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16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18
19 FOR THE COUNTY OF LOS ANGELES
20
21

22 MARY ELLEN CRAWFORD, a Minor,
23 By ELLEN CRAWFORD, her Guardian
24 ad Litem, et al.,

25
26 Petitioners,

27 BOARD OF EDUCATION OF THE CITY
28 OF LOS ANGELES,

Respondent.

No. 822 854

RESPONDENT'S MEMORANDUM
RE INTERVENTION

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I

PREFATORY NOTE

It is not the purpose of this Memorandum to support or oppose the motion of any person seeking to intervene in this action. Respondent does, however, wish to indicate its support for the concept of intervention insofar as consistent with California law and to the extent intervention would operate to advance the fundamental purposes of the Supreme Court mandate in Crawford v. Board of Education, 17 Cal.3d 280, 130 Cal.Rptr. 724 (1976). Respondent submits that persons in the community having a substantial interest in the proceedings, not already adequately represented by a party, should be afforded the opportunity to participate.

II

STATUS OF PROPOSED PLAN OF INTEGRATION

The school district staff, on the basis of criteria outlined by Respondent, submitted to the board twelve components which could form the basis of a proposed plan of integration on February 22. Following this presentation, a majority of the members indicated that the components required further review. Some board members expressed the view that the proposal called for excessive mandatory reassignment and transportation of pupils. Other board members felt that the proposal contemplated insufficient mandatory pupil reassignment and transportation.

At the present time the district staff and individual board members are reassessing and redefining various plan components and evaluating possible alternative approaches. Concurrently, public hearings are being held at various locations in the district, the purpose of which is to explain possible component approaches and to

1 elicit public response concerning other alternatives that might be
2 adopted. On or about March 10, following completion of public
3 hearings, the staff is scheduled to make another presentation to
4 Respondent on which date, hopefully, Respondent will adopt a proposed
5 plan of integration in time for submission to the Court immediately
6 thereafter.

7
8 III

9 TIME CONSTRAINTS

10 The California Supreme Court has affirmed an order that
11 "the board immediately . . . prepare and implement a desegregation
12 plan."^{*/} Respondent seeks to comply. It is Respondent's hope that
13 its proposed plan of integration can be submitted to the Court with
14 an eye to implementation, if approved, at the beginning of the next
15 school year. To accomplish this goal certain preparatory steps
16 must be undertaken during the current school year ending June 17,
17 1977 with an eye to accomplishing the following tasks:

18 (1) Preparation and dissemination of information to all
19 affected parents as well to the approximately 565 schools affected
20 by the program and the approximately 23,000 regular teachers also
21 affected advising as to the nature of the integration program and
22 the changes in school operations affecting assignments, teaching
23 schedules and curriculum.

24 (2) Preparation and dissemination of notices to pupils
25 and parents regarding specific pupil assignments for the fall 1977
26 semester.

27 ^{*/} Crawford v. Board of Education, 17 Cal.3d 280 at 307 (emphasis
28 added).

1 (3) Recruitment and assignment of staff^{*/} to the proposed
2 new programs and activities.

3 (4) Commencement of all required site preparation in-
4 cluding school modifications.

5 (5) Preparation of specific curriculum for proposed
6 specialized learning centers as well as the purchase of curriculum
7 materials and supplies.

8 (6) Commencement of in-service training programs for
9 staff involved in the new program.

10 (7) Commencement of in-service training and developmental
11 programs for those pupils involved in integration programs.

12 (8) Purchase, receipt and installation of specialized
13 instructional equipment and equipment related materials.

14 (9) Recruitment of pupils and parents for voluntary
15 integration programs such as the Permit With Transfer (voluntary
16 transportation) program.

17 (10) The enlistment of support for the court approved
18 plan by the community generally as well as specialized community
19 groups, business, labor, governmental and other public agencies.

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 ^{*/} Teachers, counselors, principals, vice-principals, pupil
26 service and attendance officers and other individuals traditionally
27 concerned with pupil welfare.

28 ---

1 (11) The coordination and planning for implementation of
2 the integration program with other involved government agencies.*/
3

4 (12) Preparation for the transportation aspects of the
5 plan.

6 Respondent expects to ask that the Court grant at least
7 interim approval for these steps on or about May 1.

8 IV

9 THE PRINCIPAL CONSIDERATIONS

10 Manageability

11 In view of the complex subject matter of this litigation
12 and the time constraints discussed above, it is of the utmost
13 importance that trial proceed with efficiency and dispatch. All
14 counsel should be careful to avoid the delay, disruptive tactics
15 and political posturing that all too often attends litigation
16 attracting widespread community and media interest.

17 The important substantive issue to be considered in this
18 case is whether Respondent's proposed plan of integration meets the
19 Supreme Court's "reasonable and feasible" criteria. It would be
20 inappropriate to permit intervention by any party seeking to intro-
21 duce extraneous issues or relitigate issues long since decided.

22
23
24
25 */
26 The RTD; the eight other cities included within the school
27 district; the City of Los Angeles; unincorporated county agencies
28 within the district, viz., county health and law enforcement
agencies.

1 Fulfillment of the Crawford Mandate

2 The plan submitted to the Court must be exposed to full,
3 fair and responsible critical evaluation if it is to achieve commu-
4 nity acceptance. It is, accordingly, Respondent's view that com-
5 pliance with the Supreme Court's order to prepare and submit a
6 "reasonable and feasible" plan calls for Respondent's support of
7 intervention by those persons in the community having a substantial
8 interest in the outcome of the action who are not already adequately
9 represented by an existing party. Clearly Respondent's plan,
10 however reasonable and feasible conceptually, could prove "infeasible"
11 or, at any rate, less likely to achieve "meaningful progress"
12 toward the ends contemplated by the Supreme Court if a significant
13 part of the community affected by the plan were to feel that its
14 interests had not been adequately represented in the proceedings.

15 V

16 STANDARDS BY WHICH INTERVENTION IS DETERMINED

17
18 Indispensable Parties

19 The only person having an absolute right to intervene in
20 an action is an indispensable party. [Cal. Code of Civ. Proc. § 389
21 (West Supp. 1977).]

22
23 Necessary and Proper Parties - Policy Considerations

24 Intervention by necessary or proper parties is permissive
25 and is determined by reference to the criteria set forth in Code of
26 Civil Procedure, § 387 and cases interpreting that section.

27 ---

28 ---

1 The fundamental policy considerations invoked in constru-
2 ing C.C.P. § 387 were recently discussed by the Court of Appeals in
3 these terms:

4 "'Liberal rules of intervention may interfere
5 with the right of existing parties to pursue
6 their litigation separately rather than to join
7 with others. The test of intervention, there-
8 fore, cannot be as loose as that governing
9 permissive joinder. It seems equally clear
10 that it cannot be as strict as the indispensable
11 party rule, for this would preclude any inter-
12 vention except by parties without whom the
13 court could not proceed. Intervention, then,
14 must be allowed by a test within these two
15 extremes, so that not only indispensable
16 parties, but some necessary or proper parties,
17 may be permitted to come in.'"

18 Fireman's Fund Ins. Co. v. Gerlach, 56 Cal.App.3d
19 299, 302; 128 Cal.Rptr. 396, 397 (1976).

20 In another recent case, the California Supreme Court had
21 this to say:

22 "The statute protects the interest of others
23 affected by the judgment, obviating delay and
24 multiplicity. Counterbalancing this pur-
25 pose is the interest of the original

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1 parties in pursuing their litigation un-
2 burdened by others."

3 People v. Superior Court of Ventura Co.,
4 17 Cal.3d 732, 736, 131 Cal.Rptr. 800, 802
5 (1976).

6
7 The Interest of the Proposed Intervenor

8 Solid authority supports the proposition that to
9 succeed "the intervenor's interests must be direct rather than
10 consequential. . ." People v. Superior Court, 17 Cal.3d at 736
11 (1976). (emphasis added).

12 In Socialist Workers Committee v. Brown, 53 Cal.App.3d
13 879, 125 Cal.Rptr. 915 (1975), the Socialist Workers Committee sued
14 to block implementation of Proposition 9 on the grounds that it
15 violated plaintiff's First Amendment rights. Common Cause, a
16 public interest group supporting Proposition 9, sued to intervene.
17 In sustaining the trial court's denial of intervention, the Court
18 of Appeals stated that:

19 "The 'interest' mentioned in section 387
20 which entitles a person to intervene must
21 be 'direct and not consequential;' it must
22 be of such direct and immediate character
23 that the intervenor will either gain or
24 loose by the direct legal operation and
25 effect of the judgment that may be rendered."

26 Id. at 891.

1 The Appellate Court concluded that Common Cause did not have a
2 direct interest.

3 "Regarding the validity of the act on its face,
4 petitioners stand on the same position as that
5 of all of the people of California; therefore,
6 petitioners have only an indirect and inconse-
7 quential interest in a declaration of the
8 facial validity or invalidity of the act.
9 Likewise, . . . petitioners would not be
10 directly affected by a judgment declaring that
11 the act is, or is not, constitutional as applied
12 to plaintiffs."

13 Id. at 892.

14 California Supreme Court in People v. Superior Court
15 of Ventura Co., after noting that the intervenor's interest must be
16 direct rather than consequential, went on to note that:

17 "[A] trial court possesses discretion to deny
18 intervention even when a direct interest is
19 shown if the interests of the original litigants
20 outweigh the intervenors' concerns of potential
21 delay and multiplicity of actions."

22 17 Cal.3d at 737, 131 Cal.Rptr. at 803
23 (1976). (emphasis added).

24 The question whether a particular interest is to be
25 deemed direct or consequential should, we submit, be decided by
26 reference to substantive rather than mechanical or semantic
27 considerations.

28 ---

1 In reviewing case authority on point, Professor Witkin
2 has observed that:

3 "The court must exercise its discretion in
4 determining, in each case, whether the original
5 action between the existing parties should be
6 allowed to proceed undisturbed by an intervenor's
7 claim; and the more indirect the connection of
8 that claim with the issues raised in the original
9 action, the less likelihood there is of the
10 court permitting intervention. . . .

11 "Moreover, this test, which allows inter-
12 vention by a person with a relatively insignif-
13 icant 'direct interest,' and denies the
14 privilege to one with a valuable and seriously
15 threatened 'indirect interest,' can lead to
16 questionable results."

17 See 3 Witkin, California Procedure, 1886

18 (2d ed. 1971).

19 In considering this question, the Court of Appeals in
20 Continental Vinyl Products Corp. v. Meade Corp., 27 Cal.App.3d
21 543, 103 Cal.Rptr. 806 (1972), noted:

22 "What would otherwise be a consequential
23 interest not justifying intervention may
24 become a direct interest permitting it when
25 . . . the assertion by all parties to
26 the litigation of claims adverse to the
27 parties seeking to intervene . . . or
28 similar circumstances render[s] strict

1 definition of direct interests likely to
2 result in injustice."

3 Id. at 551.

4 In classifying the proposed intervenor's interest as
5 direct (substantial) or consequential (insubstantial) courts
6 have considered, among other factors, whether the asserted interest
7 is already adequately represented by one of the existing parties.
8 Indeed, this criterion has often been of dispositive significance
9 in denying intervention. See, e.g.,

10 Hausmann v. Farmers Ins. Exchange,
11 213 Cal.App.2d 611, 29 Cal.Rptr. 75 (1963);
12 Jerseymaid Milk Products Co. v. Brock,
13 13 Cal.2d 620, 91 P.2d 577 (1939);
14 La Mesa, etc. Irrigation District v. Halley,
15 195 Cal. 739, 235 Pac. 999 (1925).

16
17 The Interests of the Original Parties

18
19 In Continental Vinyl Products v. Mead Corp., supra at
20 552, the Court of Appeals spoke to the question of the existing
21 parties' interests in these terms:

22 "Determination that an [intervenor's] interest
23 is direct and not consequential does not of
24 itself establish the right to intervene. . . .
25 The court ruling upon the motion to intervene
26 must balance the desirability of intervention
27 to protect a direct interest against the normal
28 ---

1 right of the original parties to the litiga-
2 tion to 'conduct their lawsuit on their own
3 terms' and the potential of unduly extending
4 the litigation."

5 The same theme has been repeated in a number of other
6 cases. Thus, in Hospital Counsel of Northern Cal. v.
7 Superior Court of Alameda Co., it was held that:

8 "[I]ntervention must not retard the principal
9 suit, nor delay the trial of the action, nor
10 change the position of the parties. . . ."

11 30 Cal.App.3d 331, 336, 106 Cal.Rptr. 247
12 (1973).

13 Hausmann v. Farmers Ins. Exchange,
14 supra, at 78;

15 Mann v. Superior Court of Los Angeles Co.
16 53 Cal.App.2d 272, 280-81, 127 P.2d 970 (1942);
17 Hibernia, etc. Soc. v. Churchill,
18 128 Cal. 633, 61 P. 278 (1900).

19
20 Status of Successful Intervenor

21 It has been held that the successful intervenor is
22 entitled to invoke the same procedural rights and remedies as
23 the original parties. Thus, the intervenor may, where inter-
24 vention is on the side of the defendant, move for dismissal
25 based on lack of subject matter jurisdiction. [Maquire v.
26 Cunningham, 64 Cal.App. 536, 540 (1923).] Moreover, the intervenor
27 may challenge a disqualified judge [San Diego v. Andrews, 195

28 ---

1 Cal. 111, 117 (1924)]; move for change of venue [Id.]; object
2 that the complaint does not state a cause of action [Maquire v.
3 Cunningham, supra, at 540, dictum]; move for a new trial or
4 appeal from a judgment for the plaintiff despite the failure of
5 the original defendant to take either step [Corridan v. Rose,
6 137 Cal.App.2d 524, 528ⁿ(1955)]. See also 3 Witkin, California
7 Procedure, 1878 (2d ed. 1971).

8 9 Timeliness of Intervention

10 C.C.P. § 387 permits intervention "[a]t any time before
11 trial." In Allen v. Calif. Water & Telephone Co., 31 Cal.2d
12 104, 187 P.2d 393 (1947), intervention was denied after trial
13 but before further proceedings wherein evidence was to be
14 taken and findings made as to riparian rights in which intervenor
15 claimed an interest. One of the bases for denial of intervention
16 was that the intervenors' complaint "[w]as not filed in the trial
17 court 'before trial' as that term is used in § 387." Id. at 107.

18 On the other hand, the restrictive terminology of § 387 has
19 been subject to liberal interpretation by the courts in cases where
20 late intervention would not subvert the basic policy considerations
21 at stake. Sanders v. Pacific Gas & Electric Co., 53 Cal.App.3d
22 661, 126 Cal.Rptr. 415 (1975); United Sav. & Loan Assn. v. Hoffman,
23 30 Cal.App.3d 306, 106 Cal.Rptr. 275 (1973).*/

24
25 */ A number of federal courts have permitted broad intervention
26 at the remedial stages of desegregation suits. E.g., Smuck v.
27 Hobson, 408 F.2d 175 (D.C. 1969); Johnson v. San Francisco
28 Unified School Dist., 500 F.2d 349 (9th Cir. 1974). The

1 A second criterion considered by the courts ruling on
2 intervention has been the diligence of the petitioning intervenor in
3 presenting his claim.

4 "Aside from the statutory limitation upon
5 the time of intervention, it is the general
6 rule that a right to intervene should be
7 asserted within a reasonable time and that
8 the intervenor must not be guilty of an un-
9 reasonable delay after knowledge of the suit."

10 Allen v. Calif. Water & Telephone Co.,

11 31 Cal.2d 104, 108, 187 P.2d 393 (1947).

12 Here again, several courts have taken a flexible approach
13 in permitting delayed intervention where no prejudice to the
14 existing parties is expected to ensue. Sanders v. Pacific Gas &
15 Electric Co., supra, at 669. See also 3 Witkin, California
16 Procedure, 1877 (2d ed. 1971)--"lack of diligence should be a
17 factor in determining whether to grant leave only when prejudice or
18 inconvenience to the original parties or to the court is
19 suffered."

20 21 Conditional Intervention

22 Professor Moore has noted that "[t]he problem of the late inter-
23 vener shades off into the problem of his status."*/ Since the

24 _____
25 precedential value of these cases, however, is conjectural
26 in view of the more permissive timeliness requirement of
27 F.R.C.P. 24.

28 */ 3 B Moore, Federal Practice, 24-422 (2d ed. 1948).

1 successful intervenor's status as a party may carry with it the
2 potential for prejudice to existing parties some courts have denied
3 late intervention where prejudice might ensue.

4 "It is . . . the general rule that an inter-
5 vention will not be allowed when it would
6 retard the principal suit, or require a
7 reopening of the case for further evidence,
8 or delay the trial of the action, or change
9 the position of the original parties."

10 Sanders v. Pacific Gas & Electric Co.,
11 53 Cal.App.3d at 669, 126 Cal.Rptr. at 420
12 (1975).

13 See also United States v. Calif. Coop. Canneries, 279 U.S. 553, 556
14 (1929)--"Intervention will not be allowed for the purpose of
15 impeaching a decree already made."

16 Hausmann v. Farmers Ins. Exchange,
17 213 Cal.App.2d 611, 616, 29 Cal.Rptr. 75,
18 78 (1963); People v. City of Long Beach,
19 183 Cal.App.2d 271, 6 Cal.Rptr. 658 (1960);
20 Hibernia etc. Soc. v. Churchill,
21 128 Cal. 633, 61 Pac. 278 (1900).

22 To a lesser degree the same purpose may be achieved by
23 imposing limitations upon the intervenor's status. Thus, it has
24 been stated that:

25 "An intervenor is bound by the record of the
26 action at the time the intervention is sought."

27 Allen v. Calif. Water & Telephone Co.,
28 supra, at 109.

1 "As a general rule an intervenor takes a suit
2 as he finds it, and he cannot avail himself
3 of irregularities the original parties have
4 expressly or impliedly waived. . . ."

5 Hospital Council of Northern Cal. v.
6 Superior Court of Alameda Co.,
7 30 Cal.App.3d 331, 336, 106 Cal.Rptr.
8 247 (1973)

9 VI

10 THE PRESENT INTERVENORS

11 To date Respondent has been served with proposed complaints
12 in intervention lodged by Bustop, a corporation, by Messrs. Paul,
13 Hastings & Janofsky; Roger S. Clark, a minor, et al., by Thomas E.
14 Garcin; Diane E. Watson, by Jack Tenner. Respondent submits that
15 each of these complaints is subject to demurrer and/or motion to
16 strike by one or both of the existing parties. Calif. Code of Civ.
17 Proc. § 387 (West Supp. 1977). The delay engendered by such pro-
18 ceedings would be prejudicial. Accordingly Respondent submits that
19 it is appropriate to consider each complaint, both in terms of
20 pleadings principles and intervention principles, at this stage.

21
22 Intervenor Bustop

23 Counsel's Memorandum in support of intervention by Bustop
24 acknowledges that "the Court's earlier judgment, as affirmed, now
25 constitutes the law of the case and cannot properly be reopened
26 at this time, save upon a showing that modification due to sub-
27 sequent events is appropriate. No such contention is being made
28 at this time." [P. 14, L. 17-21.] The qualifying language in this

1 statement gives rise to concern--particularly in light of the
2 allegations of the complaint, which clearly control.

3 In paragraph 6 of Bustop's complaint it is alleged
4 that

5 "the plan under consideration . . .
6 involves mandatory assignment of children
7 to schools . . . other than their neigh-
8 borhood schools" and "that . . . said child-
9 ren so selected for reassignment will be
10 chosen on the basis of their race, color,
11 or ethnicity, in violation of the
12 rights of said children . . . [under]
13 the Constitutions of the State of Calif-
14 ornia and the United States of America."

15 The relief prayed for by Bustop calls for the Court to:

16 (1) "prohibit the selection of students for reassignment
17 to schools on the basis of race, color or ethnicity; and

18 (2) prohibit the mandatory assignment of pupils
19 to other than their neighborhood school."

20 Bustop's complaint is manifestly open to demurrer. The
21 Supreme Court's decision in Crawford v. Board clearly requires re-
22 assignment on the basis of race, color and ethnicity, insofar as
23 reasonable and feasible, to remedy a previous constitutional viola-
24 tion. It contemplates that such reassignment shall be mandatory as
25 and to the extent necessary to achieve compliance. It should be
26 enough to say that the parties are bound by the Crawford decision;
27 that any integration plan meeting Crawford's "reasonable and feasible"
28 test would accord with the California Supreme Court's view of the

1 applicable law. In any event, the United States Supreme Court has
2 indicated that reassignment of pupils on the basis of race, in
3 order to further integration, does not violate the U.S. Constitu-
4 tion even when such reassignment is not required to remedy a previous
5 constitutional violation. Swann v. Board of Education, 402 U.S. 1,
6 17 (1970); Santa Barbara Sch. Dist. v. Superior Court of Santa
7 Barbara Co., 13 Cal.3d 315, 327-28, 118 Cal.Rptr. 637 (1975).

8 A further source of concern arising from Bustop's com-
9 plaint is to be found in paragraph 4 in which it is alleged that no
10 proper determination of the class issues was made at the trial
11 stage of this action. To the extent these allegations would afford
12 a basis for the relitigation of issues decided seven years ago they
13 present a solid impediment to intervention.

14
15 Intervenors Roger S. Clark, a Minor, et al.

16 Counsel's Memorandum in support of intervention by Roger
17 S. Clark, a minor, et al. states that his clients are indispensable
18 parties to this action. We respectfully disagree. Code of Civil
19 Procedure § 389 has been amended in such a way as to make it sub-
20 stantially identical with F.R.C.P. 19. See 3 Witkin, California
21 Procedure § 160 (a) (Supp. 1977). Under Federal Practice it is
22 clear that no particular class of students are indispensable
23 parties to a desegregation suit, although they may be proper parties.
24 Evans v. Buchanan, 416 F.Supp. 328 (D.Del. 1976); appeal dis-
25 missed 45 U.S.L.W. 3394 (S.Ct. 1976); Spangler v. Pasadena Board
26 of Education, 427 F.2d 1352 (9th Cir. 1970); cf. Serrano v. Priest,
27 18 Cal.3d 728, 750-753, 135 Cal.Rptr. 345 (1976).

28 ---

1 We note that counsel for intervenors Clark states in his
2 supporting Memorandum that his clients do not wish to reopen matters
3 already decided and they accept the law of the case decided
4 in Crawford v. Board. Again, however, the complaint in interven-
5 tion is controlling and warrants consideration. Paragraphs 13 and
6 14 of the complaint refer to mandatory pupil reassignment to schools
7 other than neighborhood schools on the basis of race, color or
8 national origin and allege that such reassignment would violate
9 intervenors' rights under the U.S. and California Constitutions.
10 These allegations appear to suffer from the same difficiencies that
11 attend Bustop's complaint in intervention. See supra at 17. It
12 is not clear to us how they can be reconciled with counsel's state-
13 ment that invervenors Clark, et al. accept the law of this case.

14
15 Intervenor Diane E. Watson

16 Respondent respectfully submits that the complaint and
17 supporting documents filed by intervenor Diane E. Watson are defi-
18 cient in several respects.

19 (1) Ms. Watson, who seeks to intervene on the basis of
20 her official capacity, lacks standing to sue.

21 (2) Her complaint fails to specify an interest not ade-
22 quately represented by petitioners and does not contain an adequate
23 prayer for relief.

24 Public officers are only possessed of those powers ex-
25 pressly granted to them by law or fairly implied therefrom. In
26 re Cathey, 55 Cal.2d 679, 689, 12 Cal.Rptr. 762 (1961); Bear
27 River, etc. Corp. v. County of Placer, 118 Cal.App.2d 684, 690
28 (1953). Ms. Watson seeks to intervene in this action in her official

1 capacity as an individual member of the Board of Education. She
2 claims the implied power to do so on the basis of Education Code §§
3 1001 and 1054. Those code sections, however, refer to the statutory
4 duties of the "governing board", not its individual members, and,
5 accordingly, afford no basis for her claim. Respondent respectfully
6 calls the Court's attention to Education Code § 1002 wherein the
7 power to "sue or be sued" is expressly vested in the governing
8 board as a whole. We submit that once a collective decision has
9 been arrived at by the governing board dissenting members, as such,
10 have no power to sue to compel board acceptance of the minority
11 view. See Wildlife Alive v. Chickering, 17 Cal.3d 768, 132 Cal.Rptr.
12 377 (1976), in which the California Supreme Court noted that:

13 "[U]nder the doctrine of expressio unius
14 est exclusio alterius, the creation of a
15 limited express exemption suggests that a
16 broader implied exemption could not have
17 been intended. 'In the grants [of powers]
18 and in the regulation of the mode of
19 exercise, there is an implied negative;
20 an implication that no other than the ex-
21 pressly granted power passes by the grant;
22 that it is to be exercised only in the
23 prescribed mode . . .'"

24 17 Cal.3d at 774.

25
26 Intervenor Watson prays the Court to order approval of
27 a plan which complies with the law (Education Code and California
28 Constitution). We submit that intervenor's participation as a

1 party to this suit is not necessary to achieve this goal. Her
2 interest in a legally sound plan of integration is indistinguishable
3 from that of any citizen and can be adequately protected by the
4 Court.

5 In paragraph 17 of her complaint, intervenor Watson
6 alleges that the Court "should have the benefit of testimony, oral
7 and documentary, which may not be presented to the Court by either
8 plaintiffs or defendants, which evidence will be in the nature of
9 some portions of the reports developed and submitted to the board
10 by CACSI [Citizens Advisory Committee on Student Integration] . . ."
11 Respondent submits that in the unlikely event the parties to this
12 action fail to present oral and documentary testimony necessary to
13 achieve sound adjudication of this case the Court can call any
14 witness to the stand to present such testimony, including Ms.
15 Watson.*/
16

17 VII

18 CLASS REPRESENTATION

19 Since petitioners are class representatives and since,
20 moreover, intervenors Clark, et al. seek to participate as class
21 representatives, a brief discussion of class actions is appropriate.

22 Respondent submits that the class action mechanism is that
23 best calculated to achieve two fundamental goals: that of manage-
24 ability and of the full participation by persons having a substan-
25 tial interest in the litigation who are not otherwise adequately
26 represented.

27 */
28 Another witness who could offer testimony concerning CACSI's
reports would be CACSI's chairman, Dr. Robert Loveland.

1 In Mann v. Superior Court, 53 Cal.App.2d 272, 127 P.2d
2 970 (1942) the Court of Appeals said:

3 "Our statutes authorize a representative
4 suit such as this derivative suit (Code Civ.
5 Proc., sec. 382), and permit one of the class
6 in behalf of which the suit has been brought
7 by a plaintiff to intervene therein (Code Civ.
8 Proc., sec. 387). However, it is elemental that
9 an intervenor who comes into the case to join
10 a plaintiff does so in subordination to and
11 in recognition of the propriety of plaintiff's
12 case.

13 * * *

14 "In a case of this character, as in any case,
15 the plaintiff must be permitted through his
16 counsel to dominate and control the suit to
17 its conclusion, unfettered by the views of
18 the interveners, save and except where it is
19 shown to the court that the action is not being
20 prosecuted to the best interests of the stock-
21 holders in whose behalf, as well as that of
22 the plaintiff, the suit was instituted. . . .
23 Hence counsel for an intervenor may not parti-
24 cipate in the presentation of the main case save
25 as counsel for plaintiff may consent or the court
26 otherwise order."

27 Id. at 280-81.

28 ---

1 Moreover, under Federal Rule of Civil Procedure § 23
2 governing class actions--which is to be used for guidance under
3 California class action procedure (Vasquez v. Superior Court, 4
4 Cal.3d 800, 94 Cal.Rptr. 796 (1971)--the court may promote effi-
5 cient conduct of the proceedings and broad representation by appro-
6 priate orders to control representatives of class or sub-classes:

7 "Under [F.R.C.P. 23] (d) the court
8 may make appropriate orders '(3) imposing
9 conditions on the representative parties or
10 on intervenors.' The Committee Note
11 suggests that the maintenance of a suit as
12 a class action might be conditioned on
13 strengthening of the representation, and
14 that the proper and efficient conduct of
15 the action may require the imposition of con-
16 ditions on intervenors. The variety of
17 . . . types of conditions that can be imposed
18 are limited only by the use of sound judicial
19 discretion."

20 3B Moore, Federal Practice, § 23.73 (2d ed.
21 1977)

22
23 Professor Moore elaborated on this point as follows:

24 "In the end, the court must utilize its
25 discretion to regulate the terms under which
26 all the attorneys, both those for the initial
27 representatives and those for members who

28 ---

1 have entered appearances, will represent the
2 class members' interests in litigating questions
3 of law and fact common to the class."

4 Ibid, § 23.90 [2].

5
6 DATED: February 28, 1977.

7 Respectfully submitted,

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