# Litigation and Community Change:
# The Desegregation of the Denver Public Schools

A Staff Paper prepared for the
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# INTRODUCTION AND METHODOLOGY

This is, by and large, a descriptive study of the conduct and setting of a desegregation lawsuit in Denver, Colorado. The suit began in the summer of 1969; it produced one Final Order and Decree in 1970; it was then in the appeals process for two years; it produced a second Final Order and Decree in 1974; as of January, 1976, the appeals process had come to an end.

The setting is the City and County of Denver, Denver being a city in which the city and county are coterminous. In 1970, shortly after the suit was commenced, the Census reported Denver's population as 514,678. Surrounding Denver is an all too typical ring of predominately suburban, metropolitan sprawl. The 1970 population of so-called "Metropolitan Denver" was 1,227,529. Only schools in the City and County of Denver proper were involved in the desegregation lawsuit. These schools numbered approximately 120.

In rough numbers, and the numbers are changing each year, the City and County of Denver is 73 percent white, 10 percent black and 17 percent Chicano. The school population, again in rough numbers, is 51 percent white, 19 percent black and 27 percent Chicano. During the rest of this report, in conformity with the terminology adopted in the litigation, blacks are usually called blacks (or Negroes); whites are often called Anglos; and Chicanos are usually called Hispanos.

The study synthesizes and analyzes demographic data, court testimony, open-ended interview data, court decisions, journalism, legal documents and secondary studies. It attempts to reconstruct the historical and sociological development of a controversy which started in the streets, went to the courts

and, to date, has not been conclusively resolved in either.

The study is also a history in miniature of the functioning of the judicial process. The Denver case is one of many in the last twenty years which have faced the courts with an intractable dilemma: A clear constitutional violation is proven; a legislative body refuses to take remedial action. The courts, equipped with limited equitable powers, must wheedle and cajole, threaten and coerce, and, on occasion, assume for all practical purposes a plenary legislative role. In the Denver case, the courts may be seen as having walked the full distance, wheedling in the beginning, threatening along the way, and by the end, virtually legislating a remedy.

Faced with such a dilemma, the judicial process reveals its weaknesses. In the Denver case, the judicial process proved slow, lacking in real-world sophistication and reluctant to take the initiative. It also proved, as time went on, that it could gain sophistication, sometimes move cautiously without tarrying and, if confronted by a vacuum, act decisively.

Conclusions such as the above are rare in the rest of the study. This study intentionally eschews editorializing. It is, by intent, descriptive and neutral. The writers have chosen to present factual information, letting opinions come from the mouths of others. Others will have to formulate answers to the questions implicit in the narrative.

## GENERAL DEMOGRAPHIC HISTORY OF DENVER

The city of Denver was established in 1858 subsequent to the discovery of placer gold in the nearby mountains. During the mining boom lasting from 1880-1910, it grew rapidly as a distribution center. After 1910, however, population growth in Denver slowed to an average annual increase of between one and three percent. It was not until World War II that Denver's isolated location and limited water resources ceased to pose obstacles to industrial development and population growth. In addition to a great number of government and military employment centers, Denver attracted airlines, railroad and trucking companies. Research and light manufacturing industries also developed. In recent years, many firms have made Denver a location for their national headquarters. As a result, since 1940, the population of Denver has grown at a rate far exceeding the growth rate of the U. S. population as a whole. In 1940, the population of Denver was 322,412. In the next decade, the population increased 29% to 415,786. Population growth for the city of Denver during 1950-1960 increased by 18.8% to 493,887. Between 1960 and 1970, the rate of increase tapered considerably to 4.2%, and Denver actually experienced a large net outmigration of 28,960 while metropolitan areas surrounding Denver surged ahead. Nonetheless, Denver's population increased absolutely as a result of natural increase and in 1970 it stood at 514,678.[1] (See Table 1)

Since World War II, the area of Denver has increased some 40 square miles by annexation of undeveloped lands to the east and south of the historical city. Currently, the boundaries of Denver extend approximately

TABLE 1

TOTAL POPULATION, DENVER, DENVER SMSA, AND UNITED STATES, 1870 - 1970

| | Denver | | Denver SMSA | | United States |
|---|---|---|---|---|---|
| Year | Population | Average Percent Change Per Year | Population | Average Percent Change Per Year | Average Percent Change Per Year |
| 1870 | 4,759 | | 15,917 | | |
| 1880 | 35,629 | 64.87 | 90,800 | 47.05 | 2.60 |
| 1890 | 106,713 | 19.95 | 161,380 | 7.77 | 2.55 |
| 1900 | 133,859 | 2.54 | 181,650 | 1.26 | 2.07 |
| 1910 | 213,381 | 5.94 | 277,097 | 5.25 | 2.10 |
| 1920 | 256,941 | 2.02 | 331,398 | 1.96 | 1.49 |
| 1930 | 287,801 | 1.22 | 385,019 | 1.62 | 1.61 |
| 1940 | 322,412 | 1.20 | 445,206 | 1.56 | .72 |
| 1950 | 415,786 | 2.90 | 612,128 | 3.75 | 1.49 |
| 1960 | 493,887 | 1.88 | 929,383 | 5.18 | 1.85 |
| 1970 | 514,678 | .42 | 1,227,529 | 3.21 | 1.33 |

Source: Charles P. Rahe, The Economic Base of Denver: Implications for Denver's Fiscal Future and Administrative Policy, Denver Urban Observatory, Denver, Colorado, 1974.

*SMSA includes Adams, Arapahoe, Boulder, Denver and Jefferson Counties for 1910 on. Prior to 1910 the SMSA includes Arapahoe, Boulder, Denver and Jefferson Counties. Adams County established in 1902.

11 miles north to south and 9-1/2 miles east to west, a total of 100 square miles.[2] Population density in Denver in 1970 was about 5,417 persons per square mile. As a result of annexation, this was lower than 7,493 persons per square mile recorded in 1960.[3]

Denver Minority Groups: Hispanos

Numerically, Hispanos comprise the most significant minority group in Denver. Because the census did not distinguish Hispanos separately prior to 1960, it is impossible to trace Hispano movement to the city of Denver. In 1960, however, the census identified 60,294 Hispanos in Denver, 12.2% of the total population.[4] By 1970, the number of Hispanos had risen to 86,345, 16.8% of the total population of Denver.[5]

The Hispano population first came to southern Colorado and New Mexico as miners and agricultural workers. With the closing of the mines and the mechanization of farm work, many were driven to Denver.[6]

The Hispano population of Denver has always been a highly disadvantaged group. In 1970, median school years completed by Hispanos totalled 10.0. This was far below the city-wide median of 12.1 for both blacks and whites. The 1970 median family income for Denver Hispanos was $7,323; the percent employed in white collar occupations was 33.6. Both measures were far below those reported for Denver city whites in 1970: $9,654 and 58.3% respectively. They were, however, comparable to levels for blacks as a whole ($7,287 and 38.7%), although far below levels reported for the blacks of Park Hill, a neighborhood of middle class blacks to be discussed shortly. The Hispano population of Denver has the weakest professional class of all ethnic groups in the city. In 1970, only 8.4% of the Hispano population

were classified professionals, while 12.3% and 18.4% of blacks and whites were classified professionals, respectively.

Geographically, the Hispano population of Denver is spread over a larger and less well-defined area than that occupied by the black population. In 1970, 51 census tracts of Denver contained 400 or more persons of Spanish language or Spanish surname. By way of contrast, only 16 census tracts contained 400 or more blacks. By and large, census tracts containing Hispanos are located north and west of the city's center.[7]

Denver Minority Groups: Blacks

The black population of Denver in 1970 comprised 9.1% of the total city population. Like the population growth of the city as a whole, black population growth in Denver has been a post-World War II phenomenon. In 1940, blacks accounted for only 2.4% of the city's population; in 1950, 3.6% of the city's population; in 1960, 6.1%.[8]

At least in part, the recent increase in the percentage of the black population is due to the movement of whites out of the central city into suburban areas. However, another good part of the increase in blacks may be safely attributed to in-migration from outside Denver in recent years. The actual number of Denver blacks during the 1940-1970 period increased tremendously, from 7,836 in 1940 to 47,011 in 1970. This is an increase of 499.9 percent. At least for the 1960-1970 decade, 43% of this increase was natural increase; 57% was due to net in-migration. The population increase of whites and other combined races in the period 1940-1970 was less than one-tenth the black rate (314,576 to 467,491, an increase of 48.6 percent), and during at least 1960-1970 all this increase was natural increase, since

there was a net out-migration of whites.[9]

Historically the black population in the city of Denver was situated in a small area immediately north of the center of the city, commonly called Five Points. It is an area meeting the classical sociological definition of a Zone of Transition, replete with the "run-down" connotation that that concept implies. To this day the economic and social profile of Five Points remains overwhelmingly bleak. In 1970, the median number of school years completed by residents of the three census tracts that comprise Five Points (tracts 16, 24.01, 24.02) was 9.1 years. Only 24% of the adults residing in Five Points were high school graduates and only 22.2% were employed in white collar occupations. The median income of families located in the three Five Points census tracts was $4,014.[10]

Five Points, however, does not represent the economic and social profile of the majority of Denver blacks. On the contrary, a large portion of Denver blacks are overwhelmingly middle-class and resemble the white population of Denver with respect to fundamental social and economic indicators far more than they do blacks in Denver's Five Points or blacks in most other metropolitan areas in the United States. The uniquely middle class character of Denver's black population and their patterns of residential mobility may have helped give rise to the lawsuit concerning school desegregation.

Unlike blacks in northern cities such as Chicago, Detroit, New York and Buffalo, the blacks who migrated to Denver in recent decades were not poor southern, rural blacks seeking employment in heavy industry.

Rather, they were the sons and daughters of these poor, rural, southern blacks. They came to Denver via the urban centers of the North and West. According to one analyst, "black population growth ...[was]... brought about by the in-migration of upwardly mobile off-spring of earlier migrants from the South and they were drawn to Denver by the relatively greater occupational opportunity offered by its economic base."[11]

Denver's economic base is oriented toward professional services, trade and public administration rather than manufacturing and raw resource extraction. Once in Denver, the black population took advantage of this base. Black employment in Denver is particularly high in SIC classifications for Railroad Transportation, Banking, Finance, Insurance and Real Estate, Business and Repair Services, Medical and Health Services, Postal Services, Federal and Public Administration and State and Local Administration. By and large, these classifications represent professional, technical business and administrative occupations associated with the white collar and the middle class.

The middle class character of Denver blacks is enhanced by the presence of the large number of Federal government installations in the city. Denver is second only to Washington, D. C. in the number of Federal agencies which have offices in the city. The proportion of the total Denver labor force employed in Federal agencies is twice the national average. Through the Civil Service System, black employment has reached into the professional, supervisory, administrative and clerical areas. Federal agency employment for blacks alone is nearly four times the national average, and in 1960 the government employed about 15 percent of employed Denver blacks.[12]

With the post World War II influx of blacks to Denver, Five Points became more heavily segregated: the Five Points census tracts that had been 26.7% black in 1940 were 52.9% black in 1960.[13] Concurrently, however, there was a movement of blacks east and north. To some degree the movement of blacks east was made possible by the Colorado Fair Housing Law of 1959 which made discrimination in housing illegal. Thus, by 1950, the black population had extended eastward to a major north-south thoroughfare called York Street, and a decade later it had crossed another principal thoroughfare called Colorado Boulevard. Thereafter, black population movement entered a predominantly white neighborhood known as Park Hill.

Park Hill has been characterized as consisting of "fine, large brick homes accommodated by wide, well planted parkways and tree-shaded streets."[14] Between 1960 and 1967, the black population in Park Hill increased about 67% per year.[14] By 1970, 52% of the population in the six census tracts that comprise Park Hill were black.[15] It should be noted however, that the black population was not uniformly distributed throughout the six census tracts. While blacks comprise 88% of the two census tracts that lie at the northern end of Park Hill in 1970, they comprised only about 65% of the two tracts located in the middle of the area and only 6% of the two tracts that comprised southern Park Hill.[15] Thus, black residential increase occurred mostly in the northern sections of Park Hill.

Although the influx of blacks east of Colorado Boulevard occasioned rapid panic selling by white residents and rapid residential turnover, the neighborhood did not experience the normal deterioration associated with such phenomena. Nor did Park Hill become an all black ghetto. Although

vacancy rates during the 1960's tended to be highest in areas with the highest black occupancy, at no point was the Park Hill vacancy rate seriously out of line with other Denver residential areas.[16] In addition, sales prices for improved residential properties in all areas of Park Hill throughout the era of heavy black in-migration increased fairly steadily at rates between one and two percent per year.[17] Whites, however, are continuing to move to Park Hill, and in recent years Park Hill has become one of the tightest and most desirable housing markets in the city.

The character of the black population that migrated to Park Hill is relevant to why Park Hill did not become an all-black slum. Since the impetus for school desegregation originated in Park Hill, it is also relevant to understanding the course of desegregation controversy in Denver.

## The Socioeconomic Characteristics of Park Hill Blacks

A look at such socioeconomic indicators as income, education and occupation shows that Park Hill blacks resemble the white population of Denver more than they do the non-Park Hill black population and the black population in other U. S. metropolitan cities of comparable size.[18] In 1970, Park Hill blacks had completed median school years totalling to 12.5. This compared favorably with the 12.8 years of school completed by Park Hill whites and was identical to the median number of school years completed by whites in the more affluent Denver Standard Metropolitan Statistical Area (SMSA). The educational accomplishments of Park Hill blacks were somewhat greater than the 12.1 recorded for Denver city whites as a whole; and well above the 10.9 median number of years of school

TABLE 2

COMPARISON OF PARK HILL BLACKS' SOCIO-ECONOMIC CHARACTERISTICS TO BLACKS AND WHITES LOCALLY AND NATIONALLY

| | Park Hill | | | Denver: Total Central City | | | | Denver: Total SMSA | | | | U. S. Metropolitan cities Between 1-3 Million Population | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Blks. | Whts. | Diff. | Blks. | Diff. | Whts. | Diff. | Blks. | Diff. | Whts. | Diff. | Blks. | Diff. | Whts. | Diff. |
| Education: Median School Yrs. Completed | 12.5 | 12.8 | 0.3<br>2.4% | 12.1 | 0.4<br>3.2% | 12.1 | 0.4<br>3.2% | 12.1 | 0.4<br>3.2% | 12.5 | 0.0<br>0.0% | 10.9 | 1.6<br>12.8% | 12.4 | 0.1<br>0.8% |
| Income: Median Family Income ($) | 9429 | 10612 | 1183<br>12.5% | 7287 | 1947<br>20.5% | 9654 | 225<br>2.3% | 7349 | 2080<br>22.0% | 10777 | 1348<br>14.3% | 7247 | 2182<br>23.0% | 11101 | 1672<br>17.7% |
| Occupational Status: Percent White Collar | 44.7 | 57.2 | 12.5<br>27.5% | 38.7 | 6.0<br>13.4% | 58.3 | 13.6<br>30.4% | 39.4 | 5.3<br>11.9% | 59.2 | 14.5<br>32.4% | 30.6 | 14.1<br>31.5% | 52.8 | 8.1<br>18.1% |

*This is the difference between Park Hill blacks and the group to which it is being compared. The first figure in this column is the numerical difference (e.g. 0.3) and the second figure expresses the difference in percentage terms (e.g. 2.4%). The numerator is always the numerical difference (e.g. 0.3), the denominator is always the figure for Park Hill blacks (e.g. 12.5).

Source: Charles F. Cortese, "The Impact of Black Mobility: Selective Migration and Community Change," final report to the National Science Foundation, Department of Sociology, University of Denver, 1974, Table 1, p. 9.

completed by blacks in cities of comparable size to Denver.[5]

The income profile of Park Hill blacks shows much the same pattern. Although in 1970 Park Hill blacks earned less than Park Hill whites, less than whites in the city of Denver and less than whites in the metropolitan area as a whole, the gaps are relatively narrow. Far broader income gaps appear between the 1970 income of Park Hill blacks and the 1970 income of the overall black population in Denver, blacks in the Denver SMSA, and blacks in U. S. metropolitan cities of comparable size to Denver.[5]

The statistics on Park Hill blacks employed in white collar occupations produce substantially similar results. 44.7 percent of Park Hill blacks were white collar workers in 1970. Although this fell short of the 57.2% for Park Hill whites in 1970, short of the 58.3% for Denver city whites and short of the 52.8% for whites in other metropolitan cities with similar sized populations, it far exceeded the 38.7% for blacks in the city of Denver as a whole and the 30.6% for blacks in similar sized U. S. metropolitan areas comparable to Denver. (See Table 2)

Demographic and Economic Prospects for Denver

In recent years, Denver's patterns of population change have begun to closely resemble those of older urban core cities, especially in the East and West.[19] Relative to the four-county suburban ring, Denver is increasingly populated by: the poor; the less educated; the minorities; the less easily employed; the elderly; and the working young adult households. When Denver is compared to the suburban ring, it lags with respect to the educational level, professional classification and income of its labor force. It is projected that Denver's population growth will

begin to decline somewhere near 1980 and that until that time Denver's share of total regional population growth will steadily taper. Families in childbearing ages will continue to migrate into the suburbs while young adults and the elderly migrate into Denver.

With regard to economic structure, it is projected that Denver's economy will continue to grow at about the national rate although its share of economic activity will lag behind that of the suburban counties. The latter are projected to experience economic activity at higher-than-average rates as new firms move into the region and existing ones expand. The fastest growing major economic sectors are expected to be government, finance, insurance and real estate.

This is the demographic and economic setting in which the school desegregation controversy occurred. In order to more fully understand this controversy and the litigation which grew out of it, some detail concerning the Denver Public Schools is necessary. This is presented in the following section.

## HISTORY OF THE DENVER SCHOOL DISTRICT

### The Creation of School District No. 1

School District No. 1 and the City and County of Denver are geographically coterminous. Both were created by amendment to the Colorado Constitution in 1902. Article XX, Section 7, Constitution of Colorado.

Fiscally and politically, the District and the city are independent. The city has a mayor-council form of government, and, until 1967, had exclusive control over annexation of surrounding lands. The District is governed by a seven-member board of education elected for staggered six-year terms; since 1967, the District has had the power to veto contemplated annexations by the city. Section 31-8-105, C.R.S. 1973.

To date, the school district has also operated independently of surrounding school districts. There are indications that this situation might change in the near future. First, the state legislature is expected to consider a bill, the Urban Education Specialist Act, which would create a mechanism for coordinating school problem-solving on a metropolitan areawide basis. Second, in the next several months, the Colorado Board of Education as well as a number of local school districts, will consider whether to apply for a National Institute of Education grant to facilitate inter-district problem-solving. If the bill is approved, and/or if the grant is secured, vehicles for cooperative school problem-solving would be established. In the meantime, however, the Denver school district will continue to function totally apart from surrounding school districts.[20]

By law, all Colorado school districts, including School District No. 1, are bodies corporate. Section 22-32-101, C.R.S. 1973. Governance of each district by a board of education is prescribed in Section 22-32-103, C.R.S. 1973; board members, once elected, select their own officers.

Section 22-32-104, C.R.S. 1973.

School districts are largely free from state controls. The Colorado Department of Education is a permissive, as opposed to a regulatory, board. The State Department lacks statutory authority to mandate directly education policies and practices in the local districts. State funding formulae stipulate that State aid be based solely on pupil enrollments in the various school districts -- not on the adoption or abandonment of specific educational programs or policies. The only statutory authorization for direct intervention by the state in local district affairs is Section 22-2-107, C.R.S. 1973, giving the state board the power to "provide consultative services to the public schools and boards of education of school districts." Otherwise, the state board's powers are limited to such matters as requiring census takings, reporting and various other "health and welfare" activities.

The local district school board is authorized to enter into contracts with a chief executive officer, commonly called a superintendent, for day to day administration of the schools. Section 22-32-110(g), C.R.S. 1973.

The School Board and the Superintendent

In practice, however, the actual power wielded by the school superintendent in Denver has been somewhat greater than the pattern set forth in the statutes would predict. From 1947 to 1967, the Denver Public Schools were under the control of a very strong and popular superintendent, Dr. Kenneth Oberholtzer. Observers say that during this period decision making resided exclusively in the hands of the superintendent and his staff. A news article in the Rocky Mountain News in June of 1949 accused the board of being merely a "rubber stamp for the superintendent" and

termed Oberholtzer a "czar" of the schools. The article accused the board of conducting its business in closed meetings and merely ratifying previously made decisions in open sessions.[21]

In the same 1947-1967 period, the election of school board members also came under the supervision of the school superintendent and his staff. For most of this period, school board elections were conducted separately from all other municipal contests. Education decision making was viewed as the domain of the local board of education, the superintendent and his close associates. So closed was the nature of participation in school matters that, according to several long term residents and members of the school board, the school administration picked school board candidates, financed their campaigns and got out the vote. In a 1950's article entitled "School Board Elections Flaunt Democracy," the Rocky Mountain News accused the school administration of calling its own elections, setting up the precincts, appointing judges and clerks and counting the ballots and certifying the results. The article urged that school elections be placed in "impeccably disinterested hands."[22]

In 1959, the Colorado Legislature voted to hold school board elections in conjunction with other municipal elections. One result of this was that voter turnout for school board elections was higher when school board and municipal elections coincided every four years than during off year school board elections. (See Table 3)

Electoral turnout for school board elections per se, however, mushroomed only in 1969 as school desegregation featured as an issue. Thus, in 1969, there was a record turnout for the school board election even

TABLE 3

VOTER TURNOUT IN SCHOOL BOARD ELECTIONS

| Year | | No. Candidates | No. To Be Elected | No. Voters | % Turnout |
|---|---|---|---|---|---|
| Municipal | 1959 | 16[a] | 3[a] | 127,714[a] | N.A. |
| School | 1961 | 9[a] | 2[a] | 63,254[c] | 28.3[c] |
| Municipal | 1963 | 5[a] | 2[a] | 134,462[c] | 71.2[c] |
| School | 1965 | 29[a] | 3+1 partial term[a] | 51,223[c] | 52.1[c] |
| Municipal | 1967 | 7[a] | 2[a] | 72,241[c] | 35.3[c] |
| School Bond | 1967 | | | 64,264[c] | 31.8[c] |
| School | 1969 | 10[a] | 2[a] | 119,229[c] | 55.6[c] |
| Municipal | 1971 | 20[a] | 3[a] | 135,642[c] | 69.5[c] |
| School | 1973 | 16[a] | 2+1 partial term[a] | 37,934[c] | 10.6[c] |
| Municipal | 1975 | 8[b] | 2[b] | 121,474[c] | 53.2[c] |

Sources: (a) Harriet Tamminga, "A Decade of Controversy in School Policy-Making: The Desegregation Issue," a paper presented at the Rocky Mountain Social Science Association Meetings, El Paso, Texas, April 25-27, 1974, p. 11.

(b) The Denver Post, May 11, 1974.

(c) Denver Election Commission, January 29, 1976.

though it did not coincide with a municipal race. This coincided with intense community and school board conflict concerning school desegregation issues.[23]

In addition to larger voter turnouts, the controversy over desegregation also increased the number and varieties of persons that became candidates in school board races. By law, candidates for the school board must submit a petition signed by 50 electors of a school district. Traditionally, successful candidates for positions on the school board were persons who were acceptable to the school administration. As late as 1965, a newspaper article reported that school board candidates critical of the superintendent generally lost the election, while those who had praised him were successful.[24]

Until recently, persons who chose to run for the school board tended to be upper class professionals, executives and independent businessmen. In the period 1939-1971, only four school board members lived west of Downing Street, a division street to the west of which lies an area characterized by lower social economic status and racial mixture.[25]

Since 1965, the first year for which detailed information is available, a trend may be noted of greater numbers of people of varied backgrounds seeking office. For example, in 1965, approximately three-quarters of the 28 candidates for school board positions were professionals, managers, executives, independent businessmen and government bureaucrats. The single largest occupation group represented among the candidates was attorneys (25%). An additional 25% were managers, executives and independent businessmen and another 25% were upper level bureaucrats in government service. The remainder were housewives, school teachers or persons engaged in

voluntary service.[26]

The ensuing desegregation controversy altered the class and occupational composition of the school board candidates greatly. In 1971, of 21 school board candidates, only two were attorneys, two were independent businessmen and two were college instructors. The largest occupational classifications represented among the candidates were voluntary service employees and activists. Thus, among the 1971 candidates, there was a worker for a health center in an Hispano neighborhood, two equal employment opportunity counselors in community centers, a member of the Denver County Judicial Commission, a former public health nurse who was engaged in a variety of voluntary activities, and an Hispano activist. The candidates pool also included three school teachers or retired school teachers, a student, a photographer, a manager of a meat store, a medical secretary and a truck driver.[27]

Candidates in the 1975 school board race also came from a variety of social class, occupational and ethnic backgrounds. The eight candidates included: one attorney; one Hispano professor of Chicano history; one Hispano Methodist minister; one pediatrician; one realtor who was the first president of CANS (Citizens Association for Neighborhood Schools); one Teamster who has worked in the building trades and in freight hauling; and two housewives with activist backgrounds, one in CANS and the other in PTA and pro-desegregation organizations.[28]

The background of successful school board candidates has also tended to become more varied. During 1973-1975, the school board included an Hispanic city government administrator; a housewife, formerly the head of the Denver League of Women voters; a black equal employment opportunity

counselor at a federal government installation in Denver; a sales manager; an executive of a real estate firm who was formerly a Republican state senator and an unsuccessful candidate for the U. S. Congress in November, 1974; an attorney who was also a former Republican state senator; and a truck driver.[29] In the 1975 school board elections, two male members of the board, both former Republican state senators, were replaced by the two female, activist candidates.

The racial composition of the school board has also undergone striking changes. In 1965, Mrs. Rachel Noel, a black consultant for the Mayor's Commission on Community Relations, was elected to the board. She was the first successful black candidate. In 1973, a second black, Omar Blair, was elected to the board. Blair is an equal employment opportunity counselor for the Air Force Finance and Accounting Center. Two Hispanos have served on the board; however, neither of them has been endorsed by the exclusively Hispano political organization, La Raza Unida Party. Both Hispanos are Republican. Table 4 summarizes the sexual, racial, occupational and partisan composition of the board during the past 12 years. (See Table 4)

Financing School District No. 1

The Denver Public Schools receives its income from federal, state and local sources.[30] School construction is financed through the approval of bond issue pledges by the voters.

Traditionally, local sources of income, in particular the local property tax, have been the mainstay of the Denver school district. In 1966, local revenues accounted for approximately 77% of the total revenues available to the school district. Mill levies for the school district increased from 40.83 in 1966 to 56.29 in 1972, an increase of approximatel

TABLE 4

SEX, RACE, POLITICAL PARTY, AND OCCUPATIONAL BACKGROUND OF SCHOOL BOARD MEMBERS, 1965-1975

| Years | Name of Members | Sex | Race | OPPOSED TO Busing* | Party | Occupation |
|---|---|---|---|---|---|---|
| 1965-1967 | James Amesse | M | W | | R | Medical Doctor |
| | Edgar Benton | M | W | | D | Attorney |
| | Palmer Burch | M | W | | R | Republican State Representative, Business Exeuctive |
| | Jackson Fuller | M | W | | R | N.A. |
| | Rachel Noel | F | B | | D | Consultant, Mayor's Commission on Community Relations |
| | Allegra Saunders | F | W | | D | Democratic State Senator |
| | James Vorhees | M | W | | R | Attorney |
| 1967-1969 | James Amesse | M | W | | R | Medical Doctor |
| | William Berge | M | W | X | R | Attorney |
| | Edgar Benton | M | W | | D | Attorney |
| | Stephen J. Knight, Jr. | M | W | X | R | President, Technical Equipment Corporation |
| | Rachel Noel | F | B | | D | Consultant, Mayor's Commission on Community Relations |
| | Allegra Saunders | F | W | | D | Democratic State Senator |
| | James D. Vorhees | M | W | | R | Attorney |
| 1969-1971 | James Amesse | M | W | | R | Medical Doctor |
| | William Berge | M | W | X | R | Attorney |
| | Stephen J. Knight, Jr. | M | W | X | R | President, Technical Equipment Corporation |
| | Rachel B. Noel | F | B | | D | Consultant, Mayor's Commission on Community Relations |
| | James C. Perrill | M | W | X | R | Attorney |
| | Frank Southworth | M | W | X | R | Executive, Real Estate Firm |
| | James D. Vorhees | M | W | | R | Attorney |
| 1971-1973 | William Berge | M | W | X | R | Attorney |
| | Robert Crider | M | W | X | R | Truck Driver |
| | Bert Gallegos | M | H | X | R | Attorney |
| | Theodore Hackworth | M | W | X | R | Sales Manager, Meat Company |
| | Stephen J. Knight, Jr. | M | W | X | R | President, Technical Equipment Corporation |
| | James Perrill | M | W | X | R | Attorney |
| | Frank Southworth | M | W | X | R | Executive, Real Estate Firm, Republican State Representative |

TABLE 4
(CONTINUED)

| Years | Name of Members | Sex | Race | Busing* | Party | Occupation |
|---|---|---|---|---|---|---|
| 1973-1975 | Omar Blair | M | B | | D | Federal Government Equal Employment Opportunity Counselor |
| | Robert Crider | M | W | X | R | Truck Driver |
| | Theodore Hackworth | M | W | X | R | Sales Manager, Meat Company |
| | James Perrill | M | W | X | R | Attorney |
| | Kay Schomp | F | W | | D | Housewife, President, League of Women's Voters |
| | Frank Southworth | M | W | X | R | Executive, Real Estate Firm, Republican State Representative |
| | Bernard Valdez | M | H | X | R | Manager of Welfare, Denver County |
| 1975-1977 | Omar Blair | M | B | | D | Federal Government Equal Employment Opportunity Counselor |
| | Naomi Bradford | F | W | X | R | Housewife, CANS (Citizens Association for Neighborhood Schools) Activist |
| | Robert Crider | M | W | X | R | Director, Food Nutrition program |
| | Theodore Hackworth | M | W | X | R | Sales Manager, Meat Company |
| | Virginia Rockwell | F | W | | D | Housewife, PTA Official and Community Activist |
| | Kay Schomp | F | W | | D | Housewife, President, League of Women's Voters |
| | Bernard Valdez | M | H | X | R | Manager of Welfare, Denver County |

*X represents that a school board member has taken a public position against the transportation of pupils to achieve racial balance in the schools.

NA Not Available

Source: The Denver Post, 1965-1975

38%. Despite this, the Denver school levy has been among the lowest in the state, and in 1970 its levy of 49.94 actually was the lowest among the state's major school districts. Since the passage of the Public School Finance Act of 1973, local contributions to school finance have decreased somewhat. In 1974, the Denver mill levy dropped nearly 14% to 45.77. In 1975, local revenues accounted for approximately 58% of total school revenues, and the school mill levy was 50.93. In 1976, it is estimated that the mill levy will rise slightly to 51.23 and that local revenues will comprise 61.2% of total school funds. (See Table 5)

State funding of local education has traditionally been weak in Colorado. In 1967, receipts from state sources accounted for approximately 12% of the total revenues needed by the District. This figure was well below the average of 39% received from state funds by all school systems in the United States. In 1968, the state contribution amounted to approximately 11% of total revenue available to School District No. 1. Again, this was well below the average of 40% received from state funds by all school systems. In recent years, the contributions of the state have increased considerably, and under the Public School Finance Act of 1973, the 1976 state contribution will be approximately 30%, more than twice the proportion it constituted in 1966. In accordance with the new Finance Act, state contributions are determined by the number of pupils enrolled in a district (attendance entitlements), and the wealth of the school district (assessed valuation per mill).

Federal revenue received has more than doubled in the ten years since 1966, from $5,193,324 to approximately $13,942,914 in 1976. The proportion of total revenues contributed by federal sources, however, has remained

TABLE 5

MILL LEVIES AND RATES OF CHANGE OF MILL LEVIES, SCHOOL DISTRICT NO. 1, 1966-1976

| | Mills | Percent Change |
|---|---|---|
| 1966 | 40.83 | |
| 1967 | 43.77 | + 7.2% |
| 1968 | 46.94 | + 7.2 |
| 1969 | 49.27 | + 5.0 |
| 1970 | 49.94 | + 1.4 |
| 1971 | 53.80 | + 7.7 |
| 1972 | 56.29 | + 4.6 |
| 1973 | 53.05 | - 5.8 |
| 1974 | 45.77 | -13.7 |
| 1975 | 50.93 | +11.3 |
| 1976 | 51.23 | - 0.6 |

Source: Compiled from Denver Public Schools, Adopted Budgets, 1966-1976.

relatively constant at approximately 8%. These federal funds must be used to supplement local funds in providing special instructional services and facilities to schools, e.g., headstart and vocational training programs. Federal funds are also available for programs to desegregate minority schools in an appropriate case.

Both state and federal funds were available to the District beginning in 1971 for implementation of desegregation plans and for purchase of transportation. The District steadfastly refused to seek and obtain these funds, maintaining that to apply while the lawsuit was in the appeals process would be premature. Millions of dollars of special assistance were lost to the District through these refusals, even though under federal law the millions of dollars of federal money involved would not have been required to be refunded in the event that the courts reversed the requirement to desegregate the Denver Public Schools.[31]

During calendar year 1974, School District No. 1 applied for and received more than $200,000 of federal funds for school desegregation. During 1975, the District received some 1.9 million dollars for this purpose from federal sources. 1976 federal funds for desegregation are also projected to be $1.9 million.[32] In addition, $809,211 of federal monies and $675,000 of state monies are expected to be available to facilitate the implementation of bilingual-bicultural educational programs.[33]

Table 6 summarizes the income contributed by local, state and federal sources to the operation of the Denver school district. (See Table 6)

The Pupils of School District No. 1

As of September of 1975, School District No. 1 operated 122 schools.[34] Of these, 93 were elementary schools, 18 junior high schools, 9 high schools and two special schools, the latter consisting of an opportunity school and

TABLE 6

APPROXIMATE FUNDING AMOUNTS CONTRIBUTED BY FEDERAL, STATE AND LOCAL SOURCES TO SCHOOL DISTRICT NO. 1, 1966-1976

| Year | Federal Sources | % | State Sources | % | Local Sources | % |
|---|---|---|---|---|---|---|
| 1966 | $ 5,193,324 | (7.4%) | $ 8,991,497 | (12.9%) | $53,679,797 | (76.9%) |
| 1967 | 5,856,072 | (7.7%) | 8,572,873 | (14.6%) | 58,761,671 | (77.0%) |
| 1968 | 6,171,057 | (7.4%) | 9,542,229 | (11.5%) | 64,696,821 | (78.0%) |
| 1969 | 6,970,273* | (7.6%) | 9,132,221 | (10.0%) | 67,315,754 | (73.4%) |
| 1970 | 7,769,488 | (8.0%) | 17,492,667 | (18.1%) | 70,233,732 | (72.7%) |
| 1971 | 8,116,303 | (7.5%) | 18,526,219 | (17.1%) | 73,041,508 | (67.3%) |
| 1972 | 8,794,975 | (7.4%) | 18,547,276 | (15.6%) | 82,647,587 | (69.7%) |
| 1973 | 10,079,888 | (8.1%) | 20,511,039 | (16.4%) | 83,364,836 | (66.8%) |
| 1974 | 9,449,336 | (7.0%) | 37,495,106 | (27.7%) | 75,821,710 | (56.0%) |
| 1975 | 11,771,263** | (7.9%) | 37,970,785** | (25.4%) | 86,595,468** | (57.9%) |
| 1976 | 13,942,914** | (9.2%) | 44,636,498** | (29.6%) | 92,368,932** | (61.2%) |

*Extrapolated

**Estimated

Source: Compiled from Denver Public Schools, Adopted Budgets, 1966-1976.

a metropolitan youth education center. Although the number of schools steadily increased from 1964-1974 (from 113 to 122), the enrolled population has been steadily diminishing. In 1964, there were 96,428 students enrolled in regular district schools. In September of 1975, the students enrolled in the regular schools was down to 76,503. This represented an absolute loss of 19,925 students and a percentage decline of approximately 20.7%. The biggest drop in student enrollments occurred in 1974, immediately after the desegregation plan went into effect. That year the district lost 7.157 pupils, a 10.8% loss. In 1975, enrollment figures indicate that the district losses were at the lowest level since 1971. There were 1,778 fewer pupils in October, 1975, than in October, 1974 -- a decline of 2.3%.

In ethnic and racial terms, the attrition may be attributed almost entirely to the Anglo student out-migration. For the first time in 1972, the Hispano school population also declined. In 1973, a similar decline was noted for the black student population. The Hispano and black declines, however, have been fairly modest, and, proportionately, the Hispano and black population continues to increase in the schools. Blacks comprised 11.6% and Hispanos comprised 17% of the school population in 1964; they now comprise 19.1% and 27.2%, respectively. At the same time, Anglos, who made up more than 70% of the school population in 1964, now comprise only 50.7% of the enrolled population. (See Table 7)

In recent years, the rate of white student attrition in the schools has accelerated considerably. Prior to 1969, the year the desegregation case was filed, the decline in white enrollment occurred at an average annual rate of 1.66%. In the years since 1969, white attrition in the

TABLE 7

ESTIMATED ETHNIC DISTRIBUTION OF PUPILS,
DENVER PUBLIC SCHOOLS, 1964-1975

| | Amer. Ind. | (%) | Black | (%) | Asian | (%) | Hispano | (%) | Anglo | (%) | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1964 | 220 | (.2) | 11,149 | (11.6) | 439 | (.5) | 16,421 | (17.0) | 67,899 | (70.4) | 96,428 |
| 1965 | 226 | (.2) | 12,197 | (12.7) | 687 | (.7) | 16,719 | (17.4) | 66,517 | (69.0) | 96,346 |
| 1966 | 317 | (.3) | 12,693 | (13.2) | 727 | (.8) | 17,266 | (17.99) | 64,955 | (67.7) | 95,958 |
| 1967 | 255 | (.3) | 13,346 | (13.8) | 720 | (.8) | 17,873 | (18.5) | 64,226 | (66.6) | 96,420 |
| 1968 | 273 | (.3) | 13,639 | (14.1) | 656 | (.7) | 18,611 | (19.3) | 63,398 | (65.7) | 96,577 |
| 1969 | 231 | (.2) | 13,932 | (14.4) | 738 | (.8) | 19,821 | (20.5) | 61,811 | (64.0) | 96,634 |
| 1970 | 335 | (.4) | 14,072 | (14.6) | 783 | (.8) | 21,182 | (22.0) | 59,716 | (62.2) | 96,088 |
| 1971 | 366 | (.4) | 14,901 | (15.7) | 698 | (.7) | 21,726 | (22.9) | 57,177 | (60.3) | 94,838 |
| 1972 | 393 | (.4) | 15,729 | (17.2) | 685 | (.8) | 21,389 | (23.3) | 53,420 | (58.3) | 91,616 |
| 1973 | 371 | (.4) | 15,584 | (17.8) | 657 | (.7) | 21,104 | (24.1) | 49,904 | (57.0) | 87,620 |
| 1974 | 509 | (.7) | 14,267 | (18.2) | 667 | (.9) | 20,074 | (25.6) | 42,282 | (54.0) | 78,281 |
| 1975 | 518 | (.7) | 14,648 | (19.1) | 762 | (1.0) | 20,808 | (27.2) | 38,743 | (50.7) | 76,503* |

Source: Denver Public Schools, Report of Estimated Ethnic Distribution of Pupils, 1964-1975.

*Information on ethnicity was not available for 1,024 pupils.

TABLE 8

ANNUAL PERCENTAGE CHANGE IN ESTIMATED ETHNIC DISTRIBUTION OF PUPILS, DENVER PUBLIC SCHOOLS, 1964-1975

| | Anglos | Black | Hispanos | Total |
|---|---|---|---|---|
| 1965 | - 2.0 | + 9.4 | + 1.8 | - 0.09 |
| 1966 | - 2.1 | + 4.1 | + 3.3 | - 0.40 |
| 1967 | - 1.1 | + 5.1 | + 3.5 | + 0.48 |
| 1968 | - 1.3 | + 2.2 | + 4.2 | - 0.16 |
| 1969 | - 2.5 | + 2.2 | + 6.5 | - 0.06 |
| 1970 | - 3.4 | + 1.0 | + 6.9 | - 0.57 |
| 1971 | - 4.3 | + 5.9 | + 2.6 | - 1.3 |
| 1972 | - 6.6 | + 5.6 | - 1.55 | - 3.4 |
| 1973 | - 6.6 | - 0.9 | - 1.33 | - 4.4 |
| 1974 | -15.3 | - 8.5 | - 4.9 | -10.66 |
| 1975 | - 8.4 | + 2.7 | + 3.7 | - 2.3 |

Source: Computed From Denver Public Schools, Estimated Ethnic Distribution of Pupils, 1964-1975.

schools has taken place at an average annual rate of 6.73%. In 1974, the school district lost its most sizable number of Anglos to date: 7,622. This translated into an annual rate of decline of 15.27%. The 1975 Anglo attrition rate was sizable, but considerably lower. Public School District No. 1 lost 3,539 Anglo pupils, an annual rate of decline of 8.4%. (See Table 8)

The Teachers of School District No. 1

In 1974, Public School District No. 1 employed 4,031 classroom teachers. The overwhelming majority of these teachers were Anglo, although in recent years, the number of Hispano and black teachers has steadily risen. In 1962, less than 1% of the district's classroom teachers were Hispano; in 1974, 4.5% were Hispano. In 1962, black teachers comprised 5.6% of the district's classroom teachers; in 1974, they comprised 9.7%. Between 1962 and 1974, the Anglo teaching population declined from 93.5% of the total to 84.8% of the total.[35] (See Table 9)

Since 1963, the Denver Classroom Teacher's Association has been recognized as the sole negotiating agent for the teacher's of School District No. 1.[36] The Denver Classroom Teacher's Association is affiliated with the Colorado Education Association at the state level and the National Education Association at the national level. In 1974, approximately 70% of the district's 4200 teachers, counselors and nurses belonged to the DCTA. In 1969, after a strike by the Denver Classroom Teacher's Association, a Master Agreement was negotiated with the Public Schools which provided for a new salary schedule that rewarded the career teacher. The DCTA has also secured representation in all curriculum and instructional committees and is involved in textbook selection and the basic instructional program of the Denver Public Schools.[37]

TABLE 9

ESTIMATED ETHNIC DISTRIBUTION OF
CLASSROOM TEACHERS, 1962-1974

| Year | Total No. of Teachers | Anglos | (%) | Black | (%) | Hispano | (%) |
|---|---|---|---|---|---|---|---|
| 1962 | 3756 | 3513 | (93.5) | 211 | (5.6) | 32* | (.85) |
| 1963 | 3854 | 2591 | (93.2) | 229 | (5.9) | 34* | (.88) |
| 1964 | 3950 | 3601 | (91.2) | 258 | (6.53) | 59 | (1.5) |
| 1965 | 3922 | 3555 | (90.6) | 274 | (6.99) | 58 | (1.5) |
| 1966 | 4078 | 3688 | (90.4) | 287 | (7.0) | 65 | (1.6) |
| 1967 | 4247 | 3822 | (89.99) | 311 | (7.3) | 74 | (0.2) |
| 1968 | 4437 | 3991 | (89.95) | 323 | (7.28) | 82 | (1.9) |
| 1969 | 4369 | 3912 | (89.54) | 324 | (7.4) | 90 | (2.1) |
| 1970 | 4045 | 3579 | (88.5) | 318 | (7.86) | 103 | (2.6) |
| 1971 | 4093 | 3570 | (87.2) | 350 | (8.6) | 133 | (3.3) |
| 1972 | 4090 | 3550 | (86.8) | 365 | (8.9) | 132 | (3.2) |
| 1973 | 4034 | 3464 | (85.9) | 379.5 | (9.4) | 142 | (3.5) |
| 1974 | 4031**[b] | 3418 | (84.8)[b] | 390 | (9.7)[b] | 179 | (4.5)[b] |

*Elementary Hispano Figures N.A.

**Ethnic Breakdown Not Shown for 39 Oriental Teachers and 2 American Indian Teachers.

Source: (a) Denver Public Schools, Estimated Ethnic Distribution of Classroom Teachers, 1962-1973.

(b) Denver Public Schools, Reports required by the Final Judgment and Decree, Civil Action No. 1499, Court Order Number 18, Section (2), October 15, 1974, pp. 21, 34, 42.

Despite these accomplishments, the DCTA retains the image of being a weak and non-committed "professional association." Indeed, it carefully avoids calling itself a union.[38] During the long period of controversy concerning school desegregation in Denver and the long court battle, the DCTA refrained from taking any position or making any public comment. In 1970, however, it voted to include on its Board of Directors educators representing two teachers associations that had been more vociferous on the issue: the Black Educators United and the Congress of Hispanic Educators. In 1974, following the issuance of the final order and decree concerning desegregation, the DCTA voted to assist the superintendent of schools in implementing the court ordered integration program.[39]

Under the 1969 agreement negotiated between the DCTA and the District, teacher assignments and reassignments are required to be made by the District without regard to "race, creed, color, national origin, sex, marital status, or membership in any teacher organization."[40] The only valid considerations in assignment of teachers are competence and the scope of teaching certificates, experience levels and, other qualifications being equal, seniority in the school district. The agreement also specifically notes that both the "Board and the Association recognize that students with slow achievement rates need the expertise of experienced teachers as much as do students with rapid achievement rates."[41]

As noted, infra, however, the federal courts have concluded as petitioners claimed that the District has maintained a deliberate racial policy in the assignment of teachers to schools. In court, Superintendent Oberholtzer confirmed that black classroom teachers have been almost always initially assigned to those schools where black pupils are concentrated, on the grounds

that such teachers would have "immediate empathy" for such students and that the teachers would be "role models."[42]

The Administrators of School District No. 1

Persons who have held administrative or supervisory positions in the Denver Public Schools have been overwhelmingly Anglo.[43] Although there has been a fairly regular increase in the number of minorities in such positions, the changes have been relatively modest. In 1962, 95% of 307 school administrators were Anglo. There were only 2 black principals in the district; and 3 Hispano administrators -- a supervisor, an assistant principal and a coordinator. In addition, there was one school coordinator of Asian derivation.

In 1973, the last year for which such information was available, 87% of the District's administrators were Anglo. Approximately 8% of the District's administrative staff were black (33), and approximately 4% (16) were Hispano. There were 4 school administrators of Asian derivation. (See Table 10)

Among the District's classified service personnel (operations, maintenance, transportation, warehouse and lunchroon), the proportions of black and Hispano employees begin to resemble their distribution in the city labor force. In 1973, 14.6% of the district's low level classified service personnel were black, 17.6% were Hispanic and 67.2% were Anglo.

The Quality of School District No. 1

Although it is difficult to gauge the quality of a school district, various impressionistic evaluations as well as statistical indicators

TABLE 10

ESTIMATED ETHNIC DISTRIBUTION OF SCHOOL ADMINISTRATORS, DENVER PUBLIC SCHOOLS, 1962-1973

| Year | Total | Anglo (%) | Black (%) | Hispano (%) | Asian |
|---|---|---|---|---|---|
| 1962 | 307 | 301 (95) | 2 (.65) | 3 (.98) | 1 |
| 1963 | 325 | 316 (97) | 5 (1.5) | 3 (.92) | 1 |
| 1964 | 339 | 325 (96) | 9 (2.7) | 4 (1.18) | 1 |
| 1965 | 335 | 320 (96) | 8 (2.4) | 4 (.28) | 3 |
| 1966 | 355 | 334 (94) | 14 (3.9) | 5 (1.4) | 2 |
| 1967 | 355 | 329 (93) | 18 (5.1) | 6 (1.7) | 2 |
| 1968 | 369 | 338 (92) | 22 (6.0) | 6 (1.6) | 3 |
| 1969 | 399 | 363 (91) | 26 (6.5) | 9 (2.3) | 1 |
| 1970 | 357 | 314 (88) | 31 (8.7) | 10 (2.8) | 2 |
| 1971 | 415 | 366 (88) | 30 (7.2) | 15 (3.6) | 4 |
| 1972 | 424 | 376 (89) | 32 (7.5) | 12 (2.8) | 4 |
| 1973 | 417 | 364 (87) | 33 (7.9) | 16 (3.8) | 4 |

Source: Denver Public Schools, "Estimated Ethnic Distribution of Administrators, Social Workers, Nurses and Psychologists," 1962-1964 and "Estimated Ethnic Distribution of Other Certified and Classified Personnel," 1965-1973.

point to the erosion of educational quality. According to the key researcher for the plaintiffs in the Denver desegregation suit, the school district enjoyed a superb reputation during the 1920's and 1930's which was based in part on the publication of an educational journal that received national acclaim and circulation. In his estimation, mediocre and unimaginative administration has largely been the cause of the District's reduced quality.[44]

Information for various statistical indicators of quality are unfortunately unavailable over an extended period of time. Moreover, the picture of quality they yield is a mixed one. During the past several years, for example, the teacher turnover rate in the Denver School District has consistently declined. This is largely attributed to the improved salary schedule negotiated in 1969 which rewarded career teachers and reduced teacher mobility. At the same time, the pupil-teacher ratio has steadily dropped from 24 pupils per teacher in 1969 to 19.3 pupils in 1975. Both these indicators would suggest improved quality.[45]

On the negative side, however, the student dropout rate has risen from 5.5% in 1971-1972 to 6.6% in 1972-1973 to 7.8% in 1973-1974 to 8.5% in 1974-1975.[45] During 1973-1975, the number of Denver Public School merit scholarship semifinalists declined sharply. While 35 high school students qualified in 1973, only 22 did in 1974 and 21 in 1975.[46] And a comparison of pupil achievement test scores during the period 1968-1972 indicates that they have dropped and that students in more and more of the district's schools fail to meet or exceed national achievement norms.[47] (See Table 11)

More recent achievement test comparisons covering the 1972-1975

period, however, fail to suggest continued patterns of decline.[48] Although the Denver School District distributions fell below national distributions in 197 and 1975 at most grade levels and for most tests, there was evidence of declining quality over time only at grade 7. At the other grade levels, the interquartile values showed little change or, if change, slight improvement. It should be noted, however, that descriptions of test scores as quartiles often conceal changes in extreme test values, high or low, over time. These measures also do not report on the scholastic progress of any individual student over time. (See Table 12)

Finally, public satisfaction with the school district has eroded. In 1968, 14% of the Denver population reported that the school district was doing an excellent job, 44% felt that the district was doing a good job and only 19% rated the school district performance as fair. In 1972, a comparable survey revealed greatly altered proportions: only 5% rated the district excellent, 39% good and 36% fair.[49]

TABLE 11

A COMPARISON OF DENVER SCHOOL BOARD ACHIEVEMENT SCORES AND NATIONAL NORMS

| Grade Level | Year | No. Denver Schools Meeting or Exceeding National Norm | No. Denver Schools Below National Norm |
|---|---|---|---|
| 3rd Grade | 1968 | 57 | 34 |
| 4th Grade | 1972 | 28 | 61 |
| Junior High | 1968 | 10 | 6 |
| | 1972 | 5 | 13 |
| Senior High | 1968 | 7 | 2 |
| | 1972 | 5 | 4 |

Source: The Denver Post, April 22, 1973

## TABLE 12

## DENVER SCHOOL DISTRICT INTERQUARTILE DISTRIBUTIONS ON ACHIEVEMENT TESTS, 1972 AND 1975

| | READING | | | | | | MATH | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1972 | | | 1975 | | | 1972 | | | 1975 | | |
| | Q-1 | M | Q-3 | Q-1 | M | Q-3 | Q-1 | M | Q-3 | Q-1 | M | Q-3 |
| National Distribution | 25 | 50 | 75 | 25 | 50 | 75 | 25 | 50 | 75 | 25 | 50 | 75 |
| Grade[a] 1 | 32 | 46 | 78 | 40 | 72 | 89 | 24 | 46 | 74 | 28 | 54 | 80 |
| Grade[a] 4 | 17 | 40 | 67 | 17 | 40 | 67 | 13 | 33 | 63 | 12 | 32 | 63 |
| Grade[b] 7 | 15 | 36 | 60 | 14 | 33 | 57 | 15 | 35 | 61 | 14 | 29 | 50 |
| Grade[c] 10 | 20 | 42 | 70 | 35 | 62 | 82 | 26 | 54 | 80 | 32 | 57 | 78 |

Q-1 (First Quartile) is defined as that number so selected that no more than 25 percent of the observations are smaller and no more than 75 percent of the observations are larger than it is.

M (Median) is defined as that number so selected that no more than 50 percent of the observations are smaller and no more than 50 percent of the observations are larger than it is.

Q-3 (Third Quartile) is defined as that number so selected that no more than 75 percent of the observations are smaller and no more than 25 percent are larger than it is.

(Source: Theodore R. Anderson and Morris Zelditch, Jr., A Basic Course in Statistics, 2nd Edition, Holt, Rinehart and Winston, Inc., 1968, p. 82.)

a) Metropolitan Achievement Tests, Form H, Total Reading and Total Math Subtests.

b) Iowa Tests of Basic Skills, Form 6, Reading Comprehension and Math Problem Solving Subtests.

c) Stanford Achievement Tests, Form W, Reading and Math Computation Subtests.

Source: Denver Public Schools, "A Comparative Study of National Percentile Achievement By Interquartile Distribution," June 12, 1975.

## THE DEVELOPMENT OF THE DESEGREGATION CONTROVERSY

Although the battle for school integration was not fully launched in Denver until 1968, momentum had been building up for a much longer period of time. For years, there had been controversy concerning the techniques by which the school board and school administration sought to regulate distribution of students. One such technique was the construction of schools in locations which were predicted would become (and did become) racially segregated on the basis of long apparent trends of black population movement. A second technique was the establishment of school attendance zones which assigned black pupils to predominantly minority schools. A third technique was the use of mobile classroom units to increase pupil capacity at predominantly minority schools rather than assigning them to nearby, underutilized Anglo schools.

Newspaper accounts[50] indicate that a series of boundary changes resulting from the construction of a new high school in 1953 provoked protest from the black community as did a 1957 school boundary change. Protest mounted once again in 1959, after the Board of Education approved preliminary plans for the construction of a new elementary school in the section of northeast Denver, known as Park Hill. According to critics of the plan, the construction site was bound to lead to the creation of an all black school. According to the Superintendent of Schools, the proposed building was designed to relieve overcrowding in adjacent schools and provide a school within walking distance in the area. Notwithstanding the opposition, the Barrett Elementary School was built and shortly after it opened became overwhelmingly black in its composition.

In 1962, a new school construction plan again became an issue of controversy among proponents of school integration.[51] The new plan was for a junior high school in northeast Denver. In view of trends in the migration of blacks, it was widely acknowledged that the new school would be an all black one. CORE and the NAACP led the attack against the construction of the junior high in the proposed location.[52] Churches in the black community helped to solidify opposition to the plan within the black community. As a result of the ensuing controversy, plans for the construction of the school were suspended, and a special study committee was created to examine the problems of equal educational opportunity in the Denver public schools and make recommendations. It was known as the Special Study Committee on Equality of Educational Opportunity in the Denver Public Schools. A committee of 32 persons, representing various segments of the community, was selected from over 500 names of interested citizens. James Voorhees, an attorney and unsuccessful candidate for the School Board in 1950, was appointed as a committee chairman. Also on the committee was Rachel Noel, a black consultant for the Mayor's Commission on Community Relations and wife of a physician.

The segregation of the Denver public schools as a result of these and other school boundary changes and new school constructions was the concern of several Denver organizations. These included traditional civil rights agencies like the Urban League, CORE, the NAACP and the Colorado Anti-Discrimination Commission (now the Colorado Civil Rights Commission). In addition, several church and neighborhood associations from Park Hill were central actors in the segregation controversy. One of the most important neighborhood

associations in this struggle was the Park Hill Action Committee. PHAC, a biracial organization formed in 1960 to prevent the deterioration of Park Hill as a neighborhood and to combat the mass flight of whites in the wake of black in-migration to Park Hill, received support from the black and white Park Hill area churches.[53]

In 1964, the school board-appointed Special Committee released its long awaited report.[54] The report criticized the Board's school boundary policies as designed to perpetuate racial isolation as well as to concentrate minority faculty in minority schools. The report also concluded that segregated schools resulted in inequality of educational opportunity and recommended a policy of considering racial and ethnic factors in setting boundaries to minimize segregation. At the same time, the report upheld the neighborhood school concept and rejected as impractical the transportation of pupils for the sole purpose of integrating school populations. Substantively, the report contained approximately 155 recommendations for improving educational opportunity in minority schools. The board of education adopted Policy 5100 in May, 1964, which upheld the principle of educational equality and cited the desirability of reducing concentrations of racial and ethnic minority groups in the schools. It also established an open enrollment program designed to reduce racial imbalance. The plan permitted parents to file transfer requests to fill approximately 1,809 places, some 2% of the public school enrollment.[55] Students were required to provide their own transportation. Aside from this limited Open Enrollment Program, nothing else was undertaken to implement a policy of racially heterogeneous schools.

In the school board election of 1965, James Voorhees and Rachel Noel,

both of whom had served on the Special Study Committee, were elected as board members, along with James Amesse, a doctor. Edgar Benton, who had previously been the lone "civil rights liberal" on the board, was now joined by Mrs. Noel, the first black ever to be elected to the Denver school board, and two other members sympathetic to minority pupil problems.

The steady increase of blacks in northeast Denver meant ever greater concentrations of minorities in the Park Hill schools. School overcrowding, the use of mobile classroom units, and unabated racial segregation led to more pressure by civil rights groups and black community leaders for action. In response, the school board created a second study committee in February, 1966. The Advisory Council on Equality of Educational Opportunity was directed "to examine the 'neighborhood school' policy in its application to building new schools or additions to relieve northeast Denver and to suggest changes or new policies if needed necessary to eliminate or ameliorate 'de facto' segregation."[56] William Berge, an attorney, was appointed committee chairman. The Advisory Council's report was published in February, 1967. Frequently a mere reiteration of the 1964 report, the 1967 report recommended that no new schools be built in northeast Denver until plans had been developed to reduce concentrations of minority pupils. The report also advocated that heterogeneity in schools be increased to improve the quality of education for all students. It suggested the establishment of special programs in schools which would attract students of a variety of racial backgrounds; the creation of an educational center, or a multi-purpose building to which students would be drawn for special purposes; and the creation of superior programs in several all black junior high schools.

A member of the Advisory Council, Stephen Knight, Jr., wrote a Minority Report which contested plans for an educational center and what he termed "busing." That spring (1967), he and William Berge ran as candidates for the school board with the support of the Republican Party. Their leading opponents were backed by an inter-racial group of civil rights liberals and supported by the Democratic Party Executive Committee. Knight and Berge were elected to the school board in May, 1967.

Shortly before the election, the voluntary open enrollment program was reviewed and declared unsatisfactory as a method of achieving racial balance. Most transfers, it was noted, involved the movement of Anglo students to new Anglo schools and black students to different all black schools.[57]

Also in 1967, at approximately the same time, several attempts were made in the state legislature to pressure school districts into eliminating racial segregation (HB 1351, SB 417) and to commit additional attention to instruction in Hispanic culture (SB 280). All three bills were postponed indefinitely.

Under mounting pressure to act positively to desegregate schools, the school board voted in June, 1967, to halt additional school construction in northeast Denver where the likelihood of racial isolation was very high.[58] Several months later, the school board issued a plan for school construction in northeast Denver based on the concept of an intermediate school drawing from larger attendance areas. Estimated to require the busing of 4,700 students per year, the intermediate school plan was designed to foster racial mixture in northeast Denver by possessing a

school boundary sufficiently large to contain a racially heterogeneous population. The plan was seen as a politically feasible response to the complaints of the black community as well as the proponents of neighborhood schools.[59]

The intermediate school plan was submitted for public approval in a capital bond election in November, 1967. For the first time in the history of the school district, a bond issue did not pass. The $32.5 million school bond issue was defeated approximately seven to three. According to former school board member Jim Voorhees, the bond issue was transformed into an integration fight. The business community which normally contributed support in bond elections refused to approve the forced busing component of the intermediate school plan and withheld financial support.[60] Subsequent surveys showed that busing and other integration factors were responsible for the defeat of the bond among the electorate.[61] As a result, the intermediate school concept was never implemented.

In 1968, protest concerning racial imbalance in the schools reached a new pitch. Several events were critical in setting this tide of protest into motion.

In 1968, for the first time, the school administration released comparative achievement test score data.[62] These scores disclosed not only a great disparity between achievement levels at predominately Anglo and predominately minority schools, but, also, they reflected very low achievement levels at the minority schools which became lower as the minority children advanced through the grades. There was also evidence that the predominately minority schools had a disproportionate number

of minority teachers, fewer experienced and more inexperienced teachers, and much higher rates of teacher turnover than the predominately Anglo schools.

Outrage over this new information and the events of the last decade came to a head on April 5, 1968, the day Martin Luther King was assassinated.[63] Shocked and outraged people met throughout the city in schools to express their reactions over the tragedy of the event. One of these groups included a minister, a social work professor with a specialty in community organizing and a juvenile court judge. Their talk concerned substantive actions that could be taken in Denver as a tribute to Martin Luther King. They decided to adopt the concern of a small Park Hill Community group called Women for One Community which had begun to circulate a petition calling for national unity and racial balance in the schools. The following week, the minister, the social worker, and the judge formed Citizens for One Community which endorsed and adopted the petition as its own. Money was collected; leadership was chosen; and the decision was made to focus effort on a school board meeting scheduled for April 25, 1968, when the only black member of the school board, Mrs. Rachel Noel, would introduce a resolution calling for a school integration plan.

With rapid fire speed, organization proceeded, and on the night of the 25th of April, 1968, thousands of middle class whites and Park Hill blacks attended the public school board meeting where Mrs. Noel introduced a resolution instructing then Superintendent Gilberts to submit an integration plan by September 30, 1968, with consideration for the use of transportation. The meeting and the turnout in support of the resolution

received full coverage in the press. The board voted to table the resolution for one month.

During the following month, relentless organizational activity continued. The homes of school board members who were uncommitted with respect to the resolution were picketed as was the school administration building. Speak Out for Integration groups attempted to educate the public on the deleterious consequences of segregated education.[64] Community, religious, political and social leaders were approached to lend support to the resolution. Indeed, the Denver Chamber of Commerce and the Denver City Council, among other organizations, voted to support the Noel Resolution. Two nights before the May school board meeting, an association of black school teachers, Black Educators United, announced its intention to boycott in support of the Resolution. Then, Voorhees, the last school board member needed to pass the Resolution, was persuaded to vote affirmatively. The boycott was officially cancelled, but thousands of public school children were absent. In black schools, more than half the students boycotted classes. However, in predominantly Anglo schools absenteeism was only about 6%.[65]

On May 16, 1968, the school board voted 5-2 (another "doubtful" vote had gone in favor of the resolution) to pass Resolution 1490, the Noel Resolution, and philosophically committed itself to the desegregation of the schools.

Pursuant to Resolution 1490, Dr. Gilberts presented a report for the Board's consideration on October 10, 1968. At a school board meeting on November 21, 1968, the superintendent was directed to come up with more specific planning options, particularly with regard to possible

desegregation of a junior high school in Park Hill and the amelioration of crowding in that school by means of limited busing. The superintendent reported back to the board. The result is what has been termed the "Gilberts Plan."[66] It involved the creation of elementary, junior and senior high model-school complexes. On all levels, schools forming a complex would be selected so as to include a wide representation of racial and ethnic groups. A further component of the plan was the sharing of educational resources, equipment and opportunities in a central city school to encourage integration while retaining the individual character of other schools. Busing would be employed for the voluntary transfer of students to achieve racial balance; the non-voluntary transfer of pupils to predominantly Anglo schools with available space; and the transportation of students of all races for special educational programs.

At about the same time in November of 1968, the board adopted a new voluntary transfer program, called "voluntary" rather than "limited" open enrollment (VOE), whereby the district provided transportation for children voluntarily choosing to fill limited spaces in cross-town pupil exchanges.

Extensive public hearings and board-administration deliberations occurred through the early months of 1969 on the proposals formulated by the superintendent. These proposals ultimately became known as Resolutions 1520, 1524 and 1531, adopted by the board on January 30, March 20, and April 17, 1969, respectively. Collectively the resolutions provided for concrete measures by which to alleviate school segregation in Park Hill. Resolution 1520 dealt with high school level racial stabilization; 1524 was concerned with the junior high school level; and 1531 with the

elementary school level. Combined, they would have meant integrated education for 33,151 students.[67]

Such was not to happen. May, 1969, was occasion for another school board election, in which two new members were to be elected. Closely following the formal adoption of Resolutions 1520, 1524 and 1531, the May election was a dramatic and emotional one. The pro-desegregation candidates were Edgar Benton, an attorney and school board member whose term was due to expire, who was persuaded to run for re-election by a group of integration proponents; and Monte Pascoe, an attorney and Democratic Party leader. Both candidates were endorsed by the Democratic Party. Their principal opposition, identified as anti-busing, was a slate consisting of James Perrill, a local attorney and former state senator, and Frank Southworth, a real estate businessman. Both latter candidates received the support of the Republican Party. The dominant theme of the race was busing versus neighborhood schools.

Election day was a disaster for the pro-busing forces. Perrill and Southworth were elected by a margin of two and one-half to one. Voting patterns were strictly along racial lines, and Benton and Pascoe lost soundly in predominantly Anglo sectors of the city.[68]

The first action of the new board on June 9, 1969, was to rescind Resolutions 1520, 1524 and 1531.[69] The rescission was by a 5-2 vote, and the vote was conducted over the opposition of the school superintendent. But the desegregation embers were far from cool. For even on the eve of the disastrous school board election of 1969, plans were underway for new actions to remedy the segregation problems in School District No. 1. These plans came to a head on June 19, 1969, when eight Denver school children and their wards filed suit against the school board, thus commencing a course of litigation which still has not come to an end.

## The Litigation: Introduction

In order to understand the Denver desegregation lawsuit in the full scope of its nearly six years of litigation and appeal, it is necessary to review in some detail the evidence and findings produced at various stages: the preliminary injunction hearing; the trial on the merits; the decisions of the District Court; the decisions on review of the Court of Appeals for the Tenth Circuit; the decision of the Supreme Court of the United States; and the hearings again before the District Court after the Supreme Court's remand. At each stage, crucial shadings of fact and legal theory gained prominence.

Preparation of this section of the report was preceded by examination of the official transcripts, exhibits and decisions at all levels. The briefs of the parties at various levels were consulted for amplification where relevant. The nature of the case itself pitted an aggressive and prepared set of plaintiffs against a relatively intransigent but not overly prepared set of defendants. As a result, the bulk of the hard evidence of relevance in the various proceedings came in through the plaintiffs, even if it consisted of documentary data under the supervision and control of the defendants. At the "trial" (preliminary injunction and trial on the merits, 1969-1970) level alone, the plaintiffs introduced more than 400 exhibits. Also at the trial level, many weeks of court time were consumed. Many additional exhibits, and, of course, trial days accumulated as the case went through several appeals and remands.

## The Litigation: Chronological Summary

For ease of reference in reading later sections of this report, the

reader is given the following chronological summary of the course of the litigation.

On June 19, 1969, the plaintiffs in Wilfred Keyes, et al. vs. School District No. One, Denver, Colorado, filed their complaint in the United States District Court for the District of Colorado, thereby commencing Civil Action No. C-1499. The complaint sought both a declaratory judgment and injunctive relief. Simultaneously, plaintiffs filed a motion for a preliminary injunction which sought to enjoin certain actions of the defendant School Board during the pendency of the principal action.

Hearings on the motion for the preliminary injunction were held July 16 through 22, 1969, before the Honorable William E. Doyle, District Judge. By Order and Opinion dated July 31, 1969, Judge Doyle granted the motion for the preliminary injunction. 303 F.Supp. 279. On appeal by the defendants, the Tenth Circuit Court of Appeals vacated the preliminary injunction and remanded the case to the District Court for further proceedings, holding the injunctive order lacked "specificity" as required by Rule 65(c), F.R.Civ.P. The District Court proceeded with hearings on August 7, 1969, pursuant to the remand, and issued its Supplemental Findings, Conclusions and Temporary Injunction on August 14, 1969. 303 F.Supp. 289. The defendants immediately applied to the Court of Appeals for a stay, and by Opinion dated August 27, 1969, that court so stayed the preliminary injunction pending further review and further order. Plaintiffs, in turn, immediately moved the Supreme Court of the United States for an order vacating the stay of the Court of Appeals, and said motion was granted by Justice Brennan on August 29, 1969. 396 U.S. 1215. Justice Brennan's order vacating the stay of the Court of Appeals further directed the

reinstatement of the preliminary injunction of the District Court.

Trial was had on the merits of plaintiffs' complaint before Judge Doyle February 2 through February 20, 1970. Pursuant to said trial, the District Court entered its Opinion and Findings on the issues and made permanent the preliminary injunction. 313 F.Supp. 61. The court reserved ruling on remedies until consideration of proposed remedial plans to be submitted by both plaintiffs and defendants. Having so considered, the court did issue an Opinion regarding remedies on May 21, 1970. 313 F.Supp. 90. This latter Opinion incorporated the results of the prior proceedings and, in addition, the results of additional hearings held May 11 through May 19, 1970. Pursuant to the Order and Opinion of March 21, 1970, and pursuant to the Opinion regarding plans and remedies of May 21, 1970, the District Court issued its Final Decree and Judgment on June 11, 1970.

Both the defendants and the plaintiffs appealed the Final Decree and Judgment to the Tenth Circuit Court of Appeals. In addition, the defendants, on March 2, 1971, filed a motion for a stay of said Final Decree and Judgment. By decision dated March 26, 1971, the Court of Appeals granted the motion for stay as to all proceedings pertaining to the plan envisioned by the District Court's Final Decree and Judgment not yet implemented as of the date of the stay. Per curiam, the United States Supreme Court vacated the stay ordered by the Court of Appeals. 402 U.S. 182.

On June 11, 1971, the Court of Appeals issued its Opinion and Judgment regarding the appeal and cross-appeal from the Final Decree and Judgment of the District Court. The Court of Appeals affirmed the decision of the District Court in part and reversed and remanded in part to the District Court. The Opinion of the Court of Appeals for the Tenth Circuit is found

at 445 F.2d 990 (1971).

Plaintiffs appealed to the Supreme Court of the United States; and their petition for certiorari was granted. 404 U.S. 1036 (1972). The appeal was argued before the Supreme Court on October 12, 1972, and the case was decided June 21, 1973. 413 U.S. 189. The Supreme Court, in an Opinion delivered by Justice Brennan, modified the Judgment of the Court of Appeals so as to vacate instead of reverse the relevant portions of the Final Decree of the District Court. The case was remanded to the District Court for further proceedings.

Pursuant to the remand, new hearings were held before the District Court in December of 1973. The District Court issued its Opinion and Order as a result of said hearings on December 11, 1973. 368 F.Supp. 207. The court's Opinion included orders to both plaintiffs and defendants to submit to the court their remedial plans in order to effectuate the District Court's Order itself. After substantial hearings on proposed plans, the District Court entered its Final Judgment and Decree of April 24, 1974, 380 F.Supp. 673, pursuant to which it selected a desegregation plan developed by one John A. Finger, Jr., the court's own expert, and rejected the plans proposed by both plaintiffs and defendants. Both plaintiffs and defendants appealed this Final Judgment and Decree to the United States Court of Appeals for the Tenth Circuit.

The appeals reached the Court of Appeals on February 10, 1975, and were decided by the Court of Appeals on August 11, 1975. 521 F.2d 465. The Court of Appeals affirmed the District Court as to the bulk of the

latter's Final Judgment and Decree and reversed as to portions thereof dealing with bilingual-bicultural education and "pairing".

The defendants petitioned the United States Supreme Court to review the decision of the Tenth Circuit Court of Appeals, as did the intervenors in the case representing the Congress of Hispanic Educators (CHE), the party to the suit primarily concerned with bilingual-bicultural matters. The petitions for review by the defendants and CHE intervenors were docketed with the Supreme Court on November 11, 1975. 44 USLW 3351. The Supreme Court denied the petitions for review on January 12, 1976. 44 USLW 3399.

The District Court still is left with minor portions of the case not finally determined -- the bilingual-bicultural issue as to which the Tenth Circuit Court of Appeals reversed, pairing and the East-Manual complex.

The Litigation: The Preliminary Injunction

When the plaintiffs filed their complaint on June 19, 1969, they also filed a motion for a preliminary injunction. The preliminary injunction was aimed at stopping implementation of the rescission of Resolutions 1520, 1524 and 1531 during the litigation. Since Resolutions 1520, 1524 and 1531 dealt exclusively with the schools in Park Hill, as noted above, the preliminary injunction motion and its later hearing were limited to the plaintiffs' case as it related to segregation in Park Hill, not in Denver as a whole. The motion was heard and argued and testimony was taken during July 16 through 22, 1969. Judge Doyle for the District Court found that the preliminary injunction was justified in his Opinion of July 31, 1969. 303 F.Supp. 279. The Judge considered the rescission of the three Resolutions by the school board in light of voluminous evidence of actual segregation in Park Hill. He described "the purpose and effect" of the rescission as "designed to segregate" and ordered the school board to cease from putting

the rescission into effect.

The decision of the District Court on the preliminary injunction was appealed, and the appeals court sent the matter back for further hearing. At such further hearing, the preliminary injunction was re-instated by the District Court, and, this time, the United States Supreme Court upheld the District Court even though the Court of Appeals was prepared to prevent the preliminary injunction a second time.

The preliminary injunction disposed of, the District Court had to proceed with a trial on the merits of the plaintiffs' complaint.

The Litigation: Trial On the Merits

The trial on the merits proceeded during February 2 through 20, 1970, again before Judge Doyle.

This phase of the proceedings raised much the same issues for determination as had been before the court in the hearing on the preliminary injunction. One issue at the trial on the merits regarded Park Hill: the making permanent of the preliminary injunction. But the chief questions not previously before the court involved: (1) whether there was in fact segregation in other than the Park Hill schools, especially in what came to be called the core-city schools; (2) whether, if such segregation existed, it had been intentionally created and maintained by the defendants, under guise of a "neighborhood school" policy or otherwise; and (3) whether, if such segregation existed either by intentional or non-intentional acts, it was accompanied by measurable and intangible consequences which inevitably resulted in a deprivation of equal educational opportunity.

After considerable testimony by both sides, Judge Doyle wrote his

opinion of March 21, 1970. 313 F.Supp. 61. First, he ordered that the plaintiffs should have the full benefit of Resolutions 1520, 1524 and 1531, thus in effect finalizing his preliminary injunction order as to the Park Hill schools. Second, he concluded that the segregation shown by the evidence to exist in the core-city (non-Park Hill) schools was not intentionally created; it was de facto, not de jure. Third, he held that, "the evidence establishes . . . that an equal educational opportunity is not being provided" at the core-city schools. He set a hearing on remedies to consider the "serious and difficult problem" of alleviating that unequal educational opportunity.

The Litigation: 1970 Hearing on Relief

The hearings on relief pursuant to Judge Doyle's Opinion of March 21, 1970, occurred May 11 through 14, 1970.

The issue, what Judge Doyle had called "a serious and difficult problem," was the development of an appropriate plan to overcome inferior educational opportunity in the core-city schools. On March 21, 1970, Judge Doyle had indicated reluctance to consider compulsory busing in any final plan although he had not ruled it out; otherwise, he had left the door open to both plaintiffs and defendants to come up with proposals.

At the hearings, both plaintiffs and defendants submitted lengthy plans for improving educational opportunity in the core-city schools. In his Opinion of May 21, 1970, Judge Doyle considered the evidence offered with regard to these plans and made a Final Order with regard to relief.

A. Findings. On the basis of the evidence and testimony presented at the hearing on relief, Judge Doyle made the following findings:

1. A program of desegregation and integration was necessary to improve the quality of education in the so-called core-city schools.

2. The segregated setting in the core-city schools did in fact stifle and frustrate the learning process.

3. To attempt to carry out a compensatory education program within minority schools without simultaneously desegregating and integrating those schools would prove unsuccessful.

4. A system of so-called voluntary open enrollment; or free transfer to designated Anglo schools of minority group students, would constitute a minimal but insufficient fulfillment of the constitutional rights of the persons involved.

5. Prior to a program of integration; the core-city schools had to be drastically improved in order not to impose inequity on white students required to attend those schools through the integration process.

B. The Court's Plan. Judge Doyle rejected the plans proposed by both the plaintiffs and the defendants and instead set forth the plan to be described below. It is to be noted that the court's plan applied to only fifteen so-called core-city schools. These schools were selected for subjection to the remedies in the plan on the basis of their possession of a 70-75% concentration of either Negro or Hispano students, not both. In the Opinion of May 21, 1970, the court agreed to add two more schools to the core-city designation, making a total of seventeen schools; on the basis of their success in meeting the above-limited 70-75% criterion. The court refused plaintiffs' request that a school which possessed a combined percentage of Hispano and Negro students in the 70-75% range also be included in the plan. Within this context, the provisions of the court's plan were as follows:

1. Elementary Schools. At least 50% of the court designated elementary schools must be desegregated by September 1, 1971; the balance of the court designated elementary schools to be desegregated by September 1, 1972. Desegregation

for the purposes of this aspect of the plan was deemed by the court to consist of an Anglo component in each school in excess of 50% of the total racial composition of the student body. Details of this aspect of the plan were left to the plaintiffs and the School Board subject to ultimate court review.

2. The Junior High Schools. There were two junior high schools affected. With regard to one, the court called for "substantial" desegregation "along the lines set forth" for the elementary schools by the beginning of the school year in the fall of 1972. With regard to the other junior high school, the court set forth two options: first, to desegregate in the manner proposed for the first junior high school; second, to make the other junior high school an open school for special education and other special programs then in effect or which the Board might wish to put into effect in the future.

3. The High Schools. There was only one high school affected by the court's findings with regard to unequal educational opportunity, and with regard to this high school, the court ordered implementation of the plans set forth by both defendants and plaintiffs for making this high school an open school for vocational and pre-professional training programs already instituted there.

4. Preparation. Beginning immediately, the court ordered an "intensive program" of education to be carried out within the community and the school system. This program was to include orientation for teachers in the field of minority cultures and problems and how to effectively deal with minority children in an integrated environment. The court also urged education of the community as to the educational benefits and values to be derived from desegregation and integration.

5. Free Transfer. As an interim measure only, the court approved the Board's program for voluntary open enrollment with respect to all the designated core-city schools.

6. Compensatory Education. For the 1970-1971 school year, the court ordered implementation of the compensatory education programs already in effect

and proposed by the defendants, including, but not limited to:

a) Integration of teachers and administrative staff;

b) Encouragement and incentive to place skilled and experienced teachers and administrators in the core-city schools;

c) Use of teacher aides and paraprofessionals;

d) Human relations training for all school district employees;

e) In-service training on both district wide and individual school bases;

f) Extended school years;

g) Early childhood programs;

h) Classes in Negro and Hispano culture and history;

i) Spanish language training;

j) Continuation of special programs for children with deficient reading skills.

Finally, the court noted that only grades one through six of the elementary schools covered by the plan were to be included therein. Kindergarten students were to be excluded.

The defendants appealed the Final Decree and Order of the District Court on June 16, 1970, to the Court of Appeals for the Tenth Circuit. On June 24, 1970, the plaintiffs cross-appealed on the following specific issues: (1) the court's failure to grant relief to the core-city schools whose combined Nego and Hispano enrollment was in excess of 70%; (2) the court's failure to find intent in the school district's setting of school attendance boundaries with regard to the core-city schools; (3) the court's failure to find that a neighborhood school system is unconstitutional

where it produces segregated schools in fact, regardless of intent; (4) the court's failure to require that all desegregation and integration be accomplished by September of 1971. The Court of Appeals for the Tenth Circuit issued its opinion with regard to both the appeal and the cross-appeal on June 11, 1971. 445 F.2d 990 (1971).

The court first dealt with the defendants-appellants' attack on the District Court's decision regarding the finding of intentional segregation in the Park Hill schools. The Court of Appeals came down in support of the conclusion of the District Court:

> "In sum, there is ample evidence in the record to sustain the trial court's findings that race was made the basis for school districting with the purpose and effect of producing substantially segregated schools in the Park Hill area. This conduct clearly violates the Fourteenth Amendment and the rules we have heretofore laid down in the Downs and Dowell cases." 445 F.2d at 1002.

As to whether, as contended by the plaintiffs, the rescission of the three Resolutions itself was an act of de jure segregation, the Court of Appeals dodged the issue saying:

> "It is sufficient to say that the Board's adoption of those resolutions was responsive to its constitutional duty to desegregate the named schools and the trial court was within its powers in designating those resolutions as the best solution to a different situation." 445 F.2d at 1002.

As to the issue of unequal educational opportunity in the so-called core-city schools, which the District Court had found to require the relief designated above, the Court of Appeals noted that "the trial court's findings stand or fall on the power of federal courts to resolve educational difficulties arising from circumstances outside the ambit of state action." 445 F.2d at 1004. The Court of Appeals then noted that the District Court correctly stated the law of the district "that a neighborhood school policy

is constitutionally acceptable, even though it results in racially concentrated schools, provided the plan is not used as a veil to further perpetuate racial discrimination." Idem. Notwithstanding its correct observation and statement of the law in the Tenth Circuit, however, the District Court then fell into an error, said the Court of Appeals.

> "In the course of explicating this rule and holding that the core area school policy was constitutionally maintained, the trial court rejected the notion that a neighborhood school system is unconstitutional if it produces segregation in fact. However, then, in the final analysis, the finding that an unequal educational opportunity exists in the designated core schools must rest squarely on the premise that Denver's neighborhood school policy is violative of the Fourteenth Amendment because it permits segregation in fact. This undermines our holdings in the Tulsa, Downs and Dowell cases and cannot be accepted under the existing law of this Circuit." 445 F.2d at 1004.

While refusing to dispute the evidence offered by the plaintiffs and while further refusing to dispute the opinion of other cases in other circuits to the effect that segregation in fact may create an inferior educational atmosphere, the Court of Appeals for the Tenth Circuit attempted to distinguish and refused to follow the statements in those other federal cases, suggesting that federal courts should play a corrective role in the system. "Our reluctance to embark on such a course stems not from a desire to ignore a very serious educational and social ill, but from the firm conviction that we are without the power to do so. * * * Unable to locate a firm foundation upon which to build a constitutional deprivation, we are compelled to abstain from enforcing the trial judge's plan to desegregate and integrate court designated core area schools." 445 F.2d at page 1005.

The Court of Appeals took solace from the fact that since the commencement of the litigation the new School Board had passed a Resolution numbered

1562, the gist of which was that regardless of the final outcome of the litigation, the School Board would attempt to improve the quality of education offered in the school system. "The salutary potential of such a program cannot be minimized, and the Board is to be commended for its initiative." 445 F.2d at page 1005.

The Court of Appeals gave short shrift to the cross-appeal of the plaintiffs. As to the assertions of the plaintiffs that they were required to labor under too high a burden of proof in proving state action in the segregation of the core-city schools, the Court of Appeals held as follows:

> "Where, as here, the system is not a dual one, and where no type of state imposed segregation has previously been established, the burden is on plaintiffs to prove by a preponderance of the evidence that racial imbalance exists and that it was caused by intentional state action. Once a prima facie case is made, the defendants have the burden of going forward with the evidence (citations omitted). They may attack the allegations of segregatory intent, causation and/or defend on the grounds of justification in terms of legitimate state interest. But the initial burden of proving unconstitutional segregation remains on plaintiffs. Once plaintiffs prove state imposed segregation, justification for such discrimination must be in terms of positive social interests which are protected or advanced. The trial court held that cross-appellants failed in their burden of proving (1) a racially discriminatory purpose and (2) a causal relationship between the acts complained of and the racial imbalance admittedly existing in those schools." 445 F.2d at page 1006.

The Court of Appeals found that although there was some evidence to sustain the position of the plaintiffs, there was also evidence to support the findings of the District Court, and that under Rule 52, F.R.Civ.P., the District Court's decision must be affirmed.

Accordingly, the case was remanded to the District Court as to that part of the District Court's opinion pertaining to the core-city schools

and reversed as to the legal determination that such schools were maintained in violation of the Fourteenth Amendment because of the unequal educational opportunity afforded by them.

The Litigation: The Supreme Court Enters

In the fall of 1971, the plaintiffs petitioned the Supreme Court of the United States for a writ of certiorari to review the Final Judgment and Opinion of the Court of Appeals for the Tenth Circuit. According to Gordon Greiner, the entire 26-page petition was authored by the Legal Defense Fund. Beginning at Page 14 of the petition, the plaintiffs noted the distinctiveness of their case:

> "The issue in this case is not de facto versus de jure segregation. Whatever the term 'de facto' may mean, this case involves a school district in which segregation has been brought about by regular, systematic and deliberate choice of the school authorities.
>
> "This is the first case of this sort before this Court from an area where officially required segregation was not previously authorized by statute.
>
> * * *
>
> "The cases in which the lower courts have determined that a school district has maintained a policy of segregation should be governed by the same rules, regardless of geography or the source of the official segregation, as cases where the initial source was State law. But there is a division among the lower courts; and this is reflected in the opinions of the courts below in this case, applying different rules to different geographical parts of the same school system. Whereas this Court and the lower courts require desegregation throughout a southern school district where segregation was imposed by law (even though it persists only in certain portions of that district), the lower courts here (and in some other places) have confined desegregation to discreet areas where particular segregating deeds have been uncovered and identified.
>
> "Consideration of the Park Hill area schools separately from the rest of the Denver school system resulted from

> the lower courts' insistence that petitioners demonstrate a segregating act at every school in order to justify relief. This narrow focus facilitated compartmentalized consideration of the different areas of the district. But the court's concern should have been school authorities' actions anywhere in the district creating or maintaining racial and ethnic segregation."

In addition to seeking review from the Supreme Court on the issue of state action in the segregation of the core-city schools in Denver, the plaintiffs requested review of the ruling of the Court of Appeals as to the effect of unequal educational opportunity. The essence of the plaintiffs' contention on this score is set forth at page 22 of the petition for certiorari:

> "We think the Court of Appeals misconstrued the basis of the District Court's ruling, but, moreover, its own opinion drains the concept of equal educational opportunity (recognized by this Court in Brown) of its meaning by declaring segregation-related inequalities irremediable in the federal courts unless that segregation is proved to have been caused entirely by school authorities." (emphasis in original)

On January 17, 1972, the Supreme Court of the United States granted the plaintiffs' petition for certiorari. The case was argued on October 12, 1972, and decided on June 21, 1973. 413 U.S. 189, 37 L.Ed.2d 548 (1973). James M. Nabrit, III, of the NAACP Legal Defense Fund and Gordon C. Greiner argued the case for the plaintiffs; William K. Ris, of the Denver firm of Wood, Ris and Hames, argued the case for the defendants. Justice Brennan delivered the Opinion of the court.

The Opinion is divided into four principal parts. The essence of the first portion of the Opinion is that Judge Doyle erred in failing to combine the number of black and Hispano students in any school in determining the concentration of minorities in a school (70-75%) likely to produce an inferior educational opportunity. The court cited findings of various

reports of the United States Commission on Civil Rights and stated that "Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students." 37 L.Ed.2d at 557.

In Part II of the Opinion, Justice Brennan considered the contention of the plaintiffs that the District Court imposed an unreasonable burden on the plaintiffs with regard to proof of unconstitutional state action in the segregation found to exist in the so-called core-city schools. Justice Brennan found that the proof produced by the plaintiffs with regard to segregation and state action in the Park Hill area sufficed to meet plaintiffs' burden in a case not involving de jure segregation by statute:

> "Nevertheless, where Plaintiffs proved that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system." 37 L.Ed.2d at 559.

Therefore, Justice Brennan directed the District Court, on remand, to "decide in the first instance whether respondent School Board's deliberate racial segregation policy with respect to the Park Hill schools constitutes the entire Denver school system a dual school system." 37 L.Ed.2d at 560.

In Part III of the Opinion, Justice Brennan elaborated. He first pointed out that Judge Doyle, for the District Court, had mistakenly failed to take into account the already-proven intentional school segregation in the Park Hill schools when evaluating the admitted factual segregation in the so-called core-city schools.

> "Plainly, a finding of intentional segregation as to a portion of a school system is not devoid of probative value in assessing the school authorities' intent with

> respect to other parts of the same school system. On the contrary, where, as here, the case involves one school board, a finding of intentional segregation on its part in one portion of a school system is highly relevant to the issue of the board's intent with respect to other segregated schools in the system. This is merely an application of the well-settled evidentiary principle that 'the prior doing of other similar acts, whether clearly a part of a scheme or not, is useful as reducing the possibility that the act in question was done with innocent intent.' II. Wigmore, Evidence 200 (3d ed. 1940)." 37 L.Ed.2d at 562-563.

Justice Brennan went on to hold that a finding of intentional segregative school board action in a "meaningful" portion of a school system creates a "presumption" that other segregated schooling within the system is not accidental. ". . . In that circumstance, it is both fair and reasonable to require that the school authorities bear the burden of showing that their actions as to other segregated schools within the system were not also motivated by segregative intent." 37 L.Ed.2d at 563. The Opinion went on to identify the exact burden to be shifted to the defendants as one not satisfied by the aducement of "some allegedly logical, racially neutral explanation" for school board actions. Rather, Justice Brennan said, the burden required submission of proof sufficient "to support a finding that segregative intent was not among the factors that motivated" school board action. 37 L.Ed.2d at 564. Justice Brennan also rejected those portions of Judge Doyle's Opinion below which attributed significance to the alleged remoteness in time of certain of the admitted segregative acts of the School Board. The Supreme Court thus summarily rejected the primary defense of the School Board that its "neighborhood school policy" combined with residential segregation were the primary justification for all previous acts of the Board which resulted in fact in segregated schools in the core-city area.

In Part IV of the Opinion, Justice Brennan set forth in capsule form the duties of the District Court on remand. As a first item, Justice Brennan directed the District Court to "afford respondent School Board the opportunity to prove its contention that the Park Hill area is a separate, identifiable and unrelated section of the school district that should be treated as isolated from the rest of the district." 37 L.Ed.2d at 566. Second, assuming that the School Board failed to prove that contention, Justice Brennan directed the District Court to "determine whether respondent School Board's conduct over almost a decade after 1960 in carrying out a policy of deliberate racial segregation in the Park Hill schools constitutes the entire school system a dual school system." Idem. Citing, Green v. County School Board, 391 U.S. 430, 20 L.Ed.2d 716 (1968), Justice Brennan stated that if the District Court were to determine that the Denver school system was a dual school system, "respondent School Board has the affirmative duty to desegregate the entire system 'root and branch'." Idem. Finally, Justice Brennan directed the District Court, in the event that the Denver school system was shown not to be a dual school system, to afford the School Board the opportunity to rebut the plaintiffs' prima facie case of intentional segregation in the core-city schools. There, the School Board's burden would be to show that its "neighborhood school" concept was not utilized in order to effect a policy creating or maintaining segregation in the core-city schools or was not a factor in causing the existing conditions of segregation in those schools. "If respondent Board fails to rebut petitioners' prima facie case, the District Court must, as in the case of Park Hill, decree all-out desegregation of the core-city schools." Idem.

The Litigation: The Proceedings in December, 1973

After the decision of the Supreme Court on June 21, 1973, the case was remanded for further hearings before the District Court in accordance with the Supreme Court's decision. Initially, in December of 1973, hearings were held on the limited factual issue set forth in Part II of the Supreme Court decision: whether the uncontested segregation in the Park Hill schools constituted the Denver School District a "dual" system, or, whether the Park Hill situation was "a case in which the geographical structure of, or the natural boundaries within, a school district [had] the effect of dividing the school district into separate, identifiable and unrelated units." 413 U.S. at 203.

Judge Doyle's Memorandum Opinion and Order arising out of the December, 1973, hearings before the District Court was issued on December 11, 1973. 368 F.Supp. 207 (1973). The Opinion consists primarily of a restatement of the findings and guidelines set forth by the Supreme Court in its earlier 1973 decision on the case. 413 U.S. 189 (1973). Judge Doyle carefully interwove findings from the evidence in the December, 1973, hearing with verbatim quotations of the Supreme Court decision. He first considered the issue of whether the Park Hill portion of the Denver school system was a "separate, identifiable and unrelated" system in either a geographic or a non-geographic sense. As to the geographic sense, he noted that the School Board "admits that there is no geographic separation of Park Hill from the remainder of the Denver school district. Since this has been conceded, there is no necessity for discussing it further." 368 F.Supp. at 209. As to the non-geographic sense, the Judge reviewed the evidence presented by the plaintiffs tending to show the non-geographic similarity of Park Hill to the rest of the district: the identity of

administrative school services, faculty services, curricular and structural services, building services and financial services; fire and police protection, water supplies and sewerage; social characteristics and spatial relationships.

Judge Doyle noted that the substantial impact of the racial segregation in Park Hill on schools outside of Park Hill "was settled in earlier decisions in this case, and is additionally supported by the presumption ennunciated in Mr. Justice Brennan's Opinion for the Supreme Court." 368 F.Supp. at 210. Nevertheless, he said, the defendants had "contended that these issues are proper for retrial here." Idem. Elaborating, Judge Doyle stated:

> "We have fully considered all of this evidence presented by defendants, both that offered in this hearing and all evidence of record from previous proceedings in this case. Insofar as that evidence was offered to support defendants' contention that the Denver school district is not a dual system, we conclude that it is merely conclusory and is lacking in substance. The intented thrust of that evidence has been that segregated conditions in individual schools outside the Park Hill area are wholly the product of external factors such as demographic trends and housing patterns, and are in no way the product of any act or omissions by the defendants. We are not persuaded by the evidence presented, nor have defendants succeeded in dispelling the presumption that segregative intent of the School Board was clearly evidenced by its actions in Park Hill permeating the entire district. The affirmative evidence is to the contrary, that defendants' actions in Park Hill are reflective of its attitude toward the school system generally." 368 F.Supp. at 210.

Judge Doyle proceeded to find the conclusion "inescapable" that the Denver school system was a dual school system within the Supreme Court's definitions.

Pursuant to order, hearings were conducted February 19 through March 27, 1974, before the District Court regarding proposed desegregation plans. In these hearings, the plaintiffs submitted two plans; the defendants submitted a plan; a plan was submitted by court-appointed consultant, Dr. John A.

Finger; and plans complementary to the plaintiffs' plans were submitted by the Congress of Hispanic Educators (CHE) regarding bilingual and bicultural education.

## THE FINAL JUDGMENT AND DECREE

Judge Doyle entered his Final Judgment and Decree on April 17, 1974. 380 F.Supp. 673. A central part of the Decree is its incorporation by reference of the entirety of Dr. Finger's plan of April 5, 1974, with minor modifications. Implementation of the Finger plan was mandated for the 1974-1975 school year. This plan has been discussed above. As to the discretionary aspects of the Finger plan, the court formally instructed the defendant Board to exercise its discretion in good faith, to forthwith consider and to report to the court with regard to contemplated alternative courses of action on enumerated administrative and educational details. Balancing the need for court administration with the desirability of unhampered School Board implementation, the Judge noted, at page 5 of his Decree:

> "If defendants are uncertain concerning the meaning or intent of the plan, they should apply to the court for interpretation and clarification. It is not intended that the school authorities be placed in a single 'strait jacket' in the administration of the plan, but it is essential that the Court be informed of any proposed departure from the sanctioned program. The Court is committed to the principles of the plan, but it is not inflexible concerning the details . . . ."

In addition to permanently enjoining the defendants from "discriminating on the basis of race or color in the operation of the school system," the court reminded the defendants that the "duty imposed by the law and by this Order is the desegregation of schools and the maintenance of that condition. The defendants are encouraged to use their full 'know-how' and resources to attain the described results, and thus to achieve the constitutional end by any legal means at their disposal . . . ." (page 5 of the Decree).

The following is a summary of the remaining key provisions of the Decree.

1. Voluntary Open Enrollment. The Board was instructed to hold in abeyance its voluntary open enrollment program pending resolution of various details of the Finger plan, but, in any event, subject to elimination of current restraints on participation in the program by minority students (refusal of voluntary transfers to minority students to Anglo schools having combined black-Hispano enrollments exceeding the district-wide average).

2. Collateral Services. The Board was instructed to maintain "to the extent feasible" on-going programs of "collateral" services such as hot breakfast programs, free lunches, tutorial programs, health services, remedial and compensatory education programs.

3. Busing. The Board was instructed to file plans with the court and to make immediate purchases of equipment for implementation of the busing required in the Finger plan.

4. In-Service Teacher Training. The Board was instructed to implement its own proposals for orientation and training of parents, pupils, school personnel and staff as proposed to the court in the February hearings.

5. Monitoring Commission. This key aspect of the Decree required both parties to submit to the court nominees for appointment to a commission, initially to serve until June 1, 1975, at the expense of the District, to act as a liason between the court and the "community" as to such matters as: coordination of community efforts to implement the plan; community education; receipt and consideration of criticism and suggestions from the community regarding the plan; assisting the community in working out programs with the school administration; reporting to the court as to the nature and resolution of such problems; and generally reporting on a periodic basis to the court with regard to implementation of the plan.

6. Bilingual-Bicultural Education. The school district was ordered to implement the model plan presented by CHE or a plan "substantially and materially similar," retaining a qualified consultant to develop the program and implement the plan on a pilot basis at three elementary schools and one junior high and one senior high school.

7. New School Construction. The defendants were enjoined from locating new schools or additions thereto in a manner conforming to patterns of residential segregation and were required to submit all plans for new schools or additions thereto to the court, with notice to counsel for the plaintiffs and provision for hearings to air objections within thirty days of reporting to the court.

8. Reporting. The court set forth formal and detailed reporting requirements on a monthly schedule beginning May 1, 1974, through September of 1974 as to plans and administrative details regarding implementation of the Finger program.

9. Additional Reporting. The defendants were instructed to report within thirty days of the commencement of the fall semester in 1974 and the second semester in 1975 on an extensive array of statistical phenomena including ethnic distribution of pupils and teachers, distribution of tenured and probationary teachers, student dropouts and suspensions, the number and nature of special administrative and hardship transfers and actions taken to implement the bilingual-bicultural program.

10. Desegregation of Faculty and Staff. The school district was instructed in detail as to the permissible standards for assignment of faculty and staff among all schools in the district and required to implement immediately an affirmative action program for hiring minority teachers, staff and administrators with the objective of attaining a ratio of Hispano and black personnel within the district corresponding to the overall black and Hispano student population of the district.

11. Foot Dragging. The Board was instructed to "take steps to prevent the frustration, hinderance or avoidance of this Decree, particularly with regard to spurious transfers and falsification of residence to avoid reassignment."

12. Harassment. "Any attempt to hinder, harass, intimidate, or interfere with the School Board, its members, agents, servants, or employees in execution of this Order shall be reported to the Department of Justice through the United States Attorney for the District of Colorado."

13. Fees of Dr. Finger. These fees were taxed to the school district "since the services of Dr. Finger were necessary to the development of an adequate and acceptable plan."

14. Plaintiffs' Attorney's Fees and Costs. The school district was ordered to pay an award of attorney's fees and costs to plaintiffs' attorneys accruing since the inception of the lawsuit in June of 1969.

## APPEAL OF FINAL JUDGMENT AND DECREE

Cross-appeals of the District Court's Order of April 24, 1974 (380 F.Supp. 673) were taken by both plaintiffs and defendants. The case on appeal reached the Tenth Circuit February 10, 1975. An appeal was also taken but not fully prosecuted by the Citizens Association for Neighborhood Schools (CANS). The Congress of Hispanic Educators (CHE) joined the appeal as an intervenor, and amici curiae briefs were filed by the Colorado Association of School Boards, the Colorado Association of School Executives and the Colorado State Board of Education.

On August 11, 1975, the Tenth Circuit Court of Appeals affirmed the District Court except as to those parts of the Final Decree dealing with part-time pairing of schools, the East-Manual complex, maintenance of five predominantly Hispano elementary schools in a segregated condition and institution of a bilingual-bicultural education program at five schools. 521 F.2d 465. These aspects of the decision were ordered sent back to the District Court for further hearing and deliberation.

Both the defendants and the CHE appealed the Tenth Circuit's Opinion to the United States Supreme Court. On January 12, 1976, the Supreme Court declined to review the appeals. 44 USLW 3399. As of February, 1976, the major issues in the case had been decided with finality.

## COMMUNITY REACTION TO THE DESEGREGATION PLAN

### Community Opposition to the Desegregation Plan

Even before the Court issued its final order and decree, community reaction to desegregation began to crystallize. The most vociferous organized opposition to school desegregation has been a group known as Citizens Association for Neighborhood Schools (CANS). An outgrowth of a variety of neighborhood associations opposed to busing, CANS was incorporated in January, 1974.[70] According to the first president of CANS, Nolan Winsett, Jr., CANS enjoyed a membership of approximately 15,000 individuals, and by November 1974 it had raised approximately $12,000. Both Mr. Winsett and the subsequent president of CANS, Don Tenant, are real estate salesmen.

Since its inception, CANS has expressed its opposition to busing in a variety of ways.[71] Initially it held numerous meetings at local schools through Denver to protest busing. Most meetings featured members of the School Board who opposed busing; citizens were encouraged to write school, local, state and federal officials to express their objections to busing and to demand federal and state constitutional amendments to halt it. CANS also sponsored a rally featuring Representative Norman Lent (R-NY), proponent of a constitutional amendment against busing, and Lawrence Hogan (R-MD). Both speakers voiced their opposition to court ordered busing to approximately 3,200 Denverites.

In the political arena, CANS succeeded in organizing a successful drive to put an anti-busing amendment on the November, 1974, election ballot in Colorado. More than 94,167 signatures were collected, fully double the requisite number needed to place the amendment on the ballot.

It appeared as Amendment No. 8 on the ballot and read as follows: "To prohibit the assignment or transportation of students to public educational institutions in order to achieve a racial balance of pupils at such institutions." Persons who voted in favor of the amendment totalled 102,654; 60,681 opposed it.[72]

In July 1974, CANS also prepared a pamphlet describing the history of the court order, entitled "Education by Judicial Fiat," and became intervenors in the desegregation litigation. This intervention was not seriously pursued, however, through the Tenth Circuit appeals process.

Lastly, CANS has encouraged a number of boycotts to demonstrate citizen opposition to forced busing. The first and most successful one was a one day demonstration in February, 1974. More than half of Denver's pupil school population participated in the boycott, and approximately 36,000 students were absent from school.[73]

Soon after the opening of the 1974-1975 school term, CANS announced plans to conduct a series of boycotts on Fridays during the month of October. The action was designed to communicate citizen opposition to the court order, as well as reduce the level of federal and state support conveyed to the schools on the grounds such monies were devoted to "the indoctrination of parents and students and teachers in the workings of the plan rather than pure education."[74] The first boycott was planned in cooperation with the Boston Citizens organization known as ROAR (Return Our Alienated Rights), also confronted with a court ordered desegregation plan.

In contrast to the February, 1974 action, the October boycotts were never executed. Prior to the first Friday boycott scheduled in October, the plaintiffs obtained a temporary restraining order prohibiting CANS

leaders from encouraging the boycott. As a result, it was leaderless, and attendance in the schools was reduced only about 8%-10%.[75] The restraining order also prohibited CANS from encouraging additional boycotts, and they were cancelled. In addition, at least 375 members of CANS resigned the organization to protest plans to coordinate boycott actions with Boston's ROAR. The resignations were spearheaded by the Hampden Heights Association. According to its spokesman, Mr. Wally Becker, it was felt that it was a mistake for CANS to associate with the ROAR organization.[76]

Although CANS has been the only group to display mass resistance to desegregation planning, other events are indicative of community opposition.[77] For example, in 1970, Craig S. Barnes, a trial attorney for the plaintiffs, was severely defeated in a race for a seat in the U. S. House of Representatives in a campaign that aroused much pro and anti-busing sentiment. The busing controversy featured once again in the 1971 Denver Mayoral race, when the successful candidate conducted an advertising campaign aimed to link his opponent with Craig S. Barnes and a pro-busing stance. And in the 1972 Colorado Democratic primary for the U. S. Senate, Mr. Floyd Haskell won the nomination after placing advertisements in suburban newspapers linking his opponent with busing and amnesty.

Community opposition has continued since the promulgation of the Order, too. In April, 1974, members of the Colorado state legislature passed House Joint Resolution No. 1012 calling for an amendment to the Constitution of the United States prohibiting the assignment of students to schools on the basis of race, creed or color and granting to Congress the power to enforce this prohibition by appropriate legislation.

In May, 1974, both of Colorado's U. S. Senators voted for a Senate bill that would have limited busing to the next closest school to the child's home. That bill was defeated, but both Senators -- Peter Dominick (R) and Floyd Haskell (D) -- voted in favor of another bill that passed that would ban cross-district busing.[78]

In March, 1974, three Colorado Representatives to the U. S. House of Representatives voted for a bill to limit busing for integration to the next closest school; Colorado's other two Representatives voted against the bill.[78]

The only federal level legislative activity in 1975 involving busing for integration were amendments to two bills. One was Amendment 403 to H.R. 7014, The Energy Conservation and Oil Policy Act. This would have prohibited the use of gasoline or diesel powered vehicles to transport school children to public schools other than the appropriate grade school closest to the student's home in his school district. Representatives Schroeder (D) and Wirth (D), both with constituencies in Denver, voted against this amendment.[79]

An amendment to the H.E.W. Labor Appropriations Bill (H.R. 8069) also contained an anti-busing provision. The two Colorado Senators took different positions on this amendment. Floyd Haskell (D) voted for it, while Gary Hart (D) voted against it.[80]

Locally, the voters have also expressed their positions on busing for integration purposes. As noted above, Colorado approved a citizen initiated anti-busing constitutional amendment in November, 1974. In addition, Denver voters rejected a Denver school mill levy increase (by 61,181 to 38,605) which was widely described as money to pay for court ordered busing.[81]

In 1975, two new candidates were elected to the Denver School Board. The election involved two candidates closely identified with the CANS organization and a third who expressed strong opposition to court ordered desegregation. While one of the CANS candidates did get elected and the other came in fourth, it should be noted that the CANS victory was extremely narrow. A mere 1,064 votes separated Mrs. Bradford from runner-up Dr. Larry McLain, the latter one who was firmly committed to implementing the court ordered plan.[82]

Community opposition to busing has also been expressed in new legal action. In May of 1975, 10 Denver area residents brought suit on behalf of what they claimed to be "dozens" to force the Attorney General of Colorado and the Colorado Board of Education to enforce the citizen initiated and approved anti-busing amendment.[83] Shortly after it was filed, however, the case was dismissed.[84]

Violent modes of expressing opposition to the court ordered plan had arisen previously in the city.[85] In February, 1970, shortly after Judge Doyle's first busing order, some 46 buses were destroyed or damaged by dynamite blasts. Race-related tensions flared in various schools at various times during the course of the controversy. The latter part of 1973 saw the bombing of the school administration building, bombings at other school facilities and bombs mailed to some Board members. In addition, several key participants in the plaintiffs' case have been harassed by bomb threats and menacing phone calls; Plaintiff Wilfred Keyes was the victim of a bomb attack on his home. On June 9, 1974, shortly after system-wide busing orders and nearly five years after the filing of the lawsuit, four flares taped together to imitate a bomb were found under the hood of a bus at the school bus lot which had been the site of the dynamite blast in 1970.

Recently published opinion survey information from a variety of sources indicates that while three out of four Denver residents are in favor of integrating schools, most Denverites, with the exception of blacks, categorically reject the theory of busing children to achieve racial balance.[86] Opposition to busing appears to be about the same for parents with bused children and for the general public; and in 1974, 73% and 72% voiced opposition, respectively.[87] The most frequently cited reason (in a sample of 350 respondents) among those opposing busing was "family inconvenience or hardship." This involved such factors as "getting children ready earlier in the morning, accessibility to the school, distance from the school and difficulty in getting involved with the school for extra-curricular activities."[87] (See Table 13)

Opposition to busing appears to have intensified in recent years (See Table 14); and when asked for solutions to the problems of unequal educational opportunity, broad support from all racial groups is indicated for spending more money in disadvantaged schools and only weak support is found for the transportation of pupils. (See Table 15)

A survey of 200 Denver and 200 suburban-ring homeowners residing in homes sold during 1973 and 1974 and of 90 Denver and 90 suburban-ring renters residing in multi-family units suggests the significance of busing in the decision to move out of Denver. Although the most important reasons for moving were the "home" and its financing and its amenities, Denverites who moved were also influenced by busing considerations. Busing was opposed by 77% of the Denver Metropolitan Area respondents, and of those who had moved to the suburban ring from Denver, 23% indicated busing was a problem at their previous address.[88] (See Tables 16 and 17)

TABLE 13

REASONS OF DENVER RESPONDENTS FOR BEING OPPOSED OR IN FAVOR OF BUSING

| Main Reasons Against Busing | Percentage of Households |
|---|---|
| Busing is a hardship on families | 32% |
| Children should go to school in their neighborhood | 12 |
| It is not an effective way to achieve racial balance | 11 |
| It is a waste of money | 6 |
| There is no need for racial balance | 4 |
| It shouldn't be forced | 2 |
| Need quality education | 1 |
| Other reasons | 4 |
| Total Percentage of Interviews | 72% |

| Main Reasons For Busing | |
|---|---|
| Provides equal opportunity for quality education | 3% |
| It is a good experience for the child | 2 |
| It is an effective way to achieve racial balance | 1 |
| All of the above reasons | 4 |
| Better for the disadvantaged | 1 |
| Must follow the court order | 1 |
| Other reasons | 2 |
| Total Percentage of Interviews | 14% |

| Reasons For Not Being For or Against Busing | |
|---|---|
| Does not concern my family | 5% |
| Need more time to make a decision | 2 |
| Don't have enough information | 2 |
| Have mixed feelings | 1 |
| Total Percentage of Interviews | 10% |

Source: Rocky Mountain News, June 8, 1975. Report on study conducted by Rocky Mountain Research Institute during Fall, 1974.

TABLE 14

WILLINGNESS TO HELP INTEGRATE THE PUBLIC SCHOOLS

"Suppose people in your neighborhood were asked to send their children to school a little farther away from home than the one they go to now to help integrate the schools in Denver: Would you be willing to do this or not?"

| | Denver 1972 Survey[a] | | | | | | | | Denver 1970 Survey[b] | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Anglos | | Blacks | | Sp-Sur. | | Total Sample | | Denver | 10-City Av. |
| Willing | 19% | (96) | 61% | (92) | 15% | (23) | 26% | (211) | 23% | 30% |
| Not Willing | 73% | (365) | 30% | (45) | 73% | (110) | 65% | (520) | 71% | 66% |
| No Answer or Not Ascertainable | 8% | (39) | 9% | (13) | 11% | (17) | 9% | (69) | 6% | 4% |

Sources (a) Denver Urban Observatory, Majority-Minority Citizen Voter Attitudes in Denver, 1972, Denver, Colorado

(b) Denver Urban Observatory, Citizen Attitude Survey, 1970, Denver, Colorado

TABLE 15

ALTERNATE SOLUTIONS TO THE PROBLEM OF SEGREGATED SCHOOLS

"There have been several proposed solutions to the problem of segregated schools; four of these are listed below. Please indicate whether you favor, disfavor or have no opinion on each."

| | Anglos | Blacks | Sp-Sur. | Total Sample |
|---|---|---|---|---|
| A. The Denver schools district should go ahead with a major busing program as a means of providing quality education to a maximum number of school children. | | | | |
| Favor | 15% (75) | 67% (101) | 25% (38) | 27% (214) |
| Disfavor | 81% (404) | 23% (35) | 60% (90) | 66% (529) |
| No Opinion or Not Ascertainable | 4% (21) | 9% (14) | 15% (22) | 7% (57) |
| B. The Denver school district should worry less about trying to achieve racial and ethnic balance in the schools and concentrate more on spending more money to improve the quality of schools in the disadvantaged areas of the city. | | | | |
| Favor | 86% (431) | 69% (104) | 84% (126) | 83% (661) |
| Disfavor | 10% (50) | 18% (27) | 6% (9) | 11% (86) |
| No Opinion | 4% (19) | 13% (19) | 10% (15) | 7% (53) |

Source: Denver Urban Observatory, Majority-Minority Citizen Voter Attitudes in Denver, Denver, Colorado, 1972.

Note: Some percentages do not add up to 100 percent due to rounding.

TABLE 16

WAS SCHOOL INTEGRATION A PROBLEM AT PREVIOUS ADDRESS?

| Reply | Denver and Suburban Ring (Metropolitan Area) | Denver | Suburban Ring | Denver from Suburban Ring | Suburban Ring from Denver |
|---|---|---|---|---|---|
| Yes | 14% | 18% | 10% | 0% | 23% |
| No | 86 | 82 | 90 | 100% | 77 |
| Total | 100% | 100% | 100% | 100% | 100% |

Source: Gordon E. Von Stroh, "Denver Metropolitan Area Residential Migration: Why Citizens are Moving In and Out of Denver and the Suburban Ring." Denver Urban Observatory, Denver, Colorado, 1975, Table 23, p.32/

TABLE 17

MOST IMPORTANT REASON FOR MOVING TO THE SUBURBAN RING FROM DENVER

| Reason | Percentage |
|---|---|
| Home-Financial | 41% |
| Neighborhood Character | 27 |
| Home-Amenities | 16 |
| Schools | 16 |
| Employment | -- |
| Marital or Family Change | -- |
| Total | 100% |

Source: Gordon E. Von Stroh, "Denver Metropolitan Area Residential Migration: Why Citizens are Moving In and Out of Denver and the Suburban Ring." Denver Urban Observatory, Denver, Colorado, 1975, Table 11, P.19.

A Denver Post survey of headmasters and admissions officers in five Metro area private schools indicates that applications in 1974 were unusually high and overrepresented by Denver-area residents. In the case of one K through 12 school, Colorado Academy, inquiries for enrollment more than doubled between 1973 and 1974 (from 70 to 147). The Kent-Denver Country Day School estimates that it received 50 to 60 Denver-area students in 1974 who probably would not have come had the desegregation decree not gone into effect. The survey also reports that applications to private schools in 1975 were on the whole back to normal levels, an indication of waning "panic" among Denver parents regarding desegregation. [89]

Despite evidence of fairly substantial opposition to school desegregation, community reaction in Denver must be characterized as relatively peaceful and mild. The violent hysteria that has gripped other cities confronted with similar problems has not appeared.

Community Support for the Desegregation Plan

Opposition has not been the only response of the Denver community to court ordered desegregation. Indeed, numerous organizations and actions indicate that support for implementing the plan in a peaceful and orderly manner is the goal of a generous segment of the population. In addition to the traditional civil rights groups and Park Hill neighborhood associations, several groups have formed specifically for the purpose of facilitating implementation of the desegregation plan. One such group is the organization called PLUS (People Let's Unite for Schools).[90] PLUS boasts a membership list that includes such prestigous organizations as the Denver Bar Association, the League of Women Voters, the Metro YMCA, the Anti-Defamation League of B'Nai B'Rith, various neighborhood associations and organizations

representing teachers and other school personnel. It takes no position on the litigation in the desegregation controversy and is purely committed to making the plan and order promulgated by the Court effective.

A second such organization is CHUN-DECCA (Capitol Hill United Neighborhoods and Denver East Central Civic Association). Like PLUS, CHUN-DECCA is committed to the implementation of the decree.[91]

In the political arena, events suggest less intense opposition to the court order. Denver's Representative to the U. S. Congress, Patricia Schroeder, was successfully re-elected in November, 1974, in a campaign against State Legislator and School Board member Frank Southworth.[92] An opponent of forced busing, Mr. Southworth campaigned on a primarily anti busing platform. Despite Representative Schroeder's record in support of court ordered desegregation plans, she won by a healthy margin.

In 1974, the Colorado voters elected Gary Hart (D) to the Senate over incumbent Peter Dominick (R). Hart has consistently voted against anti-busing amendments. Dominick's voting record showed clear support for the prohibition of busing to achieve racial integration in schools.

In the 1975 school board elections, Mrs. Virginia Rockwell, an outspoken supporter of implementing the court ordered desegregation plan, won a decisive victory. The 46,812 votes cast in her favor exceeded those received by the second place candidate, CANS candidate Naomi Bradford, by more than 10,000 votes.[93]

Activity in the Colorado legislature during the past year also suggests widespread, bipartisan acceptance, if not support, for the court ordered desegregation plan. Two pieces of legislation are relevant.

One is S.B. 2, signed into law July 14, 1975, concerning state

reimbursements to local districts for expenditures in the acquisition of school buses. S.B. 2 (now §§ 22-51-101, et seq., Colorado Revised Statutes 1973) somewhat modifies the operation of a special state fund historically used to assist the local school districts with bus purchase expenses. First, the new law gives state assistance not only to district purchases of buses used in transporting pupils from home to school and back; but also to purchases of buses used in school-to-school busing, such as in the court's final plan. Second, the new law adds the hitherto unseen condition to state assistance that applicant school districts make known not only funds they have received for bus purchases from other sources, but also funds they were entitled to receive from other sources. Both provisions are clearly directed at the Denver school district. S.B. 2 received extensive bipartisan support; the extent of the funding of its pupil transportation fund by the legislature is yet to be determined.

H.B. 1295, a major bilingual-bicultural bill, was signed into law June 30, 1975. The bill creates the mechanics by which the state board of education, the state department of education and a special appointive statewide steering committee can administer a new bilingual-bicultural policy. The policy requires local districts to canvass their pupil population for "linguistically different" (bilingual) pupils and to offer the parents of these pupils the opportunity of participating in a bilingual-bicultural program. Each district develops its own program for pupils electing to take advantage of it: courses, community participation, administration, et cetera. The act is effective for the 1975-1976 school year, but more stringent planning requirements are first imposed on local districts after 1975-1976. An approved district plan qualifies for

substantial state financial support. For the 1975-1976 fiscal year, the legislature appropriated $2,350,000 for implementation of the act. It is noteworthy that the Court of Appeals did not take formal notice of this new law in justifying its reversal of the District Court's final provision for bilingual-bicultural programs in Denver. The Court of Appeals' decision, however, does appear to notice the act implicitly.

## IMPLEMENTING THE COURT ORDER

### The Creation of a Monitoring Network

The most significant factor in the implementation of the Court ordered plan has been a body created by the Order itself. Subsequently known as the Community Education Council (CEC), the Monitoring Commission created by Judge Doyle in his Final Order and Decree of April, 1974, was composed of court appointed members of the community who were nominated by the parties to the case. The Order provided that the Commission be furnished with secretarial services by the district and instructed the district to cooperate with the Commission in full.

As defined by the Order, the duties of the Commission were to[94] coordinate efforts of community agencies and persons interested in the implementation of the desegregation plan; to educate the community on the constitutional requirement of desegregation and the court's findings and conclusions; to educate the public on the services and facilities needed to implement the plan; to receive suggestions and comments of the community regarding the implementation of the plan; to assist in working out problems with the school administration concerning the plan; to report periodically to the court and the parties on the progress of the plan and its implementation; and to provide continual monitoring of such implementation.

University of Denver Chancellor, Maurice B. Mitchell, was selected by the Judge to be Chairman of the Monitoring Commission. Chancellor Mitchell, among other things, is a past Commissioner of the U. S. Commission on Civil Rights.

As originally constituted, the Community Education Council consisted of 41 persons. Currently there are 61 members. Council members include the president of the Denver Classroom Teachers Association, members of the League of Women Voters, state legislators, ministers and other religious leaders, members of the business community, academics, the president of the Denver Chamber of Commerce, representatives of the local media, labor leaders, members of the State Department of Education, housewives and high school students.[95]

The Council met for the first time on May 10, 1974, and received instructions from Judge Doyle. Subsequently, it has met approximately twice a month as a group and more often in smaller groups and subcommittees. Meanwhile, the Council organized itself, elected officers, appointed standing committees and subcommittees. Currently, the CEC members are organized into six committees. These are an Executive Committee, a Monitoring Committee, a Transportation Committee, a Bilingual-Bicultural Committee, an Affirmative Action Committee, and a Community Education and Information Committee.[96]

In order to discharge its monitoring responsibilities, the Community Education Council decided to appoint volunteer monitors from the community to be assigned to each school.[97] Under the system, two monitors are assigned to each school or school pair at the elementary, junior and senior high school level. Ideally, monitors are expected to visit their schools on a weekly basis and to report to a specific member of the Monitoring Committee of the Community Educational Council at least once a month. As of January 28, 1976, there were 210 volunteer monitors chosen by the CEC members in the Denver public schools.[98]

The responsibilities of monitors include fact finding, information

gathering, observation, information evaluation and reporting. Fundamental is the responsibility to discern commitment on the part of the school administration, teachers, staff, students and parents to honest and effective implementation of the court plan. In so doing, monitors are encouraged to develop harmonious relationships with the school and the Council. Monitors are further instructed not to betray personal opinions on matters affecting the school, not to assume an advocacy role, and not to become involved in school matters that have no bearing on the desegregation plan.[99]

All school monitors were trained during the summer preceding the fall commencement of school in 1974 and supplied with packets of information to facilitate the discharge of their responsibilities.[100] This included information on the constitutional basis of the court Order and the provisions of the Final Order and Decree. Monitors were also supplied with detailed information on the school boundaries, community characteristics and programs for the implementation of the Order of schools to which they were assigned. In addition, each monitor was supplied with an evaluation report form and the name of a Council member directly responsible for his or her school.

By August 15, 1974, the monitoring network in the Denver public schools was intact and functioning. Within the next two weeks, monitors arranged to meet with school principals to obtain basic information about the school and programs related to the Order, as well as to identify difficulties that might impede implementation of the Order. Not insignificantly, the monitor-principal meeting was also designed to acquaint the principal with the scope of monitoring activities.

Monitor activity was particularly intense during the opening of school in 1974, and monitors aware of serious tensions or problems relayed this to the school principal and the member of the Council most directly responsible for his or her school. In subsequent visits, monitors observed classrooms, in-service training programs, parent gatherings, staff meetings, and transportation arrangements. After each visit, they completed a report sheet about the school situation they encountered; these were submitted to the Community Education Council. Regular reports on monitoring activities were conveyed to the court.

Several actions by the court were indispensable to strengthening the CEC and makings its monitoring network effective. For example, when the school administration initially insisted that all monitoring services be conducted by the court appointed members of the Council and not by Council-supervised volunteers recruited from the community, the matter was referred to the Judge who ruled in favor of the Council. Next, when the administration refused to allow monitors to enter schools without identification which would have impaired their ability to monitor unobtrusively, the matter was referred to the court, and the administration was required to distribute identification badges making for easy and rapid identification. When the administration wanted to circumscribe school concerns and places subject to monitor overview, the issue was once again referred to the court. Once again, the court decided in favor of the Council, thereby permitting the operation of an autonomous monitoring system with sufficient independence and freedom to achieve effective supervision.[101]

The Council's effectiveness also results from a number of internal

organizational and procedural decisions which facilitated its operation. According to the Council's Chairman, Chancellor Mitchell, two decisions at the start were critical to its successful operation. Noting the variety of members on the Council, including groups with diametrically opposed constituency bases and political persuasions, Mitchell established that the Chairman was the only one who could speak for the Council in any public or official occasion. This eliminated the problem of individual Council members making conflicting and provocative statements to the press and public. The heterogeneity of the Council members also led Mitchell to dispense with strict parliamentary procedures; the Chairman acquired the right to determine consensus among the Council members.[101]

According to several persons interviewed in this study, the Community Education Council has been the single most important factor in the implementation process. Gordon Greiner, the plaintiffs' chief trial lawyer, feels the CEC has made possible the relative success of the Denver plan.[102] George Bardwell, key researcher for the plaintiffs, feels that at least part of the reason Denver has avoided the violence and hostility that desegregation decrees have met in other cities is the widespread involvement of the community in the implementation of the plan through the CEC.[103]

At the close of the first school year (1974-1975) under the desegregation plan, Judge Doyle himself lauded the CEC members, the 200 voluntary monitors and CEC Chairman, Mitchell, for their efforts. Noting the time-consuming nature of the voluntary monitoring responsibilities, he termed it "the greatest bargain the community could have." And he attributed the success of the program "in large measure to the magnificent leadership furnished by Chancellor Mitchell."[104] Asked by Mitchell several months later about the

future of the CEC, Doyle replied that the CEC must continue to function and report to him until the school district shows "more responsibility in the field of desegregation, of which there is no convincing evidence yet." He reported that he expected the CEC to run at least another year and that he hoped it would continue indefinitely as a community sponsored group.[105]

Of course, not everyone is enthusiastic about the Community Education Council. According to Superintendent Kishkunas, monitoring is totally unnecessary since the schools are staffed with professionals who have demonstrated an ability to implement the court decree and a commitment to the law. Moreover, according to Dr. Kishkunas, monitors are often highly critical and enthusiastic to discover problems, and their reports are selective and prejudiced.[106] Mr. Southworth, an ex-school board member elected in 1969 on an anti-busing plank and an unsuccessful 1974 candidate for the U. S. Congress who emphasized busing in his campaign, feels that the Community Education Council is less than neutral. Southworth believes the members of the CEC are in collusion to effect social reform through the schools. According to Southworth, Judge Doyle appointed the Dean of the Denver Law School and managers of the major newspapers to the Council to allow the organization to pose as an impartial and widely representative group of citizens and community organizations. But in fact, he says, CEC members are tightly knit together by their residence in the same communities, membership in similar associations and shared political and social beliefs.[107] And in July, 1975, CANS (Citizens Association for Neighborhood Schools) demanded that Mitchell and five other CEC members resign from the Council on grounds that they were not Denver residents -- a demand brushed off by Judge Doyle and the six CEC members.[108]

Despite the differences in view expressed by its advocates and opponents, the Community Education Council must be recognized as unique. It represents the first major effort by a court to enlist the assistance of lay citizens, on a voluntary basis, to monitor a court order. The information the court receives from the CEC is generally based "on the closest view possible of what is actually happening in the district, schoolhouse by schoolhouse, and in some cases, class by class."[109] Neither a plaintiff nor a defendant, the CEC also enjoys the position of being independent of the bitter legal controversy concerning the formulation of the final plan. But independence has not been sufficient for the Council to avoid a variety of problems in the course of discharging its responsibilities. These problems have decreased as implementation has moved into its second year, but the problems are still real.

## Problems in the Implementation of the Court Order

The Council's chief obstacle in implementing the Order is the opposition of certain members of the school board and members of the school administration to the desegregation Order and Decree.[110]

### A. Problems With the School Board

The court's and the CEC's involvement has been viewed by some school board members as a fundamental political threat to autonomous powers of the district. Without exception, the board has pursued every possible means of legal appeal to delay execution of the Order. In a letter to Judge Doyle on September 20, 1974, the CEC reported the then school board President, James Perrill, freely admitting that the school board would

pursue every possible avenue to delay or reverse the court Order.[111] In May, 1975, newly elected school board member Bradford "openly refused to participate in pairing, and [has] urged others to evade the law."[112] Months later, in December, 1975, only weeks before the Supreme Court refused to hear the school board's appeal, Mrs. Bradford reiterated her public opposition to the court Order and her opposition to the CEC.[113]

The school board's attitude has been evidenced in several other substantive matters. In May of 1975, three weeks before the new school board election, a four-man majority approved three-year contract extensions for Superintendent Kishkunas and three top aides, despite the fact that none of the contracts were due to expire before the election.[114] In November, 1975, the school board voted a $100,000 decrease in the school budget and indicated that this decrease was in the funds "designed for desegregation costs."[115] During the first school year during which the plan was implemented (1974-1975), the Denver school board ignored invitations to meet with the Community Education Council.[116] During the 1975-1976 school year, a meeting of three school board members, Superintendent Kishkunas and the CEC members has taken place. In January, 1976, however, a Resolution was introduced before the board prohibiting the Superintendent and members of his administrative staff from attending any private meetings with the CEC members, committees or chairmen unless the meetings are announced and open to the public, taped and transcriptions and verbatim written minutes furnished to the Board of Education. The Resolution was defeated, but formal action by the board to open up communication with the CEC is yet to come.

Other problems have included the "failure of the School Board to act

to request funding under certain Federal Programs" which entitle school districts to assistance in achieving racial balance. One anticipated result of this failure was the impaired ability of the district to comply with the Final Decree. Finally, the school board has consistently refused to compensate the Council for expenses incurred in the course of discharging its court ordered responsibilities. Although the board pays the salary for a secretary to coordinate the activities of the Council, all members of the Council serve on a voluntary, unpaid basis, as do school monitors. The Council is housed in the Office of the Chancellor at the University of Denver where it pays no rent or overhead expenses. According to Mitchell, the school board is only billed for expenses such as mailings that are directly linked to its court ordered activities. Without fail, he has been forced to obtain a court order to assure reimbursement for such expenses. Indeed, last year Mitchell possessed a check from Judge Doyle to cover duplication expenses for CEC activities incurred at Mitchell's own expense.[119]

B. Problems With the School Administration

Problems with the school administration also appear to stem from fundamental opposition to the Decree. Superintendent Kishkunas has acknowledged that until completion of the appeals process, school officials will merely comply with the letter of the Order.[120] One major consequence of this kind of official position has been the reluctance of teachers and school administrators to comply with the plan.[121]

The administration's opposition is seen in its response to various programs called for in the Decree, e.g., the creation of Bilingual-Bicultural Programs[122] and the so-called East High-Manual High Complex.[123]

Both are outlined in rough in the plan; timetables for implementation are not specified. As a result, little progress was made during the first year of the Decree toward successful implementation. The job of supervisor for the bilingual-bicultural program was posted only a few days before the first of September, 1974, making it impossible to put a planning program in effect in time to comply with the court's wishes. And as finally established by the administration, the Bilingual-Bicultural Program apparently fails to make full utilization of its resource teachers. The latter are resented by many regular classroom teachers and in some instances are kept from participation in regular instructional duties.[124]

With respect to the East-Manual Complex, the Council reported to the Judge as late as January, 1975, that the administration was only "going through the motions" regarding the Complex; and that "in truth they do not support or promote the general ideal of the Complex."[125] During the first semester, only about 10 percent of the pupils in each school were involved in joint courses, and these were mostly consolidations of low enrollment units in each school. In June, 1975, the CEC report accused the administration of using the Complex as a convenience rather than to share the advantages of both schools.[126] The October, 1975, report, however, is much more encouraging. The report indicates that more students are taking part in the Complex course opportunities and participating in extra-curricular activities. It also notes considerable upgrading of the Manual programs and increases in students who pursue academic rather than vocational programs.[127]

Still another difficulty has been with the nature of the in-service training program supplied by the school administration for teachers and school staff members. Chancellor Mitchell notes that the in-service training procedure as it currently exists alienates teachers. Training sessions were initially offered during after school hours. Although teachers are reimbursed for their time, all training which occurs during non-school hours is widely resented by the teaching staff and meets with stiff opposition.[128] More recent questions have been raised with respect to the content of such training sessions and their relevance to classroom situations.[129]

Affirmative Action has been another area of concern. In 1975, the administration interviewed applicants for the post of Bilingual Bicultural Supervisor in advance of posting the job.[130] The adopted Affirmative Action plan lacks specificity and implementation timetables.[131] CEC recommendations to the court deal in part with remedying these lacks.

In some areas, however, such as the development of procedures to deal with parents who refuse to allow their children to participate in paired situations, the administration has been helpful.[132] Most monitors report that school principals are exceedingly cooperative. In general, the CEC reports characterize their relationship with the administration as a "workable" one,[133] and, it appears, certainly better in year two of implementation than in year one.

C. Problems Arising From the Nature of the Plan

The problems arising from the implementation of the plan, however,

do not arise alone from the reluctance of the school board and the school administration to participate in its successful effectuation. Many problems are inherent in the nature of the plan, and their solution may not be accomplished short of a court revision of the plan under question.

Examples of fundamental problems associated with the plan that may not necessarily be blamed on the reluctance of the school district to cooperate are the problems of Title I federal programs, the part-time paired school situation and the limited geographical scope of the desegregation Order and Decree. Title I programs provide allocations of special services to students in low income neighborhoods. The handicaps of the students are not in themselves a qualifying condition. When students from such low income areas are bused to a higher income area, the new area does not qualify for Title I funded programs and students are deprived of such services as a result of being bused. While the problem associated with children in a paired situation was resolved by allowing the student to receive such additional help in his or her home school, the problem for the "satellite" student full-time at another school remains unresolved.[134]

The problems in the operation of the paired school programs are considerable.[135] Although reports for the 1975-1976 school year show that pairing is working more smoothly, much confusion is still associated with the assignment of support personnel such as nurses, social workers and librarians to both members of the typical pair of schools. Pairing has been blamed for the underutilization of school facilities. Curriculum is often not coordinated between schools, and students receive duplicated instructions in both school settings. Hispano students at times do not benefit from Bilingual-Bicultural Programs because of pairing. The time

lost in busing under part-time pairing has been a source of complaint. Students, it is argued, do not get the supplementary help they got previously, teachers do not have enough time to get to know the "total pupil," and children must relate to double the number of persons they formerly had to relate to. As a result, there is at least some sentiment for all-day pairing (as proposed by the plaintiffs and currently required "within a reasonable time" by the latest decision of the Tenth Circuit Court of Appeals.)

The loss of pupils the district has experienced in the past two years has created concern, particularly in 1974 when 7,157 fewer pupils were enrolled in the schools (3,857 more than would be expected on the basis of past trends in declining enrollment). This pupil loss has led many to question the ultimate feasibility of a desegregation plan limited to the City and County of Denver. Declines in Anglo enrollment have meant that many of the enrollment boundaries developed by Consultant Finger are no longer operative; new boundaries are needed to attempt to restore ethnic balance.[136] More fundamentally, the losses of Anglo students have made it impossible for the schools to meet the ethnic balances called for in the original court Order, no matter what boundary changes are made.[137] Future ethnic trends, and the ability to move to the suburbs to avoid participation in school desegregation have ominous implications. In the words of the Community Education Council, "a white noose has been forming around the city for years."[138] In the long run, the enforcement of the Decree might depend on challenges of the political boundaries which make this noose possible.

# SUMMARY AND CONCLUSIONS

The desegregation of the Denver public schools involved nearly two decades of community controversy and six years of court battles. The formulation of the actual desegregation plan occupied another six months, and its implementation to date has consumed another two years. The story began with the migration of blacks eastward from the central city, away from traditional black neighborhoods, into traditional white neighborhoods of Denver. The school board's response was to maintain racial segregation in the schools in the wake of neighborhood change. Although this scenario is common to a number of communities which have experienced desegregation controversies, certain factors unique to Denver may help to explain the course of community mobilization and legal confrontation that transpired.

## Analysis of Community Mobilization

Although panic selling and white flight accompanied the arrival of blacks in Northeast Denver neighborhoods (Park Hill), circumstances were quite different from those to be found in other Northern cities. Principally, blacks who migrated to Denver tended to be educated and skilled members of the labor force. As a result, high proportions of blacks were homeowners and high levels of black political participation were common. This meant that the black population was more equipped to exert pressure to improve the quality of education in its schools. The middle class status of the black population also meant that there was less social distance between whites and blacks in Park Hill which was to become the seat of the desegregation controversy. As a result, in addition to the

traditional civil rights groups such as CORE and NAACP and black politicians, school desegregation became the concern of a variety of biracial community organizations dedicated to the preservation of stable, integrated neighborhoods in Northeast Denver.

The response of the school board to broadly based community pressure concerning segregation and educational inequality was initially one of acquiescence, rather than one of resistance. In 1962, faced with widespread protest over the proposed construction of a school in Park Hill, the school board halted its construction plans and created a committee to study school segregation and educational quality. The board subsequently initiated a voluntary open enrollment program, a second study committee, and some compensatory educational programs in minority schools. The board also developed a plan to foster racial mixture in the schools by creating intermediate schools which drew students from larger attendance areas than had been previously delineated. Finally, under extreme community pressure, the school board approved a resolution directing the school superintendent to develop an integration plan with consideration for the use of transportation to achieve racial balance. And subsequently, the school board adopted three resolutions to alleviate school segregation in Park Hill on the high school, junior high school and elementary school level.

Changes in the personal socioeconomic and ideological composition of school board members and the politicization of civil rights issues both explain why resistance to school desegregation hardened so dramatically. As numerous studies show, socioeconomic status is related to race liberalism.[139] High status persons are more likely to be liberal and sympathetic to civil rights demands, while low status persons tend to be conservative and

resistant to civil rights demands. In the late 1960's and early 1970's, the upper class profile of the school board began to change and persons of lower socioeconomic status were elected to the school board. This coincided with stiff board resistance to civil rights demands.

Concurrently, school matters became highly politicized. School board races and school bond elections became focal points for highly charged and dramatic confrontations between community members opposed to and supportive of school desegregation. The earliest instance of this was in 1967 when two persons were elected to the school board with the support of the Republican Party, who were clearly identified as opposed to busing students. Their leading opponents were backed by an inter-racial group of civil rights liberals and supported by the Democratic Party Executive Committee. Several months later, a school bond issue for the construction of intermediate schools designed to foster racial balance, was defeated. The defeat was attributed to busing and other integration factors. In 1969, another school board race featured the busing controversy. The pro-desegregation candidates were endorsed by the Democratic Party; the victorious anti-busing opposition received the support of the Republican Party. Throughout the period, busing also featured in a variety of campaigns for state and national office, and with few exceptions, pro-busing candidates were defeated.

With the politicization of the desegregation issue, individuals who could be identified as political professionals rather than civic-minded elitists sought positions on the school board. As other studies have shown,[140] political professionals, in contrast to school board members recruited from the civic elite, tend to be more conservative on civil rights issues. This contributed to the board's reversed position on desegregation matters.

Another consequence was the development of constituency based school policy-making. In place of circumspect, non-partisan, education administration, decision-making became highly public and visible. And school board members saw themselves as elected to uphold a pro or anti-busing position.

With the politicization of the desegregation issue and the attraction of professional politicians and lower class individuals less tolerant of civil rights demands to positions on the school board, the barriers to community acceptance of desegregation became insurmountable. In face of this, the proponents of desegregation turned to a higher authority.

Analysis of the Litigation

The plaintiffs in the Denver case came to the courtroom in 1969 equipped with an arsenal of legal and academic expertise. They came with reams of computerized statistical information, maps, charts, graphs, and documentary evidence. They were directly assisted by the foremost organized and activist legal counsel in the desegregation area in the country (the Legal Defense Fund). They and their sympathizers, perhaps, epitomized the strongest impulse of the liberal civil rights movement which had developed during the 1960's.

Nevertheless, what may distinguish the Denver plaintiffs more than anything else is the adventitious timing with which they sought legal relief. They chose to sue because of the resounding defeat in an election of the cause they believed in. Yet, it so happened at the time they made this choice that their primary adversary, the school board for the district, had just taken the first open and official action to reverse a policy designed to desegregate which had been evolving for nearly a decade. This

action was the rescission of Resolutions 1520, 1524 and 1531. Resolutions 1520, 1524 and 1531 were themselves the culmination of the decade's growing recognition of the need to desegregate schools. The Resolutions were official acts. Their rescission on June 9, 1969, was another official act.

As a result, at least as to the portion of the school district which would have been affected had the three Resolutions been allowed to stand, the plaintiffs' burden of proof at trial as civil rights complainants was greatly reduced. If they could demonstrate the existence of segregation in schools, the opportunity befell them to prove causative state action directly rather than circumstantially. Few manifestations of official state policy implementation could be more overt than the rescission of the three Resolutions.

Challenging this manifestation of state action head on, however, required the seeking of injunctive relief: the effects of the rescission had to be halted immediately. It also required bifurcating what was, in embryo, a comprehensive and all out attack on the entire school system. First came an injunctive relief hearing on the relatively small Park Hill component of the system. Trial on the rest of the system did not come until later. Due to the fortuities of the state of law, the bifurcation arguably added four years to the lawsuit. Judges argued expansively about the significance of the relationship between the two parts of the case. On the other hand, it is just as arguable, and probably more probable, that the bifurcation -- or, rather, the rescission of the Resolutions which

precipitated it -- more than anything else led the plaintiffs to a convincing legal victory.

For it was precisely the plaintiffs' clear and convincing case on official state action in the hearing on injunctive relief which became the touchstone of a Supreme Court decision which mandated the desegregation of the Denver schools and probably will affect the desegregation of schools in northern cities for years to come.

Analysis of the Plan and Its Implementation

The recalcitrance of the school board and the school administration defendants in the Denver lawsuit forced the Federal Judge to make an end run around these defendants in both the formulation and the implementation of the desegregation plan. In the formulation, the Judge retained his own expert. Since the school board and administration had given him no help, his only other alternative was to turn to the plaintiffs. This alternative the Judge eschewed. No one will ever know exactly why. It is logical speculation, however, that, knowing whatever plan he adopted would be unpopular with large numbers of citizens, he hoped at least to avoid the appearance of partiality in his final decision. Thus, through the court appointed expert a compromise plan was adopted which, in the eyes of many, fell short in sophistication and workability compared to a plan such as the plaintiffs. The plaintiffs' plan involved full-time busing and virtually equal sharing of the burdens of busing as between minorities and Anglos. But the Court of Appeals has said (and the Supreme Court has refused to review the statement) that equal sharing of such burdens is not constitutionally required. The part-time pairing part of the plan, however, will be required to be replaced by full-time busing under the Court of Appeals latest reversal.

In the implementation of the plan, the Judge has bypassed the school board and the school administration. He had no choice. Neither the board nor the administration were any more willing to put an unwanted plan into practice than they were to go through the motions of dreaming up an unwanted plan in the first instance.

The Judge created his own monitoring council, the Community Education Council. In effect, he empowered this Council to act -- under the imprimitur of the court -- as the superego of the board and administration. While obviously the latter continue to carry out day-to-day operations of the district, in one important regard they are no longer as autonomous as they would otherwise be by custom and law. The prolific network of school monitors created by the Council is constantly peering over their shoulder. The network draws from a cross-section of the community. It reaches into every school. It is, like every superego, greatly resented, but it cannot be escaped.

Through the network, the Council possesses an effective, ingenious capacity to fulfill its monitoring responsibility. Through the Council, the Court possesses a practical and relatively convenient instrumentality for maintaining meaningful jurisdiction over its plan. The court relies on the Council. The Council gives it information. Orders to the administration or board based on information from the Council, since such information is ultimately that produced by the network and the network is the community, are more likely to have community support. Having community support they are more likely to be implemented and peaceably abided.

This is the success of the plan in Denver and its implementation. Now that the appeals process has been exhausted, the school administration and

board may hopefully put their resources and authority behind the spirit as well as the letter of the plan.

## FOOTNOTES

1. The preceding paragraph was based on Charles P. Rahe, The Economic Base of Denver, 1974, (Denver, Colorado: Denver Urban Observatory), Chapter 2.

2. On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, Brief for Respondents, p. 9.

3. op. cit., Rahe, p. 11.

4. U. S. Bureau of the Census, Census of Population and Housing: 1960, Census Tracts, Final Report, Denver, Colorado, SMSA.

5. U. S. Bureau of the Census, Census of Population and Housing: 1970, Census Tracts, Final Report PHC (1)-56 Denver, Colorado, SMSA.

6. Appendix, Volume 5, Supreme Court of the United States, October Term, 1971, No. 71-507, (Wilfred Keyes, et al.), p. 2002a.

7. The preceding two paragraphs were based on the U. S. Bureau of the Census, Census of Population and Housing: 1970, Census Tracts, Final Report PHC (1)-56 Denver, Colorado, SMSA.

8. Charles F. Cortese, "The Impact of Black Mobility: Selective Migration and Community Change." Final report to the National Science Foundation, Department of Sociology, University of Denver, 1974, p. 12.

9. The preceding paragraph was based on Cortese Ibid, pp. 12-15

10. The preceding paragraph was based on the U. S. Bureau of the Census, op. cit., 1970.

11. op. cit., Cortese, p. 54.

12. The preceding two paragraphs are based on Charles F. Cortese and Judith E. Leftwich, "A Technique for Measuring the Effect of Economic Base on Opportunity for Blacks," Demography, Vol. 12, No. 2 (May, 1975).

13. George E. Bardwell, Park Hill Areas of Denver 1950-1966. Denver: Commission on Community Relations, 1966, p. 5.

14. Ibid., p. 6.

15. Doyal D. O'Dell, The Park Hill Area of Denver: An Integrated Community? Denver: The Denver Urban Observatory, 1973, p. 12.

16. Bardwell, op. cit., p. 11.

17. Ibid., pp. 19-23.

18. The following three paragraphs are based on Charles F. Cortese, "The Impact of Black Mobility: Selective Migration and Community Change," op. cit., pp. 8-11.

19. The following two paragraphs are based on Charles P. Rahe, op., cit., pp. 17-30.

20. Mr. Fred Holmes, State Department of Education, Personal Interview, April 17, 1975. Telephone Interview, February 5, 1976.

21. The Rocky Mountain News, June 20, 1949.

22. The Rocky Mountain News, June 16, 1951.

23. Harriet Tamminga, "A Decade of Controversy in School Policy-Making: The Desegregation Issue." A paper presented at the Rocky Mountain Social Science Association meetings, El Paso, Texas, April 25-27, 1974.

24. The Rocky Mountain News, May 20, 1965.

25. Mr. Paul Hamilton, Director Black Educators United, Personal Interview, with Harriet Tamminga, 1972.

26. The Denver Post, April-May, 1965.

27. The Denver Post, April-May, 1971.

28. The Denver Post, May 11, 1975.

29. The Denver Post, April-May, 1973; May 11, 1975.

30. The following three paragraphs are based on the Denver Public Schools, Adopted Budgets for the years 1967-1976, and the Colorado Department of Education, Consolidated Report on Elementary and Secondary Education in Colorado, 1972-1976.

31. The preceding paragraph was based on news articles that appeared in The Denver Post, 1971-1973 and personal interviews with Mr. Fred Thomas, former Chief of Elementary and Secondary Education, Office of Education, Department of Health, Education and Welfare, Region VIII, on April 17, 1975, and Dr. George Bardwell, Professor of Mathematics, University of Denver and key researcher for the Plaintiffs on April 7, 1975.

32. The Denver Post, January 11, 1976.

33. The Denver Public Schools, Superintendent's Adopted 1976 Budgets.

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107. Frank Southworth, Personal Interview, April 17, 1975.

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110. Maurice B. Mitchell, Personal Interview, May 7, 1975.

111. Letter of Maurice Mitchell to Judge Doyle, September 20, 1974, p. 6.

112. Community Education Council, "Report to Judge Doyle - Denver Public School Year 1974-1975," May 29, 1975, p. 4.

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