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EVERY PASSING DAY . . .

Emanuel Margolis†

In the course of its infamous opinion in *Dred Scott v. Sandford*,¹ the U.S. Supreme Court pointed to Connecticut as one of several anti-slave trade states that accepted the inequality of the “African race.”² The case cited for this bizarre proposition was *Crandall v. State*.³

Prudence Crandall was a Caucasian educator who founded a girls school in the early 1830s.⁴ When she admitted a black girl to her school, a number of irate white parents withdrew their children, and she incurred the violent opposition of her neighbors.⁵ In 1831, she founded another school for young ladies and “little misses of color” in Canterbury, Connecticut, some ten miles west of the Massachusetts border.⁶

Her neighbors were outraged, resorting to insults, abuse, and boycotts without success. The school even continued to function in the face of hostile public meetings denouncing its existence. Petitions were circulated, and shortly thereafter, in 1833, the Connecticut legislature passed a “Black Law” making it a crime for anyone to establish a school or “literary institution” for the education of nonresident blacks or to teach in such a school without obtaining “the consent in writing . . . of the civil authority, and also of the select-men of the town” in which such instruction was to take place.⁷

Prudence Crandall was arrested, tried, and convicted before Chief Justice Daggett⁸ sitting as the trial judge. The charge was “harbouring and boarding coloured persons not belonging to this

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¹ 60 U.S. (19 How.) 393 (1856).

² *Id.* at 415. If “[blacks] were not even [in Connecticut] raised to the rank of citizens, but were still held and treated as property,” the Court was satisfied that blacks were hardly likely to be “elevated to a higher rank anywhere else.” *Id.*

³ 10 Conn. 339 (1834), available at 1834 WL 102.

⁴ EDMUND FULLER, PRUDENCE CRANDALL: AN INCIDENT OF RACISM IN NINETEENTH-CENTURY CONNECTICUT 12–13 (1971).

⁵ *Id.*

⁶ *Id.*

⁷ See *Crandall*, 10 Conn. at 340 n.(a), 366.

⁸ Daggett, together with Samuel Hitchcock, founded the Yale Law School in 1826. See HISTORY OF THE YALE LAW SCHOOL 34–35 (Anthony T. Kronman ed., 2004).

state."⁹ Chief Justice Daggett, in his jury instructions, embarked from the following proposition: "The African race are [sic] essentially a degraded caste, of inferior rank and condition in society. Marriages . . . between them and whites . . . are revolting, and regarded as an offence against public decorum."¹⁰

It was a short step from Daggett's racist assumption to his determination that it was the jury's duty to convict Ms. Crandall, who, "with force and arms, willfully and knowingly did harbour and board certain coloured persons" contrary to the Connecticut "black law."¹¹ The jury instructions included the following:

To my mind, it would be a perversion of terms, and the well-known rule of construction, to say, that slaves, free blacks, or Indians, were citizens, within the meaning of that term, as used in the constitution. God forbid that I should add to the degradation of this race of men; but I am bound, by my duty, to say, they are not citizens.¹²

Although this egregious rationale for sustaining a racially exclusionary law prohibiting out-of-state blacks from attending a school in Connecticut remains "on the books," it is important to note that Crandall's conviction was ultimately reversed on appeal, albeit on a technicality.¹³ Prudence Crandall's victory in court was nevertheless Pyrrhic. Anti-abolitionist mobs attacked and partially destroyed her house, and she spent the rest of her life in Illinois and Kansas.¹⁴

Crandall offers the perfect prologue to *Brown v. Board of Education*¹⁵ and its Connecticut analogue, *Sheff v. O'Neill*.¹⁶ The State of Connecticut, like many states in the union, continued to grapple with the "badges and incidents of slavery"¹⁷ long after its formal abolition in the state.

School segregation is one such "badge and incident." *Brown* was decided 120 years after *Crandall*, and the *Sheff* litigation was planned some thirty years after *Brown*. This Article proposes to examine *Brown* and *Sheff* as two decisions, forty-two years apart, closely linked, with similar disappointing results for minority schoolchildren. Nevertheless, both offered some measure of hope for Connecticut's public school children.

⁹ *Crandall*, 10 Conn. at 341.

¹⁰ *Id.* at 346.

¹¹ *Id.* at 340.

¹² *Id.* at 347.

¹³ *Id.* at 369-71. The information failed to state that Ms. Crandall's school was "not licensed," which the Court held to be a "fatal defect." *Id.* at 369.

¹⁴ FULLER, *supra* note 4, at 92-95.

¹⁵ 347 U.S. 483 (1954).

¹⁶ 678 A.2d 1267 (Conn. 1996).

¹⁷ The Civil Rights Cases, 109 U.S. 3, 20 (1883).

A. "Two Connecticuts:" Separate and Unequal

By the mid-1980s, it was more apparent, with each passing year, that Connecticut's public school system was becoming increasingly segregated by race.¹⁸ The Commissioner of Education warned of ominous emerging trends in public school demographics. Unfortunately, Connecticut's century-old system of public school districts had begun to reflect and reinforce the broader racial divisions within society.¹⁹

In 1988, a Committee on Racial Equality appointed by the Connecticut Commissioner of Education published a report containing recommendations "that seek to avoid a portrayal of the state as two Connecticuts—the affluent and the poor, participants and nonparticipants, white and minority."²⁰ Many school districts resisted Connecticut's 1969 "Racial Imbalance Law,"²¹ leading the Connecticut Department of Education to cite a number of districts for noncompliance.²² The Department's own statistics demonstrated that the state's efforts to reduce racial imbalance and to provide minority students with an integrated learning environment were failing.²³

If these trends continued, the report concluded, the cities of Hartford, New Haven, and Bridgeport would "become effectively all-minority school districts."²⁴ These circumstances were already apparent to minority students themselves, who decided to seek judicial relief not long after the report was submitted. On April 26, 1989, Milo Sheff, a fourth-grader in a Hartford public school, along with seven-

¹⁸ Interestingly, the City of Hartford passed an ordinance in 1868 that assigned African-American students to a specially designated public school. See Raymond B. Marcin, *Nineteenth Century De Jure Segregation in Connecticut*, 45 CONN. B.J. 394, 397-98 (1971). The Connecticut legislature (hereafter the "General Assembly") passed a statute providing for open enrollment in all of the state public schools without regard to race. CONN. GEN. STAT. § 10-15c (2003).

¹⁹ Under the provisions of what is now Connecticut General Statutes § 10-240, the boundaries for the Hartford public school district became coterminous with the boundaries of the City of Hartford. CONN. GEN. STAT. § 10-240 (2003).

²⁰ COMMITTEE ON RACIAL EQUITY, A REPORT ON RACIAL/ETHNIC EQUITY AND DESEGREGATION IN CONNECTICUT'S PUBLIC SCHOOLS 4 (1988) [hereinafter COMMITTEE ON RACIAL EQUITY REPORT] (prepared for presentation to the Connecticut State Board of Education).

²¹ Connecticut General Statutes §§ 10-226a through 10-226e, enacted in 1969, were intended to address problems of ethnic imbalance in urban public schools in Hartford, Bridgeport, and New Haven, whose minority enrollments were then exceeding seventy percent. CONN. GEN. STAT. §§ 10-226a-c (2003).

²² COMMITTEE ON RACIAL EQUITY REPORT, *supra* note 20, at 7-8. Regulations to implement the statute were not promulgated until 1980—eleven years subsequent to its passage. *Id.* at 7.

²³ *Id.* at 8; *id.* at fig.6 (showing a 90.4% proportion of minorities enrolled in the Hartford school district, while neighboring school districts had minority student populations of less than 6%).

²⁴ *Id.* at 5 (showing that in October 1986, New Haven's and Bridgeport's percentages of minority students had risen to 81.2 and 83.4, respectively).

teen other plaintiffs,²⁵ filed suit against the governor, other state officials, and the Connecticut Board of Education.

B. Cloning *Brown*: Incubation In State Forum

In the fall of 1988, a group gathered at Mory's—a restaurant in New Haven immortalized in song by the "Yale Whiffenpoofs"—to discuss a litigation strategy for attacking school segregation. Lawyers from the Connecticut Civil Liberties Union (of which I had recently been elected chair),²⁶ the National Association for the Advancement of Colored People, the Yale Law School, and the Connecticut Latino community were present.

The state's report²⁷ on the growing severity of racial segregation had been published just the previous January. Those gathered at Mory's were of the opinion that the governor and the state legislature would not address the problem unless forced to do so. The only recourse was to the courts and the constitution, but the question remained: to which court and which constitution?

For those addressing the problem of school segregation in 1988, *Brown* offered inspiration but scant practical utility for Connecticut's problems. Looming as a major legal barrier was the 1973 U.S. Supreme Court decision in *San Antonio Independent School District v. Rodriguez*, which held that public education was *not* a fundamental right under the U.S. Constitution.²⁸ In contrast, the Connecticut Constitution and case law established such a right as clearly fundamental. The Connecticut Supreme Court decidedly stated: "We conclude that without doubt . . . in Connecticut, elementary and secondary education is a fundamental right, [and] that pupils in the public schools are enti-

²⁵ In addition to Milo Sheff, the other plaintiffs were:

Wildalize Bermudez, a Latino child residing in Hartford; Pedro Bermudez, a Latino child residing in Hartford; Eva Bermudez, a Latino child residing in Hartford; Oskar M. Melendez, a Latino child residing in Glastonbury; Waleska Melendez, a Latino child residing in Glastonbury; Martin Hamilton, an African-American child residing in Hartford; Janelle Hugbley, an African-American child residing in Hartford; Neiima Best, an African-American child residing in Hartford; Lisa Laboy, a Latino child residing in Hartford; David William Harrington, a white child residing in Hartford; Michael Joseph Harrington, a white child residing in Hartford; Rachel Leach, a white child residing in West Hartford; Joseph Leach, a white child residing in West Hartford; Erica Connolly, a white child residing in Hartford; Tasha Connolly, a white child residing in Hartford; Michael Perez, a Latino child residing in Hartford; and Dawn Perez, a Latino child residing in Hartford. Sheff v. O'Neill, 678 A.2d 1267, 1271 n.3 (Conn. 1996).

²⁶ I participated as the newly elected Chair of the C.C.L.U. and a practicing civil rights lawyer.

²⁷ COMMITTEE ON RACIAL EQUITY REPORT, *supra* note 20.

²⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29-36 (1973). This decision rejected a constitutional challenge to the manner in which Texas financed its public schools. *See id.*

tled to the equal enjoyment of that right . . .”²⁹ The resulting consensus among the “Mory’s lawyers” was that the state forum offered more hospitable terrain than the federal courts.

The factual basis for a complaint seeking relief from racial segregation in Connecticut’s schools was overwhelming and irrefutable. Indeed, the State Board of Education—a named defendant—provided much of the data and impetus for the lawsuit. The worst pattern of public school segregation, dramatized by the predominantly white public schools in the surrounding districts, was found in the Hartford school district.³⁰ Segregation in Bridgeport and New Haven was almost as stark,³¹ while the town of Bloomfield (contiguous to and north of Hartford) exhibited patterns of racial segregation similar to those of its larger neighbor.³²

The pattern of segregation was not the result of purposeful or intentional discrimination on the part of the state. Connecticut had never engaged in the kind of misconduct attributed to the boards of education in Kansas, South Carolina, Virginia, and Delaware in *Brown* thirty-five years earlier. The plaintiffs did not allege purposeful discrimination because it could not be proved. Absent such de jure segregation, our plaintiffs instead needed to allege and prove that (1) their right to a public school education was *fundamental* under Connecticut law; (2) racially segregated school districts were inherently unequal and provided unequal educational opportunities for minority students; and (3) the defendants failed to meet their state constitutional obligations to correct these inequities.

The complaint stated that school children throughout Connecticut, “including the City of Hartford and its adjacent suburban communities, are largely segregated by race and ethnic origin.”³³ It alleged that the Hartford public schools, because they had such a high proportion of students who were “at risk” of lower educational achievement, “operate at a severe educational disadvantage [which has rendered them] unable to provide educational opportunities that

²⁹ *Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977); see also *Horton v. Meskill*, 486 A.2d 1099, 1105 (Conn. 1985) (noting that Connecticut is required to afford all students a “substantially equal educational opportunity”). The *Horton* cases challenged the Connecticut system that financed public education in a grossly disparate manner.

³⁰ Of the more than 25,000 school children enrolled in the Hartford district at the time suit was brought on April 26, 1989, the minority enrollment was over 90%, whereas in surrounding districts it was typically in single digits. Pls.’ Compl. at 9, *Sheff v. O’Neill*, 238 Conn. 1 (1996) (No. 15255) [hereinafter *Complaint*].

³¹ As of the 1986–1987 academic year, the percentage of minority student enrollment in Bridgeport and New Haven was 83.4 and 81.2, respectively, and rising. COMMITTEE ON RACIAL EQUITY REPORT, *supra* note 20, at 1.

³² With a total school population of 2,555 in Bloomfield, the minority student percentage was 69.9%. See *Complaint*, *supra* note 30, at 9. Bloomfield was too small a target, albeit an ancillary one.

³³ *Complaint*, *supra* note 30, at 8.

are substantially equal to those received by schoolchildren in the suburban districts."³⁴

The plaintiffs also claimed that "[m]easured by the State's own educational standards, . . . a majority of Hartford schoolchildren are not currently receiving even a 'minimally adequate education.'"³⁵ They further contended that

[f]or well over two decades, the State of Connecticut, through [the defendants] and their predecessors, have been aware of: (i) the separate and unequal pattern of public school districts in the State of Connecticut and the greater Hartford metropolitan region; (ii) the strong governmental forces that have created and maintained racially and economically isolated residential communities in the Hartford region; and (iii) the consequent need for substantial educational changes, within and across school district lines, to end this pattern of isolation and inequality.³⁶

The "keystone in the arch" of the *Sheff* complaint echoed the reasoning of *Brown v. Board of Education*, but largely incorporated various provisions of the Connecticut Constitution as its basis.³⁷ The plaintiffs designed their litigation strategy to both avoid the pitfalls of an evidentiary burden of proof that they could not meet—the de jure segregation standard—and circumvent *Rodriguez's* apparently insurmountable barrier to federal equal protection claims.³⁸

The trial lasted six weeks and concluded in February 1993.³⁹ Closing arguments did not take place until November 1994, and the trial court did not file a decision until April 12, 1995—almost six full years from the filing of the complaint.⁴⁰

The trial court ruled for the defendants. Its central reasoning was that the plaintiffs had failed to prove that "state action is a direct and sufficient cause of the conditions" that were the subject matter of their complaint, "and that accordingly the constitutional claims asserted by the plaintiffs *need not be addressed*."⁴¹ Judge Hammer agreed

³⁴ *Id.* at 11–12.

³⁵ *Id.* at 14.

³⁶ *Id.* at 16.

³⁷ See Constitutional textual provisions quoted *infra* text accompanying notes 55–57.

³⁸ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29–36 (1973).

³⁹ Memorandum of Decision, *Sheff v. O'Neill*, No. CV89-03609775, at 22 (Conn. Super. Ct. Apr. 12, 1995) [hereinafter Decision], *vacated by* 678 A.2d 1267 (1996).

⁴⁰ *Id.* In this context the caveat of the Connecticut Supreme Court reversing the trial court is well worth noting: "Every 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." *Sheff*, 678 A.2d at 1290 (emphasis added).

⁴¹ See Decision, *supra* note 39, at 72 (emphasis added).

with the state's primary defense,⁴² namely that no evidence of formal (de jure) state action existed, nor was there any proof of purposeful discriminatory conduct by state actors.⁴³ The very constitutional claims that the trial court chose not to address were essential as a *ratio decidendi* given the undisputed facts before it. In fact, Judge Hammer barely mentioned *Brown v. Board of Education*,⁴⁴ and his opinion, with references to *federal* case law, contains not a single reference to the crucial Connecticut constitutional provisions that formed the linchpin of the plaintiffs' case.⁴⁵ Judge Hammer failed to understand that the core of the plaintiffs' claim in *Sheff* was based on the Connecticut state constitution premise: that public education constituted a fundamental right.

This misperception was also the fatal flaw in the U.S. Supreme Court's reasoning in *Rodriguez*.⁴⁶ In the course of rejecting a constitutional challenge to the Texas system for financing public schools,⁴⁷ the Court held that education was not a fundamental constitutional right.⁴⁸ Writing for the majority, Justice Lewis Powell declared:

It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.⁴⁹

⁴² The other defenses raised were (1) sovereign immunity, (2) stare decisis, (3) separation of powers, (4) lack of a justiciable controversy, (5) the failure to join necessary parties, including the city of Hartford, and (6) the unavailability of court-ordered remedies, a variant of separation of powers. See *Sheff*, 678 A.2d at 1272. The defenses of sovereign immunity, stare decisis, and failure to join necessary parties were never pursued.

⁴³ See Decision, *supra* note 39, at 71-72.

⁴⁴ See *id.* at 44-45, 67. Neither *Brown I* nor *Brown II* were cited for their authority but merely tangentially. *Id.* The federal authorities cited, including page after page of opinion and dicta by Justice William O. Douglas, were similarly inapposite to plaintiffs' state law claims. *Id.* at 64-71.

⁴⁵ *Id.*

⁴⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29-36 (1973).

⁴⁷ Local property taxes funded public schools in such a manner that one school district expended \$356 per pupil, whereas a wealthier district expended \$594. *Id.* at 12-13.

⁴⁸ *Id.* at 29-36.

⁴⁹ *Id.* at 33-34.

The Court concluded that no such federal constitutional right existed.⁵⁰ Blinded by *Rodriguez* and its progeny,⁵¹ Judge Hammer's opinion traveled through a maze of federal and state court decisions, ignoring the core premise of plaintiffs' case that, under the Connecticut Constitution and Connecticut Supreme Court precedent, education is a fundamental right in Connecticut.

C. The Road from *Brown* to *Sheff*

The Connecticut Supreme Court's decision in *Sheff v. O'Neill* can be traced directly back to *Brown v. Board of Education*. It is more than arguable that, had *Brown* not been decided in 1954, the milestone of *Sheff* never would have occurred. The resulting constitutional hurdle would have rendered de facto school segregation less vulnerable to attack.

Just as the U.S. Supreme Court derived fundamental rights from a number of constitutional provisions,⁵² the Connecticut Supreme Court held that Connecticut school children possess a fundamental right to substantially equal educational opportunities.⁵³ Any infringement of that right by the state or its agents is subject to strict scrutiny by the courts.⁵⁴

In the very first paragraph of its opinion, which reverses Judge Hammer's opinion and directs judgment for the plaintiffs, the Court cites three provisions of the Connecticut Constitution that were at the epicenter of the cause of action and, as shown, the trial court simply did not address:

[article first, §1] All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.⁵⁵

⁵⁰ *Id.* at 35. Recall that among the fundamental rights implicitly guaranteed by the U.S. Constitution are the right to privacy, *Roe v. Wade*, 410 U.S. 113, 152 (1973); the right to travel, *Shapiro v. Thompson*, 394 U.S. 618, 630-31 (1969); the right to marry (and divorce), *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971); the right to parental custody and care of children, *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972); and the right to rear one's children, *Troxel v. Granville*, 530 U.S. 57, 66-67 (2000).

⁵¹ See *Kadmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 465 (1988) (reiterating that education is not a fundamental right in a case challenging the North Dakota fee system for use of school buses).

⁵² The Court has derived fundamental rights from constitutional provisions through the "penumbra" concept, which first appeared in *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). See also cases cited *supra* note 50.

⁵³ *Sheff v. O'Neill*, 678 A.2d 1267, 1280-81 (Conn. 1996).

⁵⁴ Within this constitutional frame of reference, the "state action" requirement—the absence of which was fatal to the plaintiffs' case at the trial level—is totally transformed. Purposeful or de jure discriminatory intent need not be shown because "fundamentality" imports a corresponding affirmative state obligation to implement and maintain plaintiffs' "fundamental right to a substantially equal educational opportunity." *Id.* at 1280.

⁵⁵ CONN. CONST., art. first, § 1 (the equal protection clause).

. . . .
 [article first, § 20] 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.⁵⁶

. . . .
 [article eighth, §1] There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.⁵⁷

The legislature amended the Connecticut Constitution in 1965 by adding the second and third sections quoted above.⁵⁸ The *Sheff* Court was persuaded that

a fair reading of the text and the history of these amendments demonstrates a deep and abiding constitutional commitment to a public school system that, in fact and in law, provides Connecticut schoolchildren with a substantially equal educational opportunity. A significant component of that substantially equal educational opportunity is access to a public school education that is not substantially impaired by racial and ethnic isolation.⁵⁹

The Connecticut Supreme Court's Chief Justice, Ellen Peters, authored the *Sheff* majority opinion. Justice Peters embarked on the proposition that "constitutional imperatives" contained in the equal protection clause, the antidiscrimination clause, and the free public education clause of the Connecticut Constitution entitled the plaintiffs to relief.⁶⁰ In stark contrast to the trial court's conclusion, the very first paragraph of the *Sheff* opinion addresses the state constitutional issues.⁶¹

The antidiscrimination and free public education clauses not only influenced Justice Peters's analysis, but were also clearly controlling on the key issues of "protection from [de facto] segregation" and the affirmative duty of the legislature "to provide 'access to a public school education that is not substantially impaired by racial and ethnic isolation.'"⁶² The court read the two clauses conjointly,⁶³ although the clauses owed their insertion into the new constitutional text in 1965 to different *raisons d'être*.

⁵⁶ *Id.* § 20 (the antidiscrimination clause).

⁵⁷ *Id.* art. eighth, § 1 (the free public education clause).

⁵⁸ The Connecticut equal protection clause (Article first, §1) preexisted the 1965 amended Constitution and appeared in identical language in the constitutions of 1955 and 1818.

⁵⁹ *Sheff*, 678 A.2d at 1280.

⁶⁰ *Id.* at 1270-71.

⁶¹ *Id.*

⁶² *See id.* at 1280.

⁶³ *See id.* at 1270-71.

The free public education clause was aimed at plugging a major constitutional gap: As of 1965, Connecticut was the only state in the country that failed to provide in its Constitution any express right to free public education.⁶⁴ More significantly, the antidiscrimination clause owed its language, at least in part, to the decision in *Brown v. Board of Education*.⁶⁵

The *Brown* case, a mere afterthought in the judgment of the trial court,⁶⁶ became a centerpiece in the *Sheff* opinion.⁶⁷ The Connecticut Supreme Court observed, just as the U.S. Supreme Court had in its 1954 milestone desegregation decision, that "education is perhaps the most important function of state and local governments."⁶⁸ The centrality of public education as a government responsibility, indeed as a constitutional mandate, similarly drove the decision in *Sheff*.

The dissenting justices bitterly characterized the *Sheff* decision as "a result that is unprecedented in American jurisprudence."⁶⁹ Nevertheless, there was little disagreement between the parties in *Sheff* as to why this opportunity did not exist in the factual context of the pending litigation.⁷⁰ Equal educational opportunity in the Hartford school district was a chimera. The cause of segregation was obvious to all sides: the state's statutorily-created school districting scheme.⁷¹ The majority concluded that Connecticut's districting system was unconstitutional as codified in its statutes and as enforced with regard to the plaintiffs.⁷² The trial court's own finding on this issue was the major premise that led the *Sheff* Court to its conclusion of unconstitutionality:

⁶⁴ See *id.* at 1283-84.

⁶⁵ In fact, the *Sheff* opinion credits *Brown* as having influenced the constitutional convention's adoption of both article first, § 20, and article eighth § 1: "When the convention delegates debated the desirability of both amendments to our state constitution, they recognized and endorsed the landmark decision in *Brown v. Board of Education*, declaring the unconstitutionality of 'separate but equal' public school education." *Sheff*, 678 A.2d at 1283 (citations omitted).

⁶⁶ See *Sheff v. O'Neill*, No. CV89-0360977S, 1995 WL 230992, at *17-18, 26-28 (Conn. Super. Ct. Apr. 12, 1995).

⁶⁷ See *Sheff*, 678 A.2d at 1289-90.

⁶⁸ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

⁶⁹ *Sheff*, 678 A.2d at 1295 (Borden, J., dissenting).

⁷⁰ *Id.* at 1287-89.

⁷¹ See CONN. GEN. STAT. § 10-240 (2003) (

Control of schools. Each town shall through its board of education maintain the control of all public schools *within its limits and for this purpose shall be a school district* and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

(emphasis added)); CONN. GEN. STAT. § 10-184 (2002) (requiring parents, subject to limited exceptions, to cause their child "to attend a public school . . . in the district in which such child resides.")

⁷² *Sheff*, 678 A.2d at 1289.

"[t]he single most important factor that contribute[s] to the present concentration of racial and ethnic minorities in Hartford [is] the town-school district system [codified at §10-240] which has existed since 1909, when the legislature consolidated most of the school districts in the state so that thereafter town boundaries became the dividing lines between all school districts in the state."⁷³

The *Sheff* majority attributed independent constitutional significance to the inclusion of the term "segregation" in article first, § 20.⁷⁴ This term is pivotal for defining the scope and content of the state's duties in the face of de facto school segregation. These affirmative obligations are "informed and amplified by the highly unusual provision . . . that prohibits segregation not only indirectly, by forbidding discrimination, but directly, by the use of the term 'segregation.'"⁷⁵ The special and affirmative emphasis on inclusion of the term "segregation"⁷⁶ per se, led the court directly to its conclusion that "in the context of public education, in which the state has an affirmative obligation to monitor and to equalize educational opportunity, the state's awareness of existing and increasing severe racial and ethnic isolation imposes upon the state the responsibility to remedy 'segregation . . . because of race [or] . . . ancestry.'"⁷⁷

The weakest link in the chain of the *Sheff* litigation that led to the reassertion—perhaps limited resuscitation would be more accurate—of the *Brown* ideal was the elusive concept of remedy. The Connecticut Supreme Court reluctantly⁷⁸ felt obliged to defer to the legislature on this crucial issue. Unfortunately, the plaintiffs' claims for relief were not models of clarity.⁷⁹ The court held that the legislature was

⁷³ *Id.* (quotation marks in original).

⁷⁴ *Id.* at 1283.

⁷⁵ *Id.* at 1281–82. The New Jersey constitution is the only other state constitution specifically prohibiting segregation in public schools. See N.J. CONST., art. 1, para. 5; see also *Jenkins v. Morris Sch. Dist.*, 279 A.2d 619, 631–33 (N.J. 1971) (holding that the commissioner could prevent withdrawal of children from one district school to enroll in a different high school if the result would be to increase racial imbalance in the two schools).

⁷⁶ *Sheff*, 678 A.2d at 1281–82. But cf. *id.* at 1315 (Borden, J., dissenting) (reasoning that the term "segregation" should apply only in cases of intentional de facto segregation).

⁷⁷ *Id.* at 1282–83 (internal citations omitted).

⁷⁸ See *id.* at 1290 ("We direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas."). Milo Sheff was already in his senior year of high school. See Emmanuel Margolis, *Sheff Anniversary Highlights Problems Still to Solve*, CONN. L. TRIB., June 14, 2004, at 19. Recall the court's clear warnings of "every passing day." See *Sheff*, 678 A.2d at 1290.

⁷⁹ In addition to the declaratory judgment they sought declaring the State of Connecticut to be in violation of the constitutional principles described above, the plaintiffs asked for a preliminary and permanent injunction to provide them "and those similarly situated" with "an integrated education . . . equal education opportunities . . . [and] minimally adequate education." Complaint, *supra* note 30, at 28.

required by the state constitution "to take affirmative responsibility to remedy segregation in our public schools."⁸⁰

The fact that the court did not direct the legislature to proceed "with all deliberate speed" was, with tongue-in-cheek and fingers crossed, taken as a good omen for those old enough to remember the giddy period of *Brown* and its hopeful aftermath. While using the term "urgency," the *Sheff* opinion did not specify a time frame for reducing the racial and ethnic isolation of the Hartford schoolchildren.⁸¹

D. Two Steps Forward and . . .

The urgent plight of the Hartford children initially met with a positive legislative response. The "Land of Steady Habits"⁸² seemed poised to change. Unlike the explosion of judicial activism triggered by *Brown*, the *Sheff* decision prompted a more measured response from the General Assembly. The statutory changes, while far from tectonic, nonetheless did not lack long-term significance. The General Assembly, to which the court had deferred, could not ignore the *Sheff* decision: "[T]he constitutional imperative of separation of powers persuades us to afford the legislature, with the assistance of the executive branch, the opportunity, in the first instance, to fashion the remedy that will most appropriately respond to the constitutional violations that we have identified."⁸³

The state legislative body stood up and took notice with a fair degree of deliberate speed. Perhaps the most dramatic and immediate was the elimination of the elected Hartford Board of Education in 1997 and its replacement with a State Board of Trustees to serve as the governing body for the Hartford public schools. With this change

⁸⁰ *Sheff*, 678 A.2d at 1283. I am inclined to speculate that this deference to the legislature was the price that the Chief Justice was obliged to pay in order to obtain or retain her narrow majority. In this context, it is instructive to recall the brick-by-brick construction of a majority and, ultimately, the unanimity of the justices in the *Brown* case. See RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 678-99* (1976); see also BERNARD SCHWARTZ, *DECISION: HOW THE SUPREME COURT DECIDES CASES 95-100* (1996) (detailing Chief Justice Warren's efforts to obtain and maintain a unanimous opinion).

⁸¹ *Sheff*, 678 A.2d at 1290 ("In staying our hand, we do not wish to be misunderstood about the urgency of finding an appropriate remedy for the plight of Hartford's schoolchildren.").

⁸² Nickname for the State of Connecticut, which is officially called "the Constitution state" by reason of the fact that its first "constitution" dates back to "The Fundamental Orders" of 1638-39. THE FIRST CONSTITUTION OF CONNECTICUT: "THE FUNDAMENTAL ORDERS," 1638-39, reprinted in CONNECTICUT SECRETARY OF STATE, *CONNECTICUT STATE REGISTER AND MANUAL* 49-53 (1988); see also *Connecticut: The Nicknames*, at http://www.netstate.com/states/intro/ct_intro.htm (last visited Oct. 13, 2004) (providing a brief history and explanation of each of Connecticut's nicknames).

⁸³ *Sheff*, 678 A.2d at 1271.

came new state resources and new performance standards.⁸⁴ More substantively, the legislature increased the state's appropriations for interdistrict cooperative programs, interdistrict magnet schools, "lighthouse" schools, the "choice program," and minority staff recruitment.⁸⁵

In addition, the legislature enacted Public Act 98-252⁸⁶ within two years of the *Sheff* decision. This new statute placed specific obligations upon local school districts, inter alia, (1) to "document" pupils and teachers of racial minorities;⁸⁷ (2) to prepare plans to address racial imbalance in their districts, as well as to make future projections as to such imbalance;⁸⁸ (3) to include provisions for cooperation with other school districts in order to assist in the correction of racial imbalance;⁸⁹ and (4) to be subject to State Board of Education regulations governing approval of local plans to correct racial imbalance, with particular reference to "school districts with minority enrollments of fifty percent or more."⁹⁰

The *Sheff* Court's directive to the legislature appears to have prompted the new law. The language of the statute unmistakably adopts the plaintiffs' vocabulary, namely "programs and methods to reduce racial, ethnic and economic isolation."⁹¹ On its face at least, the law⁹² constituted a serious plan of attack upon the pattern of unconstitutional school segregation in Connecticut, reading as follows:

(a) A local or regional board of education for purposes of subdivision (3) of section 10-4a may offer such programs or use such methods as: (1) Interdistrict magnet school programs; (2) charter schools; (3) interdistrict after-school, Saturday and summer programs and sister-school projects; (4) intradistrict and interdistrict public school choice programs; (5) interdistrict school building projects; (6) interdistrict program collaboratives for students and staff; (7) distance learning through the use of technology; and (8) any other experience that increases awareness of the diversity of individuals and cultures.

(b) Each local and regional board of education shall report by July 1, 2000, and biennially thereafter, to the regional educational

⁸⁴ See *Sheff v. O'Neill*, 733 A.2d 925, 935 (Conn. Super. Ct. 1999).

⁸⁵ See *id.* at 928-34.

⁸⁶ 1998 CONN. ACTS 98-252. Most of its provisions found their way into what is now CONN. GEN. STAT. §§ 10-226a, h (2002).

⁸⁷ *Id.* § 10-226.

⁸⁸ *Id.* § 10-226(c).

⁸⁹ *Id.* § 10-226c(b). Of interest is the use of the optional "may" in this particular statutory provision.

⁹⁰ *Id.* § 10-226e.

⁹¹ *Id.* § 10-226h.

⁹² 1997 CONN. ACTS 97-290 § 2; 1998 CONN. ACTS 98-252 § 14; 2000 CONN. ACTS 00-220 § 11 (codified at CONN. GEN. STAT. § 10-226h (2000)).

service center for its area on the programs and activities undertaken in its school district to reduce racial, ethnic and economic isolation, including (1) information on the number and duration of such programs and activities and the number of students and staff involved, and (2) evidence of the progress over time in the reduction of racial, ethnic and economic isolation.

(c) Each regional educational service center shall report by October 1, 2000, and biennially thereafter, to the Commissioner of Education on the programs and activities undertaken in its region to reduce racial, ethnic and economic isolation.

(d) The Commissioner of Education shall report, by January 1, 1999, and biennially thereafter, in accordance with section 10-4a, to the Governor and the General Assembly on activities and programs designed to reduce racial, ethnic and economic isolation. The report shall include statistics on any growth in such programs or expansion of such activities over time, an analysis of the success of such programs and activities in reducing racial, ethnic and economic isolation, a recommendation for any statutory changes that would assist in the expansion of such programs and activities and the sufficiency of the annual grant pursuant to subsection (e) of section 10-266aa and whether additional financial incentives would improve the program established pursuant to section 10-266aa.⁹³

The plaintiffs returned to the trial court in 1998 seeking relief for the painfully slow responses to the *Sheff* decision on the part of the legislative and executive branches of government.⁹⁴ The case was placed on the "Complex Litigation Docket" and assigned to Judge Aurigemma,⁹⁵ who found the state's swift enactment of the new statutes, as well as the 1997 state takeover of the Hartford Board of Education, more persuasive than the plaintiffs' arguments that "the state ha[d] not done enough fast enough."⁹⁶

The plaintiffs chose not to appeal, recognizing that the state's foot-dragging would become more apparent with the passage of

⁹³ CONN. GEN. STAT. § 10-226h (2002). The statute's reference in subsection (d) to section 10-266aa relates to the Open Choice program, a voluntary interdistrict transfer program that theoretically allows students to transfer between city and suburban districts. *See id.* § 10-266aa.

⁹⁴ *See Sheff v. O'Neill*, 733 A.2d 925, 938 (Conn. Super. Ct. 1999); *see also* Colin Poiras, *State to Defend Sheff Action: Plaintiffs Say Response Has Been Insufficient*, HARTFORD COURANT, Aug. 31, 1998, at B1.

⁹⁵ Under Connecticut law, when a case is reversed by the Supreme Court, a new trial judge must be assigned to the case on remand. *See* CONN. GEN. STAT. § 51-183c (2002).

⁹⁶ *See Sheff*, 733 A.2d at 938.

time.⁹⁷ The plaintiffs' "Motion for Order"⁹⁸ was refiled two years later and returned to the superior court for a second evidentiary hearing in 2002. With more convincing evidence of the state's growing legislative and fiscal inertia—as well as its unwillingness to address the rising rate of school segregation in a meaningful manner—the stage was set for settlement discussions. After arduous negotiations, the parties reached an agreement and entered into a Stipulation and Order ("Stipulation") which recognizes the parties' mutual interest in reducing student "isolation" by creating "a timetable for planned, reasonable progress in reducing student isolation in the Hartford Public Schools."⁹⁹

The Stipulation recited the terms of a detailed settlement in the form of a four-year agreement. Fully implemented, the plan would provide at least thirty percent of minority students in the Hartford public schools access to a desegregated learning environment in magnet schools or in adjacent suburbs.¹⁰⁰ The plan called for the construction and operation of two new host magnet schools of approximately 600 students each—approximately 1200 students per year—during each year of the four-year period of the Stipulation.¹⁰¹

While there has been serious lag and inertia in moving forward with the state's Open Choice program, progress with the planning, opening, and operation of host magnet schools has been encouraging. Philip Tegeler, the outgoing Legal Director of the Connecticut Civil Liberties Union and counsel for the plaintiffs in *Sheff v. O'Neill*, recently opined that:

[T]he case has helped to create a network of successful magnet schools in the Hartford region that are exemplary, and show the possibilities of integrated education. You only have to spend a short time in these schools—the University of Hartford "multiple intelligences school," the Breakthrough magnet school, the magnet schools of the Learning Corridor, and others—to understand why they are chronically oversubscribed, with long city and suburban wait lists. These schools are models of how integration can work,

⁹⁷ This conclusion derives from various reports given to the Connecticut Civil Liberties Union Board by its Legal Director and lead counsel in *Sheff*, Philip Tegeler, as well as private conversations between Tegeler and the author.

⁹⁸ Motion for Order Regarding the Implementation of the Project Choice Program and the Interdistrict Magnet School Program in the Hartford Region, *Sheff v. O'Neill*, 733 A.2d 925 (Conn. Super. Ct. 1999) (No. X03 CV89-04921195).

⁹⁹ Stipulation and Order at 1, *Sheff v. O'Neill*, 733 A.2d 925 (Conn. Super. Ct. 1999) (No. X03 CV89-04921195) [hereinafter Stipulation].

¹⁰⁰ See *id.* at 3 (The Stipulation focuses on "three instruments used for the reduction of racial, ethnic and economic isolation . . . (1) interdistrict magnet school[s], (2) the Open Choice Program and (3) interdistrict cooperative programs.").

¹⁰¹ See *id.* at 4. While one or more of these schools may be operated as a regional school at the state's "sole discretion," failure on its part to open at least two such schools per year "may be deemed to be a material breach" of the Stipulation. See *id.*

and with adequate funding and administration, there is no reason that these models cannot be built on and expanded—indeed that is the approach taken in our interim settlement agreement.¹⁰²

According to another of the plaintiffs' counsel in *Sheff*, however, the progress has not been "deliberate" enough. After more than fourteen years of litigating the school segregation issue, Professor John Brittain has rethought his position on the integration effort symbolized by the *Sheff* saga. In an interview in Connecticut's leading newspaper, Professor Brittain spoke bluntly about abandoning integration altogether: "The resources, time, money and effort such as we put into *Sheff vs. O'Neill*, we should really invest in trying to improve educational achievement even in all one-race, non-white schools We've almost come back to *Plessy vs. Ferguson*. Separate, and trying to make it equal."¹⁰³

The plaintiffs and their counsel recognize the fact that an entire generation of Hartford schoolchildren has been deprived of quality education due to Connecticut's lack of leadership and political will in carrying out the steps necessary to integrate the school system.¹⁰⁴ Eight years after the *Sheff* decision, and one year after the March 2003 settlement and court order, the state remains noncompliant with the Stipulation.¹⁰⁵ This noncompliance is especially egregious in light of *Sheff's* "each passing day," and the many minority children left behind,¹⁰⁶ but the aggravating fact that the integrationist programs are "chronically oversubscribed" adds further insult to injury.

E. One Step Back

On August 3, 2004, the *Sheff* plaintiffs filed a Motion for Order Declaring Defendants in Material Breach of the January 22, 2003 Stipulation and Order.¹⁰⁷ Their allegations included the following:

1. The defendants did not fulfill the requirement of opening two new magnet schools in September 2003;
2. One of the magnet schools opened by the defendants was segregated;

¹⁰² Letter from Philip Tegeler, former Legal Director of the Connecticut Civil Liberties Union and counsel for plaintiffs in *Sheff*, to the author (Feb. 22, 2004) (on file with the author).

¹⁰³ Stan Simpson, *An Advocate of Integration Reconsiders*, HARTFORD COURANT, Feb. 18, 2004, at A1 (italics added).

¹⁰⁴ See *id.*

¹⁰⁵ Specifically, the state has failed to increase the number of magnet schools in a timely manner, and the slow pace in expanding the "Choice" program in Hartford suburbs has been a source of deep disappointment and foreboding. See Stipulation, *supra* note 99.

¹⁰⁶ *Sheff v. O'Neill*, 678 A.2d 1267, 1290 (Conn. 1996).

¹⁰⁷ Motion for Order Declaring Defendants in Material Breach of the January 22, 2003 Stipulation and Order, *Sheff v. O'Neill*, 733 A.2d 925 (Conn. Super. Ct. 1999) (No. X03 CV 89-0492119S).

3. The defendants did not open two additional magnet schools for academic year 2004–2005;
4. As of September 2004, the defendants had enrolled fewer than 900 students at the new magnet schools, as opposed to the 2,400 students required by the Order; and
5. The Hartford public schools remain 95% minority.¹⁰⁸

The plaintiffs' expert, Dr. Leonard E. Stevens, worked on desegregation cases in Cleveland and Milwaukee and was an expert in the field of public education. After reviewing the provisions of the Stipulation, Dr. Stevens submitted a report to the plaintiffs that noted that the two "Host Magnet Schools" opened by the state did not meet the required enrollment figures and that neither school was desegregated.¹⁰⁹ Furthermore, many grades were not opened at all.¹¹⁰ The two schools failed to enroll the 1,200 students required under the Stipulation, and of the three magnet schools scheduled to open for the 2004–2005 academic year, not one was scheduled to reach the target enrollment of approximately 600 students.¹¹¹

The defendants' desegregation strategy—if it can be called a "strategy" at all—violates the terms of the Stipulation. The current school enrollment data are inconsistent with the desegregation goals established by the Stipulation. As of the time of Dr. Stevens's report, three of these magnet schools failed to meet the desegregation standard of the Stipulation.¹¹²

Instead, the State of Connecticut has created a desegregation anomaly. Despite the ostensible goal of desegregating the Hartford area schools, current policy is, in fact, drawing minority students in substantial numbers away from school districts in the suburbs where their presence contributes to racial diversity.¹¹³ Dr. Stevens notes that "this is a segregative pattern of student assignment since they are leaving districts with lesser concentrations of Minority students than the magnet school they are attending."¹¹⁴

On the basis of these failures and anomalies, Dr. Stevens concluded that "the shortfall between actual and potential desegregation to date is attributable to the absence of rigorous centralized management of the implementation process."¹¹⁵ The open choice program,

¹⁰⁸ See *id.*

¹⁰⁹ Leonard B. Stevens, *Progress Toward a Desegregated Education in Metropolitan Hartford: A Report to the Plaintiffs 4–5* (Mar. 2004) [hereinafter *Stevens Report*] (appendix to Motion for Order Declaring Defendants in Material Breach of the January 22, 2003 Stipulation and Order, *supra* note 107).

¹¹⁰ *Id.* at 5.

¹¹¹ *Id.*

¹¹² *Id.* at 7–8 and Attachment C.

¹¹³ *Id.* at 9.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 14.

as well as the regional magnets and host magnets, are essentially compartmentalized operations, and the overall process is lacking a “quarterback,” or overall commander-in-chief. The State of Connecticut is not playing the role of manager and coordinator as called for by the Stipulation.¹¹⁶ Whereas the Stipulation provides that the State of Connecticut “shall be the convener and lead agency” in the Agreement’s implementation process,¹¹⁷ the state has utterly failed to play an active and responsible role in this area opting instead for a passive and mere-spectator role in the process.

The Stipulation required the state to set up a task force to evaluate, *inter alia*, alternative funding methods for interdistrict magnet schools and to report on its findings by January 15, 2003.¹¹⁸ Instead, the state disbanded the task force after two or three meetings and failed to produce any report.¹¹⁹ More disturbing is the fact that the State of Connecticut has proposed reducing the funding of magnet schools statewide—including the regional magnets¹²⁰—by approximately \$11 million.

Counsel for both sides held an in-chambers meeting with the new supervisory judge for the *Sheff* case, Honorable Susan A. Peck, on September 20, 2004. As of this writing, the state disputes the plaintiffs’ contentions of material breach of the Stipulation. Simultaneous briefs were to be filed by October 29, 2004, and the plaintiffs’ motion was assigned for oral argument on November 8, 2004.

F. Conclusion and Afterthoughts

Brown v. Board of Education and *Sheff v. O’Neill* both exemplify the integrationist ideal. Shortly after the federal courts struck down de jure segregation in public facilities and schools as unconstitutional, the practical effect of *Brown* devolved from weapon to philosophical theory. But its legacy as a principle and an ideal remains undiminished.

Connecticut has crafted a somewhat untrue legal paradigm of its own in connection with integration. To date, Connecticut remains the only state in the nation whose highest court has declared de facto school segregation unconstitutional. Preservation of this monumental achievement will require ongoing cooperation between the *Sheff* parties over the next four years—and perhaps for years thereafter. The terms of the Stipulation agreed to in January 2003 specified as its goal the reduction of student isolation in the Hartford Public Schools:

¹¹⁶ See Stipulation, *supra* note 99.

¹¹⁷ *Id.* at 3.

¹¹⁸ See *id.* at 6.

¹¹⁹ Stevens Report, *supra* note 109, at 16.

¹²⁰ *Id.* at 16.

"The State acknowledges its leadership role in accomplishing this goal. Working with the Hartford Public Schools, suburban school boards, regional groups and others, the State shall be the convener and lead agency in the planning, design, implementation and evaluation of annual progress toward achieving the goal of the Stipulation."¹²¹ Nevertheless, the percentage of minority student enrollment in the Hartford public schools has risen every year, from 90.4 percent in 1986¹²² to 95.52 percent in 1993.¹²³

Connecticut is far from unique. To the contrary, public schools throughout America have become increasingly segregated.¹²⁴ Connecticut has not escaped this national trend. The Connecticut Supreme Court in *Sheff* recognized the growing "racial divide" in the state and realized that such disparities necessarily jeopardize minorities' fundamental right to education.¹²⁵

In a state such as Connecticut, where the right to an education is recognized as a fundamental constitutional right, *Brown* retains its full impact as a governing principle: *Schools that are separate are unequal*, and education is essential to a decent life and equality of opportunity. As Chief Justice Warren declared:

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 reasonably be 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.¹²⁶

In the *Sheff* opinion Chief Justice Peters warned: "Every 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."¹²⁷ Having won the battle in *Sheff*, it is incumbent upon those inspired by the legacy of *Brown v. Board of Education* not to lose the war for equality of educational opportunity.

¹²¹ Stipulation, *supra* note 99, at 3. Plaintiffs' counsel in the *Sheff* case, perhaps the leading state constitutional lawyer in Connecticut, commented: "Whether our plan will work in the long term remains to be seen but the plaintiffs intend to keep the state's feet to the fire." Letter from Wesley W. Horton, to the author (Feb. 23, 2004) (on file with author).

¹²² COMMITTEE ON RACIAL EQUITY REPORT, *supra* note 20, at 1.

¹²³ *Id.*

¹²⁴ See GARY ORFIELD, HARVARD UNIVERSITY, THE CIVIL RIGHTS PROJECT, SCHOOLS MORE SEPARATE: CONSEQUENCES OF A DECADE OF RESEGREGATION 1 (2001).

¹²⁵ *Sheff v. O'Neill*, 678 A.2d 1267, 1290 (Conn. 1996).

¹²⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

¹²⁷ *Sheff*, 678 A.2d at 1290.

