THE IMPACT OF JUDICIAL POLICY IN A LOCAL COMMUNITY: SCHOOL DESEGREGATION IN OKLAHOMA CITY

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THE IMPACT OF JUDICIAL POLICY IN A LOCAL COMMUNITY: SCHOOL DESEGREGATION IN OKLAHOMA CITY

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DEDICATION

This thesis is dedicated to Dr. Jerry L. Polinard whose direction in the formative stages must be apparent in the finished product.

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TABLE OF CONTENTS

Chapter		Page
I.	INTRODUCTION	1
	Current Trends in Judicial Process Research	2
	Definition of the Problem	10
	Methodology and Procedure	12
II.	THE DEVELOPMENT OF NATIONAL JUDICIAL POLICY ON SCHOOL SEGREGATION	16
	The Judicial Policy of "Separate but Equal"	17
	The Trend Away from "Separate but Equal": Professional Education	27
	A New Judicial Policy: "Separate Educational Facilities Are Inherently Unequal"	36
	Implementation: "With All Deliberate Speed"	43
	Problems of Implementation: Evasion and Delay	45
	The Development of the Judicial Policy of Integration	49
	National Impact: An Overview	57
III.	THE IMPACT PROCESS IN OKLAHOMA CITY	62
	An Overview of the Impact Process in Oklahoma City	63
	Impact Analysis	106
IV.	CONCLUSIONS	120
	The Role of Elites	120
	Relative Impact	123
	How the Findings of This Study Compare With Those of Similar Studies	125
	An Afterthought Regarding Methodology	131
SELECTED BIBLIOGRAPHY		135
APPENDIX		144

LIST OF TABLES

Table		Page
I.	Percentages of Blacks in Public Schools with Whites, 1954-1967	60
II.	Racial Composition of Oklahoma City Public Schools for Selected Years, 1954-1972	107
III.	Integration Attitudes of Oklahoma City School Board Members	116

CHAPTER I

INTRODUCTION

American political science is in a state of flux. The pressure for change is becoming so intense that a recent president of the American Political Science Association labeled the change the "new revolution in political science," commenting that "The last revolution--behavioralism--has scarcely been completed before it was overtaken by the increasing social and political crisis of our time."[1] The demands for "relevance" and "action" from the Caucus for a New Political Science are gaining support as evidenced not only in voting returns for Caucus candidates,[2] but also in changes in the approaches and content of political science courses and research. The recent addition of courses in public policy to political science curricula and greater emphasis on policy research are evidence of the pressure from "the new revolution."

Unlike the "behavioral revolution," the "new revolution" is neither technical nor mathematical. The "new revolution" is based on the belief that "there must be room, in political science and its professional leadership, for normative theorists and value-free

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[1]David Easton, "The New Revolution in Political Science," The American Political Science Review, LXIII (December, 1969), p. 1.

[2]Peter Bachrach, the Caucus nominee for APSA President-Elect in 1972, lost by 60 votes out of 6400 votes cast. P.S., VI, No. 1 (Winter, 1973), p. 58.

empiricists, qualitativists and quantitativists, gadflies and experts;" combined with the conviction that "our research should respond to both social and methodological needs, concern peace, change, and justice as well as war, stability, and interest aggregation, . . ."[3] If politics is viewed as the conflict of interests, and if public policies are authoritative actions to resolve problems created by conflict; then scholarly analysis of the effects of public policies is among the most important topics we can study.

Current Trends In Judicial Process Research

Studies of the judicial process have also been affected by pressure from the "new revolution." There is wide agreement among political scientists that the judicial process is best understood as a political process, and that court decisions represent a type of public policy.[4] Students of the judicial process have even adopted many behavioral techniques and have begun to study judicial behavior. The recognition

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[3]Dankwart A. Rustow, "Statement on Behalf of Nominees Supported by the Caucus for a New Political Science," in Statements by Nominating Groups (Mail Ballot enclosure, American Political Science Association Elections, 1972), p. 1.

[4]See for example David B. Truman, The Governmental Process: Political Interests and Public Opinion (New York: Alfred A. Knopf, 1951), pp. 479-498; Jack W. Peltason, Federal Courts in the Political Process (New York: Random House, 1955); Robert A. Dahl, "Decision Making in a Democracy: The Supreme Court as a National Policy-Maker," Journal of Public Law, VI (Fall, 1957), pp. 279-295; Martin Shapiro, Law and Politics in the Supreme Court: New Approaches to Political Jurisprudence (London: The Free Press, 1964); Glendon Schubert, Judicial Policy-Making (Glenview, Illinois: Scott, Foresman and Company, 1965); Richard Wells and Joel Grossman, "The Concept of Judicial Policy-Making," Journal of Public Law, XV, No. 2 (1966), pp. 286-310; Victor G. Rosenblum, "Law and the Political Process," In George Beam and John Buechner, ed., Readings on American Government: Concepts in Context (1968), pp. 295-307.

that courts and judges are political was a tremendous, although belated, breakthrough for political science. However, most studies of the politics of the judicial process stopped short. The basic failure of most political and behavioral studies of the judicial process was that they were not designed "to relate decision-making to the actual solution of public problems through judicial policies."[5] One prominent student of judicial politics and behavior complains:

> For too long within political science, there has been an artificial division of labor such that public law people study courts and policy formulation people study legislatures, rather than study both kinds of policy makers and policy impact as part of the same total legal process.[6]

The same kind of pressure that has led political scientists in general to become concerned with policy analysis has led judicial scholars to become concerned with the impact of court decisions.

Courts as Policy Makers

Public policy may be defined as an authoritative action chosen from among conflicting alternatives and implemented by governmental institutions to resolve a problem. Thus, policy-making is a dynamic enterprise that includes policy impact as well as policy formulation. Impact analysis can reveal how effective policies and policy-making institutions are in solving problems. Courts must choose among conflicting interests when they decide a case; their decisions may be

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[5]Wells and Grossman, p. 310.

[6]Stuart S. Nagel, "Some New Concerns of Legal Process Research Within Political Science," Law and Society Review, VI (August, 1971), p. 13.

binding on members of society other than the individual litigants; and one assumes that court decisions have an effect on society. Therefore, court decisions represent a type of public policy. They are an additional way to authoritatively decide "who gets what, when, where, and how."

Of course, judicial policy-making differs from legislative or administrative policy-making in several important characteristics. First, the symbolism and legal ritual characteristic of the judicial process serve to perpetuate the myth that courts and judges are "above" politics and, therefore, do not make policy. The persistence of the "myth of judicial objectivity" influences attitudes about the proper role of courts and judges. The fact that judges and laymen alike believe that courts do not, and should not, "legislate" (i.e., make policy) distinguishes judicial policy-making from legislative or executive policy-making. The myth of judicial objectivity may serve a useful purpose in terms of securing compliance with court decisions and promoting order in society. Judicial scholars can continue to construct euphemisms to avoid speaking of judicial policy-making. However, once one recognizes that judicial decision-making is affected by political considerations and that court rulings may have a greater impact on the solution of public problems than legislative or administrative policies, it is more accurate and honest to label them judicial policies. Indeed, it becomes absurd to say that legislatures and administrators make public policy and courts do not, merely because the structural and procedural formalisms of the processes differ.

A second characteristic which distinguishes judicial policy-making from other types of policy-making is that judges cannot initiate the policy-making process. Judicial policy-making is "passive" in the

sense that judges must wait for a case to be filed. Moreover, there are certain policy areas in which courts seldom become involved. For example, foreign affairs and appropriation of funds are normally not subject to judicial scrutiny.[7] Legislators and executives have the means to initiate policies to deal with whatever problems they believe to be important. However, most would agree that it would be highly unethical for a judge to solicit a case. Judges must wait for a problem to be presented to them in the form of litigation before they can formulate public policy in the form of a court ruling to deal with it. Such a restriction does not mean that courts cannot take the lead in formulating policy in certain policy areas. For example, courts pioneered the way in formulating public policies in the fields of school desegregation and legislative reapportionment. Nontheless, the courts did not actively seek to make policy in these areas. The problems were carefully formulated and presented to the courts by political interest groups whose efforts had been unsuccessful in other political arenas.

A final distinguishing characteristic of judicial policy-making is that judicial policies generally are more narrow than legislative policies. Technically a court ruling applies only to the parties of the case. Normally, judges attempt to decide a case as narrowly as possible. However, appellate court rulings, especially those of the Supreme Court, establish precedents which may be used to expand the scope of the judicial policy. Herbert Jacob distinguishes between "law enforcement" decisions and "policy-making" decisions. He argues

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[7]Herbert Jacob, Justice in America: Courts, Lawyers, and the Judicial Process, 2nd ed. (Boston: Little, Brown and Company, 1972), p. 36.

that decisions by trial courts "are not designed to create precedent or set policy," but merely to enforce the law; whereas, many appellate court rulings are policy-making decisions which are "intended to be guideposts for future actions."[8] However, such a distinction is arbitrary. Judges may not "intend" to make policy when they decide a case, but they cannot avoid making public policy because of their authority to decide among conflicting political interests. Wells and Grossman argue that if

> policy is seen as a process of which implementation and feedback are important parts, and not just the initial choice between competing values, and if the entire judicial system in any one jurisdiction is seen as a piece of complex but essentially unified policy machinery, then this distinction [between appellate and trial court decisions] falls.[9]

It is more realistic to distinguish between local and national judicial policy-making. The United States Supreme Court makes national judicial policy; the various state and federal trial courts make local judicial policies. There is no question that both the United States Congress and local school boards make public policy, even though the policies of the school boards are binding upon far fewer people. Similarly both Supreme Court and trial court rulings are public policies because they authoritatively resolve conflicts. Rulings of the Supreme Court are more important than those of a traffic court because they potentially affect more people and deal with more pressing problems, just as policies of Congress are more important than policies of a rural

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[8]Ibid., p. 31.

[9]Wells and Grossman, p. 294.

school board. But in terms of defining judicial policy, it is unimportant that Supreme Court decisions set precedents and trial court decisions usually do not. Both types of court decisions are public policies because they impose binding solutions to conflicts. However, regardless of whether judicial policy is national or local, it is generally not as broad as legislative policy because it must resolve only the specific questions raised in the litigation.

Judicial policies like other types of public policy, seldom provide a final solution to conflict. Judges must rely on other public officials to implement and enforce their decisions. The fact that the implementation of court decisions depends on many individuals who are subject to political pressures different from those acting on judges illuminates the need for studies of the impact of court decisions.

The Need for Impact Analysis

To understand the total judicial process, one must ask what, if anything, happens as a result of a court's decisions. Judicial policies, like other types of public policies, "must be judged not on the basis of some internal or inherent rationality, but by their results."[10] The decentralization of power and authority in the United States means that public policies seldom provide a final solution to political conflict. The effects of public policies, including court decisions, are determined by local political processes which occur after the policies have been

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[10]Shapiro, p. 23.

formulated. Hence, the impact of judicial policies is not uniform.[11] Because there exists such a wide range of responses, the impact of judicial decisions needs to be examined systematically in the context of local policy-making processes. The total judicial policy-making process will be better understood if court decisions are considered as one factor among many that influence local policy-making.[12]

Judges must rely on local governing and political elites to transform their policies into practice. The term elite is used to refer to persons who have and exercise power to influence or control the formulation and implementation of public policy. An elite group may hold and exercise power openly and officially through a public office, or it may influence the decisions of those in authority and have an unofficial or informal influence over public policy. Hence the distinction between governing and political elites. "Governing elites" are those individuals who have authority to make public policy by virtue of holding a public office (e.g., governors, legislators, school board members, and school superintendents to name only a few). "Political elites" are those "influentials" who do not hold public office, but for various reasons have political power and are able to affect the course of public policy (e.g., influential businessmen, newspaper editors). Because of their power and authority, elites may play a key role in

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[11] Ellis Katz, "Patterns of Compliande with the Schempp Decision," Journal of Public Law, XIV, No. 2 (1965), pp. 407-408; Gorton Patric, "The Impact of a Court Decision: Aftermath of the McCollum Case," Journal of Public Law, VI (Fall, 1957), p. 464.

[12] Thomas E. Barth, "Perception and Acceptance of Supreme Court Decisions at the State and Local Level," Journal of Public Law, XVII, No. 2 (1968), p. 316; See also Jack W. Peltason, Federal Courts in the Political Process (New York: Random House, 1955), pp. 63-64.

determining the impact of judicial policies. Yet, the role of elites in transmitting, implementing, and enforcing judicial policies which call for behavioral changes by ordinary persons is only vaguely understood.[13]

Early impact studies focused on compliance, or non-compliance, with Supreme Court decisions.[14] However, compliance is only one aspect of impact. Impact implies that judicial policy-making effects a social change.[15] That social change might be an increase of political activity to modify local policies to implement or frustrate judicial decisions. It might be an increase of activity in the judicial system to "stretch the boundaries of the case" to see whether a decision applies in particular local situation.[16] Impact also includes psychological attitude changes which may be observed in changing attitudes about the judiciary, or in changes of values concerning certain policy objectives.[17] Finally, judicial policies may result in behavior changes of

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[13] Joel Grossman, "The Supreme Court and Social Change," American Behavioral Scientist, XIII (March/April, 1970), pp. 335-551.

[14] See for example Katz cited above, and Richard M. Johnson, The Dynamics of Compliance: Supreme Court Decision-Making from a New Perspective (Evenston: Northwestern University Press, 1967).

[15] Grossman,

[16] Stephen L. Wasby, The Impact of the United States Supreme Court: Some Perspectives (Homewood, Illinois: The Dorsey Press, 1970), pp. 6-7.

[17] Kenneth M. Dolbeare, "The Public Views the Supreme Court," In Herbert Jacob, ed., Law, Politics, and the Federal Courts, (1967), Ch. 12, is a study of attitudes about the Supreme Court. See also J. Daryl Bem, Beliefs, Attitudes, and Human Affairs (Belmont: Brooks/Cole Publishing Company, 1970), and William J. Muir, Prayer in the Public Schools: Law and Attitude Change (Chicago: University of Chicago Press, 1967) for evidence that laws effect changes in values.

individuals in local communities.[18] In any event, the nature and scope of social change produced by judicial policy-making will be determined by local political forces. Moreover, to focus exclusively on the Supreme Court is to rely excessively on a hierarchical view of the judicial system. Lower federal and state courts may exercise a great deal of discretion in implementing Supreme Court decisions. Lower court decisions may be a factor in determining the ultimate impact of Supreme Court decisions. In some instances, lower court decisions may have a greater impact locally than those of the Supreme Court. The question of the relative impact of Supreme Court and lower court decisions is an empirical question that needs to be examined.[19]

Definition of The Problem

Purpose

This study is concerned with the impact of Supreme Court and United States District Court decisions dealing with school desegregation in Oklahoma City. The purposes of the study are: (1) to illuminate the role local elites play in determining the impact of judicial policies, and (2) to determine the relative impacts of United States Supreme Court and District Court decisions in one policy area in a local community.

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[18] Stuart S. Nagel, "Overview of Law and Social Change," American Behavioral Scientist, XIII (March/April, 1970), p. 486.

[19] Richard J. Richardson and Kenneth N. Vines, The Politics of Federal Courts: Lower Federal Courts in the United States (Boston: Little, Brown and Company, 1970), p. 4. See also Wasby, p. 23.

Definition of Impact

The concept of impact implies that judicial policies stimulate changes in society. This study is concerned with two types of change affected by court decisions. One is changes in local school policies dealing with racial segregation in Oklahoma City Public Schools. The other is changes in behavior resulting from the formulation and implementation of those policies. There are two types of behavioral changes that are important here. The first is increased political activity of private citizens to attempt to influence the course of public policy. Increased political activity of private citizens may be seen primarily in the formulation of new political interest groups and petition drives. The second type of behavioral change is change in the racial composition of the public schools measured by the percentage of pupils attending racially mixed classes. Thus, impact is defined as changes in local policies, political activity, and racial composition of the schools that were affected by judicial policies. Impact is a dynamic concept. It is a process that changes over time.

This study seeks to answer several questions concerning the impact of judicial policies in Oklahoma City. Did court decisions result in local policy changes? If so, what effect did the policy changes have on the racial composition in the public schools? Did judicial policies have any effect on the political activity of private citizens? What role did the local political and governing elites play? Did decisions of the Federal District Court in Oklahoma City have a greater or lesser impact than those of the Supreme Court? Why?

Methodology and Procedure

Procedure

The case study method offers an opportunity to consider impact as a dynamic process by analyzing changes that occur over time. To study the impact of judicial policies in Oklahoma City, the research was divided into two steps. The first step involved a literature review of the relevant court cases, of previous impact studies, and of other scholarly materials dealing with school desegregation and the formulation of policy for public schools. In addition, accounts of the school desegregation controversy in a local newspaper[20] revealed the identity of individuals who tried to influence school desegregation policy in Oklahoma City. The second step was to conduct interviews with individuals involved in the school desegregation controversy in Oklahoma City. A total of thirty-two interviews were conducted with present and past members of the Oklahoma City Board of Education, members of groups which attempted to influence school desegregation policy, and United States District Judge Luther Bohanon.

During the period from 1954 to 1972, nineteen individuals served on the Oklahoma City School Board. Fourteen are still living in Oklahoma City, and twelve were interviewed.[21] The Superintendent

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[20]There are two major newspapers in Oklahoma City. The morning paper is the Daily Oklahoman; the evening paper is the Oklahoma City Times. Both are owned and operated by the same publishing company. I used the Daily Oklahoman.

[21]Of the seven I did not interview, three have died, two have moved away from Oklahoma City, one was appointed to fill a vacancy and served only a few months, and one I was unable to contact.

and the Assistant Superintendent of the Oklahoma City Public Schools were also interviewed.

There were a great many individuals and interest groups outside the governing elite who were involved in the school desegregation issue in Oklahoma City. The seventeen individuals interviewed represented most of the interests involved in the school desegregation controversy.[22]

The interviews with the school board members and representatives of the groups were divided into two parts.[23] The main part of the interview consisted of between four and nine opened-ended questions. The questions were similar but not identical in each case. Thus, the data are non-quantitative. The second part of the interview was a structured questionnaire consisting of a nine-item Integration Scale.[24] After the school board interviews, two questions in the Integration Scale were changed because there was no disagreement over them. These data are quantitative and are used to classify the respondents as to their attitudes about integration and as a check on the open-ended part of the interview. The interviews with the school administrators

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[22]One key individual involved in the school desegregation controversy in Oklahoma City was Dr. A. L. Dowell. Dr. Dowell filed the original desegregation suit in Oklahoma City in 1961. Unfortunately I was unable to interview him because he began serving a jail term for income tax evasion. Neither did he respond to a letter. While the research would have been more complete if I had been able to talk with Dr. Dowell, I believe that some of the other members of the black political elite game me most of the information I could have obtained from him.

[23]The questions may be found in the Appendix.

[24]Parts of the Integration Scale were original, and part was adapted from the Gutman Scale of Pro-Integration Sentiments used by P. Sheatsley, "White Attitudes toward the Negro," Daedalus, XCV (1966), pp. 217-238.

and Judge Bohanon were completely open-ended, Each interview lasted from thirty to ninety minutes and averaged about forty-five minutes.

In addition to information from the interviews, data reporting the racial composition of Oklahoma City Public Schools for the years immediately preceding and following key court decisions reveal changes which occurred in the racial make-up of schools and allow one to at least infer the effects of the judicial policies.

Justification for Choosing Oklahoma City As A Case Study

Oklahoma City is a good place to conduct such a study for several reasons other than the obvious advantages of accessability and the author's familiarity with the city. The first consideration that favored Oklahoma City as a case study was that Oklahoma law required racially segregated schools prior to the initial desegregation decision in Brown v. Board of Education.[25] The State was a party to two suits challenging the "separate but equal" policy in higher education[26] before Brown was decided in 1954, and Oklahoma also participated in the Brown case as amicus curiae. Second, although Oklahoma was not a party in the Brown case and technically not bound to end segregation until a suit was filed against the State, the State voluntarily complied with the decision and changed the laws requiring segregation. Third, in 1961 a group of blacks with support from the NAACP filed suit in the United

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[25] 347 U. S. 483 (1954).

[26] Sipuel v. Board of Regents of the University of Oklahoma, 332 U. S. 631 (1948); and McLaurin v. Oklahoma State Regents for Higher Education, 339 U. S. 637 (1950).

States District Court in Oklahoma City challenging the Oklahoma City School Board's policies. This action affords an opportunity to compare the impacts of Supreme Court and District Court decisions in a local community. Finally, the problems of school desegregation in Oklahoma City include most of the problems experienced throughout the nation. Oklahoma City has not only faced the problem of student integration, but has also confronted the issues of faculty desegregation, de facto segregation, and bussing.

Chapter II is designed to give the reader necessary background information about school segregation in the United States. It is an analysis of the Supreme Court decisions that established national judicial policies relating to segregation in public education. Knowledge of the national judicial policy is necessary before one can analyze its impact in a local community. Chapter III focuses on changes in policy and behavior in Oklahoma City that were affected by Supreme Court and District Court decisions. Impact is viewed as a dynamic process that is part of the total judicial policy-making process. Chapter IV offers some conclusions about the role of elites in determining policy impact, the relative impact of Supreme Court and District Court decisions and the effectiveness of judicial policy-making in solving social problems.

CHAPTER II

THE DEVELOPMENT OF NATIONAL JUDICIAL POLICY ON SCHOOL SEGREGATION

The purpose of this chapter is to analyze the Supreme Court decisions that developed national judicial policies relating to racial segregation in public education. Before one can analyze the impact of judicial policy in a local community, one must know what the policy is.

If public policies are designed to solve problems, then the policy-making process must include an opportunity for the policy-maker to occasionally review and adjust the policies. In the case of judicial policy-making, the courts usually must wait for additional cases to be filed before they can review and adjust their policies. Whether subsequent legal actions are docketed depends in great measure on the effects of existing judicial policies.

The Supreme Court decision in Brown v. Board of Education (1954)[1] is a striking example of judicial policy-making. The Brown decision is not the first example of judicial policy-making in the area of school segregation. Rather, it is the culmination of a series of decisions that indicated the Supreme Court's growing hostility toward the judicial policy of "separate but equal" adopted in Plessy v.

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[1] 347 U. S. 483 (1954).

Ferguson (1896).[2] Neither is Brown the final judicial policy in the field of school segregation. The impact of Brown in local communities required the Supreme Court to reaffirm and further define the national judicial policy of school desegregation and integration.

The fact that certain political interests were not satisfied with the judicial policies of either Plessy or Brown is evidence that both decisions had impacts. Thus, judicial policy-making, like other types of policy-making, is dynamic. Because the national judicial policy relating to segregation in public schools is not static, it is necessary to analyze the trends established by Supreme Court decisions.

The Judicial Policy of "Separate But Equal"

The Concept of "Separate But Equal"

The concept of "separate but equal" educational facilities originated before the adoption of the Fourteenth Amendment. As early as 1849, the Supreme Judicial Court of Massachusetts held in Roberts v. City of Boston[3] that the general school committee of Boston had the power to make provision for the instruction of black children in separate schools established exclusively for them and to prohibit their attendance at other schools. Charles Sumner argued for the plaintiff that under the constitution and laws of Massachusetts, all persons were equal before the law without distinction of age, sex, color, origin, or condition. Speaking for a unanimous court, Chief Justice Shaw

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[2] 163 U. S. 536 (1896).

[3] 5 Cush. 198 (1849).

accepted this "great principle," but held that

> when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to, . . be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security.[4]

Thus, the school committee had the authority to establish separate schools for children of different ages, sexes, and colors, just as it might establish special schools for poor and neglected children who had not acquired the rudiments of learning necessary for attendance at ordinary schools. Such reasoning seems inconsistent today because most people have come to accept the argument that distinctions based on race or sex are different from distinctions based on age or mental ability. However, in 1849 American society did not accept the argument that women and blacks were entitled to the same rights as other people. At that time, blacks were not considered to be citizens,[5] so it did not appear inconsistent to reason that establishing separate schools for black children was the same as establishing separate schools for children of different ages or abilities.

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[4]Ibid., quoted in Leonard W. Levy, The Law of the Commonwealth and Chief Justice Shaw (Cambridge, Mass.: Harvard University Press, 1957) p. 114.

[5]The United States Supreme Court held that blacks were not citizens in the case of Dred Scott v. Stanford, 60 U.S. (19 How.) 393 (1857).

Separate But Equal and the Fourteenth Amendment

In 1868 the Fourteenth Amendment extended the rights of citizenship to blacks. The amendment declared that all persons born or naturalized in the United States were citizens of the United States and of the state where they reside. It further provided that:

> No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment was intended to protect blacks against discriminatory state laws, but the United States Supreme Court early began to limit its protection.

The first case to reach the Court under the Fourteenth Amendment virtually nullified the "privileges and immunities clause." Speaking for the majority in the Slaughter House Cases,[6] Justice Samuel F. Miller held that the Amendment established separate and different privileges and immunities of state and federal citizenship. It was only the rights of federal citizenship that were protected by the Federal Constitution. The states had the responsibility to determine and protect the rights of state citizenship. Using similar reasoning in the Civil Rights Cases,[7] the Court invalidated the public accommodations section of the Civil Rights Act of 1870. The Court held that the Fourteenth Amendment did not deal with "individual invasions of

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[6] 83 U.S. 36 (1873).

[7] 109 U.S. 3 (1883).

individual rights." However, there remained the possibility that state action supporting discriminatory practices would be a violation of "equal protection of the laws."

The Court began to define the requirements of "equal protection of the laws" in Plessy v. Ferguson (1896).[8] Louisiana enacted a "Jim Crow" law in 1890 which required that railway passenger coaches have "equal but separate accommodations for the white and colored races," and that seating be racially segregated. Homer Adolph Plessy, who was one-eighth Negro, was arrested for refusing to leave a seat in a coach for white passengers. He challenged the constitutionality of the statute on the ground that it denied him equal protection of the laws. In the majority opinion, Justice Henry B. Brown said that the Fourteenth Amendment "could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either." He reasoned that the underlying fallacy of Plessy's argument was

> the assumption that the enforced separation of the two races stamp[ed] the colored race with a badge of inferiority. If this [was] so, it [was] not by reason of anything found in the act, but solely because the colored race [chose] to put the construction on it.[9]

The Court also rejected the assumption that social prejudices could be overcome by legislation, and that equal rights could not be achieved

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[8] 163 U.S. 537 (1896).

[9] Plessy v. Ferguson, 163 U.S. 537 (1896), reproduced in William Lockhart, et. al., The American Constitution: Cases and Materials (2nd ed.; St. Paul: West Publishing Co., 1967), pp. 839-840.

except by enforced commingling of the two races. Justice Brown argued:

> Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. . . . If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.[10]

Thus, the Supreme Court accepted the validity of "separate but equal" under the Fourteenth Amendment.

Justice John Marshall Harlan, the only dissenter, argued that the decision in Plessy would "prove to be quite as pernicious as the decision made . . . in the Dred Scott Case. . . ." He accurately predicted that the decision

> [would] not only stimulate aggression, more or less brutal and irritating, upon the admitted rights of colored citizens, but [would] encourage the belief that it [was] possible by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments.

Justice Harlan denied the validity of laws making racial distinctions. He asserted that the "constitution is color blind, and neither knows nor tolerates classes among citizens." He found it difficult to reconcile the boast of freedom with state laws that put "the brand of servitude and degredation" upon black citizens. "The thin disguise of 'equal accommodations' . . . will not mislead anyone. . . ."[11]

Though the circumstances of Plessy concerned transportation, the decision was relevant to racial segregation in education. Justice

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[10] Ibid., p. 841.

[11] Ibid., p. 842.

Brown quoted approvingly from the reasoning in Roberts v. City of Boston to support the Supreme Court's adoption of the "separate but equal" policy. He reasoned that "separate but equal" transportation facilities were valid because laws requiring separate schools for white and black children had "been generally, if not uniformly, sustained" by state courts "where the political rights of the colored race [had] been longest and most earnestly enforced."[12] Also, as Justice Harlan predicted in his dissent, the judicial policy of "separate but equal" encouraged the proliferation of segregation laws in virtually every aspect of life--most notably education. And it might be added, the emphasis was on separate rather than equal.[13]

The reasoning in the Plessy decision is based on some erroneous assumptions. The argument that law cannot advance equality or reduce discriminatory practices is absurd. The notions that there are "racial instincts" and that public policy cannot produce attitude change are neither self-evident truths nor great "legal principles." They are psychological assumptions which require proof. There is considerable evidence that law does produce attitude change and does reduce

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[12] Ibid., p. 839. Justice Brown failed to note that in 1855 Massachusetts enacted a statute forbidding distinctions "made on account of the race, color or religious opinions" in admitting scholars "into any public school . . . in the Commonwealth. . . ." St. 1855, ch. 256. Sec. 1, quoted in Levy, p. 114. This new statute ended the last legal policy of racial discrimination in Massachusetts.

[13] For a comparison of per child expenditures in "separate but equal" schools in Southern states, see Anthony Lewis, Portrait of A Decade: The Second American Revolution (New York: Random House, 1964) p. 20.

discriminatory practices,[14] and the Court offered no evidence to the contrary to support its assumptions and policy in Plessy. However, the Court was interpreting a broad constitutional principle in the context of contemporary standards and values. Courts are limited by such considerations when they formulate judicial policy to resolve political conflicts that arise when civil rights are exercised.

What Is Equal?

The adoption of the "separate but equal" doctrine did not answer the question concerning to what extent separate educational facilities had to be equal under the Fourteenth Amendment. That question was presented in the case of Cumming v. County Board of Education.[15]

The Richmond County Board of Education was created by an act of the Georgia General Assembly in 1872. The Board was empowered to levy taxes for public school purposes and to establish common schools in the county for the convenience of the people. The Georgia Constitution required that the public schools "shall be free to all children of the state, but separate schools shall be provided for the white and colored races." Black taxpayers sought an injunction to require the School Board to discontinue operation of a high school for white children until it resumed operation of a high school for black children. The School Board replied that it lacked the funds to provide

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[14]See for example Daryl J. Bem, Beliefs, Attitudes, and Human Affairs (Belmont: Brooks/Cole Publishing Company, 1970); and William Muir, Jr., Prayer in the Public Schools: Law and Attitude Change (Chicago: University of Chicago Press, 1967). Of course, the Court did not have such evidence available in 1896.

[15]175 U.S. 528 (1899).

separate black schools for both primary and high school pupils. It argued that there were private schools where black children could obtain high school education, and that it would be "unwise and unconscionable" to maintain a high school for sixty black pupils and "turn away 300 little negroes [sic] who [were] asking to be taught their alphabet and to read and write."[16]

Justice Harlan wrote the opinion for a unanimous Court. He said that the Court was not presented with a question of the validity of laws requiring racially segregated schools, and had to "dispose of the case as it [was] presented by the record." The Court affirmed the action of the School Board as not being a denial of equal protection of the laws within the meaning of the Fourteenth Amendment. Justice Harlan reasoned that if the Court granted the relief requested,

> the result would only . . . take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in the high schools. . . . The Board had before it the question of whether it should maintain . . . a high school for about 60 colored children or withhold the benefits of education in primary school from 300 children of the same race. . . . The decision was in the interest of the greater number of colored children, leaving the smaller number to obtain a high school education at existing private institutions. . . .

He added that if the plaintiffs had sought to compel the Board of Education to establish and maintain a black high school or admit black children to the white high school, then a different issue would have been presented. But, there was no evidence that the decision of the

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[16] Ibid., at 533.

Board of Education was made with any desire or intent "to discriminate against any of the school children of the county on account of their face." Therefore, the action did not deny the plaintiffs their rights as citizens.[17]

Such reasoning avoids the issue, but the Court acted consistently in deciding the case as narrowly as possible. In terms of challenging the "separate but equal" policy, it was perhaps a strategic error that the black plaintiffs did not seek to compel the board to establish a black high school equal to the white high school, or admit black pupils to the white high school. Since they did not, one can only speculate as to the costs of this mistake in strategy. The decision provides evidence that the emphasis was on separate in the "separate but equal" policy.

Continuing Validity of Separate But Equal

The validity of state laws which prohibited the teaching of white and black students together in the same institution was reaffirmed in 1908 in the case of Berea College v. Kentucky.[18] Justice David J. Brewer assumed that Kentucky's desire "to separate the teaching of white and colored children" did not violate any provisions of the Fourteenth Amendment. He accepted the appeals court decision affirming the power of the state to separate the races, and quoted that court in its ruling that "the right to teach white and negro [sic] children in a private school at the same time and place [was] not a property

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[17] Ibid., at 543-544.

[18] 211 U.S. 45 (1908).

right. . . . [A] corporation created by this state [had] no natural right to teach at all."[19] Justice Brewer effectively avoided the issue of racial segregation in education and based the decision on the power of the state to regulate corporations.

Justice Harlan dissented, arguing that the Court should have decided whether or not it was unconstitutional for a state law to make it a crime "to maintain or operate a private institution of learning where white and black pupils [were] received, at the same time, for instruction." He contended that such laws violated the rights of life, liberty, and property guaranteed by the Fourteenth Amendment, and were therefore void. The right to impart instruction to others "[was] a substantial right of property," and was "beyond question, part of one's liberty as guaranteed against hostile state action by the Constitution of the United States." Justice Harlan was concerned about such laws because they restricted voluntary associations. This concern was evident when he asked:

> Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes, simply because of their respective races?

He pointed out, however, that what he said had "no reference to regulations prescribed for public schools, established at the pleasure of the state and maintained at public expense."[20] Justice Day also dissented without opinion.

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[19] Ibid., at 53.

[20] Ibid., at 66-69.

The Court did not decide another case concerning segregated schools until 1927 in the case of Gong Lum v. Rice.[21] Gong Lum did not challenge the validity of the "separate but equal" doctrine, but contended only that the state officials had misapplied it by classifying his daughter with Negro children and requiring her to attend a school for blacks. Chief Justice William H. Taft treated the "separate but equal" doctrine as well established. He concluded that a child of Chinese ancestry was not denied equal protection of the laws if there was a "colored school" for "the brown, yellow, or black races" which the child could attend.[22]

All of the cases discussed above reaffirmed the constitutionality of separate but equal educational facilities. In 1938 the Supreme Court began to redefine "separate but equal" to emphasize the equal in the doctrine. Each of the subsequent decisions weakened the legal efficacy of the policy, and established a trend away from racially segregated educational facilities.

The Trend Away From "Separate But Equal": Professional Education

A New Definition of Equal Protection of the Laws

The trend away from the judicial policy of "separate but equal" began with professional and graduate education. The first case to

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[21] 275 U.S. 78 (1927).

[22] Ibid., at 85.

modify the "separate but equal" policy was Missouri ex rel Gaines v. Canada.[23]

The state of Missouri provided separate schools and universities for whites and blacks. It maintained Lincoln University for the higher education of black students. Lloyd Gaines, a black who had "work and credits" at Lincoln University that qualified him for admission to the University of Missouri Law School, was denied admission solely because of his race. The registrar advised him to communicate with the president of Lincoln University, who was authorized and required by state law to establish a school of law at Lincoln University whenever it was deemed necessary. Pending the establishment of the law school, the president of Lincoln University had the authority to arrange for black residents to attend the university of any adjacent state to study any subjects provided at the University of Missouri which were not taught at Lincoln University, and "to pay the reasonable tuition fees for such attendance."[24]

The opinion by Chief Justice Charles Evans Hughes held that "this discrimination . . . constitute[d] a denial of equal protection." He observed that the law school at Lincoln University had not materialized. The mere declaration of purpose was not enough to satisfy the constitutional requirements of equal protection. Nor did the provision for payment of tuition in another state remove the discrimination. The Chief Justice reasoned:

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[23]305 U.S. 337 (1938).

[24]Ibid., at 340.

> The admissibility of laws separating the races in enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State.
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> . . . . . .
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> Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the equality of legal right must be maintained. That obligation is imposed by the Constitution . . . . It is an obligation the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do.[25]

The circumstances in this case are similar to those in Cumming v. County Board of Education.[26] In Cumming the Court held that blacks were not denied equal protection if the school board closed a black high school while continuing to maintain a white high school. It accepted the school board's arguments that there were private schools where blacks could obtain a high school education, and that since funds were limited, it made more sense to maintain a black grade school for 300 black children than a black high school to serve only sixty. In Gaines the Court rejected both of these arguments. Chief Justice Highes asserted that it was the constitutional obligation of the State to provide equal privileges where it separated the races in the enjoyment of those privileges. Moreover, the fact that there was only a limited demand for the legal education of blacks did not excuse such discrimination. The enjoyment of a constitutional right did not depend upon the number of people discriminated against. Lloyed Gaines' "right was a personal one. It was as an individual that he was entitled to the equal protection

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[25] Ibid., at 349-350.

[26] 175 U.S. 528 (1899).

of the laws, . . . "[27] Therefore, in the absence of other provision for his legal training within the State, Gaines was entitled to be admitted to the law school of the State University.

The ruling in Gaines established a definition of "separate but equal" that was clearly different from that of earlier cases. Justice James C. McReynolds agreed with those earlier decisions. The reasoning of his dissent parallels that of Justice Harlan in Cumming:

> For a long time Missouri has acted upon the view that the best interest of her people demands separation of whites and negroes [sic] in schools. Under the opinion just announced, I presume she may abandon her law school and thereby disadvantage her white citizens without improving petitioner's opportunities for legal instruction; or she may break down the settled practice concerning separate schools and thereby, as indicated by experience damnify both races.[28]

Justice Pierce Butler concurred in McReynolds' dissent.

But Gaines had not asked that the white law school be closed. His strategy of asking for admission to the white law school in the absence of a separate law school for blacks avoided the strategic mistake made in Cumming.

Gaines is significant because it marked a turning point in the public law of "separate but equal." It was the first time blacks received a favorable ruling in a case involving racially segregated schools. It was the last major Supreme Court decision concerning racial segregation in which there was a dissent.

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[27] Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 351 (1938).

[28] Ibid., at 353.

The case of Sipuel v. Board of Regents of the University of Oklahoma[29] indicated that Gaines was only the beginning of a new trend. Martha Sipuel, a Negro qualified to receive legal education offered by the state, was denied admission to the University of Oklahoma Law School solely on the basis of her race. There was no other institution for legal training supported and maintained by the State. In a per curiam decision, the Court held that the state was required to provide legal education "for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."[30]

To comply with the mandate in Sipuel, the Oklahoma Supreme Court ordered the Board of Regents of the University of Oklahoma to either enroll Sipuel in the law school until a separate law school was established for blacks, or not enroll any applicant in the law school until the separate school was established and ready to function. In Fisher v. Hurst[31] the Court held per curiam that "Sipuel v. Board of Regents, did not present the issue whether a state [could] satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes."[32] Therefore, the order of the Oklahoma Supreme Court did not depart from the mandate issued in Sipuel v. Board of Regents.

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[29] 332 U.S. 625 (1948).

[30] Ibid., at 633.

[31] 333 U.S. 147 (1948).

[32] Ibid., at 150.

Justice Wiley Rutledge dissented. He observed that under the Oklahoma Supreme Court's order, it was possible "for the state's officials to dispose of petitioner's demand for a legal education equal to that afforded to white students by establishing overnight a separate law school for Negroes, . . ." He argued that such action would not comply with Sipuel because a separate law school could not be established overnight capable of providing legal education equal to that of the state university. The mandate issued in Sipuel required the state to afford "petitioner the advantages of a legal education equal to those afforded to white students. And, . . the equality required was equality in fact, not in legal fiction."[33]

When Separate Educational Facilities Cannot Be Made Equal

The case of Sweatt v. Painter[34] presented the question of whether a separate law school for blacks would satisfy the equal protection clause of the Fourteenth Amendment. Sweatt was denied admission to the University of Texas Law School because state law prohibited the admission of blacks to the University of Texas. The state of Texas established a separate law school for blacks. The school was located within the boundaries of the state, and its facilities were immediately available, thus satisfying the requirements of Gaines and Sipuel. Sweatt refused to register at the separate law school although the state trial court found that the new school offered

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[33] Ibid., at 631.

[34] 339 U.S. 629 (1950).

advantages and opportunities for the study of law substantially equal to those offered to white students at the University of Texas. It is clear that Sweatt was asking the Court to re-examine the "separate but equal" doctrine in light of contemporary knowledge.

Chief Justice Fred M. Vinson said that they would "adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court." It was not necessary to re-examine the Plessy doctrine in the disposition of this case.[35] However, the unanimous decision virtually eliminated segregation in professional graduate schools. After showing that the University of Texas Law School was superior in terms of tangible factors, such as number of faculty, courses, and library facilities, Chief Justice Vinson said that

> What [was] more important, the University of Texas Law School possesse[d] to a far greater degree those qualities which [were] incapable of objective measurement but which [made] for greatness in a law school. Such qualities, to name but a few, include[d] reputation of the faculty, experience of the administration, position and influence in the community, traditions and prestige.

He held that law was a highly practical profession, and a law school could not "be effective in isolation from the individuals and institutions with which the law interacts." The separate law school for blacks excluded from its enrollment members of racial groups which comprised eighty-five percent of the state's population, including most of the lawyers, witnesses, jurors, judges and other officials with whom lawyers deal. With such a significant segment of society excluded, the legal training offered by the separate black law school was not

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[35] Ibid., at 631.

equal to that offered at the University of Texas Law School. Petitioner had a constitutional right to receive "legal education equivalent to that offered by the State to students of other races. Such education [was] not available to him in a separate law school as offered by the State."[36]

On the same day, the Court held in McLaurin v. Oklahoma State Regents for Higher Education[37] that a state could not discriminate against a student solely because of his race after admitting him to graduate instruction at the state university. To comply with the rulings in Gaines and Sipuel, the Oklahoma legislature amended its statutes to permit the admission of blacks to institutions of higher learning attended by whites in cases where desired courses were not available in the black schools. The amendment also provided that in such cases the instruction was to "be given. . .upon a segregated basis."[38] G. W. McLaurin, a black student possessing a Master's Degree, was admitted to the University of Oklahoma in order to pursue a Doctorate in Education. However, he was segregated from the rest of the students in special seats in the classroom, library, and cafeteria.

The Court again refused to re-examine the constitutionality of "separate but equal." But Chief Justice Vinson asserted that racially segregated facilities set McLaurin apart from other students, and handicapped him in his pursuit of effective graduate instruction. Although he received the same instruction as white students, it was

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[36] Ibid., at 633-635. Emphasis mine.

[37] 339 U.S. 637 (1950).

[38] Oklahoma Stat. Ann. (1950) Title 70, par. 455.

not equal because the restrictions imposed on him impaired "his ability to study, to engage in discussions and exchange views with other students, and, in general to learn his profession." Therefore, in the area of professional education, "the Fourteenth Amendment preclude[d] differences in treatment by the state based upon race."[39]

Although the Court did not repudiate the "separate but equal" doctrine, Chief Justice Vinson rejected most of the reasoning which supported its adoption in Plessy v. Ferguson. He found that state-imposed separation of the races did in fact produce inequalities. Moreover, he found the contention that "appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students" to be "irrelevant." He said:

> There is a vast difference--a Constitutional difference--between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. . . . The removal of the state restrictions will not necessarily abate individual and group, . . . prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits.[40]

Thus, the Court declined to strike down the "separate but equal" policy. But after the rulings in Sweatt and McLaurin, the legal force of the doctrine was virtually eliminated. When intangible factors "which are incapable of objective measurement" are considered, how could any separate school be "equal"? If segregated facilities "impair

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[39] McLaurin v. Oklahoma State Regents for Higher Education, 339 U. S. 637, 641-642 (1950).

[40] Ibid., at 641.

and inhibit [one's] ability to study," would not the very fact of segregation preclude the possibility of achieving "equality"?

It was in this context that the Supreme Court approached the issue of segregation in the public schools. But even in the context of a strong trend against the "separate but equal" policy, the decision to repudiate it was not an easy one. Perhaps the judges on the Court were more willing to deal with the problem of discrimination in professional and graduate education because they were aware that it would not affect a large segment of society. The problem of segregation in graduate ecucation did not involve the compulsory association of children. Seventeen Southern and Border states and the District of Columbia, with forty per cent of the nation's public school enrollment, required segregation. There were also segregated schools in three other states whose statutes permitted a local option on segregation.[41] The men on the Court recognized that the problem of segregation in public schools was a complex and delicate problem that would have to be handled with great care. What is significant is that, given the trend of the previous twenty-two years, it was virtually inevitable that the Court would deal with the problem.

A New Judicial Policy: "Separate Educational Facilities Are Inherently Unequal"

One factor that distinguishes judicial policy making from legislative policy making is that the courts cannot initiate the policy making

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[41] The states requiring segregation were: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The states permitting segregation were: Arizona, Kansas, and New Mexico.

process. They must wait for an issue to be presented. The Supreme Court did not actively seek to rule on the issue of segregation in public schools. It was brought there by black parents and civil rights groups attempting to improve educational opportunities for black children. It was no accident that five separate law suits posing the same basic issue were initiated at approximately the same time. Although the cases were prosecuted in different courts in different parts of the country by different plaintiffs, a single organization--the National Association for the Advancement of Colored People--helped direct all of them. The NAACP had directed the lawsuits in the 1940's and 1950's which attacked only the inequality of black schools, but the success in the cases involving professional education encouraged the challenge to the institution of segregation.[42] Thurgood Marshall,[43] who was director of the NAACP Legal Defense Fund, did his best to select cases that would pose the single issue of whether segregated public schools violated the Constitution.

Cases from Kansas, South Carolina, Virginia, Delaware, and the District of Columbia reached the Court in 1952. The cases from the states challenged the validity of segregated public schools under the "equal protection clause" of the Fourteenth Amendment. They were considered together in a consolidated opinion, Brown v. Board of

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[42]Daniel M. Berman, It Is So Ordered: The Supreme Court Rules on School Segregation (New York: W. W. Norton & Company, Inc., 1966), pp. 28-30. See also Lewis, p. 23.

[43]Thurgood Marshall served as counsel for the plaintiffs in Sipuel v. Board of Regents, Fisher v. Hurst, Sweatt v. Painter, and McLaurin v. Oklahoma State Regents. He was later appointed to a judgeship on the Federal Court of Appeals for the Second Circuit, and in 1967 became the first black man to be appointed to the Supreme Court.

Education of Topeka,[44] Bolling v. Sharpe[45] challenged segregated schools in the District of Columbia on the ground that they violated the "due process clause" of the Fifth Amendment.[46] The Kansas, South Carolina,[47] and Virginia[48] cases were appealed from special three-judge District Courts. These special courts were convened because the plaintiffs sought an injunction against the enforcement of laws requiring or permitting segregation in public schools on the ground that such laws were repugnant to the United States Constitution.[49] In all three cases, the courts sustained the validity of the contested provisions and denied plaintiffs admission to the white schools because the black schools were substantially equal or undergoing an equalization program. The Delaware case[50] came on a writ of certiorari to the Supreme Court of Delaware. The Delaware Supreme Court affirmed a judgment by the Delaware Chancery Court which ordered the immediate

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[44]347 U.S. 483 (1954).

[45]347 U.S. 497 (1954).

[46]This approach was necessary because the nation's capital is governed by Congress. Consequently, the District of Columbia is not bound by the restrictions of the Fourteenth Amendment which apply only to states.

[47]Briggs v. Elliot.

[48]Davis v. County School Board of Prince Edward County.

[49]The Three-judge District Court is a statutory court convened at the request of a district judge to hear cases charging that national or state laws are unconstitutional. The three judges are chosen by the Chief Judge of the Court of Appeals of the Circuit where the challenge is made. One judge must be from the Court of Appeals; the other two are normally District Court Judges. Appeals from the Three-judge Court go directly to the Supreme Court.

[50]Gebhart v. Belton.

admission to black children to previously all white schools, on the ground that the black schools were inferior. In Bolling v. Sharpe, the District Court for the District of Columbia dismissed a complaint challenging segregated public schools in the District of Columbia. The Supreme Court granted a writ of certiorari before judgment in the Court of Appeals so the case could be reviewed with the others.[51]

The Court heard oral argument on the cases, but made no decision on the issue that term. Due to the delicacy of the issue, the Court scheduled the cases to be reargued the following term. The Justices asked the litigants to deal with a series of broad questions in their briefs: (1) Had the Fourteenth Amendment been intended to prohibit segregation in public schools? (2) Did the Fourteenth Amendment empower Congress to abolish such segregation, or was it within the judicial power, in light of current conditions, to construe the amendment as prohibiting such segregation? (3) Assuming such segregation was found to violate the Fourteenth Amendment, what would be the proper way to implement the decision?

Before the cases were reargued, Chief Justice Vinson died. One can only speculate as to the effect of this change on the Court, but there is reason to believe that it made a significant difference in the way the issue of segregation in the public schools was decided. Chief Justice Vinson was inclined to continue the trend of Sweatt and strengthen the standard of equality within the "separate but equal" doctrine. He was

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[51] Usually the Supreme Court will not accept a case unless all appeals have been exhausted. However, Rule 20 of the Rules of the Supreme Court allows the Court to accept cases "of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court." Berman, p. 28.

probably not willing to universally invalidate segregation in public schools, and indications were that he might have influenced one or more of the justices to that position. There is also evidence to suggest that at least two of the justices were inclined to wait for Congress to resolve the issue.[52]

When Earl Warren assumed the duties of Chief Justice, there may have been a majority of justices already in favor of declaring segregation in public schools unconstitutional, but there was no unanimity of opinion on how to resolve the problem. Chief Justice Warren early took the unambiguous position that segregation by race could only be justified by a belief that black people were inherently inferior. By taking such a clear position, Warren "forced those in opposition to subscribe to a questionable theory or show that such a theory was not a fundamental support for the practice."[53] Therefore, the unanimous opinion in Brown v. Board of Education must be attributed to Warren's efforts.[54]

In the unanimous decision, Chief Justice Warren held that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[55]

He noted that the intended effect of the Fourteenth Amendment could not be "determined with any degree of certainty." He reviewed

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[52]Lewis, p. 28.

[53]S. Sidney Ulmer, "Earl Warren and the Brown Decision," Journal of Politics, Vol. 33 (August, 1971), p. 693.

[54]Ibid., p. 702.

[55]Brown v. Board of Education, 347 U.S. 483, 495 (1954).

the cases involving the "separate but equal" doctrine in the field of public education, observing that in the cases involving graduate schools, it was not necessary to re-examine the doctrine to grant relief to the plaintiffs. But in the instant cases, the question was directly presented. Unlike the earlier cases, there were findings that the black schools in the present cases were equal, or were being equalized, "with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors."[56] Therefore, this decision could not turn on a comparison of "tangible" factors. Moreover, public education had to be considered "in the light of its full development and its present place in American life throughout the nation." He noted that education had become "perhaps the most important function of state and local governments."

> It is the very foundation of good citizenship. Today it is the principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may be reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[57]

Equal protection required, not only equality of "tangible" factors, but also equality of "intangible" factors.

In Sweatt v. Painter the Court found that a separate black law school could not provide equal educational opportunities because "intangible" factors were not equal. In McLaurin v. Oklahoma State

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[56] Ibid., at 492.

[57] Ibid., at 492-493.

Regents, the Court again relied on "intangible" considerations. Chief Justice Warren reasoned that

> Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications soley because of their race generates a feeling of inferiority, . . that may affect their hearts and minds in a way unlikely ever to be undone.
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> . . . . . .
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> Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.[58]

Therefore, segregation of children in public schools solely on the basis of race deprived the children of the minority group of "equal protection of the laws."

Similarly, "racial segregation in the public schools of the District of Columbia [was] a denial of due process of law guaranteed by the Fifth Amendment. . . ."[59] Chief Justice Warren reasoned that "the concepts of equal protection and due process, both stemming from our American ideal of fairness, [were] not mutually exclusive." While the concept of "equal protection of the laws" is a more exact prohibition, "discrimination may be so unjustifiable as to be violative of the due process." Liberty is not confined to only freedom from bodily restraint.

> Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably

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[58] Ibid., at 294. The Chief Justice cited social scientists in a footnote as modern authority to support this finding. Much of the criticism of the Brown decision focused on this footnote.

[59] Bolling v. Sharpe, 347 U.S. 497, 500.

> related to any proper governmental objective, and thus it. . . constitutes an arbitrary deprivation of. . . liberty in violation of the Due Process Clause [of the Fifth Amendment].
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> In view of our decision that the Constitution prohibits states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.[60]

Thus, the Court rescinded the policy of "separate but equal" in public education. Recognizing the political importance of such a decision, the Court had been very careful to allow maximum deliberation on the issue. It continued this strategy and again scheduled the cases to be reargued so that it might "have the full assistance of the parties [affected] in formulating decrees. . . ."[61] The Attorney General of the United States was asked to participate, as he had in 1953, and the attorneys general of the states requiring or permitting segregated public schools were also invited to appear as amici curiae. By participating in the argument, they added legitimacy to the new judicial policy.[62]

Implementation: "With All Deliberate Speed"

On May 31, 1955, the Supreme Court announced its implementation decree in Brown v. Board of Education.[63] Again speaking for a

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[60] Ibid., at 499-500.

[61] Brown v. Board of Education 347 U.S. 483, 495 (1954). Hereinafter this decision is cited as Brown I.

[62] Berman, p. 113.

[63] 349 U.S. 294 (1955); hereinafter cited as Brown II. This decision concerned only implementation, so Bolling v. Sharpe was consolidated with the four cases from the states.

unanimous Court, Chief Justice Warren recognized that implementation of the school desegregation decisions would "require solution of varied local school problems." School authorities would have the primary responsibility for solving these problems, and the courts where the cases originated would have "to consider whether the action of school authorities constitute[d] good faith implementation of the governing constitutional principles." He instructed the courts to require "a prompt and reasonable start toward full compliance" with the 1954 rulings. Once such a start had been made, the courts could grant additional time if "necessary to carry out the ruling in an effective manner." But, the burden was on the defendents to show that such additional time was necessary "in the public interest" and was "consistent with good faith compliance at the earliest practicable date." But he warned that "the vitality of these constitutional principles [could not] be allowed to yield simply because of disagreement with them." The parties of the cases were to be admitted "to public schools on a racially nondiscriminatory basis with all deliberate speed. . . ."[64]

The 1954 Brown decision has been criticized as being a weak "legal" decision. Critics contend that Chief Justice Warren's footnote citing social scientists to support the finding that segregation generates feelings of inferiority is proof that the decision rested upon social considerations rather than "law." However, law is one of many social forces intended to produce particular attitude and behavior patterns. Governments can and do "legislate morality." When a legislature or court formulates public policy, it orders priorities and values. The

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[64] Brown II at 299-301.

Supreme Court was making public policy in both 1896 and 1954. The difference in these two acts of judicial policy making is not in the "legal purity" of their reasonings. The difference is that they expressed different value orientations. In 1954 the Court had access to scholarly social research that was unavailable in 1896. In Brown there is the recognition of the difference between nineteenth and twentieth century knowledge about beliefs and attitudes, and the acknowledgment of sociological and psychological sources.[65]

Problems of Implementation: Evasion and Delay

The judicial policy in Brown v. Board of Education did not immediately result in desegregated schools. Indeed, fifteen years after the decision ordering school desegregation "with all deliberate speed," many blacks remained segregated in substandard schools. Hence, the implementation decreed in Brown II was not the final policy decision. The Supreme Court consistently reaffirmed its policy of school desegregation, and began to formulate a national judicial policy of school integration which required local policy makers to compensate for the effects of state-imposed segregation.

Interposition

The Court strongly reaffirmed the judicial policy of school desegregation in 1958 in Cooper v. Aaron.[66] The case involved the desegregation of the Little Rock Public Schools. Three days after

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[65] Bem.

[66] 358 U.S. 1 (1958).

Brown I, the Little Rock School Board adopted a policy statement to comply with the judicial policy. School officials prepared a plan to desegregate Little Rock schools. The plan called for desegregation in stages. Grades 10-12 were to be desegregated the first year (beginning in the fall of 1957) followed by desegregation of junior high and elementary levels in subsequent years, with complete desegregation of the school system by 1963. The Federal District Court upheld the Board's plan.

While the Little Rock School Board was preparing to desegregate the schools, other state authorities were taking actions to resist desegregation. The State Constitution was amended to require the state legislature to oppose "in every Constitutional manner the Un-constitutional desegregation decision . . . of the United State Supreme Court."[67] The state legislature enacted a law relieving school children from compulsory attendance at racially mixed schools, and took other action to interpose the state's "sovereignty" against federal authority. The School Board, nevertheless, proceeded to implement the first stage of its desegregation plan. Nine black children were scheduled to be admitted to Central High School in September, 1957. On September 2, 1957, the Governor of Arkansas sent units of the Arkansas National Guard to Central High School to bar the black children from the school. The Board petitioned the District Court for postponement of the desegregation plan because of the public opposition that had developed due to the actions of the governor and state legislature. The court held that opposition to desegregation was not a sufficient reason to

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[67] Ark. Const., Amend. 44 cited in Cooper v. Aaron, 358 U. S. 1, 9.

depart from the plan and ordered the Board to proceed. When the Arkansas National Guard prevented the black children from attending Central High School, the District Court requested the United States Attorney to begin an investigation to fix responsibility for the interference with the implementation of the Court's order to implement the desegregation plan. Following hearings on the investigation, the District Court issued an order enjoining the Governor and officers of the National Guard from obstructing or interfering with the desegregation plan. The National Guard was withdrawn and black children entered the high school under protection of Little Rock police. However, because of difficulty in controlling a large mob that had gathered at the high school, the black children were removed. The President of the United States dispatched federal troops to the high school. Federal troops remained at the school and the black children remained in attendance throughout the school year. Finding that these events had resulted in conditions which greatly disrupted the educational process, the District Court granted the School Board's request that the operation of the plan be suspended for two years.

The Supreme Court, in a unanimous opinion signed by all nine justices, held that "the constitutional rights of black children are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature."[68] The Court reasoned that the "good faith" of the School Board was not valid as a reason for delaying desegregation of the schools. Thus, the

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[68] Cooper v. Aaron, 358 U.S. 1, 16.

Supreme Court "unanimously reaffirmed" its interpretation of the Fourteenth Amendment in Brown I.

"Legal" Evasion

The case of Goss v. Board of Education[69] involved transfer provisions in desegregation plans adopted by school boards in Knoxville, and Davidson County, Tennessee. Under the plans, school districts were to be re-zoned without reference to race. Transfer provisions permitted students who were assigned, because of the re-zoning, to a school where their race was in the minority, to transfer from such school back to their segregated school in which their race was in the majority. The District Court and Court of Appeals approved the desegregation plans with the transfer provisions.

The Supreme Court held that such transfer policies ran "counter to the admonition of Brown v. Board of Education. . . ."[70] Justice Clark reasoned that "classifications based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment."[71] One should note that not all transfers based on race were held unconstitutional. Only those transfers in which "recognition of race as an absolute criterion for granting transfers which operate[d] only in the direction of schools in which the transferee's race [was] in the majority. . . ." were

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[69] 373 U.S. 683 (1963).

[70] Ibid., at 684-685.

[71] Ibid., at 687. Emphasis mine.

invalidated. The plans in question lacked a "provision whereby a student [could] with equal facility transfer from a segregated to a desegregated school." The "obvious one-way operation" of such "transfer plans promote[d] discrimination and [were] therefore invalid."[72] Justice Clark concluded that "no official transfer plan or provision of which racial segregation [was] the inevitable consequence [could] stand under the Fourteenth Amendment."[73] Thus, states were prohibited from implementing policies that resulted in segregation. While the Court hinted that policies based on race to eradicate segregation might be acceptable, it still did not specifically require such policies. There remained a question of whether the national judicial policy required only removal of legal barriers to desegregation or positive action to achieve "integration" to compensate for the effects of state-imposed segregation.

The Development of the Judicial Policy of Integration

The Affirmative Duty to Disestablish Segregation

In the case of Green v. County School Board,[74] the Supreme Court made it clear that the mandate in Brown II required local policy makers to take affirmative actions to correct for the effects of state-

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[72] Ibid., at 688.

[73] Ibid., at 689.

[74] 391 U.S. 430 (1968). See also the companion cases Raney v. Board of Education, 391 U.S. 443 (1968); and Monroe v. Board of Commissioners, 391 U.S. 450 (1968).

imposed segregation, i.e., to integrate. The case involved a "freedom of choice" plan adopted by the School Board of New Kent County, Virginia. Following the decisions in Brown v. Board of Education, the School Board continued the operation of segregated schools. In 1965, after a suit challenging such segregation, the Board adopted a "freedom of choice" plan for desegregating the schools. The plan permitted students to choose annually between the schools. First and eighth graders were required to choose, and in subsequent years students not choosing were assigned the school previously attended. During three years of operation, no white student chose to attend the all-black school, and eighty-five percent of black students remained in the all-black school. The District Court and Court of Appeals approved the plan.

Justice Brennan, speaking for a unanimous court, held that School Boards which operated a state imposed dual system had an affirmative duty to effectuate a transition to a unitary school system. The School Board argued that the Fourteenth Amendment did not require "compulsory integration." Justice Brennan rejected the argument:

> . . . that argument ignores the thrust of Brown II. . . . Brown II was a call for the dismantling of well-entrenched dual systems . . . . School boards such as the respondent then operating state-compelled dual systems were . . . clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.[75]

The Court did not hold that "freedom of choice" was unconstitutional of itself. Rather, the Court held that "freedom of choice" was not an end

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[75] Green v. County School Board, 391 U.S. 430, 437-438.

in itself. School boards operating dual systems were required to "come forward with a plan that promises realistically to work, and promises realistically to work now." The burden was on the school board "to establish that its proposed plan promise[d] meaningful and immediate progress toward disestablishing state-imposed segregation."[76] Such plans required evaluation in practice. If "freedom of choice" offered real promise of effecting a conversion to a non-discriminatory school system there might be no objection. If, on the other hand, "there [were] reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, non-racial school system 'freedom of choice' must be held unacceptable."[77] In the present case, it was important that the first step did not come until ten years after Brown II directed school boards to make a "prompt and reasonable start." The fact that the New Kent school system remained segregated three years after the establishment of the "freedom of choice" plan made such action unacceptable. Here the plan did not dismantle the dual system, but "operated simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board."[78] Thus, the Supreme Court made it clear that the national judicial policy initiated in Brown v. Board of Education, required positive action to disestablish segregated schools in those areas where segregation was state-imposed.

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[76] Ibid., at 439.

[77] Ibid., at 441.

[78] Ibid., at 441-442.

Abandonment of "All Deliberate Speed"

In Brown II the Supreme Court adopted the doctrine of "all deliberate speed" because it recognized that school desegregation presented varied and complex problems that required time and flexibility for successful resolution. The trouble with such an approach was that in many areas the vagueness of "all deliberate speed" created misunderstanding of the requirement or was used to frustrate and delay the implementation of the judicial policy. In 1969 the Court abandoned the "all deliberate speed" doctrine in Alexander v. Holmes County Board of Education.[79] The per curiam decision held that

> continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[80]

Thus, the Court reaffirmed the national judicial policy of school integration, and made it clear that local policy and practice was to comply with that national policy.

Specific Requirements and Limitations

In the case of Swann v. Charlotte-Mecklenburg Board of Education,[81] the Supreme Court defined in more precise terms the scope and

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[79] 396 U.S. 19 (1969).

[80] Ibid., at 20.

[81] 402 U.S. 1 (1971). See also companion cases Davis v. Board of School Commissioners, 420 U.S. 33; McDaniel v. Barresi, 402 U.S. 39; and Charlotte-Mecklenburg Board of Education v. Swann, 402 U.S. 43 (1971).

duty of school authorities and district courts in effecting a conversion from dual to unitary, non-discriminatory school systems. The Charlotte-Mecklenburg Board of Education implemented a desegregation plan relying solely on geographic zoning with a free transfer provision. Of the 24,000 black students in the school system, approximately two-thirds remained in schools that were totally or more than ninety-nine percent black. Petitioner Swan initiated action for further relief. The District Court ordered the Board to present another plan to include both faculty and student desegregation.

The Board's plan restructured attendance zones to achieve greater racial balance, but rejected techniques such as pairing and clustering. Under the Board's plan a large number of blacks, especially in the elementary grades, would have remained in predominantly black schools.

In addition to the Board's plan, Dr. John Finger, an expert appointed by the court, presented a plan. The "Finger Plan" adopted portions of the Board's plan for re-zoning, but included pairing-grouping techniques which would result in greater desegregation of all schools in the system. The District Court accepted the Board's plan as modified by Dr. Finger for junior and senior high schools, and adopted the "Finger Plan" for elementary schools. The School Board argued that the "Finger Plan" was unreasonable, but "acquiesced" when the District Court held that the plan was reasonable and ordered it adopted.

Chief Justice Warren Burger, speaking for a unanimous Court, reiterated that the "objective . . . remain[ed] to eliminate from the

public schools all vestiges of state-imposed segregation."[82] He held that if local authorities defaulted in their affirmative obligation to formulate and implement acceptable remedies, "a district court [had] broad power to fashion a remedy that [would] assure a unitary school system."[83] Aside from the issue of student assignment, in instances where it was possible to identify "white schools" or "black schools" simply by reference to the race of teachers and staff, the quality of facilities, or the organization of extracurricular activities, "a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause [was] shown." In a system that had been dual in these respects, "the first remedial responsibility of school authorities [was] to eliminate invidious racial distinctions."[84] The Constitution did not prohibit district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation.

Decisions concerning construction of new schools and closing old ones affect residential patterns as well as the racial composition of schools. In areas where state-imposed segregation existed, "it [was] the responsibility of local authorities and district courts to see to it that future school construction and abandonment [were] not used and [did] not serve to perpetuate or re-establish the dual system."[85]

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[82] Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15.

[83] Ibid., at 16.

[84] Ibid., at 18.

[85] Ibid., at 21.

Concerning the central issue of pupil assignment, the Chief Justice discussed four problem areas. The first problem involved the use of "racial balance" or "racial quotas" to correct a previously segregated system. The Chief Justice held that the constitutional command to "desegregate" schools did not mean that every school in the system had to reflect the racial composition of the system as a whole. However, in school systems where local authorities failed to disestablish the dual system, the limited use of mathematical ratios as a "starting point in the process of shaping a remedy . . . was within the equitable remedial discretion" of district courts.[86] A second problem concerned whether every one-race school had to be eliminated as part of a remedial process of desegregation. The Chief Justice held that while the existence of a small number of one-race schools did not in itself indicate that a dual system still existed, district courts should scrutinize such schools and require school authorities to prove that the racial composition did not result from "present or past discriminatory action on their part." Moreover, the Court recognized that an optional majority-to-minority transfer provision was a useful tool of desegregation. To be effective, such arrangement should provide free transportation and make space available for the transferring student.[87] A third problem was the limits, if any, on the rearrangement of school districts and attendance zones as a method to disestablish segregation. The Chief Justice held that in school systems with a history of discrimination, a student "assignment plan [was] not

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[86] Ibid., at 24-25.

[87] Ibid., at 25-27.

acceptable simply because it appear[ed] to be neutral." In such systems, a "frank--and sometimes drastic--gerrymandering of school districts and attendance zones", with an additional step of pairing, clustering, or grouping of schools "with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools" was within the "broad remedial powers of a court," even if these zones were "neither compact nor contiguous."[88] Fourth, the Chief Justice discussed the limits, if any, on the use of transportation facilities to disestablish state-imposed school segregation. He said that when the assignment of children to schools nearest their home would not effectively dismantle the dual school system, the remedial technique of requiring bus transportation as a tool of school desegregation was within the district court's power to provide equitable relief. He reasoned that "desegregation plans cannot be limited to the walk-in school." However, objections to transportation may have validity "when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process." The specific "limits on time of travel will vary with many factors, but probably none more than with the age of the students."[89] In conclusion, the Chief Justice said that once a unitary system was established, the constitution did not require yearly adjustments.[90]

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[88] Ibid., at 27-28.

[89] Ibid., at 29-31.

[90] Ibid., at 32.

Thus, the Supreme Court consistently reaffirmed and strengthened the national judicial policy of school desegregation. Not only does the Equal Protection Clause prohibit racial segregation in public schools, it also requires affirmative action to correct the effects of years of state-enforced segregation.

National Impact: An Overview

The national impact of the judicial policy on school segregation is difficult to analyze for two reasons. First, the national judicial policy was dynamic. The fact that Brown did not end the conflict over school segregation is evidence that the policy had an effect. The Supreme Court would not have had the opportunities to review and adjust the desegregation policy if individuals in local communities had not registered their dissatisfaction with the implementation of the policy by filing further law suits. Second, because the national policy was not static, and because of the fragmentation of power and authority in the United States, the impact of the policy was also dynamic. The Supreme Court has the authority to declare laws unconstitutional, but it often lacks the political power to immediately change the practice of such laws.

There was a wide range of responses following the initial desegregation decisions in 1954 and 1955. In some areas, what followed was an era in which the decentralization of power was used to frustrate and delay the goal of the desegregation policy. In other sections, primarily the Border States, school districts desegregated voluntarily. The smoothest transition occurred in those communities

where local political and governing elites supported the transition, primarily in urban areas.[91]

In certain areas of the deep South, there was "massive resistance" which included closing public schools and pupil placement laws designed to maintain segregation.[92] As late as the 1960-61 school year, Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina still maintained total segregation.[93] On the other hand, without waiting for the enforcement decree of 1955, 154 school districts in the District of Columbia, Delaware, Maryland, Missouri, and West Virginia desegregated. After the implementation decree in 1955, an additional 297 districts desegregated, with the largest contribution in Oklahoma, Texas, and Kentucky.[94] However, the trend toward desegregation in the Border States peaked about 1959. Until the passage of the 1964 Civil Rights Act, the responsibility of securing compliance with the national judicial policy rested almost exclusively with the Federal District Courts.[95]

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[91]Robert J. Steamer, "The Role of the Federal District Courts in the Segregation Controversy," Journal of Politics, XXII (August, 1960), p. 434. See also Albert P. Blaustein and Clarence C. Ferguson, Jr., Desegregation and the Law: The Meaning and Effect of the School Segregation Cases (New Jersey: Rutgers University Press, 1957), pp. 215-216.

[92]See Jack W. Peltason, Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation (New York: Harcourt, Brace and World, Inc., 1961), for accounts of resistance efforts in Arkansas, Virginia, and Louisiana.

[93]Thomas R. Dye, ed., American Public Policy: Documents and Essays (Columbus, Ohio: Merrill, 1969), pp. 18-19.

[94]Steamer, p. 418.

[95]Peltason. See also Harrell R. Rodgers and Charles S. Bullock, III, Law and Social Change: Civil Rights Laws and Their Consequences (New York: McGraw-Hill Book Company, 1972), pp. 71-74.

The passage of the 1964 Civil Rights Act shifted attention to the executive branch and the Department of Health, Education, and Welfare. Title VI of the Act provided that any recipiants of Federal aid who practiced racial discrimination could have their funds terminated. Enforcement of this provision forced many recalcitrant school districts to integrate. By 1965, ninety-eight percent of Southern and Border State schools claimed to have met minimal standards of desegregation.[96] However, this figure is deceptive. While the number of school districts in compliance was high, Table I reveals that the actual number of black children in mixed schools remained small in many areas of the South. By 1969 it had become difficult to separate the effects of court decisions from the effects of the Civil Rights Act and its implementation.[97] The decisions in Alexander v. Holmes County Board of Education (1969) and Swann v. Charlotte-Mecklenburg Board of Education (1971) further stimulated desegregation. Indeed, the controversy shifted from opposition to desegregation to opposition to bussing to achieve a racial balance. Moreover, the controversy over de facto segregation focused attention on the problems in North as well as the South. Although, the national judicial policy has come to be one of "integration", the decisions which developed the policy involved only school systems where segregation resulted from state action--de jure segregation. The Court has yet to formulate a judicial policy

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[96] Rodgers and Bullock, pp. 81-82.

[97] Stephen L. Wasby, The Impact of the United States Supreme Court: Some Perspectives (Homewood Illinois: The Dorsey Press, 1970), p. 173.

TABLE I

PERCENTAGES OF BLACKS IN PUBLIC SCHOOLS WITH WHITES
1954-1967

	54-55	55-56	56-57	57-58	58-59	59-60	60-61	61-62	62-63	63-64	64-65	65-66	66-67
South													
Alabama	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.4	04.4
Arkansas	00.0	00.0	00.0	00.1	00.1	00.1	00.1	00.1	00.2	00.3	00.8	06.0	15.1
Florida	00.0	00.0	00.0	00.0	00.0	00.3	00.0	00.3	00.7	01.5	02.7	09.8	22.3
Georgia	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.1	00.4	02.8	08.8
Louisiana	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.1	01.1	00.9	03.4
Mississippi	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.6	02.5
North Carolina	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.1	00.3	00.5	01.4	05.2	15.4
South Carolina	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.0	00.1	01.7	05.6
Tennessee	00.0	00.1	00.1	00.1	00.1	00.1	00.2	00.8	01.1	02.7	05.4	16.3	28.6
Texas	00.0	01.4	01.4	01.4	01.2	01.2	01.2	01.3	02.3	05.5	07.8	17.4	44.9
Virginia	00.0	00.0	00.0	00.0	00.0	00.1	00.1	00.2	00.5	01.6	05.2	11.0	25.3
Border													
Delaware	01.9	11.0	28.5	36.2	43.7	44.1	45.0	53.7	55.9	56.5	62.2	83.3	100.0
Kentucky	00.0	00.8	20.9	28.4	27.5	38.9	47.2	51.2	54.1	54.4	68.1	78.1	90.1
Maryland	05.1	13.9	19.1	22.1	32.4	29.3	33.6	41.5	45.1	41.8	50.9	55.6	65.3
Missouri	*	*	*	*	*	42.7	41.7	41.4	38.9	42.1	42.3	75.1	77.7
Oklahoma	00.0	*	08.7	18.2	21.2	26.0	24.0	25.6	23.6	28.0	31.7	38.3	50.8
West Virginia	04.3	*	*	38.7	39.8	50.0	66.6	62.0	61.4	58.2	63.4	79.9	93.4

Source: Figures for years 1954-1967 compiled from various editions of Southern Education Reporting Service, Southern School News by Thomas R. Dye, ed., American Public Policy: Documents and Essays Columbus, Ohio: Merril, 1969, pp. 18-19. Note: These figures exaggerate progress achieved because only a few blacks attending a majority white school (or vice versa) hikes the figures significantly although many minority schools persist. HEW's figures are more revealing since they indicate the percentage of black students attending 49.9% minority schools. *No data are available.

to deal with de facto segregation--segregation resulting from social and economic factors.

However, school segregation in Oklahoma City resulted from state law. The local judicial policy formulated by the District Court in Oklahoma City was based on the national policy decisions dealing with de jure segregation. The changes in the development of the national judicial policy is an indication that judicial policy-making is a dynamic process. The changing nature of the national judicial policy made the policy's impact in local communities, such as Oklahoma City, more dynamic. The development of the national judicial policy of school desegregation provides the setting to analyze the relationship between Supreme Court national policy-making and local policy-making processes. Chapter III deals with the impact process in Oklahoma City.

CHAPTER III

THE IMPACT PROCESS IN OKLAHOMA CITY

The purpose of this chapter is to analyze the dynamics of the impact process in Oklahoma City, and explain why it occurred as it did. It will attempt to answer the questions posed in the statement of the problem. Did judicial policies result in changes in local school policies? If so, what effect did the new policies have on the racial composition in the public schools? Did judicial policies have any effect on the political activities of private citizens? What role did political and governing elites play? Did decisions of the Federal District Court in Oklahoma City have a greater or lesser impact than those of the Supreme Court? Why?

Both policy formulation and policy impact are dynamic. It is best to consider both as part of the total policy-making process. Because judicial policies and impact changed over time, discovery of the answers to the above questions requires (perhaps regrettably) an account of the litigation and its aftermath in Oklahoma City. Before one can analyze the impact of judicial policies, one must first understand the litigation and events that comprise the impact process.

An Overview of the Impact Process in Oklahoma City

Because judicial policies rely on political and governing elites for implementation, the attitudes and actions of elites are important factors in determining the impact the policies will have. The impact process in Oklahoma City may be divided into two phases. Differences in the responses of local elites toward the judicial policies and the degree of social change effected by the judicial policies distinguish Phase One from Phase Two.

Phase One covers the period from 1954 to 1963. During this period the state government and the Oklahoma City Board of Education voluntarily changed school policies to comply with the judicial policies announced in Brown v. Board of Education.[1] The new policies represented only paper compliance. They required little behavior change by private citizens, and certain provisions actually contributed to resegregation after initial desegregation. In 1961, Dr. A. L. Dowell, a member of the black political elite in Oklahoma City, filed suit in the United States District Court challenging the policies of the Board of Education. The only discernable interest group activity during the first phase was black interest group activity. Local political and governing elites supported policies to comply with Brown, and there was no great negative reaction or resistance by ordinary persons to the judicial policies or to the local policy changes.

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[1] 347 U. S. 483 (1954); and 349 U. S. 294 (1955).

Phase Two covers the period from 1963 to the present. Beginning in 1963, policy decisions of the United States District Court in Dowell v. School Board of Oklahoma City Public Schools[2] compelled the Oklahoma City Board of Education to formulate and implement stronger policies that required a greater degree of integration in the public schools. Elite support for the new policies was lacking during this phase. The School Board implemented the judicial policies reluctantly, and the political elite made no attempt to secure public acceptance of the policies as it did in Phase One. The public became politically active, and school patrons formed new interest groups to both resist and support the new integration policies. The controversy over school desegregation remains unresolved.

Nineteen hundred and sixty-three was chosen as the dividing point between the two phases because it was in 1963 that the United States District Court delivered its first decision in the school desegregation issue in Oklahoma City. Such a division allows comparison of the impacts of Supreme Court and lower federal court policy decisions. Policy and behavior changes during Phase One were affected primarily be elite responses to the Supreme Court decisions in Brown v. Board of Education. Policy and behavior changes during Phase Two were influenced by elite responses to decisions of the lower federal court as well as social and political changes that were part of the impact of Brown in Phase One.

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[2] 219 F. Supp. 427 (1963).

Phase One: Supreme Court Impact in Oklahoma, 1954-1963.

Before 1955, the Constitution and laws of Oklahoma prohibited schools from conducting racially mixed classes.[3] When the United States Supreme Court ruled similar laws unconstitutional in 1954, state authorities took the position that the ruling did not affect Oklahoma until the Court handed down its implementation decree. Nonetheless, political and governing elites in Oklahoma refused to join other Southerners in resistance efforts and began preparing to revise state school laws to comply with the Supreme Court judicial policy. Governor Johnston Murray, State Superintendent of Public Instruction Oliver Hodge, and other state officials said the problem in Oklahoma was financial rather than social, and began working on proposals to change the provisions for separate financing of white and black schools.[4] The Education Committee of the Legislative Council recommended immediate preparation of legislation necessary to desegregate the public schools in Oklahoma. Representative Ben Easterly, the committee chairman, said, "We recognize the Supreme Court has spoken and we are preparing to comply."[5]

Nineteen hundred and fifty-four was an election year in Oklahoma, but school desegregation was not a major issue in the gubernatorial campaign. New state officials continued to take positive actions to

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[3] Constitution of the State of Oklahoma, Art. XIII, sec. 3; and Oklahoma Statutes, Title 70, Art. 5.

[4] The Daily Oklahoman, May 18, 1954, p. ; and September 4, 1954, p. 1.

[5] The Daily Oklahoman, September 23, 1954, p. 1.

comply with Brown. The state legislature adopted the legislation necessary to allow local boards of education to desegregate the public schools.[6] Governor Raymond Gary said, "All Oklahomans may as well face the reality that segregation is on the way out in our public schools." He noted that the Supreme Court mandate allowed additional time if it was necessary, but added, "it does not mean we can ignore the Supreme Court's decision . . . The courts will decide what feasible means. They aren't likely to accept non-compliance except where good reasons exist for moving slowly."[7] At the beginning of the 1957-58 school year, Governor Gary announced that the state's schools were seventy-five percent integrated. In April, 1957, the state legislature raised the minimum attendance requirement from twenty-five to forty. No state aid was paid if the minimum was not maintained, and accreditation was withheld from school districts that employed less than five teachers. These new policies forced many schools to desegregate. By the end of the school year, 216 of 271 bi-racial school districts had desegregated or announced desegregation plans.[8]

The state government instituted policy changes to permit the conduct of racially mixed classes in Oklahoma, but the real job of school desegregation rested with local boards of education and other local elites. Initially, local elites in Oklahoma City echoed the positive

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[6] Oklahoma Statutes, Title 70, Art. 5-8 and 5-9 were amended to consolidate provisions for financing white and black schools, and Art. 5-10 was repealed. The remainder of Title 70, Art. 5 was repealed in 1965.

[7] The Daily Oklahoman, June 17, 1955, p. 21.

[8] Report of United States Commission on Civil Rights (U. S. Government Printing Office: Washington, 1959), p. 217.

response of state officials. Immediately after the announcements of the decision in 1954, an editorial in the Daily Oklahoman encouraged compliance:

> The law as interpreted by the Supreme Court is going to be obeyed in Oklahoma. There can be no doubt of that. It will be observed faithfully by those who occupy positions of authority. And it will be well for the state if people as individuals show full respect for the court's decision.[9]

Dr. J. Chester Swanson, Superintendent of Schools for Oklahoma City, said that he personally favored early integration in Oklahoma City. Mrs. L. D. Melton, Chairman of the Oklahoma City Board of Education, said that "The board will certainly abide by the law."[10] By unanimous vote, the School Board adopted the "Statement Concerning Integration, Oklahoma Public Schools, 1955-1956" on August 1, 1955. The statement read in part:

> All will recognize the difficulties the Board of Education has met in complying with the recent pronouncement of the United States Supreme Court in regard to discontinuing separate schools for white and Negro children. The Board of Education asks the cooperation and patience of our citizens in its compliance with the law and making the changes that are necessary and advisable.[11]

The Board also approved redistricting plans based on natural geographic attendance areas with no gerrymandering to avoid integration. The existing transfer policy was maintained. Transfers were granted if space was available, but the Board indicated that mass

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[9] The Daily Oklahoman, May 19, 1954, p. 18.

[10] Quoted in The Daily Oklahoman, June 1, 1955, p. 2.

[11] Quoted in Dowell v. School Board, 219 F. Supp. 427, 434.

transfers would be refused.[12] Parents in Oklahoma City apparently accepted the policy changes calmly, as evidenced by the lack of political activity to resist the changes and the fact that the number of transfer requests in 1955 were about the same as in previous years.[13] Thus, the Oklahoma City Public Schools were desegregated in the fall of 1955 with little trouble.

By 1956, however, a trend toward resegregation had begun. In 1956, one elementary school with 340 students had only eight white pupils left. By 1960, several previously all white elementary schools had become all black and others were going through the same transition. The School Board's transfer policy was an important factor which contributed to resegregation.[14]

Shortly after the integration process began, the School Board initiated a minority-to-majority transfer policy. Under this policy, a student could transfer from a school in his resident school attendance area where his race was in the minority to a school in another area where his race predominated. For example, in 1957, forty white students living in areas with integrated schools were allowed to transfer to all white schools in other areas. Two black students were granted transfers from integrated schools to an all black school in another district. However, several black students were refused

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[12] Ibid. See also The Daily Oklahoman, August 2, 1955, p. 1.

[13] The Daily Oklahoman, August 10, 1955, p. 10.

[14] Other factors were housing patterns and "white flight." See United States Commission on Civil Rights, 1963 Staff Report, Public Education (U. S. Government Printing Office: Washington, 1963), p. 32; and Southern School News, Vol. 10, No. 2, August, 1963, p. 11.

transfers from an integrated elementary school in their district to an all white school in another area even though the all white school was closer to their homes. Dr. Melvin Barnes, Oklahoma City School Superintendent, said that closeness to school had not been a factor in previous transfers.[15] The School Board members maintained that such a policy was necessary to make integration work, and that they were acting in good faith.[16]

In October, 1957, the Education Council of the local NAACP recommended filing suit against the minority-to-majority transfer policy. NAACP leaders discussed the problem with Thurgood Marshall when he spoke in Oklahoma City in 1960 at the 30th Annual Convention of Oklahoma Conferences of NAACP Branches.[17] Finally, on October 9, 1961, Dr. A. L. Dowell, a black city councilman, filed suit on behalf of his son, Robert, in Federal District Court challenging the transfer policy.

There were several notable characteristics of the impact process during Phase One. First, the Supreme Court's Policy decision in Brown was very broad and vague and resulted in little change in the

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[15] The Daily Oklahoman, October 9, 1957, pp. 102. The minority-to-majority transfer was not a written policy, but rather a policy of common practice until it was formally adopted at the School Board meeting April 10, 1963.

[16] Ibid. This argument was reaffirmed in personal interviews with two individuals who were members of the Board of Education when the policy was initiated. Personal Interviews, Otto F. Thompson and C. B. McCray, Oklahoma City, Oklahoma, March 20 and 21, 1972.

[17] The Daily Oklahoman, October 9, 1957, p. 1; and Southern School News, Vol. 7, No. 7, January, 1961, p. 16.

racial composition of schools. The vagueness of "good faith compliance" and "all deliberate speed" allowed local elites great latitude in compliance. Second was the positive elite response at both the state and local level to the decisions in Brown v. Board of Education. Political and governing elites in Oklahoma supported and adopted policy changes to bring local law into "compliance" with the national judicial policy. There was no indication of elite support in Oklahoma of "massive resistance" efforts as in other parts of the South.[18] However, the local policy changes represented only paper compliance and effected very little actual desegregation in the schools. Third is the apparent calm acceptance by the public in Oklahoma of the judicial policy and the local policy changes. There were a few minor problems involved in enrolling blacks in previously all white schools, but there was no reported violence, and no public reaction against desegregation. However, the local policy changes provided an "escape valve" in the minority-to-majority transfer policy and ultimately resulted in very little change from the status quo of racially segregated schools. Fourth, the only visible interest group activity in Oklahoma City was that of existing, well established pro-integration interest groups, primarily the NAACP and the Urban League. The initial effort was to

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[18] For evidence of the existence of an informal "political elite" in Oklahoma City see Ron Stewart, "The Influence of the Business Community in Oklahoma City Politics" (unp. M.A. thesis, Oklahoma State University, 1967). Not only did local governing elites change local policies, the names of Oklahoma's United States Senators and Representatives are absent from the "Southern Manifesto" presented to Congress on March 12, 1956.

see that black teachers were not fired in mass.[19] When subsequent efforts to achieve significant levels of integration failed, the pro-integration interest in Oklahoma City turned to the courts. Dr. Dowell solicited help from the NAACP for his suit challenging the Oklahoma City School Board's policies. The NAACP Legal Defense Fund provided the "legal machinery" for the suit.[20]

In conclusion, the Supreme Court judicial policy established in Brown v. Board of Education had an impact in Oklahoma. The greatest impact was on local political and governing elites. Local elites felt obligated to change local policies to comply with the new judicial policy. However, the new school policies resulted in little change in the racial composition of schools by providing a means to maintain racial segregation.[21] Hence, Brown had a smaller impact on ordinary persons than on elites. Pro-integration interest groups that had been involved at the "input" stage of the judicial process continued their activities to integrate public facilities in Oklahoma City. Except for the few individuals in such interest groups, the impact of Brown in Oklahoma City was largely determined by the actions and policies of

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[19]Personal Interviews, State Senator E. Melvin Porter and Mrs. Clara Luper, Oklahoma City, Oklahoma, May 23, 1972. Both individuals have held leadership positions in the Oklahoma branch of the NAACP.

[20]Ibid. Senator Porter served as co-counsel with U. Simpson Tate who has been a regional field secretary and chief counsel for the NAACP in the Southwest Region. Southern School News, Vol. 8, No. 10, April, 1962, p. 15; and Vol. 9, No. 8, February, 1963, p. 6.

[21]Part of the impact of Brown is seen in the fact that many individuals changed their behavior by transferring to a school they ordinarily would not have attended. However, there was very little social change because very few individuals attended schools that were racially mixed.

local elites. Elite actions resulted in calm acceptance of the judicial policy by the public, but very little actual change in the racial composition of schools. Thus, the initial impact of Brown in Oklahoma City was small.

Phase Two: Lower Court Impact, 1963-1972

In May, 1961, Dr. A. L. Dowell requested that his son Robert be allowed to transfer from Douglass High School, an all black school, to Northeast High School, an integrated school. The Assistant Superintendent of Oklahoma City Public Schools, M. J. Burr, refused to approve the transfer. After discussion with Dr. Jack Parker, the Superintendent of Schools, Robert Dowell was granted the transfer with the condition that he enroll in an electronics course which was not offered at Douglass.[22] Faced with such a condition, Robert enrolled at Bishop McGuiness High School, a Catholic high school in north central Oklahoma City. Dr. Dowell challenged the School Board's policies in the United States District Court.

There were several issues raised in Dowell v. School Board.[23] The first issue was that the Oklahoma City Board of Education adopted

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[22]Other provisions of the School Board's minority-to-majority transfer policy were:

(1) If school boundaries were changed, students were granted transfers in order that they could finish at the school where they started;
(2) Students were granted transfers to attend the same school as older brothers and sisters;
(3) Transfers were granted to students wishing to enroll in courses not offered at the school in their home district.

Robert Dowell was granted a transfer under the third provision.

[23]219 F. Supp. 427 (1963). Hereinafter cited as Dowell I.

and enforced a transfer policy that discriminated "against plaintiffs and the class of persons they represent on the basis of their race."[24] The "class action" allowed the case to transcend the narrow issue of admitting Robert Dowell to integrated Northeast. Before the case came to trial, the School Board granted the transfer without condition, but Robert remained at McGuiness until he graduated in 1964. Dr. Dowell and the NAACP were challenging the School Board's actions and policies on the ground that they discriminated against blacks. The second issue was that black students who sought transfers from Douglass to other schools in the Oklahoma City school district were faced with conditions and limitations not faced by white students who sought transfers to the same schools. The third was that black students met different conditions and limitations when they sought to transfer from a school where their race was in the minority to one were their race was a majority than they met when they sought to transfer in the other direction. Fourth was that principals, clerical, administrative, supervisory, custodial, and maintenance employees were assigned to buildings and classrooms on the basis of their race and the race of the majority of students at the school. Finally, the plaintiffs contended that the Douglass High School attendance area had been gerrymandered to include a disproportionate number of blacks and all-black "feeder" elementary and junior high schools.[25]

The School Board agreed that it followed a minority-to-majority transfer policy. It argued, however, that such a policy was not racial

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[24] Ibid., at 429. Emphasis mine.

[25] Ibid., at 430-431.

segregation and did not violate the constitutional rights of any child. Further, the School Board contended that it complied with Brown v. Board of Education and "attained complete desegregation" in 1955.[26] Thus, it was not necessary for the School Board to have or present a plan for desegregation. If the evidence showed that the Oklahoma City Public Schools remained segregated in practice, "the burden [was] on plaintiffs to overcome this showing. . . ."[27] In addition, during the trial Dr. Jack Parker, the Superintendent of Oklahoma City Public Schools, admitted that faculties and staffs were not integrated. He defended this policy as follows:

> We recognize . . . that we are to operate a desegregated school system from the standpoint of pupils.
> . . . . . .
> As we have considered this matter of whether or not teacher staffs . . . should be integrated, I have advised the Board . . . that nothing would be gained educationally by a desegregation of staffs . . . ; and that there would be only one reason . . . for doing this, and it would not be an educational reason. It would be merely for the sake of integration and we feel . . . that this is not sufficient cause because our responsibility is primarily an educational responsibility.

When asked if the decision to maintain faculty segregation was because of a feeling that black teachers were not equal to white teachers, Dr. Parker replied, "No, Sir, not at all."[28] The School Board also denied that any school district had been gerrymandered.

Judge Luther Bohanon found that the Oklahoma City School Board had not

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[26] Ibid., at 431.

[27] Ibid.

[28] Ibid., at 444.

> made a good faith effort to integrate the public schools of Oklahoma City. . . , notwithstanding eight years [had] passed, which [was] more time than necessary within which to begin to adjust the inequities which. . . existed unnecessarily so long. . . .[29]

He said there could be no argument that the minority-to-majority transfer policy was designed to perpetuate and encourage segregation, and that such a policy was not a "good faith effort" to integrate the public schools as required by the Supreme Court. He reasoned:

> The Constitution imposes upon the Board of Education the duty to end segregation in good faith and with deliberate speed. It is patently clear that this obligation has not been fulfilled by the Oklahoma City Board of Education. Since the . . . Brown case. . . , segregation has continued, and on April 10 of this year the policy was reduced to writing evidencing the plan to continue such segregation. . . .[30]

As for faculty and staff integration, the court found that the "school children and personnel [had] been completely segregated as much as possible. . . , rather than integrated as much as possible." Since the Superintendent had testified that black teachers were equal to white teachers, the court said that it seemed "only reasonable. . . that in all schools, mixed or otherwise, the School Board. . . should make a good faith effort to integrate the faculty. . . ." Judge Bohanon concluded "that the time has come for the Oklahoma City School Board to begin integration of its teaching staff. . . ."[31] There was no evidence of gerrymandering, but the Court said the redistricting of schools meant

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[29]Ibid., at 435.

[30]Ibid., at 441.

[31]Ibid., at 445.

little or nothing because of the effects of the minority-to-majority transfer policy.

In the "Order and Decree,"[32] Judge Bohanon ordered that should Robert Dowell present himself as a student at Northeast, he was to be enrolled without being required to enroll in any course of study not required of other students.[33] In addition, the School Board was permanently restrained from continuing a minority-to-majority transfer policy. The Court said there were to be "no special transfers except for scholastic or study requirements or other good faith reasons, but in no case based in whole or in part on race or color."[34] The Court also ordered the School Board to establish a policy of faculty and staff integration beginning in September, 1963. Finally, Judge Bohanon ordered the School Board to submit, within ninety days, a comprehensive plan for the integration of students and faculty of the Oklahoma City Public Schools. The court retained jurisdiction to insure compliance with the Decree, and to make further orders and decrees if required.

The School Board filed a plan with the court in August, 1963. After a hearing, the court ordered the Board to file another plan which it did in January, 1964.[35] The School Board's plan entitled "Policy Statement Regarding Integration of the Oklahoma City Public Schools"

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[32] Ibid., at 447-448.

[33] Robert Dowell did not enroll at Northeast, but rather chose to remain and graduate at McGuiness.

[34] Dowell I, 219 F. Supp. 427, 447.

[35] The Daily Oklahoman, August 6, 1963, p. 1; August 9, 1963, p. 1.

generally reiterated the policies contained in the previous plan. The plan had five provisions:[36]

(1) Adherence to the neighborhood school concept.

(2) Determination of attendance areas by geography and building utilization, not the race of residents.

(3) Desegregation of student activities and school facilities.

(4) Pupil transfers without regard to race.

(5) Special school services on the basis of need.

Following the second hearing, Judge Bohanon said he was without sufficient evidence to approve or disapprove the plan. Therefore, he requested the School Board to employ a group of "unbiased experts" who were independent of local pressures and sentiment to study the problem of school desegregation in Oklahoma City, and make recommendations. The School Board rejected this request on the grounds that the expense was not justified, because the Board itself was better qualified to assess local problems and more sensitive to local needs. The court then invited the plaintiffs to submit a list of names. They complied with the court's request, and in June, 1964, Judge Bohanon appointed the three individuals suggested by the plaintiffs to conduct a study and file the report with the court.[37]

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[36] United States Commission on Civil Rights, 1964 Staff Report, Public Education (U. S. Government Printing Office: Washington, 1964), p. 177.

[37] The three experts were Dr. William R. Carmack, Director of the Southwest Center for Human Relations Studies, the University of Oklahoma, Norman, Oklahoma; Dr. Willard B. Spaulding, Assistant Director, Coordinating Council for Higher Education for the State of California, San Francisco, California; and Dr. Earl A. McGovern, Administrative Assistant to the Superintendent of New Rochelle Schools, New Rochelle, New York. The Daily Oklahoman, June 2, 1964, p. 2.

The three experts filed their integration report entitled "Integration of the Public Schools of Oklahoma City" in January, 1965, but various difficulties delayed a hearing until August, 1965. The report contained four major recommendations:

(1) A Majority-to-Minority Transfer Policy to allow students assigned to schools where their race predominated (more than 50%) to transfer, for that reason, space permitting, to schools where their race was a minority.

(2) Pairing the attendance areas of four schools housing grades 7 - 12 such that (a) the attendance areas of all white Classen and integrated Central be combined into a single district with one school housing grades 7 - 9 and the other housing grades 10 - 12; and (b) the attendance areas of all white Harding and integrated Northeast be combined in a like manner.

(3) Faculty Desegregation so that by 1970 the faculty ratio of whites to non-whites in each school would be the same as the ratio of whites to non-whites in the entire system, subject of a reasonable tolerance.

(4) In-Service Education of Faculty including city-wide workshops devoted to school integration, special seminars, and special clinics.

Judge Bohanon found that the above recommendations were "educationally sound and legally appropriate," and would permit a meaningful start toward eradication of the segregated school system in Oklahoma City. Accordingly, he ordered the School Board to prepare and submit a plan substantially identical to the recommendations in the experts' report, and to prepare and submit a plan for further desegregation to completely disestablish segregation in the public schools.[38]

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[38] Dowell v. School Board, 244 F. Supp. 971, 977-978 (1965). Hereinafter this report is referred to as the "Pairing Plan," and this ruling is cited as Dowell II.

The School Board argued that it had no affirmative duty to adopt policies to increase the number of students in "integrated" schools; the Board was only obligated to "desegregate" the school system, which it did in 1955.[39] The court disagreed. Judge Bohanon said that "paper compliance and policy statements [were] insufficient to satisfy the standards of desegregation required by the second Brown decision."[40] Moreover, "The duty to disestablish segregation [was] clear in situations such as Oklahoma City, where such school segregation policies were in force and their effects [had] not been corrected."[41] For example, provisions of the School Board's current transfer policy, which allowed two or more members of the same family to attend the same school and permitted a student to complete the highest grade in the school he was attending, gave "continuing effect to the 'minority-to-majority' transfer rule" which was invalidated in Dowell I.[42] In addition, drawing attendance zones based on logically consistent geographical areas, and adherence to the "neighborhood school" concept, would continue segregated schools because certain schools and neighborhoods were traditionally black. The existence of such schools and

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[39] In interviews, several present and past School Board members made a distinction between "integration" and "desegregation." Desegregation implied removal of legal segregation; integration implied positive action to actually mix the races in the schools and compensate for the effects of segregation. Those who made this distinction also maintained that Brown required only desegregation, not integration. Personal Interviews, Foster Estes, Otto Thompson, Melvin Rogers, Mrs. Eloise Welch, Oklahoma City, Oklahoma, March 16, 20, and 21, 1972.

[40] Dowell II, 244 F. Supp. 971, 978.

[41] Ibid., at 981.

[42] Ibid., at 974.

neighborhoods was "neither accidental nor fortuitous, but the result of laws requiring segregation in housing and education."[43] The court also noted that the School Board's commitment to the "neighborhood school" concept was less than total,as evidenced by the enforcement of laws that required students to attend schools serving their race, which necessitated bypassing schools located near their homes; and the minority-to-majority transfer policy which allowed students to transfer from their neighborhood school and travel considerable distances to attend schools in conformance with racial patterns. Judge Bohanon concluded: "It appears that the neighborhood school concept has been in the past, and continues in the present to be expendable when segregation is at stake."[44] Hence, the eradication of segregated schools could not be accomplished by a mere statement of policy. It required a definite and positive plan with specific goals to be achieved in a definite time. Under such circumstances, as in Oklahoma City where segregation resulted from state action, consideration of race to erradicate segregation did not violate the Fourteenth Amendment's equal protection clause.[45]

Following Judge Bohanon's decision in Dowell II which ordered the School Board to adopt the "Pairing Plan," individuals who were not members of the governing elite became politically active. Initially, the number was small and restricted to patrons living in the attendance areas of the paired schools, primarily Harding patrons. The Harding Parent Teacher Student Association prevailed on the School Board to

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[43] Ibid., at 976.

[44] Ibid., at 977.

[45] Ibid., at 976 and 981.

appeal. When the Board appealed Judge Bohanon's "Pairing Order," the Harding PTSA participated as amicus curiae. Mr. Robert Looney, an attorney and Harding patron, represented the group without charge. This action was the first noticeable interest group activity other than the pro-integration groups mentioned previously. In a personal interview, Mr. Looney said that there was "very little interest until Judge Bohanon made his order--people take notice when they are affected." He indicated there was "strong parent interest" at Harding, but the group was unable to gain support from parents in areas that were not affected by the "Pairing Order."[46]

The School Board appealed the "Pairing Order," but, except for the provision for in-service training of teachers, the United States Court of Appeals for the Tenth Circuit affirmed the order in a two to one decision.[47] In a dissenting opinion, Judge Breitenstein said that he saw nothing in the Fourteenth Amendment that compelled "integration." He argued that

> . . . discrimination and integration are entirely different. Discrimination is the denial of equal rights. Integration is compulsory association. Each is concerned with individual rights and each must be tested against the same constitutional standards.[48]

He thought the lower court's order was "gratuitous interference with the duties and responsibilities of the Board . . . ."[49] These arguments

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[46]Personal Interview, Robert D. Looney, Oklahoma City, Oklahoma, May 22, 1972.

[47]Board of Education of Oklahoma City Public Schools v. Dowell, 375 F. 2d 158 (1967).

[48]Ibid., at 169.

[49]Ibid., at 170.

are relevant because several individuals who were critical of "forced integration" and Judge Bohanon's orders used substantially the same arguments in their criticisms.[50]

The United States Supreme Court refused to review the case,[51] and the School Board was compelled to implement the "Pairing Plan." One member of the School Board strongly criticized the court and the "Pairing Plan," but others were optimistic.[52] There was no apparent attempt to delay the implementation of the order. For example, Coleman Hayes, the School Board's attorney, said that they could petition the Supreme Court for a rehearing, but he would not recommend it. There was

> no reason to think anything could be accomplished. . . . It would be a waste of time and money. Such action could only be a delaying tactic, and it would reflect on the board and on me as its attorney.[53]

On June 30, 1967, the Oklahoma City Board of Education filed its desegregation plan with the United States District Court. Under the plan, the four schools were paired as planned. The School Board proposed to combine the seventh and tenth grades in the 1968-69 school year with the remaining grades to be combined by the 1969-70 school year. The gradual pairing allowed high school students to graduate from the school where they started. The School Board also

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[50]Personal Interviews, Estes, Thompson, Rogers, and Welch.

[51]Certiorari denied 87 S. Ct. 2054 (1967).

[52]The Daily Oklahoman, June 2, 1967, p. 1. The individual Board member was not named.

[53]Ibid.

implemented a majority-to-minority transfer policy, and proposed to complete faculty and staff integration by 1972.[54] After a hearing, Judge Bohanon accepted the School Board's integration plan with the exception that faculty integration was to be completed by 1970 rather than by 1972. Dr. Bill Lillard, the Superintendent, and Dr. Dowell both indicated they were satisfied.[55]

Parents groups in the affected areas remained active during this period. The Harding PTSA filed a "freedom of choice" plan with the court, but Judge Bohanon rejected it. He also denied the patron's motion to intervene in the cases, and suggested they take their requests to the Board of Education. In the fall of 1967, parents of Harding and Northeast attempted to persuade the School Board to postpone implementation of the pairing of schools. They argued that "white flight" had altered the racial make-up of the attendance areas, and that pairing would result in four majority black schools. The School Board initially denied this request, and, instead, appointed some of the parents to an Advisory Committee on Race and Human Relations to help iron out some of the problems.[56] When it finally became apparent that pairing would not accomplish its objective, the School Board asked the court to reconsider the pairing provision. Judge Bohanon denied the request and ordered the pairing implemented by September, 1968. He allowed the School Board to include a "positive gerrymander" which altered the Harding-Northeast attendance area to result in a student ratio of

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[54]Ibid., June 30, 1967, p. 1.

[55]Ibid., July 28, 1967, p. 1.

[56]Ibid., October 3, 1967, p. 1.

sixty-five per cent white to thirty-five per cent black. The gerrymander was recommended by the Advisory Committee.[57] Harding students also planned a mass walk-out to protest the pairing of the schools. However, the school administration convinced the students that a petition would be a more acceptable means of protest. The students gathered more than 1,000 signatures on the petition and presented it to the School Board.

On the other hand, another group of Harding patrons attempted to gain acceptance of the pairing. The spokesmen for the group were Richard Altman and Robert Terrill. This group sent letters to 1300 homes of parents in the area affected by the pairing. The letter urged acceptance of the pairing. It said in part:

> We cannot win by running. We lose not only our homes, but also the opportunity of meeting the challenge that will come to all of Oklahoma City.
>
> . . . . . .
>
> We urge all people of goodwill to work with us in making this a school system of excellence.[58]

The only activity of interest groups outside the paired attendance areas was centered in south Oklahoma City. A group of Capitol Hill High School patrons appeared before the School Board and expressed opposition to "forced bussing" of students.[59] South Oklahoma City residents also gathered about 17,000 names on a petition objecting to "any plan . . . that would in effect cause the 'forced bussing' of school

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[57] Ibid., March 8, 1967, pp. 1-2.

[58] Ibid., March 10, 1968, p. 102.

[59] Ibid., February 16, 1968, p. 1.

children from one school area to another school area," and filed it with the Federal Court.[60]

The pairing of the schools was implemented in September, 1968, with no reported trouble. Some of the interest groups that formed during this period remained active. There was some overlap of membership in the Harding groups. After the pairing of the schools, some of the members of these groups supported city-wide integration for both moral reasons and considerations of property value.[61] The initial student opposition was related in part to "school spirit," but it is impossible to determine to what degree. The strongest opposition to "bussing" continues to be centered in south Oklahoma City. One should note that these new interest groups did not form until after lower Federal Court decisions requiring specific action to integrate the Oklahoma City Public Schools. Until 1967 the School Board made no attempt to secure public acceptance of the judicial policy decisions, and implemented the court orders reluctantly.

From 1967 to 1969 a majority of the School Board attempted to provide positive political leadership to make integration work. In 1968 and 1969 there were two Board members, Dr. Virgil Hill, the School Board President; and W. R. Yinger,who strongly favored integration; and a third "moderate," Melvin Rogers, who often voted with Hill and Yinger to form a "pro-integration" majority.[62] There are several

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[60]Ibid., April 27, 1968, p. 1.

[61]Personal Interview, Mrs. Barbara Sanger, Oklahoma City, Oklahoma, May 22, 1972.

[62]Personal Interview, W. R. Yinger, Oklahoma City, Oklahoma, March 21, 1972.

examples of positive actions taken to foster integration during this period. First was the "positive gerrymander" in the Harding-Northeast attendance area, mentioned above, to create a racial balance and help prevent "white flight." Second, Dr. Bill Lillard spoke out publically to encourage "the entire community" to help make the "Pairing Plan" work. He said that ". . .everyone has an equal responsibility in helping our plan work, and that includes the private schools and business and civic leaders."[63] Third, on April 8, 1968, the Board of Education authorized the appointment of a Committee on Equal Educational Opportunity in the Oklahoma City Public Schools because "of increasing concentrations of minority group children in Oklahoma City, and because of possible losses of values due to heterogeneous pupil grouping which might lead to general inequality of educational opportunity. . . ." The committee was charged to make a careful study of the equality of educational opportunity in Oklahoma City public schools, and "recommend the best policies, procedures and plans for providing equal educational opportunity for all pupils in the school system. . . ." There were thirty-five members appointed from various civic, racial, school, and church groups. Dr. Willis Wheat, an executive in a large Oklahoma City bank, was appointed chairman.[64]
A fourth example of an action to make the Pairing Plan work was the approval of a proposal to subsidize bus transportation for students who volunteered to participate in the majority-to-minority transfer program.

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[63] The Daily Oklahoman, December 10, 1967, p. 24.

[64] Ibid., April 25, 1968, pp. 1-2. Hereinafter, this committee will be referred to as the "Wheat Committee."

The proposal sparked heated debate among School Board members over "forced bussing." Foster Estes opposed the proposal, claiming the action would "open up the gates to cross-town bussing." Foster Estes and William F. Lott consistently opposed the pairing of the schools. The proposal passed by a vote of three to two with Hill, Yinger, and Rogers voting together.[65] Finally, the School Board attempted to prevent parents from transferring children to neighboring school districts to avoid integration. Some parents took advantage of a state law that provided for mandatory transfers for "health" reasons. Another provision of the law allowed parents to send children to schools outside their district if there was room and if they paid tuition. Other parents circumvented the Board's transfer policy by renting apartments outside the affected areas or sending students to "live" with relatives in other parts of the city and using the addresses for school reporting purposes. The School Board complained about the laxness of the medical transfer procedure. The Oklahoma County Medical Association directed its members to document the reasons for each transfer.[66] Dr. Hill, the School Board President, announced that the Board would explore the possibility of bringing legal charges against parents who violated attendance and residence requirements in an effort to discourage parents from transferring children to neighboring school

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[65] Ibid., June 28, 1968, p. 102. After the Federal Court ordered the Board to implement the Pairing Plan in 1968, Foster Estes was quoted as saying, "I'm opposed to forced bussing of students, and I'm opposed to the pairing of schools." The Daily Oklahoman, February 16, 1968, pp. 1-2. This opposition to "integration" was reaffirmed in an interview. Personal Interview, Foster Estes, Oklahoma City, Oklahoma, March 16, 1972.

[66] The Daily Oklahoman, December 20, 1968, p. 33.

districts to avoid integration. Dr. Hill said that the "board intends to widen the scope of desegregation, and . . . integration, by involving an ever-increasing number of schools to avoid unfair and destructive impact upon any one or a few numbers of schools."[67]

The Wheat Committee presented an interim report in December, 1963. The recommendations in this interim report were only the first of three phases. The first phase dealt with short-range actions to stabilize the situation and maintain integration in the paired schools. Forthcoming reports were to deal with intermediate and long-range plans for integration of all the schools in the system.[68] While conducting the study, the Wheat Committee asked churches, civic clubs, and other interested organizations and individuals to present their plans and suggestions for integration. Dr. Wheat said the "response was very disappointing."[69] The committee received some help from the Southwest Center for Human Relations Studies at the University of Oklahoma. The Wheat Committee recommendations included:

(1) Free transportation for students participating in the majority-to-minority transfer program.

(2) Use of federal funds to hire advisory specialists in integration.

(3) Reassign teachers who do not perform well in integrated schools.

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[67] Ibid., May 6, 1969, p. 1.

[68] Personal Interview, Dr. Willis Wheat, Oklahoma City, Oklahoma, May 22, 1972.

[69] The Daily Oklahoman, May 20, 1969, p. 1.

(4) Attempt to reach a 70:30 white/black ratio in the paired schools.

(5) Halt transfers of black students to Harding and Northeast from school districts outside Oklahoma City.

(6) Reach an agreement with superintendents and school boards of surrounding school districts not to grant legal transfers to students trying to avoid attending desegregated schools.

(7) Expand school boundaries to increase the number of white students and all white "feeder schools" in the attendance areas of the paired schools.

(8) Close some schools to increase integration.

(9) Develop middle school (grades 6, 7, and 8) and high school (grades 9, 10, 11, and 12) arrangements to increase integration.

Dr. Wheat emphasized these were short term actions to stabilize the situation in the paired attendance areas. Once a balance was achieved, he felt that integration could be expanded to include the entire city.

The recommendations to achieve a 70:30 racial balance in the paired schools and to expand the attendance areas to increase the number of white students in the areas caused the greatest controversy. Dr. Wheat said he "laid the groundwork" to receive elite support of the committee's recommendations. Individuals considered to be leaders in the informal "power structure"[70] recognized there was a

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[70]"Power structure" is the term Dr. Wheat used in the interview. Ronald Stewart's study of "The Influence of the Business Community in Oklahoma City Politics" provides empirical evidence of such a power structure in Oklahoma City.

problem and said they would not oppose the recommendations. The media were also prepared to support the recommendations. Dr. Wheat said the School Board had made a commitment to maintain a balance in the paired schools prior to appointing the committee, and in a private meeting the Board indicated it was ready to adopt the recommendations.[71] However, the support never came.

The only endorsement of the Wheat Committee recommendations came from the Urban League. The Daily Oklahoman ran several editorials opposing the recommendations, "massive bussing," the courts, and integration.[72] Patrons of elementary schools, who would have been included in the paired attendance areas if the boundaries were expanded as recommended, formed Neighborhood School Associations and passed resolutions to protest and resist the Wheat Committee recommendations.[73] The School Board yielded to the pressure and adopted a comparatively weak integration plan on May 30, 1969.

The new plan, called "A Plan for Desegregation and Integration of Oklahoma City Public Schools--1969-70," rejected the recommendations to expand attendance areas to achieve a racial balance in the paired schools. The plan called for:

(1) Retaining the neighborhood school concept;

(2) Increasing the emphasis on the majority-to-minority transfer program;

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[71] Personal Interview, Dr. Willis Wheat.

[72] See for example Daily Oklahoman editorials of December 4, 1968, p. 12; May 17, 1969, p. 10; and June 2, 1969, p. 12.

[73] Ibid., May 9, 1969, p. 1; May 22, 1969, p. 6; and May 28, 1969, pp. 1-2. These local organizations later came together to form a city-wide Neighborhood School Association.

(3) Making transfers to other school districts more difficult.[74]

The Neighborhood School Associations supported the Board's plan.[75] Dr. Wheat criticized the Board. He said the Board had an opportunity to provide positive leadership and make pairing work, but the conservative elements of the Board yielded to the pressure and backed off. The Board members "abdicated their responsibility" and "threw the responsibility back to the federal court."[76]

On June 12, 1969, the Board of Education filed the "May 30 Plan" with the United States District Court in compliance with the order in Dowell II. Two new interest groups were permitted to intervene as parties in the case. Mr. and Mrs. Stephen Sanger, representing a group of Harding-Northeast patrons, filed a complaint opposing the School Board's "May 30 Plan." Their decision to intervene resulted from a meeting of Harding patrons at the Sanger home. Mrs. Barbara Sanger said they were concerned about whites moving out of the district. The group chose to enter the court case because the School Board was not acting in good faith and had "consistently taken action to undermine the court decisions." She said the group had feared they would be unable to find a lawyer, but Calvin Hendrickson, a Harding patron who attended the meeting, agreed to represent them

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[74]Ibid., May 31, 1969, p. 102. Hereinafter this plan is referred to as the "May 30 Plan."

[75]Ibid.

[76]Personal Interview, Dr. Willis Wheat.

at no fee.[77] Mr. Hendrickson confirmed Mrs. Sanger's account. He said the group recognized that if the entire city was not integrated, their "area might be blighted and devalued." They also felt that "if Oklahoma City was to progress, it was time to go on with it [integration] and not delay it any more."[78]

Another group of patrons from the Belle Isle and Linwood elementary schools entered the case in support of the Board's "May 30 Plan."[79] Mr. Bill McWilliams, the intervenor from Belle Isle, was president of the Belle Isle Neighborhood School Association and later became the first president of the city-wide NSA. George Short, the attorney who represented the Belle Isle group, was one of Calvin Hendrickson's law partners.

A third group, composed mainly of Harding-Northeast parents, formed an organization called Patrons for Integrated Education (PIE). The group criticized the Board's plan as too weak and as placing too great a burden on blacks to make integration work. The group presented five "demands" to the Board, saying that if the demands were not met they would "pursue all legal channels to ensure equitable treatment for black students in the desegregation and integration of the . . . schools."[80] The five demands were:

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[77] Personal Interview, Mrs. Barbara Sanger. Mrs. Sanger said the group "passed the hat" to raise money, but Mr. Hendrickson paid many of the expenses personally.

[78] Personal Interview, Mr. Calvin Hendrickson, Oklahoma City, Oklahoma, May 25, 1972.

[79] The Belle Isle and Linnwood schools were two all white schools the Wheat Committee recommended be included in the paired school districts.

[80] The Daily Oklahoman, June 20, 1969, pp. 1-2.

(1) Two-way bussing and a commitment from the Board that 450 white students would be recruited to attend Harding and Northeast;

(2) Larger attendance area be drawn in line with the Wheat Committee recommendations;

(3) Not convert Harding or Northeast into "middle, magnet, or disruptive schools;"

(4) Total desegregation of Oklahoma City schools by 1970;

(5) Increase quality education in all black schools.[81]

One of the leaders of PIE was Robert Brook. Mr. Brook said people did not understand integration. He said the PIE group wanted to show the Board "there was citizen concern and we needed integration."[82] Mr. Brook was also present at the meeting at the Sanger home.

The day before Judge Bohanon handed down his decision on the "May 30 Plan," Dr. Virgil Hill and W. R. Yinger, the two pro-integration School Board members, abandoned the Board's plan and joined Dr. Dowell in the lawsuit. They recommended that the court order racial mixing in "significant and substantial numbers" throughout the school system so that pupils and facilities would be totally integrated by September, 1970.[83]

In his order of July 30, 1969, Judge Bohanon rejected the "May 30 Plan" and ordered the Board to submit two new plans: (1) a short-range plan to take effect in September, 1969; and (2) a long-range

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[81] Ibid.

[82] Personal Interview, Mr. Robert Brook, Telephone, May 24, 1972.

[83] The Daily Oklahoman, July 29, 1969, p. 1.

comprehensive plan. The Board voted three to two (Hill, Yinger, Rogers for; Estes, Lott against) to follow the instructions of the court. The short-range plan called for:

> (1) Expanding the Harding-Northeast area to include all or portions of five additional elementary districts (Monroe, Belle Isle, Burgank, Nichols Hills, and West Nichols Hills);
>
> (2) Transfer black sophomores and juniors in the Longfellow Elementary School area to Northwest Classen High School (students in the Longfellow area were attending Northeast).[84]

Dr. Lillard and his staff began working with interested citizen's groups on a permanent long-range integration plan.

Patron interest groups continued to be active. The Belle Isle intervenors appealed the Federal Court ruling. Another group of Belle Isle and Nichols Hills school patrons formed an organization called Volunteers for Public Education. James Dennis, chairman of the group, said the group formed in response to the Wheat recommendation to include their elementary schools in the paired attendance areas. The group sought to recruit volunteers for the majority-to-minority transfer program in an attempt to make "voluntary integration" work and avoid bussing. There was significant overlap of membership of this group with the Belle Isle Neighborhood School Association.[85] The effort to recruit enough transfers failed and the NSA became the dominant organization. In September, 1969, nine local Neighborhood School Associations came together to form a city-wide NSA. Mr.

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[84]Ibid., July 31, 1969, p. 1.

[85]Personal Interview, James Dennis, Oklahoma City, Oklahoma, May 25, 1972.

Dennis attended the organizational meeting and endorsed the NSA.[86] It is interesting to note that James Dennis' brother, Frank Dennis, was part of the group of Harding patrons that intervened in the court case to oppose the Board's plan and press for city-wide integration.[87] The city-wide NSA expanded from the original nine local organizations to include schools in all parts of the city except the east side, which was predominantly black. Each local organization retained the authority to act independently of the city-wide NSA. The NSA focused most of its action on the School Board.

In addition to these "moderate" interest groups, a few more "extreme" anti-bussing groups formed. A group of south Oklahoma City residents campaigned to defeat the annual school mill levy to protest bussing. Another organization called the Students and Taxpayers Resistance Movement advocated a school boycott as well as defeat of the mill levy. Mr. Tom Costello, the chairman of the organization, was unsuccessful in his race for the School Board. Leaders in the Neighborhood School Association said that they opposed him because he was "too radical."[88] In addition to the activities of these groups, Mr. and Mrs. Raymond York refused to comply with the

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[86] The Daily Oklahoman, September 6, 1969, pp. 1-2.

[87] Personal Interview, Mrs. Barbara Sanger.

[88] Personal Interview, Ken Nance, Oklahoma City, Oklahoma, May 23, 1972. Mr. Nance is a member of the Oklahoma House of Representatives and past president of the city-wide NSA. In an interview, Mr. Costello said that the "purpose of bussing is to destroy the U. S.," and that the "power behind the whole deal" is the "One World Government" movement composed of members of the "Council for Foreign Relations." Personal Interview, Tom Costello, Oklahoma City, Oklahoma, May 22, 1972.

Board's integrati on plan and attempted to enroll their son in his "neighborhood school." They were held in contempt of court when they refused to obey a court order to enroll their son at his assigned school. Mrs. Yvonne York defeated a NSA endorsed candidate in the 1972 School Board election.

The Court of Appeals affirmed Judge Bohanon's order, and the School Board was forced to submit the long-range integration plan as ordered. The School Board charged the superintendent and his staff with the responsibility of developing proposals for a long-range, comprehensive integration plan. Dr. Tom Smith, Assistant Superintendent, was designated to devote full time to developing such a plan. Dr. Smith established contact with more than 104 individuals, agencies, and organizations and asked for their ideas and suggestions. Responses were received from about fifty organizations including the Urban League, Neighborhood School Association, and Americans for Quality Integrated Education.[89] Among the plans was a "Cluster Plan" prepared by a team of professors from the Colleges of Education and Engineering at the University of Oklahoma.

Both factions of the School Board were enthusiastic about the "cluster" idea because they felt it would achieve a significant level of integration and also improve the quality of education. On November 5, 1969, the School Board unanimously adopted a "Comprehensive Plan for Complete Desegregation of Junior and Senior High Schools of the

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[89] Americans for Quality Integrated Education formed in the fall of 1969 to press for more integration in Oklahoma City Public Schools. Some of the members of PIE and the Sanger group were involved in the new organization. Personal Interview, Barbara Sanger. See also The Daily Oklahoman, October 6, 1969, p. 13.

Oklahoma City Public Schools."[90] The plan grouped the Oklahoma City High Schools into two "clusters." Cluster A comprised four southside high schools; Cluster B comprised four northside high schools. Under the plan each school served a dual purpose. Each school was to serve as a "home-base" school for students in the attendance area, and also as a specialized center for a specified curricular area for all students in the cluster. For example, one school would serve as a Social Science Center, another as a Science Center, and another as a Math Center. Each student would attend his "neighborhood school" for some elective courses, and such activities as music and athletics, but would attend the specialized school in his cluster for all courses in that school's specific curriculum area. The plan required restructuring class periods and "shuttle bussing" between schools in the clusters. Grouping the schools into two clusters minimized logistical problems. Making each school a specialized center offered the advantages of concentrating equipment and teachers and allowing more courses to be offered. The plan also called for closing an all black junior high school and assigning the students to a previously all-white junior high.[91]

In January, 1970, Judge Bohanon approved the "Cluster Plan" and directed the Board "to carry out the terms of such Comprehensive Plan." The court retained jurisdiction and ordered the Board to file a

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[90] The Daily Oklahoman, November 6, 1969, p. 1. Hereinafter this plan is referred to as the "Cluster Plan."

[91] The "Cluster Plan" is attached as the Appendix to Dowell v. Board of Education, 307 F. Supp. 583 (1970).

plan for the integration of elementary schools.[92] The Court of Appeals affirmed the Federal Court's decision.[93]

The composition of School Board changed in 1970. Dr. Stanley Niles, a candidate endorsed by the Neighborhood School Association, defeated W. R. Yinger in the 1970 School Board election, and Dr. Hill resigned in February. C. B. McCray, who served on the Board from 1948 to 1959, was appointed to replace Dr. Hill. The change left the Board without a single strong "pro-integration" member.

On August 21, 1970, the Federal Court closed the Dowell case on its own motion. Judge Bohanon said that he took the action because he thought the Board was acting in good faith, and he thought it desirable to allow the schools to operate during the 1970-71 school year without the stress of litigation to see how the approved plan would work. On November 20, in compliance with the order in Dowell III, the School Board submitted a plan for integration of elementary schools which it referred to as "Opening Doors in Education." The plan provided for grouping elementary schools into clusters for periodic activities. Each cluster had one predominately black school and three or four white schools. The plan included only grades 4, 5, and 6, and students could participate only with parental permission. Regular classroom activities were conducted at the individual schools. Groupings of children from all racial and socio-economic groups participated in special programs such as symphony concerts, art lectures, and visits to libraries, the zoo, and parks.

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[92] Ibid., at 594-595. Hereinafter this case is cited as Dowell III.

[93] Board of Education v. Dowell, 430 F. 2d 865 (1970).

On May 3, 1971, Judge Bohanon vacated his order closing the case, and the plaintiffs filed a motion for further relief on May 6. In August, 1971, the Court of Appeals ordered the Federal Court to conduct hearings to determine the effectiveness of the plans that had been adopted. During the course of the hearings, two more desegregation plans were submitted to the court.

One was a plan developed by two educational consultants who were appointed by the court at the suggestion of the School Board.[94] The second plan was developed for the plaintiffs by Dr. John Finger.[95] Thus, the court had three desegregation plans to consider, the operating "Cluster Plan," the "Consultant's Plan," and the "Finger Plan." The court vacated its order in Dowell III approving the "Cluster Plan" and ordered the School Board to implement "A New Plan of Unification for the Oklahoma City Public School System", which "embodie[d] the principles and suggestions contained in the Plaintiff's [Finger] Plan. . . ."[96]

Concerning the current "Cluster Plan," Judge Bohanon said it was "not the plan approved by this court." The court had understood that schools acting as specialized centers "would offer all courses

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[94]The consultants were Dr. Harold Eibling, former Superintendent of Schools of Columbus, Ohio; and Dr. Forrest Conner, former Executive Secretary of the American Association of School Administrators.

[95]Dr. Finger is Professor of Education at Rhode Island College, and author of the desegregation plan for Charlotte, North Carolina schools. The Daily Oklahoman, November 19, 1971, p. 1.

[96]Dowell v. Board of Education, 338 F. Supp. 1256, 1273 (1972). Hereinafter this case is referred to as Dowell IV, and the plaintiff's plan is called the "Finger Plan."

including required courses in the subject area of specialization. No student could avoid attending other schools in his cluster." However, the School Board "proceeded to emasculate the plan." It did not concentrate subject area specialities in one school, but allowed each home-base school to offer all the required courses in the subject areas. By electing certain courses, a student could spend his entire high school years at his home-base school, thereby "thwarting any effective desegregation." These changes in the implementation of the plan "destroyed it as a tool of desegregation."[97] Judge Bohanon was also critical of the elementary school "Opening Doors in Education" plan. He said that while the "experiences" enjoyed by the children who participated were worthwhile, it did not disestablish the dual school system. "The constitutional mandate [was] not for integrated 'experiences' but for a desegregated school system."[98]

The Consultant's Plan essentially called for implementing the original "Cluster Plan." Although the consultants had been appointed at the suggestion of the School Board, all five Board members opposed their plan. The main objection was that the plan required extensive mandatory bussing. The plaintiffs were also critical because the plan did not involve all twelve grades. Because both sides opposed it, the court found that the "Consultant's Plan" was "neither feasible nor workable."[99]

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[97]Ibid., at 1262-1264.

[98]Ibid., at 1265.

[99]Ibid., at 1267.

The "Finger Plan" called for restructuring high school (grades 9 - 12) attendance zones to ensure that no high school would have less than fifteen per cent nor more than thirty per cent black enrollment. To achieve this goal, the plan proposed an elementary school feeder system in which students would be assigned to a high school based on the elementary school attendance zone in which they lived. To desegregate the junior high schools, the "Finger Plan" proposed changing the junior high schools grade structure from grades 7, 8, and 9 to grades 6, 7, and 8, and establishing attendance zones so that all schools would have between fifteen and thirty percent black enrollment. The plan to desegregate elementary schools grouped the schools as they were for the "Opening Doors in Education" program. In each group, the school that was all black or majority black would serve as the fifth grade center. The other schools would serve grades one through four. Thus, in each cluster of schools, white students would attend their "neighborhood school" for grades one through four, and the previously black school for grade five. Black students would be split up and assigned to the white schools in their cluster for grades one through four, and attend their "neighborhood school" for grade five.[100] Judge Bohanon concluded that the "Finger Plan" would create a unitary school system if it were adopted and implemented in good faith. He said that from evidence presented at the hearings, it was

> manifest that we now have a plan that does not work, a plan that will not work, and a plan that will work. In this situation the court has no real choice. It must

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[100] Ibid., at 1267-1268.

> select the plan that promises realistically to work now.[101]

Judge Bohanon also found that the "Finger Plan" would in no way diminish the quality of education in the school system, and that the time and distance of travel was not so great as to risk the health of the children.[102] He pointed out that the court had "never ordered a single child to be bussed . . .," but bussing of children in the Oklahoma City school district was "neither new or novel. Thousands of students [were] bussed daily . . . ." He ruled that "bus transportation as a means to eliminate segregation may be validly employed."[103]

In 1972, the School Board was expanded from five to seven members, and the election procedure was revised to help ensure that a black representative would be elected. However, after the 1972 election, only two Board members could be described as "pro-integration." Two Board members were endorsed by the Neighborhood School Association and a third, Mrs. York,who defeated a NSA endorsed candidate, had been among the most extreme anti-bussing activists.[104] Thus, the School Board remains without a "pro-integration" majority. The Board has provided no leadership to gain public acceptance of

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[101] Ibid., at 1269.

[102] Ibid.

[103] Ibid., at 1270.

[104] Dr. Stanley Niles, the NSA candidate Mrs. York defeated described her as "too extreme" for the NSA. Personal Interview, Dr. Stanley Niles, Oklahoma City, Oklahoma, March 22, 1972. Mrs. York expressed conspiratorial views of government and bussing similar to those of Tom Costello. Mrs. York indicated that she was acquainted with Mr. Costello, and when a vacancy occurred on the School Board she tried unsuccessfully to have him appointed. Personal Interview, Mrs. Yvonne York, Oklahoma City, Oklahoma, Marcy 21, 1972.

court-ordered integration plans, and has implemented the "Finger Plan" very reluctantly.

The Daily Oklahoman continued to run editorials very critical of the courts, Judge Bohanon, and bussing. While awaiting the outcome of appeals of the "Finger Plan", citizens groups remained active. One group organized a boycott of the schools which had limited success, primarily in south Oklahoma City. When the plan was implemented in September, 1972, there were several reported incidents of racial violence in the schools. Parents and religious leaders attended schools to help keep order, but the local political elite remained silent. The second phase of the impact process is still in progress, and the conflict over school desegregation is not yet resolved.

The impact process in Phase Two is in sharp contrast to that in Phase One. First, the Federal District Court policy decisions were narrow and specific, and compelled significant integration. The court ordered the School Board to adopt specific integration plans and permitted very little discretion in their implementation. Second, elite support for the judicial policies and the local policy changes they compelled was almost totally lacking. The major local newspaper was consistently critical of the District Court decisions. Except for a brief period, in 1968-69, the School Board provided no leadership to gain public acceptance of the integration policies, and usually implemented the court orders very reluctantly with much complaining and criticism. The one point of agreement among the participants on all sides of the school desegregation controversy in Oklahoma City was the lack of involvement of the informal "power elite." Third, there was a negative reaction of the public to policies requiring actual, as opposed to

"paper," desegregation of schools. The negative reaction was centered in school zones affected by the judicial policy decisions. With each successive policy decision, more schools and more people became involved. Fourth, there was a proliferation of interest groups. The NAACP continued to focus its efforts on the judicial process. In addition, many new interest groups formed in response to the policy decisions of the lower court. The new groups were primarily patron organizations and originated in areas affected by the integration policies. Some groups formed to support and encourage the integration process, others formed to oppose and resist "bussing." The pro-integration groups were generally unsuccessful in their attempts to influence the School Board, but were successful in their support of the NAACP in the court case. The anti-bussing, "non-integration" groups, especially the Neighborhood School Association, were more successful in influencing School Board actions than were pro-integration groups, but were unsuccessful in their attempts to influence policy through court action. It is significant that the "non-integration" groups formed after the School Board's criticism of judicial policies requiring actual integration in the schools. After these groups formed, it appears that they and the School Board provided mutual encouragement to resist the judicial policy of integration. Similarly, new "pro-integration" groups formed in the areas affected by the integration policies. The formation of these groups also appears to be related to the failure of the local elite to support and willingly implement the decisions of the Federal Court. While the School Board resisted integrating any more schools than was absolutely required by each court order, these groups realized that integration was inevitable and probably desirable. They

also felt that if the entire school system was not integrated along with the schools in their area, the social and economic status of their area would suffer. Hence, the new pro-integration groups supported the NAACP in the judicial system when they failed to influence the School Board to effect city-wide integration.

In conclusion, the policy decisions of the lower Federal Court had a greater impact than the Supreme Court policy decisions. Of course, one must recognize that without Brown v. Board of Education, the Dowell suit would not have been possible. However, in terms of their "direct and primary effect on the policies in question"[105] and of stimulating social change in Oklahoma City, the Federal District Court's policy decisions had a greater impact than those of the Supreme Court. Federal Court decisions compelled actual integration of schools in Oklahoma City and resulted in a significant increase of mass political activity. The impact of the lower court decisions on ordinary persons was influenced by elites, as was the case with Supreme Court impact, but in a different manner. The inaction of existing elites created a power vacuum, which was filled by new elites who were the leaders of the new organizations.[106] Thus, the lower court decisions had a more direct and greater impact on local policies and private citizens than did the Supreme Court decisions; but the Dowell suit and policy decisions

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[105] Frank J. Sorauf, "Zorach v. Clauson: The Impact of a Supreme Court Decision," The American Political Science Review, Vol. LXVII (January, 1954), p. 404.

[106] For many of the people, the activity in the new organizations was their first political or civic involvement. For example, James Dennis, chairman of the Volunteers for Public Education, admitted his activity was his first civic involvement. Personal Interview, James Dennis.

of the Federal District Court should be considered as part of the continuing impact process originated by the Brown decision.

Impact Analysis

Both Supreme Court and Federal District Court decisions effected changes in school policies for Oklahoma City Public Schools. Local policy changes induced by the District Court decisions in the Dowell case had a greater effect on the racial composition of schools in Oklahoma City than did policy changes resulting directly from the Supreme Court rulings in the Brown case.

Changes in The Racial Composition of Schools

Table II reports the racial composition of Oklahoma City Public Schools for selected years. By examining the racial composition of schools in years following key events, one can infer the effect, if any, of those events, and construct a picture of the dynamics of the impact process.

The Oklahoma City Board of Education did not begin reporting data concerning the racial composition of schools until 1967. Therefore, a precise comparison of the impact of Brown in Phase One with the impact of Brown and Dowell in Phase Two is impossible. However, there is evidence to suggest that Brown had less effect on the racial make-up of schools in Oklahoma City than did Dowell.

In 1954 there was complete racial separation in Oklahoma City Schools. Following Brown II in 1955, the state legislature and local school board adopted policy changes to permit schools to conduct racially mixed classes. However, during the period from 1955 to 1959,

TABLE II

RACIAL COMPOSITION OF OKLAHOMA CITY PUBLIC SCHOOLS FOR SELECTED YEARS 1954 - 1972

	Enrollment						Percentage			
	Total Blacks	Total Whites	Blacks in 90-100% Black Sch.	Blacks in Majority Black Sch.	Blacks in Majority White Sch.	Whites in 90-100% White Sch.	Blacks in 90-100% Black Sch.	Blacks in Majority Black Sch.	Blacks in Majority White Sch.	Whites in 90-100% White Sch.
Phase One										
1954										
Elementary	*	*	*	*	0	*	100%	100%	0	100%
Secondary	*	*	*	*	0	*	100%	100%	0	100%
Total	5,477	45,778	5,477	5,477	0	45,778	100%	100%	0	100%
1961										
Elementary	10,142	*	*	*	*	*	*	*	*	*
Secondary	*	*	*	*	*	*	*	*	*	*
Total	*	*	*	*	*	*	*	*	*	*
Phase Two										
1965 (Dowell I)										
Elementary	9,535	35,389	8,628	9,231	304	34,010	90.5%	96.8%	3.2%	96.1%
Secondary	*	*	*	*	*	*	*	*	*	*
Total	*	*	*	*	*	*	*	*	*	*
1967 (Dowell II)										
Elementary	10,105	34,199	9,126	9,813	292	32,910	90.3%	97.1%	2.9%	96.2%
Secondary	5,873	25,526	5,057	5,120	753	24,769	86.1%	87.2%	12.8%	97.0%
Total	15,978	59,725	14,184	14,933	1,045	57.679	88.7%	93.5%	6.5%	96.6%
1968 (Dowell II)										
Elementary	9,961	33,253	9,298	9,382	579	31,645	93.3%	94.2%	5.8%	95.2%
Secondary	6,203	25,144	4,244	4,745	1,458	20,024	68.4%	76.5%	23.5%	79.6%
Total	16,164	58,397	13,542	14,127	2,037	51,669	83.8%	87.4%	12.6%	88.5%
1970 (Dowell III)										
Elementary	9,539	31,033	8,270	8,333	1,206	26,824	86.7%	87.4%	12.6%	86.4%
Secondary	6,621	23,637	2,640	2,640	3,981	8,561	39.9%	39.9%	60.1%	36.2%
Total	16,160	54,670	10,910	10,973	5,187	35,885	67.5%	67.9%	32.9%	64.7%
1972 (Dowell IV)										
Elementary	7,202	24,493	0	54	7,153	1,070	0.0%	0.7%	99.3%	4.4%
Secondary	7,947	26,393	0	0	7,947	2,311	0.0%	0.0%	100. %	8.8%
Total	15,154	50,886	0	54	15,100	3,381	0.0%	0.4%	99.6%	6.6%

Source: Data for 1954 were obtained from information in Dowell v. School Board, 219 F. Supp. 427, 437. Data for 1965 are from U. S. Commission on Civil Rights, Racial Isolation in the Public Schools, Vol. 2, 1967, pp. 12-13. Data for 1967, 1968, 1970, 1972 were provided by the Department of Research, Oklahoma City Public Schools. *No data are available.

"not more than ten schools in the city . . . had mixed enrollment at any one time." In the school year 1958-59, "only eight of the city's ninety-one schools were attended by both races."[107] Thus, the judicial policy of the Supreme Court effected a local policy change in Oklahoma City, but that policy change resulted in very little change in the racial composition of schools. Less than ten per cent of the city's schools conducted mixed classes during Phase One. Since one black student in a white school or vice versa qualifies as a "mixed" enrollment, it is reasonable to conclude that more than ninety per cent of all students attended schools where their race comprised more than ninety percent of their school's enrollment. It is also possible that there was a greater percentage of students attending schools with mixed enrollments in the years immediately following Brown II (i.e., 1956-1958) than in the later years of Phase One (i.e., 1959-1962) because the School Board's minority-to-majority transfer policy mitigated against any trend toward integration.

Although it did not immediately result in a large number of students attending racially mixed schools in Oklahoma City, Brown v. Board of Education had a significant impact in two respects. First, local elites voluntarily adjusted local policy, and in limited instances, practice, to comply with the judicial policy. This action is in sharp contrast with that in other parts of the South. In Oklahoma, there was no attempt to overtly evade or delay compliance with Brown, and the policy of enforced separation of the races in public schools was

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[107] Report of the U. S. Commission on Civil Rights, p. 215.

abandoned with little or no complaint. A second aspect of the impact of Brown is that it made possible the suit in Dowell v. School Board, which did result in a significant number of students attending racially mixed classes. Thus, the Federal District Court decisions and their impact are part of the changing impact of the Supreme Court decisions.

Local policy changes resulting from the decisions in Dowell I and Dowell II focused on integration in secondary schools and faculty integration. Therefore, the biggest changes in the racial composition of schools came first in the high schools. While there was progress toward desegregation of high schools between 1965 and 1968, the degree of racial segregation in elementary schools remained about the same, and in some instances increased slightly (see Table II). Dowell III and Dowell IV required a greater degree of integration at all levels, and affected more of the city's schools than previous decisions. Beginning in 1970, there was a significant change in the degree of integration of elementary schools as well as corresponding progress in high school integration. In 1972 the Federal District Court ordered the Board to implement the "Finger Plan", which was designed to purposefully eliminate the City's all-black schools. When the Board implemented the plan, all of the city's schools were "integrated". However, the impact of the judicial policies did not end with the "integration" of Oklahoma City schools. Judicial policies of the Federal District Court forced integration, but they did not resolve the conflict over integration. Indeed, the conflict seems more intense than before the policy was implemented.

Changes in Political Activity of Private Citizens

There was no visible public political activity during Phase One. Most of the political activity was that of governing elites changing local policies to "comply" with the Supreme Court decisions, and encouraging the public to accept the changes. At the same time, local elites provided an "escape valve" in the minority-to-majority transfer policy which, along with the positive actions, contributed to the calm public acceptance of the policy changes. The result was local policy changes with little change in the racial composition of schools, and little effect on the public.

Decisions of the Federal District Court, in contrast, stimulated a significant increase in public political activity. The lower court decisions required local elites to implement policies that resulted in significant mixing of the races in schools. Public political activity was centered in areas affected by the integration policies. As more and more schools were affected, more and more people became active. Local elites made little or no effort to secure public acceptance of these policy changes and, ultimately, there was violent opposition from the public to the "bussing" necessary to achieve the level of integration required by the court orders.[108]

Thus, decisions of the Federal District Court had a greater impact on local policies and behavior than Supreme Court decisions.

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[108] It is probable that some of the opposition to "bussing" is really opposition to integration. Since it is no longer acceptable to favor segregation, some who continue to hold segregationist attitudes can oppose bussing without being labled racists. Certainly, some of the anti-bussing sentiment is related to logistical and safety considerations. The financial resources available for this study were not adequate to determine whether opposition to bussing was primarily racial or logistical.

District Court decisions resulted in greater degrees of racial integration and precipitated higher levels of public political activity than those of the Supreme Court. At the same time, one should remember that the lower court decisions would not have been possible without the Supreme Court decisions. The local impact of lower court judicial policies should be viewed as part of the continuing impact of Supreme Court national policy decisions. Impact is best considered as a dynamic process.

The Role of the Federal Judge

Throughout this study, judges have been referred to as policy-makers. When one considers the situation in Oklahoma City, there can be little doubt that the Federal District Judge was a policy-maker. However, because judicial policy-making is different from legislative or administrative policy-making, judges are not in a position to attempt to gain public acceptance of their policies. Indeed, many judges do not consider themselves as policy-makers.

Judge Bohanon viewed his role strictly in legal terms. He said that a "trial judge makes no policies." His job was "to tell the Board what the Constitution of the United States requires them to do." Such action was "not a policy, just an order." Judge Bohanon also denied that he had received any type of local political pressure as a result of his rulings in the Dowell case. He admitted receiving letters and calls, but "no political pressure -- most of them [the letter writers] just called me a dirty _____."

A further indication of Judge Bohanon's role perception may be seen in the way he viewed his relationship with other courts. He said

"it would be highly improper" to discuss a case with other judges. To do his job properly, he "should decide [a case] on the basis of the facts of the case." He was confident that the Court of Appeals would affirm his order because he was "just following the law." Judge Bohanon also said that "controversy over the law" was the reason that the school desegregation issue was unresolved after more than ten years of litigation. He explained that "it takes time for the requirements of law to percolate down and affect the people . . . . It's seldom that you get anything done without force and supervision."[109]

Thus, Judge Bohanon did not view his role as one of policy-making. Such a view raises the question whether or not decision-makers must consciously intend to make policy in order for their decisions to be policy. A judge's job involves making a choice among conflicting positions. The conflict is presented to the judge within a framework of legal procedures. Given the status of courts and judges in the American political system, it is reasonable perhaps necessary for judges to view their job as a rather automatic legal process. But, because of judges' authority to decide among competing political interests, it is impossible for them to avoid policy-making. Judges may not intend to make policy, but very few judicial scholars deny that judicial decision-making is tantamount to judicial policy-making.

Judge Bohanon was no doubt sincere in his perception of his role. But that role perception is more likely a product of the socialization

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[109]Personal Interview, United States District Judge, Luther Bohanon, Oklahoma City, Oklahoma, May 25, 1972.

process the judge has undergone than a reflection of reality. It strains credibility to contend that a judge who orders a school board to adopt and implement a "Pairing Plan," a "Cluster Plan" and a "Finger Plan" is not making public policy. Judges do make policy.

The question remains as to why the judicial policies of the District Court had a greater impact in Oklahoma City than those of the Supreme Court.

Analysis of Why Changes Occurred as They Did

Evidence from the research for this case study suggests that judicial impact is related primarily to two factors: (1) the vagueness or clarity of the judicial policy decisions, and (2) the attitudes and actions of local elites toward those decisions. The national judicial policy in Brown was vague and broad, and allowed much latitude in compliance. The result was that local elites acted essentially on their own values and the resultant policies to "comply" were very weak and compelled little behavior change by ordinary persons. During Phase One, elites provided positive leadership to gain acceptance of the judicial policy announced in Brown. Other studies indicate that the prestige of the Court is an important factor in gaining acceptance of unpopular judicial policies.[110] While there is no specific evidence

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[110]See for example Thomas E. Barth, "Perception and Acceptance of Supreme Court Decisions at the State and Local Level," Journal of Public Law, XVII, No. 2 (1968), pp. 308-359; Michael J. Petrick, "The Supreme Court and Authority Acceptance," Western Political Quarterly, XII (March, 1968), pp. 5-19; Michael Barkun, "Law and Social Revolution: Millenarianism and the Legal System," Law and Society Review, VI (August, 1971), pp. 113-141, Kenneth M. Dolbeare, "The Public Views the Supreme Court," Law, Politics, and the Federal Courts (Boston: Little, Brown and Company, 1967), pp. 194-212.

here, it seems reasonable to conclude that acceptance of the Court's authority to issue the decision in Brown, and a respect for "law and order", account for the positive actions of local elites in Oklahoma City, who probably disagreed with the values embodied in the decision. Joel Grossman says the way a particular judicial policy is received by elites depends on (1) their receptiveness to the values embodied in the policy, (2) the costs to them in attempting to secure compliance, and (3) their commitment to social change.[111] In Oklahoma City, local elites felt obligated to change local school policies to "comply" with Brown, at least on paper, and to provide political leadership to gain public acceptance of the changes. However, there was no strong commitment to "integration", and the local policies resulted in little social change, which was reflected in continued racial segregation in the schools. Because the local policies were weak, the political costs to elites for "complying" with judicial policy were small. Hence, the impact of Brown on the racial composition of schools in Oklahoma City initially was small and there was not great negative public reaction.

The policy decisions of the lower Federal Court were specific and narrow. These judicial policies allowed very little latitude and compelled the School Board to adopt and implement specific policies that resulted in significant degrees of integration. Except for a brief period in 1968-1969, there were no Board members with strong pro-integration attitudes. The judicial policies during Phase Two compelled the Board to implement policies with which they disagreed. The

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[111] Joel B. Grossman, "The Supreme Court and Social Change," American Behavioral Scientist, XIII (March/April, 1970), pp. 535-551.

political costs in complying were high, but the fear of legal sanctions (e.g., contempt) from the court was stronger. Hence, the School Board reluctantly implemented policies to integrate the schools, but made no attempt to gain public acceptance of the policies as in Phase One. Other local elites also remained silent, creating a power vacuum. Private citizens who felt threatened by the integration policies formed organizations to enhance their influence. These new organizations filled the power vacuum. Some groups consistently opposed the judicial policy decisions, others took action to support city-wide integration when it became obvious that integration was inevitable.

The data suggest that the School Board's actions were more a function of the values of the members than responses to group pressure. Interviews with the Board members and representatives of groups involved in the desegregation issue revealed that, in most instances, the groups formed after the Board was forced to implement court-ordered integration plans. Table III records a measure of integration attitudes of School Board members. The Integration Scale consisted of six agree/disagree items. The responses to the statements were coded as follows: +2 for a strong pro-integration response, +1 for a weak pro-integration response; -1 for a weak non-integration response, -2 for a strong non-integration response, 0 for no response. Board members who were not interviewed or who would not fill out the questionnaire are indicated by "D" for deceased, or "NA" for Not Available or No Answer. Thus, +12 represents the strongest pro-integration attitudes, -12 represents the strongest non-integration attitudes. From public and private statements and interviews with acquaintences of Dr. Hill (who is deceased) and Mrs. York (who was

TABLE III

INTEGRATION ATTITUDES OF OKLAHOMA CITY SCHOOL BOARD MEMBERS

	Thompson	McCray	Melton	Wright	Bennett		
1954-1958	+5	0	NA	D	NA		
	Thompson	Welch	McCray	Wright	Bennett		
1960	+5	+2	0	D	NA		
	Thompson	Welch	Lott	Skaggs	Bennett		
1962	+5	+2	-3	0	NA		
	Rogers	Welch	Estes	Lott	Bennett		
1964	+5	+2	0	-3	NA		
	Hill	Rogers	Welch	Estes	Lott		
1966	D (>+8)	+5	+2	0	-3		
	Hill	Yinger	Rogers	Estes	Lott		
1968	D (>+8)	+8	+5	0	-3		
	Niles	Rogers	McCray	Estes	Lott		
1970	+10 (NSA; anti-bus)	+5	0	0	-3		
	English	Moon	Rogers	Estes	McCray	Krob	York
1972	+12	+11	+5	0	0	-8	NA (<0)

Scale: +6 to +12 "Pro-integration"
+1 to +5 "Pro-desegregation"
-12 to 0 "Non-integration"
D Deceased
NA Not Available for interview or No Answer on any question

interviewed but refused to respond to the questionnaire), it was possible to make an "educated guess" as to the range within which their integration attitudes fell. In these two cases, the integration "score" is designated as being "less than" (<) or "greater than" (>) a certain score and is in parenthesis. For comparison, a score of greater than +6 is called "pro-integration," +1 to +5 is "pro-desegregation," and 0 or less is "non-integration." Pro-integration indicates a willingness to take positive action to remove the effects of years of state imposed segregation; pro-desegregation indicates support for eliminating segregation laws, but little or no willingness to take positive action to remove the effects of such laws; non-integration indicates hostility toward integration.

From Table III, one can see that there has never been a "pro-integration" majority on the School Board. However, the School Board of 1968-1969 consisted of two "pro-integration" members and a "pro-desegregation" member. It was only during this period that the Board took any kind of positive action to secure acceptance of the judicial policy decisions and make integration work. However, the "pro-integration majority" was extremely fluid, and collapsed under pressure from groups resisting the integration policies. In the 1970 School Board election, the "pro-integration" member who was up for re-election was defeated by a candidate who was endorsed by the NSA. In February, 1970, the other pro-integration member resigned. Except for this brief period, the School Board implemented the judicial policy decisions only when it was forced to do so. The Board's action, or inaction, was largely a function of the Board members' attitudes toward the policy objective of integrating the schools.

In conclusion, the impact of judicial policy decisions is influenced primarily by the attitudes and actions of elites. Public political activity was related to the actions of local elites and the degree of change required. When the elites encouraged compliance in Phase One, the public accepted the minor changes calmly. When the school board balked at implementing the stronger judicial policies in Phase Two, the public also actively resisted the policies. Judicial policy decisions cannot be effective in solving social problems or as agents of social change without the support of local elites. In a previous study of Oklahoma City, Ron Stewart concluded that certain individuals exercised generalized influence and that the business community was "the most influential of groups in Oklahoma City politics."[112] However, in the policy area of school desegregation, the "power elite" of Oklahoma City could not or did not choose to exercise influence in any direction except during Phase One, when the costs of securing compliance with the broad, vague judicial policy of Brown were minimal. Encouraging compliance with Brown could be interpreted as supporting "law and order" rather than supporting integration. The narrow, specific judicial policies of Dowell compelled significant integration. Local elites remained silent, except for the local press, which was very critical of the courts, "integration," and bussing. The specific policy decisions of the lower Federal Court had a greater and more direct impact on the racial make-up of school and on the political activity of private citizens than the broad, vague judicial policy in Brown. The Federal District Court decisions, however, are part of the impact of

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[112]Stewart, pp. 110-116.

Brown, and a further example of elite actions (in this case the actions of the federal judge) influencing the impact of court decisions. The Federal Court was in a position to periodically review its policy decisions and make changes to meet the changing conditions. Nonetheless, the court has been unable to solve the conflict over desegregation in Oklahoma City. Because of public attitudes about the proper role of judges and the judge's personal role perception, judges cannot provide the political leadership necessary to gain public acceptance of unpopular policies. Thus, the failure of judicial policy-making to resolve the conflict over desegregation appears to be related to a lack of support for the policies by local political and governing elites.

CHAPTER IV

CONCLUSION

This study was concerned with the impact of judicial policies on the solution of the problem of school segregation in Oklahoma City. Policy-making is a dynamic process, and policy impact should be considered as an integral part of that process. The case study method afforded the opportunity to analyze the dynamics of impact. In this study, judicial policies and the effects of those policies changed over time. This study has the advantages of dealing with a current political problem and considering the dynamic nature of policy-making and policy impact. The study reveals some of the effects of judicial policy-making in a local community, and allows one to draw some conclusions about the efficacy of judicial policy-making in solving political problems and promoting social change. The questions posed in Chapter I were answered in Chapter III. What follows are some general conclusions.

The Role of Elites

One significant conclusion suggested by this research is the key role local elites play in determining the impact of judicial policy in a local community. Impact depends on the actions of local elites. The response of elites to judicial policies is largely determined by their attitudes. Without support from local elites, judicial policies cannot

be effective in solving political problems or promoting social change, because judges are not in a position to secure public acceptance of their policies. Without positive action from local elites to create public acceptance of judicial policies, the implementation of the policies may exacerbate rather than resolve conflict.

Limitations of Judicial Policy-Making

There is a paradox in the judicial policy-making process. The Supreme Court formulates national judicial policy directed at solving fundamental social and political problems. The Supreme Court must rely on the United States District Courts to implement those national judicial policies in local communities. The structure of the federal courts provides an opportunity for consideration of national policy questions in local political environments. There is a synthesis of national judicial policies and local political considerations. Every state contains at least one federal district court, and no district crosses state boundaries. District judges are required by law to live in their districts, and the practice of "senatorial courtesy" helps insure that federal district judges are in the mainstream of local politics. However, federal judges are not subject to local political and social pressures to the extent that other local elites are. Federal judges are committed to certain legal norms; they serve for terms of "good behavior" and they owe their appointments to the national political process. Thus, federal judges, unlike other local elites, are insulated from direct political pressure from their local communities. Herein lies the paradox of judicial policy-making as an agent for solving national political problems in local communities. Due to

the myth that judges are not engaged in "politics," and their quasi-insulated character, federal judges have more latitude and are more likely to support and implement national judicial policies formulated by the Supreme Court than other local elites who are directly responsible to the local political process. However, that same "myth", and perceptions of the proper judicial role that allow federal judges to support national judicial policies, preclude them from providing political leadership to secure public acceptance of these policies. While a federal judge can impel local elites to adopt policies consistent with the national judicial policy, he cannot secure public acceptance of those policies without support and leadership from local elites. Without public acceptance of policies, the conflict continues and the problem remains unresolved. Thus, local elites play a key role in determining the impact of judicial policy. The case study of Oklahoma City suggests that the public will be largely unaffected by national judicial policies, if local elites do not change local policy and practice to conform to the national standard. Public reaction usually follows the actions of elites. If court decisions impel local elites to implement policies with which they disagree, elites will make no effort to secure public acceptance of the policies. Elite inaction creates a power vacuum that will be filled by political amateurs. Without positive elite leadership, the conflict is likely to lead to violence.

Affect of Judicial Intervention on the Local Power Structure

The fact that the "power elite" in Oklahoma City remained silent on the desegregation issue as long as the federal court was involved,

suggests an hypothesis for a future study. Intervention of a federal district court to enforce locally unpopular national policies alters the power structure of a local community. If there is a community "power elite", it will not become involved, nor try to influence local policy-making on the issue in question as long as the court is involved. Of course, evidence from one case study is not sufficient to prove such a conclusion.

Thus, local elites play a key role in determining the impact of judicial policies in a local community. Impact research relates judicial policy-making to local policy-making processes. It is important in the development of a general theory to conceptualize the total policy-making process and not merely the formulation of public policy.

Relative Impact

A second general conclusion suggested by this study is that decisions of a lower court may have greater impact locally than those of the Supreme Court. While the Supreme Court sets national policy and precedents that theoretically bind lower courts, the lower courts have much discretion in the way they enforce that national judicial policy.[1] In Oklahoma City, decisions of the Federal District Court had a greater and more direct impact on the racial composition of schools and on the activities of private citizens than did Supreme Court decisions. The Dowell case could not have been successful without Brown, and in that sense it is part of the impact of Brown. Nonetheless,

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[1] See for example Walter F. Murphy, "Lower Court Checks on Supreme Court Power," American Political Science Review, LXIII (December, 1959), pp. 1017-1031.

the decisions of the Federal District Court effected greater political and social change in Oklahoma City. This fact casts doubt on Jacob's argument that appellate courts set precedents that make policy and trial courts merely enforce the law. Brown had only a limited effect in Oklahoma City until the district court became involved. Later "precedent setting" decisions[2] had no impact in Oklahoma City until the District Court issued orders relying on the precedents in the local situation.

The Supreme Court may be considered the initial policy-maker with the Brown decisions, but in Oklahoma City the primary policy-maker was the District Court with the Dowell decisions. The Court of Appeals is an appellate court, but its function is essentially one of "ratifying" judicial policies of the District Court. After the Brown decisions, the Supreme Court assumed essentially the same role of "ratifying" decisions of the District Court by refusing to review the policies. The one instance when the Supreme Court became directly involved in the issue in Oklahoma City, it reversed a Court of Appeals order and re-instated the District Court order.[3] Both trial and appellate courts make public policy. In Oklahoma City the trial court was the primary and most effective judicial policy-maker in dealing with the problem of school desegregation. In this case, it is more accurate to consider appellate courts policy-ratifiers than policy-makers. Studies of lower courts have been few. Evidence from this

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[2]For example Goss v. Board of Education, 373 U. S. 138 (1963); and Green v. County School Board, 391 U. S. 430 (1968).

[3]Dowell v. Board of Education, 396 U. S. 269 (1969).

study indicates that federal district courts are important policy-makers that deserve more attention from political scientists.

How the Findings of This Study Compare With Those of Similar Studies

Some of the findings of this study support the findings of other impact studies. Evidence here indicated that local elites played an important role in determining the impact of judicial policies. In Oklahoma City, the School Board and the NAACP (which had initiated the Brown suit) were the only active groups during Phase One. When the District Court forced the School Board to implement policies that brought about actual integration of some schools, patrons in the affected areas became directly involved and organized new interest groups to enhance their influence. Gordin Patric did a study of the impact of McCollum v. Board of Education.[4] He made an inquiry "into the types of response to the decision made by people and groups that it affected and how those responses were translated into actions.[5] The McCollum case held that releasing children from class for religious instruction on school premises violated the establishment of religion clause of the First Amendment. Patric found that the judicial policy was put into effect in diverse ways and obeyed in varying degrees. He concluded that those groups most closely associated with the practice in question (i.e., "governmental officials" and religious

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[4]Gordon Patric, "The Impact of a Court Decision: Aftermath of the McCollum Case," Journal of Public Law, VI (Fall, 1957), pp. 455-464.

[5]Ibid., p. 455.

groups who had been instrumental in initiating the practice) were the most influential in determining the effects of the judicial policy. Otis Stephens came to a similar conclusion in his study of police interrogation practices after the limitations established by the Supreme Court in Miranda v. Arizona.[6] His purpose was "to assess the impact of [the Miranda decision on interrogations] as understood and practiced by the police. . . ."[7] He found that "[f]ull implementation [of a judicial policy] must be accomplished by those agencies of government directly involved. . . ."[8] These studies illuminated the importance of local elites in determining the impact of court decisions, but they did not explain why elites responded as they did.

Another finding of the present study was that elite action in response to a court decision was related to the attitudes of the elites toward the values or goals embodied in the decision. Robert Birkby conducted a study of the impact of Abington School District v. Schempp which struck down the practices of requiring Bible reading and recitation of the Lord's Prayer in opening exercises of public schools.[9] Birkby tested the relationship between compliance and several sociological variables such as urbanization, religious pluralism, and socio-economic composition of school boards. When he found none of the

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[6]Otis H. Stephens, "Police Interrogation and the Supreme Court: An Inquiry into the Limits of Judicial Policy-Making," Journal of Public Law, XVII, (1968), pp. 241-257.

[7]Ibid., p. 242.

[8]Ibid., p. 257.

[9]Robert H. Birkby, "The Supreme Court and the Bible Belt: Tennessee Reaction to the 'Schempp' Decision," Midwest Journal of Political Science, X (1966), pp. 304-319.

hypothesized relationships, he tentatively concluded that local reaction to court decisions was best explained in terms of the attitudes of local policy-makers.[10] A study by Thomas Barth[11] provided further evidence to support Birkby's conclusion. Barth sent questionnaires to a group of district attorneys to determine the impact of Supreme Court decisions dealing with obscenity. He found that judicial policies might not be enforced in communities where local elites disagreed with or misunderstood them.[12]

Factors other than the personal attitudes of elites influence the way they respond to judicial policies. For example, Kenneth Dolbeare conducted research concerning public perceptions of the Supreme Court.[13] He found the strongest public support for the court among those who were least knowledgeable about the Court's decisions. He also found that party identification was related to attitudes toward the Court. Both Democrats and Republicans had more favorable attitudes toward the Court when their party controlled the Presidency. Concerning the question of impact and the response of elites, Dolbeare found that impact was also related to the number of people affected by the decision. Where the responsibility to act in accordance with a court's decision "rest[ed] on public officials . . . with relatively little public

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[10]Ibid., p. 312-319.

[11]Thomas E. Barth, "Perception and Acceptance of Supreme Court Decisions at the State and Local Level," Journal of Public Law, XVII, No. 2 (1968), pp. 308-350.

[12]Ibid., p. 347.

[13]Kenneth M. Dolbeare, "The Public Views the Supreme Court," in Herbert Jacob, ed., Law, Politics, and the Federal Courts, (Boston: Little, Brown and Company, 1967), pp. 194-212.

action required, compliance [was] high and the public was relatively unengaged. Where change in behavioral patterns by large numbers of people [was] involved, . . . the general public [was] more intimately impacted, and compliance [was] more difficult to secure."[14] In Oklahoma City, the School Board initially "complied" with Brown in such a way that the behavioral patterns of the general public were not greatly disturbed. The minority-to-majority transfer policy allowed the schools to remain virtually segregated. The District Court forced the Board to adopt and implement policies that required significant behavioral changes on the part of the general public (i.e., actual integration). As a result, the public became politically engaged, which made compliance more difficult to secure. When the "Finger Plan" was implemented in 1972, several schools experienced violence.

However, evidence in this and other studies indicates that the attitudes of elites are more important than public sentiment in determining the impact of judicial policies. In Oklahoma City, local elites initially urged acceptance and compliance with Brown. The public was not active and accepted the policy changes calmly. Public opposition to school desegregation did not develop until after the School Board became critical of the court's decisions. Public opposition supported the Board's position. Richard Johnson studied compliance with the Supreme Court policy concerning religious practices in public schools.[15] He found that local elites could secure compliance with the judicial

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[14] Ibid., p. 211.

[15] Richard M. Johnson, "Compliance and Supreme Court Decision-Making," Wisconsin Law Review, No. 1 (Winter, 1967), pp. 170-185.

policies despite public disagreement with them. In the community Johnson studied, extensive support for compliance with an unpopular judicial policy existed among "important actors" or "influentials" in the community. "If antagonisms existed in the community, they did not become vocal, possibly because no leadership was provided among community or school leaders."[16] Robert Crain's study of school desegregation in several cities provides further support for this conclusion.[17] Crain found that in seven of eight cities studied, the school board was able to mobilize support for its position regardless of whether that position was segregationist or integrationist. The strongest public opposition to integration occurred in the two cities where the school board opposed integration. And, like the situation in Oklahoma City, the public opposition "appeared only after the board had made it clear that it would not integrate the schools. . . ."[18] Moreover, Crain concluded that the violence that accompanied the court-ordered integration of New Orleans' schools "arose from a general failure of community leadership, resulting in a breakdown of social control over the masses."[19] This conclusion also corresponds to a finding of the present study. Elite inaction in Oklahoma City created a power vacuum that was filled by patrons' interest groups led by political amateurs. Without positive elite leadership to gain public acceptance of the

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[16]Ibid., 174-175.

[17]Robert L. Crain, The Politics of School Desegregation (Garden City: Doubleday & Company, Inc., 1969).

[18]Ibid., p. 134.

[19]Ibid., pp. 315-316.

judicial policies, the imposition of the unpopular judicial policies on the School Board exacerbated the conflict. Frank Sorauf examined the effects of Zorach v. Clauson on public policy.[20] He expressed a similar notion when he said that judicial policy represents a "continuation and extension, rather than a resolution, of conflict. . . ."[21]

Another conclusion of the present study concerned the paradox of judicial policy-making. The paradox is that judges, especially federal judges, are more insulated from direct local political pressure than are other local policy-makers. Therefore, judges have greater freedom to enforce national (as opposed to local) values and policies. However, the same factors that insulate judges also prevent them from providing the political leadership necessary to secure public acceptance of policies. Action and support from local elites is essential if judicial policies are to be implemented and accepted by the public. But local elites are influenced more by local political pressures than are federal judges, and are less likely to enforce national policies that run counter to local community preferences. Samuel Krislov compared aspirations of attorneys general and federal judges.[22] He concluded that federal judges were more national in their outlook than were other local policy-makers (i.e., attorneys general). Jack Peltason did a study on the

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[20] Frank J. Sorauf, "Zorach v. Clauson: The Impact of a Supreme Court Decision," American Political Science Review, LIII (September, 1959), pp. 777-791.

[21] Ibid., p. 791.

[22] Samuel Krislov, "Constituency versus Constitutionalism: the Desegregation Issue and the Tensions and Aspirations of Southern Attorneys General," Midwest Journal of Political Science, III (February, 1959), pp. 75-92.

role of Southern federal judges in enforcing Brown v. Board of Education.[23] He also found that federal judges were in a better position to enforce Supreme Court decisions than local elected officials. However, he observed that the "effectiveness" of court decisions rested "on the power that [could] be mobilized behind the value[s]" embodied in them.[24]

Thus, several findings of the present study reveal nothing new, but they provide further support for findings of previous studies. The conclusion concerning the "relative impact" of Supreme Court and District Court decisions, however, is unique. There have been no other studies focusing on the question of the relative impact of higher and lower court decisions. In this study, decisions of the lower court had a greater and more direct impact than those of the Supreme Court.

The limitations of the case study method prevent constructing generalizations, but the finding in this instance draws attention to the need for further research on the question of relative impact. It also indicates that lower courts may, in certain circumstances, be more important judicial policy-makers than the Supreme Court. Political scientists have perhaps been overly concerned with the Supreme Court.

An Afterthought Regarding Methodology

The Need for A Precise Definition of Impact

Scholarly research in political science must begin with precise concepts and a rigorous research design if it is to contribute anything

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[23]Jack W. Peltason, Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation (New York: Harcourt, Brace and World, Inc., 1961).

[24]Ibid., pp. 246-250.

to the development of a general theory of politics. Imprecise definitions are an underlying problem with this study and impact studies generally. Impact requires a precise definition if it is to be researchable. Defining impact in terms of changes in local policies and behavior that resulted from court decisions does not add as much precision as might be desired.

Previous impact studies also suffer from imprecise definition. Stephen Wasby has written the only book-length discussion of judicial impact.[25] He never defines impact precisely. He observes that the "term aftermath is too broad" and compliance is only one aspect of impact and is too narrow.[26] Impact, presumably, is somewhere in between. Wasby succeeded in determining what impact was not without ever defining it precisely. Other studies also defined impact in general terms. Some viewed impact as responses of certain individuals or groups.[27] Others viewed impact as changes in public policies or practices.[28]

The present study is more precise in defining impact, than many previous studies have been. The studies with the most precise definitions focused on compliance or non-compliance.[29] However, if

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[25]Stephen L. Wasby, The Impact of the United States Supreme Court: Some Perspectives (Homewood, Illinois: The Dorsey Press, 1970)

[26]Ibid., p. 28.

[27]See for example Patric, p. 455; Beany and Beiser, p. 477; Stumpf, p. 376; Wald, p. 149.

[28]See for example, Sorauf, p. 777; Katz, p. 397; Birkby, p. 307; Stephens, p. 242.

[29]See for example Johnson.

research is to advance beyond studies of compliance to studies of impact, then perhaps it is necessary to leave the definition broad. Legitimate research can look for impact without preconceived notions about what it is.

A final word on an underlying assumption of impact studies is an order.

A Critique of the Cause-Effect Assumption of Impact Studies

This approach to impact analysis views court decisions and the policy goals embodied in them as a stimulus or independent variable. The changes, however they are defined and measured, that follow, are "impact" or the dependent variable. There is a basic weakness in utilizing this stimulus--response approach. That weakness is the assumption of a cause-effect relationship between a court decision and changes that occur afterward. Even if the changes here had been defined and measured more precisely, there would be no evidence to prove the existence of a causal relationship. Stephen Wasby asks, "if several factors are operating in the same direction, how does one 'separate out' the impact the Court's decision has by comparison with other elements of the situation?"[30]

On the other hand, there is support for the contention that court decisions at least influenced changes in local policy and behavior. Interviews with members of the school board and representatives of the groups indicated that their actions were stimulated by court decisions.

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[30]Wasby, p. 32.

Thus, while there is no quantitative evidence of a cause-effect relationship between judicial policies and changes that occurred afterward, there is qualitative evidence from the interviews of such a relationship. Judicial policies account for at least part of the changes. Moreover, there is no evidence of any factors other than court decisions that operated to encourage school desegregation in Oklahoma City.

Impact research cannot tell us much unless the research is conducted rigorously. Amid the cries for "action" and "relevance," one must not lose sight of the need for scholarship and precision in the research.

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APPENDIX

SCHOOL BOARD QUESTIONNAIRE

1. Why did you run for the School Board?

2. In your opinion, what should be the function of courts in American Government? How well do you think the courts do the job they are supposed to do?

3. Do you recall your reaction when the Supreme Court ruled that segregated schools violated the constitution?

4. Do you recall your reaction to Judge Luther Bohanon's rulings ordering the school board to take action to integrate Oklahoma City's schools?

5. Which decisions, the Supreme Court's or Judge Bohanon's, had the greatest effect on you and your family and friends?

6. Since the courts have said we must integrate our schools, what should be the action of the school board?

7. Generally speaking, what action should government take with regard to desegregating schools?

8. Are there any organized groups involved in the school desegregation controversy? Which groups have been most successful? What about the business community?

SCHOOL ADMINISTRATION QUESTIONNAIRE

1. In your opinion, why has the school desegregation issue not been resolved after more than ten years of litigation?

2. Which decisions, the Supreme Court's or Judge Bohanon's do you think had the greatest impact on the community? Why?

3. Are there any organized groups involved in the desegregation controversy? When and why did they form? What about professional education organizations? What about the business community?

4. What has been the nature of their involvement?

GROUP QUESTIONNAIRE

1. How did (the organization) originate? Why was it organized? In response to what? When?

2. What kind of tactics did you use? How did you exert influence?

3. Where is power in Oklahoma City? Who (or what group) is influential in the school desegregation controversy? What about the business community?

4. Did you coordinate activities with other groups? Is there any overlapping membership?

5. Why is the desegregation issue still unresolved after more than ten years of litigation?

JUDGE LUTHER BOHANON QUESTIONNAIRE

1. Did Brown v. Board of Education have any affect on the Federal District Court here before the Dowell case was filed?

2. Do you follow the decisions of other district judges? Do you know them personally and do you discuss the problems of cases with them?

3. When one of your decisions is appealed, do you have any personal contact with the appeals judges or is it strictly formal?

4. Has there been any local political pressure on you as a result of your decisions in Dowell? Has it affected the way you have ruled?

5. What is the role of the Federal District Court in determining policies concerning school desegregation?

6. How does judicial decision-making relate to local policy-making?

7. Why is the school desegregation controversy still unresolved after more than 10 years of litigation?

8. Why have there been no guidelines from the Federal Courts concerning the exact meanings of "desegregation," "integration," and "good faith"?

9. Where is power in Oklahoma City? Who has been influential in shaping school policy? What about the business community; the civic leadership?

10. There appears to have been little negative reaction to Brown v. Board of Education in Oklahoma City. Why has there been so much negative reaction to your decisions in the Dowell case?

INTEGRATION SCALE

R > .90

1. Negroes have the right to use the same public parks, restaurants, and hotels as white people.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

2. There should be laws against marriage between Negroes and Whites.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

3. Courts should make rulings requiring integration of public schools, parks, and other public facilities.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

4. Congress and state legislatures should pass laws requiring integration of public schools, parks, and other public facilities.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

5. White people have a right to keep Negroes out of their neighborhoods if they want to, and Negroes should respect that right.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

6. Negroes shouldn't push themselves where they are not wanted.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

7. Government shouldn't try to force integration on people.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

INTEGRATION SCALE CHANGES

These two questions were used in the school board interviews:

1. Negroes should have as good a chance as white people to get any kind of job.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

2. There should be separate sections for Negroes in street cars and busses.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

These two questions replaced the above two in the scale used in the interviews with the groups:

1. Children get a better education in integrated schools.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

2. Bussing is a legitimate method of integrating the public schools.

   a. agree strongly
   b. agree slightly
   c. disagree slightly
   d. disagree strongly

VITA

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Master of Arts

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