In January 1977, Columbus, Ohio, was hit with its worst winter weather in one hundred years. Storms that caused dozens of deaths nationwide dumped a foot of snow on the city, bringing frigid weather that halted garbage collection for a week and, for the first time since the legendary "Snow Bowl" blizzard of 1950, closed the massive Ohio State University. High demand due to record low temperatures and biting winds worsened an already serious natural gas shortage, forcing Republican Governor James Rhodes to declare a statewide natural gas crisis on January 26.¹

The cold snap kept the Columbus Public School District's 96,571 students home for several days in January, but the fuel shortage posed an even more vexing problem. The local gas company had already sliced the district's allocation 40 percent, and when regional shortfalls prevented the purchase of emergency reserves, the utility announced that another 85 percent would be cut in February.² With 149 of its 172 buildings heated entirely by gas, the financially strapped school district faced the expensive prospect of having to "mothball" its buildings for most of the month.³ Although about
70 percent of Ohio's schools would be closed for at least some time that winter, the *New York Times* found "no other city as hard-hit" as Columbus.  

The morning of Rhodes's announcement, the seven-member Columbus Board of Education met with Superintendent John Ellis to ponder the district's dismal options. In the middle of the meeting, Ellis received a phone call from Gene D'Angelo, general manager of WBNS, the electronic media arm of the city's most powerful family, the Wolfes. "I was busy," Ellis recalled, "and I was going to tell my secretary, 'No, we don't have time. Don't they know we have a gas crisis here?' And she said what they said they were going to do, and I said, 'I'll be there. I'll be right over.'"  

D'Angelo, assuming the inevitability of some form of system-wide shutdown, had offered the district four free hours of educational radio and television time daily for the duration of the crisis, insisting only on mandatory student participation. By 2:30 that afternoon, Ellis, WBNS representatives, and a dozen school administrators had begun round-the-clock planning; within ten days, they had developed a comprehensive electronic curriculum, backed by what Ellis called Columbus's "greatest outpouring of community spirit since World War II." Administrators and teachers cooperated closely to create daily televised "classrooms" just two years after a bitter, weeklong teacher walkout. All three local television channels and several radio stations opened their studios to the schools; both daily newspapers printed course schedules, lesson plans, even baby-sitting announcements; and public and private institutions from city hall to Schmidt's Sausage Haus offered assistance. "What followed," said one education journal, was "a model of how the human and physical resources of business, industry and government can be used for educational value."  

On the first day of February, the notoriously fractious school board unanimously approved "School without Schools." From February 7 to 25, students were required to watch televised lessons, read newspaper supplements, attend specially scheduled field trips, and meet once a week—somewhere—with their teachers to turn in
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homework and take tests. While acknowledging that "some of what is going to happen . . . will just be rubbish," Ellis framed the situation not as a crisis, but as "the most unusual opportunity any city has ever seen," predicting that "an unbelievable array of activities and creative use of time, talent, and community resources will keep learning alive in Columbus." Indeed, classes were held in bank boardrooms and bars, motels and movie theaters, even Ohio State president Harold Enarson's kitchen. "We swam in a couple of the hotel swimming pools and we went everywhere to have school where business functioned," said Ellis. "Even little Pizza Huts have training rooms where they train their employees that we met in." 7

The beginning of March marked the end of School without Schools. While nobody hailed the improvisational three-week effort as an educational panacea, at least classroom continuity had been preserved. Commented Assistant Superintendent Howard Merri-man, "The main thing is that we were able to keep the momentum of learning going. It is a good feeling." For an embattled urban school district still reeling from a devastating levy loss and awaiting an inevitably controversial desegregation decision, School without Schools provided both a much-needed morale boost and a valuable public relations boon. The emergency demanded the dismantling of barriers among teachers, administrators, school board members, the media, and the business community; and the solution that emerged received national attention as a model of creative, bureaucracy-busting educational innovation. "We discovered a great deal of talent we didn't know we had," Ellis said. 8

School without Schools also served as an unintentional dress rehearsal for the implementation of desegregation, demonstrating that the school system could mobilize itself and the community effectively when forced to institute systemwide changes. Among these changes was a complete overhaul of the district's transportation system, including the busing—or, as the district officially chose to call it, "bus riding"—of over one-third of its students. This irony was not lost on desegregation backers in Columbus's African American community. Black school board member Watson Walker, noting the
praise heaped on School without Schools, observed that "no one complains about busing unless it is for racial integration." A reporter for the Call and Post, Columbus’s weekly black newspaper, wrote, “The most massive school busing effort the city of Columbus has seen . . . went into motion with the full support of the city’s staunchest busing opponents.” The paper’s editorial postmortem was even more caustic, predicting that “when the results of [Ellis’s] ‘School Without Schools’ substitute for ‘real education’ is assessed for what it is, the shine on his publicly related star will reveal only that Columbus learned without a court order how to bus kids around town. Education, it ain’t.”

Despite such criticisms, the positive publicity that School without Schools generated earned Ellis a national reputation as a dynamic educational innovator. In mid-February, President Jimmy Carter appointed Ellis deputy executive commissioner of the U.S. Office of Education, second in command to Education Commissioner-designate Ernest Boyer. As both School without Schools and his superintendency came to an end, Ellis gushed in a valedictory letter to the community, “America has never seen the equal of what you have just done. . . . If we were in the Olympics, Columbus and its marvelous people would be on the victory stand receiving gold medals.”

The momentum captured by Ellis’s metaphorical medal ceremony proved sadly short-lived, however. Mounting financial woes, declining public support, a hopelessly divided school board—these problems had only been obscured temporarily by the glow of School without Schools, and all were exacerbated by the news the district received the first morning back from spring break. At 10:00 A.M. on Monday, March 8, 1977, Sixth District Court judge Robert Duncan released his long-awaited ruling on Penick v. Columbus Board of Education, the Columbus Public Schools’ desegregation case. Duncan’s opinion was thorough, cautious, even sympathetic, but his conclusion was unmistakable: The defendants were guilty of intentionally creating and maintaining an illegally segregated school system.

Penick v. Columbus Board of Education culminated years of intensifying African American disenchantment with the Columbus
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Public School District. Following World War II, a convergence of economic, social, political, legal, and demographic forces allowed Columbus blacks to seek for the first time a socioeconomic status that combined both access to and control of civic resources. By the end of the 1960s, fully desegregated public schools came to be seen as a necessary component of this vision, a permanent, progressive guarantor of equal opportunity that drew upon blacks' historically powerful faith in education as the gateway to economic and social advance. However, while integration was proceeding in Columbus from community demand to judicial mandate, the issue also was being transformed from a peculiarly southern problem to a divisive national dispute. By the time of Judge Duncan's decision, the moral luster of Brown v. Board of Education had dulled, and the debate over desegregation had given way to a battle over busing.

Black Columbus and the Solidification of Segregation

For much of the nineteenth century, blacks in Columbus lived in a kind of limbo between slavery and freedom. Though both the Northwest Ordinance of 1787 and the first Ohio Constitution prohibited slavery, "black laws" passed by the state legislature beginning in January 1804 stripped "Black and Mulattoe Persons" of most citizenship rights. Barred from residing in Ohio without a $500 bond guaranteeing their good behavior, blacks who did settle could not vote, hold political office, fight in the militia, serve on juries, or testify against whites.12

Despite the restrictions, free blacks and manumitted slaves looking to farm Ohio's fields and find work in its emerging river towns slowly streamed into the new state. Many were from neighboring Virginia and Kentucky, migrants escaping slavery's omnipresent shadow. Columbus, planned and designated Ohio's capital in 1812, became a common stopping point for black newcomers. The same
attribute that made Columbus an attractive site for the state's capital—its central location—also made it a well-traveled station on the Underground Railroad; fugitive slaves found the city something of a safe haven from the stricter security of the regions near Ohio's border state and northern boundaries. Black settlers teamed with white abolitionists to safeguard runaways in haylofts, church basements, and private homes. A crossroads for both free blacks and fugitive slaves, Columbus by 1840 had a far higher proportion of black residents than the state as a whole.\(^{13}\)

The Civil War and the ensuing debate over black citizenship generated bitter political conflict in Ohio. Although the state produced some of Washington's leading antislavery voices—Joshua Giddings, Salmon Chase, Benjamin Wade—Democrats controlled the state legislature and dominated Columbus and Franklin County. Warning of an impending flood of low-wage, job-stealing former slaves, Democrats responded to emancipation and the movement for black suffrage by playing on white fears of "a total eclipse of the Caucasian race in the United States." Still, they could not stave off passage of the Fifteenth Amendment, which the legislature narrowly ratified in early 1870.\(^{14}\)

The bestowing of black male suffrage ushered in what one historian called a "golden age" of African American politics in Columbus. Between 1881 and 1912, ward-based elections placed five blacks on the city council and two on the board of education. But the death in 1907 of the Reverend James Poindexter, Columbus's first black city councilman and school board member, marked the waning of this era of unprecedented black political voice. Progressive reforms solidified de facto black disenfranchisement, neutralizing the impact of the black ballot and eliminating African American machine influence; the shift in the 1912 city charter from ward-based to at-large elections kept blacks out of public office for the next half century.\(^{15}\)

By 1910, there were 12,739 blacks in a city of 181,511. They lived in pockets throughout Columbus, generally near the jobs available as factory laborers, railroad workers, domestics, waiters, bartenders,
and draymen. Preachers and teachers made up most of the city’s small black middle class, and few service organizations existed to address problems of substandard housing and limited employment opportunity. As southern migrants fleeing Jim Crow trickled into the city, the racism of Columbus’s primarily native-born white population intensified. “Columbus,” wrote one contemporary observer, “has a feeling all its own. . . . It is not so much a rabid feeling of prejudice against the Negroes simply because their skin is black as it is a bitter hatred of them because they are what they are in character and habit. The Negroes are almost completely outside the pale of the white people’s sympathy.” In the absence of legally sanctioned segregation, a caste-conscious code of custom began to take its place. Though Columbus blacks by 1910 possessed the full rights of citizenship, theirs was decidedly second class, as well as increasingly separate.

It was in the years surrounding World War I that the city’s modern black community began to take shape. Though Ohio experienced less of an influx than did neighboring Michigan and Pennsylvania, the state’s black population increased 67 percent from 1910 to 1920, with most of the growth concentrated in the state’s eight largest cities. There were nearly 9,500 more blacks in Columbus in 1920 than there had been in 1910, a demographic surge that one researcher at the time observed “was very noticeable on the streets and in public places and gave rise to wild estimates at the close of the war, some citizens asserting that one of every four inhabitants of the city was colored.” While the actual ratio was closer to one in ten, the perception that a black tide was sweeping up from the South panicked many whites and spurred the solidification of geographic and social segregation. Despite state laws banning discrimination in public accommodations and segregation in public education, black access to white hospitals, movie houses, schools, hotels, and restaurants was uniformly restricted by the 1920s.

During the postwar real estate boom, white developers began using restrictive covenants and deeds and exclusionary zoning to preserve the racial homogeneity of the new suburbs and subdivisions
sprouting around the city's periphery. "Negroes" were considered nuisances, as detrimental to property values as saloons, slaughterhouses, and chicken coops. Realtors took advantage of this by "blockbusting": secretly selling a home on an all-white street to a black family, then subdividing the houses abandoned by fleeing whites and renting them at exorbitant rates to needy blacks, leaving overcrowded neighborhoods to fall into disrepair. "It was fun to see the white people run after a Negro family moved onto the street," commented one African American East Sider in the 1920s. During this time, according to Patricia Burgess's history of housing development in Columbus, "Real estate developers, particularly professional developers, determined the spatial and social structure of the city. . . . They in effect decided who would live where in the growing metropolis."23

Migration and segregation combined to create for the first time in Columbus a self-contained black community, the East Long Street District. Located east of downtown, north of exclusive Broad Street, and proximate to the city's central railroad station, this area in the 1920s became the economic and social hub of black Columbus. Migrants, assisted in their resettlement by Nimrod Allen, head of the newly formed Columbus Urban League, crowded into the district, often finding work in the nearby factories and earning wages unheard of in the South. Although many employers still refused to hire blacks, from 1910 to 1920 the percentage of Columbus African Americans employed in manufacturing and industrial jobs grew from 26.5 percent to 41.9 percent.25

Constrained by discrimination and forced to meet the social and economic needs of a burgeoning and increasingly concentrated population, Columbus blacks in the 1920s developed a vibrant economy within an economy. Black entrepreneurs established insurance, mortgage, lending, and real estate companies; doctors, dentists, lawyers, printers, caterers, and other professionals opened offices on the Near East Side; black businesses, social clubs, and service organizations multiplied; and the theaters and music halls lining Long Street lit up at night.26

The emergence of an African American business and professional elite gave rise to class divisions within the community itself. Long-
settled black "Buckeyes" often viewed the newly arrived "North Carolina Negroes" with disdain for their southern mores, blaming the rise in racism during the 1920s in part on the "embarrassing" behavior of the migrants. The relative success of this black middle class, along with Columbus's general economic stability, produced a comparatively more complacent and conservative black leadership than those that arose in more industrialized northern cities. Problems tended to be addressed incrementally, ameliorative social service solutions rather than redistributive political and economic policies pursued. Consequently, organizations made conservative by their dependence on white political and philanthropic largesse prevailed in Columbus, the best example being the Urban League, the city's preeminent black institution. The result was a racial milieu in which confrontation was kept quiet, civic order maintained, and African Americans received more than the crumbs but less than the loaf.

In the face of escalating political, geographic, and economic segregation, Columbus blacks during the 1920s fashioned an energetic community culture and a vigorous middle class. Though discrimination isolated blacks from the larger market of the white majority, it also allowed them to establish a certain degree of institutional independence and economic self-reliance. The onset of the Great Depression, however, swiftly demonstrated the fragility of this superficially separate economy. Black-owned businesses were closed or sold, black laborers were the first fired and last rehired, and impoverished whites occupied domestic and menial jobs previously left to African Americans. By 1931, black unemployment had reached 37.6 percent, and as the depression ground on, as few as 30 percent of black wage earners held full-time jobs in the private sector. Although it remained the hub of black commercial activity in Columbus through the 1960s, the East Long Street area never quite recovered its predepression vibrancy.

The 1940s and 1950s saw the focus of black advancement swing back slowly toward integration. In Columbus, the first target was the denial of equal access to employment opportunities and public accommodations. During the years immediately following World
War II, the Vanguard League, a comparatively radical spin-off of the city's historically ineffectual NAACP, held a series of sit-ins and demonstrations demanding an end to the segregative customs that had emerged over the previous half century. Slowly, throughout the 1940s, 1950s and early 1960s, long-established barriers began to fall. Restaurants, hotels, and movie theaters were integrated. Downtown office buildings for the first time began renting space to African Americans. The city hired its first black bus driver, fire chief, and police inspector, and blacks began to get face-to-face service jobs as secretaries, salespeople, and bank tellers. Still, while symbolically significant, these advances were primarily cosmetic and were accomplished with little pressure and minimal resistance. At the same time, just as the city was taking its first tentative steps toward integration, federal and local policies were reshaping it in ways that would both cluster blacks closer together and drive the races farther apart.

Unlike many large, northern cities, Columbus was not at the time of the depression encircled by suburbs. Consequently, after World War II, when low housing construction costs, pent-up demand, and federally underwritten long-term loans sparked an explosion in single-family home building, Columbus was able to use an aggressive annexation policy and water and sewer service monopoly to capture much of the new development that in other metropolitan areas occurred in the suburbs. Yet keeping this growth within Columbus's boundaries did not prevent the abandonment of the central city by a burgeoning white middle class. Federal lending policies funneled funds away from older areas to the new subdivisions, from which blacks were almost solidly excluded by an ingenious array of discriminatory strategies. The beginning of the interstate highway system accelerated the white exodus, pulling jobs, services, and shopping toward the city's booming periphery.

While the city rapidly sprawled outward, surrounding several older suburbs in the process, its African American population became increasingly concentrated in the deteriorating areas spreading in an arc east of downtown. Urban renewal and freeway construc-
tion exacerbated this process, bulldozing some of the city's cheapest (albeit often most dilapidated) housing and plowing through established black neighborhoods. The Near East Side, bisected by Interstate 70 and 71, saw a quarter of its residents displaced by "Negro removal" during the 1960s. Residential population in the area around downtown dropped 50 percent between 1950 and 1964, due largely to the demolition of the "Flytown" neighborhood and the construction of the "Innerbelt," a downtown bypass freeway. And the extension of I-70 east necessitated the razing of more than half the homes in Hanford Village, where dozens of black servicemen and their families had settled after the war.

Between 1950 and 1970, Columbus's black population increased 112 percent, from 47,000 (12.5 percent of the city's total) to 99,627 (18.5 percent); yet in 1970, only 15 percent of the city's blacks lived outside of the 1950 boundaries. Though some public housing was built to warehouse the displaced, Columbus's rapidly growing African American population could not be entirely compacted within the previously established borders of the black community. As in the 1920s, when overcrowded African Americans began moving into older white neighborhoods, blockbusting and panic selling ensued, followed inexorably by capital flight and physical decay. South Linden, for example, a once prosperous area along Cleveland Avenue northeast of downtown, turned from 6.8 percent minority in 1950 to 84.6 percent by 1970. By the mid-1960s, these transitional areas had become the front lines in the fight for racial equality in Columbus, as the battle returned to one of its oldest arenas: public education.

The Columbus Public Schools, 1845–1945:
The Rise, Fall, and Rise of Separate and Unequal

African American efforts to secure educational resources in Columbus date back before the 1845 establishment of the Columbus Board
of Education. Because an 1829 state law barred them from attending property tax-funded common schools, Columbus blacks in 1840 bought a plot of land at the corner of Long and Third streets and built their own school. Eight years later, the Ohio Legislature authorized the creation of segregated public schools for African American children, and in 1853, the first black public school opened in Columbus; by 1855, four black schools dotted the East Side, serving virtually all of the city's black schoolchildren.\textsuperscript{36}

The buildings provided, however, were small, overcrowded, and dangerously dilapidated, conditions blacks began protesting during the politically volatile post–Civil War years. The Reverend James Poindexter, in an 1870 letter to a local newspaper, described one of these buildings as “a PEN at the north end of the city—an old shanty, bounded by two alleys, devoid of playground, closely girded about with outhouses, the privy and well being in such proximity as makes it quite certain that the seepings from the privy find their way into the water our children are forced to drink.” In another letter, Poindexter emphasized the importance of the issue to the city’s blacks: “No people ever attached greater value to education than do the colored people. They are more worried about their ignorance than about their poverty. They feel slavery, in depriving them of the means of education, inflicted upon them greater wrong than it did in working them 200 years without pay.”\textsuperscript{37}

In 1871, the school board decided to shut down the smaller black schools and concentrate black students in a single centrally located building, named after school board member Dr. Starling Loving.\textsuperscript{38} Located in the middle of the “Badlands,” an area known for “three institutions: the saloon, the gambling hall, and the house of prostitution,” Loving School occupied a run-down and eventually condemned building too far away for many black children to attend conveniently.\textsuperscript{39} Armed with the vote and scattered throughout the city, blacks began for the first time calling for the creation of “mixed” schools. Finally, in 1881, the school board agreed to demolish Loving and assign black children to schools around the district. Seven
years before the Ohio Supreme Court declared that local boards of education could not maintain separate schools for black and white children, the Columbus Public Schools were officially integrated. Wrote a hopeful newspaper editor, “A little time will be necessary to wipe out prejudices on both sides, when it is believed, by wise and delicate management, harmony and just feelings will be brought about.”

Even at the time of this inaugural integration effort, however, some blacks doubted that mixed schools meant better education. The racism of unwelcoming white students and unsympathetic white teachers would hamper the education of black children, they believed. Wrote a group of South Side blacks to the Ohio State Journal in 1881, “Colored children will never make the same amount of progress in a mixed school that they would if not troubled about the opinion of their fellow white pupils, and vice versa.” Moreover, because white parents vociferously opposed having black teachers assigned to their children, segregated schools translated into more jobs within the system for black educators. Thus, as early as the 1880s, Columbus blacks were of two minds: some supported limited control over greater educational resources, while others backed greater control over limited resources. Richard Minor’s 1936 encapsulation was appropriate a half century before it was written and would still be appropriate a half century later: “The Negroes of Columbus are divided between a desire for a segregated school system and a mixed school system. There are numbers of Negroes in Columbus who believe that Negro teachers are best for their children in that they would be more sympathetic. Some fear, however, that it would not be as well equipped as the present school system.”

Still, it is safe to say that the bulk of the African American community in Columbus has always favored integration as the best way to ensure access to both the tangible and intangible advantages afforded the white majority. Thus, in 1907, when school board member and Ohio State University president William Oxley Thompson declared, “It is in the best interests of both [races] that they be
educated in separate schools," eight hundred blacks gathered at a Mt. Vernon Avenue skating rink to "condemn" school board plans to gerrymander attendance boundaries and open an all-black school. At the meeting, they approved a resolution that read, "We feel that the white citizens of our city owe it to us to give us that benefit which accrues as a result of education by contact and association in the public schools as they now are." A second resolution, a year later, stated, "Such separation of the races, even if the laws of the State did not forbid it, always results ultimately in inferior school equipment for colored children, and, moreover, tends to set the races father and farther apart, and so to hinder that mutual sympathy and understanding which close personal contact in the plastic years of childhood helps to cultivate." At this time in Columbus, however, white racial antipathy was growing while black political access was disappearing. African Americans were thus powerless to prevent the 1909 opening of all-black Champion Avenue Elementary School.42

The creation of Champion began the solidification of an unofficially separate school district in Columbus, a process that both followed and accelerated the city's increasing residential segregation. In 1922, again over black protests, the board of education added junior high grades to Champion in order to funnel more black children and all of the district's black teachers to the school.43 During the next two decades, the board carefully manipulated attendance boundaries to reinforce the racial transition of neighborhoods, leaving five all-black schools by 1943—Champion, Garfield, Mt. Vernon, Pilgrim, and Felton—and concentrating black students at East and Central High Schools.44 A booklet published in 1943 by the Vanguard League described attendance zones "skipping about as capriciously as a young child at play" and decried the district's race-based faculty assignment policy.45 Despite black objections, however, by the end of World War II, the board had forged a de facto dual district, with the bulk of Columbus's African American students restricted to a handful of central-city schools.
Black, White, and Brown: Postwar Columbus and the Revival of Integration

By 1946, years of depression-era and wartime neglect had left the district's physical plant in disrepair, inadequate for the 40,000 students already served by the system and unprepared for the swarm on the way. Enrollment grew 87 percent during the 1950s alone, not peaking until it reached 110,725 in 1971. The district built furiously during this period to keep up with the city's booming growth and skyrocketing birth rate: from 1951 to 1964, five bond issues, approved by an average of 71 percent of the electorate, funded the construction of 100 schools and 158 additions. Still, much of the school district's growth remained off-limits to African Americans; by 1964, more than 50 schools were 100 percent black or white. The board of education built dozens of schools to serve the all-white subdivisions springing up within Columbus's northern perimeter, establishing and altering boundaries to accelerate or fortify racial identifiability. The board opened other schools in already all-black areas or in transitional neighborhoods where rapid racial turnover made predominantly one-race enrollment inevitable. Meanwhile, optional and discontinuous attendance zones enabled some white students to evade black "neighborhood schools," and escape hatches were provided for teachers who resented the gradual integration of all-white staffs. Don Pierce, a teacher at Roosevelt Junior High in the late 1950s and early 1960s, recalled a new black teacher visiting the school where she had just been assigned: "She looked in the teachers' boxes and there was a letter to all of the teachers. And it said words to this effect, 'We are hiring a black teacher in your school and if any of you are upset about this, you have the right to transfer to another school.'" In short, white preference for a segregated educational environment was not just sanctioned by the school district, it was often assumed.

Despite this persistent segregation, Columbus blacks remained largely silent about the city school district throughout the 1950s.
The decade was a time of transition for the community: the retirement of Nimrod Allen in 1954 after thirty-three years at the Urban League's helm left a significant leadership void, and the anticommunist conformity of the cold war, an especially potent force in conservative Columbus, dulled African American activism and led to the dissolution of the Vanguard League. Employment barriers and urban renewal were the dominant issues, as blacks assumed a wait-and-see attitude toward the board of education's response to Brown. A decade of bricks and mortar failed to eliminate the "separate" that still existed within the system, however, leaving instead a larger core of mostly black central-city schools. Said civil rights activist Anna Mae Durham, "There wasn't any effort by the school board to follow Brown. The black community got started because the board didn't do anything." 49

Though other legal and political decisions contributed more to the dismantling of state-sanctioned segregation, it was the moral clarity that Brown seemed to embody that made integration both gospel and grail to a generation of civil rights pioneers. In addressing America's darkest hypocrisy, Brown captured its most brilliant promise, resonating with all of the possibility, hope, and mystery of exploration. "Integration," observed Robert Duncan, "to me meant I could go where I had not been able to go before." Ed Willis, a teacher at all-black Champion Junior High at the time of Brown, said, "If you isolate me, then I'm always wondering what's going on the other side of the mountain. I never can go to the other side." 50

Brown also enshrined the progressive basis of the NAACP's long-pursued legal strategy: Segregated public education was the foundation of racial inequality, so once this foundation was removed, the whole structure gradually would collapse, giving way to better schools, improved race relations, and a more harmonious, open society. While the reality of segregation marginalized blacks from the broader marketplace, the ideal of integration meant the opportunity to compete on equal terms with whites for the same pool of resources. If the grass were always greener on the white side of the
fence, it was not because blacks were inferior growers, but because whites had more and better land, superior tools, and more advanced training. In an era of unprecedented affluence, the cultural richness of the black institutions that segregation produced could not compensate for the sense of deprivation that inevitably accompanied them. Recollected Willis, "You know what my mother said to me? I'll never forget it, even if I get to be 200. She said, 'There's one set of rules for white people, and there's another set of rules for colored people.' . . . There was always a resentment in the black community, even though nothing was said. If there're two sets of rules for the game, and you're involved with the game, you might not say anything, but obviously you know that the rules are not fair. And so underneath, it was always there."  

Thus, a school like Champion, with its deep tradition and strong staff, could be simultaneously a source of pride and a symbol of inadequacy to the black community. Because black teachers in Columbus were restricted for so long to the five predominantly black elementary and junior high schools, competition was fierce for the few positions that occasionally would open. Champion, the system's only black secondary school through the 1950s, became the repository for the district's most qualified African American teachers. A 1959 school district fact sheet noted that fourteen of the school's thirty teachers had master's degrees, "giving the Champion School a high rating in the city for the educational training of its staff." "Champion," said Willis, a teacher and administrator at the school from 1952 to 1971, "was an all-black school, black staff, all black students and one of the best experiences I've ever had in my life. Of all of the teachers I've seen since then, as a group—none could compare." Recalled Amos Lynch, general manager of the Columbus Call and Post, "Probably the best teaching staff that was ever assembled [in Columbus] was that team of people who were at Champion Junior High during the late fifties through the mid-sixties." As the school into which all of the Near East Side elementaries fed, Champion educated students from every stratum of black
Chapter 1

society, creating a sense of racial identification and ownership inseparable from the restrictions that shaped black life in Columbus. "We had students whose parents were doctors, lawyers, ministers," said Will Anderson, a teacher at Champion from 1955 to 1966. "That's the only place they could go."

By removing the barriers obstructing access to the resources and opportunities of full citizenship, blacks believed that public school integration could disperse this sense of ownership without diffusing it, to the ultimate benefit of society as a whole. "We saw [integration] as a way to improve the quality of education for all children," said former Columbus Urban League executive director Frank Lomax. "In the minority schools in Columbus, we saw an unevenness in terms of achievement as well as resources. We felt an integrated system would begin to even that out, because if people were making decisions on the basis of race, then they couldn't very well discriminate if white kids and black kids were in the same environment."

Consequently, Columbus blacks, inspired and emboldened by civil rights victories in the South, began in the early 1960s to voice intensifying disenchantment with their second-class status within the school district. Proportionate population growth had yielded more political muscle for the black community. In 1961, Dr. Watson Walker became the first African American in the twentieth century to be elected to the board of education. Until Walker's election, board members routinely neglected the particular problems of predominantly black schools. "I sat at board of education meetings," said black administrator Ted Turner. "Those people were not thinking about Main Street and Pilgrim [two mostly black elementaries]. . . . There were 'black schools' and 'Columbus schools.'" Walker, a surgeon at the Ohio Penitentiary who had been denied employment at segregated hospitals when he arrived in Columbus in 1948, cautiously began to challenge the discriminatory assumptions that permeated the school system, using the subtle survival stratagems of a Georgia native long accustomed to pervasive public racism.

To illustrate this approach, Walker often told the story of how he
finagled lights for all-black East High School’s football field during a closed-door board meeting early in his tenure:

I knew this was one of the things the black community was incensed about. They had been working on it for years and had been rebuffed at every turn. The only reason [white board members] didn’t want lights for East was the white schools would prefer to play East at daytime because they figured if they came out in the East end at nighttime they were going to get beat up. These were prevalent racial attitudes that had to be erased.

... I asked the question, “How many schools with football fields do you have that are not lighted?” Everything got quiet. Of course, I was playing the part of not knowing that I was asking a racially loaded question. They finally said, “One,” and I said, “Which one?” And everybody got quiet again. The attitude they had was, “Is he crazy? Does he know the answer to this or is he pulling our leg?” And I had this angelic face and they couldn’t tell what was going on. They finally said, “East High.”

As the decade progressed, however, such incremental victories became increasingly unsatisfactory. The Supreme Court had yet to address the question of whether or not Brown applied to the de facto segregation of northern school systems, and lower court guidance remained murky. Without tangible legal barriers to tear down, the ideal of “non-discrimination” that Brown expressed, the Reverend Martin Luther King Jr. embodied, and the Civil Rights and Voting Rights Acts affirmed proved inadequate to deal with the social, physical, and economic complexities of racial inequity in northern cities. In a society fissured by racial segregation and economic inequality, the idea of a “race-neutral remedy” seemed to many blacks and liberal whites an oxymoron; active steps, conscious of the correlation between race and class, had to be taken to allow blacks to compete on equal terms with whites. “You do not take a person,” declared President Lyndon Johnson, “who, for years, has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, ‘you are free to compete with all the others,’ and still justly
believe that you have been completely fair."\textsuperscript{57} And so even as the
Civil Rights movement was achieving its greatest triumphs, its tac­
tics were being superseded by more fragmented strategies that
sought to achieve what Lyndon Johnson called "not equality as a
right and a theory, but equality as a fact and result" and Stokely
Carmichael labeled "Black Power."\textsuperscript{58}

\textit{From Rights to Remedies: The Blurring
of Brown Locally, 1964–1971}

During the mid-1960s, the idea that equality of condition could be
achieved by blacks being granted both access to and control over a
greater portion of the nation's resources was shaped by Washington
into policy buzzwords such as "compensatory education," "maxi­
mum feasible participation," and, eventually, "affirmative action." In Columbus, the shift from rights to remedies was signaled by an
escalating series of grassroots protests and civil rights reports con­
demning continued school segregation and demanding remedial
action.

In 1964, after the Columbus Board of Education had issued a
statement opposing segregation, supporting "neighborhood schools," and rejecting transportation to solve "social problems," four hun­
dred people protested the opening of nearly all-black Monroe Junior
High, claiming it reinforced de facto segregation within the dis­
trict.\textsuperscript{59} Two years later, the Columbus chapter of the NAACP issued
a report accusing the school board of supporting "separate educa­
tional standards for Negroes and Caucasians." The report charged
the district with "systematically" segregating staff, providing fewer
teachers, less space, and less money to black schools; inadequately
administering compensatory programs; and "hid[ing] behind the so­
called 'neighborhood school concept,' especially when the board in-
vokes this concept only when necessary to confine Negro children to substandard schools.” The NAACP recommended a combination of integrative steps (altered attendance zones and white-black school pairings to desegregate the district) and targeted resource allocation (a “massive ‘saturation’ program to bring quality instruction to the inner-city schools”) to overcome inequalities within the district.60

The Columbus Urban League echoed these recommendations the following year, offering a specific desegregation plan of its own.61 And in 1968, an Ohio State University Advisory Commission, appointed at the request of the school board and headed by the dean of the College of Education, Luvern Cunningham, issued a report and series of recommendations after a comprehensive three-month study of the district. In an elaborate examination of reading and math achievement test scores, the Cunningham Report revealed the educational disparities between the district’s poorest (“priority I to V”) schools, most of which were between 75 and 100 percent black, and its most affluent (“non-priority”) schools, most of which were between 95 and 100 percent white: “At every grade level on each of the tests the priority I and II school average scores fall far below expectation. The non-priority school average scores fall at or above expectation. . . . Priority I, II, and III schools start out in the first grade at three, two, and two months below the 1.0 grade equivalent; by the sixth grade they are between four and eight months below expectation. And by the ninth grade they are from two years, three months to two years, six months below expectation.” While noting that “non-school [environmental] factors undoubtedly contribute to low achievement in priority schools,” the report stated that “equality of educational opportunity cannot exist unless there are members from the black and white communities attending school together.” Thus, the commission advocated “managed school integration,” “pre-construction open housing agreements,” and compensatory programs “as a supplement to but not as an alternative to school integration.”62
Invariably, board response to these reports fell well short of the measures urged, exacerbating racial tensions that existed within the district. Until the 1960s, large city school districts were generally centralized, closed systems with autocratic administrative structures and rubber-stamp boards. Challenges to the authority of educational professionals, whether in the boardroom or the buildings themselves, were unusual and unwelcome. Like the American industries whose labor force they churned out, public schools faced few competitive pressures; unwieldy and unresponsive, they were often woefully unprepared to confront the conflicts that emerged in the 1960s.

The Columbus Public School district was no exception. According to the 1968 Cunningham Report, the typical board meeting "proceeds rapidly in this way . . . the Superintendent reading in a loud clear voice, the Board members voting yeas when their names are called on each motion. The Superintendent does most of the talking and his recommendations are virtually always approved by unanimous vote . . . members of the board do not disagree in public. Last April, one member voted against a recommendation of the Superintendent and the curriculum committee; this reportedly was the first negative vote in years." Before the mid-1960s, the report said, "the Board was not accustomed to dealing with any organized opposition, and certainly not from the ranks of Negroes and the disadvantaged." Superintendent Harold Eibling and his powerful assistant, Cleo Dumaree, set an organizational tone of almost military rigidity, leading a loyal "old boys' network" of administrators resistant to and often resentful of externally imposed change. "Cleo Dumaree was an old warrior," said Superintendent Ellis. "He would train the new principals and they had to wear white shirts and clean their fingernails and put a tie on and look sharp and shine their shoes and wear clean underwear." "To be a Columbus administrator" at the time, said teacher Don Pierce, "you had to have the mentality of a Nazi soldier. You had to take orders and not question."

Thus, when confronted with heightening black criticism, the district seemed unwilling and unable to provide satisfactory responses.
"A lot of the administrators were worn out," Ellis recalled. "They would go to meetings to try to listen to people and they'd get shouted down and they'd get called a racist and Cleo Dumaree would come home with his socks dripping wet from his sweat. He stood there and got assaulted verbally and threatened. It was kind of like a war zone." While the board did funnel funds to poorer schools for Title I and Head Start programs, it responded only superficially to demands for more integration in staffing, curricula, and student assignment. As a result, the Cunningham Report stated, "Critics of the schools who have taken the trouble to bring their criticisms to their elected representatives often leave Board meetings angry and frustrated because they perceive their appearance was treated with resentment and disrespect or, at best, indifference."

These attitudes were echoed inside Columbus school buildings as well, creating a cycle of unresponsiveness that fanned animosities already smoldering in the black community. The mid-1960s movement from rights to remedies, beyond a mere transformation in policy, had marked a fundamental shift in psychology for many African Americans. Increasingly insistent demands for equality of respect accompanied the growing clamor for equality of results. This quest for identity and recognition consumed black culture and politics, from the “I Am a Man” placards of striking Memphis garbage collectors to the sunglasses and shotguns of Oakland Black Panthers. In public schooling, it manifested itself in the efforts of black parents, teachers, and students to shape education into something more representative of and responsive to these new concerns.

And so grassroots black activism ran headlong into deeply rooted district intransigence. On September 13, 1967, parents at mostly black Ohio Avenue Elementary, dissatisfied with the administration's reaction to the NAACP and Urban League reports, presented a list of twenty-seven demands to the board of education, among them breakfast and hot lunch programs, smaller classes, release of test scores, "intercultural" textbooks, "human relations" training for administrators and teachers, and a school lending library. In the face of board dissembling, and following the lead of “community
control" movements that had arisen earlier in other northern cities, the parents organized a one-day student boycott of the school, the first in the district's history. There was, said Marian Craig, leader of the Ohio Avenue boycott, in a later interview, "a movement on the part of black parents to be involved in the total operation of schools where black students attend... whether in an all-black school or an integrated school." 66

While Columbus would not experience the kind of conflagration that devastated black communities in Watts, Detroit, and so many other cities during the 1960s, the Ohio Avenue boycott, coinciding with a near riot on the Near East Side, signaled a striking rise in overt black-white antagonism in Columbus. Younger, more radical blacks, impatient with the outright slanders and perceived slights of discrimination, began openly challenging the assumptions of racial inferiority embedded in the American psyche and the operation of the Columbus schools, provoking defensive, fearful, and often angry reactions from white students and staff. 67 Every aspect of daily student life, from the "tracking" of students into vocational or college prep courses to the selection of a school's homecoming court, became a potential source of black-white friction. The drama of this worsening racial hostility played out most conspicuously in the larger junior and senior high schools, where neighborhood racial transition or common socioeconomic residential status made blacks and whites more likely to mix. "You could almost pinpoint the disruptions with where the boundary lines of housing were," said Damon Asbury, then the district's chief psychologist. "The schools that had difficulty were the schools that were in transition modes from being majority white students or predominantly white students to that range where the numbers were more equal." 68

Between 1969 and 1971, high schools such as West (12 percent nonwhite in 1967), Eastmoor (13 percent nonwhite), Central (33 percent nonwhite), and Marion-Franklin (22 percent nonwhite) experienced boycotts, sit-ins, protests, even, in Central's case, the shooting of two black youths by a white student. 69 By early 1971, several of the system's schools were nearly out of control. Newspapers reported attempted firebombings at McGuffey Elementary and Mon-
roe Junior High, while racial tensions temporarily shut down both Roosevelt Junior High and Central and led to the posting of police officers at Linmoor Junior High and Monroe. The disruptions peaked in late May, when black students at Linden-McKinley High, a racially balanced school located in a rapidly changing blue-collar residential area, attempted to replace an American flag standing on the school's stage with the red, black, and green of black nationalism. When white students resisted, administrators closed the building, fearing an all-out eruption. Attempts to restart school were scrapped in the face of continued conflict, and more than fifty Columbus police officers had to be stationed around the building as seniors returned for final exams. 

The most significant immediate consequence of the disruption at Linden-McKinley was the resignation of Superintendent Harold Eibling after fifteen years as head of the district. Wedded to a top-down, disciplined administrative style, Eibling had been unable to adapt to the manifold and messy pressures that threatened to engulf the system—racial tension, increasingly vocal black protest, nascent teacher unionization, and growing fiscal problems. Devastating ballot issue defeats in 1969 and 1971 indicated that Eibling and his administration had lost the confidence of the electorate. Even more important, the events at Linden-McKinley had cost Eibling the backing of business leaders fearful that racial disruption would spill out of the schools and onto the streets that summer. These external pressures spurred the school board to bypass Assistant Superintendent Joe Davis, Eibling's heir apparent inside the administration, and hire an outsider less loyal to the status quo, one who, it seemed, might more easily be able to make changes within the district and rebuild bridges to the community. Thus, on June 15, 1971, the board announced that it had selected John Ellis, an ambitious young suburban superintendent with a Harvard doctorate and a fiery temper, to head the Columbus schools.

The long-term fallout from the Linden-McKinley closing reached well beyond the superintendent's office, however. For many Columbus whites, media coverage of disturbances at the high school, particularly images of students running a gauntlet of police officers on
their way to final exams, confirmed the conscious and unconscious anxieties that accompanied interracial contact. The words Linden-McKinley came to connote the unspoken fear and disdain with which whites viewed the burgeoning black presence in the schools, implicitly encapsulating the stereotypes—physical violence, deficient discipline, lax moral standards, declining academic achievement, and generally inferior status—that many whites associated with blacks. In a matter of a few weeks, Linden-McKinley had become a sort of understood social footnote, a symbol that would be cited for years by white parents to justify avoiding sending their children to the Columbus Public Schools. Compounding the local impact of events at Linden-McKinley, meanwhile, was the national emergence of another word whose connotations came to supersede its content: busing.


With the passage of the Voting Rights Act in 1965, the already eroding moral, spiritual, and strategic cohesion of the civil rights movement dissolved. For a decade, the freedoms fought for had been so fundamental to American citizenship, so simultaneously small and vast, that the common purpose and shared sacrifice of the struggle dwarfed the divisions that did exist. As the tangible barriers of discrimination fell, however, the glue holding the movement together—the large, lumbering target of legal segregation—lost its force. Inevitable fissures emerged as the struggle for rights became a search for remedies, fragmenting the movement along generational, tactical, and geographical lines.

Accompanying these changes was a blurring of the stark morality of Selma, Montgomery, and the March on Washington. Non-discrimination—an ideal easy for northern whites to understand,
difficult for them to oppose, and consistent with the nation's democratic mythology—splintered into two related concepts that were far more intellectually complex and psychologically messy: "disparate impact," the disproportionately negative effect that seemingly race-neutral policies have on African Americans due to the relationship between poverty, segregation, and educational attainment; and "affirmative action," the belief that this relationship can only be overcome by explicitly race-conscious remedies. As the hope of the Great Society faded into the flames of Watts, Detroit, and Vietnam, the practical application of these two ideas to policies affecting employment, taxation, and public education fueled a northern white backlash cultivated by Richard Nixon and George Wallace. Their 1968 and 1972 presidential campaigns developed what Thomas and Mary Edsall called "a new symbolic language for the politics of race . . . allowing politicians to mobilize white voters deeply resentful of racial change without referring specifically to race." Through-out the 1970s, the most volatile word in this new vocabulary was busing.

Although the backlash against busing did not erupt nationally until 1971, its roots can be traced to provisions in the 1964 Civil Rights Act. Title VI of the act charged the Department of Health, Education and Welfare (HEW) with the responsibility of drawing up guidelines to ensure obedience to desegregation mandates, permitting HEW to deny federal funds if a school district failed to comply. HEW's initial set of guidelines permitted school districts to adopt "freedom of choice" plans that allowed African Americans to transfer voluntarily to all-white schools and vice versa. Barely token desegregation ensued, as whites predictably refused to attend black schools and threatened blacks who sought to attend theirs.

By 1968, stricter HEW guidelines, a strengthened Title VI, and a series of appellate court decisions tightened the noose around such plans, charging southern districts for the first time with the responsibility of actively integrating. While these developments turned the trickle of school desegregation into a stream, however, it was with the Supreme Court's ruling in Green v. County School Board
of New Kent County [Virginia] that the flood began. Writing for a unanimous Court, Justice William Brennan declared that a school board operating a dual district had "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." "Non-discriminatory" freedom of choice plans would no longer be tolerated by an impatient Court: "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." 77

The following year, the Court demanded in Alexander v. Holmes County Board of Education that "every school district . . . terminate dual school systems at once." The Supreme Court’s shift from nondiscrimination to affirmative action commenced the remarkable collapse of legally mandated public school segregation. In 1964, 1.2 percent of the 2.9 million black students in the South attended school with whites. As of 1968, that percentage had risen to 32 percent. By 1970, it was up to 85.6 percent, and two years later it stood at 91.3 percent. In four years, southern schools had become more integrated than those in the rest of the country. 78

Still, white resistance to this process was substantial. Politicians protested, private academies multiplied, and racial violence sometimes flared. 79 Most galling to southerners was the use of buses to transport white students to formerly all-black schools, even though buses had been utilized for decades to carry African American children past nearby white schools. The school bus was quickly demonized as the obnoxious tool of overzealous federal judges and intrusive government bureaucrats. As one white Georgia parent told the New York Times in 1969, "My kids ain’t riding no buses all over the country just to make the damned Supreme Court happy." Nevertheless, noted the Charleston (West Virginia) Gazette, "Massive desegregation was carried out peacefully in almost all of the 2700 school districts in the South, a good portion of it through busing." Their delay tactics defeated, southern officials generally resigned themselves to accepting desegregation’s inevitability. "We have run out of time," said South Carolina governor Robert E. McNair. "We have run out of courts." 80
Southerners still seethed, however, at what Senator Abe Ribicoff of Connecticut conceded was the "monumental hypocrisy" of northerners who "go home and talk liberalism to each other, but . . . don't practice it." In a statement at once reactionary and prophetic, Senator John C. Stennis of Mississippi warned his northern colleagues in early 1970, "If you have to [integrate] in your area, you will see what it means to us." 81

As the Supreme Court pressed to bring Brown to school districts below the Mason-Dixon line, the Nixon administration sought to solidify an emerging coalition of conservative southerners and white working-class northerners by disavowing the kind of large-scale, court-ordered student assignment plans necessary to integrate urban districts in the North and South. Nixon had collected more African American votes in his unsuccessful 1960 presidential bid than he had while winning the presidency in 1968; he thus owed little to blacks and much to the historically Democratic South. 82 Almost immediately after taking office, Nixon ordered HEW to retreat from its successful assault on de jure segregation, shifting the primary responsibility for enforcing desegregation mandates to the Department of Justice. When Leon Panetta, then head of HEW's Office for Civil Rights, continued to exert pressure on the few remaining segregated southern school systems, he was fired. The administration's hostility to what it called "instant" integration was further illustrated when the Department of Justice sent its assistant solicitor general to argue against the NAACP in Alexander v. Holmes. The Legal Defense Fund denounced the move, declaring in a full-page newspaper ad, "Our government for the first time . . . has gone to court and asked that school segregation be allowed to continue." The Court's unambiguous ruling in Alexander was in part a scathing rebuff of the administration's legal backpedaling. 83

On March 24, 1970, Nixon explicitly laid out his desegregation policy. The president's eight-thousand-word statement steered a middle course, expressing both his opposition to "deliberate," or de jure, segregation, and his belief that de facto segregation, "resulting genuinely from housing patterns," should not "by itself be cause for Federal enforcement actions." The statement also reiterated the
Chapter 1

The president's opposition to "busing for racial balance" and his support for "neighborhood schools." Nixon's message was that his administration would continue efforts to desegregate where dual districts were mandated by law but would not offer to remedy school segregation that appeared to be caused primarily by existing residential segregation. But with desegregation litigation moving from small, often rural districts to larger, more logistically complex urban areas, this distinction was becoming murky. Increasingly, court-ordered remedies necessitated substantial student transportation in order to overcome the legacy of segregated housing. As school desegregation spread to cities nationwide, its opponents found the once innocent yellow school bus a potent symbolic vehicle.

The genius of "busing" as a form of political shorthand lay in its versatility, its capacity to compress legitimate concerns and irrational fears into a single word whose racial neutrality lent it public legitimacy. By opposing busing instead of integration, whites could endorse the ideal of racial equality without supporting the most immediate means of achieving it. At the same time, they were able to mask profound racial fear, resentment, and disdain with exaggerated arguments about a mode of transportation never questioned when it was used to facilitate rather than eliminate segregation. The emphasis on busing also shifted the desegregation debate away from the private- and public-sector actions that created segregation to the judicial decisions necessary to remove it, demonizing the federal courts while divorcing past from present and transforming white guilt into white victimhood.

At the same time, however, busing provoked a number of legitimate and troubling questions: Would it sever the schools from their surrounding communities? Would it drive whites from central city districts? Would its unintended consequences outweigh its anticipated advantages? While a morally tenable and ideologically consistent defense could not be mounted in support of denying, for example, black suffrage, such an argument could be manufactured in opposition to the shift from equal educational opportunity as a right to busing as a remedy.
Busing also exposed the class-based double standard of white liberalism: though the wealthy and the educated endorsed social change, they did not have to participate in it. Said a South Boston factory worker to Harvard sociologist Robert Coles, "They tell us we're trying to 'evade the federal court order' and we're 'racists.' But if rich people send their children to private school, they're not trying to 'evade' anything. Oh, no. They're just trying to give their children the 'best education possible.'"  

Finally, busing elicited a degree of uncertainty in many African American parents wary of sending their children into predominantly white environments hostile and unsympathetic to a black presence. This grassroots ambivalence underscored divisions that existed within the black leadership, a vocal portion of which argued that the push for integration implicitly endorsed white notions of African American cultural inferiority. Absent a coordinated front, the moral momentum that propelled the Civil Rights movement proved unrecoverable.  

The vagueness and versatility of the word busing put supporters of school desegregation on the defensive, making it impossible for them to disentangle racist resistance from justifiable opposition in a manner stark and convincing enough to sustain public support. All too often, frustrated civil rights advocates found themselves battling straw men with straw men in a polarized duel of transportation statistics that deflected attention away from the very real problems of educational inequality. As a result, busing would become the perfect political wedge issue during the 1970s, providing rhetorical cover for the opening assault in a much larger conservative counteroffensive against the liberal programs and policies of the 1960s.  

Still, as of early 1971, President Nixon's public position remained tentative. His 1970 desegregation statement had not endorsed de facto segregation but had deftly shifted the responsibility for addressing it to the judicial branch by saying that his administration had yet to be given guidelines outlining constitutionally permissible remedies. On April 20, 1971, the Supreme Court responded
by explicitly setting out acceptable remedial options in *Swann v. Charlotte-Mecklenburg Board of Education*. Writing for a unanimous Court, Chief Justice Warren Burger declared, "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad." Appropriate remedies could be "administratively awkward, inconvenient, and even bizarre," as long as they were effective in dismantling dual school districts. While "transportation" as an integrative tool had to be administered with careful regard to the circumstances of each case, the Court found "no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation." "Desegregation plans," the decision proclaimed, "cannot be limited to the walk-in school."90

On its face, *Swann* was a great liberal victory, a striking reaffirmation of *Brown*'s continuing relevance. Moreover, with two Nixon appointees, Burger and Harry Blackmun, participating in the unanimous opinion, it appeared to be a direct repudiation of the administration's tepid attitude toward desegregation. In the wake of the decision, a dispirited president announced, "The Supreme Court has acted and their decision is now the law of the land. It is up to the people to obey that law."91

However, the 9–0 decision masked deep divisions on the Court. Ambiguities and hedges throughout *Swann* reflect a ruling cobbled together by a new chief justice eager to compromise for consensus.92 It took six drafts, circulated from early December 1970 to mid-April 1971, for Burger to achieve his aim. First, however, he had to satisfy a skeptical William Brennan that his ruling would not send supportive signals to intransigent southern school districts. In response to an early Burger draft that declared, "The Constitution, of course, does not command integration; it forbids segregation," Brennan called the chief justice's language "almost *haec verba* . . . the rallying cry of the massive resistance movement in Virginia, and of the die-hard segregationists for years after *Brown*." Brennan believed that opposition to integration was "at long last . . . crumbling in the
South," and he feared that "any tone of sympathy with local boards having to grapple with problems of their own making can only encourage continued intransigence." Brennan added, somewhat sarcastically, "As our experiences with 'all deliberate speed' proved, tone is of primary importance." Still, as late as March 25, an exasperated Hugo Black threatened to dissent, writing, "I am of the opinion that it would be a mistake to give the appearance of a unanimity on the Court which does not actually exist." 93

Finally, Burger agreed to uphold the Charlotte remedy on the condition that the Court's ruling avoid addressing de facto segregation. "We will not lack for cases on this in the future," he wrote before circulating his sixth draft, "and it is apparent that we will not achieve unanimity on it now." As a result, Burger's opinion expressly sidestepped the issue of "whether a showing that school segregation as a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree." Thus, while Swann proclaimed busing a permissible remedial tool, the Court stopped short of applying the decision to northern segregation. Nevertheless, for cities outside the South, the handwriting was on the wall. As J. Harvie Wilkinson wrote, "With Swann and student busing, the school issue became a national one, because busing was meant not to remedy a peculiarly southern obstruction but to overcome the chief problem of the urban metropolis: racially separate patterns of housing." 94

Any hope that Swann might quell the burgeoning busing controversy quickly faded. Protests, and sometimes violence, greeted desegregation plans around the country. As northern and western cases rose through the courts, antibusing sentiment steadily mounted in Congress, with liberals from affected districts quickly buckling to pressure from angry white constituents. Knowing that these were the voters who would carry him to a second term, Nixon shifted his desegregation stance from ambivalence to outright opposition. In an August 3, 1971, announcement, he stated, "I am against busing as
the term is commonly used in school desegregation cases. I have consistently opposed the busing of our nation’s schoolchildren to achieve a racial balance, and I am opposed to the busing of children simply for the sake of busing. Further . . . I have instructed the Attorney General and the Secretary of Health, Education and Welfare that they are to work with individual school districts to hold busing to the minimum required by law."  

The antibusing rhetoric escalated two days later when George Wallace declared his candidacy for the Democratic presidential nomination, vowing to make busing a prominent issue. Nixon, “at times almost obsessed by fear” of Wallace’s conservative allure, responded by intensifying his own antibusing stance. Two days after a straw vote in the March 14, 1972, Florida primary indicated strong support for an antibusing constitutional amendment (as well as for Wallace, who finished far ahead of runner-up Hubert Humphrey), Nixon went on national television to reinforce his antibusing credentials.  

The politics of busing were made even more volatile in June 1972, when Sixth District Court judge Stephen Roth approved a desegregation remedy for the Detroit schools that involved fifty-three suburban districts. The remedy, immediately appealed, sent two ominous signals to northern whites: it indicated that cities outside the South would not long be immune to court-ordered busing, and for the first time it threatened seemingly safe suburban havens with school desegregation. Meanwhile, a similar district court order in Richmond, Virginia, was also winding its way to Washington.  

By November and Nixon’s forty-nine-state landslide, busing had developed into the young decade’s most wrenching domestic policy issue. Between Swann and the election of 1972, the dilemma of desegregation had become a battle over busing, and what had previously been perceived as a southern issue had been exposed as a national problem. With desegregation moving north and west, the seeds of civil disobedience had been sown, the divisive response of national public officials having legitimized the local opposition emerging in cities around the country.
The Avoidable Becomes the Inevitable:
The Columbus Board of Education
and the 1972 Bond Issue

In Columbus, the local elections of November 1971 had produced a board of education that reflected the divisions over desegregation developing nationwide. The new board consisted of four whites and an unprecedented three blacks, a racial and, for the most part, ideological split that would last the next six years. Caught in the middle was Superintendent Ellis, who sought to steer the schools gingerly toward integration while keeping his job safe, his career on track, and, if possible, his district out of federal court.

The leader of the board’s antibusing faction was fifty-year-old Virginia Prentice. Prentice had worked her way through the ranks of the Columbus Council of PTAs, establishing a loyal political base among the city’s white working class that made her the top vote getter in the 1969 board race, her first. After utilizing Nixonian “law and order” rhetoric during the 1969 campaign, Prentice quickly converted her conservative code to the developing language of the antibusing movement, running four years later on a platform calling for “a common sense approach to education.” Blacks, Prentice maintained, were using school desegregation to wrest economic and political control of Columbus from whites, a responsibility they were “not ready for” because they were “new to the political game.” Dubbed “Mom” by affectionate PTA colleagues and “Ma” by disdainful black administrators, Prentice bore a striking physical and political resemblance to the archetypal anti-buser, Louise Day Hicks of the Boston Schools Committee; “popular legend has it,” wrote the Columbus Monthly, “that [Prentice] is pleased with the comparison.” “There will be no busing strictly for racial balance if I can help it,” Prentice told a supportive audience during the summer of 1972. “Please remember that we are one vote away from it on the board. We have three members who are committed to full
integration and four who feel that it is not the solution. Just pray that none of us four ever gets sick.”

Prentice's political ambition would eventually mitigate her extremism, pulling her slightly to the left of uncompromisingly conservative comrades Marilyn Redden and Paul Langdon. Langdon, fifty-seven in 1972, was the dean of the school board, having served since 1956. While his position as assistant treasurer at Battelle Memorial Institute made him the board's expert on money matters, Langdon's social traditionalism more than his fiscal conservatism sustained the support of the Hilltop, the close-knit West Side neighborhood where Langdon lived. A fundamentalist Quaker who pressed to include creationism in the system's science curriculum, Langdon's religious conviction was matched only by his antipathy toward federal involvement in local affairs. Desegregation, he believed, was representative of a "fascist governmental attitude" and would spark a "mass exodus" of whites to the suburbs.

The junior member of the board's antibusing bloc was Marilyn Redden, a mother of five, elected in 1971 after serving as president of the largely segregated Columbus Council of PTAs. Redden viewed the school board as a bulwark in the battle to protect an acceptable and endangered status quo. She was, for instance, the only board member to oppose expanding the school system's hot lunch program, arguing that by providing lunch to students, the district "encourages mothers not to be at home at noon." Redden believed that desegregation equaled "socialization," and she used her oft-professed support for "voluntary integration" and integrated housing to mask the recognition that, absent government intervention, neither would occur in her lifetime. "The majority rules in this country," she declared. "I don't think minority rights are going to be trampled."

By successfully weaving together race, religion, patriotism, and a profound mistrust of the federal government, Redden, Prentice, and Langdon presaged the rise of cultural conservatism and the Christian right. At the same time, however, they remained defenders of a disap-
A Problem for Our Community

pearing era, traditionalists both resentful and fearful of Columbus's transformation from a big small town to a small big city. Busing embodied the racial and social ramifications of this transformation, signaling the contamination of home, school, and neighborhood and the pollution of the safety and sanctity of the status quo. Redden recalled the board adjourning from a long meeting one evening for dinner at the elegant Christopher Inn: "I'm, you know, a Midwest, farm country kind of girl, and I asked what escargot was. Dr. [Watson] Walker looked over at me and said, 'You don't know what that is?' And I said, 'No. And I'm not going to try it.' And he said, 'Well, I'll tell you what it is. It's snails. Try it, Marilyn, you might like it—just like busing.'" 105

At the same board table but on the other side of the political spectrum was the three-member "black bloc": Marie Castleman, Dr. David Hamlar, and Dr. Watson Walker. After a decade of winning small victories against stiff resistance, Walker was growing frustrated with and callous toward his board duties, a change manifested in an increasingly caustic sense of humor. "It's obvious to me because of the divisions in this board," he declared after a particularly acrimonious vote, "that we need some outside advice, be it the state Department of Education or Jesus Christ himself." To avoid the emotions elicited by using buses to desegregate, Walker once told the board, "What we need is a train." 106 Another time, he abstained from a vote simply to break the monotonous predictability of the 4-3 result. And when Prentice complained in 1973 that she had sought unsuccessfully for four years to improve speech instruction in the district, Walker quipped that he had been trying for twelve years to remedy race relations and added that "you've gotten further than I have." Walker was also spending more time with his medical practice, often leaving or missing board meetings to perform surgery. 107

Meanwhile, the crusading fervor Marie Castleman brought to her first term was quickly extinguished by a series of rejected policy initiatives. A social worker for the Veterans' Administration and magna cum laude graduate of Howard University, Castleman carried a more
ardent and Africentric attitude to the board table than her professional cohorts, Drs. Walker and Hamlar. During a meeting her first year, she responded to Redden’s defense of a white administrative appointee by snapping, “Maybe if you were a soul sister you would understand.”108 Castleman’s early activism soon gave way to a somewhat sullen passivity, however. Despite serving for two terms, she would never achieve much stature as a board member; ultimately, her reputation would be based more on her penchant for falling asleep at meetings than her effectiveness as a policy maker.

The burden of black leadership thus fell to David Hamlar, a native of Roanoke, Virginia. While none of the black school board members favored court-ordered desegregation, all three viewed it as the remedy of last resort. By making the greatest effort to keep the district out of federal court, however, Hamlar also did the most to ensure the school board’s culpability once it got there. “If we’re going to fight and bicker over every action,” he angrily told the board in June 1973, “court action is inevitable. . . . It’s negative to hold off and see what we can get away with.” Courts in the South, he added, “had to tell people to stop putting me off the bus before they finally stopped putting me off the bus. . . . It took laws to improve that.” By sponsoring a series of voluntarily integrative proposals, Hamlar hoped to give the board “something to fight with” in court. But as each was rejected or watered down, they became part of a paper trail publicly proclaiming the board’s refusal to take affirmative steps to remedy the effects of prior segregative acts. Hamlar said of the board’s white majority, “If they’re against integration, I want it on the record. When the court suit comes, I want the record to be clear how we stand. If the courts feel we’re doing all we should do, we don’t have to worry.”109

Hamlar recognized that the antibusing bloc’s intransigence would almost assuredly land the district in federal court. “I’m almost willing to bet my life savings that we will get a suit within two years,” he declared in mid-1972.110 His fatalism was shared by the board’s fourth white member, Tom Moyer. A local attorney elected to the
board in 1969 at the age of twenty-nine, Moyer was a rising young Republican star with ties to U.S. Senator William Saxbe and Ohio governor James Rhodes. More of a business-oriented Republican (he was on the Columbus Area Chamber of Commerce’s Downtown Area Committee) than a social issues conservative (he was also on the board of Planned Parenthood of Columbus), Moyer served as a swing vote and centering force on the board, often from his living room, where he would bring board members to discuss particularly delicate policy decisions. As a lawyer and pragmatist, Moyer realized that the board had to take dramatic steps to forestall legal action. But as a young Republican with one eye on the next rung of the political ladder, he was unwilling to support such steps, arguing that the ideal of integration had to be weighed against the value and tradition of the neighborhood school. Though he managed skillfully to bridge the broadening gulf between board factions, Moyer fully understood that compromise could not keep the district out of court. As he told a Linden community group in May 1973, “I believe there are some people who want to see us in federal court on a segregation suit regardless of what we do. That’s not an excuse for not doing anything, but I believe it will happen.”

Indeed, local civil rights groups dissatisfied with the board’s response to the reports of the late 1960s were becoming increasingly impatient with the slow pace of integration. The NAACP stated that its objective was to “challenge [the] neighborhood schools concept, and end school segregation by all means available.” Urban League policy, meanwhile, declared that only integrated education could be quality education. And the Columbus Area Civil Rights Council (CACRC) demanded “massive, countywide integration of the public schools,” calling busing “the only practical means to achieve that end in the near future.”

The growing immediacy of such statements represented an effort to match the escalation of antibusing rhetoric occurring in Columbus and around the country, a cycle of polarization that paralyzed constructive dialogue by making compromise capitulation. The depth
of this divisiveness first became apparent around the U-shaped table at 270 East State Street in mid-1972, as the school board wrestled with the issue of whether to place the largest bond issue in district history on the November ballot.114

Although racial volatility within the schools had dissipated somewhat in the year following the Linden-McKinley closing, the district was facing a crisis of another sort by the summer of 1972. With enrollment at an all-time high, voters had refused twice to okay funds for new construction to alleviate overcrowding. According to district figures for 1972–73, twenty-six secondary schools were on emergency schedules involving split sessions or extended days, and additional space had to be found for sixty-two classes in rented buildings and underutilized schools. Rapid residential development was overwhelming existing facilities, with thirty thousand new housing units having been constructed in the city the previous four years.115 When the school district built Winterset Elementary in 1968, said Principal Glenna Palmer, there “weren’t enough children to fill its nine classrooms.” Four years later, apartment developments and home building on the city’s booming northwest fringe had pushed the school’s enrollment well past its three-hundred-student capacity, and eight classes had to be bused to two other elementaries.116

In addition to coping with this enrollment overflow, the district had to find the funds to meet new minimum standards adopted by the State Board of Education for school libraries, disabled access, and vocational education. “While it is true that superior facilities alone cannot guarantee a superior educational program,” the district’s official rationale for the bond issue noted, “it is also fact that inferior facilities will most assuredly doom an educational program to inferiority.” Said the superintendent, “This is the space age, and the Columbus schools simply do not have enough space to do what ought to be done.”117

The $89.5 million bond issue proposed by the administration was designed to fund construction of six new secondary schools and ten new elementaries, including four “developmental learning centers” (now known as “alternative” or “magnet” schools) for experi-
mental programs. It would also "modernize or replace" several schools built in the nineteenth century, build or upgrade libraries in every school, create four "career centers" for vocational training, and provide additional space and resources for special education classes.\footnote{118}

While the entire board acknowledged the pressing need for new facilities, the three black members believed that integration should take priority over construction. With five votes needed to place a bond issue on the ballot, and unanimity considered essential when seeking the approval of increasingly tax-hostile voters,\footnote{119} the white majority could not dismiss the black bloc's basic demand: that the school board adopt a pledge making the promotion of integration official board policy.

The two factions wrangled bitterly over the wording and the intent of such a pledge. When black board members backed a statement that declared the goal of the Columbus Public Schools to be "to provide integrated educational experiences for all students," whites tabled the issue, calling "provide" too strong a word. Until that July 2 meeting, an editorialist wrote, "Columbus had been fortunate enough to escape open polarization. . . . Tuesday, the veneer was cracked and the entire community realizes the gulf between the black and white members of the school board is deep." As the July 20 election filing deadline rapidly approached, Ellis conceded, "I would be surprised if we have a bond issue on the ballot in this poisoned atmosphere."\footnote{120}

It was left to board president Tom Moyer to hammer one out. Starting at 7:30 on the eve of the board's July 18 meeting, Moyer managed to pull together language that satisfied both sides, securing unanimity shortly before convening the board at 4:00 P.M. the next day.\footnote{121} By 7–0 votes, the board approved the bond issue and adopted the following integration pledge: "It shall be the goal and policy of the Columbus Public Schools to prepare every student for life in an integrated society by giving each student the opportunity of integrated educational experiences. Such a goal does not imply the mandatory forced transportation of students to achieve a racial balance in any or all schools."\footnote{122}
Chapter 1

After the meeting, reported one newspaper, "Those in the audience known to favor construction but strongly opposed to mandatory busing left with broad smiles." Black board members found the language of the integration policy weaker than they had wished. But the principle of integration was not the only pressure affecting their votes. Upgraded libraries, new buildings, and special programs would benefit African American children as well as white children. Millions of dollars of construction would create jobs for the black community. Perhaps most critical, however, was the influence of Republican mayor Tom Moody and the Columbus Area Chamber of Commerce. Worried that the board's all-too-public racial acrimony would scare off prospective business development, and intent on getting new schools to serve the subdivisions rising on the city's periphery, the Chamber urged the board not to link the bond issue to integration. When black members refused to back down, Moody made an "unprecedented" appearance before the board, imploring it to "resolve its differences however it can, as quietly as possible." 123

Given these pressures, blacks chose to regard the integration policy that was finally approved not as an inadequate compromise but as a promising start, a significant first step toward the ultimate goal of ensuring equal educational opportunity for the district's African American students. 124 Pro-integration organizations that refused to support bond issues in 1969 and 1971 agreed to endorse the 1972 edition. "Even though the basic content of the building proposal varies little from previous ones," said Urban League president Napoleon Bell, "it was felt attitudes surrounding this proposal left doors open for innovative buildings and the beginning steps toward quality integrated education." The influential Call and Post was supportive but wary: "While we accept the fact that the facilities may be needed, we are unimpressed with the possibility that enough of the right people in the administration and the white leadership community had black folks in mind when the plans were conceived." The newspaper endorsed the ballot issue but cautioned blacks to "be prepared to fight for whatever change you believe is necessary." 125
On the strength of a well-designed, well-financed campaign, the $89.5 million bond issue handily passed, winning an encouraging 55 percent of the vote. With its passage, the school board crossed a Rubicon. The district now had the money to embark on the largest building program in its history, siting schools and fixing attendance boundaries in ways that could either curtail segregation or set it in concrete. New construction had the potential to spread the system significantly, with school sites being carved out of cornfields in anticipation of encroaching residential development. Unless the board took specific steps to foster integration, geographic sprawl and segregated housing patterns would ensure the need for extensive busing should the district be forced to desegregate in the future. Passage of the bond issue thus offered the board a final opportunity to veer from a path that increasingly seemed destined to end in federal court. “If we want to have quality integrated education,” said Hamlar, “we have to make the choice right now.”

Shortly before the November 7 election, Ellis’s administration had issued a blueprint of the district’s bond issue plans. The thirty-three-page booklet, called “Promises Made,” contained comforting words for both advocates and opponents of integration, sometimes in the same sentence. “New buildings will be located whenever possible to favor integration,” it declared, inviting unresolvably conflicting interpretations of the words “whenever possible.” The meaning of this statement was muddled further by the obliquely mentioned fact that sites for ten of the sixteen prospective schools had already been purchased. Though Ellis asserted in the booklet that “one way to help rebuild good faith [in the district] is to follow the principle that a promise made should be kept,” he added that “it is possible, in fact probable, that slight modifications will occur.” When the superintendent proclaimed, a day after the election, “We made promises and we want to keep them,” the future of the Columbus Public Schools hinged on which promise would take priority: integration or construction.

It did not take long for this question to be answered and for the cautious optimism of black board members to give way to
disillusionment. Three weeks after the election, Marie Castleman proposed the creation of an advisory committee consisting of educators, lenders, bankers, businesspeople, real estate agents, and community leaders that would monitor the racial impact of new school sites and ensure the availability of open housing and equal employment opportunities in the areas where new schools were being built. "No educational system is independent of the social, financial, legal, political and religious institutions of our society," the proposal read. "Each affects the other." By addressing the racial effects of this institutional web, the committee would assist the district "in its effort to provide quality integrated education within the neighborhood concept." 129

White board members immediately attacked Castleman's proposal, making it abundantly clear that construction, not integration, would be the priority promise of "Promises Made." "This motion," Prentice protested, "would withhold the building of schools for the purpose of bringing about social change." Moyer concurred, calling the proposal "in direct conflict with our present building program" and saying, "I won't vote for any recommendation which goes against the promises we made the voters." By contending that Castleman's proposal would undermine the newly approved building program, white board members implicitly acknowledged that they had no intention of using school sites or attendance boundary changes to facilitate integration. After the proposal was rejected, a reporter asked Castleman if the board was dragging its feet on racial issues. "Have they ever been lifted?" she answered. "There are no ifs, ands or buts about it," commented the Call and Post. "The Columbus Board of Education has once again openly betrayed the confidence of the black voters of Columbus." 130

The board's response to passage of the bond issue of 1972 transformed the avoidable into the inevitable. With white members convinced of the district's innocence, black members certain of its guilt, and Superintendent Ellis caught in the middle, the Columbus Board of Education arrived at a policy-making stalemate, the district's
inexorable slide toward desegregation accelerated by the growing impatience of integration's increasingly uncompromising advocates.

Between Integration and Litigation: John Ellis and the Road to District Court, 1973–1976

On June 21, 1973, the Supreme Court ruled in Keyes v. Denver School District No. 1 that even though no "statutory dual system... ever existed" in the Denver public schools, the foreseeably segregative acts of board members and administrators constituted unconstitutional state action. By rendering the distinction between de facto and de jure school segregation virtually irrelevant, Keyes threw open the door to desegregation in northern and western cities. Still, it was pure coincidence that the same day Keyes was issued, a coalition of three Columbus civil rights groups was at the Federal Courthouse on Marconi Avenue, filing a complaint with sixth District Court judge Carl Rubin. That complaint marked the start of twelve years of school desegregation litigation in Columbus, a case that would come to be known by the last name of its lead plaintiff, thirteen-year-old Gary L. Penick.

The alphabet-soup coalition bringing the suit called itself Project QUIET (Quality Integrated Education Tomorrow) and consisted of CACRC (Columbus Area Civil Rights Council), NWACHR (Northwest Area Council on Human Rights), and the local chapter of the NAACP. The complaint alleged the existence of illegal racial imbalance in the Columbus Public Schools and charged the Columbus Board of Education with a "lack of good faith in carrying out its adopted resolution for integrated educational experiences." It asked the court to order that building program funds be used to foster integration and called on Rubin to convene an immediate hearing. "If buildings are allowed to begin," the complaint read, "damage to
plaintiffs' rights would be irreparable.” The plaintiffs’ attorney and former NAACP chapter president William “Wild Bill” Davis declared, “We’re getting ready to build edifices which could set the pattern of attendance for two generations or more. . . . If the board doesn't start doin', we'll start suin'.”

With court consideration not expected for another year, however, the board had ample time to appropriate funds and initiate construction. Project QUIET attorneys attempted to seal off this opening by seeking a temporary injunction on the bond issue building program. Citing construction already approved for predominantly black or white schools, such as the $210,000 spent adding seven classrooms onto 100 percent white Devonshire Elementary, the plaintiffs argued that continued construction would create “segregated and unequal educational facilities” and leave the school board with fewer and fewer integrative options outside of busing. “The nature of the suit will become moot if nothing is done,” said NWACHR president Ken Connell. “This appears to be a classic case of how 'justice delayed is justice denied.'” Project QUIET’s efforts were supported with sharpening anger by the *Call and Post*, which in an editorial accused the school board of “playing sadistic racial games with the black community” via a “construction program covertly planned to continue, forever, racial segregation of Columbus schoolchildren.”

Finally, on April 15, 1974, Judge Rubin held a hearing to determine whether an injunction should be issued. After listening to a handful of morning witnesses, the judge called both parties into his chambers just before noon recess to make a startling announcement. Enjoining the building program, he declared, would not address adequately the crux of the plaintiffs’ case—the persistence of segregation in the Columbus Public Schools. “If plaintiffs are willing to file an amended complaint,” Rubin continued, “that issue may be adjudicated in court.”

Rubin's all-or-nothing announcement swept away the legal center. There would be no gradually escalating complaints, no time
wasted on peripheral issues; either file a full-scale desegregation suit, Rubin was saying, or stay out of my courtroom. Despite its lack of ambiguity, Rubin's ruling sent mixed signals to both sides. By forgoing an injunction, it enabled the district to proceed unobstructed with a building program already well under way. At the same time, by encouraging a significant expansion of the original complaint, the ruling implied that the plaintiffs had a compelling enough case to merit more sweeping review. Moreover, in requesting an amended complaint rather than demanding a new one, Rubin greased procedural wheels by allowing the Columbus case to maintain its place in the court's normal rotation. "It's a success for the plaintiff," Connell said, "when a federal judge asks you to file a more comprehensive case to seek a more comprehensive remedy." Proclaimed "Wild Bill" Davis, "We're throwing the gauntlet to the school board to develop an effective desegregation plan." 136

The intransigence of the antibusing bloc, however, precluded such a plan, a reality that Superintendent Ellis understood keenly and accepted judiciously. Ellis possessed an impatient, sometimes combative intelligence tethered by personal ambition and political acumen; he was as respectful of the immovability of the board majority as he was aware of the inevitability of integration. As a Harvard graduate student in the early 1960s, he had helped formulate a voluntary desegregation plan ultimately rejected by Louise Day Hicks and the Boston School Committee. He thus understood the populist appeal and unwavering conviction of Virginia Prentice and recognized that directly challenging such conviction could divide the community and derail his career. Said David Hamlar, "I took it that we should do everything possible to get [desegregation] done. I never felt [Ellis] had the strength to fight people who thought it shouldn't be done." Unwilling to be martyred, Ellis adopted a mithridatic role, feeding the district small doses of integration to prepare it for the court order he saw coming. In doing so, said former PTA official and school board member Pauline Radebaugh, "John Ellis dragged Columbus kicking and screaming into the twentieth century." 137
"The school board did not want to have me deal much with the process of desegregation," Ellis recalled. "They wanted us to hire the best lawyers we could and defend ourselves and hunker down and resist. They read the social history and the law differently than I did, and they didn't particularly want me to move in that direction. . . . So, I viewed my role as trying to move aggressively toward a state of integration without engaging in polarizing activities all the way. . . . My approach as the leader was to do as Confucius says: 'A journey of a thousand miles starts with the first step.' You have to get your toe in the water. You have to start somewhere rather than just stay in denial." That starting point was a little-publicized, seldom-used voluntary transfer plan created by the board in 1967 and nominally designed "to achieve better ethnic distribution." A northern form of the southern "freedom of choice" plans deemed insufficiently integrative in *Green*, the "Columbus Plan" allowed high school students to transfer to special programs at other schools, as long as racial balance was improved. But because the board refused to provide transportation, only 0.5 percent of Columbus high schoolers were enrolled in the program by 1972–73.\(^{138}\)

As part of the behind-the-scenes bargaining needed to nail down black support for the bond issue, Ellis promised to expand the Columbus Plan to include transportation for special programs. However, when he also proposed in early 1973 to allow transfers solely to improve integration, white board members erupted. Such a move, Langdon contended, would "open Pandora's box." Prentice declared, "I don't want this board hung up on transportation for racial balance instead of for programs."\(^{139}\) Eventually, the board agreed to allow transfers for racial balance but to offer transportation only for special programs. "It's a breakthrough to allow any transportation at all," said Walker. "[It's] token integration, but at least some integration."\(^{140}\)

As the threat of a desegregation suit escalated, Ellis's administration continued to improve the Columbus Plan's publicity and enlarge its scope. "We were trying to get ourselves positioned so that we could prove that we were making efforts to integrate the school
system,” said Beverly Gifford, the district’s public information di­rector. “It came out of the fear that we were going to be in court and ordered to bus, and so we were looking for alternatives.” To Ellis, however, the Columbus Plan served as more than what Watson Walker called a “Nixon-type delaying tactic . . . something to say ‘Look what we’re doing.’” “It was in my opinion a great teaching and learning device,” Ellis said. “It was like having a pilot program before you do it on a massive scale . . . . There were schools that didn’t have any black kids in them at all. Lots of schools. And we didn’t have any buses rolling up with black kids on them going to white schools, nor did we have white kids rolling up to black schools. We didn’t have any experience at all with that.” The Columbus Plan, Ellis observed, offered the district an opportunity to learn a lot of lessons on how to do things and how to confront things . . . . How do you welcome [children from another neighborhood]? How do you integrate them into the classroom? How do you work with the parents? How do you deal with the questions of athletic programs after school? How do you deal with the PTA when the parents are in another area? How do you deal with insur­ing that they don’t end up resegregated back into the classroom when you group students? What do you do when there is a fight in the cafeteria? All those things Columbus had a chance to deal with in microcosm before they went to the macro system. The Columbus Plan exemplified Ellis’s efforts to expand integration within the closely circumscribed space afforded him by the board majority. If it spawned only superficial integration, it was never in­tended or permitted to do much more. Ellis’s administration took a number of other steps to nudge the system toward desegregation. In mid-1973, the superintendent ne­gotiated a teacher integration plan with the Ohio Civil Rights Council that barely staved off a potentially bitter court hearing. He established the district’s first alternative schools in 1975, with specially designed curricula and carefully chosen faculties that drew students from around the city. By creating community advisory
panels and depending on younger, less hidebound staffers, Ellis found ways to circumvent the dutiful passivity of the administrative old guard and push through a number of moderately integrative proposals.\textsuperscript{146}

Paradoxically, it was the ever increasing polarization over busing that ensured Ellis’s security as superintendent. Desegregation-related violence in Boston and Louisville convinced local business leaders that antibusing intransigence could lead to similar situations in Columbus. If busing was bad, they reasoned, Boston was worse. As Tom Moyer warned his more conservative colleagues in late 1974, “School districts which have done nothing have had the doors torn off at the hinges.”\textsuperscript{147}

On September 30, 1975, the board majority, reacting to the prospect of an out-of-court desegregation settlement, denounced the superintendent for having sent administrators to study desegregation plans in other cities without board authorization. “It was obvious,” said Ellis, “that there was a move at that time to do something to me—maybe fire me.” Out of town on a business trip, Ellis was alerted to the potential coup by Beverly Gifford, who had him paged at the Atlanta airport. He immediately phoned Columbus reporters to explain his belief that “it was irresponsible not to plan for potential contingencies, just like you plan for [fires with] fire drills.”\textsuperscript{148}

Black board members and other integration advocates rushed to Ellis’s defense. Teachers’ union president Ted Thomas blasted the board majority’s “head-in-the-sand attitude on the issue of desegregation.” White board members, the normally more temperate \textit{Call and Post} fumed in an editorial, were “motivated by racial prejudice of the most vicious type.” “We are dealing with four dangerous white men and women,” the newspaper warned.\textsuperscript{149}

It was the backstage clout of Columbus business leaders, however, that quickly settled the issue. Publicly, chamber of commerce officials were circumspect, telling the board, “Contingency planning is logical and necessary in a situation as serious as this one.” Privately, they were more forceful. “The business community, laid out in full glory,” Ellis recalled, “came down pretty hard behind the
scenes on the school board and said, 'You leave Ellis alone. He's doing exactly what he ought to be doing.' They saved my neck." In doing so, the business community also tacitly endorsed Ellis's integrative efforts, creating a counterweight to the board's antibusing faction that enabled community leaders to build a consensus around the neutral goal of peacefully accepting the district court's decision. Said Ellis, "After [Prentice] learned she wasn't going to be able to fire me, she learned to try to live with me."

On March 10, 1975, the NAACP intervened in Penick v. Columbus Board of Education, making Columbus part of what desegregation scholar Gary Orfield called the "most concentrated campaign of urban school litigation" in the organization's history. With the NAACP's traveling team of expert witnesses and its nearly unblemished record in desegregation suits, what had once appeared avoidable now seemed inescapable. It is impossible to say whether John Ellis was too realistic, too ambitious, or too weak to stand up to the school board's recalcitrant majority; quite likely, given the circumstances, nothing could have kept the Columbus Public Schools out of court. Regardless, by the beginning of the Penick trial on April 19, 1976, Ellis, along with many others in the community, could see what lay ahead. "I had read the law carefully," he said. "I had studied other communities around the country. I had looked at our own data and I realized that the court would find Columbus segregated and would order some form of desegregation. There was no question in my mind."

Penick Decided: The Ruling of Robert M. Duncan

With the chamber's intercession on behalf of Ellis in late 1975, the politics of school desegregation in Columbus reached an impasse. The intransigence of the board majority, the bitterness of the board minority, and the anxiety of the business community combined to create an unspoken system of checks and balances that precluded
both volatile confrontation and dramatic compromise. When the white bloc rejected an NAACP offer to settle for a gradual, "stair-step" integration plan, a sense of uneasy anticipation settled over the dispute. The hopes and fears of a whole city thus came to rest on the shoulders of district court judge Robert M. Duncan.\textsuperscript{156}

Still something of a cipher judicially, Duncan represented so many apparent contradictions that his very presence behind the bench had a moderating influence on the emotions surrounding \textit{Penick}. Here was a Nixon appointee whose first major rulings resoundingly endorsed affirmative action; a law school classmate of school board attorney Sam Porter and an acquaintance of NAACP general counsel Nate Jones; an African American and a Republican. Equally comfortable in the social clubs of Columbus's white and black elite, Duncan had tasted both the bitterness of white racism and the benefits of white patronage. Above all, despite his powerful position, Duncan remained very much of the community: he lived in Berwick, an integrated neighborhood east of downtown; his wife, Shirley, taught kindergarten at Columbus's Oakland Park Elementary; and two of his three children would graduate from city public schools. To blacks, this signaled a comforting familiarity with the racial circumstances of the city and the school district; to whites, it meant that any decision made by Robert Duncan the district court judge would directly affect the life of Robert Duncan, the husband and father.\textsuperscript{157} While more radical blacks saw an Uncle Tom and white antibusing extremists a double demon—a black jurist and a federal court judge—most of Columbus's moderate majority could seize on something hopeful amid the many contrasts in Duncan's biography.

Duncan was born on August 27, 1927, in Urbana, Ohio, a small town about fifty miles west of Columbus "where everything was segregated except the public school system and the library."\textsuperscript{158} His was the generation that straddled \textit{Brown}, the last to experience an America in which segregation was ritualized social reality. "In Urbana at that time," Duncan said, "you could still only go to the movie theater and sit at the left rear. Nobody ever told you to sit there."
You just automatically went there so as to not cause a problem." As a senior at Urbana High, Duncan was one of three black starters on the school's varsity basketball squad. After winning the district championship, the team returned to Urbana in search of a postgame meal: "We wanted to have something to eat but there was no restaurant in town [that would serve us]. This is our hometown! Well, we went to one and got put out. Then we went to a black restaurant and had hamburgers." 159

Though equally segregated, Columbus, with its bustling black population, offered a young Duncan the excitement Urbana lacked: "I remember coming to Columbus when I was in high school and having my first ice cream soda. You couldn't go have ice cream sodas in places like Urbana." When he arrived at Ohio State, "The High Street area was almost completely de facto segregated. If you wanted to press the point and go in and sit around long enough, you could get something. But it was very reluctant and you got served very grudgingly. So we didn't generally go." Instead, Duncan recalled, "The entire social life of African Americans on this campus was on the East Side. Friday afternoon we would head for Long Street. Club Regal. Club Flamingo. Movie theaters . . . Sunday afternoon, all the [black] fraternities and sororities had meetings at the old Spring Street Y." 160

Like many African Americans, Duncan looks back on the era before integration with a kind of qualified wistfulness:

Although one shudders at the thought of ever returning to segregation, when you lived it on an everyday basis it was a rather well-organized separate society. It was fun and it was hierarchical. There were leaders in the community and there were people of great respect and there were people with a lot of money and there were people who had fine houses and, above all, there were some very nice places to go. . . . It wasn't day-to-day suffering. And although there's never been a day in my life I don't think about race, there were some days when you could almost say, "Yeah, I'm really glad to be a black law student in Columbus." 161
But the piercing clarity of prejudice invariably punctures the haze of nostalgia. One of Duncan's most searing memories occurred as a third-year law student at Ohio State. He and classmate John Bowen became the first African Americans to pledge the school's law fraternity. When officials at the fraternity's Atlanta national headquarters found out, they informed the local chapter that accepting blacks violated the organization's constitution. "We got dumped out of the fraternity," Duncan recalled, "which was, to say the least, at that time traumatic. Nothing like that had ever happened to me before. . . . To show how schizophrenic society was in those days, about three months later, I got elected president of the class." 162

Duncan spent seven years at Ohio State, where he majored in education as an undergraduate and received his law degree in 1952. That year, he passed the Ohio Bar and began his deferred military service. Though the armed forces had recently been desegregated, Duncan quickly discovered that the new policy had yet to be uniformly implemented:

I go to Fort Hayes [in Columbus] and I am in a desegregated port of entry to the army. They put us on a desegregated train going from Columbus to Fort Meade, Maryland. Get off at Fort Meade and immediately go to a segregated part of Fort Meade to get our shots and clothing and all that kind of stuff. Stay there two days in segregated housing. Get on a segregated train in Fort Meade, all blacks together and all whites together. The train goes to Camp Breckenridge, Kentucky. And we get to Cincinnati on a train and we change trains. Now we are in a desegregated train going from Cincinnati down to Camp Breckenridge. We go now to a segregated area to distribute us where we're going to go. So then we get distributed out to desegregated Army facilities. This all happened in less than a week. 163

Duncan returned to Columbus in 1955 with, in his words, "limited expectations," resigned to becoming a "competent practitioner, primarily serving a black clientele." His fortunes changed, however, when William Saxbe, a Republican from just outside Urbana, was elected attorney general of Ohio. Duncan's family had deep roots in
the Urbana Republican Party, and "everybody in town" knew his grandfather, a porter and headwaiter at the city's hotel, and his father, a shoe shiner in the barbershop next door. When Duncan left Urbana for OSU, then-State Representative Saxbe arranged a job for him in the Ohio treasurer's office. A decade later, Saxbe hired the recently married lawyer to try workmen's compensation cases for the state, giving Duncan's pioneering career its first big boost and cementing his allegiance to the Republican Party.¹⁶⁴

Over the next two decades, Duncan would become known as "the Jackie Robinson of the Ohio judiciary," turning the phrase first black into a permanent professional prefix: first black chief counsel in the Ohio attorney general's office (1965–66), first black elected Franklin County municipal court judge (1966–69), first black Ohio Supreme Court justice (1969–71),¹⁶⁵ first black on the United States Military Court of Appeals (1971–74), and, in the waning months of Watergate, Ohio's first black federal district court judge. As the second black district court judge to decide a desegregation suit, Duncan was mindful of but unfazed by the added scrutiny his actions would receive.¹⁶⁶ "I was always concerned about whether or not citizens in this community would think they're getting a prejudiced opinion from a judge who is black," he said. "On the other hand, I always thought, ‘Well, if a black man didn't decide it, it would have to probably be some other ethnic person or group. So what the hell?’”¹⁶⁷

More broadly, Duncan brought to Penick an acute sensitivity to both the case's gravity and its volatility. He frequently met informally with reporters to clarify important legal issues and explain impending procedures, even passing out pillows to make the hard courtroom benches more comfortable. "My approach to it," he said, "was 'I want newspaper people there.' I got really uncomfortable if I ever looked out there and didn't see any." A day before the trial began, the Dispatch ran a front-page photograph of the judge seated in his office, arms behind his head, feet resting lazily on his cluttered desk, a reassuring symbol of relaxed calm and an image in sharp contrast to the armed guards and metal detectors that greeted
spectators entering the courtroom the next day. *Penick*, the judge assured the *Dispatch* on April 18, was "just another trial." As it opened the next morning, however, his assessment was far more sober. "This is an extremely important case in this community and the nation," he told a packed courtroom. "I pray that we will find a fair and just result."^{168}

Thirty-six days of occasionally testy and often tedious testimony followed, spanning nearly two months. More than seventy witnesses and six hundred exhibits left Duncan and his clerks to wade through a 66-volume, 6,322-page transcript.^{169} "It's going to be the toughest decision I've ever been called on to make," mused Duncan the day testimony ended. "We're dealing with the most valuable thing that all of us have—our children."^{170}

It took Duncan just over six months from *Penick*’s September 3, 1976, closing arguments to hammer out a decision, a process delayed by a voluminous record and an unusually heavy criminal docket. Ironically, the bitter cold that would close the Columbus schools that winter ended up accelerating the completion of the ruling. In December 1976, Chief Judge Harry Phillips of the Sixth U.S. District assigned Duncan for two weeks to assist the busy Western District of Michigan in Grand Rapids. "It was sort of like eight below zero when I got there," Duncan recalled. "So my law clerks and I really couldn't do anything while we were in our spare moments. That's when we really did most of the writing of the opinion."^{171}

At 10:00 A.M. on March 8, 1977, a week after the end of School without Schools and the departure of John Ellis, Duncan finally released his ruling. The thirty-six-page opinion and order quickly laid to rest months of speculation that overdue equaled uncertain: "[The] delay in reaching a decision," Duncan wrote, "should not be construed to reflect a hesitancy on the part of the Court in determining the basic result required by the evidence and the law. I am firmly convinced that the evidence clearly and convincingly weighs in favor of the plaintiffs."^{172}

The lag between the end of the trial and the release of the ruling reflected a judge wrestling not with what to say but how to say it.
"This case was not close," Duncan confessed. "To find for the plaintiffs did not make me sit up nights."\(^{173}\) Wanting to address both the Constitution and the community, Duncan faced the challenge of crafting an opinion that would be legally thorough without being hard to understand, emphatic without being accusatory, and sympathetic without being lenient. What emerged was a decision unusual in its compassion and humanity, the product of a judge forced by violations he could not deny to take on a role he did not relish. Revealing bits and pieces of Duncan's many masks—judge, African American, Republican, parent, civic leader—the ruling set a tone of resigned resolve that would eventually come to characterize the implementation of school desegregation in Columbus.

From the beginning of the decision, Duncan made clear his belief that the courts were ill suited to deal effectively with the complexity of racial segregation in America. In both the trial and the opinion, the judge decried what he later called the "punting syndrome," the tendency of politicians and policy makers to abdicate responsibility for "agonizing social issues" by kicking them into the courts and then blaming unelected judges for trying to resolve them.\(^{174}\) "As I view it," he wrote in Penick, "the real reason that courts are in the school desegregation business is the failure of other governmental entities to confront and produce answers to the many problems in this area pursuant to the law of the United States. This Court is quick to admit that the litigation model is not the most efficient way to solve problems of far-reaching social impact, but our courts must always protect the constitutional rights of all our citizens." During the trial, Duncan had significantly injected himself only once into testimony, disbelievingly grilling twenty-year Ohio Board of Education member Wayne Shaffer about the state's failure to actively investigate segregation in Columbus. In the decision, Duncan reserved his harshest words for the state defendants. "As I understand [their] argument," he wrote, "they claim that they would have investigated had Columbus school officials so requested. This position borders on the preposterous. It cannot reasonably be expected that those who violate the Constitution will be anxious for an investigation in order that a remedy may be leveled against them."\(^{175}\)
Duncan's judicial misgivings extended beyond the problems of addressing school segregation to the unintended consequences of remedying it. Developments around the country suggested that busing brought with it the danger of reducing *Brown* to a triumphant battle in a lost war. While media coverage of antibusing violence obscured the uneventful desegregation taking place in most of the country, images from cities such as Boston and Louisville symbolized mounting white resistance to African American advancement. And violence was only the most vivid manifestation of this resistance. By the mid-1970s, some sociologists, most notably the influential James Coleman, were making the controversial claim that school desegregation actually undermined integration by accelerating "white flight" from cities to suburbs. This thesis raised the insidious paradox that, like a strain of bacteria growing immune to antibiotics, the disease of segregation might only be worsened by efforts to remedy it.

Meanwhile, the integration that had come to Columbus was proving no panacea for African Americans. The Columbus Plan, the district's voluntary transfer program, was coming under increasing criticism as a "black brain drain" that skimmed the academic cream from schools such as East and Linden-McKinley. At the same time, the Ohio Civil Rights Council's teacher integration formula, fully implemented by 1975, seemed to be undermining discipline and morale at predominantly black schools, where experienced black teachers were often replaced by younger whites with little understanding of their new pupils' culture or circumstance. "The loss of more experienced staff," observed a consultant sent to study the plan, "has had a drastic and sometimes unmanageable impact on those schools severely affected." Moreover, the consultant reported, minority teachers sent to white schools "appear to be alienated, isolated, and have not been in many instances offered a full partnership in the educational process of those schools." Asserted East principal Ed Willis, "Many parents of inner-city children have expressed discontent and frustration at this agreement and view it as just another trick played on them by the white majority." This conspiratorial
vision of desegregation, not uncommon among African Americans, found its most vociferous local voice in radio-personality-turned-politician Bill Moss.\(^{179}\)

Finally, any attempt to eliminate illegal segregation was going to cost money. In November 1976, Columbus voters rejected a 6.2-mill operating levy, forcing the board to make cuts in its inflation-ravaged budget that Superintendent Ellis called "virtually immoral."\(^{180}\) Uncertainty over desegregation, along with more general antitax sentiment, clearly contributed to the levy loss, a link frequently emphasized by the board majority. Said Ellis, "Some people apparently were afraid that if they provided additional money for the schools, somehow we would use those dollars to buy buses and engage in forced busing."\(^{181}\) Penick thus proved a twofold curse at the polls: opponents of desegregation who resented the issue's being in the hands of unelected judges could vent their frustrations by voting against the school levy; similarly, those who mistakenly viewed desegregation as a political choice rather than a judicial mandate believed that by voting down the school levy, they could vote down desegregation.

Duncan was keenly conscious of the wrongs that could result from even well-intentioned efforts to ensure constitutional rights. "A case such as this one is disturbing," he wrote, "because of the social costs which can be associated with the implementation of a remedy. Depending upon the school system involved, these social costs can include substantial expenditures of public funds, inconvenience and hardship for students, unrest on the part of various segments of the community involved, and flight by white residents from the desegregated school district, often resulting in more pronounced racial imbalance and in a loss of tax base." By tying legitimate worries about the consequences of remedial action to his unconditional duty to uphold constitutional rights, Duncan hoped to send calming signals of judicial flexibility and concern to the community. "While the plaintiffs must, and will, receive vindication for the deprivation of their constitutional rights," he wrote, "the social costs should not be forgotten in the formulation of a
remedy." He added, "A desegregation remedy that may be so burdensome upon a school system as to impair its basic ability to provide the best possible educational opportunities, is no remedy at all." 182

Like Justice Brennan in Swann, Duncan incisively understood the importance of tone. Convinced that confrontation could only hinder the effectiveness of a remedy, Duncan carefully crafted the language of his decision to be complex but uncomplicated and to establish guilt without emphasizing blame. Knowing that blasting current board members would inflame their opposition, Duncan steered clear of condemnation, even going so far as to describe the "recent efforts of the Columbus defendants" as "in many ways highly commendable." "I tried to write the decision," he said, "to let people know that I felt no animus, that this is what the law decided and there was no other way to do this." 183

With controversy inevitable, clarity was essential. "One of the things that I was always concerned about," he recalled, "was 'Will the people understand this case?'" To ensure that they did, Duncan largely spurned confusing and alienating legalese, making "a studied attempt to write [the decision] at about the eleventh-grade reading level." 184

Ultimately, of course, Duncan knew that his efforts to address the concerns of the community could neither convince nor convert. "I always had the feeling," he said, "that if this thing were ever put up to public vote, then it would probably lose. It was not something a majority of citizens would be in favor of." However, in what sociologist Jennifer Hochschild would call the conflict between democracy and liberalism in school desegregation, Duncan placed the awarding of constitutional rights above the rewarding of popular opinion. "The Brown principle," he wrote, "[is] still quite valid today, that unlawfully segregated schools are inherently unequal. Because black children are expected and required to grow up, live and work in a majority white society, it is not only unlawful, it is unfair for public officials, by their actions or their inaction, to promote with segregative intent racially imbalanced schools." 185
In order to prove that Columbus and state officials deliberately created and knowingly maintained an unconstitutionally segregated school district, NAACP attorneys during the trial traced an unbroken pattern of race-based decision making back more than a century. Utilizing a mass of historical sources and the most dramatic testimony of the trial, they had little difficulty demonstrating that by 1954, the year of Brown, "there was not a unitary school system in Columbus." The plaintiffs' pre-Brown evidence was the easiest for Duncan to interpret. It was also the most personal. "I knew all about this stuff," he said. "When I was doing my practice teaching as a senior [at OSU], the only place that an African American could do that was at Champion Avenue Junior High School." In Penick's most moving paragraph, Duncan wrote, "The evidence in this case harkens back to a previous era in the history of Columbus: a time fresh in the memory of some who testified at trial, when black parents and their children were openly and without pretense denied equality before the law and before their fellow citizens."  

The plaintiffs' claim that a dual district existed in Columbus at the time of Brown went undisputed by the defense. The case thus turned on a question of causation: what connection, if any, was there between segregation in 1954 and racial imbalance at the time of the trial?  

The defense contended that continued racial imbalance in the school district was solely the product of the city's undeniably segregated housing patterns. To keep up with Columbus's remarkable postwar growth, attorney Sam Porter argued, the district built schools at an extraordinary rate, siting them according to a racially neutral "neighborhood schools" policy. Any black-white imbalance that resulted was not the product of intentional board action, but of existing residential segregation, an independent variable beyond board control. Porter thus sought to prove that logistical necessity, not segregative intent, drove the board to build schools "where the people were." Citing the standard of proof set forth in Keyes, Porter contended that absent such intent, existing segregation in the
Columbus Public Schools was not in violation of the Fourteenth Amendment. Moreover, he argued, the Columbus Plan and other recent actions amply demonstrated the district’s good-faith efforts to enhance integration.

Duncan found the connection between city growth and school construction compelling. “That was the closest part of the case,” he recalled. “The argument is that you built the new schools when the student population meteorically soared. You built the schools where the kids were. It’s a good argument.” Ultimately, however, “the greater weight of the evidence” presented by the plaintiffs convinced the judge that by act and omission, the school board had systematically and intentionally maintained the dual district that existed at the time of Brown. The defendants, Duncan wrote, had failed to prove “that the racial character of the school system is the result of racially neutral social dynamics or the result of acts of others for which defendants owe no responsibility.” Nor, he added, had the defendants demonstrated “that the present admitted racial imbalance in the Columbus Public Schools would have occurred even in the absence of their segregative acts and omissions.” In short, a generation after Brown, “nothing [had] occurred to substantially alleviate [the] continuity of discrimination of thousands of black students over the intervening decades.”

In his decision, Duncan extensively detailed the tools used by the board and administration to sustain segregation: new school sittings, optional and discontiguous attendance zones, gerrymandered pupil assignment boundaries, and race-based employment and appointment practices. The foreseeably segregative effects of these actions, the judge wrote, were compounded by the board’s failure in the face of a significant degree of public notice to take adequate advantage of the integrative options it did have; “neither the magnet alternative school nor the Columbus Plan,” he added, “will predictably provide students at [segregated] schools with their constitutional rights.” Race, Duncan concluded, could not be divorced from rationality in explaining the board’s failure to fulfill its affirmative duty to establish a unitary system:
I am constrained, from certain facts which I believe to be proved, to draw the inference of segregative intent from the Columbus defendants' failures, after notice, to consider predictable racial consequences of their acts and omissions when alternatives were available which would have eliminated or lessened racial imbalance.\textsuperscript{191}

Critically, Duncan concurred with the plaintiffs that residential segregation and school segregation were not, as the defense argued, independent of board decision making:

In Columbus, like many urban areas, there is often a substantial reciprocal effect between the color of the school and the color of the neighborhood it serves. The racial composition of a neighborhood tends to influence the racial identity of a school as white or black . . . The racial identification of the school in turn tends to maintain the neighborhood's racial identity, or even promote it by hastening the movement in a racial transition area . . . The Court finds that the school authorities do not control the housing segregation in Columbus, but the Court also finds that the actions of the school authorities have had a significant impact upon the housing patterns. The interaction of housing and the schools operates to promote segregation in each.\textsuperscript{192}

Thus, the apparent racial neutrality of "neighborhood schools" only served to obscure and preserve the symbiotic efforts of housing developers and city school officials to maintain segregation. Furthermore, trial testimony revealed an overwhelming web of public and private policies supporting this relationship. Yet, while the plaintiffs painted a devastating picture of the complex and interlocking causes of urban segregation, only the public schools were on trial. Though equally complicit, bankers, lenders, developers, real estate agents, and federal officials were merely accomplices, the unindicted coconspirators of public school segregation.

Robert Duncan's \textit{Penick} opinion was an unequivocal victory for Columbus blacks and an unambiguous defeat for antidesegregation whites, confirming what the former had known for generations while condemning what the latter had done for years. With the winners
and losers of the litigation now decided, however, the case moved into its far messier remedy phase. In the order that followed his opinion, Duncan gave the city and state school boards ninety days to submit plans to desegregate the Columbus district. The antibusing intransigence of the white board majority had only made “forced busing” more likely to be included in these plans. To city leaders, this prospect evoked the chaotic spectacle of desegregation-related violence in Boston, stoking fears that a similar eruption could irrevocably mar Columbus’s national image, derail its development potential, and cramp its expanding civic ambition. “A school desegregation problem,” Judge Duncan wrote, “is one we could all do better without, but there is no denying that it is just that—a problem for our community—a problem that simply won’t go away if left alone.” 193