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THE CONSTITUTION, DESEGREGATION, AND PUBLIC OPINION: *SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION*

JAMES L. HUNT*

The first three words of the preamble to the Constitution are "We the People." Yet the vast majority of constitutional scholarship is limited to the opinions of judges, lawyers, law professors, and other political and economic elites. This article takes a different approach to constitutional understanding. It describes the legal thoughts of the citizens for whom the Constitution exists. It does so through an analysis of the public's reaction to the federal court decisions in Swann v. Charlotte-Mecklenburg Board of Education, a desegregation case. The lead attorney for the Swann plaintiffs was Julius LeVonne Chambers, an alumnus and future chancellor of North Carolina Central University. The case culminated with a United States Supreme Court decision in April 1971, in which the Court unanimously affirmed the decision of District Judge James B. McMillan of Charlotte, North Carolina. Judge McMillan ordered the busing of students in order to achieve racial balance in the District's more than one hundred schools. The Supreme Court ruling stood for the principle that federal district judges possessed extensive remedial powers to integrate Southern public school districts. More importantly, Swann existed in an intensely public context. This context included vastly different understandings of the constitutional grounds for desegregation and the meaning of a racially integrated society. Opponents of busing often relied on arguments that busing contradicted essential constitutional rights of freedom of association, democratic choice, liberty, and majority rule. Supporters of Judge McMillan, on the other hand, viewed the Constitution as encouraging a degree of moral and legal racial equality that could be accomplished through busing. During the litigation, citizens expressed their views directly to the Judge in personal letters. A constitutional debate over liberty and equality, in which persons of different races, ages, education, and economic status expressed their thoughts, divided the Charlotte community. This article takes the position that constitutional law should take account of public opinion and not be restricted to the ideas of elites. Only by studying the legal thoughts of the citizenry, "the People" at the center of constitutional purpose, can the Constitution and its evolution be more fully understood.

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In 1835, the French observer of American affairs, Alexis de Tocqueville (1805–1859) wrote glowingly about the authority of U.S. Supreme Court justices.¹ “Without them,” he claimed, “the Constitution would be a dead letter.”² Yet Tocqueville noted limitations on the Court’s influence.³ He believed its authority was “immense,” but ultimately “a power of opinion.”⁴ The judges are “all-powerful so long as people consent to obey the law, but when the people scoff at the law, they can do nothing.”⁵ Further, “the power of opinion is the most difficult kind of power to use, because it is impossible to say exactly where its limits lie.”⁶ “It is often as dangerous to underestimate it as to overestimate it.”⁷ Recent constitutional history provides many examples of public opinion’s force, including abortion, affirmative action, and criminal procedure. Few areas in constitutional history, however, have generated more reaction than the federal courts’ attempts to desegregate public schools.⁸ The dialogue commenced in earnest after the U.S. Supreme Court’s May 17, 1954 ruling in *Brown v. Board of Education of Topeka*.⁹ The *Brown* Court recognized that “education is perhaps the most important function of state and local government.”¹⁰ It then struck down school segregation because it deprived “the children of the minority group of equal education opportunities.”¹¹ Famously, however, the Court refused to articulate specific standards as to how exactly desegregation would unfold in the hundreds of school districts in which segregation prevailed.¹² On May 31, 1955, the Court ambiguously directed district courts to implement the revolutionary new principle with “such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed.”¹³ The Court’s ruling produced an outpouring of litigation and public debate that lasted for the remainder of the century and beyond.¹⁴

1. See generally ALEXIS DE TOQUEVILLE, *DEMOCRACY IN AMERICA* Volume I 169–70 (Arthur Goldhammer trans., Literary Classics of the United States, Inc. 2004) (1835).

2. *Id.* at 170.

3. *Id.* at 169–70.

4. *Id.* at 169.

5. *Id.*

6. *Id.*

7. *Id.*

8. See generally *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

9. *Id.*

10. *Id.* at 493.

11. *Id.*

12. See generally *id.*

13. *Id.*

14. *Id.*

I. SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION:
AN INTRODUCTION

Among the most important judicial proceedings involving how precisely to achieve desegregation was *Swann v. Charlotte-Mecklenburg Board of Education*.¹⁵ Darius and Vera Swann initiated the case on behalf of their children, James and Edith Swann, in Charlotte, North Carolina, federal district court in January 1965.¹⁶ A little more than six years later, their suit produced an important Supreme Court decision involving remedial powers under the Equal Protection Clause of the Fourteenth Amendment.¹⁷ In 1971, the Supreme Court in *Swann* affirmed the use of busing to achieve desegregation, which sought to achieve similar target ratios of black (29 percent) and white (71 percent) students in each of the system's more than one hundred schools.¹⁸ District Judge James B. McMillan (1916–1995) ordered the desegregation policy and its means, busing.¹⁹ For liberals, *Swann* represented the high water mark of aggressive judicial remedies for desegregating schools.²⁰ It meant federal courts could order taxpayer-funded measures to achieve numeric balance in individual schools in urban districts with tens of thousands of students.²¹ Subsequent Supreme Court decisions, including *Milliken v. Bradley*,²² decided in July 1974, signaled a different direction and limited the power of district judges to craft desegregation remedies.²³ The issue of racial equality in Charlotte schools persisted, and in various forms litigation continued into the early twenty-first century.²⁴

There is a large secondary literature on *Swann*. Excellent book-length accounts describe *Swann*'s key legal and political aspects.²⁵ A variety of other publications analyze policy and legal issues related to Charlotte's experi-

15. 402 U.S. 1 (1971).

16. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 243 F. Supp. 667 (W.D.N.C. 1965).

17. See generally *Swann*, 402 U.S. 1.

18. *Id.* at 32.

19. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 300 F. Supp. 1358, 1372–73 (W.D.N.C. 1969).

20. See generally *Swann*, 402 U.S. 1.

21. *Id.*

22. 418 U.S. 717 (1974).

23. See generally *id.*

24. See *id.* *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305 (4th Cir. 2001); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 431 F.2d 138 (4th Cir. 1970); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 369 F.2d 29 (4th Cir. 1966); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 318 F. Supp. 786 (W.D.N.C. 1970); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 311 F. Supp. 265 (W.D.N.C. 1970); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 306 F. Supp. 1299 (W.D.N.C. 1969); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 300 F. Supp. 1358 (W.D.N.C. 1969).

25. See, e.g., STEPHEN SAMUEL SMITH, *BOOM FOR WHOM? EDUCATION, DESEGREGATION, AND DEVELOPMENT IN CHARLOTTE* (2004); DAVISON M. DOUGLAS, *READING WRITING AND RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS* (1995); FRYE GALLIARD, *THE DREAM LONG DEFERRED* (1988); and BERNARD SCHWARTZ, *SWANN'S WAY: THE SCHOOL BUSING CASE AND THE SUPREME COURT* (1986).

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ence with desegregation and its schools since the 1950s.²⁶ Contemporary academic scholarship describes, and usually criticizes, decline in the extensive school desegregation ordered by Judge McMillan.²⁷ The key question in this research is why the decline has occurred, and the shift is most frequently explained as a function of a rising political conservatism or lack of will, particularly among judges and political leadership. These explanations tend to focus on the behavior of community elites and formal legal processes.²⁸

But explanations of “resegregation” require caution. Even one factor, the vast demographic and educational changes in Mecklenburg County during the past forty years, suggests the difficulty of linking the past and the present.²⁹ These changes include a tripling of the county’s population, to about one million, as well as enormous growth in suburban populations outside the county.³⁰ In 2013–2014, 142,000 students attended Charlotte-Mecklenburg’s public schools, compared to about 84,000 in the *Swann* era.³¹ Approximately 41 percent of the students in 2013–2014 were Afri-

26. See, e.g., MATTHEW W. LASSITER, *THE SILENT MAJORITY: SUBURBAN POLITICS IN THE SUNBELT SOUTH* 119–221 (2006); Brian Keith Matney, *Two Decades After Swann: A Qualitative Study of School Desegregation Efforts in Charlotte and Mecklenburg County, North Carolina* (1992) (unpublished Ph.D. dissertation, University of North Carolina at Chapel Hill) (on file with the Walter Royal Davis Library, University of North Carolina at Chapel Hill); and H. Clay Hodges, Jr., *The Hard Light of Fact: Judge James Bryan McMillan and the Swann Case* (1990) (unpublished bachelor’s honors thesis, University of North Carolina at Chapel Hill) (on file with the Walter Royal Davis Library, University of North Carolina at Chapel Hill).

27. See, e.g., R. Kenneth Godwin, Suzanne M. Leland, Andrew D. Baxter & Stephanie Southworth, *Sinking Swann: Public School Choice and the Resegregation of Charlotte’s Public Schools*, 23 REV. POL’Y RES. 983, 983–97 (Sept. 2006).

28. See, e.g., SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 24 (John Charles Boger and Gary Orfield eds., 2005) (“We have not put any real effort into desegregation in several decades. Our political and educational leaders are generally silent, the federal government has done nothing for a long time, and the courts have been leading the backward trend toward segregation.”).

29. Mecklenburg County, North Carolina Quick Facts, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/37/37119.html> (last visited Aug. 11, 2014); Memorandum from Scott McCully, Executive Director, Student Planning and Placement, Charlotte-Mecklenburg Schools, to the Executive Staff of Charlotte-Mecklenburg Schools, Membership for the First School Month of the 2013 School Year, available at http://www.cms.k12.nc.us/cmsdepartments/StudentPlacement/PlanningServices/Documents/Month1PMR_PrintMemo_2014-0304.pdf; 2013-14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., <http://www.cms.k12.nc.us/cmsdepartments/StudentPlacement/PlanningServices/Documents/GRS%20Month3-Bluc.pdf> (last visited Aug. 11, 2014); CHARLOTTE CHAMBER OF COMMERCE, *Education*, <http://charlottechamber.com/newcomers/education/> (last visited Aug. 11, 2014); STATE OF N.C. DEPT of ADMIN., *2014 North Carolina Home School Statistical Summary*, <http://www.ncdnp.org/documents/hhh239.pdf> (last visited Aug. 11, 2014); T. Keung Hui, *Home Schooling Accelerates in North Carolina*, NEWS & OBSERVER (Raleigh), Aug. 14, 2014, <http://www.charlotteobserver.com/news/local/education/article9150560.html>.

30. See Mecklenburg County, North Carolina Quick Facts, U.S. CENSUS BUREAU, *supra* note 29.

31. See Memorandum from Scott McCully to the Executive Staff of Charlotte-Mecklenburg Schools, *supra* note 29.

can-American, in contrast to less than 30 percent forty years ago.³² Moreover, roughly 25 percent of current Charlotte students are American-Indian, Asian, Hispanic, or of mixed races.³³ These groups were so small that they were not considered part of the desegregation effort in the early 1970s.³⁴ In 2013–2014, the school district classified just under 31 percent of the students as “non-Hispanic white,” but when Judge McMillan ordered busing, the district was approximately 71 percent white.³⁵ Moreover, since *Swann*, private education has grown exponentially.³⁶ In 2013, the Charlotte Chamber of Commerce reported that private and charter schools enrolled more than 26,000 students.³⁷ A 2014 state study found an additional 7,300 students attended homeschools.³⁸ Altogether, forty years after *Swann*, almost 20 percent of the county’s children receive their education outside the public system, a rate about twice that of the state average.³⁹

This study attempts to understand *Swann* and its enduring consequences by drawing heavily on Tocqueville’s insight that the authority of courts in constitutional matters derives in large part from public acceptance. *Swann* is an ideal case to test the relationship between judicial power and public opinion because it affected the lives of practically every citizen in Mecklenburg County. It directly challenged Charlotte’s political and cultural legacy of white supremacy and discrimination. It impacted the county’s children, a group entitled to special protection under emotional, moral, and legal considerations. A grassroots perspective offers an opportunity to look at constitutional thought, race relations, and history from the “bottom up.” Instead of focusing on political leaders, lawyers, and judges, the aim here is to explore the legal ideas of the public — the people directly affected by court decisions.

Research strategies to measure the constitutional ideas of non-elites confront significant barriers. Newspapers, for example, publish letters to the editor. But given their lack of privacy, they can only capture the thoughts of those willing to reveal themselves to neighbors and employers. Public opinion polls can be useful, but they are limited in terms of their ability to measure and record complex legal arguments. Thanks to Judge McMillan, however, there is a unique resource for discerning public reactions to

32. See 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

33. *Id.*

34. *Id.*

35. *Id.*

36. See CHARLOTTE CHAMBER OF COMMERCE, *Education*, *supra* note 29.

37. *Id.*

38. See STATE of N.C. DEP’T. of ADMIN., *2014 North Carolina Home School Statistical Survey*, *supra* note 29.

39. T. Keung Hui, *Home Schooling Accelerates in North Carolina*, *supra* note 29.

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Swann. Before his death in 1995, the Judge left an extensive set of personal papers to the University of North Carolina at Chapel Hill's Southern Historical Collection, including several boxes relating to *Swann*.⁴⁰ Within these boxes are hundreds of letters sent to the Judge during the late 1960s and early 1970s.⁴¹ At the time, McMillan was hearing evidence and issuing orders, and the national media heavily reported *Swann*'s judicial proceedings.⁴² The large volume of letters demonstrates that the public was well-aware of who would be making the critical decisions. More importantly, the letters show that Charlotte citizens believed constitutional law also belonged to them and not just to those with formal legal or political power.

Judge James Bryan McMillan grew up in rural eastern North Carolina and attended St. Andrews Junior College and the University of North Carolina at Chapel Hill, graduating from the latter in 1937.⁴³ After three years at Harvard Law School, he returned to North Carolina as a state government attorney in Raleigh.⁴⁴ McMillan served in the Navy during World War II and then moved to Charlotte and built a private law practice.⁴⁵ McMillan established a reputation as an effective trial and business lawyer and eventually won appointment, in 1968, as a federal district judge during President Lyndon Johnson's administration.⁴⁶ *Swann*, which began three years earlier, waited for him when he assumed office.⁴⁷ McMillan knew Charlotte well, having lived in Mecklenburg County for more than twenty years.⁴⁸ He understood the human consequences and potential impact of his rulings. His correspondence files show that rather than simply receiving and filing incoming letters from citizens, even hostile ones, he frequently responded, sometimes attaching copies of his decisions.⁴⁹ The Judge also made it a point to cultivate positive relationships with the Charlotte media.⁵⁰ In short, McMillan believed that although he had the formal judicial say on what the Constitution required, in *Swann*, public goodwill was necessary for the re-

40. See generally James B. McMillan Papers #4676 (on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

41. *Id.*

42. See *id.*

43. Resolution and Memorial in Honor of James Bryan McMillan by Mark R. Bernstein, Vice-President of the Mecklenburg County Bar, Francis I. Parker, Chairman of the Memorials Committee of the Mecklenburg County Bar, & Edwin Osborne Ayscuc, Jr., Speaker on this Occasion for the Mecklenburg County Bar (May 11, 1995) (on file with the Clerk of the Superior Court of Mecklenburg County, N.C.), available at http://www.meckbar.org/newsevents/McMillan,JamesBryan_5.11.1995.pdf.

44. *Id.*

45. *Id.* at 1-2.

46. *Id.* at 2-3.

47. *Id.* at 6.

48. *Id.*

49. See generally James B. McMillan Papers #4676, *supra* note 40.

50. See *id.*

sults to have their intended effect.⁵¹ But his public statements suggested that he also viewed his job as interpreting the Constitution despite popular opposition.⁵² This balance between democracy, public support, and constitutional interpretation remains among the longer-lasting issues raised by *Swann*.

The letters to Judge McMillan can be grouped into several categories. The most obvious distinction among them is between letters clearly supporting the Judge's decision and those opposing it. More than 80 percent of the letters attacked Judge McMillan's orders implementing busing.⁵³ Perhaps most significantly for this study, the critics usually told the Judge that he did not understand the Constitution. There were four types of negative letters: (1) from radicals, occasionally threatening McMillan's life; (2) from ideological or political opponents of busing; (3) from children affected by busing; and (4) from parents opposed to busing; each were typically rooted in legal and constitutional principles.⁵⁴ Predictably, letters from parents were most numerous, followed by letters from ideologues opposed to busing according to constitutional, political and social values.⁵⁵ As far as can be determined, white citizens wrote all of the critical letters.⁵⁶

There were also letters supporting Judge McMillan.⁵⁷ A small number came from self-identified African-Americans, but most derived from whites. Among the latter were political and constitutional liberals. More common were letters from persons who for religious or moral reasons believed in increased integration as a matter of human and social justice. There were also letters motivated primarily by past or present personal friendship with McMillan. Finally, a small number of individuals connected

51. *See id.*

52. SCHWARTZ, *supra* note 25, at 21–22 (“I cannot cope with public opinion in dealing with the rights of man under the Constitution. I cannot go by a vote of the neighbors or the electorate at large. . . . To yield to public clamor, however, is to corrupt the judicial process and to turn the effective operation of courts over to political activism and to the temporary local opinion makers.”).

53. James B. McMillan Papers #4676 (on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

54. *See id.*

55. *See id.* An important component of the project was an extensive effort to identify senders, both supporters and opponents, contact the senders if still living, and ask their current thoughts about *Swann*. The results, as well as information about any schools mentioned in letters, the writers' neighborhoods, employment, and education are summarized in the notes. The aim was to achieve a memory dimension to the research, extend further the constitutional history into the more recent past, and keep attention centered on the citizens engaged with McMillan in constitutional debate.

56. *See id.* All of the opponents who identified their race described themselves as white or assumed the Judge would believe they were white. No opponent described himself or herself as black. This conclusion is based on the author's extensive review of the entire collection of the McMillan Papers.

57. *See infra* notes 346–449.

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to the schools wrote offering praise based on their belief that children's education would benefit from greater racial equality.

Out of the large collection of letters a few samples from each group demonstrate citizens' approaches to the constitutional law of school desegregation. These letters show clearly the human consequences of the case as well as perceptions about the relationship between law and race. They offer constitutional arguments about the past, present, and future of American race relations. As a result, the letters reflect a complex "Citizens' Law," a manifest articulation of "We the People," that either endorsed or opposed the constitutional basis for the busing orders issued by Judge McMillan. Given the constitutional values of the white majority, the letters provide reasons for the subsequent history and decline of school desegregation in Charlotte since the early 1970s.

II. CRITICS

A. *Radicals and Anger*

One category of letters reflected a radical approach that frankly rejected *Brown* and busing, and stood steadfastly for racism and segregation. By the late 1960s, this group's perspective existed against the majority understanding of constitutional requirements and had limited political prospects. Consequently, members of this group tended to express rage and hatred toward the federal government and Judge McMillan. In their isolation, the writers offered threats of violence, smoldering resentment, and a sense of betrayal. Their letters sometimes rejected entirely the idea of law, and most were sent to the Judge anonymously. According to one from August 1970:

I AM AN OLD MAN — 78 YEARS OLD AND I HAVE FATHERED AND RAISED EIGHT THEY ARE ALL MARRIED EXCEPT ONE FOUR ARE LIVING IN THIS SCHOOL DISTRICT I HAVE AN INCURABLE SICKNESS I HAVE LESS THEN 1 YEAR TO LIVE I HAVE NEVER DONE ANYTHING TO BE REMEMBERED FOR SOMEONE HAS TO DO SOMETHING TO STOP THESE STUPID ORDERS BY SOMEONE LIKE YOU I HAVE MY LEFT HAND ON MY BIBLE AS I WRITE THIS IF ANY ONE OF MY GRANDCHILDREN IS BUSSED INTO A NEGRO SCHOOL AND I CANT GE THEM OUT, I SHALL KILL YOU . . . IT HAS COME TO THE POINT THAT KILLING IS NOT A SIN, SO I DO NOT FEAR FOR THIS CAUSE.⁵⁸

58. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). In order to capture accurately

"Young White America," an individual who, in August 1970, revealingly defined himself by generation, race, and nationality, told the Judge that he "predicted both Kennedy's and Martin Luther King's deaths. I will predict another assassination. This time it will be you Judge McMillan. Now is it worth it?"⁵⁹ The writer vowed to "never integrate with Negros, we had rather destroy the entire Neger race, and that is what will happen. We will defy the federal government."⁶⁰ Voicing sentiment for an unlimited form of democratic power, he claimed, "Millions of us cant be wrong. We mean to put the neger in their place or graves. We mean business. Hell we are not kidding. There is no law. We will do as we please and we will kill neggers and enjoy it."⁶¹ A year later, a letter from another nameless writer looked forward to a race war, stating that blacks would never be accepted in white schools or society: "We are so mad and so insulted to think our government is that stupid We rather see Washington D.C. and those that are forcing those dogs on us blown to hell."⁶²

A variation on this approach omitted direct threats of violence, but offered racism, anticommunism, and class resentment, along with personal attacks. For these writers, the only just Constitution was one that advanced white supremacy. As a consequence, this group advocated that a judge's proper work was to protect segregationist values. One claimed former regard for federal judges, "BUT TODAY WITH COMMUNIST LIKE YOU WITH A WARPED MIND AS OUR \$\$40,000. PER YEAR LAW MAKER I HAVE NO RESPECT FOR THE FEDERAL COURTS . . . WE THE TAXPAYERS PAYING YOUR SALARY TO DESTROY WE THE PEOPLE."⁶³ The writer advised McMillan to go among the "COLORED OR MOVE TO CHINA OR RUSSIA."⁶⁴ The same person wrote the Judge several times in the fall of 1970, complaining about the violence and sexuality he associated with integration:

NEGRO BOYS CARRYING KNIVES CUTTING WHITE GIRLS . . .
PARENTS GO TO SCHOOL TO TALK WITH SCHOOL OFFICIALS

the writers' beliefs, motivations, emotions, and arguments, the author has retained the original spelling, capitalization, grammar, and formatting when quoting citizen letters.

59. Letter from Young White America to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

60. *Id.*

61. *Id.*

62. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

63. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

64. *Id.*

HAVE TO TALK TO A NEGRO WHO TELLS THEM THAT IT WAS THE FAULT OF THE WHITES THAT CAUSED THE TROUBLE. . . I DROVE BEHIND A SCHOOL BUS FOR TEN MINUTES TODAY AND OSERVED A BLACK BOY IN THW BACK OF THE BUS TRYING TO UNBUTTON THE DRESS OF A BLACK GIRL FOR TEN MINUTES.⁶⁵

Similarly, another writer hoped all of McMillan's grandchildren would be "little Black Boys & Girls," but for unknown reasons refrained from spelling out a full condemnation, calling the Judge a "d----- s-- o- a -----."⁶⁶ V.C. Lowery of New Martinsville, West Virginia, described McMillan as a "Communist trash petting rat," and sent him a copy of Federal Bureau of Investigation Director J. Edgar Hoover's criticisms of liberal judges.⁶⁷ Lowery blamed federal courts for increased crime, because "anytime 1 Negro gangster or dope pusher comes before our supreme court they have nothing to worry about."⁶⁸ According to Lowery, the overreach of judges like McMillan as well as integrationist Christian ministers meant conditions would only get worse, because "three Fourths of the judges and preachers across the country have turned communist."⁶⁹ Ernest Huggins, Jr., of Jonesboro, Georgia, offered McMillan advice about how to improve black-white relations.⁷⁰ In January 1970, he argued "[r]acial integration is no Law of God, more racial segregation was." He proposed "[n]atural grouping, something less than integration and something less than segregation," as "a reasonable solution."⁷¹ It was "the work of the Devil to jumble everything up."⁷² There should be a "free school system, not an integrated one. You

65. Letters from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 1970, Oct. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). The same writer probably wrote another letter asking the Judge to "sign an order desegregating your church Bus some of your members to all black churches The ruling elders should also be 30% black & 70% white." Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). The author concluded the writers of these letters were the same based on the similarities in appearance.

66. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

67. Letter from V.C. Lowery to James B. McMillan, Judge, U.S. Dist. Ct. (Nov. 14, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

68. *Id.*

69. *Id.*

70. Letter from Ernest Huggins, Jr. to James B. McMillan, Judge, U.S. Dist. Ct. (Jan. 8, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

71. *Id.*

72. *Id.*

might call it ‘pooling.’”⁷³ A subsequent letter advised the Judge — “You people,” as he expressed it — need to stay out of the schools.⁷⁴

An organization based in Davidson, North Carolina, called the “U.S. Constitutional Restoration Association,” sent McMillan several dramatic legal proposals.⁷⁵ The proposals combined tax and currency ideas (repeal of the Federal Reserve Act, for example), with a plan to create a “U.S. Department of Repatriation, Migration, and Homesteading,” charged with assisting ten million black people to move to Africa.⁷⁶ One document proclaimed, “We will have more friends in Africa by this wise and helpful action!”⁷⁷ More to the school desegregation issue, the group argued that the Fourteenth Amendment was illegally ratified in 1868 and was thus “null and void.”⁷⁸ Instead, a new constitutional Amendment should be adopted to give states “THE SOLE AND EXCLUSIVE JURISDICTION OF THE ORGANIZATION AND ADMINISTRATION OF ALL PUBLIC SCHOOLS.”⁷⁹ The organization offered this “IN A SPIRIT OF TRUE FRIENDSHIP, FREEDOM, AND FAIR PLAY.”⁸⁰

B. *Ideology and Politics*

Radicals exposed deeply-felt bigotry and fears, but the Judge actually received few letters from legal extremists. Much more common were ideological criticisms based on white mainstream political and constitutional beliefs. These typically rejected Jim Crow laws, but articulated an understand-

73. *Id.*

74. Letter from Ernest Huggins, Jr. to James B. McMillan, Judge, U.S. Dist. Ct. (Apr. 8, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Julius Chambers (1936–2013), the African-American lead attorney for *Swann*’s plaintiffs, experienced direct action; whites fire-bombed his home in November 1965. In 1970, some of the violent letters he received appear to have been written by the same persons who threatened McMillan. One proposed a “Civil War rather than to bus our children to other schools.” The envelope was addressed simply to “Julius Chambers Negro Charlotte North Carolina.” At the time of *Swann*’s filing, Chambers, a graduate of North Carolina College (now North Carolina Central University), was in his second year of private practice in Charlotte. He later headed the NAACP Legal Defense and Educational Fund and served as chancellor of North Carolina Central University (1993–2001). Letters from Anonymous to Julius Chambers (Mar. 27, 1970, Apr. 25, 1970) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte); Douglas Martin, *Julius Chambers, A Fighter for Civil Rights, Dies at 76*, N.Y. TIMES, Aug. 6, 2013, available at http://www.nytimes.com/2013/08/07/us/julius-chambers-a-fighter-for-civil-rights-dies-at-76.html?_r=0.

75. U.S. Constitution Restoration Association (Nov. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

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ing of equality, liberty, democracy, and the Fourteenth Amendment that gave constitutional priority to individual choice. Ideologues usually argued that their opposition to busing was not a rejection of integration, for racism, or based on hostility to black people. Instead, *Swann* erred because it meant liberalism in the flesh, big government, and overpaid unelected judges telling hard-working and patriotic white men and their families how to act and think.⁸¹ *Swann* therefore threatened constitutional freedom. After all, the arguments were that regular citizens, not civil rights complainers or militants, paid taxes and fought the nation's wars, including the current one in Vietnam.⁸² The ideologues proudly distinguished themselves from communists, hippies, drug users, and criminals.⁸³ In their minds, McMillan's judicial robe and life as a Presbyterian business lawyer amounted to a façade. The Judge actually intended to turn the country into a Soviet-style satellite in which citizens' individual liberty disappeared.⁸⁴ Busing to achieve desegregation represented not racial equality, but a freedom-destroying liberal-socialist agenda. Legally, the ideologues believed in a constitution that included the liberty to choose where to live, with whom one's children would attend a public school, and what moral values those children would learn.⁸⁵

Alienation toward government represented a common theme among the ideologues. One man, "[a] former satisfied citizen who plans to support those who use good sense instead of those who appear to be vendictive such as newspapers and . . . other liberals," quantified the critique.⁸⁶ His "good fortune" in the previous year included \$18,500 in earnings, of which \$5,187.26 was "extracted" by the government in income, property, sales, and Social Security taxes, leaving (after donations to charity) \$12,767.74.⁸⁷ But, thanks to McMillan, the hard earned cash paid in taxes would be spent to buy buses.⁸⁸ The writer believed liberals "feel that the middle class should sit tight and let the 'Servants of the People' continue to jab us in the

81. See, e.g., Letter from Edward J.F. Maslanka to James B. McMillan, Judge, U.S. Dist. Ct. (June 11, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

82. See, e.g., Letter from Andrew J. Calcote to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 13, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

83. *Id.*

84. See, e.g., Letter from Edward J.F. Maslanka to James B. McMillan (June 11, 1971), *supra* note 81.

85. *Id.*

86. Letter from A Servant of [Servants of the People] to Various "Servants" of the People (Jan. 29, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

87. *Id.*

88. *Id.*

back and continue to ask for more, more, more.”⁸⁹ Another “U.S. Citizen” referred the Judge to the Tenth Amendment, which reserves non-delegated federal powers to the states or the people, and argued that the Court lacked the power to force busing.⁹⁰ Moreover, this unnamed citizen thought modern courts grabbed powers properly placed in other branches.⁹¹ To this writer, “[t]he only power granted the Courts by the Constitution is to make decisions — not enforce them!”⁹²

Others linked broader political, personal, and social failures to the woes of desegregation. Edward J. Burns, a Carthage, North Carolina, lawyer, former mayor, and school board member, assumed that black people “have enough pride not to favor the close mixing of their children” with the “sorry ‘white trash’” and “do not favor desegregation.”⁹³ Burns argued that current “racial troubles” had “resulted largely from that ruling of the [Brown] Court, and disrespect, more crime and general moral letdown are rampant in this nation.”⁹⁴ John E. Roberts (d. 2005), a manufacturing agent who lived in an upper middle class suburb in southeast Charlotte, described McMillan as a “despicable character” who “would send small children into a situation where their very lives would be in danger.”⁹⁵ Although Roberts’

89. *Id.*

90. Letter from A U.S. Citizen to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

91. *Id.*

92. *Id.*

93. Letter from Edward J. Burns to James B. McMillan, Judge, U.S. Dist. Ct. (July 20, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Burns, a Duke University graduate (1929), was the son of the former mayor of Carthage, North Carolina and had served on a local public school board. *Class of 1929*, DUKE U. ALUMNI REG. XXIII (Duke Univ. Gen. Alumni Ass’n, Durham, N.C.) Apr. 1937, at 105–06, available at [https://archive.org/details/dukeuniversityal01duke/DIRECTORY_OF_MOORE_COUNTY_5-6_\(A_Selders_ed.,_1925\),_available_at_https://archive.org/stream/directoryofmoore1925seld/page/n0/mode/2up](https://archive.org/details/dukeuniversityal01duke/DIRECTORY_OF_MOORE_COUNTY_5-6_(A_Selders_ed.,_1925),_available_at_https://archive.org/stream/directoryofmoore1925seld/page/n0/mode/2up). Eight years earlier, Burns wrote James Meredith, who was integrating the University of Mississippi, asking him to “go back to your own sort, the good Negro race. Never force yourself into the company of those who neither appreciate you or want your fellowship.” White people disliked Meredith because “he was out of place in a white university.” Burns’ main fear was “intermarriage of the races by lower classes of both races,” and he desired “both races to retain their distinct and different racial characteristics of which each can be justly proud.” Letter from Edward J. Burns to James H. Meredith (Oct. 12, 1962) (in the the James Howard Meredith Collection, on file with the University of Mississippi Libraries, Digital Collections), available at http://clio.lib.olemiss.edu/cdm/compoundobject/collection/jm_corr/id/1792/rc/1.

94. Letter from Edward J. Burns to James B. McMillan (July 20, 1970), *supra* note 93.

95. Letter from John Everett Roberts to Charles M. Lowe (Aug. 2, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). John Everett Roberts wrote Lowe, a member of the Mecklenburg County Board of Commissioners, partly to praise Lowe’s opposition to busing. Several writers disliked Nixon because they believed, despite campaign promises, that the President had not done enough to stop McMillan. Roberts lived on Maryland Avenue. *Deaths*, MYERS PARK BAPTIST CHURCH NEWSL. (Myers Park Baptist Church, Charlotte, N.C.) July 2005, available at <https://>

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children never attended public schools, he was interested “in all children, and our freedom.”⁹⁶ Along with McMillan, Roberts blamed the faulty “leadership” of the media and Richard Nixon.⁹⁷

The ironically-named Charlotte resident Ulysses S. Grant offered a broad assault on recent interpretations of constitutional law.⁹⁸ He feared nothing less than the loss of republican government: “When one woman can kick the bible out of all our public schools;⁹⁹ and one sexual pervert can make the worst pornographic literature and have same OK’d by the U.S. Supreme Court it’s high time someone was sounding off.”¹⁰⁰ Grant saw in busing a slippery slope to socialism and unlimited federal power.¹⁰¹ He sent McMillan a local minister’s opinion that liberty would be crushed when, in order to sustain racial ratios in schools, families would be ordered to live in particular neighborhoods.¹⁰² Quoting Abraham Lincoln and Charles Evans Hughes on the desirability of limited government, Grant told McMillan, “Germany took care of everyone from cradle to grave we are heading fast in that direction under the blanket of civil rights.”¹⁰³ Under the circumstances, it seemed state and local governments should be abolished because they no longer mattered.¹⁰⁴ In fact, “[W]hy not pass a law forcing all whites to marrying all blacks: hence, no more problems.”¹⁰⁵

Most letters in the ideological and political category viewed the Judge’s efforts to equalize races in Charlotte’s schools as constitutional error.¹⁰⁶ Harry E. Leminger of State Line, Pennsylvania, wondered if McMillan was not so “stupid” to “think that this kind of practice is Constitutional.” “Show

www.yumpu.com/cn/document/view/9250308/july-2005-myers-park-baptist-church/3 (last visited Aug. 15, 2014); HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963 853 (1963).

96. See Letter from John Everett Roberts to Charles M. Lowe (Aug. 2, 1970), *supra* note 95.

97. *Id.*

98. Letters from Ulysses S. Grant to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 22, 1970, Oct. 31, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). In 1970, Grant was a partner with the AAA Carolina Motor Club. He and his wife lived on Palm Avenue, in a modest middle class neighborhood in east Charlotte. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971 355 (1971).

99. See *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963) (holding that school-sponsored Bible reading was unconstitutional. Madelyn Murray O’Hair (1919–1995), a participant in the consolidated lawsuit, was the woman referenced in the Grant’s letter.).

100. See *generally* *A Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Attorney Gen. of Mass.*, 383 U.S. 413, 424–33 (1966) (Douglas, J., concurring) (relating to a gradual limiting by the Supreme Court of materials that could be defined as obscene); Letter from Ulysses S. Grant to James B. McMillan (Sept. 22, 1970), *supra* note 98.

101. Letter from Ulysses S. Grant to James B. McMillan (Sept. 22, 1970), *supra* note 98.

102. *Id.*

103. *Id.*

104. Letter from Ulysses S. Grant to James B. McMillan (Oct. 31, 1970), *supra* note 98.

105. *Id.*

106. See *generally* James B. McMillan Papers #4676 (on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

me any place in the Constitution where by it states that the public schools must have racial balance, 'Mixed Vegetables Yes,' 'Children no.' Voluntary Integration yes, Compulsory Integration 'never.'"¹⁰⁷ Leminger believed integration should mean a student could attend any public school, "[p]roviding that said student resided in the school district."¹⁰⁸ Leminger also argued that the Supreme Court "has no legal authority to try any national problem" because that responsibility belonged to Congress, not the "nine old goats" on the Court.¹⁰⁹ Courts should resolve only "personal problems between two parties."¹¹⁰ He condemned the Supreme Court and McMillan for destroying the Constitution.¹¹¹

Many others rejected the legal basis of busing to achieve a target ratio (71:29) of white to black students in the district's more than one hundred individual schools.¹¹² George Alvin Tucker (1899–1986) a Charlotte real estate agency owner, read several of McMillan's orders.¹¹³ He distinguished the Supreme Court's more recent case, *Green v. School Board of New Kent County*,¹¹⁴ from *Swann*.¹¹⁵ There, according to Tucker, the Court ordered

107. Letter from Harry E. Leminger to James B. McMillan, Judge, U.S. Dist. Ct. (Apr. 6, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *See, e.g.*, Letter from Hubert G. Price to James B. McMillan, Judge, U.S. Dist. Ct. (Apr. 23, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Hubert G. Price (1923–2004), a district salesman for the Burroughs Corporation and a 1947 University of North Carolina at Chapel Hill graduate, complained about overreliance on racial ratios and the money needed to achieve those ratios. He feared the dislocations and cost had not been considered by the Supreme Court in evaluating busing and that these costs would now be forced on the county's taxpayers. Price signed his letter, "a former fair Southerner whose patience has run out." Price and his wife lived on Cutler Place, a middle class area south of Independence Boulevard in a neighborhood constructed in the 1950s. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 748; *Keeping Up With the Classes*, U.N.C. ALUMNI REV. XXXIX (U.N.C. Gen. Alumni Ass'n, Chapel Hill, N.C.) May 1951, at 264; *Hubert Price (1923–2004)*, MOCAMO.COM, <http://www.mocavo.com/Hubert-Price-1923-2004-Social-Security-Death-Index/17096257052514136630> (last visited Aug. 15, 2014).

113. Letter from Alvin Tucker to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 10, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Tucker and his wife lived on Chambwood Drive in a middle class east Charlotte area developed in the 1930s. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 933; *George Alvin Tucker*, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=63701925> (last visited Aug. 15, 2014).

114. *See generally* *Green v. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430 (1968) (New Kent, a rural Virginia county, operated two high schools, one all-black, the other overwhelmingly white. The Supreme Court ruled the county's "freedom of choice" plan for the two schools was unconstitutional. Greater racial balance was required. The decision, by altering the legal meaning of desegregation, had a profound effect on *Swann*. "Freedom of Choice," the prior strategy of the Charlotte school board, was

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full integration on the ground that New Kent was a rural system with only two schools.¹¹⁶ Tucker was “quite aware that the Integration thing is LAW,” but objected to “a thorough blend of color in the schools NOW.”¹¹⁷ There was simply too much contrary history and too much complexity in the Charlotte system for that kind of change.¹¹⁸ Instead, “common sense” should prevail.¹¹⁹ Tucker added that he knew all about the Constitution before McMillan was born and, although he felt an obligation to follow laws he did not like, “I do not swallow every word or opinion of every U.S. District Judge that makes them.”¹²⁰

A young minister of education at Midwood Baptist Church in east Charlotte, Larry Sledge (b. 1936), also criticized busing.¹²¹ In July 1970, Sledge argued for “the neighborhood school concept of public education.”¹²² His work with young people convinced him of the “frustration and confusion which already has permeated our educational system.”¹²³ Sledge assured the Judge he was “opposed to segregation, [but] I cannot with any stretch of the imagination see where a certain ratio has to be established in order to call a system integrated.”¹²⁴ Foreseeing the county’s more complicated racial future, Sledge asked “[i]f this is necessary for the blacks, then why isn’t it necessary for the Chinese, Japanese, Mexicans, Indians, etc.?”¹²⁵ Like many others, Sledge suggested using the money expended on transportation for buildings, teachers, and supplies.¹²⁶ He wanted “a stable situation where everyone regardless of race or color is welcome in any school he chooses to attend.”¹²⁷ Like many others, Sledge viewed his position in constitutional terms: “This is my interpretation of our Constitution and anything else is

no longer sufficient. This put the legal question of the proper remedy squarely in Judge McMillan’s court.).

115. Letter from Alvin Tucker to James B. McMillan, *supra* note 113.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Letter from Larry Sledge to James B. McMillan, Judge, U.S. Dist. Ct. (July 13, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). The author sent Reverend Sledge a copy of his letter in January 2014. Reverend Sledge replied that he holds the same views now, “after seeing the results of what I still think was a bad decision.” Reverend Sledge believes it would have been better to train teachers and build new schools than spend money on transportation and legal costs. This “would have helped ALL students’ education far more than meeting a ratio based on skin color!” Letter from Larry D. Sledge to author (Jan. 23, 2014) (on file with author).

122. Letter from Larry Sledge to James B. McMillan, *supra* note 121.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

hurting our educational system as well as infringing on the rights of someone.”¹²⁸

With the exception of Army combat service in World War II, Andrew Jones Calcote (1907–1987) lived his whole life in DeRidder, a small town in central Louisiana.¹²⁹ Calcote grew up on a farm, received a ninth-grade education, and did maintenance work at Fort Polk, an Army installation.¹³⁰ Calcote wrote McMillan because he feared for the state of the nation and wanted the Judge to do something about it.¹³¹ Calcote had many “colored friends,” but integration, in his view, tended to encourage racial hatred.¹³² He saw links between recent turmoil: Little Rock; race riots; hippies (especially at the 1968 Democratic National Convention); Rap Brown; and even “Cacaus Clay.”¹³³ It was “a shame a pure shame to know how things are going on in our own country.”¹³⁴ He believed in “good education for everybody,” but opposed the cost of busing “children from one side of town to the other just to say we are getting integrated.”¹³⁵ Going slowly would be better.¹³⁶ The only way Calcote could make sense of these problems was to conclude that it was “nothing but a Communist set up.”¹³⁷ “Sabotage . . . paid by the Communist,” and promoted by Leftist leaders like the late Reverend Martin Luther King Jr. caused it.¹³⁸ After all, Communists welcomed all violence and unrest, seeing it as political opportunity.¹³⁹

Edward J. F. Maslanka (1918–2010) offered perhaps the most wide-ranging and persistent ideological discussion. Maslanka, a Massachusetts native, graduated from the Lowell Textile Institute and served in the Pacific during World War II.¹⁴⁰ He moved to Charlotte and worked as a technical salesman for the National Starch and Chemical Corporation for thirty-five years.¹⁴¹ Maslanka, a member of Myers Park Presbyterian Church, lived in

128. *Id.*

129. Letter from Andrew J. Calcote to James B. McMillan (Mar. 13, 1970), *supra* note 82; *Obituaries — Calcasieu Parish Area — Prior to 1997*, USGEN WEB ARCHIVES, <http://files.usgwarchives.net/la/calcasieu/obits/obitsold.txt> (last visited Aug. 15, 2014).

130. Letter from Andrew J. Calcote to James B. McMillan, *supra* note 82.

131. *Id.* at 5.

132. *Id.* at 2.

133. *Id.* at 2, 4, 8–9.

134. *Id.* at 5.

135. *Id.* at 6.

136. *Id.* at 11.

137. *Id.* at 7.

138. *Id.* at 8, 12.

139. *Id.* at 8.

140. LOWELL TEXTILE INSTITUTE, THE PICKOUT 22 (1940); HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 638; *Edward John Felix Maslanka*, CHARLOTTE OBSERVER, Feb. 16, 2010.

141. See HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 638; see also *Edward John Felix Maslanka*, CHARLOTTE OBSERVER, Feb. 16, 2010.

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a wealthier area of southeast Charlotte.¹⁴² In December 1969, he claimed that “forced integration” through busing violated constitutional law.¹⁴³ He contrasted McMillan’s acceptable support for racial “desegregation” with “mandatory integration.”¹⁴⁴ Maslanka and his wife wrote to the Judge that they were “disturbed and frustrated by the trend of some members of the Judiciary, you for an example, to tamper with our Constitutional rights in choosing the social environment of our child.”¹⁴⁵ By interfering with this “free choice of parents,” the Judge’s actions illegally “make marriage obsolete” by turning child-rearing over to the government.¹⁴⁶ Maslanka denounced the 71:29 target, noting that although he was raised in racially liberal New England, he did not recall any busing to achieve integration.¹⁴⁷ Altogether, “[f]orced integration interferes with our ‘pursuit of Happiness’ as stated in the Declaration of Independence.”¹⁴⁸

In January 1970, Maslanka wrote a broader critique of the lack of “practical” solutions in the Judge’s busing orders.¹⁴⁹ He repeated the need to follow first the ideals of life, liberty, and the pursuit of happiness, tracing these essential goals back to the “Greek philosophers,” Martin Luther’s “free will,” and the Founding Fathers’ support for a maximized “freedom of choice.”¹⁵⁰ Maslanka also maintained that McMillan’s busing order contradicted the 1964 Civil Rights Act. Section 407(a)(2) of the Act provided

nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.¹⁵¹

Thus, according to Maslanka, our constitutional democracy had already rejected the 71:29 ratio: “When were the people permitted to voice their opinion on racially mixing schools in any ratio whatsoever?”¹⁵² Finally,

142. See HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 638.

143. Letter from Edward J.F. Maslanka to James B. McMillan, Judge, U.S. Dist. Ct. (Dec. 28, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Letter from Edward J.F. Maslanka to James B. McMillan, Judge, U.S. Dist. Ct. (Jan. 25, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

150. *Id.*

151. *Id.*; see also Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

152. Letter from Edward J.F. Maslanka to James B. McMillan (Jan. 25, 1970), *supra* note 149.

there was a “freedom of choice” for parents in choosing schools implied in the First Amendment and demonstrated by the long-standing acceptance of private schools.¹⁵³

Later, after it became clear that busing would stand, Maslanka grounded his legal arguments to the Judge on cultural differences.¹⁵⁴ He thought black students would have a harder time “comprehending the white man’s language,” because blacks were “not relating to the Soul of the white man’s history [including] Sumer and Egypt and passing through the Greeks and many Indo-European tribes from which most white Americans descend.”¹⁵⁵ In fact, correct constitutional knowledge itself seemed greater among long-term residents, as compared with recent immigrants.¹⁵⁶ Given the diversity in the American population, “[o]ppressive laws of forced uniformity,” such as busing, would produce chaos.¹⁵⁷ This “new society means the destruction of the old, the one established upon Anglo-Saxon Spirit and philosophy that emanates from Western Culture.”¹⁵⁸ Whites naturally oppose this but “do not understand why or how to express this instinct properly due to the paradox of the Christian religion.”¹⁵⁹ Maslanka predicted societal decline in this “age of Politics and the money economy.”¹⁶⁰

By June 1971, two months after the Supreme Court’s *Swann* decision, Maslanka understood his various attempts at persuasion had failed.¹⁶¹ At this time, McMillan’s orders reflected a Supreme Court-approved plan that Maslanka saw as manipulating the future by divorcing children from parental values, a strategy with historical precedents among Communists and “Ottoman Turks.”¹⁶² To his dismay, “[u]nscrupulous politicians, irrational courts, and the ignorant and gullible communication media” led the way to this “New Democracy.”¹⁶³ “[D]ifferent races, religions, and cultural backgrounds” had, in fact, altered the Constitution’s purpose.¹⁶⁴ Maslanka accused McMillan of shifting his views on integration since his days as a law student, stated that after World War II McMillan “was very keen on the one world government concept,” complained that he was vulgar and arrogant

153. *Id.*

154. Letter from Edward J.F. Maslanka to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 8, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. Letter from Edward J.F. Maslanka to James B. McMillan (June 11, 1971), *supra* note 81.

162. *Id.*

163. *Id.*

164. *Id.*

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when teaching Sunday School, that fellow Charlotte Country Club members hated him, that he was groveling for public support, and that he represented an elite clique trying to control and misshape society contrary to fundamental law.¹⁶⁵ Maslanka most resented McMillan's interference with his attempts to raise his son on "cultural values, traditions, and the morals and ethics" derived from "blood kinsmen" and the "Fathers of Western Culture."¹⁶⁶ He despised "being forced to become a member of some new mongrel society."¹⁶⁷

Altogether, the ideological arguments expressed specific constitutional and legal traditions. Key principles were a right to privacy and the freedom to associate, partly drawn from the First Amendment, which was understood to include the right to maintain an ethnic identity and parental control. Such values trumped any alternative notions of racial equality under the Fourteenth Amendment, to which they were implicitly compared. Frequently, the ideological writers offered a property rights or class-based justification, as well as democratic distrust of federal judges, for their legal arguments. Many expressed personal pride in achieving middle-class status through hard work, including military service in World War II or Korea.¹⁶⁸ They were not willing to concede those hard-fought victories because of the constitutional errors of an unelected and possibly socialist judge.¹⁶⁹ This group believed that the middle class earned the right to send their children to better public schools than poor people. At the same time, some expressed class resentment against the rich, including McMillan.¹⁷⁰ A surprising number pointed out that he earned the princely salary of \$40,000 a year, while the median household income in North Carolina in 1969 was \$7,000. These writers assumed that the Judge was out of touch with their financial reality, and they knew the wealthiest Charlotteans could put their children in private schools and avoid busing, integration, and the white and black bottom rungs of the economic ladder.¹⁷¹ Finally, the ideological writers resented the fact that they were being asked to give up an important aspect of their un-

165. *Id.*

166. *Id.*

167. *Id.* A different view was the Letter from James W. Markel, Florida Attorney to William Waggoner, Attorney, Charlotte-Mecklenburg school board (May 7, 1971) (in the William Waggoner Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte) ("Since the middle and upper economic classes have traditionally imparted education to their offspring through cultural practices and speech patterns, the only losers in this political power play are the poor and downtrodden.").

168. See, e.g., Letter from A Servant of [Servants of the People] to Various "Servants" of the People (Jan. 29, 1970), *supra* note 86.

169. See, e.g., Letter from A U.S. Citizen to James B. McMillan (1970), *supra* note 90.

170. See, e.g., Letter from Edward J.F. Maslanka to James B. McMillan (June 11, 1971), *supra* note 81.

171. *Id.*

derstanding of American democracy, the right to choose elected officials who would draw school district boundaries according to neighborhood boundaries.¹⁷²

C. Youth

The outcry expressed by some white students is important in understanding the public reaction to *Swann*. This was the younger generation, born between the mid-1950s and early 1960s, which may have had a lesser stake in segregation. Yet they were deeply affected by their parents' beliefs and behaviors, and they often experienced racial tension and violence in Charlotte's schools. From a constitutional standpoint, these student writers believed they had a legal right to attend the nearest school, and that freedom of association and privacy had been lost because of McMillan's actions. The young white students who wrote McMillan condemning his decisions focused on the disruption that busing and integration caused, but they also sensed important constitutional issues.¹⁷³

Loss of freedom was a common characteristic of these children's letters, as it was with the adults. One anonymous female student, "speaking for alots more other kids that feel like I do," believed McMillan did not "know what [he was] doing to us."¹⁷⁴ Devastated at reassignment and no longer being a "lettergirl" at her old school, she cried constantly, would not leave the house, and planned on "quitting school" despite being a senior.¹⁷⁵ Her prayers asked God why McMillan "took my dreams away from me: I've never hated anyone like I hate you"¹⁷⁶

An equally "mad sixth grader," Lisa Jones, opposed "this bussing stuff you have started."¹⁷⁷ Jones lived on Windham Place, a middle-class neighborhood in east Charlotte.¹⁷⁸ She attended Merry Oaks Elementary School,

172. See, e.g., Letter from Ulysses S. Grant to James B. McMillan (Sept. 22, 1970), *supra* note 98.

173. See, e.g., Letter from Lisa Jones to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 25, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

174. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

175. *Id.*

176. *Id.*

177. Letter from Lisa Jones to James B. McMillan (Aug. 25, 1970), *supra* note 173. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 494. Jones appears to have been the daughter of Henry B. and Josephine A. Jones. Henry Jones is identified as proprietor of Commonwealth Barber Shop, a small business located not far from the family home on Commonwealth Avenue in east Charlotte. During the 2013–2014 school year, about 3 percent of Merry Oaks students were white. 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

178. *Id.*

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located a little more than one mile from her house.¹⁷⁹ Jones complained that under McMillan's orders she would no longer be able to attend the school. McMillan as a result, was "stupid" and "stubborn."¹⁸⁰ According to Jones, her family's purpose in moving to the area was for her to attend that school.¹⁸¹ Although puerile, the argument had a constitutional dimension. It was "not fair for one man to run everybody else's life," and it was "not right for us to move out of our school so some negroes can move in. Same way with them."¹⁸² Jones even offered a juvenile version of the slippery slope: "Next thing you'll be telling us what to say, where to live, what friends to make, and how to make them."¹⁸³

An eleven-year-old student, Philip Anatonio Hairrios, told McMillan he had a right to complain because he was going to be bused and could not choose his school.¹⁸⁴ This denied him "freedom."¹⁸⁵ Hairrios, attempting parody, described himself as "a fellow communist" and further elaborated by describing the Judge as "stupid," a Nazi, and a Communist.¹⁸⁶ The young writer announced that he did not see "how this country can be called free when the almighty judges tell the people what to do."¹⁸⁷

David C. Dillenbeck, a student at J. Mason Smith Jr. High School, expressed dismay at the negative effects of busing, an indirect variety of the adults' contention that it infringed on constitutional rights.¹⁸⁸ In an articulate and neatly typed letter, Dillenbeck maintained, "[b]oys and girls don't

179. *Id.* See Driving Directions from 1927 Windham Place, Charlotte, N.C., to Merry Oaks Elementary School, Charlotte, N.C., GOOGLE MAPS, <https://www.google.com/maps/dir> (type in search box "1927 Windham Place, Charlotte, N.C., to Merry Oaks Elementary School, Charlotte, N.C."; click on magnifying glass search button to retrieve directions).

180. Letter from Lisa Jones to James B. McMillan (Aug. 25, 1970), *supra* note 173. Cf. Letter from One of the pupils from Oaklawn School to Julius Chambers (Jan. 1, 1969) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte) (receiving a similar student's complaint: "You have caused a lot of trouble. You have caused heart aches and pains to the parents.").

181. Letter from Lisa Jones to James B. McMillan (Aug. 25, 1970), *supra* note 173.

182. *Id.*

183. *Id.*

184. Letter from Philip Anatonio Hairrios to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Based on the author's research, it is unlikely that "Hairrios" was the boy's real name.

185. *Id.* (addressing the letter as "Judge McMillan, Heil Hitler" and providing a salutation of "a few names of people who are with me Adolph Hitler, Mr. Mussolini, Ho Chi Men" in the signature).

186. *Id.*

187. *Id.*

188. Letter from David C. Dillenbeck to James B. McMillan, Judge, U.S. Dist. Ct. (Jan. 17, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). According to the letter's return address, Dillenbeck lived on Wedgewood Avenue, a middle class area in south Charlotte close to Smith Junior High.

even want to go to the school they are assigned.”¹⁸⁹ Busing required them to leave home early and return late.¹⁹⁰ Dillenbeck argued black students were worse off under busing.¹⁹¹ Based on his conversations, he concluded there were less “disturbances” at “the black school they went to last year.”¹⁹² At Smith Junior High School, the black kids set off firecrackers in the hall, “molested” white girls, cut classes, stole things from the gym, and broke in line in the cafeteria.¹⁹³ The only students who came late to class were “the blacks from shuffling around in the hall. They don’t care!”¹⁹⁴ Dillenbeck guessed “nine out of ten black students [did] not do any sort of work[.]”¹⁹⁵ The teachers failed to enforce discipline “because of sheer fright.”¹⁹⁶ He asked McMillan, “Can you please tell me if their education has been improved since they have been transferred as you ordered?”¹⁹⁷

D. Parents

Frustrated parents, often mothers, sent numerous letters to the Judge. They expressed personal upheaval, fear of busing’s effects, and the threat of lost status. No longer were their children safe within middle-class neighborhoods, and these families lacked an ability to pay for the escape offered by private schools. Predictably, political, social, and economic perceptions bred resentment. But most importantly, parents viewed the crisis in constitutional terms. Like other critics, they believed busing illegally caused a loss of fundamental freedom, which included the right to choose a neighborhood school. Racism manifested itself in a few letters, but not most. More broadly, as for the ideologues, busing and the target ratios represented big government taking another chunk out of personal and parental sovereignty. Many wondered why they had to give up an assumed constitutional right of choice and control when they had done nothing wrong, especially when they supported at least a limited version of integration and racial equality.¹⁹⁸

Some parents focused less on integration and more on the means by which it was being achieved. Robert T. Snyder blamed McMillan for at-

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *See, e.g.*, Letter from Robert T. Snyder to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 25, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collections Library, University of North Carolina at Chapel Hill).

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tempting to “overcome hundreds of years of injustice in the wink of an eye.”¹⁹⁹ He believed the

black man is a man and I respect him for that. He loves his family as I love mine, and his problems of earning a livelihood, living in his community, believing in his God, are the same as mine. His blood is as red as mine and his hopes and dreams are not affected by the color of his skin.²⁰⁰

Snyder also thought “the black man deserves every opportunity to have what I have had and more, and I support his right to have it.”²⁰¹ He understood these rights to include

[t]he right to do without today so that I can have more tomorrow and the right to be proud of what I have because I worked and sweated to earn it. The right to raise my children to be intelligent, hard-working, compassionate adults who believe more strongly in a God that most surely exists that does their weak and selfish father.²⁰²

Snyder, whose child was bused, offered multiple criticisms of the experience.²⁰³ Buses were crowded and unsafe for blacks and whites.²⁰⁴ In his opinion, McMillan degraded black students by “making [them] the minority in virtually every school in the county.”²⁰⁵ Snyder favored equal education, including black teachers in white schools, but he thought the target ratio actually threatened educational equality.²⁰⁶ More precisely, he believed his rights under the Constitution included “the right to choose where I live and work and with whom I associate; the right to attend the church of my choice; and to do almost anything I want as long as it does not interfere with the rights of another.”²⁰⁷ The busing decision violated those rights because of its manifest unreasonableness: It “attacked the basic philosophy of life guaranteed by our Constitution.”²⁰⁸

199. *Id.* at 1.

200. *Id.*

201. *Id.* at 2.

202. *Id.*

203. *Id.* at 3.

204. *Id.*

205. *Id.*

206. *Id.* at 4.

207. *Id.*

208. *Id.* at 5. Several Charlotte lawyers made similar points. Louis A. Bledsoc (b. 1927), a graduate of the University of North Carolina at Chapel Hill and its law school, expressed dislike for the ratio and the use of children as “pawns” to be distributed around the county. Whiteford Blakeney (1906–1991), a Duke University and Harvard Law School alumnus, believed *Swann* “sanctioned a basic denial of individual liberty to American citizens, white and black alike,” because school attendance could be “prescribed solely according to race and color.” Ironically, he thought, the old state racial compulsion was now replaced by federal racial compulsion. But all racial quotas were offensive, and it was “most distressing to note the continuing inroads on individual freedom and the provincialism of Washington.” Letter from Louis A. Bledsoc to William Waggoner (Oct. 13, 1970); Letters from Whiteford Blakeney to William Waggoner (Apr. 22, 1971, Apr. 27, 1971) (on file in the William Waggoner Papers, J. Murrey Atkins Library, University of North Carolina at Charlotte); Resolution and Memorial in Honor of

B.L. Martin (1926-2013) considered himself a “loyal American who has tried to uphold the law and bring up my children to respect it[.]”²⁰⁹ But the prospect of busing threatened his family.²¹⁰ His children were “scared to death” of attending school “in a neighborhood that is rampant with crime.”²¹¹ His twelve-year-old son asked to carry a knife for protection.²¹² Martin believed “[i]ntegration has been good for both the black and the white people,” and he desired excellent public education for his children.²¹³ But busing, given its coercive nature, was tyrannical.²¹⁴ Its only goal was to achieve racial balance, not improve education.²¹⁵ In addition, the remedy only affected the less well-off. Rich people, like the Judge, could buy the “freedom to choose” private schools for their children.²¹⁶ In contrast, “I do not have this freedom because I am only one who does his part to support you and others and simply cannot afford to do so.”²¹⁷ As a result, the Judge’s actions violated Martin’s constitutional rights and restricted his freedom.²¹⁸ Martin repeated others’ argument that the 1964 Civil Rights Act specifically stated that school desegregation “shall not be done solely to achieve racial balance.”²¹⁹ Martin reminded the Judge that, “[t]his country was founded by those who opposed tyranny and were willing to fight for freedom. If this is not tyranny I feel that it certainly borders on it.”²²⁰

Whiteford S. Blakeney by Sydnor Thompson, President, Mecklenburg County Bar, Francis I. Parker for the Memorials Committee, Mecklenburg County Bar, & William K. Van Allen, Speaker on this Occasion for the Mecklenburg County Bar (May 8, 1991), available at http://www.meckbar.org/newsevents/Blakeney,WhitefordS_5.6.1991.pdf; Louis A. Bledsoe, LAW. CENT., <http://www.lawycrcentral.com/louis-a-bledsoe-jr-interactive-profile--20-387937.html> (last visited Aug. 15, 2014).

209. Letter from B.L. Martin to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 10, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Martin, a credit manager for Sinclair Refining Company, lived with his wife and children on Ruth Drive in a middle class neighborhood in northeast Charlotte. The family later moved to the Atlanta area. *Bobby Lee Martin*, ATLANTA J.-CONST., Jan. 7, 2013, available at <http://www.legacy.com/obituaries/atlanta/obituary.aspx?pid=162201926>. Like Edward Maslanka, Martin referred to Section 407(a)(2) of the 1964 Civil Rights Act. Other writers also thought busing missed the educational and legal point. J.H. Horner wrote Julius Chambers, advising him it would be better to devote his time and energies to “the meanings of responsibility, authority, due process, and respect for the rights of the majority.” Letter from J.H. Horner to Julius Chambers (Mar. 9, 1971) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte).

210. Letter from B.L. Martin to James B. McMillan (Feb. 10, 1970), *supra* note 209.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* (referencing the 1964 Civil Rights Act).

220. *Id.*

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In February 1971, Mrs. Frank C. Sullivan, (1933-2006) a mother of four, told the Judge how she felt “about our country and our constitution.”²²¹ Like many others, she wrote in response to a statement the newspapers reported McMillan had made about public opinion and the Constitution.²²² According to Sullivan, the newspaper stated, “[t]he Judge said he realized that the U.S. Constitution was not held in very high esteem in Mecklenburg County.”²²³ As a Charlotte native, Sullivan replied that, to the contrary, she believed “in the constitution and in America with all my heart.”²²⁴ She interpreted the fundamental law to mean “freedom to say what you feel, to worship the way you want and to raise your child in the way you see fit.”²²⁵ She assumed democratic choice determined these rules, but was disturbed to read that McMillan was quoted as saying he “didn’t care to hear what the people liked or disliked,” and that it “didn’t matter that our children would be upset or that their education would suffer.”²²⁶ She “pray[ed] to God” that “our constitution doesn’t mean this.”²²⁷ Sullivan had always “been proud of my country and everything she stands for,” and asked McMillan to explain how the law could be changed to allow authoritarianism.²²⁸ She did not “want my children to defy any law of this land,” but hoped they would “love this country and to be proud to say I am an American.”²²⁹

In December 1969, Mrs. Clifford Hartis (b. 1922) expressed similar concerns.²³⁰ She described herself as a “moderate,” who believed in “equal rights for all U.S. citizens,” integration, and “that we have treated minority races badly in past years.”²³¹ She had “no objection to living next door to

221. Letter from Mrs. Frank C. Sullivan to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 10, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Joyce B. Sullivan lived in a home built in 1961 on Crater Street, a middle-class area just south of Independence Boulevard. Her husband was a driver for American Cynamid. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969 1079 (1969).

222. Letter from Mrs. Frank C. Sullivan to James B. McMillan (Feb. 10, 1971), *supra* note 221, at 1.

223. *Id.*

224. *Id.* at 2.

225. *Id.*

226. *Id.*

227. *Id.* at 3.

228. *Id.*

229. *Id.* at 4.

230. Letter from Mrs. Clifford T. Hartis to James B. McMillan, Judge, U.S. Dist. Ct. (Dec. 9, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Hartis lived on Laura Lane in a less-developed area of southeast Charlotte, near Independence Boulevard. Her husband was an automobile mechanic. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 433.

231. Letter from Mrs. Clifford T. Hartis to James B. McMillan (Dec. 9, 1969), *supra* note 230.

any race or even going to church with them.”²³² On the other hand, “sending children to a school in a community other than the one they live in is taking the rights of the majority to appease the rights of a minority.”²³³ Hartis thought “[e]very American under the Constitution should have the right to live, go to school and church where he so chooses.”²³⁴ In addition, she concluded, “[a] person has a right to be proud of his community school and be able to support the school his children attend.”²³⁵ She argued the county should allow students the freedom to attend any school.²³⁶ However, Hartis did not believe “the constitution can be interpreted to read that children must be sent to another community in order to equalize percentage of races in each school.”²³⁷ Instead, Hartis advocated that the focus should be on improving the quality of teachers for all races.²³⁸ Although she assumed “most of our [white] people are willing to abide by integration and equality,” there was “restlessness among our white race lately that I have not observed before.”²³⁹ Active in the Parent Teachers Association (P.T.A.) for about twenty years, Hartis told the Judge “this is the first time I have felt that our people might rebel against a situation.”²⁴⁰ She hoped McMillan’s “interpretation of the Constitution will not be the straw to break the camel’s back.”²⁴¹

Mrs. Eugene A. Bibeau (1933–2011) wrote with a similar purpose and tone.²⁴² She sympathized with the Judge.²⁴³ Like Joyce Sullivan, Bibeau was worried by the newspaper reporting that the Judge said, “the People of ‘Mecklenburg County did not hold the United States Constitution in very high esteem.’”²⁴⁴ Bibeau viewed the remark as evidence that McMillan

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. Letter from Mrs. Eugene A. Bibeau to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 6, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Bibeau, a Kannapolis native, graduated from high school there in 1951, was an active church member and a Belk’s department store employee. The 1963 city directory identified her husband as a printer. In 1970 they lived in a middle-class neighborhood on Dunwoody Drive in east Charlotte. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 79; *Mildred Miller Bibeau*, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=80783447> (last visited Aug. 15, 2014).

243. Letter from Mrs. Eugene A. Bibeau to James B. McMillan (Feb. 6, 1970), *supra* note 242.

244. *Id.*

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looked at ordinary citizens disdainfully.²⁴⁵ For her part, she followed the law and taught her three children to do the same, “because the law is for their protection.”²⁴⁶ Although she “believed in integration,” she disagreed with busing to achieve it.²⁴⁷ She thought the Judge’s remark seemed to dismiss the human costs of complying with the busing order.²⁴⁸ Bibeau wanted to “believe that you as well as everyone else who has a part in this issue cares and really cares about what this can mean to people.”²⁴⁹

Ken Welborn (1926–2013) tried a different approach.²⁵⁰ He wrote a letter to his seven and eleven year old sons and sent a copy to the Judge.²⁵¹ Welborn, a veteran, former teacher, and graduate of the University of Tennessee and the University of North Carolina at Chapel Hill, was president of the Hidden Valley P.T.A. and lived in a middle-class area of homes built in the 1960s north of downtown and east of Sugar Creek Road.²⁵² Welborn described America as a “great nation” and North Carolina as “a fine state.”²⁵³ He praised “Washington, Jefferson, Lincoln, Roosevelt, and Eisenhower.”²⁵⁴ Welborn thought it was now “time to stand up and be counted because a constitutional imbalance had arisen.”²⁵⁵ Although the Constitution created a system of three branches, which were “on equal footing and serve as checks on the others,” the Supreme Court had “assumed authority of another [branch] and has gotten away with it.”²⁵⁶ Welborn supported the 1954 *Brown* decision and concluded it “would in time probably do away with segregated schools.”²⁵⁷ But *Brown* did not “desegregate the schools as

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. Letter from Ken Welborn to David and Barry Welborn (Jan. 29, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). The author sent a copy of this letter to David and Barry Welborn in January 2014. Barry Welborn, in an email to the author on Jan. 22, 2014, responded that neither brother knew the letter existed, but they were not surprised their father wrote it, and “we did live it.” Barry explained that Ken Welborn died in July 2013, and “one of the last lucid conversations we had was concerning *Swann*.” Barry Welborn stated his father objected to busing, not integration. The family’s response to *Swann* was to move to Bessemer City, just west of Charlotte in Gaston County. Author’s Telephone Interview with Barry Welborn (Jan. 29, 2014); *Kenneth Edgar Welborn*, FIND A GRAVE, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=113658174> (last visited Mar. 26, 2015).

251. Letter from Ken Welborn to David and Barry Welborn (Jan. 29, 1970), *supra* note 250.

252. *Kenneth Edgar Welborn*, WESTMORELAND FUNERAL HOME & CREMATORY, <http://www.westmorelandfuneralhome.com/obits/obituary.php?id=314472> (last visited May 17, 2015).

253. Letter from Ken Welborn to David and Barry Welborn, *supra* note 250.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*; see also *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954) (ruling that the “segregation of children in public schools solely on the basis of race, even though the physical facilities and

fast as some would like,” so courts had recently ruled schools must be integrated regardless “of the wishes of both Black and White parents, and of the educational consequences.”²⁵⁸ Because “segregated housing patterns still remain in our community,” a judge chose busing to achieve integration.²⁵⁹ This meant that “although the courts [in *Brown*] said that governing bodies could not assign you to a school on the basis of your race, a Federal Judge is now going to assign and bus you to a particular school because of your race.”²⁶⁰ To Welborn, this paradox and absurdity meant the Constitution no longer had any fixed meaning.²⁶¹ It caused him to lose the “great belief and trust I had in our governmental structure.”²⁶² He told his sons he supported desegregation, but based on his “rights as an American Citizen” they would not be bused.²⁶³

A large number of letters from parents communicated profound anger at what they understood as the deeper constitutional threats posed by busing. Mr. and Mrs. Robert L. Robinson announced they would not bus their children: “The color of our skin should make no bearing on where we go to school or upon our education; let us choose where we wish to attend or have our children attend.”²⁶⁴ The couple believed their constitutional freedom was at issue, “along with our freedoms to work, pray, and pay taxes,” and asked that the federal government get out of the local schools and submit busing to a democratic vote.²⁶⁵ Mrs. Eugene Reed wrote the Judge that “[m]ost of us like to feel we’re taking an active part in our Government, about the problems that concern us all.”²⁶⁶ In losing power to judges she

other ‘tangible’ factors may be equal, [did] deprive the children of the minority group of equal educational opportunities[.]”.

258. Letter from Ken Welborn to David and Barry Welborn, *supra* note 250. See also *Brown*, 347 U.S. at 493.

259. Letter from Ken Welborn to David and Barry Welborn, *supra* note 250.

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. Letter from Mr. and Mrs. Robert L. Robinson to William Poe, President of Sch. Bd. (Aug. 13, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Robert Robinson, who worked as a foreman with “Power Equipment” company, and Carol Robinson lived on Lake Forest Road East in northeast Charlotte. The neighborhood consisted of middle-class homes built after 1960. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 789.

265. Letter from Mr. and Mrs. Robert L. Robinson to William Poe (Aug. 13, 1970), *supra* note 264.

266. Letter from Mrs. Eugene Reed to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 11, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Reed lived in northwest Charlotte in a lower middle-class neighborhood built in the late 1960s. Her children attended Tuckasegee Elementary but were to be bused to Oaklawn Elementary. In 2013–2014, 14 percent of the students at Tuckasegee were white; at Oaklawn, 2 percent were white. 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

feared "Communism is back of this school bussing instead of desegregation[.]"²⁶⁷ She also thought young people already had enough pressure to "grow up" too soon and should not have to face busing: "No wonder they turn to drugs and other forms of violence."²⁶⁸ Although her two elementary-aged children already attended a desegregated school, they were scheduled to be bused elsewhere.²⁶⁹ She, however, "will rot in jail first, before I do something that I don't believe in and in my heart know that Communism is creeping in faster every day."²⁷⁰

Some, like Peggy Croxton, a mother of two, harshly described "forced busing" as a remedy that violated "God given" legal rights.²⁷¹ She thought that people had reached the limits of how far they could be pushed by government.²⁷² Others, like Mrs. J. F. Clontz, regarded busing as "[going] against everything my country stands for."²⁷³ She contended McMillan was "not concerned about our civil rights, or our freedom of choice, and I wonder if you realize what you are trying to destroy in order to implement your desegregation by ratio."²⁷⁴ Clontz believed that McMillan disregarded the Civil Rights Act, was a dictator, a tyrant, and a "bigoted idiot" for "even considering such an asinine, freedom revoking, not to mention unconstitutional plan of desegregation."²⁷⁵ Parents, and not a wrong-headed judge "herding them about like so many black and white sheep," should "enjoy the privilege of choosing where they will live, work, play, and send their children to school."²⁷⁶

Similar legal arguments characterized other letters. A "Concerned Parent" from Winterfield Elementary concluded that the real issue was finding "the best education for all both black and white."²⁷⁷ Busing would "degrade

267. Letter from Mrs. Eugene Reed to James B. McMillan (Mar. 11, 1970), *supra* note 266.

268. *Id.*

269. *Id.*

270. *Id.*

271. Letter from Peggy Croxton to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 9, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

272. *Id.*

273. Letter from Mrs. J.F. Clontz to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 8, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Shirley Clontz and her husband, Jay Franklin Clontz, lived on Rosecrest Drive, just east of South Boulevard and south of Archdale Road in south Charlotte. Their home was located in a middle-class suburban neighborhood built in the early 1960s. In 1971, Clontz's husband was manager of Confection Storage. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 184.

274. Letter from Mrs. J.F. Clontz to James B. McMillan (Feb. 8, 1970), *supra* note 273.

275. *Id.*

276. *Id.*

277. Letter from Concerned Parent to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 3, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). The return address

the schools we now have.”²⁷⁸ McMillan’s job required he ensure “the blacks have equal facilities, schools, and teachers but let this happen in their own neighborhoods and let our neighborhood schools that we white people work for alone!!”²⁷⁹ Whites sacrificed to buy homes to “send our children to the best neighborhood schools we can afford.”²⁸⁰ Far from being a mere parenting strategy, this was “our Constitutional right! There is nothing fair or Constitutional about busing!”²⁸¹ The writer saw McMillan’s actions as a craven response to black civil rights leaders, but whites could demand civil rights as well, which meant community schools.²⁸² A young father, Terence Richard McNamee (1934–1980), told the Judge his ancestors fought to overcome British tyranny in 1776, defended the Union in 1861, and served in many wars since then, including Vietnam.²⁸³ “McMillan the First,” represented the new enemy, and McNamee held him in “profound contempt.”²⁸⁴ McNamee said he was not a racist, and in fact in the late 1950s nearly lost his job in Virginia because he opposed that State’s school closing policy of “Massive Resistance.”²⁸⁵ He moved to Charlotte and bought a “better home than any of my family ever owned,” so “my children could walk to Cotswold School.”²⁸⁶ He did not care if his children “have classes, or teachers, who are white, black, yellow, brown, red, or polka dotted.”²⁸⁷ McNamee attacked the notion of “racial balance” as socialistic: “Do you also order a racial balance in federal judgeships, in salesman, in computer operators, in

and Winterfield Elementary reference suggest the letter came from east Charlotte, north of Independence Boulevard. Winterfield’s enrollment was less than 4 percent white in 2013–2014. 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHOOLS, *supra* note 29.

278. Letter from Concerned Parent to James B. McMillan (Feb. 3, 1970), *supra* note 277.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. Letter from Terence Richard McNamee to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 6, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). In 1971, McNamee was an oil heat manager at Pure Oil Company. He lived on Linda Lane in an above-average middle-class neighborhood in southeast Charlotte, with newer houses that were built in the mid-1960s. The McNamee home was about one mile from both Cotswold Elementary School and Randolph Junior High School. In 2013–2014, about 58 percent of Cotswold’s students were white, while at Randolph Middle School, about 35 percent were white. McNamee was born in Pennsylvania and graduated in 1952 from Cristobal High School in the Panama Canal Zone. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 622; 1952 CARIBBEAN 17, available at <http://ufdc.ufl.edu/UF00093680/00038/21x>; Deaths, 14 CANAL REC. 47 (June 1980), available at <http://ufdc.ufl.edu/AA00010871/00119/49j>; 2013-14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHOOLS, *supra* note 29.

284. Letter from Terence Richard McNamee to James B. McMillan (Feb. 6, 1970), *supra* note 283.

285. *Id.*

286. *Id.*

287. *Id.*

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doctors?”²⁸⁸ Also, he “was under the impression our Constitution said that revenue bills would have to be initiated in the House,” yet busing would obviously require additional tax revenues.²⁸⁹

Several parents emphasized the contrast between busing and their understanding of American constitutional law. An anonymous writer, “Had it up to here,” served in World War II and Korea, where he fought “for my freedom and my country and kids.”²⁹⁰ This now seemed in vain, when a “Tyrant” like McMillan “is going to tell me where my kids can and have to go to school!”²⁹¹ The writer favored integration, but he refused to allow his children to be bused.²⁹² Daniel R. (“Doc”) Martin (1927–2001), a 1949 graduate of Appalachian State University, former high school baseball and football coach, and chairman of the Charlotte Park and Recreation Commission, requested a transfer for his son from Hawthorne Junior High to Eastway Junior High.²⁹³ Martin believed his son had a “right as an individual to receive an education at his neighborhood school.”²⁹⁴ Because the young man must follow the law, “it should also be his right to be exposed to an education in an atmosphere that is conducive to good learning.”²⁹⁵

In a letter to President Nixon, copied to McMillan, John H. Sellers sarcastically told the President he did not expect a response because “your administration is only interested in how to squeeze another tax dollar out of the middle class white citizens and for them to continue to be the so-called silent majority which lately does not have any voice in anything.”²⁹⁶ He

288. *Id.*

289. *Id.*

290. Letter from Had It Up to Here to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

291. *Id.*

292. *Id.*

293. Letter from Daniel R. Martin to Edward Sanders (Sept. 17, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill); *Outstanding Service Award, ALUMNI ASS'N APPALACHIAN ST. UNIV.*, <http://alumni.appstate.edu/about/awards/outstanding-service> (last visited Aug. 15, 2014); David Raith, *Don Bradey, SOC'Y FOR AM. BASEBALL RES.*, <http://sabr.org/bioproj/person/894f415a> (last visited Mar. 29, 2015); *Regular Meeting of the City Council of the City of Charlotte, November 25, 1968*, available at <http://charmck.org/city/charlotte/cityclerk/councilrelated/council%20minutes/minutes%201968/11-25-1968.pdf> (last visited Mar. 29, 2015). “Doc” Martin lived on Clark Street in east Charlotte, in a neighborhood built in the 1950s. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 635. In 2013–2014, Eastway’s enrollment was about 5 percent white, while Hawthorne operated as a special-purpose high school. It had an enrollment of less than 200 students, of whom about 2 percent were white. 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

294. Letter from Daniel R. Martin to Edward Sanders (Sept. 17, 1970), *supra* note 293.

295. *Id.*

296. Letter from John H. Sellers to President Richard M. Nixon (Aug. 13, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Sellers, a post office clerk, lived in a

once “thought that the Constitution guaranteed equal opportunity for all, but now I discover that this same Constitution is being interpreted to mean that a Federal Judge can force anyone to do anything that he wants them to do, regardless of the rights of anyone else.”²⁹⁷ He asked Nixon to tell him “how the Constitution can guarantee equality for all and at the same time force everyone to bus their children all over the county to achieve a white to black balance that the Constitution says absolutely nothing about.”²⁹⁸ Sellers believed American life was inherently “segregated”: “I am not equal to you. I can hardly pay my expenses and secure a living for my family; therefore, I am segregated from the affluent. . . . Is busing a black unemployed laborer’s child going to permit him to attend a \$50.00 per plate dinner?”²⁹⁹ Sellers also asked Nixon why children outside the South had not been compelled “to attend the schools that the courts have chosen for them?”³⁰⁰

Several parents saw threats to their understanding of democracy under the Constitution. Mrs. John S. Davis, Jr., who lived in northeast Charlotte, believed we “are losing our freedoms and becoming Communistic BLACK AND WHITE are not the ENSLAVED CITIZENS of a DICTATOR GOVERNMENT.”³⁰¹ It was the essence of freedom and desirable that blacks could vote and “attend movies and schools with whites.”³⁰² But when government required a ratio of white to black, telling children

lower middle class neighborhood built in the 1950s on Gwynne Avenue, near Independence Boulevard. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 820. The author appreciates the correspondence of John Sellers’ son, Rodger P. Sellers, regarding the family’s experiences. Rodger Sellers’ parents grew up in rural South Carolina in poor circumstances and learned and accepted the dominant white racial attitudes. They moved to Charlotte in the early 1950s. McMillan’s orders, probably because of this background, produced anger and fear and especially drove his mother to protest. Beginning in 1974, Rodger Sellers was bused to West Charlotte High School, a formerly all-black school in an African-American northwest Charlotte neighborhood. Because of busing, during the mid-1970s whites made up half of the school’s students. According to Rodger Sellers, the experience was very positive and even caused his parents to become more tolerant and inclusive: “[I]t worked We got an excellent public education,” and “the sense of pride in our school was in many ways a testimony to more than just our city.” By graduation in 1977, most parents were “proud of their children and what they had accomplished in the face of so many prior voices predicting failure and chaos.” Busing, in short, changed white racial attitudes. Rodger Sellers views “the regression here in Charlotte with much sadness to see how far backwards we’ve moved since the late 70s/early 80s.” Letter from Rodger P. Sellers to author (Jan. 23, 2014) (on file with author). In 2013–2014, West Charlotte enrolled more than 1,600 students, of whom less than 2 percent were white. 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

297. Letter from John H. Sellers to President Richard M. Nixon (Aug. 13, 1970), *supra* note 296.

298. *Id.* at 2.

299. *Id.*

300. *Id.*

301. Letter from Mrs. John S. Davis, Jr. to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 6, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

302. *Id.* at 2.

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where to go to school and “under what conditions you will be allowed to MOVE,” it was “teaching people to HATE.”³⁰³ Constitutional equality meant “the freedom to pursue our own interests and talents, using our own initiatives and abilities.”³⁰⁴ As for schools, they depended on freedom of choice.³⁰⁵ They needed pride “in their establishments.”³⁰⁶ Davis believed that equality could mean all white, all black, and some schools with “mixed” races, “but at least the curriculum would be the same and the choice of neighborhood and school left solely to the individual.”³⁰⁷

Similarly, Aubry Keith Montague (1929–1997) argued McMillan’s decision insulted all races, categorizing them “by numbers like apples and oranges.”³⁰⁸ This destroyed the constitutional system and democracy.³⁰⁹ American courts handed down confusing opinions, Nixon failed to keep his campaign promises on neighborhood schools, and federal bureaucrats told the majority how to behave.³¹⁰ Montague argued busing actually avoided the issue of racial equality and that black people lost rights because of it: “It has actually made me more sympathetic toward them,” because excessive government power now crushed both races.³¹¹ For his part, he illegally kept his children at home to “peacefully defy what we consider to be unconstitutional,” while others moved out of the county or into private schools.³¹² For Montague, busing reflected the tip of an expanding government iceberg.³¹³ Below its surface lurked other issues, including housing, religion, employment, and income distribution.³¹⁴

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. Letter from Keith Montague to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 23, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Aubry Keith Montague, a native of Amarillo, Texas, Korean War veteran, and architect, worked at James H. Benton & Associates, an architectural firm. In 1970 he and his family lived in a small house constructed in the late 1950s on Charleston Drive in southeast Charlotte, near Independence Boulevard. He may have tried to solve part of the districting issues by later moving to Sheffield Drive. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 780; *Potter County, TX—Obits from Online Amarillo Newspapers*, USGENWEB ARCHIVES (Sept. 12, 1997), <http://files.usgwarchives.net/tx/potter/obits/1997/12sep97.txt> (last visited Mar. 29, 2015).

309. Letter from Keith Montague to James B. McMillan (Sept. 23, 1970), *supra* note 308, at 1–3.

310. *Id.* at 1–2.

311. *Id.* at 2.

312. *Id.* at 2–3.

313. *Id.* at 3.

314. *Id.*

Mrs. G. C. Baker experienced a crisis which she blamed on the Judge's constitutional mistakes.³¹⁵ Her home "has been and still is being slowly and surely tore apart by your ruling allowing forced busing."³¹⁶ She noted the wealthier areas of Charlotte were not affected by busing and wondered how this could be just. As a result, "when my sons reach draft age they will be encouraged to leave this great country with my blessings."³¹⁷ For her part, she was simply a "middle class citizen," unable to move, put her children in private schools, benefit from Head Start kindergarten, send her children to free summer camps, qualify for free school lunches, or receive money to pay rent.³¹⁸ "We only pay taxes."³¹⁹ She told her ten-year-old son that this country could not force him to go to a school that was not his own.³²⁰ She asked him if he wanted to go to her sister's home in West Virginia, but he would have to leave his other three siblings and miss family holidays and birthdays.³²¹ McMillan "made me break my son's heart and I will never forgive you. May God have mercy on me for saying this as I do not think I have ever felt so strongly about anything but I sincerely hate you."³²²

A minority of parents expressed racist opposition to busing. They believed the Constitution allowed a gentler form of segregation that was consistent with modern American freedom. Mrs. Marshall Parrott wrote Judge McMillan that "she prayed daily for you, that somehow God would speak to your heart and thereby your decision would be changed."³²³ Parrott re-

315. Letter from Mrs. G. C. Baker to James B. McMillan, Judge, U.S. Dist. Ct. (1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Gary C. Baker, vice president and general manager at Howel Motor Freight, and Emma J. Baker lived on Heather Lane in south Charlotte, in a middle-class neighborhood built in the mid-1950s. Their home was approximately one-half mile from Park Road Elementary School, which in 2013–2014 operated as a Montessori school with an enrollment approximately 64 percent white. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 42; 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

316. Letter from Mrs. G. C. Baker to James B. McMillan (1970), *supra* note 315.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. Letter from Mrs. Marshall Parrott to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 15, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Robert Marshall Parrott (1934–1988), her husband, was an independent insurance agent. Marshall and June Parrott lived on Bircherest Drive, in a modest home in east Charlotte built in the late 1950s. The home was less than one-half mile from Windsor Park Elementary, which one of their children attended. The other child was assigned to Villa Heights Elementary, located approximately five miles west of the home near uptown Charlotte. In 2013–2014, at Villa Heights, now Irwin Elementary, a specialized school on the grounds of the former Harding High School, enrollment was about 24 percent white, while Windsor Park was less than 5 percent white. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 709; 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG

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ported that thus far, God had not answered, but God never made a mistake and “He is still bigger than any court in this land.”³²⁴ She most feared the loss of freedom, especially from judges who now seemed to rule America.³²⁵ Parrott, a parent of two elementary school boys, believed “God never planned for races to mix.”³²⁶ As she told her children, “[t]he bluejays never mate with a parrot, the dogs never mate with cats. So why should human beings mix?”³²⁷ She worked for a large company, with many black employees.³²⁸ Parrott explained that the two races were friendly and spoke to each other, “[b]ut bet your life, when lunch time comes, the whites are together and the blacks are together — in two separate groups. They want to be with their own kind.”³²⁹ In fact, “[a]ll of the colored people I have talked to, feel they don’t have as much freedom now as they did ten years ago.”³³⁰ When Parrott visited her child’s school, Villa Heights, she noticed the children voluntarily segregated themselves.³³¹ On the other hand, she did not object to black children who lived in her neighborhood going to the local elementary school.³³² To Parrot, busing seemed illogical and incapable of giving all children a better education.³³³

Other parents thought inherent racial differences doomed the sort of full integration envisioned by busing, and therefore assumed the Constitution would not require something so obviously futile.³³⁴ An anonymous writer complained that the recent school year “brought more ill-feelings and hatred between the races than has EVER existed.”³³⁵ Schools existed for education, not integration, and “children SHOULD have some fun and social activities at school!”³³⁶ In the past year there had been “very little homework, [and] so many discipline problems the teachers could not teach.”³³⁷

SCHS., *supra* note 29; Robert Marshall Parrott, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=54408012> (last visited Aug. 16, 2014).

324. Letter from Mrs. Marshall Parrott to James B. McMillan (Sept. 15, 1970), *supra* note 323.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

335. *Id.*

336. *Id.*

337. *Id.*

This writer implied that black students threatened his daughter with a knife and frequently stole her lunch money.³³⁸

Mrs. Katherine Carroll (1906–1998), who had grandchildren in the school system, asked the Judge how he would feel if his children came home cursing, “taking God’s name in vain,” with “V.D.,” “handling the sex language in a very ugly manner,” “under the influence of Dope,” or cut from a “terribly long switchblade or razor.”³³⁹ She believed that bused children would be negatively influenced by association with the wrong people, persons who did not appreciate “[h]ygiene, cleanliness[, and] moral living.”³⁴⁰ According to Carroll, the Judge, dealing only with blacks of the “higher class,” did not understand that racial interaction in the schools would not be so positive.³⁴¹ Carroll doubted the ability of black people to avoid violence.³⁴² Although she was “not against the black,” because “[h]e has a soul and Jesus loved him and died for him too,” she concluded “[t]here will always be segregation,” even in heaven.³⁴³ She endorsed racial “loving, helping, yes even mixing in school — But not forcing mothers and children to do what man wants.”³⁴⁴ In any case, “this blood will be upon your hands — You and you alone will have to give account to God.”³⁴⁵

338. *Id.* Another anonymous writer, apparently a parent, communicated intense stresses produced by busing. She prayed to God daily about the case, and argued that the Judge had harmed the county’s children and caused hatred between the races. She was physically and mentally ill, and “under the care of my physician, for how long I don’t know. I’m not sure I will ever get over this.” Letter from Anonymous to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Julius Chambers received analogous sentiments: “Please encourage black children to behave. A teacher cannot teach when children are misbehaving — and everyone suffers. White children have feelings and fear isn’t a pleasant one.” Letter from Anonymous to Julius Chambers (Sept. 1971) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte).

339. Letter from Katherine Carroll to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 21, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.* Carroll was an unusual example of a grandparent who wrote the Judge. She lived on Marsh Avenue, in a 1940s neighborhood less than two miles south of uptown Charlotte. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 153; *Katherine Carroll (1906–1998)*, MOCALO.COM, <http://www.mocavo.com/Katherine-Carroll-1906-1998-Social-Security-Death-Index/03095428253407357685> (last visited Aug. 23, 2014). Many parents expressed fears about safety. Mrs. Rhumel Williams (1937–2003) wrote the Judge from Roanoke Rapids, North Carolina, with an enclosed newspaper story about a girl killed there in August 1970 in a bus accident. She argued for desegregation (“the children in my thoughts have no color”) but believed no parent “was willing to sacrifice his sons and daughters to achieve so called integration.” Letter from Mrs. Rhumel Williams to James B. McMillan, Judge, U.S. Dist. Ct. (Sept. 3, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill); *Rhumel Jane Daniels Williams*, DAILY HERALD (Roanoke Rapids,

Altogether, constitutional arguments dominated parents' negative reactions to McMillan's orders. The Constitution did not require busing. The Constitution could not require a child to be taken out of her home district. The white majority believed black people, as a matter of law, deserved equal schools, but if they wanted better schools, they should improve their own schools or work harder so they could move into neighborhoods with better schools. The United States was supposed to be a democracy, and clearly a majority of voters in Charlotte opposed busing, so how could a judge not elected by anyone decide where their children should go to school? The matter involved a forced use of their tax dollars in a way they disapproved. McMillan's order failed legally because desegregation did not require mandatory ratios of black and white; the Civil Rights Act of 1964, in fact, expressly prevented this. More broadly, the orders contradicted basic constitutional rights to freedom of association, privacy, and movement. They ignored the principles of choice and liberty that formed the core of American constitutional law and even defined national purpose. Liberty meant freedom to choose; equality did not mean racial ratios. How, parents reasoned, could *Swann* possibly be consistent with the Constitution?

III. SUPPORTERS

Like McMillan's opponents, his supporters offered different perspectives. Some tended to focus on the historic inequality between black and white schools.³⁴⁶ From this, they agreed with McMillan that a target ratio of whites and blacks in individual schools with busing was a reasonable manner to address the constitutional legacy of segregation.³⁴⁷ Some welcomed McMillan's stand against what they perceived as the hypocrisy and foot-dragging of the white-dominated school board, which seemed to want only token desegregation.³⁴⁸ A few argued the former system had led to cultural and economic backwardness.³⁴⁹ Why could not Charlotte, like booming Atlanta, see that there was money to be made in integration? But most let-

N.C.), Sept. 12, 2003, available at http://www.rrdailyherald.com/obituaries/rhumel-jane-daniels-williams/article_35f00747-1a36-55b2-881b-7120ffbb9604.html; *Rhumel D. Williams*, CRESTLEAF, <http://crestleaf.com/p/50ba9b82651a69c4d4c84d92/rhumel-d-williams> (last visited Aug. 23, 2014).

346. See, e.g., Letter from Mary J. Powell to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 3, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

347. *Id.*

348. See, e.g., Letter from Lila Bellar to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 11, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

349. See, e.g., Letter from Harry Golden to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 12, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

ters favoring McMillan grounded themselves in morality, not constitutional law or economic efficiency. Unlike the Judge's opponents, who leaned on legal or constitutional doctrine, these writers regretted the unethical treatment of fellow human beings.³⁵⁰ They wanted something done about the ugly scar of bigotry, and busing seemed to be a logical approach, even if it meant making sacrifices. They compromised parental choice because of their understanding of racial equality. To these writers, the moral priority most often derived not from *Brown*, or the Fourteenth Amendment, or a secular Constitution, but from Jewish or Christian ethics concerning the brotherhood of man.³⁵¹ Most importantly, supporters used moral arguments to provide a glimpse of an evolving Constitution, one that included busing and defined racial equality in a dramatic new way.

The supportive letters can be placed into categories. The largest group came from friends or political liberals.³⁵² Another type tended to focus on religious arguments, and a very small number were written by persons connected to the school system or by black Charlotteans.³⁵³ Parents overwhelmingly wrote to condemn the Judge, not to praise him.

The Judge received a few letters from fellow lawyers, most of whom appeared to have some previous professional connection. George Fitzgerald (1926–2011), a Charlotte attorney, appreciated McMillan's

patience, intelligence and courage and the way you have stood up like a country church against the combined onslaughts of a vicious newspaper editor, some doctors whose children are too good to go to school except with other doctor's children, some local attorneys, politicians, and judges seeking political and economic gains while a cowardly administration in Washington provides anarchy for the price of a few southern votes.³⁵⁴

350. See, e.g., Letter from Dr. R.M. Robb to James B. McMillan, Judge, U.S. Dist. Ct. (May 18, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

351. See, e.g., Letter from W.D. Kuenzli to Editor, *Charlotte Observer* (July 6, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

352. See, e.g., Letter from Charles H. Crutchfield to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 17, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

353. See, e.g., Letter from Mary J. Powell to James B. McMillan (Aug. 3, 1970), *supra* note 346.

354. Letter from George L. Fitzgerald to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 9, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Fitzgerald, a New York native, attended college and law school at Syracuse University. He came to Charlotte in the early 1950s as an employee of Sealtest Foods, was admitted to the North Carolina bar in 1955, and started his own firm in 1956. Much of his practice focused on Social Security claims, where he would have encountered both the physicians mentioned in his letter as well as Judge McMillan. Resolution of the Bar of the Mecklenburg County Bar in Memory of George Lawrence Fitzgerald (July 21, 2011) (on file with author). The author thanks attorney Chad Smith of Charlotte for this information.

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Law professors at Cleveland State University, led by David Goshien (1937–2010), wrote in March 1970 to convey their support.³⁵⁵ Goshien believed the Judge had taken “a position of leadership,” and hoped that “shortly the propriety of your action will be demonstrated in a final decision and you and the Queen City will earn just distinction.”³⁵⁶ After the Supreme Court ruling in April 1971, Daniel H. Pollitt (1921–2010), a University of North Carolina at Chapel Hill law professor, told McMillan, “there are those of us who really are excited and pleased at your vindication by a unanimous court with a decision by Burger, no less.”³⁵⁷ Special praise came from Erwin Griswold (1904–1994), Solicitor General of the United States, who also wrote just after the Supreme Court decision.³⁵⁸ Griswold conceded his letter “may be a little irregular,” given that he and his office had just argued in the Supreme Court against McMillan’s ruling on behalf of the Nixon Administration, but he did not see any conflict in a pending matter, and communicated “on the basis of our long acquaintance and professional involvement.”³⁵⁹ Griswold thought McMillan “acted courageously [and] your every action has been wholly professional and in the highest traditions of our calling.”³⁶⁰ We “can be grateful that we have such fine and able people on the

355. Letter from Professors David B. Goshien, Frank Emerson, Hyman Cohen, James Boskey, William Tabac & Harvey Leiser to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 18, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). In an email to the author, Professor Tabac remembered the telegram “was inspired by the late David Goshien, who, I think, knew the judge. David was a friend of mine and leaned on my liberal nature to go along with it.” Letter from William Tabac to author (Jan. 27, 2014) (on file with author). Professor Goshien, a Massachusetts native, graduated from Brown University and the University of Chicago Law School before beginning a teaching career at Cleveland State. *David B. Goshien (1937–2010)*, ANCESTRY.COM, <http://boards.ancestry.com/localities.northam.usa.states.massachusetts.counties.bristol/6338/mb.ashx?nt=1> (last visited Aug. 23, 2014).

356. Letter from Professors David B. Goshien, Frank Emerson, Hyman Cohen, James Boskey, William Tabac & Harvey Leiser to James B. McMillan, *supra* note 355.

357. Letter from Daniel H. Pollitt to James B. McMillan, Judge, U.S. Dist. Ct. (Apr. 21, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Pollitt graduated from Wesleyan University and Cornell Law School. A Marine Corps veteran wounded in combat in the Pacific during World War II, he became a professor at the University of North Carolina at Chapel Hill in 1957 and was active in the NAACP and the ACLU. He had “a lifetime of defending civil rights, civil liberties, and fighting injustices in local, state and national arenas.” *Daniel H. Pollitt*, CARRBORO CITIZEN (N.C.), Mar. 10, 2010, available at <http://www.carrborocitizen.com/main/2010/03/06/obituary-daniel-h-pollitt/>. Pollitt sent similar congratulations to Julius Chambers. Letter from Daniel H. Pollitt to Julius Chambers (Apr. 21, 1971) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte).

358. Letter from Erwin Griswold, Solicitor Gen., U.S. Dep’t of Justice, to James B. McMillan, Judge, U.S. Dist. Ct. (Apr. 21, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

359. *Id.*

360. *Id.*

bench as you.”³⁶¹ Griswold described the Supreme Court’s decision as “remarkable,” “thoroughly statesmanlike, and fully up to the caliber of the *Brown* case itself,” especially in its guidance to lower federal courts.³⁶² He feared the problems of desegregation would “never end,” but hoped “the solutions are taking shape and we all owe much to you for your staunch and essential part in helping to bring that about.”³⁶³ Griswold wanted McMillan to “have an inner feeling that you have contributed mightily to [addressing] one of our country’s greatest problems.”³⁶⁴

A small number of liberals, who apparently did not know the Judge, voiced their approval. R.M. Robb of Middletown, Delaware, saluted McMillan for empathy, intellect, judgment, courage, and strength.³⁶⁵ He believed “you would live comfortably with your decision even if no-one stood with you.”³⁶⁶ According to Robb, “Blacks are people, and men such as you are gradually awakening us (whites and blacks) to that fact.”³⁶⁷ He hoped McMillan could rule, some day, “on whether our children are being denied their right to learn.”³⁶⁸ Monroe T. Gilmour, Jr. (b. 1946), a young Peace Corps Volunteer in India who had attended high school in Charlotte, thought it was “unfortunate that many of those in such [anti-busing] organizations as ‘Concerned Parents’ do not recognize the tremendous historical implications and excitement which should (and do) surround the implementation of true integration.”³⁶⁹ He was proud the nation was finally address-

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.* Griswold graduated from Oberlin College and Harvard Law School. He began teaching at Harvard in 1934 and served as the law school’s Dean from 1946–1967. President Lyndon Johnson appointed Griswold Solicitor General; he held the position into the Nixon administration, until 1973. In *Swann*, following the instructions of the President, he argued to the Supreme Court that the Charlotte system was not required to achieve any particular racial balance or ratios and that the United States Court of Appeals for the Fourth Circuit had been correct in remanding McMillan’s decision requiring busing of elementary school students. Dennis Hevesi, *Erwin Griswold is Dead at 90; Served as Solicitor General*, N.Y. TIMES, Nov. 21, 1994, available at <http://www.nytimes.com/1994/11/21/obituaries/erwin-griswold-is-dead-at-90-served-as-a-solicitor-general.html>; Brief for the United States as Amicus Curiae, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (Nos. 281, 349, 436), 1970 WL 122661. McMillan responded to Griswold with thanks, agreeing the Supreme Court opinion “faced the facts head-on, has decided everything that could be decided in the context of this case, and has indicated or reaffirmed some broad principles which will suffice to decide future school cases. The Court’s decision reflected principle, rather than politics: The system works.” Letter from James B. McMillan, Judge, U.S. Dist. Ct., to Erwin Griswold, Solicitor Gen., U.S. Dep’t of Justice (May 12, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

365. Letter from Dr. R.M. Robb to James B. McMillan (May 18, 1971), *supra* note 350.

366. *Id.*

367. *Id.*

368. *Id.* Robb appears to have been a physician.

369. Letter from Monroe T. Gilmour, Jr. to James B. McMillan, Judge, U.S. Dist. Ct. (May 9, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Gilmour, the son of a

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ing the issue and wrote that McMillan's "decisions and strength have provided a real inspiration for me."³⁷⁰ Anne Beidler (b. 1935) sympathized with the Judge's endurance of the "whirlwind of ire and passion."³⁷¹ Her "own experiences with dissent have made me no stranger to those feelings of discomfort and disharmony — even self-doubt and bitterness — which one can be driven to."³⁷² She reminded McMillan that a democratic majority could be wrong.³⁷³ In "these times of social upheaval, when many archaic practices and institutions must be changed, it seems that courts — and their hoped-for objectivity — are one of our best hopes. Thank God you are unyielding to the current mores."³⁷⁴

Friends, most of whom began their letters with "Dear Jim," also attempted to encourage McMillan. Louise Smith (1904–1992) of Greensboro proclaimed "Hooray! God Bless You!" after the Supreme Court ruling.³⁷⁵ In

Charlotte physician, grew up in a wealthy neighborhood on Granville Road in southeast Charlotte. He graduated from Myers Park High School in 1964 and Davidson College in 1968. He served in the Peace Corps in India from 1968–1972. His father was McMillan's friend and the men socialized at the Charlotte Country Club. Gilmour developed a life-long interest in social justice and became a leader in the Western North Carolina Citizens for an End to Institutional Bigotry. Author's Telephone Interview with Monroe T. Gilmour Jr. (Jan. 23, 2014); HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 412; W. N.C. CITIZENS FOR AN END TO INSTITUTIONALIZED BIGOTRY (WNCCEIB), <http://www.main.nc.us/wncceib/> (last visited Aug. 23, 2014).

370. Letter from Monroe T. Gilmour, Jr. to James B. McMillan (May 9, 1971), *supra* note 369.

371. Letter from Anne M. Beidler to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 12, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Beidler, a 1957 Duke University graduate and mother of three, was the widow of Norman R. Morrison. Morrison immolated himself outside Secretary Robert McNamara's office at the Pentagon in 1965 to protest the escalating Vietnam War. In 1967 Anne Morrison married William Beidler, a philosophy professor at Charlotte's Queens College. At the time of her letter they lived in a modest-sized house on an upper middle-class street in southeast Charlotte (Hampton Avenue). HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 77; John-Paul Flintoff, *I Told Them to Be Brave*, GUARDIAN (London), Oct. 16, 2010; ANNE MORRISON WELSH WITH JOYCE HOLLYDAY, *HELD IN THE LIGHT: NORMAN MORRISON'S SACRIFICE FOR PEACE AND HIS FAMILY'S JOURNEY FOR HEALING* (Orbis Books 2008); Eric Larson, *Surviving an Act of Conscience*, 87 DUKE MAG., Jan.–Feb. 2001, at 31. She wrote to provide strength to the Judge because of the criticism he experienced: "What he did required a lot of courage, probably well beyond his comfort zone." At the time of Norman Morrison's death she received support from "many friends and strangers" which gave her courage to go on and also "to uphold Norman's witness against the war." As for *Swann*, "no matter what happened subsequently in the efforts to achieve school integration, I believe he did the right thing. I still admire him greatly." Letter from Anne Morrison Welsh to author (Jan. 18, 2014) (on file with author).

372. Letter from Anne M. Beidler to James B. McMillan (Feb. 12, 1970), *supra* note 371.

373. *Id.*

374. *Id.*

375. Letter from Louise Smith to James B. McMillan, Judge, U.S. Dist. Ct. (May 3, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Smith taught high school in the Greensboro public schools. A 1927 graduate of the Women's College of the University of North Carolina and later a civil rights leader, she actively supported desegregation. *Interview by Louise Smith with William Chafe*, Feb. 9, 1973, <http://library.uncg.edu/dp/crg/oralHistItem.aspx?i=677> (last visited Aug. 23, 2014); Louise Covington Smith, C.R. GREENSBORO, <http://library.uncg.edu/dp/crg/personbio.aspx?c=104> (last visited Aug. 23, 2014).

early 1969, Charlotte's Harry Golden (originally Goldhirsch, 1902–1981), a well-known Jewish author and publisher, wrote to McMillan that he did “not envy you your forthcoming decision in the integration cases.”³⁷⁶ Yet Golden explained that “Freedom of Choice,” the current policy of the school board, “is not freedom at all, and neither is it a choice. It is all calculated to maintain a segregated society.”³⁷⁷ Atlanta provided a good role model. Instead of protecting Jim Crow laws, “they are selling insurance and building high rise office buildings and the money is rolling in.”³⁷⁸ Charlotte needed to understand “the tremendous wealth that would accrue to the city once this intransigence is ended.”³⁷⁹ For Golden, busing was the only practical answer.³⁸⁰ After *Brown*, Southern whites made many false threats about closing schools, and he believed in time busing would be accepted as well.³⁸¹ Denying black children the ability to go to school with whites was “a crime,” because black children lost the benefits of diversity.³⁸² He compared the situation to discrimination against Jews.³⁸³ When the worst forms of anti-Semitism ended, there was an exchange of ideas which produced “Heinrich Heine and Mendelsson and Disraeli and Einstein and Jonas Salk and millions of others who have enriched this world.”³⁸⁴ The interchange of ideas with others is the answer to all the problems of man.”³⁸⁵

Several individuals wrote simply to provide personal support. Glyn Thomas, a former Charlotte businessman living in Rocky Mount, understood the enormous pressures confronting the Judge.³⁸⁶ But he believed McMillan would “keep a strong hand on the ‘tiller.’”³⁸⁷ In response to a

376. Letter from Harry Golden to James B. McMillan (Feb. 12, 1969), *supra* note 349. Golden was born in the Austro-Hungarian Empire and emigrated with his family to Canada and later New York City. He graduated from high school in New York and attended City College. In the 1920s Golden worked as a stockbroker, but after the 1929 crash his firm failed and he was convicted of mail fraud. He served several years in Atlanta's federal prison (and was later pardoned by President Richard Nixon). In 1941, Golden changed his last name and moved to Charlotte. He published the *Carolina Israelite* from the early 1940s to the late 1960s and wrote a widely-read collection of essays, *ONLY IN AMERICA* (1958), along with many other books. Golden, a member of the NAACP, was a tireless opponent of racial and ethnic discrimination. *The Harry Golden Papers*, CHARLOTTE-MECKLENBURG STORY, available at www.cmstory.org/pcople/papersGolden.pdf (last visited Aug. 6, 2014).

377. Letter from Harry Golden to James B. McMillan (Feb. 12, 1969), *supra* note 349.

378. *Id.*

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. Letter from Glyn Thomas to James B. McMillan, Judge, U.S. Dist. Ct. (Mar. 26, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

387. *Id.*

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constituent survey by Congressman Charles Jonas (1904-1988), Thomas recommended McMillan for the Supreme Court.³⁸⁸ Although others were “making a mockery of a pretty serious matter,” Thomas wrote, “James B. McMillan is a man of principle and ability.”³⁸⁹ Joan Repetti, an elementary school student in Short Hills, New Jersey, who followed *Swann* in *The New York Times*, “was very impressed with your courageous decisions.”³⁹⁰ At one time she wanted to become President of the United States, but thanks to the Judge’s inspiration (and a school project on desegregation) her present ambition was to be a United States District Court judge.³⁹¹ John Austin “Jack” Tate (d. 2008), a bank president in Davidson, called McMillan’s decisions “clear and to the point, logical and forthright.”³⁹² He thanked McMillan for giving reviewing courts “no alternative morally or legally other than to agree with you or compromise completely their previous stand on the issues.”³⁹³ Although Tate himself had “little personally at stake,” he knew the Judge had much to lose and not much to gain by his decisions.³⁹⁴ Yet McMillan “demonstrated strong character, great moral integrity, and

388. *Id.*

389. *Id.*

390. Letter from Joan Repetti to James B. McMillan, Judge, U.S. Dist. Ct. (June 1, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Joan’s father, Peter Repetti, took her to the annual meeting of the Fourth Circuit Judicial Conference, where she met McMillan. She later attended Brown University and Emory University School of Law and worked in Atlanta at King & Spalding and Delta Airlines. Letter from Joan Repetti to author (Mar. 15, 2014) (on file with author). The Judge responded to Joan’s letter by writing that his method in *Swann* was to “study the facts, learn the law and think a little bit about the decencies of the situation and then try to make a decision which is correct.” He rejected the notion that a judge should “find out whether people are going to like his decision and do what he thinks most of the people like.” Instead, judges “must follow the Constitution and its current interpretations unless that would produce totally inhuman and or inhumane results.” The public has the long-term power to make any law or Constitution, but a judge has the “duty of following the law of the times.” He believed the most important consequence of the *Swann* decision was to reaffirm that “the Court operates on constitutional principle rather than functioning as a glorified Gallup poll.” Letter from James B. McMillan, Judge, U.S. Dist. Ct. to Joan Repetti (June 7, 1971) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

391. Letter from Joan Repetti to James B. McMillan (June 1, 1971), *supra* note 390.

392. Letter from John Tate to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 11, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Tate, a Charlotte native, graduated from the University of North Carolina at Chapel Hill in 1937 and Harvard Business School in 1939 (a classmate was Robert McNamara), the same period McMillan was a student at Chapel Hill and Cambridge. Tate has been described as “one of the major people that will be remembered in Charlotte as it was developing into a major city.” *Jack Tate*, CHARLOTTE OBSERVER, Oct. 14, 2008, available at <http://www.legacy.com/obituaries/charlotte/obituary.aspx?n=Jack-Tate&pid=118838143>; *Bulletin, HARVARD BUS. SCH. ALUMNI ASS’N* (Harvard Bus. Sch. Alumni Ass’n, Boston, Mass.), 1939, at 292, available at http://fraser.stlouisfed.org/docs/historical/eccles/077_14_0001.pdf.

393. Letter from John Tate to James B. McMillan (Aug. 11, 1970), *supra* note 392.

394. *Id.*

extreme personal courage.”³⁹⁵ Charles H. Crutchfield (1912–1998), president of the Jefferson Standard Broadcasting Company, thought it interesting to “see how people who are outside of legal circles interpret the Supreme Court [decisions on desegregation] from an entirely different point of view.”³⁹⁶ In March 1970, Crutchfield wrote a hopeful letter, stating he was telling acquaintances McMillan reached his “decision after long and careful consideration, and that you honestly and sincerely believe that this decision is correct.”³⁹⁷

Compared to the flood of letters from angry parents, McMillan received very few friendly letters from persons directly affected by busing. But Jeanne Bohn (1928–2013), whose thirteen-year-old daughter was bused to a formerly all-black junior high school, applauded McMillan’s “wisdom, intelligence and good judgement.”³⁹⁸ She looked forward to a “positive reaction,” and believed that if “the more viscious elements of our city and the cleverer race baiters are not given too much publicity our buses will roll on schedule.”³⁹⁹ As for her daughter, she prayed “her teachers suddenly

395. *Id.*

396. Letter from Charles H. Crutchfield to James B. McMillan, Judge, U.S. Dist. Ct. (Dec. 16, 1969) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Crutchfield operated WBTB and WBT radio, CBS affiliates in Charlotte. In the late 1960s, Jefferson Standard was part of the Jefferson-Pilot Corporation, which controlled Jefferson Standard Broadcasting, Jefferson Standard Life Insurance Company, and the Pilot Life Insurance Company. Crutchfield, a South Carolina native, innovated in broadcasting sports and country music. He also served as president of the Charlotte Chamber of Commerce. His generally conservative views, including on racial issues, suggest that one motivation for his letters to McMillan was to encourage moderation. Eugene Chadbourne, *Charles H. Crutchfield*, ALLMUSIC, <http://www.allmusic.com/artist/charles-h-crutchfield-mn0002159363> (last visited Aug. 23, 2014); Charles Harvey Crutchfield Papers, 1942–2000 (on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill), available at http://www2.lib.unc.edu/mss/inv/c/Crutchfield,Charles_Harvey.html (last visited Aug. 23, 2014); PATTON B. REIGHARD, *Charles H. Crutchfield, 1912–1998*, in THE BIOGRAPHICAL DICTIONARY OF AMERICAN RADIO 87–88 (Christopher H. Sterling, Cary O’Dell, & Michael C. Keith, eds., Routledge 2011).

397. Letter from Charles H. Crutchfield to James B. McMillan (Mar. 17, 1970), *supra* note 352.

398. Letter from Jeanne Bohn to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 4, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Bohn, a mother of two, was born in Chicago and graduated from Knox College, an institution founded by abolitionists. Her husband, Ralph P. Bohn, Ph.D. (1927–2012), also an Illinois native and a Presbyterian minister, taught philosophy and religion at Johnson C. Smith University and Belmont Abbey College. Jeanne Bohn was the director of communications for Charlotte’s WSOC-TV for more than twenty years. In 1970, the Bohn family lived on Ranch Road, in a very modest middle-class neighborhood of 1960s-built houses about two miles northwest of uptown Charlotte. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 107; Jeanne Zemek Bohn, SANFORD HERALD (N.C.), Mar. 1, 2013, available at <http://www.sanfordherald.com/obituaries/x670459290/OBITUARIES-FOR-MARCH-1-2013>; Ralph Paul Bohn, COX MEMORIAL FUNERAL HOME & CREMATORY, http://www.coxmemorialfuneralhome.com/fh/obituaries/obituary.cfm?o_id=1412499&fh_id=13435 (last visited Aug. 23, 2014).

399. Letter from Jeanne Bohn to James B. McMillan (Aug. 4, 1970), *supra* note 398.

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become wise, her principal suddenly become noble, and may those boys and girls who arrive with her, from near and far, make that better tomorrow I have been waiting half my life to see!”⁴⁰⁰ Lila G. Bellar (1928–2005), an attorney and mother of four, offered a legal and religious perspective.⁴⁰¹ Despite her education, she left the specifics of desegregation to “wiser and better informed minds.”⁴⁰² Bellar intended to cooperate fully with any decision, “as every law abiding citizen of our community should be doing.”⁴⁰³ During her rabbi’s sermon the previous Friday, the rabbi “begged the congregation not to make [McMillan] a scapegoat,” and blamed the situation on the lethargy of the school board and the community.⁴⁰⁴ Bellar realized that “[r]eform is never painless, comfortable or convenient.”⁴⁰⁵ She and her children’s generation simply had to confront the present “upheaval” and make the most of it.⁴⁰⁶ Bellar thought what McMillan “was helping to bring about must surely come one way or another,” and she hoped the Judge would be “blessed with continued strength, good health and inspiration during these trying times.”⁴⁰⁷ Beth Daniel (1916–2005), a “white resident of southeast Charlotte,” was “very proud” of the Judge and “very ashamed of some of my neighbors.”⁴⁰⁸ Despite her “despairing for this community so

400. *Id.*

401. Letter from Lila Bellar to James B. McMillan (Feb. 11, 1970), *supra* note 348. Lila G. Bellar, admitted to the North Carolina Bar in 1962, was among Charlotte’s few female lawyers. Born in Brooklyn, she studied violin at the University of Miami and graduated from New York University Law School. Bellar came to Charlotte in the 1950s with her husband, a Charlotte Symphony musician. A mother of four, in 1970 she lived on Hunter Lane in southeast Charlotte. She has been described as “a colorful solo practitioner who was the first female to practice criminal law here.” Bellar represented defendants in difficult criminal cases and was particularly interested in the protection of children and, eventually, gay and lesbian legal rights. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 81; Nancy Black Norelli, *Women at the Bar*, 26 MECKLENBURG B. NEWS. (Mecklenburg Cnty. Bar, Charlotte, N.C.), Mar. 2000, <http://www.meckbar.org/newsevents/NorelliMar00.pdf>; David Perlmutter, *1st Female Courtroom Lawyer in Charlotte*, CHARLOTTE OBSERVER, Oct. 20, 2005; *Lila Bellar*, N.C. ST. B., <http://www.ncbar.gov/gxwcb/wwwmember.aspx?Lila,Bellar> (last visited Aug. 23, 2014). Bellar also wrote Julius Chambers: “Please be assured that the thinking people in our community do not hold you personally responsible for what is happening in our schools. We know this great social reform is necessary and inevitable and someone must spearhead the movement.” Letter from Lila Bellar to Julius Chambers (Feb. 9, 1970) (in the Julius L. Chambers Papers, on file with the J. Murry Atkins Library, University of North Carolina at Charlotte).

402. Letter from Lila Bellar to James B. McMillan (Feb. 11, 1970), *supra* note 348.

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. Letter from Beth Daniel to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 8, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Mary Elizabeth Greene Daniel, a native of Drexel, North Carolina, lived on Jefferson Avenue, an upper middle class southeastern neighborhood built in the 1950s. Her husband, Arthur Fletcher Daniel (1918–1990), originally from Lexington, graduated from the University of North Carolina in 1939 and was a C.P.A. with his own firm

often, you have restored my faith in our judicial system.”⁴⁰⁹ A social worker for the school system, Daniel experienced a “time that tries the soul,” but McMillan’s leadership “makes it possible for me to keep trying.”⁴¹⁰

A few others inside the schools thanked McMillan. Mary J. Powell taught at Harding High School, “which was made nearly half black” after the former Second Ward High School closed.⁴¹¹ She learned “all-black schools (at least as they exist now) are not equal to all — or nearly — white ones.”⁴¹² The black students “were so poorly prepared that they could not begin to keep up with their white classmates,” and “our standards of behavior apparently did not coincide with those at their previous schools.”⁴¹³ It was necessary to train “these people in the rudiments of decency and courtesy.”⁴¹⁴ Despite the challenge, Powell appreciated the “lesson I learned — that integration is necessary and that the responsibility for integration must be shared equally by all schools.”⁴¹⁵ If this meant busing, “then that is what should be done.”⁴¹⁶ However, she disliked the idea that wealthier portions of the county could escape the burden.⁴¹⁷ Parents in less well-off sections of the city “love [their children] just as much and want just as many opportunities for them as the wealthier families do for theirs.”⁴¹⁸ Without McMillan and busing, black schools would persist, and “no armchair liberal in the southeast half would lift a voice to help them.”⁴¹⁹ Powell asked McMillan

in uptown Charlotte. Beth Daniel graduated from Chapel Hill in 1937 (the same year as McMillan, although her letter does not suggest she was aware of this) and began her career as a social worker with Charlotte’s welfare department in 1940. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1963, *supra* note 95, at 246; YACKETY YACK 1937 (Univ. of N.C. Annual, Chapel Hill, N.C.), 1937, at 75; YACKETY YACK 1939 (Univ. of N.C. Annual, Chapel Hill, N.C.), 1939; *Class of 1939*, 29 THE ALUMNI REV. 112 (Dec. 1940); 40 THE UNIVERSITY ALUMNI REPORT 42 (Aug. 1993); Arthur Fletcher Daniel, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=81975494> (last visited Aug. 23, 2014); Elizabeth G. Daniel, CRESTLEAF, <http://crestleaf.com/p/50ba9b77651a69c4d4c50962/elizabeth-g-daniel> (last visited Aug. 23, 2014).

409. Letter from Beth Daniel to James McMillan (Feb. 8, 1970), *supra* note 408.

410. *Id.*

411. Letter from Mary J. Powell to James B. McMillan (Aug. 3, 1970), *supra* note 346. Powell apparently taught at Harding High School through the 1970s. She lived on Lynnwood Drive, in southeast Charlotte, in attached housing built about 1950. In 2013–2014, Harding’s enrollment was about 3 percent white. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 743; 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

412. Letter from Mary J. Powell to James B. McMillan (Aug. 3, 1970), *supra* note 346.

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

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to keep the letter confidential, because she did not want to “lose favor” with her employer.⁴²⁰

Isabella White, after working as a summer intern at Dilworth Elementary School, assured McMillan that many people supported “you and your decision all the way.”⁴²¹ Her students at Dilworth included black children bused to Sharon Elementary in southeast Charlotte.⁴²² She believed busing was “a small price to pay to help them out of the inner city, and dullness of their lives.”⁴²³ The black children assumed “they do not amount to anything,” but White showed them “they were capable and I liked them.”⁴²⁴ She prayed “this community will rise above racism — for busing is not the real issue — and get on with educating the children in our society” for the benefit of all.⁴²⁵

Among the greater ironies of the letters was that although *Swann* was about integration, almost all of McMillan’s correspondence came from whites. But there were exceptions, and these letters also reflected constitutional values. In February 1970, the “Baptist Minister’s Conference #1” sent McMillan a formal resolution commending his “momentous deci-

420. *Id.*

421. Letter from Isabella White to James B. McMillan (July 17, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). White and her husband were teachers. In the late 1960s and early 1970s, Isabella worked at Hidden Valley Elementary School, while Charles taught music in the Charlotte-Mecklenburg system. They lived on Neal Road in northeast Charlotte. In 2013–2014, Dilworth Elementary, located in a now gentrified area near uptown, was almost 72 percent white. Northern suburban Hidden Valley was less than 2 percent white, while southeastern suburban Sharon Elementary was more than 72 percent white. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 980; 2013–14 Grade/Race/Sex Report School Month 3, CHARLOTTE-MECKLENBURG SCHS., *supra* note 29.

422. Letter from Isabella White to James B. McMillan (July 17, 1970), *supra* note 421.

423. *Id.*

424. *Id.*

425. *Id.* Another letter-writer, Bill Kuenzli, viewed desegregation as religious duty. He sent the Judge copy of his letter to the *Charlotte Observer*, in which he described McMillan as “an active member and officer in another well-known liberal group called the C.H.U.R.C.H.” The leader of this organization was “crucified for teaching such revolutionary and distressing ideas as that ‘You should do unto others as you would have them do to you.’” McMillan should be praised for believing in a “Constitution that was drawn up by a bunch of ‘young radicals’” (Thomas Jefferson, for example) who stood for the proposition that “all men are created equal and have equal rights under the law.” Letter from W.D. Kuenzli to Editor, *Charlotte Observer* (July 6, 1969), *supra* note 351. Wilbur David Kuenzli (1910–1986) was an associate pastor at Plaza Presbyterian Church, where McMillan once led Sunday school lessons. An Ohio native and World War II veteran, Kuenzli graduated from Wittenberg University in 1937. He lived in east Charlotte on Erskine Drive. HILL’S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 528; *Class Notes, 1920–1950*, 1 WITTENBERG MAG. ONLINE 1 (Winter 1999), available at http://www4.wittenberg.edu/administration/university_communications/magazine/volume1/issue2/3050.html; *Wilbur David Kuenzli, 1910–1986*, Minutes of the Annual Session of the Synod of North Carolina, Presbyterian Church, available at <http://www.mocavo.com/Minutes-of-the-Annual-Session-of-the-Synod-of-North-Carolina-Presbyterian-Church-1985/657646/402#401> (last visited Aug. 23, 2014).

sion.”⁴²⁶ Despite the general hostility among whites to busing, “as citizens and christian ministers, we stand ready to abide by all laws based on the constitution of the United States, and so commend our congregations to do the same.”⁴²⁷ McMillan interpreted “the law in line with the constitution of the United States so that justice may be applied to all citizens alike,” and they hoped God would grant the Judge wisdom.⁴²⁸ Based on their reading of his decisions, they understood he relied on the Constitution, “which is the only stay line for justice in our system of government.”⁴²⁹ They also believed there was a higher source for governance: “May God be praised for a man of your courage.”⁴³⁰

Odis Rousseau III (1924-1990) offered an exceptionally powerful perspective.⁴³¹ Rousseau attended the Agricultural & Technical College of

426. Letter from The Baptist Minister's Conference to James B. McMillan, Judge, U.S. Dist. Ct. (Feb. 9, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill). Dr. A. Jackson Ryans (1892-1975), pastor of the Ebenezer Baptist Church, then located on East Trade Street uptown, and Reverend L.D. Parker (1923-1998), pastor of St. Luke's Missionary Baptist Church, signed the letter. Armster Jackson Ryans lived adjacent to the church with his wife, Arline Jones Ryans, and his four children. A South Carolina native, he resided in Richmond, Virginia, in the 1920s and 1930s and completed a divinity degree at Virginia Union University in 1938 with a thesis on “The Social Organism of Christ: The Times of the Apostles.” Ryans served as pastor at First Baptist Church in Wilmington before moving to Charlotte in the 1940s. Shaw University, in 1957, awarded him an honorary doctor of divinity degree. Ryans was president of the Mecklenburg chapter of the NAACP and Ebenezer Church played a substantial role in the city's civil rights movement. *Ryans, Armster Jackson [Selective Service Registration Card]*, FOLD3, <http://www.fold3.com/document/285150051/> (last visited Aug. 24, 2014); *Marie Arline Cannon*, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=60309330> (last visited Aug. 24, 2014); Armster Jackson Ryans, *The Social Organism of Christ: The Times of the Apostles* (1938) (unpublished master's thesis, Virginia Union University) (on file with the L. Douglas Wilder Library, Virginia Union University); *Shaw University Bulletin 1956-1957* (Shaw Univ. Office of Publ'n, Raleigh, N.C.), 1957, at 120; HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1948-1949 226 (1948); *Shaw University Bulletin 1945-1946* (Shaw Univ. Office of Publ'n), 1946, at 101; *Armster Ryans*, CRESTLEAF, <http://crestleaf.com/p/50ba9ab8651a69c4d4bca338/armster-ryans> (last visited Aug. 24, 2014). Reverend Parker, a Matthews, North Carolina native, received his education in public schools, Johnson C. Smith University, Charlotte's Teamer School of Religion, and Shaw University. He was pastor of St. Luke's, on Rodey Avenue in north Charlotte, for more than forty years. HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1958 665 (1958); *Rev. L.D. Parker*, FINDAGRAVE.COM, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=40294326> (last visited Aug. 24, 2014).

427. Letter from The Baptist Minister's Conference to James B. McMillan, *supra* note 426.

428. *Id.*

429. *Id.*

430. *Id.* Spiritual faith motivated many others who favored busing. Two writers, for example, told Julius Chambers, “Our times demand that we take all account to rectify tradition where it failed to provide for the underprivileged, or disenfranchised among us; so as to provide equitably to all citizens of this grand and glorious land of ours under God as expressed by the lonely Nazarene, the prophets, the philosophers, and all sages that yet live emblazoned on this heritage of ours.” Letter from Robert A. Meachem and Carrie G. Burton to Julius Chambers (Feb. 16, 1970) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte).

431. Letter from Odis Rousseau III to James B. McMillan, Judge, U.S. Dist. Ct. (Aug. 24, 1970) (in the James B. McMillan Papers #4676, on file with the Southern Historical Collection, Louis Round Wilson Special Collections Library, University of North Carolina at Chapel Hill).

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North Carolina in Greensboro between 1940 and 1946, a period interrupted by military service.⁴³² The Statesville native trained in history, then taught in the segregated Columbia, South Carolina, schools during the 1940s and 1950s.⁴³³ By the early 1960s, he was a world history teacher at West Charlotte High School.⁴³⁴ Rousseau lived on Burbank Drive, in a modest middle class black neighborhood built in the early 1960s northwest of uptown.⁴³⁵ His wife, Sadie, was a teacher at Druid Hills Elementary School, located near St. Luke's Missionary Baptist Church, while his daughter, Yvonne, taught at Merry Oaks Elementary in east Charlotte.⁴³⁶ Rousseau's son, Alan, graduated from West Charlotte in 1970, while his other daughter taught in the Greensboro public schools.⁴³⁷ Not only did Rousseau and his family have daily contact with Charlotte's schools, Rousseau took a personal interest in *Swann's* proceedings.⁴³⁸ He attended the Court's sessions during the summers of 1969 and 1970, when the plan was under intense discussion.⁴³⁹

Rousseau told the Judge he wanted to "express the admiration of many people of this community."⁴⁴⁰ He admitted his perspective was affected "by the fact that I am black and a school teacher."⁴⁴¹ He saw in McMillan "tolerance, fairness, restraint, [and a] sense of justice and legal excellence."⁴⁴² It was with "shame, discouragement and apprehension that I must observe so many in our community who have allowed racism, ignorance, vested

432. *Id.*; Odis A. Rousseau: *Enlistment Record from WWII*, WW2ENLISTMENT.ORG, <http://www.ww2enlistment.org/index.php?page=directory&rec=4928772> (last visited Aug. 24, 2014); THE LION (W. Charlotte High Sch. Annual) (1963), at 22, available at <http://www.mocavo.com/The-Lion-1963-West-Charlotte-Senior-High-School-Charlotte-North-Carolina/205305/19#26>; 34 BULLETIN OF AGRICULTURAL AND TECHNICAL COLLEGE OF NORTH CAROLINA 185 (July, 1943), available at <http://library.digitalnc.org/cdm/ref/collection/yearbooks/id/7750>; HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1969, *supra* note 221, at 961; HILL'S CHARLOTTE (MECKLENBURG COUNTY, N.C.) CITY DIRECTORY 1971, *supra* note 98, at 77. According to Alan G. Rousseau, son of Odis Rousseau, Alan belonged to West Charlotte High's first integrated class as well as the school board's Student Advisory Committee for Integration. One of Odis Rousseau's daughters participated in the 1960 Woolworth sit-ins in Greensboro. Letter from Alan G. Rousseau to author (Mar. 4, 2014) (on file with author).

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

437. *Id.*

438. Letter from Odis Rousseau III to James B. McMillan, *supra* note 431.

439. *Id.*

440. *Id.* Julius Chambers also received intensely-felt praise. One couple wrote, "You cannot imagine how many black hearts swell with joy to see you perform in court," and there "are those of us who are unable to express our thanks and thoughts, you can bet that our hearts are proud, our smiles are loud and your name is a household word." Letter from Brumit and Edith De Lane to Julius Chambers (June 29, 1969) (in the Julius L. Chambers Papers, on file with the J. Murrey Atkins Library, University of North Carolina at Charlotte).

441. Letter from Odis Rousseau III to James B. McMillan, *supra* note 431.

442. *Id.*

interest and emotionalism to keep themselves from seeing and understanding the true issues involved.”⁴⁴³ Rousseau referred to his years in South Carolina, when federal Judge Waties Waring (1880-1968) of Charleston had been ostracized and effectively exiled for recognizing black rights.⁴⁴⁴ It might help McMillan to avoid a similar fate to “know that there are many, many, many in the black community who would like for the world to know how much we, as citizens, understand, admire, appreciate, and thank God that a gentleman, humanist, wise and learned judge” was able to conduct the kind of deliberations “so vital to the establishment of the true, constitutional, democratic ideal of Americanism.”⁴⁴⁵ Suggesting the reason McMillan received so few letters from blacks, Rousseau stated it was difficult to convey this message “because past experiences make us know that this could be and would be used to make all situations more difficult for you.”⁴⁴⁶ Like many others, Rousseau observed the Constitution from a religious perspective.⁴⁴⁷ He believed “Divine Guidance” shaped “the drafting of the Constitution, the Emancipation Proclamation, the *Brown* Decision [and was present] at so many more events that have liberated and elevated mankind.”⁴⁴⁸ Surely this force directed McMillan also and Rousseau prayed for the Judge’s continued “courage and wisdom.”⁴⁴⁹

IV. CONCLUSION

The letters to Judge McMillan allow several conclusions. First, the public was well-informed about *Swann* and took great interest in the case. Second, Judge McMillan received a large number of hostile letters about his opinions and relatively few supporting ones. Third, some opponents of his orders represented a radical and racist fringe, but most were parents, students, and ideologues who, in some fashion, looked to the Constitution for answers and inspiration. The radicals’ understanding stood partly on constitutional grounds, albeit a Constitution rooted in Jim Crow and white supremacy. For the majority of the Judge’s white opponents, a different kind of legalism prevailed. Their constitutional arguments focused on the threat from busing to other rights, such as the rights of property, freedom of association, freedom of movement, taxation based on consent of the governed, local control of school matters, and democratic limitations on the power of unelected officials. McMillan’s opponents offered a legal defense of free-

443. *Id.*

444. *Id.*

445. *Id.*

446. *Id.*

447. *Id.*

448. *Id.*

449. *Id.*

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dom, against coercion, and a constitutional preference for their understanding of liberty over what they viewed as forced equality.⁴⁵⁰ The opponents tended to be white middle-class men and women, especially parents of school-age children, in the northern, southern, or eastern suburbs, and they most often lived in newer neighborhoods constructed in the 1950s and 1960s. They likely did not graduate from elite universities, even if several clearly had high incomes. Fourth, and in contrast to the more legalistic constitutionalism of his opponents, Judge McMillan's supporters generally relied on moral reasons for busing and school integration. Their dominant constitutional value was racial equality, derived primarily from religious and ethical sources. This ideal apparently trumped man-made legal rights, which in the past sanctioned discrimination. None expressly argued that *Brown* or the Fourteenth Amendment required busing. They viewed the Constitution as an evolving document that should reflect new standards of equality, especially on racial matters.⁴⁵¹ Supporters' letters disproportionately came from well-educated men and women, many of whom possessed advanced degrees from universities outside of North Carolina, lived in the wealthier areas of the county, and belonged to the professional class.

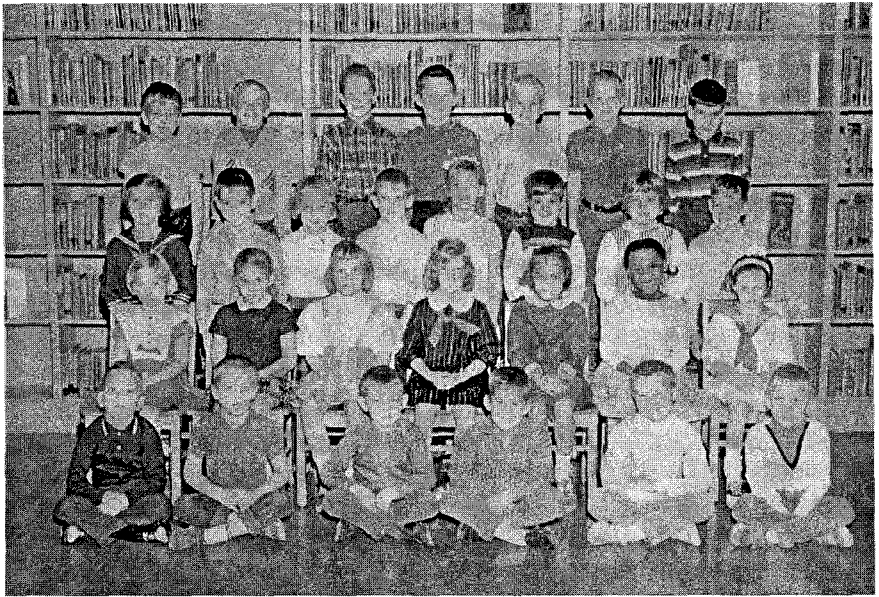
Finally, the letters to Judge McMillan suggest the correctness of Tocqueville's observation about the relationship between the Constitution, the courts, and public opinion. As the Judge understood, his decision rejected the moderately integrationist constitutional values of most white people in Mecklenburg County. This was both a risk and an opportunity. In the white

450. The formal legal argument for the School Board in the Supreme Court was fundamentally the same as that articulated by most of McMillan's citizen critics, especially on the themes of its lack of respect for democracy and financial cost. Thus, as the lawyers put it, "[i]t is the School Board's duty to determine whether the dollars allocated to it by other elective officials (the Board of County Commissioners for Mecklenburg County) for the education of our children shall be spent for *books or buses*. It is for the Board to determine whether the existing transportation system shall be expanded or contracted, whether it is educationally good or bad to stagger the opening and closing of schools at any particular grade level, whether after school activities will suffer, whether inconveniences and disruption to children and parents are justifiable, whether overloaded buses are acceptable or safe, whether the time of children in transit is justifiable and how the host of other value judgments and policies shall be made to administer effectively a large complex metropolitan school system charged with awesome responsibility of providing 84,500 school children in 103 schools with a quality education." Moreover, "[a] court mandate that edicts racial balancing and forced bussing supplants the value judgments of the elected school board and the educators on its administrative staff. An overdose of judicial paternalism and control will ultimately sign the death warrant for public education." Brief of Respondents at 91-92, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (No. 281), 1970 WL 122646.

451. In its essence, without the detail or reference to legal precedent, this was the same argument for McMillan's order put forward by the Plaintiffs-Petitioners in the Supreme Court: "Good schools, as well as the moral imperatives of a pluralistic society, demands desegregation of the schools. How can school desegregation be accomplished in cities and suburbs with long-established racial housing patterns? What method can circumvent the hard fact that segregated neighborhoods foster segregated neighborhood schools? One tried and tested means is the transportation of children out of their immediate neighborhoods by school bus." Brief for Petitioners at 78, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (No. 281), 1970 WL 136776.

majority's mind, busing represented a contest between potentially conflicting constitutional principles of liberty and equality. For a range of reasons, which in complex fashion included both racism and opposition to racism, the majority preferred a particular kind of liberty to what it viewed as the coerced kind of equality present in busing.⁴⁵² They tended not to consider the inherently coercive effects of racial inequality. By contrast, McMillan's supporters generally discounted the coercive quality of busing, its impact on liberty, and the ethical implication of this coercion. To the supporters, a new constitutional future under a more challenging and morally demanding version of racial equality was worth busing's price. This contest between freedom, equality, and their moral and legal meanings is as ancient as the American republic. More importantly, letters to the Judge show that its translation into a contest over judicial power continued into the community, just as Tocqueville would have predicted. The subsequent legal and political history of desegregation, meaning the demise of busing and the partial resegregation of Charlotte's schools, reflects this reality. The school data presented show that whites, now fifty years after *Swann* began, have a scant presence in many Charlotte schools, just as they did in the mid-1960s, before Judge McMillan's orders. As a result, it is easy to see the longer-term political, ethical, and legal successes of one version of liberty over a contrary understanding of equality in Charlotte schools since the 1970s. The letters to Judge McMillan powerfully demonstrate the practical meaning of "We the People" in the context of race, the Constitution, and public opinion.

452. See SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK?, *supra* note 28, at 307–08. An excellent discussion of this theme is John Charles Boger's observation that for school desegregation there is an ongoing "struggle to mediate" between liberty and equality: "Americans in every generation must prioritize these two venerable values, weighing their desire for individual freedom against their commitment to equal opportunity and collective responsibility." Boger argues that in the early twenty-first century, many "have opted for liberty – some beguiling amalgam of individualism, libertarianism, and market theory. Whites who live in the South and West appear especially likely to have cherished liberty over equality." In the school arena, this means a "greater demand for 'freedom of choice' in selecting their children's schools." The evidence presented here suggests an emphasis and priority on liberty over equality regarding school choice was already well-established as a constitutional principle among middle class whites in Mecklenburg County by the late 1960s. Two recent studies that capture the complexity of white responses to the civil rights movement across a range of issues are JASON SOKOL, *THERE GOES MY EVERYTHING: WHITE SOUTHERNERS IN THE AGE OF CIVIL RIGHTS, 1945-1975* (2006), and JOSEPH CRESPINO, *IN SEARCH OF ANOTHER COUNTRY: MISSISSIPPI AND THE CONSERVATIVE COUNTERREVOLUTION* (2007).



Ms. Elizabeth Kendrick's first-grade class, Eastover Elementary School, 1965–1966. Edith Swann is seated on the second row, second from the right. A younger version of the author is on the first row, third from the left.