

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

DONNY BUCKLEY,

Plaintiff-Intervenor,

v.

BOARD OF SCHOOL COMMISSIONERS
OF INDIANAPOLIS, et al.,

Defendants.

MEMORANDUM IN SUPPORT
OF POSITION STATEMENT

In support of the Position Statement previously
filed in this case, the United States respectfully submits
the following Memorandum:

I.

Supreme Court Guidelines Prescribe the Powers and Duties
of District Courts in Fashioning Equitable Relief from
Conditions of Official Racial Discrimination.

The United States Supreme Court decision in Milliken
v. Bradley, 418 U.S. 717 (1974), while rejecting broad
metropolitan-wide relief for Detroit and three surrounding
counties, established two general principles that should be
applied by lower courts in determining whether the disestab-
lishment of a school district's unlawful school segregation
should include schools and students of neighboring districts:
First, a constitutional violation must warrant the court's
ignoring established school district boundaries and, second,

the remedy devised must be a practical one. The latter standard is a corollary of the Supreme Court's mandate in Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971) and Louisiana v. United States, 380 U.S. 145 (1965) that practical remedies must be devised by district courts in order to remove the present effects of past discrimination.

II

The Effect of Indiana Legislation Has Been to Circumscribe the Ability of Local School Officials to Bring About a Practical Desegregation Remedy.

Prior to 1961, Indiana law provided that IPS (school city) would expand automatically with the City of Indianapolis (civil city). Thus, between 1953 and 1960, there were approximately 170 annexations of territory by the civil city that were automatically matched by a like expansion of the school city. A 1961 state statute ended this process of automatic co-extension and made school city expansion subject to remonstrance by those in the civilly annexed area. */ Between 1961 and 1969, there were approximately 91 additional annexations expanding both the civil and school cities. However, on February 25, 1969, sixteen days before the Indiana legislature enacted a general city-county consolidation

*/ Acts 1961, Chapter 186. Remonstrance is a procedure whereby the owners of land in the area to be annexed are afforded the right to contest the annexation attempt in state court. The requirements for a successful remonstrance are set out in the statute.

("Uni-Gov") for Indianapolis and Marion County **/ (which enactment specifically exempted schools), the legislature passed a law ending the traditional relationship between school city and civil city expansion ***/ and left IPS only with the power to expand on its own motion, again subject to remonstrance by persons in affected areas. IPS has annexed no territory since this enactment.

III

State Laws Cannot Impede The Disestablishment of Formerly Dual School Systems.

The Supreme Court in North Carolina State Board of Education et al. v. Swann, et al., 402 US 43 (1971), held that state laws may not hinder the desegregation process in a formerly dual school system. That case held unconstitutional a statute enacted by the State of North Carolina

**/ Services which were already county-wide (e.g., libraries) were excluded; in addition to the specific prohibition on school consolidation, fire and police services were also treated differently--the existing civil city boundaries of Indianapolis were set up as a fire and police district, leaving other units providing these services in Marion County intact until included in the consolidation by ordinance or resolution by the combined city-county government. Acts 1961, Chapter 173.

***/ Chapter 52 Section 3 states: Acts 1961, c. 186 is amended by adding a new and additional section to be numbered Section 9a and to read as follows: "Sec. 9a. Notwithstanding any act which provides in substance that the boundaries of any school city or school town are coterminous or coextensive with the boundaries of any civil city or civil town, the boundaries of a school city (as such term is defined in this act) shall be changed after the effective date of this act in 1961 solely by an annexation in accordance with the terms of this act in effect at the time such annexation is effective or finally effective."

which prohibited the transportation of students for desegregation purposes. At 45, the Court said:

. . . if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

See also, Wright v. Council of City of Emporia, 407 U.S. 451; United States v. Scotland Neck Board of Education, 407 U.S. 484; Harvey v. Sevier County Board of Education, 410 F. 2d 920 (C.A. 8, 1969); United States v. State of Texas, 321 F. Supp. 1043 (E.D. Texas, 1970), aff'd 447 F. 2d 441 (C.A. 5, 1971, cert denied sub nom Edgar v.

United States, 404 U.S. 1016.

IV

The State Legislation Limiting the Ability of IPS to Expand Warrants a Remedy Extending to Schools Located Outside the Present Boundaries of IPS.

The government views the Supreme Court's position, in Milliken as well as its predecessors, to be: practical remedies must be implemented (by district courts if not school officials) if necessary to accomplish desegregation and those remedies implemented by courts must be practical.

This court has available to it a practical remedy based on a violation that is clear--the state's placement of inhibitions on the historic power of IPS to expand,

disestablish its dual school system. The remedy-- restoration of IPS' annexation power - fits the violation, and in conjunction with student transfers as provided by state law, ****/ can form the basis of a workable desegregation plan.

At the very least, a federal district court's remedial power should extend as far as the power of local school officials to act on their own to correct the present effects of past racial discrimination. And when the state has acted to lessen those local powers, in the face of a need to bring about desegregation, surely this court must have the authority to restore those powers to local officials.

V

Residential Segregation Within the Present Boundaries of IPS and the Poor Condition of Some of its Presently All Black Schools Make Desegregation of Schools Wholly Within Those Boundaries Impractical.

Were the black school children of IPS scattered throughout the district, there would be no necessity to involve outside schools and pupils in the desegregation process. Further, a substantial amount of the desegregation of IPS can be accomplished within the district's present borders. However, to the extent that students can be transported to closer schools and that better use can be made of all the school facilities reasonably

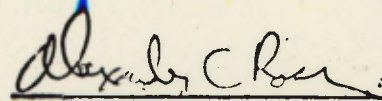
****/ Burns Ind. Stat. 28-5001.

available, common sense and practicality dictate that a
broader remedy be worked out.

STANLEY B. MILLER
United States Attorney

Respectfully submitted,

J. STANLEY POTTINGER
Assistant Attorney General



ALEXANDER C. ROSS
SAMUEL J. FLANAGAN
Attorneys

Department of Justice
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
have been served on all the parties in this case by
depositing them in the United States mail, postage
prepaid, addressed as follows:

Mr. Richard L. Brown
156 E. Market Street
Indianapolis, Indiana 46204

Mr. H. William Irwin
1200 Merchants Bank Building
Indianapolis, Indiana 46204

Mr. William O. Schreckengast
380 Main Street
Beech Grove, Indiana 46302

Mr. John P. Ward
2951 N. Capitol Avenue
Apartment #5
Indianapolis, Indiana 46208

Mr. John O. Moss
156 E. Market Street
Suite #902
Indianapolis, Indiana 46204

Mr. William F. Harvey
735 West New York Street
Indianapolis, Indiana 46202

Mr. Charles G. Reeder and
Mr. Ben Weaver
600 Union Federal Building
Indianapolis, Indiana 46204

Mr. William M. Evans
1100 First Federal Building
Indianapolis, Indiana 46204

Fred S. White
2430 Indiana National Bank
Tower
Indianapolis, Indiana 46204

Mr. James D. Capehart
2700 Indiana National Bank
Tower
Indianapolis, Indiana 46204

Mr. Charles W. Hunter
810 King Cole Building

Indianapolis, Indiana 46204

Mr. Richard D. Wagner
2860 Indiana National Bank
Tower
Indianapolis, Indiana 46204

Mr. Gary Landau and
Mr. Ronald Shannon
2561 City-County Building
Indianapolis, Indiana 46204

Mr. Lewis C. Bose
1100 First Federal Building
Indianapolis, Indiana 46204

Mr. Donald P. Bogard
Office of the Attorney General
219 State House
Indianapolis, Indiana 46204

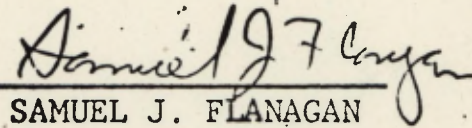
Mr. William E. Marsh
735 West New York Street
Indianapolis, Indiana 46202

Mr. Kurt F. Pantzer, Jr.
Royce, Travis, Hendrickson
& Pantzer
500 American Fletcher Building
Indianapolis, Indiana 46204

Mr. Stanley B. Miller
United States Attorney
248 Federal Building
Indianapolis, Indiana 46204

Mr. Donald A. Schabel
111 Monument Circle
Indianapolis, Indiana 46204

This the 10th day of March 1975.



SAMUEL J. FLANAGAN
Attorney
Department of Justice
Washington, D.C. 20530