

# ***Booker v. Special School District No. 1: A History of School Desegregation in Minneapolis, Minnesota***

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## **Introduction**

On May 24, 1972, United States District Judge Earl R. Larson held the Minneapolis school district in violation of the Fourteenth Amendment to the Constitution in *Booker v. Special School District No. 1*.<sup>1</sup> When Judge Larson rendered his decision, it was undisputed that the Minneapolis public schools were segregated by race.<sup>2</sup> Three of the district's elementary schools — Hay, Bethune and Willard — had minority enrollments exceeding seventy percent, at a time when less than ten percent of the district's students were black.<sup>3</sup> Judge Larson found that the school district's actions had increased and fostered racial segregation.<sup>4</sup> He enjoined the district from further racial discrimination and ordered the district to take

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The author extends her thanks to Judge Larson, who graciously agreed to share the newspaper file which his secretary of many years, Lucille M. Johnson, had kept on the school desegregation case. These articles, along with the official files of the case, which were obtained with the assistance of the clerk's office for the United States District Court for the District of Minnesota, form the basis for much of this article. The author also wishes to thank Constance Huser, Professor Carol Chomsky and Ann Huntrods for their efforts in reviewing and providing comments on draft versions of the article. Finally, the author thanks her husband, James Widder, and her children, Sarah and James, for their support and encouragement.

1. 351 F. Supp. 799, 809 (D. Minn. 1972).

2. *Id.* at 802.

3. *Id.* This article initially refers solely to black and white students, instead of to all students of color, because when the school desegregation litigation began, the focus was primarily on integrating white and black students. See *infra* notes 89 and 212-215 and accompanying text.

4. *Id.* at 809. "As a matter of law, the intended and inevitable effect of a series of policy decisions made by the defendant Special School District #1, Minneapolis, Minnesota, with respect to size and location of schools, transfer policies, and teacher assignments as described in the Findings of Fact set out above has been to aggravate and increase the racial segregation in its schools." *Id.*

affirmative action to eliminate the effects of its prior discrimination.<sup>5</sup>

The *Booker* decision had an enormous impact on the students, teachers, administrators and parents involved in the Minneapolis public schools. Like most school desegregation cases, the *Booker* litigation was highly controversial. The court-imposed remedy, which included the use of school buses to transport children, was opposed by many parents and became an issue in school board elections. While the case was pending, Judge Larson received harassing calls, abusive letters and even several threats on his life.<sup>6</sup> Others, such as Minneapolis school board member Harry Davis, remained steadfast advocates for judicial oversight of the desegregation process.<sup>7</sup> Many supporters of the desegregation process, including members of the black community, were disappointed by the district's repeated failure to achieve compliance with the court's desegregation orders. In 1978, Julia Cherry, the President of the local NAACP, urged the court to retain jurisdiction over the case, stating, "I know there are a lot of good people in Minneapolis. . . . [b]ut sometimes there has to be some pressure brought to bear to bring that good out in people. I think this suit is it."<sup>8</sup>

This article chronicles the history — and the controversy — surrounding the *Booker* litigation. Beginning with the reasons why the plaintiffs in *Booker* decided to file suit, this article describes the court proceedings, news accounts and information on the desegregation process gathered by an advisory committee to the United States Civil Rights Commission.<sup>9</sup> The article concludes with Judge Larson's decision to relinquish jurisdiction, after eleven years of

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5. *Id.* at 809-11.

6. In 1983, Judge Larson consented to a rare interview with reporter Greg Pinney, who covered the school desegregation case for the Minneapolis Tribune newspaper. Although Judge Larson said he had no hesitation finding the district guilty of segregation, he acknowledged that his decisions in the case were not always popular. *E.g.*, Greg Pinney, *Constitutional Rights Came Before 'White Flight' Concerns for Judge*, MINNEAPOLIS TRIB., July 18, 1983, at 1A, 5A; Bob Lundegaard, *Judge Larson: Quiet Man Amid Controversy*, MINNEAPOLIS TRIB., June 15, 1972, at 1A.

7. See *infra* note 174 and accompanying text.

8. Transcript of Hearing at 314, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. Mar. 31, 1978) (hereinafter 1978 Transcript).

9. The advisory committee hearings were part of a ten month study of desegregation throughout the country. For three days in April 1976, the advisory committee heard statements from individuals involved in the desegregation process in Minneapolis. A transcript of the statements made to the advisory committee is on file with the U.S. Commission on Civil Rights in Washington D.C. (hereinafter Advisory Comm. Tr.). Civil Rights Commission staff later reviewed the information gathered by the advisory committee and issued a report in May, 1977. See Staff Report, U.S. Commission on Civil Rights, "School Desegregation in Minneapolis, Minnesota" (May 1977) (hereinafter Staff Report).

monitoring the school district's efforts, to allow the district the opportunity for autonomous compliance with constitutional standards.<sup>10</sup>

Understanding the history of the desegregation process in Minneapolis provides an important background for evaluating new developments in school integration/desegregation and lends perspective to the choices now confronting educators. This article attempts to recount at least part of that history and the significant role played by the federal court, and, in particular, by Judge Earl R. Larson.

## I. Pre-Litigation History

Discrimination was a fact of life in the Minneapolis school district and the city at large in the decades preceding the *Booker* litigation. A pattern of racially segregated schools existed in the city since at least 1954,<sup>11</sup> the year the Supreme Court declared segregation unlawful in *Brown v. Board of Education*.<sup>12</sup> This educational segregation resulted both because of residential segregation<sup>13</sup> and because of specific school board policies relating to the size and location of schools, attendance zones, enrollment and transfer policies and teacher assignments.<sup>14</sup>

### A. Discrimination in the 1950s and 1960s

At trial, Judge Larson heard compelling evidence of the district's discriminatory practices in the 1950s and 1960s. In 1964, for example, the district added seven new classrooms to Field Elementary School in order to maintain Field as "the identifiably 'Black school' in south central Minneapolis," while keeping the schools ad-

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10. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 5 (D. Minn. June 8, 1983).

11. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 803 (D. Minn. 1972).

12. 347 U.S. 483 (1954).

13. Racial discrimination in housing was legal until passage of the Federal Fair Housing Act in 1968. The city's neighborhoods were segregated, in large part because of intentional housing discrimination. Black teachers testified at the *Booker* trial about apartment managers who told them "we don't rent to blacks," and about real estate agents who maintained separate books for homes in the "Negro neighborhood." Trial Transcript, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, 93-94, 150-52 (D. Minn. Apr. 12, 1972) (hereinafter 1972 Transcript). In addition, low income housing, which was substantially occupied by black and other minority persons, was limited to near-north and near-south Minneapolis until 1969. *Id.* at 328-30. See also *Booker*, 351 F. Supp. at 806 ("[p]rior to 1962 it was common practice for members of the Board of Realtors to only show minority persons houses in certain areas").

14. *Booker*, 351 F. Supp. at 803-06.

jacent to Field 100% white.<sup>15</sup> The next year, the district added another portable classroom at Field, even though two of the nearby "white" schools — Hale and Northrup — were underenrolled.<sup>16</sup>

The court's findings detailed other discriminatory patterns in the construction of schools for all white neighborhoods, while maintaining older, larger schools in the black neighborhoods.<sup>17</sup> The district changed boundary lines, granted "special transfers" at the request of parents, and created "optional attendance zones" to allow white students to "escape" from schools with minority enrollments to identifiably white schools.<sup>18</sup>

The district also discriminated in the hiring and assignment of teachers. Employment application forms for black teachers routinely contained comments such as "a fine physical specimen," "[b]ig fat colored woman with seven kids," "[a] dark complexioned colored boy with a red vest," and "[w]e can find better colored candidates."<sup>19</sup> Comments such as these continued to appear on prospective teachers' applications until the early 1960s, when federal authorities intervened and ordered the practice stopped.<sup>20</sup>

The experiences of individual teachers reflected similar discriminatory actions by the district. When Dr. Joyce Jackson began her teaching career in 1952, she was the only black teacher in a predominately white south-central Minneapolis school.<sup>21</sup> Like other black teachers hired by the district in the 1950s, she was offered a position in special education, although this was not her area of expertise. After she was hired, every black student in the school was assigned to Jackson's classroom for the educable mentally retarded.<sup>22</sup>

Earl Bowman, a black graduate of Macalester College in St. Paul, was also hired by the district in the 1950s.<sup>23</sup> Although principals and administrators gave Bowman high marks, they recommended "selective school placement," meaning schools in which there were mixed racial groups.<sup>24</sup> Bowman was offered and ac-

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15. *Id.* at 808. Forty percent of the students who attended Field in 1964 were minority students. *Id.*

16. *Id.*

17. *Id.* at 803-04. "The pattern that emerges is that in areas where there were small White neighborhoods adjacent to large minority neighborhoods, abnormally small White elementary schools were constructed, while at the same time large Black elementary schools were maintained." *Id.*

18. *Id.* at 804.

19. 1972 Transcript, *supra* note 13, at 184-86.

20. *Id.* at 184.

21. *Id.* at 24.

22. *Id.* at 25.

23. *Id.* at 135-36.

24. *Id.* at 138.

cepted a position at Central High, a south-central school with a significant minority enrollment. Bowman was named "co-coach" at Central High because Minneapolis reportedly was not "ready for a Negro coach" in the 1950s.<sup>25</sup>

The late 1960s brought changes to the city of Minneapolis and its schools. There were riots in the black community in 1966, and disturbances at some of the district's schools.<sup>26</sup> A group of concerned citizens — both black and white — formed the Committee for Integrated Education ("CIE").<sup>27</sup> The committee's goal was to convince the school board and school administrators that desegregation was essential for Minneapolis schools.<sup>28</sup>

In 1966 the district closed Warrington School, which had a 98% black enrollment.<sup>29</sup> School Superintendent Putnam took early retirement in 1967 and was replaced by Dr. John Davis, who appeared more receptive than Putnam to desegregation efforts. The district also published its first Human Relations Guidelines in 1967, which were designed to begin the desegregation process.<sup>30</sup> Under the Guidelines, students had the opportunity to participate in a voluntary urban transfer program. The Minneapolis school board also gained its first black member, Harry Davis, who served throughout the course of the *Booker* litigation.<sup>31</sup>

### B. *The Decision to File Suit*

These developments did not, however, significantly change either the extent of segregation in Minneapolis schools or the attitudes of many parents whose children attended those schools. Moreover, from the perspective of those who would later bring legal action against the district, the school board continued to act in the late 1960s in ways that promoted segregation. As the attorney for the plaintiff schoolchildren, Charles Quaintance, noted:

We [knew] that in 1967, that the Board had adopted human relations guidelines under which they committed themselves to a planning of new schools . . . in such a way as to [provide for desegregation], . . . but we were aware that in December of 1967, the district had decided where it was going to locate the Bethune [Elementary] School and decided it was going to have

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25. *Id.* at 138-40.

26. *Id.* at 152, 1076.

27. Advisory Comm. Tr., *supra* note 9, at 29.

28. *Id.* at 29, 38.

29. *Id.* at 18.

30. *Id.* at 18-19, 308-09.

31. *Id.* at 308.

an unusually large school and that it was going to be opened in such a way as to be racially identifiable.<sup>32</sup>

As Judge Larson's findings later indicated, the district oversized Bethune Elementary School with the knowledge that most of the children from the predominately black near north side of the city would go to Bethune rather than "spilling over into neighboring schools with larger majority enrollments."<sup>33</sup> The driving force behind the district's decisions regarding school size and attendance boundaries was "public pressure not to integrate."<sup>34</sup>

Public pressure against integration surfaced often during the period immediately prior to the plaintiffs' decision to file suit. Opponents of desegregation were vocal during the numerous meetings held by the school district in 1969 as part of the process of revising the 1967 Human Relations Guidelines.<sup>35</sup> The school board adopted revised guidelines in 1970. However, the vocal opposition of desegregation opponents left parents active in CIE unconvinced that the school board would take any decisive action to desegregate.<sup>36</sup> CIE member Barbara Schwartz explained why CIE came to believe that court action was necessary to achieve desegregation: "After writing two Guidelines . . . this Guideline writing then became a substitute for action. . . . It seemed as if intentions were good, but somehow we just couldn't take that step beyond good intentions. I guess we felt it just had to be forced."<sup>37</sup>

During the summer of 1970, parents who participated in CIE and in the local NAACP approached attorney Charles Quaintance for advice on how to force the school district to commit to a timetable or plan for integration. Quaintance, then an attorney with the Maslon law firm, had extensive personal and professional experience with desegregation cases. He participated in several civil rights and school desegregation lawsuits as a member of the Civil Rights Division of the United States Justice Department prior to coming to Minneapolis in 1970.<sup>38</sup> Understanding that the case would be a pro bono effort, Quaintance agreed to attend a meeting sponsored by the school district to find out more about the district's

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32. *Id.* at 433-44.

33. *Booker v. Special School District No.1*, 351 F. Supp. 799, 803 (D. Minn. 1972).

34. *Id.* at 806.

35. Advisory Comm. Tr., *supra* note 9, at 204.

36. *Id.* at 31.

37. *Id.* at 33-34.

38. This brief biographical information is taken from a recent article about Quaintance which appeared in the newsletter of his church, Plymouth Congregational Church. See Theresa Voss-Williams, *Chad and Lucy Quaintance, Walking the Slow, Steady Path to Change*, *Flame*, July 1992, at 4-5 (Plymouth Congregational Church, Plymouth, MN) (on file with the Law & Inequality Journal).

desegregation plans. Quaintance recalled that meeting in his statement before the advisory committee to the U.S. Civil Rights Commission:

The district was at that time conducting a — as I recall, a public relations or public educational campaign, and I went to one of those meetings. . . . and I recall asking the associate superintendent . . . when the district intended to implement whatever plans it had adopted, and his response was that, well, they hadn't decided on that, that it could be in 1975 — it could be 1980, and it could be 1985; and the district just hadn't made that decision yet, and in effect, that it would depend in part on the response of the community.<sup>39</sup>

Quaintance agreed that a lawsuit was warranted because, in his view,

the response of the community would essentially preclude the adoption of an effective integration plan so long as the district tied public acceptance to the adoption; in other words, as long as the district acted on the premise that it only could go as far as the majority of the people wanted it to go, or would permit it to go, politically — it just wouldn't ever implement a plan.<sup>40</sup>

Quaintance was also convinced that faculty integration also “would not occur voluntarily in this school district.”<sup>41</sup> In the fall of 1970, Quaintance agreed to represent those who sought integration if two things occurred:

[O]ne, if we could conduct an investigation that would show we could prove segregation in the district in such a way that we would be likely to win the case; and second, if it could be demonstrated that there was adequate public support — not meaning that there was support by the majority of the people, but . . . substantial public sentiment for doing it.<sup>42</sup>

As the plaintiffs explored the possibilities of commencing a lawsuit, opponents of desegregation became more vocal in response to the school board's proposal in November, 1970, to “pair” several schools for desegregation purposes.<sup>43</sup> The pairing process involved combining the attendance areas of two adjacent K-6 elementary schools. Instead of two K-6 schools, one school would serve all K-3 students in the expanded attendance area; the other school would serve all students in grades 4-6.<sup>44</sup> Such “pairing” would keep neighborhoods together for school attendance purposes and would

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39. Advisory Comm. Tr., *supra* note 9, at 429.

40. *Id.* at 430.

41. *Id.*

42. *Id.* at 430-31.

43. *Id.* at 536-37.

44. *Id.* at 540. See also Gregor W. Pinney, *Innovative Education Planned for Field, Hale*, MINNEAPOLIS TRIB., Aug. 30, 1971, at 4A.

ensure that children would attend their "neighborhood" school for at least part of their elementary years.

Two of the schools chosen by the school board for pairing were Hale Elementary School, which was then 98% white, and Field Elementary School, which was then 54% black.<sup>45</sup> According to Hale Principal Gladys Anderson Johnson, "[t]here was considerable community resistance" to the pairing proposal,<sup>46</sup> resistance which Judge Larson described as "vehement."<sup>47</sup> In response to the public outcry, the school board immediately announced that the plan was not definite and that there would be an opportunity for further discussion.

By early winter of 1971, attorney Quaintance had "in effect advised the district that [the plaintiffs] anticipated filing an action."<sup>48</sup> Later that spring, the State Commissioner of Education cited seventeen of the district's schools for violating the state's newly adopted desegregation guidelines.<sup>49</sup> These guidelines set a 30% ceiling for minority student enrollment in public schools throughout the state. Many of the seventeen schools cited in Minneapolis were substantially above the 30% ceiling.<sup>50</sup>

Both the state's action and the threat of litigation prompted the school board to vote in April 1971 to proceed with the Hale-Field pairing.<sup>51</sup> Despite significant programmatic improvements and other incentives for "test case" participants, the Hale-Field pairing "polarized the city and became the major issue in . . . school board elections."<sup>52</sup> The two board members who won in the 1971 elections, Philip Olson and Marilyn Borea, "ran as avowed opponents of busing or forced integration in any other form. The two

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45. Pinney, *supra* note 44, at 4A.

46. *Id.*

47. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 806 (D. Minn. 1972).

48. Advisory Comm. Tr., *supra* note 9, at 432.

49. *Id.*

50. The Board of Education first proposed desegregation regulations in November 1969, but the negative reaction from the cities of Minneapolis and St. Paul promoted the Board to adopt the proposed regulations as guidelines instead. *Id.* at 114-118.

51. A *New York Times* article described the choice of Hale and Field as "a cautious move in itself . . . [the schools were] only a mile and a quarter apart . . . the Hale district was large . . . a third of the white youngsters had been bused before . . . [and the two schools were] similar in size and physical condition." *2 Schools 'Paired' By Minneapolis*, N.Y. TIMES, Sept. 19, 1971, at 66.

52. *Id.* Subsequently, teachers did transfer within the system and did receive human relations training. Students and parents also participated in trips to schools to familiarize them with their new schools. *Innovative Education Planned for Field, Hale*, MINNEAPOLIS TRIB., Aug. 30, 1971, at 1A.



candidates they defeated had endorsed the pairing plan."<sup>53</sup> Olson and Borea won the election with 60% of the vote.<sup>54</sup>

Shortly after the election, parents and guardians of children within the Minneapolis school system who favored school integration filed suit against the school district on behalf of all Minneapolis schoolchildren.<sup>55</sup> The class action complaint alleged that the district had denied the schoolchildren of Minneapolis equal educational opportunity by discriminating on the basis of race in the operation of the Minneapolis public schools.<sup>56</sup> The school district's answer did not deny the history of segregation, but claimed that court intervention was unwarranted and unnecessary.<sup>57</sup> The district asserted that it had taken significant steps toward eradicating any discrimination that may have existed in the schools and attached to its answer a plan which the school district had developed to improve racial balance in the schools.<sup>58</sup>

This plan had not been formally adopted by the school board, however, and as the Hale-Field pairing began to be implemented, district administrators also began public hearings on proposals for desegregating the district's schools.<sup>59</sup> "School officials told the audiences at the meetings that, by implementing its own desegregation plan, the school system could avoid the loss of local control that could come as a result of a plan ordered by the courts or forced by action of the State Board [of Education]".<sup>60</sup> In his statement before the Civil Rights Commission advisory committee, Superintendent Davis readily admitted that:

[W]ithout question, the threat of the court case and the reality of the court case precipitated more and more attention to the development of a plan. One of the statements we made in candor was . . . we would now like the right to use our own plan

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53. 2 Schools "Paired", *supra* note 51, at 66.

54. *Id.*

55. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 801 (D. Minn. 1972).

56. *Id.* at 801-02.

57. *Id.*

58. *Id.*

59. See Jim Talle, *Busing: Reaction at City Meetings Was Mixed, But Definite*, MINNEAPOLIS STAR, Dec. 9, 1971, at 1A. The three plans proposed for discussion were all reportedly "somewhat similar in that all propose to create three 1,800-pupil elementary school complexes to replace several of the city's oldest schools, and to bus students and change boundaries enough to get the schools below the State Board of Education guideline's maximum of 30% minority enrollment in any school." *Id.* at 2A.

One of the plans also "included a proposed exchange with schools in suburban Robbinsdale and Golden Valley." Gregor W. Pinney, *Pairing, Large Schools Seen as Davis Desegregation Plan*, MINNEAPOLIS TRIB., Mar. 14, 1972, at 9A. However, those districts refused to commit to the proposal. *Id.*

60. Talle, *supra* note 59, at 2A.

before we have imposed on us a federal court plan, so citizens, faculty, staff and students — let's get together and put it together. . . . [b]efore the Federal Court "tells us what to do".<sup>61</sup>

Groups at some of the meetings held by the district appeared about equally divided between supporters and opponents of the desegregation process.<sup>62</sup> At a meeting at Washburn High School in south-central Minneapolis, Hale Principal Gladys Anderson offered her view that the Hale-Field pairing had been "entirely successful as far as the attitudes of the children are concerned."<sup>63</sup> The 200 people at Henry High School in north Minneapolis, however, were almost entirely opposed to any form of busing.<sup>64</sup> Calls to repeat the anti-pairing and anti-busing victories of the two candidates in the last school board election were "frequent and well-received by the audience" at Henry.<sup>65</sup>

## II. The Court Becomes Involved: 1972

The first court order in the *Booker* case was issued in February, 1972. The order certified a class on behalf of all children who were residents of the city of Minneapolis and who attended its public schools.<sup>66</sup> The order was signed by United States District Judge Earl R. Larson, the Judge assigned to hear *Booker*. Judge Larson grew up in north Minneapolis and graduated from North High School prior to attending the University of Minnesota and the university's law school.<sup>67</sup> After law school, Larson worked in the U.S. Attorney's Office, served during the war in U.S. Naval Intelligence, and formed his own law firm prior to becoming a judge.<sup>68</sup> Active in community affairs while in private practice, Larson served as chair of the Governor's Interracial Commission, a forerunner of the Human Rights Commission, and helped found the Minnesota Civil Liberties Union. Larson was appointed to the federal bench in 1961 by President Kennedy.<sup>69</sup>

Judge Larson scheduled the trial for *Booker* in early April, 1972. Shortly before the trial began, the school board considered the district's proposal for desegregating its schools. The district's

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61. Advisory Comm. Tr., *supra* note 9, at 421.

62. Talle, *supra* note 59, at 2A.

63. *Id.* at 1A, 2A.

64. *Id.* at 1A.

65. *Id.* at 1A.

66. *Booker v. Special School District No. 1*, No. 4-71-Civ. 382 (D. Minn. Feb. 10, 1972).

67. See Bob Lundegaard, *Judge Larson: Quiet Man Amid Controversy*, MINNEAPOLIS TRIB., June 15, 1972, at 1A, 4A.

68. *Id.* at 4A.

69. *Id.*

plan sought to improve racial balance through additional pairings such as Hale-Field, through clustering the attendance areas of three or more schools to create expanded-community school complexes, and through the realignment of some school attendance boundaries.<sup>70</sup> The schools most affected by the plan were those with a high percentage of minority students and those schools in the immediately adjoining areas.<sup>71</sup>

The same evening as closing arguments in the trial, the school board voted 5 to 2 to adopt the proposed desegregation plan.<sup>72</sup> Olson and Borea, the two school board members elected on an anti-busing platform, were the two board members who voted against the plan.<sup>73</sup> Before the vote, Harry Davis, the lone black member on the school board, proposed an amendment to speed up the desegregation process. His motion died for lack of a second. Although many of the onlookers who attended the meeting applauded after the plan was approved, Superintendent Davis and school board members recognized "that the public outside still largely opposes [desegregation]."<sup>74</sup>

Much of the testimony presented in the *Booker* trial focused on the district's proposed desegregation plan. Attorneys for both the plaintiffs and the school district referred to the plan often during their closing arguments. As counsel for the school district, attorney Norman Newhall argued that court intervention was unwarranted because the district was working on its own to desegregate the schools.<sup>75</sup> Newhall argued further that if the court disagreed and

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70. Gregor W. Pinney, *Pairing, Large Schools Seen as Davis Desegregation Plan*, MINNEAPOLIS TRIB., Mar. 14, 1972, at 1A, 9A.

71. *Id.*

72. The previous week, the school board held the only citywide hearing for the plan. Two-thirds of the 300 people who attended the citywide meeting opposed both the desegregation plan and any large scale effort involving busing. Doug Stone, *Citywide School-Integration Hearing Adds Little*, MINNEAPOLIS TRIB., Apr. 12, 1972, at B2.

Reporters found mixed emotions — and some trepidation — about desegregating the city's schools. A white boy from northeast Minneapolis told a reporter, "[w]e're going to move to the sticks if those niggers move over here." Gregor W. Pinney, *Northeast-North Side Busing May Be Plan's Toughest Test*, MINNEAPOLIS TRIB., Apr. 12, 1972, at B1. A white woman who did not want her children "bused across the river" said, "I have no prejudice against the colored people as long as they stay in their place and we stay in ours." *Id.* at B1, B10. Many blacks who were interviewed were "willing to go along with desegregation," but others had doubts. One black woman who worked in northeast Minneapolis was concerned about sending her children to a northeast area school because "the prejudice is in the air [there]. You can feel it." *Id.*

73. Gregor W. Pinney, *City School Desegregation Plan Approved*, MINNEAPOLIS TRIB., Apr. 26, 1972, at 1A.

74. *Id.*

75. 1972 Transcript, *supra* note 13, at 1135-39.

found school officials responsible for the condition of segregation in the schools, the plan prepared by the district should be the remedy imposed.<sup>76</sup>

Plaintiffs agreed that the district's plan had many positive elements, but they opposed the district's phased approach.<sup>77</sup> Plaintiffs' attorney, Charles Quaintance, urged the court to adopt the modifications to the plan offered by plaintiffs' expert witness, Dr. Michael Stolee.<sup>78</sup> Dr. Stolee advocated desegregated schools across the district by the fall of 1972. School officials acknowledged that an accelerated plan was feasible, but they argued that the phased approach was more compatible with a planned \$19 million construction program.<sup>79</sup> Plaintiffs' counsel responded: "The issue isn't whether the district is going to use old buildings for the next two years; but whether it will use them for segregated or integrated student bodies."<sup>80</sup>

School officials also opposed Dr. Stolee's accelerated plan because they wanted time to prepare as they had for the Hale-Field pairing.<sup>81</sup> Officials were convinced that the teacher training and the preparation of parents and students who participated in the Hale-Field pairing were key elements in the program's apparent success.<sup>82</sup> In an effort to rebut Dr. Stolee's testimony that other districts had successfully desegregated their schools in a short period of time, the district called an official to testify about San Francisco's experience with a plan implemented as quickly as Dr. Stolee's proposal for Minneapolis.<sup>83</sup> San Francisco's Director of Desegregation and Integration testified that the desegregation process went smoothly in San Francisco, when his school district had sufficient opportunity to plan and prepare. When the process was accelerated by court order, however, San Francisco officials encountered a substantial boycott of the schools by parents and a frustrated and unprepared teaching staff.<sup>84</sup>

Judge Larson issued his Findings of Fact and Conclusions of Law on May 24, 1972.<sup>85</sup> Prior to a recitation of the facts which led him to conclude the school district had acted unconstitutionally,

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76. *Id.* at 1143.

77. *Id.* at 1126-27.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 1130.

82. *Id.*

83. Dr. Stolee testified that a number of school districts, including San Francisco's, had implemented desegregation within a very short time. *Id.* at 613.

84. *Id.* at 781-86.

85. *Booker v. Special School District No.1*, 351 F. Supp. 799 (D. Minn. 1972).

Judge Larson stated: "[t]his Court feels little need to philosophize on the evils of racial segregation, other than to note its firm belief that it is both a moral and a legal wrong."<sup>86</sup> Rejecting as irrelevant any reliance on sociological or psychological data to support his ruling, Judge Larson stated:

[c]ivil rights are not premised on sociological data or moral platitudes. Instead, they are rooted solely in that "living document" which contains the very essence of American life — the Constitution. That document, and it alone, must provide the answers in this case. Neither sociologists' findings nor the clamor of misguided extremists have any bearing on the rights of these plaintiffs. The answer can only come from sober judicial reflection, free from the rhetoric of would-be demagogues and frightened parents.<sup>87</sup>

After finding "[i]t is an uncontroverted fact that the schools of the City of Minneapolis are segregated," Judge Larson wrote it was the duty of the court:

to objectively examine the facts in an effort to determine if the defendant [school district] has fulfilled its constitutional duty to the plaintiffs, and if not, what more must be done. This is not an effort to assess blame; it is an effort to vindicate plaintiffs' rights. The blame for segregation rests firmly on the shoulders of all of us.<sup>88</sup>

When the court's decision was rendered, 9.7% of the students in the Minneapolis public schools were black, 3.5% were Native American, and 85.5% were white.<sup>89</sup> A majority of black students attended schools which were over 30% minority. Three elementary schools — Hay, Bethune, and Willard — had minority enrollments exceeding 70%.<sup>90</sup> After carefully reviewing the additional evidence presented to him concerning the location of schools and student and teacher assignments, Judge Larson concluded that the intentional actions of the school district were in part responsible for the condition of segregation which existed in the Minneapolis public schools in 1972.<sup>91</sup>

The judge accepted the district's plan as the basis for an appropriate remedy and ordered the district to implement this plan. However, because Judge Larson found no sound educational reason to delay faculty desegregation,<sup>92</sup> his order accelerated the timetable

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86. *Id.* at 803.

87. *Id.*

88. *Id.*

89. *Id.* at 802. In the 1971-72 school year, 65,201 students were enrolled in Minneapolis schools. "Of these, 55,735 were Caucasian, 6,351 were Black, 2,225 were American Indian, and 890 were of other minority or ethnic backgrounds." *Id.*

90. *Id.*

91. *Id.* at 809.

92. *Id.* at 810.

for full compliance with the plan for faculties and administrators. The court also reduced the maximum allowable percentage of minority students in any school from 40%, as proposed in the district's plan, to 35%.<sup>93</sup> Judge Larson retained jurisdiction to monitor compliance and required the district to submit semi-annual reports detailing the district's implementation efforts.<sup>94</sup>

As newspaper articles and editorials made clear, the Court's ruling was based on the school district's intentional and deliberate acts of segregation.<sup>95</sup> Stating that "any objective review would find it hard to come to another conclusion," editorial writers for the *Minneapolis Tribune* characterized Judge Larson's ruling as "a middle-of-the-road approach."<sup>96</sup> The newspaper urged residents to heed the advice of School Board Chair Richard Allen, who said he hoped the decision would be accepted "as a matter of law and the Constitution."<sup>97</sup>

### III. Implementing the District's Desegregation Plan: 1973-1976

When school began in the fall of 1972, the district had satisfied the faculty assignment portion of the court's order, largely through the successful recruitment of additional minority teachers.<sup>98</sup> The first significant phase of the plan for students, though, began in the fall of 1973.<sup>99</sup>

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93. *Id.* at 810. "This is not to say that the Constitution requires a fixed racial balance in public schools. The Court only uses the figure as a useful starting point in shaping a remedy [for] . . . past constitutional violations." *Id.*

94. *Id.*

95. *Desegregating Minneapolis Schools*, MINNEAPOLIS TRIB., May 26, 1972, at 14A ("Board of Education policies in past years overtly contributed to racial segregation in the schools").

96. *Id.*

97. *Id.* School board members Olson and Borea and Mayor Charles Stenvig objected to the court's decision to assume jurisdiction over the desegregation process, but the district chose not to appeal Judge Larson's ruling. *See id.*; Bob Lundegaard, *supra* note 67 at 1A.

98. After the district filed its first semi-annual report in December, 1972, plaintiffs moved for supplemental relief. The court granted plaintiffs' motion with regard to faculty assignments by imposing a maximum as well as a minimum percentage of minority faculty at each secondary school in order to implement the mandate that "the faculties of the secondary schools shall be integrated so that each has approximately the same proportion of minority to majority teachers as there are minority to majority teachers in the whole system." *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 3 (D. Minn. May 8, 1973).

99. A few secondary school boundary changes went into effect in the fall of 1972, but these changes affected only a small number of students. Gregor W. Pinney, *Largest Desegregation Phase Set Wednesday*, MINNEAPOLIS TRIB., Sept. 2, 1974, at 1A, 14A.

Nine of the city's fifteen junior high schools were involved in the transfer of 1,645 students in an effort to achieve the 35% minority population ceiling imposed by Judge Larson's order.<sup>100</sup> The largest program involved Bryant, Anthony and Ramsey Junior High Schools, all in the south-west area of the city. One teacher described the three schools prior to implementation of the desegregation plan as follows: "Bryant was the low economic, high minority population kind of school. . . . Ramsey had quite a bit more class, and was closer to the suburbs, had a very small ethnic minority population; and Anthony was the silk stocking school."<sup>101</sup> Under the plan, the attendance areas of all three schools were combined: Bryant and Anthony became 7th and 8th grade centers and Ramsey became the 9th grade center for all children in the expanded attendance area.<sup>102</sup>

In preparation for the program, the district offered human relations training for teachers and a project for parents and students to share their thoughts on racial issues and ways to reduce racism.<sup>103</sup> According to news accounts, the beginning of the plan in the fall of 1973 "was not without its share of fist fights on buses, confrontations in halls and white girls afraid to go into restrooms ('They'll stick you with pins,' one girl said she was told)."<sup>104</sup> Both black and white youngsters were initially apprehensive about their contacts with children of different races, but after only a few months, the plan appeared to be working.<sup>105</sup>

#### A. The District Seeks Modifications

The district's entire program for eliminating segregation in the elementary grades was to take effect in the fall of 1974.<sup>106</sup> At that time, no school was to have more than a 35% minority enroll-

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100. George Hage, *Junior High Parents Relaxed But Puzzled By Transfer Plan*, MINNEAPOLIS STAR, Aug. 23, 1973, at 6A.

101. Advisory Comm. Tr., *supra* note 10, at 646-47 (Bryant had 43% minority enrollment prior to implementation of the desegregation plan; Anthony had 2% minority enrollment).

102. Zeke Wigglesworth, *School Desegregation Fears Quieted*, MINNEAPOLIS STAR, Apr. 29, 1974, at 1A.

103. *Id.*

104. *Id.*

105. *E.g., Id.* at 2A; *Busing: After a Trial, How Is It Working?*, MINNEAPOLIS STAR, Apr. 29, 1974, at 1B. One seventh grade black girl attending Anthony said, "When I first came here I was kind of scared because I was used to being around black kids. . . . But after awhile I got to know some of the kids and now I have some friends that are white and everything is OK." *Id.* A thirteen year old white girl at Bethune had similar feelings: "When I first started going there, I was very afraid . . . But that's all changed . . . The whole thing, well, it's working like great." Zeke Wigglesworth, *It's Working Like Great*, MINNEAPOLIS STAR, Apr. 29, 1974, at 1B.

106. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 810 (D. Minn. 1972).

ment. As the time for compliance approached, however, the district asked Judge Larson to modify his order to more closely conform to the district's original plan.<sup>107</sup> The district requested the court to allow up to 40% minority enrollment, if the district could obtain the approval of the state Commissioner of Education.<sup>108</sup>

Although State Board of Education guidelines generally imposed a 30% ceiling on minority enrollment, the guidelines did allow the Commissioner of Education to approve up to 40% minority enrollment upon a showing of a justifiable "educational reason."<sup>109</sup> The district listed a number of reasons to explain why minority enrollment would likely exceed the court-ordered 35% maximum in several schools even after the district had planned for full implementation of the desegregation plan. The major reasons included inaccurate projections regarding minority housing patterns, a larger decline than anticipated in total school enrollment and delays in construction of new school buildings intended to alleviate racial segregation within the district.<sup>110</sup>

Judge Larson rejected as "cumbersome and unwise" the district's proposal to inject the approval of the Commissioner of Education into the case.<sup>111</sup> He did allow some small departures from the 35% limit, based on the increase in minority enrollment from 14.5% in 1972 to 17.7% in 1974.<sup>112</sup> The court refused, however, to modify its order for schools with relatively high minority enrollments. With regard to these schools, Judge Larson stated:

the District has been on notice since May 1972 that the Court would insist on full implementation of the Plan as of the opening of the school year this fall. In accordance with the previous rulings in this case, the Court cannot tolerate such huge racial imbalance, in excess of 45% minority enrollment in four of the schools (Mann, Madison, Clinton, and Greeley), for another school year.<sup>113</sup>

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107. 1972 Transcript, *supra* note 13, at 2.

108. *Id.*

109. See Regulations Relating to Equality of Educational Opportunity and School Desegregation, EDU 620-639 (Sept. 10, 1973) (cited in *Booker*, No. 4-71 Civ. 382, slip op. at 2) (D. Minn. Apr. 24, 1974).

110. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 2 (D. Minn. Apr. 24, 1974).

111. *Id.* The court noted that the State Board's guidelines were "too new to permit a determination of the effectiveness and facility with which they may be administered. It is also uncertain what constitutes a valid 'educational reason' for purposes of allowing up to 40% minority enrollment in a school." *Id.*

112. *Id.* at 3.

113. *Id.* at 9. In the fall of 1973, both Mann and Madison Elementary Schools had minority enrollments exceeding 51%; Clinton and Greeley Elementary Schools exceeded 45%. *Id.* at 7-8. All four schools were located in south-central Minneapolis.

The court also refused to delay implementation of the desegregation order at another south-central area school, Phillips Junior High School. The projected minor-



The school board initially voted 4 to 2 to seek a rehearing of Judge Larson's order, against the advice of attorney Newhall. Two weeks later, the board reversed itself, voting unanimously to implement the court's order by offering an expanded system of alternative educational styles for parents to choose from.<sup>114</sup> "One of the [district's] objectives was to get parents to make choices based on educational style, not location," with the idea that desegregation would result as attendance areas were combined.<sup>115</sup>

Superintendent Davis played an instrumental role in presenting the alternatives concept to Minneapolis educators. When asked about the concept of quality education in the context of desegregation, attorney Quaintance offered this perspective on the Minneapolis experience:

I think that [Superintendent] Davis will be remembered in Minneapolis and in this country as being a very imaginative educator and one who has made a substantial contribution through this concept of alternative schools. . . .

The way that I saw it, and this is something that would be difficult to verify, but I think that Dr. Davis wouldn't disagree that . . . the integration suit was a vehicle for implementing the introduction or expansion of the concept of alternative schools in Minneapolis. The integration plan was also the vehicle or the excuse for the implementation of a major construction program — an expenditure of some \$19 million in new construction.

. . . and Judge Larson carried a heavy load on his back — I mean he was the man who provided the vehicle . . . not only for implementing integration which a majority of the [school] board has believed would be appropriate and good for those it serves, but also the [implementation] of the alternative system [and] the new construction program.<sup>116</sup>

In the fall of 1974, district schools opened with an expanded menu of educational alternatives: contemporary, continuous pro-

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ity enrollment at Phillips was in the 40-45% range for fall 1974 and the court found no offsetting factors that would lower the percentage of minority students attending Phillips in the future. *Id.* at 3.

114. Sam Newland, *School Board Won't Ask Rehearing By Judge*, MINNEAPOLIS TRIB., May 29, 1974, at 2B. The concept of alternatives was first implemented in Minneapolis in 1971, when the district received a \$7 million dollar grant to launch the Southeast Alternatives program in southeast Minneapolis. Gregor W. Pinney, *What Kind of Education is Best? You Do Have Choice*, MINNEAPOLIS TRIB., Aug. 25, 1974, at 1E. School Board Chair Richard Allen first promoted the idea of choice in 1972 as a means of making school desegregation more acceptable to opponents. Gregor W. Pinney, *Busing Foes Oppose School-Choice Plan*, MINNEAPOLIS TRIB., Feb. 3, 1972, at 1A. The concept was primarily limited to the southeast program until the school board decided to use alternatives as a means of complying with Judge Larson's order for the fall of 1974. *Id.*

115. Pinney, *What Kind of Education Is Best?*, *supra* note 114, at 1E, 8E.

116. Advisory Comm. Tr., *supra* note 9, at 444-46.

gress, open, modified open and free school programs.<sup>117</sup> Although desegregation proceeded peacefully,<sup>118</sup> the district's mid-year report to the court indicated there were still "some problems left to solve."<sup>119</sup> A total of fifteen schools exceeded the court's 35% minority ceiling for the fall of 1974, and as many as eleven schools were projected to continue above 35% minority enrollment for the following year as well.<sup>120</sup>

School officials offered no plan to remedy the situation, and instead sought to "stabilize" school attendance areas rather than require another redistribution of students to achieve compliance.<sup>121</sup> Plaintiffs opposed any "stabilization" period and sought an order mandating compliance by September, 1975.<sup>122</sup> In response to plaintiffs' request, Judge Larson acknowledged the district's concern that "[i]t is becoming extremely difficult to offer students and parents any stability in their educational program if the increasing minority population, citywide, requires an annual redistribution of students."<sup>123</sup> Recognizing that the minority population of the district was projected to reach 20% by September, 1975, the judge increased the 35% enrollment ceiling to 42% and ordered that no

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117. Pinney, *What Kind of Education Is Best?*, *supra* note 114, at 1E, 8E. The school district continues to implement the concept of alternative educational styles today. The most traditional alternative style is "contemporary" where students are grouped by grade level and spend most of their time in one self-contained classroom with one teacher. In "continuous progress" schools, there is more grouping and re-grouping for different subjects, and students move ahead at their own pace. In an "open" or "modified open" school, students spend their time in one or more rooms that have many "interest centers;" students and teachers may work together to develop themes around which learning takes place. In a "free" school, the student chooses the area of study and is primarily responsible for his or her own learning process. *Id.* at 1E.

118. One reporter revisited several people who had expressed reservations about desegregation in 1972, including a white woman from northeast Minneapolis who did not want her children "bused across the river." See Pinney, *supra* note 72. The woman's daughter began attending a school "across the river" — Bethune Elementary School — in the fall of 1974 as part of the desegregation process. The women told reporters she had decided to help make the desegregation plan work. "Times are changing and you have to change with them," she said. "Another thing — when the federal government tells you to do something, you do it." Peg Meier, *Nancy Skinner at Bethune School*, MINNEAPOLIS TRIB., Sept. 5, 1974, at 1B, 2B.

119. *Report Card For the Schools*, MINNEAPOLIS TRIB., Dec. 7, 1974, at 6A.

120. Gregor W. Pinney, *City School Officials Ask More Time To Integrate*, MINNEAPOLIS TRIB., Jan. 8, 1975, at 1A, 4A.

121. Max Nichols, *Schools Note Imbalance But Plan No New Busing*, MINNEAPOLIS STAR, Jan. 18, 1975, at 1A, 2A.

122. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 1 (D. Minn. May 7, 1975).

123. *Id.* at 3.

single minority group constitute more than 35% of the population on any school campus.<sup>124</sup>

These revised guidelines resolved the projected noncompliance of all schools, with the exception of Bethune Elementary School. Principal George McDonough told the court that 50% of Bethune's students were minority students because of an increasing minority population in the Bethune attendance area in north-central Minneapolis.<sup>125</sup> McDonough also cited increasing parochial school enrollment among white students in the northeast Minneapolis area, the area from which the district sought to attract majority students to attend Bethune.<sup>126</sup> Plaintiffs argued that without further action by the district, parents of white students would not choose Bethune's continuous progress program for their children because of Bethune's history as "an identifiable black school."<sup>127</sup> The court's order stated:

Although the Court has been inclined to resolve doubts as to anticipated enrollments in favor of the School District's projections, it will not do so in regard to Bethune. That school is a constant reminder of the segregationist policy of the District in the 1960's. The injury resulting from that policy has never been adequately remedied. The Court will order the District to provide in 10 days a plan that will ensure that each school in the Bethune-Hall-Holland-Webster Cluster will be in compliance with the revised minority limits for the coming school year.<sup>128</sup>

The district produced a plan, and school began in the fall of 1975 with more than 11,000 children riding buses as part of the district's desegregation effort.<sup>129</sup> Half of the city's 82 public elementary and secondary schools were now affected by the court's order.<sup>130</sup> As part of its effort to comply with Judge Larson's revised

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124. *Id.* at 2. The court also specifically noted the increase in Native American students in south-central Minneapolis. Although Native American students constituted less than 5% of the total student enrollment in the district, the district projected that approximately 31% of the school population at Phillips Junior High School and at the new Anderson Elementary School (scheduled for completion in 1976) would be Native American. *Id.*

125. *Id.* at 3.

126. *Id.*

127. In his 1972 findings of fact, Judge Larson stated, "It is hard to imagine how a school could be more clearly denominated a 'Black school' unless the words themselves had been chiseled over the door." *Booker v. Special School District No. 1*, 351 F. Supp. 799, 803 (D. Minn. 1972). In his 1975 order, the judge indicated that Bethune had always had at least 50% minority enrollment since it opened in 1968. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 4 (D. Minn. May 7, 1975).

128. *Booker*, No. 4-71 Civ. 382, slip op. at 4-5 (D. Minn. May 7, 1975).

129. Gregor W. Pinney, *Two Areas to Join City School Plan for Desegregation*, MINNEAPOLIS TRIB., Sept. 1, 1975, at 1B.

130. *Id.*

order, the district brought children from two predominately white areas of Minneapolis — the Putnam Elementary School neighborhood in northeast Minneapolis and the Calhoun Elementary School area in south Minneapolis — into the desegregation process.<sup>131</sup>

*B. Civil Rights Commission Advisory Committee Proceedings*

In the spring of 1976, Minneapolis participated in a United States Civil Rights Commission study designed to gain perspective on the effectiveness of the desegregation process throughout the country.<sup>132</sup> The study included formal hearings in Boston, Massachusetts; Denver, Colorado; Louisville, Kentucky; and Tampa, Florida. State advisory committees also held open meetings in Berkeley, California; Corpus Christi, Texas; Stanford, California; and Minneapolis, Minnesota.<sup>133</sup>

Lupe Lope, Director for Westside Ramsey Action Programs, Inc., chaired Minneapolis' state advisory committee.<sup>134</sup> The committee convened for three days in April, 1976 to gather information on the success of the desegregation effort in Minneapolis and the factors which influenced the course of desegregation in the city's schools. The committee heard from teachers, administrators, parents, students and others affected by the *Booker* litigation and the court's continuing jurisdiction over the schools.<sup>135</sup>

After considering the comments made during the open meetings in April, Civil Rights Commission staff concluded:

\* The goal of desegregation — the physical redistribution of students in compliance with the court's order — had been achieved in some, but not all, of Minneapolis' schools. The inte-

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131. *Id.* at 1B. "The new busing program began smoothly and most of the reluctant parents decided to try to make it work." *Id.* at 8B. See also Gregor W. Pinney, *School Desegregation Continues*, MINNEAPOLIS TRIB., Dec. 29, 1975, at 1B, 2B. The relatively peaceful desegregation process in Minneapolis contrasted sharply with the process in cities such as Boston, where a court-ordered desegregation plan for South Boston High was met with repeated violence and disruption. Resistance to desegregation was so strong in Boston that United States District Judge Garrity was forced to appoint his own administrator to run the school. *Id.* at B2. Violence erupted elsewhere in the country as well, and in 1975 sociologist James Coleman released new research which suggested desegregation was responsible for driving whites out of major cities. *Id.*

132. Staff Report, *supra* note 9, at 5.

133. See *id.*

134. Also on the committee were Father Frank Zaragoa, James Kirk, Carmelo Melende, Margaret Johnson, Robert Dodor, Iwan Fertig, Gloria Kumagai, Jeanne Cooper, Greg Barrow, Dr. John Taborn, Duane Lindstrom and Clark O. Roberts. Advisory Comm. Tr., *supra* note 9, at 2.

135. Staff Report, *supra* note 9, at 2.

gration portion of the school district's plan had yet to be fully implemented.

\* Some nearly all-white schools had not been included in the district's desegregation plan, and the district had failed to recognize that the maintenance of such schools constituted segregation.

\* Although incidents of physical disruption and violence had been minimal during the desegregation process, there was vocal opposition to the desegregation plan. According to at least one parent, the lack of violence resulted not from a lack of opposition, but rather from a "law abiding citizenry who really did not care to stand up and start throwing rocks at each other."

\* Many elements of the community — the school board, school administration, teachers, business leaders, religious leaders, some parents, the media — participated to some extent in formulating the desegregation plan, and had been supportive of desegregation efforts.<sup>136</sup>

When state advisory committee members asked participants in the April meetings about the effect of the federal court case on the district's desegregation efforts, school board member Rev. David Preus responded:

I think it was essential that we — it was simply needed as a way of saying to what I believe to be a fundamentally law-abiding citizenry that this is what the United States Government is calling for, and even if we may not like it, it's time to swallow and say, "Let's see if it works."<sup>137</sup>

Marvin Trammel, a former west area superintendent for the district, identified three elements which in his view contributed to the degree of success the district had achieved in desegregating its schools: first, the participation of numerous groups in formulating the desegregation plan, which created a "broad base of support;" second, the court order telling "the school district to desegregate its schools;" and third, the generally positive support for desegregation from the district's teachers.<sup>138</sup> In concluding his remarks before the Advisory Committee, Trammel advocated continued monitoring of the desegregation process by the court:

I would urge this group and others to very strongly recommend that this school district . . . continue to be under the jurisdiction of the Federal court in terms of its plan for desegregation. And I state that because I think that while the other factors which I mentioned are very important . . . the Court has been a stabilizing factor in keeping the desegregation plan going for a period of years. And I think that if the Court were to withdraw its

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136. See Staff Report, *supra* note 9, at 9, 16.

137. Advisory Comm. Tr., *supra* note 9, at 75.

138. *Id.* at 283.

jurisdiction of the case, the potential for losing that impetus, I think, would become glaring.<sup>139</sup>

School board member Harry Davis also favored "remaining under the court order for a considerable length of time" for what Davis characterized as "practical" reasons:

School Board [members] in the city of Minneapolis and other major cities are political people, and they respond to the electorate. And the electorate does not always say that you should provide the same quality education [for all children]. . . .

I think that the court — even if the court is well coordinated with the Minneapolis school system, as Judge Larson's court is — that the court needs to serve as a conscience to those in responsibility, not only on the School Board but the general public and the administration.<sup>140</sup>

Others were not so eager to continue under the court's jurisdiction. Former superintendent Davis told the advisory committee, "[w]ell, I would say that before I left the Minneapolis School District, my commitment was to have firmly established our capability of doing it ourselves and the withdrawal of the court from the case would have been viewed, you know, with happiness."<sup>141</sup>

### C. *The District Again Fails to Achieve Compliance*

Shortly after the advisory committee concluded its proceedings in Minneapolis, the school district revealed that seven of the district's schools had exceeded the court's revised student enrollment guidelines, which allowed a total minority enrollment of 42%.<sup>142</sup> Officials predicted that various adjustments could ensure compliance at six of the schools for the upcoming 1976-77 school year, but the seventh school — North High School — would remain out of compliance.<sup>143</sup>

Along with its report, the district filed a motion requesting authorization to continue a voluntary programmatic desegregation plan for North High School, instead of redrawing school boundary lines to achieve desegregation goals.<sup>144</sup> Under the voluntary program, North was paired with two predominately white schools — Edison and Henry High Schools across the Mississippi River in

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139. *Id.* at 305-06.

140. *Id.* at 326-27.

141. *Id.* at 422.

142. 8th Semi-Annual Report Under Order of May 24, 1972, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (June 30, 1976).

143. *Id.* at 1.

144. In the proceedings before the Civil Rights Commission advisory committee, plaintiffs' counsel expressed concern "about what the situation is now at a few of the schools and especially at North High School." Advisory Comm. Tr., *supra* note 9, at 442.

northeast Minneapolis. Under the HEN program, an acronym comprised of the initials of each school,<sup>145</sup> students could sign up for courses and attend school for part of the day at "each others' schools."<sup>146</sup> The district also filed a motion requesting for the first time that housing officials be joined as third-party defendants in the litigation.<sup>147</sup>

On August 12, 1976, the court granted both motions.<sup>148</sup> With regard to the district's proposal to rely on voluntary transfers to achieve desegregation at North High, Judge Larson stated:

The parties to this action, their counsel, and the Court have agreed throughout these proceedings that the United States Constitution requires that the schools be integrated. The defendants have made a sincere effort to comply with the various Orders that have been made. In view of the defendants' generally successful and good faith integration of students and faculty, the motion of defendants for relaxation of the requirements for North High for one year should be granted.<sup>149</sup>

Although the court granted the district's motion for North High School to continue to operate "in status quo," the court also ruled that the district should "vigorously pursue the plans for programmatic desegregation."<sup>150</sup>

Although the district appeared poised to achieve compliance with the court's revised order for the 1976-77 school year, enrollment figures for the fall of 1976 brought news which "dismayed" school officials.<sup>151</sup> Instead of just one school — North High — reporting a total minority enrollment which exceeded the court's guidelines, thirteen schools reported minority enrollments exceeding 42%.<sup>152</sup> The seven schools which had been out of compliance the year before all "got worse instead of better in terms of minority percentages," and six more schools were added to the list of those failing to comply with the court's minority enrollment maximums.<sup>153</sup>

School officials believed federal housing policies contributed to the district's continued inability to achieve compliance with the

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145. Gregor W. Pinney, *North's Transfer Plan Allowed*, MINNEAPOLIS TRIB., Aug. 13, 1976, at 1A.

146. Gregor W. Pinney, *13 Schools in City Top Racial Limits*, MINNEAPOLIS TRIB., Dec. 14, 1976, at 1A, 8A.

147. See *infra* notes 272-78 and accompanying text.

148. *Booker v. Special School District No. 1*, No. 4-71-Civ. 382 (D. Minn. Aug. 12, 1976).

149. *Id.* at 2.

150. *Id.*

151. *Desegregation Setback*, MINNEAPOLIS STAR, Dec. 16, 1976, at 18A.

152. *Id.*

153. Gregor W. Pinney, *13 Schools in City Top Racial Limits*, MINNEAPOLIS TRIB., Dec. 14, 1976, at 1A, 8A.

court's desegregation orders. According to attorney Newhall, "the present concentrations of minorities [in the schools] are not our fault, but was also based on the city's housing patterns."<sup>154</sup> The news of the district's fall 1976 enrollments prompted school board chair John Mason to question whether the district should rethink its objectives: "I'm not sure that an annual response is the best approach from an educational or moral view . . . It may be that we will decide that we can't achieve a certain percentage each year and should so advise the appropriate agencies."<sup>155</sup>

#### IV. The District Seeks Termination of Court Oversight: 1977-1978

A month after the district found that thirteen of its schools failed to comply with the court's desegregation order, school board members met for an informal discussion of the desegregation process.<sup>156</sup> Although the board "took no votes and made no final decisions, it seemed to be growing weary of desegregation — more so than at any other time in the six years of racial mixing in Minneapolis."<sup>157</sup> Board members "backed away" from promising Judge Larson that they would devise a plan to achieve compliance before school started in the fall:

Board Chairman John Mason said he wanted to skip the promises and simply give the court the facts in the forthcoming semi-annual report. He implied it would then be up to the pro-integration plaintiffs to try to persuade the court [to act].<sup>158</sup>

Comments from other board members indicated that they shared Mason's views. Board member James Pommerenke said, "I think it's time . . . [to tell] the court there's plenty of commitment to quality education and that we don't want the court telling us how to run the school system."<sup>159</sup> Board member Harry Davis "was the only one . . . who firmly disagreed with the idea that segregation has been eliminated. He said he still wants all schools to be brought into compliance."<sup>160</sup>

The plaintiffs responded to the district's semi-annual report by filing a motion requesting the court to order the district to sub-

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154. Mike McCabe, *Some Schools Still Violating Race-Mix Rule*, MINNEAPOLIS STAR, Dec. 13, 1976, at 1A, 9A.

155. Gregor W. Pinney, *13 Schools in City Top Racial Limits*, MINNEAPOLIS TRIB., Dec. 14, 1976, at 1A, 8A. See also *Desegregation Setback*, *supra* note 151, at 18A.

156. Gregor W. Pinney, *School Desegregation Effort Seen Fading*, MINNEAPOLIS TRIB., Jan. 28, 1977, at 1A.

157. *Id.*

158. *Id.* at 6A.

159. *Id.*

160. *Id.*



mit a plan which would assure full desegregation of the district's student population.<sup>161</sup> Two days later, the district filed a motion requesting the court to terminate its jurisdiction,<sup>162</sup> citing *Pasadena City Board of Education v. Spangler*.<sup>163</sup> The district argued that in *Spangler*, the United States Supreme Court had ruled that "once a court-ordered desegregation plan is fully implemented the District Court may not periodically re-enter the fray to order rearrangement of attendance districts to 'correct' racial imbalances arising since that implementation."<sup>164</sup>

After hearing from counsel for both parties, Judge Larson refused to end the court's involvement in the *Booker* litigation.<sup>165</sup> The court's order distinguished *Spangler* by noting that:

[i]n Pasadena, all of the city's schools were integrated at one time, with the proportion of racial minorities in each school below a given limit, within one year of the court order. While various schools gradually slipped out of compliance over the next few years, there was an identifiable point in time at which all of the city's schools were integrated within the limits set by the Court. In Minneapolis, such an identifiable point of total compliance has never existed; indeed, Minneapolis' plan is more akin to the type of "step at a time" plan which the Supreme Court specifically excluded from application of its holding.<sup>166</sup>

In response to the district's argument that any slippage from compliance was due to "demographic changes and discrimination in housing,"<sup>167</sup> Judge Larson observed that the demographic trends in the City of Minneapolis should have been taken into account in planning school assignments, the district had to be on notice that Minneapolis would be touched by the nationwide trend towards increasing minority concentration in the city core. Indeed, it was the recognition of this trend that caused the district to begin planning for desegregation even before the *Booker* complaint was filed.<sup>168</sup>

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161. Motion of Plaintiffs for Order Requiring Defendants to Submit Plan to Assure Compliance Re: Student Enrollment, at 1, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. May 5, 1977).

162. Motion of Defendants to Terminate Litigation, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. May 7, 1977).

163. 427 U.S. 424 (1976).

164. *Id.* at 437.

165. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. July 11, 1977).

166. *Id.* at 2.

167. *Id.* at 3 (the school district had previously joined HUD and the Minneapolis Housing and Redevelopment Authority as third party defendants).

168. *Id.* at 3. The court did not fault school administrators, however, for failing to plan for the great increase in Native American students at the Hans Christian Anderson complex in the south-central area of the city. The minority enrollment at Anderson reached 53% in the fall of 1976. Approximately 35% of the students at Anderson were Native American. *Id.* at 5 & n.1.

The court's July 1977 order rejected an immediate end to the litigation. However, Judge Larson also gave both parties notice that "unlike the District Court in *Spangler*, . . . this Court does not foresee retaining jurisdiction over this matter for the rest of its life."<sup>169</sup> Ordering the district to "provide for full student desegregation by the fall of 1978,"<sup>170</sup> the court observed:

in this period of rapidly dropping enrollments, which makes school closings necessary anyway, the District is in an ideal position to accomplish two goals with one set of actions: responding appropriately to the fact of lower enrollments, and providing, once and for all, for full desegregation in the schools.<sup>171</sup>

Response to the court's ruling was mixed. A black community newspaper ran an editorial urging the district to heed the court's order.<sup>172</sup> The editorial criticized the district's past efforts, stating:

Five years have passed since the initial order and two years have passed since the District was to complete total desegregation. In fact, there are now more schools out of compliance with the court's guidelines than five years ago . . .

The District has dragged its feet in taking this long to desegregate its student body. And it has been done piecemeal. The District has always been distracted by public pressure not to desegregate. These pressures still influence its decisions, especially in the east and north areas. . . Adding a school here and a school there, year after year, to the desegregation plan works against the kind of stability students and community should expect, and only serves to keep feelings stirred up, diverting talent and energies our students and faculties could use to good advantage.<sup>173</sup>

The school board initially requested Judge Larson to reconsider his order.<sup>174</sup> School board chair John Mason announced the board's decision, adding, "I hope people won't make the mistake of confusing our legal posture with our commitment to desegregation and integration of our schools."<sup>175</sup> Judge Larson denied the board's request and advised the district to pursue its right to appeal to the

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169. *Id.* at 3.

170. *Id.*

171. *Id.* at 4.

172. *All Deliberate Speed: The Status of School Desegregation in Minneapolis*, MINNEAPOLIS SPOKESMAN, July 7, 1977, at 2.

173. *Id.*

174. Gregor W. Pinney, *Schools Will Ask Release By Court*, MINNEAPOLIS TRIB., Aug. 5, 1977, at 1A. Board members Pommerenke, Olson, Mason and Borea voted to request the court to reconsider its decision. Board member Davis was the lone dissenting vote. Board members Star and Lind were absent from the meeting. *Id.*

175. *Id.*

Eighth Circuit if the district believed its motion to terminate the case was wrongly decided.<sup>176</sup> The district did not appeal.

Instead, when the district filed its semi-annual report in December, 1977, it requested a hearing to describe more fully the district's plans for the future.<sup>177</sup> School board members and top officials attended the hearing on January 26, 1978. At the hearing, attorneys for the school district<sup>178</sup> presented a slide show and summary of the district's accomplishments since the court assumed jurisdiction of the case in 1972. The attorneys advised the court that the district would present a "preferred" five year desegregation plan to the court in March of 1978. If the preferred plan did not meet the court's current desegregation guidelines, the district would also present a plan designed to ensure compliance with the court's order that total minority enrollment not exceed 42% at any school and that no one minority group constitute more than 35% at any school. Plaintiffs responded to the materials presented and to the district's proposed five year "preferred" plan by expressing concern about the district's lack of commitment to meeting the court's guidelines:

The concern that we have . . . is what we perceive as a lack of commitment to carrying out the order of this Court of July, 1977. . . . we can see from what has been presented, that this district is able to bring together a massive amount of talent and resources to get a job done. We believe that that talent and those resources should be directed to getting the job done that the Court ordered it to do, rather than another job.<sup>179</sup>

#### A. The District Develops a "Preferred" Plan

At the time of the hearing in January, 1978, the district had only begun to develop the five year plan it had promised to deliver to Judge Larson by March.<sup>180</sup> In February, 1978 the district unveiled four proposals to the public.<sup>181</sup> Each of the proposals contemplated some additional busing.<sup>182</sup> The district scheduled meetings at two area high schools to obtain input from interested parents.<sup>183</sup>

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176. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 2 (D. Minn. Aug. 8, 1977).

177. Transcript of Hearing at 2, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. Jan. 26, 1978).

178. Attorney Norman Newhall was joined at the hearing by attorney Duane Khronke, who had recently begun to advise the district on the case. *Id.* at 1.

179. *Id.* at 23, 28.

180. *Id.* at 14.

181. Gregor W. Pinney, *Crowd Opposes Further Busing*, MINNEAPOLIS TRIB., Feb. 22, 1978, at 6 B.

182. *Id.*

183. *Id.*

At the Jordan Junior High School meeting in north Minneapolis almost 900 people — most of them white — turned out “primarily to tell the Minneapolis School Board that further busing for desegregation is a bad idea.”<sup>184</sup> News accounts stated that:

The crowd [at Jordan] was as large as the ones back in 1970 and 1971 when busing was a new idea in Minneapolis, and the people said a lot of the same things they had said back in those years: that busing damages the family, destroys community identity, wastes money, drives students into private schools, makes parents move out of the city, and accomplishes nothing.<sup>185</sup>

Alderman Walter Dziedzic spoke at the meeting of a strong sense of family and community in northeast Minneapolis which he felt would be altered by busing. “It’s not a racial issue,” he said, “but a question of whether or not their children can attend neighborhood schools.”<sup>186</sup> County Commissioner Sam Sivanich, who also represented the northeast Minneapolis area, added, “I wish Judge Larson would come out into the community and see what the city of Minneapolis is.”<sup>187</sup>

The meeting at Jordan was described as “quiet” and “restrained,” compared to the meeting held at Folwell Junior High in south Minneapolis several days later.

[At Folwell] Minneapolis School Board members took verbal potshots at each other. A man and a woman were forcibly ejected for shouting obscenities. Former Mayor Charles Stenvig was waving a placard [that said No Forced Busing]. There were shouts, jeers, threats and pleas [as] the audience of about 700 persons let it be known — loudly and often with hostility — that it opposed busing.<sup>188</sup>

School board member James Pommerenke took the floor and asked everyone opposed to busing to stand because he wanted Judge Larson to see a picture of the opponents in Friday’s newspapers. “It seemed that nearly everyone in the auditorium stood up.”<sup>189</sup>

Although the audience at Folwell was mostly white, some blacks and Native Americans also attended. A delegation from Anderson school requested that the district exempt Anderson from the

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184. *Id.* (under the school board’s proposal for north and northeast Minneapolis, “virtually every school in the area would be involved” in desegregation). Nancy Paulu, *School Board Hears Criticism of Busing Plan*, MINNEAPOLIS STAR, Feb. 22, 1978, at 19A.

185. Pinney, *supra* note 181, at 1B.

186. Paulu, *supra* note 184, at A19.

187. Pinney, *supra* note 181, at 1B, 6B.

188. Nancy Paulu, *Antibusing Sentiment Shakes Rafters At City School-Desegregation Hearing*, MINNEAPOLIS STAR, Feb. 24, 1978, at 1A.

189. Gregor W. Pinney, *School Busing Hearing Heated*, MINNEAPOLIS TRIB., Feb. 24, 1978, at 1A, 6A.

court's order. The delegation sought to allow Anderson to operate with a significant percentage of Native American students.<sup>190</sup> The school board's "preferred plan" did allow any school with between 15% and 30% Native American students to have a total minority enrollment of 60%.<sup>191</sup> The plan contemplated that for other schools, the total minority enrollment would not exceed 50%, an increase from the court's existing 42% minority enrollment maximum.<sup>192</sup> The plan also contemplated continued voluntary programmatic desegregation at North, Henry and Edison High Schools and expanded use of alternative teaching styles to achieve further desegregation.<sup>193</sup> District officials believed the preferred plan was the most feasible option, given the segregated housing patterns which persisted in the city, as well as the increasing number of minority students served by the district.<sup>194</sup>

At the court hearing in March, the district renewed its motion to terminate the litigation completely and presented "a massive amount of data (the total package of briefs weighed 14 pounds) to prove that desegregation had already been accomplished."<sup>195</sup> In the alternative, the district moved for approval of the preferred plan for student enrollment.<sup>196</sup> The district also presented a plan that complied with the court's existing requirement that no school have a total minority enrollment exceeding 42%, and that no one minority group constitute more than 35% of the total population at each school.<sup>197</sup> District staff plainly did not support this plan, how-

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190. Nancy Paulu, *Antibusing Sentiment Shakes Rafters at City School-Desegregation Hearing*, MINNEAPOLIS STAR, Feb. 24, 1978, at 1A, 5A.

191. "Where Native American students comprised 30% of the school population, the preferred plan allowed the overall minority population to rise to 60%. Where Native American students comprised 15% of the school population, the overall minority population could rise to 55%." *Booker v. Special School District No. 1*, 451 F. Supp. 659, 664, n.8 (D. Minn. 1978).

192. *Id.* at 665.

193. *Id.* at 666.

194. Plaintiffs' counsel objected strongly to the time and resources the district had devoted to developing a 50%/50% five year plan, when the court's order required the district to develop a plan to comply with the existing 42%/35% guidelines for the fall of 1978.

195. Gregor W. Pinney, *Larson Orders Increased School Desegregation*, MINNEAPOLIS TRIB., May 23, 1978, at 1A, 12A.

196. The district's 50%/50% plan was to remain in effect from 1978 through 1983. The district estimated that in the fall of 1978, the student body would be approximately 26% minority, with an 18% black and a 6% Native American enrollment. The district projected that by 1983, 35% of the student body would be students of color. The district assured the court that it could ensure compliance with its preferred plan for three years. 1978 Transcript, *supra* note 8, at 11-12.

197. *Id.* at 12.

ever, labeling it "educationally unsound, disruptive to the educational process, and lacking in durability."<sup>198</sup>

Minneapolis School Superintendent Raymond Arveson testified in favor of the district's preferred plan. Arveson told the court the 50%/50% plan would promote more stability in student assignments in a time of decreasing overall enrollment.<sup>199</sup> Board member Harry Davis also indicated his support for the 50%/50% plan. Davis believed the 42%/35% plan could work, but he believed the 50%/50% plan was more workable and more likely to be achieved by the district.<sup>200</sup> When pressed by counsel for the plaintiffs, Davis agreed that his support for the 50%/50% plan was, in part, based on his assessment of what was politically possible.<sup>201</sup>

Davis opposed the district's request to terminate the litigation, however, and he urged the court to continue its involvement in the case to ensure the school district achieved the goal of desegregation.<sup>202</sup> Others voiced their support for the court's continued assertion of jurisdiction as well. Central High School Principal Joyce Jackson offered her view that the district's commitment to desegregation had diminished in recent years.<sup>203</sup> NAACP President Julia Cherry described to the court the reluctance she perceived on the part of some school board members even to consider a plan that would comply with the court's existing guidelines.<sup>204</sup>

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198. *Id.*

199. *Id.* at 30-35. Judge Larson advised the parties that he had received a massive number of letters objecting to the continual movement of children. He further acknowledged the problems parents had communicated to him concerning the lack of stability in school assignments. *Id.* at 38.

200. *Id.* at 88-89, 294-96.

201. Davis testified as follows in response to questioning by attorney Quintance:

Q: Let me ask you the question again: Is one reason you supported the 50/50 Plan that you sense a decrease in the degree of commitment to desegregation/integration?

A: To a lesser degree, that might be a reason, yes.

Q: You believe that half a loaf is better than none and it is better to do what is politically possible on the Board than to isolate yourself, is that correct?

A: Let me qualify that because again, I have to establish my own goals and I have established goals. My goal and commitment is to quality integrated education and I have to try to find it and to use strategy to accomplish that with the kinds of issues that are before me, and that includes commitment of my colleagues as well as commitment of staff and other people in the School District. So working that way, I feel I have to adjust so that strategy can become a reality. There are all kinds of variables and barriers that you have to contend with, or at least I have to contend with.

*Id.* at 295-96.

202. *Id.* at 91, 296-98, 300-01.

203. *Id.* at 309.

204. *Id.* at 314.

Cherry also told the court how she felt as a member of the audience at the recent Folwell Junior High School meeting held to discuss the district's desegregation plans: "I guess I had to keep reminding myself that I was in Minneapolis, Minnesota in the year 1970. . . . I was embarrassed — first angry and then embarrassed because . . . people across the nation . . . look to Minneapolis for leadership."<sup>205</sup> Cherry told the court that the only response to desegregation issues she had heard from at least two current school board members was, "[w]e don't need a judge's Order."<sup>206</sup> Cherry, who grew up in South Carolina and attended segregated schools there, added:

My reaction to that is I know there are a lot of good people in Minneapolis. There are also a lot of good people in South Carolina . . . but sometimes there has to be some pressure brought to bear to bring that good out in people. I think this suit is it.<sup>207</sup>

Cherry opposed the request of several Native American groups to exempt Native Americans from the court's order and to prohibit involuntary removal of Native American students from schools with a Native American program.<sup>208</sup> Cherry believed this request would result in racially identifiable schools, and she testified, "I don't think . . . the NAACP should be involved in setting a precedent for segregated schools. We are not going back down that route."<sup>209</sup>

Two Native American educators testified in support of the district's proposal to allow up to 60% minority enrollment in schools with significant numbers of Native American students.<sup>210</sup> Their testimony echoed the remarks made by Jake Kanassatega, a Native American educator who appeared before the U.S. Civil Rights Commission advisory committee in April, 1976.<sup>211</sup> Kanassatega agreed then that the court's order had succeeded in "bringing black kids and Indian kids and white kids together to be educated."<sup>212</sup> According to Kanassatega however, the desegregation order had unintended and unforeseen side effects which arose, in part, because

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205. *Id.* at 313.

206. *Id.* at 318.

207. *Id.* at 314.

208. Judge Larson permitted attorney Larry Leventhal to present an amicus brief on behalf of several Native American groups. The amicus brief requested the court to exempt Native Americans from the court's order. *Id.* at 5. The school district did not support Leventhal's request, but had incorporated a larger minority percentage option when a significant number of students at a school were Native American. *Id.* at 10; see *supra* note 191 (listing planned allowable minority student percentage differences in schools with large numbers of Native American students).

209. 1978 Transcript, *supra* note 8, at 318-19.

210. The educators were Charles Robertson and Rosemary Christenson. *Id.* at 161, 185.

211. Advisory Comm. Tr., *supra* note 9, at 148.

212. *Id.* at 183.

"[t]he Native American concern was not even brought forth" at the time of the court's initial ruling.<sup>213</sup> No Native Americans were involved in the court case when it was initially brought in 1971, and only a small percentage of the district's students were Native American.<sup>214</sup> By 1978, the percentage of Native American students had increased to 6%.<sup>215</sup> Kanassatega told the advisory committee that when the *Booker* complaint was initially filed by the plaintiffs: "[Indian people perceived] that it was not our problem. It was a black-white problem. But, with the increasing numbers [of Indian students], the effect has been . . . [w]e cannot provide the things that will help meet the special educational needs of Indian children."<sup>216</sup>

Plaintiffs' expert, Dr. Stolee, presented a plan to the court which would comply with the existing 42%/35% student enrollment guidelines.<sup>217</sup> Stolee was impressed with the sincerity of the Native American educators who testified before the court at the March hearing, but he added:

I must confess that as I sat listening to the testimony I had feelings of *deja vu* — here we go again. The feelings are generated because . . . I worked with desegregation in the south. I heard the reasons, the rationale for the segregation of the races in southern schools. The rationale that was given is that black people and white people have different learning styles. . . I heard the rationale that blacks and whites have different disciplinary styles. I heard the rationale that blacks and whites have different cultural backgrounds. . . Therefore, because of those things, it was best to educate black and white children separately. . . .

What I heard [in the testimony from the Native American educators was that] we have a racial group that is so different in learning styles, in disciplinary styles, in cultural background that in essence they have to be segregated. That, I don't believe, should be permitted.<sup>218</sup>

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213. *Id.* at 184. The same observation applies to the lack of involvement of other minority groups as well. Francisco Trejo, an Hispanic teacher, told the U.S. Civil Rights Commission advisory committee that when desegregation first began, the Hispanic or Chicano community was not even told by the district whether Hispanic children were considered "minority" for purposes of complying with the court's order. Trejo said he and other Hispanic people could talk with school officials about the needs of Chicano students, but the meetings were "always based on a Chicano issue. . . [w]e were not involved in a desegregation process." *Id.* at 906-07.

214. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 802 (D. Minn. 1972) (in 1971-72, approximately 3% of the enrolled students were Native American).

215. *Minneapolis School Racial Percentages*, MINNEAPOLIS STAR, Dec. 8, 1978, at 17A.

216. Advisory Comm. Tr., *supra* note 9, at 184.

217. 1978 Transcript, *supra* note 8, at 21.

218. *Id.* at 259.



*B. The Court Insists on Full Compliance for Fall 1978*

On May 22, 1978, Judge Larson issued an order denying the district's motion to terminate the litigation. Nonetheless, the judge agreed that some adjustment in the enrollment guidelines was warranted.<sup>219</sup> The court explained that, in the past, the enrollment guidelines had been set approximately 20% above the total projected minority pupil population, a margin more generous than the 15% figure often used throughout the country.<sup>220</sup> Using the district's projection that 26% of Minneapolis' public school students would be minority in the fall of 1978, the court increased the maximum minority enrollment for each school in the district to 46% for the fall of 1978. The court's order also raised the maximum for a single minority group from no more than 35% to no more than 39% of the total enrollment.<sup>221</sup>

The court's order reveals frustration with the district's failure to attain full compliance with the court's previous desegregation orders:

Perhaps the major difficulty with gradual implementation of desegregation remedies is the tendency for planners to fail to take into account predictable demographic trends and inevitable errors in projections, sight counts, and other similar factors. Unless allowances for such errors are built into the system, noncompliance is virtually assured even where the district acts in good faith. The Court is then placed in the position of ruling on modification requests based on factors that ought properly to have been foreseen by the planners in the first place. Although the response to such requests must be flexible and reasonable where the mistakes do not appear to have been motivated by bad faith, this pattern threatens to so weaken the effectiveness of a remedy that at some point it can no longer be tolerated. Perhaps, despite repeated admonitions by the Court, the district has never fully understood its responsibility to exercise reasonable foresight and to plan by allowing a generous margin for the errors and trends which, given its considerable experience, the district can readily anticipate. . . . the district is hereby on notice that in the future neither the plea of "increased minority enrollment" nor of other foreseeable and predictable events will be deemed sufficient to support a modification request or to further delay final implementation.<sup>222</sup>

Based on the court's "experience with the instability and potential unreliability" of the district's efforts to monitor compliance with an-

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219. *Booker v. Special School District No. 1*, 451 F. Supp. 659, 661-64 (D. Minn. 1978).

220. *Id.* at 666.

221. *Id.*

222. *Id.* at 665.

nual "sight counts," Judge Larson ruled that the district would achieve full compliance with the court's desegregation order only if every school in the district met the revised 46%/39% guidelines in both the fall of 1978 and the fall of 1979.<sup>223</sup>

In response to the request for an exemption or variance for Native American students, the court ruled that, while it was sensitive to the special educational needs of Native American students and the desire to maximize the expenditure of federal funds, "the constitutionality of permitting a school board to maintain, increase, or cause the segregation of Native Americans in the context of an urban school desegregation case is highly doubtful."<sup>224</sup> The court found that it need not resolve the difficult constitutional questions presented, however, because the district could meet and had met the needs of Native American students by means other than promoting segregation.<sup>225</sup>

Commenting on Judge Larson's order, an editorial in the *Minneapolis Star* stated the court had "little choice but to turn down" the school board's 50%/50% proposal, which the *Star* characterized as "a formula for legitimizing existing racial segregation in the city schools."<sup>226</sup> Attorney Newhall and School Superintendent Arveson urged the school board not to appeal the court's decision and instead advised that the board develop a plan to implement it.<sup>227</sup> Despite their advice, the board voted, 4 to 3, to appeal Judge Larson's ruling to the Eighth Circuit Court of Appeals.<sup>228</sup> Both the *Star* and the *Tribune* newspapers ran editorials opposing the board's decision.<sup>229</sup> According to the *Star* editorial: "Some of the board members who voted for an appeal say they merely want to bring the litigation to an end. The irony is that they might have done that in

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223. *Id.* at 666.

224. *Booker*, 451 F. Supp. at 667.

225. At the time of the court's opinion, the concentration of Native American students at Anderson, which the district viewed as a model, was approximately 35%. The court observed:

The Court does not mean to imply that the district has by any means "solved" the deep and complex problems of educating Native American children to realize their full potential; but the district has demonstrated that promising approaches can be found in the context of an integrated unitary school system.

*Id.* at 668.

226. *No More Racial Foot-Dragging*, MINNEAPOLIS STAR, May 24, 1978, at 18A.

227. Gregor W. Pinney, *Board to Appeal Desegregation Rule*, MINNEAPOLIS TRIB., June 1, 1978, at 1A, 9A.

228. Board members Olson, Pommerenke, Borea and Mason voted to appeal the court's decision. Board members Star, Davis and Lind voted against the appeal. The board unanimously agreed, however, that the district should develop a plan to comply with the court's order pending the appeal. *Id.*

229. *Drop the Busing Appeal*, MINNEAPOLIS STAR, June 2, 1978, at 8A; *A Mistaken Appeal by Minneapolis Schools*, MINNEAPOLIS TRIB., June 2, 1978, at 6A.

the first place by offering the court a more acceptable desegregation plan."<sup>230</sup>

### C. Budget Cutbacks and School Closings

Shortly after the district decided to appeal the court's May, 1978 order, the parties were back before Judge Larson on issues relating to budget cutbacks;<sup>231</sup> a subject one school official termed "our second major headache."<sup>232</sup> The district anticipated that proposed teacher layoffs would have a disparate impact on minority teachers.<sup>233</sup> State law required the district to lay off teachers based on seniority.<sup>234</sup> Because the school district hired many of its minority teachers after the court's 1972 order, the proposed cutbacks would affect minority teachers disproportionately.<sup>235</sup> In June, the district presented the court with a motion to permit the retention of minority teachers notwithstanding the state law or, in the alternative, permitting preferential rehiring of minority teachers.<sup>236</sup> The district advised the court that the proposed layoffs would not affect the district's ability to comply with the court's faculty desegregation order during the 1978-79 school year, but, if projections were accurate, additional layoffs could make compliance difficult for the 1979-80 school year.<sup>237</sup>

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230. *Drop the Busing Appeal*, *supra* note 229, at 8A.

231. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. June 19, 1978).

232. Nancy Paulu, *City's Schools To Face \$5-Million Budget Cut*, MINNEAPOLIS STAR, Mar. 23, 1978, at 1A. In March 1978, Associate Superintendent Bernard Kaye projected that the district would be forced to close about eight schools and lay off a significant number of teachers before the fall of 1978. *Id.*

233. Nancy Paulu, *Teacher Layoffs to Hit Minority Ranks Hard*, MINNEAPOLIS STAR, June 13, 1978, at 1B.

234. *Id.* (citing State Tenure Act).

235. In the spring of 1978, minority teachers accounted for approximately 10% of the total number of teachers in the Minneapolis school system. The proposed layoffs would decrease that percentage to approximately 9% for the 1978-79 school year. Juana Duty & Dennis McGrath, *Minority Teachers Feel 'Left' By Judge*, MINNEAPOLIS TRIB., June 21, 1978, at 1A.

236. *Id.* ("Because of their lack of seniority, minority teachers represent about 20 percent . . . of the 240 teachers scheduled to be laid off").

237. Since 1972, the court's order had required that each secondary school have approximately the same proportion of minority to majority teachers as there were minority to majority teachers in the whole system. *Booker v. Special School District No. 1*, 351 F. Supp. 799, 810 (D. Minn. 1972). In response to plaintiffs' motion for further relief, the court's 1973 order specifically required that minority teachers fill at least six percent of the faculty positions at each secondary school. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 3 (D. Minn. May 8, 1973). The court's order with regard to elementary school teachers required only that before any school could hire additional minority teachers, every school must have at least one minority teacher. *Booker*, 351 F. Supp. at 811.

Plaintiffs expressed no view on the merits of the district's request to circumvent the seniority system, but argued the request was premature because the issues were not yet ripe for consideration.<sup>238</sup> The Minneapolis Federation of Teachers filed an amicus brief supporting the seniority system. The union's executive secretary said the union felt "caught between wanting to retain minorities, and protecting the seniority system which . . . was crucial to teachers."<sup>239</sup> Some minority teachers expressed disappointment with their union's position. They asserted that the Minneapolis Federation of Teachers ignored its minority members when it failed to push for an affirmative action policy in the previous teacher contract.<sup>240</sup>

The teachers felt especially betrayed by a school system that had recruited them from other teaching positions, only to abandon them once they accepted a position with the district.<sup>241</sup> Joyce Lake, a black teacher at Jordan Junior High School in north Minneapolis, told a news reporter in June of 1978 that it was difficult to be one of only two minority teachers at Jordan when the school had almost a 48% minority enrollment.<sup>242</sup> According to Lake, "we aren't just talking about jobs. We are talking about minds. They [minority students] need me, and they need other minority staff members. . . . we don't have nearly enough minority staff members right now."<sup>243</sup> In a hearing before Judge Larson, the district argued that large minority teacher losses would reduce the district's ability to recruit more minority faculty and would deny students the opportunity to interact with and see minority persons in professional positions.<sup>244</sup>

On June 19, 1978, the court ruled that it would not resolve the issue of layoffs until the seniority law more directly affected the district's ability to comply with the court's orders. Judge Larson emphasized, however, that the district remained free to present the issue again "should circumstances change."<sup>245</sup> Although minority

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238. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 1 (D. Minn. June 19, 1978).

239. *Duty & McGrath*, *supra* note 235, at 1A.

240. *Id.* (describing the effect of Judge Larson's decision to deny request to exempt minority teachers from layoffs).

241. *Id.* "I was recruited by a system that's now cutting my neck," said Anthony Queen, an eight-year veteran of the school system who was recruited from Baton Rouge to come to Minneapolis. "And now I'm at the age where I've planted my roots here, only to have them cut." *Id.*

242. Nancy Paulu, *Teacher Layoffs To Hit Minority Ranks Hard*, MINNEAPOLIS STAR, June 13, 1978, at 1B.

243. *Id.*

244. *Id.*

245. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 1 (D. Minn. June 19, 1978).

teachers were unhappy with the court's ruling, school board members indicated they would pursue other means to retain as many minority teachers as possible.<sup>246</sup>

The second issue brought before the court during the summer of 1978 involved a challenge to the school board's decision to close Longfellow Elementary School to comply with the court's revised 46%/39% minority enrollment guidelines.<sup>247</sup> Parents of Longfellow students attempted to intervene in the *Booker* case to argue their position that closing Longfellow was counterproductive.<sup>248</sup> In a hearing on the motion to intervene, Longfellow parents advised the court that Longfellow was "naturally integrated" with a minority student population of approximately 17% of the total student enrollment.<sup>249</sup>

Shortly after the hearing, with the first day of school less than three weeks away, the court issued an order denying the parents' motion to intervene.<sup>250</sup> The court based its decision on the importance of avoiding further uncertainty "for parents, students, teachers and school administrators at a time when plans for the start of the school year must go forward."<sup>251</sup> The court also admitted its reluctance to "jeopardize in any way" the district's efforts to achieve compliance with the court's revised 46%/39% student enrollment guidelines.<sup>252</sup>

Although the first day of the 1978-79 school year and a new round of racial desegregation went smoothly, parents of Longfellow students continued to express frustration that the school board had acted so quickly to close the school. Several of the parents decided to send their children to parochial school.<sup>253</sup> As one parent complained, "They did it so fast . . . They didn't give us any alternative and we didn't have a chance to fight it. They don't even listen to you. They decided and that's it."<sup>254</sup>

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246. Duty & McGrath, *supra* note 235, at 1A, 4A.

247. Gregor W. Pinney, *Parents' School Appeal Denied*, MINNEAPOLIS TRIB., Aug. 11, 1978, at 1B.

248. *Booker*, No. 4-71 Civ. 382 (D. Minn. Aug. 9, 1978).

249. Pinney, *supra* note 247, at 1B.

250. *Booker*, No. 4-71-Civ. 382, slip op. at 3 (D. Minn. Aug. 9, 1978).

251. *Id.*

252. *Id.*

253. Gregor W. Pinney, *Several in Desegregation Plan Enroll in Parochial Schools*, MINNEAPOLIS TRIB., Aug. 29, 1978, at 1A.

254. Debra Stone, *Students Are Adapting, But Many Miss Longfellow*, MINNEAPOLIS STAR, Sept. 6, 1978, at 7B.

## V. The Eighth Circuit Approves Continued Jurisdiction

As the district's plan for implementing the court's 46%/39% desegregation guidelines went forward, the Eighth Circuit Court of Appeals considered the district's appeal of the court's order retaining jurisdiction over the litigation.<sup>255</sup> At oral argument in September, 1978, attorney Duane Khronke argued on behalf of the school district that the district court's jurisdiction over school desegregation should be terminated. Eighth Circuit Judge Ross expressed concern about the ramifications of the school district's position: "I suppose every school district in the country, . . . could say '[w]e've done what you asked;' and then would go back to what it was before."<sup>256</sup> Judge Ross also took issue with the district's contention that it had sufficiently desegregated the Minneapolis schools: "Judge Larson says you never have [complied] with his opinion."<sup>257</sup> When counsel for the school district advised the court that the district had complied with the court's faculty desegregation orders and had discontinued the optional attendance zones and discretionary transfers which had contributed to segregation in the past, Judge Henley observed, "[t]hat says you've done everything *but* integrate."<sup>258</sup>

A month after the oral argument, the Eighth Circuit panel unanimously affirmed Judge Larson's May, 1978 ruling.<sup>259</sup> Judge Henley, writing for the court, stated simply:

The instant case was filed in August, 1971, and Judge Larson has worked with it for more than seven years. As the Addendum to the Board's brief establishes, the trial judge has filed a total of at least fourteen opinions and orders in the case. . . . Prior to 1978 the Board did not see fit to appeal from any of the orders of the district court . . . .

Judge Larson has a familiarity with this case and the problems it presents that this court cannot easily obtain. We see nothing clearly erroneous in his factual findings; we see no misconceptions of law in his 1978 opinion; and we see no abuse of discretion in the results that he reached.<sup>260</sup>

At a school board meeting shortly after the Eighth Circuit's ruling, Superintendent Arveson reported that preliminary information from the district's annual sight count indicated that all the city's schools would comply with the 46%/39% student enrollment

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255. *Booker v. Special School District No. 1*, 585 F.2d 347 (8th Cir. 1978).

256. Gregor W. Pinney, *New Judges Hear City Desegregation Case*, MINNEAPOLIS TRIB., Sept. 16, 1978, at 1A, 4A.

257. *Id.*

258. *Id.* (emphasis added).

259. *Booker*, 585 F.2d 347 (8th Cir. 1978), cert. denied 443 U.S. 915 (1979).

260. *Id.* at 354-55.

guidelines for the 1978-79 school year.<sup>261</sup> Despite the projected compliance, the school board members who voted in favor of the initial Eighth Circuit appeal, now voted to petition the United States Supreme Court for review.<sup>262</sup> Board member Olson explained the appeal as "a matter of principle."<sup>263</sup> Olson added, "[i]t's so we can run our schools instead of having Judge Larson run our schools."<sup>264</sup>

The district's semi-annual report to the court in December, 1978 confirmed Superintendent Arveson's earlier prediction that all schools would comply with the court's order for the first time since the court case began.<sup>265</sup> The compliance resulted from additional busing and from the use of a technique called "controlled enrollment."<sup>266</sup> Under controlled enrollment, principals at some schools simply refused to admit minority students after the beginning of the fall term if the minority percentage was too high.<sup>267</sup> A total of 157 minority students from five schools in the north and east areas of the city were turned away from their "first choice" school and were assigned to other schools by the time the district filed its semi-annual report in December.<sup>268</sup>

As the district continued its efforts to meet the court's guidelines for the fall of 1979, the United States Supreme Court issued an order refusing to review the district's contention that it should be released from the court's jurisdiction.<sup>269</sup> School board member Harry Davis, one of the three board members who had opposed the appeal, reacted to the high court's decision: "I feel very excited and very happy about it . . . . To appeal the decision of a judge that had bent over backwards to let us determine our own destiny was an

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261. Nancy Paulu, *City Schools Will Further Appeal Race-Mixing Bind*, MINNEAPOLIS STAR, Oct. 25, 1978, at 8B.

262. *Id.*

263. Gregor W. Pinney, *Arveson: Schools Meet Court Orders*, MINNEAPOLIS TRIB., Oct. 26, 1978, at 1A, 7A.

264. *Id.*

265. Gregor W. Pinney, *Minority Enrollments in City Schools Reach Court Ordered Levels*, MINNEAPOLIS TRIB., Dec. 9, 1978, at 13A.

266. *Id.*

267. *Id.*

268. *Id.*; Gregor W. Pinney, *5 Schools To Stop Enrolling Minorities*, MINNEAPOLIS TRIB., Sept. 2, 1978, at 1A. North High School's full-time minority enrollment continued to exceed the court's revised 46%/39% guidelines. North did achieve compliance through enrollment control in the part-time desegregation program, which the court had approved for North and the predominately white schools of Henry and Edison in northeast Minneapolis (the HEN program). By requiring late enrolling students at North, Henry and Edison to take at least two of their classes each day at one of the other buildings, North's minority enrollment was reduced to below the guideline percentages at every hour of the day. *Id.*

269. *Booker v. Special School District No. 1*, 443 U.S. 915 (1979).

exercise in futility, I think. I would rather have spent that money on providing better education and retaining minority staff."<sup>270</sup>

#### A. *Claims Against Housing Officials Dismissed*

A month after the Supreme Court's decision, Judge Larson issued an order ending the school district's efforts to implicate federal and city housing officials.<sup>271</sup> According to the district, the Minneapolis Housing and Redevelopment Authority (MHRA) and the United States Department of Housing and Urban Development (HUD) had frustrated the district's efforts to comply with court-ordered desegregation by building low income housing on the near north side of Minneapolis, which increased the concentration of minority residents in that area of the city.<sup>272</sup>

Housing officials raised numerous arguments in support of their motion to dismiss the district's third-party complaint.<sup>273</sup> The court found most persuasive those arguments directed to prudential, equitable and practical considerations. Judge Larson wrote, "[i]n the words of the Supreme Court, '[o]ne vehicle can carry only a limited amount of baggage.'"<sup>274</sup> The court's order explained:

Previous Orders in this case state that the District not only knew of the racial segregation in Minneapolis, it exploited that segregation to keep the schools from being integrated. The whole case revolves around what the District did with the knowledge it had. It does not revolve around what kind of demographic pattern the municipal and Federal housing authorities "provided" the District with. On the contrary, the central, litigated issue (to which MHRA and HUD were not parties) was how the District conducted itself given the full knowledge it had of the city's population distribution.<sup>275</sup>

Noting that five years had passed since the district answered the original complaint, Judge Larson refused to consider the "new issues, new parties and new theories of liability" which the district's claims against the housing officials would entail.<sup>276</sup> The court dismissed the district's third party complaint with prejudice.<sup>277</sup>

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270. *Court Refuses Minneapolis Busing Case*, MINNEAPOLIS TRIB., July 3, 1979, at 1A, 6A.

271. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. Aug. 8, 1979).

272. *Id.* at 1.

273. *Id.* at 2.

274. *Id.* at 3 (quoting *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 22 (1971)).

275. *Id.* at 3 (citations omitted).

276. *Id.*

277. *Id.* at 4.



*B. Compliance Through Controlled Enrollment: 1978-1980*

When school began in the fall of 1979, the district's schools were again in compliance with the court-ordered guidelines for student enrollment.<sup>278</sup> As in the previous year, the district employed controlled enrollment to limit the number of minority students when a school was at or near the court-ordered 49%/36% maximum minority enrollment.<sup>279</sup> Claiming it had now fully complied with the court's May, 1978 order, the school district again renewed its motion to terminate the litigation.<sup>280</sup> Plaintiffs opposed the district's motion and filed a separate motion attacking the district's controlled enrollment technique as discriminatory.<sup>281</sup>

At the hearing before the court in April, 1980, plaintiffs argued that, over the previous two years, controlled enrollment had diverted more than 400 minority students for desegregation purposes<sup>282</sup> compared to only 10 white students involved in the HEN program.<sup>283</sup> Judge Larson agreed that the controlled enrollment plan as implemented raised serious concerns — serious enough that he was unwilling to terminate the court's jurisdiction until the district could demonstrate that the burdens of its desegregation plan, including controlled enrollment, did not fall inequitably on minority students.<sup>284</sup> Plaintiffs also objected to the district's failure to develop an adequate plan to hire and retain minority teachers. Although the proportion of minority teachers had not declined as feared, and in fact had remained constant at approximately 10%

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278. Gregor W. Pinney, *Judge to Hear Desegregation Debate*, MINNEAPOLIS TRIB., Apr. 15, 1980, at 1A. See *Court Refuses Minneapolis Busing Case*, MINNEAPOLIS TRIB., July 8, 1979, at 1A.

279. Pinney, *supra* note 278, at 1A.

280. *Id.* at 1A, 6A (the school board asked Judge Larson to end court oversight based on the district's compliance in 1978 and 1979).

281. *Id.* at 1A, 6A (plaintiffs contended the discriminatory impact of the plan violated Judge Larson's original order barring discrimination).

282. *Id.* at 1A.

283. *Id.*

284. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 3 (D. Minn. May 1, 1980). The court suggested that while the controlled enrollment plan as implemented almost exclusively affected minorities,

It does not appear that this is necessary. Rather than only turning away minority students from schools which are close to violating the Court's guidelines, the defendants could also turn away white students at schools with very high majority race percentages and send those students to the schools with racial percentages close to the maximum permissible levels. This would achieve the same result while distributing the burden of this aspect of the desegregation plan more equitably.

*Id.* at 1.

since 1978,<sup>285</sup> the court directed that "[i]f, in fact, a large number of minority teachers must be laid off this fall, defendants should file a written motion immediately and request a hearing before the Court to seek an order to allow defendants to lay off on other than a strict seniority basis."<sup>286</sup>

Two months later, in July, 1980, the district's first black school superintendent, Richard Green, assumed control of the district's operations. Green proposed pairing predominantly white and predominantly minority schools for "two-way controlled enrollment," so that "when minority students must be sent to another school, that school . . . [would] send its late white enrollees to the school with a higher minority enrollment."<sup>287</sup> Green also offered to provide a long range plan for more permanent district-wide integration.<sup>288</sup> In the fall of 1980, two-way controlled enrollment succeeded in increasing the number of white students diverted to other schools.<sup>289</sup> However, the number of white students who actually participated in the two-way program was less than expected because many senior high white students simply refused to report to their assigned school.<sup>290</sup>

In January 1981, plaintiffs asked the court to retain the case until the issues of controlled enrollment and minority teacher retention were fully resolved.<sup>291</sup> Plaintiffs also requested the opportunity to review the district's long range integration plan, which the district pledged to complete by May, 1981.<sup>292</sup> On January 27, 1981, the court agreed to retain jurisdiction until after the district had submitted its long range plan, with the caveat that, "[a]s previously noted, the case has been pending for about nine years and like all

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285. Pinney, *supra* note 278, at 6A (it was expected that since the layoff lists contained a disproportionate number of minority teachers, the district would not be able to retain minority teachers).

286. *Id.* at 2.

287. Kate Stanley, *There's Still a Long Way to Go to Real Integration in the Schools*, MINNEAPOLIS STAR, July 25, 1980, at 4A ("Because more minority students than white students . . . [were] late enrollees, . . . [it was] estimated [that] 69 percent of students bused . . . [would be] minority group members, even though those students made up only 28 percent of public school enrollment [during the 1979-80 school year].").

288. *Id.* at 4A (Superintendent Greene's plan involved a "10-year long-range projection of enrollments, buildings, and programs").

289. Gregor W. Pinney, *School-Switching Plan Involves More Whites*, MINNEAPOLIS TRIB., Dec. 5, 1980, at 1B.

290. *Id.* at 1B, 7B. Of the 156 white high school students who were diverted under the controlled enrollment procedures, 81% did not report to their assigned school. Some of these students went to a technical school or other specialized program. Others dropped out of school, left the district, or went to private schools. *Id.*

291. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 1 (D. Minn. Jan. 27, 1981).

292. *Id.* at 1-2.

cases it must sometime end.”<sup>293</sup> On June 17, 1981, the court approved a joint proposal by plaintiffs and the school district to eliminate controlled enrollment and to raise the enrollment guideline to a maximum of 50% minority student enrollment.<sup>294</sup>

Judge Larson also agreed to retain jurisdiction for one more year to allow the completion of the district’s long range plan.<sup>295</sup> The plan would incorporate pending school board decisions concerning which buildings to keep open and which to close. The parties agreed to design the long range plan to insure that each school’s minority enrollment would not exceed the district-wide average minority enrollment by more than 15%.<sup>296</sup> In addition, the parties agreed that the student population of every school in the district would be involved in the district’s desegregation/integration effort.<sup>297</sup>

## VI. Ten Years of Desegregation

In August, 1981, ten years after the initial Hale-Field pairing began the desegregation process in Minneapolis, *Minneapolis Tribune* writer Greg Pinney reviewed the progress and the changes in Minneapolis public schools since August, 1971: “No longer does the city have ‘minority schools’ in the center and ‘white schools’ everywhere else. Minority and white students have been spread around to such an extent that it is difficult to put those labels on any school anymore.”<sup>298</sup> There were other major changes in the district as well. Total enrollment of whites declined from 58,000 students in 1971 to 29,000 students in 1981, a decline of 50%; and minority enrollment increased from 8,700 in 1971 to 13,000 in 1981, an increase of 70%.<sup>299</sup> Some observers claimed desegregation was responsible for the overall declining enrollment, especially among white students.<sup>300</sup> According to Pinney, however, enrollment began dropping prior to desegregation due to declining birth rates.<sup>301</sup>

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293. *Id.*

294. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 2 (D. Minn. June 17, 1981).

295. *Id.* at 3.

296. *Id.* at 2.

297. *Id.*

298. Gregor W. Pinney, *Desegregation Strips Race Labels Off Schools*, MINNEAPOLIS TRIB., Aug. 31, 1981, at 1A.

299. *Id.* at 4A (“When the case began, 87 percent [of the students] were white and just 13 percent were black or Indian or Hispanic or Asian. When it ended, the white proportion had shrunk to 69 percent, and the minority part had risen to 31 percent.”).

300. *Id.*

301. *Id.* (suburban school enrollment also reflected this pattern due to declining birth rates).

Desegregation undoubtedly caused some students to leave the Minneapolis public schools, although no hard data exists on how many actually left for this reason. The percentage of students enrolled in private schools fell in the early 1970s when desegregation began, but rose during the late 1970s to reach 18.6% in 1980.<sup>302</sup> Reports do suggest that parents reacted to specific desegregation decisions by withdrawing their children from the public schools. For example, when pairing first began there, an unusually large number of students in the Hale-Field area transferred to private schools or left the district.<sup>303</sup> Seven years later, 64 students left the public school system when the district closed Longfellow.<sup>304</sup>

Proponents of desegregation nonetheless viewed the results of the process favorably.<sup>305</sup> Even avowed opponents of busing conceded that desegregation helped create a climate in which Superintendent Green, the first black superintendent in Minneapolis, could be appointed. Busing opponent and school board chair Philip Olson commented, "I feel better about [Green's appointment] than anything we've done in busing."<sup>306</sup>

Superintendent Green pronounced desegregation a success in reducing racial isolation in the school district.<sup>307</sup> Green shared his views about the benefits of desegregation when, as principal of North High School, he appeared before the advisory committee to the United States Civil Rights Commission:

The basic benefit is coming to know someone who exists outside your frame of reference . . . the breakdown [of] the fear and stereotypes and myths that people have about other people, and that goes across racial lines. . . . One of the other pluses is to do away with the distinction that is perpetuated by some researchers that whites suffer academically when they move into a desegregated setting . . . or the other myth is that blacks learn more when they sit in a classroom with whites.

We find that achievement is based on individual capability and competence and continues to be based on individual capability and competence.<sup>308</sup>

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302. Pinney, *supra* note 298, at 1A ("Across the state, the percentage of students' in private schools fell from 19.7 to 9.3 percent and then gained . . . after 1975").

303. *Id.*

304. *Id.*

305. Gregor W. Pinney, *11th Year of City School Desegregation Begins*, MINNEAPOLIS TRIB., Aug. 30, 1981, at 1A, 5A.

306. *Id.* at 1A.

307. *Id.* at 5A ("Racial isolation has been diminished in the school district. I feel it has made a contribution in the community toward bringing that about . . . I think desegregation made it much easier for new immigrants (the Indochinese) to settle in this community. I think it broke the way for that to occur").

308. Advisory Comm. Tr., *supra* note 9, at 507-08. Attorney Quaintance offered his own views to the advisory committee on the issue of student achievement:

*A. The District's Long Range Plan: 1982*

As promised, in the spring of 1982, the district submitted a long range plan to the court coupled with a desegregation/integration plan for the years 1982 through 1986. The long range plan contemplated 17 school closings in response to financial considerations and the district's declining enrollment.<sup>309</sup> The plan required major dislocations of students and teachers at the outset, but then allowed a period of stability of at least five years.<sup>310</sup>

Plaintiffs challenged the plan as placing an unequal burden on minority students. Plaintiffs requested the court eliminate a programmatic exchange program for North and Edison High Schools, keep open two other successfully desegregated schools, and relocate some of the primary centers to communities with substantial numbers of minority residents.<sup>311</sup> After reviewing each of the plaintiffs' concerns, the court approved the plan proposed by the district, stating "it is important to view the deficiencies shown by plaintiffs in the context of a plan that will represent a major step toward desegregation/integration throughout the city as a whole."<sup>312</sup> In view of these deficiencies, however, the court decided to retain jurisdiction for "at least one more year so that the Court will be able to monitor the implementation of the desegregation/integration plan."<sup>313</sup>

*B. The Court Ends Its Jurisdiction*

One year later, on June 8, 1983, Judge Larson dissolved his order governing the desegregation of the Minneapolis public

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[Y]ou don't integrate because the kids get higher test scores; you integrate because otherwise people are scarred. The children are scarred and know [that] they aren't deemed as worthy or as worthwhile as the kids in the white schools.

*Id.* at 443. Quaintance advised the committee that:

in the context of Minneapolis, . . . when a school becomes racially identified as a black school or as an Indian school, . . . what happens is that that school is shunted off to the side. It doesn't get the same kind of support, and . . . the kids who go to the racially identified schools get the message that they aren't worth as much as the other kids.

*Id.* at 441-42.

309. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 2 (D. Minn. June 22, 1982); see *Desegregation/Integration Plan: 1982-83 through 1986-87*, Minneapolis Public Schools, 1-3, *Booker v. Special School District No. 1*, No. 4-71 Civ. 382 (D. Minn. Mar. 31, 1982).

310. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 3-4 (D. Minn. June 22, 1982).

311. *Id.* at 14.

312. *Id.* at 14.

313. *Id.* at 15.

schools.<sup>314</sup> He noted that seven or eight years ago some members of the school board completely opposed integration/desegregation and any remedy the court might impose. Now, Judge Larson said, he was "convinced that the majority, if not all, of the School Board and the Superintendent and his staff will support the constitutional rights of the students and will respect the rights of all of our citizens, including students, to the equal protection of the law as required by the Constitution."<sup>315</sup> The order concluded:

The Court believes and finds that the District should have the opportunity for autonomous compliance with constitutional standards, that the State Department of Education should and will monitor implementation of the long range plan which includes integration/desegregation and that the North-Edison exchange program satisfies constitutional standards.

The complaint in this case was filed in 1971 and a number of trials, hearings and other proceedings have continued since 1972. The Court appreciates the dedication of plaintiffs and their counsel to the integration/desegregation process and to the maintenance and preservation of constitutional rights.<sup>316</sup>

After it was clear neither party would appeal the court's ruling, Judge Larson agreed to discuss the case publicly with reporter Greg Pinney.<sup>317</sup> Larson shared some personal information, including the fact that he and his children graduated from the Minneapolis public schools.<sup>318</sup> He also discussed the criticism he received from friends and neighbors and in letters written to him during the litigation. Despite the controversy, Judge Larson said he enjoyed the opportunity to work on school desegregation issues and had no hesitation about his decision in 1972, ordering the district to desegregate.<sup>319</sup>

The judge did confess to some misgivings about relinquishing jurisdiction over the desegregation process: "I think the pressure I could exercise as a judge in enforcing the orders could make it more likely there will be compliance."<sup>320</sup> "But," he added, "I think enough progress has been made. And, I'm impressed with the in-

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314. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 6 (D. Minn. June 8, 1983).

315. *Id.* at 5.

316. *Id.*

317. Gregor W. Pinney, *Constitutional Rights Came Before 'White-Flight' Concerns for Judge*, STAR TRIB. (Minneapolis), July 8, 1983, at 1A, 5A.

318. *Id.* at 5A ("It had never occurred to him [at that time] that the system had been practicing segregation").

319. *Id.* ("I decided this was both a legal wrong — that was true, it was a constitutional wrong, a violation of the 14th Amendment — and I thought segregation was a moral wrong").

320. *Id.*

terest of the board and the superintendent and staff and teachers to continue to make it work. . . . [Overall] the final results, although not entirely perfect, . . . [do] represent a reasonable desegregation-integration program."<sup>321</sup>

## VII. Desegregation Today

A decade has passed since the court relinquished its jurisdiction over the district's desegregation efforts. Both the racial composition of the student body and the district's approach to educating its students have changed to some degree. Student enrollment in the suburban school districts surrounding Minneapolis remains largely white. In Minneapolis, however, students of color now make up over half of the public school enrollment.<sup>322</sup>

The district continues to rely on the concepts of teaching alternatives and parental choice to maintain desegregated schools. The city is divided into three large busing zones, and parents may decide among schools within each zone.<sup>323</sup> Alternatives also include district-wide magnet schools that offer specialized programs on Native American language and culture, French, international culture and the fine arts, math and science, Spanish or the urban environment.<sup>324</sup>

Two of the district's magnet programs operate outside State Board of Education desegregation rules. In 1991, the district obtained a variance to operate its American Indian and French program with over 80% minority-race students.<sup>325</sup> The State Commissioner of Education also agreed that the district could operate an experimental all-black academy on the city's north side.<sup>326</sup> Both the Afrocentric Educational Academy and the Native American magnet program feature cultural enrichment along with other subjects. The Native American program aims to reflect Indian cultural values and includes the study of French, Dakota and Ojibwe languages. The school's theme is a circle, a symbol of unity and completeness for many Indians.<sup>327</sup>

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321. *Id.*

322. Rob Hotakainen, *Community Schools Movement Prompts a Clash of Values*, STAR TRIB. (Minneapolis), Feb. 24, 1992, at 1A.

323. Kevin Duchscher, *Multiple Choice: Twin Cities Parents Have Many Options on Schools*, STAR TRIB. (Minneapolis), Jan. 25, 1992, at 1B, 2B.

324. *Id.* at 2B.

325. Rob Hotakainen, *Panel Waives Desegregation For School*, STAR TRIB. (Minneapolis), Aug. 13, 1991, at 1B.

326. Rob Hotakainen, *All-Black Academy OK For Now*, STAR TRIB. (Minneapolis), Aug. 22, 1991, at 1B.

327. Rob Hotakainen, *Whites in Demand at School for Indians*, STAR TRIB. (Minneapolis), Aug. 12, 1991, at 1A, 6A.

The theme of the Afrocentric Educational Academy is "Dreamkeepers," and posters in the school pay tribute to them: Harriet Tubman, Malcolm X, Booker T. Washington, Thurgood Marshall, Louis Armstrong.<sup>328</sup> The district began the academy in January, 1991, at the urging of black parents. Although the academy is open to all students, it is aimed at finding new ways to help black students succeed in Minneapolis schools. In 1991, all of its students and teachers were black.<sup>329</sup> The Minneapolis Urban League has opposed the all-black academy as "a step to resegregating the schools."<sup>330</sup> The NAACP has also voiced concerns regarding the academy: "As a temporary thing, it is fine. As a permanent separate school, we would be totally opposed. . . . The fact of the matter is that it is born out of desperation. Something has to be done."<sup>331</sup> School officials have supported the programs as a means of reaching students of color who may have difficulty succeeding in other programs. At least one school board member has acknowledged that continuation of these programs raises "some of the most interesting, important, profound and difficult issues facing public education in the '90s."<sup>332</sup>

Other city residents have simply advocated more neighborhood schools. Proponents of neighborhood schools say creating the schools would slow middle-class flight to the suburbs, save money in tight transportation budgets, and make it easier for parents to become involved in the schools.<sup>333</sup> According to one school board member, "[i]t's people from the neighborhoods — including a lot of minorities — asking for neighborhood schools" as part of the neighborhood revitalization planning process sponsored by the city of Minneapolis.<sup>334</sup> Opponents of the return to neighborhood schools say the risks are too great: "The risks are that you'll immediately see extremely unequal schools. It's a big step toward a place where we've already been: back to the future."<sup>335</sup>

The district has begun to develop new plans to guide its operations over the coming years. Included in the discussions are con-

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328. Rob Hotakainen, *I am Special: The Afrocentric Education Academy, Minneapolis' Experiment in Education, Teaches More Than The Three R's*, STAR TRIB. (Minneapolis), June 9, 1991, at 1A, 12A.

329. *Id.*

330. *Id.* at 12A (quoting Charles Nichols, Chairman of the Board of the Minneapolis Urban League) "[T]he league's board voted 24-0 to oppose the academy, reasoning that it's wrong to use public money to isolate black students." *Id.*

331. Rob Hotakainen, *A Clash of Ideals Puts All-Black School to Test*, STAR TRIB. (Minneapolis), July 19, 1991, at 1A, 15A.

332. *Id.*

333. Hotakainen, *supra* note 322, at 1A.

334. *Id.*

335. *Id.* at 9A.



cepts of neighborhood schools, school choice and school transportation priorities.<sup>336</sup> Meanwhile, the State Board of Education has given preliminary approval to replace the requirement that no school operate with a minority enrollment which exceeds 15% of the school district's average minority enrollment.<sup>337</sup> The Board proposal replaces the 15% standard with a more general requirement "that students be integrated in a way that improves achievement."<sup>338</sup> The Board has also proposed a desegregation plan which includes all seven counties in the Twin Cities metropolitan area.<sup>339</sup> The plan is voluntary, and success may depend, in part, on the response of the Legislature.<sup>340</sup> At least one news reporter believes that a lack of money, hardened attitudes and inconvenience for families stand in its way.<sup>341</sup> Yet others believe that while metropolitan desegregation plans are "bound to arouse opposition," eventually a metropolitan-wide approach is "going to have to happen,"<sup>342</sup> because "[d]iversity is crucial to our society and our children [and] [i]f we don't embrace this plan in a voluntary way, in two or three years [the courts] will do the job for us."<sup>343</sup>

Issues of desegregation and integration will continue to play a prominent role in educational policy in the coming decades. In facing the challenges that lie ahead, school officials, parents and teachers would do well to remember an admonition from one of the many orders Judge Larson issued in *Booker*: "I should remind the School Board and School officials that whether or not this Court retains jurisdiction, they still have an obligation to respect the Constitution of the United States, which requires equal protection of the law for all of our citizens regardless of race."<sup>344</sup>

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336. *E.g.*, Hotakainen, *supra* note 322, at A1 (discussing neighborhood school and transportation priorities); Duchscher, *supra* note 323, at B1, B2.

337. Nancy Livingston, *State Plan Would Halt School Desegregation*, ST. PAUL PIONEER PRESS, Nov. 10, 1992, at 1A, 8A.

338. *Id.* at 8A.

339. Laurie Blake, *Desegregation Plan Would Include Suburbs*, STAR TRIB. (Minneapolis), Jan. 11, 1994 at 1A, 6A.

340. Laurie Blake, *Metro Desegregation: An Uphill Battle*, STAR TRIB., Jan. 16, 1994 at 1A, 10A-11A.

341. *Id.* at 1A.

342. *Id.*

343. *Id.* (quoting Superintendent Linda Powell).

344. *Booker v. Special School District No. 1*, No. 4-71 Civ. 382, slip op. at 2 (D. Minn. Aug. 8, 1977).

