

Here we start out with a Board made up -- and I appreciate that this isn't in evidence and couldn't be in evidence, probably, but here we have a Board made up of non-salaried representative citizens.

The president is a man who serves with great hardship, Mr. Caples. Certainly we have to proceed first, at least, on the assumption that those men don't want to shunt recently graduated teachers all into these schools that have predominantly Negro children. I can't believe that is a fact here.

But we will see what the evidence is.

MR. MONTGOMERY: May I say one thing, speaking as a student in the public school system of Chicago and a product of it --

THE COURT: You remember that far back?

MR. MONTGOMERY: Yes, sir.

One thing that is quite obvious in the school system in terms of a teacher selecting the place where she might wish to teach, there is probably no question but that there are no obvious Negroes, and when I say "obvious Negroes," I mean those of us where the brown shows through, who are teaching --

THE COURT: I am color-blind. I don't mean that

out and those who have remained in the area were benefiting also because now parents had an opportunity to see the comparison and also put the Board of Education on notice that it is now possible for Mrs. Jones who lives next door to Mrs. Brown to see something to compare in the type of education that her child is receiving. There has been a marked improvement in the whole attitude. Some people are still resisting it, but mainly -- and I might say that is mainly the president of the school board there -- but the majority of the people say, "We go along with it," and just before I left to come out here, the Town of Stamford, Connecticut, was becoming aware of the same problem.

But the point being made, your Honor, is that it has been my observation in travelling throughout the United States that up as far as Chicago, most cities are becoming cognizant of this fact. There is also the question involved of having to use meetings. Plainfield is in the process of trying to work out a solution, also Hanover, Montclair, New Jersey, they made their decision by community organization.

THE COURT: Trying to work something out, you mean, as a result of the New Rochelle case?

MR. ZUEER: Yes, as a result of the New Rochelle case, figuring that rather than go to that expense, if there is going to be something like that there, maybe they had better look very closely and see whether it is there. The only way you can do that is have the diversity of opinion of people on an equal basis across the table. This doesn't happen out here. This is why there is a suit here in Chicago. There is one in Newark, New Jersey, now. I don't know where that one is going to go.

THE COURT: I don't want to get into an "all deliberate speed" kind of decree here if I can avoid it, assuming that I come to resolve the issues here generally in favor of the plaintiffs.

If the plaintiffs are entitled to the relief they seek, it seems to me that it ought to be a decree, the violation of which could result in proceedings filed for contempt of the decree. It is not going to be one of these "all deliberate speed" things. I am not critical of the Supreme Court for using that expression except

district.

Now the segregation opinion of the Supreme Court says everybody is alike, whatever color we are. Then this situation arises or has arisen where it is charged that there are some schools that are overcrowded and some where there is more room; there isn't an equal distribution of schools and pupils.

When I ask these questions, I am really seeking information. My question doesn't suggest or doesn't intend to suggest my view about the law or the facts, but if you start out, Mr. Zuber, with the proposition that goes back to Lincoln rather than Warren, everybody is equal, how can it be said that because a certain number of human beings, of whatever race, are greater in number in certain areas, the law is being violated?

Now the plaintiffs and other members of the Negro Race say, "We are equal. We want this relief." And it is true they are certainly equal. As I repeat, it didn't take the Supreme Court to persuade me of that. Evidently some people are still unpersuaded. But I wonder how

you get around that. We have these substantial additions to population, and, as a result -- I make this statement all subject to check, and this isn't evidence, it is merely part of a pre-trial conference or a friendly discussion -- we have this large number of Negro pupils and they got there because, I suppose, they had to move into those neighborhoods, they couldn't get living accommodations in places where they weren't welcome. But, you know, I lie awake thinking about this case sometimes, and one of the things that bothers me is that it seems to me that maybe the plaintiffs might be held to be begging the question. They say they don't want to be where there are all Negro pupils. They say, "We just don't want to be with them." Isn't that of itself snobbish or aren't you seeking to discriminate among yourselves?

If you are equal to begin with, and the rules are age old, as I say, they go back to a time when I was a little boy, aren't you saying, in effect, "You have a rule and it results in what you think is discrimination. Then you must change it."

Now I would like to have your comments. Has that ever occurred to you? Have I made myself clear?

MR. ZUBER: I think so, your Honor, but, you see, since the New Rochelle matter, I have just about lived, eaten and slept this stuff and I --

THE COURT: I am sure you know more about it than I do.

MR. ZUBER: -- and there has been a refinement of the original theory which I worked on in the New Rochelle case, and it would work to this extent: The general question which is usually raised when you mention segregation in northern communities, the point is raised de facto school segregation is a result of residential segregation.

Now it is my theory that public school segregation precedes residential segregation.

THE COURT: Precedes it?

MR. ZUBER: Precedes it, and if you will go through the history of the Negro in the North, this is more or less a social problem, and I am tying it into a legal problem, a legal thesis. If you analyze the situation, when Negroes were first in the North, they first had slave schools,

and then when they were freed, they had schools which were primarily set up for the Negroes.

Now as you proceed along, let's say that here is the Negro community (indicating), and this is a time when you don't have a large city. Here is the Negro community, here is a white residential community, and possibly here stands a school. The theory works that as the Negro population has moved, the school board has redrawn their district lines. Not for the purpose, as the law would say, to sort of evenly balance the distribution of the pupils throughout the school system, but for the purpose of containing the Negroes within a prescribed school district.

Now going one step further, when Negroes come into a community which tends to be predominantly white, here again you find that these lines are drawn, and when these lines are redrawn, or if they are not redrawn, then the situation takes place that by movement or by not taking action by the school board of keeping these lines in such a way to fit purely the question of everybody being equal, but, instead, the school boards tend to gerrymander these lines in such a