

COVERING SCHOOL DESEGREGATION:
A DESKBOOK FOR EDUCATION WRITERS

Summarizing
Legal Developments, Current Status,
and Research Findings

Mark A. Smylie

The Educational Equity Project
Institute for Public Policy Studies

Vanderbilt University

August 1982

TABLE OF CONTENTS

	<u>Page</u>
PREFACE	iv
SECTION I: LEGAL PRINCIPLES FROM MAJOR SCHOOL DESEGREGATION	
CASES	I-1
<u>Brown v. Board of Education [Brown I]</u>	I-2
<u>Brown v. Board of Education [Brown II]</u>	I-3
<u>Cooper v. Aaron</u>	I-4
<u>Green v. County School Board of New Kent County</u> . .	I-4
<u>Swann v. Charlotte-Mecklenburg Board of Education</u> .	I-5
<u>North Carolina State Board of Education v. Swann</u> . .	I-6
<u>Keyes v. School District No. 1</u>	I-6
<u>Milliken v. Bradley [Milliken I]</u>	I-7
<u>Milliken v. Bradley [Milliken II]</u>	I-8
<u>Pasadena City Board of Education v. Spangler</u>	I-9
<u>Washington v. Davis</u>	I-9
<u>Village of Arlington Heights v. Metropolitan</u>	
<u>Housing Development Corporation</u>	I-9
<u>Dayton Board of Education v. Brinkman [Dayton I]</u> . .	I-10
<u>Brinkman v. Gilligan [Dayton II]</u>	I-11
<u>Columbus Board of Education v. Penick</u>	I-11
<u>Martin v. Charlotte-Mecklenburg Board of Education</u> .	I-12
<u>Reed v. Rhodes</u>	I-13
<u>Crawford v. Board of Education of the City of</u>	
<u>Los Angeles</u>	I-14
<u>Washington v. Seattle School District No. 1</u>	I-15
For Further Information	I-17
Experts	I-17
SECTION II: MAJOR DESEGREGATION ACTIVITY IN 1982 II-1	
<u>Desegregation Activity in Selected School</u>	
<u>Districts</u>	II-2
Boston, Massacuhsetts	II-2
Chicago, Illinois	II-3
Cincinnati, Ohio	II-4
Dade County (Miami), Florida	II-4
Denver, Colorado	II-5
Duval County (Jacksonville), Florida	II-6
Hartford, Connecticut	II-6
Indianapolis, Indiana	II-6
Jackson, Mississippi	II-7
Los Angeles Unified School District	II-7
Memphis, Tennessee	II-8
Montgomery County, Maryland	II-8
Nashville-Davidson County, Tennessee	II-9
Norfolk, Virginia	II-10
Pittsburgh, Pennsylvania	II-10
Prince George's County Maryland	II-11

	<u>Page</u>
Rapides Parish, Louisiana	II-11
St. Louis, Missouri	II-12
Seattle, Washington	II-12
State of Illinois	II-12
State of Ohio	II-13
Yonkers, New York	II-13
For Further Information on Current Desegregation Activity	II-14
For Further Information about the History of Desegregation in Selected Districts	II-14
<u>Congressional Anti-Busing Legislation</u>	II-16
The Collins Amendment	II-16
Neighborhood School Act of 1982	II-16
For Further Information About this Legislation	II-18
<u>Desegregation Policies of the Reagan Administra-</u> <u>tion</u>	II-18
Stated Positions of the Reagan Administration on School Desegregation	II-19
The Justice Department's Involvement in School Desegregation Cases in 1981-82	II-21
<u>Addendum: Update of Activity</u>	II-25
Boston, Massachusetts	II-25
East Baton Rouge Parish, Louisiana	II-25
Mobile City-County, Alabama	II-25
Montgomery County, Maryland	II-25
Nashville-Davidson County, Tennessee	II-26
Philadelphia, Pennsylvania	II-26
 SECTION III: FINDINGS OF RESEARCH ON THE EFFECTS OF SCHOOL DESEGREGATION	 III-1
<u>Reducing Racial Isolation</u>	III-2
National Progress	III-2
Mandatory Student Reassignment Plans v. Voluntary Desegregation Plans	III-3
Examples of School Districts	III-4
Experts	III-5
Magnet Schools	III-5
Examples of School Districts	III-7
Experts	III-7
Metropolitan Desegregation Plans	III-7
Examples of School Districts	III-8
Experts	III-8

	<u>Page</u>
The Amount and Cost of Busing for School	
Desegregation	III-8
Experts	III-9
<u>Community Response and Public Opinion</u>	III-9
White Flight from School Desegregation . . .	III-9
Experts	III-12
Community Conflict and Public Opinion . . .	III-12
<u>Academic Achievement</u>	III-15
The General Impact of School Desegregation .	III-15
The Effect of Busing	III-17
Experts	III-17
<u>Disruption and Race Relations in Schools</u>	III-17
Extent of Interracial Conflict in	
Desegregation Schools	III-17
Human Relations Programs	III-18
Multicultural Education	III-20
Experts	III-20
<u>Resegregation Within Schools</u>	III-21
Ability Grouping and Tracking	III-21
Disciplinary Policies and Student	
Suspensions	III-23
Experts.	III-24
<u>Desegregation and Postschool Opportunities</u>	III-25
Experts.	III-26
SECTION IV: DESEGREGATION AND ENROLLMENT DATA FROM THE NATION'S	
100 LARGEST PUBLIC SCHOOL SYSTEMS, 1976-77 TO	
1980-81.	IV-1
SECTION V: GLOSSARY	V-1
BACKGROUND READINGS ON SCHOOL DESEGREGATION	

PREFACE

This deskbook was prepared to assist education writers in their reporting of events related to school desegregation in their communities and in the nation. Legal developments in the field change frequently and new law is often misunderstood. There is, moreover, much misinformation about the status and effects of desegregation. This deskbook seeks to be both comprehensive and objective.

The information contained in this publication is divided into five major sections:

- I. Legal Principles from Major School Desegregation Cases
- II. Major Desegregation Activity in 1982
- III. Findings of Research on the Effects of School Desegregation
- IV. Desegregation and Enrollment Data from the Nation's 100 Largest Public School Systems, 1976-77 to 1980-81
- V. Glossary of Legal and Education Terms Related to School Desegregation.

This deskbook was edited by Mark A. Smylie. It is based on research conducted under the auspices of the Institute for Public Policy Studies at Vanderbilt University. In particular, this book seeks to make available to education writers the results of studies summarized in recent publications sponsored by the Educational Equity Project, which has received financial support from the National Institute of Education and the U.S. Office for Civil Rights and is currently funded by the Ford Foundation. Those publications include:

Hawley, Willis D., ed. Effective School Desegregation: Equity, Quality, and Feasibility. Beverly Hills, Calif.: SAGE Publications, 1981.

Assessment of Current Knowledge About the Effectiveness of School Desegregation Strategies. Nashville, Tenn.: Vanderbilt University, Institute for Public Policy Studies, Center for Education and Human Development Policy, April 1981.

Volume I: "Strategies for Effective Desegregation: A Synthesis of Findings" [in publication as Strategies for Effective Desegregation by Lexington Books, D.C. Heath Company].

Volume IV: "A Practical Guide to Desegregation: Sources, Materials, and Contracts."

Volume V: "A Review of the Empirical Research on Desegregation: Community Response, Race Relations, Academic Achievement, and Resegregation" [to be published by Temple University Press].

Volume VII: "Desegregation Strategies and the Courts."

Some material presented herein has not been synthesized in other publications.

In preparing this deskbook, we spoke with a number of education writers who have covered school desegregation stories and asked their assistance to identify those aspects of research that might be useful to themselves and other education writers. We wish to acknowledge the assistance of Peggy Caldwell of Education Week (formerly of the Louisville Courier-Journal), Sandra Keyes of the Nashville Tennessean, and Fred Schecker of the Kansas City Star. We are grateful for their time and cooperation.

The literature on media coverage of school desegregation is small but useful. The greatest portion of the literature discusses the role of the media in promoting public understanding of desegregation in individual school districts. Several articles identify problems encountered by education writers covering desegregation litigation and implementation of desegregation plans. A list of sources on the media and school desegregation follow.

Brown, J. "Busing and Video Process: School Desegregation and Boston Media." Television 5 (1977).

Grant, William R. "The Media and School Desegregation." Integrated Education 14 (November-December 1976):12-13.

Levinsohn, Florence H. "TV's Deadly Inadvertant Bias." In School Desegregation: Shadow and Substance, edited by Florence H. Levinsohn and Benjamin D. Wright. Chicago: The University of Chicago Press, 1976.

Mathews, J. "Busing Coverage: Total Commitment." Quill, no. 64, 1976, p. 34.

Rossell, Christine H. "The Effect of Community Leadership and the Mass Media on Public Behavior." Theory Into Practice 17 (April 1978):131-139.

Schulman, Robert. "Anatomy of a Decision." Quill 63 (November 1975): 24-27.

Stuart, Reginald. "Busing and the Media in Nashville." New South, 28 (Spring 1973):79-87.

Weinberg, Meyer, and Martin, Gertrude, eds. Covering the Desegregation Story: Current Experiences and Issues. Evanston, Ill.: Center for Equal Education, 1976.

Wiederhold, G. "News Media in Louisville Set Guidelines, Endorsed by Court on Coverage of School Issue." Variety, 10 (September 1975).

A list of tips on covering school desegregation stories as well as other education stories can be found in Covering the Education Beat, published by the Education Writers Association (P.O. Box 281, Woodstown, N.J. 08098).

For further information about the contents of this deskbook, please contact Mark A. Smylie at the Educational Equity Project, Vanderbilt University, Institute for Public Policy Studies, 1208 18th Avenue S., Nashville, Tennessee 37212, at 615-322-8443.

SECTION I

LEGAL PRINCIPLES FROM MAJOR SCHOOL DESEGREGATION CASES

This section traces the major developments in public school desegregation law since the U.S. Supreme Court's 1954 decision in Brown v. Board of Education. For each decision included here, controlling legal principles are presented. These principles relate to the nature of constitutional violations in school desegregation cases, the establishment of violations and liability, and the appropriateness of a given remedy (desegregation plan) with respect to the constitutional violation. We provide complete citations for each case for reference. The cases are presented in chronological order.

In general, the U.S. Supreme Court has held the de jure segregation (purposeful or intentional segregation, with the force of official policy or statute) violates the 14th Amendment's guarantee of equal protection of laws. De facto segregation (segregation that does not result from a constitutionally segregative policy or statute) does not constitute a constitutional violation. Segregative impact of a racially neutral policy or statute does not violate the Constitution and require a remedy. However, a state or school board can be found liable for and be required to remedy the persisting segregative effects of past intentional government action, if they have been perpetuated by policy or nothing has been done to remedy those effects. The Court has held that states and school boards must do more than just abandon the discriminatory purposes of past actions.

Once a constitutional violation is established, states and/or school boards have an affirmative duty to desegregate schools. A legally acceptable remedy or desegregation plan is one that works immediately to eliminate the violation. The remedy must not exceed the scope of that violation. For

example, a remedy that involves a central city school district and surrounding suburban school districts (a multidistrict or metropolitan remedy) is not permissible unless an interdistrict violation can be established. A districtwide remedy is not permitted if intentional segregation is shown to affect only certain schools. However, the Court has ruled that the purposeful segregation of some schools in a district can have a segregative impact on the entire district. If districtwide impact can be established, a districtwide remedy is required. Government-imposed segregation that affects a portion of a school system cannot be viewed in isolation from the rest of the district.

State governments may be liable to share the costs of implementing desegregation plans if they are found guilty of initiating or perpetuating intentionally segregative actions that affect individual school systems. The Court has not allowed states to restrict the power of courts to order particular remedies nor has the Court allowed voters to restructure the political process to make it more difficult for minorities to seek particular remedies to vindicate their constitutional rights.

- Brown v. Board of Education, 347 U.S. 483 (1954) [Brown I].

Four separate desegregation cases from Kansas, South Carolina, Virginia, and Delaware were combined for argument before the U.S. Supreme Court in Brown I. In each of the court cases, the plaintiff black children sought admission to the public schools in their communities on a non-segregated basis. The evidence indicated that the black and white schools in each district had been equalized or were in the process of being equalized in terms of facilities, curricula, and faculty. Except in the Delaware case, three-judge district courts refused to grant plaintiffs' requests, and based their decisions on the "separate but equal" doctrine of Plessy v. Ferguson (163 U.S. 537, 1896).

On appeal, the U.S. Supreme Court addressed the following question: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors

may be equal, deprive the children of the minority group of equal educational opportunities?" The Court reasoned that it does. Citing social science evidence, the Court found that despite equalization of tangible factors, state-imposed segregation was detrimental to minority children and deprived them of benefits they would receive in desegregated schools. The Court concluded that separate education was inherently unequal.

While social science evidence was cited, the legal basis of the decision rested on the Court's interpretation of the equal protection clause of the 14th Amendment. It argued that equal protection requires that where the state has undertaken to provide an opportunity, in this case the opportunity of an education, that opportunity must be made available to all on equal terms. Because segregated education was found to be unequal, official action that imposes segregation was found to violate the equal protection clause of the 14th Amendment.

Brown I did not specifically overrule the separate but equal doctrine of Plessy. It held only that intentional state-imposed (*de jure*) segregation in public education was unconstitutional. In addition, the Court did not rule on the question of remedy. The cases were returned to district courts for rehearing in accordance to the ruling in Brown I.

Brown I was preceded by a series of cases related to segregation in institutions of higher education. In Missouri ex rel. Gaines v. Canada (305 U.S. 337, 1938), the Court held that a Missouri law forbidding blacks to attend state law schools but providing them with tuition grants for a legal education out of the state did not satisfy the state's obligation to provide equivalent educational opportunities for black and white students. Ten years later, the Court ruled in Sipuel v. Board of Regents of the University of Oklahoma (322 U.S. 631, 1948) that a black applicant had to be admitted to the University of Oklahoma School of Law even though the state legislature has ordered the establishment of a separate law school within the state for blacks. In addition, the Court ruled in Sweatt v. Painter (339 U.S. 629, 1949) that a separate law school established in Texas for blacks did not satisfy the "equal" requirement of the "separate but equal" doctrine of Plessy, and, for that reason, a black applicant was entitled to admission to the University of Texas Law School.

- Brown v. Board of Education, 349 U.S. 294 (1955) [Brown II].

In Brown II, the Supreme Court addressed the question of the manner in which relief should be accorded black students who were denied equal protection because of government-imposed segregation in public schools. The Court ruled that school authorities have the affirmative duty and primary responsibility to remedy unconstitutional segregation. They must establish a racially nondiscriminatory, racially neutral school system in accordance with Brown I. Defendant school systems must make a prompt and reasonable start toward full compliance with that decision. District courts were charged with the responsibility to consider whether the actions of school authorities constitute good faith compliance with Brown I and to fashion remedies if school authorities abrogate their affirmative duty.

The Supreme Court held that in deliberations and in fashioning remedies, district courts should follow principles of equity, allowing for reconciliation of public and private concerns. However, the Court emphasized that the principles of Brown I could not be compromised because of disagreement with them. Brown II stated that district courts are allowed to grant additional time to school systems to carry out the mandates of Brown I once start toward full compliance is made. However, the burden rests with the defendant school systems to establish that more time is necessary and consistent with good faith compliance at the earliest possible date.

- Cooper v. Aaron, 358 U.S. 1 (1958).

Cooper v. Aaron, involving public school desegregation in Little Rock, was the first decision to follow remands to district courts in Brown I. The Little Rock school board requested a delay in implementation of a desegregation plan that had been in operation at Central High School during the 1957-1958 school year. Federal troops had been sent to protect black students from violence and public hostility, engendered in part by the governor's and the state legislature's opposition to desegregation.

The Supreme Court unanimously rejected the board's request for delay and held that the 14th Amendment "forbids states to use their governmental powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property." It stated that opposition to Brown I, no matter how intense or violent, would not be allowed to delay the implementation of actions to protect the constitutional rights of black children. The Court held that Brown could not be nullified either "openly and directly by state legislators or state executive or judicial officers" or "indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously'."

- Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

The Supreme Court's decision in Green emphasized the immediate desegregation of school districts found in violation of Brown I and questioned the effectiveness of "freedom-of-choice" plans that were previously a widely approved method of desegregation. The case involved the New Kent County (VA) school district, a system with only two schools. Previously segregated by state law, the two schools remained wholly segregated until 1964. In 1965, the school board adopted a "freedom-of-choice" plan in accordance with HEW guidelines for federal financial assistance. After three years, no white student had chosen to attend the black school and only 15% of all black students had transferred to the white school.

In an unanimous decision, the Supreme Court stated that Brown II had charged school authorities with "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Local school authorities are required to come forward with a plan and establish that the plan "promises realistically to work, and promises realistically to work now." The Court held that district courts must weigh the claim of school authorities that a plan promises meaningful and immediate progress in light of the facts and in light of any alternatives which may be shown as feasible and

more promising in their effectiveness. The Court ruled that "[w]here . . . other, more promising courses of action are open to the board, . . . [the choice of a less promising plan] may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method." Whatever plan is adopted will require evaluation in practice and lower courts should retain jurisdiction until it is established that de jure segregation is completely eliminated.

The Supreme Court found that New Kent County's "freedom-of-choice" plan was inadequate to meet the mandates of Brown for two reasons. First, the plan had not dismantled the dual system. Second, the Court reasoned that the "freedom-of-choice" plan shifted to students and parents the responsibility Brown II placed squarely on school authorities to take affirmative steps to desegregate schools. The Court did note that where such "freedom-of-choice" plans prove effective they might be acceptable. However, if they fail to undo segregation, other means are required to achieve this end.

- Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

In Swann, a federal district court used racial balancing in developing a desegregation plan for the Charlotte-Mecklenburg school district. That plan required widespread reassignment and busing of students in the metropolitan area. The 4th U.S. Circuit Court of Appeals reversed the busing portion of the plan, ruling it excessive. That decision was appealed to the Supreme Court which reversed the circuit court ruling and affirmed the desegregation plan ordered by the district court.

The Supreme Court addressed two issues in Swann: 1) the duties of school authorities to remedy unconstitutional segregation, and 2) the powers of federal courts in determining and requiring the scope of remedies. In an unanimous opinion, the Court held that school authorities have an affirmative duty to eliminate existing de jure segregation, and that school authorities have broad discretionary powers to remedy segregation on their own. However, if school authorities fail in their affirmative obligations to eliminate all vestiges of intentional segregation, judicial authority may be invoked to require a remedy. Once a right (equal protection) and a violation of that right (de jure segregation) have been established, the court's powers to remedy past wrongs is broad, but the Court held that the scope of specific remedies cannot exceed the nature and extent of the constitutional violation.

Citing Green, the Court held that a school board's remedial plan or a district court's remedial order must be judged by its effectiveness. It ruled that racial balance measures are acceptable as a starting point in shaping a remedy. The Court stated that the presence of a small number of one-race or virtually one-race schools within a district is not in and of itself evidence that a system still practices intentional segregation. However, the Court held that the presence of these schools places a burden on school authorities to prove that their racial compositions are not the result of past or current discriminatory action on their part.

Addressing the issue of court-ordered reassignment and busing of students to schools to achieve desegregation, the Court ruled that absent a constitutional violation, there is no basis for such reassignment and transportation. However, if a constitutional violation is established, reassignments and busing are within the remedial powers of a court. The Court continued that school authorities may be required to transport students to assigned schools as one tool of desegregation, but the time and distance of travel must be weighed against risks to the safety and health of students and impingement of the educational process.

Finally, the Court held that neither school authorities nor courts are required to make year-by-year adjustments of racial compositions of individual schools once school authorities have met their affirmative duty to establish a unitary and nondiscriminatory system. However, the Court argued that adjustments could be ordered by courts upon showing of future intentional segregative actions by a state or school board. This portion of the decision implies that adjustments to promote future desegregation to remedy intentional discrimination or to correct segregation that results from demographic changes, are within the discretionary authority of school authorities over educational policy.

[See discussion of Pasadena City Board of Education v. Spangler and Martin v. Charlotte-Mecklenburg Board of Education later in this section.]

- North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

The Supreme Court affirmed a 4th U.S. Circuit Court of Appeals decision striking down a North Carolina statute that prohibited the assignment of any student to schools on the basis of race or for the purpose of creating racial balance in the schools. It also prohibited the use of busing for such purposes. The Court held that the 14th Amendment and the Supremacy Clause of Article VI of the Constitution prohibited the states from interfering with federal remedies for constitutional violations. North Carolina State Board found that the statute was an attempt by the state to prevent implementation of desegregation plans ordered by federal courts.

- Keyes v. School District No. 1 [Denver], 413 U.S. 189 (1973).

Keyes concerned the Denver public school district, where racial segregation had never been mandated by statute. However, a federal district court found that the school board, by actions affecting school construction, attendance zones, and use of mobile classroom units, had engaged in deliberate racial segregation with respect to schools in one portion of the district. The court ordered the desegregation of those schools. At the same time, the district court found evidence that inner-city schools were segregated in fact, but ruled that the board's segregative policies did not affect these schools and declined to order their desegregation.

On appeal, the Supreme Court reversed the district court ruling. It held that where plaintiffs prove that school authorities carried out a program of segregation affecting a substantial portion of students, schools, and teachers, there exists a logical predicate for a finding of the existence of a dual system. The Court found that racially discriminatory actions have an impact beyond the schools that are targets for those actions. Upon such

a finding, the burden of proof shifts to school authorities to show that other segregated schools in the district are not the direct or a reciprocal effect of deliberate segregative actions. If that burden cannot be met, plaintiffs are entitled to "a finding by the trial court of the existence of a dual system" and a systemwide remedy is required.

The Court also rejected the suggestion that "remoteness in time has any relevance to the issue of intent." It held that if the actions of a school board were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the time that has passed since those actions first were taken does not make them any less intentional or reduce the responsibility of school authorities to remedy them.

The Supreme Court reversed the district court's finding of limited unconstitutional segregation because the school board could not prove segregation in the district as a whole was not due to or was not maintained by proven intentional segregation actions that affected one portion of the district. The case was returned to the district court for development of a proper districtwide remedy.

- Milliken v. Bradley, 418 U.S. 717 (1974) [Milliken I].

In Milliken I, a federal district court found that actions of the Detroit school board, the State Board of Education, and the Michigan legislature contributed to de jure segregation in the Detroit city public schools. That court held that while a desegregation plan limited to the city schools would promote a racial mix that approximated the student population of the district, such a plan would "accentuate the racial identifiability of the district as a Black school system, and would not accomplish desegregation." Therefore, the district court ordered a desegregation plan for the predominantly black Detroit city school district that involved 53 neighboring predominantly white suburban school districts. The court of appeals affirmed the decision.

On appeal, the U.S. Supreme Court found that the record contained evidence of de jure segregation only in the city schools; there was no evidence of intentional segregation in any of the suburban school districts included in the district court plan. The question for the Supreme Court was whether a federal court may impose a multidistrict plan to remedy intentional segregation in a single district absent any findings of intentional segregation on the part of the other school districts or finding of segregative impact of the single district's actions or the other districts. Citing Swann, the Court stated that the controlling principle was that the scope of the remedy is determined by the nature and extent of the constitutional violation. It held that before any multidistrict remedy could be imposed, a court must find evidence that there has been a constitutional violation within one district that produces a significant segregative effect in another. Because there was no evidence that the actions of the Detroit city schools had segregative impact on the other districts, a multidistrict remedy exceeded the scope of the constitutional violation. The Supreme Court reversed the ruling of the lower court and remanded the case for development of a new plan.

[The Supreme Court has upheld multidistrict desegregation plans in two other cases in which cross-district constitutional violations were found. In Evans v. Buchanan (434 U.S. 880, 1977), the Court refused to hear an appeal of a circuit court ruling that upheld a desegregation plan for Wilmington (DE) that involved the surrounding school districts in New Castle County. In United States v. Board of School Commissioners of Indianapolis (429 U.S. 1068, 1977), the Court upheld a multidistrict desegregation remedy for the Indianapolis public schools.]

- Milliken v. Bradley, 433 U.S. 267 (1977) [Milliken II].

On remand from the U.S. Supreme Court (Milliken I), the federal district court ordered a pupil assignment plan within the Detroit city school system and ordered the adoption and implementation of a variety of educational components in the areas of reading, inservice teacher training, and testing and counseling that were originally proposed by the Detroit Board of Education. The district court assessed a portion of the costs of selected educational programs against the State of Michigan, a guilty co-defendant in the case.

The state challenged this financial liability before the Supreme Court, arguing that the educational remedies exceeded the established constitutional violation. It contended that financial liability violated the 10th Amendment principles of federalism, and argued on the basis of the 11th Amendment that the district court decree was no different from an award of money damages against the state based upon the asserted prior misconduct of state officials.

The Supreme Court affirmed the lower court rulings upholding the educational components as part of the desegregation plan and the financial liability of the state. It argued that the scope of a desegregation remedy is to be determined by the nature and extent of the constitutional violation and that it is to be designed as nearly as possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. While federal courts are to take into account the interests of state and local school authorities in managing their own affairs, matters other than pupil assignment must on occasion be addressed by federal courts to eliminate the effects of prior segregation. The Supreme Court ruled that the district court did not exceed its authority in approving a remedial plan going beyond pupil reassignments and ordering educational programs for students who had been subjected to intentional segregation. The educational programs did not exceed the scope of the constitutional violation in that district.

The Court held that federal court remedies exceed appropriate limits if they are imposed upon governmental officials that were neither involved in nor affected by the constitutional violation. Because the State of Michigan was found guilty of perpetuating intentional segregation in the Detroit public schools, the Court ruled that it could be held liable for a portion of the costs of programs aimed at correcting the constitutional violation. Such liability was not restricted by either the 10th Amendment principles of federalism or 11th Amendment principles of state liability.

- Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976).

In this case, the Supreme Court invalidated a federal district court requirement for the Pasadena school system that the racial composition of the student bodies of particular schools conform to a certain ratio every year. The Court held that because the system had been found guilty of intentional segregation, the initial use of a statistical goal for racial desegregation was proper. However, once the district had established a racially balanced, unitary school system, the lower court exceeded its authority by requiring annual readjustment to maintain racial balance. The Supreme Court held that future change in racial compositions of school enrollments that is not caused by segregative acts of school or state authorities is de facto segregation and is beyond the purview of the court. However, if racial imbalance occurs after establishment of a unitary system because the original decree has been violated or deliberate segregative acts have occurred, the court can take steps to require readjustment in student assignments.

[While courts are not allowed to require readjustments in student assignments after a district has established a neutral system unless purposeful segregative acts occur, the Supreme Court has held that school districts themselves are not prohibited from making such adjustments (see following discussion of Martin v. Charlotte-Mecklenburg Board of Education).]

- Washington v. Davis, 426 U.S. 229 (1976).

While dealing with racial discrimination in employment, the Supreme Court's decision in Washington v. Davis has important implications to school desegregation laws. In Washington, several black police officers and rejected black applicants for employment as police officers brought suit against the District of Columbia and federal officials. These plaintiffs alleged that promotion and recruitment procedures of the District violated the equal protection clause of the 5th Amendment (5th Amendment equal protection clause applies to the federal government and the District of Columbia as the equal protection clause of the 14th Amendment applies to the states). The suit involved the legality of a test used as a measure for rejecting applicants.

Plaintiffs did not allege intentional discrimination but argued that the use of the test had a discriminatory impact of screening out more black than white applicants. They claimed further that the test was not an accurate predictor of future job performance. The Supreme Court held that a violation of equal protection requires showing of intent to discriminate. The Court found that the plaintiffs had not made such a showing and that discriminatory impact was not enough to trigger an equal protection claim.

- Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

In Arlington Heights, a case dealing with residential zoning decisions, the U.S. Supreme Court upheld and interpreted its ruling in Washington v. Davis (1976). The Court stated again that official government action will not be held unconstitutional solely because it results in a racially disproportionate impact. Proof of racially discriminatory intent or purpose

is required to show a violation of the equal protection clause. However, the Court ruled that race need be only one purpose of an act that results in a racially disproportionate impact: "Davis does not require a plaintiff to prove that the challenged action rests solely on racially discriminatory purposes" (p. 265).

The Court continued that proof of a racially discriminatory purpose is not enough to require a remedy. Rather, proof of intentional discrimination would shift to the defendant "the burden of establishing that the same decision [causing disproportionate impact] would have resulted even had the impermissible [discriminatory] purpose not been considered" (pp. 270-271). The defendant must, in other words, show that the same decision would have been reached for racially neutral reasons to accomplish a legitimate government purpose. If this is established, plaintiffs cannot attribute the injury complained of to a discriminatory purpose.

- Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977) [Dayton I].

In this case, a federal district court addressed the question of whether the Dayton school system was segregated by intentional acts or omissions by the board of education. That court found evidence of a "cumulative violation" of the equal protection clause of the 14th Amendment. It argued that the district's maintenance of racially imbalanced schools, its use of optional attendance zones, and its rescission of the previous board's resolution calling for racial and economic balance in each school in the system were evidence of intentional creation of perpetuation of segregation over time in the schools. The district court ordered a limited desegregation plan.

On appeal, the 6th U.S. Circuit Court of Appeals upheld the district court's finding of intentional segregative actions but ruled that the limited desegregation plan was insufficient to remedy the 14th Amendment violations. The circuit court returned the case to the district court for development of a systemwide plan.

The U.S. Supreme Court reversed the ruling of the circuit court and reaffirmed the principle that the nature of the constitutional violation determines the scope of the remedy. The evidence found by the district court did not justify a systemwide remedy. The Court ruled that in the absence of such a showing, the presence of racial imbalance is not, by itself, a violation of the 14th Amendment requiring a court-imposed remedy (citing Washington v. Davis, 1976). It also held that because the previous school board had no constitutional obligation to desegregate the system, the current board could rescind the resolution calling for racial and economic balance among the schools.

The Supreme Court outlined requirements for district courts to make specific findings before imposing systemwide remedies. Their first duty is to determine whether there was any action in the conduct of the business of the school board which was intended to, and did in fact, discriminate against minority pupils, teachers or staff. If such violations are found, the district court must determine how much incremental segregative effect these violations had on the current racial distribution of a school population "when that condition is compared to what it would have been in the

absence of such constitutional violations." The remedy should be designed to make up that difference and only if there has been a systemwide impact can there be a systemwide remedy.

The case was returned to the district court for more specific findings and, if necessary, to take additional evidence.

- Brinkman v. Gilligan, 583 F.2d 243 (1978), cert. denied, 444 U.S. 887 (1979) [cited as Dayton Board of Education v. Brinkman, Dayton II]

On remand from the U.S. Supreme Court (Dayton I), a federal district court dismissed school desegregation proceedings on a finding that plaintiffs had failed to prove that the Dayton school board was guilty of intentional segregation. On appeal, the 6th U.S. Circuit Court of Appeals found that the district court had erred in findings of fact and in interpretation of law and that the plaintiffs had indeed showed a systemwide pattern of intentional segregation which had not been disproven by the school board. The circuit court held, therefore, that the systemwide remedy approved by the court in Dayton I should be reinstated.

The circuit court held that evidence presented before the district court established that at the time of Brown I school authorities in Dayton were intentionally operating a dual school system in violation of the equal protection clause of the 14th Amendment. Citing Keyes, the court held that where evidence shows that school officials' actions create and perpetuate a dual system, the burden of proof shifts from the plaintiffs to the defendant school authorities to show that segregation is not a result of intentional actions. The school board failed to make such a showing and evidence was presented that it had established policies in the use of optional attendance zones, school construction and site selection, and grade structure and reorganization that perpetuated segregation throughout the district. The school board thus failed in its affirmative duty to remedy unconstitutional segregation in the system. Finding systemwide impact of these segregative policies, the circuit court ruled that a systemwide remedy was appropriate.

The school board appealed the circuit court's decision to the Supreme Court. The Court refused to hear the case, letting the circuit court's ruling stand.

- Columbus Board of Education v. Penick, 583 F.2d 787 (1978), cert. denied, 444 U.S. 887 (1979).

The points of law and rationale in Columbus are similar to those in Dayton II (1978). A federal district court found that the Columbus school board had failed in its duty to desegregate the system and had intentionally perpetuated segregation throughout the district. The district court ordered a districtwide remedy.

On appeal, the 6th U.S. Circuit Court of Appeals held that the evidence supported the district court's finding that prior to Brown I, the Columbus board of education had maintained an unconstitutional dual school system and that the board was under a constitutional duty to desegregate.

The circuit court agreed that the school board had failed in its affirmative duty to desegregate the system after 1954 and had perpetuated segregation through its post-Brown I policies of school construction and teacher and student assignments. The evidence further showed that these segregative policies affected the system as a whole. Therefore, the circuit court affirmed the lower court's ruling that a districtwide remedy was required.

The school board appealed the circuit court's decision to the Supreme Court, which refused to hear the case.

- Martin v. Charlotte-Mecklenburg Board of Education, 626 F.2d 1165 (1980); cert. denied, 101 S.Ct. 1758 (1981).

In Martin, parents brought suit for themselves and their children against the Charlotte-Mecklenburg Board of Education to prevent the Board from implementing a 1978 pupil reassignment desegregation plan. In 1974, the School Board and a citizens group submitted a proposal for student reassignment to the district court pursuant to a series of orders in Swann v. Charlotte-Mecklenburg Board of Education (402 U.S. 1, 1971) to implement desegregation in the district's schools. The proposal called for student reassignments so that no school (with one exception) would have a majority of minority students. It also called for review and adjustment of pupil assignments every third year to meet this standard. The district court adopted this proposal, and in 1975 removed the case from its docket.

In 1978, the Board of Education reviewed pupil assignments and reassigned approximately 5,000 of 78,000 students in the system in accordance with the 1974 proposal. Plaintiffs sued in federal district court to block reassignment of these students. They argued that Brown I (1954) prohibited assignments made on a racial basis and that the plan was invalid under Pasadena (1976) because a racially neutral attendance pattern was achieved in 1974.

The district court held that a racially neutral attendance pattern had never been achieved in Charlotte, and that certain of the Board's policies had contributed to segregation. It ruled that the board's decision to adopt the 1978 plan was reached independently and without the court's intervention. The plan constituted a valid exercise of the board's power over educational policy.

Upon appeal by the plaintiffs, the 4th U.S. Circuit Court of Appeals affirmed the district court's decision that the assignments made in 1978 were well within the plenary powers of the board. The circuit court cited Brown I (1954), that when unconstitutional segregation exists, school authorities have an affirmative obligation to dismantle the dual system. If school authorities do not meet this obligation, the district court has broad power to fashion a remedy that will ensure a unitary system. Citing Swann (1971) and Pasadena (1976), the court noted that once a school system achieves compliance with the Brown mandate, further judicial supervision is unnecessary unless school authorities intentionally attempt to segregate schools by altering attendance patterns. The circuit court found that Pasadena was not appropriate to Martin because it was the Board of Education

that decided to adhere to its 1974 proposal and the district court did not intervene to coerce the reassignments. The court ruled that the standard in *Swann* (1971), that school boards are vested with board discretionary power over educational policy, was controlling and that requiring the 1978 reassignments was within that power. Student reassignments were pursuant to the board's duty to desegregate the system. The ruling of the district court was affirmed.

Plaintiffs appealed the circuit court decision to the U.S. Supreme Court. The Supreme Court refused to grant certiorari and hear the case on appeal, thus implicitly upholding the circuit court decision.

- *Reed v. Rhodes*, 622 F.2d 1219 (1981), cert. denied, 102 S.Ct. 1713 (1982), cited as *Ohio State Board of Education v. Reed*.

In *Reed*, a federal district court found both the Cleveland school board and the Ohio State Board of Education and its Superintendent guilty of intentionally and deliberately operating a racially segregated school system in violation of the equal protection clause of the 14th Amendment. On appeal, the 6th U.S. Circuit Court of Appeals reaffirmed the finding of intentional systemwide segregation and returned the case for further determination of liability of state defendants. On remand, the district court found that the state board of education and its superintendent had knowledge of intentional discrimination against blacks in the Cleveland public schools and continued to support the system and its segregative practices through state financing in spite of that knowledge and of a state law prohibiting financing of discriminatory practices. That court held the state responsible for half the costs of desegregating the Cleveland schools.

On appeal, the circuit court reviewed the evidence of state liability and held that the evidence was sufficient to support the finding that the state board of education knew of segregative practices in the Cleveland system. It ruled that state defendants had the duty, both under state and federal law, to require any intentionally segregated schools they were helping to finance to desegregate and to withhold state funds from systems which refused to remedy unconstitutional segregation. The evidence showed that the state never fulfilled that duty. On the basis of these findings, the circuit court upheld the district court's ruling that the state pay for half the costs of desegregating the Cleveland school system.

The state board of education appealed the circuit decision to the U.S. Supreme Court which refused to hear the case, thus affirming the decision of the lower courts.

- Crawford v. Board of Education of the City of Los Angeles, 50 U.S.L.W. 5016 (Case No. 81-38, June 30, 1982).

In 1970, a California state trial court found the Los Angeles school district guilty of intentional (de jure) segregation in violation of both the state and federal constitutions and ordered the district to develop a school desegregation plan. On appeal, the California State Supreme Court affirmed the lower court's ruling but based its decision solely on the equal protection provisions of the state constitution which forbids intentional as well as unintentional (de facto) segregation. The case was returned to the trial court which approved a desegregation plan in 1978 that included the mandatory reassignment and busing of students in the 4th through 8th grades.

While the trial court was considering alternative new plans in 1979, state voters passed an amendment to the state constitution, Proposition I, which limits state courts from ordering mandatory pupil assignment or transportation unless an intentional (de jure) violation of the equal protection clause of the 14th Amendment of the U.S. Constitution can be established. Relying on Proposition I, the Los Angeles school board sought to halt the reassignment and busing of students ordered in 1978. The trial court held that the amendment was not applicable in light of the 1970 finding of de jure segregation in violation of the 14th Amendment to the federal constitution. The trial court then ordered implementation of a revised desegregation plan that again included mandatory pupil reassignment and busing.

On appeal, the California Court of Appeal reversed the trial court and held that the 1970 findings would not support the conclusion that the district had intentionally segregated its schools in violation of the 14th Amendment. The state appellate court held that Proposition I was constitutional under the 14th Amendment and barred implementation of that part of the plan requiring mandatory reassignment and busing. In spring 1981, the Los Angeles school board stopped requiring the reassignment and busing of students and adopted a voluntary school desegregation plan. In September 1981, the district began its first full year under that voluntary plan.

Plaintiffs appealed the state court decision to the U.S. Supreme Court charging that Proposition I violated the 14th Amendment to the U.S. Constitution. The Supreme Court held that the proposition did not constitute such a violation. Proposition I was found by the Court not to limit the ability of minorities to vindicate their rights under the equal protection clause of the 14th Amendment. Rather, Proposition I constituted a repeal of a state constitutional provision that required local school boards to do more than what the federal constitution requires. The Court concluded that it was constitutional for the people of California to determine that the 14th Amendment's standard was more appropriate for California state courts to apply in desegregation cases than the state constitutional standard repealed by Proposition I.

Although this decision serves to maintain voluntary desegregation in Los Angeles, it does not reverse previous school desegregation law. The primary issue the Court addressed was whether a state could repeal a

state provision that went beyond the provisions of the federal constitution. The decision did not alter previous decisions that require districts found guilty of intentional segregation to take affirmative steps to effectively desegregate their schools. Plaintiffs have returned to court to attempt to establish that the Los Angeles system has intentionally maintained segregated schools.

- Washington v. Seattle School District No. 1, 50 U.S.L.W. 4998 (Case No. 81-9, June 30, 1982).

In 1978, the Seattle school district began implementation of a mandatory student assignment plan to desegregate its schools. That plan was developed and implemented voluntarily by the school board and was not the result of court order. Subsequently, a statewide initiative, Initiative 350, was drafted to forbid the use of mandatory student reassignment and busing for the purpose of racial desegregation in the public schools of the State of Washington. The initiative prohibited school boards from requiring any student to attend a school other than the one geographically nearest or next nearest to that student's home. However, the initiative set forth a number of exceptions to this requirement. A student could be assigned beyond his neighborhood school for special education programs, or if the nearest or next nearest school is overcrowded or unsafe, or if it lacks necessary physical facilities. These exceptions permitted school boards to assign students away from neighborhood schools for virtually all purposes required by their educational policies, except desegregation.

Initiative 350 was passed by voters in November 1978. Seattle, joined by the Tacoma and Pasco school districts, challenged the constitutionality of the initiative in federal district court. The district court held that the initiative violated the equal protection clause of the 14th Amendment because "it permits busing for non-racial reasons but forbids it for racial reasons." The district court blocked implementation of the initiative's restrictions, and on appeal by the State of Washington, the 9th U.S. Circuit Court of Appeals affirmed the lower court's decision.

On appeal, the U.S. Supreme Court held that Initiative 350 violated the equal protection clause of the 14th Amendment. The court found that the initiative used the racial nature of an issue, student reassignment and busing for desegregation to redefine the governmental decisionmaking structure, thus imposing substantial and unique burdens on racial minorities. The initiative reordered the state's educational decisionmaking process. Before adoption of the initiative, the power to determine what programs would most appropriately meet a school district's educational needs, including programs involving student assignment and desegregation, was committed to the local school board's discretion. After passage of the initiative, authority over all but one of these areas remained with the local board. By placing power over desegregative busing at the state level, the initiative unconstitutionally differentiated between the treatment of problems involving racial matters and treatment of other problems by school boards. The Court reaffirmed earlier decisions that meaningful and unjustified distinctions based on race are impermissible. In addition, it held that the initiative dislodged decisionmaking authority over desegregation at a new and remote level of government, making enactment of racially beneficial legislation uniquely difficult and imposing direct burdens on the pursuit of minority interests.

The Court distinguished its decision in Washington v. Seattle from its decision in Crawford v. Los Angeles. Initiative 350 was more than a repeal of a desegregation law by the political entity that created it. In Crawford, the State of California adopted a stricter standard for school desegregation than required by federal law and later repealed that stricter standard in favor of the federal standard. The Seattle case addressed a different issue of whether the state has the authority to use a racial classification to usurp local decisionmaking authority. As in Crawford, the Court in Washington did not reverse previous school desegregation decisions. And, as in Crawford, the Court's decision in this case served to maintain the mandatory student reassignment and busing plan implemented in Seattle since 1978.

For Further Information

- Aquila, Frank D., ed. Race Equity in Education: The History of School Desegregation, 1849-1979. Bloomington: Indiana University, School of Education, 1979.
- Blaustein, Albert P., and Ferguson, Clarence C., Jr. Desegregation and the Law: The Meaning and Effect of School Segregation Cases. New York: Vintage Books, 1962.
- Harris, J. John, III. "Historical and Legal Antecedents of Public School Desegregation." Planning and Changing 10 (Spring 1979):20-36.
- Kluger, Richard. Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality. New York: Vintage Books, 1977.
- National Institute of Education. A Citizen's Guide to School Desegregation Law. Washington, D.C.: U.S. Government Printing Office, 1978.
- Read, Frank T. "Judicial Evolution of the Law of School Integration Since Brown v. Board of Education." Law and Contemporary Problems 39 (Winter 1975):7-49.
- Taylor, William L. "The Supreme Court and Recent School Desegregation Cases: The Role of Social Science in a Period of Judicial Retrenchment." Law and Contemporary Problems 42 (Autumn 1978):37-56.
- Taylor, William L. "Brown in Perspective." In Effective School Desegregation: Equity, Quality, and Feasibility, edited by Willis D. Hawley. Beverly Hills, Calif.: SAGE Publications, 1981.
- U.S. Commission on Civil Rights. With All Deliberate Speed: 1954-19??. Washington, D.C.: U.S. Government Printing Office, November 1981.
- Wilkenson, J. Harvie. From Brown to Bakke: The Supreme Court and School Integration, 1954-1978. New York: Oxford University Press, 1979.

Experts

Betsy Levin Dean School of Law University of Colorado Boulder, CO 303-492-8047	James Nabrit, III NAACP Legal Defense and Education Fund Suite 2030 10 Columbus Circle New York, NY 212-586-8397	William Taylor Director Center for National Policy Review School of Law Catholic University Washington, D.C. 202-832-8525
Norman Chachkin Lawyers' Committee for Civil Rights 733 15th Street, N.W. Washington, D.C. 20005 202-628-6700	Peter Roos Mexican American Legal Defense and Education Fund 28 Geary Street San Francisco, CA 94108 415-981-5800	Mark G. Yudof University of Texas School of Law 727 E. 26th Street Austin, TX 78705 512-471-5151

SECTION II

MAJOR DESEGREGATION ACTIVITY IN 1982

Over the past several years, a belief in the failure of school desegregation has begun to dominate national thought and influence the development of related national, state, and local policies. In 1978, voters in the state of Washington approved Initiative 350 limiting the discretion of local school systems, even if they wish to do so voluntarily, to assign and transport students to achieve racial balance among schools. In 1979, California voters approved Proposition One prohibiting state-ordered desegregation unless intentional discrimination is established. Several local school systems have recently proposed at least partial abandonment of mandatory desegregation strategies. During 1980-1981, nineteen separate bills were introduced in the U.S. Congress to prohibit the Department of Education, the Justice Department, or the federal courts from promoting or requiring mandatory student assignments or busing as strategies to achieve school desegregation. On June 9, 1981 the House of Representatives passed by a vote of more than 2-to-1 a measure that would prohibit the Justice Department from pursuing litigation that could lead to the busing of students to promote racial desegregation. On March 2, 1982 the Senate passed a rider to the Justice Department appropriations bill (S. 951) that prohibits the department from pursuing busing and prohibits the federal courts from requiring the assignment and busing of students to schools for the purpose of desegregation if such assignment and busing is to a school over 5 miles or 15 minutes away from the student's home. In addition, the Education and Justice Departments under the Reagan administration have publicly opposed mandatory strategies to reduce racial isolation in the public schools.

While political activity to reduce mandatory student assignments and busing has increased in recent years, the courts and hundreds of school systems around the country continue to go about the process of desegregation. Many of the actions proposed by local school boards to reduce amounts of mandatory desegregation have been blocked by the courts. In addition, new inquiries into levels of segregation maintained by other school systems have begun.

This section is divided into three parts. In the first part, we discuss major developments in the desegregation activity of several of the nation's largest school systems. In the second part, we outline the major provisions of current congressional legislation to limit or prohibit mandatory student reassignment and busing for desegregation. The third part of this section outlines the stated positions of the Reagan administration on school desegregation policies and strategies.

Desegregation Activity in Selected School Districts

• Boston, Massachusetts

On February 17, 1982, the 1st U.S. Circuit Court of Appeals held that the Boston school system may lay off tenured white school teachers before terminating junior black faculty members in order to comply with the 1974 court order to desegregate the system (Morgan v. O'Bryant). The school system has laid off about 1,200 white tenured teachers since fall 1981 after its budget was reduced as a result of property tax cutbacks mandated by Proposition 2½.

The 1974 desegregation order, which was upheld by the circuit court, requires the system to increase the percentage of black teachers in the system by 1.5% each year until a 20% level is reached. The system must then recruit more black faculty members to reach a 25% level.

The circuit court held that the 20% quota was clearly a part of the remedy to eliminate unconstitutional segregation found to exist in the system in 1974. It held that the system could not follow a policy that would allow the percentage of black teachers to fall below the 19% currently achieved. The Boston Teachers Union announced during the week of June 14 that it will appeal the decision to the U.S. Supreme Court.

In other litigation involving the Boston public schools, a federal district court rejected a school board proposal to alter the grade structure of one of the city's elementary schools while adding a magnet

program for the performing arts at that school. Under the proposal, that elementary school would be expanded to include grades 6 through 8. The district court decision was based in part on that court's finding in the original desegregation case that the system's grade structure had been used to segregate the district.

In June, 1982, lawyers for the black plaintiffs in the desegregation suit announced that they would seek court approval of a "freedom-of-choice" plan to replace the mandatory student assignment plan now in effect. The plan, which is being developed, would allow students to attend the school of their choice. Lawyers for the plaintiffs contend that the mandatory plan has not worked to provide equal educational opportunities for blacks in the system and their sentiments echo the results of a March 1982 Boston Globe poll that found four out of five black parents surveyed preferring an open enrollment policy to the current plan.

According to the Boston Globe, the U.S. Justice Department is considering a study of whether the 1974 court order has helped promote desegregation. Reportedly, if the study produces negative findings, the department may support a change to a "freedom-of-choice" plan.

However, the NAACP Legal Defense Fund rejoined the Boston desegregation case earlier this year. Its attorneys urge the district court not to close the case and maintain that the free choice proposals are unconstitutional.

• Chicago, Illinois

On February 12, 1982, the U.S. Justice Department approved a desegregation plan proposed by the school board that excludes busing and relies heavily on voluntary student transfers to increase racial balance among schools. A federal district court will review the case to determine if the board's voluntary plan meets Supreme Court desegregation standards. The district court will also examine the plan under the terms of a 1980 decree in which the Justice Department agreed to withdraw from the case in return for the school board's promise to create "the greatest practicable number of stably desegregated schools." The case is United States v. Board of Education of Chicago (80-C-5124).

Justice Department acceptance of the board's plan followed a series of events in which the department reversed its position with respect to the desegregation of the Chicago school district. In July 1981, the department questioned the board's all-voluntary approach and voiced concern about its definition of a desegregated school as one with no more than a 70% white enrollment. Justice contended that this standard implied that there would be a 30% limit to minority enrollment in white schools.

In September 1981, however, the department reversed its position, arguing before the district court that the Chicago school board was headed in the right direction by using voluntary strategies to desegregate its schools. The department agreed with the board's judgment that mandatory strategies would not be successful in the predominantly minority district.

Under the voluntary plan supported by the Justice Department, 183 of Chicago's 538 schools would be considered desegregated under the 70% white standard, according to the board's projections.

In a separate action, the U.S. Supreme Court agreed to hear a challenge by black parents of a school board policy imposing racial quotas on enrollment in two high schools. The Supreme Court originally agreed to review the constitutionality of the quota system but then dropped the case after Chicago officials said they were abandoning the quota plan under an agreement worked out with the Justice Department. However, the board later reinstated the quotas.

The quota policy bars black attendance at the two high schools that would increase minority enrollment above 48% and 50%. The plaintiffs contend that the policy has kept 1,600 black students, but no white students, from attending the high school closest to their homes.

The 7th U.S. Circuit Court of Appeals upheld the quotas in 1979 and again in 1980. The case, Johnson v. Board of Education of the City of Chicago will be consolidated with the proceedings involving the desegregation consent decree in United States v. Board of Education of Chicago.

- Cincinnati, Ohio

In early March, 1982, a federal district court held that the NAACP Legal Defense Fund could use evidence to attempt to show that the Cincinnati school district maintained intentional segregation before 1965, the year a trial court found no intentional segregation in the system. The 1965 ruling was affirmed by the 6th U.S. Circuit Court of Appeals in 1969.

In fall 1980, the Legal Defense Fund filed a motion in district court arguing that the Supreme Court's decisions in Columbus and Dayton allowed the inclusion of such evidence. It argued that those two decisions charge school systems that operated dual systems at the time of Brown with the affirmative duty to desegregate. It further contends that evidence from before 1965 will show intentional discrimination on the part of the Cincinnati system.

The new trial will involve the city of Cincinnati, 17 suburban school systems and the State of Ohio. The district court has rejected requests by the state and by the suburban school systems to appeal the evidence ruling to the circuit court before trial. The case is Bronson v. Board of Education (C-1-74-205).

- Dade County (Miami), Florida

A report by the U.S. Commission on Civil Rights issued in spring 1982 criticized the quality of education the Dade County school district offers minority students. The primary reason for the alleged discrepancy between the quality of education received by minority and white students is, according to the Commission's report, incomplete desegregation of the county schools that has left thousands of black students in dilapidated, ill-equipped inner-city schools.

The Commission found that despite the system's desegregation efforts, many schools remain virtually one-race, especially in affluent white neighborhoods and inner-city black neighborhoods. The desegregation plan, ordered by a federal district court in 1970, was based on the pairing and grouping of 27 predominantly black schools with 30 predominantly white schools. The court held that it was impractical to require a plan to achieve racial balance in all of the district's 250 schools.

The plan did not affect several inner-city schools, which currently remain all-black. School district data for the 1981-1982 school year indicate that 5 Dade County schools are 100% black and 4 are 99% black.

The school board has appointed a special committee to study the Commission's report and make recommendations for improving the quality of classes.

- Denver, Colorado

In October 1981, the Denver school board voted 4 to 3 to recommend to a federal district court a new desegregation plan based on neighborhood schools and a freedom of choice policy. The system, which has been under court order to desegregate since 1973, failed to develop an acceptable desegregation plan after Keyes v. School District No. 1. In 1974, the district court ordered a plan which paired elementary schools and altered the attendance zones for secondary schools.

The voluntary plan proposed by the school board would assign students to the "closest school" of their choice on a first come, first-served basis. It would also allow students to remain in their present schools if they wished to do so. Magnet schools with special programs would be developed and attract white students to schools in minority neighborhoods.

In March 1982, the federal district court rejected the voluntary plan proposed by the school board. Testimony given before the court indicated that under the proposed plan, assuming that most students would attend schools closest to their homes, the district would return to levels of segregation that approximated levels of segregation found unconstitutional in 1973. The district court ordered that a new plan be developed that promised to achieve substantial desegregation throughout the system.

On May 12, 1982, the court approved a desegregation plan that resulted from negotiations among members of the school board, plaintiffs in the case, and a communitywide citizens committee. The plan, approved for only one year, will reduce the number of children reassigned and bused in fall 1982 from 13,600 to approximately 11,000 students in the 62,000 student system. The number of "walk-in" neighborhood schools will increase from 34 to 52. Attendance zones will be redrawn, grade structures will be reorganized, and magnet schools will be increased. A panel of education experts will replace a court-appointed citizens committee to monitor progress under the plan.

- Duval County (Jacksonville), Florida

In April 1982, the superintendent of the Duval County school district appointed a 27-member committee, composed of representatives from several community groups and school officials, to study the future course of desegregation in that district. The committee will examine the implications of reducing busing throughout the system and of neighborhood schools in light of changing housing patterns in the county. The committee has no schedule for completing their investigation and making recommendations.

Duval County has implemented a mandatory student reassignment plan since 1971 as a result of a court order Mims v. Duval County Board of Education.

- Hartford, Connecticut

Hartford's voluntary desegregation program, Suburban Project Concern, is being phased out by order of the local school board. The board argues that due to state and federal funding cuts, the district can no longer afford to send minority students from the city to suburban schools under the program.

Project Concern began in 1966 as a program to desegregate surrounding suburban public schools with minority students from overcrowded schools in Hartford. Five suburban school districts agreed to accept 250 of Hartford's minority students in the first year of the program. City officials in return paid tuition for their students and transportation costs to bus them to suburban schools. Hartford also hired support teachers to accompany students and assist with tutoring services in the suburban schools.

Since 1966, Project Concern has grown to include 13 suburban school systems. The program has served up to 1,500 minority students a year, but in the 1981-1982 school year that number was down to 900. In 1981-1982, no new students were placed in any of the suburban school districts that have contracted with the Hartford system for Project Concern. No more students are expected to be placed in the program in the future, despite requests by suburban communities for more students.

Funding for the program has been reduced from \$2.2 million in 1980-1981 to \$1.6 million in 1981-1982. Administrative and support staff have been terminated from their positions with the program and transportation is no longer provided for middle and high school students attending suburban schools under the program.

- Indianapolis, Indiana

On March 26, 1982, the 7th U.S. Circuit Court of Appeals upheld the ruling of a federal district court that the State of Indiana was liable for the costs of a court-ordered interdistrict desegregation plan for Indianapolis and surrounding suburban school districts. The court held that because state legislation that merged municipal governments did not consolidate school districts in Marion County, the state was solely liable for countywide segregation. The state plans to appeal the decision to the U.S. Supreme Court.

The state maintains that it has prerogative to determine financing under a 1974 state law that distributes court-ordered interdistrict desegregation costs between school systems and the state. It contends that the circuit court's ruling breaches that prerogative. However, the circuit court addressed that argument in its opinion, holding that states have no authority to limit the power of federal courts to remedy constitutional violations. The case is United States v. Board of School Commissioners of Indiana (81-2209).

In August 1981, Indianapolis and surrounding suburban townships in Marion County began implementation of a cross-district desegregation plan that requires reassignment of several thousand black students from predominantly black inner-city schools to predominantly white schools in suburban school districts. This plan was ordered by a federal district court and affirmed by the 7th U.S. Circuit Court of Appeals in Bowen v. United States. The U.S. Supreme Court refused to hear challenges to the plan.

- Jackson, Mississippi

Lawyers for plaintiffs in the 19-year-old desegregation suit against the Jackson school district signed an agreement with the 5th U.S. Circuit Court of Appeals in June 1982 not to appeal a district court's determination that Jackson had achieved a unitary school system. That agreement officially ended the federal courts' involvement in school desegregation in that city.

Jackson began implementation of a mandatory desegregation plan in 1970 that involved the reassignment and busing of students for racial balance. The signed agreement and the district court's 1981 determination of a unitary system does not mean that school officials can abandon the mandatory plan. Rather, it means that school authorities can stop making frequent adjustments to attendance zones to compensate for changing residential patterns. Plaintiffs intend to continue to monitor the system.

- Los Angeles Unified School District, California

On June 30, 1982, the U.S. Supreme Court upheld a statewide voter-approved initiative, Proposition One, that adopted a stricter standard for school desegregation litigation than the one previously required by state courts. State courts in California had held that school districts have a state constitutional duty to take "reasonable feasible steps to alleviate school segregation 'regardless of its cause'." The case is Crawford v. Board of Education of the City of Los Angeles (81-38).

The proposition substituted the stricter federal standard that school districts have a duty to remedy segregation only where intentional discrimination is established. The proposition and the Supreme Court's decision do not prohibit mandatory student assignments and busing to achieve desegregation. They state only that California courts cannot order mandatory assignments and busing unless school systems are shown to have practiced intentional racial discrimination.

The California State Supreme Court had upheld the application of the proposition to the Los Angeles school desegregation case. In that case, a limited mandatory student reassignment and busing plan that was ordered by a lower state court was nullified because the lower court had not satisfactorily proven the existence of intentional discrimination on the part of the school system. The state supreme court allowed the system to stop implementing the mandatory plan and adopt a voluntary one in the spring of 1981.

That voluntary desegregation plan is being challenged by the NAACP Legal Defense Fund. The LDF returned to court in April 1981 when the school system adopted the voluntary plan. Plaintiffs are trying to establish a finding of intentional discrimination in the district with respect to provision of educational opportunities for minority students.

[See discussion of Crawford in Section I.]

- Memphis, Tennessee

In April 1982, a federal district court approved revisions in Memphis' school desegregation plan. Those revisions, negotiated by the school board and the NAACP Legal Defense Fund, include elimination of 151 existing bus trips and the addition of 44 new ones. The revisions also include closing three elementary schools, establishing an alternative high school, exempting desegregated neighborhoods from reassignment and busing, and changing the grades served by 23 other schools.

The revisions call for reassignment and busing in a predominantly white area in the northeast section of the district for the first time. Parents of students in that neighborhood plan to appeal the district court's approval of this part of the desegregation plan.

- Montgomery County, Maryland

Faced with declining enrollments and budget reductions, the Montgomery County school board voted in fall 1981 to close 16 schools over the next three years, including 6 in predominantly minority neighborhoods, and redraw attendance zones for a number of other schools. Members of minority groups charged that these changes would serve to resegregate schools in the southern portion of the county where most minority students live. Several of the schools targeted for closure were successfully desegregated under a system of pairing and clustering schools.

A state-appointed hearing examiner recommended to the Maryland State Board of Education that it reverse three of the county board's proposals affecting minority neighborhoods. He recommended that the state board uphold the county board's decisions to close or rezone eight schools, but advised that the state board closely monitor two of the rezoned schools which he thought were in danger of becoming racially imbalanced.

The examiner concluded that the boundary changes for one high school and an intermediate school would remove predominantly white neighborhoods from the attendance zones leaving a small enrollment at those schools composed mostly of minority students. He found that the county board's decision to close an elementary school in a predominantly minority