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THE ST. LOUIS DESEGREGATION PLAN

A Report to Judge James H. Meredith

United States District Court

by

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PREFACE

Assignment and Methods of Work. The assignment of the District Court to serve as a court-appointed expert in the development of the St. Louis desegregation has involved a series of complex activities in a relatively brief period of time. To aid in evaluating the following report I think that it is important that you know the way I have interpreted the assignment and the manner in which I have carried out the work.

My assignment was not to draw a plan nor to engage in public disputes over decisions in the plan but to carefully observe the planning process, offer candid advice on planning issues, and to prepare an assessment of the degree to which the school board and the other parties to the case have complied with the order of the Court of Appeals. My task is not to say whether or not the board's plan is the best that might have been devised but whether it represents a serious and reasonable effort to comply with the requirements of the law.

Since the time of my appointment I have been in St. Louis, working with the district's internal committee and other concerned participants, whenever my teaching schedule has permitted. I was in the city for the entire third week, when many of the basic decisions were made and have returned for two or three days each other week. I have supplemented the information from the school district with interviews with local experts in demography, housing, community development, and other fields and with examination of many of the official and scholarly reports that have been prepared over the years on the St. Louis metropolitan area and

its schools. To assist me in my work I asked for preparation of data by Frank Avesing of St. Louis University and collection of information on St. Louis County by Richard Patton of the University of Missouri, St. Louis. I commissioned Professor Karen Dawson of Washington University to gather information and conduct interviews relating to the response of the state government to the court order and directed Professor David Colton of Washington University to prepare information about the feasibility of exchanges of students between the city and suburban school systems, as suggested in the Court of Appeals decision. My research associate at the University of Illinois, Marilyn Cohen, conducted telephone interviews and assisted in the library research for this report. In preparing this report I carefully considered the resolutions of the court-appointed Citizens Committee and the comments of attorneys representing the various parties in the case. A series of discussions with the Commissioner of Education and other ranking officials of his department in Jefferson City has given me a better understanding of the role of the state.

PART III

THE STATE

The Role of the State. In appraising the role of the state government in implementing the requirements of the St. Louis school desegregation order I have been guided by the decisions of the District Court and Court of Appeals in this case, the description of the role and responsibility of state government in U.S. v. Missouri, a reading of numerous publications prepared by or for Missouri state education authorities, a series of interviews with state officials conducted by Professor Karen Dawson of Washington University and by me in recent weeks, and by the Supreme Court's ruling about the responsibility of state government in the second Detroit decision, Milliken II. Based on these standards and sources of data I have reached a series of conclusions about what the state has done to aid St. Louis and a series of recommendations for possible inclusion in the court's order.

Basic Conclusions

1. Education is a state function in Missouri and the state government has historically exercised broad powers over its organization, administration, and content. Those powers and the level of state financing have continued to expand in the recent past.

2. A state, such as Missouri, which operated a dual school system through most of its history, has an affirmative duty to work for desegregation of the public schools.

3. The state has no significant affirmative policy for school desegregation and recognizes no affirmative duty in the St. Louis case.

4. The state has had a basic policy in favor of school district consolidation since 1901. State reports in 1968, 1969, and 1979 have highlighted the immense educational problems caused by the separation of St. Louis and suburban school districts.

5. The state education officials would support voluntary city-suburban transfers for desegregation but they see no chance of enactment of the state fiscal incentive bill to create the program and very little if any suburban interest in a voluntary program.

6. The state has particularly broad control of the organization, construction, and programs for vocational education.

7. State officials believe that the existing vocational and career education programs are far too small in both the city and county of St. Louis.

8. State rules for transportation reimbursement do not take into account the special costs of desegregation busing, particularly the special costs of magnet programs which reduce problems of mandatory reassignment but require picking up small numbers of children from widely scattered areas.

9. State officials do not favor any expansion of their role in the desegregation process. They believe, however, that if the court is to order an expanded role they must be given an opportunity to insure that educational issues be carefully considered in the process and have full access to financial data and financial plans that will create fiscal obligations for the state.

10. State Department of Education officials will comply with federal court orders and attempt to provide leadership to assure the most successful implementation of any court—mandated changes.

Education and State Government. State aid increased by more than 500 percent from 1950-1965 and more than doubled during the seventies. It now provides about 43 percent of total educational funding in Missouri.[1] During the current school year the state of Missouri is

spending $859 million on elementary and secondary education and is exercising a powerful influence on the shape and direction of education in the state. Next year's budget will be up sharply. The governor's budget requested $979 million and the legislature has approved an overall increase of approximately 15 percent.[2]

The state administers major federal-state programs, such as vocational education and exercises detailed control of staffing and curriculum through its certification and classification procedures. It subsidizes transportation to school for 61 percent of Missouri students.[3] The state's influence over education has been expanding in recent years through large new efforts in such complex and controversial fields as mandatory testing and mandatory provision of special education programs. The statewide testing program, the Basic Essential Skill Test, which now requires that every eighth grader take a state-prescribed test and retake it each year until he passes or graduates, is a major attempt to assess and influence the teaching in school districts across the state.[4]

A good deal of the state's detailed control over curriculum and staffing comes from its process of classifying school districts. Since 1950 all school districts have been rated "AAA," "AA," or "A" by the state department. To achieve a given rating a district must meet specific standards of course offerings, teacher ratio, counseling, libraries and many other program requirements. The State Board's annual report concluded in 1980 that "because of the classification system, 95 percent of Missouri students now benefit from expanded programs."[5] The ratings have been very important to school officials and local communities. Deputy State Commissioner Wasson commenting on the accreditation rating said that "residents of a community value that very highly."[6]

The ratings are widely publicized and constantly referred to in state publications.

Pressure for compliance has been sufficiently strong that the number of districts meeting only the standards for an "A" fell from 221 in 1972 to 22 in 1978. The state board will phase out the "A" rating this year leaving districts that do not comply with the label "unclassified."

573,000 Missouri students attended schools in districts with "AAA" classifications in 1978-79. 159 high school districts had "AAA" ratings.[7] 270,000 were in "AA" districts, more than one-fourth of them in the city of St. Louis. Fewer than 8,000 students were in districts with lower ratings.[8]

Approximately one-fourth of the state's expenditures for education are made in the St. Louis city-county area.[9] Within the city-county area every district except St. Louis and the small black suburb of Wellston have "AAA" ratings.[10] St. Louis City is one of the few districts to experience a loss of an "AAA" rating at a time many other systems are improving.

(St. Louis school district, in other words, was labeled by the state classification system as the worst major system in its metropolitan area. The city suffered, according to the Deputy Commissioner, from too high a student/teacher ratio, from a lack of counselors, from problems in its special education program, and from difficulties in teacher certification.[11])

Reviewing the wide range of state powers which include establishing the legal framework for school district organization, it is not surprising that the Missouri School District Reorganization Commission concluded in its report to the governor:

> Education is a state function. Thus the state, having the responsibility for education, establishes the form of school district organization and delegates certain operation responsibilities to the districts.[12]

The Obligation of the State in Desegregation Plans. A state which operated dual schools for most of its history and never fully desegregated its schools, is under a strong positive obligation. As the U.S. District Court observed in the 1973 decision in U.S. v. Missouri the state "must insure that the education is provided in a manner which does not discriminate against any group of persons on account of their race and which is consistent with the Equal Protection Clause of the Fourteenth Amendment."[13]

> A state, such as Missouri, which has in the past operated a racially dual system of public education, pursuant to state constitutional and statutory requirements is, and has been since 1954, under an additional constitutional obligation to take such affirmative measures as are necessary to disestablish that dual system and to eliminate the continuing vestiges that system.[14]

The nature of the affirmative obligation of state governments guilty of de jure segregation were explored by the Supreme Court in the second Detroit case, Milliken II. The Court held that state officials must help "eliminate from the public schools all vestiges of segregation."[15] Much more than physical desegregation was needed:

> Children who have been . . . educationally and culturally set apart from the larger community will inevitably acquire habits of speech, conduct, and attitudes reflecting their cultural isolation. They are likely to acquire speech habits, for example, which vary from the environment in which they must ultimately function and compete, if they are to enter and be a part of that community. This is not peculiar to race; in this setting, it can affect any children who, as a group, are isolated by force of law from the mainstream. . . .
>
> Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; the consequences linger and can be dealt with only by independent measures. In short, speech

> habits acquired in a segregated system do not vanish simply by moving the child to a desegregated school. The root condition shown by this record must be treated directly by special training at the hands of teachers prepared for that task. (Milliken v. Bradley, 433 U.S. at 273.)

Even in a state like Michigan, where there had been no segregation law and the state had taken positive as well as negative actions on desegregation, that obligation extended to payment for substantial educational components included in the desegregation plan. The state money was used to match federal desegregation aid funds obtained by the district for a variety of educational programs.[15]

The new state programs dealt with problems of reading, counseling, teacher training, and a new approach to testing. The Supreme Court relied on the testimony of school officials and other witnesses that educational components were a vital part of the desegregation plan and essential to overcome some of the harms of segregation for children who would remain in segregated schools.

The District Court in the Wilmington case ordered state implementation on an extensive remedial education program of the city's desegregation plan over state objections. The order also covered costs of desegregation itself. The Third Circuit Court of Appeals sustained the decision. (Evans v. Buchanan, 447 F. Supp. 982, aff'd 582 F. 2d 750 (3d Cir. 1978)) The District Court in Indianapolis also ordered the state government to finance supporting components in the desegregation plan. (U.S. v. Board of School Commissioners, 456 F. Supp. 183 (S.D. Ind. 1978))

The State View of State Duties under the Desegregation Order. During the course of the desegregation litigation in St. Louis the

Assistant Attorney General then handling the case asked that the state be considered an observer rather than a party in the litigation.[16]

The basic attitude remains very much the same today, as revealed in a series of interviews conducted by me and Professor Karen Dawson of Washington University with ranking state school officials during April. The consistent message we received from the state Department of Elementary and Secondary Education and the Attorney General's office is that the state believes it is under no obligation for positive action, it intends to take no substantial steps, it will offer no additional funds, and it will not even openly advocate suburban cooperation unless ordered to do so by the federal courts. The authorities in Jefferson City will cooperate and obey the law if ordered to act, but they will take no initiatives.

Deputy Commissioner Wasson and other officials strongly asserted that there were no discretionary funds the state could use without a change in legislation or a court order.[17] Deputy Commissioner Wasson, Commissioner Mallory, Assistant Attorney General J. Kent Lowry, and other state officials repeatedly stated that the state government would not initiate any effort and did not feel any special responsibility.[18] They only respond to local requests that fall within their statutory authority. None of the state officials believed that the legislature would enact any new legislation, such as the Fiscal Incentives bill, which would create a program with funds to aid desegregation efforts. State legislators interviewed by Professor Dawson agreed with this conclusion.[19]

The only state funds that will be available for the desegregation plan in the absence of a court order will be $14,000 in state-administered federal desegregation assistance grants, to which St. Louis was entitled

even in the absence of a court order. Even within the small desegregation assistance program, used for staff training, not one dollar was reallocated following the court decision.[20] (St. Louis is, of course, the first Missouri city to receive a major desegregation court order.)

The Missouri State Board of Education has never adopted a program for the desegregation of public schools and has no state guidelines or regulations requiring desegregation. The state staff has never investigated a school district for segregation problems and has never aided in drafting a desegregation plan, except when ordered to by the court in the Kinloch case.

In February 1979 the Missouri State Board of Education adopted a policy statement affirming the right of all students to "equal access to educational opportunities." Programs receiving state funds were expected to be "appropriately accessible to all students." Instructional materials should not "distort, stereotype, or omit groups of people." The state department was directed to help in in-service training of teachers on race relations. The statement, however, said nothing about encouraging or requiring desegregation of students, helping with court orders, or development of state segregation standards.[21]

Missouri's efforts are very much less than those undertaken in a number of other states, according to data reported by the Education Commission of the States and compiled in 1980 by the Urban and Teacher Education Division of the Missouri Department of Elementary and Secondary Education. There are 29 states with desegregation legislation and 20 with state regulations on desegregation. Twenty-eight states had compliance and enforcement programs. Missouri had no law, no regulations, and no compliance program.[22]

The State and School District Organization. The state legislature and state educational leadership have profoundly affected the organizational structure of school districts since the 1820 law which authorized township level districts. The existing structure of school districts reflects a long series of state laws. The county was recognized as an educational unit in 1853 legislation creating county commissioners of common schools. In 1866 the state began to organize schools on the city or village level, and in 1874 a state law encouraged the organization of small districts which led to more than 8,000 districts by 1880 and 10,500 by 1909.[23]

Consolidation laws, providing authority and incentives for combining small units into more workable districts were enacted in 1901, 1913, 1921, 1931, and 1948. Rapid change began with the 1948 School District Reorganization Act, which created county boards of education and superintendents charged with producing reorganization plans. Incentives were provided. Reorganized districts were expected to contain minimum numbers of students, or amounts of tax base, or at least 100 square miles under a 1955 state law.[24]

The state government policies profoundly affected the educational organization of Missouri districts in the twentieth century. The consolidation movement brought a reduction of more than 90 percent in the number of Missouri districts between 1948 and 1968. By 1968 there were four Missouri counties with only one school district and five others with a single high school district.[25]

Although the small rural districts had been the focus of much of the early reform efforts it became clear to many concerned with Missouri education that the most severe organizational problems were in the St. Louis

and Kansas City metropolitan areas by the 1960s. St. Louis had more than twice as many districts as any other county and Kansas City was next in number of districts. The fragmentation reflected and reinforced inequalities in educational resources and racial segregation.

A 1963 National Education Association study of St. Louis County pointed to the enormous difference in fiscal resources among school districts in metropolitan St. Louis. A state department of education report, Public School Finance Study, Final Report, concluded in 1972 that "the state should make a strong positive move to assure that all citizens bear an equitable share of the tax burden." A report prepared at the University of Missouri, St. Louis, concluded that state law hurt St. Louis education because state aid made up a smaller fraction and local property tax revenues a larger component of school budgets than in the rural areas favored by the state distribution formula. By the 1970 school year, the study found, there were twenty school districts in St. Louis County that generated more local revenue per pupil than the city and the city did not receive offsetting state aid.[26]

The most exhaustive examination of the organization of Missouri education in modern history took place during 1968. The legislature in 1967 enacted a law establishing the Missouri School District Reorganization Commission. The Commission consulted with experts across the state, held a series of field hearings in all sections of Missouri, and employed a professional staff to develop background materials. During 1968 it submitted a comprehensive proposal to the governor and in 1969 a supplemental detailed report on metropolitan St. Louis and Kansas City.[27]

The Commission concluded that "school districts are purely creatures of the state and as such have no inherent powers. They may be created or destroyed and their powers may be increased or diminished at the will of the state."[28] The report highlighted the problem of the large cities, holding that "if the problems of the city are permitted to fester unabated, the prosperity and well-being of the entire region are endangered."[29]

> Evidence abounds to support a case for educational reform in the Greater St. Louis Metropolitan area. This disparity between the best and the worst on every measure of quality is readily apparent. Moreover, there is every indication that such disparities will continue inexorably to grow. The movement of industry and the flight of the more prosperous taxpayers to select suburbs continues, leaving the city and some of the inner-ring suburbs with a declining tax base to provide education for an increasing percentage of pupils from officially designated poverty areas. The absurdity of this implicit policy of providing the most education for those who need it the least, and conversely, the least education for those who need it the most, is clear when the total environment of the pupil is considered.[30]

The report recommended combining all the school systems in the city, the county, St. Charles and Jefferson counties into a single large district to be subdivided into a number of smaller operating units. There was a similar proposal for Kansas City. Chairman Spainhower later testified that the most heated resistance to the proposal came from the Kansas City suburbs and from St. Louis in general and much of it was related to racial concerns.[31]

Newspaper accounts reached similar conclusions. By the 1960s, St. Louis was a separate and unequal school district--predominantly black--and organizational change was resisted on both economic and racial grounds. The organizational structure established under state law, however, remained a fundamental problem, both for the pursuit of desegregation and

for the pursuit of quality education. As the city has become more segregated and as its educational rating has dropped in recent years, there have been no more state proposals for organizational change.

Voluntary Suburban Exchange and the State. The District Court order and the Court of Appeals order in this case authorize the school district to pursue the possibility of voluntary exchanges of students with the suburbs as one portion of the desegregation plan. This proposal is intended to partially offset some of the problems created by the school district lines. The district has attempted to initiate planning and an exchange but has found it impossible to win cooperation. Obviously, working out a very sensitive relationship between several districts is difficult to accomplish within any single system.

Although the state department did testify in favor of the Fiscal Incentives bill, which would have provided funds for voluntary exchanges, it has made no public response to the court decisions. Commissioner Mallory reports that he has informally mentioned to some St. Louis County superintendents that it would be well to take some form of voluntary action before a mandatory metropolitan case is initiated, his department has not made any effort to establish such an exchange or to initiate communication on this issue between the city and the suburbs. The state officials believe that they have no such responsibility under the court order. The Commissioner would respond to a more explicit court order but would not expect great success.

> If I were ordered by the judge to go in there and attempt to work out cooperative efforts, of course I would, but I think it would fall on fairly deaf ears.[32]

The State and Vocational Education Programs. The St. Louis School Board, in its plan, has urged the state department of education to require a merger of the city and county vocational education programs. This request and its strong endorsement by the court-appointed Citizens Committee, led me to give special attention to several questions about the state's role in vocational education. My conclusions, based primarily upon discussions with the responsible state officials, are as follows:

1) The state does have the power to establish a new city-county area vocational program as it recognized and funded separate programs in the past.
2) The city and county vocational programs have been under investigation on civil rights grounds by the HEW Office for Civil Rights and the State Commissioner has agreed that the state department will fund no new programs in the city or the county until an effort is made for cooperation.
3) The St. Louis school board has been willing to cooperate but the Special District of St. Louis County has refused.
4) State educational leaders believe that there is a serious shortage of vocational training throughout the metropolitan area.
5) State officials do not support the idea of merger.

6) If merger is ordered for desegregation purposes, the state vocational education director believes the order must include time for planning and a very strong emphasis upon improvement of educational services.

The Area Vocational Schools were created when the State Board of Education recognized particular districts or combinations of districts as Area Vocational programs under the terms of the 1963 Vocational Education Act. B.W. Robinson, director of the state vocational education office, recalls the origin of the St. Louis County situation. The county-wide Special District was originally established for provision of special education services for county children. Vocational services were provided on an inadequate basis by a cooperative of six county districts operating an old county school. Civic and educational leaders in the county, recognizing the need for a better program, successfully asked the state legislature to amend the law to permit the Special District to administer vocational education as well. The district promptly applied for recognition and recognition was granted in 1965. Seventeen months later the State Board recognized the area vocational program in St. Louis city.[33]

The county Special District operates two high schools and is building a third. The city has one school. There are few specialized courses available in any of the schools, since each now carries almost all of the standard vocational programs.

The State Commissioner of Education and the Career Education Director, Mr. Robinson, share the view that both the city and county

are providing far less vocational education than is needed by the children of the region. Commissioner Mallory said, for example, that the students "need another vocational high school in the city." Mr. Robinson reported that the county schools were full and that the whole area had less than half the vocational program spaces that were needed. The metropolitan area had a substantially lower fraction of its students in the career-oriented programs than the state average. Both Robinson and Mallory said that they would encourage new specialty programs if proposals were submitted and a need shown by an analysis of the St. Louis economy. If there were to be a court-ordered merger of the systems, Robinson concluded that an in-depth survey of the operations of the existing programs and the vocational education needs of the metropolitan area was an essential prerequisite for a sensible plan.[35]

Commissioner Mallory said that he does have the authority to merge the vocational programs and that he has, on occasion, threatened to use it because of failure to comply with HEW Office for Civil Rights requests for cooperative planning between the districts. Recognition as an Area Vocational school brings a special level of state funding, not only for staff but also for buildings and equipment, at sites approved by the state. Mallory said the State Board could simply withdraw recognition of the two existing districts and recognize the junior college system (which does have city-county jurisdiction and taxing authority already) as the administrative agent for the programs.[36]

The vocational programs have been investigated for civil rights violations by the HEW Office for Civil Rights. Following the investigations HEW demanded a cooperative effort to deal with the problems of segregation among the programs. In response to the HEW action, Commissioner Mallory wrote to the superintendents of the city and of the county's special district formally notifying each that he could approve no new programs until they had formally met and attempted to formulate cooperative programs.[37] The Commissioner has been unable since his February 20, 1979 letter to both superintendents to achieve so much as a joint meeting of the two governing boards. When an application came in for a new program, the state department had to return it to the district for failure to comply with the HEW agreement.[38] Thus, vocational education in metropolitan St. Louis can initiate no new programs at this point in time.

State Transportation Funds. The State Board of Education administers programs which finance most transportation of students for Missouri public schools. Missouri is a state with a high proportion of transported students, 61 percent of total enrollment. The state funding for transportation works in a way that is particularly damaging to big cities and which was drawn up without any consideration of the special costs of big city desegregation plans.

The state transportation program is based upon 80 percent reimbursement of local costs but with a ceiling of 125 percent of the average state cost of busing. The average cost of regular busing in the state is less than one-third of the per pupil cost experienced in St. Louis. Most transportation, of course, is rural

the top of the total education budget before state aid to the districts is allocated. Thus the practical impact of changing the transportation reimbursement formula by removing the 125 percent cap is to reduce slightly the state's per pupil payment to each district. Each million dollars reallocated for this purpose would reduce each projected dollar of education aid by about one-tenth of a cent. Given the fact that the state elementary and secondary education budget will rise more than $120 million next year, there would be no cut in per pupil payments resulting from a change in the formula but rather a slight decline in the large increase which has been projected.

State Officials and the Law. Although none of the state administrators expressed support for a court order expanding the state's responsibilities, all emphasized their determination to obey the law. If the federal courts order any form of state participation the state officials will obey the law and do their best to carry out their responsibilities in the way that will create the strongest possible educational outcomes.

Recommendations for Directives to the State Department of Education

1. That the state department be ordered to fund 80 percent of the pupil transportation costs incurred by the St. Louis schools in implementing their desegregation plan and that the state department be required to review and comment upon the district's transportation planning, contracting arrangements, and routing procedures.

2. That the state department be ordered to develop a plan for merger and desegregation of the vocational and career education

programs of the St. Louis Public Schools and the Special District of St. Louis County for implementation in September 1981. Beginning the fall of 1980 free transfer will be permitted without tuition among the vocational students of the city and county. Transportation will be provided by the Special District and costs and tuition reimbursed by the state. The state will commission a full-scale review and survey of vocational instruction in the metropolitan area as part of the planning process. The survey shall include representatives from the American Vocational Association, the state department of education, the two school districts, and districts elsewhere in the U.S. that operate desegregated metropolitan vocational education programs, and other experts to be designated by the state commissioner. The survey shall be completed by December 1, 1980 and the plan submitted to the court by March 1, 1981. The plan may include the creation of new metropolitan vocational magnet programs but it may not rely on voluntary transfers as its principal desegregation technique. The plan will include an extension to the City of St. Louis of the fraction of the present Special District levy that now supports vocational education (thus increasing resources for these programs) and the creation of an appropriate structure of governance for the new Area Vocational District.

3. That the state department of education be ordered to develop and organize a procedure for voluntary exchange of students and the creation of metropolitan-wide magnet schools in metropolitan St. Louis and that it seek federal funding for such programs in

cooperation with participating districts. State transportation reimbursement should cover the total cost of transportation in this program and the state should count transfer students in both the sending and receiving districts for purposes of distributing state aid funds. (This should be considered part of the Milliken II remedy outlined below.)

4. That the state government be ordered to assist the district's program of educational changes that have been developed as an integral portion of the desegregation plan, following the model created by the Supreme Court in Milliken II. This support should include the following:

A. Support for the transition costs of the new grade structure and magnet schools not funded under the Elementary and Secondary Education Act ESSA program.

B. A one-time capital grant to cover the cost of physical conversion of buildings to new purposes.