Buffalo Law Review

Volume 13 | Number 2 Article 15

1-1-1964

The Stereotype: Hard Core of Racism

Louis Lusky
Columbia University

THE STEREOTYPE: HARD CORE OF RACISM

LOUIS LUSKY*

THE Great Debate of our time centers upon the question whether and how we can learn to live at peace with our neighbors at home and abroad. On the domestic side, the major segment of that Debate concerns justice to the Negro.

Much work has been done to hammer out rules of law and institutional mechanisms adequate to fulfil the broad promise of the equal protection clause and to reconcile it with other basic values of our society, such as the preference for decentralized government and the preservation of individual freedom in the choice of personal associates and the use of property.[1] As advances are made, it is well to keep the ultimate goal constantly in mind. Otherwise it may be hard to tell whether an offered compromise is a highway or a dead end—since the acceptability of a compromise ordinarily depends on whether it involves disfigurement of a basic principle. Forgetfulness of the strategic objective may even lead to tactical measures that regress from it.

The strategic objective is *perfection of a single community*, pluralistic in culture but unified by mutual empathy,[2] rather than development or preservation of two distinct communities co-existing uneasily at arm's length. What has prevented us from achieving it during the whole century following emancipation is the stereotype that has hindered most whites from seeing their Negro brothers as the individuals they are. The stereotype still holds us in thrall. Our strategic objective is to obliterate it—to work a change in the mode of looking at Negroes, analogous (in quality if not in degree) to the change that took place, between the 1928 defeat of Al Smith and the 1960 election of John F. Kennedy, in the mode of looking at the Roman Catholic.

Let us be clear about what we mean by "stereotype." It is a conception of a group of people as possessing, each of them, certain characteristics that are believed to inhere in the group; a conception that is factually erroneous; and a conception that is impervious to rational refutation because it is rooted in the emotions rather than the intellect.

The stereotype is more than a simple overgeneralization about human attributes and behavior. A belief that redheaded children are hot-tempered does not blind us to reality because, having no emotional stake in the validity of the proposition, we are not hampered by it in appraising truly the temperament

* Professor of Law, Columbia University. A.B. 1935, University of Louisville; LL.B. 1937, Columbia University.

1. Valuable work in identifying this reconciliation problem, and suggesting an approach to it, has been done by my colleague Louis Henkin in his ground-breaking article, *Shelley v. Kraemer: Notes for a Revised Opinion*, 110 U. Pa. L. Rev. 473 (1962). Professor Henkin appears to conceive of equal protection and due process as competing principles. Perhaps it would be more useful to regard them as cooperating forces, both contributing to the perfection and preservation of an open society, which must be kept in balance for best achievement of that end. *Cf.* Lusky, *Minority Rights and the Public Interest*, 52 Yale L.J. 1 (1942).

2. See Lusky, *Peace . . . the Presence of Justice*, 17 The Humanist 195, 198 (1957).

of a particular carrot-topped angel. The stereotype, on the other hand, involves a sort of hysterical paralysis engendered by a strong need to believe that each member shares the assumed characteristics of a group to which he belongs.

Of course, there is no single stereotype of the Negro. Some people attribute to him one complex of qualities, others a different one. There may even be Negroes who have a stereotyped view of their own race. But this variegation does not affect the presently pertinent point, which is that *any* stereotype results in a partial blindness to the actual qualities of individuals, and consequently is a persistent and prolific breeding ground for irrational treatment of them. Not unnaturally, the prevalent conception held by the white population in the Deep South has tended to remain close to the historic prototype derived from chattel slavery; and because it has achieved frequent and explicit articulation, we shall deal with it as "the" stereotype of the Negro—recognizing the over-simplification involved.

In order to understand the importance of the stereotype, one must ask and answer the question, "How can a decent human being—a man so gifted with the common touch that he can win election to the office of governor or mayor or assemblyman or judge or sheriff—bring himself to treat other human beings as though they were outside the community of man?" *It is a psychological impossibility* unless he really believes and feels that Negroes as such—not just particular Negroes, or most Negroes, but all Negroes except perhaps a handful so small that the few exceptions can be disregarded as biological sports—are essentially different from whites. It is necessary for him to believe and feel that it is *just* to treat Negroes as a class apart. He must preserve the aloofness revealed by the school teacher of Arolsen, Germany, who in 1945, referring to the Negroes who had appeared with the American occupation forces, declared, "But their souls are different." And, to that end, he must nourish and preserve the stereotype which was imprinted upon his mind and heart from his earliest childhood—the stereotype that depicts Negroes as relatively unteachable, and therefore ignorant; as insensitive to the demands of abstract ideals, and therefore less troubled by discrimination than the white man; as motivated solely by appetite for the creature comforts, and therefore appeasable with access to fried fish, liquor and women; as devoid of moral fibre, and therefore predisposed to crime; as scornful of cleanliness and personal fitness, and therefore susceptible to disease. Unless he really believes and feels these things, he cannot keep the Negro "in his place" and still maintain his own self-esteem.

When this is understood, it becomes clear why the segregation issue has been so fiercely contested on both sides. One might have thought that champions of racial equality would give priority to the elimination of substantive discrimination in such fields as education, voting, housing, employment and public accommodations, reserving until later the question whether segregation *as such*, with the insult that it implies, is unlawful. This, however, would have overlooked the fact that segregation's significant function is not to deliver an insult but

to preserve the group stereotype by minimizing contact between the races in situations where they would necessarily see and deal with each other as individuals, and by putting the official imprimatur on the proposition that Negroes and whites differ in a legally material way.

Proponents of Negro rights appear to have grasped the central significance of this function. Their election to press firmly for the ending of school segregation is a correct one, measured against the strategic objective suggested above. For when the youngsters see their classmates as individuals, each with his own personality, his own virtues and failings, the stereotype tends to melt away and the psychological self-justification for white supremacy is correspondingly weakened.

Conversely, preservation of barriers to association would provide a fertile matrix for new discriminatory devices even if all the present ones were outlawed. Whites outnumber Negroes in every state of the Union; and where the white constituent majority operates as a bloc insensitive to the interests of the Negro minority, state legislatures have little difficulty in enacting new statutes faster than the old ones can be thrown out by the courts.[3] However plainly unconstitutional such statutes may be, they at least serve as a means of concerting private coercive action to preserve the status quo—not only through the criminal violence of lynch law, but through the quieter yet almost equally effective medium of evictions, denials of credit, discharges and other forms of boycott. And these are the modes of resistance that are hardest for the law to overcome.[4] They can preserve the substance of white supremacy, as untouchability has been preserved in India, long after its original legal supports have been replaced by legal prohibitions.

What are the most promising avenues of attack on the stereotype? First of all, it seems clear that escape from it is easier for children than for adults. Whether this is because it is a culture-connected phenomenon which, as declared in the song from *South Pacific*, "You've Got to Be Carefully Taught," or whether children have less difficulty than parents in seeing the realities ("The King has no clothes on!"), or whether continuing exploitation of unequal status, as one grows older, creates a growing vested interest in the resulting material benefits (coupled with an ever-heavier sense of guilty responsibility for acceptance of a tainted legacy)—whatever the reason or reasons, the stereotype is at its most vulnerable (and perhaps is even preventable) during the pre-school period; is still significantly vulnerable (though decreasingly so) during the elementary and high school years; and takes on its full toughness only thereafter.

It also seems clear that, although it is difficult if not impossible for an adult to free himself completely of the stereotype acquired in childhood, *his*

3. *Id.* at 201; see Peltason, Fifty-Eight Lonely Men 93 (1961).

4. See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Colum. L. Rev. 1163, 1169-71 (1963); Lusky, *Justice with a Southern Accent: Do Our Federal Courts Need Emancipating?*, Harper's Magazine, March, 1964, p. 69.

attitude toward such astigmatism is subject to modification. He may never be able to see a Negro with clear eyes himself, but he may come to regard the visual defect not as a badge of noble birth but as the crippling disability that it is. In other words, he may become ashamed of it rather than proud. And if he does, he may try to keep from passing it along to his children during their vital pre-school years. Most parents want their children to grow up healthy and whole.

What does it take to stop a man from believing that his stereotype gives him an essentially accurate picture of the Negro? To this question there is no single, comprehensive answer. Different people achieve their view of reality in different ways. But one general proposition can safely be advanced: actions speak louder than words, and—in this particular quarter—Negro actions speak louder than white. The egalitarian sermon of a white minister, for example, may serve as a useful assurance to his parishioners that escape from the stereotype will not be frowned upon by him or the group for which he speaks. If he goes further, and makes his protest against void or unjust laws and customs by subjecting himself to arrest and prosecution for violating them, the depth of his feeling will be the more unequivocally communicated; and the message may operate with telling effect not only on those who look to him for moral guidance, but also on the makers and enforcers of the law. The direct attack on the stereotype, however, can only be made by the Negro himself. One who sees him conduct himself like a man in a situation where manly conduct is difficult, cannot continue comfortably to regard him as subhuman. And though the stereotype cannot be destroyed outright by official mandate, the law *can* give the Negro a means of revealing himself to his fairer-skinned brother.

I saw this process at work during the Mississippi Freedom Rider litigation in the spring and summer of 1961.[5] The NAACP had sued in the Federal District Court at Jackson, for an injunction against prosecution of the Riders for ignoring the local customs as to segregation in public travel—customs backed by state statutes and a city ordinance that were plainly unconstitutional, requiring Negroes to sit in the back of buses and use segregated waiting rooms in the terminals. The injunction suit was filed June 9, 1961. The next three months and more were devoted to a remarkably effective delaying action during which the stage was held by the lawyers rather than the living witnesses. Then, after 108 days of legal sparring, the flesh and blood of the case became visible. A few samples of the testimony—given in a courtroom crowded by whites and Negroes both—will give a glimpse sufficient to illuminate the present point.[6]

Medgar W. Evers, who had been Field Secretary of the NAACP in Jackson since 1954, testified that on March 11, 1958, at about 1:30 A.M., he boarded a bus at Meridian, Mississippi en route to Jackson and took a front seat just behind the driver. The driver told him to move back. He refused. Evers said

5. Bailey v. Patterson, 199 F. Supp. 595 (S.D. Miss. 1961), *vacated and remanded*, 369 U.S. 31 (1962); 206 F. Supp. 67 (S.D. Miss. 1962), *rev'd in part*, 323 F.2d 201 (5th Cir. 1963), *cert. denied*, 32 U.S.L. Week, 3290 (U.S. Feb. 17, 1964) (No. 708).

6. Trial transcript, pp. 139-236, Bailey v. Patterson, *supra* note 5.

that the driver phoned the police (this being the only part of his testimony that the driver, a later witness, denied) and notified the ticket agent. The police came and demanded Evers' identification. He showed them his American Legion and NAACP cards. They took him to the police station, detained him twenty minutes, and let him go back to the bus. He sat in the front seat on the right side of the bus, which then started toward Jackson. Three or four blocks later the bus was flagged down by a taxi. A man got out of the taxi, boarded the bus, and hit Evers in the face. The driver told the attacker to get off the bus but did nothing to prevent the attack or detain the criminal.

John Frazier, a college student from Greenville, Mississippi, testified that on August 26, 1960, he took an interstate bus from Atlanta to Greenville and sat in the second seat from the front. The driver told him to move back but he did not. At Montgomery, Alabama, a new bus driver took over and also told him to move back, saying that his safety could not otherwise be guaranteed. In Columbus, Mississippi, Frazier changed to another bus and sat on the front seat. The driver said, "Nigger, you're not going to sit up in the front seat of this bus." Frazier ignored the driver. The bus made several stops between Columbus and Winona (including one non-scheduled stop) and the driver got off several times. At Winona, the sheriff and a deputy met the bus. Frazier went to the colored restroom and brushed his teeth (having traveled all night), and came out to reboard the bus. The sheriff and deputy said, "Nigger, we want to see you." The deputy beat him with a blackjack and the sheriff with his fists until he was semi-conscious, saying, "You had no business sitting on the front seat of that bus. You know you are a Mississippi Nigger and that does not work here." Several white men had come from the other side of the station and held Frazier while the sheriff and deputy beat him. When he came to, he was in the rear of a police car being cursed by the sheriff. A doctor came to the jail to treat his injuries.

Having been charged with disturbing the peace and resisting arrest, he was granted permission next morning to phone a friend in Jackson, and asked her to get him a lawyer and to help obtain his release on $2000 bond. Before he could tell the whole story, however, the phone was snatched from his hand and he was beaten again. The doctor returned, stopped his nosebleed, and gave him something for his headache.

The following morning he went to court for trial, but experienced another nosebleed and was taken back to jail. He was later tried and convicted.

Helen G. O'Neal, a student at Jackson State College, testified that on Labor Day, September 4, 1961 (the same month as the federal court trial), she boarded the 1:20 P.M. bus at the Jackson terminal, bound for Clarksdale, and took the second seat from the front. The driver told her she might be in someone's seat. She said that, if so, she would move when asked—or perhaps the other person would share a seat with her. The driver left the bus and came back three minutes later with a police officer, who said, "Girl, you'll have to move. That's

the way it is. I'll arrest you if you don't." She refused; was arrested; was taken to the police station; was questioned and photographed; and was taken back to the bus station at about 6 P.M. By that time her bus had gone and she had to wait for the 7:15 bus. She had had no lunch, and her request to stay at the jail long enough to get supper there was denied, but the police officer who took her back to the bus station—note this well—gave her a dollar to buy food.

On cross-examination it was brought out that she had been arrested on July 19, 1961, for picketing a meeting of Southern governors in Jackson, with signs saying, "Why don't you join the United States of America?" (Since the First Amendment protects her right to do this, the arrest was, of course, illegal.) An officer of CORE who was picketing with her was also arrested. She testified, however, that she was not a member of CORE or the NAACP.

She was asked whether she was a member of any organization listed by the United States Attorney General as subversive. She said no. She was shown the Attorney General's list, and was asked to examine it and answer the question again. She glanced through it and repeated that she didn't belong to any organizations listed. Counsel expressed great surprise, and with ponderous emphasis said he wanted the record to show that although the list had hundreds of names on it, she had looked at it for approximately one minute. She remarked mildly that she didn't belong to *any* organizations—so that there had been no need for her to look at the list at all.

She was asked how she could claim not to be a member of CORE when she was arrested while picketing with a CORE officer. She replied, patiently and sweetly but seriously, that she would work with anyone who was seeking equality and justice for all people.

The demeanor and appearance of these and other witnesses was as eloquent as their narratives. Miss O'Neal was a pretty twenty-year-old, in the bloom of youth. Frazier could have been an Olympics competitor, alert and straight. Evers was a quiet-spoken man, exact but not pretentious in his language, who must have looked well in his wartime uniform. They were not self-assertive. They made no attempt to dramatize themselves. They gave quiet, firm, concise, responsive and intelligent answers to the questions put to them. Skillful cross-examination by a battery of experienced trial lawyers, backed by the investigatory resources of the state and local governments and the defendant carriers, did not impeach the essential veracity of their testimony.

As I watched and listened, I realized that something was happening to my own conception of the Negro. I was raised in Kentucky and had practiced law there for sixteen years. I had spent little time in the Deep South; but Kentucky was once a slave state, and the vestiges remain. As an observer in the Federal district court, my initial attitude was that the Freedom Rides had already served the purpose of proving Southern defiance of federal law, and had passed the point of diminishing returns. Throughout the preliminary hearings I tended to view the proceedings primarily in their aspect as interesting and

difficult legal problems, and my main emotional reactions arose from doubts as to whether the judges and lawyers were in all respects fulfilling their professional obligations. But when the living witnesses appeared, I could not help seeing their tribulations as a quiet but determined search for justice by humble people whose faith in the ultimate fairness of our law and our courts may exceed that of their white brothers. Their simple serenity placed them above their sneering interlocutors. In that courtroom they proved, perhaps to more white people than had theretofore paid close attention to them, that they were not second-class citizens.

I believe that these witnesses did something to the stereotypic astigmatism of many who saw and heard them that day—not only courtroom spectators, but perhaps even hardened court attendants, sophisticated lawyers and seasoned judges. All who were not wholly blind and deaf were shaken—in spite of themselves—in whatever belief they may have had in the essential inferiority of Negroes.

This is not to say that a change in their behavior toward Negroes could be expected to follow quickly, if ever. Men must act out the roles they have accepted, and, at least for a while, comply with the demands of the institutional mechanisms that prescribe the patterns of their outward lives. But they can no longer do it happily. (Think about the policeman who gave Helen O'Neal a dollar to buy supper.) They can no longer confidently teach their children to emulate their own attitudes. And therein lies the seed of significant change.

* * * *

We have first essayed a description of the psychological change that should constitute the strategic objective of the civil rights movement; and, second, we have undertaken to suggest at least some of the more promising avenues leading to it. The former is offered with considerable confidence in its accuracy. The latter may, to some degree, suffer from incompleteness, oversimplification and misplacement of emphasis; but its broad outlines are believed to be true enough to serve as the basis for the observations now to be presented.

It should be borne in mind that a strategic objective, while it lends balance, direction and timing, does not fully determine the course of a campaign. There may be additional objectives, important though secondary. And the choice of tactical measures is necessarily conditioned by such practical considerations as the availability of money and manpower, the strength of resistance on particular fronts, and the capabilities of the (legal) weapons at hand. The important thing is to move always toward and not away from the ultimate goal—and to keep moving as fast as circumstances permit.

So far as secondary objectives are concerned, one in particular is especially important. Our strategic objective being the perfection of a single community rather than achievement of a *modus vivendi* between two distinct groupings, it is essential that our legislative-judicial mechanism for the creation and enforcement of legal rights be preserved as a bridge between whites and Negroes

throughout the whole period (which can hardly be less than a generation) required for eradication of the stereotype. This can be done if, but only if, petitions for redress of Negro grievances are given serious legislative attention and if legal rights, once established, are enforced expeditiously and without reserve. Otherwise the Negro will be driven to renounce as illusory the processes of orderly change, and resort instead to measures of self-help that will deepen the racial cleavage and bring on repressive state action for the preservation of civil order; and the consequent impairment of the openness of our society would be a disaster for whites and Negroes alike. There is no need to repeat what has been written elsewhere about the reality of this danger and possible ways of reducing it.[7]

As for the choice of tactics, it would seem that initial emphasis should be placed on one particular goal that is not only fundamentally important but probably capable of fairly quick attainment: *eradication of the group stereotype from the law itself*. It must be firmly and unrelentingly insisted that no statute, ordinance, police practice or other official act is valid if founded, either explicitly or by necessary implication, on the premise that Negroes as such are different, in any legally material way, from other people.

One of the subtler manifestations of this viewpoint is the notion that Negroes (unlike whites) possess rights as a race rather than as individuals, so that a particular Negro can rightly be delayed in the enjoyment of his established rights if progress is being made in improving the legal status of Negroes generally. "Don't be so impatient. Consider how far your people have come in a hundred years."

It is hard to avoid the conclusion that this premise infects the so-called "deliberate speed" formula which the United States Supreme Court, in *Brown v. Board of Education*,[8] prescribed as the standard for enforcement of the rule against public school segregation. It may be thought heretical to suggest that the Supreme Court, which is truly the citadel of individual rights and has contributed more to the cause of racial justice during the last quarter-century than any other of our public institutions, has itself in some degree fallen victim to the stereotype. And yet, as has already been said, it is difficult indeed for adults to achieve unclouded vision once the stereotype has been imprinted upon us. Sarah Patton Boyle has shown, from her own poignant experience, how it may persist in hidden form even after our strenuous and seemingly successful efforts to free ourselves of it.[9]

The series of cases that led up to the *Brown* decision focused attention carefully on the question whether, in a given segregated school situation, the complaining Negro was *himself* suffering arbitrary discrimination. If so, he was accorded relief from it. With each succeeding case, the reality of a more

7. *Supra* note 4; and see Lusky, *Minority Rights and the Public Interest*, 52 Yale L.J. 1 (1942).
8. 347 U.S. 483 (1954), *opinion on form of mandate*, 349 U.S. 294 (1955).
9. Boyle, The Desegregated Heart (1962).

intangible deprivation won judicial recognition: first, denial of access to a law school in the student's home state;[10] next, his need to wait for the (prompt) establishment of a Negro law school in the home state;[11] then, inequality of an established Negro law school that inevitably lacked the size, traditions and prestige of its older white counterpart;[12] and finally, denial of full access to white fellow-students in a bi-racial school by reason of separate seating in the classroom, library and cafeteria.[13] Once the Court had accepted the reality of a denial as intangible as this, it was hard to imagine *any* context in which racial segregation would be consistent with the equal protection clause; for, by definition, segregation denies to every student the opportunity to associate with (and learn by contact with) students of the other race.

All of these decisions rested squarely and solely on the denial of equal treatment to the particular Negro involved. The Court was dealing with the individual, not with the race. Then, with the *Brown* case, came a radical change of approach—manifested not so much by what the Court said, as by what it did.

The opinion on the merits still spoke in terms of individual rights.[14] It did de-emphasize, almost to the point of omission, the fact that *the plaintiffs* were suffering unconstitutional discrimination. But there was no explicit repudiation of the approach taken in the earlier cases.

A year later, when the "deliberate speed" formula was promulgated,[15] the significance of the changed emphasis became clear. The Court had determined to deal with the problem as involving the rights of the Negro race rather than the rights of individuals. Citing the traditional power of courts of equity to shape remedies so as to reconcile public and private needs, the Court applied that power in a way that is believed to be unprecedented. It left open the possibility that the plaintiffs themselves would be denied any relief from the legal wrong they were found to have suffered, if only steps were taken to protect other Negroes—at some later date—from similar harm.

It might be thought that the Court, recognizing the existence of strong local opposition to school desegregation, had decided to make a concession to it. But the Court expressly denied this, saying that "constitutional principles cannot be allowed to yield simply because of disagreement with them."

The Court did refer to problems of administration, some of which were not

10. Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).
11. Sipuel v. Board of Regents, 332 U.S. 631 (1948).
12. Sweatt v. Painter, 339 U.S. 629 (1950).
13. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).
14. To be sure, there was reference to the writings of psychologists and sociologists who had examined the effect of school segregation on Negroes as a class. But the Court used these authorities not to establish the central conclusion that separateness itself denies equality (which is virtually self-evident, since Negro students have access to a different class of fellow-students than do whites) but only to show that the grievance was not *de minimis* —that the practice involved a sufficient potentiality of substantial harm to justify judicial intervention. In other words, expert opinion was marshalled only to confirm the soundness of a conclusion which the Court itself had already reached (though in a more limited context) in the *McLaurin* case, *supra* note 13.

Subsequent criticism of the *Brown* decision as being based on social science theory rather than on legal principles, therefore appears to be ill founded.
15. Brown v. Board of Education, 349 U.S. 294 (1955).

unreal. It mentioned the need to revise school districts and attendance areas into compact units, and to readjust the transportation system, which of course would take a certain amount of time. It also mentioned other "problems," which are not problems at all unless it is unthinkable for a *white* child to be transferred to a school inferior to that which he has been attending: "problems . . . arising from the physical condition of the school plant . . . [and] personnel." (What had created these "problems" was the prevalent disregard of the "equal" part of the "separate but equal" rule.) The Court also mentioned the "problem" of "revision of local laws and regulations." But the supremacy clause is still on the books; and the usual way of dealing with difficulties of this type is to decide the pending issues and remand the case to the trial court, which has power to make supplementary rulings, if necessary, as to whether and how far the local laws and regulations must be deemed modified by the overriding requirements of federal law.

To be sure, the problem of bringing local laws and regulations into conformity with the Constitution could be expected to arise in many different forms in the thousands of school districts which the decision would affect. But nothing compelled the Court to attempt decision of thousands of cases in addition to the five that were before it. Definitive adjudication of those five might have left unfinished a good deal of judicial clean-up work, and the ensuing litigation in other school districts might well have lasted for several years—the usual aftermath of any decision effecting a significant change in the law. But the clean-up litigation would have ended when the various local laws and regulations had been passed upon—a process that could hardly have lasted until 1964. Instead, ten years after the *Brown* decision, school desegregation has hardly begun in most of the deep South—and has not begun at all in Mississippi.

The administrative problems involved in the *Brown* case and its four companions, to the extent that they were real ones, could mostly have been solved in a few weeks or months. Any law-abiding school board could have finished the job of redistricting, reassigning students, and mapping new school bus routes by the September following the May when the decision was handed down. Residual inconveniences there might have been; but final adjustments could have been made after desegregation rather than before—in which event the burden of temporary dislocation would have been distributed among the entire student body rather than imposed on the Negroes alone.

In short, the ruling that Negroes and not their white classmates should suffer the consequences of delay, seems inexplicable except on the premise that it was justified by the great benefit that the decision conferred on the Negro race as a whole.

The *direct* consequence of the "deliberate speed" formula is bad enough. As each additional Negro child is forced into a segregated school, another person is denied the equal protection of the laws and the Constitution is outraged anew. Moreover, as each additional white child is admitted to such a school, the chance to cure another case of defective vision is lessened or lost.

But the *indirect* consequence of "deliberate speed" is still more devastat-

ing. Local authorities have been quick to see its meaning and apply it to the full extent of its logic. They have seized upon statistics compiled by psychologists, anthropologists, sociologists and other researchers, comparing the races with respect to such factors as intelligence, achievement, criminality and health —all totally immaterial in an equal protection case if we accept, as we must and do, the pervading principle that the rights of man belong to the individual and not to his group. The down-to-earth meaning of this averaging technique, and its practical potentialities for injustice, can be illustrated by the following affidavit which was filed in the *Mississippi Freedom Rider Case* referred to above:[16]

> That affiant is the duly appointed, and qualified Executive Secretary of the State Board of Health of the State of Mississippi, and as such has under his supervision and control certain records and statistics incident to health conditions in the State of Mississippi.
>
> That the prevalence of many communicable diseases is greater among members of the Negro Race than among members of the white race in the State of Mississippi; that for example, in this State Tuberculosis is slightly over two times more prevalent among members of the Negro race than among members of the white race in the State of Mississippi; that venereal diseases are more prevalent among members of the Negro race than among members of the white race in the State of Mississippi; that affiant is of the opinion that mixing of any group of people having high prevalence of contagious diseases with any other group having low prevalence endangers, to the extent of such mixing, the public health in that the prevalence of these diseases among the low prevalence groups will tend to rise to the height of the high prevalence group.

The purpose of filing the affidavit was to justify the local laws and customs requiring separation of the races in common carriers and waiting rooms. From the viewpoint of a *particular* Negro who happened to be entirely free of TB, veneral disease and other maladies referred to, the affidavit actually supported his grievance; for it showed that the segregation rules exposed him to greater risk of infection because of his race, by requiring him to mingle with a more disease-ridden group of people than an equally healthy white man would have to mingle with. But if the right to equality belongs to Negroes *as a race*, the reasonableness of the classification might be at least debatable.

Because the "deliberate speed" formula affords a plausible precedent for the latter approach, it is a source of continuing harm and should be withdrawn without delay. Official action premised on the group stereotype is not to be tolerated. No private citizen should be enabled to treasure his own stereotype, and transmit it proudly to his children, on the ground that he is simply following the lead of his government. On this point of principle there can be no compromise.

But it does not follow that the state must or should ignore the stereotype's

16. See note 5 *supra.*

grip upon millions of Americans. Official color-blindness, in this sense, is not a constitutional imperative.

The nation and its states bear responsibility for the establishment and protection of chattel slavery, followed by a whole century of officially sanctioned discrimination which, though lessening, is still in evidence today. These are the stereotype's historic roots. The victims of the injustice now claim not only the cessation of maltreatment, but aid in recovering from its effects, just as the maimed veteran is accorded rehabilitation as well as a discharge. It is here that the most difficult problems arise.

For example: Is it enough to operate a school system on a color-blind basis, assigning each student to the school nearest his home, in a city where residential segregation results *de facto* in segregation in the schools? Or should "racial imbalance" be corrected by transportation of children to more distant schools? On the one hand, it can be argued that there are educational values in interracial schoolroom association, in that white—as well as Negro—students are given a more accurate picture of the real world in which they are to emerge. It can also be argued that the public interest in obliteration of the stereotype will be served by such association, particularly at the lower elementary levels. In reply, it can be urged that the neighborhood school has special values of its own which should not be thrown away; that school boards are not obligated to remedy situations extraneous to the school system; and that, whatever may be the public duty to offer remedial help to the victims of past injustice, the obligation rests on the community as a whole—not on the young people who, under a cross-bussing plan, would pay the main price for correction of "racial imbalance."

The problem involves a serious problem of consistency with the strategic objective. Will a color-conscious official policy, even though benevolent in purpose and not premised on any judgment as to the attributes of Negroes in general, tend on the whole to preserve the stereotype? Or will the net effect be to hasten its extirpation?

Analysis of these questions would carry the present article beyond its proper scope. For present purposes we must be content to point them up. Hard problems of this type now appear in growing numbers as the battleground shifts from establishment of the equal protection principle to achievement of its just reconciliation with other societal values. And the wisdom of particular solutions will depend greatly on whether and how much they contribute to realization of the ultimate aim—destruction of the stereotype, that each of us may see his brothers as they really are.