# THE OTHER DESEGREGATION STORY: ERADICATING THE DUAL SCHOOL SYSTEM IN HILLSBOROUGH COUNTY, FLORIDA

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*Professor Days describes the successful desegregation of the Hillsborough County, Florida school system. The Hillsborough case was originally filed by Thurgood Marshall and Constance Baker Motley and exemplifies the optimal outcome of* Brown.

*BROWN v. Board of Education*[1] established the basic constitutional principle that state-mandated segregated schools are inherently unequal and unconstitutional. As we approach the thirty-eighth anniversary of *Brown*,[2] the courts are still in the process of elaborating new doctrines in the field of school desegregation. Some elaboration and refining of legal doctrine is inevitable where the Supreme Court has issued broad constitutional pronouncements, such as its decisions in *Brown*,[3] *Baker v. Carr*,[4] and *New York Times Co. v. Sullivan*.[5]

However, not all subsequent elaborations or reconsiderations by the Court of its prior rulings are inevitable. Sometimes they occur in response to resistance by those whose conduct the Court has decided to regulate. Much of the development of school desegregation law has been of this latter type. It has been necessitated by resistance to the proposition that arbitrary use of race in public education for purposes of student or faculty assignment or allocation of resources violates the Constitution.[6]

One rarely has to look hard for reports on the so-called "failures" of school desegregation. The media usually find such stories good copy. Hence, we hear of twenty- and thirty-year-old cases where opposition to busing, "White flight," and significant demographic changes have caused formerly one-race facilities before desegregation to become resegregated. We have been made constantly aware of the fact that there are now many largely minority and poor urban school districts surrounded by predominantly White, wealthy, suburban school systems. Indeed, Linda Brown,

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1. 347 U.S. 483 (1954).

2. 349 U.S. 294 (1955).

3. Brown v. Board of Educ., 349 U.S. 294 (1955) (*Brown II*); Brown v. Board of Educ., 347 U.S. 483 (1954) (*Brown I*).

4. 369 U.S. 186 (1962) (reapportionment).

5. 376 U.S. 254 (1964) (seditious libel).

6. *See, e.g.*, Griffin v. County Sch. Bd. of Prince Edward County, 377 U.S. 218 (1964) (closing of public school system to avoid desegregation in Virginia county); Cooper v. Aaron, 358 U.S. 1 (1958) (opposition to desegregation of Little Rock, Arkansas' Central High School).

the original plaintiff in the 1954 case, renewed her claim in 1979,[7] alleging that the Topeka, Kansas school system had still not achieved constitutionally acceptable desegregation,[8] an event that was widely covered in the media.

One presumably is supposed to conclude from these chronicles of failure that most of the effort since *Brown* has been in vain. They suggest that, for all of the Court's staunch support for most of this nearly forty-year period, the legal doctrines that were developed since *Brown* to ensure an end to segregation have made little practical difference. This is clearly not the case. The Court's efforts to implement *Brown* have transformed public education in America for the good in ways too numerous to recount here. It must be acknowledged, however, that legal doctrines cannot operate in a vacuum, and that concerted opposition to Supreme Court rulings can frustrate realization of their intent. In more than a few cases this has been part of the story of desegregation.

There is, however, another less-told desegregation story that deserves to be heard. It is a story of success, of compliance, of stability, and of effective dismantlement of the dual system. Take, for example, Hillsborough County on the Gulf Coast of Florida, whose major city is Tampa. In 1970, it was the twenty-sixth largest school district in the nation.[9] The Hillsborough County school desegregation case was filed in 1958 by Thurgood Marshall and Constance Baker Motley, lawyers for the NAACP Legal Defense Fund at the time.[10] Between 1958 and 1969, the county school board engaged in a variety of stratagems designed to delay as long as possible the coming of meaningful desegregation. The use of pupil assignment laws, one-grade-a-year desegregation, and freedom of choice proved effective. When further delay appeared impossible, the school board proposed a modest desegregation plan that received trial court approval.[11] Once it was clear that the plan would not achieve much change in the status quo, plaintiffs moved for further relief. That motion was denied. The court of appeals, however, reversed and remanded the lower court ruling, ordering a more effective desegregation plan.[12]

The Hillsborough County schools have now been thoroughly desegregated for almost twenty-one years. There are no racially identifiable

7. *See* Brown v. Board of Educ., 892 F.2d 851, 855 (10th Cir. 1989), *vacated*, Board of Educ. v. Brown, 112 S. Ct. 1657 (1992).

8. *See id.* at 889.

9. U.S. Comm'n on Civil Rights, Five Communities: Their Search for Equal Education 9 (1972).

10. Constance Motley subsequently was appointed to the United States District Court for the Southern District of New York in August, 1966. She is now a Senior District Judge.

11. *See* Mannings v. Board of Pub. Instruction of Hillsborough County, 306 F. Supp. 497, 500 (M.D. Fla. 1969), *rev'd*, 427 F.2d 874 (5th Cir. 1970).

12. *See* Mannings v. Board of Pub. Instruction of Hillsborough County, 427 F.2d 874, 878 (5th Cir. 1970).

schools, faculty ratios are balanced, and resource allocations appear to be free from discrimination.[13]

Several elements have contributed to desegregation success rather than failure in that district. First, the Hillsborough County case had a federal district judge assigned to it in November of 1969 who was truly committed to making *Brown* a reality in that school district. In far too many other cases, district judges lacked the conviction or the guts to get the job done. During 1969 and 1970, he constantly prodded the school board to achieve further desegregation. The judge, Ben Krentzman,[14] showed in a variety of ways that he meant business.

For example, a month after the Supreme Court's April, 1971 decision in *Swann v. Charlotte-Mecklenburg Board of Education*,[15] Judge Krentzman issued an order on his own motion. It required the school board to develop a comprehensive desegregation plan using techniques approved by the Supreme Court in *Swann*, such as two-way busing, pairing and clustering. He made clear his view that the Hillsborough County case had gone on far too long. The judge observed, "The papers filed in this case, including pleadings, motions, exhibits, depositions, orders and so forth now weigh a total of sixty-two and a half pounds, and when stacked on top of each other rise two feet three inches off the ground."[16] He actually had his law clerks measure the records to make certain these statistics were accurate.

Second, the desegregation process was facilitated by the fact that the system involved was a city-county arrangement. The court was not faced, therefore, with the prospect of having to desegregate solely within the urban community. Instead, it could reach out and incorporate the suburbs and even rural areas in the process. Under these circumstances, "White flight" was less likely to occur unless White families were prepared to move outside of the county entirely. Third, the school board and its lawyers, quite remarkably, decided against taking an appeal from the judge's ruling. Had that been done, years of further litigation undoubtedly would have ensued.

Fourth, the school board decided to involve a broad cross-section of the citizenry in the preparation of the desegregation plan that was to begin with the 1971-72 academic year. It created a committee—somewhat incredibly—of over a hundred and fifty citizens to engage in the planning process. There were representatives from diverse segments of

13. *See* Report of Defendant School, Mannings v. Board of Pub. Instruction of Hillsborough County, 306 F. Supp. 497 (M.D. Fla. filed 1990) (No. 3554-Civ.-T-17); Status Report of the Defendants, Mannings v. Board of Pub. Instruction of Hillsborough County, 306 F. Supp. 497 (M.D. Fla. 1976) (No. 3554-Civ.-T-K).

14. Appointed in June, 1967. He is now a Senior District Judge.

15. 402 U.S. 1 (1971). In *Swann*, the Supreme Court authorized the use of busing, among other tools, to achieve "the greatest possible degree of actual desegregation." *Id.* at 26.

16. Mannings v. Board of Pub. Instruction of Hillsborough Co, No. 3554 Cir. T., slip op. at 3 n.4 (M.D. Fla. May 11, 1971).

the county population. The chair was a four-star Air Force general. There were also business leaders, civic leaders, and important Black and White community figures, including representatives of the White Citizens Council and the NAACP.[17]

The result was a desegregation plan that involved the entire community not only in the planning, but also in the implementation process.[18] Every White family in the county shared equally in busing to formerly Black schools, for example. No special White enclaves were allowed, a feature that caused plans in other districts to encounter significant opposition from both Blacks and Whites. Wealthy school neighborhoods in some other school districts were left largely unaffected by the desegregation process.

There were two features of the desegregation plan, however, that did raise concern in the Black community. One was the unequal burden of busing on Black children. For example, Black elementary students had to be bused for five years; White students were bused for only one year. There were logistical explanations[19] for that disparity, but it did not explain away entirely the feeling of stigma and the additional onus that the Black community both faced and felt. There was also the problem of the conversion of Black high schools to junior high schools, essentially demoting those schools in terms of their status in the Black community.

The fifth element was that the school board accompanied the desegregation process with a group of educational enrichment programs costing several million dollars. It took the federal government seriously and actually got some of the educational enhancement money to support desegregation that was then available.[20] In this respect, Hillsborough County was ahead of its time. The significant role that educational enhancement components could play in the desegregation process was largely overlooked until the mid-1970s.[21] The planning committee in Hillsborough County thought that it was very important to let students know that quality education was at the end of the bus ride. The plan received court approval on July 2, 1971.[22]

Desegregation has been remarkably stable since 1971. Recently, the district embarked on a major restructuring plan to convert from a junior high school to a middle school configuration. This shift presented all

17. *See* U.S. Comm'n on Civil Rights, School Desegregation in Ten Communities 18 (1973).

18. For a general discussion of the planning process and of the desegregation plan itself, see *id.* at 17-28; U.S. Comm'n on Civil Rights, *supra* note 9, at 10-14 (1972).

19. Several all-Black elementary schools were converted into sixth-grade centers. Hence, Black children from those schools were bused out to predominantly White schools in first through fifth grades. White students were bused in only for sixth grade.

20. *See* School Desegregation in Ten Communities, *supra* note 17, at 12 nn.14 & 19.

21. *See* Milliken v. Bradley, 433 U.S. 267, 279 (1977) (ordering the State of Michigan to fund educational improvements for Black children as part of Detroit desegregation process).

22. *See* Mannings v. Board of Pub. Instruction of Hillsborough County, No. 3554-Civ.-T., (M.D. Fla July 2, 1971) (opinion and order).

kinds of possibilities for mischief by the school board with respect to desegregation. That temptation was resisted, however. With a little prodding from the NAACP Legal Defense Fund, the board agreed that avoiding resegregation should be a principal consideration in the planning process. Once again, it used a technique of inviting a representative group of citizens to become involved in developing the new plan.[23] The Legal Defense Fund was consulted frequently as the plan took shape to avoid misunderstandings that might trigger litigation.

The new plan successfully deals with problems of desegregation. Moreover, it envisions the reduction of the busing burden on Black students, and the restoration to its original status of one of the Black high schools that was demoted to a junior high school. By recognizing the symbolic importance of that institution in the Black community, this action will go a long way toward redressing some grievances Blacks had with respect to the desegregation process in 1971.

The plan has been approved.[24] Of course, difficulties may arise in the plan's implementation. Given Hillsborough County's track record, however, there is some basis for optimism. In any event, there are many more success stories beyond that of Hillsborough County.[25] It does a great disservice to Thurgood Marshall, to the Legal Defense Fund, and to *Brown v. Board of Education* to suggest that desegregation in America has been largely a failure. The Hillsborough County case teaches that where people took *Brown* seriously, where they understood the redemptive quality of that decision in their communities, and where they went about the job, desegregation could be accomplished and accomplished well.

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23. The planning group included, among others, the president of the local NAACP, a retired corporate executive, and the executive director of the Classroom Teachers Association. *See* Coordinating Comm. Task Force to Modify Single Grade Sch. Ctrs., Middle School Task Force Report 3 (1991).

24. *See* Mannings v. School Bd. of Hillsborough County, No. 71-3554-Civ.-T-17 (M.D. Fla. Oct. 24, 1991) (consent order).

25. For a discussion of the impact of *Brown* upon segregation, see Finis Welch & Audrey Light, U.S. Comm'n on Civil Rights, New Evidence on School Desegregation (1987).