CHAMBERS OF
The Superior Court
LOS ANGELES, CALIFORNIA 90012
PAUL EGLY, JUDGE

TELEPHONE
(213) 974-1234

September 14, 1980

Honorable Rose Elizabeth Bird,
Chief Justice and Associate Justices
The Supreme Court of California
350 McAllister
San Francisco, California 94102

Dear Chief Justice Bird and Associate Justices:

Because thousands of minority children are potentially affected by the recent rulings issued by the Court of Appeal, I have decided to address you by this somewhat informal fashion and with your leave, to express to you certain facts which I believe the advocates may have failed to sufficiently stress.

Following the decision in Crawford v. Board of Education (1976) 17 Cal.3d 280, that there existed in Los Angeles unlawful segregation, I was first instructed to determine whether the School Board had implemented a program which promised to achieve meaningful progress toward eliminating that segregation. (17 Cal.3d at p. 286.) After nearly three years of hearings, on July 7, 1980, I determined that the Board had failed in that obligation and that it was necessary for the trial court to intervene. I therefore ordered the School Board to undertake immediately a reasonably feasible desegregation program, and in so doing, relied upon the broad equitable power outlined in Crawford, to the end of ensuring meaningful progress to alleviate school segregation in the district. (17 Cal.3d at p. 286.)

By reason of certain petitions for extraordinary relief lodged with the Court of Appeal, certain orders have issued which by any reasonable construction present me with a dilemma I cannot unilaterally resolve. For example, by its order of September 13 1980, the Court of Appeal has stated that the responsibility for the factual determinations of segregation are with the Board and that it is the Board (and not the trial court) which retains the primary responsibility of administering the school system.

Faced with conflicting instructions from two courts of higher jurisdiction, and having been made aware that petitions have been lodged with you by the parties to this action, seeking your intervention at this time, I have determined that the extraordinary nature and pervasive effect of this litigation requires that I communicate to you certain facts which may not be put in proper perspective by the advocacy documents prepared by counsel. More significantly, however, I direct this communication to you

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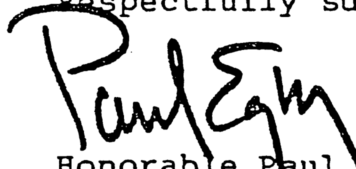
With the thought in mind that the entire school district with over half a million children is awaiting resolution of these problems, I trust this letter will be received in the spirit intended.

Respectfully submitted,



Honorable Paul Egly
Judge of the Superior Court

PE:sd
cc: Justice Roth
Justice Fleming
Justice Compton
Honorable Richard Schauer, Presiding Judge
Jerry F. Halverson, Esq.
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Sepember 14, 1980

CHRONOLOGY OF PRINCIPAL EVENTS

Situation Created by July 7 Order of the Trial Court

On July 7, after months of trial and thousands of pages of transcript, this court issued an Order After Trial. That Order divided the District into 11 sub-areas and directed that mandatory transportation of students could only occur within the boundaries of each area, while voluntary transportation could cross these boundaries. However, the Opinion accompanying the Order reviewed the history of voluntary programs in Los Angeles and observed that:

-- The principal voluntary program, called Permits with Transportation (PWT), resulted in transportation of minority pupils only, and subjected them to average bus rides of 55 minutes each way.

-- This program desegregated no minority schools, since the sending minority schools received no white students.

-- The program often placed minority students in second-class status by putting them in situations of sufferance rather than of right.

For these reasons, the Opinion concluded as follows:

"The inequitable treatment inherent in PWT programs as thus far applied in the District is a clear violation of the right of minority students to equal protection. It is especially true in the all-voluntary plan proposed by the district, where this form of PWT is relied upon as the major instrument of desegregation. The violation would also occur if PWT were permitted to thwart or to distort the desegregative effect of other programs by insulating students from assignment under those programs. However, when none of these conditions apply, PWT may represent the only option available for pupils who would not otherwise have access to what they perceive to be a better educational opportunity, and in that setting the program can be included as a residual component of a desegregation program."

In accord with the last sentence, the Order directed the respondent Board to prepare a plan that preserved Permits with Transportation, but allocated them after the residential racial/ethnic makeup of the school has been determined and mandatory assignments made on the basis of the students present in the school's attendance areas before any such Permits had been granted.

This principle was acknowledged by all parties to be central to the entire character of the planning pursuant to the Order. It was challenged by the Board of Education in its petition to the Court of Appeal for a stay. Meanwhile, however, planning by all parties proceeded on the basis of the racial/ethnic makeup of the students who reside near each school, not on the makeup of the school during the previous year with the minority students imported through PWT counted.

The Chart attached to this letter shows that using the biethnic/multi-ethnic definition of a desegregated school provided in the July 7 Order, it was possible to achieve desegregation of 190 schools (including 62 minority schools) involving 100,000 students in 1980-81, while maintaining the Permits with Transportation program at approximately its current size. This was the direction in which planning was proceeding up until August 6.

Situation created by Court of Appeal Order of August 6

On August 6, the Court of Appeal issued an Order granting in part the respondent Board's request for a stay of the trial court's Order, but denying the Board's request in most respects. While also denying the Board's request for a stay on grounds of the passage of Proposition 1, the Court of Appeal ruled that:

- The proper definition of a desegregated school, pending full argument of the pending appeals, is one where whites and the total of all minorities stand in "rough equivalence" with each other.
- Neither pupil reassignment nor pupil transportation may be made "to or from a presently substantially desegregated school." (This remark, which is explained nowhere in the Order, apparently was intended to be read in the context of the definitional discussion.)
- The Board's contention that there was too little time before the start of the 1980-81 school year for proper planning was without merit.
- All other aspects of the petition for a writ were denied.

Planning was immediately revised in accord with the change in the definition of a desegregated school. However, nothing in the Court's Opinion said or implied that a "presently desegregated school" was to be determined after PWT and other minority transportation programs had transferred in minority students. This court took it as settled that the portions of its July 7 Order directing that racial/ethnic makeup be determined by the composition of the school's residence area had been upheld. The Supreme Court's subsequent denial of the petitioners' appeal, which denial was also silent on this question, was seen as confirming this.

The Chart shows that after revising the definition of desegregation to suit the Court of Appeal, it was possible to desegregate 166 schools (50 of them minority schools) involving 86,000 students. This was the situation contemplated by the August 25 Order of this court, issued to establish the school groupings that were to be in effect starting September 16. If that Order had been drawn on the basis that PWT should be include within the racial/ethnic base of each school, it would have been in direct contravention of the Order of July 7, which had not been stayed in this regard.

Situation Created by Court of Appeal Order of September 4

The respondent Board appealed the August 25 Order, in part on the ground that the previous year's PWT students should be included in each school's base, so that some of the schools included in the groupings should be excluded as "presently desegregated." The Board further requested that seven schools that ranged between 60% and 62% white in composition be excluded on the ground that they were close enough to "rough equivalence."

On September 4, 12 days before the scheduled opening of school, the Court of Appeal issued a Supplemental Order interpreting the earlier exemption of a "presently, substantially desegregated school." For the first time, the Court indicated that this phrase encompassed schools brought to rough equivalence during the previous year through one-way minority transportation. The Court asserted that it was "axiomatic that in dealing with such an explosive and emotional issue as forced busing, use of voluntary means of compliance is infinitely preferable to use of involuntary means and that a desegregated school is a desegregated school. . . ." Nothing was said of the importance of desegregating minority schools or of equalizing travel burdens. Rather, 20 schools that had been included in the desegregation groupings order on August 25 were summarily exempted. However, the groupings themselves were not stayed, nor was replacement of the exempted schools by other white segregated schools forbidden or discouraged, nor was the time for implementation of the plan extended. Neither was it provided that PWT students should be taken into account in determining the racial/ethnic makeup of schools that were not brought to rough equivalence but did host some PWT students during the previous year. The request to add schools near the 60% mark was denied.

Acting on the understanding that the Crawford mandate required desegregation of minority schools, this court immediately requested the Board to propose ways to amend the school groupings so as to include the 14 minority schools and 12,895 minority students whose desegregation prospects were threatened by the exemption of 20 schools from participation. Despite repeated requests no such proposals were forthcoming. Board filings consisted entirely of challenges to any replacement of the exempted schools and protestations that insufficient time remained to make the adjustment.

As the Chart shows, implementation of this Court of Appeal Order without any replacement of the exempted schools would reduce the number of schools desegregated by the plan to 122 (of which 44 would be formerly minority schools), involving 64,000 students.

Left with no alternative, as the Crawford decision suggested might occur in the remedy phase, this court had no alternative but to make the adjustment on its own motion. This was done in an Order of September 12, the basic nature of which had been communicated to the Board and other parties two days before. This Order:

- Moved nine different segregated white schools into the groupings to insure desegregation of 13 of the 14 minority schools affected by the Court of Appeal action.

- Preserved all PWT placements planned in all of the affected schools other than those moved into the groupings.

- Provided for similar placements in other schools for all PWT applicants whom the District had planned to place in the schools inserted in groupings.

- Provided for placement of all minority students scheduled to be permanently assigned (and transported to) predominantly white schools in order to relieve overcrowding in their home schools.

- Allowed the Board extra time in which to implement the plan in the revised groupings.

This Order would permit desegregation of approximately the same number of schools and students as would have been possible before the Court of Appeal's exemption of 20 schools.

Situation created by Court of Appeal Order of September 13

The respondent Board's appeal arrived at the Court of Appeal before this court's Order was entered on September 12.

This was the same day that Mr. Justice Rehnquist denied the Board petition for a stay on the ground that no four members of the U.S. Supreme Court would agree to grant certiorari. On the following day the Court of Appeal issued a further Order, ruling essentially as follows:

- -- The exemption of 20 schools "was not and is not intended to be exclusive." Any other schools which "have been substantially desegregated" were also exempt.
- -- The white segregated schools that remained after the groupings had been formed by the trial court could not be used to substitute in these groupings for exempted schools.
- -- Whether a school is desegregated is a matter of fact and the factual determination "is in the first instance that of the Board."

Present Situation

Immediately upon receipt of the Court of Appeal Order, the respondent Board made public announcements to the effect that:

- -- The revised groupings would not be put into effect immediately and perhaps not at all.
- -- The seven additional schools for which exemption had again been requested from the Court of Appeal, and which are members of other groupings, would be exempted by decision of the Board.
- -- An inventory would be immediately taken of all other schools still involved in groupings with an eye toward further exemptions.
- -- Some or all of these steps will be placed before the trial court for decision during the next few days.

In order to appreciate the significance of these proposals, it must be kept in mind that an overwhelming majority of Board members oppose all mandatory assignment and transportation. It must also be stressed that almost every school grouping contains one large minority school and a number of smaller white schools. Thus the effectiveness of an entire grouping as an instrument of desegregation can be destroyed by the exemption of a single school, and the entire program can be dismantled through manipulation of a relatively small number of schools.

Hanging in the balance, therefore, is the capacity of any desegregation plan to effect any substantial desegregation of minority schools whatsoever. It is this decision, and nothing less, that is before the Supreme Court today.

CONSEQUENCES OF ORDERS FOR DESEGREGATING ELEMENTARY AND JUNIOR HIGH SCHOOLS

	July 7 Order - Multi-ethnic Plan	After Court of Appeal August 4 Order - "Rough Equivalence" Plan
"Naturally" Desegregated Schools	56	70
Mandatorily Desegregated Schools	190	166
(Formerly White Schools)	(128)	(116)
(Formerly Minority Schools)	(62)	(50)
White Segregated Schools	44 (Pending PWT)	28 (Pending PWT)
Minority Segregated Schools	204	230
	494	494

	After Court of Appeal August 25 Order - 20 1979-80 PWT Receivers Declared Desegregated*	After Court of Appeal Sept. 13 Order (Assuming Board Exempts Additional Schools)
"Naturally" Desegregated Schools	90	UNKNOWN
Mandatorily Desegregated Schools	122	"
(Formerly White Schools)	(78)	"
(Formerly Minority Schools)	(44)	"
White Segregated Schools	28 (Pending PWT) 18 (Unassigned)	"
Minority Segregated Schools	236	"
	494	

*Assumes that their groupings will operate only if remaining group is at least 40% white, without added schools.

CONSEQUENCES OF ORDERS FOR DESEGREGATING PUPILS IN ELEMENTARY AND JUNIOR HIGH SCHOOLS

Type of School	July 7 Order - Multi-ethnic Plan		After Court of Appeal Appeal August 4 Order - "Rough Equivalence" Plan	
	White	Minority	White	Minority
"Naturally" Desegregated Schools	18,000	26,000 pupils	24,000	26,000 pupils
Mandatorily Desegregated Schools	40,000	60,000	40,000	46,000
(Formerly White Schools)	(32,000)	(15,000)	(34,000)	(12,000)
(Formerly Minority Schools)	(8,000)	(45,000)	(6,000)	(35,000)
White Segregated Schools	20,000	10,000	15,000	5,000
Minority Segregated Schools	11,000	182,000	15,000	193,000

Type of School	After Court of Appeal August 25 Order - 20 1979-80 PWT Receivers Declared Desegregated*		After Court of Appeal Sept. 13 Order (Assuming Board Exempts Additional Schools)
	White	Minority	UNKNOWN
"Naturally" Desegregated Schools	33,000	29,000 pupils	"
Mandatorily Desegregated Schools	28,000	36,000	"
(Formerly White Schools)	(23,000)	(8,000)	"
(Formerly Minority Schools)	(5,000)	(28,000)	"
White Segregated Schools	17,000	6,000	"
Minority Segregated Schools	15,000	200,000	"

*Assumes that their groupings will operate only if remaining group is at least 40% white, without adding schools.