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DISCRIMINATION IN THE EDUCATION PROCESS BASED ON RACE*

DEBORAH MAYO-JEFFRIES**

HISTORY

Prior to the ruling in *Brown v. Board of Education*,¹ state and local governments determined who would be educated. Between 1800 and 1835, it was against the law to educate African-Americans.² However, with the gradual enactment of compulsory school attendance laws by 1918, every child in every state was required by law to attend school.³

Despite the law, free public education in the South for African-American and Caucasian children was not equal. A dual education system was established wherein African-American children attended school with African-American children, and Caucasian children attended school with Caucasian children. Under this system, only a fraction of what was spent to educate Caucasian students was allocated for African-American students.

Just forty years ago, African-American students in Mississippi were receiving thirty percent of what was spent on Caucasian students for education.⁴ In 1947, a parent in Clarendon County, South Carolina had to petition the school board to provide school bus transportation for his and other similarly situated African-American children. The children were required to walk for miles to get an education that amounted to nothing more than rudimentary training in "dark, rickety" school houses.⁵

Some southern states did not allocate funds for African-American schools at all except in the form of teacher salaries, which were as

* Some portions of this bibliography are excerpts from *Equal Educational Opportunity For All Children: A Research Guide to Discrimination in Education (1950 - 1992)* (1994).

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1. 394 U.S. 294 (1955).

2. JAMES D. ANDERSON, *THE EDUCATION OF BLACKS IN THE SOUTH, 1860-1935* 2 (1988).

3. The first compulsory school attendance laws were enacted in Massachusetts in 1852. 6 *WORLD BOOK ENCYCLOPEDIA, Education* 72b (1986).

4. John Kaplan, *Segregation Litigation and the Schools - Part II: The General Northern Problem*, 58 *Nw. U. L. Rev.* 157, 163 (1963).

5. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 13-16 (1976).

much as thirty percent lower than Caucasian teacher salaries.⁶ In the early forties, African-American teachers in South Carolina sued the South Carolina legislature for equal pay. By 1947, African-American teachers in most of the city schools were receiving equal pay. Unfortunately, the bulk of the state was essentially rural and school boards in those rural areas could find no reasonable justification for increasing African-American teacher's salaries.⁷

DESEGREGATION OF PUBLIC SCHOOLS

African-Americans believed that the only way their children could hope for equality in education would be to dismantle the dual segregated public school system. The Court in *Brown v. Board of Education (Brown I)*⁸ ruled that segregation of educational facilities denied African-American children equal protection of the law guaranteed by the Fourteenth Amendment. However, the Court did not determine the manner in which relief would be provided. The Court in *Brown II*⁹ placed the responsibility on school authorities of dismantling dual segregated school systems and effectuating the transition to a unitary school system "with all deliberate speed."

School authorities and state and local governments resisted court orders to desegregate the school system with legislation, pupil re-assignments, transfer policies, freedom of choice plans, and school closings.¹⁰ The federal court's failure or refusal to deal with this resistance resulted in only a fraction of the public school districts in the South being desegregated in the ten years following the decision in *Brown*.¹¹ The federal legislature responded with Title VI of the Civil Rights Act of 1964,¹² which provided that any program receiving federal financial assistance could not exclude any persons on the basis of race. Despite federal legislation and the *Brown* decisions, desegregation of public schools, for the most part, has occurred on a case by case basis. As a result, racially identifiable school systems continue to exist.

6. *Id.* at 256-57.

7. *Id.* at 16.

8. 347 U.S. 483 (1954).

9. *Brown v. Board of Education*, 349 U.S. 294 (1955).

10. See *Goss v. Board of Education*, 373 U.S. 683 (1963) and *Griffin v. County School Board*, 377 U.S. 218 (1964). See also Francis B. Nicholson, *The Legal Standing of the South's School Resistance Proposals*, 7 S.C. L. REV. 1 (1954).

11. James R. Dunn, *Title VI, the Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967).

12. 42 U.S.C. § 2000d (1964).

DESEGREGATION OF FACULTY AND STAFF

Although it was ruled unconstitutional to discriminate in the hiring, retention and assignment of African-American teachers displaced during desegregation,¹³ a tour of American classrooms twenty years after *Brown II*¹⁴ revealed a disproportionate number of African-American to Caucasian teachers, even in predominately African-American schools.¹⁵

A discussion of who teaches the students is significant because teachers' attitudes about race influence how students think about themselves. Teachers communicate, explicitly and implicitly, high and low expectations of students based on race. African-American students tend to be perceived as low achievers. This message is often-times communicated subtly and sometimes overtly early in the academic process.¹⁶ African-American students tend to be admonished for lofty expectations and are frequently channeled into curricula that prepare them for lower paying, laborer-type jobs traditionally held by African-Americans.¹⁷

DESEGREGATION OF PROFESSIONAL SCHOOLS

Few historically African-American institutions of higher education offer advanced degrees in medicine, law or the sciences. Consequently, African-Americans do not traditionally pursue advanced degrees in these fields. For example, in Mississippi state laws segregating the races resulted in the creation of five Caucasian and three African-American institutions of higher education. Three of the five Caucasian universities offered advanced degrees, varied and specialized programs, and a wide range of curricular activities, while all three of the African-American universities offered limited research and advanced degrees and were established mainly to train African-Americans in agriculture and teaching. Notwithstanding legislative and judicial attempts to desegregate Mississippi's university system, the racial composition of the five Caucasian schools in the mid 1980's remained between eighty percent and ninety-one percent Caucasian,

13. See J. F. Ghent, Annotation, *Racial Discrimination in the Hiring, Retention, and Assignment of Teachers - Federal Cases*, 3 A.L.R. 325 (1970). See also Note, *School Desegregation and the Office of Education Guidelines*, 55 GEO. L.J. 325, 335 (1966).

14. 347 U.S. 483 (1954).

15. During the 1975-76 school year, 62.6% of the students in New York high schools were minority, while only 8.3% of the teachers were minority. See Board of Education of New York v. Harris, 444 U.S. 130, 134 (1979).

16. EDUCATION AND GENDER EQUALITY 100, 108 (Julia Wrigley, ed., 1992).

17. WOMAN, WORK AND SCHOOL OCCUPATIONAL SEGREGATION AND THE ROLE OF EDUCATION 57, 81 (Leslie R. Wolfe, ed., 1991).

and that of three African-American schools continued to be ninety-two percent to ninety-nine percent African-American.¹⁸

In addition, those African-American students pursuing advanced or professional degrees are often confronted with racial discrimination. Virgil Hawkins, an African-American applicant to the University of Florida Law School in 1949, was denied admission solely on the basis of his race. It took seven years of court proceedings and political maneuvering before the United States Supreme Court ordered him admitted under the same admissions policies applicable to other law school candidates.¹⁹

Today, more than forty years since Virgil Hawkins applied for admission to the University of Florida, there has not been a significant change in the presence of African-Americans in professional schools. "Race discrimination" disguised as "reverse discrimination" continues to prohibit desegregation in higher education. Some admissions policies deny qualified African-Americans admission to segregated professional schools by stating that special admissions programs result in the denial of admission of some qualified Caucasians. This approach continues to use race to perpetuate segregation. The same racial classification used to perpetuate segregated professional schools could be used to desegregate them.²⁰ Special admissions policies in professional schools were an attempt to rectify past inequities against African-Americans in the educational system. However, the courts chose to view them as unequal treatment of the majority. Perhaps unequal treatment may sometimes be necessary to put one group on equal footing with another group.²¹

SCOPE OF THIS BIBLIOGRAPHY

While different minority groups have been adversely affected by unequal treatment in the education system, this selected annotated bibliography is limited to a chronology of the litigation and commentary depicting the treatment of African-Americans in the education process from 1950 to 1992. It begins with the landmark case that popularized equal educational opportunity²² and serves as a guide to federal

18. See *United States v. Fordice*, 112 S. Ct. 2727 (1992).

19. See *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413 (1956). See also Darryl Paulson & Paul Hawkes, *Desegregating the University of Florida Law School: Virgil Hawkins v. The Florida Board of Control*, 12 FLA. ST. U. L. REV. 59 (1984).

20. See Martin Redish, *Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments*, 22 UCLA L. REV. 3443 (1974).

21. See John Kaplan, *Equal Justice in an Unequal World: Equality for the Negro-The Problem of Special Treatment*, 61 NW. U. L. REV. 363 (1966).

22. *Brown v. Board of Education*, 347 U.S. 483 (1954). The Court held that segregated educational facilities deprived minority children of equal protection of the law regardless of the equality of the facilities.

legislation, federal and state cases, law review articles, and books on discrimination in education based on race.

The bibliography is divided into three main topics: (1) desegregation of public schools, (2) desegregation of faculty and staff, and (3) desegregation of professional schools. Primary and secondary sources are listed in chronological order beginning with federal legislation, followed by federal and state cases and commentary or secondary sources within each topic.

The abundance of information on discrimination in education since the decision in *Brown*²³ makes a complete listing of materials impractical. Therefore, only Supreme Court cases are included in this bibliography. These cases were found by using the American Digest System and the on-line databases, WESTLAW and LEXIS.

Secondary sources used include citations to law review articles. These citations were retrieved from the *Index to Legal Periodicals* and *Legaltrac*. Both sources yielded hundreds of articles on this topic. Only those articles that have been cited in a court opinion have been included in this bibliography. LEXIS and *Shepard's Law Review Citorator* were used to determine if the article had been cited by a court. Because *Shepard's Law Review Citorator* only cites to a limited number of journals, articles cited by the courts published in journals that are not recognized by *Shepard's Law Review Citorator* are not included. The annotations included in this bibliography were found in the *A.L.R. Index to Annotations*. All monograph entries were found at the main library and the law library at North Carolina Central University.

I. DESEGREGATION OF PUBLIC SCHOOLS

A. Federal Legislation

1. 20 U.S.C. § 1702(a) (1988).

"The Congress finds that - (1) the maintenance of dual school systems solely on the basis of race . . . denies to those students the equal protection of the law guaranteed by the Fourteenth Amendment."

2. 20 U.S.C. § 1703(a) (1988).

"No State shall deny equal educational opportunity to an individual on account of his or her race, . . . among or within school."

23. 347 U.S. 483 (1954).

3. 42 U.S.C. § 2000c(b) (1988).

“Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex, or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance.”

4. 20 U.S.C. § 1751(a) (1988).

“No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.”

B. *Federal Cases*

Brown v. Board of Education, 347 U.S. 483 (1954). In an appeal from a United States District Court decision denying African-American children admission to public schools attended by Caucasian children based on the “separate but equal” doctrine set out in *Plessy v. Ferguson*, 163 U.S. 537 (1896), the United States Supreme Court held that segregation of educational facilities deprives minority children equal protection of the laws guaranteed by the Fourteenth Amendment regardless of the equality of the physical facilities.

Bolling v. Sharpe, 347 U.S. 497 (1954). Since the Equal Protection Clause of the Fourteenth Amendment prohibits a state’s maintenance of racially segregated schools, the United States Supreme Court held that the District of Columbia’s refusal to admit African-American children to public schools attended by Caucasian students deprived them of due process of law guaranteed by the Fifth Amendment.

Brown v. Board of Education, 349 U.S. 294 (1955). The United States Supreme Court implemented the first *Brown* decision by placing the primary responsibility of dismantling dual segregated school systems and effectuating the transition to unitary racially nondiscriminatory school systems “with all deliberate speed” on school authorities.

Cooper v. Aaron, 358 U.S. 1 (1958). The United States Supreme Court held that the Governor and Legislature of the State of Arkansas have an affirmative duty to obey federal law requiring the elimination of segregated schools and conversion to a unitary system. Orders of the district court enforcing a gradual desegregation plan to begin immediately were reinstated despite opposition and obstruction by the Governor, the Legislature and mob violence necessitating the maintenance of federal troops for the protection of the African-American children.

Bush v. Orleans Parish School Board, 364 U.S. 500 (1960) (per curiam). Motions to stay a district court's abolition of Louisiana statutes enacted to prevent desegregation of certain schools in New Orleans were denied.

McNeese v. Board of Education, 373 U.S. 668 (1963). The United States Supreme Court, reversing the decision of the court of appeals, held that African-American students in segregated Illinois school systems were not required to seek an administrative remedy through state proceedings prior to resorting to the federal courts for equitable relief from school segregation.

Goss v. Board of Education, 373 U.S. 683 (1963). The United States Supreme Court, reversing and remanding the decision of the court of appeals, held that transfer provisions in a school desegregation plan based solely on race perpetuated segregation and were therefore contrary to the decision in *Brown* and in violation of the Fourteenth Amendment.

Griffin v. County School Board, 377 U.S. 218 (1964). The United States Supreme Court held that the closing of public schools in the county to avoid desegregation while using public funds to assist Caucasian students in private segregated schools was a denial of African-American student's equal protection of the laws guaranteed by the Fourteenth Amendment.

Calhoun v. Latimer, 377 U.S. 263 (1964) (per curiam). The United States Supreme Court, finding the efforts of the Atlanta Board of Education to achieve desegregation commendable, vacated the judgment of the district court and remanded the cause to the district court to test Atlanta's plan to desegregate schools by using a pupil assignment and transfer policy.

Green v. County School Board, 391 U.S. 430 (1968). Finding the school board's "Freedom of Choice" plan ineffective in eliminating dual school systems, the United States Supreme Court remanded the case to the district court and required the board to develop a new plan. The Court held that the Kent County "Freedom of Choice" plan essentially placed the burden of conversion to a unitary school system on the parents instead of the school board which had an affirmative duty to convert to a system that would dispense with "all vestiges of state imposed segregation."

Raney v. Board of Education, 391 U.S. 443 (1968). The United States Supreme Court, reversing and remanding the decision of the district court, held that the "Freedom of Choice" plan of the Gould (Arkansas) School District, a racially segregated school system, was inad-

quate in terms of compliance with *Brown v. Board of Education*, 349 U.S. 294. The district court was ordered to retain jurisdiction until it was clear that state imposed segregation had been completely removed.

Monroe v. Board of Commissioners, 391 U.S. 450 (1968). The United States Supreme Court held that the school board's "free transfer" plan to desegregate schools did not accomplish its affirmative duty to provide a unitary school system. The Supreme Court also held that while the consequences of a particular plan cannot be ignored, neither can it be used to avoid the board's constitutional obligation to eliminate segregated school systems.

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) (per curiam). The United States Supreme Court, vacating and remanding the decision of the court of appeals, held that continued operation of segregated school systems in certain Mississippi school districts under the standard of "all deliberate speed" was no longer permissible under the constitution and directed the immediate elimination of dual school systems based on color. The Court ordered the operation of unitary school systems holding that the school district had an affirmative duty to terminate dual school systems immediately and provide a realistic plan for desegregation.

Carter v. West Feliciana Parish School Board, 396 U.S. 226 (1969) (per curiam). The United States Supreme Court temporarily enjoined a court of appeals ruling that would allow three Louisiana school districts to delay desegregation of public schools.

Dowell v. Board of Education, 396 U.S. 269 (1969) (per curiam). The United States Supreme Court vacated the order of the court of appeals and held that Oklahoma City School Board's plan to desegregate school by revising school attendance boundaries should have been allowed to be implemented pending argument and decision on appeal.

Keyes v. Denver School District, 396 U.S. 1215 (1969). Absent a finding of abuse of discretion, the decision of the district court, which required partial implementation of a school desegregation plan prepared by the school board should not be disturbed.

Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970) (per curiam). The United States Supreme Court, reversing and remanding the decision of the court of appeals, held that the court of appeals had misconstrued its holding in *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969) (per curiam), when it authorized deferral of student desegregation.

Northcross v. Board of Education, 397 U.S. 232 (1970). The United States Supreme Court required the Memphis Board of Education to submit a desegregation plan that showed “real prospects” of creating a unitary system at the “earliest practical date.” The Court also held that the pupil placement law was inadequate to convert a dual system into a unitary system.

Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1 (1971). The United States Supreme Court held that courts have the authority to provide remedies to achieve unitary school systems when school boards fail to develop acceptable means of eliminating segregated public schools. Extensive busing was the desegregation plan accepted to use to satisfy the board’s constitutional obligation to desegregate public schools. The Court outlined permissible and impermissible remedies for state maintained racial segregation in public schools.

Davis v. Board of School Commissioners, 402 U.S. 33 (1971). The United States Supreme Court held that every technique available for achieving the maximum desegregation of schools must be considered, including the restructuring of attendance zones.

McDaniel v. Barresi, 402 U.S. 39 (1971). The United States Supreme Court, reversing the decision of the Georgia Supreme Court, held that the Clark County Board of Education’s elementary school desegregation plan, which involved student assignment, busing and the establishment of attendance zones based on race, did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court held that the Board of Education properly took race into consideration in its efforts to convert the dual school system to a unitary one.

North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971). The United States Supreme Court held that North Carolina’s antibusing statute, forbidding any student assignments or busing for the purpose of creating a racial balance or ratio in public school, inhibited school authorities ability to implement desegregation plans and was violative of the Fourteenth Amendment.

Moore v. Charlotte-Mecklenburg Board of Education, 402 U.S. 47 (1971) (per curiam). The United States Supreme Court dismissed appellants request for review of a district court decision declaring a North Carolina antibusing statute unconstitutional due to lack of controversy. Both parties argued that the law is constitutional.

Jefferson Parish School Board v. Dandridge, 404 U.S. 1219 (1971). The United States Supreme Court refused to stay the district court’s orders to desegregate public school in Jefferson Parish, Louisiana absent

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extraordinary difficulties incident to the transition from a dual to a unitary system.

Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971). Application for a stay of a plan designed to achieve racial balance through the school system was denied because it could not be determined if the lower court correctly applied the holding in *Swann v. Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971), which did not require that the racial composition of the school reflect that of the community.

United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972). The United States Supreme Court, reversing the court of appeals, held that the district court properly enjoined a North Carolina statute which authorized the creation of a new school district and would promoted school segregation.

Wright v. Council of Emporia, 407 U.S. 451 (1972). The United States Supreme Court held that the effect of the city's establishment of a new school district violated the requirements of the Fourteenth Amendment by impeding the process of dismantling a segregated school system.

Drummond v. Acree, 409 U.S. 1228 (1972). The United States Supreme Court denied reapplication for a stay of a lower court order for the transportation of elementary school students to desegregate the Augusta, Georgia school system.

Keyes v. School District, 413 U.S. 189 (1973). The United States Supreme Court's finding of intentional segregation of Park Hill schools in one area of a school district was indicative of segregative intent regarding other schools in that school district unless otherwise rebutted. The Court further held that African-Americans and Mexican-Americans are similarly disadvantaged minorities and should be treated as such when evaluating the segregation of a school district.

Lau v. Nichols, 414 U.S. 563 (1974). The United States Supreme Court held that school systems receiving federal financial assistance must provide an equal educational opportunity for all students regardless of race, color, or national origin as required by Section 601 of the Civil Rights Act of 1964. In this case, non-English speaking Chinese students were denied an equal educational opportunity in violation of the Fourteenth Amendment when the school system failed to provide English instruction for them.

Bradley v. School Board, 416 U.S. 696 (1974). The United States Supreme Court, vacating and remanding the decision of the court of

appeals, held that section 718 of the Education Amendments of 1972, which granted federal courts authority to award reasonable attorney's fees to the prevailing party in school desegregation cases, was properly applied in this case.

Gilmore v. Montgomery, 417 U.S. 556 (1974). The United States Supreme Court held that exclusive use of city recreational facilities by schools with racially discriminatory admissions policies or groups affiliated with those schools was constitutionally impermissible.

Milliken v. Bradley, 418 U.S. 717 (1974). The United States Supreme Court, reversing and remanding the judgment of the court of appeals, held that an interdistrict remedy for de jure segregation in the Detroit school system cannot be imposed on outlying districts absent a finding of constitutional violations or acts of discrimination affecting those districts. The remedy must be proportionate to the constitutional violation.

Runyon v. McCrary, 427 U.S. 160 (1976). The United States Supreme Court held that racially discriminatory admission policies in private schools are prohibited under 42 U.S.C. 1981. The Court held further that such prohibition does not infringe on the right of free association or privacy.

Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976). The United States Supreme Court held that the district court exceeded its authority when ordering that school officials adopt a desegregation plan that required annual readjustments of attendance zones to avoid a majority of minority students in any school.

Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977). The United States Supreme Court, vacating and remanding the judgment of the court of appeals, held that the district court's formulation of a system wide remedy imposed to eliminate racial discrimination in the operation of Dayton City schools, following the school board's repudiation of previous resolutions for desegregation, could not be justified. The Court held that there should be a system wide remedy for segregation only if there has been system wide segregative impact from constitutional violations.

School District of Omaha v. United States, 433 U.S. 667 (1977) (per curiam). The United States Supreme Court vacated the judgment of the court of appeals and remanded the case to the district court for formulation of a system wide remedy and for reconsideration in light of *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977).

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Brennan v. Armstrong, 433 U.S. 672 (1977) (per curiam). The United States Supreme Court held that a Milwaukee desegregation plan only needed to provide a remedy to the extent that there was a problem.

Columbus Board of Education v. Penick, 443 U.S. 449 (1979). The United States Supreme Court held that the Columbus Board of Education's intentional and continuous conduct promoting system wide segregation of public schools violated the Equal Protection Clause of the Fourteenth Amendment.

Bustop, Inc. v. Board of Education, 439 U.S. 1380 (1978). The United States Supreme Court denied application to stay a desegregation plan calling for extensive busing.

Board of Education v. Superior Court, 448 U.S. 1343 (1980). The United States Supreme Court denied application to stay the California Supreme Court's order requiring mandatory busing of elementary and junior high school students.

Plyler v. Board of Education, 457 U.S. 202 (1982). The United States Supreme Court held that a Texas statute denying undocumented school-age children free public education violated the Equal Protection Clause of the Fourteenth Amendment.

Crawford v. Board of Education, 458 U.S. 527 (1982). The United States Supreme Court held that Proposition I, which barred a trial court's desegregation plan requiring mandatory pupil reassignment and busing, was constitutional and was not in violation of the Fourteenth Amendment.

Missouri v. Jenkins, 495 U.S. 33 (1990). The United States Supreme Court held that a federal district court could not levy a property tax increase to provide funding to desegregate public schools but it could authorize the school district to submit a levy to the tax collectors sufficient to fund the desegregation plan and enjoin any state laws that would hinder adequate funding.

Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237 (1991). The United States Supreme Court, reversing the decision of the court of appeals, remanded the case to the district court to determine whether as of 1985 the school board fully complied with a 1972 desegregation decree to eliminate past discrimination. The Court held that before the decree could be terminated, the school board must show that, to the extent possible, it has in "good faith" eliminated all "vestiges of past discrimination." If the district court determines that the desegregation decree should have been terminated as of 1985, it should then evaluate the implementation of the

board's Student Reassignment Plan under the Equal Protection Clause.

Freeman v. Pitts, 112 S. Ct. 1430 (1992). The United States Supreme Court allowed a school system in DeKalb County, Georgia to regain control over some of its affairs (student assignment, transportation, physical facilities and extracurricular activities), but the Court required the district court to retain control over areas of faculty and administrative assignments and quality of education until the school system could demonstrate full compliance with the desegregation decree in those areas.

C. *State Cases*

1. *California*

Jackson v. Pasadena City School District, 382 P.2d 878 (Cal. 1963). The California Supreme Court, reversing the decision of the trial court, held that a thirteen-year-old African-American student, who attended a segregated school, was deprived of an equal educational opportunity when he was denied transfer to a more convenient school zone, that had been gerrymandered.

San Francisco Unified School District v. Johnson, 479 P.2d 669 (Cal. 1971). The California Supreme Court held that section 1009.5 of the Education Code could not be construed as a limitation of the school board's authority to change school zones and make student assignments as it deems necessary. Section 1009.5 applies to a school district's authority to require that students use a particular mode of transportation to and from school without parental consent.

Santa Barbara School District v. Superior County of Santa Barbara County, 530 P.2d 605 (Cal. 1975). A desegregation plan developed by the superintendent and known as the "Administration Plan" was held invalid due to its failure to comply with section 966 of the Education Code and other legal requirements.

NAACP v. San Bernadino City Unified School District, 551 P.2d 48 (Cal. 1976). The Supreme Court of California, affirming the trial court's finding of segregation in the San Bernardino school districts, held that while school districts have a constitutional obligation to desegregate regardless of the cause of the segregation they are not required to make the school systems racially balanced.

Crawford v. Board of Education, 551 P.2d 28 (Cal. 1976). The Supreme Court of California affirmed the trial court's judgment that the Los Angeles Unified School District was segregated and held that school boards were constitutionally obligated to take reasonable steps

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necessary to eliminate school segregation, whether such segregation is de facto or de jure in nature.

McKinny v. Board of Trustees, 642 P.2d 460 (Cal. 1982). The Supreme Court of California affirmed the judgment of the superior court and refused to enjoin the implementation of the Board of Trustees' desegregation plan. The Board of Trustees did not act arbitrarily. Community members were informed and were given ample opportunity to be heard and involved, and all of the requirements of the regulations set out by the Board of Education were satisfied during the development of the desegregation plan.

2. Delaware

Steiner v. Simmons, 111 A.2d 574 (Del. Ch. 1955). In an appeal from the court of chancery's decision to enjoin the Board of Education from denying African-American students the right to attend a public high school reserved for Caucasian students, the Supreme Court of Delaware held that the admission of African-American students to a high school reserved for Caucasian students was unlawful even though the United States Supreme Court had decided that segregation of public schools was unconstitutional. The Supreme Court had not issued a mandate indicating the relief to which the students were entitled, and therefore, the Board of Education was not compelled to admit them to the all-Caucasian high school.

3. Georgia

Barresi v. Brown, 175 S.E. 2d 649 (Ga. 1970). The Georgia Supreme Court held that the Clarke County School Board's pupil assignment plan was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The plan used arbitrary assignment and busing to achieve racial balance in public school. The Plan also excluded Caucasian and African-American students from attending school available to other similarly situated Caucasian and African-American students.

4. Maryland

Borders v. Board of Education of Prince George's County, 290 A.2d 510 (Md.), cert. denied, 409 U.S. 1026 (1972). The Maryland Supreme Court held that the redrawing of attendance lines and busing of students to achieve racial balance were permissible where no constitutional hardship was involved.

5. Massachusetts

School Committee of Springfield v. Board of Education, 287 N.E.2d 438 (Mass. 1972). The Supreme Judicial Court of Massachusetts, ordering the State Board of Education to release state aid withheld from the school district's use for failure to comply with the Massachusetts racial imbalance law, determined that it was inappropriate for the Board of Education to revoke an approved racial balance plan when there was no evidence that the plan was unconstitutional.

School Committee of Springfield v. Board of Education, 311 N.E.2d 69 (Mass. 1974). The Supreme Judicial Court of Massachusetts, upholding a short term plan for achieving racial balance beginning with the opening of classes in September, 1974, ordered the case remanded to the jurisdiction of a single justice to ensure implementation of the plan to eliminate racial imbalance in Springfield.

School Committee of Springfield v. Board of Education, 319 N.E.2d 427 (Mass. 1974), *cert. denied*, 421 U.S. 947 (1975). The Supreme Judicial Court of Massachusetts, denying a motion to vacate its previous decision ordering the implementation of a plan to correct racial imbalance, held that an amendment to the racial imbalance law which eliminated the school committee's power to implement the plan was unconstitutional. The plan involved busing, redistricting, and transfer of students.

Board of Education v. School Commission of Springfield, 345 N.E.2d 345 (Mass. 1976). The Supreme Judicial Court of Massachusetts affirmed an order of the State Board of Education to open a new school in the Brightwood Community that would call for a modification of the school committee's desegregation plan. The Court held that the state board of education looked to the racial imbalance law when revising the school committee's desegregation plan and such action was neither "arbitrary nor capricious."

6. New Jersey

Jenkins v. Morris School District, 279 A.3d 619 (N.J. 1971). The Supreme Court of New Jersey, reversing the decision of the appellate division, held that the Commissioner of Education had the authority under the state constitution and by legislation to effectuate school laws. Accordingly, the commissioner was authorized to take whatever steps were necessary to avoid the racial imbalance that would be created if Morris Township were allowed to withdraw students from Morristown High School.

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Morean v. Board of Education of Montclair, 200 A.2d 97 (N.J. 1964) (per curiam). The Supreme Court of New Jersey, affirming the Commissioner of Education's determination that the Montclair Board of Education's relocation plan was neither "arbitrary nor unreasonable," found that the relocation plan requiring pupil assignments was not racially motivated and did not deprive students of equal educational opportunity.

Booker v. Board of Education, 212 A.2d 1 (N.J. 1965). The Supreme Court of New Jersey held that the Commissioner of Education had the authority to review and supervise local desegregation plans and was responsible for the correction of racial imbalance.

7. New York

Balaban v. Rubin, 199 N.E.2d 375 (N.Y.), *cert. denied*, 379 U.S. 381 (1964). When preparing a zoning plan for a new school district, the Board of Education took race into consideration. This plan resulted in an enrollment of one third African-American, one third Caucasian, and one third Puerto Rican students. The court of appeals held that the board had the authority to determine where a school will be located and who will attend. It further held that the Board had acted within its authority, and that its actions were not "arbitrary, capricious or unreasonable."

Vetere v. Allen, 206 N.E.2d 174 (N.Y.) (per curiam), *cert. denied*, 382 U.S. 825 (1965). The Court of Appeals of New York, affirming the decision of the Supreme Court, Appellate Division, held that the Commissioner of Education has the authority to take whatever steps were reasonably necessary to eliminate racial imbalance short of "pure arbitrariness."

8. North Carolina

Dilday v. Beaufort County Board of Education, 148 S.E.2d 513 (N.C. 1966). The North Carolina Supreme Court held that a school board had no authority to reallocate funds for the construction of a consolidated integrated high school to the construction of a consolidated segregated school.

9. Pennsylvania

Pennsylvania Human Relations Commission v. Chester School District, 233 A.2d 290 (Pa. 1967). The Supreme Court of Pennsylvania held that the Human Relations Commission properly ordered plans for the immediate desegregation of six public schools where 87% - 100% of the students were African-American.

Balsbaugh v. Rowland, 290 A.2d 85 (Pa. 1972). The Supreme Court of Pennsylvania held that a desegregation plan requiring busing 29% of the students and computerized pupil assignment was violative of neither state nor federal constitutions.

Pennsylvania Human Relations Commission v. Uniontown Area School District, 313 A.2d 156 (Pa. 1973). The Supreme Court of Pennsylvania, affirming the orders of the commonwealth court, held that the Human Relations Commission was within its authority to adopt a mathematical definition of de facto segregation in public schools.

Pennsylvania Human Relations Commission v. School District of Philadelphia, 390 A.2d 1238 (Pa. 1978). The Supreme Court of Pennsylvania held that the Human Relations Committee had the authority to require a school district to submit a workable desegregation plan.

10. Texas

Board of Trustees v. Kreger, 369 S.W.2d 916 (Tex. 1963). The Texas Supreme Court, vacating the judgment of the court of appeals, dismissed a taxpayer's action to restrain the school district's expenditure of public funds to build a segregated school system. The court held that such expenditure was contrary to federal court orders requiring desegregation of schools, thereby rendering the case moot.

11. Virginia

County School Board v. Griffin, 133 S.E.2d 565 (Va. 1963). The Supreme Court of Appeals of Virginia upheld as valid under state law the closing of the Prince Edward County public schools, state and county tuition grants for children who attend private schools, and county's tax concessions for those who make contributions to private schools. The court held that each county had the option to operate or not to operate public schools.

12. Washington

Citizens Against Mandatory Busing v. Palmason, 495 P.2d 657 (Wash. 1972). The Supreme Court of Washington held that the trial court erred in enjoining the implementation of a desegregation plan that required mandatory busing to alleviate de facto segregation in the school district. The court held that this method of desegregation was neither arbitrary nor capricious; it was a proper exercise of the school board's discretionary power.

D. *Commentary*

Annotation, *Comment Note - Racial Segregation*, 38 A.L.R.2d 1188 (1954). Racial segregation in public schools prohibited by the Fifth and Fourteenth Amendments has a psychological effect on African-American children.

Paul G. Kauper, *Segregation in Public Education: The Decline of Plessy v. Ferguson*, 52 MICH. L. REV. 1137 (1954). Segregation in public schools deprives minority children of equal protection of the laws guaranteed by the Fourteenth Amendment. This article examines the erosion of the "separate but equal" doctrine as applied to public schools.

Robert A. Leflar & Wylie H. Davis, *Segregation in the Public Schools - 1953*, 67 HARV. L. REV. 377 (1954). This article discusses the legal, social, and economic issues that will have to be addressed as the court decides the desegregation cases pending before it.

Francis B. Nicholson, *The Legal Standing of the South's School Resistance Proposals*, 7 S.C. L. REV. 1 (1954). Many southern states chose to ignore the law and to develop strategies to block any federal court ruling that might upset the continuance of separate schools. This article analyzes the plans of those states called "resistance movements" to perpetuate a dual school system.

ALBERT COATES & JAMES C. N. PAUL, *THE SCHOOL SEGREGATION DECISION* (1954). This report, written in the wake of the *school segregation cases*, reviews the history of segregation in North Carolina and suggests legal alternatives to desegregation. Author S. Miller, *Racial Discrimination and Private Schools*, 41 MINN. L. REV. 145 (1957). This article discusses the legal problem of private denominational and nondenominational schools in the southeast with racially discriminatory policies and practices.

ALBERT P. BLAUSTEIN & CLARENCE C. FERGUSON, JR., *DESEGREGATION AND THE LAW* (1957). This book explains how the courts have attempted to eliminate centuries of segregation with laws, beginning with the decision in *Brown v. Board of Education*. The authors discuss the history and future of this case and its significance in American history.

J.W. PELTASON, *FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION* (1961). This book examines the role of the federal courts, particularly in the South, in the segregation and desegregation of schools.

U.S. COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS U.S.A.: PUBLIC SCHOOLS SOUTHERN STATES (1962). This report contains case studies on the desegregation of schools in the southern states of Kentucky, North Carolina, Tennessee and Virginia.

U.S. COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS U.S.A.: PUBLIC SCHOOLS, CITIES IN NORTH AND WEST (1962). This is a compilation of case studies on school desegregation litigation in Highland Park, Michigan; New Rochelle, New York; Philadelphia, Pennsylvania; Chicago, Illinois; and St. Louis, Missouri. Paul Hartman, *The Right to Equal Educational Opportunities as a Personal and Present Right*, 9 WAYNE L. REV. 424 (1963). This article discusses the impact that the second *Brown* decision had on the present and the personal right doctrine.

Robert A. Sedler, *School Segregation in the North and West: Legal Aspects*, 7 ST. LOUIS U. L.J. 228 (1963). This article deals with legal issues that arise when segregation of the schools is not sanctioned by law but is the result of segregated residential patterns. John Kaplan, *Segregation Litigation and the Schools - Part I: The New Rochelle Experience*, 58 NW. U. L. REV. 1 (1963). This article discusses the problem of de facto segregation in northern cities and focuses on the resulting litigation in the *New Rochelle* case. It chronicles the litigation surrounding the desegregation of Lincoln Elementary School. Beginning with some background about the community and the major participants in the litigation, the author discusses the complaint issued, the hearing, the testimony, the court's decision and the plan to desegregate the New Rochelle school district.

John Kaplan, *Segregation Litigation and the Schools - Part II: The General Northern Problem*, 58 NW. U. L. REV. 157 (1963). The author discusses the duty of the northern school boards to provide racially balanced schools even if the cause of the segregated school is de facto. He gives a history of the "separate but equal" doctrine by examining the result of *Plessy v. Ferguson*, and notes the harm caused by de facto segregation. Using evidence gathered by social scientists on race and education, the author concludes that the real problem is social class rather than race.

John Kaplan, *Segregation Litigation and the Schools - Part III: The Gary Litigation*, 59 NW. U. L. REV. 121 (1964). This article gives the history of school and residential segregation in Gary, Indiana and discusses the litigation initiated to require the school board to provide a racially integrated school system.

Jacob D. Hyman & Wade J. Newhouse, Jr., *Desegregation of the Schools: The Present Legal Situation*, 14 BUFF. L. REV. 208 (1964). The status of desegregation ten years after the landmark case of *Brown v. Board of Education* is evaluated.

Richard Hicks, *California Suggests De Facto School Segregation Must End*, 16 STAN. L. REV. 434 (1964). The author discusses the use of transfer policies as a possible remedy to achieve racial balance in the case of *Jackson v. Pasadena City School District*, where school segregation was considered de facto. Owen M. Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 HARV. L. REV. 564 (1965). The author defines racially imbalanced schools and explores why they should be eliminated.

DE FACTO SEGREGATION AND CIVIL RIGHTS: STRUGGLE FOR LEGAL AND SOCIAL EQUALITY (Oliver Cities, Jr. & David T. Smith eds., 1965). This is a compilation of articles from scholars in the fields of law, education, history and sociology focusing on de facto school segregation and other related civil rights issues.

J. Skelly Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 40 N.Y.U. L. REV. 285 (1965). This article discusses the causes of de facto segregation, and how they can be remedied.

School Desegregation and the Office of Education Guidelines, 55 GEO. L.J. 325 (1966). This article restates the guidelines for school desegregation set out by the Office of Education and evaluates their effectiveness.

DANIEL M. BERMAN, *IT IS SO ORDERED: THE SUPREME COURT RULES ON SCHOOL SEGREGATION* (1966). This book analyzes the Federal judicial process in the *school segregation cases*. Significant emphasis is placed on issues of segregation in education.

Annotation, *De Facto Segregation of Races in Public Schools*, 11 A.L.R.3d 780 (1967). While the Fourteenth Amendment does not require integration, de facto segregation is unconstitutional even if it is the unintentional result of geographic location rather than discrimination. De facto segregation can be remedied in a number of ways, including large scale busing, enlarging attendance zones, rezoning school districts, strategic selection of site for new schools, and open transfers. School boards are required to do more than passively accept de facto segregation. They have a constitutional duty to provide equal educational opportunity for all children.

Peter F. Rousselot, *Achieving Equal Educational Opportunity for Negroes in the Public Schools of the North and West: The Emerging Role for Private Constitutional Litigation*, 35 GEO. WASH. L. REV. 698 (1967). The Fourteenth Amendment requires affirmative steps to alleviate racial imbalance resulting from state action to achieve equal educational opportunity for African-American school children. This article discusses the deprivation of equal educational opportunity when racial imbalance is not the result of racially motivated state action. Note, *The Courts, HEW, and Southern School Desegregation*, 77 YALE L.J. 321 (1967). The Civil Rights Act of 1964 was Congress' response to the ineffectiveness of court orders to desegregate public schools. This article deals specifically with Title VI of the Civil Rights Act and its effect on the desegregation process.

U.S. COMMISSION ON CIVIL RIGHTS, *EDUCATIONAL PARKS: APPRAISALS OF PLANS TO IMPROVE EDUCATIONAL QUALITY AND DESEGREGATE THE SCHOOLS* (1967). This compilation of papers discusses the value and limitations of the concept of education parks as desegregation remedies.

James R. Dunn, *Title VI: The Guidelines and School Desegregation in the South*, 53 VA. L. REV. 42 (1967). Title VI of the Civil Rights Act prohibits the distribution of federal funding to programs that discriminate on the basis of race. This article examines Title VI and its application to public schools in the South.

Jerald J. Director, Annotation, *Federal Court Regulation of School Construction or Facility So As To Avoid School Segregation*, 4 A.L.R. Fed. 979 (1970). The federal courts have regulatory power to prohibit the construction of school buildings, transportation of students and school sponsored extra curricular activities that perpetuate the unconstitutional segregation of the races in public schools.

Owen M. Fiss, *The Charlotte-Mecklenburg Case - Its Significance for Northern School Desegregation*, 38 U. CHI. L. REV. 697 (1971). This article shows the similarities between result oriented criteria used in the school desegregation case of *Swann v. Charlotte-Mecklenburg Board of Education* and the school desegregation cases in the North.

Arthur J. Goldberg, *The Administration's Anti-Busing Proposals - Politics Makes Bad Law*, 67 NW. U. L. REV. 319 (1972). Busing was affirmed by the courts as a proper remedy to desegregate the schools. However, in the wake of a presidential election, antibusing legislation proposals could result in the return to segregated schools. Convinced that the antibusing proposals are unconstitutional, the author analyzes their legal context. Frank I. Goodman, *De Facto School Segregation*:

A Constitutional and Empirical Analysis, 60 CAL. L. REV. 275 (1972). Do separate schools deny equal educational opportunity, and if so, does de facto segregation represent constitutional denial of equal educational opportunity? This article analyzes the constitutionality of neighborhood schools and sets out five arguments against de facto segregation. It also discusses the freedom of choice plan and whether this is a sufficient remedy to meet the requirements of the Equal Protection Clause.

Mark G. Yudof, *Equal Educational Opportunity and the Courts*, 51 TEX. L. REV. 411 (1973). This article addresses the court's role in achieving equal access to educational opportunities and nondiscriminatory treatment of the races.

Jeffrey F. Ghent, Annotation, *Relief Against School Board's "Busing" Plan to Promote Desegregation*, 50 A.L.R.3d 1089 (1973). Federal "antibusing" provisions were directed to the use of federal funds to implement federal court ordered busing. Objections to busing include distance of travel, danger to students, time required to travel, and right to neighborhood schools.

Donald T. Kramer, Annotation, *Validity, Construction and Application of Provisions (So-called "Antibusing Amendments" of Education Amendments of 1972 (20 U.S.C.S. § 1651-1656), Prohibiting Assignment or Transportation of Students or Teachers in Public Schools in Order To Overcome Racial Imbalance*, 16 A.L.R. FED. 950 (1973). The enactment of "Antibusing Amendments" to prevent the use of federal funds for court ordered busing to achieve racial balance was constitutionally permissible. These amendments did not apply to court ordered busing to achieve desegregation, could not be applied retroactively, and did not apply to desegregation plans proposed by school boards.

LINO A. GRAGLIA, *DISASTER BY DECREE: THE SUPREME COURT DECISIONS ON RACE AND THE SCHOOLS* (1976). The author discusses the indefensibility of compulsory busing imposed by the Supreme Court to achieve racial desegregation.

U.S. COMMISSION ON CIVIL RIGHTS, *TITLE IV AND SCHOOL DESEGREGATION: A STUDY OF A NEGLECTED FEDERAL PROGRAM* (1973). This is an evaluation of the significance of Title IV in facilitating desegregation in schools.

Gary C. Leedes & James M. O'Fallon, *School Desegregation in Richmond: A Case History*, 10 U. RICH. L. REV. 1 (1975). This article summarizes desegregation of public schools in Richmond.

NORENE HARRIS ET AL., *THE INTEGRATION OF AMERICAN SCHOOLS: PROBLEMS, EXPERIENCES, SOLUTIONS* (1975). What did the integrationist leaders anticipate would happen when African-American and Caucasian children came together, what actually did happen in the classroom, and what effect did it have on the education of African-American children? This compilation of articles by educators and other concerned citizens with some personal experience with school integration addresses these concerns and other desegregation issues, including busing.

Karl E. Taeuber, *Demographic Perspectives on Housing and School Desegregation*, 21 WAYNE L. REV. 833 (1975). The author offers the demographic evidence he presented as testimony in the desegregation case of *Milliken v. Bradley*. He specifically looks at the causes of residential segregation in Detroit and its effect on school segregation.

Elwood Hain, *School Desegregation in Detroit: Domestic Tranquility and Judicial Futility*, 23 WAYNE L. REV. 65 (1976). This author relates the issues of desegregation in a metropolitan area to the issues of school desegregation in Detroit.

Derrick A. Bell, Jr., *Serving Two Masters: Integrating Ideals and Client Interests in School Desegregating Litigation*, 85 YALE L.J. 470 (1976). Does desegregation of the schools promote educational improvement or equal educational opportunity? This article reviews the educational interests of clients in desegregation cases.

Stephen Barrett Kanner, *From Denver to Dayton: The Development of a Theory of Equal Protection Remedies*, 72 NW. U. L. REV. 382 (1977). The scope of equal protection remedies achieved in school desegregation cases is governed by constitutional violations of the particular school district.

Charles R. Lawrence III, *Segregation "Misunderstood": The Milliken Decision Revisited*, 12 U.S.F. L. REV. 15 (1977). This article recapitulates the *Milliken* decision and discusses the Supreme Court's lack of commitment to desegregation.

John Leubsdorf, *Completing the Desegregation Remedy*, 57 B.U. L. REV. 39 (1977). Desegregation alone does not remedy school segregation. This article discusses the power of the federal courts to order ancillary remedies that will remove discrimination, prevent its recurrence of discrimination and ensure equal educational opportunities.

GARY ORFIELD, *MUST WE BUS?* (1978). Busing, the most controversial issue resulting from the desegregation of the schools, is thoroughly analyzed in this book. The author reviews the evolution of laws on

school desegregation and discusses the resulting problems in the communities and school systems. His concluding chapter suggests how we can make desegregation work.

J. Harvie Wilkinson, III, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA. L. REV. 485 (1978). This article chronicles the role of the Supreme Court in what the author defines as the five stages of desegregation of southern schools: absolute defiance, token compliance, modest integration, massive integration, and resegregation.

Bruce N. Bagni, *Discrimination in the Name of the Lord: A Critical Evaluation of Discrimination by Religious Organizations*, 79 COLUM. L. REV. 1514 (1979). Absent an objection showing that anti-discrimination laws infringe upon the free exercise of religion, religious organizations are not insulated from anti-discrimination laws. This article analyzes the clash between religious autonomy and racial discrimination.

J. HARVIE WILKINSON, III, *FROM BROWN TO BAKKE (THE SUPREME COURT AND SCHOOL INTEGRATION: 1954-1978)* (1979). This book chronicles the Supreme Court's role in the desegregation of the nation's schools beginning with its decision in *Brown v. Board of Education*.

U.S. COMMISSION ON CIVIL RIGHTS, *DESEGREGATION OF THE NATION'S PUBLIC SCHOOLS: A STATUS REPORT* (1979). This report covers federal court, federal legislative and federal agency (HEW) requirements for school desegregation.

ROBERT L. CRAIN ET AL., *MAKING DESEGREGATION WORK: HOW SCHOOLS CREATE SOCIAL CLIMATES* (1982). After systematic analysis of 200 high schools, the authors suggest ten ways to improve desegregated high schools.

Paul Gewirtz, *Remedies and Resistance*, 92 YALE L.J. 585 (1983). This article focuses on how the courts have dealt with Caucasian resistance to the implementation of remedies for racial segregation and discrimination in public schools.

Christine H. Rossell & Willis D. Hawley, eds., *THE CONSEQUENCES OF SCHOOL DESEGREGATION* (1983). This is a compilation of articles written by various authors discussing the benefits and costs of desegregation. The book begins with an explanation of the expected results of desegregation. The book then compiles the findings of existing research as to what the actual consequences of desegregation have been and concludes with an agenda for future research on desegregation.

GONOPHORE L. HOTCHCHILD, *THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION* (1984). This author attempts to show that school desegregation can be successful.

CHARLES V. WILLIE, *SCHOOL DESEGREGATION PLANS THAT WORK* (1984). This report provides model school desegregation plans for unitary school systems from Boston, Milwaukee, Seattle, and Atlanta. An analysis of the desegregation plans, their significant components, and why and how they work is also provided.

Paul Gerwitz, *Choice in the Transition: School Desegregation and the Corrective Idea*, 86 COLUM. L. REV. 728 (1986). Freedom of choice as a corrective vehicle to remedy unlawful school segregation and the resulting issues that arise are examined.

D. GARTH TAYLOR, *PUBLIC OPINION & COLLECTIVE ACTION: THE BOSTON SCHOOL DESEGREGATION CONFLICT* (1986). In 1974, a federal court judge ruled that Boston schools were illegally segregated and that school children, both African-American and Caucasian, must be bused to achieve integration of the schools. This book analyzes the controversy that followed. The author, using survey data along with historical and contextual information about the city of Boston, systematically explains the extremity of the conflict and opposition to mandatory school desegregation. Brian K. Landsbert, *The Desegregated School System and the Retrogression Plan*, 48 LA. L. REV. 789 (1988). The author analyzes the court's simultaneous formulation and dismantling of racial discrimination remedies.

Deborah Sprenger, Annotation, *Circumstances Warranting Judicial Determination or Declaration of Unitary Status With Regard to Schools Operating Under Court-Ordered or Supervised Desegregation Plans and the Effects of Such Declarations*, 94 A.L.R. FED. 667 (1989). Unitary status in public schools is achieved when there is racial neutrality, a good faith effort is made to eradicate segregation, there are minorities on the school board, and there is proper racial balance in assignment of faculty and staff.

RONALD P. FORMISANO, *BOSTON AGAINST BUSING: RACE, CLASS, AND ETHNICITY IN THE 1960's AND 1970's* (1991). This book focuses primarily on the Caucasian opponents to court ordered busing in Boston. The author describes what happened in Boston during the anti-busing protest and offers explanations.

II. DESEGREGATION OF FACULTY AND STAFF

A. Federal Cases

Bradley v. School Board of Richmond, 382 U.S. 103 (1965) (per curiam). The United States Supreme Court held that the petitioners were entitled to a full evidentiary hearing prior to the approval of school desegregation plans involving faculty allocations on the basis of race.

Rogers v. Paul, 382 U.S. 198 (1965) (per curiam). The United States Supreme Court, vacating and remanding the decision of the district court, held that African-American students had standing to challenge the racial allocation of faculty in public schools even though they were not yet students in desegregated grades.

United States v. Montgomery County Board of Education, 395 U.S. 225 (1969). In its efforts to desegregate faculty and staff, the United States Supreme Court approved a district court judge's order requiring that the ratio of Caucasian and African-American faculty be essentially the same throughout the Montgomery County, Alabama school system. A ratio of two African-American teachers out of every twelve teachers at each school was approved.

Mayor of Philadelphia v. Educational Equality League, 415 U.S. 605 (1974). The United States Supreme Court affirmed the district court's finding of insufficient evidence of racial discrimination when the Mayor of Philadelphia appointed only one African-American to the Educational Nominating Panel. Article XII of the Philadelphia Home Rule Charter provides for the establishment of an Education Nominating Panel to submit nominees for vacancies on the school board. It consists of thirteen members, nine of which come from the executive offices of organizations within the city. The other four are appointed by the mayor from the general citizenry.

Hazelwood School District v. United States, 433 U.S. 299 (1977). The United States Supreme Court held that the court of appeals' failure to consider statistical data in the record in determining whether a school district engaged in teacher employment discrimination practices in violation of Title VII of the Civil Rights Act of 1964 was in error.

Board of Education v. Harris, 444 U.S. 130 (1979). Financial assistance was denied to the New York Board of Education as a result of statistical evidence of racially disproportionate assignment of minority teachers. The United States Supreme Court held that the impact of discrimination in hiring, promoting, and assigning employees whether de facto or de jure determined eligibility for financial assistance to

schools under section 706 of the 1972 Emergency School Aid Act. In this case, financial assistance was denied to the New York Board of Education as a result of statistical evidence of racially disproportionate assignment of minority teachers.

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986). The United States Supreme Court, reversing the decision of the court of appeals, held that a collective bargaining agreement that provided job security for those teachers with seniority but prohibited the lay off of a disproportionate number of minority teachers between a teacher's union and the Board of Education violated the Equal Protection Clause.

St. Francis College v. Al-Khazraji, 481 U.S. 604 (1987). The Court held that an Arabic college professor who was denied tenure was entitled to protection from racial discrimination under 42 U.S.C. § 1981.

B. *State Cases*

1. Colorado

Colorado Civil Rights Committee ex. rel. Ramos v. Regents of University of Colorado, 759 P.2d 726 (Colo. 1988). A Hispanic associate professor filed a complaint with the Colorado Civil Rights Commission alleging that he was denied tenure because of his origin or ancestry. The Supreme Court of Colorado, reversing and remanding the decision of the Denver District Court, held that the Colorado Civil Rights Commission's jurisdiction over matters of discriminatory employment practices did not violate state constitutional provisions giving supervisory authority to the Board of Regents of the University of Colorado.

2. Kansas

Londerholm v. Unified School District No. 500, 430 P.2d 188 (Kan. 1967). The Supreme Court of Kansas held that a Kansas anti-discrimination act did not require that public school teachers whether probationary or tenured be assigned to other schools to facilitate integration of the school system over their objections to such assignment.

Stephens v. Unified School District No. 500, 546 P.2d 197 (Kan. 1975). The Supreme Court of Kansas affirmed the district court's determination in a trial de novo that the Unified School District was not guilty of unfair employment practices by transferring an African-American tenured teacher, who married a Caucasian tenured teacher, to a different school.

3. Massachusetts

Drinkwater v. School Committee of Boston, 550 N.E.2d 385 (Mass. 1990). While a court ordered affirmative action plan for positions on the public school administrative staff was valid, whether or not the school committee properly complied with the plans was a genuine issue of material fact to be determined. A Caucasian applicant for the position of general counsel for the school committee alleged that the school committee discriminated against her on the basis of race when an African-American candidate was hired.

4. Minnesota

Kaster v. Independent School District No. 625, 284 N.W.2d 362 (Minn. 1979). The Supreme Court of Minnesota, reversing and remanding the decision of the district court, held that the school district's failure to demonstrate a non-discriminatory motive for its continuous refusal to promote a Jewish teacher to an administrative position violated the state statute prohibiting discrimination.

6. South Carolina

Riggs v. Laurens District 56, 248 S.E.2d 306 (S.C.), *cert. denied*, 442 U.S. 913 (1978). The Supreme Court of South Carolina, reversing the order of the court of common pleas, held that termination of a Caucasian teacher, who refused to transfer to another school within her district at no loss of benefits or salary, because she preferred her present position, was not a denial of employment based on race and therefore was not a violation of 42 U.S.C. § 1981. The court concluded that the teacher had no vested contractual right to be employed at a school of her choice.

7. Washington

Johnson v. Central Valley School District, 645 P.2d 1088 (Wash. 1982). The Washington Supreme Court found no violation of the Indian Self-Determination Act or state law against discrimination as a result of the school district's decision to choose a non-Indian applicant, whom they found to be better qualified than an Indian applicant, to fill a full-time teaching position.

C. Commentary

Note, *Desegregation of Public School Facilities*, 51 IOWA L. REV. 681 (1966). This article examines the judiciary's attempt to desegregate public school faculties and its determination of who has standing to bring suit in faculty discrimination cases. It also discusses the difficulties encountered in enforcing laws implementing desegregation of

school faculties. J.F. Ghent, Annotation, *Racial Discrimination in the Hiring, Retention, and Assignment of Teachers - Federal Cases*, 3 A.L.R. FED. 325 (1970). The desegregation of public schools requires the desegregation of its faculties. Discrimination in the hiring, retention, and assignment of African-American teachers, who were displaced due to decrease in enrollment resulting from the enforcement of desegregation plans, violates the Equal Protection Clause of the Fourteenth Amendment.

III. DESEGREGATION OF PROFESSIONAL SCHOOLS

A. Federal Cases

Sweatt v. Painter, 339 U.S. 629 (1950). The United States Supreme Court ordered that an African-American applicant denied admission to the University of Texas because of his race was ordered admitted. The Court held that a recently established segregated law school for African-Americans could not provide them educational opportunities equal to those offered to Caucasian students at the University of Texas.

McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950). The United States Supreme Court held that an Oklahoma statute requiring that African-Americans attending institutions of higher education do so on a segregated basis, created conditions that deprived an African-American doctoral candidate of his "personal and present right to equal protection of the laws." The Court found that assigned seating of a African-American student in the classroom, library, and cafeteria because of his race was differential treatment based on race precluded by the Fourteenth Amendment.

Florida ex rel. Hawkins v. Board of Control, 350 U.S. 413 (1956) (per curiam). The United States Supreme Court ordered prompt admission of qualified African-American applicants to graduate or professional schools under the rules and regulations applicable to other students without regard to race.

Regents of University of California v. Bakke, 438 U.S. 265 (1978). The United States Supreme Court held that a special admission program designed to ensure enrollment of a specific number of minorities in medical school violated the Equal Protection Clause of the Fourteenth Amendment and the state constitution.

United States v. Fordice, 112 S. Ct. 2727 (1992). The United States Supreme Court, vacating the decision of the court of appeals that the State of Mississippi had fulfilled its duty to desegregate its dual university system, remanded the case to determine whether Mississippi's

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current university admissions policies and practices continue to perpetuate the prior dual segregated university system. Also on remand, the court was requested to determine whether closure of one or more of its eight institutions of higher education due to differential admission practices and program duplication is constitutionally required to eliminate the discriminatory effects of its policies and practices.

B. *State Cases*

1. California

Bakke v. Regents of University of California, 553 P.2d 1152 (Cal. 1976). A special admissions program that benefitted minority applicants who applied to medical school was held unconstitutional in that it provided preferential treatment on the basis of race for persons who were not as qualified as non-minority applicants who were denied admission.

2. New York

Board of Higher Education of New York v. Carter, 199 N.E.2d 141 (N.Y. 1964). The Court of Appeals of New York held that the State Commission Against Discrimination has the authority to investigate and act upon complaints of discrimination in public educational institutions within the control of the Board of Higher Education.

Alevy v. Downstate Medical Center, 348 N.E.2d 537 (N.Y. 1976). The Court of Appeals of New York, affirming the order of the appellate division, held that where a medical school applicant failed to show that he would have been admitted even if minority admissions programs were eliminated, no legal trauma was suffered in the selection process.

3. Washington

DeFunis v. Odegaard, 507 P.2d 1169 (Wash. 1973), *vacated*, 416 U.S. 312 (1974). The Supreme Court of Washington, reversing the decision of the superior court, held that the law school admission's consideration of race as a factor in admitting qualified minorities was neither arbitrary nor capricious even though the process provided for the admission of some minority applicants with a lower predictive first year average than some non-minority applicants.

C. *Commentary*

U.S. COMMISSION ON CIVIL RIGHTS, *EQUAL PROTECTION OF THE LAWS IN PUBLIC HIGHER EDUCATION* (1960). This report traces the historical development of segregated colleges, the impact of the

school desegregation cases, and problems arising from discriminatory admissions policies.

SAM P. WIGGINS, *THE DESEGREGATION ERA IN HIGHER EDUCATION* (1966). This book discusses the extent to which African-Americans have gained access to historically Caucasian institutions of higher education and the significance of this achievement.

Lino A. Graglia, *Special Admission of the "Culturally Deprived" to Law School*, 119 U. PA. L. REV. 351 (1970). The author sets out his objections to special admission programs in law school for African-American students as a remedy for past racial injustices.

Robert M. O'Neil, *Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education*, 80 YALE L.J. 699 (1971). The author examines the objections to preferential admissions policies of colleges and universities.

Arval A. Morris, *Equal Protection, Affirmative Action and Racial Preferences in Law Admissions (DeFunis v. Odegaard)*, 49 WASH. L. REV. 1 (1973). Using the case of *DeFunis v. Odegaard* as a basis, the author discusses the constitutionality of racial classifications in law school admission policies.

Martin H. Redish, *Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments*, 22 UCLA L. REV. 343 (1974). The author examines the *DeFunis* case and the standard of judicial review used in determining the legality of the preferential admissions policy at the University of Washington. Goals justifying preferential admission policies are explored, and attempts are made to establish how these goals can be accomplished without violating the equal protection rights of majority and minority students.

Robert M. O'Neil, *Racial Preferences and Higher Education: The Larger Context*, 60 VA. L. REV. 925 (1974). This article probes the constitutionality of the use of racial classifications to desegregate institutions of higher education. Finding the use of preferential admissions policies constitutionally permissible, the author argues that there is a compelling state interest in the implementation of preferential admissions policies.

John H. Ely, *The Constitutionality of Reverse Racial Discrimination*, 41 U. CHI. L. REV. 723 (1974). The author defends the constitutionality of preferential admissions. Ernest Gellhorn & D. Brock Hornby, *Constitutional Limitations on Admissions Procedures and Standards - Beyond Affirmative Action*, 60 Va. L. Rev. 975 (1974). The author

attempts to define the constitutional duty law school administrators owe to law school applicants and outlines the law school admissions process. Terrance Sandalow, *Racial Preferences in Higher Education: Political Responsibility and the Judicial Role*, 42 U. CHI. L. REV. 653 (1975). This article examines the issue of validity of preferential admissions policies that have been sanctioned by the legislature and the role of the judiciary in the absence of legislative approval of these policies.

ROBERT M. O'NEIL, *DISCRIMINATING AGAINST DISCRIMINATION: PREFERENTIAL ADMISSIONS AND THE DEFUNIS CASE* (1975). This book chronicles the case of Marco DeFunis and analyzes the legal controversy of preferential admissions.

Kent Greenawalt, *Judicial Scrutiny of "Benign" Racial Preference in Law School Admissions*, 75 COLUM. L. REV. 559 (1975). The author discusses the standard of review used by the courts in preferential admissions cases.

Larry M. Lavinsky, *DeFunis v. Odegaard: The "Non-Decision" with a Message*, 75 COLUM. L. REV. 520 (1975). The author suggests that instead of preferential admissions policies based on race, law schools should justify preferential admissions on less constitutional criteria such as "diverse student body" and "cultural disadvantage," to avoid the promotion of feelings of racism for Caucasians and inferiority for African-Americans.

Symposium, *DeFunis: An Introduction*, 75 COLUM. L. REV. 483 (1975). This introduction to a symposium on the *DeFunis* case questions what is expected to be achieved by preferential treatment of minority applicants for law school and how we expect to achieve it.

HOWARD UNIVERSITY, INSTITUTE FOR THE STUDY OF EDUCATIONAL POLICY, *EQUAL EDUCATIONAL OPPORTUNITY FOR BLACKS IN U.S. HIGHER EDUCATION: AN ASSESSMENT* (1976). This book serves as a report on the status of African-Americans in higher education in the 1973-74 academic year and as a reference source on Blacks in higher education. Particular emphasis is placed on the goal of equal educational opportunity and the continuous barriers to that goal.

Araval A. Morris, *The Bakke Decision: One Holding or Two?* 58 OR. L. REV. 311 (1979). As there was no majority opinion in *Bakke*, the author analyzes what he considers the three principal opinions and their treatment of the affirmative action issues.

Earl M. Maltz, *Commentary: A Bakke Primer*, 32 OKLA. L. REV. 119 (1979). This article analyzes the opinions in the *Bakke* case in an at-

tempt to define the current status of the law on affirmative action or preferential treatment in college admissions programs. Howard Lesnick, *What does Bakke Require of Law Schools?* 128 U. PA. L. REV. 141 (1979). The decision in *Bakke* requires that law schools utilize color blind admissions policies. This article discusses admissions issues facing law schools as a result of the *Bakke* decision.

Darryl Paulson & Paul Hawkes, *Desegregating the University of Florida Law School: Virgil Hawkins v. The Florida Board of Control*, 12 FLA. ST. U. L. REV. 59 (1984). This article chronicles the efforts of Virgil Hawkins, an African-American public relations official, to gain admission to the state's only law school in 1949, and the seven years of resistance by Florida's political officials and court systems that followed. The 1956 Supreme Court order that Hawkins be admitted under the same rules and regulations applicable to the other candidates for admission did not end the state's resistance to desegregation. The author discusses the strategies of resistance that followed.

BERNARD SCHWARTZ, *BEHIND BAKKE: AFFIRMATIVE ACTION AND THE SUPREME COURT* (1988). Using oral and documentary sources, the author gives some insight into how the justices arrived at the decision in the *Bakke* case.