

CRAWFORD V. LOS ANGELES UNIFIED SCHOOL DISTRICT; AN UNFULFILLED PLEA FOR RACIAL EQUALITY

I. BUSES ACROSS LOS ANGELES

The morning of September 12, 1978 began with the extraordinary and startling sight of over 1000 school buses carrying youngsters in all directions across Los Angeles. Many of the buses were traveling on roads over and around the hills that separated the city center from the San Fernando Valley. These yellow buses resembled segmented caterpillars making their way up and over an obstacle. This obstacle was real, as the hills separated concentrations of racial groups who had no history of collective education. It was as though the Los Angeles Unified School District (LAUSD) had exploded with buses, filled with mostly African-American children going from their African-American neighborhoods to neighborhoods and schools filled with Caucasian children.

This day had been dreaded by many parents and students, both African-American and Caucasian, as the experience was new and filled with suspense. This sight was also a cautionary flag to the rest of Los Angeles that a change was here after years of debate and contention. Both African-American and Caucasian children feared this day because it was the first time they would come together in a school building. It was also the first time that, after a history of racial violence during desegregation in other parts of the United States, this invasion of the races into each other's territory was not violent but filled with hope that African-American and Caucasian children seated in the same school would peacefully coexist.

The summer of 1978 had been full of talk of school desegregation in Los Angeles. The Los Angeles police had predicted that this first day of busing would be a day of violence based on the busing experiences in other urban school districts. But, other than new bus drivers losing their way, there was no physical interference with busing or the students, and the day ended with all children safely returned to their homes and their

families. After all, on that first day, buses had transferred between 40,000–60,000 students from neighborhood schools to assigned schools. The students ranged from grades four through eight. The city breathed a sigh of relief that school integration was finally becoming an ordinary fact of life.

The buses were the first tangible result of a lawsuit that began in 1963 and dragged its weary way through the legal process until finally coming to rest in the trial court thirteen and a half years later. This September morning in 1978 was either the beginning of integration or the first day of its journey toward defeat. But that comes later. It was time to relax for a bit.

The story of the long process, both before and after this September morning, and a judgment as to whether it had any positive effect in Los Angeles, is the subject matter of this work. This lawsuit is commonly known throughout Los Angeles as the *Crawford Busing Case*.

II. MARY ELLEN CRAWFORD

In 1961, Mary Ellen Crawford sought to enroll in South Gate High School, the closest high school to her residence. She was refused enrollment for no reason other than the School Board's policy to ensure the separation of races. Instead, she was told to enroll at Jordan High School, which was farther away from her home than South Gate. There was a significant difference between the two high schools, which were 1½ miles apart. True, they were both within the LAUSD and they both had teachers, a campus, and buildings. But beyond that, there was a striking difference. Jordan had a student body composed of over 99% African-American students. South Gate had an enrollment of 98% Caucasian students. The attendance boundary between the two schools was the Los Angeles River, the Standard Pacific railroad tracks and Alameda Boulevard, the main truck thoroughfare that carried trucks delivering cargo to and from San Pedro and Los Angeles. There were few pedestrian crossings, which would have required bridges. South Gate was on the east side of the river, which contained the tracks and Alameda Boulevard as well. Jordan was on the west side of these obstacles. Consequently, the assignment of Mary Ellen Crawford to Jordan was not only in furtherance of maintaining a dual school system but also subjecting the few African-American students who lived in the city of South Gate to a dangerous route to school. Her assignment to Jordan was not only unfair but also dangerous.

The parents of Mary Ellen Crawford sought court relief from this racially motivated and arbitrary attendance action. They alleged in the

complaint, filed in the Los Angeles Superior Court, that the LAUSD had discriminated in establishing attendance boundaries, which created a dual school system based upon race.¹ Her suit was late in relation to the myriad of other suits brought in other states to compel desegregation and impose integration. Consequently, the concept was not new to people following the news.

A long history of lawsuits had preceded Mary Ellen Crawford's case, which brought to the forefront, race relations and states' rights. In the seminal 1954 case, *Brown v. Board of Education*, the U.S. Supreme Court prohibited separation by race in public schools. The LAUSD ignored *Brown* under the rationale that it was not relevant to California. The LAUSD could see no defect in the operation of its schools. Eight years passed from the U.S. Supreme Court's declaration in *Brown* before California took any affirmative steps to change its public policy of tolerating segregated schools.

California finally took these steps when a complaint was filed in the Los Angeles Superior Court by Mr. Jackson, the father of an African-American student.² Mr. Jackson said that his son had suffered discrimination by the Pasadena School District in refusing him admission to a school whose student body was mostly Caucasian. The California Supreme Court's opinion in *Jackson*, in favor of the plaintiff, was the legal opening that the attorneys for Mary Ellen Crawford sought to file a complaint on behalf of their client to force the LAUSD to allow African-American school children to attend schools with Caucasian children and abolish racial segregation in the district.

III. RACIAL SEGREGATION IN THE UNITED STATES

At this point, it is necessary to examine in more detail the history of racial intolerance and segregation in the United States, the existence of which was the barrier to obtaining the full fruits of the North's victory at the conclusion of the Civil War. At the end of the war, the Nation thought there would be no further race problems upon passage of the post-Civil War Amendments; namely the Thirteenth, Fourteenth and Fifteenth Amendments which were adopted by the Congress under extreme pressure from the northern states, and were required to be adopted by any former confederate state that wished to rejoin the United

1. Crawford v. L.A. Unified Sch. Dist., No. 822-854 (Cal. Super. Ct. filed Feb. 11, 1970) (Findings of Facts and Conclusions of Law and Order of Judgment) [hereinafter *Crawford*, No. 822-854].

2. Jackson v. Pasadena City Sch. Dist., 382 P.2d 878, 878-79 (Cal. 1963).

States.³ For the southern states, these Amendments were difficult pills to swallow.

This was clearly demonstrated in probably the most famous Supreme Court decision on state rights, *Plessy v. Ferguson*.⁴ The holding in *Plessy* allowed the relationship between Caucasians and African-Americans to remain the same as it was prior to the Civil War. This treatment by the Caucasian race was not forbidden by the Fourteenth Amendment. The case clearly retained social conduct which left the badge of slavery and relationships between the races untouched except in clearly defined state action. This required that state services only be provided equally. Services did not need to be integrated; separate services were the only requirement. U.S. history does not show a national outcry at the establishment of the *Plessy* doctrine, and the disparate treatment required by the separation of races was widely accepted, even in schools, which is of such import that it is almost a fundamental right.⁵

This allowed dual school systems to be provided by the states until *Brown* in 1954, when the dual system was abolished with a clear command that state separated facilities by race, even though equal, were not equal—that equality required that there be no separation of the races in state services, especially education. Slavery, as institutionalized in the South, was never an issue in California, which had aligned itself with the North during the Civil War. However, California had a similar issue with race caused by economic factors.

IV. SEGREGATION IN CALIFORNIA

A. The Relationship Between Caucasians and Asians

Section III above described the battle for equality between the African-American and Caucasian races. It was a story of legal slavery and Civil War, leading to the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, which were demanded by the North and accepted reluctantly by the South. In California, however, the Civil War era coincided with the need for cheap labor in mining, agriculture, and railroad construction which led to another form of inequality. When a large number of Asians were imported by labor contractors to

3. U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; U.S. CONST. amend. XV.

4. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

5. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); *Plyler v. Doe*, 457 U.S. 202 (1982).

fulfill the need of manual labor in the development of the economy, California insisted upon the maintenance of a dual culture. Caucasian society welcomed this labor on an economic basis. This differed from slavery because the importation and use of the Chinese was contractual and legal, but left the Chinese in the same social and economic condition as the freed slaves. What also differed between the two was an element of physical cruelty in slavery that was not present in the relationship between the Asians and the Caucasians in California. The relationship in California between these races could be characterized by the words “demeaning” and “mean,” but not physically cruel. There was an existence of two societies carefully maintained by state regulation, custom, and xenophobia.

This relationship between Asians and Caucasians in California is best described in the majority opinion of *People v. Hall* in 1856, when Chief Justice Murray described the injury which would be inflicted upon the race if Asians were given equal rights.⁶ In describing this injury to the Caucasian society, he used the following words:

The anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State, except through necessity . . . ; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown [false] between whom and ourselves nature has placed an impassable difference, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our Government.⁷

This was the low point of state action, making the Chinese second-class citizens. While that case was overturned, the xenophobic opinion of Chief Justice Murray remained a signpost for much of California in the next six or seven decades of California history.

When the economic depression in the East finally made it to California in late 1870, competition with the Chinese for jobs led to riots. Xenophobia, especially directed at the Chinese, was rampant. One example from that period was the policy of San Francisco in *Yick Wo v. Hopkins*.⁸ The Caucasians who owned laundries (and were the

6. *People v. Hall*, 4 Cal. 399 (1854).

7. *Id.* at 404-05.

8. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

minority) convinced the Board of Supervisors that, in the interest of safety, wooden structures could not be used for laundries because of the use of open flames necessary to heat laundry water.⁹

On its face the regulation appears rational and consistent with safety. However, the Board of Supervisors and everyone else in San Francisco were also aware that Chinese owned over 80% of the laundries, and the vast majority located their businesses in wooden structures. Most of the remaining laundries were owned by Caucasians and housed in brick buildings, thereby giving them a monopolistic advantage. The U.S. Supreme Court invalidated the actions of the San Francisco Board of Supervisors on the grounds that there was no evidence of danger in the use of wooden structures and that the ordinance was in violation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.

Yick Wo was only one example of how the Chinese were treated by the State of California as undesirable residents. California eventually allowed Chinese-born and U.S.-resident children to attend public schools. However, the state's attendance policy was limited to an all-Chinese school unless the school district had no provision for the Chinese schools. The excuses given for the exclusion of Chinese children from public schools open to Caucasians were the differences in culture, language, and ability, but the truth of the fact was that it was based upon an antipathy toward the Chinese race. The Chinese had a long fight in order to gain full advantage of public school admission policies treating them equally with all other races, including African-American children.

The same demand for cheap labor in California was satisfied by the importation of Japanese from Hawaii, a territorial possession of the United States, and by inducements of American labor contractors in Japan seeking agricultural laborers for California. Their productivity and initiative fit the needs of California's agricultural interests. Immigration policy controlled Japanese immigration into the United States, but economic conditions and racism dictated their living and working conditions upon arrival. They too were restricted by the rules of public schools for the admission of Asian students. The presence of the Japanese in California did not appear to be a threat to the Caucasian race, although the popular phrase "Yellow Peril" belied the deep xenophobia toward Asians in the United States.

9. *Id.*

The Emperor of Japan noted the fact that Japanese were excluded from public schools in San Francisco when President Roosevelt was suggested as a mediator in the peace between Japan and Russia. The Japanese Emperor was quite adamant that the Japanese had been insulted by California, especially by the San Francisco School District through this refusal. President Roosevelt wanted to be recognized as an international power and decided, apparently, that Yellow Peril would not necessarily be increased if the Japanese were admitted to public schools in California. Roosevelt had a difficult time, but was ultimately effective, in convincing the California legislature and the San Francisco School District to admit Japanese to the public school system. This agreement took effect in 1908.

The Yellow Peril Doctrine became an actual factor in the worst kind of xenophobia when the Japanese Navy attacked Pearl Harbor on December 7, 1941—when suddenly all persons of Japanese descent, including U.S. citizens, were seen as individual threats to national security. The xenophobes came out of the woodwork with claims that their Japanese neighbors had secret shortwave radios, and that the Japanese fishermen all had Imperial Navy commissions. People of Japanese heritage, both citizens and non-citizens, were removed from their homes and sent to American-style concentration camps, where most were held until the end of the war regardless of citizenship and residency status. Such imprisonment was accomplished without trial, court order, or charge. The post-war awards by the Congress to the Japanese citizens and residents injured by the state government action were pitifully small; however, our cultural history since then has treated the Japanese with less injury than California has treated children of African-American and Hispanic families.¹⁰

In many instances, migration and treatment of minorities in California was based upon the need for cheap labor. This created resentment with established Caucasian laborers. It was not until World War II, around 1942, that the demand for labor made working in California attractive, especially surrounding the war related industries and services. Demand for cheap labor was especially notable around the urban areas of San Francisco, Oakland, Los Angeles, and San Diego due to the war efforts. Figure 1 illustrates the sharp rise in minority population in the Los Angeles area during this time.¹¹ California schools and other institutions particularly sensitive to population were overwhelmed and unable to address the issue until the War ended and

10. Civil Liberties Act of 1988, 50 U.S.C. § 1989b (2008).

11. See *infra* Figure 1 p. 264.

the population became more permanent. The LAUSD had difficulty in contemplating the necessity for planning for the minority growth that was clearly shown by the U.S. census and the School District's own racial statistics. When the demand for minority schools was finally recognized, the response by the School District was to build schools within the areas populated by minorities.

It was easy for Californians to portray themselves as progressive, liberal, and racially tolerant and not at all reactive to desegregation as the Caucasians were in the South. The news out of the South was well publicized by scenes described in newspapers, magazines, and pictures on the TV screens. However, the minority pressure was little noted by news media in California. The intolerance and the reaction of the South were disapproved of in California public opinion, or at least by Californians who described themselves as tolerant of desegregation. California had closed its eyes to its own history of intolerant treatment of Asians.

It is an uncomfortable truth that California was not tolerant of other races and was ignorant of the benefit the Asian immigration contributed to the welfare of California. The availability of Asian labor in California was a sore point during bad times of economic depression, and Asians were blamed for stealing jobs from American labor and being "non-American" in their behavior. Despite state policies and federal law, local public opinion governed local school districts and city governments. Local control was considered essential to the enhancement of public education.

FIGURE 1: CENSUS FIGURES FROM 1860-1990¹²

Year	White	Black	Asian	Hispanic
1860	87.9	1.5	0.2	-
1870	93.4	1.6	3.0	-
1880	92.8	0.9	5.4	-
1890	93.7	2.5	3.8	-
1900	95.7	2.1	2.2	-
1910	95.6	2.4	1.9	-
1920	94.8	2.7	2.4	-

12. Percentage of White, Black, Asian and Hispanic in the City of Los Angeles. The Hispanic inhabitants were not counted as a separate race until 1960.

1930	94.6	3.1	2.2	-
1940	93.5	4.2	2.2	-
1950	89.3	8.7	1.7	-
1960	83.2	13.5	3.0	-
1970	77.2	17.9	3.6	-
1980	61.2	17.0	6.6	47.8
1990	52.8	14.0	9.8	39.9

B. The Ignored Hispanic Community

The initial pleadings and proceedings in the suit brought by Mary Ellen Crawford ignored a plight similar in nature suffered by the children in the Hispanic community. When California became a state, it was bound by the terms of the 1848 Treaty of Guadalupe Hidalgo.¹³ Specifically, the Treaty guaranteed Mexican residents the same legal rights they had previously held in Mexico. However, the Caucasians who flooded the state after the discovery of gold completely submerged the Mexican civilization, and the social and cultural status of resident Mexicans gradually declined until, they too, became second-class citizens. The Mexican children went to de facto segregated schools. Such segregation was commonplace in southern California and unquestioned until 1946.

In *Westminster School District of Orange County v. Mendez*,¹⁴ parents of Mexican children challenged the School District to integrate the Mexican and Caucasian schools. Unfortunately, when the case was filed and appealed, the legal effect was solely within the specific district at issue.¹⁵ Subsequently, the legislature and schools in California did not regard this case as binding law upon the rest of the school districts in California. Separate Mexican schools had been chosen by school districts containing a large number of Mexican residents and created segregation.

The xenophobia exhibited against the Asians and Mexicans was also expressed toward the growing African-American population that settled in California during and after WWII. However, in spite of the political and judicial pressure in other parts of the United States for physical desegregation, California never saw the same parade of

13. Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922.

14. *Westminster Sch. Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

15. *Id.*

lawsuits that arose from the desegregation chaos of the South. The protests against segregation were more in tune with the national demand for civil rights than for specific institutional changes in California. For example, the Berkeley sit-ins and African-American racial protest in the Bay Area were social protests against racism in general and not directed against specific institutions. With sporadic and violent acts occurring around the time Mary Ellen Crawford's case was filed, one wonders whether the resistance and antagonism of the School Board and the public toward desegregation and integration was because of fear and distrust of each race toward the other.

If one consolidates as a whole all the factors of the history of racism in the United States and the racism at the time of *Brown*, it is understandable why school desegregation was not popular. Even California, as liberal as it proclaimed itself to be, found in 1963 little favor for instituting desegregation in public schools.

C. California Desegregation in 1963

The importance of the year 1963 with respect to school desegregation was the declaration by the California Supreme Court in *Jackson v. Pasadena* that Pasadena's practice of separating children by race in Pasadena's school system was prohibited by the California Constitution.¹⁶ The import of that decision imposed a duty on local California school districts to desegregate to a much higher standard than that required by the federal decision in *Brown*. The ease of bringing the suit without the necessities of the formalities in the federal system left open an invitation to sue in state court. Hence, Mary Ellen Crawford became a plaintiff along with other similarly situated minority children in the LAUSD.

The filing of *Crawford* in 1963 revealed the astounding fact that the LAUSD did not keep a census in numbers of racial minorities enrolled in their schools. When the census was prepared as required by law, the 1966 enrollment figures showed a dual school system maintained deliberately by the LAUSD, controlled by a Board of Trustees, reflecting their voter constituency of politically active Caucasian persons.¹⁷ The history of California's racially discriminatory treatment of the Asian population was a template for similar treatment

16. *Jackson v. Pasadena City Sch. Dist.*, 382 P.2d 878 (Cal. 1963).

17. See *infra* Figures 2 and 3 pp. 267-68.

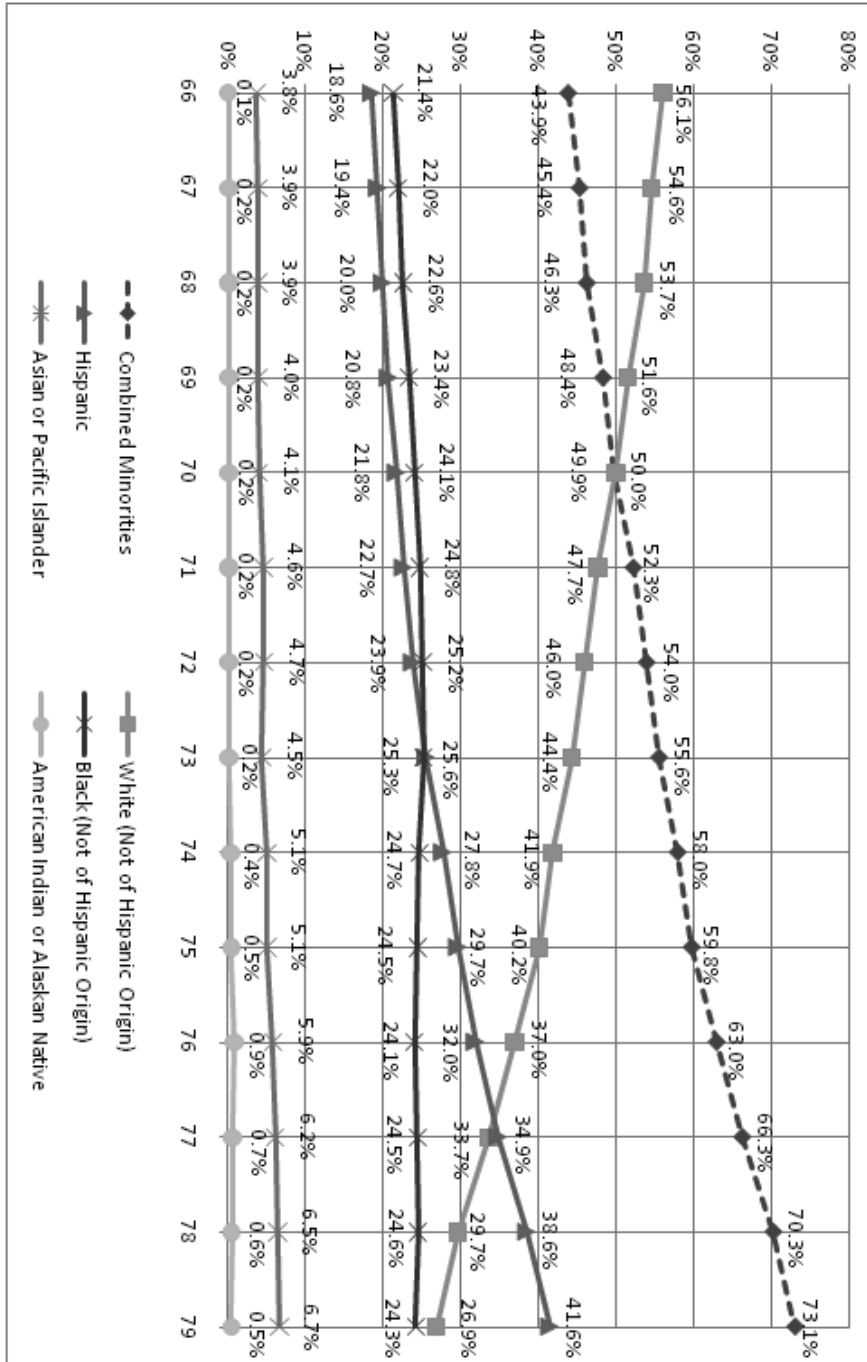
of minorities, including African-Americans and Hispanics. There was no popular demand for a desegregated school district and no action from the LAUSD Board of Trustees in spite of the clear evidence of the increase of minority students. One had the feeling that the School Board was paralyzed and in a state of denial at the time of Mary Ellen Crawford's lawsuit.

FIGURE 2: DISTRICT RACIAL AND ETHNIC ENROLLMENT PERCENTAGE¹⁸

Year	W	B	H	A	A.I.	% of M. S.	% of C. S.
1966	56.1	21.4	18.6	3.8	0.1	43.9	56.1
1967	54.6	22.0	19.4	3.9	0.1	45.4	54.6
1968	53.7	22.6	20.0	3.6	0.2	46.4	53.6
1969	51.6	23.4	20.8	4.0	0.2	48.4	51.6
1970	49.9	24.1	21.8	4.1	0.2	50.2	49.8
1971	47.7	24.8	22.7	4.6	0.2	52.3	47.7
1972	46.0	25.2	23.9	4.7	0.2	54.0	46.0
1973	44.4	25.3	25.6	4.5	0.2	55.6	44.4
1974	41.9	24.7	27.8	5.1	0.4	58.0	42.0
1975	40.2	24.5	29.7	5.1	0.5	59.8	40.2
1976	37.0	24.1	32.1	5.9	0.9	63.0	37.0
1977	33.7	24.7	34.9	6.1	0.6	66.3	33.7
1978	29.7	24.6	38.5	6.5	0.6	70.2	29.8
1979	27.0	24.1	41.8	6.7	0.5	73.1	26.9

18. Graph of Racial and Ethnic Percentages by Year in LAUSD. Acronyms: W=White; B=Black; H=Hispanic; A=Asian; A.I.=American Indian; % of M. S.=% of Minority Students; % of C. S.=% of Caucasian Students.

FIGURE 3: LOS ANGELES UNIFIED SCHOOL DISTRICT, RACIAL AND ETHNIC PERCENTAGES BY YEAR



V. EARLY STAGES OF LITIGATION

Mary Ellen Crawford's complaint was based upon the *Jackson* case, which imposed a new and different duty upon public schools in California.¹⁹ The federal court was the court of choice for mandates concerning desegregation and obedience to the Supreme Court's opinion in *Brown*. It was not until 1963 that the LAUSD became unavoidably aware that the California Constitution, according to *Jackson*, required every public school administrative body, including local boards, county school boards, and the state school board, to erase, by reasonable and feasible means, every instance of racial segregation in the student body, staff, and teachers which existed within their jurisdiction, regardless of how the segregation originated.²⁰

The state law set forth in *Jackson* differed from the federal system because it lowered the legal and factual hurdles to maintain desegregation lawsuits. The popular differential between the federal requirement and the state requirement was called "de jure" as opposed to "de facto." The federal courts interpreted the U.S. Constitution to require a specific and intentional act by the School Board that was designed to segregate the races.²¹ California's de facto rule, as enunciated in *Jackson*, required simply that segregation be found in the school systems regardless of the cause.²² This rule disregarded the federal rule, which required an act by the School Board as a causative fact, and recognized that the evils of segregation could be caused by external actions such as public opinion, public law regarding zoning, job discrimination, etc. The result was that California required only that before a remedy was applied, proof must be shown that there was segregation in the school without any causal connection to any act of the School Board.

This eliminated the need for a factual finding of a specific wrong inflicted by the district in its admissions policy. The result was a grant of protection to minority children in a manner that was easier to apply than the rules followed by the federal courts. *Jackson* relied upon the equal protection clause contained in Article I, Section 1 of the California Constitution. The equal protection clause mirrored almost exactly the protection granted in the Fourteenth Amendment of the U.S. Constitution that states shall not deny protection to their citizens based

19. *Jackson*, 382 P.2d 878.

20. *Id.*

21. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

22. *Jackson*, 382 P.2d at 878.

upon race.²³ California had relied upon states' rights jurisprudence that recognized that the states have the right to control the administration of schools and, therefore, if the state gave greater protection to its minority citizens, it was not in violation of the Fourteenth Amendment.

Unfortunately, the California Supreme Court did not take into account the possibility that the law in California could be changed by initiative or the case affected by the threat of judicial recall. The court could not have foreseen the degree to which many California citizens would go to avoid desegregation. There may have been a bit of arrogance in the California Supreme Court in its bold move toward a new remedy of minority rights. Popular remedies reserved to the people of California were not available in the federal court system.

The California Supreme Court assumed rightly that its findings and judgment would be found to be consistent with the federal courts under federal jurisprudence except for the extension of protection to the California minority students. The Crawford family complained to the attorneys who represented the American Civil Liberties Union (ACLU) about the segregation imposed upon their daughter because of race, and the case was filed under the doctrine of *Jackson* against the School Board on behalf of their child, Mary Ellen Crawford.

The case, however, did not follow the normal progression for litigation. Specifically, for several years, many vocal citizens had long advocated that the treatment of minority children by the LAUSD was illegal and that changes should be made.²⁴ As a result of this advocacy, the LAUSD made certain promises of integration that were relied upon by the ACLU until it was clear that no such action was intended by the LAUSD. It was not until four years later after the original filing that the attorneys for Mary Ellen Crawford moved that the case be treated as a class action and, for the first time, included children of Hispanic heritage. Not only was the minority population growing rapidly, but Mary Ellen Crawford had graduated from her high school and her personal situation had become moot. Nevertheless, by order of the court in 1971 or 1972 when the case was finally beginning trial, the lawsuit officially adopted Mary Ellen Crawford's name for the title of the suit and henceforth was known as *Crawford v. Los Angeles Unified School District*.

23. CAL. CONST. art. I, § 1; U.S. CONST. amend XIV, § 1.

24. The most vocal of these advocates was the team of Professor and Mrs. Caughey. Their advocacy was supported by popular publications of articles and books detailing the injury minority children suffered from the continued racial segregation in the LAUSD schools.

In the meantime, the demography of the student population was changing, as shown in Figures 2 and 3, and with every delay, segregation became more serious and more difficult to remedy.²⁵ As I was not connected with the case until 1975, I am not sure of the reason for any of the delays until the case was finally assigned for trial in 1971, but I have been informed, and many observers felt, that desegregation would have been practical while the demography still indicated a majority of Caucasian students.

As this delay was being experienced, the jurisprudence in the federal courts became more and more restrictive as school desegregation became more controversial, and it was not helped by the resignation of many of the justices on the Warren court. Public opinion had decidedly lost its willingness to embrace *Brown* and became less enamored with court-ordered attendance and busing to accomplish desegregation. I think protection of the status of the majority Caucasian citizens seemed endangered, and while desegregation was not controlled by popular vote, it certainly was represented by the change in public opinion that sought to diminish the effect of desegregation orders.

California state courts were required to follow *Jackson* and Crawford's filing in California state court gave hope to those who thought that there was a sense of justice in *Jackson*, which did not require intentional segregation for a successful cause of action. I do not believe there was any other state that departed from federal jurisprudence; California was alone and the *Jackson* standard remained the basis of California desegregation jurisprudence until 1981.

In the case of *Jackson*, the duty of each of the school boards, county boards, and the state was to eliminate every aspect of segregation in the school structure, insofar as it was possible.²⁶ This was eight years after *Brown*, but without a lawsuit like *Brown*, California passed some regulations instructing the school boards how to effect desegregation, and these regulations became a part of the *California Educational Code*. They were completely ineffective and attempted to duck the requirements of *Brown*.²⁷

The 1966 Los Angeles racial riots did not impress upon the LAUSD the necessity of remedying any of the problems within the African-American areas of Los Angeles. The commission that studied

25. See *supra* Figures 2 and 3 pp. 267-68.

26. *Jackson v. Pasadena City Sch. Dist.*, 382 P.2d 878 (Cal. 1963).

27. I found in *NAACP v. San Bernardino City Sch. Dist.*, 187 Cal. Rptr. 646, 648-49 (Ct. App. 1982) that these regulations were unconstitutional and unenforceable. This opinion was affirmed by the Supreme Court of California.

the riots, commonly referred to as “The Christopher Commission,” concluded that the economic conditions and atmosphere reflected the fear and apprehension of school integration in Los Angeles. The violence of the riots likely exacerbated the LAUSD’s resistance to desegregation. The Christopher Commission identified problems that could not be divorced from the failure of the School Board to correct the injuries caused by the dual school system. In addition, the School Board’s policy indicated that desegregation would hinder the education of Caucasian children by introducing an “inferior” group to the classroom. Further, the School Board placed little value in attempting to educate the African-American youngsters. They believed the simple goals of reading, writing, and arithmetic were sufficient.

Such was the racial background in Los Angeles County while Mary Ellen Crawford pursued her lawsuit. In 1967, the case was first heard by Judge Alfred T. Gitelson, which lasted until his ruling came out in 1970. As mentioned in Part IV, both parties during discovery recognized that a census of the student body by race was essential. The attorneys were surprised to find that no such census existed and realized that one had to be conducted to continue the lawsuit. In 1966, a document was produced which clarified the overall racial profile of the district’s student body.²⁸ The table indicates that in 1966, Caucasian students made up 56.1% of the total student body and total combined minorities represented 43.9%.

Ignoring the requirements of *Jackson*, the LAUSD initiated a feeble, voluntary plan entitled Permits with Transportation (PWT) that gave 10,000 African-American students the opportunity to integrate with Caucasian children. This integration effort encouraged the African-American students to volunteer for a daily bus ride to the San Fernando Valley to be enrolled in Caucasian schools, located thirty miles away. The voluntary plan placed the entire burden to desegregate upon the African-American students, which was consistent with the LAUSD’s policy that integration/desegregation be voluntary and not compulsory. This was one hell of a way to solve the problems of segregation and desegregation by leaving it to the lawyers, when the heat of their battle neglected the needs of the Racially Isolated Minority Schools (known as “RIMS”) and their students.

Thirteen years elapsed from the time the suit was commenced until the California Supreme Court sustained the issuance of a mandate to the unresponsive School Board. Inevitably, and without compromise, the

28. See *supra* Figure 2 p. 267.

lawsuit proceeded with a fury of energetic, skilled lawyers in battle, using their talents for a win and not a solution that would improve the plight of the RIMS' children. However, the story of the battle supplied a political springboard for the minor politicians, headline seekers, and yes, advocates with pure hearts looking for a solution. Despite all this, the trial began on March 23, 1977.

VI. JUDGE GITELSON'S JUDGMENT

The *Crawford* lawsuit required that the court issue a writ of mandate that would require the respondents to acknowledge their duty to eliminate all segregation within the district regardless of the cause, and design and adopt a plan to do so. If the district refused to obey the mandate, the court could take all other available means to enforce its provisions even to the extent of removing the School Board or body in charge and replacing it with court-appointed officials. These types of duties are the most serious job required of a court because all activities involving these types of lawsuits revolve around the judge's decisions as opposed to a jury's. The judge has great discretion in his duties and actions as long as the actions do not exceed due process. Therefore, in equity matters, the judge has a large and personal responsibility because a jury does not temper the effect of his judgment. A judge hearing a desegregation case is not to be envied because of the personal responsibility for large societal changes. Subject to criticism by the citizens, he is seen as a judge without restraint and suffers public rebuke for his actions. He cannot hide behind a jury verdict.

Judge Gitelson was appointed in 1963 by the presiding judge of the Los Angeles Superior Court to hear the *Crawford* case. He finally completed the first phase of the case on May 12, 1970, in which he concluded that the LAUSD was segregated, and that Mary Ellen Crawford was entitled to relief by a mandate that required the school district to desegregate. This judgment was a sonic boom heard all over the county. Judge Gitelson became known as the "busing judge" to his detriment and chagrin. Unfortunately, he publicized his decision just prior to the last date for filing by ambitious persons who wanted to be elected a judge. During the election campaign, his opponent campaigned on the political issue that Judge Gitelson ordered busing. His opponent then joined forces with a San Fernando Valley organization that opposed mandatory assignment and busing called "Bustop." Judge Gitelson campaigned hard but was soundly defeated at the polls. His last year as a Superior Court judge was 1970. Judge

Gitelson was reported to have said that his defeat was a racist decision of the electorate.

His defeat sent a second shock wave through the Los Angeles judiciary which had not suffered election defeats for years except in cases of misconduct or incompetence of sitting judges. For eleven years prior to his defeat, Judge Gitelson had been known by attorneys and fellow judges as extremely competent. I do not remember that he had been accused of excessive progressiveness or had ever made segregation or desegregation a political issue. His defeat was a disaster for the court system, as it shook the sense of stability which most judges had in believing that he or she was a judge for life.

Following Judge Gitelson's order, the LAUSD filed an appeal, which sat with the Second Division of the Court of Appeals for five years without decision. I am unaware of the reasons it took so long, but I believe the appellate division hoped the U.S. Supreme Court would eventually overrule *Jackson*. When an opinion was finally issued, it declared Judge Gitelson's actions to be unconstitutional, and Crawford immediately appealed. The California Supreme Court to which the decision was appealed was essentially the same court that had written *Jackson* and had several other desegregation cases under consideration, and it issued a quick and surprisingly unanimous decision stating that the mandate was in line with California law.

To the intense disappointment of the School Board and opponents of desegregation, the California Supreme Court sent it back to the Los Angeles Superior Court with orders to proceed and to enforce the mandate. The Supreme Court denied certiorari in the case. This cleared the way for the Los Angeles Superior Court to put the matter back on its calendar for further hearing. The judge who replaced Judge Gitelson had very little to do with the case while appeals were pending, and the case first re-appeared on the Superior Court's calendar in June 1976 for the secondary phase of overseeing the enforcement of the mandate and determining the intentions of the School Board. However, during the six-year period between the appeal of Judge Gitelson's order and the California Supreme Court's decision, the case hid itself from public view.

VII. MY FIRST DESEGREGATION CASE IN SAN BERNARDINO

During the early 1970s, I was assigned by judicial council to hear a similar school segregation case in San Bernardino County, where there was a persistent fear that busing was to be ordered. The thirteen members of the San Bernardino Superior Court were aware of Judge

Gitelson's fate and hoped that the case would go away or that the council would appoint a judge from another county. The council obliged and I, as a Los Angeles County judge, was assigned to the case.²⁹

My assignment to the San Bernardino case was not done in the usual fashion. Some time in 1971, when the judicial council was looking around for a judge to assign to the case, I met with the presiding judge of the Pomona District whom I had known for years. At his request, we met for breakfast, and he said he had good news for me. He said, "Would you like to go to San Bernardino to hear a motion?" I inquired about the nature of the motion which he assured me was "just a civil motion." He told me it was set for hearing in a week. I did not know what was going on in San Bernardino that would cause every judge there to declare a conflict.

I went out cold, thinking it was going to be a half-day motion, and I could have dinner in Palm Springs. Upon my arrival, I ran into a sea of TV reporters, newspaper people, and noisy crowds filling the front of the San Bernardino courthouse and the lobby inside. Apparently, the courtroom where I was going to sit was full of people, but I did not know which courtroom it was, and I did not know what was going on. I saw a bailiff I knew, and he took me into the courtroom, which was through the crowd. Back in the chambers I asked, "What is this about?" The bailiff said, "Oh, this is the desegregation case, and this is the first day of its trial." I said, "No shit!"

After presiding over the case for several weeks, I then understood why thirteen judges in San Bernardino much preferred the case be heard by an assigned judge from some other county. The anti-desegregation groups were noisy and not always eloquent. It was good old-fashioned race and culture bias. Normally, on an unpopular case, tradition in that court (and in other smaller courts) assigned the case to the most junior member. So when the first twelve judges looked like they were pointing to Judge Campbell, he begged for mercy as he had just been appointed. He also knew better than anyone that his tenure in office would only last until the next election if he presided over the case. I knew him personally, and he was most enthusiastic about my appointment to that San Bernardino case. I heard the case in broken sessions for a period of about two years.

The case was interesting. Both sides agreed on which schools were segregated, and the only question was the manner in which they

29. NAACP v. San Bernardino City Sch. Dist., 119 Cal. Rptr. 784 (1975).

were to be desegregated. The litigation prior to my assignment had been noisy and turbulent, which was no surprise in light of the race problems in the city. The school district trustees knew at this point that desegregation was the right thing to do, but they did not know how to do it, keep their seats, and prevent a recall and other actions that would be detrimental to the court, the School District, and the community.

I heard the case and declared the provisions of the current condition of desegregation to be unconstitutional.³⁰ I declared that the district was not following *Brown* and *Jackson* and had intended not to follow them, but they did attempt to desegregate on a voluntary basis. My decision went up to the California Supreme Court and came down on the same day as the *Crawford* case.

To my surprise, there was not any violence that I know of in San Bernardino in reaction to the case. The community seemed to reluctantly accept the decision of the supreme court, and the School District's counsel informed me that they intended to prepare a desegregation plan. I gave them time to do so and to present it on an agreed date in the future, which is why I was not busy with the San Bernardino matter during the period of time I first entered into the problems with the *Crawford* case in Los Angeles in 1977.

VIII. MY APPOINTMENT TO *CRAWFORD*

The presiding judge of the Los Angeles Superior Court remembered that I was the presiding judge on the companion case to the supreme court decision in *Crawford*. He concluded that I could be assigned to *Crawford*. Neither party raised an objection and, without any controversy, agreed with the presiding judge that I should be assigned.³¹ This happened before he talked to me. So when he called in February 1977 to say the parties had agreed to my assignment, he appealed to my ego. What could I say but yes, ignorant as I was about what I was getting into?

In retrospect, if I had not wanted the case, I could have begged off. But in truth, I felt I would probably be the best choice. I still do not really know why I took the case at all, except that I believed in the principles of *Brown*. Moreover, I was relieved to have a break from the routine civil calendar, and this case was challenging. It sounded

30. *Id.*

31. What I have just related is what I was personally aware of. But an interesting account of the negotiations between the parties in judge selection is given by Fred Okrand, attorney for the ACLU, in a 1982 oral history. This account is somewhat different than the knowledge I had of my selection.

interesting, so I agreed. I must be frank that I felt comfortable with the constitutional problems, as I had been teaching Constitutional Law at the University of La Verne College of Law for at least ten years.

The media scrutiny was intense, and it was only then that I realized I was going to be the subject of strong public interest and would have to get used to it. The publicity surrounding the case was painful, as my name was attached to everything I had done, what I was going to do, and why I should not do it. But I must confess, I became addicted to the *Los Angeles Times*' accounts of the case. I soon learned that I was the best known four-letter-word in Los Angeles. These personal discomfitures became minor when I began reading the court file.

I finally got a peek at the file that was being held for me in the presiding judge's custody, and promptly became very unhappy that I had accepted the case. I knew enough about desegregation and the troubles it causes to a judge and to the court in crafting an order that would be acceptable to the public, not to mention to organizations such as the National Association for the Advancement of Colored People (NAACP). After reading the file, which was over sixteen volumes of transcript from Judge Gitelson's trial and his order mandating the school to desegregate, along with the affirmation of his order in the last part of 1976, my heart sank. I learned that the Los Angeles County School District, with an area of 714 square miles, was the second largest school district in the United States. It had nearly 600 schools and close to 600,000 students.³²

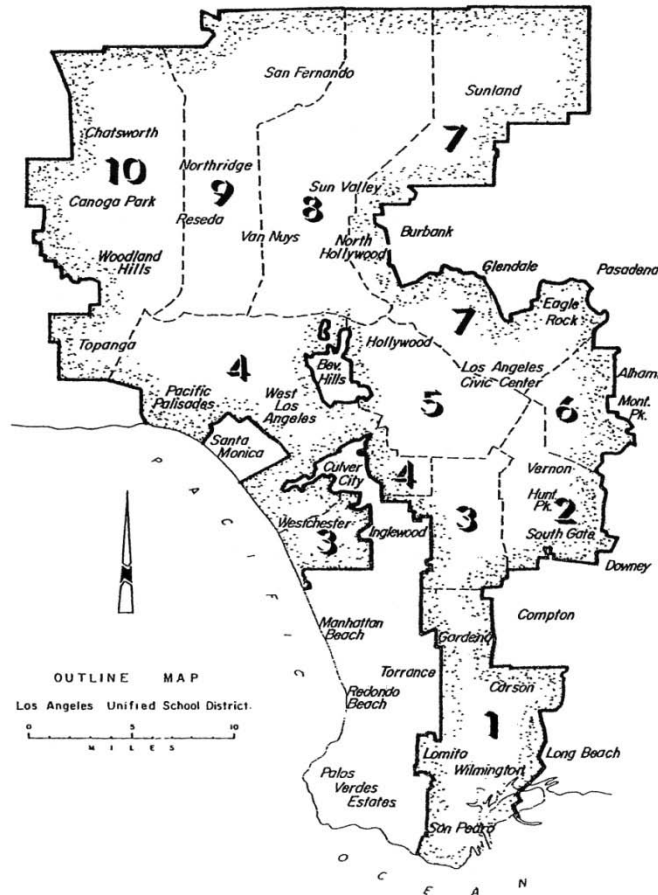
Further, while I did not know the exact budget or the cost of desegregation, I suspected that it would be terribly costly because of the distances between segregated African-American schools and segregated Caucasian schools, the public opposition to busing, and the pre-existing Order which included mandatory assignments. In addition, there were underlying racial problems which had become apparent in Los Angeles with the Compton riots and subsequent civil disorders. Based on my experience, I knew it would be difficult, if not impossible, to satisfy all the parties or enforce the mandate. The California Supreme Court told the trial judge, now me, that the court was to let the School District do the best it could to come to a solution and interfere with it only to the extent the School District proved recalcitrant. If the School District became recalcitrant, the trial judge was given broad discretion to take any other measures which would effectively, within reason and feasibility, desegregate the LAUSD. I consoled myself with the thought

32. See *infra* Figure 4 p. 279.

that this assignment would be an interesting experience in attempting to sort out the many, and major, problems.

First, the distances were too large between the minority and majority. Second, the number of segregated Caucasian schools was far too small to accomplish any significant desegregation, and the disparity between the number of minority students and those classified as Caucasian was growing wider every year. Third, there was a lack of enthusiasm amongst most of the district's constituencies about complying with the mandate. After all, the case had been filed in 1962 and had not been the center of attention until I was assigned to enforce the mandate. For these reasons and many more, I was pessimistic of success but hoped that the School District would approach solving the problem with their expertise and enthusiasm. Altogether, the outlook was bleak, none of which was an excuse to nullify the California Supreme Court's order by pleading impossibility. And so, a trial date was set for March 23, 1977, only one month after I received the case.

FIGURE 4: MAP OF LOS ANGELES UNIFIED SCHOOL DISTRICT³³



33. Numbers indicate Administrative Districts without illustration of segregation. It has little bearing as to segregative effect.

IX. SEEKING PUBLIC SUPPORT FOR CRAWFORD'S POSITION

Prior to the trial date and after reviewing the court file, I had not found evidence of public support for Mary Ellen Crawford's position, especially in view of the fact that Judge Gitelson had anticipated that mandatory assignment for the purpose of desegregation would require bus transportation.

More importantly, I was concerned that the LAUSD would suffer violence and civil disobedience similar to that of other schools, both in the South and the North. I was acutely aware of the 1966–1967 disturbance caused by the race riots in the African-American areas in central Los Angeles. In retrospect, I was wrong. The violence that accompanied desegregation was caused by the Caucasian population attempting to stifle integration, and not by minorities.

With this combination of intuition and knowledge, I concluded that if desegregation was to succeed, it would have to be a community effort. Based on this conclusion, I did a very silly thing. I became a public relations figure to drum up, in a very primitive way, public support for desegregation and integration. The beginning of my fruitless campaign began with conversations with journalists.

At that time, Los Angeles had two metropolitan area newspapers that were circulated to all corners of the county. One, of course, was the *Los Angeles Times*, and the other was the *Herald Examiner*, now defunct. I made an appointment with the editor of the *Herald Examiner*, despite their lower circulation, on an assumption that they covered more local news. I did not know at the time that I talked with the editor that he was desperate to keep the paper alive and thought that desegregation would be a likely prospect for increasing circulation. I assumed that we both knew that desegregation was a good thing, but I soon began to feel that he looked at desegregation as being a "hot" issue if the paper's slant was in opposition.

I tried to get the *Los Angeles Times* interested, but I think they were surprised at my approach and as a result, politely closed the door on my suggestion that the paper support the Petitioners' position prior to the hearing. It was not until some time during the trial of the School Board's first proposed plan that I was invited by the Editorial Board of the *Los Angeles Times* to have lunch with them; however, this seemed to me to be somewhat late in the game. My discussion with the journalists from both papers ended with my discovery that public opinion was skeptical of assigned attendance and busing for the purpose of desegregation.

My next target in my public relations campaign was the mayor of Los Angeles; if there was a reliable public leader who would support a peaceful acceptance of desegregation, it was Mayor Tom Bradley, the first African-American Mayor of Los Angeles. I knew he had not expressed a public opinion on desegregation, but I later learned his support as Mayor was based upon a coalition of the liberal west side and members of the African-American community, both of whom would be political participants and supporters of desegregation. I had known Mayor Bradley through our common participation in other activities in the state, and I assumed he would be on the Petitioners' side. I did not know, however, that desegregation would weaken support from his coalition.

The Mayor was far more sensitive than I to the possibility of failure and problems involved in desegregation, but he invited me to discuss the matter in his office on a Saturday morning. I thought it strange that he picked a Saturday morning for this discussion, and it was clear that he devised a way for me to get from the parking lot directly to his office while bypassing the reception area in City Hall. We had a pleasant chat. I wanted to convince him that the supreme court had spoken, that the LAUSD was required to institute desegregation, that a peaceful acceptance of the judgment was the best idea, and that Los Angeles would not end up like Boston with riots and demonstrations that had plagued its school system over a desegregation order.

We talked about the desegregation case and his sympathy for the Petitioners. I talked about the problem with civil disturbances by both Caucasian and minority leaders to desegregation by using busing as a remedy. We concurred in our hope that there would be a peaceful acceptance of the plan. I said a statement from him would help quell disturbances which, of course, showed my biased assumptions that if there were a disturbance, it would be by the African-American community. I did not know 90% of those who voted for him were also represented by the LAUSD Board of Trustees, and that he would be conciliatory to all members of his constituency. His reply to me was extremely delicate. He said he supported the Petitioners' position, but he could do more for them in the background than he could by making a public statement. I was really disappointed. I thanked him, we wished each other well, but that was the last time I had any communication with him. I understood at that point I had better get back on the bench and be a judge, and it would be up to the parties to educate the public in their efforts to oppose or promote desegregation efforts.

I came to the sad conclusion that it simply was not my job to act as a self-appointed public relations politician. I regretted my efforts to

promote a peaceful acceptance of our California legal imperative only to the degree my efforts could be perceived as bias in favor of, or opposed to, either party. As a judge, I had to maintain the appearance of neutrality until I had heard the evidence. Looking back on it, it seemed natural that I, as the judge, should participate in a non-violent reception of any plan that was approved. Approval depended upon acceptance by the public, as public opinion was integral to the requirement of feasibility. I know I felt relief when I accepted the fact that public opinion was the business of the parties and not mine.

X. THE INITIAL CRAWFORD HEARINGS

When the LAUSD announced it would present a plan at the beginning of the hearings, I realized both sides knew the case would require additional discovery and preparation. The Petitioners and the NAACP were limited in resources because the litigation costs were paid out of donations. The Petitioners had difficulty in coming to an agreement as to who was going to represent them at the hearing. I was not privy to the troubles of the Petitioners' choice of settling on counsel, but I knew the ACLU had Fred Okrand as its staff counsel.³⁴ The Respondents had maintained the same counsel for the twelve years prior to the trial, and it appeared they would be well prepared.

In April 1977, three weeks after opening hearings began, the citizen's group who called themselves Bustop made a Motion to Intervene. Bustop alleged that their membership was a majority of the Caucasian citizens in San Fernando Valley. They were insistent that their viewpoint was not represented by the School Board and was unique in its representation of at least 70% of the Caucasian students in the School District. They became organized at the start of the hearings, agreeing that busing was fine for desegregation as long as it was voluntary. They also alleged that many others in the San Fernando Valley did not want their children to be bused into Central Los Angeles. The strongest argument in support of their motion was that the School Board was under a duty to desegregate, and in order to desegregate, it would have to use mandatory assignment of students and the use of busing. There was some logic to their argument, but I shuddered at the consequences and indicated in the court's ruling that their participation was limited to filing *amicus curiae* briefs. I anticipated that if the

34. In an oral history given by Fred Okrand to the ACLU, he recounts the difficulty of assembling enough attorneys for the preparation and trial work.

motion were granted, there would be at least 20–30 groups who would also move to join the suit.

The Court of Appeals reversed my order and allowed “White Flight” to intervene as a party, holding that the interest to be protected was the interest of the health, safety and education of their children if compulsory busing was a part of the mandate. Following that ruling, a parade of people petitioned to become intervenors. Several weeks later, in the next regular session of the court, there were enough attorneys in the courtroom to be declared a section of the California Bar. That day I said that I was taking on a case that was closer to a circus, with myself as the ringmaster.

Each of the parties who were allowed to join had to waive their right to object to the assigned judge and had to accept the lawsuit as it stood. In the early days of that hearing, the title of the suit was expanded to over one-half of a page. The petitions to intervene never stopped. They were all sincere, of course, but most of the attorneys were retained on a pro bono basis and, while their hearts were pure and passionate, they really did not have the time or money for the case. In the long run, most of their interests were heard and there was not too much difficulty in scheduling.

The attorneys on Mary Ellen Crawford’s side for the first hearing of the School Board’s plan were drawn from all the attorneys who, for the prior twelve years, had aided the ACLU in this case on a pro bono basis. However, several weeks prior to the commencement of the hearings, the lead trial attorney for Mary Ellen Crawford was chosen, Edward Medvane. Fred Okrand served as his co-counsel. Medvane’s legal life had been spent on civil rights cases.³⁵

The School Board’s attorneys consisted of the staff attorney for the School Board; however, the School Board also wanted outside counsel and retained the firm of McCutchen, Black Verleger & Shea. The well-known Los Angeles firm represented primarily commercial interests. The lead attorney was G. William Shea, who was the litigation attorney for the firm. All attorneys on both sides were known to each other because of the tremendous amount of discovery that both sides felt was necessary before commencement of the suit.

When the date for trial was set, both sides realized that there was still a tremendous amount of work to be done. For example, the racial composition of all the schools in the district was not precisely known,

35. I think that all of the attorneys appearing for the Petitioners over the years did so because they personally believed in school desegregation.

the minutes of the School Board could not be easily obtained, the inner workings of the School Board in opposition to desegregation were unknown, as were their efforts thus far to prepare a plan. Only two attorneys in this phase of the case had previously appeared in Judge Gitelson's court. Basic problems included not only determining the number of segregated schools and racial composition of each, but also presented such complicated questions as which schools should be labeled racially segregated, either Caucasian or minority, and whether a definite mathematical ratio should be used to make the determination as to whether or not the school was segregated either minority or Caucasian. After the identification of those schools, the problems remained in realizing the extent of the segregation, what plan would be presented by the School Board and what standards the Petitioners would use to evaluate the School Board's plan.

One would think the parties could easily determine these matters, but there was a disagreement on almost every issue. It was as if this was not a case where desegregation was accepted as the law, but instead an effort by both sides to prove who was right and who was wrong. There was a general refusal by both sides to enter into negotiations for solutions. Preliminary conferences were held between the parties and myself in order to determine whether or not litigation was actually necessary to attempt desegregation. Desegregation by the School Board was something altogether different than what the Petitioners believed. There was no question that all of them believed in the principle enunciated by *Brown*, but none of them could agree on the important issues as to how to desegregate, the limits of a desegregation plan, the definition of a segregated school, and the definition of a desegregated school. At that time we were dealing with approximately 570,000 students and the geographic and demographic problems caused by the profile of the district. What made things more difficult was the prevailing public opinion of a majority of the residents of the Los Angeles School District that voluntary attendance to schools of their choice should not be accomplished by a court order but be left to the School District, who would provide the transportation for voluntary assignments selected by the parents for their child or children.

The Petitioners' position, after many years of conflict with the School Board, was to be militant in obtaining a court order, which, if followed, would attempt desegregation by busing to assigned schools. It was as if there was no common agreement that there could be a court order for desegregation by reasonable and feasible means, and that the school should furnish transportation for reassignment. In other words,

mandatory busing was the only option. On March 23, 1977, the trial on whether to approve the plan commenced.

XI. THE SCHOOL BOARD'S ORIGINAL PLAN

March 23, 1977, the first day of examining the validity of the School Board's plan, was significant to all the parties. To the Petitioners, the day was one of hope. To the Respondents, it represented a bitter pill. To the school children and their parents it was the beginning of a long period of anxiety. And to the judge it might signal the end of his judicial career. But there was no other alternative other than to hear the plan. The hearing sequence required that the Board present the plan, explain it, and then move that it be accepted. Of course, the Petitioners, Mary Ellen Crawford, et al., would have the opportunity to cross-examine and resist any motion to accept the plan. If the plan was not accepted and no further evidence was required because it was insufficient on its face, the Board would have to come back with another plan or appeal.

The School Board opened the hearing by introducing their plan, a voluminous document containing terms that reflected the most optimistic hopes of the six Caucasian members of the seven-person School Board. The court learned that the plan was formulated by the School Board without apparent public input.

The School Board had, prior to the hearing, encouraged a citizens group, who had been officially formed, to plan a desegregation solution for the court. The case was to commence on Monday, March 23rd. At a meeting on the prior Thursday, the School Board rejected the citizens' plan and adopted their own plan, which was presented to the court. The School Board's plan was formulated after its members returned from an examination of a desegregation plan in Dallas. The Dallas plan formed the basis for the Los Angeles plan and was almost all voluntary and without compulsory busing. Adopting this plan, the LAUSD evaded the problem of mandatory assignments and busing with the hope of avoiding the animosity of groups like "White Flight." While it involved a lot of busing to and from various schools, it did not change the regular attendance pattern of the neighborhood schools, nor would it raise the ire of the parties represented by Bustop and "White Flight" and their supporters. As a fallback, if some minimal mandatory attendance became necessary in order for the School Board to get its plan accepted, they would introduce such provisions. Consequently, "busing" was not really an objection to transportation by buses per se but a euphemism

for mandatory attendance resulting in a change of neighborhood schools. This plan was offered as a palliative only.

The School Board also suggested that their existing voluntary program could be expanded. This existing voluntary program PWT was limited to minority students with a maximum of approximately 9000 participating minority students out of a total of nearly 300,000. The voluntary program appeared to be unattractive to the Caucasian students. The School Board also insisted that, although they had not formalized other types of voluntary participation, they intended to do so in the future. And lastly, but most importantly, the School Board asserted that they had good intentions to comply with the mandate in all aspects of the plan, and were not recalcitrant in their response to the California Supreme Court.

It was clear that counsel for Mary Ellen Crawford, having had a preliminary look at the plan, were ready to pounce and were prepared for an initial victory. In their mind, a victory was a complete rejection of the plan, a court declaration that the School Board was recalcitrant, and the appointment of a Master to take over and create a plan that would be constitutional. Petitioners' hope ignored the direction shown by the California Supreme Court which required that the School Board be given every opportunity to perform its duty before a declaration of recalcitrance could be made and the court take over. Both sides neglected to consider the possibility of reaching a joint plan which understood and took into account the minority children whose needs had not been met, even though it might end in a *Plessy* solution of equal facilities.

The presentation of evidence, cross-examination, and argument lasted twelve weeks in total, during which coalitions of opposition were formed, especially in San Fernando Valley. There were few public demonstrations of support for the Petitioners' position. By week eight, I was expecting the rest of the plan would solve the problems of desegregation and integration, which I had not yet heard in nearly eight weeks of hearings.³⁶

36. During these hearings, neither party addressed the problems of desegregation. The Petitioners never suggested an alternative and the Respondents ignored the problem by limiting their plan in scope and content. The problems are illuminated by the LAUSD Pupil census as of October 1976—kindergarten through twelfth grade. There were 592,931 students, distributed among 559 schools as follows:

435 elementary schools
75 junior high schools
49 senior high schools

The School Board's plan was clearly an attempt at mild integration, and not one of desegregation of schools. Instead, the School Board planned a series of field trips with students of various ethnic groups to meet during the mid-portion of the day at another school, which would be utilized by both groups simultaneously for several hours of indoctrination, and then return to their home school. In addition, only grades four through eight were involved, leaving untouched minority children in kindergarten through third grade and grades nine through twelve.

In its plan, the School Board made an illogical definition of segregated schools as those having a minority (non-Caucasian) to Caucasian or Caucasian to minority ratio of not less than 80% to 20%. All other schools by this definition were integrated. The segregated schools were either segregated minority or segregated Caucasian. The minority aspect represented by these ratios is described as follows:

Of the total segregated minority schools, there were 183 elementary schools; 26 junior high schools; and 22 senior high schools.

Within the segregated minority elementary schools, there were:

Percentages	No. of Elementary Schools	Minority Students
98%-100%	113	101,162 minority students
95%-98%	24	17,797 minority students
80%-94%	46	34,745 students
Total	183	163,704 minority students

Within the segregated minority junior high schools, there were:

Percentages	No. of Junior High Schools	Minority Students
98%-100%	17	31,577 minority students
95%-98%	5	7595 minority students
80%-94%	4	6593 minority students
Total	26	45,765 minority students

As of October 1976 the ethnic, racial and cultural identification of these 592,931 students was, as follows:

CAUCASIAN: 219,359 or 37.0%
 AFRICAN-AMERICAN: 142,778 or 24.1%
 HISPANIC: 190,363 or 32.1%
 OTHER NON-CAUCASIAN MINORITY: 40,431 or 6.8%

Within the segregated minority senior high schools, there were:

Percentages	No. of Senior High Schools	Minority Students
98%-100%	14	25,385 minority students
95%-98%	4	8395 minority students
80%-94%	4	10,675 minority students
Total	22	44,455 minority students

The basic tool of the plan was the Educational Planning Unit (EPU). This device clustered segregated schools and allowed the parents and staff of the schools comprising the cluster to determine what type of voluntary integration would be accomplished within their units. The EPU concept had been praised by witnesses produced by the School Board because of its voluntary nature and the participation given the parents and staff of the schools in choosing among the several programs offered for integration.

The plan had built-in constraints that prevented any effective expansion for increased impact on the segregated minority schools. The most inhibiting of these constraints were geographical and definitional; the scope of the EPU was determined by both constraints. The limitation of acceptable transportation distance determined the geographical limits of the EPU. The definition of segregated schools and integrated schools determined which schools within those geographical limits could be included in an EPU. This last definition excluded all pupils in schools defined as integrated, which were within the geographical boundary of the EPU but regardless of the exact ratio of the majority to minority pupils, whether 79:21 or 50:50.

The School Board conceded that the ratio by which a school was defined to be either "integrated" or "segregated" had no articulated rationality. Thus, by arbitrary standards, large numbers of students may be included or excluded with just a change of the ratio defining segregated schools. With the existing definitions, there were no mandatory provisions in the plan to expand the scope of the EPU. These constraints operated on the voluntary options given the schools participating in an EPU by limiting the number of schools in an EPU.

There was only one mandatory provision which was a sanction for failure to opt out of a voluntary plan. It was a provision that allowed the judge to change the EPU if it failed to elect a voluntary means of integration by February 1978. The judge's version of an EPU would

require that a minimum of fifty elementary schools within the EPU enter into the mandatory method of integration, known as Specialized Learning Centers (SLC).

SLCs were planned to operate as follows:

The kindergartners within the schools comprising the EPU were exempt from any integration. Children in grades one through three would be required to have a cultural exchange experience with children of the same grade and another race or culture from other schools comprising that EPU for a minimum of ten days each scholastic year. These exchanges would be sharing experiences, which I perceived to be in the form of field trips.

At grades four through six, each child in the fifty schools would participate part-time in an SLC. For two-thirds of their normal school year, the youngsters would maintain their regular school schedule and curriculum at the school to which they were regularly assigned. For one-third of the school year they would report, presumably one hour early, to their regularly assigned segregated school and remain there for one hour. During this hour, they would be given instructions in the basic skills: reading, mathematics, and writing. They would then be placed on a bus and go to a facility housing the SLC. Upon their arrival with their neighborhood school teacher or aides, they would be met by two master teachers permanently assigned there, teaching aides, and youngsters from the same grade from the other segregated schools comprising their EPU. Their curriculum while there would be limited to the social sciences, with emphasis on non-competitive, cooperative, and individual learning techniques. The youngsters would have lunch together, and at 2:00 or 2:30 p.m. each student would then be placed on a bus and returned to his or her regularly assigned segregated home school.

The defined SLC plans stopped at the end of the sixth grade. Thereafter, the student became eligible, if attending the right school, to participate for one year in a cultural exchange or integrated program before graduation from senior high school. This high school program was vaguely outlined in the School Board's plan without specific guidelines. Through the SLCs, the School Board contended that bringing together youngsters of the same grade from schools comprising the EPU for part of a day and part of a year, the schools which each youngster attended as his home school would become desegregated.

I spent a lot of time in these hearings listening to testimony praising the educational concepts of the EPUs and the SLCs as valuable and novel techniques for integration. The School Board's position was

that these techniques were designed to alleviate the consequences of integration and thereby desegregate schools. I did not share this view. No witness presented by the School Board made such a claim and several asserted that the plan did not desegregate. I had repeatedly urged that desegregation must precede or accompany integration.

At the conclusion of the Respondent's case, the Petitioners made a motion, along with intervenors who sided with the Petitioners, to reject the plan, find the School Board recalcitrant, and put the School District in a form of receivership under the management of a court-appointed aster who would oversee creation of a new plan. At the time of the motion, I had serious concerns as to what the next step should be in order to comply with the Supreme Court's admonition that the best plan was one devised by, and not imposed on, the district.

I found that the School Board's plan did not desegregate one single school. At most, it provided field trips for each ethnic group to meet the other. The plan simply failed to comply with the California Supreme Court mandate. On that basis, in July 1977, I granted the Petitioners' motion to reject the plan, but denied the motion declaring recalcitrance and appointing a Master. The School Board did not appeal this order.

The next question, of course, was what would be the next step? Obviously, the School Board had not complied with the mandate, and probably should be given another opportunity to devise an effective plan. By 1977, there was a continuing decrease in the number of Caucasian students and a continuing increase in the number of minority students throughout the district. Time really was of the essence at this point, and the plight of the minority students would become more acute during these proceedings.

XII. WHAT NEXT? CHANGES AFTER THE ORIGINAL PROPOSED PLAN

At the time Judge Gitelson wrote his opinion, the School Board's census of the student body by race was nearly one-half minority. I did not know whether Judge Gitelson had any presentiment of how quickly the minority figures were growing, especially in the Latino population, and to a lesser extent, the Asian population. At the time of the opinion, the African-American percentage was more than 20%, but with the increase of the Hispanic population, that percentage would decrease along with the Caucasian population. The growth of the Hispanic population proved to be extremely intense which reduced the percentage of the African-American students. This growth in the Hispanic population caused different problems, most prominently the failure of the School District to provide sufficient English as Second Language

(ESL) programs, teachers, and classes. The Caucasian percentage was decreasing by the actual removal of Caucasians from the district, termed “White Flight” but the district overall was experiencing a growth.

This meant, in effect, that the percentages were changing so rapidly that I felt rethinking the remedy would have to be done in four sections:

- 1) The forced attendance to other schools for the purpose of physical desegregation and with the knowledge that there would never be a sufficient reservoir of Caucasian students to accomplish much more than a minimal actual integration of students;
- 2) Maximum efforts should be directed to rebuilding or relocating schools in the minority areas so as to minimize minority isolation;
- 3) Provide an agreement with the Teacher’s Union to allow maximum utilization of experienced teachers to the minority schools that needed those teachers; and
- 4) Use equality in educational outcome as a major factor in the integration process.

The above considerations had to be a part of any plan the School Board presented in the future, along with an attempt to cure the injuries to the minority children so that equality in education, while not equal in the term used by *Brown*, would result in equal or better educational outcome as compared to Caucasian children’s education. I felt this was the only practical solution given the geographic and demographic reality. During the course of the hearings, these minority schools were known as RIMS, which was an acronym for Racially Isolated Minority Schools. I think the assumption of the Petitioners was that desegregation would cure many of the RIMS’ problems, but this was a faulty assumption. It was obvious that there were not sufficient Caucasian students to maintain the desegregation efforts with any success. The true problem facing the minority child was not the inability to attend schools with Caucasian children, but the lack of a competent educational program to bring their educational outcome (as close as possible) to that afforded the Caucasian students. The attitude of the School Board and the public was that minority students were

incapable of reaching the same level of education as the Caucasian students because of the racial superiority of Caucasians. It was an assumption perpetuated by the years of racial and cultural bias.

Looking back, both the School Board and the Petitioners ultimately should have presented a plan that improved the RIMS, as sought by the Petitioners, while not requiring the physical desegregation that the School Board was against. But this observation is made in hindsight. The parties neglected the opportunity to implement a RIMS program as a result of their animosity towards one another. When the court suggested to the Petitioners that such a program be devised they objected vociferously on the grounds that this would be *Plessy*. This objection did not analyze the difference between a good faith effort based on reality rather than one based upon the law of *Plessy*. The district was restricted in what it could do for physical desegregation. The majority of the Petitioners could not benefit from those plans.

However, the very least that could be done for the minority schools was to provide equality in all educational objectives and services. An effort needed to be made to relieve the minority student of the badge of slavery in order to provide an education comparable to that of the Caucasian. I think a fair reading of Judge Gitelson's opinion intimated that solution. The School Board's attitude toward the RIMS policy was to ignore the plight of the RIMS and infer a difference between Caucasian and minority students. If it was not the official attitude of the School Board, it was certainly the attitude of many of the Caucasian parents. The *Crawford* lawsuit proved to be an ineffective instrument for social and educational change.

XIII. CONSIDERATIONS IN DESIGNING PLAN II

The answer to Section XII's question, "What next?" was answered by a long, contentious summer in which the School Board attempted to create a plan that could be implemented in the Fall of 1978. The School Board was unprepared to meet the requirements I felt necessary and had to start from the beginning to plan around the minority growth and the factors outlined in Section XII. This new plan had to recognize the rapid growth in the numbers of minority children and plan for their education. This meant that the RIMS should be the focus of Plan II. None of the parties were so focused, and the School Board had not yet shown an interest in such a program. Unless the School Board undertook this as its focus, the lawsuit would come to a practical end. The short deadline was designed to place pressure upon all parties to take a fresh look at the RIMS problem and focus upon the education of

the minority children attending the RIMS. This would substitute for the fading dream of physical desegregation.

Good social policy is not always formed by legal decrees, especially when the decrees disregard public opinion. In this case, the lawsuit started by requesting that the court force the LAUSD to enter into activities which were decidedly unpopular and unsupported by their constituency. *Brown* had signaled to the nation that desegregation needed to occur, but as with any judicial pronouncement, it could not be affected without the support of local units and individual citizens. When the court in *Brown* rejected *Plessy* and declared that equal facilities were not equal protection under the Fourteenth Amendment, one had the feeling that the eloquence of the Court in making this declaration ignored the question, "How do you do it?" Contemporary history was full of instances where the how-to-do-it problem was the beginning of civil disobedience, threats of violence, and political upheaval. These events occurred in the latter part of the 1950s and spilled into the 1960s and 1970s. If the LAUSD was to accomplish desegregation, it had to be accepted without major civil disobedience, and there seemed to be no question in the School Board's mind that forced desegregation was unpopular.

Segregation at that time was still bound by the stereotype that inspired *Jackson*. It was hard at that time, and it is still hard, to blame the School Board for the causes of segregation beyond their control, such as restrictive covenants, zoning, employment, the choices of the residents regarding areas in which they wished to reside, the history of California racism and other factors. However, *Jackson* held that causation or lack of causation was not an excuse to eliminating segregation.

The hearings on the first plan showed the deficiencies of the School Board's planning. Neither the School Board nor the Petitioners, until forced by Plan II, fully considered the obstacles to a successful solution. The factors that had been ignored in the first plan were the residents, the numbers of students, Caucasian or minority, and the geographical relation of each school to the others. Each geographical area also had a varying degree of involvement in the schools, with the West Side and San Fernando Valley quite vocal in advocating for educational policies beneficial for their children. There was an equally vocal call for reform from the African-American community but not from the growing Hispanic population of the city. While Hispanics and African-Americans both would benefit from the reforms that a successful plan was supposed to bring, there was no alliance to be

created due to the cultural and geographic differences between the two groups.

The NAACP very reluctantly agreed to the inclusion of several of the Hispanic political groups who were interested in desegregation as intervenors. They opposed their entry on an emotional level that integration was their battle and not Hispanics'. They were the ones who had suffered, and they were the ones who had started the lawsuit. Unfortunately for them, the U.S. Supreme Court included Hispanics in their definition of under-represented and unprotected minorities under the Fourteenth Amendment. I often wondered, during the course of these arguments, how it was possible to measure a minority other than by color of skin and/or use of language. Popular opinion was based upon the principle that everybody knew the difference between Caucasian and other races. I was not so sure.

Los Angeles at that time was truly a group of communities, each with a definite ethnic and racial identity. The distances between those clearly identified districts was great. The Petitioners said that it was the burden of the district to desegregate and solve this problem, but the Petitioners did not help them out. Discovery had not provided information as to what was a minority in the changing demographics of the district.

The district's area of 740 square miles made it the second largest geographical district in the United States.³⁷ The Caucasian children who resided north of the mountains and in the San Fernando Valley comprised approximately 70% of all the Caucasian students in the district and approximately one-third of the total district population. That percentage was decreasing daily in 1977–1978.

To move between the central area into the San Fernando Valley, there were three major freeway routes, all of which were used by the LAUSD buses. This ensured that all travel times calculated between the locations in the two major areas assumed freeway use to cover what in most cities would be regarded as great distances. This fact and the spatial distribution in the district of the various races and ethnic groups led me to believe that there was relatively little natural connection between the two areas except for whatever communality was created by a common School Board operating within far-flung, but governmentally-recognized, boundaries. The boundaries were

37. Toward the end of the hearings, the square miles appeared in many of the documents as 710, which was different than the 740 used at the beginning of the hearings, and the 780, which was stretched by other parties. The only thing that changed was the number, not the area.

extremely irregular and not determined by geographic barriers. Nevertheless, the LAUSD's history of segregation, as well as the prognosis for desegregation, could fairly be described as originating in large part from the geography of the district.

Substantial and persistent differences existed among the various racial and ethnic groups residing in the Los Angeles area. Broadly defined, there were four large and easily defined groups: African-Americans, Hispanics, Caucasians, and Asians. There were many smaller groups that also had strong traditions and senses of cultural identity. For school desegregation planning purposes, the most important differences among groups concerned their social and economic status, growth rates, and residential distributions.

In stark contrast to the stability of the geographical problem was the rapid growth of minority students within the student body each year. By the time the trial court started its hearings in 1977, the percentage of minority students was 66.3% compared to 43.9% in 1966. This produced over-crowding, and confusion in the School Board as to how they were going to protect the Caucasian children from the influence of the minority children. The court believed that it was the job of the School Board to improve the conditions of the minority children. The School Board could not conceive of the need for equal education.

In 1966, the district conducted the first racial and ethnic survey of its schools. According to that survey, 56.1% were Caucasian, 21.4% were African-American, 18.6% were Hispanic, and 3.9% were Asian. In 1968, the year that this case first came to trial, the Caucasian student population had declined from 351,817 in 1966 to 347,967. The proportion of Caucasians in the district had fallen from 56.1% to 53.7% between 1966 and 1968. In 1970, Caucasian students constituted 49.9% of the population, no longer a majority, but still the largest group. By 1977, the proportion of Caucasians had fallen further to 33.7%; and for the first time, Caucasians were no longer the largest group.

The African-American enrollment reached its peak in 1971, and had declined each year since then. From 1971 to 1979, the number of African-American students in the district dropped from 156,003 to 130,315, a loss of 16% of total African-American enrollment. During this interval, the proportion of African-Americans remained constant at about one-quarter of the total district enrollment. In the fall of 1979, African-American enrollment in the district was 24.1%.

By contrast, the Hispanic enrollment had continued to rise, almost doubling between 1966 and 1979. In 1977, Hispanics became the largest single racial or ethnic group in the student population,

representing 34.9% of the total enrollment. By the fall of 1979, the Hispanic enrollment had risen to 41.8%. Asian enrollment experienced similar escalation on a smaller scale. The number of Asian students rose to 36,269 in 1979, an increase of 50% since 1966.

Student populations in the district were predicted to fluctuate within the upcoming years, without regard to whether a court-ordered desegregation plan was enacted. Hispanic students were predicted to rise to over 50% of the population, while Caucasian and African-American student populations were expected to decline approximately 14% and 18%, respectively. These figures, as prepared by the School District, were accepted as accurate by the courts.

The School Board had access to these figures, but failed to recognize the significant implications they would have upon future desegregation plans. More importantly, the School Board failed to recognize desegregation required more than just transportation and forced attendance assignments. The significance of these figures pointed to a different solution; one that focused on the education of RIMS students in order for them to catch up with the standards applied predominantly to Caucasian schools. Instead, the School Board treated the integration trial as a battle to segregate Caucasian children from minority children rather than realizing geography, demography, and education required that the RIMS students needed the attention, improvement, and a focus equal to the attention given the Caucasian segregated schools. The RIMS students needed to be treated as importantly as other students, not only because they were the majority, but also because they represented the majority of the future citizens of Los Angeles.

XIV. PLAN II

Against all expectations, a sketchy outline of Plan II was filed with the court in October 1977 that changed the terms of the prior plan. The new plan required extensive examination and explanation and was, I felt, "in-your-face, Judge, here's your damn plan." It was elementary, incomplete, and contained several new concepts not previously discussed. Extensive hearings were required to examine the plan. The School Board called many witnesses to testify that the effect of busing and forced assignment would be the destruction of the School District because it would cause White Flight. The experts' testimony was aimed at convincing me that White Flight was propelled mainly by fear of desegregation. The Petitioners presented other testimony which indicated that White Flight was naturally expected with any

desegregation plan, but that the extensive White Flight in Los Angeles was not primarily related to proposed desegregation and probably was not responsible for more than 25% of the White Flight.

I soon realized with all the factors, including the political maneuverings of the School Board and individual schools, that these problems diverted too much of my attention from evaluating the work of the School Board in preparing for Plan II. I needed help. So, at the suggestion of several superior court judges, I requested a referee to help me keep abreast of the activities of School Board and committees attempting to shape Plan II. Professor Monroe Price was recommended because of his previous experience as a trustee in a federal case involving a division of the royalties accruing from north shore oil exploration and exploitation of the immense petroleum reserves on the north shore of Alaska. Professor Monroe Price was appointed with the consent of the parties. His reports were helpful and, as 1977 was coming to an end, it was clear that the parties were nowhere near to a resolution on Plan II.

In late December 1977, Price suggested that a settlement conference between the parties be initiated, and the parties agreed. I did so in hopes an agreement could be reached as to Plan II. In order to provide an atmosphere free from the influence of the public and media, I arranged for the conference to be held in Pomona as it constituted the eastern boundary of the county. Normally, with settlement conferences, the assigned judge attends or otherwise makes himself available, but I knew that if the case were to proceed, that I would be the judge and felt better about not attending. After ten days, counsel informed me that they could not reach an agreement.

An interesting outcome of the conference was a memo from the Petitioners requesting that the state be made a party, as the California Constitution gave the state the ultimate responsibility for education. This had been a thought of mine for several months because then the state could suggest a Metropolitan Plan³⁸ and the decision would not come from the court. But doing so would have prolonged the suit and would not have occurred because of the pressure that the politicians would have found themselves under from their constituents. The year 1977 ended without any movement toward solution or progress by the School Board, which convinced me that it had not seriously undertaken to comply with the mandate.

38. Desegregation crossing political boundaries.

XV. SEARCHING FOR PROGRESS

I started out 1978 feeling that I needed to take some action, but before I could, I had to contend with a motion by Bustop's attorneys questioning my ability to be impartial. I denied their motion to recuse myself, but the law provides that such challenges also be heard and determined by another judge. The case was transferred to Judge Lester Olson, a Los Angeles Superior Court judge. After several days, he denied the motion. So, in late January, the trial on Plan II resumed.

Although Plan II contained the essential elements of desegregation and integration, it failed when it came to the RIMS problem. I often felt that the plan was designed half-heartedly to placate both the public and me, although accomplishing neither. However, it introduced new language into the literature of desegregation and integration. The coverage of the plan was limited to grades four through eight, to commence in September 1978, and contained the promise that it would extend into high school within a year. I was not convinced that the School Board's actions were sufficient, but I was also half convinced there was not much more they could do except expand their program into the lower elementary grades and make specific plans at the high school level. Nothing indicated any original thinking on the School Board's part to improve the RIMS.

In February of 1978, I was tired of the lack of progress but also reluctant to declare the School Board recalcitrant. The fall semester of 1978 was a deadline for all of us. We either had buses rolling or we were in another political and court fight. So with the feeling of "let's jumpstart this thing," I gave Plan II partial approval with the following comments in a Minute Order dated February 7, 1978:

[T]he Court is indicating it is only approving Plan II as an initial step toward eventual desegregation of this district. Until the Court has examined the form of further proposed amendments to the plan and until the School Board has been given an opportunity to act thereon by either implementing such amendments or including them in future plans with specificity to determine whether or not the School Board can meet and intends to meet the mandate, any final approval of Plan II will be withheld and this Court will, pending that approval, continue its jurisdiction in supervising compliance with the previously issued writ of mandate.³⁹

39. See *infra* Appendix.

This was a bitter pill for me as judge and for all the parties. The plaintiffs wanted a declaration of recalcitrance. The School Board wanted an all-voluntary plan, and I wanted more but had big doubts as to whether I would ever see more. Expectations regarding progress in the next seven months were low.

Immediately following this order, the hearings recommenced to obtain the court approval of proposed amendments, plans, and minutia of assignments, bus schedules, and other items of controversy that daily appeared and seemed to me to be nonproductive. It occurred to me that there had been nothing solid in the way of progress, and there should be a possibility of coming up with a Plan II, which would at least recognize, to the fullest extent, all the problems impeding desegregation. I had in the past been accustomed to listening to expert advice on specific issues. If there ever was a need for experts it was in this case, when so much of importance rode upon its outcome. There is a provision in the California Evidence Code that allowed me to appoint my own experts so that the parties and the trier of fact can be better acquainted with expert opinion on matters not normally within everyday experience.⁴⁰ So with the help of counsel, seven experts in the field of education and segregation were picked and approved towards the end of February 1978.

Many of the experts had testified on several occasions and each had written on the subject of desegregation. I certainly needed to hear the experts, and I found them useful in San Bernardino. The *Crawford* case was extraordinarily complicated, and I thought the issues that I had with Plan II were the same issues that the experts would probably ask questions about.

It is normally the practice of the judge in calling his own expert witnesses to direct them to the fields in which he has questions. For this appearance, I attempted to find a private place to meet. The meeting took place at the UCLA School of Education. The meeting lasted a number of hours. There was a division amongst the experts based on their particular fields of expertise, and a date was set for filing the expert reports by September 1978, the month set by the School Board to begin busing pursuant to the terms of Plan II.

After the transcript of the meeting was released, the *Los Angeles Times* reported on the hearing in a way that drew attention to *Crawford*, with a headline that hinted at widespread mandatory busing. The

40. CAL. EVID. CODE § 134 (West 2009).

headline blared: Egly Hints at Metropolitan School Desegregation Plan—Says Law Allows Use of Neighboring Districts to Ease Problem; Orange County Systems May be Included.⁴¹

This was surely an attention grabber and the very mention of a Metropolitan Plan was the beginning of a state-wide anti-busing initiative which resulted in the passage of Proposition 1, the “Anti-Busing” statute, late in 1978. It clearly had been in my mind for several months as a possible solution. I felt my conversation was not for publication, but I did not realize such suggestion, if publicized, would be so threatening to areas outside of Los Angeles County.

In re-reading the *Los Angeles Times* article, I stand by my questions and explanations. While the charge gave the opponents reason to be optimistic, it should not have prevented a citizens group from coming up with a reasonable plan to at least minimize the educational defect caused by segregation. The School Board was set against any plan requiring pupil assignments and transportation for the purpose of desegregation, and they continued to propose an all-voluntary plan that was vehemently opposed by the Petitioners. At this time, I was hoping that a plan could be proposed that accepted the impossibility of a complete physical desegregation, but emphasized strongly the expenditure of money and effort to remove the educational deficiency found in minority schools.⁴²

Three months after I appointed the experts, Price recommended appointing a ten-member Citizens’ Monitoring committee. The committee reported to Price and myself on the daily activities of the School Board in forming a new plan and the School Board’s attempt to secure agreement with the various schools selected to be a part of the plan. The Citizens’ Monitoring Committee reports proved to be invaluable to all in that it gave a picture of the possibility of compliance by the parents of the various schools that were chosen to be part of the plan. A dark cloud on the horizon was the political alliances that were being created amongst the political units. As actual implementation neared, Bustop found it a precipitous moment to dismiss the entire lawsuit.

On August 3, 1978, I denied their motion; the Court of Appeals reversed me and granted their motion and plans for implementing

41. William Trombley, *Egly Hints at Metropolitan School Desegregation Plan—Says Law Allows Use of Neighboring Districts to Ease Problem; Orange County Systems May Be Included*, L.A. TIMES, Apr. 11, 1978, at A1.

42. Even as this account is being written thirty-one years after those events, I do not believe that particular problem has been solved.

busing in September were in danger of being vacated. The California Supreme Court overturned the Court of Appeals, and Bustop and the School Board went on to the U.S. Supreme Court.

Chief Justice Rehnquist and Justice Powell heard the matter in chambers. Bustop's petition asked that a temporary injunction be issued against the implementation of the plan on the grounds the plan was unconstitutional. Neither Justice was in a position to declare the plan unconstitutional nor were they ready to overturn the decisions of the California Supreme Court in *Jackson, Crawford*, and the holding in *NAACP v. San Bernardino City Schools*.⁴³ Bustop's petition was directed solely to the implementation of the court-approved plan. The U.S. Supreme Court's order was short and declared that the district was ready for a major and significant desegregation effort within several weeks thereafter, and that it would be inequitable to halt this plan in its present stage.

Physical desegregation of the LAUSD began September 17, 1978. The buses began to roll, and desegregation was in effect without violence, disobedience, or accident. Physically, the School Board had done its planning well for implementation of an imperfect plan. There was no valid criticism of the School Board's physical efforts to effect assignment of the children by busing. But the next fourteen months were directed toward desegregating by choice and formation of school groupings, PWT, and magnet schools. Most importantly, once again, there was a decided lack of effort directed toward RIMS.

XVI. EXPERT OPINIONS

The expert reports were two months late, but when received, every report opined that the demography, geography, and resolution of the School Board and public opinion meant that no plan for physical desegregation would be successful in a district with approximately 600,000 students in over 600 schools within an area of over 740 square miles. The experts felt success was possible only if a Metropolitan Plan was adopted.

Two experts in particular had especially illuminating opinions. Dr. Beautriz Arias from UCLA submitted the most interesting of the experts' reports. Her report addressed something that had never been taken into account by either Petitioners or Respondents; namely, the effect of Plan II upon a partially successful ESL program and other programs for the benefit of non-English speaking children. If Plan II

43. See *infra* Appendix for citations.

was finally approved, it would have to take into account the continuation of those programs by using the same instructors in the programs in the new school as was used in the neighborhood school. This would require twice as many ESL instructors as the School District had on its payroll in order to prevent a loss of these programs. That number of teachers was not then available. Professor Arias was also concerned about the ability to obtain and train new instructors. The School Board, to its credit, took this report seriously, recognized this as being necessary, and increased the program and salary of ESL teacher classifications.

The most instructive expert report was that of Dr. Reynolds Farley, a Professor of Demography at the University of Michigan. His report proved politically and factually disastrous to a successful continuation of the case. He proposed that the only hope the LAUSD had was to incorporate into their plan Caucasian segregated schools located in school districts adjacent to the LAUSD who had a majority Caucasian student census. This would, of necessity, include school districts within the county of Los Angeles and school districts in Orange and Ventura counties, and this is what the media pounced upon in reporting on the expert reports.

Reporting on the case led two ladies in Huntington Beach, who had participated in the successful passage of Proposition 13, to use the same tactic and institute an initiative called Proposition 1 (Proposition 1). Proposition 1 would ban the use of buses for forced attendance assignments for the purpose of desegregation throughout the State of California. Proposition 1 was popularized as an anti-busing law, and was placed on the November 1979 ballot. There was a question in the Petitioners' minds, and in mine, that perhaps Proposition 1 was unconstitutional under the theory that it represented a violation of equal protection. The School Board, Bustop, and White Flight, realizing that victory in the court was doubtful, pinned their hopes on the passage and constitutionality of Proposition 1, giving them new energy.

All in all, the reports of the experts were disheartening to the Petitioners. They reinforced obliquely the White Flight argument and reinforced directly the incontrovertible facts available to everyone that there were too many minority and too few majority students to have a desegregation plan that was feasible and practical. Assuming that Proposition 1 would be held constitutional, the lawsuit would have to change course and adopt a serious plan to improve programs in the minority schools to make them equal with those in the few Caucasian schools. The prospect for a successful outcome was extremely dim. Neither side mounted an attack on the experts' conclusions. However,

the case dragged on in its original direction without change by either the School Board or Petitioners.

XVII. THE STATE INITIATIVE PROCESS AND PUBLIC BACKLASH

I have always agreed with, and dreaded the truth of, the adage that nothing stirs the populace as much as public and large private projects which involve cemeteries, landfills, airports, large development plans, school locations, and educational policies and perceived unfair taxation. The State of California gives the public a ready weapon in the initiative process. Probably the best example in California before the *Crawford* case was Proposition 13, popularly known as the Jarvis amendment, which corrected the perceived wrong of allowing small governmental entities, such as school districts and other similar districts, to tax with few constitutional restrictions, the property located within those local districts for the benefit of those districts.

The state initiative process was especially popular in California, as it gave the voters a belief that, if legislature or the courts were not going to help them, they had the power to help themselves. The political opportunities for a number of groups were immense and, if consolidated, could be an effective device to nullify the California Supreme Court's decision suggesting busing as a device to remedy the evils of segregated education. The very thought that a popular vote could nullify an unpopular California Supreme Court decision appealed strongly, especially to the Caucasian population. Once the conversation of the Metropolitan Plan as a theoretical remedy was publicized, it ignited popular opinion to embrace Proposition 1, which denied the use of busing as a remedy for desegregation. Many people, without giving much thought to the matter and in protection of their own interests, would likely vote for Proposition 1 and leave the school districts without effective remedy. Political careers could be built or lost with initiative or recall procedures.

One of those who took advantage to advance their career was Roberta Weintraub. I believe she was sincere in that desire, but without regard to the effect on the minority children. Her political activism had spread from active participation in the Democratic Party, to protecting the California Medical Association from malpractice suits, to protecting her Caucasian neighbors in San Fernando Valley, the home of 70% of the Caucasian children in the LAUSD. She was joined by another activist, Bobbi Fiedler, who had a small history in local politics as a Republican and saw the anti-busing campaign as the first rung on the

ladder of political ascension. Fiedler was energetic, intelligent, and articulate.

Neither Fiedler, nor Ms. Weintraub, in their political campaigns, ever directly addressed the equitable aspects of the suit. Instead, they took a popular viewpoint that desegregation could be best accomplished by the voluntary participation of parents and children. I am quite sure neither of them believed that there would be any desegregation, given the small amount of Caucasian children who would be available for this voluntary desegregation. I do not think many people believed that it would be greatly advantageous to the Caucasian parent and child to voluntarily integrate across the mountains into a minority school. Their theme was to, “[a]t least give voluntary segregation a chance before any forced assignment by the court to schools which were minority.” In other words, they professed that voluntary desegregation might remedy the troubles of the isolated, minority students.

The very recitation of the aims of their campaigns seemed to imply, at least to the Petitioners and to the court, that racism was a basic premise and impetus to the success of Proposition 1. This conclusion seems true if we consider Bustop’s position that the Caucasian population of the School District would move away, and that the interruption of Caucasian children’s education to accommodate desegregation would be an injury to their education.

Proponents of Proposition 1 also argued that there was an element of unfairness in using Caucasian children as tools to correct the prior segregation caused by the maintenance of a double school district. I believe there was a general feeling that the use of affirmative action was wrong and that reassignment of students from their neighborhood schools to a school of a different color constituted such action. Proposition 1 had extremely popular appeal, especially to those who felt the problems of minorities should not be solved by the use of the Caucasian children and Caucasian schools.

There were many other careers that were damaged by the stance officeholders took on desegregation in Los Angeles. One example is LAUSD’s chairman, Howard Miller, who was instrumental in pushing the implementation of Plan II in its early stages. This was the beginning of the end of his career in Los Angeles politics. He had previously been a practitioner and a Professor of Law. After his defeat by Weintraub in his re-election campaign to the LAUSD in 1978, Miller went into

private practice and is now, at the time of this writing, the President of the State Bar of California.⁴⁴

I mention this because it reinforces my belief that there are better ways to form public policy than by litigation. On the other hand, it could be argued that litigation was the last resort for Mary Ellen Crawford as a representative of all the children in the over 300 segregated minority schools of Los Angeles. We often look to the courts as a protector of the minority, who have little representation and little political power. But as a corollary, the court's edicts depend upon an assumption that being a citizen of the United States means being law abiding, to respect and use due process in obtaining the court's protection. It is not difficult for me to say that the citizenry did use due process in the defeat of the main element of the *Crawford* lawsuit and put the lawsuit to its death without recourse to any action other than political.

This was the disadvantage of filing the lawsuit in the state court rather than the federal court. It put the California Constitution in direct conflict with the edict of the U.S. Supreme Court, where the Petitioners were bound to lose. Another political remedy available in state courts was the ability of the state populace to recall a sitting judge in the superior court. Three different times I was subject to an attempted recall, all of which failed because sufficient signatures (80,000) were not collected within the prescribed time. That does not mean that I was not annoyed by popular opinion.

I used to get lots of hostile mail, and I thought it was necessary, as a public servant, to answer each of the letters. However, I received too many and gave up my attempt. Besides, I found it was hard to answer a letter that sometimes questioned the legitimacy of my birth or the legitimacy of my judgments and the stupidity of desegregation by the use of buses. At least 95% of the mail was against busing and the "dictator" who required it.

I do remember getting annoyed by a nasty letter written by an attorney that doubted my understanding of the law and believed that I was acting contrary to judicial ethics. I question the ethics of an attorney, regardless of his political position, without being a party to the lawsuit, to use his position as a practicing attorney to question the integrity of his judge. I sent it to the State Bar for action and four months later, they felt that no action could be taken against that attorney

44. The State Bar of California, Howard Miller sworn in as 85th State Bar President, <http://www.calbar.ca.gov> (follow "About the Bar" tab; then follow "Board of Governors"; then the "Howard Miller Sworn in as 85th State Bar President" hyperlink).

on the grounds that he had a First Amendment right. I did not disagree with that, but I felt he had abused his position as a member of the Bar to exercise the right given to all citizens. That response by the Bar was sobering, and made me feel somewhat unprotected.

I do not believe that I read more than about 20% of the letters that came in. After reading some of the letters, I came to the conclusion that I was probably the best-known four-letter word in Los Angeles County. I do remember one classic that was short and explicit. It said:

Dear Judge Egly:
F*** You.
Nasty letter to follow.
Signature

Others might have followed, but not from this writer. However, there was one persistent gentleman who finally got under my skin. I assume that he had nothing else to do because he would come and sit in the front row of whatever courtroom I was in with a large sign that said, "Recall Egly." He held it on his chest area, large enough so it could easily be read by anybody who was in front of him. I do not know why, but on one particular day, I finally got tired of it and told the bailiff to take the sign out of the courtroom. I will admit, he did not look dangerous and I am sure he was an interested citizen, but I lost my temper. After I saw the bailiff communicate with him, he sat solemnly in his seat and stared at the bench. I went on the record and described the gentleman, where he sat, what the sign said, and that it had been held up for display. After I decided to tell him to remove it, I declared him in contempt and declared his hearing for that afternoon. I had him taken away. A few hours later, the bailiff whispered, "I think you should turn him loose." I had him released and never saw him again. I was ashamed of myself.

As far as I am aware, no one tried to kill me or hurt me, although I do recall being at various places and having demonstrations in front of the building where I was to go. I noticed that, in most instances, they were well televised and lasted about ten minutes. They usually ended when the television people disappeared and the crowd left for wherever they were going. I was not used to public demonstrations or political attack, and for whatever reason, it did not really bother me. I was perhaps just stupid in not considering the possibility of personal harm.

XVIII. THE ANTICLIMACTIC END

With the threat of the passage of Proposition 1, the month of October 1979 was eventful and full of activity, but not particularly fulfilled. Plan II had been in operation since September of 1978, so there were many motions adjusting the outline of the plan, motions to delete the court-ordered shifting of attendance for the purpose of desegregation and the furnishing of buses to affect those shifts, and everyday motions and arguments requesting adoption or change of the structure of the limited desegregation plan. These motions were brought by the School Board, usually in conjunction with Bustop. Various intervenors also had motions, and it appeared to me that I was the de facto proctor of the LAUSD's operation with veto power over the Superintendent's activities.

I learned a lot about the School District, but mostly my education taught me that there was a lack of planning. As far as I could tell, the School Board was doing nothing to address overcrowding and future expansion needs, especially those of the minority children. At this point, integration meant not only mixing the races to the extent feasible, but major efforts to correct for past deficiencies in the education of minority children due to years of neglect and segregation.

In the meantime, the press spent much energy in discussing the progress of Proposition 1 and, if passed, its effect upon the lawsuit. I think the expectation that Proposition 1 would pass was recognized by the Petitioners. I began to see mild but not enthusiastic efforts to discuss remedies for the RIMS program. I attempted to ignore the progress of Proposition 1, as that was in the future and did not affect the execution and immediate business of amending and implementing Plan II.

In November 1979, Proposition 1 passed with 75% of the vote. I had heard the people speak, but it could not affect my decisions in *Crawford* until Proposition 1 was declared constitutional and effective. The Respondents immediately took what advantage they thought they had with the passage of Proposition 1. They moved that the court reverse its order implementing Plan II and allow the students to return to their neighborhood schools. Busing for the purpose of desegregation would be eliminated by their motion. I denied it. Proposition 1 had not been declared constitutional or unconstitutional by any court and was under appeal, which would stay all future motions based on Proposition 1 until a final order was made.

Simultaneously, the Petitioners moved to declare the School Board recalcitrant. In all frankness, the School Board was recalcitrant, but in

order to find that I would have had to make findings of fact that had not been established by the Petitioners. I was especially hoping that in Plan II the School Board would recognize the difficulty of obtaining enough Caucasian segregated schools to make a significant dent by forced assignment to fulfill the purpose of the mandate. The mandate also included the necessity for the district to establish programs to alleviate the evils of segregation, regardless of how they were caused. If there was any reason for declaring the School Board recalcitrant, that would have been the best reason. The motion of the Petitioners to have the School Board declared recalcitrant was denied.

In the meantime, busing continued and there was no evidence of violence in the operation of the minimum forced attendance features of Plan II. The case continued under the shadow of the passage of Proposition 1 and its pending appeal. It was clear to all that if Proposition 1 was ultimately declared constitutional this was the end of desegregation and busing in California. If busing continued, it would have to be under the conditions of the U.S. Supreme Court and not under the California Supreme Court doctrine of *Jackson*. My decisions in the motions brought after the passage of Proposition 1 were appealed to the Court of Appeals. Their decision was that Proposition 1 was constitutional, any further efforts of court-ordered and supervised desegregation were invalid, and the plans approved by the trial court were overturned. The opinion of the Court of Appeals was filed in the first month of 1981, and the Plaintiffs initiated an expedited hearing by the California Supreme Court.

The California Supreme Court refused to hear the case. The case was then handed back to the Court of Appeals, effectively ending the California litigation. Mary Ellen Crawford's class action suit was without a future and essentially dead. In fact, it was dismissed later in 1981.

XIX. LEAVING THE CASE

On March 11, 1981, without comment and without a reason, the California Supreme Court refused to rule on the matter. This left the Court of Appeal's decision as the law of the case and, in effect, defeated the *Crawford* case. I was informed of the California Supreme Court's refusal to listen to the Plaintiffs' appeal by public radio and TV broadcasts that same day. I had little doubt that the California Supreme Court's inaction sealed the fate of the case, but I was angry that the supreme court would not give a reason for its refusal nor take the case and make a declaration one way or the other on the constitutionality of

Proposition 1. On an extremely important issue, this was unexpected in my experience. I knew that it was the custom of the court to either hear the case or give reasons why they would not. Their failure to do either was a surprise, in view of the fact that it was dealing with an initiative.

I notified both the presiding judge and the assistant presiding judge of my decision to recuse myself from the case. I do not recall what reasons I gave them, if any, but I realized that I could no longer continue with the case without the expected direction from the California Supreme Court. My decision to recuse was emotional, as all along I had believed that what I was doing was following the direction of the California Supreme Court and that the action of the court and the refusal to hear the Petitioners' appeal was a complete reversal of the body of law with respect to desegregation. I really had developed an emotional attachment to the case when it came to the treatment of the minority children. I knew it would be extremely difficult for me to stay on the case as there was no remedy remaining.

I had been previously asked to speak on March 14, 1981 to a new organization of educators and others who had been active in the city's African-American communities called Interchange for Community Action. I had made no public announcement of my decision to recuse myself but waited until my talk to the persons attending that meeting. I wanted to explain to them that I was no longer going to hear the case and that I was recusing myself because I felt that I could no longer be impartial. I was angry that there seemed to be no concern for the nearly 400,000 kids and that the case had been conducted in such a manner as to maintain the barriers separating the Caucasian kids from the rest of the youngsters. I did not think it through very thoroughly. I did know that I could no longer act as a judge on the case. The plight of these children was then left in the hands of a hostile School Board and an ineffective political movement. I pointed out that if there was to be any hope for serious consideration by the School Board of these youngsters, it would have to come through a change in the composition of the School Board. The plight of the minority children was foremost on my mind. I was certain that effective help had to come from the minority population. I know I expressed some sympathy for those children. I do not know whether I acted as a judge or a citizen. I think it was both. This was the first and only time I announced my recusal in public.

Since then, I have speculated, along with others, as to the reasons for the non-action of the California Supreme Court, as they gave no explanation. Rose Bird was the only justice who voted for review. I truly believe that the court was ducking the case for political and

personal reasons. I was ashamed of the court. This was the same court which supported the trial court since 1963.

I resigned from the superior court near the end of my term as I was tired and I wanted a change. Since then, the LAUSD, as prophesied, became nearly 90% "minority" which of course became majority, and are no longer treated differently than others. If there is any discrimination in the School District it will be on cultural rather than legal terms. I am speculating that if this case had any value, it was to awaken the citizens of Los Angeles County to the troubles of the School Board who failed in its duty to all of its children. Whatever I did, I hope was of value and not destructive, and that I followed the law and acted as a judge.

XX. MISSED OPPORTUNITIES

In retrospect, the tragedy of this case was the length of time it took for it to be heard. It took thirteen full years before it ended abruptly in 1982. Fred Okrand, staff attorney for the ACLU, in his oral history of 1982, said that it was his opinion that there was a window of opportunity to take advantage of the demography which existed prior to 1971, which was not used but, if used, would have accommodated a successful desegregation plan. I was surprised when I read that. This might have been their opinion in 1977, or this may have been the hindsight of their attorney. It was obvious when all seven of the experts' reports filed with the court in November of 1978 agreed that desegregation within the boundaries of the School District was neither feasible nor practical without a Metropolitan Plan. This left remediation of past injuries to the minority children as the only plan which would fall within the limits of a reasonable and feasible mandate. Instead, the ugliness and combativeness of the parties prevented any sensible solution to the lawsuit. The focus of the lawsuit continued with Mary Ellen Crawford's attorneys pushing for a declaration of recalcitrance and the appointment of a Master to take over the School District, and the School Board's focus on a victory which would prevent the Caucasian children from being bused.

Lawsuits that degenerate into a political battle and ignore good public policy principles are not the best way to run an educational system. The lack of goodwill and shortsightedness of the parties in this case foretold of the actual end. This case has convinced me that a strong segment of public opinion is more effective than a court decree in obtaining a public good.

CONCLUSION

It has taken me a while to understand that the best of legal principles can never become public policy unless embraced by a substantial segment of public opinion. It is a lesson that supreme court justices should never forget, successful politicians should understand, and trial judges must accept without question or rebellion. Otherwise, lawsuits are ineffective to establish public policy. If the U.S. Supreme Court and state supreme courts attempt to achieve compliance through moral suasion only, and anticipate that their orders will be obeyed without substantial question, the expectation is ill-founded unless prior to that decree, the principle is desired and understood by a substantial portion of the public.

A supreme court declaration of a change in public policy can only rely upon its enforcement if it is accepted by a large segment of the population and enforced by the executive branch of the government. The attempt to enforce the order of a supreme court is most difficult unless that is understood. I think our history tells us this, and *Crawford* was a perfect example of public disagreement, not with the principle of desegregation but with the means used to accomplish the remedy. In addition, the failure of the California Supreme Court to try to keep *Crawford* alive or to even give it a decent burial was the result of failure of nerve because of public opinion. Clearly, there are better ways of solving public problems than a lawsuit brought in the face of public opposition and unsolvable physical obstacles.

My own regrets have to do with my inability to suggest effective alternate cures and theories to solve the plight of nearly 400,000 minority children who were ignored in favor of the battle to protect the status quo of the education of Caucasian children, and to erase the racism inherent in the LAUSD. While I have been extraordinarily hard on our California Supreme Court as constituted in 1981, I have faith that the California Supreme Court has and will recover its dignity and faithfulness to the law.

I hope that in the future, before policy changes are effected, valuable as they may be, the court will take seriously its ability or inability to enforce its decrees. The failure to heed the history of racism in California, and the latent racism within our population, contributed to the shattering of the dream of equality that was a portion of the lawsuit. Of course, many other factors are explained in this work, but as a judge and lawyer, I am ashamed of the cavalier attitude of our supreme court in promoting a new theory of liability and passing it on to an antagonistic School Board to implement. Regardless, the people and

demography had the last word as our California Constitution gives the right to the citizens to nullify an unpopular California Supreme Court judgment.

APPENDIX

*List of Materials Used by the Honorable Paul Egly (Ret.) in the
Preparation of this Publication.*

*(This is not exclusive when selected for the purpose of understanding of
the material herein)*

*The materials listed are separated into two groups. The first group lists
the collection of sources that narrated events and conditions clearly
beyond my memory. The second group contains sources which were
used to refresh my memory of those events in which I was a participant
or an observer.*

GROUP 1

1. Brown v. Bd. of Educ., 347 U.S. 483 (1954).
2. Brown v. Bd. of Educ. (Brown II), 349 U.S. 294 (1955).
3. Jackson v. Pasadena City Sch. Dist., 382 P.2d 878 (Cal. 1963).
4. Crawford v. Los Angeles Unified Sch. Dist., No. 822-854 (Cal. Super. Ct. filed Feb. 11, 1970) (Findings of Facts and Conclusions of Law and Order of Judgment).
5. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971).
6. Milliken v. Bradley, 418 U.S. 717 (1974).
7. NAACP v. San Bernardino City Unified Sch. Dist., 187 Cal. Rptr. 646 (Ct. App. 1976).
8. Crawford v. Bd. of Educ., 551 P.2d 28 (Cal. 1976).
9. Crawford v. Bd. of Educ., 170 Cal. Rptr. 495 (Ct. App. 1980).
10. Crawford v. Bd. of Educ., 458 U.S. 527 (1982).
11. McKinny v. Oxnard Union High Sch. Dist. Bd. of Trs., 642 P.2d 460 (Cal. 1982).

12. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
13. *People v. San Diego Unified Sch. Dist.*, 96 Cal. Rptr. 658 (Ct. App. 1971).
14. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).
15. *Westminster Sch. Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947).
16. *Crawford v. Los Angeles Unified Sch. Dist.*, No. 822-854 (Cal. Super. Ct. filed Feb. 22, 1978) (Trial Court Minutes Re: Appointment of Expert Witnesses).
17. *Crawford v. Los Angeles Unified Sch. Dist.*, No. 822-854 (Cal. Super. Ct. filed Feb. 7, 1978) (Trial Court Minutes Re: District Racial and Ethnic Enrollment Percentages for Grades K-12 from 1966-1979).
18. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), *aff'd*, 557 P.2d 929 (Cal. 1976).
19. *People v. Hall*, 4 Cal. 399 (1854).
20. *Speer v. See Yup Co.*, 13 Cal. 73 (1859).
21. *Lin Sing v. Washburn*, 20 Cal. 534 (1862).
22. *Wong Him v. Callahan*, 119 F. 381 (C.C.N.D. Cal. 1902).
23. *In re Ah Yup*, 1 F. Cas. 223 (C.C.D. Cal. 1878) (No. 104).
24. *In re Tiburcio Parrott*, 1 F. 481 (C.C.D. Cal. 1880).
25. *In re Ah Chong*, 2 F. 733 (C.C.D. Cal. 1880).
26. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

27. Jew Ho v. Williamson, 103 F. 10 (C.C.N.D. Cal. 1900).
28. People ex rel. Att’y Gen. v. Naglee, 1 Cal. 232 (1850).
29. People v. McGuire, 45 Cal. 56 (1872).
30. Wysinger v. Crookshank, 23 P. 54 (Cal. 1890).
31. Lau v. Nichols, 483 F. 2d 791 (9th Cir. 1973).
32. Ward v. Flood, 48 Cal. 36 (1874).
33. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).
34. Arval A. Morris, *Whither the Neighborhood School? – Comments on Washington v. Seattle School District and Crawford v. Board of Education*, 6 EDUC. LAW REP. 429 (1983).
35. Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education: The Courts’ Role*, 81 N.C. L. REV. 1597 (2003).
36. Erica Frankenberg & Chungmei Lee, *Race in American Public Schools: Rapidly Resegregating School Districts*, CIV. RTS. PROJ. HARV. U. (August 2002).
37. Janet Ward Schofield & Leslie R.M. Hausmann, *The Conundrum of School Desegregation: Positive Student Outcomes and Waning Support*, 66 U. PITT. L. REV. 83 (2004).
38. UNITED STATES COMMISSION ON CIVIL RIGHTS, A GENERATION DEPRIVED: LOS ANGELES SCHOOL DESEGREGATION (1977).
39. Gerald N. Rosenberg, *Tilting at Windmills: Brown II and the Hopeless Quest to Resolve Deep-seated Social Conflict through Litigation*, 24 LAW & INEQ. 31 (2006).

40. Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 ASIAN L.J. 181 (1998).
41. JOHN D. HICKS ET AL., *THE AMERICAN NATION; A HISTORY OF THE UNITED STATES FROM 1865 TO THE PRESENT* (Houghton Mifflin Co. 1937) (4th ed.1965).
42. Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CAL. L. REV. 61 (1947).
43. Irma Borchers, *Legislation Against the Oriental Farmer*, 1 J.L. LAND & PUB. UTIL. ECON. 509 (1925).
44. *Nation: Turn-Around on Integration*, TIME, Mar. 9, 1970, available at <http://www.time.com/time/magazine/article/0,9171,878766-1,00.html>.
45. EDMUND MORRIS, THEODORE REX. (San Francisco School Board, Random House 2001) (1906).

GROUP 2

1. Copies in collection of Crawford v. Bd. of Educ., No. 822-854 (Cal. Super. Ct.) in author's personal files held by UCLA Library Special Collections, including: the Order after Trial Upon Plan; the Proposed All-Voluntary Plan Proposed 111 0 (b) CCP Order after Hearing and Subsequent to Issuance of Order but Prior to Appeal; and a Summary of Experts Orfield, Farley, and Crain (July 7, 1980) (discussing the Metropolitan Plan, White Flight, and Demography).
2. Crawford v. Bd. of Educ., No. 822-854 (Cal. Super. Ct. filed May 19, 1980) (Intended Order).
3. Crawford v. Bd. of Educ., No. 822-854 (Cal. Super. Ct. filed July 5, 1977) (Minute Order).
4. Crawford v. Bd. of Educ., 458 U.S. 527 (1982) (discussing Cal. Const. art I. § 7(a), and some procedural history).

5. D.G. Cooper, *The Controversy over Desegregation in the Los Angeles Unified School District 1962–1981* (Aug. 1991) (unpublished Ph.D. dissertation, University of Southern California) (on file with Cubberly Education Library, Stanford University).
6. Stephen C. Yeazell, *Intervention and the Idea of Litigation: A Commentary on the Los Angeles School Case*, 25 UCLA L. REV. 244-60 (1977).
7. David S. Ettinger, *The Quest to Desegregate Los Angeles Schools*, 26-MAR L.A. LAW. 55 (2003).
8. Meyer Weinberg, *Bibliography of Desegregation: Los Angeles: State Court Desegregation Orders: Multi-District Busing, Supreme Court Review, and the Los Angeles School Case*, 20 EQUITY & EXCELLENCE IN EDUC. 32, 33 (1982).
9. Nicelma J. King, *The Los Angeles Experience in Monitoring Desegregation: Progress and Prospects*, 18 EQUITY & EXCELLENCE IN EDUC. 26-32 (1981) (Personal Experience of Monitor and a Report to Monitoring Committee of Crawford v. Bd. of Educ., 458 U.S. 527 (1982)).
10. Jeanne T. Landis, *The Crawford Desegregation Suit in Los Angeles, 1977-1981: The Multiethnic Community Versus BUSTOP* (1984) (unpublished Ph.D. dissertation, UCLA); Judge Fred J. Fujioka, *It Might Be Better for Us Later*, GAVEL TO GAVEL: LOS ANGELES SUPER. CT. MAGAZINE, Spring 2006.
11. Interview with Fred Okrand, *Forty Years Defending the Constitution*, Attorney for ACLU of S. Cal. (Sept. 4, 1982, Sept. 11, 1982, Oct. 9, 1982, and Oct. 16, 1982).

REPORTS OF EXPERTS

(Most of the following materials are scattered in different locations, however, upon search, can most probably be located in the Honorable Paul Egly's (Ret.) files in his collection held by UCLA Library Special Collections or in the Minutes of the Trial commencing in 1978.)

1. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Reynolds Farley).
2. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Elwood B. Hain, Jr.).
3. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Gary Orfield).
4. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Bernard Gifford).
5. LOS ANGELES SCHOOL MONITORING COMMITTEE, LEGAL CHRONOLOGY OF CRAWFORD V. BD. OF EDUC. (July 1, 1981).
6. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Thomas Pettigrew).
7. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Beatriz Arias).
8. Crawford v. Bd. of Educ. (Nov. 14, 1978) (expert report of Dr. Robert L. Crain).

LOS ANGELES TIMES AND OTHER PUBLICATIONS

- L.A. TIMES, May 19, 1954.
- L.A. TIMES, June 3, 1954.
- L.A. TIMES, June 6, 1954.
- L.A. TIMES, June 19, 1954.
- L.A. TIMES, July 1, 1954.
- L.A. TIMES, July 6, 1954.

L.A. TIMES, July 7, 1954.
L.A. TIMES, July 11, 1954.
L.A. TIMES, Aug. 1, 1954.
L.A. TIMES, Aug. 5, 1954.
L.A. TIMES, Sept. 15, 1954.
L.A. TIMES, Oct. 11, 1954.
L.A. TIMES, Nov. 17, 1954.
L.A. TIMES, Aug. 6, 1964.
L.A. TIMES, Jan. 2, 1966.
L.A. TIMES, Apr. 8, 1966.
L.A. TIMES, July 23, 1967.
L.A. TIMES, Dec. 30, 1969.
L.A. TIMES, Feb. 23, 1977.
L.A. TIMES, Mar. 5, 1977.
L.A. TIMES, Mar. 10, 1977.
L.A. TIMES, Mar. 26, 1977.
L.A. TIMES, Mar. 27, 1977.
L.A. TIMES, Apr. 15, 1977.
L.A. TIMES, May 19, 1977.
L.A. TIMES, May 30, 1977.
L.A. TIMES, June 1, 1977.
L.A. TIMES, June 29, 1977.
L.A. TIMES, July 10, 1977.
L.A. TIMES, July 11, 1977.
L.A. TIMES, July 31, 1977.
L.A. TIMES, Aug. 29, 1977.
L.A. TIMES, Sept. 16, 1977.
L.A. TIMES, Sept. 22, 1977.
L.A. TIMES, Sept. 28, 1977.
L.A. TIMES, Oct. 3, 1977.
L.A. TIMES, Oct. 28, 1977.
L.A. TIMES, Nov. 10, 1977.
L.A. TIMES, Nov. 29, 1977.
L.A. TIMES, Dec. 5, 1977.
L.A. TIMES, Jan. 4, 1978.
L.A. TIMES, Jan. 18, 1978.
L.A. TIMES, Apr. 11, 1978.
L.A. TIMES, May 7, 1978.
L.A. TIMES, Nov. 23, 1978.

L.A. TIMES, Dec. 1, 1978.
L.A. TIMES, Dec. 2, 1978.
L.A. TIMES, Dec. 3, 1978.
L.A. TIMES, Feb. 9, 1979.
L.A. TIMES, Oct. 20, 1979.
L.A. TIMES, Oct. 22, 1979.
L.A. TIMES, Nov. 9, 1979.
L.A. TIMES, Nov. 16, 1979.
L.A. TIMES, Dec. 28, 1979.
L.A. TIMES, Jan. 7, 1980.
L.A. TIMES, Jan. 21, 1980.
L.A. TIMES, Jan. 29, 1980.
L.A. TIMES, Feb. 2, 1980.
L.A. TIMES, Mar. 12, 1980.
L.A. TIMES, Mar. 21, 1980.
L.A. TIMES, May 4, 1980.
L.A. TIMES, May 20, 1980.
L.A. TIMES, May 22, 1980.
L.A. TIMES, May 25, 1980.
L.A. TIMES, May 28, 1980.
L.A. TIMES, May 29, 1980.
L.A. TIMES, June 1, 1980.
L.A. TIMES, June 4, 1980.
L.A. TIMES, June 8, 1980.
L.A. TIMES, June 22, 1980.
L.A. TIMES, July 4, 1980.
L.A. TIMES, Aug. 8, 1980.
L.A. TIMES, Aug. 14, 1980.
L.A. TIMES, Aug. 21, 1980.
L.A. TIMES, Aug. 22, 1980.
L.A. TIMES, Aug. 28, 1980.
L.A. TIMES, Sept. 9, 1980.
L.A. TIMES, Sept. 15, 1980.
L.A. TIMES, Sept. 16, 1980.
L.A. TIMES, Sept. 23, 1980.
L.A. TIMES, Sept. 24, 1980.
L.A. TIMES, Oct. 9, 1980.
L.A. TIMES, Oct. 11, 1980.
L.A. TIMES, Mar. 12, 1981.

L.A. TIMES, Mar. 15, 1981.
L.A. TIMES, Mar. 16, 1981.
L.A. TIMES, Mar. 24, 1981.
L.A. TIMES, Mar. 28, 1981.
L.A. TIMES, Apr. 3, 1981.
L.A. TIMES, Apr. 10, 1981.
L.A. TIMES, Apr. 12, 1981.
L.A. TIMES, Apr. 20, 1981.
L.A. TIMES, Apr. 26, 1981.
L.A. TIMES, June 4, 1981.
L.A. TIMES, June 28, 1981.
L.A. TIMES, Sept. 27, 1981.
L.A. TIMES, Sept. 1, 1983.
L.A. TIMES, Aug. 28, 2005.
L.A. TIMES, Aug. 30, 2005.
N.Y. TIMES, Sept. 25, 2005.
L.A. TIMES, Dec. 6, 2005.
L.A. TIMES, Jan. 20, 2006.
ORANGE COUNTY REG., Mar. 21, 2007.

INTERVIEWS

1. Interview with Al Mariam, Professor & Special Assistant to the President, in San Bernardino, Cal. (Jan. 31, 2006).
2. Interview with Dan Patton, Chief of Scholastic Programs, and Dr. Rice, Chief of the Student Magnet and desegregation programs (Feb. 13, 2006).
3. Interview with Dr. David Arase, Chairman, Politics Department, Pomona College (Mar. 3, 2006).
4. Interview with members of the research and testing unit of the Board of Education, Los Angeles (Mar. 29, 2006).
5. Interview with Judge Robert M. Takasugi and Mrs. Takasugi (June 17, 2006).

LIST OF EXHIBITS

1. Figure 1. Census Figures from 1860–1990, Los Angeles, Cal., Percentages of White, Black, Asian and Hispanic.
2. Figure 2. District Racial and Ethnic Enrollment Percentages from 1966–1979, Grades K-12. Based on *10/Sfi9* Preliminary Enrollment Data.
3. Figure 3. Graph of Los Angeles Unified School District Racial and Ethnic Percentages by Year.
4. Figure 4. Map of Los Angeles Unified School District.