed responsibility for segregation on the basis of past discrimination. My point is that there is an alternative theory for attributing responsibility for the segregation that is as intellectually satisfying as the *Charlotte-Mecklenburg* theory requiring a search for past discrimination.[14]

[14] It should also be pointed out that the very use of geographic criteria may be as responsible for residential segregation as past discriminatory construction policies. By rigidly adhering to geographic criteria over a long period of time, a school board assures the white parent who does not want his children to go to school with blacks that this desire can be fulfilled by moving into a white neighborhood. The use of geographic criteria also assures the white parent that if he moves out of the neighborhood into which blacks are moving, he will be leaving the blacks behind. They will not follow him to the new school—unless they also change residence.

III

Thus far the development in school desegregation doctrine has been largely the work of the courts, and my forecast about future direction is based on the view that the courts will—in the face of popular pressure and logic—evolve an approach to school desegregation that is increasingly result-oriented. Within the weeks immediately following *Charlotte-Mecklenburg* that seems to be precisely what has been happening in a few lower courts.[15] It is important to emphasize, however, that other branches of government need not wait for these projected doctrinal advances.

Local agencies are today free to institute the appropriate measures to correct segregated patterns of student attendance. There is no suggestion in *Charlotte-Mecklenburg* that such voluntary remedial measures need be predicated on the discovery of past discrimination. Indeed, this term the Supreme Court invalidated two statewide "anti-busing" laws, one in New York[16] and the other in North Carolina,[17] that would have impeded the efforts of local school boards to correct racial imbalance. Moreover, Congress need not wait until the Supreme Court declares a practice a violation of the equal protection clause before requiring (or inducing) local authorities to correct it. Cases such as *Katzenbach v. Morgan*[18] and *Jones v. Alfred H. Mayer Co.*[19] indicate the lengths to which the Court will go to indulge and even to encourage congressional activity on behalf of the cause of racial equality. Under the Civil War amendments, Congress is free to enact a rule of law that would require (or induce) school boards throughout the country to take reasonable steps to eliminate segregated patterns of student attendance—without regard to proof in each instance of past discriminatory practices and their contemporary vestiges. Such legislation can be predicated on a judgment about the inequality that arises from a segregated pattern of student attendance itself. And if the legislature insists, as does the Court in *Charlotte-Mecklenburg*, that the segregation be "state-imposed," then such legislation can be predicated on a conclusion that the South has no monopoly on past

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15 *See, e.g.*, Davis v. School Dist., No. 20477 (6th Cir. May 28, 1971); Johnson v. San Francisco Unified School Dist., No. C-70 1331 SAW (N.D. Cal. Apr. 28, 1971). *But see* Spencer v. Kugler, Civil No. 1123-70 (D.N.J. May 13, 1971) (rejecting constitutional challenge to state law that made boundaries of school districts conform to municipal boundaries).

16 Chropowicki v. Lee, 402 U.S. 935 (1971) (summary affirmance of three-judge district court ruling).

17 North Carolina Bd. of Educ. v. Swann, 402 U.S. 43 (1971).

18 384 U.S. 641 (1966).

19 392 U.S. 409 (1968).

discrimination, or that school boards are responsible for the foreseeable and avoidable consequences of their own actions. In any event, there is no question about the authority to enact nationwide school desegregation laws. For the last several years that has been clear. The only question is about the will. Conceivably, *Charlotte-Mecklenburg,* by imposing such a heavy burden on the South and by requiring the greatest possible degree of actual desegregation, might be sufficient inducement for such legislation. That might be the most significant aspect of *Charlotte-Mecklenburg* for the North and for the law of school desegregation.