

## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

## SECOND APPELLATE DISTRICT

BOARD OF EDUCATION OF THE  
CITY OF LOS ANGELES,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES,

Respondent.

MARY ELLEN CRAWFORD, etc., et al.;  
BUSTOP, a Corporation; BETTER EDUCATION  
FOR STUDENTS TODAY; an Unincorporated  
Association; ROBERT LOVELAND and MARY  
KEIPP; CHARLES DREEBIN, etc., et al.; and  
UNITED TEACHERS/LOS ANGELES,

Real Parties in Interest.

REAL PARTIES IN INTEREST MARY ELLEN CRAWFORD,  
ETC., ET AL. REPLY TO REQUEST FOR TEMPORARY  
STAY AND FOR ALTERNATIVE WRIT OF MANDATE,  
PROHIBITION OR OTHER EXTRAORDINARY RELIEF

FRED OKRAND  
MARK D. ROSENBAUM  
MARY ELLEN GALE  
REES LLOYD  
ACLU Foundation of  
Southern California  
633 South Shatto Place  
Los Angeles, CA 90005  
(213) 487-1720

ANTONIO RODRIGUEZ  
Los Angeles Center for  
Law and Justice  
3421 East Olympic Blvd.  
Los Angeles, CA 90023  
(213) 266-2690

HALVOR T. MILLER  
3307 West 43rd Place  
Los Angeles, CA 90008  
(213) 295-6679

MANNING & ROBERTS  
1900 Avenue of the Stars  
Los Angeles, CA 90067  
(213) 277-4796

SHOCKLEY, DUFF & HART-NIBBRIG  
4401 South Crenshaw Blvd.  
Los Angeles, CA 90043  
(213) 299-9107

Attorneys for Real Parties in In Interest,  
Mary Ellen Crawford, et al.

PAUL HOFFMAN  
1 Wilshire Building  
Los Angeles, CA 90017  
(213) 629-0388  
Of Counsel

# TABLE OF CONTENTS

|                                                                                                                                                                                 | <u>Page</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| TABLE OF AUTHORITIES                                                                                                                                                            | iii         |
| REPLY TO PETITION FOR WRIT OF<br>MANDATE AND/OR PROHIBITION OR<br>OTHER EXTRAORDINARY RELIEF                                                                                    | 9           |
| REPLY TO MEMORANDUM OF POINTS<br>AND AUTHORITIES                                                                                                                                | 17          |
| REPLY TO INTRODUCTION                                                                                                                                                           |             |
| I. PROPOSITION 1, THE 1979 AMENDMENT<br>TO THE CALIFORNIA CONSTITUTION'S<br>EQUAL PROTECTION CLAUSE IS<br>UNCONSTITUTIONAL                                                      | 18          |
| A. The Procedure by Which It<br>Was Adopted and the Subject<br>Matter It Embraces Violate<br>the Method by Which the<br>California Constitution may<br>be Amended by Initiative | 19          |
| B. It Violates the Equal Protection<br>and Due Process Clause of the<br>United States Constitution                                                                              | 26          |
| 1. Proposition 1 is a<br>Culmination of California's<br>Historic Discrimination<br>Against Minorities                                                                           | 30          |
| a. Generally                                                                                                                                                                    | 30          |
| b. California's Discrimination<br>Against its Minorities in<br>its Public Schools                                                                                               | 35          |
| 2. The Purpose and Intent of<br>Proposition 1 is to Prevent<br>the Desegregation of the<br>Los Angeles School System                                                            | 44          |
| 3. An "Unequal" Equal Protection<br>Clause Cannot Stand Before<br>the Fourteenth Amendment                                                                                      | 49          |
| a. The Requirements for Finding<br>a Violation of the Fourteenth<br>Amendment Have Been Satisfied<br>in This Case                                                               | 49          |

|                                                                                                                                                                                                             | <u>Page(s)</u> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| (1) Proposition 1 Substantially<br>Burdens Minority Children<br>Attending Segregated Schools                                                                                                                | 51             |
| (2) The Historical Context of<br>Proposition 1, the Sequence<br>of Events Leading Up to<br>its Passage and the Legis-<br>lative History Establish<br>the Existence of an Improper<br>Discriminatory Purpose | 56             |
| b. The Case Law Clearly Demonstrates<br>the Constitutional Infirmary of<br>Proposition 1                                                                                                                    | 64             |
| C. The Re-Opening and Retroactive<br>Feature of Proposition 1 Deprives<br>the Plaintiff Minority Students<br>of Their Fourteenth Amendment Rights                                                           | 69             |
| D. To the Extent the Board's Application<br>Seeks to Apply Proposition 1 to Have<br>the Court Look Only to the Facts Which<br>Exist Today, the Proposition Violates<br>Federal Law                          | 79             |
| II THE SUPERIOR COURT'S FINDING DO<br>ESTABLISH A FOURTEENTH AMENDMENT<br>VIOLATION, CURRENT SEGREGATIVE<br>EFFECTS AND THE VALIDITY OF<br>ASSIGNMENTS BY RACE FOR THE<br>PURPOSE OF DESEGREGATION          | 83             |
| A. The 1970 Findings of Fact and<br>Conclusions of Law Fairly Bristle<br>with Federal Constitutional<br>Violations on the Part of the Board                                                                 | 85             |
| B. The Superior Court's Order to<br>Desegregate the District was<br>Amply Justified                                                                                                                         | 95             |
| III THERE IS NO JUSTIFICATION FOR<br>THE ISSUANCE OF A STAY OR<br>ALTERNATIVE WRIT                                                                                                                          | 99             |
| CONCLUSION                                                                                                                                                                                                  | 103            |
| EXHIBIT                                                                                                                                                                                                     | 104            |

## TABLE OF AUTHORITIES

|                                                                                                                                             | <u>Page(s)</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| AMADOR VALLEY JOINT UNION HIGH<br>SCHOOL DISTRICT v. STATE BOARD OF EDUCATION<br>22 Cal.3d 208, 149 Cal. Rptr. 239,<br>583 P.2d 1281 (1978) | 23             |
| AUSTIN INDEPENDENT SCHOOL DISTRICT<br>v. UNITED STATES<br>429 U.S. 990 (1976)                                                               | 87             |
| BANKS v. HOUSING AUTHORITY<br>120 Cal.App.2d, 260, P.2d 668 (1953)                                                                          | 33, 34         |
| BARHAM v. BARHAM<br>33 Cal.2d 416, 202 P.2d 289 (1949)                                                                                      | 46             |
| BENEFICIAL FIRE AND CASUALTY<br>INSURANCE CO v. KURT HITKE AND CO.<br>46 Cal.2d 517, 297 P.2d 428 (1956)                                    | 46             |
| BILLINGS v. HALL<br>7 Cal.1 (1857)                                                                                                          | 72             |
| BRINKMAN v. GILLIGAN<br>446 F.Supp. 1232 (D.C. Oh. 1977)                                                                                    | 89, 90         |
| BRINKMAN v. GILLIGAN<br>518 F.2d 853 (6th Cir. 1975)<br>cert.den. 423 U.S. 1000 (1975)                                                      | 90             |
| BROWN v. BOARD OF EDUCATION OF TOPEKA<br>347 U.S. 483, 98 L.Ed.2d 873, 74 S.Ct.<br>686 (1954)                                               | 80, 93, 101    |
| BROWN v. CALIFANO<br>455 F.Supp. 837<br>(D. D.C. 1978)                                                                                      | 27, 28         |
| BROWN v. MERLO<br>8 Cal.3d 855, 106 Cal.Rptr.<br>388 (1969)                                                                                 | 53             |
| BUSTOP, INC. v. BOARD OF EDUCATION<br>439 U.S. 1380, 58 L.Ed.2d 88, 99 S.Ct.<br>40 (1978)                                                   | 4, 52          |

|                                                                                                |        |
|------------------------------------------------------------------------------------------------|--------|
| CALIFORNIA EMP. etc. COM. v. PAYNE<br>31 Cal.2d 210 (1947)                                     | 74, 78 |
| CASTRO v. CALIFORNIA<br>2 Cal.3d 223, 85 Cal.Rptr 20, 446<br>P.2d 244 (1970)                   | 19     |
| CHILD LABOR TAX CASE<br>259 U.S. 20, 37, 66 L.Ed. 817, 42<br>S.Ct. 449 (1922)                  | 45     |
| CLARK v. JORDAN<br>7 Cal.2d 248 60 P.2d 457 (1963)                                             | 25     |
| COLUMBUS BOARD OF EDUCATION v. PENICK<br>443 U.S. 449 61 L.Ed.2d 666, 99 S.Ct.<br>(1979)       | passim |
| COOPER v. AARON<br>358 U.S. 1, 18, 3 L.Ed.2d 78 S.Ct.<br>1401 (1958)                           | 82, 98 |
| COOPER v. BRAY<br>21 Cal.3d 841, 148 Cal.Rptr. 148,<br>582 P.2d 604 (1978)                     | 54     |
| CRAWFORD v. BOARD OF EDUCATION<br>17 Cal.3d 280, 130 Cal.Rptr. 724 (1976)                      | passim |
| CUMMINGS v. HOKR<br>31 Cal.2d 844, 19s P.2d 742 (1948)                                         | 33     |
| DAYLO v. ADMINISTRATOR OF VETERANS AFFAIRS<br>501 F.2d 811 (C.A.D.C. 1974)                     | 74     |
| DAYTON BOARD OF EDUCATION v. BRINKMAN<br>443 U.S. 526, 61 L.Ed.2d 720, 99 S.Ct.<br>(1979)      | passim |
| DERODULFA v. UNITED STATES<br>461 F.2d 1240 (C.A.D.C. 1972)<br>Cert.denied 409 U.S. 949 (1972) | 72     |
| DIAZ v. S.J.U.S.D.<br>612 F.2d 411 (1979)                                                      | 86, 88 |
| ESTATE OF THROM<br>80 Cal.App.2d 756 (1947)                                                    | 72     |

|                                                                                                   |        |
|---------------------------------------------------------------------------------------------------|--------|
| ESTATE OF WELLINGS<br>197 Cal. 189, 240 P.2d (1925)                                               | 72     |
| FUJII v. CALIFORNIA<br>38 Cal.2d 718, 242 P.2d 617 (1952)                                         | 33     |
| GREEN v. COUNTY BOARD OF NEW KENT COUNTY<br>391 U.S. 430, 20 L.Ed.2d 716, 88 S.Ct.<br>1689 (1968) | 67     |
| GREEN v. UNITED STATES<br>376 U.S. 149, 11 L.Ed.2d 576, 84<br>S.Ct. 615 (1964)                    | 72     |
| HARRELL v. HOAGLAND<br>18 Cal.App.2d 721 (1937)                                                   | 72, 75 |
| HO AH KOW v. NUNON<br>Fed. Cas. No. 6, 546, 12 Fed. Cas. 252<br>(C.C.D. Calif. 1879)              | 31, 45 |
| HODGES v. SNYDER<br>261 U.S. 600, 67 L.Ed. 819<br>43 S.Ct. 435 (1923)                             | 72     |
| HOSPITAL ASSOCIATION OF NEW YORK STATE,<br>INC. v. TOIA<br>577 F.2d 790 (2nd Cir. 1978)           | 72     |
| HUNTER v. ERIKSON<br>393 U.S. 385, 21 L.Ed.2d 616, 89<br>S.Ct. 557 (1969)                         | 55, 56 |

|                                                                                                                                                                      |                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| JACKSON v. PASADENA CITY SCHOOL DISTRICT,<br>59 Cal.2d 876, 31 Cal.Rptr. 606 (1963)                                                                                  | 7, 55, 59<br>60, 93 |
| JONES v. UNION OIL CO.,<br>218 Cal. 775 (1933)                                                                                                                       | 72, 74, 75          |
| KELLEY v. METROPOLITAN CITY BOARD OF<br>EDUCATION OF NASHVILLE, TENNESSEE,<br>436 F.2d 856 (6th Cir. 1970)                                                           | 102                 |
| KENDALL v. KENDALL,<br>122 Cal.App. 397, 10 P.2d 131 (1932),<br><u>overruled on other grounds</u> , ROSHER v.<br>SUPERIOR COURT, 9 Cal.2d 556, 71 P.2d<br>918 (1937) | 72, 75              |
| KEYES v. SCHOOL DISTRICT NO. 1,<br>413 U.S. 189, 37 L.Ed.2d 548, 93 S.Ct.<br>2686 (1973)                                                                             | passim              |
| IN RE LAWS,<br>31 Cal.2d 8461, 93 P.2d 744 (1948)                                                                                                                    | 33                  |
| LEE v. NYQUIST,<br>318 F.Supp. 710 (W.D.N.Y. 1970) <u>aff'd</u><br>402 U.S. 935, 29 L.Ed.2d 105, 91 S.Ct. 1618<br>(1971)                                             | 67                  |
| IN RE LEE SING,<br>43 Fed. 359, [C.C. N.D. Cal. 1890)                                                                                                                | 31                  |
| LIN SING v. WASHBURN,<br>20 Cal. 534 (1862)                                                                                                                          | 31                  |
| LOS ANGELES INVESTMENT CO. v. GARY,<br>181 Cal. 680, 186 P. 896 (1920)                                                                                               | 33                  |
| McCULLOUGH v. COMMONWEALTH OF VIRGINIA,<br>172 U.S. 102, 43 L.Ed. 382, 19 S.Ct. 134<br>(1898)                                                                        | 71, 72              |
| McFADDEN v. JORDAN,<br>32 Cal.2d 330, 196 P.2d 787 (1948),<br><u>cert.den.</u> 336 U.S. 918, 93 L.Ed. 1080,<br>69 S.Ct. 6401 (1948)                                  | 19, 26              |
| MILLER v. McKENNA,<br>23 Cal.2d 774 (1944)                                                                                                                           | 72, 74, 75, 76      |
| MULKEY v. REITMAN,<br>64 Cal.2d 529, 50 Cal.Rptr. 881, 413 P.2d<br>825 (1966), <u>aff'd</u> 837 U.S. 369 (1967)                                                      | 19, 44, 57, 58      |

|                                                                                                                 |    |
|-----------------------------------------------------------------------------------------------------------------|----|
| MILLER v. MURPHY,<br>185 Cal. 344 (1921)                                                                        | 72 |
| MIRABEL v. GENERAL MOTORS ACCEPTANCE CORP.,<br>537 F.2d 871 (7th Cir. 1976)                                     | 74 |
| NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF<br>COLORED PEOPLE v. STATE OF CALIFORNIA,<br>Civil No. 5-79-857-PCW | 29 |
| NORTH CAROLINA STATE BOARD OF EDUCATION v.<br>SWANN,<br>402 U.S. 543, 28 L.Ed.2d 586, 91 S.Ct. 1284<br>(1971)   | 67 |
| OYAMA v. CALIFORNIA,<br>322 U.S. 633, 92 L.Ed. 249, 68 S.Ct. 269 (1948)                                         | 33 |
| PARDEE CONST. CO. v. CALIFORNIA COASTAL<br>COMMISSION,<br>95 Cal.App.3d 471, 157 Cal.Rptr. 184 (1979)           | 72 |
| IN RE PARROTT,<br>1 Fed. 481 (C.C.D. Cal. 1880)                                                                 | 31 |
| PEOPLE v. BEADY,<br>40 Cal. 198 (1870)                                                                          | 32 |
| PEOPLE v. HALL,<br>4 Cal. 399 (1854)                                                                            | 32 |
| PEOPLE v. PETTINGILL,<br>21 Cal.3d 231, 247, 578 P.2d 108, 145 Cal.Rptr.<br>861 (1978)                          | 52 |
| PEREZ v. SHARP,<br>32 Cal.2d 711, 198 P.2d 17 (1948)                                                            | 34 |
| PERRY v. JORDAN,<br>34 Cal.2d 87, 92-93, 207 P.2d 47 (1949)                                                     | 20 |
| PERSONNEL ADMINISTRATOR OF MASSACHUSETTS v.<br>FEENEY,<br>442 U.S. 256, 60 L.Ed.2d 870, 99 S.Ct. 2282<br>(1979) | 65 |
| PIPER v. BIG PINE SCHOOL DISTRICT, 193 Cal.<br>664, 226 P. 926 (1924)                                           | 39 |
| POLICE DEPARTMENT v. MOSLEY,<br>408 U.S. 92, 33 L.Ed.2d 212, 92 S.Ct. 2286<br>(1972)                            | 54 |

|                                                                                                                                                |                |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| PORTERFIELD v. WEBB,<br>263 U.S. 225, 68 L.Ed. 278, 44 S.Ct.<br>21 (1923)                                                                      | 32             |
| REITMAN V. MULKEY<br>387 U.S. 369, 18 L.Ed.2d 830,<br>87 S.Ct. 1627 (1967)                                                                     | 30, 35, 57, 70 |
| ROBINS v. PRUNEYARD SHIPPING CENTER<br>23 Cal3d 889, 592 P.2d 341, 153 Cal.Rptr.<br>854 (1979) <u>aff'd</u> 48 U.S.L.W. 4650<br>(June 9, 1980) | 51             |
| SAN ANTONIO UNIFIED SCHOOL DISTRICT<br>v. RODRIGUEZ<br>411 U.S. 1, 36 L.Ed.2d 16, 93 S.Ct. 1278                                                | 22, 52         |
| SAN FRANCISCO UNIFIED SCHOOL DISTRICT<br>v. JOHNSON<br>3 Cal.2d 937, 92 Cal.Rptr 309<br>479 P.2d 669 (1971)                                    | passim         |
| SANTA BARBARA SCHOOL DISTRICT v.<br>SUPERIOR COURT<br>13 Cal.3d 315, 118 Cal.Rptr. 637,<br>530 P.2d 605 (1975)                                 | 43, 61         |
| SCARBOROUGH v. DUGAN<br>10 Cal. 305 (1858)                                                                                                     | 72, 75         |
| SCHOOL COMMITTEE OF SPRINGFIELD v.<br>BOARD OF EDUCATION<br>366 Mass. 315, 319 N.E.2d 427<br>(1974), cert. denied 421 U.S. 947                 | 68             |
| SEATTLE SCHOOL DISTRICT NO. 1<br>v. WASHINGTON<br>473 F.Supp. 966 (W.D. Wash. 1979)                                                            | 64, 66, 67, 68 |
| SERRANO v. PRIEST<br>5 Cal.3d 584 (1971)                                                                                                       | 22, 77         |
| SERRANO v. PRIEST<br>18 Cal.3d 728, 762, 557 P.2d 929, 18<br>Cal.3d 728 1976)                                                                  | 52             |
| SLATER v. BLACKWOOD<br>15 Cal.3d 791, 126 Cal.Rptr. 225 (1976)                                                                                 | 78-79          |
| SWANN v. CHARLOTTE-MECKLENBURG BOARD<br>OF EDUCATION<br>402 U.S. 526 (1971)                                                                    | 55, 79, 87, 90 |

|                                                                                                               |                |
|---------------------------------------------------------------------------------------------------------------|----------------|
| TAKAHASHI v. FISH & GAME COMMISSION<br>410 92 L.Ed. 1478, 68 S.Ct. 731 (1948)                                 | 33             |
| THORPE v. HOUSING AUTHORITY<br>393 U.S. 268, 21 L.Ed.2d 474, 89<br>S.Ct. 518 (1969)                           | 72             |
| TINSLEY v. PALO ALTO UNIFIED SCHOOL DISTRICT<br>No. 206 010                                                   | 29             |
| UNITED STATES v. RUMELY<br>35 U.S. 41, 44 97 L.Ed. 775,<br>73 S.Ct. 543 (1953)                                | 45             |
| UNITED STATES v. BOARD OF EDUCATION,<br>IND. S.D., NO. 11, TULSA CITY, OKLA.<br>476 F.2d 621 (10th Cir. 1973) | 92             |
| UNITED STATES v. MISSOURI<br>515 F.2d 1365 (8th Cir. 1975)                                                    | 81             |
| UNITED STATES v. TEXAS EDUCATIONAL<br>AGENCY<br>564 F.2d 162 (5th Cir. 1977), cert.<br>denied, 443 U.S. 915   | 94             |
| VILLAGE OF ARLINGTON HEIGHTS v.<br>METROPOLITAN HOUSING DEVELOPMENT CORP.<br>429 U.S. 252 (1977)              | 30, 50, 68, 81 |
| WARD v. FLOOD<br>48 Cal. 36 (1874)                                                                            | 37, 76-77      |
| WATSON v. CITY OF MEMPHIS<br>323 U.S. 526, 533 10L.Ed.2d 529,<br>83 S.Ct. 1314 (1963)                         | 16             |
| WATTS v. INDIANA<br>338 U.S. 49, 52, 93 L.Ed. 1805,<br>69 S.Ct. 1347 (1949)                                   | 45             |
| WESTMINSTER SCHOOL DISTRICT OF ORANGE<br>COUNTY v. MENDEZ<br>161 F.2d 774 (9th Cir. 1947)                     | 40             |
| YICK WO v. HOPKINS<br>118 U.S. 356, 30 L.Ed. 220<br>6, S.Ct. 1064 (1886)                                      | 32             |

## CONSTITUTION

### California

|                    |                   |
|--------------------|-------------------|
| Article I, §1      | 22                |
| Article I, §7(a)   | 1, 14, 24, 25, 53 |
| Article I, §24     | 21, 27, 52        |
| Article I, §26     | 34                |
| Article II, §1     | 31                |
| Article II, §8(d)  | 24                |
| Article II, §9     | 20                |
| Article IV, §1     | 20                |
| Article IV, §16(a) | 21                |
| Article VI, §1     | 20                |
| Article XVIII, §1  | 24                |
| Article XIX, §2    | 31                |

### United States

|                      |     |
|----------------------|-----|
| Article VI, Cl.2     | 82  |
| Fourteenth Amendment | 100 |

## STATUTES

|                                                            |        |
|------------------------------------------------------------|--------|
| Cal.Stats. 1935, c. 488, §33                               | 38     |
| Cal. Civil Code §60                                        | 34     |
| Cal. Civil Code §69                                        | 34     |
| Cal. Code of Civ. Procedure §526a                          | 72     |
| Cal. Education Code §1009.5                                | 41     |
| Cal. Education Code §1009.6 -<br>(Ed. C. §35351 and 72210) | 42, 61 |

|                               |        |
|-------------------------------|--------|
| Cal. Education Code §3520(a)  | 25     |
| Cal. Education Code §35350    | 41     |
| Cal. Education Code §72209    | 27     |
| Cal. Elections Code §3531     | 25, 26 |
| Cal. Political Code §§1197(b) | 26     |

#### TREATISE/REVIEW

|                                         |        |
|-----------------------------------------|--------|
| 4 Witkin, Cal. Procedure Judgment, §147 | 77, 78 |
| 13 Cal.Jur.3d §269                      | 73     |
| 13 Cal.Jur.3d §275                      | 76     |
| 13 Cal.Jur.3d §276                      | 75     |

#### MISCELLANEOUS

|                                                                                                                       |        |
|-----------------------------------------------------------------------------------------------------------------------|--------|
| The Government Riots of Los Angeles, June, 1943<br>(Masters Thesis, UCLA, 1969, pp. 25-27)                            | 34     |
| Hochman,<br>The Supreme Court and the Constitu-<br>tionality of Retroactive Legislation,<br>73 Harv.L.Rev. 692 (1960) | 73     |
| Irving G. Hendrick<br>"The Education of Non-Whites in<br>California, 1849-1970"                                       | Passim |
| Tipton, The San Dimas Intercultural Program                                                                           | 41     |

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

|                                           |   |
|-------------------------------------------|---|
| BOARD OF EDUCATION OF THE                 | ) |
| CITY OF LOS ANGELES,                      | ) |
|                                           | ) |
| Petitioner,                               | ) |
|                                           | ) |
| vs.                                       | ) |
|                                           | ) |
| SUPERIOR COURT OF THE STATE OF CALIFORNIA | ) |
| FOR THE COUNTY OF LOS ANGELES,            | ) |
|                                           | ) |
| Respondent.                               | ) |
|                                           | ) |
| MARY ELLEN CRAWFORD, etc., et al.;        | ) |
| BUSTOP, a Corporation; BETTER EDUCATION   | ) |
| FOR STUDENTS TODAY; an Unincorporated     | ) |
| Association; ROBERT LOVELAND and MARY     | ) |
| KEIPP; CHARLES DREEBIN, etc., et al.; and | ) |
| UNITED TEACHERS/LOS ANGELES,              | ) |
|                                           | ) |
| Real Parties in Interest.                 | ) |

---

REAL PARTIES IN INTEREST MARY ELLEN CRAWFORD,  
ETC., ET AL. REPLY TO REQUEST FOR TEMPORARY  
STAY AND FOR ALTERNATIVE WRIT OF MANDATE,  
PROHIBITION OR OTHER EXTRAORDINARY RELIEF

This is a reply by real parties in interest, Mary  
Ellen Crawford, etc. et al. (the plaintiff minority  
students<sup>1/</sup> about which this case is) only to those portions  
of the Board of Education's papers which seek a temporary

---

<sup>1/</sup> The case in chief, Crawford v. Board of Education, No. 822  
854 in the Los Angeles Superior Court, is a mandamus proceeding.  
In that proceeding the minority students are denominated  
"petitioners." For ease of reference in these proceedings in  
which there is also a petitioner, the minority students will  
be referred to as "plaintiffs."

stay and an alternative writ, neither of which, nor the writ of superdeas which the Board seeks in the companion case, No. 60,000 in this Court, should be granted. Save as necessary for clarification and understanding, whether a peremptory writ should issue, will not be dealt with herein.

By these applications the Board of Education seeks to immediately undo almost three years of hearings by the trial court and have this Court in haste and without having an opportunity to review the record and consider adequate briefs or argument, issue an order to continue its segregated district. As the trial court found and the California Supreme Court agreed (Exhibit A, pars. IV.21 and 36; Exhibits, 19 and 25; Crawford v. Board of Education, 17 Cal.3d 280, 285, 551 P.2d 28, 130 Cal.Rptr. 724 (1976), the Board affirmatively, intentionally and in bad faith created that de jure segregated district. That district is still not desegregated, yet the Board seeks to have this Court further delay the process on an emergency, shot gun basis.

The Board would have this Court in the space of a few days decide the validity of a multi-ethnic approach to desegregation. This, in a school district which is, indeed, multi-ethnic (26.9% white; 23.8% Black; 41.9% Hispanic; 6.9% Asian-Filipino; .5% American Indian [from Exhibit 11B in Trial Court]). To take advantage of this rich cultural mix, the Board says is "bizarre." (Petition 2) The trial court pondered long and hard on the

matter, heard the witnesses. Not so cavalierly or summarily should the trial proceedings be cast aside.

The Board posits its application for an immediate stay on the passage of Proposition 1 at the November, 1979 election (Petition 2). It likewise (Id.) asks this Court before an appeal may be heard and without the evidence in the case before it to order "prompt termination of the extensive mandatory reassignment and transportation of pupils imposed by the Superior Court's orders dated February 7, 1978 and May 30, 1979 as well as that imposed by the Superior Court's order dated July 7, 1980 (Plan 3)."<sup>2/</sup> The Board does so in Orwellian "1984" style as though the 7-1/2

---

<sup>2/</sup> The Board knows, or should know, that there is no such thing as "mandatory transportation" in California. (San Francisco Unified School District v. Johnson, 3 Cal.3d 937, 479 P.2d 669, 92 Cal.Rptr. 309 [1971]) and it knows that the Superior Court did not order such. The Board also knows that all assignment of students is mandatory and that school districts have not only the right but the duty to make them. (Id.) Any other system, allowing students to go to whatever school they want, when they want and for as long as they want to would result, by definition, in utter confusion, chaos and anarchy. What the Board really means, therefore, is that it wants from this Court an emergency order preventing the effectuation of the Superior Court's order that the Board comply with the Superior Court's 1970 order, affirmed by the Supreme Court, that the Board desegregate its segregated district. To the extent that the Board seeks to be relieved of the pairs, clusters and midsite "mandatory" assignments it made during Plan 2, (Minute Orders of February 7, 1978 and May 30, 1979; Exhibits C and E; pages 85 and 217) a plan which did not comply with the mandate or the Constitution but which the Superior Court allowed the Board to implement as a first step (Exhibit C, pages 87-88), that is accomplished by the court's July 7, 1980 order (Exhibit EE, page 1075), which allows the Board to discontinue them if it so minded.

month trial did not take place in 1968 and 1969, (Exhibit A, page 2) as though the Superior Court did not make findings as to the intentionally de jure segregated system the Board had created (Id., pages 19 and 25) and as though the California Supreme Court had not approved those findings (17 Cal.3d at 285).

The Board's justification for engaging in this "newspeak" is the remark of Mr. Justice Rehnquist, possibly concurred in later by Mr. Justice Powell<sup>3/</sup> denying the application of Bustop<sup>4/</sup> to reverse the California Supreme Court's order overturning this Court's stay order of August 31, 1978 as to Plan 2 (2d Civ. No. 54391, 54392). Mr. Justice Rehnquist stated (Bustop Inc. v. The Board of Education of the City of Los Angeles, 439 U.S. 1380, 1381, 58 L.Ed.2d 881, 99 S.Ct. 40 [1978]) that he was of the view that were the California Supreme Court's order premised on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, he would be inclined to agree with this Court that the Plan 2 order of the Superior Court, ordered into effect by the California Supreme Court, was inconsistent with then recent decisions of the United

---

<sup>3/</sup> The reason we say "possibly" is that Mr. Justice Powell also denied the application because he was "in accord with the reasons advanced by Mr. Justice Rehnquist." This does not necessarily mean that he was in accord with Mr. Justice Rehnquist's remark about a case that was not before him.

<sup>4/</sup> An intervenor corporation in the proceedings whose position is identical with that of the Board's (Memorandum of Intervenor Bustop in Support of Petition for Writ of Supersedeas, No. 60,000 in this court).

States Supreme Court, notably Dayton Board of Education v. Brinkman, 433 U.S. 406, 53 L.Ed. 851, 97 S.Ct. 2766 (1977) (Dayton I). From this the Board would have this Court draw the conclusion, even if it is legally permissible at this stage of the litigation, which it is not, that the federal rule on the record of this case would not permit of mandatory assignments for desegregation. The Board is totally in error.

The Board neglects to appreciate that both Mr. Justice Rehnquist and Powell were dissenters in the later cases of Columbus Board of Education v. Penick, 443 U.S. 449, 61 L.Ed.2d 666, 99 S.Ct. \_\_\_\_ (1979) and Dayton Board of Education v. Brinkman, (II) 443 U.S. 526, 61 L.Ed.2d 720, 99 S.Ct. \_\_\_\_ (1979) wherein the United States Supreme Court in Columbus specifically rejected (61 L.Ed.2d at 682, footnote 15) their view of such evidence, ("Those courts [the District and Court of Appeals] reveal a much more knowledgeable and reliable view of the facts and of the record than do our dissenting Brethren") and in Dayton II, (61 L.Ed.2d at 735) rejected the Board of Education's view of Dayton I, a view apparently agreed with by the dissenting Justices.<sup>5/</sup> Accordingly, the Board's assertion (Petition 4) that the reasoning of Mr. Justice Rehnquist and Mr. Justice

---

<sup>5/</sup> Incidentally, with due respect, we suggest that Mr. Justice Rehnquist and Powell had scant time to become familiar with the voluminous record in the case presented to them which in addition to the petition itself included some 22 volumes of exhibits (this Court has 3 before it) of which the 1970 findings alone occupied some 75 pages. The decision by the California Supreme Court was rendered on September 6, 1978 in San Francisco. Mr. Justice Rehnquist's was rendered in Washington on September 8, 1978.

Powell now precludes the "mandatory" reassignment and transportation imposed by Plan 2<sup>6/</sup> is simply wrong. If Mr. Justices Rehnquist's and Powell's reasoning had prevailed, Dayton II and Columbus would never have been decided the way they were.<sup>7/</sup>

A few comments on the Board's "facts of the case in chronological order." (Petition 4).

The Board is egregiously incorrect in its characterization (Petition 5) that the Superior Court's conclusion of de jure segregation was "based largely on findings that the District 'knew or, in the exercise of reasonable cause, should have known' that the failure to take affirmative action would result in racial imbalance." Even were this the case, which it is not, it would aid the Board of Education naught. "Part of the affirmative duty imposed by our cases," said the Supreme Court in Dayton II (61 L.Ed.2d at 734) "is the obligation not to take any action that would impede the process of disestablishing the dual system and its effects . . . [T]he measure of the post-Brown conduct of a school board under an unsatisfied duty to

---

6/ In any event, that matter is functus officio. See footnote 2, supra, page 3.

7/ Although plaintiffs understandably are not in agreement with Mr. Justice Rehnquist's and Powell's views on desegregation as expressed in their dissenting opinions in Dayton II and Columbus, they would be less than candid if they did not acknowledge that they derive some comfort -- long range -- in the justices' expressions in both those cases (61 L.Ed.2d at 666 [in Columbus] and 737 [in Dayton II]) that the Court's opinion in them "sweeps away the distinction between de facto and de jure segregation."

liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system." (emphasis added). In Columbus the court reiterated (61 L.Ed.2d at 681) its teaching that "'the foreseeable effect standard [may be] utilized as one of the several kinds of proofs from which an inference of segregative intent may be properly drawn," and "adherence to a particular policy or practice, 'with full knowledge of the predictable effects of such adherence upon social imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent may be drawn.'" As in Columbus, 61 L.Ed.2d at 680, the school board here was "'adequately put on notice of the fact that action was required to correct and to prevent the increase in' segregation, yet failed to heed [its] duty to alleviate racial separation in the schools." That the Board here refused to follow the teaching of the California Supreme Court in Jackson v. Pasadena City School District, 59 Cal.2d 876, 382 P.2d 878, 31 Cal.Rptr. 606 (1963) is not something that can be turned by the Board to its advantage. It consciously failed and refused to do its duty. It intentionally perpetuated segregation.

But even more telling, perhaps, with reference to the Board's "failure to take affirmative action" view of the Superior Court's findings, is the fact that the Court found the Board to have engaged in affirmative positive

segregative and discriminatory action. Witness a few:

Finding IV.21; Exhibits, 19: "That the schools which were segregated and will continue to be segregated have remained and continue to remain segregated. They were caused to be segregated and will continue to remain segregated by Board by, among other acts, mandating neighborhood school systems, site selection, mandating school attendance areas and boundaries of such schools, transportation policies, and restrictive, impracticable and non-effective, for integration transfer policies." (emphasis added)

Finding IV.27, Exhibits, 22: "Negro and Mexican American students in Board's minority segregated schools do not receive equal educational opportunity measured either by educational inputs or outputs. There are significant differences and disadvantages when compared, measured and valued with Board's white schools.

" . . .

"Board's segregated schools, the plant, teacher and facilities are in fact of less quality . . ."

Finding IV.32, Exhibits, 23: "That Negro and Mexican pupils in Board's segregated schools have not been taught as efficiently and effectively, with the same emphasis, compassion and understanding, as White pupils have been taught in the white schools . . ."

Finding IV.34, Exhibits, 24: " . . .

"Board postulates that having a group, white, whose 'output' makes a better showing for Board and its educational system, it therefore should concentrate thereon and only from any excess funds attempt to achieve through integrated education the same 'outputs' by the minority . . ."

Finding IV.36, Exhibits, 25: "Board has and is, since at least May of 1963,

knowingly, affirmatively and in bad faith, without regard for its legal and fiduciary duties to its pupils, by and through its actual affirmative policies, customs, usages and practices, doings and omissions, segregated, de jure, its students, in that it did at all times herein involved and still is doing and will continue to do so unless commanded otherwise by the Court, among other things:" (emphasis in original)

These included

(i) Selecting, purchasing and siting schools in racially imbalanced segregated areas intending that the minority students shall attend those schools and slavishly setting attendance areas to require the minority students to attend minority segregated schools. (Exhibits, Pg. 25)

(iii) Knowing of its constitutional duty to establish school attendance areas so as to afford its students equal protection of the law but nevertheless establishing them to create segregated minority schools. (ibid).

(iv) Establishing Feeder School Policies that created or perpetuated racial imbalance and segregation. (Exhibits, 26)

(v) and (vi) Establishing transportation policies that created or perpetuated segregation. (ibid)

(vii) During the trial the board caused its Director of Transportation to prepare a report for presentation to the Court to demonstrate that the cost of busing involved in desegregation was more than desegregation was worth. The Court found the report not to have been made

in good faith. (Exhibits, 28-29)

(xi) Expending billions of dollars in creating, maintaining, protecting and perpetuating its segregated and racially imbalance schools. (Exhibits, 29)

Finding IV.38, Exhibits, 30: "None of Boards' schools opened subsequent to 1963 was designed, in its location or in the drawing of its boundaries, to effect desegregation or integration in education.

1963 was the date of the California Supreme Court's decision in Jackson, supra, which set out the duty of California School boards with regard to maintaining segregated schools, a duty the Board refused to fulfill.

Finding IV.48, (Exhibits, 34): ". . . The effect of the Boards alleged 'open enrollment' policies was to permit white pupils attending schools with predominantly minority group enrollment to transfer to schools having predominantly white enrollment."

Finding IV.51, Exhibits, 37: in 1967 the Board adopted a resolution that "sets as its goal on integrated system at all levels and divisions and instructs the staff to develop every feasible technique and program to accomplish this goal." The court found that the Board took no meaningful steps to accomplish the stated goal. (Exhibits, 37)

Finding IV.52, (Exhibits, 37): in 1969, the State Board of Education adopted rules as to the school district responsibilities to prevent and eliminate racial and ethnic imbalance. The Court found that though approximately a year

had passed since the adoption of the State regulation and a subsequent adoption by the Board of a resolution as to its understanding of them, the Board had made no plans to follow them.

In Finding IV.54, (Exhibits, 42) the Court found that the Board is committed to the policies "that separate but equal is equal. That no affirmative duty exists on its part to not create segregation...."

In Finding IV.63, (Exhibits, 45): the court found "That since 1963, ... public monies have, in effect, been expended to maintain and thereby to perpetuate the segregation existing in Board's schools, without any meaningful progress toward integration. ... Board's directions and statements, sounding as if Board were, in fact, seeking and ordering integration, were issued for public relations to attempt to keep the minorities pacified by attempting to create an image of equal educational opportunity."

Thus, it cannot be said that the findings of the Superior Court were merely that the Board did not act affirmatively. The findings show many typical affirmative segregative acts of a Board of Education determined, to the extent it could, to intentionally maintain a segregated system.

The order of July 5, 1977 referred to at page 6 of the petition was not a partial granting of plaintiffs' motion. It was a total granting. Said the Court: "At the end of the testimony [of the hearing which took place from March through June, 1977] a motion was made by [plaintiffs], . . . requesting the plan be rejected as insufficient

compliance with the mandate. The Court now grants [plaintiffs'] motion." The order to come back with a new, constitutional plan within 90 days, "a plan or plans which realistically commence the desegregation of the district by no later than February 1978" (an order never complied with by the Board) did not indeed preclude the Board from "reexamining" the rejected Plan A or any other plan, but it by no means permitted the Board to return to court with that plan as the means of desegregation.

The February 7, 1978 order (Exhibit C, Exhibits, 85), in denying plaintiffs' motion to reject Plan 2 recognized that the plan did not comply with the mandate of the California Supreme Court in Crawford (Exhibits, 87, lines 21-24) but allowed it to be implemented as "an important initial step toward the eventual compliance with the writ of mandate." (ibid, 88, lines 9-10)

In response to plaintiffs' emergency petition for writ of mandate to overturn this Court's August 31, 1978 stay order as to Plan 2, the Board urged the California Supreme Court not to vacate the stay.

Whether Plan 2 or any portion thereof was ineffective is a matter of opinion. Respondent court found that the largest single factor as to whatever dissatisfaction there was in the white community (which is, apparently, the way the Board measures the "effectiveness" of a plan) was because of the manner in which the Board administered the plan. "It pitted school against school without an

articulated reason, and violated the first rule of any acceptable plan that it be fair and require that if there are burdens that they be assumed as equally as possible by all participants." (Exhibit FF; Exhibits 1109, lines 21-24)

The Board has never complied with the Superior Court's February 7, 1978 order. (Exhibit C, Exhibits, 85) That order required the Board to come forward with proposals to remedy the insufficiencies of Plan 2 or explain why the mandate of the Superior and Supreme Courts did not require them to be remedied. (Exhibits, 88) The March, 1979 submission of the Board (Exhibit D, Exhibits, 92) neither remedied the insufficiencies nor explained why the mandates do not require them.

What point the Board seeks to make by recalling (Pet. 10) that the pairings which it decreed were felt by the respondent court to be monstrous is not clear. Attention has already been called to the Board's administration of the plan as being the largest single cause of white dissatisfaction. (supra, page 12) Moreover, the Board seeks to stay the order of the respondent Court which calls for changes in this coming year, including allowing the Board to end those pairings. (Exhibits, 1075) If the stay is granted, those very pairings will, perforce, continue.

The July, 1979 motion of plaintiffs concerning the ninth grade was not to add the ninth grade to the mandatory reassignment component, as the Board puts it (Petition 10). It was to prevent those students who were already in a desegregation program from being sent back for the last year of their junior high school experience to their previous segregated schools. The motion was directed to the consequences of an inadequate plan that applied to only some grades.

The purpose of Proposition 1 on the November 6, 1979 ballot amending the Equal Protection Clause of the California Constitution, Article I, Section 7(a), was to stop the desegregation of the Los Angeles School District (Exhibit J, Exhibits, 395)

The Board's contention (Petition 13) concerning the Superior Court's orders of May 19, 1980 is moot. That order simply denied the Board's motion made during trial (Exhibit F; Exhibits, 220) that the so-called mandatory reassignment portions of Plan 2 be terminated. Those methods of assignment were to remain in effect only until further order of Court. That termination was done by the court's order of July 7, 1980 (Exhibit EE; Exhibits, 1075). Accordingly, what the Board seeks to do by this preceeding is to catapult this Court into determining the validity of the Superior Court's order made after due consideration following almost 6 months of trial which had been preceded by hearings over a 2-1/2 year period.

The reasons given by the board to abort the appeal process (Petitions 13-15) and to receive the precipitous

orders it requests are inadequate. The effect of so doing would be to have no desegregation in this school district which has been found to have created and maintained in bad faith and intentionally a segregated school system. It is the minority students who would suffer irreparable injury if desegregation is not permitted to go forward at this time. This the Superior Court has already found. (Exhibit GG; Exhibits, 1186)<sup>8/</sup> On the other hand, if the Board is required to continue to plan for desegregation and to implement the plan in September of this year, it will suffer no injury. The equation of money with desegregation simply cannot be made. That battle was ended with Brown I.<sup>9/</sup> It is the students' right to desegregation which are at stake here, not the right of the Board of Education.

---

8/ For the convenience of the parties, the Superior Court's proposed order pursuant to CCP § 1110(b) was issued by the Court on July 7, 1980, before the notices of appeal were filed. Following the filing of the notices of appeal, the Court, on July 17, 1980, reissued the order. A copy of the minute order so doing is attached hereto.

9/ Indeed, it re-ended, or should have, in this very case. In its Opening Brief before this Court in the 1970 appeal, the Board said (page 104):

X.

Since its fiscal year 1968-1969 the Los Angeles Unified School District has been operating under very severe financial constraints which have resulted in decreased academic programs and other services provided pupils. Even more severe constraints are anticipated for future years. Under such circumstances, and the fact that the Academic benefits of integration, if any, have not been demonstrated with a high degree of probability, respondent board has not been unreasonable in not choosing integration as an educational strategy.

As said by the United States Supreme Court in Watson v. City of Memphis, 323 U.S. 526, 533 10 L.Ed. 2d 529, 83 S.Ct. 1314 (1963) concerning segregation in general, there as to municipally owned parks and recreation facilities:

" ... The rights here asserted are, like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees our constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled...."  
(emphasis in original)

In his article, the Administration Anti-Busing Proposals: Politics Makes Bad Law, 67 N.W. Univ. Law Rev. 319, 337, former Supreme Court Justice Goldberg said:

"Segregation injury is so intolerable that the right to non-segregated schools is the right to them now. Thus, the remedy merges into the right. Any suspension of the remedy is a suspension of the right itself."

The Board has succeeded for 17 years already in thwarting both the minority segregated students right and remedy. It should not be permitted to thwart them again. The appeals should be allowed to go forward. Neither a stay nor an alternative writ should issue.<sup>10/</sup>

---

<sup>10/</sup> As will be seen from the plaintiffs' papers with regard to the petition for writ of supersedeas, the law is overwhelming that a stay pending appeal should not be granted of a Court ordered desegregation plan.

REPLY TO MEMORANDUM OF  
POINTS AND AUTHORITIES

Reply to Introduction  
(pp. 17-18)

As pointed out above, the Board of Education's complaint about the respondent Court's May 19, 1980 Order (Exhibit 5; Exhibit, 752) is moot. The Board's November 15, 1979 Motion (Exhibit F, Exhibits, 220) was to modify the Court's earlier, February 7, 1978 (Exhibit C, Exhibits, 85) and May 30 (Exhibit E; Exhibits, 217) 1979 orders so as "to eliminate those portions of the desegregation plan (Plan 2) implemented pursuant to those orders which require the mandatory reassignment of pupils for the purpose of desegregation." (Exhibits, 220) Though the respondent Court denied that motion on Proposition 1 grounds, the Board's request was actually granted by the Court's July 7, 1980 Order (Exhibit EE, Exhibits, 1064) since that orders allowed the Board to completely end the pairs, clusters and midsites affected if the Board desired (Exhibits, 1075).

Accordingly, as mentioned, what the Board is really seeking in this proceeding to avoid the appeal, is to have this Court in a few days, upon an incomplete record (the latest trial lasted about 6 months from October 22, 1979 to April 11, 1980, with virtually daily court sessions; it produced a reporter's transcript of over 12,000 pages and encompassed some 400 voluminous exhibits) stop in it tracks the results of exhaustive hearings and evidence.

In the light of this and the applicable law, for the respondent Court to have ordered that there be assignments, mandatory if you will, for the purpose of desegregation can, by no stretch of the imagination be considered an abuse of discretion in excess of constitutional and decisional limits on its jurisdiction, as the Board erroneously contends (Petition 17) .

To the extent that it is sought to apply Proposition 1 to the facts of this case, as well as on its face, Proposition 1 is unconstitutional as will be shown below. The question of constitutionality aside, Proposition 1 has no application here for its requirements were completely met as respondent Court pointed out. (Exhibits, 752)

No extraordinary relief as requested by the Board is warranted, and certainly no stay order or alternative writ the effect of which would be to stop the planning which is now going on for the opening of school on September 15, 1980 should be countenanced.

I.

PROPOSITION 1, THE 1979 AMENDMENT TO  
THE CALIFORNIA CONSTITUTION'S EQUAL  
PROTECTION CLAUSE, IS UNCONSTITUTIONAL  
(Reply to the Board's Point I, pp. 18-23)11/

---

11/ We do not understand the Board's footnote, Page 23 of its Petition. The Board seeks by a stay order and/or an alternative writ to stop desegregation in the Los Angeles City School System now. Its entire case for this lightning like approach is the presence of Proposition I. It would seem that the question of the constitutionality of the Proposition cannot help but be "worthy of plenary consideration." The initiative is set out at page 539 of the Exhibits.

A.

The procedure by which it was adopted and the subject matter it embraces violate the method by which the California Constitution may be amended by Initiative.

While, no doubt, a substantive initiative amendment to the California Constitution may only be declared unconstitutional under the United States Constitution (e.g. Mulkey v. Reitman 64 Cal. 2d 529, 533, 413 P. 2d 825, 50. Cal. Rptr. 881; aff'd 387 U.S. 369; see, also Castro v. California, 2 Cal.3d 223, 85 Cal. Rptr. 20, 466 P.2d 244 (1970), it is equally true that if an amendment is adopted which does not comply with the provisions of the California Constitution regarding amending it, the amendment will be struck down. (McFadden v. Jordan, 32 Cal.2d 330, 196 P.2d 787 (1948), cert. den. 336 U.S. 918, 93 L.Ed. 1080, 69 S.Ct. 640) Proposition I is such.

1.

Article II, Section 8(d) of the California Constitution provides:

"An initiative measure embracing more than one subject may not be submitted to the electorate or have any effect." 12/

By its terms the Proposition applies irrespective of anything "contained . . . elsewhere in the Constitution" and provides that "in enforcing this subdivision or any other provision of this Constitution, no court of this state . . . ." (emphasis added).

---

FOOTNOTE 12 ON NEXT PAGE

Not only does this amend all the other provisions of the California Constitution which would protect the rights of minority students attending minority segregated schools to obtain a desegregated education, but the initiative specifically, but without saying so, vitiates at least four other provisions of the California Constitution.

The Proposition amends Article VI, Section 1 which provides that "the judicial power of this State is vested in the Supreme Court, court of appeal, superior courts, municipal courts, and justice courts." The judicial power of the State courts insofar as desegregation is concerned no longer rests with the courts of this state but is now vested in the federal courts. In matters affecting so vital a right as that of a minority child to a desegregated education the California courts must now defer to the federal decisional law. Nowhere does this fundamental change in the California Constitutional Section appear from a reading of the Proposition or its title.

---

12/ This is but a restatement of what is the same requirement for the legislature. (Perry v. Jordan, 34 Cal.2d 87, 92-93; 207 P.2d 47). Article II, Section 9, formerly Article IV, Section 24 of the California Constitution reads in part: "A statute shall embrace but one subject which shall be expressed in its title."

Likewise amended, and with a vengeance, is Article I, Section 24 of the California Constitution which states that the "rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." Heretofore, it was required under the California Constitution that the inferior education a minority student gets by attending a minority segregated school be changed to an equal education. Now, whether or not the segregated minority student is even to be considered for an equal educational opportunity depends, indeed, upon whether the right is guaranteed by the United States Constitution. This change in the California Constitution's Section cannot be gleaned from reading the Proposition of its title.

Article IV, Section 16(a) of the California Constitution also receives the lash of Proposition I. That section states that "all laws of a general nature have uniform operation." Up to now, in applying equal protection principles to the field of school segregation, the object of concern was protecting and making equal opportunity for the minority youngsters attending segregated minority schools <sup>13/</sup> Proposition I adversely affects and takes away rights from minority students. No constitutionally adverse consequences

---

<sup>13/</sup> This, without gainsaying, of course, that white youngsters likewise benefit from desegregation. (Crawford, supra, 17 Cal.3d at 303 n.15).

are affected as to white students. The Proposition, therefore, does not, and cannot, have uniform operation. That the uniform operation section was being amended does not appear from the Proposition or its title.

And the very basic Article I, Section I which provides that "all people . . . have inalienable rights" is amended by the Proposition. Proposition I takes away one of these inalienable rights: the right to an equal education. This right heretofore in California has been a fundamental right. (Serrano v. Priest, 5 Cal.3d at 604-610; Crawford, supra, 17 Cal. 3d at 297). If a right is fundamental, it is inalienable, but Proposition I now takes it away. This, because irrespective of how one gets there vis-a-vis intentional versus benign segregation, there is no gainsaying that "separate educational facilities are inherently unequal." (Brown v. Board of Education fo Topeka, 347 U.S. 483, 495, 98 L.ed 2d 873, 745 ct 686)

Thus, Proposition I embraced the subject of equal education and changed it from a fundamental right to just a right of some other kind a la San Antoni School District v. Rodriguez, 411 U.S. 1, 35, 37, 36 L.ed 2d 16, 93 S ct 1278 (1973) which specifically held that education is not a fundamental right under the 14th Amendment. Proposition I, though changing the State Constitution did it without saying so. If Californians are to live under a regimen that education of their children is not a fundamental right, they should be told so in order that they might vote intelligently on the issue. More of this later.

All of the above constitutional provisions, involve more than a single subject. The changes effected do not reasonably relate to a single subject. The purpose of the single subject requirement is to minimize the risk of voter confusion and deception. (Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal.3d 208, 232, 149 Cal.Rptr. 239, 583 P.2d 1281 [1978]). Proposition 1 effected that very confusion. Not only did its proponents think so in their importuning of the Secretary of State and Attorney General to issue their "clarifying" statements (Exhibits, pages 484-485) that a "yes" vote was a vote against "mandatory busing" but it is manifest that the voters did not know and were, indeed, therefore deceived that they were amending and detracting from other fundamental rights in their constitution. See the ballot arguments made to the voters. (Exhibits, pages 540-541).

Plaintiffs are aware of the discussion by the Court in Fair Political Practices Commission v. Superior Court, 25 Cal.3d 33, 599 P.2d 46, 157 Cal.Rptr. 855, 857-858 and the Court's adherence (157 Cal.Rptr. at 860) to "the reasonably germane test." But the Proposition at bar does not pass the test. In Fair Political Practices Commission, the Court said (157 Cal.Rptr. at 857): "'Numerous provisions, having one general object, if fairly indicated in the title, may be united in one act.'" The title to Proposition 1 on the November 6, 1979 ballot, did not fairly

indicate in its title the numerous provisions the Proposition was amending. The title read (Exhibits page 538):

"SCHOOL ASSIGNMENT AND TRANSPORTATION OF PUPILS  
Official Title and Summary Prepared by  
the Attorney General

SCHOOL ASSIGNMENT AND TRANSPORTATION OF PUPILS.  
LEGISLATIVE CONSTITUTIONAL AMENDMENT.  
Amends Section 7(a) of Article I of the Constitution to provide that nothing in the California Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the United States Constitution with respect to the use of pupil school assignment or transportation. Provides for modification of existing judgments, decrees, writs or other court orders to conform to the provisions of this subdivision. Provides that governing boards of school districts may voluntarily continue or commence a school integration plan. Financial impact: Indeterminable. Potential savings if school districts elect to reduce or eliminate pupil transportation or assignmentment programs as a result of this measure."

This title gives not an inkling that the various sections of the Constitution above referred to were likewise being amended.

2.

Article XVIII, Section 1 of the California Constitution carries out the same theme as Article II, Section 8(d) and was likewise violated in the passage of Proposition 1. That section provides, with respect to a constitutional amendment proposal by the Legislature that

"each amendment shall be so prepared and submitted that it can be voted on separately."

The Legislature sought to insure this happening by providing in Election Code §3570(b) that "the ballot pamphlet shall contain . . . (b) a copy of the specific constitutional or statutory measure which would be repealed or revised by each state measure." That was not done. See Exhibits pages 538-541.

The only measure referred to in the ballot pamphlet is Article I, Section 7(a) itself. None of the five we have above discussed was mentioned.

3.

California Elections Code Section 3531 was likewise not complied with.

That section requires the Attorney General to prepare a ballot title (the short title) giving a true and impartial statement of the purpose of the measure. The "short title" requirement is not just a minimal one. Its purpose "is to inform the prospective signers [and since it appears in the ballot pamphlet, the voter] of the general purpose of the proposal, and to protect him [sic] from being misled or imposed upon." (Clark v. Jordan, 7 Cal.2d 248, 252, 60 P.2d 457 [1936]).

In the Clark case, the short title to a proposed initiative set forth that certain taxes were to be abolished, but failed to mention that a new real estate tax would be

imposed. The court held that the title did not comply with the requirements of then Political Code §1197(b), a predecessor to the now Section 3531 of the Elections Code, and enjoined the Secretary of State from submitting the measure to the voters.

Proposition 1 likewise fails here. There is no indication anywhere either in the short title or in the analysis that the various sections of the State Constitution we have discussed were being amended or revised. Nothing in the voters' pamphlet supplied the deficiency.

Accordingly, the passage of Proposition 1 did not comply with the procedural requirements of the California Constitution and California law. It is therefore invalid. "It [the California Constituion] can be neither revised nor amended except in the manner prescribed by itself, and the powers which it has conferred upon the legislature in reference to proposed amendments . . . must be strictly pursued." (McFadden v. Jordan, supra, 32 Cal.2d at 333) It was not.

B.

Proposition 1 violates the equal protection protection and due process clauses of the United States Constitution.

Aside from the patent invalidity of Proposition 1 in purporting to allow, no, order, the retroactive reopening of long final judgments, the Board misses the glaring invalidity of Proposition 1 in purporting to enact an unequal

equal protection clause for California. By definition such cannot be. A state may not, and still be true to the dictates of the 14th Amendment, take away rights from one group of its citizens which it gives to all the others. At least it may not do so without some rational basis, let alone compelling state interest and the necessity for strict scrutiny. The Proposition itself recognizes -- indeed, states -- its inequality: "a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided that" and then follow the words which except out from California's equal protection clause as well as from Article I, Section 24, only minority children attending minority segregated schools from the right to higher treatment all other Californians have. We shall discuss this in more detail below.

The Board's attempted distinction of the cases upon which it expects plaintiffs to rely fails. As will be seen, plaintiffs' argument does not depend upon cases which deal with a purported prohibition of all desegregation remedies.

Nor does the Board's reliance (Petition 21) on Brown v. Califano, \_\_\_ F.2d \_\_\_ (D.C. Cir. 1980) (Exhibits, 706) assist it. In the first place, that case was not concerned with an enactment which took away rights from a distinct group which it gave to all others. There was no unequalness in the legislation. Moreover, the legislation there involved limited administrative remedies which could be employed by the Department of H.E.W. in enforcing mandatory

pupil assignment plans. The legislation in no way limited the courts in the remedies they could employ in obtaining compliance with desegregation plans. It is precisely because the judicial remedies were open that the court did not feel it need strike down the restriction on H.E.W. "As the district court concluded, nothing in the amendments preclude H.E.W. from referring such cases [where school boards are not employing mandatory assignment for desegregation] to the Department of Justice, with recommendations for appropriate legal action. This option is especially meaningful, given the Department's historical role in civil rights enforcement, its experience in helping to develop desegregation plans, and its authority to intervene in private suits as well as initiate enforcement actions." (Brown v. Califano, \_\_\_ F.2d \_\_\_; Exhibits 727).

Just the opposite is the case here. Proposition 1 does restrict the courts, the very branch of government which historically has had to be brought in in order for the minority students' rights to be enforced. And the defendants in such litigation is, of course, the local school boards which have refused to desegregate or, worse, have been responsible for the very segregation sought to be remedied.

The exception from Proposition 1 as to school boards is cruel tongue-in-cheek. It does not save the enactment from constitutional condemnation.

The recent ruling by the San Mateo Superior Court in Tinsley v. Palo Alto Unified School District, No. 206 010 in that court, referred to by the Board (Petition 22) need not give pause. The opinion is indeed, as the Board points out, brief and, with due respect, it fails to justify its bald conclusion. If trial court opinions are to be referred to, plaintiffs would call to the court's attention the recent July 25, 1980, 25 page ruling by the United States District Court for the Eastern District of California in National Association for the Advancement of Colored People v. State of California, No. Civil 5-79-857-PCW in denying a motion to dismiss a challenge to Proposition 1.

We turn now to a substantive consideration of the constitutional questions. We will discuss below the frightening feature of Proposition 1, upon which the Board relies in Point II, pp. 24-46, and not involved in Tinsley, which seeks to undo and set aside the final judgment that was rendered by the Superior Court in 1970 and affirmed by the California Supreme Court in 1976, a violation of the Due Process Clause of the 14th Amendment. We first will show that even aside from the retroactivity aspect of the Proposition, it is unconstitutional on its face in violation of the Equal Protection Clause of the Amendment.

1.

Proposition 1 is a Culmination  
of California's Historic Dis-  
Crimination Against Minorities.

The United States Supreme Court has taught that in determining the constitutionality of an enactment the historical context, ultimate effect, immediate objective and the conditions existing prior to its enactment must be considered. (Reitman v. Mulkey, 387 U.S. 369, 373, 18 L.Ed. 2d 830, 87 S.Ct. 1627 [1967]; Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 267, 50 L.Ed. 2d 450, 97 S.Ct. 555 [1977]).

Proposition 1 is but the latest in a long series of California provisions against its racial and ethnic minorities. This is true both generally, and specifically in the field of education. Some have been blatantly racist on their face. Others have been more subtle or sophisticated, but all were eventually recognized for what they were: denials of equal protection of the law. Without purporting to chronicle the history, we mention a few in the general field of the law and then we deal with education.

a.

Generally

A neutral provision requiring prisoners to have their hair clipped was found constitutionally wanting because the court perceived that it was directed against the

Chinese (Ho Ah Kow v. Nunon, Fed. Cas. No. 6, 546, 12 Fed. Case 252 [C.C.D. Calif. 1879])

California Constitutional and legislative provisions which prohibited California corporations from employing Chinese or Mongolians were struck down. In re Parrott, 1 Fed. 4481 [C.C.D. Calif. 1880])

Other provisions of the 1879 Constitution (Art. XIX, §2; Art. II, §1) provided that no Chinese could be employed by a public agency, nor, respectively, be allowed to vote.

Legislation which provided for a levy on each person of the Mongolian race over 18 and a requirement that they take out licenses in order to work in mines or prosecute a business, the so-called Chinese Police Tax, was held invalid (Lin Sing v. Washburn, 20 Cal. 534 [1862])

Another Constitution Provision of the 1879 Constitution (Art. XIX, §3) allowed cities to provide that Chinese may be prohibited from within the city limits or be confined to areas within the city. A San Francisco ordinance to that effect was struck down (In re Lee Sing, 43 Fed. 359 [C.C.N.D. Cal. 1890]).

An ordinance which prohibited a laundry in a building other than brick or stone without the consent of the Board of Supervisors was struck down by the United States Supreme Court because it perceived that though neutral on its face, it was directed against and impacted

virtually entirely on the Chinese. (Yick Wo v. Hopkins, 118 U.S. 356, 30 L.Ed. 220, 6 S.Ct. 1064 (1886) It was in that case that the high court made its famous pronouncement (30 L.Ed. at 227):

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as to practically make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the constitution."

The Chinese were not the only object of California's Caucasian legislative discrimination against the State's minorities.

A statute, Section 14 of the Act of April 16, 1880, provided that no Black or Mulatto or Indian could give evidence in favor of or against the White man. The State Supreme Court interpreted the provision to include Chinese and so convictions obtained wherein Chinese persons so testified, including one where the victim of the robbery was Chinese, were reversed. (People v. Hall, 4 Cal. 399 [1854]; People v. Brady, 40 Cal. 198 [1879]).

The Alien Land Laws directed against Japanese ownership of land (the prohibition of the legislation was couched in such neutral terms as "aliens ineligible to citizenship"), though at first sustained (Porterfield v. Webb, 263 U.S. 225, 68 L.Ed. 278 44 S.Ct. 21 [1923] were finally overturned by the Supreme Court of this State and of

the United States (Fujii v. California, 38 Cal. 2d 718, P.2d 617 [1952]; Oyama v. California, 332 U.S. 633, 92 L.Ed. 249, 68 S.Ct. 269 [1948] The same fate befell legislation designed to prevent Japanese ("aliens ineligible to citizenship") from having commercial fishing licenses. (Takahasi v. Fish & Game Commission, 334 U.S. 410, 92 L.Ed. 1478, 68 S.Ct. 731 [1948]).

Reminiscent of the California Constitution's provision allowing cities to confine Chinese to certain parts of the city, restrictive covenants, whereby a non-Caucasian owner of property was not able to live in it were upheld by the courts of the state (Los Angeles Investment Co. v. Gary, 181 Cal. 680, 186 P. 896 [1920]). Such covenants were also written against Mexicans (Declaration of Conditions and Restrictions Governing Tract No. 11703, Los Angeles County [1945]). This official government action played a major role in the creation of segregated neighborhoods in California. (Banks v. Housing Authority, 120 Cal. App.2d 1, 260 P.2d 668 [1953]). As could be expected, such governmental enforcement of private discrimination was later struck down. (In re Laws, 31 Cal.2d 846, 193 P.2d 744 [1948]; Cummings v. Hokr, 31 Cal.2d 844, 193 P.2d 742 [1948]).

Mexicans were precluded from certain public parks in Los Angeles County or allowed in them only on certain days. The same as to public swimming pools. Some theaters did not allow Mexicans to enter or segregated them in

certain sections. Some restaurants would not serve Mexicans at all and had signs to that effect (Page 2 of "Statistics 1942," a report issued by the Los Angeles County Sheriffs Department "Foreign Relations Division," quoted in Hendrick, (hereinafter referred to as "Education") "The Education of Non-Whites in California, 1849-1970," page 99, from Jones, "The Government Riots of Los Angeles, June, 1943" (masters thesis, UCLA 1969, pp. 25-27)).

California Civil Code Section 60 held illegal and void and Section 69 provided that no marriage license may be issued authorizing the marriage of a white person with a Negro, Mulatto, Mongolian or member of the Molay race. They were finally held unconstitutional (Perez v. Sharp, 32 Cal.2d 711, 198 P.2d 17 [1948]).

Public housing authorities had policies, which the courts struck down, which perpetuated segregated neighborhoods by selecting tenants "insofar as possible [to] maintain and preserve the same social composition which exists in the neighborhoods where a project is located." (Banks v. Housing Authority, supra, 120 Cal.App. 2d 1, 5, 260 P.2d 668 [1953]).

The initiative method of racial discrimination is also well known.

In 1964, Proposition 14 added Section 26 to Article I of the California Constitution. It purported to allow any person to sell or rent or not sell or rent his or her property to any person as he or she chose. The

discriminatory purpose and effect of this "neutral" enactment was seen through by both the California and United States Supreme Courts and struck down as a violation of the 14th Amendment. (Reitman v. Mulkey, 387 U.S. 369, 18 L.Ed. 2d 830 87 S.Ct. 1627 [1927])).

It is thus seen from even this cursory resume that California has an unfortunate heritage of discrimination against its minorities in general. We turn now to an examination of its treatment of its minorities vis-a-vis the public schools.

b.

California's Discrimination  
Against its Minorities in  
its Public Schools 14/

The California School Census Act of 1855 provided that the apportionment of the state school fund to the several counties was to be made "in proportion to the number of white children as shown by the census taken by the school marshals." (Education, 7). Thus, the education of non-whites was explicitly inhibited because no money was received for their attendance. As the first active State Superintendent explained, in lashing out against "the Negrophilist school of mock philanthropists" who sought to "introduce children of Negroes into our public schools" (Education, 8):

---

14/ Much of the material in this section is taken from the work by Hendrick. "The Education of Non-Whites in California, 1849-1970," supra, page \_\_\_\_\_. See, also, Wollenberg, "All Deliberate Speed, Segregation and Exclusion in California Schools, 1855-1975" (1976).

"Until our people are prepared for practical amalgamation, which will probably not be before the millenium, they will rather forego the benefits of our Schools than permit their daughters -- fifteen, sixteen and seventeen years of age plus to affiliate with the sons of Negroes. It is practically reduced to this, then, that our School must be maintained exclusively for white, or they will soon become tenanted by blacks alone." 15/

The laws of 1860 and 1863 allowed, but did not require, districts to establish separate schools for Negroes, Asians and Indians (Education, 16), but they provided serious retribution in the form of lost revenue to those districts which did admit children of those races. (E.g. Cal. Stats. 1863, ch. 159, §68).

The 4th State Superintendent, while acknowledging that Black children were entitled to education, came down squarely for segregation (Education, 16):

"The parents of colored children are taxed, and it is just that some provision should be made for their education; but the law requires, and public opinion demands that they should be educated in separate schools."

---

15/ The threat of white flight as a rationale for resisting integration was apparently not unknown to our predecessors.

And that is just what was done, with the same inferior education that separate schools provide. (Education, 18-19).

Condescendingly, the Revised School Law of 1866, provided that local school boards might admit into schools for whites "half-breed Indian children and Indian children who live with white families or under guardianship of white persons." (Education, 16).

The California Supreme Court sustained separate schools for Blacks and sanctioned the conduct of school boards refusing admission of Blacks to white schools even while maintaining a neighborhood school attendance policy. (Ward v. Flood, 48 Cal. 36 [1874]). <sup>16/</sup> In so doing the Court called attention (pg. 48) to the state statute (Acts 1869-70, §56) which provided that "the education of children of African descent, and Indian children, should be provided for in separate schools." <sup>17/</sup>

---

<sup>16/</sup> The stated policy of the San Francisco Board of Education, Regulation 117, was: "Separate Schools - Children of African or Indian descent shall not be admitted into schools for white children, but separate schools shall be provided for them in accordance with the California School Law."

<sup>17/</sup> The absence of provision for the education of Chinese children is glaring. It meant that school districts were relieved of all responsibility to educate such children, even in separate schools. (Education, 25). And they were, indeed, excluded. (Id. 32).

Los Angeles was right in line. Here, "segregation was a way of life." (Education, 22). The Los Angeles Superintendent of Schools stated: "So far as I have heard an expression of opinion, the negroes (sic) prefer a separate school, provided their children have the same advantages that white children have." (Education, 23).

On September 27, 1906, a separate "Oriental School" was established in San Francisco and the city principals were directed to send all Chinese, Japanese and Korean children to that school. (Id. 39).

Native Americans, like Blacks and Asians, were seen in California, both officially and non-officially, as an inferior race, thereby entitling society to discriminate against them. (Id. 43). This included 1860 legislation denying the use of state funds for the education of all racial minorities, including Indians. (Id.) Later, in 1864, legislation provided that district school trustees "shall establish" separate schools for Negroes, Mongolians and Indians when parents or guardians of ten or more such children petitioned the Board in writing. The chance of Indians being able to meet such requirements was nil. (Education, 43). Legal sanction to require Indians to attend separate schools continued in California until 1935. (Cal.Stats. 1935, c. 488, §33). And even with encouragement and pressure from the federal government in the form of monetary incentives, public schools were reluctant to admit Indian children. (Education, 53). It took a court battle

to get Indian children living on reservations to be admitted to public schools at all even though no separate schools had been established for them. (Piper v. Big Pine School District, 193 Cal. 664, 226 P. 926 [1924]).

Despite the Mexican heritage of this state, purposeful discrimination against Mexican children was also the case. As put by Hendrick (Education, 56), "Respectable politicians and citizens could not face up squarely to the overt segregation of Mexican immigrants and the children of Mexican immigrants. The problem was one of maintaining the segregation of Mexican children, some of whom were natural born citizens of the United States, without appearing to discriminate against them." The solution was found by the State Legislature passing and the Governor signing, on July 15, 1935, Section 3.3 of the School Code. That section provided:

"The governing board of the school districts shall have power to establish separate schools for Indian children, excepting children of Indians who are wards of the United States government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese or Mongolian parentage."

Thus the legislation accomplished the task of discriminating against Mexican children without saying so, naming Indians directly while releasing them from legally mandated segregation (because of pressure from the Office of Indian Affairs of the United States Government [Education, 57]) and

continuing the discrimination against the Chinese, Japanese, and other Asians.

Predictably, actual segregated schools for Mexican school children did take place. (Education, 90). As is so often the case, it took the courts to strike such conduct down. (Westminster School District of Orange County v. Mendez, 161 F.2d 774 [9th Cir. 1947]).

In 1916, the Los Angeles School Board resisted pressures to segregate Mexican school children (Education, 81; Minutes of the Los Angeles Board of Education, Dec. 7, 1916), but the Pasadena Board did not. (Education, 82; Pasadena City School District, Annual Report of the Pasadena City Schools for the Year Ending June 30, 1916, pg. 55). But later, in 1921 and 1923, the Los Angeles Board succumbed to the pressures of the white population living in Owensmouth (now Woodland Hills) and established a separate segregated school for the Mexican children living in that area. (Education, 91).<sup>18/</sup> Other school districts

---

<sup>18/</sup> The Los Angeles Board's cooperation with white parents in establishing and maintaining Black schools in other areas is described in Education, pages 92-94, 104. The author concludes (pg. 92); "School attendance zones already contributed to the definition of neighborhoods . . . Although Los Angeles school officials never agreed publicly to segregation, they did cooperate in seeing that segregation was accomplished, usually in the interest of maintaining community harmony." Cf. San Francisco Unified School District v. Johnson, 3 Cal.2d 937, 956, 92 Cal.Rptr. 309, 479 P.2d 669 (1971): "[T]he school board was collaterally engaged in reaching decisions respecting pupil assignments, attendance zones, transportation, and the location of new facilities, which decisions in turn necessarily influenced the racial composition of the residential areas."

similarly accommodated. (Education, 100).

For example, the principal of the San Dimas Elementary School described: "During the postwar reaction against all foreigners, which was strong in the local community, there came a demand for complete segregation of all children of Mexican ancestry . . . . In response to the demand, a small frame building was erected behind the main elementary school building. Here all the Mexican and Mexican-American children of the elementary school were housed." (Id.; Tipton, "The San Dimas Intercultural Program," in California Elementary School Principal's Yearbook, Education for Cultural Unity, 17 [1945], pp. 93-94).

Without unduly extending the point, we conclude this section of this brief with a discussion of two recent legislative efforts, one by the legislature itself and the other by the electorate, to maintain segregation in the California schools.

In 1970, the State Legislature enacted Section 1009.5, now Section 35350, of the Education Code.<sup>19/</sup> which reads: "No governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." The transparent purpose of the provision, of course, was to thwart, by parental veto, mandatory desegregation assignments. San Francisco Unified

---

<sup>19/</sup> Similar language is also found in Section 72209, pertaining to minors attending community colleges.

School District v. Johnson, 3 Cal.3d 933, 958, 92 Cal.Rptr. 309, 479 P.2d 669 (1971). To avoid such an unconstitutional result, the California Supreme Court construed the statute to mean only that a school board may not require a student to board a bus to get to school. That is, a board may not engage in "forced busing," but it may, and always has had the prerogative to, assign students for desegregation purposes.

While preserving the constitutionality of the statute, the Court recognized that its very purpose, its very presence, was the exercise of the awesome power of the state to preserve segregation. A more forceful manifestation of California's intent to discriminate against its minorities in education could scarcely be imagined.

One would have thought that California would learn from this 1970 attempt, would desist from its efforts to thwart desegregation and would go about the business of educating its children. One is mistaken. In 1972, the voters again tried to stop desegregation by adopting Proposition 21 on the November 7 ballot. That provision added Section 1009.6 (now §§35351 and 72210) to the Education Code to provide: "No public school student shall, because of his race, creed, or color, be assigned to or be required to attend a particular school." The purpose of this enactment is likewise transparent: to maintain segregation by prohibiting pupil assignments or desegregation purposes. Not surprisingly the California

Supreme Court declared the statute unconstitutional for the same reason it declared the "anti-forced busing" measure in Johnson, supra, would have been unconstitutional if that enactment had been construed to prevent mandatory assignment for the purpose of desegregation. (Santa Barbara School District v. Superior Court, 13 Cal.3d 315, 118 Cal.Rptr. 637, 530 P.2d 605 [1975]).

The enactment by California of Proposition 21 in 1972 is further demonstration of this state's discriminatory treatment of its minorities, especially vis-a-vis equal educational opportunity in the public schools.

The Purpose and Intent of Proposition 1  
is to Prevent the Desegregation of the  
Los Angeles School System

The Board of Education pretends (Point II, pg. 24) that the segregation in Los Angeles is de facto. The evidence in this case is that it is not. But even if it is, that helps the Board naught for the law is that:

"Once a state undertakes to preserve de facto segregation, such state involvement transfers the setting to one of de jure segregation."  
(San Francisco Unified School District v. Johnson, 3 Cal.3d 937, 958, 92 Cal.Rptr. 309, 479 P.2d 669 [1971]).

That is precisely what Proposition 1 does for it is clear without peradventure of doubt that Proposition 1 was designed to hamper the removal of the segregation in Los Angeles, as well as elsewhere in California, but particularly in Los Angeles, no matter what its nature and to preserve its present state (Exhibits pp. 318-330, 399-481).<sup>20/</sup>

---

<sup>20/</sup> In the court below the Board objected (Exhibit N; Exhibits, 598) to the use of widespread newspaper accounts to bring this matter of common knowledge to the attention of the Court. But that is exactly what occurred in Mulkey v. Reitman, 64 Cal.2d 529, 50 Cal.Rptr. 881, 413 P.2d 825 (1966) when the California Supreme Court struck down the 1964 Proposition 14 discussed above. Indeed in that case, the record was even sparser than here because the newspaper accounts were not even presented to the Court. The Court was simply aware of the recent history and the context in which the proposition was adopted. This is, of course, sound jurisprudence for, as Circuit Justice Field said long ago in striking down the short hair requirement in the San Francisco jail:

The intent of the author of Proposition 1 -- to interfere with the desegregation of the Los Angeles and other existing segregated school systems--is further revealed, though it is plain enough without it, by his conduct following the decisions of the United States Supreme Court in the Dayton and Columbus, Ohio cases.

Proposition 1, it will be remembered, is designed, ostensibly, to require state courts to follow federal courts in desegregation cases. However, the author of Proposition 1 is not content that that be done when the federal law makes opposition to desegregation more difficult. When the decisions in the Dayton and Columbus cases (Dayton Board of Education v. Brinkman, supra; Columbus Board of Education v. Penick, supra, reiterated and reinforced the rule the

---

20/ CONT'D

"[W]e cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we know as men."

Ho Ah Kow v. Nunon, Fed.Cas. No. 6,546,  
12 Fed.Cas. 252, 255 [C.C.D. Cal.  
1879]).

The United States Supreme Court agrees, many times. (Watts v. Indiana, 338 U.S. 49, 52, 93 L.Ed. 1805, 69 S.Ct. 1347 [1949]; Child Labor Tax Case, 259 U.S. 20, 37, 66 L.Ed. 817, 42 S.Ct. 449 [1922]; United States v. Rumely, 35 U.S. 41, 44, 97 L.Ed. 775, 73 S.Ct. 543 [1953]).

The entire matter, including judicial notice, hearsay, and history is discussed in the briefs filed by plaintiffs in the court below and appearing here as Exhibit P, page 662.

Court had set out in Keyes v. School District No. 1, 413 U.S. 189, 208, 37 L.Ed.2d 548, 93 S.Ct. 2686 (1973), that "a finding of intentionally segregative school board actions in a meaningful portion of a school system . . . establishes a presumption that other segregated schooling within the system is not adventitious," Proposition 1's author introduced in the 1979 Legislature SB 1244 (Exhibits, 482-83). That bill was designed to immunize California from that federal rule; to, in effect, "overrule" the United States Supreme Court, and to say that even though de jure segregation is shown as to a meaningful portion of the school system, the minority children will have to prove all other again that each and every bit of segregation that exists was intentionally caused by the school board before desegregation can be permitted in those areas. The difficulty of the minority children carrying this burden and the correctness of the United States Supreme Court's holdings in Keyes, Columbus and Dayton is apparent. The intent of the author is clear: to interfere with and impede desegregation.

The conduct and intent of the author of Proposition 1 continues in the tradition of California's historical discrimination against its minorities<sup>21/</sup> It is

---

<sup>21/</sup> This concurrent and post conduct of the author of Proposition 1 can, of course, be considered to ascertain his intent in writing the Proposition. (Beneficial Fire and Casualty Insurance Co. v. Kurt Hitke and Co., 46 Cal.2d 517, 524, 297 P.2d 428 [1956]; Barham v. Barham, 33 Cal.2d 416, 423, 202 P.2d 289 [1949]).

reminiscent of the passage in 1935 by the state legislature of Section 3.3 of the School Code, whereby segregated schooling for Mexican children was decreed without the legislature saying so.

A final word as to the intent of Proposition 1.

As we have seen, the very passage of Proposition 1, seeking as it does to preserve existing segregation and to hamper its removal, is itself a de jure act of segregation. (San Francisco Unified School District v. Johnson, supra, 3 Cal.3d at 958). But there is more.

Prior to the passage of SCA 2 and while it and similar measures were pending before the State Legislature, counsel for plaintiffs herein wrote to each of the legislators, assemblypersons and senators, reminding them that passage of such a measure would be, indeed, a de jure act of segregation. (Exhibits, 486-87). As seen, the fact of performing a de jure act of segregation did not deter the legislature. Accordingly it is fair to conclude that they intended that very thing: engage in de jure segregation.

Moreover, the Legislative Counsel rendered an opinion to Senator Paul Carpenter on January 9, 1979 and to Senator Robbins on March 21, 1979 to the same effect: that in the opinion of Legislative Counsel SCA 2 (which became Proposition 1 on the November, 1979 ballot) if adopted by the electors would be constitutional. "However," Legislative Counsel said,

"the measure could not by its operation extinguish any rights existing at the time of its adoption to the extent that such a result would amount to de jure segregation, as, for example, in a situation where it would require 'resegregation' in the face of a then currently active plan of desegregation."

This precisely describes Los Angeles (as well as San Diego, San Bernardino, possibly Delano, El Centro, Richmond, Sequoia, Stockton and any other state case where a desegregation plan has been ordered). The legislature was aware and, by passing SCA 2, must be held to have intended, that very resegregation which must occur if Los Angeles is prevented from continuing mandatory assignment desegregation. This, in the very face of their counsel's advice that this would be a de jure act.

3.

An "Unequal" Equal Protection Clause Cannot  
Stand Before the Fourteenth Amendment

The "historical context," "ultimate effect", "immediate objective" of Proposition 1 and the conditions existing prior to its enactment, revealed by the discussion above, ineluctably lead to the legal conclusion that Proposition 1 is violative of the equal protection clause of the Fourteenth Amendment. The effect of Proposition 1 would be to seize from minority children alone the benefits of the California Equal Protection Clause, as it has been interpreted by the California courts, and to burden minority children alone with the continuing injury of a segregated education. The evidence is unmistakable that the proponents of Proposition 1 knew of these burdens and wrote them into the new unequal California "equal protection" clause. Proposition 1 offends the basic principle underlying the Equal Protection Clause of the Fourteenth Amendment that majoritarian impulses in the heat of public controversy should not lead to the enactment of discrete burdens to be visited solely upon racial minorities.

a.

The Requirements for Finding a Violation  
of the Fourteenth Amendment Have Been  
Satisfied in This Case

In Village of Arlington Heights v. Metropolitan

Housing Development, supra, the Court held that a plaintiff alleging an equal protection violation need only prove that a discriminatory purpose was a motivating factor in the official act complained of.

In recognition of the fact that discriminatory purposes are most often disguised, the Court suggested various factors as guidelines for discerning whether a particular action is infused in any way with discriminatory purpose:

- (a) The impact of the action, i.e., "whether it bears more heavily on one race than another;"
- (b) The historical background of the decision;
- (c) The specific sequence of events leading up to the challenged decision;
- (d) The procedural and substantive departures from the norm in connection with the decision or action; and
- (e) The legislative or administrative history of the decision or action. 429 U.S. at 266-268.

The evidence before this Court is overwhelming that Proposition 1 is infected with improper discriminatory purposes. In fact, the burdens to be placed upon minority children are hardly disguised. When viewed in light of the history of racial discrimination in California, particularly in the public schools, the arguments raised by the proponents of Proposition 1 in the election debate and the unambiguous pronouncements of the California courts

concerning the urgent need to eradicate the continuing harm of segregated public schools in the State of California, the constitutional issue is easily resolved.

(1)

Proposition 1 Substantially Burdens  
Minority Children Attending Segregated  
Schools

Before the passage of Proposition 1 all persons in the State of California were entitled to the same equal protection under the laws under Article I, Section 7 of the California Constitution. Proposition 1 carves out a discrete exception to California's Equal Protection Clause for minority public school students seeking relief from the harmful effects of a segregated school system. For this class of minority children alone, relief under the California Equal Protection Clause will be tied forever to the vagaries of the federal decisional law, as that law may be applied to the facts existing whenever a Proposition 1 petitioner seeks to challenge an existing desegregation order or judgment.

The California Supreme Court has long held and the United States Supreme Court has agreed that California's jurisprudence may, and does, offer broader rights to its citizens under its Constitution than required by similar provisions of the United States Constitution. (Robins v. Pruneyard Shopping Center, 23 Cal.3d 899, 903-4, 592 P.2d 341, 153 Cal.Rptr. 854 [1979]; aff'd, 48 U.S.L.W. 4650 [June 9, 1980]; People v. Pettingill, 21 Cal.3d 231, 247, 578 P.2d

108, 145 Cal.Rptr. 861 [1978] and cases cited). This is true under the equal protection clause as to education. (Compare Serrano v. Priest, 18 Cal.3d 728, 762, 557 P.2d 929, 18 Cal.3d 728 [1976] with San Antonio School District v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16, 93 S.Ct. 1278 [1973] and specifically under that clause as to desegregation (Crawford v. Board of Education, supra, 17 Cal.3d 280 [1976]; Bustop, Inc. v. Board of Education, 439 U.S. 1380, 58 L.Ed.2d 88, 99 S.Ct. 40 [1978])). Indeed, the California Constitution provides, or did until the passage of Proposition 1, that "rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." (Art. I, §24).

If Proposition 1 stands, this is no longer true. Whereas formerly, education was a "fundamental interest" for all children in the State of California (Serrano, supra, 18 Cal.3d at 76), the Proposition now carves out a special exception as to minority segregated children.

Although Proposition 1 supporters were unwilling to relinquish all of these broader rights by bringing the California Equal Protection Clause into complete harmony with its federal counterpart, the proponents of Proposition 1 had no difficulty relinquishing a substantial share of those equal protection rights for minority children attending segregated schools. Those minority children will not only be deprived of their long standing state equal protection rights, but they will be forced to litigate and

relitigate their right to relief even under the changing landscape of the federal decisional law.

As is clearly shown by the media response to the Robbins Amendment, (Exhibits, 399-472) Proposition 1 was designed not with abstract constitutional theory in mind, but with the purpose of imposing enormous litigation burdens on a select class of racial minorities. Proposition 1 is a direct response to an unbroken chain of California cases which refuse to permit recalcitrant school boards to place additional litigation hurdles in the path of minority children seeking their right to an equal education. See, e.g., Crawford v. Board of Education, 17 Cal.3d 280, 300 (1976) ("the litigative task involved in such an effort (distinguishing de jure from de facto segregation) would be an enormous one, imposing tremendous burdens on representatives of minorities . . ."). It is precisely the imposition of those enormous litigation obstacles on minority children which the proponents of Proposition 1 sought to manufacture as a last ditch attempt to dismantle the desegregation of the Los Angeles public schools which is required in this case.

The imposition of such unequal litigation burdens is typical of violations of equal protection principles. For example, the California Supreme Court in Brown v. Merlo, 8 Cal.3d 855, 106 Cal.Rptr. 388 (1969) invalidated California's automobile guest statute because of its unreasonable differentiation between classes of litigants.

The Court found that the statute in question created three distinct levels of classification of discrimination. First, it denied recovery for negligence by automobile guests but allowed such recovery by paying passengers. Second, it treated automobile guests differently from social guests, denying the former protection from negligently inflicted injuries while extending such protection to the latter. Third, the statute created subclasses of automobile guests, withholding recovery only from those guests injured "in a vehicle" "during a ride" "on a public highway." 8 Cal.3d at 863. The court found no justification for these distinctions and held the statute to be violative of equal protection. See also Cooper v. Bray, 21 Cal.3d 841, 148 Cal.Rptr. 148, 582 P.2d 604 (1978); Police Department v. Mosley, 408 U.S. 92, 33 L.Ed.2d 212, 92 S.Ct. 2286 (1972).

As in Brown v. Merlo, the special litigation burdens placed on the representatives of minority children established by Proposition 1 cannot be justified under the Fourteenth Amendment. It is clear that the burdens imposed by Proposition 1 fall only on minority children attending segregated schools. It is only these minority children who are deprived of the more expansive rights guaranteed by the California Equal Protection Clause. It is only these minority children who must sustain enormous procedural burdens in order to vindicate their right to equal educational opportunity. No justification proffered by the Board of Education could be compelling enough to support the

imposition of such burdens. See, e.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 526 (1971).

Apart from the imposition of litigation burdens, Proposition 1 cruelly deprives minority children of their rights, secure since Jackson v. Pasadena City School District, 59 Cal.2d 876, 382 P.2d 878, 31 Ca.Rptr. 606 (1963), to be free from the harmful effects of segregation "regardless of its cause." These harmful effects have been recognized time and again by the California Supreme Court and form the fundamental basis for the principles of California Equal Protection law which the proponents of Proposition 1 seek to dismantle. The fact of this continuing harm was clearly known to the proponents of Proposition 1; yet they deliberately chose to impose these onerous burdens on minority children alone.

The superficial racial neutrality of Proposition 1 cannot insulate it from equal protection attack. For example, in Hunter v. Erickson, 393 U.S. 385, 21 L.Ed.2d 616, 89 S.Ct. 557 (1969), the United States Supreme Court invalidated a city charter amendment, adopted by initiative, which prevented the Akron, Ohio, city council from implementing any ordinance dealing with racial, religious or ancestral discrimination in housing without the approval of a majority of the city's voters. Other ordinances not dealing with such housing discrimination automatically became effective within ten days of their enactment. The Court found that the amendment created an unconstitutional

racial classification by treating racial housing matters differently from other housing matters. Id at 389. Thus, while the amendment at first blush appeared racially neutral on its face, in reality it burdened minorities by imposing upon them alone the requirement of a referendum.

The Court in Hunter emphasized the necessity of analyzing the burdens imposed by a legislative enactment in light of the context in which they were passed. In Hunter the reality was the existence of widespread racial segregation in the City of Akron caused by widespread discrimination in the sale, lease, rental and financing of housing. The racially discriminatory nature of the burdens imposed by the Akron ordinance could be understood only in light of that broader context.

The reality of where the burdens imposed by Proposition 1 will fall are well known to the Court, particularly since they have been extensively detailed by the California Supreme Court in the Crawford decision. The burdens cannot be justified under the Fourteenth Amendment.

(2)

The Historical Context of Proposition 1,  
the Sequence of Events Leading Up to its  
Passage, and the Legislative History  
Establish the Existence of an Improper  
Discriminatory Purpose

Proposition 1, when viewed in the context of the long history of racial discrimination in public education in California, and in light of the unmistakable purpose of its proponents to block the desegregation efforts mandated by

the California courts, is clearly infused with improper discriminatory purposes. More specifically, Proposition 1 is a response to the California Supreme Court's decision in this case.

In Reitman v. Mulkey, 387 U.S. 369, 18 L.Ed.2d 830, 87 S.Ct. 1627 (1967) the United States Supreme Court was faced with a similar attempt to subvert the rights of minority persons to equal protection under the law. Reitman involved an attempt by the voters of California to invalidate earlier statutes prohibiting private discrimination in housing sales and rentals by the passage of Proposition 14 in 1964. Proposition 14, like Proposition 1, was worded with deceptive neutrality:

"Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

However, the Court pierced these neutral terms to expose the discriminatory purpose which motivated the passage of Proposition 14.

The California Supreme Court in invalidating Proposition 14 had considered the Amendment in light of its "immediate objective", "its ultimate effect" and its "historical context and the conditions existing prior to its enactment" Mulkey v. Reitman, 64 Cal.2d 529, 533-534 (1966). In affirming the decision of the California Supreme Court

striking down Proposition 14 on equal protection grounds,  
the United States Supreme Court stated:

"[T]he State had taken affirmative action designed to make private discriminations legally possible. Section 26 was said to have changed the situation from one in which discrimination was restricted 'to one wherein it is encouraged, within the meaning of the cited decisions'; Section 26 was legislative action 'which authorized private discrimination' and made the State 'at least a partner in the instant action of discrimination. . .'"

387 U.S. at 375.

Not only did Proposition 14 purport to remove the barriers of the Unruh and Rumford Acts, but it also transformed private discrimination into a constitutional right safeguarded by the State. Proposition 14 in facilitating private discrimination and resistance to the elimination of racial discrimination in housing in California constituted an act of purposeful discrimination itself violative of the Fourteenth Amendment.

The "historical context," "ultimate effect" and "immediate objective" of Proposition 1 present an even stronger example of purposeful discrimination than the circumstances presented in Reitman. The history of racial discrimination and segregation in the California public school systems is as long as the history of housing discrimination relied upon in Reitman. Just as the proponents of Proposition 14 sought the freedom from state anti-discrimination measures -- in effect, a right to discriminate -- the proponents of Proposition 1 seek the

right to maintain a segregated public school system.<sup>22/</sup>  
This "immediate objective" is brought clearly into focus by the media coverage of the Proposition 1 election debate and the legislative history set forth above. The context of the California's school desegregation case law leading up to the Crawford decision, the main object of the ire of the proponents of Proposition 1 brings this discriminatory purpose into clearer focus.

The California state courts have for nearly two decades mandated the end of segregated education in California "regardless of its cause." Jackson v. Pasadena City School District, 59 Cal.2d 876, 881 (1963). Since Jackson, school boards in California have been under a constitutional duty to "take steps, insofar as reasonably feasible to alleviate racial imbalances in schools regardless of its cause." 59 Cal.2d at 881. Over the years the California courts have been confronted with every conceivable attempt to circumvent this mandate and have rejected each

---

<sup>22/</sup> Indeed the proponents of Proposition 1 even resurrected the old "forced housing" slogans of the Proposition 14 election campaigning in the new form of "forced busing" slogans. (Exhibits, 468). In the 1964 campaign, the California Real Estate Association circulated a pamphlet entitled "Freedom of Choice v. Forced Housing." (Exhibit "A", to amicus curiae brief of United Automobile, Aerospace, and Agricultural Implement Workers of America [UAW] AFL-CIO in Reitman v. Mulkey, supra.) Compare the Board's March, 1979 Submission to the Court below: "Integrated Educational Excellence through Choice." (Exhibits, 92).

such attempt.

The decision in San Francisco Unified School District v. Johnson, 3 Cal.3d 937, 92 Cal.Rptr. 304 (1971) is particularly instructive. In Johnson, the Court invalidated Education Code §1009.5 which provided that "no governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." In finding this provision unconstitutional the court did not rely solely on its own constitutional mandate in Jackson. As the Court in Johnson explained:

"The unconstitutionality of Section 1009.5, if applied to pupil assignments in districts of de facto segregation, is deeper, more flagrant. Section 1009.5 does not assume a neutral stance respecting de facto segregation of schools; it moulds a medium of obstruction to the elimination of that evil. It prohibits the use of a method that may be essential to desegregation. Pupil assignment without the requirement of parental consent. Yet the state cannot constitutionally countenance obstruction, for once the state undertakes to preserve de facto school segregation, or to hamper its removal, such state involvement transforms the setting into one of de jure segregation."

3 Cal.3d at 958. (emphasis added)

This is consonant with the later pronouncement by the United States Supreme Court in Dayton II:

"Part of the affirmative duty imposed by our cases . . . is the obligation not to take any action that would impede the process of disestablishing the dual

system and its effects." (61 L.Ed.2d at 734).

That Proposition 1 is expressly designed as such a vehicle of obstruction and impence cannot seriously be questioned. Moreover, the Court in Johnson acknowledged that "[t]he weighing of the motive and effect of [school] board decisions stretching back for many years to arrive at a net determination of the de facto or de jure character of the present structure presents a highly difficult and possibly insolvable task." Id. at 957. Thus, any rule preserving these two categories "would inhibit and delay school boards in their efforts to bring about full equality of educational opportunity." Id.

In Santa Barbara School District v. Superior Court, 13 Cal.3d 315; 118 Cal.Rptr. 637 (1975), the California Supreme Court invalidated Proposition 21 (passed in 1972), which added the following proviso to Education Code §1009.6: "No public school student shall, because of his race, creed, or color, be assigned to or be required to attend a particular school."

The Court found that such a provision was unconstitutional even as applied to districts in which there was de facto segregation and emphasized the inherent uncertainties involved in distinguishing between de facto and de jure segregation:

"The high court [in Keyes v. School District No. 1] further emphasized that segregatory intent on the part of the school board is not limited to actions in the immediate present. 'We reject any suggestion that remoteness in time has any relevance to the issue of intent. If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time does not make those actions any less intention.' [cite omitted] We read this to mean that a school board therefore can ascertain whether the segregation present in its district is de jure or de facto only by examining the full history of acts by the school authorities and determining if, at any time in that course of action, some acts were undertaken with segregatory intent. We think it is clear that no school board or lower court can ascertain with any degree of confidence whether Section 1009.6 can constitutionally apply in its district and we further believe that therefore a determination by this court that Section 1009.6 can apply to districts manifesting de facto segregation would involve uncertain enforcement and improperly delay elimination of de jure segregation." Id. at 326-327.

The Court also emphasized that, given the 'discouraging fact of dilatory tactics of many school authorities,' "it is all too clear to us that the elimination of de jure segregation would be seriously impeded if school authorities could claim a legal disability to assign or bus pupils merely be presenting that the segregation in their district was de facto in origin." Id. at 327. The acts of the Los Angeles Board of Education in this case are ample evidence of the reality underlying the Supreme Court's fears.

In Crawford v. Board of Education, 17 Cal.3d 280, 130 Cal.Rptr. 724 (1976), the state Supreme Court reaffirmed the soundness of its mandate in Jackson to desegregate California's schools. The Court again stressed the enormous litigation burdens placed on the representatives of minority children by a de facto/de jure distinction and the fact that creating such a distinction would "delay the desegregation of public schools throughout California for years to come." 17 Cal.3d at 300-301. The Court also stressed that most of the currently segregated school systems in California would almost certainly be found to be de jure segregated in any event. Id. at 301. Finally, the Court in Crawford emphasized that, "[a]lthough the educational experts may disagree on many aspects of the desegregation controversy, there is virtually no dispute that the practical effect of segregated schooling on minority children does not depend upon whether a court finds the segregation de jure or de facto in nature; the isolating and debilitating effects do not vary with the source of the segregation. Id.

It is in the face of this unbroken chain of unambiguous pronouncements that Proposition 1 seeks to impose such burdens on minority children and to deprive them of the affirmative rights to be free of the harmful effects of a segregated education. The issue of the constitutionality of Proposition 1 cannot be removed from the long standing structure of California school desegregation law and the majoritarian reluctance to accept that law out of which

Proposition 1 arose. The history of racial discrimination described above and the legislative history and media response to Proposition 1 provide the rest of the pertinent context in which Proposition 1 must be viewed. Under any of the tests posited by the United States Supreme Court to determine violations of the Equal Protection Clause, Proposition 1 must be invalidated.

b.

The Case Law Clearly Demonstrates the  
Constitutional Infirmary of Proposition 1

The recent case of Seattle School District No. 1 v. Washington, 473 F.Supp. 996 (W.D. Wash. 1979), represents the best synthesis of the pertinent federal case law applicable to measures such as Proposition 1. In Seattle School District No. 1 a federal district court struck down an anti-busing initiative (Initiative 350), similar in purpose and effect to Proposition 1, which arose in a context remarkably similar to the within case.

The Court in Seattle School District No. 1 found that Initiative 350 constituted racial classification, in that it enumerated a variety of bases upon which student assignments could be made but conspicuously omitted the assignment of students for racial balancing purposes. Thus, although Initiative 350 did not contain any explicit racial classifications, the Court looked beyond the superficial neutrality of its terms and based its decision on the obvious effect and purpose of the statute. 473 F.Supp. at 1012-1013.

The obvious effect of Initiative 350 was that only minority children would bear the burden of its prohibitions.

The Court also found that the passage of Initiative 350 was infused with purposeful discrimination when analyzed within the framework suggested by Arlington Heights and Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 60 L.Ed.2d 870, 99 S.Ct. 2282 (1979). As the Court explained:

"Beyond question the informed voters of the state, and the voters in general in Seattle, were well aware that the passage of Initiative 350 would terminate the efforts which had been taken by school boards of the state to balance schools racially by the mandatory busing of students. Given the segregated housing patterns of the three plaintiff school districts, the termination of those efforts could only result in racially-imbalanced schools in those districts and a disproportionate impact upon minority students. This impact of Initiative 350 was a certainty, in marked contrast to the uncertain and speculative impact of the verbal skills test used to select police recruits in Washington v. Davis and the denial of the rezoning application in Arlington Heights." 473 F.Supp. at 1015.

The Court emphasized the special significance of recognizing the reality of this obvious burden on minority children within the analytical framework suggested by Arlington Heights. In particular, where the adverse consequences of a law upon a minority are inevitable "a strong inference that the adverse effects were desired can reasonably be drawn." Id.; citing Personnel Administrator of Massachusetts v. Feeney, 442 U.S. at 279, fn. 25. As

suggested earlier, the inevitable adverse consequences of Proposition 1 on minority children attending segregated schools in Los Angeles are even clearer than the facts before the Court in Seattle School District No. 1.

The Court next reviewed the historical context of Initiative 350 and found that it was clearly adopted with the specific purpose of overriding the Seattle School Board's decision to attain a racial balance in Seattle schools through pupil assignments. As the Court explained:

"One must assume therefore that the voters, in adopting the initiative, intended to accomplish the very purpose for which the initiative was designed and intended therefore the disproportionate racial impact which its implementation will have." Id.

\* \* \*

"The historical background and sequence of events leading up to the adoption of the initiative reveals a whole series of lawsuits and a recall election,<sup>23</sup> the objective of which was to prevent the racial balancing of Seattle schools by means of mandatory student assignments. It reveals, too, that the adoption of the plan of racial balancing by the Seattle School Board was the event which gave rise to the thought of a statewide initiative as a means of thwarting that decision."

Id. at 1015-1016.

The Court also found that Initiative 350's sudden intrusion of the public into areas which had traditionally been the autonomous function of school boards -- i.e., pupil

---

<sup>23</sup>/ Los Angeles had its recall election for the same objective (Exhibits, 490-521).

assignments -- also was an indicator of discriminatory purpose. Id., at 1016.

The final ground for the Court's decision was that Initiative 350 did not provide for districts in which de jure discrimination exists, where there would be an affirmative duty under the Fourteenth Amendment to redress such discrimination, using pupil assignments as a remedy if necessary. North Carolina State Board of Education v. Swann, 402 U.S. 543, 28 L.Ed.2d 586, 91 S.Ct. 1284 (1971); Green v. County Board of New Kent County, 391 U.S. 430, 20 L.Ed.2d 716, 88 S.Ct. 1689 (1968). Moreover, the Court emphasized that under Initiative 350, a school district believing that de jure discrimination exists within its borders would be placed in the untenable position of being in violation of Initiative 350 or the Fourteenth Amendment, leaving it no alternative but to litigate.

Moreover, Seattle School District No. 1 stressed the constitutional invalidity of Initiative 350's interference with attempts to promote racial balance in the public schools, with regard to the de jure/de facto distinction. 473 F.Supp. at 1013. See also Lee v. Nyquist, 318 F.Supp. 710 (W.D.N.Y. 1970) aff'd, 402 U.S. 935, 29 L.Ed.2d 105, 91 S.Ct. 1618 (1971).

Proposition 1 purports to eliminate this constitutionally infirm Hobson's Choice by allowing voluntary integration efforts, though in light of the practical reality which the overwhelming passage of

Proposition 1 represents, the interference with the obligation of local school boards to take affirmative steps to alleviate de jure segregation is clear and unavoidable. One need only refer to the Board member Miller's recall election (Exhibits pp. 490-520), for further evidence of this practical reality.

The decision in Seattle School District No. 1 embodies the appropriate synthesis of the principles of equal protection analysis announced in Washington v. Davis, Arlington Heights and Feeney as applied to a factual context markedly similar to this case. The application of the same equal protection principles to Proposition 1 requires its invalidation.<sup>24/</sup>

---

<sup>24/</sup> See also, School Committee of Springfield v. Board of Education, 366 Mass. 315, 319 N.E.2d 427 (1974), cert.denied 421 U.S. 947, a case directly in point. In this case, after a court had ordered Springfield to desegregate, the Massachusetts Legislature passed an act which prevented the State Board of Education from ordering pupil assignments or transportation for desegregation. The power of the local school boards, there called "School Committees," to employ such methods was not impaired. Thus, the Massachusetts enactment was virtually identical with Proposition 1 except there the state agency that was shorn of power was the State Board of Education. Here it is the Courts. The Supreme Judicial Court of Massachusetts held the legislation unconstitutional under the Fourteenth Amendment, saying (319 N.E.2d at 434, 435, 436):

" . . . [I]n the circumstances of this case, any action taken by the Legislature or by the School Committee of Springfield which would tend to reverse or impede the progress toward the achievement of racial balance in Springfield's schools would constitute a violation of the Fourteenth Amendment to the United States Constitution . . .

(CONT'D ON NEXT PAGE)

C.

The Re-Opening and Retroactive Feature of  
Proposition 1 Deprives the Plaintiff Minority  
Students of Their Fourteenth Amendment  
Rights

Under the banner of Proposition 1, the Los Angeles Board of Education, seeks to retroactively deprive the District's minority children of vested rights secured by their final judgment more than a decade ago. Further, the Board seeks to retry the issue of whether segregation in Los Angeles is de jure, and thus to strip minority plaintiffs

---

24/ CONT'D

Thus, insofar as c.636 was intended to forestall the implementation of the Task Force plan in Springfield, it is unconstitutional.

". . .

". . . when viewed in the 'historical context' of the Springfield situation. . . it becomes easy to comprehend that any attempt under c.636 to prevent the operation of the Task Force plan would constitute a significant retreat from the progress toward desegregation that has been made under the pre-amendment plan. And the cases make clear that even where steps toward desegregation are made voluntarily rather than pursuant to constitutional mandate any subsequent state action which would cause a return of the preexisting segregation would itself be an act of de jure segregation. This is especially true where, as in this case, there is a court decree ordering the implementation of such plans."

It is just as though the court were speaking about California, the Los Angeles School Board and Proposition 1.

of the protection of the doctrine of res judicata. The facial invalidity of Proposition 1 is manifest in its retroactive impact.

The judgment in Crawford is a final one, with all appeals long exhausted, and it is therefore a vested right which cannot retroactively be denied nor diminished by fiat, by statute, nor by constitutional amendment. Nor can the issue of de jure segregation be retried, as it has been finally decided, and retrial is barred by the doctrine of res judicata. Moreover, Proposition 1 cannot constitutionally single out and impose burdens on one class of litigants alone -- minority plaintiffs in school desegregation cases.

These burdens are unparalleled. Minority children in desegregation cases, and they alone, are to be deprived of the sanctity of judgments, and subjected to apparently unending litigation to vindicate and secure their rights.

Proposition 1 provides that "any interested person," at any time, as a matter of constitutional right (cf. Reitman v. Mulkey, supra) may compel a court, upon application, to reopen final judgments, retry issues once decided, and modify those decisions by applying current law "to the facts which exist at the time of such modification."

It is a mad-hatter's prescription for endless litigation -- converted to constitutional right. It invests ambiguously identified "interested person(s)," presumably anyone able to assert standing (See California's broad

taxpayer statute, C.C.P. 526a), with a right to upset judgments "whenever rendered." The principle of res judicata falls by the wayside, for minority children alone.

Minority children are to achieve final judgments, only to defend, defend, and redefend. There is nothing in Proposition 1 to prevent multiple applications by "interested persons," ad infinitum, year after year, or with any and every change in the federal law, or whenever the spirit of segregation moves them. Once having fallen, the doctrine of res judicata cannot be revived to protect the judgments of minority children, under the terms of Proposition 1.

Upon each application, minority children are forced to re-establish their right to relief upon new facts and new law existing "at the time of such modification." The imposition of such onerous burdens upon a class of litigatns is unprecedented.

It has long been the law that "it is not within the power of a legislature to take away rights which have been once vested by a judgment. Legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into judgment the power of the legislature to disturb the rights created thereby ceases." McCullough v. Commonwealth of Va., 172 U.S. 102, 123-24, 19 S.Ct. 134, 43 L.Ed. 384, 390 (1898).

In California, even prior to the general rule articulated in McCullough, supra, our Supreme Court had

declared that it was "repugnant" to advance the notion that a statute could constitutionally derogate a vested right, (Billings v. Hall, 7 Cal. 1 (1857)), and it has been uniformly recognized that "the Legislature is without power to impair or destroy the obligations of contractual or vested rights, and any statute which affects a vested right cannot be given retrospective operation." Pardee Const. Co. v. Cal. Coastal Com'n., 95 Cal.App.3d 471, 479, 157 Cal.Rptr. 184, 189 (1979), citing Estate of Thram, 80 Cal.App.2d 756, 765, (1947).

The cases following the general rule articulated in McCullough are legion.<sup>25/</sup> Nor is there a different

---

<sup>25/</sup> See, e.g., Hodges v. Snyder, 261 U.S. 600, 43 S.Ct. 435, 67 L.Ed. 819 (1923); Green v. United States, 376 U.S. 149, 160-161, 84 S.Ct. 615, 11 L.Ed.2d 576 (1964); Thorpe v. Housing Authority, 393 U.S. 268, 282 n. 43, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969); De Rodulfa v. United States, 461 F.2d 1240, (C.A.D.C., 1972), cert.denied, 409 U.S. 949 (1972), and Supreme Court cases cited at 461 F.2d 1252, n.61; Hospital Ass'n. of New York State, Inc. v. Toia, 577 F.2d 790, 797 (2nd Cir. 1978); Estate of Wellings, 197 Cal. 189, 240 P.2d (1925); Jones v. Union Oil Co., 218 Cal. 775, 778 (1933) ["It is well established in this state that a judgment is a contract as contemplated by the constitution." (Scarborough v. Dugan, 10 Cal. 305; (1858); Miller v. Murphy, 186 Cal. 344 (1921) . . . The lien thus created was inseparably connected with the judgment and the legislature had no power to impair it.]; Miller v. McKenna, 23 Cal.2d 774, 782-783 (1944) - Harrel v. Hoagland, 18 Cal.App.2d 721, 722 (1937) [final judgment obtained prior to change in Code of Civil Procedure providing for cancellation of judgments based upon a debt discharged in bankruptcy was a vested right which could not be affected by the change in the statute.]; Kendall v. Kendall, 122 Cal.App. 397, 10 P.2d 131 (1932), overruled on other grounds, Rosher v. Superior Court, 9 Cal.2d 556, 71 P.2d 918 (1937) -- a final judgment is "such a vested right of property that the legislature cannot, by a retroactive law, either destroy or diminish its value in any respect";

(CONT'D ON NEXT PAGE)

standard when the divestiture is accomplished by way of constitutional amendment, as "[t]he state has no power to divest or to impair vested rights whether such attempt be made by legislative enactment, by municipal ordinance or by change in the constitution of this state." Favot v. Kingsbury, 98 Cal.App. 284, 291 (1929). [Citations omitted.]

Proposition 1, however, attempts to divest plaintiffs of their vested right secured by their judgment. Proposition 1 attempts to modify far more than just a particular equitable remedy -- it seeks, and the Board seeks, to reach the substantive right itself which plaintiffs have won in their prior judgment.

In stating the general rule against retroactive divestment of vested rights, the Supreme Court in McCullough stated that "legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into judgment the power of the legislature to disturb

---

25/ CONT'D

and see 13 Cal.Jur. 3d, Constitutional Law, §269 et seq., -- "a vested right of action is property in the same sense that tangible things are property, and is equally protected against arbitrary interference . . . Like a common law cause of action, a judgment is such a vested right of property that the legislature cannot, by a retroactive law, either destroy or diminish its value in any respect." (13, Cal.Jur.3d, Constitutional Law, at 275). For a general survey of Supreme Court cases dealing with retroactive legislation see Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv.L.Rev. 692 (1960) -- "The traditional principle invoked in determining the constitutionality of retroactive legislation is that a statute may not abrogate 'vested rights'." Id. at 696.

the rights created thereby ceases." (172 U.S. at 123-24.) Therefore, the rule is that there is no vested interest in a particular remedy, but once the judgment is final, the right is vested. (See, 13 Cal.Jur.3d at 516).

Decisions which have seemingly allowed retroactive application of legislation which removed a prior remedy have almost universally involved cases in which the judgment was not final, and have generally followed the reasoning that "what Congress giveth, Congress can taketh away." (Mirabal v. General Motors Acceptance Corporation, 537 F.2d 871, 876 (7th Cir. 1976)).

However, where the judgment is final, the courts have not allowed a remedy to be removed retroactively (see e.g. Daylo v. Administrator of Veterans' Affairs, 501 F.2d 811 (C.A.D.C., 1974 [no retroactive deprivation of widows' benefits], and the many cases cited at footnote 26, supra).

"Where a statute operates immediately to cut off an existing remedy and by retroactive application, deprives a person of a vested right, it is ordinarily invalid because it conflicts with the due process clauses of the federal and state constitutions." California Emp. etc. Com. v. Payne, 31 Cal.2d 210, 215, (1947) [Citations omitted]; Miller v. McKenna, 23 Cal.2d 774, (1944); Jones v. Union Oil Co., 218 Cal.2d 774 [judgment lien not impaired by subsequent legislation -- "considered in the sense of a remedy for the enforcement of a judgment, such remedy is nevertheless a part of the obligation of the contract and subject to

constitutional protection against impairment."] Further,

"Remedies are ordinarily no more than rules of procedure which the legislature may change. Such changes may be made applicable to pending actions, provided that under the guise of a mere change in procedure or substitution of remedies, vested rights are not destroyed or the obligation of contract impaired." 13 Cal.Jur.3d, Constitutional Law §276 at 516. (emphasis supplied).

Proposition 1, by its express terms, "does not purport to affect the remedy, but expressly provides for the cancellation and discharge of the judgment itself. It cannot therefore be constitutionally applied to a judgment secured prior to the effective date of said [amendment]." Harrell v. Hoagland, 18 Cal.App.2d 721, 722 (1937), citing Jones v. Union Oil Co., supra, 218 Cal. 775 (1933); Scarborough v. Dugan, 10 Cal. 305 (1858); Kendall v. Kendall, 122 Cal.App. 397 (1932) [other citations omitted].

In Miller v. McKenna, 23 Cal.3d 774 (1944), the Supreme Court considered the effect of two subsequent curative statutes as they impacted upon the title disputed by a plaintiff who claimed pursuant to a mortgage foreclosure judgment, and a defendant who claimed pursuant to tax deeds. The defendant's tax deeds were subject to challenge for errors in publication of the original notices. The legislature subsequently passed curative legislation, first in 1929 and later in 1943, both of which acts were aimed at resuscitating tax deeds such as those at issue. The Supreme Court, however, held that neither act could

disturb the plaintiff's title, which had been secured by the prior judgment entered before the curative legislation. The Court stated (at 23 Cal.2d 782-783):

"The Legislature may not enact curative legislation the effect of which would be to destroy or unlawfully infringe upon vested rights. In such cases, laws confessedly retrospective have been declared ineffective when they were held to be in conflict with some right secured either by a constitutional guarantee or protected by the principles of universal justice." (citations omitted).

The earliest cases have recognized that the right to education attaches to each child. For instance, in the first challenge to segregated schools to reach the California Supreme Court, Ward v. Flood, 48 Cal.36 (1874), decided only six years after passage of the Fourteenth Amendment to the United States Constitution, the Court, while declining to find that so-called "separate but equal" schools were in violation of the Fourteenth Amendment, unequivocally articulated its view that the right to education was a fundamental right enjoyed by each student. The court stated (at 48 Cal. 38):

"The opportunity of instruction at public schools is afforded to youth of the State by the statute of the State, enacted in obedience to the special command of the Constitution of the State, directing that the Legislature shall provide for a system of common schools . . . The advantage or benefit thereby vouchsafed to each child, of attending a public school is, therefore, a right -- a legal right -- as distinctly so as the vested right in property owned

as a legal right, and as such it is protected, and entitled to be protected by all the guarantees by which other legal rights are protected and secured to the possessor."

Accord on this score: Serrano v. Priest, supra, 5 Cal.3d 584, 609. Crawford, 17 Cal.3d at 297.

From the very foundation of the nation, the necessity of secured judgments has been recognized. "Thus, the Federalist stressed the desirability of protecting the people from the 'fluctuating policies' of the Legislature." (73 Harvard L.Rev. at 692). Retroactive legislation would rob the people of the "stability" to be desired in secure judgments, and " . . . such a statute may be passed with exact knowledge of who will benefit." (Id. at 693). The courts have, therefore, viewed retroactive legislation with "hostility" (Id.)

The Proposition in seemingly allowing the setting aside of the 1970 judgment and the Board in seeking to do so, disregard all principles of res judicata.

"The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration." 4 Witkin, Cal.Pro., Judgment, §147.

"The doctrine [of res judicata] in both its major aspects (bar and collateral estoppel) applies to all courts, including inferior courts of limited jurisdiction and courts of special jurisdiction. Thus, C.C.P. 1908 refers to the judgment of 'a

court or judge of this state, or of the United States.'" (Id. at §153).

"The application of the doctrine to judgments of our principal trial courts -- superior and minicipal -- appears in numerous cases . . . [and] 'The final adjudication of an inferior court made within its jurisdiction is binding and conclusive upon a higher court in a subsequent action.'" (Id. at §514; all citations omitted; emphasis in original throughout.)

The passage of Proposition 1 with its retroactive feature cannot affect the principle of res judicata.

For instance, in Slater v. Blackwood, 15 Cal.3d 791, 126 Cal.Rptr. 225 (1976), a minor who had received an adverse judgment when the California guest statute was in effect, brought a second action after the guest statute was held unconstitutional, arguing, inter alia that the change in law, should allow the action to proceed in order to prevent manifest justice.

In an opinion by Justice Richardson, a unanimous Supreme Court refused to give retroactive application to its decision declaring the guest statute unconstitutional, and held the action was barred by the doctrine of res judicata. "A valid final judgment on the merits . . . serves as a complete bar to further litigation on the same cause of action," the Court held (15 Cal.3d at 795).

Justice Richardson, reviewing decisional law, cautioned against exercise of a "manifest injustice" exception which would undermine the doctrine of res judicata: "We expressly hold that the rule [of manifest

injustice exception] is inapplicable where, as here, the only possible basis for its implementation is founded on a change of law following the original judgment." (Id. at 796). Moreover, disregard of the doctrine of res judicata in the current case would itself be a manifest injustice.

Accordingly, the retroactive feature of Proposition 1 is invalid and cannot be given effect.

D.

To the Extent the Board's Application Seeks to Apply Proposition 1 to Have the Court Look Only to the Facts Which Exist Today, Proposition 1 Violates Federal Law (Comment on Board's pp. 26-27)

Proposition 1 requires a court to modify its previous judgments and orders, whenever rendered, "to conform to the provisions" of the Proposition "as applied to the facts which exist at the time of such modification."

This clearly is violative of the federal standard.

In Keyes v. School District No. 1, 413 U.S. 189, 37 L.Ed.2d 548, 93 S.Ct. 2686 (1973), the United States Supreme Court made very clear that the past is not wiped clean simply because of what exists in the present. Thus it pointed (page 209) to its earlier opinion in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18, 28 L.Ed.2d 554, U.S. Ct. 1267 (1971), where it spoke of a "history of segregation" as being sufficient to justify a present prima facie finding of violation of constitutional right merely because of the quality of buildings and

equipment or the organization of sports activity. And the Court forcefully said (page 210-211):

"We reject any suggestion that remoteness in time has any relevance to the issue of intent. If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make those actions any less 'intentional.'"

And, of course, Dayton II (Dayton Board of Education v. Brinkman, 443 U.S. 526, 61 L.Ed.2d 720, 99 S.Ct. 2971 [1979]) and Columbus Board of Education v. Penick, 443 U.S. 449, 61 L.Ed.2d 666, 99 S.Ct. 2941 (1979) are the clear expressions of the principle that "de facto" segregation today is not warrant for a court to relieve a board of its desegregation duty because of its "de jure" conduct in the past. In Dayton II, the Supreme Court scolded (61 L.Ed.2d at 732) the District Court because it had at the hearing in 1972-73 "ignored the legal significance of the intentional maintenance of a substantial number of black schools in the system at the time of Brown I." That is, it ignored events which had occurred in 1954, almost 20 years before.

The Court in Dayton II, specifically addressed itself to the school board's contention "that, even if a dual system did exist a quarter of a century ago, the Court of Appeals erred in finding any widespread violations of constitutional duty since that time." Said the Court (61 L.Ed.2d at 733):

"Given intentionally segregated schools in 1954, however, the Court of appeals was quite right in holding that the Board was thereafter under a continuing duty to eradicate the effects of that system (citing Columbus), and that the systemwide nature of the violation furnished prima facie proof that current segregation in Dayton schools was caused at least in part by prior intentionally segregative official acts . . . ."

Similarly, in Columbus, (61 L.Ed.2d at 675) "the Board earnestly contends that when this case was brought and at the time of trial its operation of a segregated school system was not done with any general or specific racially discriminatory purpose, and that whatever unconstitutional conduct it may have been guilty of in the past such conduct at no time had systemwide impact and surely no remaining systemwide impact at the time of trial." The Supreme Court answered by pointing out (61 L.Ed.2d at 679) that there was no dispute that in Columbus at time of trial "most blacks were still going to black schools and most whites to white schools." And that (ibid) "whatever the Board's current purpose with respect to racially separate education might be, it knowingly continued its failure to eliminate the consequences of its past intentionally segregative acts."

Arlington Heights, supra, also recognizes the point. (429 U.S. at 267-268).

The principle was succinctly stated by the Court in United States v. State of Missouri, 515 F.2d 1365, 1370 (8th Cir. 1975):

"Intentional school segregation in the past may not be ignored in assessing the impact of present inaction which has the effect of maintaining segregation."

Accordingly, Proposition 1's effort to straight-jacket court determination to the facts today goes contra to the decisions of the United States Supreme Court. In addition, that fact renders the Proposition violative of the Supremacy Clause (Art. VI, CL.2) of the United States Constitution. (Cooper v. Aaron, 358 U.S. 1, 18, 3 L.Ed.2d 5, 78 S.Ct. 1401 [1958]).

## II

THE SUPERIOR COURT'S FINDINGS  
DO ESTABLISH A FOURTEENTH  
AMENDMENT VIOLATION, CURRENT  
SEGREGATIVE EFFECTS AND THE  
VALIDITY OF ASSIGNMENTS BY  
RACE FOR THE PURPOSE OF  
DESEGREGATION (Reply II,  
pp. 24-46)

In a real sense, the Board has no right in these proceedings for extraordinary relief to question the Superior Court's 1970 decisions. Unless and until the Board gets over the hurdle of the unconstitutionality of Proposition 1, it is simply in no position to challenge those findings and judgment. <sup>26/</sup> The Board recognized this in its motion to the Superior Court to be relieved (as we have shown it has been) of the requirement to mandatorily assign pupils for the purpose of desegregation. (Exhibits, 220). The Board, properly, called this the "threshold issue." (Ibid, 222)

For the sake of completeness, however, we will deal with the issue and briefly here show that the Board is completely in error in its contention.

The Board continues to rely (Pet. 25-26) upon the words of Mr. Justice Rehnquist in denying the application of Bustop in 1978 to stop the implementation of Plan 2.

---

<sup>26/</sup> Certainly without the record here the Board cannot question the July 7, 1980 Findings of the Superior Court.

As we have pointed out, however, the views of Mr. Justice Rehnquist and Mr. Justice Powell (who may or may not have shared the view of Mr. Justice Rehnquist that Plan 2 was violative of federal standards) simply are not the law. Those justices were dissenters in the Dayton II and Columbus cases. Those cases just could not have been decided by the Supreme Court the way they were had their views prevailed.

It is not the federal law that there must be a present segregative intent before a school board in a school district which was found to have in the past engaged in intentional segregation and which has been under a duty to desegregate, may be ordered to desegregate. It is the federal law that a school district which is today unintentionally segregated but which was under a duty in the past to desegregate but failed to do so, may be ordered to desegregate. It is likewise the federal law that a school district which has intentionally segregated a part of the district is presumed to have intentionally segregated the remainder when segregation exists in the remainder, and the burden is upon the district to prove otherwise. Dayton II and Columbus can be read no other way.

If federal standards were to be applied here, the Board simply did not carry its burden. Moreover, Los Angeles was not merely segregated in a part of its district. The segregation was district-wide. See page 101, infra.

A word of correction: the Board did not, as suggested by it, (Petition 26-27) apply to the court below to

"hold a hearing to determine whether a federal court, sitting today, would find a de jure violation and impose a remedy involving pupil school assignment or pupil transportation." Its motion was to modify the Superior Court's order of February 7, 1978 and May 30, 1979 "to eliminate those portions of those orders which require the mandatory reassignment of pupils for the purposes of desegregation." (Exhibits, 220) a result achieved by respondent Court's July 7, 1980 order. (Exhibits, 1163). The Board did contend that the Court must hold such a hearing (Exhibits 223), but proposed to the Court that it not be held at that time but only at "such time as, and if, [the proceedings] may need to be interrupted for a hearing on the issue of liability under federal law." (Exhibits, 224) (emphasis added)

That time never came. The Board has no basis for complaint.

A.

The 1970 Findings of Fact  
and Conclusions of Law Fairly  
Bristle with Federal Consti-  
tutional Violations on the  
Part of the Board (Reply to  
Board's Point II, A; pp. 28-39)

As we have said, it is virtually ludicrous to even be discussing the matter. How can the 1970 findings and judgment be undone? Especially in light of the challenge to the findings made by the Board on the previous appeal. "It seems that we have heard that song before." In its Opening

Brief before this Court on its appeal from the 1970 judgment, the Board said (pg. 23):

VI

"The Trial Court Found That the School Board Was Guilty of De Jure Segregation and Was Therefore Required to Disestablish the Effects of Such Segregation. Careful Scrutiny of Such findings Indicates That the Court Has Simply Equated "De Jure" Segregation With "De Facto" Segregation. The Court Did Not Find State Mandated Segregation-- the Assignment of Minority Pupils to Minority Schools Because of the Races of Such Pupils."

If the Supreme Court's answer to the Board's argument does not settle the matter, we do not know what does or can.

We proceed, however.

The Board is incorrect in its assertion (Pet., 28) that all the district did is "fairly adhere to a racially neutral neighborhood school policy." We have set out above, pages, the findings of the court which show many of the segregating things the Board did and in bad faith. In light of that, the recent ruling of the United States Court of Appeals for the Ninth Circuit in Diaz v. San Jose Unified School District, 612 F.2d 411, 416 (1979), must be noted: "strict adherence to a neighborhood school policy <sup>27/</sup> is no more than circumstantial evidence that bears upon the existence of segregative intent. The existence of such a policy is not enough to prove the absence of segregative intent." (emphasis added)

---

<sup>27/</sup> Not so by the Board here with its transfer policy which allowed whites to leave their neighborhood minority schools to go to white schools. (Exhibits, 34)

The Board quotes (pp. 30-31) from Washington v. Davis, 426 U.S. 229, 230 (1976) and Mr. Justice Powell's concurring opinion in Austin Independent School District. v. United States, 429 U.S. 990 (1976) as though the federal rule re the necessity for intent in a desegregation case were new doctrine. There is nothing new about that. It was recognized in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 17-18 28 L.Ed. 2d 554, 91 S.Ct. 1267 (1971) and given unmistakable articulation in Keyes v. School District No. 1, 413 U.S. 189, 198, 208-209, 37 L.Ed.2d 548, 93 S.Ct. 2686 (1973). The California Supreme Court knew both these cases and cited them in Crawford, 17 Cal.3d at 290, fn. 4 when it held at page 285 that "the findings in this case adequately support the trial court's conclusion that the segregation in the defendant school district is de jure in nature."

Likewise, as discussed early in this brief, pages 6-11, it is not accurate that the 1970 findings "establish no more than the failure to take affirmative action to alleviate racial balance." (Pet. 23). Moreover, where, as here a school board has been found to have engaged in intentional discrimination, there is, indeed, an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and hands.... Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment." (Columbus Board of Education v. Penick, supra, 61 L.Ed. at 677). (emphasis added)

The Board is incorrect in its contention (Pet. 37) that the factors it sets out from one of the Superior Court's findings (IV. 36 [i]--[xii] do not show intent or purpose to segregate. Everyone of them has been held to show segregative intent:

As to a neighborhood school policy, (i), we have mentioned the 9th Circuit decision in Diaz, supra. Keyes, supra, also recognizes that a neighborhood school policy may be an instrument of segregation especially where, as here, it "has not been maintained free of manipulation." (413 U.S. at 212)

As to the drawing of attendance zones (ii), the Court in Columbus (61 L.Ed. 2d at 678) and Dayton II (61 L.Ed. 2d at 734) said that "the Board has had an affirmative responsibility to see that pupil assignment policies ... 'are not used and do not serve to perpetuate or reestablish the dual system.'" (Dayton II, 61 L.Ed. 2d at 734)

As to failing to adopt any definition of equal educational opportunity segregation, integration, desegregation, or racial balance or imbalance (iii), the court in Dayton II said (61 L.Ed. 2d at 734): "Part of the affirmative duty imposed by our cases ... is the obligation not to take any action that would impede the process of disestablishing the dual system and its effects." By not adopting any definition for desegregation or racial imbalance, the Court found (Finding IV, 60; Exhibits 44) that the Board's staff was unable to, and did not, select

sites or readjust attendance boundaries to achieve or further integration. Thus, by the failure to adopt definitions, the Board did "impede" the dismantling of the dual school system.

The mere fact that this impeding took form of inaction is of no moment. "[A]dherence to a particular policy or practice 'with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many factors which may be considered by a court in determining whether an inference of segregative intent should be drawn.'" (Columbus, 61 L.Ed 2d at 681) Despite its perfunctory adoption of a formal "desegregating" resolution, the Board took no action, thus the goal could never be reached. That is intentional conduct.

As to establishment of feeder patterns that created or perpetuated segregation (iv.), it is hard to follow the Board's contention that this does not show intent or purpose. In the trial court in Dayton II, the court found that the district had established "middle schools" and that "the feeder elementary schools were those in the closest proximity to the middle schools" Brinkman v. Gilligan, 446 F.Supp. 1232, 1240 (DC Oh 1977) and from this no inference of intent could be drawn. The 6th Circuit reversed, noting that the District Court's holding was "questionable in light of plaintiffs' convincing demonstration that the natural,

probable and foreseeable result of the establishment of the middle schools was an increase or perpetuation of segregation." Brinkman v. Gilligan, 583 F.2d 243, 256). The Supreme Court, of course, affirmed the 6th Circuit in Dayton II.

Thus, the Superior Court here is entitled to infer segregative intent from the manner the Board established its feeder patterns.

As to establishing and maintaining transportation policies which created or perpetuated segregation (v), here again it is hard to follow the Board's logic that this does not show purpose or intent to segregate. The finding of the Superior Court was that the Board's transportation policy resulted in whites being able to leave minority schools and go to white schools while causing "substantially all, if not all, [the minority students] to be compelled to and attend a segregated neighborhood school." (Exhibits, 26) Nothing, could be more indicative of segregative intent.

As to the failure to provide free transportation in its open transfer permits, the California Supreme Court happened to address itself to that. "Moreover, defendant has failed even to adopt a program which would provide a realistic opportunity for minority children in segregated schools voluntarily to integrate other schools in the district. (quoting from Swann, supra, 402 U.S. 1, 26-27) Instead of implementing such a program, the Board adopted a

transfer policy which had the foreseeable consequence of perpetuating and indeed exacerbating the segregation in its district schools" (Crawford, 17 Cal.3d at 309)

Clearly, this is evidence of segregative intent. "[A]s we held in Columbus today, ... proof of foreseeable consequences is one type of quite relevant evidence of racially discriminatory purpose, ... " (Dayton II, 61 L.Ed 2d at 733, fn. 9)

As to expending only surplus funds, defined as that given the Board by outside grants, either federal or state, for desegregation purposes (viii) the discriminatory intent that may be inferred here is devastating. This can be seen from another finding (IV. 34, Exhibits 24): "Board postulates that having a group, white, whose 'output' makes a better showing for board and its educational system, it therefore should concentrate thereon and only from any excess funds attempt to achieve through intergrated education the same 'output' by the minority."

How the Board can say this is not evidence of purpose or intent to segregate is baffling. It is deliberate intent to put the white students ahead of the minority. Put in terms of desegregation, it placed what it considered its educational priorities over the constitutional requirement of desegregation. Of similar conduct by another board, the 10th Circuit said: "In essence the argument of the district is that its decision on

educational priorities takes precedence over the mandate requiring desegregation. We believe that such a question of priorities is no longer open. (citation) The constitutional mandate must be obeyed.". (United States v. Board of Education, Independent School District No. 11, Tulsa County, Oklahoma, 476 F.2d 621, 622 (1973))

As to the finding (viii) that the Board constantly took the position that desegregation would wrongfully result in decreased academic achievement of its students, this is similar to Finding viii. But the constitutional mandate must be obeyed. The failure of the Board to obey it is evidence of discriminatory intent. The California Supreme Court addressed itself to the matter. "Although the board now contends that ... the complete desegregation of the district's schools would be financially infeasible and financially counterproductive for all students, this argument does not explain the Board's past failure to implement desegregation measures which were unquestionably feasible." Crawford 17 Cal.3d at 307)

Thus, this is one more instance of the Board's reluctance to fulfill its continuing constitutional duty. A pattern of conduct emerges which can only be explained with reference to intent to maintain or perpetuate the segregated system.

As to the failure to maintain predominantly minority schools on an equal basis with white schools, (ix) this should hardly need comment. That is what desegregation

is all about. "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." (Brown v. Board of Education I, 347 U.S. 483, 98 L.Ed.2d 873 74 S.Ct. 686 [1954]). Surely this finding, above, all others, shows discriminatory purpose and intent. The Board's suggestion to the contrary is breath-taking.

As to the Board's contention that it had no duty to desegregate (x), here again is more evidence of discriminatory intent. In light of the California Supreme Court's 1963 teaching in Jackson v. Pasadena City School District, 59 CA.2d 876, 881, 31 Cal.Rptr. 606, 382 P.2d 878 (1963) that "where ... segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographical basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation requires that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause," for a school board to contend it has no obligation, can only be interpreted as signifying intent to discriminate.

The Board's "legal" explanation for this position was that the statement in Jackson was but dictum. But the trial court had the right to and properly rejected that

rationale. The trier of fact had the right to conclude that the Board's conduct belied its words.

As to the finding (xi) that the Board had spent public monies (amounting to billions) in creating, maintaining segregated schools, here again it is hard to follow the Board's contention that this is not evidence of discriminatory intent. It can be no other; that is what the case is all about. To say that the trial court had no right to infer discriminatory intent from this conduct of the Board is to defy logic.

And as to, again, the finding concerning the maintenance of a neighborhood school policy (xi), this has been covered in our discussion of (i) above. In addition, it may be well to point that what the Fifth Circuit said about the Austin School Board is equally applicable here. "Admittedly, the AISD's neighborhood school policy played no small part in creating and maintaining this pattern of Mexican-American segregation in the Austin schools. This is not a case however in which 'the "neighborhood school concept" has ... been maintained free of manipulation (citing Keyes). Instead, an examination of school board decisions on such matters as the construction and abandonment of schools, the selection of school sites, the assignment of faculty and staff, and the drawing of student attendance zones confirms the existence of the segregative intent that the statistics imply." (United States v. Texas Education Agency, 564 F.2d 162, 177 [5th Cir. 1977]; cert. den. 443 U.S. 915.

Columbus is to the same effect. The trial court there said: "Substantial adherence to the neighborhood school concept with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent may be drawn." (429 F.Supp. 229, 254-55) When the case got to the United States Supreme Court on this issue, this Court said (61 L.Ed.2d at 682-83, fn. 13): "the phenomenon described by petitioners [that the districts were becoming black irrespective of the school board's conduct] seems only to confirm, not disprove, the evidence accepted by the District Court that school segregation is a contributing cause of housing segregation."

In sum the very finding the Board cites for consideration of this Court to show lack of discriminatory intent shows the presence of it.

B.

The Superior Court's Order to  
Desegregate the District was  
Amplly justified.  
(Reply to the Board's Point II,  
A, pp. 47-50)

We answer this point very briefly.

1. This is the very order (Exhibits 80-81) the California Supreme Court affirmed in Crawford, 17 Cal.3d at 310.

2. The Board has not given even a nod toward the teaching of Keyes that if a "meaningful or significant" segment of a school system is intentionally segregated, the presumption is that the remaining segregated portions of the system are likewise intentionally segregated and that the burden is on the Board to disprove that presumption (413 U.S. at 208-209), a burden the Board has not carried here.

3. The Board's own argument to this Court in its brief on the appeal from 1970 judgment. It is Point XI in its brief and appears at pages 135-36. We set it out in haec verba.

**XI.**

**Partial Integration of the School District  
Would Not Be Feasible.**

Another question that should be answered is whether a compulsory integration program can be effectively implemented in only a part of the district.

All witnesses who addressed themselves to this question seemed to agree that to be effective an integration plan must (1) prescribe racial quotas and balances; (2) it must be mandatory—not voluntary or permissive; (3) it must be at least districtwide in effect, and preferably it should include school districts surrounding the Los Angeles Unified School District; and (4) it should be accompanied by supportive services to promote beneficial interaction between the mixed racial groups.

The voluntary open enrollment plan often has the tendency to cause further racial segregation. [Hamerman, 37 RT 7364-7365.] Simply modifying elementary and junior high school feeder plans will not have a substantial effect upon the racial composition of schools unless transportation is also provided. [Hamerman, 39 RT 7867.] The Princeton Plan, which consists of the pairing of schools at the periphery of ghettos, has not been effective in large cities. [Hamerman, 39 RT 7872.] Nor has the strategic selection of school sites, also at the periphery of ghettos, been effective in promoting integration.

Mr. Hamerman stated that he felt the transportation of pupils is basic to the desegregation of school populations. He stated: "The possibility to integrate depends upon wheels. it rests upon wheels because you have to move populations." [39 RT 7874.]

Neither Dr. Dodson nor Dr. Sullivan (also a witness for petitioners) believed that any substantial integration can be effectively accomplished voluntarily.

The authors of *Racial Isolation, etc.*, pp. 146-151, have reviewed desegregation strategies used in large cities having substantial proportions of minority students and have concluded that voluntary open enrollment, school pairing, site selection at the peripheries of ghettos, etc., are not effective methods for effecting racial balance.

The court's findings [Finding IV.46, 3 CT 621; II.-11, 3 CT 596] that, if the district is to be integrated it must be done compulsorily on a districtwide basis, seems fully supported by the evidence.

### III

THERE IS NO JUSTIFICATION FOR THE ISSUANCE  
OF A STAY OR ALTERNATIVE WRIT (Reply to  
Board's Point III, pp. 47-51)

As was pointed out earlier, what the Board is seeking to do here is have the whole case determined in this extraordinary proceeding without regard to the record in the case. This, on the ground that in denying the Board's motion to modify the previous orders of February 7, 1978 and May 30, 1979, so as to eliminate the portions of those orders requiring assignments for the purpose of desegregation, the respondent court, somehow, abused its discretion or exceeded its jurisdiction.<sup>28/</sup> This hardly could be the case. As the court pointed out, the remedy required by Crawford both by the Supreme Court and by the Superior Court is not inconsistent with that alluded to in Proposition 1. Indeed, they are identical.<sup>29/</sup>

---

<sup>28/</sup> As also already noted, the Board's motion as to the February 7, and May 30 orders, though formally denied, was in effect granted because the July 7, 1980 order provided that the Board may discontinue those assignments if it so wishes. (Exhibits, 1075).

<sup>29/</sup> Eminently correct in the light of Dayton II and Columbus.

Presumably, the Board also claims that in rejecting the Board's counter-finding of fact, Exhibits 1036, that "the evidence does not establish any acts of intentional, de jure segregation by respondent which would constitute a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution or which would permit a federal court to order mandatory reassignment of students under federal law," the trial court, somehow, exceeded its jurisdiction and that, therefore, the Board is entitled to extraordinary relief. But this Court is in no position, at least without the evidence the Board referred to in its proposed counter-finding, to make any judgment. In refusing such an evidentiary finding, the Superior Court can hardly be said to have exceeded its jurisdiction or abused its discretion. Plaintiffs have no doubt, even if Proposition 1 is constitutional both in its enactment of an unequal equal protection clause and in its effort to tear asunder long final judgments, that upon consideration by the reviewing court of the long record and its exhibits it will be held that respondent court committed no error, much less abused its discretion or exceeded its jurisdiction. But that must await review. This Court simply is in no position to make that judgment.

There is no question that there is great public interest in this case. But that does not amount to

irreparable injury to the Board or anyone else justifying the extraordinary relief requested. Indeed, the Board's argument reads as though the issue is public interest versus the minority children. The fact is that the public interest is that of the minority students in seeing to it that school segregation ends. That is why Brown and Crawford were necessary.

The irreparable injury, if a stay is granted or even an alternative writ issued which would envisage the aborting of the appeal process, is to the minority segregated students. This Court's attention has been called to the view of the United States Supreme Court that the constitutional rights of the minority segregated students at stake here are for the here and now. They have been denied for 17 years already. Every day of delay only adds to the infliction of that "feeling of inferiority as to their [the segregated minority students] status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (Brown v. Board of Education, I, 347 U.S. 483, 494, 98 L.Ed. 873, 74 S.Ct. 686 [1954]).

The irreparable injury in this proceeding is that which will occur to the minority segregated students if a stay order or an alternative writ is issued. They once again will be told to await the fulfillment of their constitutional right. The Board's repetition (Petition 50) of the same reasons made to this and the Supreme Court in

The irreparable injury in this proceeding is that which will occur to the minority segregated students if a stay order or an alternative writ is issued. They once again will be told to await the fulfillment of their constitutional right. The Board's repetition (Petition 50) of the same reasons made to this and the Supreme Court in the appeal from the 1970 judgment as to why it should not desegregate, are hollow when compared to the injury sought to be continued as to the minority segregated students.

"[T]he rights of school children to schooling under nondiscriminatory and constitutional conditions cannot be recaptured for any school semester lived under discrimination practices. Nor can any court thereafter devise an effective remedial measure." (Kelley v. Metropolitan County Board of Education of Nashville and Davidson County, Tennessee, 436 F.2d 856, 862 [6th Cir. 1970]).

CONCLUSION

No temporary stay nor alternative writ should  
issue. 30/

Dated: August 4, 1980

Respectfully submitted,

FRED OKRAND  
MARK D. ROSENBAUM  
MARY ELLEN GALE  
REES LLOYD  
ANTONIO RODRIGUEZ  
HALVOR T. MILLER  
MANNING & ROBERTS  
SHOCKLEY, DUFF &  
HART-NIBBRIG

---

FRED OKRAND  
Attorneys for Real Parties  
in Interest

---

30/ In its proposed form of Alternative Writ of Prohibition and Mandate submitted to this Court by letter, dated July 30, 1980, the Board suggests, page 2, that "all proceedings to impose pupil assignment and/or transportation in Los Angeles Superior Court case number C 822 854 are stayed." Thus, summarily, would go 17 years of litigation to achieve some measure of desegregation in the Los Angeles schools.

date: July 17, 1980

HONORABLE PAUL EGLY

JUDGE HERBERT H. COX

DEPUTY CLERK \_\_\_\_\_

HONORABLE

JUDGE PRO TEM

M. WALKER

Deputy Sheriff

NOTE

Reporter

(Parties and counsel checked if present)

C 822854  
 Mary Ellen Crawford, etc, et al  
 VS  
 Board of Education of the City  
 of Los Angeles

Counsel for Plaintiff Fred Okrand  
 Lynn Pineda  
 Joseph Duff  
 Counsel for Defendant Mark Rosenbaum  
 Michael Bodaken  
 Anthony Rodriguez

## NATURE OF PROCEEDINGS.

Lawrence Trygstad  
 by Steve Suzukawa  
 for INTERVENOR, UTLA

AMICUS CURIAE,  
 John Caughey

Brenda P. McKinsey  
 and Arthur Goldberg  
 for INTERVENOR,  
 INTEGRATION PROJECT

Cliff Fridkis for  
 INTERVENOR, BUSTOP

G. William Shea  
 David T. Peterson  
 Jerry F. Halverson  
 Peter James  
 Michael Johnson

(AO)

Respondent's Request for Hearing  
 for Guidelines for Polling of  
 Existing Pairs/Clusters/Mid-sites  
 to Determine Their Wishes as to  
 Continuance in 1980-81

Proposed 1110(b) CCP Order  
 After Hearing and Subsequent  
 to Issuance of Order but Prior  
 to Appeal dated July 7, 1980  
 is ordered reissued as of today  
 except as to page 2, line 24,  
 in parenthesis,

~~STRIKE "embodiment"~~

and in its place

ADD "major revisions".

Copies of this minute order mailed to counsel this date.

EXHIBIT

104.

DEPT.

MINUTES ENTERED  
 July 17, 1980  
 COUNTY CLERK

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3  
4  
5  
6  
7

8

10  
11

13  
14  
15  
16  
17  
18

20

23

24

25

26

28

RIDER

- 1 G. WILLIAM SHEA, ESQ.  
DAVID PETERSON, ESQ.
- 2 PETER JAMES, ESQ.  
McCutchen, Black, Verleger and Shea  
3 3435 Wilshire Boulevard, 30th Floor  
Los Angeles, CA 90010
- 4 JERRY F. HALVERSON, ESQ.  
5 450 North Grand Avenue  
Suite A-215  
6 Los Angeles, CA 90012
- 7 CLIFF FRIDKIS, ESQ.  
8 433 North Camden Drive  
Sixth Floor  
9 Beverly Hills, CA 90210
- 10 ARTHUR L. GOLDBERG, ESQ.  
1467 Echo Park Avenue  
13th Floor  
11 Los Angeles, CA 90026
- 12 BRENDA POWERS MCKINSEY  
Attorney at Law  
13 P.O. Box 74724  
Los Angeles, CA 90004
- 14 RAYMOND C. FISHER, ESQ.  
15 609 South Grand Avenue  
Los Angeles, CA 90068
- 16 HAMILTON, RABINOVITZ & SZANTON  
17 3345 Wilshire Blvd.  
Suite 402  
18 Los Angeles, CA 90010
- 19 DR. MILLICENT ANN COX  
Monitoring Committee  
20 Los Angeles County Hall of Records  
320 West Temple Street, Room 772  
21 Los Angeles, CA 90012
- 22 LAWRENCE B. TRYGSTAD, ESQ.  
1880 Century Park East  
23 Suite 517  
Los Angeles, CA 90067
- 24 JACK D. FINE, ESQ.  
25 ROBERT MONTGOMERY, ESQ.  
8383 Wilshire Blvd.  
26 Suite 230  
Beverly Hills, CA 90211
- 27 Superior Court, County of Los Angeles  
Attention: Hon. Paul Egly  
28 Dept. L  
400 Civic Center Plaza  
Pomona, CA 91766

RECEIVED

AUG -5 1980

CE