

U.S. SUPREME COURT DECISIONS AND DESEGREGATION IN THE SOUTH

by

MARTHA ANN PEAVY

Under the Direction of

John Dayton

ABSTRACT

This study examined the relevant legal history and the current legal status of desegregation in the Southern United States. Beginning with the *Dred Scot* case and continuing to the present, this study examined Southern Blacks' quest for equal access to a quality education through legal challenges before the United States Supreme Court.

U.S. Supreme Court decisions on challenges to the denial of equal access to education and an adequate legal remedy were also analyzed. The study produced a chronology of U.S. Supreme Court cases effectuating desegregation in the South and relevant scholarly commentaries concerning these decisions of the high Court.

This study found that: 1) three cases in the nineteenth century had a significant impact on segregation, but only one pertained directly to education; 2) segregation in public schools based on color was struck down in an unanimous decision by the U.S. Supreme Court in *Brown v. Board of Education* (1954); 3) cases immediately following the first *Brown* case up until 1967 involved rulings by the high Court forbidding tactics that were designed for the specific purpose of delaying desegregation; 4) beginning in 1968 and ending in 1973 legal guidelines were given on implementing desegregation by the U.S. Supreme Court; 5) the high Court began to back away from expanding desegregation

from 1974 until 1979; and 6) three recent cases indicate that the U.S. Supreme Court has withdrawn from active involvement in desegregating schools.

The study concluded that a review of the cases concerning school desegregation in the South shows that the U.S. Supreme Court followed a bell shaped curve of initial non-involvement, to increasing involvement, to direct and active involvement with *Brown* through *Swann*, and then began backing away from involvement in *Milliken*, further decreasing involvement, and is now approaching non-involvement again. In his recent study on resegregation, Orfield (2004) determined that even though the 1954 *Brown* decision had an enduring impact on desegregation of public schools, the South is experiencing the largest backward movement in the nation. Many believed that *Brown* would cure the forces that produced segregation and inequality. But the South, which had the most integrated schools in the U.S. for three decades, is now experiencing a major increase in resegregation.

INDEX WORDS: Desegregation, U.S. Supreme Court, De jure segregation, de facto segregation, resegregation

U.S. SUPREME COURT DECISIONS AND DESEGREGATION IN THE SOUTH

by

MARTHA ANN PEAVY

Submitted to the Faculty of the School of Education
in partial fulfillment of the requirement
of the degree

DOCTOR OF EDUCATION

The University of Georgia

May, 2004

© 2004 Martha Ann Peavy

All Rights Reserved

U.S. SUPREME COURT DECISIONS AND DESEGREGATION IN THE SOUTH

by

MARTHA ANN PEAVY

Major Professor: John Dayton

Committee: Thomas Holmes
Sally Zepeda

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
May, 2004

ACKNOWLEDGEMENTS

I would like to thank Dr. John Dayton for his immeasurable patience, his steadfast support and his generous help in my endeavor.

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENT	iv
1. INTRODUCTION	1
Problems Statement	4
Research Questions	4
Procedures	5
Limitations	5
2. A REVIEW OF THE RELEVANT LITERATURE CONCERNING DESEGREGATION	7
3. AN ANALYSIS OF THE LAW CONCERNING DESEGREGATION AND A SUMMARY OF THE PRESENT STATUS OF THE LAW	74
Segregation	74
Unitary Status and the <i>Green</i> Factors	75
The Effects of <i>Dowell</i> , <i>Freeman</i> and <i>Jenkins</i>	78
Strict Scrutiny	84
Current Status of Desegregation Law	86
Summary	88
4. FINDINGS, CONCLUSIONS, AND COMMENTS	90
REFERENCES	97
APPENDIX	102

LIST OF TABLES

Table 1: Unitary Status Granted or Desegregation Order Dismissed.....	93
---	----

CHAPTER 1

INTRODUCTION

Historically and legally, the pursuit of quality education has been an uphill battle for people of African descent in America. Brought to the New World against their will, Blacks from the very start sought to advance themselves and elevate their status through education. The enslaved Africans took advantage of any opportunities for education that existed for them, allowing neither hardships nor punishment to stand in the way of their attempts to learn (U.S. Department of the Interior, n.d.). Indeed, education was central to their drive toward freedom and equality. The Black writer and scholar, W. E. B. DuBois, declared that the Blacks' quest for education was one of the marvelous occurrences of the modern world; and, almost without parallel in the history of civilization (Bullock, 1967).

Although Quakers and Presbyterians established schools in the South for Blacks during the early 1700s, most southern Whites professed that Blacks lacked the mental capacity to be educated and generally feared that literacy would encourage the slaves to escape or revolt (Franklin and Moss, 1994). Southern colonies imposed severe restrictions on slaves' efforts to learn to read and write. In 1740, the colony of South Carolina legislated that anyone teaching a slave to read or write would be fined one hundred pounds for each offense (Berry & Blassingame, 1982)

However, some southern cities tolerated church-run schools for Blacks (Cornelius, 1991). In Raleigh, North Carolina some teachers taught Whites during the day and Blacks

at night. Several schools for Blacks were in operation in New Orleans, and by 1850, one thousand Blacks attended them (Berlin, 1975).

During the Civil War, the desire for education by Black slaves was so strong that Union Army generals appealed for emergency philanthropic assistance to address it (Blassingame, 1965). At the War's end, former slaves began to establish and support their own schools (Anderson, 1988). They contributed what money they could spare, cleared land, cut lumber, and built schoolhouses. By 1867, Blacks supported 152 schools in Georgia (Berry & Blassingame, 1982). The same phenomenon occurred in other southern states. By 1877, more than 600,000 Blacks were enrolled in schools in the South (Berry & Blassingame, 1982).

At the end of Radical Reconstruction, the South adopted Jim Crow laws, which separated the races in most aspects of life (Cartwright, 1976). Franklin (1959) stated that the impact of Jim Crow on public education in the South steadily increased from the time the guns were silenced at Appomattox.

Once Jim Crow was firmly established in the public schools of the South, the inequities persisted and increased; and the conditions most destructive to the educative process in a democracy were created...For the Negro children the task was an almost impossible one: to endure the badge of inferiority imposed on them by segregation; to learn enough in inferior Jim Crow schools to survive in a highly complex and hostile world; and, at the same time keep faith in democracy. For both Negro and white children, one of the most effective lessons taught in Jim Crow schools was that even in institutions dedicated to training the mind a greater premium was placed on color than on brains. (p. 235)

The *Dred Scot* (1856) case delivered a devastating blow to the Blacks' pursuit for equality. The decision that Dred Scot was property, not a citizen, and as such could not sue in any court dashed the hopes of obtaining freedom for many slaves. Southerners opposed to equal access to education for Blacks embraced the *Dred Scott* (1856) decision

and carried it diligently into the future (Fehrenbacher, 1978). During the 1870s, the U.S. Supreme Court heard several cases on the issue and consistently found that the Equal Protection Clause of the 14th Amendment was limited to official state actions. According to the Justices, the amendment forbade only states, not individuals or businesses, from discriminating against Blacks (Sitkoff, 1978).

Plessy v. Ferguson (1896) gave federal and legal sanction to racial segregation under the rule of “separate but equal.” But a system of separate and unequal schools was a cornerstone of the New South (Anderson, 1988). The unanimous decision in the *Cumming* (1899) case stated that schools maintained by states’ tax money belonged only to the respective states, and interference on the part of the federal government could not be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. This ruling discouraged Blacks from seeking redress in the courts for many years (Kousser, 1980).

During the 1930s and 1940s, the NAACP began an organized and sustained legal challenge to the structures and practices of racial discrimination, especially in the area of public education. The organization began to chip away at the legal foundation of *Plessy v. Ferguson* and the struggle to have separate but equal declared unconstitutional culminated in *Brown v. Board of Education* (1954).

The *Brown* case did not end the Blacks’ quest for equal access to quality education. Although the U.S. Supreme Court determined in *Brown* that separate but equal was unconstitutional, there was a solid wall of opposition to the decision in the South and little overt effort was made by the Executive branch to enforce it. Since Congress did not symbolically intervene to pass laws bolstering *Brown*, the “law of the land,” it was left to

the Court to step in again and mandate compliance. During this period the U.S. Supreme Court's decisions held that the Black petitioners seeking relief from dual school systems be admitted to all-White schools.

Brown II (1955) demanded that dual school systems be abolished with "all deliberate speed." This order was virtually ignored in the South. Furthermore, the U.S. Supreme Court did not address desegregation until after 1967 when the high Court pushed for speedy and complete compliance with the law demanding desegregation even if it meant busing thousands of children many miles to achieve it. Courts ordered school districts to integrate schools so that they conformed to the racial demographics of the district.

The United States' educational institutions mirror the society's values, but the most significant changes, in terms of equality in public education, have come via the legal system in which minority rights are protected. Those seeking equal access to quality education embrace this avenue.

Problem Statement

This study reviewed the legal history of Southern Blacks in their quest for equal access to quality education through U.S. Supreme Court decisions. It begins with *Dred Scott* (1856) and continues to the present.

Research Questions

This study investigated the following research questions:

1. What is the relevant legal history of desegregation in the South?
2. What is the current legal status of desegregation in the South?

Procedures

This study used legal research methodology. Research procedures included a thorough review of U.S. Supreme Court cases concerning alleged denials of Black students' equal protection rights to equal education in the South. Scholarly periodicals concerning desegregation and Supreme Court desegregation cases were found through searches in "Lexis," "ERIC," and the University of Georgia library, the University of Georgia Law Library and other libraries. In addition to searches for relevant cases and legal commentary, the archives of various libraries were also searched for relevant writings of Black leaders, scholars, and educators concerning U.S. Supreme Court desegregation cases. Government documents, on-line journals, and various search engines were also searched for relevant material.

These documents were analyzed and synthesized to construct a chronological account of the legal history of desegregation in the South and to construct a composite perspective on the legal status of desegregation law in the South. The literature review is arranged in chronological order to provide the reader with a chronological perspective on the historical development of U.S. Supreme Court cases concerning desegregation in the southern states. Interspersed in the review of Court cases are relevant scholarly journal articles discussing the Court cases and the issue of desegregation in the South.

Limitations of the Study

This study examined the struggle of Blacks in the South to attain equal access to a quality education through U.S. Supreme Court decisions. It is intended to provide a historical view of the road to desegregation in the South through U.S. Supreme Court decisions and mandates. It does not consider Court cases in other regions of the United

States. Lower court cases are discussed only as they pertain to relevant Supreme Court cases. The study considers only public K-12 school cases, and does not address those Court cases that pertain to higher education.

CHAPTER 2

A REVIEW OF THE RELEVANT LITERATURE CONCERNING DESEGREGATION

This chapter presents a review of the relevant literature concerning desegregation in the South, beginning with pre-Civil War events. In 1795 Dred Scott was born a slave in Virginia. But was later taken by his master, an army surgeon, into the free portion of the Louisiana territory. When his master died, Scott argued that he was entitled to freedom. He contended that since slavery was outlawed in the free territory, he had become a free man there and “once free, always free.” The Missouri court rejected this argument, but Scott and his White supporters managed to take his case on to the U.S. Supreme Court, where the issue simply became whether a slave even had a legal right to sue in a federal court. The first question for the Court to decide in *Dred Scott v. Sandford* (1857), was whether it had jurisdiction to rule over this case. If Scott had legal standing, then the Court had jurisdiction, and the Justices could move forward to decide the merits of Scott’s claim. But if, as a slave, Scott did not have legal standing, then the Court could dismiss the suit for lack of jurisdiction.

Chief Justice Taney delivered the opinion of the court. He asserted that the question before the Court: Can a Negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights and privileges, and immunities guaranteed by that instrument to the citizen?

The Court ruled that Scott, a slave, could not achieve United States citizenship, therefore, could not exercise the privilege of a free citizen to sue in federal court. The Court also ruled that the Missouri Compromise of 1820 was unconstitutional since Congress could not forbid citizens from taking their property, i.e., slaves, into any territory owned by the United States. A slave, Taney ruled, was property, nothing more, and could never be a citizen (*Dred Scott v. Sandford*, 1856).

In the opinion of many scholars, this case was one of the U.S. Supreme Court's great self-inflicted wounds (*Dred Scott v. Sandford*, 1856). In this case the U.S. Supreme Court was involved in imposing a judicial solution on a political problem. The question concerned Dred Scott's status in the United States: was he a citizen entitled to protection under the Constitution, or was he property with no such rights? The Court ruled that Scott was a slave and could not achieve United States citizenship. Chief Justice Taney took the matter a step further asserting that Dred Scott was nothing more than property and could never be a citizen. Some scholars assert that the Court's decision in the *Dred Scott* case was a significant aggravating factor in the initiation of the U.S. Civil War.

After the U.S. Civil War, Black citizens enjoyed a great legal victory in the adoption of the Fourteenth Amendment to the U.S. Constitution in 1868.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The U.S. Supreme Court had an opportunity to decide what "equal" meant in *Plessy v. Ferguson* (1896), a case which ultimately enshrined the "separate but equal" doctrine into law. At issue in this case was an 1890 Louisiana law requiring railroads to provide equal

but separate accommodations for the White and Colored races, thereby sanctioning state-imposed segregation. The constitutionality of the Louisiana law was attacked on the grounds that it conflicted both with the Thirteenth Amendment of the Constitution, which abolished slavery, and with the Fourteenth Amendment, which prohibited certain restrictive legislation on the parts of states. Justice Brown delivered the opinion of the Court.

1. That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as punishment for crime, and is too clear for argument. A statute which implies merely a legal distinction between the White and Colored races, a distinction which is founded in the color of the two races, and which must always exist so long as White men are distinguished from the other race by color, has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection. (p. 1)
2. The object of the Fourteenth Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competence of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for White and Colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the Colored race have been longest and most earnestly enforced. (pp. 3-4)

Justice Brown further stated in the opinion of the court that “a law which authorizes or even requires the separation of the two races in public conveyances is no more unreasonable or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for Colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding

acts of state legislatures.” (p. 6) Justice Brown further stated that:

We consider the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the Colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the Colored race chooses to put that construction upon it. The argument also assumes that social prejudices may be overcome by legislature, and that equal right cannot be secured to the Negro except by an commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other’s merits, and a voluntary consent of individuals. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. (p. 8)

In a dissenting opinion, Justice Harlan argued that if a White man and a Black man choose to occupy the same public conveyance on a public highway, it is their right to do so; and no government proceeding along on the grounds of race can prevent it without infringing on the personal liberty of each. He further stated:

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. (*Plessy v. Ferguson*, 1896, pp. 12-13)

Despite Justice Harlan’s vigorous dissent, the doctrine of separate but equal was firmly established into law following the U.S. Supreme Court’s decision in *Plessy*.

Nonetheless, legal advocates for Black citizens persisted in their efforts to gain legal equality. A case in Augusta, Georgia, *Cummings v. Board of Education* (1899) rejected a bid by Blacks to force the district schools to end secondary education for Whites until the district restored education for Blacks. The ruling, the first school segregation case to reach the high Court, allowed for wide disparities in the quality of education afforded Blacks and Whites in the South.

In *Cummings v. Board of Education* the Court ruled that it could not say that the action of the state was, within the meaning of the Fourteenth Amendment, a denial by the state to the plaintiffs, and to those associated with them, of the equal protection of the laws or of any privileges belonging to them as citizens of the United States. The Court found that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class because of their race. The education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. Justice Harlan delivered the following opinion of the Court:

We are not permitted by the evidence in the record to regard that decision as having been made with any desire or purpose on the part of the board to discriminate against any of the Colored school children of the county on account of their race. But if it be assumed that the board erred in supposing that its duty was to provide educational facilities for the 300 Colored children who were without an opportunity in primary schools to learn the alphabet and to read and write, rather than to maintain a school for the benefit of the 60 Colored children who wished to attend a high school, that was not an error which a court of equity should attempt to remedy by an injunction that would compel the board of education to withhold all assistance from the high school maintained for White children. If, in some appropriate proceeding instituted directly for that purpose, the plaintiffs had sought to compel the board of education, out of the funds in its hands or under its control, to establish and maintain a high school for Colored children, and if it appeared that the board's refusal to maintain such a school was in fact an abuse of its discretion and in hostility to the Colored population because of their race, different questions might have arisen in the state court.... We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. We have no such case to be

determined. (*Cumming v. Board of Education*, 1899, pp. 5-6)

In *Gong Lum v. Rice* (1927), the U.S. Supreme Court affirmed a Mississippi district's right to require a Chinese-American girl to attend a segregated Black school, rejecting her bid to attend the school for Whites. *Plessy v. Ferguson* (1896) and *Cumming v. Board of Education* (1899) were cited in this decision.

The final paragraph of the court's opinion in *Gong Lum v. Rice* commented that most of the cases cited arose over the establishment of separate schools for White pupils and Black pupils. But the Court could not think that the question was any different or that any different result could be reached where the issue was between White pupils and the pupils of the Yellow races. The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment (*Gong Lum v. Rice*, 1927).

State of Missouri v. Canada (1938) was the first graduate school program case to challenge racial discrimination and to reach the U.S. Supreme Court. Legal advocates for equal rights for Blacks were victorious. The ruling declared unconstitutional Missouri's failure to provide a law school for Blacks. The ruling also established that the legitimacy of segregated institutions rests wholly upon the equality they offer the separated groups. The question here was not about the duty of the State to supply legal training or about the quality of the training which it does supply. Instead, it was about the state's duty to provide such training to all of its residents upon the basis of equality of rights. By the operation of the laws of Missouri, a privilege had been created for White law students which was denied to Negroes by reason of their race. The White resident was afforded legal education within the State; the equally qualified Negro resident was

refused and had to go outside the State to obtain a legal education. The U.S. Supreme Court held that policy to be a denial of the equality of a legal right to the enjoyment of the privilege which the State has set up. The provision for the payment of tuition fees in another State does not remove the discrimination (*State of Missouri Ex Rel v. Canada, 1938*).

The capstone period, as viewed by Lane (1932), of the Negro's stride toward increased provisions for education in the Deep South was seen between 1920 and 1930.

Lane noted:

1. Employing supervising industrial teachers made a tremendous jump;
2. North Carolina took over the National Training School and made it public;
3. Georgia established The State Agricultural and Mechanical School for Negroes at Forsyth and made it a branch of the University of Georgia;
4. Alabama changed the status of three Normal schools so that they could give two years training above the high school level;
5. Texas passed a law requiring that all available public school funds be appropriated in each county for the education of White and Negro children with impartial provisions were to be made for both races;
6. North Carolina granted a charter to a Negro school that made it a four year college and gave it the authority to confer degrees;
7. Texas gave authority for the maintenance of a teachers' college in each of the three grand divisions of the state;
8. Maryland established a Normal school for Colored students;

9. Florida's Board of Education recognized the normal, collegiate, and professional work done at the Agricultural and Mechanical College for Negroes at Tallahassee;
10. In 1926, there were twenty-nine teacher-training institutions for Negro students located in seventeen Southern states, up from eight the year before;
11. The average length of the school year in the Southern states increased to 132 days, a gain of nine days;
12. Maryland provided a high school education for the Negro pupils of Baltimore County by building a \$1,500,000 structure for classrooms;
13. County training schools, public schools belonging to the counties as part of the regular county system, increased considerably;
14. In 1927, Maryland extended the school year to 160 actual days for Negro elementary and high schools, a decided improvement in educational opportunities;
15. Georgia built seventeen modern school houses in 1927;
16. Alabama promoted summer schools of collegiate rank for Negroes with the expressed purpose of raising the qualifications and training of public school teachers;
17. Laws were passed to equalize the salaries between Negro and White teachers;
18. In 1929, Georgia provided for the establishment of a college or university for the education of persons of Color under its constitution (Lane, 1932).

A review of relevant history demonstrates that some scholars took exception to the idea, held by many southerners, that segregation was constitutional. Emerson noted that: "If segregation in education is constitutional, it became so under a rule of law that came

from no place. So vital a matter should not have rested on dicta without either argument or consideration.” (Emerson, et al., 1950, p. 317)

By the early 1950s the Court’s new direction concerning the equal protection clause of the Fourteenth Amendment had not yet reached the area of public education. States had failed to provide, a particular type of educational advantage for Negro residents when such advantage was provided for White residents similarly situated, to pay Negro teachers the same salaries paid White teachers with similar qualifications, and to provide similar school terms for Blacks to those of White schools. This fact can be traced back to *Plessy v. Ferguson* (1886). This case has been cited and subsequently relied upon as persuasive, if not binding, judicial precedent for the principle that state-enforced segregation in the public schools violates no provision of the Federal Constitution. Such cases fall into the following five categories:

- (1) Cases that make little or no attempt to examine the facts against the constitutional requirements of the equal protection clause of the Fourteenth Amendment;
- (2) Cases which hold the problem to be one of school administrative classification not unlike other classifications long recognized as a valid exercise of administrative discretion;
- (3) Cases that announce results of which are based upon theories of the “natural race peculiarities” of the Negro as the justification for the segregation;
- (4) Cases that unquestionably and erroneously interpret the application of the protective scope of the Fourteenth Amendment;
- (5) Cases that in no sense support the principle for which they was cited. (Groves, 1951, p. 527)

While addressing the Southern Governors Conference, Ashmore (1952) was asked to measure and to analyze the prevailing attitude of the White South toward segregation in public education, with particular reference to the current legal attacks being made on segregation in most of the Southern states. Ashmore prefaced the conference with the following statement:

I know of no subject that has produced more pure bombast, more fuzzy moralizing, or more sentimental maundering than this. For generations most Americans-Northern and Southern-have approached the profoundly complex subject of race relations in an emotional lather, and have spoken of it in terms of the verities. There are deep well-springs of prejudice on both sides of the question, of course, and in recent years there have been added sharp and practical political considerations. (p. 250)

The prospectus of the conference contained this statement: “Negroes are determined, and all but the most reactionary Whites are resigned to the fact, that enforced segregated schools must go in the very near future” (p.249). Ashmore took issue with that statement insofar as it applied to the White South. He felt that the conservative Whites, who as far as the issue was concerned, made up the great majority of Southern Whites and were a long way from being resigned to the abandonment of segregation in the public schools.

Ashmore’s concern was that the Court, being aware of the prevailing attitude of the South, would hand down a decision that could very well have been unenforceable. Though he did not discount the validity of the legal arguments against segregation, he concluded that the majority of the people in the South were White and the majority of the Whites were opposed to dropping the color bar (Ashmore, 1952).

Marshall (1952) presented a legal background of the efforts to achieve racial integration in education through legal action. He divided the efforts into three distinct periods.

1896-1930. During this period the Court, citing the *Plessy* case, upheld a Louisiana statute that required segregation in public education. This decision started the separate but equal doctrine. During the period between 1896 and 1930, the separate but equal doctrine became ingrained in case law through a lack of carefully planned legal action. Many cases in State and Federal courts were decided, almost without exception, by citing the separate but equal doctrine. The period can be summed up by recognizing that the separate but equal doctrine was set forth without critical analysis on the part of the U.S. Supreme Court and with a record that did not give the Court an opportunity to consider the question adequately. This doctrine, which was established in a case involving intrastate transportation, was seized and used by State and Federal courts in school cases without any effort being made to analyze the legality of the segregation statutes involved. Marshall further elaborated that the separate but equal doctrine became a rule of law that was sacred and apparently beyond legal attack.

1930-1945. In 1930, the NAACP began the attack on the inequalities in public education. A special fund was established to begin the campaign. The first attack was aimed at professional schools on the theory that the extreme cost of maintaining two equal school systems would eventually destroy segregation. The initial form of attack was against the segregation system through law suits that sought absolute and complete equalization of curricula, faculty, and physical equipment between the White and Negro schools. It did not take long to discover that this strategy would not work soon enough.

Due to a lack of full support from the general populace in the Negro community the campaign moved slowly during this period. Few Negroes were interested enough to be plaintiffs. Lack of sufficient money to finance the cases also hindered the movement.

To Marshall the greatest gain during this period was the enlightenment of school officials, the courts, and the general public in the lawlessness of school officials in depriving Negroes their constitutional rights. Obviously, this tangential approach to this legal problem did not produce results in keeping with the time, the efforts exerted, or the money expended.

1945-1952. During the period prior to 1945, the legal program was checked, rechecked, and constantly evaluated. By 1945, plans were ready for a direct attack on the validity of segregation statutes as they applied to public education on the graduate and professional level. In 1946 the first case filed under this program was the *Sweatt* case against the law school at the University of Texas. The state appropriated millions of dollars to establish a new university for Negroes. This new approach not only produced more educational opportunities for Negroes, but also it presented the chance to weaken the principles of segregation at the same time. The University of Texas established a Jim Crow law school and claimed that it would soon be equal to the University of Texas Law School. The Court held that the new law school would not offer equal access to the Negroes and required that the petitioner be admitted to the University of Texas Law School (*Sweatt v. Painter*, 1950).

As a result, segregation on the graduate and professional levels was removed, but the stumbling block to full and complete integration of all students on every level of public education without regard to race or color continued to be the separate but equal doctrine (Marshall, 1952).

Brown (1954) involved cases from Kansas, South Carolina, Virginia, and Delaware. They proposed a common legal question which justified their joint

consideration in the consolidated opinion.

The decision of *Brown* was unanimous. The plaintiffs contended that segregated public schools were not equal and could not be made equal; hence, they were deprived of the equal protection of the law. The first argument was heard in the 1952 Term, and the reargument was heard in the 1953 Term. In delivering the opinion of the Court, Chief Justice Warren wrote:

We come then to the questions presented: 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? We believe that it does. (p. 5) Chief Justice continued, we conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and other similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. (*Brown v. Board of Education*, 1954, p. 5)

According to Valien (1956), official opposition to the *Brown* decision took various legal forms in the South. The following are some of the more prominent ones:

- Established state agencies specifically directed to find means to circumvent the decision
- Disregarded totally the decision by permitting the continuation of segregated public schools
- Abolished public school systems
- Adopted resolutions of interposition or of nullification
- Gave local authorities the power to assign each individual pupil to a specific school

- Declared illegal the advocating or implementing of desegregation for teachers, students, or school officials
- Passed state constitutional amendments and laws disclaiming public education as an individual right or as a state obligation
- Enacted laws to censor books which appeared to support desegregation or racial equality
- Passed laws abolishing compulsory school attendance
- Enacted measures requiring teachers to sign segregation loyalty oaths and to refrain from joining the National Association for the Advancement of Colored People
- Decreed regulations restricting teachers' appointments to a year-to-year basis. (pp. 359-361)

At the same time, Valien (1956) recognized that there were also significant legal victories for desegregation. Among those were the following:

- The federal courts issued a permanent injunction restraining a resistance group from interfering with the Hoxie School Board in the implementation of its desegregation program in Arkansas.
- A federal judge invalidated all school segregation laws passed by the Louisiana legislature in 1954.
- A federal judge directed that Charlottesville, Virginia begin desegregation of its schools in 1956.
- A federal judge in West Virginia ruled that threats of violence regarding desegregation did not constitute reason for non-compliance.
- Desegregation cases were judged as a class action and not one of an individual

- State segregation laws were declared void by a United States Supreme Court decision
- A deadline for compliance by the school boards were established. (pp. 363-367)

After the *Brown* decision, Black children still had many mountains to climb. Franklin (1959) explained that once Jim Crow was firmly established in the public schools of the South, the existing inequities persisted and increased, creating conditions most destructive to the educational process in a democracy. He further asserted that White children were taught that they belonged to some kind of master race. In 1959 Franklin wrote:

For the Negro children the task was an almost impossible one: to endure the badge of inferiority imposed on them by segregation; to learn enough in inferior Jim Crow schools to survive in a highly complex and hostile world; and, at the same time, keep faith in democracy. For both Negro and White children, one of the most effective lessons taught in Jim Crow schools were that even in institutions dedicated to training the mind a greater premium was placed on color than on brains.... Only Jim Crow was flourishing and making steady gains in the generation after the Civil War. (p. 235)

Another *Brown* case that considered the manner in which relief was to be accorded was decided in 1955. After the 1954 decision, the Court requested further argument on the question of relief. With the May 17, 1954 ruling, the defendants were warned that they could not continue to put obstacles in the way of full compliance. The language of the decision emphasized to those in noncompliance, “But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them” (*Brown v. Board of Education*, 1955). Chief Justice Warren delivered the opinion of the Court:

While giving weight to these public and private considerations, the courts will

require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To this end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases. (*Brown v. Board of Education*, 1955, p. 5)

In another case, *Cooper v. Aaron*, (1958), a District Court in Arkansas found that the state could suspend its desegregation for two and a half years because of the tension, bedlam, chaos and turmoil in the school. A Court of Appeals reversed this decision. The U.S. Supreme Court upheld the Court of Appeals' reversal and ordered the state to reinstate their desegregation plan immediately. The order read:

1. This Court cannot countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey Federal court orders resting on this Court's considered interpretation of the United States Constitution in *Brown v. Board of Education*. (p. 4)
2. This Court rejects the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the *Brown* case have been further challenged and tested in the courts. (p. 4)
3. In many locations, obedience to the duty of desegregation will require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools. (p. 7)
4. If, after analysis of the relevant facts (which, of course, excludes hostility to racial desegregation), a District Court concludes that justification exists for not requiring the present nonsegregation admission of all qualified Negro children to public schools, it should scrutinize the program of the school authorities to make sure that they have developed arrangements pointed

toward the earliest practicable completion of desegregation, and have taken appropriate steps to put their program into effective operation. (p. 7)

5. The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights, when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. (pp. 15-16)
6. The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights. (p. 16)
7. The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." (p. 17)
8. The interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Article VI of the Constitution makes it of binding effect on the States "anything in the Constitution or Laws of any State to the contrary notwithstanding." (p. 18)
9. No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. (p. 18)
10. State support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws. (p. 19)

The Board of Education in Arkansas voted to abolish public schools in Little Rock until state laws and efforts to nullify the rulings in *Brown v. Board Education* had been further challenged in courts. The U.S. Supreme Court rejected these contentions. The Court had already required that defendants make a prompt and reasonable start toward compliance with the 1954 ruling, but the Court contended that states may need extra time to comply in an effective manner. The states would have to prove that the needed time

was in good faith and in the best interest of all in the public forum. The Court warned that any delay in any guise to deny the constitutional rights of Negro children could not be countenanced. Good faith could be shown only by a prompt start, and a diligent and earnest pursuit toward elimination of racial segregation from the public schools. Thus, state authorities were duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination.

Occasionally Southern states used force to impede desegregation. The state militia was called to bar the entrance of Negro students to the White high school in Little Rock. The federal government counteracted by sending in the National Guard to ensure their entrance. Justice Frankfurter addressed this situation by stating that the use of force to further obedience to law is a last resort and is not congenial to the spirit of our nation. But when the state of Arkansas decided to use force to block the implementation of the rulings of the U.S. Supreme Court, such action had to be taken. Justice Frankfurter concluded:

That the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding, is especially true when they are confronted with a problem like a racially discriminating public school system. This is the lesson to be drawn from the heartening experience in ending enforced racial segregation in the public schools in cities with Negro population of large proportions. Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze supreme Law, precludes the maintenance of our Federal system as we have known and cherished it for one hundred and seventy years. (*Cooper v. Aaron*, 1958, p. 13)

Southern states were determined to obstruct desegregation. Various tactics were employed as a hindrance. Such was the situation in *Griffin v. School Board* (1964), faced with an order to desegregate, Prince Edward County, Virginia closed the public schools

in the county for five years and gave White parents grants and tax credits to place their children in private schools. Schools in the other counties of Virginia remained open. The U.S. Supreme Court ruled that that public schools in Prince Edward County could not remain closed to avoid the Court's decision while other public schools in Virginia remained open.

In 1956, the Virginia Constitution was amended to authorize the General Assembly and local governing bodies to appropriate funds to assist students in attending either public or nonsectarian private schools, in addition to those owned by the State or by the locality. Other steps taken in Virginia were:

- (a) In 1956, the General Assembly met in a special session and closed any public schools where White and Colored children were enrolled together, cut off state funds to such schools, paid tuition grants to children in nonsectarian private schools, and extended state retirement benefits to teachers in newly created private schools.
- (b) The legislation closing mixed schools and cutting off state funds to those schools was later invalidated by the Court of Appeals of Virginia, which held that these laws violated Virginia's Constitution. In April, 1959, the General Assembly abandoned resistance to desegregation and turned instead to what was called a freedom of choice program. The Assembly repealed the rest of the 1956 legislation, as well as a tuition grant law of January, 1959, and enacted a new tuition grant program.
- (c) The Assembly repealed Virginia's compulsory attendance laws.
- (d) The Assembly made school attendance a matter of local option.

The Court mandated that Prince Edward County public schools reopen and allow the petitioners to attend. This reopening was to be done with great speed. The Court also stipulated that whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one. Grounds of race and opposition to desegregation did not qualify as constitutional. The Court further added that the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise their power to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like the ones operated in other counties in Virginia.

Justice Clark and Justice Harlan disagreed with the holding, contending that the Federal courts are not empowered to order the reopening of the public schools in Prince Edward County, but they otherwise joined in the Court's opinion (*Griffin v. School Board, 1964*).

West and Daniel (1965) of Howard University reported on the programs of the seventeen Southern states that prior to 1954 operated separate but equal educational facilities. They saw progress being made in the gradual desegregation of school systems and in the provision of compensatory opportunities to alleviate the ill effects of segregation and deprivation. Their report included the following facts:

- (a) In the 1964-65 school year, some desegregation had begun on every level of public education in the South. Even in North Carolina some of the rural mountain counties were beginning to move toward desegregation.
- (b) Progress was made in legal compliance of the law. There were 2,050 biracial school districts in the South. The vast majority of these were desegregated

voluntarily with only 142 desegregated under specific court order.

Desegregation of teaching staff in public school districts lagged behind official desegregation of the schools within the system

- (c) The desegregation of school districts does not ensure racially mixed classrooms.

Only 45.8 % of Negro elementary and high school students live in desegregated school districts of this percentage, only 4.67 % of these actually attend racially mixed schools.

- (d) The Southern Association of Schools and Colleges asked Ford Foundation for support for projected Educational Improvement Projects aimed at breaking the cycle in which culturally disadvantaged students were caught. Using certain rooms in schools within the public school system, programs were designed to demonstrate that culturally disadvantaged students can be helped toward higher academic achievement. In addition some of the projects received grants that allowed talented seventh and eighth grade children from deprived families to participate in a special program of counseling.

- (e) States also participated in establishing programs for meeting the educational problems connected with desegregation. Arkansas conducted research that yielded recommendations for ameliorating the educational problems of disadvantaged students. Louisiana operated a pilot School-Work Adjustment Program designed for slow learners. North Carolina opened a residential institution providing three-month sessions for eighth grade students who had indicated good potential but had shown poor achievement. This was an interracial school.

- (f) Progress had been made in the achievement of equal opportunity for the best education possible. A good example is the racial integration on a system-wide basis in a formerly segregated school system, Dade County, Florida (West & Daniel, 1965).

In multiple cases, Negro pupils and their parents sued in Federal District Courts in Tennessee to desegregate racially segregated public schools. In *Goss v. Board of Education* (1963), the desegregation plan submitted by the school board provided for the rezoning of school districts without reference to race. Each plan contained a transfer provision under which any student, upon request, would be permitted, solely on the basis of his own race and the racial composition of the school to which he was assigned to, transfer from a school where he would be in the racial minority, to a school where his race would be the majority. The U.S. Supreme Court reversed the District Court's ruling in favor of the school board. The Court reasoned that the transfer plans were based on racial factors which inevitably would lead toward segregation of students by race which was contrary to *Brown v. Board of Education* (*Goss v. Board of Education*, 1963). Justice Clark delivered the opinion of the Court:

In reaching this result we are not unmindful of the deep-rooted problem involved. Indeed, it was consideration for the multifarious local difficulties and "variety of obstacles" which might arise in this transition that led this Court eight years ago to frame its mandate in *Brown* in such language as "good faith compliance at the earliest practicable date" and "all deliberate speed." Now however, eight years after this decree was rendered and over nine years after the first *Brown* decision, the context in which we must interpret and apply this language to plans for desegregation has been significantly altered. Compare *Watson v. City of Memphis*.... The transfer provisions here cannot be deemed to be reasonably designed to meet legitimate local problems, and therefore, do not meet the requirements of *Brown*. (*Calhoun v Latimer*, 1964, p. 2)

In 1964, the U.S. Supreme Court agreed to hear three cases pertaining to desegregation. After being heard, the cases were sent back to the District Court for further proceedings.

(1) *Calhoun v. Latimer* (1964). The Atlanta Board of Education set forth in a resolution its pupil assignment plan and transfer policy for the next school year. The petitioners argued that the resolution did not meet constitutional standards and would take five to six years to achieve desegregation. The Court sent the case back to the District Court for evidentiary hearing and to test it under considerations set forth in other desegregation cases.

(2) *Bradley v. School Board* (1965). Plans for desegregating the public school systems of Hopewell and Richmond, Virginia, were approved by the District Court for the Eastern District of Virginia without full inquiry into petitioners' contention that faculty allocation on an alleged racial basis rendered the plans inadequate under the principles of *Brown v. Board of Education* (1954). The Court of Appeals, while recognizing the standing of petitioners as parents and pupils to raise this contention, declined to decide its merits because no evidentiary hearings had been held on this issue. The U.S. Supreme Court determined that petitioners were entitled to full evidentiary hearings upon their contention; therefore, the case was remanded to the District Court for evidentiary hearings. The Court did not express any views about the merits of the desegregation plans submitted.

(3) *Rogers v. Paul* (1965). This class action suit to effect pupil and faculty desegregation of the Fort Smith, Arkansas high schools was brought by two Negro students. Before the case came before the U.S. Supreme Court, one had graduated and

the other was in the twelfth grade. The petitioners' request to add two other students to the case was granted. Fort Smith had implemented a plan in which one grade at a time would be desegregated. The petitioners were assigned to a Negro high school because the 10th, 11th, and 12th high school grades were still segregated. The District Court did not allow these students to attend the White high school where they wanted to take courses that were offered only at the high school for Whites. The petitioners had also challenged the policy of allocating faculty on a racial basis. The District Court took the view that petitioners were not in desegregated schools therefore, they did not have standing to challenge the policy.

The Court of Appeals sustained this ruling, holding that only students presently in desegregated grades would have the standing to make this particular challenge. The U.S. Supreme Court rejected the Court of Appeals' view of standing as being too restrictive. Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty on the following grounds: (a) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils and (b) that it rendered inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades. The judgment of the court was vacated and remanded to the District Court for further proceedings consistent with the Court's opinion.

Carter, General Counsel for the NAACP, contended in 1968 that the United States Supreme Court was committed to giving the 14th Amendment pragmatic content in the area of race relations. He further affirmed that the meaning and scope of the

constitutional guaranty of equal educational opportunity develops and grows through case by case adjudication. Carter recognized that formerly a specific practice in public schools was to constitute an educational deprivation within the meaning of the equal protection clause, but it was not meant to be the final word on equal access. The next case and the next case and so forth could add to new dimension to equal opportunity. A major problem noted by Carter was educators who did not seem to know the needed ingredients to insure equal educational opportunity for Negro children. Carter continued:

The current educational consensus seems to be that the Negro poor will need more than mere equal treatment in order to insure an equal result...if educators were to determine with some specificity the particulars needed to accord the underprivileged Negro equal educational opportunity in fact the courts would be able to incorporate those ingredients in the constitutional concept of equal education and require such state action...courts will be asked to measure every conceivable educational factor, resource, method or program, within and without school districts to determine whether in their formulation or application, discrimination against Negroes results. The legal approach must be an all-inclusive one because only an all-inclusive solution is capable of producing the far-reaching results required. (Carter, 1968, p. 211)

Some school systems may have known the needed ingredients but equal educational opportunities for Negro children was not a major concern. These school systems adopted policies which impeded desegregation progress. In *Green v. County School Board*, 1968 a Virginia school system's desegregation plan hindered establishing a unitary school system. New Kent County, Virginia, maintained two schools one for Whites and one for Negroes. In order to remain eligible for federal financial aid, the county adopted a "freedom-of-choice" plan for desegregating the schools. The plan permitted students, except those entering the first and eighth grades, to choose annually between the schools. Those who made no choice were assigned to the school previously attended. First and eighth grade students had no choice in schools. The District Court approved the plan.

The Court of Appeals also approved the plan and its “freedom-of-choice” provision, but it remanded for a more specific and comprehensive order concerning teachers. After three years, no White student had chosen to attend the all-Negro school, but 115 Negro students enrolled in the formerly all-white school, leaving 85% of the Negro children in the system still attending the all-Negro school. The U.S. Supreme Court held:

1. In 1955, this Court, in *Brown v. Board of Education*, (Brown II), ordered school boards operating dual school systems, part “White” and part “Negro”, to effectuate a transition to a racially nondiscriminatory school system and it is in light of that command that the effectiveness of the “freedom-of-choice” plan to achieve that end is to be measured. (p. 435)
2. The burden is on a school board to provide a plan that promises realistically to work now, and a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is intolerable. (pp. 438-439)
3. A district court’s obligation is to assess the effectiveness of the plan in light of the facts at hand and any alternatives which may be feasible and more promising, and to retain jurisdiction until it is clear that state-imposed segregation has been completely removed. (p. 439)
4. Where a “freedom-of-choice” plan offers real promise of achieving a unitary, nonracial system there might be no objection to allowing it to prove itself in operation, but where there are reasonably available other ways, such a zoning, promising speedier and more effective conversion to a unitary school system, “freedom-of-choice” is not acceptable. (p. 439)
5. The New King “freedom-of-choice” plan is not acceptable; it has not dismantled the dual system, but has operated simply to burden students and their parents with a responsibility which *Brown II* placed squarely on the School Board. (pp. 441-442)

In delivering the opinion of the Court, Justice Brennan affirmed that the obligation of the district courts was to assess the effectiveness of a proposed plan in achieving desegregation. He proclaimed that there was no universal answer to the complex problems of desegregation and that there was obviously no one plan that would do the job in every case. Justice Brennan held:

The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system “at the earliest practicable date,” then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. (p. 5)

Subsequent cases cited the *Green* decision which held that school boards that operate a dual school system are “clearly charged 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” (p. 5). Desegregation can be achieved among several factors affecting education quality, including student body composition, facilities, staff, faculty, extracurricular activities, and transportation. The case was vacated and remanded to the District Court for further proceedings consistent with the *Green* opinion (*Green v. County School Board*, 1968).

Monroe v. Board of Commissioners, 1968 was a case involving a local school board’s adoption of a desegregation plan which appeared to further desegregation, but in fact the plan hindered it. After *Brown*, Tennessee enacted a pupil placement law which gave local school boards exclusive authority to approve assignments. In 1962, Jackson, Tennessee had not enrolled any White students in the Negro schools and had granted only seven applications to Negro pupils to enroll in White schools. In March, 1962, the Court of Appeals ruled the placement law inadequate as a plan to convert a biracial system into

a nonracial one. The court further required the school board to formulate and file a desegregation plan. A plan with court-directed remedies was filed and approved in August, 1963. The effective date for elementary schools was immediate, while the date for junior and senior high schools extended over a four-year period. The plan provided for automatic assignments of pupils within attendance zones drawn along geographic boundaries. The plan also had a “free-transfer” provision by which a student could freely transfer to a school of his/her choice if space were available. Zone residents had priority in case of overcrowded conditions. No bus service was provided in the plan. After one year under this modified plan, the Negro elementary schools were still all Negro, and only 118 Negro pupils had been scattered among four formerly all-White schools.

The petitioners of the original case objected to the zones on the grounds that the zones were racially gerrymandered. They also pleaded for the Board of Education to be required to use a “feeder system,” in which each junior high would draw its students from specific elementary schools. The District Court held that the petitioners had not proven the allegations that the zones were gerrymandered and concluded that there was no constitutional requirement that a feeder system be adopted. The Court of Appeals concurred. Three years later the Negro junior high school, which had over 80% of the Negro junior high students, had no White students. White junior high had seven Negroes out of 819 students, and the other had 349 White and 135 Negro pupils. The Court held:

1. The “free-transfer” plan does not meet respondent Board’s “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,” *Green v. County School Board*...rather than further the dismantling of the dual system, the free-transfer plan has operated simply to burden children and their parents. (p. 458)

2. Since it has not been shown that the “free-transfer” plan will further rather than delay conversion to a unitary, nonracial system, it is unacceptable, and the Board must formulate a new plan which promises realistically to convert promptly to a unitary, nondiscriminatory school system. (pp. 459-460)

Justice Brennan delivered the opinion of the Court: “ The Court of Appeals judgment is vacated and the case is remanded for further proceedings consistent with this opinion and with our opinion in *Green v. County School Board*, supra.” (*Monroe v. Board of Commissioners*, 1968, p. 460)

Many court cases in the South were the result of school systems attempting to delay desegregation. The petitioner, Alexander, brought suit in Mississippi, *Alexander v. Board of Education*, 1969, because he felt that the schools were not being segregated with “all deliberate speed.” The U.S. Supreme Court ruled that the policy of continued operation of racially segregated schools under the standard of all deliberate speed was no longer constitutionally permissible. Justice Brennan wrote:

School districts must immediately terminate dual school systems based on race and operate only unitary school systems. The Court of Appeals’ order of August 28, 1969, delaying that court’s earlier mandate for desegregation in certain Mississippi school districts is therefore vacated and that court is directed to enter an order, effective immediately, that the schools in those districts be operated on a unitary basis. While the schools are being thus operated, the District Court may consider any amendments of the order which may be proposed, but such amendments may become effective only with the Court of Appeals’ approval. (*Alexander v. Board of Education*, 1969, p. 2)

This case explicitly defined the obligation of every school district to terminate dual school systems immediately and operate now and hereafter only unitary schools. The case has been used numerous times as it defined a unitary school system as one in which no person was to be effectively excluded from any school because of race or color. The Court ordered:

1. The Court of Appeals’ order of August 28, 1969, is vacated, and the case is

remanded to that court to issue its decree and order, effective immediately, declaring that each of the school districts here involved may no longer operated a dual school system based on race or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color.

2. The Court of Appeals may in its discretion direct the schools here involved to all or any part of the August 11, 1969, recommendations of the Department of Health, Education and Welfare, with any modifications which that court deems proper insofar as those recommendations insure a totally unitary school system for all eligible pupils without regard to race or color. The Court of Appeals may make its determination and enter its order without further arguments or submissions.
3. While each of these school systems is being operated as a unitary system under the order of the Court of Appeals, the District Court may hear and consider objections thereto or proposed amendments thereof, provided, however, that the Court of Appeals' order shall be complied with in all respects while the District Court considers such objections or amendments, if any are made. No amendment shall become effective before being passed upon by the Court of Appeals.
4. The Court of Appeals shall retain jurisdiction to insure prompt and faithful compliance with its order, and may modify or amend the same as may be deemed necessary or desirable for the operation of a unitary school system.
5. The order of the Court of Appeals dated August 28, 1969, having been vacated and the case remanded for proceedings in conformity with this order, the judgment shall issue forthwith and the Court of Appeals is requested to give priority to the execution of this judgment as far as possible and necessary. (*Alexander v. Board of Education*, 1969, p. 3)

Carter v. West Feliciana Parish, 1970 called for immediate implementation of desegregation. Petitioners in Louisiana who filed an application to Justice Black, of the Fifth Circuit, for a temporary injunctive relief to require the school board of West Feliciana Parish to take the necessary preliminary steps to bring complete student desegregation by February 1, 1970. The Court granted the application.

The final steps ordered in the opinion directed the Feliciana Parish school board to take no steps that were inconsistent with, would tend to prejudice against or cause a delay

to a schedule to implement on or before February 1, 1970. Desegregation plans submitted by the Department of Health, Education and Welfare for student assignment simultaneous with the other steps ordered by the Court of Appeals were to be implemented (*Carter v. West Feliciana Parish School Board*, 1969).

Dual school systems were operated in some southern states despite the fact that the U.S. Supreme Court had handed down its ruling in *Brown I* that segregation by races in the public school was unconstitutional. The case, *U.S. v. Montgomery Board of Education*, 1969, resulted from the school district's operation of a dual school system based on race and color. Suit was filed against that body in 1964 by Black children and their parents. The United States District Court at Montgomery, Alabama ordered the local Montgomery County Board of Education to bring about racial desegregation of the faculty and the staff of the local county school system. Judge Johnson set forth a plan to set teacher ratios to accomplish that holding. Schools with fewer than 12 teachers were required to have at least two full-time teachers whose race was different from the race of the majority of the faculty at that school. In schools with 12 or more teachers, the race of at least one out of every six faculty and staff members was required to be different from the race of the majority of the faculty and staff members at that school. The Montgomery County School Board appealed this ruling, and the Court of Appeals modified Judge Johnson's plan. The original petitioners appealed Judge Johnson's ruling to the U.S. Supreme Court. The high Court upheld Judge Johnson's plan because the Court felt that his plan would realistically work and that it would work immediately. The Court held:

The modifications ordered by the panel of the Court of Appeals, while course not intended to do so, would, we think, take from the order some of its capacity to expedite, by means of specific commands, the day when a completely unified, unitary, nondiscriminatory school system becomes a reality instead of a hope.

(*U.S. v. Montgomery Board of Education*, 1969, pp. 5-6)

In a similar case in Alabama, *Davis v. School Commissioners of Mobile County*, 1971, was filed to eradicate a dual school system. Mobile, Alabama was divided by a major highway. That highway also divided the Negro children from the White children. The eastern side was predominately Negro while the west side was mostly White. The desegregation plan of Mobile treated the western section as isolated from the eastern with unified geographic zones and provided no transportation of students for desegregation purposes. The elementary schools in the east were over 90% Negro and over half of the Negro junior and senior high school students went to all Negro or nearly all Negro schools. The Court of Appeals upheld this plan, but the U.S. Supreme Court held that the Court of Appeals erred in allowing Mobile to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system. It had also erred in not adequately considering the possible use of all available techniques to achieve the maximum amount of practicable desegregation.

The Justice Department intervened and offered a plan to desegregate. The Mobile School System modified it and the Court of Appeals accepted the modified version, yet the plan did not achieve desegregation in Mobile. The Court held that a district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and noncontiguous attendance zones. The district court was to look into the possibility of using bus transportation and split zoning to achieve desegregation (*Davis v. School Commissioners of Mobile County*, 1971).

In 1963, the Board of Education of Clarke County, Georgia, began a voluntary program to desegregate its public schools. The student-assignment plan involving only

elementary schools became effective in 1969. It relied primarily on geographic attendance zones drawn to achieve greater racial balance. Students in five heavily Negro “pockets” either walked or were transported by bus to schools located in other attendance zones. Most elementary schools were left 20% to 40% Negro.

In 1971, Petitioners in Georgia brought suit, *McDaniel v. Barresi*, contending that the plan violated the Fourteenth Amendment Equal Protection Clause by treating students differently because of their race. The Supreme Court of Georgia upheld this contention. The petitioners further stated that the county’s desegregation plan violated Title IV of the Civil Right Act of 1964. The Supreme Court of Georgia concluded that Title IV prohibited the board from requiring the transportation of students from one school to another in order to achieve racial balance. The U.S. Supreme Court rejected that contention. It held that Title IV clearly does not restrict state school authorities in the exercise of their discretionary powers to assign students within their school systems (*McDaniel v. Barresi*, 1971).

The Charlotte-Mecklenburg school system had 84,000 students in 107 schools in the 1968-69 school year. Most of the 24,000 Negroes in the system attended schools that were at least 99% Negro. In 1971, Swan and others brought suit, *Swann v. Board of Education*, for relief of this situation. The District Court found the Board of Education’s plan unsatisfactory and appointed a desegregation expert, Dr. Finger, to submit a desegregation plan. In February 1970, Dr. Finger along with the board presented plans that the court adopted for the junior and senior high schools along with the proposed plan for elementary schools. The board appealed to the Court of Appeals, which, in turn, affirmed the plans for junior and high schools but vacated the plans for elementary

schools, fearing that the provisions for pairing and grouping of elementary schools would unreasonably burden the pupils and the board. The case was remanded to the District Court for reconsideration and submission of further plans. The U.S. Supreme Court agreed to hear the case and directed that the District Court's order be reinstated pending further proceedings. On remand, the District Court received two new plans and ordered the board to adopt their own plan, or Dr. Finger's plan would remain in effect. The board accepted the expert's plan.

In its ruling, the U.S. Supreme Court found the following four problem areas in the issue of student assignment:

1. Racial quotas. The constitutional command to desegregation schools does not mean that every school in the community must always reflect the racial composition of the system as a whole; here the District Court's very limited use of the racial ratio—not as an inflexible requirement, but as a starting point in shaping a remedy—was within its equitable discretion. (pp.22-25)
2. One-race schools. While the existence of a small number of one-race, or virtually one-race, schools does not in itself denote a system that still practices segregation by law, the court should scrutinize such schools and require the school authorities to satisfy the court that the racial composition does not result from present or past discriminatory action on their part. An optional majority-to-minority transfer provision has long been recognized as a useful part of a desegregation plan, and to be effective such arrangement must provide the transferring student free transportation and available space in the school to which he desires to move. (pp. 26-27)

3. Attendance zones. The remedial altering of attendance zones is not, as an interim corrective measure, beyond the remedial powers of a district court. A student assignment plan is not acceptable merely because it appears to be neutral, for such a plan may fail to counteract the continuing effects of past school segregation. The pairing and grouping of noncontiguous zones is a permissible tool; judicial steps going beyond contiguous zones should be examined in light of the objectives to be sought. No rigid rules can be laid down to govern conditions in different localities. (pp. 27-29)
4. Transportation. The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not effectively dismantle the dual school system is supported by the record, and the remedial technique of requiring bus transportation as a tool of school desegregation was within that court's power to provide equitable relief. An objection to risk either the health of the children or significantly impinge on the educational process; limits on travel time will vary with many factors, but probably with none more than the age of the students. (pp. 29-31)

Justice Burger delivered the Court's unanimous opinion concerning these four areas:

1. Racial quotas. Because of the failure of the school board to implement desegregation, the District Court was obliged to turn to Dr. Finger to do what the school board should have done. The mathematical ratios was no more than a starting point in the process of shaping remedy, rather than an inflexible requirement. From the starting point the District Court proceeded to frame a decree that was within its discretionary powers, as an equitable remedy for the

particular circumstances. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court. The Constitution requires dismantling of dual school systems, but does not mandate racial balance in schools. (p. 11)

2. One-race schools. The record in this case reveals the familiar phenomenon in metropolitan areas minority groups are often found concentrated in one part of the city. Schools all or predominately of one race in a district of mixed population will require close scrutiny to determine that school assignments are not part of state-enforced segregation. It should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not of itself the mark of a system that still practices segregation by law. Where a school's authority proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. In order to be effective, such a transfer arrangement must grant the transferring student free transportation and space must be made available in the school to which he desires to move. (p. 12)
3. Remedial altering of attendance zones. The maps submitted in these cases

graphically demonstrate that one of the principal tools employed by school planners and by courts to break up the dual school system has been a frank—and sometimes drastic—gerrymandering of school districts and attendance zones. An additional step was pairing, “clustering,” or “grouping” of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of White students to formerly all-Negro schools. More often than not, these zones are neither compact nor contiguous; indeed they may be on opposite ends of the city. As an interim corrective measure, this cannot be said to be beyond the broad remedial powers of a court. We hold that the pairing and grouping of noncontiguous school zones is a permissible tool and such action is to be considered in light of the objectives sought. Maps do not tell the whole story since noncontiguous school zones may be more accessible to each other in terms of the critical travel time, because of traffic patterns and good highways, than schools geographically closer together. Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations. (p. 13)

- (4) Transportation of students. The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations. Bus transportation has been an integral part of the public

education system for years, and was perhaps the single most important factor in transition from the one-room schoolhouse to the consolidated school. The Charlotte school authorities did not purport to assign students on the basis of geographically drawn zones until 1965, and then they allowed almost unlimited transfer privileges. The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record. Thus, the remedial techniques used in the District Court's order were within the court's power to provide equitable relief; implementation of the decree is well within the capacity of the school authority. Desegregation plans cannot be limited to the walk-in school. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed...the judgment of the Court of Appeals is affirmed as to those parts in which it affirmed the judgment of the District Court. The order of the District Court, dated August 7, 1970, is also affirmed. (*Swann v. Board of Education*, 1971, p. 14)

Board of Education v. Swann, 1971, resulted from a North Carolina Anti-busing law which was in answer to the decision in the *Swan* case. The law forbade the following: (1) assigning of any student based on race; (2) creating a racial balance or ratio in the schools; and, (3) using busing to create said balance and ratio. The school board was directed to consider altering attendance areas, pairing or consolidating of schools, busing of students, and any other method which would create a racially unitary system. The

school board submitted a series of proposals, all of which were rejected as inadequate by the District Court. During this time the North Carolina Legislature enacted the anti-busing bill. The District Court found this law to be invalid since it prevented implementation of desegregation plans required by the Fourteenth amendment. (pp. 45-46) The U.S. Supreme Court heard the case and was unanimous in its opinion.

[T]he statute exploits an apparently neutral form to control school assignment plans by directing that they be “color blind”; that requirement, against the background of segregation, would render illusory the promise of *Brown v. Board of Education* (1954). Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this state, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate dual school systems...the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points...conclude that an absolute prohibition against transportation of students assigned on the basis of race...will similarly hamper the ability of local authorities to effectively remedy constitutional violations. (*Board of Education v. Swann*, 1971, p. 3)

Howie (1973) of Yale University downplayed the significance of the *Brown* decision for the Negroes in America. He contended that *Brown*:

was trebly ominous: intellectually, it failed to satisfy traditional requirements of “neutrality” and “generality”; politically, it impeded the evolution of the Black liberation movement; morally, it enabled the Court to perpetuate its noxious tradition of unconscionability in its determination of the human and constitutional rights of Black “citizens.” (p. 372)

Howie also took issue with what he saw as the Court’s avoidance of explicit renunciation of the assumption that *Plessy* did not necessarily imply the inferiority of the Black. He believed that the Court perpetuated its tradition of balancing Black people’s rights against the pragmatic needs of the White society. He wrote:

The enduring legacy epitomized in different degrees of judicial concealment by the fateful developments from *Dred Scott* through *Plessy v. Ferguson* down to *Brown*, of the Court's adjudication of the personal liberty of Black "citizens" is precisely this morally and culturally depraved balancing process....What the Court says in this dimension of its purportedly constitutional argument...revives the savage tradition of *Dred Scott* and *Plessy*. (p. 380)

The United States' legal system reached the zenith in discriminatory treatment of Blacks in both *Dred Scott* and *Plessy*. At the same time it has also done the most in terms of providing the needed leadership for righting past wrongs. Howie saw three critical pre-Brown cases in the chronology of judicial events which had reinforcement effect on segregation.

1. *Roberts v. City of Boston* (1850) initially challenged segregation.

Sara Roberts, a Black, was not allowed to attend a white school in her neighborhood. The Massachusetts Supreme Court reached a unanimous decision finding that while all people stand equal before the law, school segregation existed for the good of both races.

2. Seven years later, *Dred Scott v. Sandford* (1857) dealt another blow to equal access. The sentiment of the time was that Blacks were inferior among the races, fit only to attend inferior schools.

3. *Plessy v. Ferguson* (1896) brought separate but equal to the U.S. Supreme Court. Although the case involved racial segregation on railway cars, the Louisiana law requiring racial segregation of passengers was held not to be racial discrimination on the condition that accommodations were equal in quality. This doctrine was consistently applied in the South to cover every walk of life.

In conclusion, Howie maintained that *Brown* did not counteract *Plessy*. Instead they were on the same level in continuing the legacy of racism in America. “*Plessy* down through *Brown* constitutes merely one chapter in the American legal system’s establishment of *Dred Scott* ‘the most clearly disastrous interpretation of the Constitution’” (Howie, p. 383).

The U.S. Supreme Court blocked efforts for interdistrict, city-suburban desegregation remedies as a means to integrate racially isolated city schools in *Milliken v. Bradley*, 1974. The Court prohibited such remedies unless plaintiffs could demonstrate that the suburbs or the state took actions that contributed to segregation in the city. Because proving suburban and state liability is often difficult, *Milliken* effectively shut off the option of drawing from heavily White suburbs in order to integrate city districts with very large minority populations. Justice Burger delivered the opinion of the Court:

- (a) The District Court erred in using as a standard the declared objective of development of a metropolitan area plan which, upon implementation, would leave “no school, grade or classroom...substantially disproportionate to the overall pupil racial composition” of the metropolitan areas as a whole. The clear import of *Swann v. Board of Education* is that desegregation, in the sense of dismantling a dual school system, does not require any particular racial balance. (p. 739)
- (b) While boundary lines may be bridged in circumstances where there has been a constitutional violation called for inter-district relief, school district lines may not be casually ignored or treated as a mere administrative convenience; substantial local control of public education in this country is a deeply rooted tradition. (pp. 741-742)
- (c) The interdistrict remedy could extensively disrupt and alter the structure of public education in Michigan, since that remedy would require, in effect, consolidation of 54 independent school districts, and since – entirely apart from the logistical problems attending large-scale transportation of students – the consolidation would generate other problems in the administration, financing, and operation of this new school system. (pp. 742-743)
- (d) From the scope of the interdistrict plan itself, absent a complete restructuring of

the Michigan school district laws, the District Court would become, first, a de facto “legislative authority” to resolve the complex operational problems involved and thereafter a “school superintendent” for the entire area, a task which few, if any, judges are qualified to perform and one which would deprive the people of local control of schools through elected school boards. (pp. 743-744)

- (e) Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must be first shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district: i. e., specifically, it must be shown that racially discriminatory acts of the state or local school district, or of a single school district have been a substantial cause of interdistrict segregation. (pp. 744-745)
- (f) With no showing of significant violation by the 53 outlying school districts and no evidence of any interdistrict violation or effect, the District Court transcended the original theory of the case as framed by the pleadings, and mandated a metropolitan area remedy, the approval of which would impose on the outlying districts, not shown to have committed any constitutional violation, a standard not previously hinted at in any holding of this Court. (p. 745)
- (g) Assuming, arguendo, that the State was derivatively responsible for Detroit’s segregation school conditions, it does not follow that an interdistrict remedy is constitutionally justified or required, since there has been virtually no showing that either the State or any of the 85 outlying districts engaged in any activity that had a cross-district effect. (pp. 748-749)
- (h) As isolated instance of a possible segregative effect as between two of the school districts involved would not justify the broad metropolitanwide remedy contemplated, particularly since that remedy embraced 52 districts having no responsibility for the arrangement and potentially involved 503,000 pupils in addition to Detroit’s 276,000 pupils. (*Milliken v. Bradley*, 1974, pp. 749-750)

The first *Milliken* case determined that an interdistrict remedy for *de jure* segregation in the Detroit school system exceeded the constitutional violation and remanded the case for formulation of a decree. The District Court promptly ordered submission of desegregation plans limited to the Detroit school system. After extensive hearings, the court included in its decree educational components proposed by the Detroit School Board in the areas of reading, in-service teacher training, testing, and counseling. The court determined these components necessary to carry out desegregation and directed that

the costs to be borne by the Detroit School Board and by the State. Both the Court of Appeals and the U.S. Supreme Court affirmed this order. The District Court, affirmed by the U.S. Supreme Court, laid down the following guidelines with respect to each of the four educational components:

- (a) Reading. Concluding that there is no educational component more directly associated with the process of desegregation than reading, the District Court directed the General Superintendent of Detroit's schools to institute a remedial reading and communications skills program to eradicate the effects of past discrimination. (p. 5)
- (b) In-Service Training. The court also directed the Detroit Board to formulate a comprehensive in-service teacher training program, an element essential to a system undergoing desegregation. In the District Court's view, an in-service training program for teachers and administrators, to train professional and instructional personnel to cope with the desegregation process in Detroit, would tend to ensure that all students in a desegregated system would be treated equally by teachers and administrators, by virtue of special training, to cope with special problems presented by desegregation, and thereby facilitate Detroit's conversion to a unitary system. (p. 6)
- (c) Testing. Because it found, based on record evidence, that Negro children are especially affected by biased testing procedures, the District Court determined that, frequently, minority students in Detroit were adversely affected by discriminatory testing procedures. Unless the school system's tests were administered in a way "free from racial, ethnic and cultural bias," the District Court concluded that Negro children in Detroit might thereafter be impeded in their educational growth. Accordingly, the court directed the Detroit Board and the State Department of Education to institute a testing program along the lines proposed by the local school board in its original desegregation plan. (p. 7)
- (d) Counseling and Career Guidance. Finally, the District Court addressed what expert witnesses had described as psychological pressures on Detroit's students in a system undergoing desegregation. Counselors were required, the court concluded, both to deal with the numerous problems and tensions arising in the change from Detroit's dual system, and, more concretely, to counsel students concerning the new vocational and technical school programs available under the plan through the cooperation of state and local officials. (*Milliken v. Bradley*, 1977, p. 8)

In a case, *Pasadena City Board of Education v. Spandler*, 1976, concerning readjusting a remedy yearly, Pasadena, California, Board of Education implemented a desegregation plan that would eliminate any school having a majority of any minority students. The District Court retained jurisdiction to oversee that plan. Suit was brought against this body in the ensuing year when plaintiffs contended that the school district was not following the plan. Petitioners claimed that the school board had only complied one year. The District Court ruled that the plan had to be readjusted yearly to ascertain that the “no majority” requirement was being met. The U.S. Supreme Court held that the District Court had exceeded its authority in enforcing its order so as to require annual readjustments of attendance zones so that there would not be a majority of any minority in any Pasadena public school. The Court went further to rule that once resegregation occurs without state action courts have no power to impose an additional remedy. Achieving racial balance was more of a temporary obligation than a perennial one in the opinion of the Court, (*Pasadena City Board of Education v. Spandler*, 1976).

In 1980, another desegregation remedy case brought before the U.S. Supreme Court from Dallas, Texas, *Estes v. Metropolitan Branches, Dallas NAACP*, was dismissed. The case involved parents protesting that one-race schools remained in Dallas after their desegregation plan had been in effect for more than fifteen years. Justices Powell, Stewart, and Rehnquist dissented. Their dissent was based on several factors:

1. The case presented a long-needed opportunity to re-examine the considerations relevant to framing a remedy in a desegregation suit. The use of the busing remedy to achieve racial balance can conflict with goals of equal educational opportunity

and quality schools was quite evident. The well-intended court decrees have had the primary effect of stimulating resegregation.

2. Providing effective relief in a school desegregation case is sometimes very lengthy and complex. Many economic, social, and educational factors must be considered, and those factors vary widely from community to community.

3. The nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. The constitutional deprivation must be identified accurately, and the remedy must be related closely to that deprivation. Otherwise, a desegregation order may exceed both the power and the competence of courts.

4. There can be no legitimate claim that racial balance in the public schools is constitutionally required. The question is how equitably to remedy unconstitutional state action or inaction. A desegregation decree must 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.

5. Court orders to remedy constitutional deprivations in formerly segregated school systems must be drawn in light of the circumstances present and the options available, taking into account the practicalities of the situation.

6. The pursuit of racial balance at any cost is without constitutional or social justification. Out of zeal to remedy one evil, courts may encourage or set the stage for other evils. By acting against one-race schools, courts may produce one-race school systems. A desegregation plan without community support, typically one with objectionable transportation requirements and continuing judicial oversight, accelerates the exodus to the suburbs of families able to move. The children of families remaining in

the area affected by the court's decree are denied the opportunity to be part of an ethnically diverse student body.

7. A desegregation remedy that does not take account of the social and educational consequences of extensive students transportation can be neither fair nor effective (*Estes v. Metropolitan Branches, Dallas NAACP*, 1980, pp. 2 – 10).

An amendment to the constitution of the state of California, known as Proposition I, was challenged in the courts in 1982, *Crawford v. Los Angeles Board of Education*, as violating the Fourteenth Amendment. The amendment barred requiring mandatory student assignment and busing to achieve racial balance. The U.S. Supreme Court held:

- (a) This Court's decision will not support the contention that once a State chooses to do "more" than the Fourteenth Amendment requires, it may never recede. Such an interpretation of that Amendment would be destructive of a State's democratic processes and of its ability to experiment in dealing with the problems of heterogeneous population. Proposition I does not embody, expressly or explicitly, a racial classification. The simple repeal or modification of desegregation or antidiscrimination laws, without more, does not embody a presumptively invalid racial classification. (p. 535)
- (b) Proposition I cannot be characterized as something more than a mere repeal. The State Constitution still places upon school boards a greater duty to desegregate than does the Fourteenth Amendment. Nor does Proposition I allocate governmental or judicial power on the basis of a discriminatory principle. A "dual court system" – one for the racial majority and one for the racial minority - is not established simply because civil rights remedies are different from those available in other areas. It was constitutional for the people of the State to determine that the Fourteenth Amendment's standard was more appropriate for California courts to apply in desegregation cases than the standard repealed by Proposition I. (p. 540)
- (c) Even if it could be assumed that Proposition I had a disproportionate adverse effect on racial minorities, there is no reason to differ with the state appellate court's conclusion that Proposition I in fact was not enacted with a discriminatory purpose. The purposes of the Proposition – chief among them the educational benefits of neighborhood schooling – are legitimate, nondiscriminatory objectives, and the state court characterized the claim of discriminatory intent on the part of millions of voters as but "pure speculation." (p. 543)

The U.S. Supreme Court upheld the California state amendment that held mandatory busing would not be required to attain racial balance (*Crawford v. Los Angeles Board of Education*, 1982).

Reid, Professor of Law at Howard University, and Foster-David, attorney in the District of Columbia Government (1983) summarized the state of law and education since the *Brown* decision. They maintained that segregation persisted over three decades after *Brown* through transfer programs for White students into majority White schools, freedom-of-choice plans, the closing of public schools, and provisions for tuition grants and other aid to private, segregated White schools. In 1963-64, only 1.2 % of Black students in the eleven Southern states attended schools with Whites. The following school year the percent grew to only 2.2 % (Reid & Foster-David, 1983).

Between 1955 and 1967 the U.S. Supreme Court did not address the desegregation question. The Court's order that segregation be implemented with "all deliberate speed" was virtually ignored. One of the first orders of business for the Court after 1967 was to mandate busing in order to end segregation. Next, the Court called for the elimination of state laws that imposed segregation. The U.S. Supreme Court continued to insist that purposeful discrimination was the essential factor that distinguishes *de facto* from *de jure* segregation.

Reid and Foster-David (1983) regarded remedy as the most troublesome issue in the area of public school desegregation. A number of U.S. Supreme Court cases considered this issue. *Green v. County School Board* (1968) declared that school officials found guilty of *de jure* segregation have an affirmative duty to eliminate all vestiges of state imposed segregation. A certain tailoring of the remedy occurred

following *Green*. While *Swann v. Charlotte-Mecklenburg Board of Education* (1971) held that when segregation is *de jure*, school officials have an affirmative duty to establish a plan that will remedy the effect of segregation. The aim of the Court was system-wide desegregation.

Milliken v. Bradley, 1974, set forth guidelines for relief in a multidistrict. A remedy is required if there has been a constitutional violation within one district that produces a significant segregation effect in another district. Specifically racially discriminatory acts of the state, local school districts, or of a single school district must be shown to have been a substantial cause of inter-district segregation. Thus, an inter-district remedy might be in order if the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or if district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by constitutional violation. Conversely, without an inter-district violation and an inter-district, there is no constitutional wrong that calls for an inter-district remedy.

The degree of desegregation that had occurred during the three decades after *Brown* was reflected in the *Statement of Commission* (1982):

Segregation of Black students declined significantly in the United States between 1968 and 1980. However, most of the decline occurred by 1972. In 1968, 76.6 % of Black students were in schools that were predominantly minority (more than 50 %); in 1972, the percentage was 63.6; and in 1980, the percentage was 62.9. Further, the percentage of Blacks in 90-100 percent minority schools decreased from 64.3 % in 1968, to 38.7 % in 1972, to 33.2% in 1980. (p. 4)

Reid and Foster-Davis (1983) concluded that race-mix should not be the only goal of desegregation. They both believed that quality education was the goal of the fight that produced *Brown* in 1955.

Harris (1983) wrote about the historical principles verses legal mandates in the *Brown* decision. “But, the most significant change in terms of effecting equality has come from the legal system. Interestingly...lawyers, through their everyday work in the courts, became social reformers” (p. 143). He further stated that the educational institution is the mirror of society’s values. This legal-historical interface gives meaningful perspective to a subsequent discussion of the progress of Blacks in this nation.

Even though there were many weaknesses in the first *Brown* case, it was of monumental importance for it broke down the wall of physical isolation between the races. It opened the doors for the elimination of racial barriers in other areas of public life, and provided hope for a new way of life in America.

In 1991, the U.S. Supreme Court in *Board of Education of Oklahoma City Public School v. Dowell* upheld a Student Reassignment Plan adopted by the Board of Education in Oklahoma City. The plan called for a number of previously desegregated schools to return to primarily one-race status for the asserted purpose of alleviating greater busing burdens on young Black children caused by demographic changes. The U.S. Supreme Court upheld this plan stressing that desegregation decrees were designed to be temporary. In this case, the High Court established two new criteria for deciding when such orders should be ended. First, had the school district complied in good faith to its desegregation plan? Second, had the district remedied past discrimination “as far as practicable” (*Board of Education of Oklahoma City Public School v. Dowell*, 1991)?

Court supervision of twenty-three years in DeKalb County, Georgia, was withdrawn in 1992. *Freeman v. Pitts* decided that a district court need not retain active control over every aspect of school administration until a school district has demonstrated unitary status in all facets of its system.

Several factors compounded the difficulty of unifying the DeKalb School System. When the county was ordered to desegregate in 1969, only 5.6% of the student population was Black. By 1986, when this suit was filed, the percentage of Black students had increased to 47. These demographic changes during the course of the desegregation order became the foundation for the District Court's analysis of the racial mix of DeKalb County. Those filing suit argued that this racial imbalance in student assignment was a vestige of a dual school system, not a product of independent demographic forces, but the District Court found no constitutional violation.

The District Court did find that DeKalb had not achieved unitary status with respect to quality of education because teachers in schools with disproportionately high percentages of White students tended to be better educated and have more experience than those teachers in schools with disproportionately high percentages of Black students. They also held that per-pupil expenditures in majority White schools exceeded per-pupil expenditures in majority Black schools.

Justice Kennedy delivered the opinion of the Court. The following points were seen as extremely significant to the current status of desegregation:

1. A District Court may relinquish its supervision and control over the aspects of a school system in which there has been compliance with a desegregation decree if other aspects of the system remain in noncompliance.

2. The term “unitary” does not have fixed meaning or content and this finding is not inconsistent with the principles that control the exercise of equitable power. Equitable remedies must be flexible. The requirement of a unitary school system must correct the condition that offends the Constitution.
3. Courts that supervise desegregation plans have the authority to relinquish supervision and control of school districts in incremental stages. A court should give particular attention to the school system’s record of compliance. The withdrawal should be consistent with the purposes and objectives of its equitable power.
4. The racial imbalance in student attendance zones did not show that the school district was in noncompliance with the duties under the law. Racial balance is not to be achieved for its own sake. It is to be pursued only if the imbalance has been caused by a constitutional violation. Population changes in DeKalb were not caused by the policies of the school district, but rather by independent factors. The effect of changing residential patterns on the racial composition of schools, though not always fortunate, is somewhat predictable. Where resegregation is a product not of state action, but of private choices, it does not have constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. This would cause an ongoing and never-ending supervision by the courts of school districts simply because at one time they decreed segregation.

5. This decision will be of great assistance to the citizens of DeKalb County, who, for the first time since 1969, will be able to run their own public schools.
6. Although the Court mandates the court supervision of DeKalb County be withdrawn, the Court maintains that an integrated school system is no less desirable because it is difficult to achieve, and it is no less a constitutional imperative because that imperative has gone unmet for 38 years (*Freeman v. Pitts*, 1992).

Dayton (1993) asked if the Supreme Court was prepared to declare that it had finished with desegregation. He briefly summarized the history of desegregation by looking at four decades. The late 1960s saw the Court become more assertive by forcing schools to do more toward eliminating desegregation. Distinguishing between *de jure* and *de facto* segregation was the order of business in the 1970s. The Court ruled that only *de jure* segregation was constitutionally actionable. The 1980s saw Court action on desegregation decrease but it regained some momentum in the 1990s. Dayton discussed *McDowell* and *Freeman v. Pitts* as cases that prompted his question concerning the end of the Court's involvement in desegregation cases. In *McDowell*, the Court stated that federal courts should consider good faith compliance in school cases. Dayton (1993) viewed *Freeman* as the Court moving away from active federal judicial involvement in desegregation, but the Justices were not moving in unison. Several factors separated the Justices, but the Court stood firm on the approval of incremental relinquishment of judicial supervision and control of public schools. Dayton's answer to his question was "No, it is too soon to announce the death of public school desegregation." (p. 4)

In *Missouri v. Jenkins*, 1995, an 18-year-old school desegregation litigation, challenged the District Court's orders requiring the State (1) to fund salary increases for virtually all instructional and noninstructional staff within the Kansas City, Missouri, School District, and (2) to continue to fund remedial "quality education" programs because student achievement levels were still at or below national norms at many grade levels. In affirming the orders, the Court of Appeals rejected the State's argument that the salary increases exceeded the District Court's remedial authority because they did not directly address and relate to the State's constitutional violation. The Court of Appeals observed that the increases were designed to eliminate the vestiges of state-imposed segregation by improving the desegregative attractiveness of the district and by reversing "White flight" to the suburbs. The Court of Appeals also approved the District Court's rejection of the State's request for a determination of partial unitary status with respect to the existing quality education programs. The U.S. Supreme Court reversed this decision. It held that the salary increases were beyond the court's remedial authority.

The U.S. Supreme Court held:

The factors which must inform a court's discretion in ordering complete or partial relief from a desegregation decree are: (1) whether there has been compliance with the decree in those aspects of the school system where federal supervision is to be withdrawn; (2) whether retention of judicial control is necessary or practicable to achieve compliance in other facets of the system; and (3) whether the district has demonstrated to the public and to the parents and students of the once disfavored race its good-faith commitment to the whole of the decree and to those statutes and constitutional provisions that were the predicate for judicial intervention in the first place. The ultimate inquiry is whether the constitutional violator has complied in good faith with the decree since it was entered, and whether the vestiges of discrimination have been eliminated to the extent practicable. (*State of Missouri v. Jenkins*, 1995, pp. 14-18)

In a discussion on recent changes in school desegregation, Orfield, (1996) saw the increasing number of court cases which released school districts from court supervision of their desegregation efforts as one of the most prominent current trends. Releasing school districts is known as granting unitary status. For Orfield, this resulted in many urban school districts moving toward increasing resegregation of their schools as students return to neighborhood schools.

Several pivotal U.S. Supreme Court cases during the 1990s have spelled out procedures for court approval of the dismantling of school desegregation plans. As seen by Orfield, rulings from these cases have provided the legal standards to determine when a school district can be released from its obligation to maintain desegregated schools. The U.S. Supreme Court ruled that formerly segregated school districts could be released from court-ordered busing once they have taken all practical steps to eliminate the legacy of segregation. The Court further ruled that school districts are not responsible for remedying local conditions, such as segregated housing patterns.

The *Freeman* decision effectively weakened the *Green* standards by allowing schools to desegregate incrementally. School districts no longer have to achieve unitary status in all six of the *Green* factors – student assignment, faculty, staff, transportation, extracurricular activities, and facilities – before being released from court supervision (Orfield, 1996).

Weiler (1998) presented some of the major trends and changes taking place in school desegregation in the 1990s. One of the most prominent trends known as granting unitary status was the increasing number of court cases that released school districts from court supervision of their desegregation efforts. Weiler saw this trend resulting in many urban

school districts moving toward increasing resegregation of their schools as students return to neighborhood schools.

During the 1970s and 1980s, the focus of desegregation was on the physical integration of Black students and White students through busing, school choice, magnet schools, use of ratios, redrawn school district boundaries, mandatory and voluntary interdistrict transfer, and consolidation of city districts with suburban districts. Many of these vehicles continue today, but the courts are declaring more and more large urban districts unitary. Pivotal U.S. Supreme Court cases during the 1990s spelled out procedures for court approval of the dismantling of school desegregation plans. Rulings from those cases have provided the legal standards to determine when a local school district could be released from its obligation to maintain desegregation schools. Weiler discussed the significance of the pivotal cases.

1. *Board of Education v. Dowell* (1991). The U.S. Supreme Court ruled that formerly segregated school districts could be released from court-ordered busing once they have taken all practicable steps to eliminate the legacy of segregation. This ruling meant that districts could be freed from court oversight if they had desegregated their students and faculty and met the other requirements of mandatory desegregation, such as transportation and facilities. The Court further ruled that school districts are not responsible for remedying local conditions, such as segregated housing patterns. In essence, with this ruling, the U.S. Supreme Court made it easier for districts to be declared unitary or to be released from desegregation orders. (p. 2)

2. *Freeman v. Pitts* (1992). The Supreme Court ruling in this case held that Federal district courts can have discretion to order incremental withdrawal of court supervision over school districts. In other words, a school district does not need to achieve unitary status in all six of the “*Green* factors”—student assignment, faculty, staff, transportation, extracurricular activities, and facilities—before being released from court supervision. The *Green* factors, codified by the U.S. Supreme Court decision in *Green v. Board of New Kent County*, are typical components of a school system where desegregation is mandatory. Thus, the *Freeman* decision effectively weakened the *Green* standards by allowing schools to desegregate incrementally, although it did not release districts from their obligation to desegregate. (p. 2)
3. *Missouri v. Jenkins* (1995). This was one of the most complex desegregation cases to date in the United States. Since 1985, the state of Missouri has spent \$1.4 billion on the court-ordered desegregation plan for the Kansas City school district. In 1995, however, the U.S. Supreme Court ruled that a desegregation plan does not have to continue just because minority student achievement scores remain below the national average. The state of Missouri could not be required to provide funding for programs and various kinds of school improvement activities or to pay for a plan aimed at attracting White students from suburban districts for an undetermined amount of time, simply because minority student achievement scores remained below the national average. The state could only be required to do what is practicable for remedying the vestiges of past discrimination; it was not responsible for remedying inequities that may exist between students within

schools. (p. 2)

Weiler concluded that barriers to school desegregation were mounting. The Court's rulings of the 1990s encouraged more and more school districts to seek unitary status and signaled a reluctance by the courts to continue indefinitely federal court supervision of school districts. Weiler saw Plaintiffs' best hope for continuing under desegregation orders centered on the issues of within-school segregation, differential course availability, and the educational performance gap between White and Minority students. Weiler further added that the growing number of poor students of Color in inner-city areas makes racial balance plans difficult. Thus, the efforts to improve the education of students of Color must be focused on effective school reform regardless of whether a school district is physically desegregated or not.

The first actual aid rendered by the federal government in the education of Negroes initiated in 1861. The government gave this aid both as a war measure and as an unavoidable humanitarian obligation for the general welfare and education of the Negroes, first as refugees and then as freedmen within the war zone. This was the first contact of the federal government specifically with the education of Negroes.

The army found locations for schools, erected buildings, endeavored to coordinate the educational efforts of the religious and missionary organizations, and protected the Negroes in their educational activities. These were strictly an emergency measures as the Negroes poured into the northern states at the beginning of the conflict.

At the end of the war, the Freedmen's Bureau was established. Until it was discontinued in 1872, this body held a virtually absolute guardianship over the 4,000,000 Negroes who had suddenly obtained the status of freedmen as a result of the Civil War.

One of the Bureau's functions was to oversee the education of the freedmen. The plans were for this oversight to be only a temporary function until a system of free schools could be supported by the reorganized local governments. When the Bureau was liquidated in 1872, the federal government withdrew for a time from the field of educating freedmen.

There were those who felt that the "equal" part of the separate but equal doctrine should be upheld in public schools in the South. From colonial times until the early part of the twentieth century, roughly nine out of ten Black Americans lived in the South. Around 1930, the National Association for the Advancement of Colored People (NAACP) began laying the groundwork for what eventually would blossom into a multipronged legal attack on Jim Crow education.

From 1933 through World War II, the NAACP focused on two types of education lawsuits. Challenging the exclusion of Blacks from public graduate and professional schools and the practice of paying Black public school teachers significantly less than White teachers were the main targets.

After World War II, parents of Black school children became increasingly disgruntled with worn-out textbooks and ramshackle schools, but the NAACP had difficulty finding plaintiffs willing to bring suits. In addition there were disagreements among the ranks on procedure matters. A very critical issue was whether the NAACP Legal Defense and Education Fund, which was formed in 1939 to handle the association's litigation campaign, should lend support to bring better facilities within the context of segregation. Many of the strategists insisted on challenging the dual system of educating Blacks and Whites rather than better, separate facilities.

On the same day in 1950, the U.S. Supreme Court rendered two university cases involving graduate schools and law schools. In both cases the Court declined to overturn the separate but equal doctrine. Despite the fact that the Court did find that the programs being offered to Blacks unconstitutional, the Justices stressed that it was not just physical resources but such intangible qualities as a school's reputation and a student's chance to interact with classmates that determined whether the education offered Blacks was in fact equal (Hendrie, 1999).

Peebles (1999), a retired school superintendent in Massachusetts, Connecticut, and Virginia held that even today America remains seriously divided and frustrated by racial issues. He felt that trends relating directly to school desegregation were both disturbing and discouraging. According to Peoples, the recent U.S. Supreme Court decisions have supported lower-court rulings that weaken or destroy previous gains made in attempts to integrate public schools. The cause of the deterioration in the school desegregation effort was of great concern to Peebles.

A report by the U. S. Commission on Civil Rights published in June, 1973, concluded that progress was made in desegregation for two decades following the *Brown* decision. and that desegregation had improved the quality of education. It pointed to curricular improvement and specific training of teachers and administrators to heighten awareness of race issues and sensitivities. Different approaches to learning, team teaching, and more flexible scheduling of classes were seen as innovations which led to the improvement. The commission did not report on test results because they were not reported by ethnic categories until the 1980s.

While Peebles sounded discouraged, he did point to some accomplishments, especially in the South. Before the 1960s, there was an apartheid system in the South as the schools were legally segregated. Although Peebles did not see the struggle as failing, he did note that problems remained in urban public schools.

Peebles saw Thurgood Marshall as playing a most critical role in school desegregation. Marshall, a believer in integration, spent his adult life debating and struggling for desegregation. Marshall exhibited a quiet power as desegregation began to take hold across America. He used legal strategy rather than militancy might. His arguments based on the Constitution for desegregation made the difference and accomplished changes once unimaginable.

Viadero (1999) discussed the events of Prince Edward County, Virginia after the *Brown* decision. The state court refused to bend to the will of the U.S. Supreme Court and closed its public schools for five years. Now almost 50 years later, the residents of Prince Edward County have finished the fight. White students have reentered the public schools, making these schools among the most integrated in America. The school system, which at one time was deemed one of the worst in the state, is now widely considered to be among the best.

In 1959, the White community established Prince Edward Academy. It was a private school which served 1,500 White students who were bused to makeshift classrooms in churches, stores, and homes. By 1961, enough money had been raised to construct a permanent structure.

Though the 1964 the Supreme Court decision in *Griffin v Board of Education*, ordered the public schools back into operation, a big challenge to the school system currently is

poverty. Many believe this poverty exists because many students are children of those who were denied an education when the county closed the public schools.

Reid (2003) reported that the Virginia Senate issued a resolution that expressed official regret for the shutdown of the Prince Edward County public schools from 1959 to 1964 to avoid desegregation. The Virginia House of Delegates had approved the resolution of regret earlier. The resolution acknowledges that the state cut public funding to integrate schools while giving money to White children to attend nonsectarian private schools. The resolution also states that the closing of the schools severely affected the education of African-American students, wounded human spirits, contributed to job and home losses, family displacements, and separations, and engendered a deep sense of despair within the African-American community. In addition the Prince Edward school district seeks to award honorary high school diplomas to those students who had to earn their diplomas elsewhere because of the shutdown of the schools.

As the door closes on desegregation cases being heard in the U.S. Supreme Court Johnston (2001) reported that one of Florida's longest-running desegregation orders had been overturned. The Hillsborough County system was declared free of racial segregation and released from a 1971 Court order. The 43-year-old desegregation case ended as the U.S. Supreme Court declined to disturb a Federal Appeals court ruling that the district was no longer segregated. The Justices declined without comment to review the case.

There have been some reservations and concerns about a resurgence of segregation in the South. Richard (2002) reported findings from an academic conference held at the University of North Carolina. The professors and researchers at the meeting compared

evidence showing that students in the South are more segregated by race than at any time since *Plessy v Ferguson* went into effect. Although those in attendance agreed that the reasons for this new segregation are complex, they did agree on the following causes:

1. Influxes of Hispanics and court decisions that outlaw race as a main factor in student assignment.
2. Residential segregation persists.
3. Many school district policies allow some degree of segregation.
4. Residents may have forgotten the educational value of a diverse community.
5. Private schools may be contributing to racial segregation more strongly now than it has since the early 1970s.
6. Teachers are flocking to more segregated schools.
7. Social class may be more important to the public now than race. (p. 4)

Walsh reported in October, 2002, the U.S. Supreme Court declined to revive an effort by an original plaintiff in an Alabama desegregation case to intercede in recent court proceedings. Sullins, who was part of the original case in 1963, tried to persuade the Court to intervene in the school district's request to close an elementary school under the long-running desegregation decree. Sullins contended that representation of Black schoolchildren in the 39 year old case was no longer fair or effective. Sullins claimed that the law firm of Gray, Langford, Sapp, McGowan, Gray, and Nathanson of Montgomery, Alabama, was taking a monolithic approach to representing the Black children. Sullins asked the Court to obtain opinions of other parents and community groups before agreeing to a school closing. The Supreme Court denied the appeal without comment (Walsh, 2002).

Returning the control of public schools to the local authorities has not been viewed as a positive move by some. “One by one, districts such as Pinellas are being told they no longer discriminate under the eyes of the law, and one by one, they are re-creating schools that separate students by race.” This was the opening paragraph from an editorial published in the St. Petersburg Times written by East (2002), the Perspective Editor. In his opinion returning local control to school districts comes at an unusual racial price.

According to East, this pattern was leading to the school’s abandonment of the practices that helped it to desegregate. The district turned from cross-city busing and magnet schools because the court orders prohibited them from consideration of any racial issues.

In his editorial, East suggested that a social movement triggered nearly a half-century ago by a unanimous U.S. Supreme Court decision that proclaimed “separate is not equal” was now coming to an end. To him, the most telling gauge of this transformation came from work compiled by the Civil Rights Project at Harvard University. Orfield, professor of education and social policy at Harvard, is one of the nation’s leading authorities on school desegregation. Co-director of the Civil Rights Project, Orfield was quoted by East as saying, “What is going on is a stunning historic reversal and a return to the belief that you can have separate but equal schools.” (p. 2) To East, the *Brown* decision was becoming a distant legal memory.

The movement toward resegregation which reached as far back as 1974 has had many causes, but the role of the courts have been defining and confounding according to East. He determined that the Court had distanced itself from *Brown* and substantiated this opinion by discussing specific U.S. Supreme Court cases:

1. In the 1974 *Milliken v Bradley* case, a 5-4 Court turned down a plan to desegregate Detroit schools by transferring students between the largely Black inner-city district and the largely White suburban districts. The decision virtually ruled out any inter-district transfers, thus ignoring a national pattern of White flight to the suburbs.
2. In the 1991 *Dowell* case, a 5-3 Court, led by Chief Justice Rehnquist, held that a desegregation order in Oklahoma City could be lifted even though the district was planning to return to segregated neighborhood schools. Rehnquist wrote that the district had complied in good faith and had eliminated the vestiges of past discrimination to the extent practicable.
3. The 1992 *Freeman* case the Court ruled 5-3 in four separate opinions that DeKalb County, GA., was under no duty to remedy imbalance that is caused by demographic factors, and some districts could be released from some court-ordered requirements even if others had not been met.
4. In 1995, in Kansas City, Missouri, a 5-4 Court held that desegregation orders should be terminated even when there is evidence of wide academic disparity between races. In *Jenkins* Rehnquist wrote, “Insistence upon academic goals unrelated to the effects of legal segregation unwarrantably postpones the day when the...(district) will be able to operate on its own.”
(p.15)

East proposed that the Court, by declaring these school districts unitary, has caused those districts to abandon the very practices that helped them desegregate. The districts have claimed that the unitary status prohibits them from considering race at all in any of

their decisions. East considered the U.S. Supreme Court ignoring the issues of race being a factor in enrollment meant that school districts have no legal compass on race.

East saw one trend as being consistent: once declared unitary, districts become less integrated. In 1990, urban public schools in the South were 40 % less segregated than the neighborhoods; by 2000, those same schools were only 27 % less segregated. East considered those trends as disturbing because they might represent the leading edge of a rapid process of resegregation of public school in the South.

According to Merelman (2002) racially integrated public schools have not become embedded in the foundation of American public policy. He saw racial integration of public schools as failing. He explained:

Two massive domestic social experiments were undertaken by the American federal government in the 20th century...the racial integration of public schools has failed... nor do powerful claimant groups protect integrated schools. Indeed even the policy's intended beneficiaries-African Americans-no longer press energetically for it. In fact, the National Association for the Advancement of Colored People, which designed and executed the arduous legal strategy that won school desegregation in the courts, now has difficulty maintaining a public posture favorable to it against an indifferent and sometimes hostile membership. (p. 1)

Studies have shown that there were more Black students in schools whose student populations were more than 50 % minority in 1991 than there were in 1971, several years before most busing for integration had even begun. The proportion of Black students in entirely segregated schools increased in the late 1980s and 1990s.

Merelman also found the fact that the failure of school integration has been met with deafening silence in the media very curious. The *New York Times'* highly acclaimed series on race relations in America, which won a Pulitzer Prize in 2002, mentioned very little about integrated schools. "Surely the most ambitious and idealistic domestic political undertaking of the last 50 years deserves better, at least a decent public burial, an

autopsy, an obituary, even a eulogy, perhaps even a national requiem mass” (Merelman, 2002, p. 2).

Merelman suggested there would be dire consequences if school integration died. He saw Americans adopting a series of comforting social myths, or illusions, to rationalize the dismantling of their ambitious, but deeply conflicted experiment, as the chief consequence. One such myth is that resegregated schools are better for Blacks than integrated schools. “Legally, this argument is quite ingenious; it manages to reassert the logic of *Plessy v. Ferguson* without overruling *Brown v. Board of Education*” (p.6).

Many Blacks favor these myths for these reasons:

- (1) It demeans Black children to believe they can learn only by sitting next to White children. (p. 6)
- (2) Some Black leaders argue, resegregation will protect Black culture from the gradual eradication that would occur in an integrated setting. (p. 6)
- (3) Resegregation relieves Blacks of the disproportionate burden they have borne under most desegregation arrangements. (p. 6)
- (4) Some resegregation proponents claim that resegregated schools will lure White parents back to cities. No longer having to fear for the education or physical well-being of their children in integrated schools, Whites will revitalize blighted city neighborhoods and revivify downtowns. (p. 6)

Merelman (2002) believed that all of the myths could be easily and simply demolished.

- (1) The brute fact is that White parents have more money than Black parents to pay for schools. Parents are mainly interested in good schools for their own children, not for the children of others. It follows that Whites will only support Black students who happen to be in school with White children. Thus, only if they are sitting next to White children will Black children benefit educationally. (p. 7)
- (2) Black culture does not seem to improve the educational performance of Black children in such indispensable skills as reading, math, writing, and science. Blacks who hold the view that Black culture is in danger of being eradicated sell

their culture short. Black culture is not fixed, it evolves over time. It may even undergo a renaissance as it comes into contact with other cultures. (p.7)

- (3) Blacks who favor resegregation are doing Whites the great favor of relieving both their guilty consciences and their pocket books. (p. 7)
- (4) There is no evidence to suggest that resegregation lures White families with young children back into cities. The economics and sociology of cities increasingly favor affluent singles, and couples without children. Most of these people believe they have no stake in a strong public school system.

CHAPTER 3

AN ANALYSIS OF THE LAW CONCERNING DESEGREGATION AND A SUMMARY OF THE PRESENT STATUS OF THE LAW

This chapter provides an analysis of the law concerning desegregation and a summary of the present status of the law. The analysis includes a systematic explanation of important points of law concerning desegregation jurisprudence, including an explanation of *de jure* and *de facto* segregation, unitary status and the *Green* factors used by the Court to measure unitary status, the effect of the Court's decision in *Dowell*, in *Freeman*, and in *Jenkins*, strict scrutiny by the Court, and a summary of the current status of the law.

Segregation

By definition, segregation is the social or legal practice of separating. According to the U.S. Supreme Court, there are two types of racial segregation: *de facto* segregation and *de jure* segregation. *De facto* is a Latin phrase meaning "by the fact of" or "in fact." This form of segregation occurs when circumstances other than race, such as economics and politics cause separation even though no laws require it. For example, schools are segregated because of the demographics of neighborhoods, not by law (Arkansas Faith and Ethics Council, 2001).

De jure, also a Latin phrase, means "from the law" or "by right." It is a type of segregation of people through systematic or established processes. In the South, *de jure* segregation became the law of the land after the Civil War. Jim Crow laws or Black Codes enforced *de jure* segregation (Arkansas Faith and Ethics Council, 2001).

The term Jim Crow comes from the minstrel show song “Jump Jim Crow” written in 1828 by Thomas D. Rice, a white man who originated the blackface performance. By 1837, Jim Crow was being used to refer to racial segregation (McElrath, 2003). The first Jim Crow type law was passed in Virginia in 1723. The U.S. Supreme Court held in *Plessy v. Ferguson* (1896) that Jim Crow laws were constitutional as long as they allowed for separate but equal facilities. Although *Brown* later declared Jim Crow laws unconstitutional, implementing desegregation has taken many years and numerous Court decisions to counteract these laws. In 1968, the U.S. Supreme Court held that the duty of a former *de jure* district was to take all necessary steps to convert to a “unitary system” in which racial discrimination was eliminated (*Green v. County Board of Education*).

Unitary Status and the Green Factors

In early desegregation litigation, the U.S. Supreme Court did not define “unitary status.” The implied definition is a school district that no longer maintains a dual school system, having instead one school system for all students. Unitary status indicates that the courts have declared a school system “sufficiently desegregated” to require both the dissolution of federal control and the return of control to the local school board. In *Green* the Court held that *de jure* school systems had an affirmative duty to eliminate the vestiges of past racial discrimination “root and branch.” The Court was quite specific concerning that duty. According to the Court in *Green*, courts were to look at: 1) student assignments, 2) faculty assignments, 3) staff assignments, 4) transportation, 5) extracurricular activities, and 6) facilities to determine if a school system deserved unitary status. These elements have become known as the *Green* factors. The Court did not proffer a discussion or explanation of the meaning of these factors or the level of

compliance that would be required, but the courts have usually looked at the factors in the following manner:

1. Student Assignment. The existence of a racially identifiable school has been used to determine if a vestige of the previous dual school system exists. There is no exact statistical number which can be utilized to determine whether schools are racially identifiable. Some cases have held that a plus/minus ratio of 20% is acceptable, but this formula in and of itself would not mean that the ratios would be acceptable. In consideration with the assignment for the system as a whole, the student assignment at each school is critical. It is a ratio fact-based inquiry that determines if there are in the school district demographic changes that are the result of present or past discrimination of prior *de jure* segregation. Said school district has the burden of proving that these racial imbalances are not *de jure*.
2. Faculty Assignment. This consideration is whether or not the ratio of Black-to-White faculty at each individual school is substantially equal to the system-wide ratio of faculty. The racial percentage of the student population has nothing to do with the ratio of the general population of the city, county or school system. Faculty assignment deals solely with the ratio of a system's employees.
3. Staff Assignment. Both faculty and staff must be assigned following the requisites of *Single v. Jackson Municipal Separate School District*. This consideration is known as the *Singleton* ratio. The ratio of Black to White staff assignments at each individual school must be substantially equal to the system-wide ratio of staff. The *Singleton* ratio is not based on the racial percentage of the make up of the student population at each school or on the ratio of the general population of

the city, county, or school system. Some courts have recognized and allowed a deviation from the system-wide average by no more than 15%.

4. Transportation. A school system must examine its student assignment and educational plan to determine if the burdens of transportation are being disproportionately shared among the racial groups. This examination requires an analysis involving time, distance traveled, and other considerations. There must be an extensive analysis of regular transportation for students in general, for magnet programs, for majority-to-minority students and for extra curricular activities.
5. Extracurricular Activities. All extracurricular activities in a school system should be open to all students and the system should thoroughly review the issues of access versus participation. There should be race neutral eligibility requirements, and all students should be encouraged to participate in all activities. The mere existence of disparities does not mean the system discriminates. However, the existence of disparities should serve as an indicator that further review is necessary. The school system must determine the causes of the disparities and be certain they are not caused by the previous *de jure* segregation or discriminatory actions.
6. Facilities. The school system must assess all of its facilities to assure they are equitable for everyone regardless of their racial makeup. Buildings must be comparable to one another and not racially identifiable as Black schools or White schools. An analysis of funds allocated by the system to the schools is needed to determine if those allocations are equitably distributed. The allocation of resources

in a school system should be broken down by per pupil expenditure, pupil/teacher ratios, teacher experience levels, teacher education levels, and other relevant considerations (Gibson, 1999).

Effects of Dowell, Freeman, and Jenkins

Although, the U.S. Supreme Court decreased action involving desegregation cases during the 1980s, the issue regained prominence in the 1990s in the following cases:

Board of Education v. Dowell, *Freeman v. Pitts*, and *Missouri v. Jenkins*.

In its 1991 decision in *Dowell*, the Court addressed the proper standards for declaring a formerly segregated school system unitary (Dayton, 1993). Claiming racial segregation, plaintiffs attempted in 1985 to reopen a case previously heard in 1977, in which a federal district court had declared the Oklahoma City School System unitary. In response, the Oklahoma City Board of Education sought an end to federal judicial oversight of the schools in the district. The district court ruled in favor of the school system, holding that present residential segregation resulted from private choices and economics. "If there was any linkage to former segregation, it was too remote to justify a new constitutional remedy," (*Board of Education of Oklahoma City v. Dowell*, 1991, p. 14) was the opinion of the Court.

Later the U.S. Supreme Court held that the 1977 declaration of unitary status by the district court was too ambiguous. It further added that plaintiffs were entitled to an unambiguous statement by the district court before a declaration of unitary status could restrict future action. The Court stated that federal supervision of local schools was not intended to operate in perpetuity, but rather it was intended as a temporary measure to remedy past discrimination. The Court held that the school needed only to establish that

it had been operating in compliance with the commands of the Equal Protection Clause of the Fourteenth Amendment and that it was unlikely that the school board would return to its former ways. The Court added that the school could meet its burden by demonstrating good faith compliance with the district court's order and by showing that vestiges of former segregation had been eliminated "to the extent practicable." The Court explained that district courts should consider the *Green* factors to determine if unitary status had been achieved. However, the Court did not clarify whether the indicators of unitary status identified in *Green* may be satisfied incrementally, or whether those factors must all be satisfied concurrently before a school district can be released from judicial supervision and control (Dayton, 1993).

In a class action, *Freeman v. Pitts*, filed by Black school children and their parents in 1969, the District Court entered a consent order approving a plan to dismantle the *de jure* segregation that existed in the Dekalb County, Georgia, School System. The court concurred, but it retained jurisdiction to oversee implementation of the plan. In 1986, seeking a declaration that DeKalb County had achieved unitary status, DeKalb County School System officials filed a motion for final dismissal of the litigation.

The District Court ruled DeKalb County a unitary system with regard to four of the six factors identified in *Green v. New Kent County School Board* (1968). The four areas in DeKalb County that satisfied the *Green* factors were student assignment, transportation, physical facilities, and extracurricular activities,. Although ruling that it would order no further relief in the foregoing areas, the Court refused to dismiss the case because it found that DeKalb County was not unitary with respect to the remaining *Green* factors of faculty and staff assignments. The Court of Appeals reversed this ruling, holding that a

district court should retain full remedial authority over a school system until the system achieved unitary status in all *Green* factors at the same time for several years. Under this test DeKalb never achieved unitary status nor could it shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status. To regain control of its schools, DeKalb County would have to take further actions to correct the racial imbalance. The U.S. Supreme Court held:

1. In the course of supervising a desegregation plan, a district court has the authority to relinquish supervision and control of a school district in incremental states, before full compliance has been achieved in every area of school operations, and may, while retaining jurisdiction over the case, determine that it will not order further remedies in areas where the school district is in compliance with the decree. (p. 15)
 - (a) *Green* held that the duty of a former *de jure* district is to take all necessary steps to convert to a unitary system in which racial discrimination is eliminated, set forth factors that measure unitariness, and instructed the district courts to fashion remedies that address all these factors. Although the unitariness concept is helpful in defining the scope of the district court's authority, the term "unitary" does not have a fixed meaning or content and does not confine the court's discretion in a way that departs from traditional equitable principles. Under such principles, a court has the inherent capacity to adjust remedies in a feasible and practical way to correct the constitutional violation with the end purpose of restoring state and local authorities to the control of a school system that is operating in compliance. Where justified by the facts of the case, incremental or partial withdrawal of judicial supervision and control in areas of compliance, and retention of jurisdiction over the case with continuing supervision in areas of noncompliance, provides an orderly means for fulfilling this purpose. In particular, the court may determine that it will not order further remedies in the area of student assignments, where racial imbalance is not traceable, in a proximate way, to constitutional violations. (pp. 15-16)
 - (b) Among the factors which must inform the court's discretion to order the incremental withdrawal of its supervision in an equitable manner are the following: whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; whether retention of control is necessary or practicable to achieve compliance in other areas; and whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good faith commitment to the whole of the decree and

to those statutory and constitutional provisions that were the predicate for judicial intervention in the first instance. In considering these factors a court should give particular attention to the school system's record of compliance....And with the passage of time the degree to which racial imbalances continue to represent vestiges of a constitutional violation may diminish and the practicability and efficacy of various remedies can be evaluated with more precision. (pp. 21-22)

2. The Court of Appeals erred in holding that, as a matter of law, the District Court had no discretion to permit DeKalb County to regain control over student assignments and three other *Green* factors, while retaining supervision over faculty assignments and the quality of education. (p. 22)
 - (a) The District Court exercised its discretion appropriately in addressing the *Green* elements, inquiring into quality of education, and determining whether minority students were being disadvantaged in ways that required the formulation of new and further remedies in areas of noncompliance. This approach illustrates that the *Green* factors need not be a rigid framework and demonstrates the proper supervision is no longer needed, a district court can concentrate its own and the school district's resources on the areas where the effects of *de jure* discrimination have not been eliminated and further action if necessary. (pp. 22-23)
 - (b) The related premises underlying the Court of Appeals; rejection of the District Court's order—first, that given noncompliance in some discrete categories, there can be no partial withdrawal of judicial control; and second, until there is full compliance, *Swann, supra*, requires that heroic measures be taken to ensure racial balance in student assignments systemwide—are incorrect under this Court's analysis and precedents. Racial balance is not to be achieved for its own sake, but is to be pursued only when there is a causal link between an imbalance and the constitutional violation. Once racial imbalance traceable to the constitutional violation has been remedied, a school district is under no duty to remedy an imbalance that is caused by demographic factors....The decree here accomplished its objective of desegregation in student assignments in the first year of its operation, and the District Court's finding that the subsequent resegregation is attributable to independent demographic forces is credible. A proper rule must be based on the necessity to find a feasible remedy that ensures systemwide compliance with the decree and that is directed to curing the effect of the specific violation. (p. 23)
 - (a) Resolution of the question whether retention of judicial control over student attendance is necessary or practicable to achieve compliance in other facets of DeKalb County School System must await further proceedings on remand. The District Court did not have this Court's

analysis before it when it addressed the faculty assignment problem, and specific findings and conclusions should be made on whether student reassignments would be a proper way to remedy the defect. Moreover, the District Court's praises for DeKalb County's successes, dedication, and progress, and its failure to find that DeKalb County School System had acted in bad faith or engaged in postdecree acts of discrimination with respect to those areas where compliance had not been achieved, may not be the equivalent of the necessary finding that DeKalb County School System has an affirmative commitment to comply in good faith with the entirety of the desegregation plan. (pp. 27-28)

The Court restated its approval of the *Green* factors as a basis for assessing progress toward unitary status, but it also reiterated that the *Green* factors need not be a rigid framework. In *Dowell* the Court reemphasized its holding that federal courts should consider good faith compliance and whether vestiges of prior segregation had been eliminated to the extent practicable (Dayton, 1993).

In an 18-year-old school desegregation litigation, *Missouri v. Jenkins*, (1995), Missouri challenged the District Court's orders requiring the State (1) to fund salary increases for virtually all instructional and noninstructional staff within the Kansas City, Missouri, School District, and (2) to continue to fund remedial quality education programs because student achievement levels were still at or below national norms at many grade levels. In affirming the orders, the Court of Appeals rejected the State's argument that the salary increases exceeded the District Court's remedial authority because this argument did not directly address and relate to the State's constitutional violation: its operation, prior to 1954, of a segregated school system within the Kansas City, Missouri School District. The Court of Appeals observed that the increases were designed to eliminate the vestiges of state-imposed segregation by improving the desegregative attractiveness of the district and by reversing "White flight" to the suburbs. The Court of Appeals also approved the District Court's implicit rejection of the State's request for a determination of partial

unitary status, under *Freeman v. Pitts*, with respect to the existing quality education programs. The U.S. Supreme Court held:

1. Respondents' arguments that the State may no longer challenge the District Court's desegregation remedy and that, in any event, the propriety of the remedy is not before this Court are rejected. Because, in *Jenkins*, 495 U.S., at 37, certiorari was granted to review the manner in which this remedy was funded, but denied as to the State's challenge to review the remedial order's scope, this Court resisted the State's efforts to challenge such scope and, thus, neither approved nor disapproved the Court of Appeals' conclusion that the remedy was proper....Here, however, the State has challenged the District Court's approval of across-the-board salary increases as beyond the remedial authority. Because an analysis of the permissible scope of that authority is necessary for a proper determination of whether the salary increases exceeded such authority, a challenge to the scope of the remedy is fairly included in the question presented for review. (pp. 12-13)
2. The challenged orders are beyond the District Court's remedial authority. (p. 14)
 - (a) Although a District Court necessarily has discretion to fashion a remedy for a school district unconstitutionally segregated in law, such remedial power is not unlimited and may not be extended to purposes beyond the elimination of racial discrimination in public schools....Proper analysis of the orders challenged here must rest upon their serving as proper means to the end of restoring the victims of discriminatory conduct to the position they would have occupied absent that conduct,...and their eventual restoration of state and local authorities to the control of a school system that is operating in compliance with the Constitution....The factors which must inform a court's discretion in ordering complete or partial relief from a desegregation decree are: (1) whether there has been compliance with the decree in those aspects of the school system where federal supervision is to be withdrawn; (2) whether retention of judicial control is necessary or practicable to achieve compliance in other facets of the system; and (3) whether the district has demonstrated to the public and to the parents and students of the once disfavored race its good-faith commitment to the whole of the decree and to those statutes and constitutional provisions that were the predicate for judicial intervention in the first place. ...The ultimate inquiry is whether the constitutional violator has complied in good faith with the decree since it was entered, and whether the vestiges of discrimination have been eliminated to the extent practicable. (pp.14-15)
 - (b) The order approving salary increases, which was grounded in improving the "desegregative attractiveness" of the Kansas City, Missouri, School System, exceeds the District Court's admittedly broad discretion. The order should have sought to eliminate to the extent practicable the vestiges of prior de jure segregation within the Kansas City, Missouri, School System: a system-wide reduction in student achievement and the existence of 25 racially identifiable

schools with a population of over 90% Black students. Instead, the District Court created a magnet district of the Kansas City, Missouri, School District in order to attract nonminority students from the surrounding suburban school districts and to redistribute them within the Kansas City, Missouri, School Districts schools. This interdistrict goal is beyond the scope of the intradistrict violation identified by the District Court....Indeed, the District Court has found, and the Court of Appeals has affirmed, that the case involved no interdistrict violation that would support interdistrict relief....The District Court has devised a remedy to accomplish indirectly what it admittedly lacks the remedial authority to mandate directly: the interdistrict transfer of students....The record does not support the District Court's reliance on "white flight" as a justification for a permissible expansion of its intradistrict remedial authority through its pursuit of desegregative attractiveness....Moreover, that pursuit cannot be reconciled with this Court's decisions placing limitations on a district court's remedial authority....Nor are there appropriate limits to the duration of the District Court's involvement....Thus, the District Court's pursuit of the goal of "desegregative attractiveness: results in too many imponderables and is too far removed from the task of eliminating the racial identifiability of the schools within the Kansas City, Missouri School District. (pp.18-19)

- (c) Similarly, the order requiring the State to continue to fund the quality education programs cannot be sustained. Whether or not Kansas City, Missouri, School District student achievement levels are still "at or below national norms at many grade levels" clearly is not the appropriate test for deciding whether a previously segregated district has achieved partially unitary status. The District Court should sharply limit, if not dispense with, its reliance on this factor in reconsidering its order, and should instead apply the three-part Freeman test. It should bear in mind that the State's role with respect to the quality education programs has been limited to the funding, not the implementation, of those programs; that many of the goals of the quality education plan already have been attained; and that its end purpose is not only to remedy the violation to the extent practicable, but also to restore control to state and local authorities. (p. 29)

In summary, the Court found that the "White flight" out of urban districts did not justify an interdistrict remedy, and that districts did not have to demonstrate that the harms caused by segregation, such as lower minority student test scores, had to be corrected in order to attain unitary status (Ancheta, 2002).

Strict Scrutiny

Today, virtually all of the court supervised desegregation plans in the public school systems have been declared to have unitary status. Once a school system is declared

unitary, any further use of race by school officials is subject to strict scrutiny review by courts. To be declared unitary, a district court has ascertained by factual assessment that local school authorities have eliminated the vestiges of past discrimination to the extent practicable, that the school systems have acted in good faith and fully, and that they have satisfactorily shown compliance and commitment to its school desegregation plan (Gibson, 1999). A system that is unitary no longer discriminates against school children on the basis of race and provides a constitutional acceptable education to all children.

As the Court turns control of school systems back to local authorities, school districts are finding that most race-conscious policies that are used to further desegregation efforts must satisfy a high standard review known as “strict scrutiny” (Ancheta, 2002). Under strict scrutiny, the courts employ a two-part test. First, courts evaluate when a race-conscious policy advances a “compelling interest.” A compelling interest is one that is necessary to government interests such as national security, protecting people’s lives, and protecting constitutional rights. Because *Brown* involved the protection of constitutional rights, it was an example of the use of race justified by a compelling interest. Second, courts assess the fit between the policy and the interest being advanced. A race-conscious policy is necessary to achieve the compelling interest. The courts typically require that a policy be narrowly tailored to serve that interest. For example, if a race-neutral policy could advance an interest as a race-conscious policy, then the race-conscious policy is not narrowly tailored. This compelling interest is further explained by Ancheta:

Compelling Interests. The courts have widely recognized that remedying the principal effects of an institution’s past discrimination is a compelling interest. There must, however, be a “strong basis in evidence” to prove the effects of past discrimination is not enough that a district assert that there has been discrimination.

The district must provide evidence of the discrimination, and to document its harmful effects through that evidence....The Supreme Court has also ruled remedying *societal* discrimination, compared to an institution's own discrimination, is not sufficiently compelling, because it is too broad and general.

The promotion of "educational diversity" in higher education, an interest that was held by the Supreme Court in *Regents of the University of California v. Bakke*, has been advanced as an interest in K-12 settings....However, the courts have not ruled squarely on the issue, largely because there have been recent challenges to the *Bakke* decision itself. A number of courts have assumed that an interest in promoting diversity is compelling, and then have gone on to strike down policies because they are not narrowly tailored.

Narrow Tailoring. Although the courts do not always apply the same test of narrow tailoring, they generally weigh several factors, such as the necessity of the policy, the availability of alternative race-neutral policies, the duration of a policy, the relationship between numerical goals and the relevant student population, the flexibility of the policy and the burden imposed by the policy on third parties.

The narrow tailoring inquiry has become increasingly important because several cases have assumed that interests such as a *Bakke*-type interest in diversity are compelling, but then struck down policies as not being narrowly tailored. These courts characterized voluntary policies as forms of "racial balancing" that are inadequate alternatives to neutral policies and impose too great a burden on non-minority students....Except for remedial cases, the courts will not uphold quotas or set-asides as narrow tailored. However, a plan that does not use race in a rigid or mechanical way and considered alternative to a race-neutral policy is more likely to satisfy strict scrutiny like the higher education admissions policy upheld in *Bakke*, K-12 policies that employ race along with other relevant factors (such as socioeconomic background or geographic factors) may stand the best chance of being upheld by the courts.

The use of race in K-12 educational policy remains problematic....The law continues to evolve as new policies are adopted and new cases are litigated. The Supreme Court has chosen not to take up appeals from the recent K-12 cases challenging race-conscious policies, but as cases percolate in the lower courts, the Court may ultimately take an appeal and provide greater guidance to the courts and to policy....But until the Supreme Court does provide definite guidelines, the use of race in K-12 education will remain uncertain. (Ancheta, 2002, pp. 2-4)

Current Status of Desegregation Law

Based on the U.S. Supreme Court's most recent desegregation cases, courts are increasingly leaning towards granting unitary status to those schools operating under

federal judicial oversight. This position has drawn strong opposition from some legal scholars. Boger stated that: "The forces in play include the rapid resegregation of the region's public schools, due to the termination of court-ordered desegregation decrees in many southern school districts," (Boger, 2003, p. 1). Boger made this statement at a recent symposium in North Carolina. Randall (2003) suggested that the Court's current doctrine, which favors returning control to local districts, is causing integration to meet a dead end. He further added that the judicial abandonment of integration by the U.S. Supreme Court was seen as a betrayal of the Court's vision in *Brown* and its progeny.

As the U.S. Supreme Court seems to close the door on desegregation cases, unanswered questions remain. In *Dowell*, *Freeman*, and *Jenkins* Poser (2002) discussed the termination of desegregation remedies as a shift from defining the remedial standard in terms of interests and drawing upon the breadth of equity to focusing on duty. In *Dowell* and *Freeman* the Court held that it had given too much discretion to district courts to create remedies which were unwieldy and potentially limitless. Thus, the Court's reaction was to invoke the limits of equity to create some boundaries for the remedies and to create some hope for their eventual termination. *Jenkins* saw the Court's shift from its focus on rights in *Dowell* and *Freeman* to a focus on duty. The Court held that requiring a school district to provide certain remedies with the avowed goal of attracting children from other school districts as a method of achieving desegregation was impermissible because that was an interdistrict goal for an intradistrict violation.

Poser's main concern was that the Court had always held that to remedy a violation, the school district must do more than simply stop discriminating. But the Court has never been able to identify the appropriate scope of the remedy beyond simply inventing terms

of art to approximate the intuition that something beyond ceasing to discriminate is required. The Court has continued to require that defendants remedy the effects of segregation by attempting to place the plaintiffs in the position they would have been in, absent the discrimination, by eliminating the vestiges of segregation to the extent practicable or by creating a unitary school district. Yet the Court has been at a loss to identify those vestiges and to clarify its definition of unitary.

Smith (2003) contended that within the American legal system the voice of the U.S. Supreme Court speaks with particular prominence. He documented how the U.S. Supreme Court's racial formulations echoed throughout American law. Smith suggested that if the U.S. Supreme Court had not legitimized Jim Crow segregation in *Plessy v. Ferguson*, the American version of apartheid might never have become so deeply entrenched in the American way of life.

In *Jenkins*, the burden of proof appears to have shifted from the school board to the plaintiffs. Without comment, the U.S. Supreme Court is currently refusing to hear desegregation cases. Recently, plaintiffs have not provided the Court with enough evidence to show vestiges of discrimination based on race. A decade ago Dayton (1993) stated that it was too soon to announce the death of public school desegregation, but the end was obviously near. Today, a half century after *Brown*, federal judicial involvement in desegregation efforts are rapidly coming to an end.

Summary

Currently all indicators point toward the U.S. Supreme Court distancing itself from desegregation cases. With its three most recent desegregation decisions, the Supreme Court's trek into the field of court-supervised desegregation has come full circle. The

1950s saw the Court actively enter the battle over racial segregation in public schools, and the 1990s saw the Court trying to define the terms of disengagement.

CHAPTER 4

FINDINGS, CONCLUSIONS, AND COMMENTS

This chapter provides a summary of this study's findings and conclusions. This study found that:

- (1) Three cases of the nineteenth century had a significant impact on segregation, but only one pertained directly to education. In *Dred Scott v. Sandford* (1856) the U.S. Supreme Court ruled that since Scott was a slave, he was property and was unable to sue in court. *Plessy v. Ferguson* (1896) concerned separate but equal accommodations for Blacks and Whites on a train but the ruling became the cornerstone legal foundation of racial segregation in the public schools. *Cummings v. Richmond County Board of Education* (1899) was the first public school segregation case to reach the high Court. The U.S. Supreme Court ruling in this case allowed for wide disparities in the quality of education afforded Blacks and Whites in the South.
- (2) Segregation in public schools based on color was struck down in a unanimous decision by the U.S. Supreme Court in *Brown v. Board of Education* (1954). However, the Court deferred judgment on implementing its ruling. *Brown II* (1955) ordered school districts to overcome obstacles to desegregate with "all deliberate speed."
- (3) Until 1967, cases immediately following the first *Brown* decision involved rulings by the high Court against tactics that were for the specific purpose of delaying desegregation. The case, *Cooper v. Aaron* (1958), unanimously ruled that law

order were not there to be preserved by depriving the Negro children of their constitutional rights. *Griffin v. Board of Education* (1964) blocked tax breaks and tuition grants used to subsidize private schools for Whites in Prince Edward County, Virginia.

- (4) The U.S. Supreme Court gave guidelines on how to implement desegregation beginning in 1968 until 1973. *Green v. County School Board of New Kent County* (1968) gave explicit tests to be applied to a school district's desegregation plan to determine the plan's effectiveness in producing mixed-race schools. In this Virginia case the Justices held that formerly segregated systems have an affirmative duty to eliminate racial discrimination root and branch. That duty applied to student assignment, faculty and staff assignments, transportation, extracurricular activities, and facilities. These became known as the *Green* factors. A Jackson, Tennessee, case, *Monroe v. Board of Commissioners* (1968) rejected a "free transfer" plan ruling the board could not show that such a plan would further, rather than delay, conversion to a unitary, nonracial, nondiscriminatory school system. Urgency in dismantling dual school systems is seen in *Alexander v. Board of Education* (1969) and *United States v. Montgomery County Board of Education* (1969). The unanimous ruling in the former held that districts must end their dual systems at once while the latter upheld the use of numerical quotas for the racial balancing of school faculty. *Swann v. Charlotte-Mecklenburg Board of Education* (1971) authorized aggressive steps to overcome residential segregation that was so common in urban areas. Mandatory cross-county busing, redrawn attendance

zones, pairing of city and suburban schools, and the limited use of racial-balance quotas were to be used as desegregation tools.

- (5) Beginning in 1974 and ending in 1979, the U.S. Supreme Court began to back away from expanding desegregation. *Milliken v. Bradley* (1974) struck down a plan to merge the Detroit schools with 53 largely White suburban districts. *Pasadena City Board of Education v. Spangler* (1976) ruled that school districts needed not to readjust attendance zones each year to preserve court ordered racial ratios. *Milliken II* (1977) held that the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. Otherwise, a desegregation order may exceed both the power and competency of the court. In all three of these cases the U.S. Supreme Court held that the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of that school system as a whole. In the opinion of the High Court achieving racial balance was more of a temporary obligation than a perennial one.
- (6) Three recent court cases have given the message that the U.S. Supreme Court has withdrawn from active involvement in desegregating schools. In *Board of Education of Oklahoma City v. Dowell* (1991) the U.S. Supreme Court gave its blessing to the return to neighborhood schools, stressing that desegregation decrees were designed to be temporary. In 1992, the Justices in *Freeman v. Pitts* held that the causes of segregation, such as demographic changes, may be beyond the reach of the courts, and restoring local control of the schools was of utmost importance. schools could be granted unitary status in increments and not wait until all of the

Green factors had been met. *Missouri v. Jenkins* (1995) decreed that a judge had gone too far in ordering an ambitious desegregation plan designed to woo suburban Whites to inner-city magnet schools.

The current status of the desegregation law has made it easier for federal courts to declared school districts unitary. In Table 1 significant unitary status rulings between 1990 and 2002 are presented.

Table 1

Unitary Status Granted or Desegregation Order Dismissed

State	District	Year	Case	Comments
Alabama	Alexander City	2002	2002 WL	Declared partially unitary for all factors except hiring and promotion of higher-level administrators.
Alabama	Auburn	2002	2002 WL 237091 (M.D. Ala 2002)	Court found compliances with 1998 consent decree and declared fully unitary.
Alabama	Butler County	2002	183 F1Supp.2d (M.D. Ala 2002)	Court found compliance with 1998 consent decree and declared fully unitary.
Alabama	Lee County	2002	2002 WL 1268395 (M.D. Ala 2002)	Declared partially unitary for all factors except faculty assignment.
Alabama	Opelika City	2002	2002 WL 237032 (M.D. Ala 2002)	Court found compliance with 1998 consent decree and declared fully unitary.
				continued

State	District	Year	Case	Comments
Alabama	Russell	2002	2002 WL 360000 (M.D. Ala 2002)	Court found compliance with 1998 consent decree and declared fully unitary.
Alabama	Tallapoosa	2002	2002 WL 317973	Declared partially unitary for all factors except faculty assignment at one school.
Arkansas	Little Rock	2002	2002 WL 31119883	Declared partially unitary. Court will continue monitoring the school district's assessment of programs most effective in improving African American achievement.
Florida	Duval County	2001	273 F.3d 960 (11 th Cir. 2001)	Declared fully unitary. Plaintiffs only opposed and provided evidence regarding vestiges of discrimination in school assignments.
Florida	Hillsborough	2001	244 F.3d 927 (11 th Cir. 2001)	1990 found partially unitary in transportation, extracurricular activities and facilities. 2001 declared fully unitary.
Florida	Miami-Dade	2001	Unreported	Unitary status review initiated by the Court. Declared fully unitary. Plaintiffs agreed tha the school district was unitary with respect to <i>Green</i> factors.
Florida	St. Lucie	1997	077 F. Supp. 1202 (S.D. Fla. 1997)	Declared fully unitary. Joint motion with plaintiff seeking unitary status.
Georgia	Coffee County	1995	1995 U.S. Dist. LEXIS 4864	Motion for unitary status unopposed by plaintiff.
				continued

State	District	Year	Case	Comments
Georgia	DeKalb County	1996	942 F. Supp. 1449 (N.D. Ga. 1996)	1988 declared partially unitary in student assignment, transportation, facilities, and extracurricular activities. 1996 declared fully unitary.
Georgia	Muscogee County	1997	111 F.3d 839 (11 th Cir. 1997)	Declared fully unitary. Plaintiffs did not oppose findings regarding transportation and extracurricular activities.
Georgia	Savannah-Chatham	1994	860 F. Supp. 1563 (S.D. Ga. 1994)	Declared fully unitary. Plaintiffs did not oppose findings regarding transportation and extracurricular activities.
Kentucky	Jefferson County	2002	102 F. Supp.2d 358 (W.D. Ky. 2000)	Declared fully unitary. Plaintiffs opposed due to segregation at the classroom level.
North Carolina	Charlotte-Mecklenburg	2001	269 F.3d 305 (4 th Cir. 2001)	Declared fully unitary.
Oklahoma	Oklahoma City	1991	778 F. Supp. 1144 (W.D. Ok. 1991)	Declared fully unitary and dissolved the permanent injunction governing the school district.
Texas	Dallas Independent	1994	869 F. Supp. 454 (N.D. Tx. 1994)	Declared unitary, but would not be dismissed until 1997, judge questions whether would release because of disparities in student achievement.
Texas	Jefferson Independent	2001	Unreported	Declared partially unitary in 2001 with the expectation that the district would be declared unitary by July, 2002.

*This table does not include a number of unpublished decisions. Unpublished rulings declared many school districts unitary, including Florida's Broward, Pinellas, and Polk Counties, Louisiana's Livingston Parish School System, North Carolina's Franklin County School District, Tennessee's Hamilton County School District, Texas' Fort Worth and Houston School Districts, Alabama's Mobil School District, and Virginia's Norfolk School District.

Based on these findings this study concludes that the recent holdings by the U.S. Supreme Court favor returning control of schools to the local authorities. In the nineteenth century the high Court established the separate but equal doctrine that gave validity to segregation by races in public schools in the South. In 1954, the U.S. Supreme Court ruled the separate but equal doctrine unconstitutional. Subsequently, the Court established guidelines to implement desegregation. By 1980, the Court began to back away from desegregation cases and supported the return of control to local school authorities. The two newly established criteria for deciding when desegregation decrees should be ended are (1) if the school district has complied in good faith, and (2) if the school district has remedied past discrimination "as far as practicable." The Court's "as far as practicable" language is a major retreat from the Court's 1955 order to desegregate "with all deliberate speed."

REFERENCES

- Alexander v. Board of Education, 396 U.S. 19 (1969).
- Ancheta, A. (2002). *Constitutional law and race-conscious policies in k-12 education*. The Civil Rights Project, Harvard University. Retrieved December 2, 2003, from <http://eric-web.tc.columbia.edu/digest/dig175.asp>.
- Anderson, J.D. (1988). *The education of Blacks in the South 1860-1935*. Chapel Hill: University of North Carolina Press.
- Arkansas Faith and Ethics Council (2001). *Racism in America*. Retrieved February 22, 2004 at <http://www.afec.org/issues/racism/intro.htm>.
- Ashmore, H.S. (1952). Racial integration with special reference to education in the south. *Journal of Negro Education*, 21(3), 250-255.
- Berlin, I. (1975). *Slaves without masters: The free Negro in the antebellum South*. New York: Pantheon.
- Berry, M.F.& Blassingame, J.W. (1982). *Long memory: The black experience in America*. New York: Oxford University Press.
- Blassingame, J.W. (1965). The Union army as an educational institution for Negroes, 1862-1865. *Journal of Negro Education*, 34, 11-12.
- Board of Education v. Swann, 402 U.S. 43 (1971).
- Board of Education of Oklahoma City v. Dowell, 498 U.S. 237 (1991).
- Boger, J.C. (2003). Education's "Perfect Storm?" Racial resegregation, high-stakes testing, and school resource inequities: The case of North Carolina. *North Carolina Law Review* 81, 1375.
- Bradley v. School Board, 382 U.S. 103 (1965).
- Brown v. Board of Education, 347 U.S. 483 (1954).
- Brown v. Board of Education, 349 U.S. 294 (1955).
- Bullock, A. (1967). *A history of Negro education in the south from 1619 to the present*. Cambridge: Harvard University Press.

- Calhoun v. Latimer, 377 U.S. 263 (1964).
- Carter v. West Feliciana Parish School Board, 396 U.S. 226 (1969).
- Carter, R. (1968). The law and racial equality in education. *Journal of Negro Education*, 37(3), 204-211.
- Cartwright, J. H. (1976) *Triumph of Jim Crow: Tennessee race relations in the 1880s*. Knoxville: University of Tennessee Press.
- Cooper v. Aaron, 358 U.S. 1 (1958).
- Crawford v. Los Angeles Board of Education, 458, U.S. 527, (1982).
- Cumming v. Board of Education of Richmond County, 175 U.S. 528 (1899).
- Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971).
- Dayton, J. (1993). Desegregation: Is the court preparing to say it is finished? *Education Law Reporter*, 84, 897.
- Dred Scott v. Sandford, 60 U.S. 393 (1856).
- East, J. (2002). Desegregation in reverse. *St. Petersburg Times*. Retrieved July 3, 2003, From <http://sptimes.com>.
- Emerson, F. et al (1950). Segregation and the Equal Protection Clause. 34 *Minn. Law Review* 289, 317.
- Estes v. Metropolitan Branches, Dallas NAACP, 444 U.S. 437 (1980).
- Fehrenbacher, D. E. (1978). *The Dred Scot case: Its significance in American Law and politics*. New York: Oxford University Press.
- Franklin, J. H. (1959). Jim Crow goes to school: The genesis of legal segregation in southern schools. *South Atlantic Quarterly*, 225-235.
- Franklin, John Hope and Moss, Alfred A., Jr. (1994) *From slavery to freedom: A history of African Americans* (7th ed.). New York: McGraw-Hill.
- Freeman v. Pitts, 503 U.S. 467 (1992).
- Gibson, J. R. (1999). Unitary status: A new wave of litigation. *Alabama Association of School Boards*. Retrieved December 2, 2003 from <http://www.theaasb.org>.

- Gong Lum v. Rice, 275 U.S. 78 (1927).
- Goss v. Board of Education, 373 U.S. 683 (1963).
- Green v. County School Board, 391 U.S. 430 (1968).
- Griffin v. School Board, 377 U.S. 218 (1964).
- Groves, H. E., (1951). A re-examination of the “separate but equal” doctrine in public education. *Journal of Negro Education*, 20(3), 520-534.
- Hendrie, C. (1999). Years of entrenched inequality. *Education Week on the web*. Retrieved June 20, 2002, from <http://www.edweek.org/ew/vol-18/28black>.
- Howie, D. L. W. (1973). The image of black people in Brown v. Board of Education. *Black Studies*, 3(3), 371-384.
- Johnston, R. (2001). Hillsborough County desegregation case overturned. *Education Week on the web*. Retrieved July 2, 2002 from <http://www.edweek.org/ew>.
- Kousser, J. M. (1980). Separate but not equal: The Supreme Court’s first Decision on racial discrimination in schools. *Journal of southern history*, 46, 17-44.
- Lane, R. (1932). The legal trend toward increased provisions for Negro education in the United States between 1920 and 1930. *Journal of Negro Education*, 1(3-4), 396-399.
- Marshall, T. (1952). An evaluation of recent efforts to achieve racial integration in education through resort to the courts. *Journal of Negro Education*, 21(3), 316-327.
- McDaniel v. Barresi, 402 U.S. 39 (1971).
- McElrah, J. (n.d.). Creation of the Jim Crow south. *African-American History*. Retrieved December 10, 2003, from <http://afroamhistory.about.com>.
- Merelman, R. (2002). Dis-integrating American public schools. *Education Week*. Retrieved September 12, 2003 from <http://www.edweek.org>.
- Milliken v. Bradley 418 U.S. 717 (1974).
- Milliken v. Bradley 433 U.S. 267 (1977).
- Missouri v. Jenkins, 000 U.S. U10251 (1995).

- Monroe v. Board of Commissioners, 391 U.S. 450 (1968).
- Orfield, G. (1996). *Dismantling desegregation: The quiet reversal of Brown v. Board of Education*. New York: The New Press.
- Orfield, G. and Lee, C. (2004). Brown at 50: King's dream or Plessy's nightmare? Retrieved March 13, 2004 at <http://www.civilrightsproject.harvard.edu/research/resego4/brown50.pdf>.
- Pasadena City Board of Education v. Spangler, 427, U.S. 424 (1976).
- Peebles, R. (1999). School desegregation and the 'American dilemma.' *Education Week on the web*. Retrieved May 5, 2003 at <http://www.edweek.org/ew/vol-18/28peebles.h18>.
- Plessy v. Ferguson, 163 U.S. 537 (1896).
- Poser, S. (2002). Termination of desegregation decrees and the elusive meaning of unitary status. *Nebraska Law Review*, 81, 283.
- Randall, A. (2003). Reclaiming Brown's vision: A new constitutional framework for mandating school integration. 10 *Georgetown Journal on Poverty Law and Policy* 363.
- Racial desegregation in public education in the U.S.* (n.d.) Retrieved May 15, 2003, from United States Department of the Interior, National Park Service.
- Reid, H. & Foster-Davis, (1983). State of the art: The law and education since 1954. *Journal of Negro Education*, 52(3), 234-249.
- Reid, K. (2003). Va. expresses "regret" for closures aimed at resisting desegregation. *Education Week*, 22(23), 17.
- Richard, A. (2002). Researchers: School segregation rising in the south. *Education Week*. Retrieved February 28, 2003, from <http://www.edweek.org>.
- Rogers v. Paul, 382 U.S. 198 (1965).
- Singleton v. Jackson Municipal Separate School District, 419 F.2nd 1211 (5th Circ. 1969).
- Sitkoff, H. (1978). *A new deal for blacks, the emergence of civil rights as a national issue: The depression decade*. New York: Oxford University Press.

- Smith, R. M. (2003). Black and white after Brown constructions of race in modern Supreme Court decisions. *University of Pennsylvania Journal of Constitutional Law*, 5, 709.
- State of Missouri v. Jenkins, 515, U.S. 70 (1995).
- State of Missouri Ex Rel. Gaines v. Canada, 305 U.S. 337 (1938).
- Swann v. Board of Education, 402 U.S. 1 (1971).
- Sweatt v. Painter, 339 U.S. 629 (1950).
- University of California Regents v. Bakke, 438 U.S. 265 (1978).
- United States Constitution (1787).
- U.S. v. Montgomery Board of Education, 395, U.S. 225 (1960).
- Valien, P. (1956). The status of educational desegregation, 1956: A critical summary. *Journal of Negro Education*, 25(4), 359-368.
- Viadero, D. (1999). At the crossroads. *Education Week on the web*. Retrieved July 2, 2003 from <http://www.edweek.org/ew/vol-18/28genera.h18>.
- Walsh, M. (2002). Court declines to consider Alabama desegregation appeal. *Education Week*. Retrieved May 13, 2003, from <http://www.edweek.org>.
- Weiler, J. (1998). Recent changes in school desegregation. *Eric Clearinghouse on urban education* 133.
- West, Earle H. and Daniel, H. (1965). Programs in the south. *Journal of Negro Education* 34(3), 310-318.

APPENDIX A

TIME LINE OF THE U.S. SUPREME COURT CASES BRINGING DESEGREGATION TO ELEMENTARY AND SECONDARY PUBLIC SCHOOLS IN THE SOUTH

- 1856 - *Dred Scott v. Sandford*
Scott was ruled to be property and could not sue in court deterring Blacks from trying to gain equal access to education via the courts.
- 1896 *Plessy v. Ferguson*
The separate but equal doctrine was legitimized and became the key underpinning of racial segregation in the public schools.
- 1899 *Cumming v. Richmond County Board of Education*
The first public school desegregation case to reach the high Court, this case allowed for wide disparities in the quality of education afforded Blacks and Whites in public schools in the South
- 1954 *Brown v. Board of Education*
The Court unanimously declared segregated elementary and secondary public schools unconstitutional. The Court deferred judgment on implementation of its ruling.
- 1955 *Brown v. Board of Education*
The defendants in the first case were ordered to make a prompt reasonable start toward full compliance to desegregate. Federal district judges were directed to oversee the process that was to be accomplished with all deliberate speed.
- 1958 *Cooper v. Aaron*
The justices unanimously ruled that Little Rock, Arkansas, could not delay desegregating its schools because of the upheaval surrounding the opening of its high school the year before to a few Black students.
- 1963 *Goss v. Board of Education*
The desegregation plan submitted by Knoxville, Tennessee, was unacceptable to the Court because it contained transfer

provisions based on racial factors which would inevitably lead toward segregation of students by race.

- 1964 *Griffin v. Board of Education*
The Court held that Prince Edward County, Virginia, could no longer avoid desegregation by keeping public schools closed, as it had done since 1959. It also affirmed the decision blocking tax breaks and tuition grants used to subsidize private schools for Whites.
- 1968 *Green v. New Kent County School Board*
Districts in Virginia that operated dual public school systems for Blacks and Whites were declared to have an affirmative duty to eliminate racial discrimination root and branch. Not only were they to dismantle segregation in student assignment, but also in faculty, staff, transportation, extracurricular activities, and facilities. These became the 6 *Green* factors later used by courts to determine whether a district had met its obligation to desegregate.
- 1968 *Monroe v. Board of Commissioners*
A Jackson, Tennessee, desegregation plan contained a free-transfer for students that was held to be a burden on children and their parents. The plan was seen as furthering rather than delaying conversion to a unitary, nonracial, nondiscriminatory school system, making it unacceptable to the high Court. The school board was directed to formulate a new plan which promised realistically to convert promptly to a unitary system.
- 1969 *Alexander v. Board of Education*
An appeals court ruling that gave 33 Mississippi school districts more time to come up with acceptable plans to desegregate was overturned. The ruling was unanimous and called for the districts to end their dual school systems for Blacks and Whites at once and to operate hereafter only unitary schools.
- 1969 *United States v. Montgomery County Board of Education*
The use of numerical quotas for the racial balancing of public school faculty was upheld in this Alabama case.
- 1971 *Swann v. Charlotte-Mecklenburg Board of Education*
Mandatory busing, redrawn attendance zones, and limited use of racial-balance quotas were authorized as desegregation tools in this North Carolina case. The Court held that individual

schools need not reflect the district wide racial balance, but that districts bear the burden of proving that any one-race school did not result from discrimination.

- 1972 *Wright v. Emporia City Council* and *United States v. Scotland Neck Board of Education*
Two separate rulings issued on the same day, rejected bids to carve out new school districts in Virginia and North Carolina. Both districts would have had enrollments with a greater ratio of White students than in the desegregating districts they were leaving.
- 1974 *Milliken v. Bradley*
This was the first major curb on the expansion of desegregation. It rejected a plan to merge the Detroit schools with 53 largely White suburban districts. The Court cited a lack of evidence that those districts were guilty of intentional segregation and ordered a new plan. This ruling made it much harder for courts to order city-suburban desegregation plans to counteract the concentration of minorities in the cities.
- 1976 *Pasadena City Board of Education v. Spangler*
The high Court reversed a ruling by a lower court that required this California school district to adjust its attendance zones annually to preserve court-ordered racial ratios. The justices concluded that the enrollment shifts stemmed from demographic changes and not deliberate segregative acts. The justices held that there was no constitutional obligation to remedy resegregation after an approved plan had been implemented, racial balance was more of a temporary obligation than a perennial one.
- 1977 *Milliken v. Bradley*
This ruling was another curb the high Court's expansion of desegregation. The holding was that the desegregation remedy was to be determined by the nature and scope of the constitutional violation. If the deprivation was identified accurately, as it should be, then the remedy must be related closely to that deprivation. Otherwise, the desegregation order may exceed both the power and competence of the court. The case authorized courts to require remedial education programs as an antidote to past segregation.
- 1982 *Crawford v. Board of Education*
Upheld an amendment to California's constitution that

prohibited state judges from ordering busing for desegregation in the absence of a violation of the U.S. Constitution.

- 1991 *Board of Education of Oklahoma City v. Dowell*
The Court held that court orders to desegregate were designed to be temporary. The federal judges should lift such decrees if school districts have complied with them in good faith and have remedied past discrimination as far as practicable. The Court allowed districts to return to neighborhood schools.
- 1992 *Freeman v. Pitts*
In this Dekalb County, Georgia, case the justices authorized courts to grant unitary status incrementally. Judges were also granted leeway to consider issues beyond the *Green* factors, such as educational quality, in assessing whether districts should be declared unitary. The high Court held that causes of segregation may be beyond the reach of the courts and that restoring local control of schools is of utmost importance.
- 1995 *Missouri v. Jenkins*
The Court ruled that a judge had gone too far in ordering an ambitious magnet school desegregation plan designed to woo suburban White students to inner city schools. The ruling added that neither the goal of attracting Whites nor the persistence of substandard test scores in the city justifies the plan