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Alicia L. Mioli

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SHEFF v. O'NEILL: **THE CONSEQUENCE OF EDUCATIONAL** **TABLE-SCRAPS FOR POOR URBAN** **MINORITY SCHOOLS**

*Alicia L. Mioli**

It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior.¹

INTRODUCTION

During the 1998-1999 school year, 95.6% of students in the public schools in Hartford, Connecticut were minorities.² Compared to statistics from 1967, racial segregation in Hartford public schools has increased.³ The racial segregation found in Hartford public schools during the 1990s is not a result of *de jure* segregation.⁴ Instead, the large degree of segregation comes from *de facto* segregation,⁵ which the Connecticut Supreme Court determined was aided

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1. *Missouri v. Jenkins*, 515 U.S. 70, 114 (1995) (Thomas, J., concurring).

2. See CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1998-99: Hartford School District* (visited Feb. 16, 2000) < <http://state.ct.us/sde/ssp.htm> > [hereinafter *Hartford Strategic School Profile 1998-99*]. Although the minority students in the Hartford school district consist of African American, American Indian, Asian and Hispanic students, this Note concentrates on educational issues dealing with African American students in segregated schools. For a detailed discussion about issues regarding Hispanic students' experience with school segregation and educational inequalities, see Rachel F. Moran, *Milo's Miracle*, 29 CONN. L. REV. 1079 (1997).

3. See U.S. COMMISSION ON CIVIL RIGHTS, *RACIAL ISOLATION IN THE PUBLIC SCHOOLS* 4 (1967).

4. See *Sheff v. O'Neill*, 678 A.2d 1267, 1274 (Conn. 1996). *De jure* segregation is a state's intentional separation of African Americans and whites into two different school systems. See *id.*

5. See *id.* *De facto* segregation in public schools, on the other hand, occurs when "some of the public schools are attended exclusively or predominantly by students of one race, ordinarily [African American] students, and the racial imbalance of such schools results from their geographical location or other factors which are not dis-

by action of the Connecticut State legislature.⁶ This combination ultimately caused the "concentration of racial and ethnic minorities in the Hartford public school system."⁷

Nevertheless, Hartford school children do not only have to contend with racial segregation. Unfortunately, many are also faced with poverty.⁸ The combination of both racial segregation and poverty has a strong negative impact on the quality of education in segregated and poverty-stricken schools.⁹ Consequently, low-income minority students attending urban schools are subjected to inferior education. Indicators of inferior education include less-qualified teachers,¹⁰ insufficient supply of books for students,¹¹ crumbling and poorly maintained buildings and lack of valuable learning tools such as science labs.¹² Consistently below-average student achievement is the consequence of inferior education.¹³

criminary by themselves, and not from intentional discriminatory state action, past or present." A.M. Swarthout, *De Facto Segregation in Public Schools*, 11 A.L.R. 780, 782 (1967).

6. See *Sheff*, 678 A.2d at 1274.

7. *Id.*

8. See James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 273 (1999).

Over half of the students in the largest urban districts were eligible for a free or reduced lunch in 1990-1991, which is the primary measure of student poverty The schools that have the highest minority enrollment also have the highest incidence of student poverty: In 87% of schools that are over 90% minority (African American and Hispanic), over half of the students come from families living in poverty

Id. (footnotes omitted).

9. See GARY ORFIELD ET AL., *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* 53 (1996) [hereinafter ORFIELD ET AL., *DISMANTLING DESEGREGATION*] ("The extremely strong relationship between racial segregation and concentrated poverty in the nation's schools is a key reason for the education differences between segregated and integrated schools.").

10. See *id.* at 69. Teachers are the most important part of the equation, even more so than the other factors, although other resources are also necessary. See Martha Minow, *Reforming School Reform*, 68 FORDHAM L. REV. 257, 276 (1999).

A recent study showed that fourteen poor districts in Texas which each obtained a surge of increased federal funding showed no improvement in student performance even though the districts drew on research-based recommendations to put money into smaller classes with a better teacher-student ratio. Two similar schools in Texas did show marked improvement when they plowed their extra funds into intensive teacher training tied to curricular reform.

Id. (footnotes omitted).

11. See JONATHAN KOZOL, *SAVAGE INEQUALITIES* 37 (1991) (stating that a history teacher in a poor urban school had 110 students in four classes but only 26 books from which to teach).

12. See *id.* at 65.

13. See Ryan, *supra* note 8, at 274.

Considering the importance of education to American society,¹⁴ the state of education in urban areas does not paint an optimistic picture for the future.

While the state of education in Hartford does not appear to be as bleak as other highly segregated school districts around the country,¹⁵ Hartford's public schools still lag significantly behind the surrounding white and wealthy suburban schools in resources and student achievement.¹⁶ As a consequence, eighteen students in the Hartford public school system sued the State of Connecticut for denying them equal education opportunities in 1990.¹⁷ The *Sheff* plaintiffs focused on integrating Hartford students with students from the surrounding suburban school districts.¹⁸ The Connecticut Supreme Court agreed with the plaintiffs and held that the Connecticut Constitution required the state to remedy racial segregation in Connecticut's urban public schools.¹⁹

14. See, e.g., *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954). The Court stated that:

[education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may be reasonably expected to succeed in life if he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Id. The U.S. Supreme Court also discussed the importance of education in *Plyler v. Doe*, 457 U.S. 202, 221 (1982). In *Plyler*, the Court stated that:

[t]he American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government . . . and as the primary vehicle for transmitting the values on which our society rests And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists [E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society.

Id. at 221 (footnotes omitted; internal quotation marks omitted).

15. See Gary Natriello, *A Descriptive Study of the Educational Resources of the Hartford Public Schools and Disparities with Other Districts*, Feb. 1993, available in ERIC, Accession No. ED356290.

16. See *infra* Part III.

17. See *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996). Some of the plaintiffs were from suburban school systems.

18. See *id.* at 1283; see also *infra* Part I.A. "Interdistrict" or "multidistrict" integration means sending students from one school district to another in order to desegregate.

19. See *Sheff*, 678 A.2d at 1283.

The remedy in *Sheff* follows the colorblind approach to remedying racial segregation in education, calling for non-recognition of race in decision-making.²⁰ On the other hand, parents of students in the Hartford school districts have been calling for remedies that resemble those supported by advocates of race consciousness, a theory of race relations that embraces the recognition of race.²¹ This Note will explore the debate between colorblindness and race consciousness and argue that the multidistrict integration²² remedy called for by *Sheff* does not directly address the true injury faced by minority students: inferior education. Part I will discuss the facts and background of *Sheff* and the Connecticut cases dealing with school funding. Part II will outline colorblind and race conscious theory generally and discuss how each theory deals with education. Finally, Part III will argue that integration theory, evidenced in *Sheff*, may not remedy the harms of segregation suffered by minority students. Further, this Note argues that solutions allowing for race-conscious remedies and improving the quality of education available to urban minority students may better equalize educational opportunities for these students. This Note concludes that while Connecticut is on the right track, it must take more aggressive measures to ensure that no student within its borders suffers from inferior education.

I. CONNECTICUT'S STRUGGLE AGAINST INFERIORITY AND INEQUALITY

This Part will describe the background of *Sheff v. O'Neill*²³ and the Connecticut Supreme Court's holding in 1996 as well as the Connecticut Superior Court's holding in 1999.²⁴ This Part will also discuss the facts of the cases seeking to reform Connecticut's school finance system, namely the two *Horton v. Meskill* cases²⁵ and *Johnson v. Rowland*.²⁶

20. See *infra* notes 94-155 and accompanying text.

21. See Robert A. Frahm, *Poll: Education, Rather Than Integration: Study Reveals Black Parents Want More Emphasis on Quality*, HARTFORD COURANT, July 29, 1998, at A1; see also *infra* notes 173-241 and accompanying text.

22. Integration is the manner through which proponents of colorblindness mean to achieve the colorblind society. See, e.g., Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 56 (1991). "Integrationists" is used interchangeably in this Note with "proponents of colorblindness."

23. 678 A.2d 1267 (1996).

24. See *Sheff v. O'Neill*, 733 A.2d 925 (Conn. Super. Ct. 1999) [hereinafter *Sheff II*].

25. 486 A.2d 1099 (1985); 376 A.2d 359 (1977).

26. No. CV-98-0492103-S (Conn. Supp. Ct. filed Mar. 26, 1998).

A. *Sheff v. O'Neill*

Milo Sheff and seventeen other Hartford public schoolchildren sued the State of Connecticut in 1989 alleging educational inequalities in the Hartford public school system.²⁷ The students' claim was based on the anti-segregation²⁸ and equal educational opportunity²⁹ provisions of Connecticut's Constitution.³⁰ The crux of the problem was that Hartford's public schools were (and still are) heavily racially segregated.³¹ More specifically, minority students in 1991 made up 92.4% of the Hartford student population compared to 25.7% statewide.³²

In addition to racial segregation, many Hartford students suffered a number of damaging socioeconomic hardships.³³ A large number of schoolchildren in Hartford came from economically disadvantaged homes.³⁴ Furthermore, many students' primary language was not English.³⁵ The Connecticut Supreme Court recognized that the combination of these factors "impair[s] a child's orientation toward and skill in learning."³⁶ By contrast, the surrounding suburbs consisted primarily of white, English-speaking, middle-class families whose children attended schools that did not lack resources, monetary or otherwise.³⁷ Hence, the plaintiffs alleged that the combination of the racial and economic isolation created "severe educational disadvantages."³⁸ These educational

27. *See Sheff*, 678 A.2d at 1271.

28. *See* CONN. CONST. art. I, § 20, *amended by* CONN. CONST. amend. XXI ("No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.").

29. *Id.* art. VIII, § 1 ("There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.").

30. *See Sheff*, 678 A.2d at 1271.

31. *See id.* at 1272-73.

32. *See id.* (identifying the minority student population as consisting of Hispanic and African American students).

33. *See id.* at 1273.

34. *See id.* "Economically disadvantaged" generally means that the student's family's income level is low and sometimes bordering on the poverty line. *See* Ryan, *supra* note 8, at 274 (citing U.S. Census Bureau's definition of "extreme poverty areas" as areas where 40% of residents are below the poverty line); Moran, *supra* note 2, at 1101-02 (stating that the income gap between city and suburbs has grown since 1950 and that poverty levels among African American families specifically have grown as well).

35. *See Sheff*, 678 A.2d at 1273.

36. *Id.*

37. *See id.* at 1272-74.

38. *Id.* at 1271-72.

disadvantages deprived Hartford students of their fundamental right to education as guaranteed by Connecticut's Constitution.³⁹

In 1996, the Supreme Court of Connecticut held the state responsible for the educational inequalities that resulted from the *de facto* segregation that plagued Hartford schools.⁴⁰ Because Connecticut had enacted statutes setting the school district boundaries coterminous with city limits,⁴¹ the court stated that "the legislature [has] to take affirmative responsibility to remedy segregation in [Connecticut's] public schools."⁴² The court based this determination on the fundamental right to education⁴³ in conjunction with the Connecticut Constitution's equal protection clause.⁴⁴ By reading the two provisions together, the court held that the constitutional injury was "the existence of extreme racial and ethnic isolation in the public school system [that] deprives school children of a substantially equal educational opportunity."⁴⁵ As a result, the State of Connecticut was required "to take further remedial measures."⁴⁶

Like the U.S. Supreme Court in *Brown v. Board of Education*,⁴⁷ the Connecticut Supreme Court in *Sheff* refrained from prescribing a remedy for Milo Sheff and the other plaintiffs.⁴⁸ Instead, the Connecticut court charged the legislature and the governor with the responsibility of devising the remedy while retaining jurisdiction to grant additional relief.⁴⁹ The task of creating a remedy was complex and, according to the court, to be handled by the appro-

39. *See id.*

40. *See id.*

41. *See* CONN. GEN. STAT. §§ 10-184, 10-240 (West 1999).

42. *Sheff*, 678 A.2d at 1283.

43. *See* CONN. CONST. art. VIII, § 1. *See also supra* note 29. *Horton v. Meskill* interpreted this section to establish a fundamental right to education for Connecticut school children. 376 A.2d 359, 375 (1977) [hereinafter *Horton I*].

44. *See* CONN. CONST. art. I, § 20, amended by CONN. CONST. amend. XXI; *see also supra* note 28.

45. *Sheff*, 678 A.2d at 1281.

46. *Id.*

47. 347 U.S. 483 (1954). In *Brown*, the Court held that *de jure* segregation in public schools was unconstitutional. *See id.* at 495. The Court based its rationale on the idea that *de jure* segregation creates feelings of inferiority in African American students that have a detrimental effect on the ability of these students to learn. *See id.* at 494. In reargument, the Court decided to remand *Brown* and the cases decided with it to the local district courts to prescribe a remedy "with all deliberate speed" with help from local school officials. *Brown v. Board of Educ.*, 349 U.S. 294, 300-01 (1955).

48. *See Sheff*, 678 A.2d at 1271.

49. *See id.*

priate governmental branch.⁵⁰ Even though the court stepped aside at this point,⁵¹ it stressed the urgency of the matter. The court noted that “[e]very passing day denies these children their constitutional right to a substantially equal educational opportunity. Every passing day shortchanges these children in their ability to learn to contribute to their own well-being and to that of this state and nation.”⁵²

Integrationists have hailed *Sheff* as a landmark decision because of its unique qualities. First, the case was based on state law.⁵³ It was the Connecticut Constitution that expanded the rights of the students rather than the U.S. Constitution.⁵⁴ Thus, *Sheff* is the only school segregation case in force today that is based on state law, rather than federal law.⁵⁵

Second, *Sheff* mandated an interdistrict remedy that is now nearly impossible in federal desegregation cases.⁵⁶ In 1977, the U.S. Supreme Court decided in *Milliken v. Bradley*⁵⁷ that in order to obtain an interdistrict remedy,⁵⁸

50. *See id.*

51. *See id.* (deciding to “employ the methodology used in *Horton I* . . . [that in] light of the complexities of developing a legislative program that would respond to the constitutional deprivation that the plaintiffs . . . established, . . . further judicial intervention should be stayed ‘to afford the General Assembly an opportunity to take appropriate legislative action’”).

52. *Id.* at 1290. The court noted that by 1995, the percentage of minority students increased to 94.5%. *See id.* at 1287. By 1999, this percentage increased to 95.6%. *See Hartford Strategic School Profile 1998-99, supra* note 2.

53. The case was based on the Connecticut Constitution’s grant of the fundamental right of students to have substantially equal educational opportunities. *See Sheff*, 678 A.2d at 1270.

54. *See* John C. Brittain, *Why Sheff v. O’Neill is a Landmark Decision*, 30 CONN. L. REV. 211 (1997).

55. *See id.* at 214. In *Crawford v. Board of Educ.*, 551 P.2d 28 (Cal. 1976), the California Supreme Court ruled that *de facto* school segregation in Los Angeles School District violated the state constitution’s equal protection clause. *See id.* California voters later approved an amendment to that clause that required intent to prove a constitutional violation of the equal protection clause. *See* Brittain, *supra* note 54, at 216. This amendment consequently invalidated the *Crawford* decision. *See id.*

56. *See* *Missouri v. Jenkins*, 515 U.S. 70 (1995); *Milliken v. Bradley*, 418 U.S. 717 (1974) [hereinafter *Milliken I*].

57. 418 U.S. 717 (1974). The *Milliken I* plaintiffs proved *de jure* segregation in the heavily minority Detroit school district but were unable to prove the same in the heavily white suburban school districts surrounding Detroit. *See id.* at 744. Due to the inability to prove the effect of *de jure* segregation on the suburban school district, the court struck the interdistrict remedy. *See id.* at 744-45.

58. An interdistrict remedy is a desegregation order requiring the integration of students of two different districts. *See id.* at 729.

it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.⁵⁹

Without this showing, a federal court can only order an intradistrict remedy, limited to the affected district.⁶⁰ Later, in *Missouri v. Jenkins*,⁶¹ the Court held that desegregation remedies for intentionally segregated inner city schools could not be designed to allow voluntary integration of students from other districts.⁶² Instead, the remedies must compensate the students at the inner city school for having suffered the intentional segregation.⁶³

Third, *Sheff* is based on *de facto* segregation.⁶⁴ As the Court stated in 1973, "where no statutory dual system has ever existed, plaintiffs must prove not only that segregated schooling exists but also that it was brought about or maintained by intentional state action."⁶⁵ School segregation cases relying on federal law can only

59. *Id.* at 744-45.

60. *See id.* at 746.

61. 515 U.S. 70 (1995). In response to the district court order, the Kansas City, Missouri School District and the State of Missouri developed a state of the art school district intended to "remove the vestiges of racial segregation and to . . . attract non-minority students back to the [school district]." *Id.* at 77-78 (internal quotations omitted). When the district court ordered salary increases for almost all of the school district's employees, the state challenged the order. *See id.* at 80. The U.S. Supreme Court stated that the district court's desegregation order went beyond the discretion of the district court. *See id.* at 100.

62. *See id.* at 94.

63. *See* *Milliken v. Bradley*, 433 U.S. 267 (1977) [hereinafter *Milliken II*] (requiring that "the decree . . . must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in absence of such conduct'" (citations omitted)). The Court applied this standard in *Jenkins*. *See* 515 U.S. at 88.

64. *See* *Sheff v. O'Neill*, 678 A.2d 1267, 1283 (Conn. 1996) ("The state has not intentionally segregated racial and ethnic minorities in the Hartford public school system.").

65. *Keyes v. School Dist. No. 1*, 413 U.S. 189, 198 (1973).

be based on *de jure* segregation.⁶⁶ Due to the unique qualities of the Connecticut Constitution,⁶⁷ *Sheff* gives Connecticut students a way to combat *de facto* segregation that students in other states may not have.

These differences are not the only factors that make *Sheff*'s result virtually impossible to achieve in the federal forum. Since *Brown*⁶⁸ and its progeny,⁶⁹ the goal of federal desegregation cases has shifted gears⁷⁰ and has allowed segregation to creep back into school districts, especially in urban areas.⁷¹ Starting in the 1970s with *Milliken I*⁷² through the 1995 *Jenkins* case,⁷³ the Court has placed a higher priority on returning schools under desegregation orders to local control than on desegregating highly segregated

66. *See id.*

67. Besides Connecticut, Hawaii and New Jersey are the only other states that have express anti-segregation clauses in their constitutions, which was instrumental to the result in *Sheff*. *See Brittain, supra* note 54, at 214.

68. 347 U.S. 483 (1954) (holding that intentional segregation in public schools violates the constitutional rights of students).

69. The "*Brown* progeny" are the major federal desegregation cases that followed *Brown v. Board of Education*, 347 U.S. 483 (1954), which include, in chronological order, *Green v. County School Board*, 391 U.S. 430 (1968) (striking "freedom of choice" school integration program that gave the option to African American students to go to an all white school and holding that school districts had to develop meaningful desegregation plans that included integrating the faculty, staff, facilities, extracurricular activities, and transportation), *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969) (holding that "all deliberate speed" was over and that school integration had to be completed "at once"), *Swann v. Charlotte—Mecklenberg Board of Education*, 402 U.S. 1 (1971) (striking student assignment plans that created segregated schools due to existing residential segregation and holding that the schools had to be desegregated as much as possible and the district could use busing to achieve this goal) and *Keyes v. Denver School District No. 1*, 413 U.S. 189 (1973) (holding that the school district was responsible for the intentional racial segregation in the schools because of gerrymandering attendance zones and building schools in predominantly minority neighborhoods and recognizing that Latino students also had a right to desegregation). For the purposes of this Note, school desegregation cases following *Keyes* are not considered part of *Brown*'s progeny because those cases limit the availability of desegregation remedies for the lower courts. *See infra* notes 72-76 and accompanying text.

70. *See* ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 35-36 (discussing the *Jenkins* Court's emphasis on how restoring local control "was a fundamental 'end purpose'").

71. *See id.* at 53-71 (stating that the level of segregation in 1991 increased "to the level that existed before the Supreme Court's first busing decision in 1971").

72. 418 U.S. 717 (1974) (holding that an interdistrict remedy was necessary to desegregate the urban school district because such a remedy could not be granted where intentional racial segregation in one district did not affect another district).

73. 515 U.S. 70 (1995) (striking a voluntary desegregation plan because the school district was not permitted to lure white suburban students to the urban school district).

schools.⁷⁴ This change is evident in cases where the Court terminated school desegregation plans before the school district achieved complete desegregation.⁷⁵ The Court also limited the remedies available to district courts when approving desegregation plans.⁷⁶ This limitation is especially evident in *Milliken I*'s restriction on the application of mandatory interdistrict remedies⁷⁷ and in *Jenkins*' restriction on the use of voluntary interdistrict remedies.⁷⁸

As the opportunity to bring school segregation cases in a federal forum is limited, innovative plaintiffs seek other forums to achieve their objectives.⁷⁹ Some plaintiffs, however, use other theories to fight educational inequalities found in segregated school systems.⁸⁰ This use of other theories is evident in the school funding lawsuits brought in Connecticut over the years.⁸¹

B. The School Funding Cases

Milo Sheff's cry for integration, however, has not been the only voice in Hartford. Recently, African American parents have spoken out against the Connecticut Supreme Court's focus on integration.⁸² These parents want the State of Connecticut to focus on the quality of the education their children receive rather than the num-

74. See *id.* at 99 ("[A] district court must strive to restore state and local control of a school system operating in compliance with the Constitution."); see also *Milliken II*, 433 U.S. 267, 280-81 (1977) ("[F]ederal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.").

75. See *Freeman v. Pitts*, 503 U.S. 467 (1992); *Board of Educ. v. Dowell*, 498 U.S. 237 (1991); see also ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 75-76.

76. See *Jenkins*, 515 U.S. at 70; *Milliken I*, 418 U.S. at 745; see also *Pasadena City Bd. of Educ. v. Spangler*, 472 U.S. 424, 434 (1976) ("[T]here are limits beyond which a court may not go in seeking to dismantle a dual school system." (internal quotations omitted)). School desegregation remedies rely on principles of equity. See *Brown v. Board of Educ.*, 349 U.S. 249, 300 (1955). As a consequence, the scope of the remedy is determined by the scope of the right. See *Jenkins*, 515 U.S. at 88.

77. See *Milliken I*, 418 U.S. at 745.

78. See *Jenkins*, 515 U.S. at 70.

79. See, e.g., *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996).

80. See, e.g., *Johnson v. Rowland*, No. CV-98-0492103-S (Conn. Sup. Ct. filed Mar. 26, 1998); *Horton v. Meskill*, 486 A.2d 1099 (1985) [hereinafter *Horton II*]; *Horton I*, 376 A.2d 359 (1977). It should be noted that these cases do not focus on racial segregation but economic segregation. See *Horton II*, 486 A.2d at 1101; *Horton I*, 376 A.2d at 361; see also Rick Green, *Schools Want Fair Share of Funding Pie: Small Districts Call For Change*, *HARTFORD COURANT*, Jan. 14, 1999 at A3.

81. See *Johnson*, No. CV-98-0492103-S (Conn. Sup. Ct. filed Mar. 26, 1998); *Horton II*, 486 A.2d 1099; *Horton I*, 376 A.2d 359.

82. See *Frahm*, *supra* note 21, at A1; Anne Hamilton, *Students Speak Out on Diversity*, *HARTFORD COURANT*, Dec. 6, 1995, at C1.

ber of white students seated next to their children.⁸³ These parents want their neighborhood schools to be as good as those in the suburbs.⁸⁴ As one African American parent in Hartford stated, "I don't give a hoot about integration I just want to make sure when my child leaves school that he has just as good an education as any child in Glastonbury, Avon or Simsbury."⁸⁵

One method through which parents have sought to improve neighborhood schools is lawsuits focused on school finance reform. Connecticut encountered this type of suit for the first time in *Horton v. Meskill* ("*Horton I*").⁸⁶ In 1977, the plaintiffs brought this suit against the state alleging that the system for financing the public schools was unconstitutional.⁸⁷ At the time, local property taxes mostly funded the schools with a small amount of money from the state.⁸⁸ Connecticut contributed a flat rate per student to all of the towns regardless of need.⁸⁹ Because the financing system led to large discrepancies between funding of schools,⁹⁰ the Connecticut

83. See Frahm, *supra* note 21, at A1.

84. See Steve Grant, *Parents Want Choice, but Better City Schools, Too*, HARTFORD COURANT, Dec. 6, 1995, at B1 ("[Parents] want to see their neighborhood school provide the best possible education.").

85. *Id.* Glastonbury, Avon and Simsbury are affluent and predominantly white suburbs of Hartford, Connecticut. These school districts tend to have high student achievement rates, what many educators use as a measure of the quality of education. For example, in 1999, Connecticut students were ranked highest in reading performance on the National Assessment of Educational Progress, a standardized test for fourth and eighth graders administered by the U.S. Department of Education. See *State's Students Ranked Nation's #1 Readers* (visited Feb. 12, 2000) <<http://www.state.ct.us/sde/press>>. Nevertheless, student achievement of "students attending schools in central cities was lower than those of students in urban fringes/large towns and rural/small towns." *Id.*

86. 376 A.2d 359 (1977).

87. See *id.* at 361.

88. See *id.* at 365 ("In Connecticut, the percentage contribution of the local, state and federal governments has been approximately 70 percent local, 20 to 25 percent state, and 5 percent or less federal. This contrasts with [national] average figure of 51 percent local, 41 percent state, and 8 percent federal.").

89. See *id.* at 365-66.

90. See *id.* at 368.

In the 1972-73 school year, the per pupil operating expenses of sample towns were as follows: Darien, \$1570.47; West Hartford, \$1443.10; Greenwich, \$1428.99; Weston, \$1332.79; Canton, \$945.15; Lisbon, \$669.94 Property-rich towns were and still are able through higher per pupil expenditures, to provide a substantially wider range and higher quality of educational services than Canton

Id. The wealthier suburbs in this list are Darien, West Hartford, Greenwich and Weston.

Supreme Court held in *Horton I* that the financing system was unconstitutional.⁹¹

Two years later, the state legislature passed a new school financing system to lessen the discrepancy between rich and poor towns.⁹² This new system used a formula to determine what each town was capable of contributing to fund its school district.⁹³ State funds were then to be distributed so as to close the gap between the wealthy and poor towns.⁹⁴ The new financing system, however, also granted a minimum award to all towns, regardless of need.⁹⁵ In addition, the legislature passed a statute postponing the full funding for seven years.⁹⁶ The *Horton I* plaintiffs sued the state again.⁹⁷ This time they alleged that the new system, as amended, was unconstitutional because the plan did not "provide[] the substantially equal educational opportunity for all Connecticut public school children that the Connecticut constitution requires."⁹⁸ The Connecticut Supreme Court, however, found the amended system constitutional,⁹⁹ and held that Connecticut's system did not deny the students of poorer towns an equal opportunity to education because the disparities were not unconstitutionally large.¹⁰⁰

Fifteen years later, the state's school financing system again came under fire. In January 1998, Shawn Johnson, an eight-year-old East Hartford student, filed a suit against the state with a group of students from other poor cities around Connecticut.¹⁰¹ The suit alleged that Connecticut violated the *Horton I* ruling because caps on the equalized cost sharing formula, the new school funding sys-

91. See *id.* at 374 ("We conclude that . . . in Connecticut, . . . the state system of financing public . . . education as it presently exists and operates cannot pass the test of 'strict judicial scrutiny' as to its constitutionality.").

92. See *Horton II*, 486 A.2d at 1100.

93. See *id.* at 1101.

94. See *id.*

95. See *id.* at 1102.

96. See *id.*

97. See *id.* at 1099.

98. *Id.* at 1101.

99. See *id.* at 1108.

100. See *id.* at 1108, 1110. The court upheld the trial court's findings that: if adequately funded, the [funding] program would provide sufficient overall expenditures for public school education, that its . . . phase-in assured an efficient use of educational resources, and that its design would provide equity in the distribution of educational funds and a proper balance between state and local contributions thereto.

Id. at 1107.

101. See *Johnson v. Rowland*, No. CV-98-0492103-S (Conn. Supp. Ct. filed Mar. 26, 1998); see also Rick Green, *School Funding Formula Opposed: Planned Lawsuit Seeks More Aid for Poor Towns*, HARTFORD COURANT, Mar. 18, 1998, at A1.

tem, has prevented poor cities from getting necessary funding.¹⁰² In essence, the *Johnson*¹⁰³ plaintiffs want education funding to rely less on local property taxes because "problems of poverty have made it increasingly hard for schools to provide an adequate education for urban children."¹⁰⁴ Although Hartford has not been named in the suit, the ruling will undoubtedly affect it.¹⁰⁵

Evidenced by education-based lawsuits brought in Connecticut, the debate in the state revolves around determining the correct solution to educational inequalities in urban schools. This debate has taken place for decades and has implications for educators throughout the country.

II. INFERIORITY V. INEQUALITY

This Part presents the theoretical underpinnings of opposing theories of race relations and their approach to issues dealing with urban education. The first of these principles is the colorblind theory as espoused by integrationists, which comprises different forms of integration and presents solutions for educational issues. The second principle of race relations is race consciousness as espoused by black nationalists. There are various types of black nationalism, as well as the black nationalist approach to educational issues.

A. The Colorblind Point of View

The origins of "colorblindness," a theory of race relations in the United States that advocates for the non-recognition of race, can be traced back to Justice Harlan's famous dissent in *Plessy v. Ferguson*.¹⁰⁶ While *Plessy* upheld the doctrine of separate but equal in the United States,¹⁰⁷ Justice Harlan wrote that

[i]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his

102. See Rick Green, *State Faces Lawsuit over School Funding*, HARTFORD COURANT, Jan. 21, 1998, at A1 [hereinafter Green, *State Faces Lawsuit*].

103. No. CV-98-0492103-S (Conn. Supp. Ct. filed Mar. 26, 1998).

104. Green, *State Faces Lawsuit*, *supra* note 102, at A1.

105. As of publication of this Note, the Connecticut Superior Court has not ruled on the case.

106. 163 U.S. 537 (1896).

107. See *id.* at 548.

civil rights as guaranteed by the supreme law of the land are involved.¹⁰⁸

Essentially, the colorblind approach to race strips the historical and social context of "Black" and "White" and reduces these terms to labels of racial classification.¹⁰⁹ The method to achieve this ideal is through the integration of African Americans and whites in every level of American society.¹¹⁰ Ultimately, American society will thus become race-neutral.¹¹¹ Consequently, integrationists¹¹² believe it is a mistake to attribute specific social qualities to a race.¹¹³ The color of a person's skin is therefore irrelevant because "the race of a person tells us nothing about an individual's capabilities and certainly nothing about [the individual's] moral worth."¹¹⁴ Each individual is no different than any other member of American society; her ancestry and the color of her skin is irrelevant.¹¹⁵

According to proponents of colorblindness, in order to overcome racism, America must become a race-neutral society.¹¹⁶ This requirement is due to the belief that race consciousness "increase[s] racial stereotyping and intolerance,"¹¹⁷ which in turn reinforces racism.¹¹⁸ Hence, in order to avoid racism, American society must transcend race consciousness and racial identity.¹¹⁹ According to the colorblind approach, people will then treat one another as rational individuals, regardless of race.¹²⁰ Hence,

108. *Id.* at 559 (Harlan, J. dissenting).

109. See Gotanda, *supra* note 22, at 6, 17 (stating that the colorblind approach "suggests a seemingly neutral and objective method of decision-making that avoids any consideration of race").

110. See John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the Future Essay*, 71 N.C. L. REV. 1487, 1492 (1993).

111. See *id.*

112. Because integration is the manner through which colorblindness can be achieved, this Note uses the term "integrationists" interchangeably with "proponents of colorblindness."

113. See Gotanda, *supra* note 22, at 56.

114. T. Alexander Aleinikoff, *A Case for Race Consciousness*, 91 COLUM. L. REV. 1060, 1063 (1991).

115. See *id.*

116. See ROBERT BLAUNER, *RACIAL OPPRESSION IN AMERICA* 21 (1972).

117. Aleinikoff, *supra* note 114, at 1091.

118. See, e.g., *Metro Broad. Inc. v. Federal Communications Comm'n*, 497 U.S. 547, 604 (1990) (O'Connor, J., dissenting) ("Racial classifications, whether providing benefits to or burdening particular racial or ethnic groups, may stigmatize those groups singled out for different treatment . . .").

119. See Gotanda, *supra* note 22, at 53 ("[S]ocial progress is most effectively achieved by judging people according to their ability, and, therefore, . . . race-based decision making seduces citizens away from a more legitimate merit-based system."); Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 761 (1990).

120. See Gotanda, *supra* note 22, at 56.

the integrationist cure for discrimination is equal treatment according to neutral norms. And at the institutional level, integrationism obviously means an end to the social system of racial segregation. In sum, the cure for racism would be equal treatment on an individual level and integration on an institutional level. . . . Once neutrality replace[s] discrimination, equal opportunity would lead to integrated institutions; experience in integrated institutions would, in turn, replace the ignorance of racism with the knowledge that actual contact provides.¹²¹

Because "it suggests a seemingly neutral and objective method of decision making that avoids any consideration of race," colorblind integration thus gains a heightened level of credibility.¹²²

1. *Three Forms of Integration*

There are a number of different views on how to create the integrationist ideal: a colorblind society.¹²³ Generally, integrationism covers a large range of views that uniformly call for integration of minorities into white American society. Among these prevalent sub-categories are amalgamation, accommodationism and assimilationism.¹²⁴

The first, amalgamation, also called cultural pluralism,¹²⁵ is based on the belief that American society can blend the best qualities of different cultures.¹²⁶ In essence, amalgamation treats race somewhat like ethnicity.¹²⁷ This model of integration allows diverse cultures to retain their individual characteristics while giving them equal access to resources.¹²⁸ Amalgamation thus embraces the belief that each member of American society can determine the extent that another member's race will factor into their relationships and identifications so long as the second member's "race would not be used . . . to limit [his] opportunities or define [his] identit[y]." ¹²⁹

121. Peller, *supra* note 119, at 770.

122. See Gotanda, *supra* note 22, at 17.

123. See Edgar G. Epps, *The Integrationists*, in *THROUGH DIFFERENT EYES: BLACK AND WHITE PERSPECTIVES ON AMERICAN RACE RELATIONS* 62, 63 (Peter I. Rose et al. eds., 1973).

124. See Epps, *supra* note 123, at 63; PETER I. ROSE, *THEY AND WE: RACIAL AND ETHNIC RELATIONS IN THE UNITED STATES* 59 (3d ed. 1981).

125. One scholar has also called this "weak colorblindness." See Aleinikoff, *supra* note 114, at 1079.

126. See ROSE, *supra* note 124, at 63.

127. See Aleinikoff, *supra* note 114, at 1079 (explaining that race might be "an attribute that could have significance for group members, and one that society as a whole could recognize, but not one upon which legal distinctions could be based").

128. See ROSE, *supra* note 124, at 65; Epps, *supra* note 123, at 65-66.

129. Aleinikoff, *supra* note 114, at 1079.

Through meshing different cultures together, including African American culture, American society thus reaps the benefits of multiculturalism and those of integration at the same time.¹³⁰ Consequently, the amalgamationist could, in theory, preserve African American heritage.¹³¹

Next, accommodationism is based on accepting the values of dominant society and working toward eliminating racial inequalities gradually.¹³² Instead of aggressively working for change, accommodationists conform to the expectations of the white majority and "accept [white] evaluations of Black institutions and Black people."¹³³ Surprisingly, this subcategory includes accepting the white majority's stereotype of African American inferiority.¹³⁴ As a result, while accommodationists embrace integration, they will not push white society¹³⁵ to embrace it as well.¹³⁶ As Booker T. Washington put it, "the agitation of questions of social equality is the extremist folly, and that progress in the enjoyment of all the privileges that will come . . . must be the result of severe and constant struggle rather than of artificial forcing."¹³⁷ Hence, the accommodationist believes that African Americans need to allow the white majority to accept integration in its own time by consistently spoon-feeding the virtues of integration and not the problems inherent in violent protests.¹³⁸ While this slow and gradual approach may appear to attempt to preserve African American culture, the

130. See ROSE, *supra* note 124, at 65.

131. See Epps, *supra* note 123, at 66. This philosophy appears to mirror race consciousness. Proponents of race consciousness, however, believe in having a separate-ness from the rest of society, in a sense a "nation within a nation." Peller, *supra* note 119, at 792. Race consciousness is discussed further in Part II.B.

132. See Epps, *supra* note 123, at 63.

133. *Id.* at 64.

134. See *id.* ("It is among [the accommodationists] that one finds tacit acceptance of the notion of Black inferiority.").

135. Proponents of race consciousness consider white culture or society to consist of institutions controlled by whites and white traditions carried over from Europe. African American culture or society, on the other hand, is made up of institutions controlled by African Americans and traditions rooted in African culture and civilization. See Malcolm X, *The Ballot or the Bullet*, in MALCOLM X SPEAKS: SELECTED SPEECHES AND STATEMENTS 42 (George Breitman ed., 1965) [hereinafter Malcolm X, *The Ballot or the Bullet*].

136. See Epps, *supra* note 123, at 63 ("[The accommodationist] believes in integration but will not fight for it.").

137. Booker T. Washington, *The Agitation of Questions of Social Equality is the Extremist Folly*, in THE STRUGGLE FOR RACIAL EQUALITY 20 (Henry S. Commager ed., 1967).

138. See Epps, *supra* note 123, at 63-64 ("[The accommodationist] is constantly attuned to the demands and expectations of white America. He attempts to find out what white people expect of him so that he can conform to these expectations.").

accommodationist's desire to conform to white society's expectations¹³⁹ implies that accommodationists accept the belief that African Americans do not have a distinct culture.¹⁴⁰ The key difference between accommodationism and other forms of integration is the slow and steady approach it advocates.¹⁴¹

The third approach, assimilationism, is the most extreme method of integration. Essentially, assimilationism completely ignores the contributions of African American culture.¹⁴² Rather, the "color-blind assimilationist ideal seeks homogeneity in society rather than diversity."¹⁴³ Assimilationists believe that because African Americans are no different than any other American, they should adopt the culture, norms and values of the American majority.¹⁴⁴ In other words, because African Americans are Americans, assimilationists believe that values and culture of African Americans are no different than the American majority. Proponents of assimilationism also believe that African Americans can compete equally with the white majority before and after they are integrated into the mainstream.¹⁴⁵ Thus, as one commentator has noted, "[n]onrecognition fosters the systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue."¹⁴⁶ Integrationists apply these concepts rather vigorously in their approach to the segregated public school issue.

139. See *id.* at 64 (stating that the accommodationists accept "evaluations of Black institutions and Black people").

140. See Aleinikoff, *supra* note 114, at 1070 ("In a curious yet powerful way, whites create and reflect a cultural understanding of blackness that requires little contribution from blacks. The dominant and dominating story excludes or ignores black representations of blackness . . . because the black stories simply do not register.").

141. When accommodationism is compared to assimilationism, for example, one notices a feeling of urgency in assimilationism. In accommodationism, however, there is a constant undercurrent calling for gradual progression rather than immediate change. Compare *supra* note 137 and accompanying text, with *Sheff v. O'Neill*, 678 A.2d 1267, 1290 (Conn. 1996) (stating in dicta that "every passing day denies these children their constitutional right to a substantially equal education opportunity . . . [and] ability to learn").

142. See Epps, *supra* note 123, at 65.

143. Gotanda, *supra* note 22, at 56.

144. See Aleinikoff, *supra* note 114, at 1081. Justice Scalia also voiced this sentiment in his concurring opinion in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), stating "in the eyes of the government, we are just one race here. It is American." *Id.* at 239 (Scalia, J., concurring).

145. See Aleinikoff, *supra* note 114, at 1081.

146. Gotanda, *supra* note 22, at 16.

2. *The Integrationist Approach to Schools*

The integrationist, or colorblind, ideal is to instill the concept of colorblindness in students not only by ensuring that African American and white students sit next to each other in the classroom, but also by instituting a centralized perspective on administration.¹⁴⁷ A centralized perspective on school administration mandates that school districts follow a nation- or state-wide policy on school management. For example, Connecticut requires that each school have a specific curriculum that it must follow.¹⁴⁸ Each school can then decide to have additional courses above the core curriculum.¹⁴⁹ Accordingly, centralized control of schools, including control over curriculum and administration, helps students to ignore the differences in their skin color and to learn together in harmony.¹⁵⁰ Integrationists believe this result is achieved because centralized control of schools does not take race or class into account when determining its policies. Thus, centralizing control is done in part to sanitize education from "the perceived repression — rooted in parochialism — of the former institutional culture of Southern schools."¹⁵¹

Ultimately, the assimilationist aspect of integration¹⁵² is the approach taken by the U.S. Supreme Court with respect to education.¹⁵³ Many of the early desegregation orders upheld by the

147. See Peller, *supra* note 119, at 781-82.

148. See CONN. GEN. STAT. ANN. § 10-16(b) (West 1999) (requiring at a minimum the arts, career education, consumer education, health and safety, language arts, which includes reading, writing, grammar, speaking and spelling, mathematics, physical education, science, social studies, and in high school, foreign language study, and vocational education).

149. See *id.* (allowing schools to offer additional courses).

150. See Peller, *supra* note 119, at 781-82 ("The decentralization of curriculum now exists only as a formality, as public education has, for all practical purposes except funding, been nationalized.").

151. *Id.* at 781.

152. See *supra* notes 142-146 and accompanying text.

153. See, e.g., *Milliken II*, 433 U.S. 267 (1977); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971); *Green v. County Sch. Bd.*, 391 U.S. 430 (1968). In *Milliken II*, the Court stated,

[c]hildren who have been thus 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.

Milliken II, 433 U.S. at 287. In fact, the Supreme Court has taken an assimilationist approach to many of the race cases. See Gotanda, *supra* note 22, at 56.

Court called for mandatory integration of African American and white students.¹⁵⁴ Some of these early cases dealt with residential patterns that were already integrated.¹⁵⁵ As a result, desegregation could occur without requiring students to leave their communities. As residential patterns changed and communities became racially segregated,¹⁵⁶ neighborhood schools became predominantly homogenous.

Consequently, single race neighborhood schools, even if the result of *de facto* racial housing patterns, are what integrationists have long fought. Districting policies, like that in Connecticut, require that schools draw from the immediately surrounding community, thus creating a neighborhood school system.¹⁵⁷ Thus, a result of white flight¹⁵⁸ and housing segregation is that most urban schools have a high percentages of African American and other minority students.¹⁵⁹ As one prominent integrationist has stated "[r]estoring neighborhood schools forces more African American . . . children into isolated high-poverty schools that almost always have low levels of academic competition, performance, and preparation for college or jobs. Almost no whites end up in such schools

154. See, e.g., *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973); *Swann*, 402 U.S. at 1; *Green*, 391 U.S. at 430; *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

155. See, e.g., *Green*, 391 U.S. at 432 ("There is no residential segregation in the county.").

156. See ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 291-92.

157. See CONN. GEN. STAT. ANN. § 10-184 (West 1999) (mandating that parents are to send their children to "public schools in the district in which such child resides"); *id.* § 10-240 (mandating that each town within Connecticut "shall . . . maintain the control of all the public schools within its limits and for this purpose shall be a school district").

158. "White flight" is a phenomenon where whites leave cities that become integrated too quickly for their comfort, see Calmore, *Spatial Equality*, *supra* note 110, at 1499, and move to the suburbs because they wrongly fear that the urban centers will deteriorate because of the growing African American population. See John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing Stone of Hope From a Mountain of Despair,"* 143 U. PA. L. REV. 1233, 1241 (1995). "White Flight" is also used to describe when white parents pull their children out of desegregating public schools to place them in private schools. See ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 61-62.

159. See GARY ORFIELD ET AL., *THE GROWTH OF SEGREGATION IN AMERICAN SCHOOLS: CHANGING PATTERNS OF SEPARATION AND POVERTY SINCE 1968* 20-22 (1993) [hereinafter ORFIELD ET AL., *THE GROWTH OF SEGREGATION*]. Schools that had 90 to 100% African American and Hispanic students also contained 50 to 100% poor students. See *id.* at 22. The study also showed that cities in large metropolitan areas had 63.9% African American students in schools with 90 to 100% African American and Hispanic students. See *id.* at 20. The correlation between these statistics show the link between poverty and segregation in urban school districts. See *id.*; see also *supra* note 8.

under the [urban] neighborhood system."¹⁶⁰ Hence, integrationists believe that a neighborhood school system basically would be the return of separate and unequal in public schools and that only desegregation will succeed in equalizing education opportunities.¹⁶¹

In order to avoid single race neighborhood schools, integrationist have employed mandatory busing to bring students from predominantly African American public schools to predominantly white public schools and vice versa.¹⁶² In 1971, the U.S. Supreme Court approved of mandatory busing as a way to achieve the greatest extent of desegregation possible in *Swann v. Charlotte-Mecklenberg Board of Education*.¹⁶³ Since *Swann*, mandatory busing has generated a great deal of controversy.¹⁶⁴ Many communities have strongly objected to mandatory busing.¹⁶⁵

With the movement of middle class whites to the suburbs, generally poorer minority families are left in urban centers.¹⁶⁶ As a result of these changes in demographics, desegregation remedies need to

160. ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 331. See also ORFIELD ET AL., *THE GROWTH OF SEGREGATION*, *supra* note 159, at 20. Inner cities in large metropolitan areas had 63.9% of their African American students in schools that contained 90-100% minority students while 92.4% of African American students attended inner city schools with 50 to 100% minority student enrollment. See *id.*

161. See *id.* at 156-61, 173-78. One study on school desegregation and minority achievement stated that integrationists "hope to promote internalization of middle class values through sheer contact and exposure." Harold B. Gerard et al., *Factors Contributing to Adjustment and Achievement in Racially Desegregated Public Schools* 4 (1972), available in ERIC, Accession No. ED057120. Professor Orfield, however, explains that the benefits a minority student receives are the resources and connections that white schools historically have. See ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 57.

162. See GARY ORFIELD, *MUST WE BUS* 14 (1978) [hereinafter ORFIELD, *MUST WE BUS*].

163. 402 U.S. 1 (1971).

164. See James E. Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432, 481 (1999) (indicating that mandatory busing has been disliked by the public for a significant amount of time); ORFIELD, *MUST WE BUS*, *supra* note 162, *passim*.

165. See Michele Jacklin, *Not Many Solutions Exist For Sheff v. O'Neill*, HARTFORD COURANT, Feb. 10, 1999, at A13 (calling forced interdistrict busing an unacceptable remedy"); Lawrence D. Cohen, *Absent Vouchers, the Hope of Hartford's School is Amato*, HARTFORD COURANT, May 13, 1999, at A11 (stating that state legislators want to be shielded "from the ticking time bomb of forced busing."). For an in-depth discussion, see ORFIELD, *MUST WE BUS*, *supra* note 162.

166. See ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 61-63. For a discussion on housing segregation focusing on the flight of white middle class to the suburbs and the causes thereof, see Michelle Adams, *Separate and [Un]equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413 (1996).

reflect the reality of urban school districts. These demographic changes in conjunction with the prohibition in *Milliken I* against interdistrict remedies¹⁶⁷ resulted in the inability of urban centers to integrate themselves.¹⁶⁸ Integrationists continue to call for the following things. First, they want to create new desegregation plans that reflect the current status of school and residential patterns.¹⁶⁹ Second, integrationists encourage active judicial oversight of desegregation plans and active enforcement of judicial orders.¹⁷⁰ Last, integrationists call for better planning and evaluation of long-term goals by local educational officials.¹⁷¹

The colorblind point of view in education and race relations in the United States generally requires the integration of African American¹⁷² and white students into public schools. Integrationists see this as the right of African American students. Thus, only through integration will African Americans be able to take advantage of benefits offered traditionally to white middle-class schools.

B. The Race Conscious Point of View Through Black Nationalism

A school system in an all-white neighborhood is not a segregated school system. The only time it's segregated is when it is in a community other than white, but at the same time is controlled by the whites. So my understanding of a segregated school system, or a segregated community, or a segregated school, is a school that's controlled by people other than those that go there. . . .

On the other hand, if we [African Americans] can get an all-black school, that we can control, staff it ourselves with the type of teachers that have our good at heart with the type of books that have in them many of the missing ingredients that have produced this inferiority complex in our people, then we don't feel that an all-black school is necessarily a segregated school. . . . I just can't see where if white people can go to a white class room and there are no Negroes present and it doesn't affect the aca-

167. Nevertheless, the *Milliken I* prohibition is not absolute. It does allow interdistrict remedies only when one district's segregative act caused segregation in a neighboring district. See *Milliken I*, 418 U.S. 717, 745 (1974).

168. See ORFIELD ET AL., THE GROWTH OF SEGREGATION, *supra* note 159, at 2.

169. See ORFIELD ET AL., DISMANTLING DESEGREGATION, *supra* note 9, at 345.

170. See *id.* at 349-50.

171. See *id.* at 351-52.

172. This claim is true for all other minority groups as well. See *supra* notes 106-171 and accompanying text.

democratic diet they're receiving, then I don't see where an all-black classroom can be affected by the absence of white children. . . .

So what the integrationists, in my opinion, are saying, when they say that whites and blacks must go to school together, is that the whites are so much superior that just their presence in a black classroom balances it out. I can't go along with that.¹⁷³

This subsection explores the race conscious point of view and its implications in public school education. Race consciousness embraces the meaning of race including its historical and social contexts.¹⁷⁴ With regard to African Americans, black nationalists advocate the race conscious theory of race relations.¹⁷⁵ At the heart of black nationalism are three underlying beliefs. The first belief highlights the importance of maintaining both racial solidarity¹⁷⁶ and one's racial identity.¹⁷⁷ Racial identity encompasses a people's history, culture and experiences; it is how one identifies one's self with a racial group.¹⁷⁸ Thus, racial solidarity is the extent to which a racial group maintains its history, culture and pride.¹⁷⁹ On the one hand, colorblindness calls on people to transcend race, requiring an individual to ignore her racial identity, race consciousness through black nationalism; on the other hand, calls for an individual to identify herself both racially and with her community.¹⁸⁰

In conjunction with racial identity, the second belief of black nationalism is pride in African American cultural heritage.¹⁸¹ Because integrationists deny the existence of a separate African American culture, black nationalists have sought to instill pride of their cultural past into the African American community.¹⁸² One

173. MALCOLM X, BY ANY MEANS NECESSARY: SPEECHES, INTERVIEWS, AND A LETTER 16-17 (George Breitman ed., 1970).

174. See Gotanda, *supra* note 22, at 4.

175. As black nationalists advocate race consciousness regarding issues that affect African Americans, this Note uses race consciousness and black nationalism interchangeably.

176. See J. Herman Blake, *Black Nationalists*, in *THROUGH DIFFERENT EYES: BLACK AND WHITE PERSPECTIVES ON AMERICAN RACE RELATIONS* 72, 74 (Peter I. Rose et al. eds., 1973).

177. See Peller, *supra* note 119, at 791.

178. See John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2144 (1992).

179. See *id.*

180. See *id.*

181. See ALPHONSO PINKNEY, *RED, BLACK AND GREEN: BLACK NATIONALISM IN THE UNITED STATES* 7 (1976).

182. See *id.*; see also Malcolm X, *The Leverett House Forum of March 18, 1964*, in MALCOLM X: SPEECHES AT HARVARD 131, 156 (A. Epps ed., 1st ed. 1991) [hereinafter Malcolm X, *The Leverett House Forum*].

manner black nationalists use to accomplish this is through establishing African American studies, as well as African history and civilization courses that would teach African American students about their cultural past.¹⁸³

Black nationalists consider the last belief of black nationalism, autonomy,¹⁸⁴ to be essential to obtaining equality.¹⁸⁵ As Malcolm X said, "Black Nationalism . . . is a political philosophy that makes a black man more conscious of the importance of his doing something to control his own destiny."¹⁸⁶ According to black nationalists, self determination is impossible without autonomy.¹⁸⁷ Different groups of black nationalists, however, disagree with respect to the amount of autonomy required to achieve equality.¹⁸⁸ Early African American activists believed that African Americans needed to completely separate from the United States. For example, Marcus Garvey, a prominent early black nationalist, made efforts to return to Africa to establish this separate nation.¹⁸⁹ Some activists even called for an independent nation in the South.¹⁹⁰

183. *See id.* at 178.

184. *See* PINKNEY, *supra* note 181, at 7. Autonomy in this context means separation from the white majority. *See id.* There are different opinions as to the extent to which autonomy from the larger society is necessary. *See id.*

185. *See id.*

186. Malcolm X, *The Leverett House Forum*, *supra* note 182, at 142.

The social philosophy of Black Nationalism says that . . . we must stress the cultural roots of our forefathers, that will lend dignity and make the black man cease to be ashamed of himself. We have to teach our people something about our cultural roots Once our people are taught about the glorious civilization that existed on the African continent, they won't any longer be ashamed of who they are.

Id.

187. *See* PINKNEY, *supra* note 181, at 7.

188. *See id.*

189. *See* THEODORE DRAPER, *THE REDISCOVERY OF BLACK NATIONALISM* 50-56 (1969). Malcolm X also believed early in his life that African Americans needed to fight for a separate African state for African Americans. *See id.* at 90. He moved away from this ideal as time revealed the difficulty of the project. *See* Malcolm X, *Declaration of Independence*, in MALCOLM X SPEAKS: SELECTED SPEECHES AND STATEMENTS 20 (G. Breitman ed., 1965). Malcolm X, however, was one of a number of modern black nationalists to urge separatism. *See, e.g.,* Max Stanford, *Max Stanford Calls For Independent Black Nation*, AFRO-AMERICAN NEWS SERVICE, Apr. 17, 1968, reprinted in BLACK NATIONALISM IN AMERICA 513 (John H. Bracey, Jr. et al. eds., 1970).

190. *See* Stanford, *supra* note 189, at 513-514 (calling for African Americans to fight for an independent nation in the South and for reparations). For an in-depth discussion of separatism, see BLACK NATIONALISM IN AMERICA, *supra* note 189, at 156-209, 288-97, 408-76.

Others believed that African Americans needed to take control of local communities.¹⁹¹

Generally, black nationalists believe integration is an excuse to assimilate African Americans into white society.¹⁹² For many black nationalists, integration, rather than representing a road to equality, is a "subterfuge for the maintenance of white supremacy."¹⁹³ More specifically, integration is "based on complete acceptance of the fact that in order to have a decent house or education, black people must move into a white neighborhood or send their children to a white school. This reinforces . . . the idea that 'white' is automatically superior and 'black' is by definition inferior."¹⁹⁴ By requiring assimilation, African Americans are forced to turn their backs on their identity and their ancestry.¹⁹⁵ In contrast, race consciousness encourages African Americans to embrace their racial identity, their communities and their heritage.

1. *Aspects of Black Nationalism*

Among the many views of black nationalism, three of the most prominent are cultural nationalism, religious nationalism and revolutionary nationalism.¹⁹⁶ The first view, cultural nationalism, strongly maintains that African Americans are a distinct cultural community and are separate from the white majority.¹⁹⁷ One cultural anthropologist thus argues that African cultural traits have

191. See RAYMOND L. HALL, *BLACK SEPARATISM IN THE UNITED STATES* 3 (1978); Stokely Carmichael, *Power and Racism*, in *STOKELY SPEAKS: BLACK POWER BACK TO PAN-AFRICANISM* 29 (Ethel N. Minor ed., 1971).

192. See Stokely Carmichael, *The Emergence of Black Power*, in *THE STRUGGLE FOR RACIAL EQUALITY* 256 (Henry S. Commager ed., 1967) [hereinafter Carmichael, *The Emergence of Black Power*]; Ruth Turner Perot, *Black Power: A Voice Within*, *LXIII OBERLIN ALUMNI MAGAZINE* 17-19 (1967), reprinted in *BLACK NATIONALISM IN AMERICA*, *supra* note 189, at 465, 465-70. "Integration simply could not be gained at the expense of black self worth. No other ethnic group had been forced to lose its identity to succeed in integrated society. Why is it necessary for black people to do so?" *Id.* at 467.

193. Carmichael, *The Emergence of Black Power*, *supra* note 192, at 256; see also Gotanda, *supra* note 22, at 16 ("[Integration] fosters the systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue.").

194. See Carmichael, *The Emergence of Black Power*, *supra* note 192, at 256.

195. See Peller, *supra* note 119, at 795.

196. Due to the rather large number of forms and organizations, this Note will discuss some of the modern forms of black nationalism generally. For a discussion of the earlier forms of black nationalism, see Blake, *supra* note 176, at 73-85; PINKNEY, *supra* note 181, at 151-205. For a more in-depth discussion of the modern forms of black nationalism, see DRAPER, *supra* note 189, *passim*; PINKNEY, *supra* note 181.

197. See Alex M. Johnson, *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African American Again*, 81 CAL. L. REV. 1401, 1415 (1993).

affected African Americans in the United States.¹⁹⁸ Another sustains that African American culture derives from slavery and centuries of discrimination.¹⁹⁹ Regardless of how the culture developed, both agree that African Americans have a unique culture different from that of white Americans. African Americans and whites come from "different communities, neighborhoods, churches, families, and histories, and [are] in various ways 'foreigners to each other.'"²⁰⁰ As a result, it is impossible to transcend race and create a color-blind society because race defines people.

Consequently, cultural nationalists call for African Americans to develop a cultural philosophy,²⁰¹ to regain control of the core of African American culture, such as its music,²⁰² and to develop a separate value system based on "traditional black values and customs and a common code of morality."²⁰³ By teaching African American children the value system of African American culture, instead of that of European culture, African Americans can "free themselves from internal colonialism."²⁰⁴ Thus, for example, by regaining control over African American music, cultural nationalists seek not only to prevent further impoverishment of the Black Nation,²⁰⁵ but also to help "collectize" African American culture.²⁰⁶ Hence, cultural nationalists believe that development of national awareness, which is obtained through cultural growth, can achieve liberation from racism.²⁰⁷

Religious nationalism is similar to cultural nationalism but with greater focus on religion rather than broader culture.²⁰⁸ There are three main types of religious nationalism: that which rejects Christianity, like the Nation of Islam; that which promotes African American unity within traditional Christianity, such as the National Committee of Black Churchmen; and last, the Shrine of the Black

198. See PINKNEY, *supra* note 181, at 127 (discussing the theories proposed by Melville J. Herskovitz).

199. See *id.* (discussing the theories proposed by E. Franklin Frazier).

200. Peller, *supra* note 119, at 792.

201. See Askia Muhammad Touré (Rolland Snellings), *We Must Create a National Black Intelligentsia In Order to Survive*, in BLACK NATIONALISM IN AMERICA, *supra* note 189, at 452, 458 (reprinting Askia Muhamad Touré, *The Crisis in Black Culture*, 1 J. BLACK POETRY 2-10 (1968)).

202. See *id.* at 454, 456.

203. PINKNEY, *supra* note 181, at 129.

204. *Id.* at 130

205. See Touré, *supra* note 201, at 457.

206. See *id.* at 459.

207. See PINKNEY, *supra* note 181, at 143.

208. See HALL, *supra* note 191, at 2.

Madonna, a separate African American church that views God as African American.²⁰⁹

The first type of religious nationalism, the Nation of Islam,²¹⁰ is based on a theological doctrine similar to that of orthodox Islam in Asia and Africa,²¹¹ and preaches absolute separation from white America.²¹² This type also helps African Americans to develop, through Black Islamic religion and education, a positive sense of identification with African American culture.²¹³ The second, African American unity within traditional Christianity, uses the teachings of Christianity to develop a "Black Theology" that connects Christianity with the plight of African Americans in American society.²¹⁴ Through Black Theology, this second form of religious nationalism assists African Americans to develop a positive self image and as a result, helps the African American community to "focus on self-determination and to do whatever is necessary to preserve its existence."²¹⁵

The third type, the Shrine of the Black Madonna, also known as the "Black Church," sees its role as "the focal point in the emerging black nation" with white America and believes it is to support the African American community in its struggle for equality.²¹⁶

209. See PINKNEY, *supra* note 181, at 154-55.

210. The Nation of Islam is also known as the Black Muslims. See *id.* at 155.

211. See *id.* at 156-158. For a more in-depth discussion on the theological underpinnings, see *id.*

212. See Elijah Muhammad, *The Muslim Program*, MUHAMMAD SPEAKS, Jul. 31, 1962, reprinted in BLACK NATIONALISM IN AMERICA, *supra* note 189, at 404 ("We want our people in America whose parents or grandparents were descendants from slaves, to be allowed to establish a separate state or territory of their own — either on this continent or elsewhere."). Elijah Muhammad was the religious leader of the Nation of Islam during the 1960s. See PINKNEY, *supra* note 181, at 155. In order to achieve this goal, the Nation of Islam created economic enterprises ranging from farming, manufacturing and retail to housing and hospitals. See *id.* at 162. Through these economic enterprises, the Nation of Islam wanted to "create a separate black economy within the United States." *Id.* at 162.

213. See PINKNEY, *supra* note 181, at 155-59. In addition, the Nation of Islam promoted separate Muslim schools to teach African American children about their history and to instill in them pride of heritage. See Muhammad, *supra* note 212, at 405 ("We want equal education — but separate schools . . . [where] Muslim teachers shall be left free to teach and train their people in the way of righteousness, decency and self respect."). For a more in-depth discussion of the teachings and history of the Nation of Islam, see PINKNEY, *supra* note 181, at 155-64.

214. See PINKNEY, *supra* note 181, at 170. One African American theologian believed that "God must be viewed as black, because 'either God is identified with the oppressed to the point that their experience becomes His or He is a God of racism.'" *Id.*

215. *Id.* at 171. For an in-depth discussion of the African American unity within traditional Christianity, see *id.* at 164-71.

216. *Id.* at 172.

The Black Church thus teaches its members that they must take complete control, socially, economically and politically, of their community.²¹⁷ Through the development of unity of the African American community via the Black Church, the African American nation therefore can be built.²¹⁸

One of the most radical forms of nationalism is revolutionary black nationalism. This third form of black nationalism advocates overthrowing "the existing political and economic system."²¹⁹ Believing that African Americans are still enslaved by white society,²²⁰ revolutionary black nationalists maintain that the only manner to obtain freedom is to seize political power.²²¹ The ultimate goal is not, therefore, integration into American society because revolutionary nationalists believe that integration is impossible.²²² Instead, revolutionary nationalists called for a separate nation for African Americans in the southern states that were heavy slave-owning states prior to the Civil War.²²³ Through organization of the African American community for the necessary revolution, revolutionary nationalists do not advocate development of African American culture because they assume it is firmly in existence.²²⁴

217. *See id.* ("In pursuit of self-determination . . . black people must be willing to sacrifice, even to the point of death, for the black Messiah was willing to die so that black people might achieve freedom from oppression.").

218. *See id.*

219. HALL, *supra* note 191, at 2.

220. *See* Stanford, *supra* note 189, at 513-14 ("A second class citizen is a [twentieth] century slave.").

221. *See id.* at 510-511 ("As revolutionary black nationalists, we do not believe that standing on the street corners alone will liberate our people. Revolutionary black nationalists must act as a vanguard to show our people how to seize power so that they may gain some control over their lives."). Furthermore, revolutionary nationalists believed that because the "U.S. government is a government of the majority, by the majority, for the majority," it could not be a government for African Americans. *Id.* at 516.

222. *See id.* at 514 ("As long as we demand integration, we will be shot down in the streets.").

223. *See id.* at 514-15. The states some targeted for the independent African American nation were Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, Texas, South Carolina and Virginia because those states contained "[t]he land we tilled, shed blood for 300 years for nothing (slave labor) and a 100 years for dry bones (sharecropping)" *Id.* at 515.

224. *See* Robert Sherill, *Interview with Milton Henry*, ESQUIRE, Jan. 1969, 73, 75, reprinted in BLACK NATIONALISM IN AMERICA, *supra* note 189, at 518 (discussing the "Republic of New Africa").

2. *The Race Conscious Approach to Education*

This subsection describes how race consciousness applies to education issues. In critiquing the integrationist remedy for school segregation, many proponents of race consciousness identify integration as African American assimilation into white culture.²²⁵ As a result, proponents of race consciousness focus on a system of neighborhood schools.²²⁶ Through the neighborhood school system, African American communities can control the schools in their communities.²²⁷ These communities can ensure that teachers of their own race teach their children.²²⁸ Further, these children could learn the values held by the African American community²²⁹ as well as African American history and culture.²³⁰

Proponents of race consciousness fear that African American neighborhood schools will be eliminated in efforts to integrate because they tend to be "inferior as a result of discrimination between white and black institutions under segregation."²³¹ By sending African American children to white schools, black nationalists believe that African American children will be indoctrinated into white culture instead of their own.²³² Hence, integration through assimilation results in "cultural genocide."²³³

Assimilation into the white culture, however, is not the only way integration causes the death of the African American community.²³⁴ If these African American neighborhood schools are closed because African American students are sent to white suburban schools, the result would be the loss of an important organized institution in the African American community.²³⁵ The consequence of this loss "contribute[s to a] greater loss of social power

225. See Peller, *supra* note 119, at 795; Perot, *supra* note 192, at 467.

226. See Peller, *supra* note 119, at 800.

227. See *id.*

228. See PINKNEY, *supra* note 181, at 163.

229. See *Plyler v. Doe*, 457 U.S. 202, 222 n.20 (1982) ("[T]he significance of education to our society is not limited to its political and cultural fruits. The public schools are an important socializing institution, imparting those shared values through which social order and stability are maintained.").

230. See PINKNEY, *supra* note 181, at 163.

231. Peller, *supra* note 119, at 800. They are made inferior by the lack of resources and connections and "opportunity networks that historic discrimination has attached to white middle-class schools . . ." ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 344.

232. See Kimberle W. Crenshaw, *Foreword: Toward A Race Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 3 (1989).

233. Gotanda, *supra* note 22, at 60.

234. See Peller, *supra* note 119, at 800.

235. See *id.* at 798.

[because African Americans] lose the ability to control and shape their children's education."²³⁶

Unlike integrationists, black nationalists respond to the growing educational inequalities by concentrating on equalizing educational opportunities.²³⁷ Rather than focusing on the racial mix of the students, black nationalists call for infusing resources into the African American community as well as into the school system.²³⁸ This infusion includes both money and other resources.²³⁹ Maintaining community schools strengthens minority, and specifically African American, communities. One way is that African American children learn about their culture and identity.²⁴⁰ Another is that the African American community would be able to retain and potentially augment its social power within American society as a whole.²⁴¹

Educational remedies advocated by proponents of race consciousness thus focus directly on the educational inequalities faced by students in urban schools. The right of African American students is not integration, but equal educational opportunity. By receiving an infusion of resources, minority students can enjoy equal quality education without leaving their communities.

III. PERHAPS *SHEFF* IS NOT A VICTORY FOR MINORITY STUDENTS

This Part begins by discussing the remedies enacted by the Connecticut State Legislature in reaction to the Connecticut Supreme Court's mandate in *Sheff v. O'Neill*. Next, it describes the *Sheff* plaintiffs' response to those remedies. This Part further argues that there are potential problems with the remedies sought by the *Sheff* plaintiffs. This Part concludes that the remedies that embody a race-conscious point of view confront the problem of inferior education without the potential problems that accompany those sought by the *Sheff* plaintiffs.

A. The Connecticut Legislature's Response to *Sheff*

One year after the Connecticut Supreme Court rendered its decision in *Sheff*, Connecticut's Legislature enacted a bill in response

236. *Id.* at 795.

237. *See, e.g.,* Malcolm X, *The Ballot or the Bullet*, *supra* note 135, at 42.

238. *See* Peller, *supra* note 119, at 797.

239. *See id.*

240. *See* Carmichael, *The Emergence of Black Power*, *supra* note 192, at 258.

241. *See id.*

to the court's holding, an Act Enhancing Educational Choices or Opportunities (the "Enhancing Education Act").²⁴² Interestingly, the state adopted a mix of colorblind remedies and what can be considered race-conscious remedies. The Enhancing Education Act focuses on increasing interdistrict enrollments and, to achieve this goal, creates a program to allow 800 students from Hartford, Bridgeport and New Haven²⁴³ to voluntarily go to schools in suburban towns.²⁴⁴ In addition, the Enhancing Education Act provides state funding for interdistrict programs, including regional magnet and charter schools.²⁴⁵ School districts are not required to participate in these interdistrict programs.²⁴⁶ The state eliminated the Hartford Board of Education and replaced it with the state board of trustees,²⁴⁷ as well as increased funding to the Hartford school system in attempts to improve the quality of education of the inner city schools.²⁴⁸ The state also increased the focus on minority staff recruitment.²⁴⁹ Further, the Enhancing Education Act requires the State Department of Education to create a five-year plan to studying and eliminating educational inequalities and reduce ethnic, racial and economic isolation.²⁵⁰

242. See An Act Enhancing Educational Choices and Opportunities, 1997 Conn. Acts 290 (Reg. Sess.) (codified as amended at CONN. GEN. STAT. ANN. tit. 10 (West Supp. 1999)).

243. Bridgeport and New Haven are two other cities in Connecticut suffering education problems similar to Hartford. See *The 28 Failing Schools*, HARTFORD COURANT, Nov. 8, 1999, at A12.

244. See Diane Scarponi, *Legislature Approves 23.78 Billion Budget, \$273 Million In Tax Cuts*, ASSOC. PRESS NEWSWIRES, June 4, 1999. In 1999, the number of students sent to suburban schools increased to 1600 and to 2400 in 2000. See *id.*

245. See CONN. GEN. STAT. ANN. § 10-226h (offering programs to reduce racial, ethnic and economic isolation). Connecticut also added the reduction of racial, ethnic and economic isolation to the statute that defines the "educational interests of the state." *Id.* § 10-4a. The amendment also imposes a duty on the school districts to "provide educational opportunities for its students to interact with students and teachers from other racial, ethnic and economic backgrounds" *Id.*

246. See *id.*

247. See 1997 Conn. Special Acts 4 (West 1999); *Sheff II*, 733 A.2d 925, 935 (Conn. Super. Ct. 1999).

248. The state contributed 67.5% of Hartford school operating budget in 1997, as compared to 66.1% in 1994. Compare *Hartford Strategic School Profile 1998-99*, *supra* note 2, with CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1993-94: Hartford School District* (visited Feb. 16, 2000) <<http://state.ct.us/sde/ssp.htm>>. In 1999, the state budget allotted \$190.8 million to be used in the Hartford school district's \$194.8 million operating budget. See Christopher Keating et al., *Lawmakers Toss Adriaen's Landing a Lifeline*, HARTFORD COURANT, June 10, 1999, at A1. Hartford also received \$36 million from the federal government. See *id.*

249. See CONN. GEN. STAT. ANN. § 10-220(a).

250. See *id.* § 10-4p.

The *Sheff* plaintiffs, however, believed that the state was not aggressively responding to the court's mandate and instituted another suit.²⁵¹ In March of 1999, the Connecticut Superior Court ruled against the *Sheff* plaintiffs, holding that the state was moving quickly enough to reduce racial isolation in the Hartford schools.²⁵² At that pronouncement, the *Sheff* plaintiffs vowed to continue to watch the state's progress in integrating Hartford's students with suburban students.²⁵³ In light of these developments, the question remains whether mandatory integration,²⁵⁴ as desired by the *Sheff* plaintiffs,²⁵⁵ is the correct strategy to combat poor education in Connecticut's urban schools.

While racial equality should always be the goal, the assimilationist approach advocated by integrationists and the Connecticut Supreme Court regarding school segregation does not address the ultimate harm caused by school segregation: inferior education faced by students in segregated schools. Furthermore, integrationist remedies may cause additional psychological harms to the children it attempts to help.²⁵⁶ Unfortunately, through *Sheff*, Connecticut may be continuing down the path originally marked by *Brown*,²⁵⁷ that is, Connecticut may place too much emphasis on mechanical application of integrationist ideals rather than on a meaningful remedy for inferior education.

Although *Brown* prohibited *de jure* segregation in public schools,²⁵⁸ this holding may not have remedied the injury integrationists believed *de jure* school segregation causes. The rationale behind *Brown* was based on the resulting psychological impairments suffered by African American children.²⁵⁹ Unfortunately, integrationists have overlooked the destructive impact their remedies may have on the psyches of African American children.²⁶⁰ In carrying out integration policies, African American children are

251. See *Sheff II*, 733 A.2d at 925.

252. See *id.* at 938, 943 ("The [S]tate has acted expeditiously and in good faith to respond to the decision of the [Connecticut] Supreme Court in this case.").

253. See Mike Allen, *Judge Sees Good Faith Effort to Integrate Hartford Schools*, N.Y. TIMES, March 4, 1999, at B4.

254. This critique does not refer to the voluntary interdistrict programs discussed *supra* notes 244-246 and accompanying text.

255. See *Sheff II*, 733 A.2d at 940 (indicating that the plaintiffs sought mandatory reassignment of students).

256. See *infra* notes 259-293 and accompanying text.

257. See *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

258. See *id.* at 487.

259. See *id.* at 486.

260. See John A. Powell, *Living and Learning: Linking Housing and Education*, 80 MINN. L. REV. 749, 775 (1996).

usually sent to white schools.²⁶¹ White suburban students, however, are not usually sent to traditionally African American schools.²⁶² Connecticut has already implemented this remedy through busing, albeit on a smaller scale.²⁶³ The practice of sending urban students to suburban schools stems from the belief that sending white students to traditionally African American schools would be counter-productive.²⁶⁴ These urban schools have labored under a history of discrimination and, as a result, lack the resources and connections that white middle-class schools traditionally enjoy.²⁶⁵ Consequently, the implementation of desegregation remedies leads to a powerful assumption: African American students need to become like white, middle-class students in order to improve academically.²⁶⁶

A favorite desegregation tool, busing minority students out of their communities to wealthy suburban schools, can be a contributing factor to the sense of inferiority developed in poor urban minority students.²⁶⁷ These students are usually taken out of lower income communities and sent to wealthier suburban schools.²⁶⁸ The perception created by busing poorer urban minority students to wealthier white suburban schools is that the wealthier community is better than the child's own community.²⁶⁹ As a conse-

261. *See id.*

262. *See* ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 57.

263. *See* Scarponi, *supra* note 244. In fact, some officials have reacted negatively to the idea of suburban school children going to Hartford public schools. *See* Stacy Wong & Marisa O. Colon, *Many Officials Support Sheff Decision, Some Others Object that Desegregation is not the State's Responsibility*, *HARTFORD COURANT*, July 10, 1996, at B1. The Chairman of the Cheshire Board of Education stated, "if someone proposes sending Cheshire school students outside of the Cheshire school system — we'll have a war on our hands." *Id.*

264. *See* ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 57.

265. *See id.* In New Jersey, a wealthy suburb that followed a cross-busing plan with a poorer district requested release from the plan because of the poorer district's "old and dilapidated buildings, lack of adequate equipment and materials [and] lack of science programs." KOZOL, *supra* note 11, at 167 (alteration in original).

266. *See* Powell, *supra* note 260, at 775 ("Because of the assumption that only blacks gain from integration, black children have been bused to white schools, while white children are often not bused to black schools."). If the assumption was that African American students needed to be in better school systems, presumably efforts would be made to improve every poor quality school district rather than busing.

267. *See id.* at 777.

268. *See, e.g.,* ORFIELD ET AL., *DISMANTLING DESEGREGATION*, *supra* note 9, at 57 (advocating that students need to be taken out of the historically segregated schools and sent to "successful middle-class institutions"). Project Concern, a voluntary desegregation program in the 1980's in Connecticut, specifically transported children out of poor cities of Bridgeport and New Haven and into affluent suburbs like Westport.

269. *See* Powell, *supra* note 260, at 777.

quence, "students bused from urban areas come to see their communities and experiences as inferior."²⁷⁰

When applied to the urban versus suburban school debate, these assumptions "result[] from the view that urban schools provide a less than satisfactory education because the students are black, while suburban schools, because the students are white, provide greater opportunities."²⁷¹ This view overlooks the socioeconomic realities that many urban schools face.²⁷² As one scholar has noted, poor urban schools face,

low levels of competition and expectation, less qualified teachers who leave as soon as they get seniority, deteriorated schools in dangerous neighborhoods, more limited curricula, peer pressure against academic achievement and supportive of crime and substance abuse, high levels of teen pregnancy, few connections with colleges and employers who can assist students, little serious academic counseling or preparation for college, and powerless parents who themselves failed in school and do not know how to evaluate or change schools.²⁷³

Considering these challenges, it is the combination of race and socioeconomic class that makes *de facto* segregation in urban settings so powerful.²⁷⁴ As a result, the assumptions that stem from integration policies come about because the policies ignore how race and poverty work to undermine educational achievement in urban schools. Instead, integration policies concentrate heavily on race.

Another problem exists with busing the disadvantaged African American students to wealthy suburban schools. Many times, even though poorer urban minority students share a school with white suburban students, urban students are often segregated within the school.²⁷⁵ This reality may be due to the lower amount of academic preparation urban students received prior to attending the school. As a result of urban students being victims of inferior education, these students are placed in special classes.²⁷⁶ Thus, instead of being one integrated school, it is really two schools.²⁷⁷ Being separated from the other students only furthers urban students' feelings

270. *Id.*

271. *Id.* at 776.

272. See ORFIELD ET AL., DISMANTLING DESEGREGATION, *supra* note 9, at 53-54.

273. *Id.*

274. See *id.* at 56.

275. See KOZOL, *supra* note 11, at 93.

276. See *id.*

277. See *id.*

of not belonging and being inferior to the students in the mainstream classes.

As *de facto* segregation replaces *de jure* segregation in schools, the *Sheff* court's focus on assimilationist remedies creates an additional harm.²⁷⁸ Subsequently, *de facto* segregation shaped the African American community "in such a way that the [Supreme] Court's assimilationist brand of integration came to be perceived as a badge of inferiority by African Americans."²⁷⁹ The precise harm *Brown* attempted to cure — the feelings of inferiority — did not get cured. Instead, the *Sheff* plaintiffs may perpetuate this harm.²⁸⁰

Integration remedies used since *Brown* have furthered another alarming assumption underlying schools' integration policies. Under the "green follows white" theory,²⁸¹ minority schools will receive needed resources and funds only if the school has a significant percentage of white students.²⁸² As one prominent scholar has recently stated, "[t]he per pupil expenditures and other resources devoted to white students would . . . reach non-white students if [the white and non-white students] were sitting side by side."²⁸³ Another consideration in this argument is the fact that urban school districts, which tend to be poorer and with high minority populations, have a significantly lower property tax base than the surrounding suburbs.²⁸⁴ Not surprisingly, the amount of taxes in urban areas is significantly less than the surrounding suburbs because of the lesser property values in the urban areas.²⁸⁵ The combination of a low tax base with a high minority population tends to leave urban schools with less educational opportunities because the urban areas are not able to fund the schools at levels

278. See Johnson, *supra* note 197, at 1427 (stating that following *Brown*, law imposed segregation was eliminated).

279. *Id.*

280. See Powell, *supra* note 260, at 775 ("School integration policies have accepted the assimilation model, too often focusing on 'fixing' or assimilating black children into white culture.").

281. See Minow, *supra* note 10, at 275.

282. See KOZOL, *supra* note 11, at 104, 154.

283. Minow, *supra* note 10, at 275 (discussing one of the underlying motives behind *Brown* in order to ensure equal access to educational resources); See Peller, *supra* note 119, at 820.

284. See *Horton II*, 376 A.2d 359, 366 (Conn. 1977) (indicating that, generally, local taxes give the most financial support to schools); see also Powell, *supra* note 260, at 766.

285. See KOZOL, *supra* note 11, at 54 (comparing the \$5500 Chicago spent per student against the \$9000 the wealthy suburbs of Chicago spent per student during the 1989 school year).

similar to the suburbs.²⁸⁶ If wealthy white suburban students were sent to poor urban schools, their parents would most likely require that the schools be improved.²⁸⁷ Instead, responses to this situation have been to send the African American students out of their communities or to integrate them with richer areas and to give state desegregation funds to the suburban school.²⁸⁸ Unfortunately, poor urban students are aware of the "green follows white" theory as well.²⁸⁹ Both of these responses can lead to psychological harms.²⁹⁰

When examining the effects of busing for desegregation, it becomes evident that the results are also dubious. One sociological study, for example, has shown that African American students bused out of their community actually declined academically.²⁹¹

286. See *id. passim* (describing the horrendous conditions of poor urban schools as compared to those at the wealthy suburban schools). While Connecticut has made efforts to better fund its urban schools, see *supra* note 248, the amounts suburban schools spend per pupil still surpass the amounts urban school districts spend per pupil. See, e.g., CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1998-1999: Greenwich School District* (visited Feb. 16, 2000) <<http://state.ct.us/sde/ssp.htm>> (stating that Greenwich School District spent \$13,380 per pupil); CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1998-99: Westport School District* (visited Feb. 16, 2000) <<http://state.ct.us/sde/ssp.htm>> (stating that the Westport School District spent \$11,638 per pupil); CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1998-99: Bridgeport School District* (visited Feb. 16, 2000) <<http://state.ct.us/sde/ssp.htm>> (stating that the Bridgeport School District spent \$7814 per pupil); CONNECTICUT ST. DEP'T OF EDUC., *Strategic School Profile 1998-1999: New Haven School District* (visited Feb. 16, 2000) <<http://state.ct.us/sde/ssp.htm>> (stating that the New Haven School District spent \$9466 per pupil). Since Connecticut pays for almost the Hartford School District's entire school budget, see Scarponi, *supra* note 244, Hartford spent \$10,599 per pupil in 1998-1999 school year. See *Hartford Strategic School Public 1998-99*, *supra* note 2.

287. See KOZOL, *supra* note 11, at 104, 154. The argument is not only that the suburban schools have the wealth locally, but also that they have a voice that will be heard by the legislators. See, e.g., *id.* at 170-74.

288. See Powell, *supra* note 260, at 777.

289. See KOZOL, *supra* note 11, at 104 (quoting an urban minority student who stated that if school authorities "put white children in this building in our place, this school would start to shine. No question. The parents would say: 'This building sucks. It's ugly. Fix it up.' They'd fix it fast — no question.").

290. See *id.* ("Students who are bused from urban areas come to see their communities and experiences as inferior.").

291. See Lawrence G. Felice, *Mandating Busing and Minority Student Achievement: New Evidence and Negative Results* 16 (1975) (paper sponsored by the U.S. Dep't of Education), available in ERIC, Accession No. ED114444. The study focused on African American students before and after a court ordered almost half of the surveyed students bused to a white school. See *id.* at 6-7. The study used the California Achievement Test as the measure for achievement. See *id.* at 7. The study found that after a two-year period, non-bused African American students' scores raised on average by 9.14 points whereas bused African American students declined on average by 10.02 points. See *id.* at 9. When this result is translated into grade placement, the study indicated that the non-bused students "advanced an average of one year . . .

These students were negatively affected by the interracial climate, racial prejudice and socioeconomic level of the receiving school.²⁹² Hence, if "busing serves as a political catalyst to generate negative feelings," the minority student will likely be adversely affected by the negative feelings of the receiving school.²⁹³ One possible reason for the lack of achievement is that the minority student may feel unwanted and like an outsider, which may affect achievement. This situation is likely to happen in Connecticut as well. Suburban school administrators have already indicated concern for cross-district busing because suburban schools do not have room for Hartford school children.²⁹⁴

B. The Argument for Race-Conscious Remedies in Connecticut

Fortunately, recent plans of Connecticut educators in response to *Sheff* include better funding for urban schools.²⁹⁵ This response can be considered a race-conscious remedy because it focuses on the inferior education and allows the students to remain within their community.²⁹⁶ Unfortunately, the general response to school inequality has never been to truly equalize the discrepancies in educational opportunities.²⁹⁷ Connecticut falls within this general response. While Connecticut lessened the discrepancies between the wealthy suburban towns and the poor urban areas,²⁹⁸ truly equalizing funding has not been suggested by the courts or the legislature. The same level of funding does not necessarily make schools equal. In fact, "[e]quity . . . does not mean simply equal funding. Equal funding for unequal needs is not equality. The need is greater in

compared with an average advancement of only one month . . . for bused [] students." *Id.* at 8.

292. *See id.* at 17.

293. *Id.* at 17.

294. *See* Rick Green & Matthew H. Brown, *We're Full, Suburban Schools Say*, HARTFORD COURANT, Feb. 2, 1997, at A1.

295. *See Rowland proposes \$21.5 Billion Two-year Budget*, ASSOC. PRESS NEWSWIRE, Feb. 10, 1999, at ¶ 7 (stating that the Governor of Connecticut proposed increasing the state funding to public schools by \$64 million and \$124 million by the year 2000).

296. *See supra* notes 225-246 and accompanying text.

297. *See* KOZOL, *supra* note 11, at 175 ("What [innumerable commissions on school finance] mean by [equity] is *something that resembles equity but never reaches it*: something close enough to equity to silence criticism by approximating justice, but far enough from equity to guarantee the benefits enjoyed by privilege." (emphasis in original)).

298. *See Horton I*, 376 A.2d 359 (1977) (holding that the state was required to give all Connecticut students in public school "a *substantially* equal educational opportunity" (emphasis added)).

[under-funded urban schools], and its children, if they are to have approximately equal opportunities, need more than the children who attend [highly-funded suburban schools]."²⁹⁹ Connecticut should take heed of its citizens' call for eliminating inferior education considering the fact that Connecticut citizens filed the recent school funding suit, *Johnson v. Rowland*,³⁰⁰ two years following the Connecticut Supreme Court's decision in *Sheff*. As a result, Connecticut should focus on equality of non-monetary resources, such as curricular materials, teachers, supplies and facilities, and not on equal funding among the districts.

Old arguments against greater funding are again being used.³⁰¹ During the 1999 Connecticut political debates over the state budget, one legislator stated that "[w]hen you have failing schools, it is not enough to just spend more money."³⁰² Again, these arguments fail to realize that schools in poor urban settings not only tend to be severely over-crowded,³⁰³ but also are harmed by the environment surrounding each school.³⁰⁴ Consequently, while equal funding is a step in the right direction, the focus should include other factors contributing to inferior and unequal education.

When increasing the funds to urban school districts, educators need to learn the lesson taught by history. Namely, educators should focus on why earlier attempts to improve education through funding did not flourish. Integrationists eagerly point to studies of urban school systems that received significant sums of money, but showed no improvement in minority student achievement.³⁰⁵ These

299. KOZOL, *supra* note 11, at 54.

300. See No. CV-98-0492103-S (Conn. Supp. Ct. filed Mar. 26, 1998).

301. See KOZOL, *supra* note 11, at 170 (discussing the debate in New Jersey over equalizing funding for poor urban schools and wealthy suburban schools where people argued that more funding for the urban schools was "not the answer").

302. Rick Green, *Rowland: Better Education, Not New Programs*, HARTFORD COURANT, Feb. 11, 1999, at A15.

303. See KOZOL, *supra* note 11, at 158-161.

304. See *supra* note 272; see also Cynde Rodriguez et al., *Students Get Off On Right Foot First-Day Attendance Rises in Hartford Schools*, HARTFORD COURANT, Sept. 8, 1999, at A1 (indicating overcrowding in Hartford Schools).

305. See, e.g., ORFIELD, *DISMANTLING DESEGREGATION*, *supra* note 9, at 143-78 (discussing four examples of increased funding to hyper-segregated school systems: Detroit, Michigan, Little Rock, Arkansas, Prince George's County, Maryland, and Austin, Texas where there was little improvement in test scores). In Detroit, the increased funding was not based on the showing of educational results but to be withdrawn after a negotiated number of years. See *id.* at 150. This decision was based on politics and not educational needs. See *id.* at 153 (quoting the city school superintendent Arthur Jefferson). As a result, the school district used the extra funding to "do the things that we wanted to do in the school system . . . and we didn't expect the components would be sufficient to overcome the urban pathos in Detroit." *Id.* at 150

studies, however, also show that many school districts received funding without a set plan in place that would allocate the funds in a manner that improves the quality of education in their school system.³⁰⁶ Instead, politics replaced educational needs when education administrators determined the uses of the funds.³⁰⁷ For instance, a problem in a Kansas City school district desegregation plan was that there was no improvement in teacher quality.³⁰⁸ The district used the funds to build needed new buildings that contained state of the art equipment that no school in the country had.³⁰⁹ The school district, however, ignored “the ‘difficult inexpensive’ things that really make a difference in children’s lives — appointing qualified principals, supervising instructional practices, developing curriculum, providing incentives, hiring good teachers, and firing bad ones.”³¹⁰ Because integrationists fail to present the full picture when highlighting the failure of neighborhood schools, Connecticut educators need to implement funding base on educational needs, not politics.

One of the most important factors in favor of academic achievement is teachers. Studies show the dramatic influence teachers have on minority student achievement.³¹¹ One study demonstrated that if desegregated minority students are in classes with prejudiced teachers, their achievement plunges.³¹² If Connecticut hired additional and highly qualified teachers for its overburdened urban schools, minority achievement may improve. For example, in 1999, 74% of Hartford school teachers and 75.6% of New Haven school teachers had masters or higher degrees.³¹³ This trailed be-

(quoting Stuart Rankin, the assistant superintendent). In the end, the amount of money the school district received from the state was insufficient to really improve the quality of the education. *See id.* at 155.

306. *See id.* at 158-60.

307. *See id.* at 153.

308. *See* Paul Ciotti, *Money and School Performance: Lessons Learned From the Kansas City Desegregation Experiment, Policy Analysis* (visited Feb. 13, 2000) <<http://www.cato.org/pubs/pas/pa298.html>>.

309. *See id.* For instance, the school district put in an Olympic-size swimming pool with an under water viewing room, arboretum, planetarium, a zoo, animation studios, a model United Nations with simultaneous translation capability, along with other amenities. *See id.*

310. *Id.*

311. *See* Norman Miller, *School Desegregation as a Social Reform: A Meta-Analysis of its Effects on Black Academic Achievement* 48 (1982) (prepared for the National Institute of Education), available in ERIC, Accession No. ED239005.

312. *See id.* Prejudiced teachers can be found in any school system. This Note does not attempt to make a connection between suburban schools and prejudiced teachers.

313. *See Hartford Strategic School Profile 1998-99, supra* note 2, at 2.

hind the Connecticut average of 78.4%.³¹⁴ In addition, training for existing teachers should also be implemented. For example, two poor districts in Texas that had received a significant increase in federal funding used the money for "intensive teacher training tied to a curricular reform" showed substantial improvement in student achievement.³¹⁵ The fourteen other districts that used the funding in other ways did not see the improvement in student achievement.³¹⁶ Through concentrating on improving teacher quality, Connecticut would not only improve achievement but also allow urban African American and other minority students to remain in their community.

Consequently, integration through assimilation may not lead to the equal educational opportunities it promises. The harms caused by integration that replaced those harms identified in *Brown* perpetuate inequality between the poor minority students and the wealthy white students because "[t]he assimilation model . . . is one of racial supremacy. It assumes that only the dominant race or culture is valid. Acceptance into the community requires everyone to accept the experiences of the dominant race as their own."³¹⁷ Hence, educators and legislators need to strive to deal directly with the problem of inferior education without perpetuating these psychological harms.

Legislators and educators through out the country faced with predominantly minority urban school districts can learn a great deal from Connecticut's experience. All major urban metropolitan areas are faced with racially and economically segregated schools.³¹⁸ Instead of ignoring educational inequalities until ordered by a court to deal with them, legislators should focus on equalizing resources in schools plague by racial and economic disparities. If legislators do not act, potential plaintiffs can force their legislators in to action by instituting litigation focused on equal resources rather than equal funding. This type of litigation should directly address the educational inequalities without bringing in problems inherent with some of the integrationist remedies.

314. See *id.* Prejudiced teachers can be found in any school system. This Note does not attempt to make a connection between suburban schools and prejudiced teachers.

315. Minow, *supra* note 10, at 276.

316. See *id.*

317. Powell, *supra* note 260, at 776.

318. See ORFIELD ET AL., *THE GROWTH OF SEGREGATION*, *supra* note 159, at 20; see also *supra* notes 159, 161.

CONCLUSION

In 2000, integrationists and the proponents of race consciousness throughout the country continue to debate what the right and the wrong solution is in school segregation. Connecticut is a microcosm of this debate as evidenced through *Sheff* and the school funding cases. This debate will continue in Connecticut as well as in the rest of the United States.

Integrationists continue to advocate the belief that equal educational opportunities are only possible when white students and minority students sit next to each other in the classroom. Integration is the right of the minority student. Through integration, the integrationists argue, minority students will no longer be isolated racially or economically, which is the "wrong" of school segregation.

The flaw with this argument is that the integrationists overlook the reality minority students face and instead impose "remedies" that could cause additional psychological injuries and hardships. Minority students must confront inferior education or be transported to another community. The proponents of race consciousness, on the other hand, argue that the focus should be on actually improving the inferior schools through the infusion of resources. Not only would minority students finally obtain quality and equal educational opportunities, but they would also remain in their communities. In the end, education advocates in Connecticut probably would have been better off using the money spent on the *Sheff* litigation in school funding litigation, just as Connecticut would have done better to enhance the resources in urban schools.