

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 trying 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

way as to create another racially segregated school.

Now if they only leave, say, a small portion of the white community, there again the second phase of this technique, northern technique, comes into play, and that is the issuance of permits, or, as in the case of Chicago, you have the situation of optional school districts. I think about 1948 or '49 you had over 100 optional school districts. In other words, there was an option on the part of the parent, and this was prior to this permit question.

Then the Superintendent last week on a television program, and we have the tape here in court, made the statement that as late as 1955 there were permissive transfers of students out of their attendance area into other schools, and as of '55 there were 1,000 students attending high schools and none of them lived in that particular high school district.

Now you say, "All right, I have stopped this." But, you see, by the time you say you have stopped it, the damage has already been done.

THE COURT: I don't mean to interrupt you, and