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# A study of selected non-pending, Supreme Court cases held between 1965-2000 on K-12 public, intradistrict, race-based, dual systems of education

LaRonda J. Conley-Townsend

To the Graduate Council:

I am submitting herewith a dissertation written by LaRonda J. Conley-Townsend entitled "A study of selected non-pending, Supreme Court cases held between 1965-2000 on K-12 public, intradistrict, race-based, dual systems of education." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Education.

Olga Welch, Major Professor

We have read this dissertation and recommend its acceptance:

Joy DeSensi, Jaqueline DeJonge, George Harris, Jr.

Accepted for the Council:

Carolyn R. Hodges

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

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# A STUDY OF SELECTED NON-PENDING, SUPREME COURT CASES HELD BETWEEN 1965-2000 ON K-12 PUBLIC, INTRADISTRICT, RACE-BASED, DUAL SYSTEMS OF EDUCATION

A Dissertation
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# ABSTRACT

The purpose of this study was to examine the Supreme Court's rulings between 1965 and 2000 focusing on the legality of intradistrict, race-based, dual systems of education. The study applied the theory of Equal Protection as a rationale for the actions and determinations of the Court made in the kindergarten-twelfth grade public school segregation cases during this period. This theory was chosen because the Equal Protection Clause of the Fourteenth Amendment was used to prohibit the operation of segregated systems (Brown v. Board of Education, Topeka, Kansas, 1954) which were held to be detrimental to minority students. The Civil Rights Act of 1964 furthered efforts to dismantle racial segregation in schools by refusing federal funds to systems that practiced racial discrimination.

From an analysis of the fifty-eight cases, two cases emerged for further study, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) and *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). Data from these cases were used to answer the research questions: 1) In making its decisions, what judicial guidelines did the Supreme Court establish, if any, for determining whether a dual system of education existed? 2) What judicial guidelines, if any, were established to distinguish between illegal and legal dual systems? 3) If judicial guidelines were established to delineate between illegal and legal dual systems, were the differences related to the system practicing de jure or de facto segregation?, and 4) What has the Supreme Court decided about the legality of two schools, with racially diverse dominant populations existing within the same district in the public school system?

The study's findings suggested that no guidelines were established for use in future rulings, a) to determine whether a dual system existed; b) establish a definition of illegal vs. legal dual systems; or c) to assert a connection between de jure and de facto segregation as each relates to dual systems. Yet in the two cases studied, the Supreme Court, decided that dual systems existed and that the systems were illegal.

These rulings support the existence of dual systems after 1965 in violation of the Equal Protection Clause of the Fourteenth Amendment. However, as might have been expected, they did not establish guidelines or precedents for future cases, particularly those involving intradistrict, race-based, dual systems in kindergarten through twelfth grade education.

The lack of these guidelines also has implications for future litigation involving intradistrict segregation. Moreover, the lack of guidelines suggests a need for future studies on the impact of, for example, district transfers and school voucher programs on efforts to end the practice of de jure and de facto segregation in public school systems.

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# CHAPTER I

# INTRODUCTION

According to the Supremacy Clause of the Constitution of the United States, the Constitution is the supreme law of the land. The U. S. Supreme Court is the ultimate arbiter of the Constitution (U.S. CONST. art. III, §1). Any law appearing to violate the Constitution will be interpreted by the Supreme Court, and, if the law violates the Constitution, it is void.

The Constitution limits the jurisdiction (types of cases that may be heard) of the Supreme Court. Under Article III of the Constitution, the Supreme Court may only review cases on appeal from federal and state courts (U. S. CONST. art. IV, § 2). Should the Supreme Court decide to hear a case on appeal from a federal or state court, its decision is binding on all courts, and becomes the law of the land. Once the Supreme Court hears a case on a particular issue (i.e. segregation) irrespective of the facts, it may not consider the issue again, unless it intends to overrule its previous decision.

The Amendments of the Constitution are also vested within the Supreme Court for interpretation and application to the law. In 1868, the Equal Protection Clause of the Fourteenth Amendment was enacted, providing that "no state shall deny any person within its jurisdiction the equal protection of the law" (U.S. CONST. XIV amend. § 1). From 1868 to 1964, segregation was a prominent issue challenged through court systems, under the Equal Protection Clause, as unconstitutional.

Segregation is legally defined as the "unconstitutional policy of separating people on the basis of color, nationality, religion, or the like" (Garner, 1999, p.1362). Because

America used racial difference as a basis for public segregation and unequal treatment in education, race was also a preeminent factor in segregating public schools. Segregation in public schools placed the sole responsibility on blacks for building and supplying their own educational materials, with minimal assistance from state or local authorities. Blacks, among other minority groups, considered some actions of state and local governments discriminatory and segregation harmful, hence violating the Equal Protection Clause (Anderson, 1988). Notwithstanding the limited jurisdiction of the Supreme Court, a few pivotal equal protection cases concerning segregation were heard and ruled on by the Court, because equal protection is a constitutional issue.

The Supreme Court first addressed the issue of segregation in *Plessy v. Ferguson*, 163 U.S. 537 (1896). Plessy, a man of mixed black and white ancestry, purchased a train ticket for the coach seating whites only. He was removed from the train and sought relief based on the Equal Protection Clause. At the time *Plessy v. Ferguson* (1896) was decided, the Court held that separate access to public spaces, e.g. trains, schools, etc., was constitutional, thus defining the relationship between the law, public places (education), and race. Consequently, as long as separate spaces were offered, the Equal Protection Clause was not violated. The Court set no expectations at this time for the quality of the spaces offered to blacks. The Court, relying on the theory of "separate-but-equal" and equal protection under the law (not human equality) found East Louisiana Railway's practices constitutional.

*Plessy v. Ferguson* (1896) authorized de jure segregation, the practice of segregation allowed by law, and was often cited to justify practices of segregation. The ruling in *Plessy v. Ferguson* (1896) was challenged in *Missouri ex rel. Gaines, State of v.*

*Canada*, 305 U.S. 337 (1938) and *Sweatt v. Painter*, 339 U. S. 629 (1950). *Missouri ex rel. Gaines, State of v. Canada* (1938) was a case brought against the state of Missouri by a black who wanted to attend law school, because Missouri did not have a law school for blacks. Rather than allowing blacks to enroll in the white law school, the state created a law school for them. Applying the decision in *Plessy v. Ferguson* (1896), the Court in *Missouri ex rel. Gaines, State of v. Canada* (1938) ruled Missouri could offer separate law schools for blacks and whites, maintaining the existing relationship between the key elements - law, public spaces (education), and race – the equal protection theory.

*Sweatt v. Painter* (1950) also involved a black student who was unable to attend a white only law school. Texas followed the Missouri example and created a law school for blacks instead of allowing them to enroll in the existing law school for whites. However, the decision of the Court came after a law school for blacks at Texas Southern University was established. Under *Sweatt v. Painter* (1950), the Court ruled that separate public spaces, in this case law schools, being clearly unequal, were unconstitutional. Accordingly, if separate spaces were offered, said spaces must be equal. This decision modified "separate-but-equal" and that doctrine's legal relationship to the guarantee of equal protection. *Sweatt v. Painter* (1950) succeeded where previous cases had failed to show indisputable inequities in black facilities compared to non-black facilities. In addition to *Sweatt v. Painter* (1950), the Supreme Court ruled in *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950), that allowing "Negroes" in the same areas as whites, but separating within those same spaces, was also a violation of equal protection.

The onset of the Civil Rights Movement followed *Sweatt v. Painter* (1950) and *McLaurin v. Oklahoma State Regents* (1950) and furthered desegregation efforts. A

series of cases, collectively known as *Brown v. Board of Education Topeka, Shawnee County, Kansas*, 347 U.S. 483 (1954), beginning in 1952, provided the Supreme Court with enough evidence to rule against segregation in schools, and overrule the "separate-but-equal" doctrine, which had been upheld in *Plessy v. Ferguson* (1896) and the subsequent cases already cited. The decision essentially declared "the dual system of public education in seventeen states which had been legal under 'separate-but-equal' ...unconstitutional" (Alexander & Alexander, 1995, p. 200).

The Court in *Brown v. Board of Education* (1954) reevaluated the relationship between law, public places (education) and race. It held that separate facilities were inherently unequal and violated the Equal Protection Clause. Hence, this decision completely changed the relationship between law, public education and race. The *Brown v. Board of Education* (1954) decision affected only state imposed segregation, leaving desegregation efforts and purposeful integration by the states as considerably different tasks. Further in *Bolling v. Sharpe*, 347 U.S. 497 (1954), the U.S. Supreme Court held the federal government in violation of the Due Process Clause of the Fifth Amendment, because the segregated school system was in the District of Columbia. On both accounts, state and federally imposed segregation was held as constitutional violations.

*Brown v. Board of Education*, 349 U.S. 294 (1955), clarified the expectations of the desegregation plans. Among the decisions made in *Brown v. Board of* Education (1955), the Supreme Court emphasized the need for local courts to oversee the rate and effectiveness of implementation for desegregation plans. School officers were charged with an "affirmative duty" to create a solution. Further, in *Cooper v. Aaron*, 358 U.S. 1 (1958) the Supreme Court declared that schools were not allowed, on the basis of race, to

discriminate against students and children through actions taken by state officials. The courts also resolved, in the case of *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), that voucher systems, causing the closing of public schools, were unconstitutional. The voucher system violated the Equal Protection Clause, because black students were unable to attend private schools.

These cases established national guidelines for public segregation, which affected education. While the facts of every segregation case appealed to the Supreme Court did not involve education, the rulings in these cases, when applied to public schools, evidenced the Supreme Court's power. The Civil Rights Act of 1964 reinforced the Supreme Court's rulings in *Brown v. Board of Education* (1954) and subsequent cases, banning de jure segregation. Specifically, Subchapter II and Subchapter V of the Civil Rights Act of 1964 prohibited distribution of federal funds to public schools that racially discriminated. (See Appendix A.)

## Statement of the Problem

Prior to 1965, there were two preliminary evaluative standards relevant to cases of segregation in educational facilities, de jure segregation and de facto segregation. De jure segregation, as argued in *Brown v. Board of Education* (1954), was ruled unconstitutional. De facto segregation, unlike de jure segregation, "occurs without state authority, usually on the basis of socioeconomic factors" (Garner, 1999, p.1362) and was not necessarily, as of 1965, an illegal activity. As schools began to comply with desegregation policies for de jure segregation, white students and parents employed methods of de facto segregation (segregation occurring by practice or custom). As found in *Griffin v. County School Board of Prince Edward County* (1964), white parents

avoided sending their children to schools with black students (Lagemann, 1995; Smith & Meier, 1995).

The Civil Rights Movement and the Civil Rights Act of 1964 assisted in national efforts to end segregation. However, since 1964, those Supreme Court cases challenging racial segregation in K-12 education (i.e. race-based, dual systems of education) under Equal Protection do not appear to have been studied. Thus, this study provided an examination of two Supreme Court decisions after 1964 and analyzed their possible effects on national policy related to segregation.

## Purpose

The Equal Protection Clause requires that every citizen be provided with the same protection of rights under the law. Segregated schools in a single district, according to Supreme Court cases before 1965, violated that principle. However it was unclear if since 1965 the Supreme Court has reversed its previous rulings outlawing de jure segregation or limited further de facto segregatory practices. Additionally, it was unclear if the delineation between de jure and de facto segregation was the deciding factor in Supreme Court cases for declaring segregated school districts legal.

Therefore, the purpose of this study was to examine the determination of the legality of intradistrict, race-based, dual systems of public, K-12 education by reviewing non-pending, U. S. Supreme Court cases of the last thirty-five years. Thus, the study described the process by which the Supreme Court arrived at its determinations. It also described the existing distinctions between de jure segregation and de facto segregation and their relationship to the characterization of legal or illegal public school segregation.

## Theoretical Considerations

The study was grounded in the theoretical construct of the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws" (U.S. CONST. XIV amend. § 1). The theory of equal protection supports human equality and nonrestrictive protection from and by the law. It has been used variably as a judicially enforced practice, as well as a theoretical explanation of courts' decisions (Dworkin, 1977; Fiss, 1976; Kanner, 1977; Purdy, 1976; Rodham, 1973).

The study applied the theory of equal protection and the courts' implementation of the theory, specifically the Supreme Court's use of the theory to enforce the removal of segregation. The selection of this construct supported the dual purpose of the study; that was a) to review Supreme Court cases challenging segregation in light of the Equal Protection Clause in order to examine the legal status of segregation in public K-12 schools; and b) to examine the unintended consequences of these cases in shaping or reshaping the characterization of segregation, including de jure and de facto segregation, in K-12 public school districts (judicial application of the theory).

Maxwell (1996) suggests that theory is "simply a set of concepts and the proposed relationships among these, a structure that is intended to represent or model something about the world" (p. 30-31). In the study the "set of concepts" was public education, law, and race. Equal Protection sets forth the desired interaction of these concepts, because equal protection represents the legal requirements (law) for public education (schools) with regard to race or other factors. Supreme Court cases are a vehicle for examining the interaction of these concepts in light of the theory of equal protection in

challenging segregation in public education. Thus the Supreme Court cases from 1965 through 2000 were examined to determine whether the rulings support legal race separation in public schools.

## Research Questions

The Supreme Court is bound by the Constitution to uphold, apply, and implement equal protection. To examine the legality of intradistrict, race-based, dual systems of education, the study focused on the following questions.

1. In making its decisions, what judicial guidelines did the Supreme Court establish, if any, for determining whether a dual system of education existed?
2. What judicial guidelines, if any, were established to delineate between illegal and legal dual systems?
3. If judicial guidelines were established to delineate illegal and legal dual systems, were they related to any difference between de jure and de facto segregation?
4. What has the Supreme Court decided about the legality of two schools, with racially diverse dominant populations existing within the same district in the public school system?

## Significance of the Study

The legal parameters for segregation, de jure segregation or de facto segregation, in public schools were unclear. Segregation, prior to 1964, was held to be antithetical to the Constitution and the Civil Rights legislation of 1964. The potential harm, as described in *Brown v. Board of Education* (1954), that might be created by segregated systems become the basis for closer scrutiny of the doctrine "separate-but-equal." The proposed

review of guidelines related to segregation provides public school districts with information regarding segregation, which may not have decreased so much as it may have changed from a de jure to a de facto form (Martinez, Godwin, Kemerer, & Perna, 1995).

## Assumptions

The study was initiated and conducted with two major assumptions:

1. In violation of the Equal Protection Clause, segregation in some K-12 school systems persists.
2. Where it persists, this segregation disproportionately affects educational access for minorities contradicting the intent of federal civil rights legislation and Supreme Court case law.

## Scope of the Study

The study sought to determine the legality of intradistrict, race-based, dual systems of public, K-12 education by reviewing non-pending, U. S. Supreme Court cases of the last thirty-five years. Supreme Court cases prior to 1964 challenged segregation under the Equal Protection Clause by claiming that discrimination resulting in segregation precluded equal protection under the law. Therefore, Supreme Court cases after 1965 were examined in relation to the theory of equal protection. Thus, the study's analysis of the legality of segregation in part focused on judicial outcomes and on the relationship of the equal protection theory to those outcomes.

The study was confined to two areas, case law and federal judicial law. Case law is the result of a trial. It does not suggest new law, but interprets statutory law. Federal judicial law limits the study to non-pending cases from the U.S. Supreme Court, and

more specifically to those during or after 1965 but before 2000. Only the Supreme Court cases were used to study the legality of segregation in public elementary and secondary schools. For example, the study was delimited to cases from the Supreme Court, although federal courts of appeal and district courts may have cases meeting the parameters of date and substance.

Remedies or subsequent results after determining whether a school system was segregated (a dual system) were outside of the scope of this study. The Supreme Court evaluates, on appeal, resolutions of lower courts, but not always the entire case. The nature of the Supreme Court allows specific aspects of original cases to be appealed. Where the trial court case's initial argument determined the legality of segregated public school systems and where additional or subsequent issues were appealed to the Supreme Court, the cases were not studied, i.e. freedom of choice plans, busing issues, or funding. Further, Supreme Court cases focusing implementation of desegregation plans in any way also were not studied extensively. To be included in the study, the issue before the Supreme Court must have involved the determination of the legality of a intradistrict, race-based, dual systems of education.

The study also disallowed regional examinations, such as North versus South, of segregation issues brought before the Supreme Court. The federal court system begins with the district courts. The number of district courts varies for every state, depending on the population. District court decisions are appealed to circuit courts, which are organized geographically. There are eleven circuit courts. Cases appealed from circuit courts are submitted to the Supreme Court. Therefore, examining decisions geographically, East compared to West or North versus South, was not required.

Additionally, none of the cases studied included litigation involving state owned or public colleges and universities. In addition, the study focused on cases that were no longer litigated. Cases currently in litigation, which would have otherwise been included in the study, were not assessed and added later. Likewise, cases that were non-pending after December 31, 2000 were not included. The study did not attempt to affirm or disaffirm legislative attempts to define segregation if such attempts were not specifically stated in judicial decisions (opinions). An exploratory search using the parameters of dates, Supreme Court jurisdiction, and racial segregation cases, occurring within a K-12 district or school system, produced six cases for the study. The actual query used for the study produced two cases for the study.

## Definition of Terms

The following list defines terms as used in this study.

*Appellant:* The party asking for the appeal. Also known as the petitioner.

*Appellate Court:* The court receiving the case after the trial court in order to decide if the law was properly applied.

*Appellee:* The party answering the appeal. Also known as the respondent.

*Briefs of Amici Curiae*: Briefs filed by parties that have similar interests or could be directly affected by the outcome of the case.

*Case Law*: Laws based on cases, not legislation, and derived from principles, justice, and common sense, allowing flexibility as the needs and interests of society transform.

*Certiorari:* To request the record of a case from the previous, lower court.

*De Jure* Segregation: Segregation caused or enabled by law.

*De Facto Segregation*: Segregation caused by social and financial factors.

*Defendant*: The party accused in the original proceedings; the responsive party to the complaint.

*Federal Judicial/Case Law or Policy*: Interpretations of Constitutional law, resulting from cases held in the U.S. Supreme Court.

*Intradistrict*: Occurring within a school district or school system. Where a school system has multiple districts, it implies within at least one of the districts.

*Remanded:* To send back to the previous court for further action.

*Respondent:* The party placed in the position of the defendant in appellate proceedings.

*Petitioner:* The party placed in the position of the plaintiff in appellate proceedings.

*Plaintiff*: The party initiating the complaint in the original proceedings.

*Trial Court:* The court with jurisdiction of the case originally.

*Public School*: Elementary and secondary, K-12 schools supported by the government or its authorities. Public schools may include alternative schools or programs.

*Segregation*: Separation of racial groups.

*Vacated:* Voided or overruled.

## Sources of Data and Methodology

The data used in this study were cases extracted from court reporters identified through a database system. The cases were confined to those of the U. S. Supreme Court, which were decided between 1965 through 2000. Cases were also limited to those that challenged intradistrict, race-based, dual systems of public, K-12 education. Cases from the Supreme Court possess uniquely wide latitude over the entire nation because the Court's rulings stand until another U. S. Supreme Court case outcome overrules the previous decision(s). Segregation cases test the assurance of the Constitution to protect

all citizens and the presumption of human equality.

The theory of equal protection granted substantive cause for filing actions challenging segregation prior to 1965. The equal protection standard related to segregated school environments, prior to 1965, has been considerably limited to two main standards – de jure segregation and de facto segregation. The rulings of the U. S. Supreme Court have the power to change the definition, attributes, and legality of both de jure segregation and de facto segregation.

In addition to the exclusive use of Supreme Court cases between 1965 and 2000, restrictive terms were used in the study, which dictated the data sources consulted. These terms are described below:

1. Intradistrict specified the occurrence of segregation within a school system or district.
2. Race-based suggested that there is a substantive difference in racial majorities in at least two schools within one system or district.
3. A dual system was a school system or district where two or more schools operate simultaneously but vary greatly in one or more characteristics, such as funding or instruction, based on a factor. In this study the factor for variance was race.
4. Public schools of K-12 grades were those operated by the state or supported by government and public funds. Public K-12 schools included those at the elementary and secondary levels.

In order to identify cases from the Supreme Court after 1965 but before 2000 on intradistrict, race-based, dual systems of education, this study made use of computer-

assisted legal research (CALR). The search material from legal databases does not contain original work but leads to primary materials, such as court reporters, which were used in the study (Shapo, Walter, and Fajans, 1995). The court reporters, for example Supreme Court reporters, provide the facts, history, and proceedings of the cases. Various reporters contain the same cases. The study did not limit the kind of reporters from which it gathered case information.

A preparatory CALR search for this study produced six cases. The parameters were defined as follows: "rac! & dual-systems & elementary or secondary & public & education & intradistrict and not university or higher education" from January 1, 1965 until December 31, 2000. Exclamation points (!) truncated words, allowing multiple forms of the word to be searched, allowing this preliminary search to include "race," "racial," or "races." The "and" (&) notations linked words together, requiring the words to appear somewhere within the case, not necessarily in the same paragraph or sentence. Hyphenations (-) adjoined words, suggesting that they must appear side by side. "OR" provided options to the search. At least one of the listed terms before or after "or" appeared in the cases. Disjunctive words and word phrases ("not" or "but not" or "and not") set excluding boundaries.

This preliminary search was conducted within the database confines of federal cases. It returned seventeen cases, from which the Supreme Court cases were extracted. The list follows:

1. *Alexander v. Holmes Board of Education*, 396 U.S 19 (1969)
2. *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968)
3. *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973)

4. *Milliken v. Bradley*, 418 U.S. 717 (1974)

5. *Missouri v. Jenkins*, 515 U.S. 70 (1995)

6. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)

These six cases were not exhaustive and were not reviewed for content. A comprehensive search required the addition and deletion of cases. The change of terminology used in the legal system, such as Negro to black, suggested the need for an expansion of the preliminary search to account for the transition of legally appropriate CALR terms and search phrases. The study employed the search tools above for the initial search, as well as others. After an extensive review of case literature and the use of the database thesaurus, the final query developed was: "DA (AFT 01/01/1965 & BEF 12/31/2000) & "dual system!" segregat! /p "school district" "school system" & public & rac! % "higher education" % college." This query produced fifty-eight cases. Fifty-six of those fifty-eight cases did not meet the study's criteria. The Supreme Court made a determination about the legality of intradistrict, race-based, dual systems of education between 1965 and 2000 in two cases, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) and *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979).

The cases were then outlined using an adaptation of the five fact categories and three legal categories suggested in The Process of Legal Research (Kunz, Schmedemann, Downs, & Bateson, 1996). The questions for the outline were chosen to simulate Issue, Rule, Application, and Conclusion (IRAC), a checklist device used for case preparation and analysis for legal understudies. The five facts and legal categories, hereafter termed Education and Legal Evaluation (EDLE), focus on seven questions:

1. Who is involved?

2. What is involved?
3. What relief or action does the petitioner(s) seek?
4. When did (or will) it happen?
5. Where did (or will) it occur?
6. Why did the petitioner(s) and respondent(s) act in this manner?
7. What is the outcome or decision?

This outline assured uniformity in the data collection process. The data collected from EDLE provided the history and background considered by the Supreme Court in making its rulings. The case record, along with the data from EDLE questions, were sufficient, as the research questions were considered the leading questions to determine the legality of intradistrict, race-based, dual systems of public K-12 education. (See Research Questions, Page 8.) The research questions, along with the case selections and EDLE questions, were chosen because of the Equal Protection Clause, provided in the Fourteenth Amendment of the Constitution. Questions 3 and 7 from the Education and Legal Evaluation were used to determine the relationship of the equal protection theory to the Supreme Court cases, and in turn, were used with the research questions, especially Research Question 4.

Each research question was answered for every case. A single case may overrule or make additions to previous cases' rulings about the legality of segregation, whether de jure or de facto. In addition, an assumption cannot be made about whether the cases under study were considered landmark cases or whether they demonstrated precedence. However, general guidelines for the research questions' data were established.

If the cases under study provided judgments, which overruled a previous case's

ruling, this was stated. References to precedent were also stated. If the cases under study provided judgments, which made additions to previous rulings, the precedent and the addition were stated. Thus, the issue of the legality of dual systems and its relationship to the theory of equal protection may be determined by the outcomes of each case separately or jointly.

## Organization of the Study

The study examined the legality of intradistrict, race-based, dual systems of public, K-12 education by reviewing non-pending, U. S. Supreme Court cases of the last thirty-five years. It was divided into five chapters:

Chapter I provides an introduction to the study containing the rationale, statement of the problem, purpose of the study, theoretical considerations, research questions, significance, assumptions, scope of the study, definition of terms, data sources and methodology, and organization of the study.

Chapter II contains a review of seminal historical and legal cases, related to the study's focus and research questions.

Chapter III discusses the study's methodology, describing the sources of data, data collection, and procedures for analysis.

Chapter IV discusses the research findings.

Chapter V presents the conclusions and implications of the study.

# CHAPTER II

## REVIEW OF LITERATURE

In the judicial system, precedent (the rule of law set by previous cases) indicates the success of judicial arbitration. Landmark cases, those held as groundbreaking litigation on an issue, can set these precedents. Most landmark cases in education were decided in the Supreme Court. Chapter 1 detailed important cases up to 1965. During that time, cases primarily dealt with the separate but equal doctrine and its relationship to segregation in public accommodations, including the *Brown v. Board of Education* (1954) decision mandating the immediate removal of separate facilities based on race. The Civil Rights Act of 1964, which prohibits schools who act in a racially discriminatory manner from receiving federal funds, also clearly enunciated federal legislative positions on racial segregation. (See Appendix A.)

However, by 1965, the separate-but-equal doctrine as a legal policy was overturned. The Supreme Court's power and jurisdiction was pivotal to the immediate ratification of anti-discriminatory policies and desegregation measures. The breadth of its jurisdiction also allowed every related case to effect desegregation in public schools. Cases, after 1965, defined specific topics and genres of segregation. These topics have included defining the difference between race-based and religious-based segregation, intradistrict and interdistrict segregation, and unitary versus dual systems.

This chapter offers a review of seminal Supreme Court opinions that acted as legal precedent in cases related to race and public schools. The case literature also submits the precedent to the Court's segregation analysis, which was the focus of the

study. These cases provided background information needed to understand the information from the study's EDLE and research questions.

When opinions are delivered, justices note cases, which set the precedent for that particular point of law. Because of the Supreme Court's power (Supreme Court cases may only be overruled by the Supreme Court), the cases acted as precedent and controlling law for the cases in the study since they may have been decided in the Supreme Court. Therefore, a review of these seminal cases, a majority of which were Supreme Court cases, is critical to understanding the development of Supreme Court's review standards.

This chapter provides an overview and explanation of the role and power of the Supreme Court. It then examines cases focusing on race and their legal standing. Finally, it discusses the role and function of public, K-12 education in relation to the de jure and de facto segregation questions and issues examined in the study.

## U.S. Supreme Court

As discussed previously, the Supreme Court was granted judicial powers by Article III of the United States Constitution. Thus, the federal and state court systems fall entirely under its jurisdiction. This means that any appeals process concludes in the Supreme Court. (See Appendix B.) Although there are numerous ways that a case may be appealed to the Supreme Court, the procedures for granting an appeal are explicit. An appeal to the Supreme Court is limited by jurisdiction, manner and source.

There are two kinds of jurisdiction for the Supreme Court – original and appellate. Article III provides that the Supreme Court has initial jurisdiction in cases where a State or the United States is one of the parties. "In all cases affecting

Ambassadors, other public Ministers and Consuls, and those in which a state shall be Party, the Supreme Court shall have original Jurisdiction" (U.S. CONST. art. III, § 2). In cases involving other matters, the Supreme Court is limited to appellate jurisdiction and intertwines its jurisdiction with the power of Congress. The Supreme Court's appellate jurisdiction is bound by the limits set by Congress. Article III, Section 1 of the Constitution provided Congress with the power to create courts. The Constitution states that Supreme Court jurisdiction is "under such Regulations as the Congress shall make" (U.S. CONST. art. III § 2).

There are two types of appellate jurisdiction proscribed by Congress, Certiorari and Appeal (28 U.S.C. 1254). On Appeal, the Supreme Court must hear the case. Cases heard on Appeal are those from the federal district court regarding a directive for relief (28 U.S.C. 1253). However, cases arriving by Certiorari are heard at the discretion of the Supreme Court. Certiorari is an appellate court's order (in this case Supreme Court) to have the case record delivered for review. Upon review, a majority of Supreme Court Justices must agree to hear the case. When the Supreme Court hears a case, it does not revisit the facts. Under the Federal Rules of Civil Procedure Rule 52, which applies to all federal courts, the Supreme Court "shall not set aside [the facts of a case] unless [they are determined to be] clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of the [lower court] shall be considered the findings of the [Supreme Court]." Thus, the trial court is the finder of fact, and the Supreme Court reviews the cases to ensure that the law was properly applied.

Once the Supreme Court decides to hear a case, the Court's jurisdiction is still limited. Only cases from the highest state court or any case from the federal court of appeals are heard (28 U.S.C. 1257). If a state Supreme Court case is presented for appeal, there must be a question of the constitutionality of federal or state law or a violation of federal law. The exception under appellate jurisdiction, by way of certiorari, is a case appealed from the federal court of appeals. (See Appendix C.)

The judicial court system and Supreme Court's powers place it in a unique and irreplicable position with other courts regarding issues of national importance. For example, Belknap (1999) suggests that the Supreme Court's power could well have been used to deal with issues surrounding the legality of the Vietnam War, as well as other national conflicts. However, Belknap (1999) notes that the Supreme Court is limited to the exact matter brought before it by litigants and how those problems have already been "framed" by the litigants. Although the Supreme Court cannot take action without having a case before it, once a case is presented the Court has the opportunity to shape the nation naturally. This shaping, however, must remain within the confines of the Constitution and the Supreme Court's authority. These complexities were evident in *Mora v. McNamara*, 389 U.S. 934 (1967). In *Mora v. McNamara* (1967), Dennis Mora alleged that the United States military action in Vietnam was illegal, and sought to have his draft notice and the orders sending him to Vietnam set aside. The Court refused to hear the case because it presented a "political question." Under the Political Question doctrine, the Supreme Court will not hear cases, which deal with political issues that should be reserved for the legislature.

The multifaceted nature of the Supreme Court's jurisdiction over national issues impacted segregation issues as well. The Supreme Court played an active role in eliminating discrimination and enforcing desegregation by choosing to hear and rule in segregation cases. It also provided orders for the enforcement of anti-discriminatory practices. In *Brown v. Board of Education* (1955), the Supreme Court determined that the school authorities had more insight into their local problems and were therefore better equipped to derive feasible plans for desegregation. The Supreme Court also determined that the district courts would oversee the implementation process and school systems' adherence to Constitutional law.

## Race-Related Cases

The Supreme Court has closely evaluated race and race-based activities, including racial segregation cases. Racial language and implications in judicial proceedings and legislation, when before the Supreme Court, automatically provoke rigorous examination of the guarantees of the Fourteenth Amendment's Equal Protection and Due Process Clauses. These two clauses direct that the Supreme Court review the context of the law. The difference between Due Process and Equal Protection Clauses is that the former prohibits infringement on one's constitutional rights without proper process, meaning a hearing, while the latter prohibits unequal application of the law in violation of one's constitutional rights. Segregation cases, like the ones in this study, have been previously reviewed applying the Equal Protection Clause.

Because equal protection was the theoretical foundation of the study, a closer examination of its relationship to the law and its effects on race and racial discrimination is critical. Litigants seeking relief from discriminatory practices applied the principle that

the government and its officials and entities should equally guard persons of the same class by the law or asserted blanket human equality. As a result, the equal protection theory has been used to examine issues related to gender, non-citizens, and ethnicity.

The judicial application of Equal Protection Clause involves three standards of review: a) strict scrutiny, b) intermediate scrutiny, and c) minimal scrutiny. Under the strict scrutiny standard, there are also three classifications: a) suspect, b) quasi-suspect, and c) all others. In this study only the strict scrutiny standard is discussed, since it applies to race discrimination, a suspect classification. (See Appendix D.)

Strict scrutiny applies if the law addresses a suspect classification or a fundamental right. As stated previously, suspect classifications fall under strict scrutiny. Race is a suspect classification. If the actions of the law appear to discriminate against an individual because of his/her race, it will be struck down. Otherwise, the law must be the only way to accomplish the goal of the government. Failure to meet the goal through the law or effecting individuals outside of its proposed scope makes the law susceptible to invalidation. Before 1965, the intent to discriminate was indisputable, causing segregation to become illegal. Under strict scrutiny, there must be facts in the case, which identify a clear intent to discriminate. Intent to discriminate at one of the three levels - facial discrimination, discriminatory application, and discriminatory motive - must also be proven.

## Facial Discrimination

Facial discrimination means the law explicitly identifies, "on its face," a distinction in application of the law, based on race. Jim Crow laws or voting laws prior to 1920 are examples of facial discrimination. In attempts to change the racial

composition of public education, the government may proactively use facial discrimination in creating laws, as long as it does not burden another group. *University of California Regents v. Bakke*, 438 U.S. 265 (1978) is an example of facial discrimination.

In *California Regents v. Bakke* (1978), a white male, Bakke, applied to medical school at the University of California, Davis in 1973 and 1974. Bakke was not admitted either year and brought suit in the California Superior Court seeking to compel his admission to Davis. Davis had two admission programs, a "Regular Program" and a "Special Program." Davis used the "Special Program" to evaluate "disadvantaged students." Under the "Special Program" minority students, with lower ratings than comparable students evaluated under the "Regular Program," were admitted. Bakke argued that the "Special Program" excluded him on the basis of race in violation of the Fourteenth Amendment. The California Superior Court found that the "Special Program" operated as a racial quota because minority applicants were only rated against one another, and race could not be considered in evaluating the applicants. The court, however, refused to order Bakke's admission to Davis, holding that Bakke failed to meet his burden of proof (he would have been admitted without the program).

The Supreme Court of California transferred the case directly from the California Superior Court, because of the importance of the issue. The California Supreme Court found the "Special Program" was not the least restrictive means of promoting the state's interest (increasing the number of minority doctors). Further, the California Supreme Court held applicants could not be rejected because of race in favor of a less qualified applicant. Since Bakke suffered discrimination based on race, the court shifted the

burden of proof (Bakke would not have been admitted without the "Special Program") to Davis.

The U. S. Supreme Court granted certiorari (a review). The Court affirmed the California Supreme Court's judgment holding that Davis failed to demonstrate that the "Special Program" was necessary to promote a substantial state interest. The "Special Program" used an explicit racial classification never before allowed by the Court. "White applicants were totally excluded from a specific percentage of the seats in an entering class. No matter the strength of their qualifications they could not compete with applicants from the minority groups for the special admissions seats. At the same time, the minority applicants had the opportunity to compete for every seat in the class." Id., at 320. The Court found "the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of 'societal discrimination' d[id] not justify a classification that imposes disadvantages upon persons like [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered." Id., at 310. As a result, the Davis "Special Program" was found invalid.

Discriminatory Application

Discriminatory application is when a law in practice is discriminatory, although the language of the law makes no distinction as to the class of individuals. If in application, the law was purposefully discriminatory, then the law is nullified, as found in *School District of Omaha v. Nebraska*, 433 U.S. 667 (1977). The school district in Omaha operated a segregated school system, but there was never a statute requiring any distinctions be made based on race. The Court had to determine whether the existing

racial segregation in the school district violated the Equal Protection Clause of the Fourteenth Amendment. The School District applied several policies, which it utilized to ensure that even, without a statutory mandate the system would remain segregated.

The Court in Omaha, applying *Washington v. Davis*, 426 U.S. 229 (1976), held "cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact." Id., at 668. In *Washington v. Davis* (1976), the District of Columbia Police Department used tests and procedures, which, while neutral on their face, tended to isolate minorities. Black police recruits sued the Department alleging racial discrimination. The Court found the recruiting procedures did not violate the Fourteenth Amendment, irrespective of its adverse impact on minorities; there was sufficient evidence, based on the relationship between the applicant's test results and his/her performance, to validate the test.

Discriminatory Motive

Discriminatory motive is evident when the consequences of the law, despite the language and application, burden a particular group of individuals. The Denver School System, in *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973), never operated under a constitutional or statutory provision that mandated or permitted segregation in public education. However, the School District, "through the use of various techniques such as the manipulation of student attendance zones, school site selection and a neighborhood school policy, created or maintained . . . segregated schools through out the school district." Id., at 191. While the school district in *Keyes v. School District No. 1, Denver, Colorado* (1973) did not permit segregation in public school, the

intent and purpose of the School Board's actions were clearly to maintain a discriminatory system.

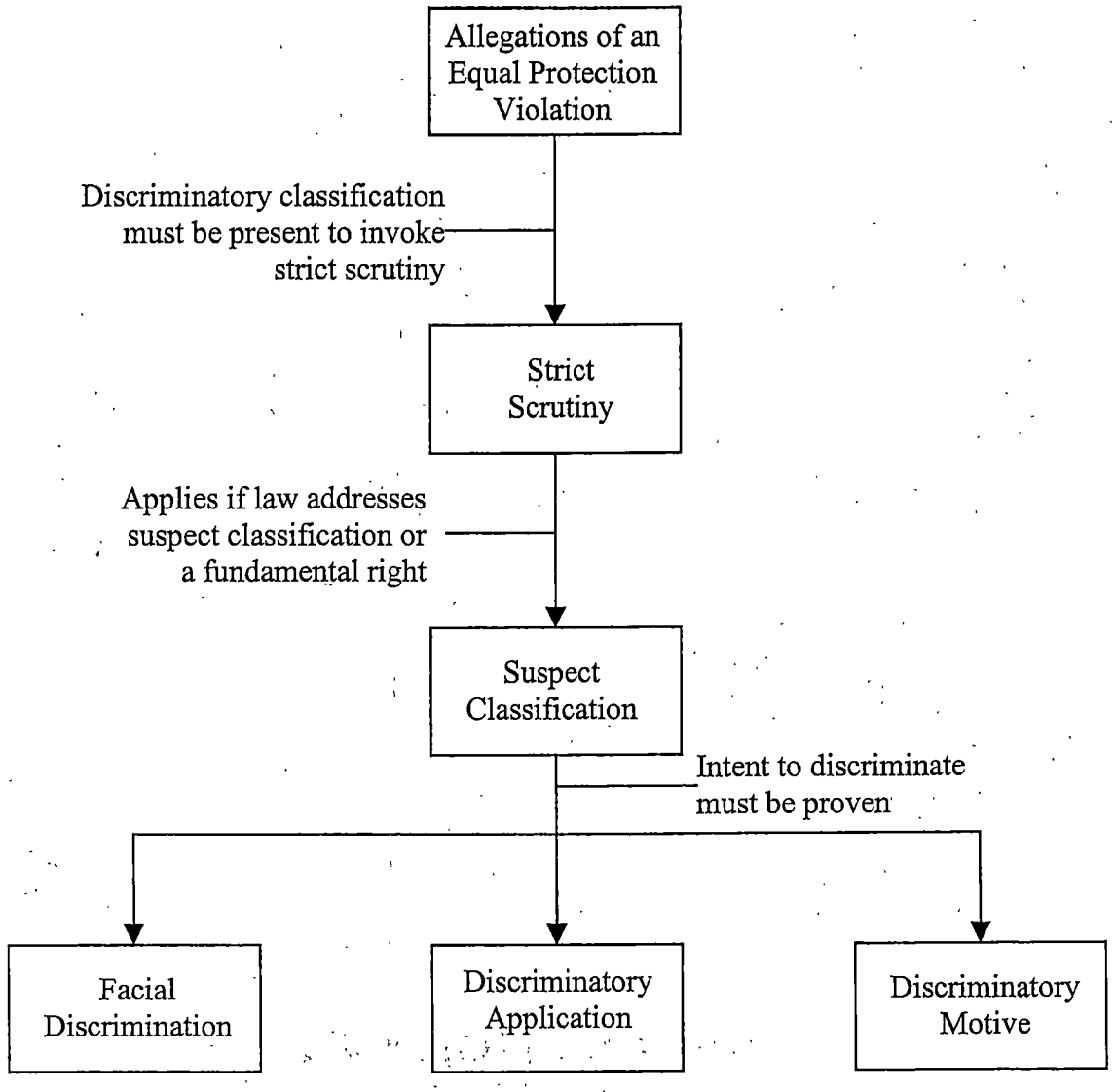
Discriminatory motive is also discussed in *Wright v. Council of the City of Emporia*, 407 U.S. 451 (1972). In *Wright v. Council of the City of Emporia* (1972), black children claimed racial discrimination and sought desegregation of the Greensville County School System. Emporia is a rural county on the North Carolina border, near the center of Greensville County, Virginia. Prior to 1967, Emporia was operated as a town, meaning its schools were operated under the Greensville County System. In 1967 Emporia sought and received designation as a city, under Virginia law, which would allow it to become politically independent and to operate its own school system. After this designation, Emporia continued to operate its schools with the Greensville County, under an agreement that required Emporia to assist Greensville County with the cost associated with the operating the school system. In 1969, the Supreme Court ordered the desegregation of the Greensville System, and implementation of a desegregation plan. After the Supreme Court's decision, Emporia attempted to operate its own school system, based on the designation it received in 1967. This attempt was made despite the fact that Emporia continued to operate its schools with Greensville up to that time.

The District Court denied Emporia's request, holding that to allow Emporia to carve out a separate system from the county's system would interfere with the implementation of the desegregation order issued to Greensville County. The Supreme Court reviewed the case and determined that the actions of the Board (attempting to establish a separate school system) were neutral on their face, however, the effect would be to impede the dismantling of a dual system and further segregation. The Court found

that if Emporia were allowed to establish its own school system, the effect would be to decrease the number of black and increase the number of white students attending Emporia City Schools. The Court concluded that even if a government's motives appear to be proper, any action that has a discriminatory effect would not be allowed.

The Supreme Court considered both discriminatory purpose and effect in *Village of Arlington Heights v. Metropolitan Housing Development*, 429 U.S. 252 (1976). In *Arlington Heights v. Metropolitan Housing Development* (1976), the Metropolitan Housing Development Corporation applied for a rezoning classification from single-family to multi-family units for 15 acres of land it was attempting to purchase. Arlington Heights is a suburb of Chicago, with low minority population. The Village of Arlington Heights denied the request, and Metropolitan filed suit charging racial discrimination. The District Court found for Arlington Heights and the Court of Appeals reversed holding that the effect of the denial was discriminatory and therefore violated the Fourteenth Amendment. Arlington Heights appealed to the Supreme Court. The Supreme Court reversed the Court of Appeals' finding that Metropolitan had failed to show a discriminatory purpose in Arlington Heights' denial of Metropolitan's rezoning request, although the effects of the denial were discriminatory. The Court held that while discriminatory effect had to be considered, it was not by itself determinative. (See Table 1 for Equal Protection Analysis.)

Table 1: Equal Protection Analysis



## Public K-12 Education

In addition to the Constitutional guidelines set for the Supreme Court, it must also consider the role of public education, in deciding segregation cases. Although education is not discussed in the Constitution, *Goss v. Lopez*, 419 U.S. 565 (1975) established it as a property, guarded by the Due Process Clause of Fourteenth Amendment. In *Goss v. Lopez* (1975) several students were suspended without notice. The Court held that the suspensions were unconstitutional because of the failure to hold a hearing. Because the suspensions would inhibit the students' future enjoyment of property, the suspensions violated due process. For this reason, *Goss v. Lopez* (1975) has become a premier case for establishing the role of education and its importance to American life. It further substantiates the importance of *Brown v. Board of Education* (1954), where separation by race was deemed inherently unequal because it deprived minority children of equal opportunities. Thus, if segregated, students are prohibited from having access to their property interests.

### Intradistrict School Systems of Education

Supervision of public education has been divided between federal, state, and local agencies. District lines and the segregation occurring between and within them were constantly evaluated in segregation cases involving local agencies. Two definitions that evolved from the segregation cases involved the differences between intradistrict and interdistrict segregation. Intradistrict segregation is segregation within a school district or school system. Several school districts may compose one school system. Further, school districts may consist of smaller districts. For example, the Houston Independent School District is comprised of seven districts, each operating with its own superintendent. In

smaller geographical areas, a district may be a single entity, with one board and one central office.

Interdistrict refers to two or more completely independent districts. A county school system and a city school system within that county are likely to be two independently operating school systems. Although the systems overlap because one geographically encompasses the other, the districts are unattached. For example, Auburn, Alabama is within Lee County. Lee County has a school system and Auburn City has a school system, separate and distinct from one another and without overlapping or coinciding functions, boards, or budgets.

The distinctions between intradistict and interdistrict were indicated in the Supreme Court's actions against and interpretation of the Constitutional violations. In *Missouri v. Jenkins*, 515 U. S. 70 (1995), the State of Missouri contested a) remedial education programs, including improved facilities and magnet schools; and b) teacher salary increases that it was ordered to pay in part as a remedy for past discriminations. The Supreme Court held that the relief from state imposed segregation, ordered by the District Court, affirmed by the Court of Appeals, extended beyond the Kansas City, Missouri, School District's (KCMSD) lines. The remedy, presented by the Supreme Court, was used indirectly to apply authority over suburban districts that had no direct participation in the segregation. The relief was viewed as interdistrict, where the violation was held as intradistrict, and therefore overruled.

In his dissent, Justice Souter, joined by Justice Stevens, Justice Ginsburg, and Justice Breyer, suggested that intradistrict violations may affect other districts beyond its own lines, and, as such, intradistrict implies that only authorities within the district were

actively engaged in the violations. This raised the question of what intradistrict meant for the Court. For example, Ben (1995) argued that the Supreme Court engaged in a major oversight regarding intradistrict and interdistrict effects. He asserted that creating magnet schools or providing increased teacher salaries may draw the attention and attendance of suburban teachers and students, but the purpose was for the improvement of the Kansas City, Missouri, School District. Hence, the remedy was intradistrict although the effects may extend beyond the district. The reasoning behind Justice Souter's dissent and Ben's (1995) contention is closely aligned. Both purport that intradistrict violations and remedies may occur outside of demarcated district lines. Although the study was limited to the definition of intradistrict as segregation occurring within a district's line, it is important to note that in *Missouri v. Jenkins* (1995) there were discussions about the legal implications of the definitional attributes of intradistrict.

Moreover, *Missouri v. Jenkins* (1995) set a precedent regarding the extent of authority for federal courts. As discussed previously, the Supreme Court's jurisdiction over the District Courts and Court of Appeals became apparent, as it reversed the prior courts' decisions. Even though both lower federal courts concurred on the remedial judicial order for segregation, the Supreme Court was asked to evaluate the District Court's authority to deliver relief beyond the immediate scope of the Constitutional violations.

## Dual School Systems of Education

Local and state departments have related interdistrict and intradistrict problems to dual systems. Therefore, dual systems have also been pointedly attacked. The courts' responses to dual systems appeared to rest upon the opinion rendered in *Brown v. Board*

*of Education* (1954) against the separate-but-equal doctrine supported in *Plessy v. Ferguson* (1896). However, the sustaining force behind the continued dismemberment of segregated (dual) systems depended on the court's interpretation of the precedent set by *Brown v. Board of Education* (1954) and subsequent litigation and legislation.

Dual systems, as defined in this study, are an operation within a school system or district, which separates and, consequently, subjects public school students to two forms of education based on a factor. This study's dual system factor was race. In *Brown v. Board of Education* (1954) the court held that:

> Segregation of white and [minority] children in public schools has a detrimental effect upon the [minority] children. The impact is greater when it has the sanction of the law for the policy of separating the races is usually interpreted as denoting the inferiority of the [minority] group . . . Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of [minority] children and to deprive them of some of the benefits they would receive in a racial(ly) integrated system.

A unitary system operates making no discriminatory appearances or distinctions in facilities, funds, faculty population, student population, curriculum, etc. Specifically, in *Green v. Board of New Kent County*, 391 U.S. 430 (1968), there were six guidelines established to determine whether a school system had established a unitary system. *Green v. Board of New Kent County* (1968) brought an action against New Kent County seeking an injunction. New Kent maintained a dual system with one school (combined elementary and high school) for blacks and one school for whites. After the suit was

filed, New Kent County adopted a "freedom of choice" plan under which students except those entering first and eighth grade could choose between the two schools on an annual basis. If the students did not make a choice, they were automatically enrolled in the same school as the previous year (first and eight graders were required to make a selection). After the plan was submitted, the District Court denied the injunction and accepted the plan contingent upon additional provisions regarding faculty and staff. Green appealed to the Fourth Circuit Court of Appeals, where that court affirmed the District Court's holding. The Supreme Court granted certiorari.

The Supreme Court determined that when schools were ordered to implement a unitary system, the District Court, in its review of the effectiveness of the system, must consider problems a) related to administration; b) arising from the physical condition of the school plant; c) the school transportation system; d) personnel; e) revision of school districts and attendance areas into compact units to achieve a system of determining admission to public schools on a nonracial basis; and f) revision of local laws and regulations which may be necessary in the solving the foregoing problems. Id., at 436.

The legal definitions and characteristics of dual systems and unitary systems have been further shaped by several cases beyond *Brown v. Board of Education* (1954), including *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969) and *Keyes v. School District No. 1, Denver, Colorado* (1973). The Court in *Alexander v. Holmes County Board of Education* (1969) expressed the urgent need for school districts to desegregate. The Supreme Court "faced with thousands of school children" attending segregated schools in Mississippi, granted certiorari to determine if the Holmes County Board of Education should be allowed additional time to implement a unitary system.

The Court held that "every school district [must] terminate dual school systems at once and . . . operate now and hereafter only unitary schools." Id., at 20.

Under *Keyes v. School District No. 1, Denver, Colorado* (1973), the school district, through various practices maintained a racially segregated school system. Keyes sued in District Court seeking desegregation of the Park Hill area schools in Denver, and after successfully arguing that case sought desegregation of the entire district. The District Court denied Keyes relief, holding that deliberate segregation of Park Hill did not prove like segregation practices in the entire district. The Court did, however, order the school district to desegregate based on *Plessy v. Ferguson* (1896). The case was appealed to the Appellate Court, which reversed the District Court's order to desegregate the entire district. Keyes filed a writ of certiorari to the Supreme Court, which was granted. The Supreme Court held that a finding of intentionally segregative actions in a meaningful portion of a school system creates a presumption that there is other segregated schooling within the system, and the burden of proof shifts to the school board to demonstrate that the segregation is not the result of intentional action. Id., at 208.

<u>De Jure Segregation and DeFacto Segregation</u>

In addition to the basic principles and characterizations of dual systems described in *Green v. County School Board* (1968), *Alexander v. Holmes County Board of Education* (1969) and *Keyes v. School District No. 1, Denver, Colorado* (1973), dual systems were also defined by the manner in which they formed. Dual systems were accomplished in two different ways before 1965, de jure segregation and de facto segregation. As stated previously, de jure segregation was the legal mandate of separation by race. Under *Oliver v. Kalamazoo*, 508 F.2d. 178 (1974), a finding of de

jure segregation requires three elements: a) action or inaction by public officials; b) with segregative purpose; c) which actually results in increased or continuous segregation in public schools. De Facto Segregation was not condoned by law, but was alleged as a happenstance due to one or more social factors, such as income and housing. Housing patterns, in turn, affected school populations, since most school districts have attendance zones. Zoning patterns have factored into de facto segregation due to their vulnerability to manipulation.

The variation between the two forms of segregation has been debated. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the District Court approved a desegregation plan for the Charlotte-Mecklenburg School System. Swann filed a motion for further relief, based on *Green v. County School Board* (1968). The District Court found the School Board's actions discriminating (official actions may be interpreted as de jure segregation by definition) and ordered the School Board to provide a plan for faculty and student desegregation. The Board failed to submit a complete and timely plan, so the Court appointed an expert (Finger) to prepare a desegregation plan.

The District Court adopted the board plan as modified by Finger. The Court of Appeals affirmed the District Court plan with regard to secondary schools, but rejected the elementary school plan. The Court of Appeals felt the elementary school plan might place an undue burden on the board and the children. The case was remanded to the District Court for reconsideration. The Supreme Court granted certiorari. The Court held that if school authorities fail in their affirmative obligation, then the scope of a District Court's equitable powers to remedy the past wrongs is broad. Id., at 18.

In *Crawford* v. *Los Angeles Board of Education*, 458 U.S. 527 (1982), minority students filed a suit in California State Court seeking desegregation of the Los Angeles Unified School District. The trial court found the District substantially segregated in violation of the State and Federal Constitutions, and ordered the District to coordinate a desegregation plan. The District appealed and the California Supreme Court affirmed, based solely on the Equal Protection Clause. The California Supreme Court remanded the case back to the trial court for implementation of a "reasonably feasible plan" of desegregation. Id., at 531.

In November of 1979, California enacted Proposition I, which provided in part that no court may impose on any state agency or official any obligation with respect to use of public school assignment or transportation. After Proposition I was enacted the District requested all busing and reassignments be stopped. The Court denied the request and ordered implementation of the revised desegregation plan. The California Court of Appeals reversed, holding the trial courts original findings of fact would not support a finding that the District had violated the Fourteenth Amendment, and vacated the trial court's order. The Court of Appeals ruled Proposition I was applicable to the trial court's desegregation plan, and was constitutional.

The California Supreme Court denied a hearing. The U. S. Supreme Court granted certiorari. The Court found that Proposition I does not inhibit the Constitution or federal law; rather it adopts the Equal Protection Clause of the Fourteenth Amendment. "Proposition I . . . neither says nor implies that persons are to be treated differently on account of their race. It simply forbids state courts to order pupil school assignments or transportation in the absence of a Fourteenth Amendment violation." Id., at 537. The

Court found Proposition I went beyond the requirements of the federal Constitution, and affirmed the Court of Appeals ruling. In a later case, *Washington v. Seattle School District 1*, 458 U.S. 457 (1982), the Court determined whether the School Board could utilize the Fourteenth Amendment to justify a busing program designed to desegregate the school system. Washington State started an initiative, which allowed busing between schools for non-racial reasons, but not for racial ones. The Court found this policy violated the Fourteenth Amendment because it could potentially prevent schools with segregated systems from integrating.

In *Freeman v. Pitts*, 503 U.S. 467 (1992), a school district, which previously operated under a de jure system, had to make the argument that current racial patterns in the school system were due to housing patterns, a de facto segregatory element. In 1969, the District Court formulated a plan which the DeKalb County, Georgia, School System (DCGSS) would follow in order to rid itself of de jure segregation. Seventeen years later, the System petitioned the District Court to remove the implementation plan because it had achieved unitary status. The District Court agreed to the System's contention that most of the guidelines set in *Green v. County School Board* (1968) were met and the remaining segregation was de facto segregation in housing patterns. Despite the argument, the District Court did not completely release the System from judicial oversight, because of the remaining points in *Green v. County School Board* (1968) not accomplished (e.g. faculty assignments and resource allocation).

The Court of Appeals reversed the District Court's decision, stating that it could not meet, in part, the guidelines set by *Green v. County School Board* (1968) and still claim a unitary status, even though the other facets of the segregation were de facto. The

Supreme Court ruled that the District Court could release control in areas where the goal has been achieved, if it has clearly met such expectations. The Court of Appeals' decision was reversed and the case was remanded. Further, in *Keyes v. School District No. 1, Denver, Colorado* (1973), the Supreme Court remanded the cases back to the District Court to make a determination as to the source of the segregation, de jure segregation or de facto segregation. As discussed previously, intent was pivotal to the delineation between the two forms of segregation, where de jure segregation was blatantly intentional and de facto segregation was a product of housing patterns.

In *Brown v. Board of Education, Topeka, Kansas,* 978 F.2d. 585 (1993), the Board of Education sought a determination about whether their past de jure segregation had been eliminated. The District Court ruled that the Board was currently operating a unitary system. The case was appealed to the Court of Appeals, which reversed the District Court, finding that the plaintiffs should be allowed the presumption that current racial disparities are related to past intentional conduct. Id., at 588. The Supreme Court vacated the Tenth Circuit Court of Appeals' opinion and remanded the case for further consideration in light of more recent Supreme Court opinions.

The Tenth Circuit Court of Appeals was to determine whether recent Supreme Court authority had altered the "landscape of desegregation law" such that the District Court must reformulate its remedy to remove the vestiges of past discrimination. The Tenth Circuit Court of Appeals reinstated its prior opinion. It found that Topeka had not fulfilled its affirmative duty in the areas of student and faculty/staff assignments, and ordered the District Court to implement a plan designed to eliminate segregation. The *Brown v. Board of Education* (1993) case highlights the complexity of eliminating past

de jure segregation and meeting the legal obligations of proof for no longer operating de jure segregated schools. Because of the remaining racially identifiable schools, the Court found the Board of Education still in violation of the Fourteenth Amendment of the Constitution.

The cases, statutes, and doctrines discussed in this literature review provided examples of instances in which the theory of equal protection was applied. These examples included the Supreme Court's use of strict scrutiny for racial discrimination with the assertion of an equal protection violation. Public education cases were also reviewed, including litigation related to intradistrict issues, dual systems, and de jure and de facto segregation. The cases supported the Supreme Court's use of the Equal Protection Clause, in achieving consensus on instituting a unitary school system where one did not exist. Chapter 3 presents the methodology for the study.

# CHAPTER III

# METHODOLOGY

The purpose of the study was to examine the Supreme Court's determination about the legality of intradistrict, race-based, dual systems of education in public, K-12 schools. The study was grounded in the equal protection theory drawn from the Equal Protection Clause, in the Fourteenth Amendment of the Constitution. The Fourteenth Amendment provided that "no state shall abridge the rights of citizens" and has been interpreted to mean either all humans are equal or individuals from similar legally identified classes, must be protected by the law. The type of cases the Supreme Court hears (its jurisdiction) is limited to cases involving Constitutional issues. Therefore the data from these particular cases were sources for determining a judicial posture on the Constitutional issue of segregation, and its relationship to the Constitutional guarantee of equal protection. In this respect, the study provided a recent and comprehensive overview of Supreme Court cases on segregated (dual) systems in public K-12 education from 1965-2000.

This chapter presents the parameters, identification, use, and application of data. Specifically, the research design, data sources, and data collection from the cases are discussed. Finally, the chapter describes how the data were analyzed in relation to the research questions.

## Research Design

The research design was chosen based on the research and case analysis procedures used by legal practitioners (Kunz, Schmedemann, Downs, & Bateson, 1996). Reviewing all cases relevant to the subject matter was first. This process consisted of

collecting Supreme Court cases on intradistrict race-based dual systems of public, K-12 education utilizing a database system search. The data were then outlined using seven questions, termed EDLE, adapted from standard legal research questions. Data were reviewed to answer each of the four research questions and identify the influence of the constitutional guarantee of equal protection on the judicial decisions rendered. The Supreme Court's resolution for intradistrict, race-based, dual systems in public primary, elementary, and secondary schools was provided.

## Data Sources

Cases are filed in court reporters. There are at least three publishers that publish court reporters. The Supreme Court cases were the data source used for the study, with no specific court reporter designated. The data were limited to cases on intradistrict, race-based, dual systems of education from the Supreme Court after 1965 but before 2000. The cases meeting the criteria were located in their appropriate reporter using computer-assisted legal research (CALR). Westlaw was the computer database system used for the legal research to access the cases in the reporters.

Westlaw was chosen because it is considered a premier database system for legal researchers and lawyers. West Group began providing online services in 1975. Westlaw is owned and operated by West Group. It enables legal professionals to retrieve cases, statutes, and other documents from West's vast library of legal and business materials. Cases located in Westlaw are extracted from court reporters. Many times the cases are written in various court reporters. Each reporter provides the court's opinion on each case, including the facts, history, and proceedings of the cases. This general material was sufficient to answer the EDLE questions. Thus, the study did not limit the class of

reporters from which to gather case information, before or after the database search was conducted.

## Data Collection

Westlaw was adequate for searching any reporter containing the Supreme Court cases for the study. Westlaw access was available online at www.web2.westlaw.com. After completing access and password information, the system database was selected to search "Federal Materials," "Cases & Judicial Materials," and "US supreme Court Cases" respectively. Unlike the preliminary search from which Supreme Court cases had to be extracted (See Chapter 1), the study was later focused exclusively on locating Supreme Court cases within the database system.

The Supreme Court cases were further restricted by date to those decided between January 1, 1965 and December 31, 2000. Cases are not always argued and decided on the same date. The dates of 1965 to 2000 were when the judgments in the cases were rendered. Cases argued before 1965 but not decided until 1965 were included. Likewise, cases argued in 2000 but resolved after December 31, 2000 were not reported in the study.

The Supreme Court cases from 1965 to 2000 were comprised of cases related to dual (segregated) school systems. The term dual system was used in cases prior to 1965 by the Court to describe a distinct variance, such as racial population in schools, within a school system or district. Intradistrict was used to describe the phenomenon of district segregation within district lines, usually indicated by having at least one exclusively white school and one minority school. "Race-based" was used to define the type of segregation that occurred, as well as "dual system." The term "race-based" referred to

the basis for segregative action and suggested that the racial majorities in at least two schools in one district or system are racially different.

Initial Search

The original query terms for the cases were as follows: "rac! & dual-systems & elementary or secondary & public & education & intradistrict and not university or higher education" from January 1, 1965 until December 31, 2000. "Rac!" was selected to correlate with race-based. "Dual-systems," "intradistrict" and "public" as query terms represented the same in the study parameters. "Elementary" and "secondary" concur with the study's K-12 range. "Not university or higher education" in the query excluded from the search from including cases of segregation on the collegiate level. Additionally, the original query included the connectors and expanders below:

1. Exclamation points (!) truncated words, allowing multiple forms of the word to be searched, i.e. "race," "racial," or "races."
2. The "&" notations linked words together, requiring both words to appear somewhere within the case, but not necessarily in the same paragraph or sentence.
3. Hyphenations (-) adjoined words, requiring them to appear side by side.
4. "OR" provided options to the search. At least one of the listed terms before or after "or" must appear in the case.
5. Disjunctive words and word phrases ("not" or "but not" or "and not") set excluding boundaries.

The preliminary CALR search produced seventeen federal cases (U.S. District Court, U.S. Court of Appeals, and U.S. Supreme Court cases) from which six Supreme

Court cases were extracted. Those Supreme Court cases were:

1. *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968)
2. *Alexander v. Holmes Board of Education*, 396 U.S. 19 (1969)
3. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)
4. *Keyes v. School District No. 1, Denver, Colorado,* 413 U.S. 189 (1973)
5. *Milliken v. Bradley*, 418 U.S. 717 (1974)
6. *Missouri v. Jenkins,* 495 U.S. 33 (1995).

The six cases produced, with the initial query search, were not read for content.

Forming a New Search

In Chapter 1, it was noted that some modifications were needed to search for cases over the span of thirty-five years. Therefore, changes in language and characterizations of the study's parameters occurred. In addition to word selection, Westlaw changed the database interface, access, and connectors, since the original query. Reconstruction in the database system required adjustments of the search terms and fields.

The transition from the original query to the latter query used for the actual study was an extensive process. Terminology used in previous and similar cases was crucial in determining the search terms used. Additionally, the database system itself provided applicable terms and synonyms to use in the query.

Replacement connectors were chosen using the reference page, accessible through the "Connectors/Expanders Reference List" option on the query page. The current database system required replacing three previous connectors and altering one of the search terms. The changes regarding the immediate changes with connectors and search

terms are presented below.

1. The "%" became the moderator for "and not." Initially there was "not" before university and "or" between "university" and "higher education." "Not" and "or" were replaced with a "%." These two connectors ensured cases focusing on university or higher education were not retrieved.
2. Every "or" was replaced with a space indicating to the database system "or."
3. "Dual-system" was changed to "'dual system!'." Quotations marks were added to require words to appear as written in quotation marks and in that specific order. A hyphen was previously used for this function and therefore deleted. The "!" was used to truncate "system" so that the multiple forms of word were also searched.

Further revisions were made to the query including using optional search terms. Alternates were found using the "Thesaurus" option on the query page. The Thesaurus had two boxes, one with "Terms in the query" listing the search terms given and another with "Related terms" giving alternate words to use or add to the current query. Every term was not indexed in the "Terms in the query" box.

The "Terms in the query" box also listed the variations of "rac!" that were executed in the search. Several of the variations of "rac!" were not relevant to the study or to race as examined in the study. Those words were not selected to find "Related Terms." "Related Terms Not Searched" in Appendix D indicates this. The "Related terms" box grouped synonyms together, where a word had multiple meanings. The complete register of the "Terms in the Query" box and "Related Terms" are also found in Appendix D.

Two steps were taken to change the query, because of the information gathered from the Thesaurus. Those changes follow.

1. The query term "higher education" was replaced with "'higher education'." (Step 4 in Appendix E). Placing quotations marks, as was suggested in the "Related Terms" box, requires the terms to be searched as a phrase in the same order as it is written within quotations.
2. "College" was added as an alternative to "University." "University" was deleted. It was placed after "Higher Education" and preceded by a "%." (Step 5 in Appendix E.)

Five additions were made outside of the suggestions of the database system. Segregation was a common term for dual system in litigation, although no substitutions were given for dual system in the Thesaurus.

1. "Segregat!" was added to the query terms, preceded by a space between it and "dual system!," indicating "or." (Step 6 in Appendix E.) This addition allowed the query to search both variations of segregated and dual system(s).
2. "School system" and "school district" were added to the query. A space was placed between "school system" and "school district" to indicate "or." (Step 7 in Appendix E.)
3. A backslash followed by the letter "P" (/p) was placed before "school system" requiring the search results to contain the variations of dual system and segregation within the same paragraph as school system or school district in the case, following "segregat!" in the query. "Rac!" was then moved behind "intradistrict" so that the search was not required to have race in the same

paragraph. (Step 8 in Appendix E.) Cases cited in Chapter 2 often used school system or school district together in case notes and therefore these two were used for the study.

4. "Education" was deleted, because it repetitious of "school system" and "school district" (Step 9 in Appendix E.) Deleting education also further ensured that cases involving higher education institutions would not included.
5. "School system" and "school district" were adequate for completing replacing "elementary," "secondary," and "intradistrict" as well. (Step 10, Step 11, and Step 12, respectively in Appendix E.) A school system or district would presumably include an elementary and secondary schools. "School District" and "school system" likely delimited cases to those involving issues with a district or between districts. Thus, these three terms, "elementary," "secondary," and "intradistrict," were deleted.

The delimitation of dates was modified to include only Supreme Court cases between 1965-2000 within the Westlaw database system, by choosing the "Field Restrictions" option on the query page. Dates were entered in one step. The date of January 1, 1965 was entered first in the "after" space, disabling the selection of cases before this time. Similarly, December 31, 2000 was entered in the "before" space, creating the end date for selecting cases. (Step 13 in Appendix E.) Date restrictions were first, followed by "& 'dual system'."

Search Results

The final query was "DA (AFT 01/01/1965 & BEF 12/31/2000) & 'dual system!' segregat! /p 'school district' 'school system' & public & rac! % 'higher education' %

college." The resulting query generated a total of fifty-eight cases (See Appendix F.) The litigants but not the motions duplicated some cases in the search; exact citations were not repeated. As stated previously, different aspects of cases may be appealed to the Supreme Court, and each aspect would render a different citation in the reporters. Further, the Supreme Court may remand the case to the lower court for further review and the case may be appealed to the Supreme Court again.

As with most database searches, all results were not germane to the study. Each case summary was read to determine relevancy. A total of fifty-six cases were expunged. Most cases argued the merits of desegregation plans, the extent of remedy (intradistrict or interdistrict), the rate of implementation, oversight of implementation and the means (e.g. faculty diversity or busing). However, the study examined Supreme Court cases, which determined the legality of districts with the appearance of race-based, dual systems of education. The study did not evaluate the actions of the Supreme Court after the determination was made in a lower court, when the determination itself was not in question. The subsequent actions to remedy segregation, i.e. desegregation plans, were also outside the scope of the study.

Twenty-two cases discussed desegregation plans. Four of the twenty-two cases, *Guey Heung Lee v. Johnson*, 404 U.S. 1215 (1971), *Milliken v. Bradley*, 418 U.S. 717 (1974), *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976), and *Delaware State Board of Education v. Evans*, 446 U.S. 923 (1980), were cases about the geographical extent of the desegregation orders, including arguments about interdistrict and intradistrict remedies. *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969) and *Alexander v. Holmes County Board of Education*, 396 U.S. 1218 (1969)

questioned the speed at which the desegregation order should be implemented and how the lack of implementation allowed continual violations of the Fourteenth Amendment. *Freeman v. Pitts*, 503 U.S. 467 (1992), debated the removal of judicial oversight over desegregation implementation. Five cases, *Rogers v. Paul*, 382 U.S. 198 (1965), *Monroe v. Board of Commissioners of City of Jackson, Tennessee*, 391 U.S. 450 (1968), *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968), *Raney v. Board of Education of Gould School District*, 391 U.S. 443 (1968), and *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), argued the effect of transfers and school choice plans on desegregating schools.

Five of the twenty-two desegregation cases specifically presented concerns about busing as a means of accomplishing desegregation and opposition to busing, *North Carolina State Board of Education v. Swann*, 402 U.S. 43 (1971), *Winston-Salem/Forsyth County Board of Education v. Scott*, 404 U.S. 1221 (1971), *Drummond v. Acree*, 409 U.S. 1228 (1972), *Estes v. Metropolitan Branches of Dallas NAACP,* 444 U.S. 437 (1980), and *Crawford v. Board of Education of City of Los Angeles*, 458 U.S. 527 (1982). *Missouri v. Jenkins*, 495 U.S. 33 (1990) raised the issue of levying taxes and how taxes would fund desegregation plans. *Milliken v. Bradley*, 433 U.S. 267 (1977) concerned funding and student assignments as part of a desegregation plan, and the District Court's authority to order such. One case, *U. S. v. Montgomery County Board of Education*, 395 U.S. 225 (1969), disputed teacher transfers to assure a unitary system. *United States v. Scotland Neck City Board of Education,* 407 U.S. 484 (1972) and *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972) were cases dealing with the establishment of new city school districts carved from dual systems dissolved.

Nine cases, *Northcross v. Board of Education of Memphis, Tennessee, City Schools*, 397 U.S. 232 (1970), *Dandridge v. Jefferson Parish School Board*, 404 U.S. 1219 (1971), *Gomperts v. Chase*, 404 U.S. 1237 (1971), *Austin Independent School District v. United States*, 429 U.S. 990 (1976), *School District of Omaha v. U.S.*, 433 U.S. 667 (1977), *Brennan v. Armstrong*, 433 U.S. 672 (1977), *Columbus Board of Education v. Penick*, 439 U.S. 1348 (1978), *Board of Education of City of Los Angeles v. Superior Court of California, Los Angeles County*, 448 U.S. 1343 (1980), and *South Park Independent School District v. United States*, 453 U.S. 1301 (1981), dealt with judicial procedures (i.e. a temporary injunction or stay), and no opinion was issued on the substance of the cases. Some of the cases did involve desegregation plans and included evaluations of the progress, as well as a ruling on the particular motion. However, none of the cases discussed the legality of districts, the major focus of the study.

Three cases involved private schools. *Norwood v. D. L. Harrison*, 413 U.S. 455 (1973) involved textbook support for a private school, which may have racially discriminated. *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994) was a Supreme Court case regarding the legality of a school district based on religion. *Cook v. Hudson*, 429 U.S. 165 (1976) concerned the termination of public school teachers because they enrolled their children in segregated private schools.

In *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982), and *Buchanan v. Evans*, 423 U.S. 963 (1975), the Supreme Court ruled on a State's educational legislation. *Board of Oklahoma City Public Schools, Independent School District, No. 89, Oklahoma County, Oklahoma v. Dowell*, 498 U.S. 237 (1991) and *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) disputed the

power of and standards for lower courts and desegregation decrees. Fees resulting from segregation litigation and the party responsible for paying was the issue in *Bradley v. School Board of City of Richmond*, 416 U.S. 696 (1974).

Previously, most landmark cases about segregation in public spaces were not exclusive to schools or school districts. However, as discussed in Chapter 1, every case may affect the nature of school environments, since schools are public places. The study narrowed the inquiry to those cases related to public K-12 environments, and therefore excluded Supreme Court cases not specifically focused on segregation in school systems or districts based on race. As a result, seventeen more cases were not included in the study, since they involved segregation in public spaces but not schools. (These seventeen cases can be found in Appendix G.)

None of the six original cases were valid for the study because of their content. However, each of the original six cases reappeared in the subsequent query. The original search terms produced a number of cases involving segregated school systems and substantively relevant cases, but generated only six Supreme Court cases. The query for the study produced fifty-eight cases, all relating to an aspect of the study.

Two of the fifty-eight cases met each of the study's criteria, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) and Columbus *Board of Education v. Penick*, 443 U.S. 449 (1979). The study required that the cases were Supreme Court cases, in which the Supreme Court made a determination about the legality of intradistrict, race-based dual systems of education. Many of the fifty-eight cases had prior litigation, which made the determination of the legality of dual systems. None of the other cases, however, had the determination made by the Supreme Court. Therefore,

it is these two cases, which became the focus of the study.

Collecting data from the cases was achieved by answering the Education and Legal Evaluation (EDLE) questions. The outline assured that data collection was consistent for every case. Summaries, paraphrases and quotes were used from the Supreme Court record to answer questions. The seven EDLE questions examined follow:

1. Who was involved?
2. What was involved?
3. What relief or action did the petitioner(s) seek?
4. When did it happen?
5. Where did it occur?
6. Why did the petitioner(s) and respondent(s) act in this manner?
7. What was the outcome or decision?

Dayton Board of Education v. Brinkman, 443 U.S. 526 (1979)

The Dayton litigation began in federal district court in 1972. A total of twelve cases were litigated regarding this suit; eleven of which preceded in the litigation the Dayton case. (See Appendix H.) On April 17, 1972, Mark Brinkman and the parents of several other black children who attended schools operated by the Dayton Board of Education filed an action against the Board and several state defendants. Brinkman argued that the Board had violated the Fourteenth Amendment by operating a segregated school system, segregated athletic programs, and that in the few integrated schools in existence, blacks were required to sit in the back of the classroom. On February 7, 1973, the District Court finding for Brinkman, ordered the creation of a desegregation plan. On July 13, 1973, the District Court approved a plan submitted by the Board of Education.

The Dayton Board appealed the District Court's decision to the Court of Appeals for the Sixth Circuit, in *Brinkman v. Gilligan*, 503 F.2d. 684 (1974).

The Court of Appeals affirmed the portion of the District Court's opinion with regard to the findings of facts, but sent the case back to the District Court for a reconsideration of the remedial plan. The District Court ordered new plans to be submitted by the Dayton Board and all other interested parties. On March 10, 1975, the District Court approved the Board's plan with certain modifications, and the Court made its own modifications in an effort to satisfy the Court of Appeals requirements. In *Brinkman v. Gilligan*, 518 F. 2d. 853 (1975), Brinkman appealed the Court's decision, and the Court of Appeals reversed and remanded the case again. This time the Court of Appeals ordered the District Court to implement a "system-wide" plan to become effective for the 1976-1977 school year, in *Dayton Board of Education v. Brinkman*, 423 U.S. 1000 (1975).

The District Court, on December 29, 1975 ordered a new plan be prepared. On March 25, 1976, the District Court approved a plan, which used mathematical ratios to determine the appropriate remedy for the Board's past discriminatory conduct. The Board appealed the decision to the Court of Appeals arguing that the District Court had adopted a remedy that was too expansive in light of the Board's conduct. Specifically, the Board argued that the District Court improperly ordered the use of a formula that set a percentage goal for racial balance in the Dayton system. In *Brinkman v. Gilligan,* 539 F. 2d. 1084 (1976), the Court of Appeals affirmed, finding that the District Court only created a "useful starting point" for shaping a remedy to past segregation.

The Dayton Board appealed the use of a formula to the U.S. Supreme Court, in *Dayton Board of Education v. Brinkman*, 429 U.S. 1060 (1977). The Supreme Court found, in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), that it was unclear that Dayton was a "mixed racial community, and that many of its schools were predominately black or white." The Supreme Court remanded the case back to the Court of Appeals, in *Brinkman v. Gilligan*, 561 U.S. 652 (1977), and the Court of Appeals remanded to the District Court for a determination as to the whether there was any intentionally discriminatory action on the part of the Board, which created a dual system at the time of *Brown v. Board of Education* (1954). If there was such conduct, then the Court must determine the "incremental effect" of this action on the racial distribution of the present school system, and any remedy must be tailored to redress those acts. Only if the District Court found a system wide impact could it order a system wide remedy.

On remand, the District Court found that the plaintiffs had failed to show that the past actions of the Dayton Board continued to have an effect on the current school system, in *Brinkman v. Gilligan*, 446 F. Supp. 1232 (1977). In *Brinkman v. Gilligan*, 583 F.2d. 243 (1978), the plaintiffs' appealed the case to the Court of Appeals, arguing that the District Court misinterpreted the Supreme Court's ruling. The Court of Appeals found that the desegregation plan approved in 1976 should be reinstated, because the evidence supported a finding that Dayton had a duty and failed to eliminate the segregative effects of its past acts. The Court of Appeals specifically found that Dayton had taken various actions that were purposefully segregative, and resulted in a dual system at the time of *Brown v. Board of Education* (1954). Further, the Court found that the Board had a duty to eliminate the effects of these actions. The Board appealed this

opinion to the Supreme Court, *Dayton Board of Education v. Brinkman*, 439 U.S. 1066 (1979), and it is the Supreme Court's determination that is examined in the study, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979).

Columbus Board of Education v. Penick, 443 U.S. 449 (1979)

In *Penick v. Columbus Board of Education*, 429 F.Supp. 229 (1977), Gary Penick and the parents of thirteen other children in the Columbus School System filed suit against the Columbus Board of Education. Several other students filed on June 21, 1973, which resulted in extensive litigation. (See Appendix I, but only the first five cases listed in Appendix I relate to the study.) The plaintiffs claimed that funds, which had been designated for school construction, should be used to integrate the Columbus School System. The plaintiffs also claimed that the Columbus Board had intentionally segregated the Columbus School System, and, if the new funding was not used to integrate the school system, the Board would further segregate the system. In March of 1975, the National Association for the Advancement of Colored People and eleven other students joined in the lawsuit and asked the court to order the Columbus Board to implement a system wide plan for desegregation. The Board argued that any segregation in the Columbus School System was due to segregated housing patterns, and that they could not control this phenomenon. The case went to trial on April 19, 1976, and on March 8, 1977 the District Court found that at the time *Brown v. Board of Education* (1954) was decided, Columbus was operating an intentionally segregated system, and that after *Brown v. Board of Education* (1955) the Board had a duty to desegregate the Columbus System.

In this District Court proceeding, *Penick v. Columbus Board of Education*, 429 F.

Supp. 229 (1977), the Court provided details as to the controlling law and definitions regarding the litigation. In particular, the burden of proof, racially identifiable schools, black and white schools, and dual and unitary school systems were explained in the record and glossary. The burden of proof, according to the District Court, was clearly outlined in *Keyes v. School District No. 1, Denver, Colorado* (1973), where it declared that "plaintiffs must prove not only that segregated schooling exists but also that it was brought about or maintained by intentional State action. The District Court also noted *that Swann v. Charlotte-Mecklenburg Board of Education* (1971) made a determination about lawful segregation, suggesting "mere racial imbalance resulting from population shifts would not be enough to constitute unlawful segregation in the constitutional sense." *Penick v. Columbus Board of Education*, 429 F. Supp. at 251 (1977). Further, the burden of proof shifts, according to *Keyes v. School District No. 1, Denver, Colorado* (1973), when "the plaintiffs' proofs reach a certain standard, [causing then the] defendant...[to] assume the obligation to show that the constitutional right to equal protection has not been denied to the plaintiffs." *Penick v. Columbus Board of Education*, 429 F. Supp. at 260 (1977).

The initial District Court case was also instrumental in defining the common terms used in the judicial proceedings. In the District Court record's "Appendix Glossary", racially identifiably schools were considered imbalanced. These schools were determined by statistical analysis, which made conclusions about "the relationship between the racial composition of a particular school and the racial composition of the system as a whole." Schools were considered imbalanced when dominant and minority races of students were not within a specific range of one another. Id., at 268. "Black" and

"white" were the only racial terms used since "the evidence does not reflect that Columbus has any other substantial non-white population [beside black]." Id., at 269. Moreover, a "one race school" was based on a 90% rate or higher of a single race, white or black. Descriptions about the nature of the school system were provided in the Appendix Glossary as well. According to the District Court, a dual school system was one in which "there is officially imposed racial segregation," whereas a unitary system provided "no, or insignificant, officially imposed racial segregation." Id., at 269.

The District Court ordered the Columbus Board to stop discriminating on the basis of race in the Columbus School System, and, further, ordered the Board to submit a desegregation plan for the 1977-78 school year. The District Court also stopped the Columbus Board from constructing new schools, unless the Court approved the construction plans. In *Columbus Board of Education v. Penick*, 439 U.S. 1348 (1978), the Board requested that the Supreme Court stop the District Court from enforcing the order for the 1977-1978 school year. The Supreme Court granted the Board's request.

In *Penick v. Columbus Board of Education*, 583 F.2d. 787 (1978), the School Board appealed the decision to the Sixth Circuit Court of Appeals, and asked the Court to send the case back to the District Court for consideration of the case in light of the Supreme Court's decision in *Dayton Board of Education v. Brinkman* (1977). The Sixth Circuit agreed with the District Court's findings and denied the Board's request. The Sixth Circuit held that the Columbus case differed from Dayton in that Columbus had more constitutional violations and instances of segregation than Dayton, which justified a system wide approach.

The School Board appealed the Sixth Circuit's decision to the U. S. Supreme

Court and asked the Court to stop the enforcement of the desegregation plan until the U.S. Supreme Court had an opportunity to consider the Board's request for appeal. The Supreme Court granted the Board's request for a stay and subsequently granted the Board's request for appeal, in *Columbus Board of Education v. Penick*, 439 U.S. 1066 (1979). It is the Supreme Court's evaluation of the dual system in Columbus, which will be reviewed for the study, *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979).

The only court capable of overruling a Supreme Court decision is the Supreme Court. Further once a particular issue, i.e. segregation, is decided, that issue may not be revisited by the Supreme Court, unless a change in the decision is likely to be made or prevailing evidence is likely to be presented in a subsequent case for reconsideration of the previous decision. Given the study's research questions and use of Supreme Court cases, the examination was sufficient with only two Supreme Court cases. Precedent in legal research is not quantifiable and therefore not validated by the number of similar cases supporting a position. The nature of the case determines its validity, and, consequently, there may be a limited number of cases, perhaps only one, that offers the Supreme Court's official position on a particular issue. This principal also substantiates the use of only two cases in the study.

## Data Analysis

The data collected from EDLE provided history and background considered by the Supreme Court in making its rulings. The case record, along with the data from EDLE questions, provided sufficient information to answer the research questions. Each research question was related to the judicial interpretations of the rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment. Questions 3 and 7 from the

Education and Legal Evaluation provided information needed to determine the relationship of the Equal Protection theory to the Supreme Court cases, and in turn, to the research questions, especially Research Question 4. The questions also provided insight into the judicial reasoning stated in the written opinions of the Court. These research questions were:

1. In making its decisions, what judicial guidelines did the Supreme Court establish, if any, for determining whether a dual system of education existed?
2. What judicial guidelines, if any, were established to delineate between illegal and legal dual systems?
3. If judicial guidelines were established to delineate illegal and legal dual systems, were they related to any difference between de jure and de facto segregation?
4. What has the Supreme Court decided about the legality of two schools with racially dominant populations existing within the same district in the public school system?

The research questions were answered for both cases in the study. The study sought to examine the way the Supreme Court made its determinations. Although the two cases represented separate litigants, both cases chosen met the study's criterion that the Supreme Court had made a determination of intradistrict, race-based, dual systems of education. As discussed in the literature review, the Equal Protection Clause requires that race-related discrimination meet specific standards of scrutiny and proof. It is the relationship of the theory of equal protection to these cases, which the research questions sought to examine, along with determinations of legality. Thus, the way the cases met the

proof did not require individual analysis. Further, the data used to answer the research questions, unlike the EDLE questions, were not case specific. Therefore, data from both cases were used to answer each research question, rather than providing separate responses for each case to the research questions.

Research questions were answered by analyzing the EDLE information and cases. Examples to support the analysis were provided, following the answers to the research questions. These examples were excerpts from the case records and illustrated the relationship of the equal protection theory to the proceedings. If the cases provided judgments, which overruled a previous case's ruling, this was stated. References to precedents were also stated. If the cases in the study provided judgments, which made additions to previous rulings, the precedent(s) and the addition were stated.

Further, although dissenting opinions were entered as data for EDLE questions, the official and binding judgment is the ruling provided by the general or majority opinion. Therefore, the majority opinions were the only data used to answer the research questions. Similarly, information provided in the record of the cases under study, not preceding litigation, was included in the analysis. Because the Supreme Court is not a finder of fact, both the Court of Appeals' and District Courts' records may be, in part, included in the Supreme Court's records.

This chapter discussed the data and how they were used to examine the legality of intradistrict, race-based, dual systems of education. Chapter Four presents the findings, discussing each research question's relationship to the equal protection theory. Specifically, it addresses the guidelines for making determinations for each of the cases studied.

# CHAPTER IV

# FINDINGS

The study sought to examine the determination made by the Supreme Court of the legality of intradistrict, race-based, dual systems of public, K-12 education by reviewing cases decided between 1965 and 2000 on the subject. Two cases, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979), and *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979), were studied. They were a) both Supreme Court cases decided between January 1, 1965 and December 31, 2000, and b) for which, a determination was made in the Supreme Court regarding the legality of intradistrict, race-based, dual systems of education.

This chapter provides the data collected from the cases using the seven EDLE questions:

1. Who was involved?
2. What was involved?
3. What relief or action did the plaintiff seek?
4. When did it happen?
5. Where did it occur?
6. Why did the plaintiff and defendant act in this manner?
7. What was the outcome or decision?

The answers to the four research questions below, which emerged from the data, are also discussed:

1. In making its decisions, what judicial guidelines did the Supreme Court establish, if any, for determining whether a dual system of education existed?

2. What judicial guidelines, if any, were established to delineate between illegal and legal dual-systems?
3. If judicial guidelines were established to delineate illegal and legal dual systems, were they related to any difference between de jure and de facto segregation?
4. What has the Supreme Court decided about the legality of two schools with racially dominant populations existing within the same district in the public school system?

Finally, the relationship of the data to the Equal Protection theory is also discussed.

Educational and Legal Questions (EDLE)

*Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979)

1. Who was involved?
    a. Dayton Board of Education, six individual members of the Dayton Board of Education, and Dayton Board of Education's Superintendent were the petitioners (defendants in the District Court proceedings). The original defendants initially included actions against the Governor, Attorney General, State Board of Education, Superintendent of Public Instruction of the State of Ohio, i.e. all State officials. The case before the Supreme Court, however, did not include any State officials. [See *Brinkman v. Gilligan*, 503 F.2d. 648 (1974) and *Brinkman v. Gilligan*, 583 F.2d. 243 (1978).]
    b. Mark Brinkman and other black and white parents whose children were students in the Dayton, Ohio School System were the respondents

(plaintiffs in the District Court proceedings). The National Association for the Advancement of Colored People joined as respondents.

c. The United States filed a brief of amicus curiae.

2. What is involved?

   a. Whether the petitioners (School Board and School Board Superintendent) were intentionally operating a dual school system in violation of the Fourteenth Amendment.

   b. Whether the dual system at present was linked to past pre and post-Brown discriminatory conduct, which required the defendants to eliminate the effects of that system in a post-Brown era.

   c. Whether the remedy to eliminate vestiges of past discrimination should be system wide.

3. What relief or action did the petitioners seek?

   The petitioners (School Board and School Board Superintendent) sought to have the determination of the Court of Appeals in *Brinkman v. Gilligan,* 583 F. 2d. 243 (1978) overturned by the Supreme Court. In *Brinkman* (1978) the court found that the School Board and Superintendent were:

   a. Operating a dual system (de jure segregation).

   b. The current dual system was ongoing from previous a dual system in pre- and post-Brown eras and this mandated action to alleviate said dual system.

   c. The remedy, in accordance with the effects of the segregation, should be system wide.

4. When did it happen?

   The initial action taken by the respondents (parents of the children in the system, original plaintiffs in District Court proceeding) attending schools in the Dayton, Ohio School System was filed on April 17, 1972. Segregatory practices allegedly dated from at least 1951. The District Court's initial opinion was filed on February 7, 1973. Additionally, the Supreme Court case under study, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979), since 1973, had a litigation history of at least twelve preceding cases. Eleven of those twelve preceded the case in the study. (See Appendix H.)

5. Where did it occur?

   The allegations occurred in the Dayton, Ohio Public Schools. The segregatory practices included racially unbalanced schools accomplished through the following. (See Appendix J for descriptions.)

   a. Optional attendance zones
   b. Faculty and staff assignments
   c. School closings and site selections
   d. Grade structures and reorganizations
   e. Pupil transfers and transportation

6. Why did the petitioners and respondents act in this manner?

   a. The petitioners (School Board and School Board Superintendent) had been accused of operating a dual segregated system since 1951. If the allegation was true, it existed during a pre-Brown era, when there were not explicit governmental anti-discriminatory rules present. There had been

no reasoning, post-Brown, for dual systems to remain and the petitioners contended that no dual system existed due to de jure segregation.

b. The respondents (parents of children and children) argued that the existing system violated their Constitutional rights guaranteed by the Fourteenth Amendment, as well as violated the federal civil rights statutes, 42 U.S.C. § 1981, 1983-1988, 2000d.

7. What was the outcome or decision?

The Supreme Court made three determinations, affirming the Court of Appeal's ruling, which overturned the District Court's ruling:

a. There was no information on record, which contradicted the Court of Appeals' determination that as of 1954, the time of the first *Brown* case, the Dayton School Board was operating a dual system. Id., at 526.

b. The ruling in *Brown v. Board of Education* (1954) required that dual systems be eradicated. Since the Dayton School Board was apparently operating a dual system at the time of *Brown v. Board of Education* (1954), the Board had an obligation to dismantle said dual system after the *Brown v. Board of Education* (1955) decision was rendered. The segregation was systemwide and provided "prima facie proof that current segregation was caused at least in part, by prior intentionally segregative official acts." Id., at 527. Further, post-Brown actions by school officials were restricted from impeding dismantling of dual systems, as found in *Wright v. Council of City of Emporia* (1972). Actions toward dismantling were measured by their effectiveness, instead of the purpose. Therefore

the Board should have gone beyond abandoning its segregatory practices, as held in *Keyes v. School District, Denver, Colorado* (1973) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971). An active role should have been taken by the Board to verify that current practices were not encouraging the continuance of segregation.

c. The ruling of the Court of Appeals, applying *Keyes v. School District, Denver, Colorado* (1973), on remand (review) of *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) was correct. Current actions of the Board were linked to past segregatory practices and its failure to act proactively. The finding was that segregatory effects were systemwide, because segregation occurring in part of the district was sufficient enough to warrant a systemwide remedy, given the proof of effect throughout the district, applying *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). Id., at 527.

There was one dissent by Mr. Justice Renquist, who was joined by Mr. Justice Powell. (See Point a.) There was also a separate opinion by Mr. Justice Stewart, who was joined by Mr. Chief Justice Burger. (See Point b.) A separate opinion was given by Mr. Justice Powell, filed as *Dayton Board of Education v. Brinkman*, 443 U.S. 449 (1979). (See Point c.)

a. Mr. Justice Renquist's dissent, joined by Mr. Justice Powell, stated that the case ignored the difference between de jure and de facto segregation. Mr. Justice Renquist's noted that *Swann v. Charlotte-Mecklenburg Board of Education* (1971) was misapplied to this case. The Court of Appeals'

understanding of the standard of segregative intent was wrong. Further, he contended that after 1954, intent discussions were unwarranted. The Board had to prove that maintaining or any escalation in the effects of the segregated school system had to have legitimate purposes. Mr. Justice Renquist's dissenting opinion also compared the decisions of the trial court 's (federal District Court) interpretation of law regarding segregation issues in this case, *Dayton Board of Education v. Brinkman* (1979) to the other case under study, *Columbus Board of Education v. Penick* (1979). He enunciated the roles of the trial courts and appellate courts, including the Supreme Court. The trial courts, according to Mr. Justice Renquist, are the finders of fact. Appellate courts review those facts and their relationship to the requirements of the law, making the legal requirements or "controlling law" clear. In this case, he stated, the District Judge did not use the post-Brown "affirmative duty" test or "foreseeability test for intent." The violations found did not suggest connections to the current segregation; the school system was not held responsible for the de facto related instances, such as "residential segregation" or "neighborhood school policy," which contributed to racially identifiable schools. "Thus, the District Court opinions in these two cases demonstrate dramatically the hazards presented by the laissez-faire theory of appellate review in school desegregation cases." *Dayton Board of Education v. Brinkman,* 443 U.S. at 544 (1979).

b. Mr. Justice Stewart, joined by Chief Justice Burger, provided a dissenting

opinion. He stated that the Court of Appeals "ignored the crucial role of the federal district courts in school desegregation litigation." The District Court, in his view, was more appropriate to evaluate segregation cases because they are located within the geographical area of the disputing parties. Further, the importance of cases related to segregation, e.g. *Keyes v. School District No. 1 Denver, Colorado* (1973), *Washington v. Davis* (1976), and *Arlington Heights v. Metropolitan Housing Development* (1977), were the cases' ability to highlight the difficulties in finding constitutional violations and appropriate remedies. This meant that the difficulty faced by non-fact-finding courts, such as appellate courts (Court of Appeals and Supreme Court), in making determinations based on the evidence, could best be addressed by agreeing with the facts as found by the trial (District) courts. Mr. Justice Stewart also found fault with desegregation cases placing (or shifting) the burden of proof onto the school district, as it is differs from the normal expectation in other cases. Although there is no disagreement with him that these dual or segregated school systems, if found in violation of the Constitution, should remedy the violations. The years (1954 or 1979), he asserted, should have no bearing. Most of the cases emphasized the landmark year of 1954. The assumption that school systems, which were segregated in 1954, always maintained that initial segregative intent was not necessarily a "valid presumption." He noted the change in the nation's attitude toward "racial relationships" and that the school boards and children who were in place

in 1954 were no longer there. Therefore, the assertion that the past discrimination had current effects was not supported, especially with the urbanization of the two cities, Dayton and Columbus. Mr. Justice Stewart concluded that 'there is no doubt that many of the districts' children are in schools almost solely with members of their own race...the question remains, however, whether the respondents showed that this racial separation was the result of intentional systemwide segregation. Id., at 473. He then specified his reasons for the dissent for the *Dayton Board of Education v. Brinkman* (1979) case. The Supreme Court remanded the first Dayton case, from which the District Court dismissed the case because of the lack of evidence presented by the plaintiffs that a discriminatory purpose existed and the "significant segregative effect" presently resulted from the past. The Court of Appeals found the District Court's findings clearly erroneous. The Court of Appeals, according to Stewart, did not agree but also did not state how the District Court erred in its "factual assessments." Further, if the Dayton School District was segregated in 1954, as assumed by the Court of Appeals, then the burden of proof should have been shifted to the school board to prove that there was no intent, which the trial court (District Court) failed to do. Without the District Court's apparent failure to shift the burden of proof, there was no foundation to overturn its ruling. Absence of the burden of proof, Mr. Justice Stewart contended that little evidence existed that "pre-1954 policies led to racial separation in the district's schools." Id., at 475.

c. Mr. Justice Powell also filed a completely separate dissenting opinion, to "emphasize several points" because "[t]he Court's opinions in [*Dayton Board of Education v. Brinkman* (1979) and *Columbus Board of Education v. Penick* (1979) were] disturbing." Id., at 479. His dissent was divided into three areas.

i. He discussed the lack of logic found in the ruling regarding the two school districts, totaling about 241 schools, had intentionally racially separated these schools in violation of the Fourteenth Amendment. Therefore, the Courts determined a need for a systemwide remedy, including "each and every school." He suggested that racial imbalances in the school populace exist in "every major urban area in the country that contains a substantial minority population." Id., at 480. This racial separation was "primarily from familiar segregated housing patterns" which are linked to socioeconomic factors not influenced or governed by school boards. Id., at 480. The application of equal protection in cases like these, he suggested, was unlike that found in other non school-related cases, e.g. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979), *Arlington Heights v. Metropolitan Housing Development Corporation* (1977), and *Washington v. Davis* (1976). He asserted that *Brown v. Board of Education* (1954) sought to end a different kind of "state-imposed segregation." Further, "de facto segregation has existed on a large

scale in many of [North, Midwest, and West] cities and often it is indistinguishable in effect from the type of de jure segregation outlawed by Brown." Id., at 481. He emphasized that the violations found should be commensurate with the remedy imposed, as articulated by *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), *Austin Independent School District v. United States*, 429 U.S. 990 (1976), *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976), *Milliken v. Bradley*, 418 U.S. 717 (1974), and *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

ii. Secondly, Mr. Justice Powell examined the judicial "illusion" that the ratio requirements in different locations (school districts) will provide the same results. The remedies imposed by the courts, he feared, will result in "resegregation" due to "resentment." He viewed the remedies as "intrusions on local and professional authorities" because the remedies require a massive overhaul in the areas of transportation (busing of students), teacher placement, and grade structuring. Court ordered remedies also disrupt neighborhood schools and the public education system's authority, as well as parental decisions regarding schools. Parents especially may take leave of the court ordered remedies by moving or placing their children in private schools, leading to "a substantial exodus of whites from the system." Id., at 485. Specifically, minority

children and parents may suffer most. Their immediate environment supports neighborhood schools. With the immediate neighborhood disrupted by busing and removal from public schools, a general decline in the quality of public education was at stake. Leaving "public school enrollment... to families that either lack the resources to choose alternatives or are indifferent to the quality of education." Id., at 486.

iii. Finally, Mr. Justice Powell suggested that "the ultimate goal is to have quality school systems in which racial discrimination is neither practiced nor tolerated." Id., at 486. He contended that courts should evaluate the best route to integrated school systems or dismantled dual systems, instead of imposing system wide remedies because it is believed that systems that have black and white schools are created by segregative intent. The "social engineering" often associated with desegregation cases is inappropriate for courts to oversee. Further, the role of the judicial system and courts has been expanded, often in areas where other governmental entities, such as school boards, should be in charge. "Courts are the branch least competent to provide long-range solutions acceptable to the public and most conducive to achieving both diversity in the classroom and quality education...the primary and continuing responsibility for public education...must be left with school officials and public authorities." Id., at 488, 489.

*Columbus Board of Education v. Penick*, 443 U.S. 449 (1979)

1. Who was involved?

    a. The petitioners were the Columbus Board of Education, the Board's seven elected members, the Superintendent of the Columbus Public Schools, the State Board of Education, the State Superintendent of Public Instruction, Governor James A. Rhodes, and Attorney General William J. Brown. The Franklin County Recorder was added on July 19, 1974, because of an alleged conspiracy with the Board and State plaintiffs, which violated the Fair Housing Law of 1968.

    b. The respondents were fourteen students (one of which was Gary L. Penick) of the Columbus Public School System and their parents. On February 5, 1975, eleven other students joined represented by National Association for the Advancement of Colored People's lawyers, and had the suit classified as a class action suit.

    c. Briefs for amicus curiae were filed for affirmance by the United States (by Assistant Attorney General and Acting Solicitor General), American Civil Liberties Union, Fair Housing Council of Bergen County, New Jersey, National Association for the Advancement of Colored People Legal Defense and Education Fund, Inc., and the National Education Association.

    d. Briefs of amicus curiae were also filed for reversal by the Attorney General of Delaware, Deputy Attorney General of Delaware, Delaware State Board of Education, and the Neighborhood School Coordinator

Committee.

e. Briefs of amicus curiae were filed by the American Jewish Congress and Special School District No. 1, Minneapolis, Minnesota.

2. What was involved?

a. Whether the Board was operating, in the past and up until the trial, a segregated system, even after *Brown v. Board of Education* (1955), providing sufficient cause for a systemwide remedy.

b. Whether the appropriate application of the controlling law was present when the Court of Appeals' affirmed the District Court's findings.

3. What relief or action did the petitioners seek?

The petitioners (Columbus Board of Education and other original defendants in the District Court proceedings) sought to have the verdict overturned of the District Court for the Southern District of Ohio, Eastern Division, in *Penick v. Columbus Board of Education*, 429 F. Supp. 229 (1977), which was affirmed by the Court of Appeals, Sixth Circuit, in *Penick v. Columbus Board of Education*, 583 F. 2d. 787 (1978). The District Court found:

a. Segregative intent could be assumed by the School Board and Superintendent because they failed to recognize the potential for increased segregation, did not select a more effective manner to dismantle segregated schools and in the determination of what schools to construct (and where) and attendance zones (although the Board contended assignments were based on neighborhood assignments and not race).

b. The School Board's use of neighborhood school zoning, which resulted in

racial imbalance, with the Board's full knowledge of its potential to cause racial imbalance, is sufficient to substantiate segregative intent.

c. Alternative school programs, including magnet schools, special education, vocational schools, were insufficient in to provide for the constitutional rights of students.

d. With the State officials' (State Board of Education and Superintendent of Public Instruction) knowledge of the School District's actions and the results of those actions, the State officials also exhibited segregative intent.

4. When did it happen?

Segregatory practices allegedly dated from at least 1954, when the first *Brown v. Board of Education* cases was decided. The initial action taken by the parents of the children attending schools in the Columbus, Ohio School System (the original plaintiffs, now respondents) was filed on June 22, 1973, resulting in an opinion on March 8, 1977 by the United States District Court for the Southern District of Ohio, Eastern Division. Since 1977, *Columbus Board of Education v. Penick,* 443 U.S. 449 (1979), has a litigation history of at least four other preceding cases (See Appendix I.)

5. Where did it occur?

The allegations of segregative intent occurred in Columbus, Ohio 's public schools. (See Appendix J for descriptions.)

a. Site Selection and School Construction

b. Attendance zones

c. Teacher Assignments

6. Why did the petitioner and respondent act in this manner?

   a. The petitioners (original defendants, School Board, Superintendent, and State Officials) alleged that they were simply following neighborhood school policies.

   b. The respondents (original plaintiffs, children, and their parents, represented by the NAACP) alleged that the rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the Constitution had been violated.

7. What was the outcome or decision?

"Because the District Court and the Court of Appeals committed no prejudicial errors of fact or law, the judgement appealed must be affirmed." Id., at 468. The Supreme Court made two determinations, affirming the District Court's and Court of Appeals' ruling:

   a. The petitioners (original defendants, Columbus city and Ohio State officials) exhibited, in the past and present, a segregative purpose creating segregative impact systemwide. This intent merited a systemwide remedy, as ordered by the District Court. Id., at 450.

      i. The Board did not provide in facts rebutting that there were separate black schools in parts of the system and it provided "prima facie proof of a dual system and supports a finding to this effect." Id., at 450.

      ii. After *Brown v. Board of Education* (1955), the Board was to

dismantle the dual school system and the Board and other officiates did not. Id., at 450.

b. There was no mistake made by the courts, District Court and Court of Appeals, with their applications of the controlling law. Id., at 450.

i. Knowing that one's actions or projection that one's actions are sufficient facts, which contribute to proving "a forbidden purpose." The District Court ruled correctly in this regard as stipulated in precedent set by *Washington v. Davis*, 426 U.S. 229 (1976), and *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), which held that violations of equal protection "on the basis of racial discrimination must show purpose." Id., at 450.

ii. The District Court, after finding that there were currently "purposeful segregative practices," ruled correctly as stipulated in the precedent set by *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), which held that remedies may be no greater than the violations.

iii. The District Court ruled correctly in making inferences about systemwide segregation, as stipulated in the precedent set by *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973), which held that "purposeful discrimination in a substantial part of a school system [is] sufficient ... for ... infer[ing] ... systemwide discriminatory intent unless otherwise rebutted" and that the

purpose of a dual system is sufficient for making an inference from that purpose to racial separation in other parts on the school system. Id., at 450.

There were four additional opinions filed. Mr. Justice Stewart, joined by Mr. Chief Justice Burger, filed a separate opinion, concurring in the judgement found in *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). (See Point a.) Mr. Chief Justice Burger filed an opinion, concurring in judgement. (See Point b.) Mr. Justice Powell filed a separate dissenting opinion, found in *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). (See Point c.) Mr. Justice Renquist filed a dissenting opinion, joined by Mr. Justice Powell. (See Point d.) Two opinions mentioned above (Mr. Justice Stewart's separate opinion, joined by Chief Justice Burger, and Mr. Justice Powell's separate dissenting opinion) were filed in Columbus Board of Education v. Penick, 443 U.S. 449 (1979) for both cases, *Dayton Board of Education v. Brinkman* (1979) and *Columbus Board of Education v. Penick (1979).*

a. Mr. Justice Stewart filed a separate opinion, joined by Mr. Chief Justice Burger.

Mr. Justice Stewart's dissent, joined with The Chief Justice Burger, provided a dissenting opinion. He suggested that the Court of Appeals "ignored the crucial role of the federal district courts in school desegregation litigation." The District Court, in his view, was more appropriate to evaluate segregation cases because they are located within the geographical area of the disputing parties. Further, the importance of

cases regarding segregation, e.g. *Keyes v. School District No. 1 Denver, Colorado* (1973), *Washington v. Davis* (1976), and *Arlington Heights v. Metropolitan Housing Development* (1977), is their ability to highlight the difficulties in finding constitutional violations and appropriate remedies. This meant that the difficulty then presented to non-fact-finding courts, such as appellate courts (Court of Appeals and Supreme Court), in making determinations based on the evidence could best be served by agreeing with the facts as found by the trial (District) courts. Mr. Justice Stewart also found fault with desegregation cases placing (or shifting) the burden of proof to the school district, as it differs from the normal expectation in other cases. Although there is no disagreement with him that these dual or segregated school systems, if found in violation of the Constitution, should remedy the violations, he felt the year (1954 or 1979) has no bearing. However, most of the cases emphasized the landmark year of 1954, even though the assumption that school systems, which were segregated in 1954, always maintained that initial segregative intent was not necessarily a "valid presumption." He noted the change in the nation's attitude toward "racial relationships" and the school boards and children who were in place in 1954 are no longer there. Hence the past discrimination have current effects is lost upon him logically, especially with the urbanization of the two cities, Dayton and Columbus. Therefore, he concluded, that "there is no doubt that many of the districts' children are in schools almost solely with members of their own race...the question remains, however,

whether the plaintiffs showed that this racial separation was the result of intentional systemwide segregation." Id., at 474. Mr. Justice Stewart accepted the facts found by the trial court (District Court) of racial discrimination, which occurred until the 1970's. He suggested that evidence in this case was "relatively strong." For example, white students were bused past a black school, Alum Crest Elementary, to a predominantly white school, Moler Elementary. However, Mr. Justice Stewart questioned the use of a systemwide remedy, "without reference to an affirmative duty stemming from the situation in 1954." Id., at 476. But, he contended, *Keyes v. School District No. 1, Denver, Colorado* (1973) provides that prima facie case is proven when intentional segregation in part of the school systems suggests that other segregation within the school district is not accidental. The burden of proof of innocence or non-intentional segregation shifts and is then borne by the School Board. Further, the Board did not "rebut the presumption," and thus, the District Court and Court of Appeals were correct in finding Constitutional violations. Although the petitioners (the school officials) did not agree with the systemwide remedy, the District Court found and the Court of Appeals reviewed the incremental segregative effect and provided an equivocal remedy, which was systemwide, as required by precedent *Dayton Board of Education v. Brinkman,* 433 U.S. at 420 (1977). Mr. Justice Stewart agreed with the remedy, according to the facts in the record. He asserted that *Green v. County School Board,* 391 U.S. 430

(1968) requires that remedies are evaluated by their effectiveness, but effectiveness cannot be used as reasoning to implement a systemwide remedy when every school in the district may not be affected. The Columbus officials did not use this precedent to show that every school in their district was not affected. Further, the use of mathematical tools to determine an appropriate remedy is permitted by *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). After considering the procedures of the case, Mr. Justice Stewart, joined by The Chief Justice Burger, found no faults with the remedy.

b. Mr. Chief Justice Burger suggested that the present state of Columbus public schools may not be linked to post-Brown (1954) activities of segregative "intent and effect" especially with the facts before him. However, the record also prohibited the Court and him from finding the ruling of the District Court "clearly erroneous," which is required by Federal Rules of Civil Procedure Rule 52, in order to overturn. He was also uncomfortable with the finding that dual systems existed in both Columbus and Dayton at the time of *Brown v. Board of Education* (1954), which was one of the leading foundations for assuming that both school systems should have been proactive in alleviating their districts of dual systems. Further, the remedy of busing (or transportation) had him "increasingly doubtful" of its accomplishments. He concluded that the Supreme Court "can only set the general legal standards and, within the limits of appellate review, see that they are followed." *Columbus Board of*

*Education v. Penick*, 443 U.S. at 488.

c. Mr. Justice Powell filed a separate dissenting opinion. The opinion was rendered for both cases, without differentiation between the two. (See Chapter 4, EDLE Questions 7, Section c for both cases.)

d. Mr. Justice Renquist's dissenting opinion, joined by Mr. Justice Powell, provided a point-by-point analysis of the controlling law for the case as he interpreted it versus the accounts presented by the Supreme Court and preceding lower courts, the District Court and the Court of Appeals. He began by stating that "the school desegregation remedy imposed on the Columbus School System by this Court's affirmance of the Court of Appeals is a complete and dramatic displacement of local authority by the federal judiciary as is possible in our federal system." Id., at 489. He criticized the displacement of local school authorities by federal courts, although he asserted that schools authorities should not be beyond the authority of federal courts when dealing with Constitutional issues. Further, when this intervention did occur, the "District Court and Court of Appeals in this case did not heed this admonition." Id., at 490. He cited *Keyes v. School District No.1, Denver, Colorado* (1973) as precedent for "proving the existence and scope of a violation warranting federal court intervention; discriminatory purpose and a causal relationship between acts motivated by such a purpose and a current condition of segregation in the school system." Id., at 490, 491. In this case, he found that the lower courts' manner of deciding the violations made no clear distinctions

between de jure and de facto segregation. Since 1888, there was no statutory requirement to separate the races. Without this mandate in place, Renquist found it inappropriate to impose a remedy systemwide, especially since the Board contended that it was simply following neighborhood assignment and zoning policies. State imposed segregation was the reasoning behind *Brown v. Board of Education* (1954). Subsequently, *Swann v. Charlotte-Mecklenburg Board of Education* (1971) presented remedy applications of schools with a history of mandated racial separation. In that instance, the school board should submit a plan to remedy the segregation. This *Columbus Board of Education v. Penick* (1979) case misapplies those rulings because the racial separation did not occur from statutory requirements. Further, cases since *Brown v. Board of Education* (1954) have not clearly determined the rules for making a transition from dual to unitary systems with the exception of the rate of the change and what the results should be. *Green v. County School Board* (1968) is the precedent for this point, but the context of schools and the populations greatly differed from the city of Columbus at that time. *Keyes v. School District No. 1 Denver, Colorado* (1973) was first in addressing cases without historical state-imposed segregation, from which arose the "affirmative duty" standard. "Affirmative duty" is a "remedial concept defining the obligation of the school board to come forward with an effective desegregation plan after a finding of a dual system." Id., at 499. Mr. Justice Renquist asserted that in

1973, when *Keyes v. School District No. 1 Denver, Colorado* (1973) was decided, is a more appropriate marking in history and litigation than 1954. The Court in this case (*Columbus Board of Education v. Penick*) "dramatically departs from *Keyes* by relieving school desegregation plaintiffs from any showing of a causal nexus between intentional segregative actions and the conditions they seek to remedy." Id., at 501. *Keyes v. School District No. 1, Denver, Colorado* (1973) required the burden of proof shifts only after plaintiffs show that the school officials imposed, in a substantial part of the school district, systematic segregation. If no evidence is available to prove or disprove the reasons for the school board's decisions, the plaintiffs' proof of Constitutional violations is not present. The review of the site selection and construction presented, in fact, as segregatory was not drawn from the facts presented by the school officials, as they sought and heeded to a third party's (Ohio State's Bureau of Educational Research) study and evaluation of their district and the district's needs. Further, the dual system alleged in this proceeding was a result of about five predominantly black schools located in predominantly black neighborhoods. The systemwide remedy affects 172 schools, including the original five schools (now only three). Most the 172 schools in the remedy did not exist before 1954 to have such a remedy imposed upon them. The appellate courts' roles, according to Mr. Justice Renquist, are to "ensure that [district court] judges are asking themselves the right questions: it is clear in the instant case that crucial questions

regarding causality and purpose were not asked at all." Id., at 524. He contended that the unasked and unanswered questions render the record before the Supreme Court insufficient to impose a systemwide remedy. He concluded that this case, *Columbus Board of Education v. Penick* (1979), makes it impossible for school boards to be found innocent of segregative intent and the case ignores the "Dayton I and Keyes." Id., at 525.

## Research Questions

The research questions for this study examined the guidelines, particularly new guidelines, used by the Supreme Court for dual systems. Additionally, the research questions focused on the decisions of the Supreme Court about the legality of intradistrict, race-based, dual systems of education in the two cases that met the study's criteria. The Equal Protection Clause does not stipulate a procedure for judicial evaluation of an alleged violation. However, judicial guidelines have been created related to equal protection violations. Similarly, courts use portions of previous cases, which are applicable to current cases under review as controlling law for particular areas as legal standards. The Equal Protection Clause also does not mention race. However, the Supreme Court has heard numerous cases over the last century concerning violations of equal protection involving racial discrimination. This study focused on intradistrict, race-based, dual systems of education, which may have been a result of racial discrimination.

The cases in the study were the only two cases between 1965 and 2000, in which the Supreme Court made a ruling regarding the legality of intradistrict, race-based, dual systems of education, without precedent. However, the combination of the judicial

requirements for equal protection violations and controlling law set by precedenting cases guided portions of the cases' procedures. Most of the precedent for these cases was discussed in the literature review. Answers provided to EDLE questions also provided specific facts and background of the cases.

Each research question was answered for every case. Both *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) and *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979) were decided on July 2, 1979, probably alleviating any precedent between the two cases. However, the data relevant for answering research questions were not case specific material. Therefore, answers to the research questions used data from both cases simultaneously. If the cases furnished judgments, which overruled a previous case's ruling, this was stated. References to precedent were also stated. If the cases studied provided judgments, which made additions to previous rulings, the precedent and the addition were stated. The answers to the research questions reflect the role of the Equal Protection Clause. Further, the EDLE questions substantiated that litigants in both cases asserted an equal protection violation. The discussion of the research questions in relation to both cases follow.

1. **In making its decisions, what judicial guidelines did the Supreme Court establish, if any, for determining whether a dual system of education existed?** No judicial guidelines, per se, were established. However, the Court appeared to review two areas, statistical characterizations or district demographics and legal or precedent applications, in these cases, *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) and *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979), when making the decisions. Statistical characterizations and districts'

demographics were used to provide proof of intent. Under the strict scrutiny's suspect classification of race, an equal protection violation requires one of the following types of intent must be proven: facial discrimination, discriminatory application, and discriminatory motive. Explanations and examples of these areas follow below.

a. Statistical Characterizations/District Demographics

The descriptors include, but are not limited to the race ratios in schools and neighborhoods, which allegedly directly affected one another. Geographical data were also important where they identified the physical proximity of one school to another and how those schools affected one another's racial population because of location or avoidance of attendance.

i. The Supreme Court, in the record of the Court of Appeals, found that "virtual one race schools refers to schools with student enrollments of 90 per cent or more of one race." The Dayton schools were "highly segregated by race" in this regard. *Dayton Board of Education v. Brinkman*, 443 U.S. at 529, 530 (1979).

ii. The Supreme Court in the record of the District Court found that "Dunbar High School had been established as a district-wide black high school... Garfield as a black elementary school...[and] that in 1950 the faculty at 100% black schools was 100% black and the faculty at all other schools was 100% white." *Dayton Board of Education v. Brinkman*, 443 U.S. at 535 (1979).

iii. The Supreme Court found that "the dual school system extant at

the time of *Brown I* embraced 'a systemwide program of segregation affecting a substantial portion of the schools, teachers, and facilities.'" *Dayton Board of Education v. Brinkman*, 443 U.S. at 541 (1979).

iv. The Supreme Court found that "segregated faculty assignments [is] one of the factors in proving the existence of a school system that is dual for teachers and students." *Dayton Board of Education v. Brinkman*, 443 U.S. at 537 (1979).

v. The Supreme Court, in the record of the District Court, found that as of *Brown v. Board of Education* (1954) the Columbus Board of Education was "conducting 'an enclave of separate, black schools on the near east side of Columbus'." *Columbus Board of Education v. Penick*, 443 U.S. at 449 (1979).

vi. The Supreme Court, in the record of the District Court, found that "the Columbus Public Schools were openly and intentionally segregated on the basis of race when *Brown v. Board of Education* (1954) was decided." *Columbus Board of Education v. Penick*, 443 U.S. at 452 (1979).

b. Legal and Precedent Applications

The Supreme Court does not hear an issue more than once unless there is compelling evidence, which would change its previous decision. Therefore, a case extremely similar to the two cases under study did not exist. However, several cases served as precedent in part for these two

cases. *Swann v. Charlotte-Mecklenburg Board of Educa*tion, 402 U.S. 1 (1971) and *Keyes v. School District No. 1, Denver, Colorado* (1973) in particular were frequently cited in part as precedents for segregation.

i. The Supreme Court found that the "District Court had ...ignored, contrary to *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the significance of purposeful segregation in faculty assignments in establishing the existence of a dual school system." *Dayton Board of Education v. Brinkman*, 443 U.S. at 536 (1979).

ii. The Supreme Court found that *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. at 18 (1971) "mandates" with regard to dual system being disestablished must consider more than student assignments, such as the ability to "identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff, ...school buildings and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown." *Columbus Board of Education v. Penick*, 443 U.S. at 460 (1979).

iii. The Supreme Court held in its decision that "proof of purposeful and effective maintenance of a body of separate black schools in a substantial part of the system is itself prima facie proof of a dual system... absent ...contrary proof." This was according to *Keyes v.*

*School District No. 1., Denver, Colorado*, 413 U.S. at 203. *Columbus Board of Education v. Penick*, 443 U.S. at 450.(1979).

iv. The Supreme Court found that "*Keyes v. School District No.1, Denver, Colorado*, 413 U.S. 189 (1973) plainly demonstrates in the educational context that there is no magical difference between segregated black schools mandated by statute and those that result from local segregative acts and policies." *Columbus Board of Education v. Penick*, 443 U.S. at 458 (1979).

v. The Supreme Court, in the record of the Court of Appeals, found that "'while the Columbus school system's dual black-white character was not mandated by state law as of 1954, the record certainly shows intentional segregation by the Columbus Board.'" *Columbus Board of Education v. Penick*, 443 U.S. at 456 (1979).

vi. The Supreme Court, in the record of the District Court, found that the "local officials, by their conduct and policies, had maintained a dual school system in violation of Fourteenth Amendment." *Columbus Board of Education v. Penick*, 443 U.S. at 458 (1979).

2. **What judicial guidelines, if any, were established to delineate between illegal and legal dual systems?**

There were no overt distinctions between illegal and legal dual systems. However, the Supreme Court enunciated facts, which allowed it to arrive at its conclusions about the illegality of the Dayton and Columbus School Systems. The proof of intent is required by judicial standards in litigation alleging an equal

protection violation. Two areas – Intentions and Discriminatory Purpose and Legal and Precedent Applications - characterize findings and comments. Explanations and examples of these areas follow.

a. Intentions and Discriminatory Purpose

The intentions and purpose of actions of the petitioners (original defendants, Board members and officials) seemed to contribute to the Supreme Court's determination of the legality of dual systems.

i. The Supreme Court found, in the record of the District Court, that at the time of Brown *v. Board of Education* (1954), the Columbus School System was not "a racially neutral unitary school system" because the Board members' and administrators' "direct...cognitive acts or omissions...had intentionally caused and later perpetuated the racial isolation." *Columbus Board of Education v. Penick,* 443 U.S. at 449, 456 (1979).

ii. The Supreme Court found, in the record of the District Court, that since 1954, "a series of Board actions and practices that could not 'reasonably be explained without reference to racial concerns' and that 'intentionally aggravated, rather than alleviated,' racial separation." *Columbus Board of Education v. Penick,* 443 U.S. at 449 (1979).

iii. The Supreme Court found, based on the record of the District Court, which was affirmed by the Court of Appeals, that the Board's conduct "at the time of trial and before ...was animated by

an unconstitutional, segregative purpose... and segregative impact." *Columbus Board of Education v. Penick*, 443 U.S. at 455 (1979).

iv. The Supreme Court found, in the record of the District Court, that the Board's segregative attempt was based on the Columbus Board's "failures, after notice, to consider predictable racial consequences of their acts and omissions when alternatives were available which would have eliminated or lessened racial imbalance." *Columbus Board of Education v. Penick*, 443 U.S. at 463 (1979).

v. The Supreme Court noted that the Board "does not appear to challenge the finding of the District Court that at the time of trial most blacks were still going to black schools and most whites to white schools." *Columbus Board of Education v. Penick*, 443 U.S. at 461 (1979).

vi. The Supreme Court found, in the record of the District Court, that "the Columbus Board of Education never actively set out to dismantle the dual system." *Columbus Board of Education v. Penick*, 443 U.S. at 452, 461 (1979).

vii. The Supreme Court held that the Court of Appeals was correct in finding that the "Dayton Board was...under a continuing duty to eradicate the effects of that system" since the dual system existed in 1954. *Dayton Board of Education v. Brinkman*, 443 U.S. at 526

(1979).

viii. The Supreme Court found, in the record of the Court of Appeals, that the Court of Appeals held that the evidence "demonstrat[ed] convincingly" the Board's failure to "eliminate the continuing systemwide effects of their prior discrimination and have intentionally maintained a segregated school system down to the time the complaint was filed in the present case." *Dayton Board of Education v. Brinkman*, 443 U.S. at 537 (1979).

ix. The Supreme Court noted that, regardless of the reason for segregated schools, the Board "knowingly continued its failure to eliminate consequences of its past intentionally segregative policies." *Columbus Board of Education v. Penick*, 443 U.S. at 461 (1979).

x. The Supreme Court noted that the Board asserted at the time of this trial that the segregated, dual school system in place was "not done with general or specific racially discriminatory purpose." *Columbus Board of Education v. Penick*, 443 U.S. at 454 (1979).

b. Legal and Precedent Applications

*Brown v. Board of Education* (1954) declared segregated systems inherently unequal, while *Brown v. Board of Education* (1955) mandated that actions should be taken to dismantle dual systems. These appear to be the primary demarcations of legality. The connection between past purposeful segregatory acts before 1954 and current purposeful

segregatory practices appear to disqualify dual systems as legal. Landmark cases litigated after 1954 about dual systems generally addressed the actions of dismantling dual systems, the rate and quality of actions, where dual systems were in place prior to 1954.

i. The Supreme Court, in the record of the District Court, found that since the Board had never eradicated the dual system nor was discharged by judicial proceedings from responsibility to eradicate the dual system, but, because of *Brown v. Board of Education* (1955), was obligated to do so. *Columbus Board of Education v. Penick,* 443 U.S. at 449 (1979).

ii. The Supreme Court held in its judgement that "the Board's continuing affirmative duty to disestablish the dual system, mandated by *Brown II,* is beyond question." *Columbus Board of Education v. Penick,* 443 U.S. at 450 (1979).

iii. The Supreme Court noted, even in times of transition, the School Board was required to show purpose with nondiscriminatory intent, as shown in *Swann v. Board of Education* (1971). It required that "where the school authority's proposed plan for conversion from...dual to...unitary... contemplates the continued existence of some schools that are all predominantly of one race, they have the burden of showing that such school assignments are generally nondiscriminatory." *Columbus Board of Education v. Penick,* 443 U.S. at 460 (1979).

iv. The Supreme Court held that after the decision of *Brown v. Board of Education* (1954), "a school board's conduct under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of [their] actions in decreasing or increasing the segregation caused by the dual system." Therefore, in Dayton, the School Board should have done more than "abandon its prior discriminatory purpose" as stipulated by *Keyes .v School District No.1, Denver, Colorado* (1973) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971). *Dayton Board of Education v. Brinkman*, 443 U.S. at 527 (1979).

v. The Supreme Court noted that the Board was bound by a "'heavy burden' [to show] that the actions that increased or continued the effects of the dual system serve important and legitimate ends," as stipulated in *Green v. County School Board of New Kent County* (1968) and reemphasized in *Wright v. Council of the City of Emporia* (1972). *Dayton Board of Education v. Brinkman*, 443 U.S. at 538 (1979).

3. **If judicial guidelines were established to delineate between illegal and legal dual systems, were they related to any difference between de jure and de facto segregation?**

Both cases were based on current actions, which were preceded by segregatory law. For example, in 1871, Columbus did operate a segregated school system, but as of 1888 state law banned segregation in public schools. There was one overt

reference from the record of the Court of Appeals noted by the Supreme Court about de jure segregation, but not de facto segregation; "there is little doubt that [schools] were de jure segregated by the direct acts of the Columbus defendants' predecessors...[and] nothing has occurred to substantially alleviate that continuity of discrimination of thousands of black students over the intervening decades." *Columbus Board of Education v. Penick*, 443 U.S. at 466 (1979). However, there were not other references or judgements made about de jure segregation or de facto segregation in either case. Distinctions were made about whether the segregatory actions were official. The Equal Protection Clause states "[n]o State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the law." If the actions of the school boards were considered as official actions due to their position, the Equal Protection Clause applies. The definition of de jure segregation suggests that the actions of the State were equal to legislation. Examples of the suggested differences between de jure and de facto segregation follow.

a. The Supreme Court notes that the "Board insists that, since segregated schooling was not commanded by state law and since not all schools were wholly black or wholly white in 1954" there was no basis for the finding of the dual system. However, the "'Columbus Public Schools were officially segregated by race in 1954'." *Columbus Board of Education v. Penick*, 443 U.S. at 457 (1979).

b. The Supreme Court noted that in light of the minority opinions offered by other Justices the Equal Protection Clause is not exclusively applicable to

acts of legislation. It states "'No agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." Further, as found in ex parte *Virginia*, 100 U.S. 339 (1880), "whoever, by virtue of public position under a State government...denies or takes away the equal protection of the laws...violates the constitutional inhibition; and as he acts in the name of and for the State, and is clothed with State's power, his act is that of the State." *Columbus Board of Education v. Penick*, 443 U.S. at 458 (1979).

c. The Supreme Court noted that *United States v. Price*, 383 U.S. 787 (1966) and *Screws v. United States*, 325 U.S. 91 (1945) both held that "[e]ven actions of state agents that may be illegal under state law are attributable to the State." It continues by noting that *Keyes v. School District No. 1, Denver, Colorado* (1973) "demonstrates in ...educational context...there is no magical difference between segregated schools mandated by statute and those that result from local segregative acts and policies." *Columbus Board of Education v. Penick*, 443 U.S. at 458 (1979).

d. The Supreme Court noted that the District Court and the Court of Appeals found the local officials' conduct and policies to "maintain a dual system in violation of the Fourteenth Amendment" and this finding precluded them from determining that "there should be a lesser constitutional duty to eliminate that system than there would have been...[if] ordained by law." *Columbus Board of Education v. Penick*, 443 U.S. at 458 (1979).

e. The Supreme Court noted that the petitioners suggested "many of the

involved schools were in areas that had become predominantly black residential areas by the time of trial, the racial separation in the schools would have occurred" without their involvement. This suggests that there were instances of de facto segregation in housing which affected the schools' racial composition. But the District Court found that the "evidence in this respect was insufficient to counter respondents' proof," citing *Arlington Heights v. Metropolitan Housing Developing Corporation*, 429 U.S. 252 (1977) and *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977). Further, the District Court suggested that housing segregation may have resulted from the school segregation, confirming its perceptions of the School Board's actions, noting *Keyes v. School District No. 1, Denver, Colorado* (1973) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971). *Columbus Board of Education*, 443 U.S. at 466 (1979).

f. The Supreme Court found that the Court of Appeals was correct when it held that the "systemwide nature of the violation furnished prima facie proof that current segregation in the Dayton schools was caused at least in part by prior intentionally segregative official acts." *Dayton Board of Education v. Brinkman*, 443 U.S. at 537 (1979).

It is important to note that some Justices made a reference and distinction related to the two forms of segregation. For, example, Mr. Justice Renquist's dissenting opinion, joined by Mr. Justice Powell, mentioned lower courts' decisions in *Columbus Board of Education v. Penick* (1979) did not recognize the different

between de jure and de facto segregation. However, the additional opinions of the Justices were not binding and therefore could not be included in the analysis.

4. **What has the Supreme Court decided about the legality of two schools with racially dominant populations existing within the same district in the public school system?**

Determining the legality of two schools with racially dominant populations existing within the same district in the public school system appeared to have no predetermined framework for the application of law and judgement. There appear to be several general areas of investigation within the records that the Supreme Court reviewed in both, *Dayton School Board of Education v. Brinkman* (1979) and *Columbus Board of Education v. Penick* (1979) - affirmative duty, discriminatory intent, and segregative purpose. These areas coupled with factual data, such as schools' and neighborhoods' racial demographics or the closing and building of racially dominant black and white schools, were specific to each case, but generally aided the respondents (original plaintiffs, school children and parents) with their claim of an equal protection violation. Once proof was offered, it appears that the controlling law for the varying and specific aspects of each case was applied. If the controlling law was correctly applied, the Supreme Court was bound to affirm the Court of Appeals' judgements, which the Supreme Court did in each case. Illustrations of the strands of commonality between the two cases regarding the determination with examples follow.

a. Affirmative Duty

The *Brown v. Board of Education* (1954) declared that segregated schools

were inherently unequal, while *Brown v. Board of Education* (1955) required an "affirmative duty to disestablish dual systems." The Supreme Court held that the Boards were under this duty. This duty to "disestablish" suggests that the Supreme Court examines the actions of the school systems based on their prior *Brown v. Board of Education* (1954) history and their post *Brown v. Board of Education* (1955) actions. A school system with a history of segregation was, after 1955, obligated to eradicate the dual system. The general presumption of the prior existence of a dual system seems to indicate, strongly, an illegal dual system, if the connection was made from past conditions to present conditions.

i. The Supreme Court noted that "where a racially discriminatory school system...exist[s], Brown II imposes a duty on local school boards to...'transition to a nondiscriminatory school system'...and [they are also]...'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system'," as stipulated by *Green v. County School Board*, 391 U.S. 430 (1968). "Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment," according to *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), *Wright v. Council of City of Emporia* (1972), and *United States v. Scotland Neck Board of Education*, 407 U.S. 484 (1972). *Columbus Board of Education v. Penick*, 443 U.S. at 458, 459 (1979).

b. Discriminatory Intent

The actions by both school boards were examined for their intentions. Evidence had to support the respondents' (original plaintiffs, school children and parents) claim that the dual system in place was not a natural occurrence of urbanization or residential patterns.

i. The Supreme Court found, in the record of a previous District Court preceding, that the District Court held the "plaintiffs children had not shown that the Board's use of attendance zones and transfers denied equal protection." *Dayton Board of Education v. Brinkman*, 443 U.S. at 540 (1979).

ii. The Supreme Court found, in the record of the Court of Appeals, that the Court of Appeals held and was correct in finding that "since 1954 the Board had used some 'optional attendance zones for racially discriminatory purposes in clear violation of the Equal Protection Clause'." *Dayton Board of Education v. Brinkman*, 443 U.S. at 533 (1979).

iii. The Supreme Court found, in the record of the District Court, that the District Court concluded at the time of trial that "the racial segregation in the Columbus school system 'directly resulted from [the Board's] intentional segregative acts and omissions' in violation of the Equal Protection Clause of the Fourteenth Amendment." *Columbus Board of Education v. Penick*, 443 U.S. at 453 (1979).

c. Segregative (Forbidden) Purpose

As with discriminatory intent, the Supreme Court also examined the purpose of the Boards' implementation of policies, such as attendance zones, school site and construction, etc. Segregation was generally viewed as an illegal act. However, its presence alone was not sufficient. Purpose, almost synonymous with intent, was sought by the Supreme Court.

i. The Supreme Court held that the District Court recognized that disparate impact and foreseeable consequences alone "do not establish a constitutional violation" but were additives to the proof of a forbidden purpose. *Columbus Board of Education v. Penick*, 443 U.S. at 450 (1979).

This chapter provided the judicial history and background of the two cases in the study, including guidelines from the determinations made in each case connected with the research questions. The information provided by the EDLE questions and Research Question answers were not intended to substitute for the entire Court record. However, answering the EDLE questions provided the basic facts of the cases. Likewise, the information most germane to the study was provided by responses to the research questions.

In summary, the data suggest that: 1) during these two proceedings, the Supreme Court did not establish any guidelines for determining whether a dual system existed, but did interpret the racial composition of the schools within both districts to prove intent to operate a dual system; 2) there were also no guidelines for distinguishing between the

illegal and legal dual systems, except the two Boards' failure to alleviate the dual systems, which existed prior to 1955, and their apparent attempts purposefully to discriminate thereafter; 3) de jure and de facto differences were mentioned only once, however most of the two school districts' actions were interpreted as official and therefore of a de jure nature; and 4) the Supreme Court decided that dual systems were present in the two school systems and illegal. Chapter Five discusses the conclusions and implications of the study.

# CHAPTER V

# CONCLUSIONS AND IMPLICATIONS

The purpose of the study was to examine the Supreme Court's determinations made between 1965 and 2000 about the legality of intradistrict, race-based, dual systems in public, K-12 schools. This time frame was selected because the Civil Rights Act of 1964 prohibited racial discrimination in public facilities. Federal legislation nature supported the judicial position regarding segregation in public schools held in *Brown v. Board of Education* (1954). *Brown v. Board of Education* (1954) ruled that the segregated schools were inherently unequal and constituted an equal protection violation. "Intradistrict" refers to schools within the same school district. The term "race-based" is an indicator of a distinction made based on ethnicity. "Dual systems" are school systems that have a distinct difference between at least two schools based on a factor. For this study, the factor was race. Therefore, the study focused on schools within the same K-12 school district, where in some schools the student population was of one race , while a different race dominated another.

The research was conducted with two major assumptions, a) that segregation persisted after 1965, and b) that the segregation disproportionately and negatively affected minority students. If segregation did occur, it happened despite the Equal Protection Clause of the Fourteenth Amendment of the Constitution, Civil Rights legislation, and judicial case law, that occurred prior to 1965, prohibiting segregation.

The study used as its theory the Equal Protection Clause. This theory suggested that a) equal protection, by law is provided for similar classes (e.g. native born citizens or immigrants) of individuals, or b) all humans are equal. As discussed in Chapter 2 and

outlined in Appendix C, the Equal Protection Clause has three standards of review, one of which is strict scrutiny. Under strict scrutiny, there are three classifications, including suspect classifications. Race is considered a suspect classification. In both cases, there was proof of discrimination, facial discrimination and discriminatory motive, a requirement under the Equal Protection Clause's strict scrutiny test. There were not any State laws present in the cases to review under the strict scrutiny test, but the actions of the States' officials were considered similar to law.

Applying the general principle of the Equal Protection Clause, dual school systems that negatively affected any public school student would be considered unlawful for two reasons. First, public schools and their officials are representatives of their respective State. The Equal Protection Clause prohibits any State from making a distinction regarding protection of its citizens. Secondly, dual systems were shown to be inherently unequal and harmful by *Brown v. Board of Education* (1954). Therefore, after *Brown v. Board of Education* (1954), and specifically after *Brown v. Board of Education* (1955), school officials were under "affirmative duty" to disestablish pre-existing dual or segregated systems resulting from State imposed segregation.

The review of literature furnished the background of significant cases containing issues similar to those in the cases studied. The review provided an indication of judicial expectations and controlling law during the time frame of the study. The cases in the review were not replicas of those used in the study, but were chosen based on their repetition in the case law of the variables used in the study. Most of the cases in the review, like the cases in the study, were those that had gone to the Supreme Court level.

The cases in the study were those in which the Supreme Court determined the legality of intradistrict, race-based, dual systems. Of the fifty-eight cases produced in the query search, two cases met all the criteria. These two cases were *Dayton Board of Education v. Brinkman* (1973) and *Columbus Board of Education v. Penick* (1979).

Educational and Legal Questions (EDLE) were answered to provide procedural history and background information about the cases. The EDLE questions revealed that the Supreme Court ruled in both instances that a dual system existed and, therefore, as the respondents alleged, violated the Fourteenth Amendment. Similar violations (site selection and school construction, attendance zones and teacher assignments) were present in both cases. Both Supreme Court case rulings favored the students and their parents at the Court of Appeals' level. Both cases were heard in the same District Court, but the District Court ruled in favor of the Dayton School Board, and against the Columbus School Board. Litigation for each case started at different times, but the Supreme Court gave rulings for both on the same day, July 2, 1979, and opinions given separately by the Justices were filed jointly for both cases in some instances.

Answers to Research Questions spoke to the cases' ability to demonstrate the application of the Fourteenth Amendment as well as present the relationship between Equal Protection and the legality of dual or segregated school systems. The Supreme Court's decisions was partly based on the finding that the School Boards did not meet the "affirmative duty" requirement set by *Brown v. Board of Education* (1955). Based on the evidence presented, the Supreme Court found that past practices of discrimination by both School Boards influenced the current status of segregation within the school systems, and that the Boards did not make an effort to dismantle the dual systems.

Assuming that the past practices of segregation within the school were detrimental to minority students, leading to the need for "affirmative duty," the ruling of the Supreme Court supports the second assumption of the study, that the segregation disproportionately and negatively affected minority students.

Because the Court of Appeals and the Supreme Court are not finders of fact, they may only make a ruling based on the information presented at the District Court level. Therefore, whether or not segregation was practiced was a matter of interpreting what was presented as evidence during the District Court trial, and incorporating that evidence into their own records. The Supreme Court also makes judgments about whether the District Court arrived at its conclusions properly. The Court's decision affirmed the students' and their parents' positions that dual or segregated systems violated the right of equal protection supported the study's theoretical base and its first assumption that segregation existed after 1965.

Controlling law aided the Supreme Court in making its determination about whether the dual system existed. Both cases applied aspects of *Keyes v. School District No. 1 Denver, Colorado* (1973) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971). The overwhelming factor in both of these cases was the maintenance of "one race schools" despite each city's growth. A parallel was found in the way both school boards permitted racially dominant schools to remain in operation, despite the school boards' responsibility to abolish them.

The Supreme Court also reviewed statistical data in an effort to determine whether a dual system existed. Both districts had schools where students of one race represented from 70% to 90% of the student population and teachers of one race

represented 70% to 100%. No other "substantial" minority population aside from blacks existed; hence the majority of the student population within the districts was white or black students. This information further supports the first assumption of the study.

The Supreme Court noted that in the record of the Court of Appeals for *Columbus Board of Education v. Penick* (1973), the Court of Appeals found that "[t]here is little doubt that [schools] were de jure segregated by direct acts of the Columbus defendant predecessors... [and] nothing has occurred to substantially alleviate that continuity of discrimination of thousands of black students over the intervening decades." *Columbus Board of Education v. Penick*, 443 U.S. at 466 (1973). Statements filed by the Supreme Court Justices regarding *Dayton Board of Education v. Brinkman* (1979) made similar points, but other than these instances, there were no other notes regarding de jure or de facto segregation.

Overall, the Supreme Court did not purposely make a determination regarding whether or not any school district housing two schools with racially dominant populations was legal. Based on the means the Supreme Court used to make its decisions for the two cases under study, the rulings suggested that there are certain criteria that should be examined in making the decision. There must be proof of discrimination when alleging an equal protection violation. Evidence must suggest that the dual system is a direct result of actions by school officials and that the segregation is attributed solely to their actions. In cases where a dual system was present before *Brown v. Board of Education* (1955), there must be proof that no effective effort has been made to dismantle the dual system.

In summary, both cases asserted Equal Protection allegations, establishing a need for a specific examination (strict scrutiny) by the Supreme Court. The Supreme Court did not establish any guidelines for determining whether a dual system existed, whether the dual systems were legal or illegal, or whether the legality was attributed to de jure or de facto segregation. The Supreme Court did use guidelines provided by controlling law as specified by the cases' facts. The Supreme Court determined that in both cases, dual systems did exist and that the systems were illegal. The Court's rulings related to these cases specifically and there were no specific guidelines set for making this determination.

## Conclusions

These cases did not appear to set precedence in any particular area. Both cases also did not seem to include any landmark decisions. However, much was learned from both cases about the legality of intradistrict, race-based, dual systems of education as viewed by the Supreme Court. In making its determinations about the legality of intradistrict, race-based, dual systems, between 1965 and 2000, the Supreme Court operated on a case-by-case basis. Although both cases resulted in the ruling that a dual system existed and that said system was illegal, the manner in which the Court arrived at its determinations was case specific. Because the Supreme Court chooses the cases it hears and does not revisit an issue unless necessary, it appears that the lack of guidelines may be attributed to the limited number of cases on this particular subject. There would be no reason to establish general guidelines, as the Supreme Court would be unlikely to hear a similar case again. This highlights the uniqueness of these two cases, which were decided on the same day. If one was presented any later, the Supreme Court may have remanded the latter case to the Court of Appeals and District Court. Although the

Supreme Court has many segregation cases in its records, none would presumably be the same in allegation of violation, facts and proof, or manner of violations, as the two in this study.

Based on the rulings in both cases, the first assumption of the study was supported. Segregation in the form of dual school systems has existed beyond 1965. The second assumption, based on the facts in both cases, was also supported; the dual systems resulting from racial discrimination disproportionately affected minority students, specifically black students. Further, the segregation in both cases contradicted the judicial interpretation and application of the Fourteenth Amendment's Equal Protection Clause and the Civil Rights Act of 1964. Both assumptions were upheld because the Supreme Court cannot assert a violation for petitioners.

In both cases, the respondents made allegations of violations of the Equal Protection Clause. In making its determination, the Supreme Court acted upon the allegations of this violation. With the respondents suggesting an equal protection violation, upon which the Supreme Court acted, the theory of equal protection was supported; that is, racially discriminatory school districts with segregated school systems within them are a violation of the Equal Protection Clause. The theory of equal protection was also supported by the outcomes of the cases, as the Supreme Court affirmed, in both cases, the respondents' contentions. It is unclear in the record of the Supreme Court whether the children and parents of the children interpreted the Equal Protection Clause to assert that each similarly situated individual was equal or that humans were equal. However, the cases appear to suggest that the fundamental aspect of the theory, equal protection under the law, was applied.

## Implications

Prior to the study, the legal status of de jure and de facto segregation in public, K-12 schools was unknown. The study suggests that the appearance of purposeful segregation by school officials may be interpreted as de jure actions. De facto segregation, in non-school-related areas, such as housing, affects the racial population in schools. The study indicates that school officials may be required to reconsider attendance zones based upon neighborhood policies to counteract de facto effects.

Mr. Justice Powell was concerned that judicial policy would overrule local authority encouraging "white flight." "White Flight," in turn, would also affect the racial composition of neighborhoods and schools based on neighborhood zoning, developing the high probability of the "one race school" found illegal in these two cases. Further, the intradistrict parameter of the study illustrates the Supreme Court's intent to equalize schooling, even within small geographical areas.

Interdistrict cases, instead of intradistrict, as in this study, would involve segregation affecting two or more school districts. In Rivkin's (1994) study, "Residential Segregation and School Integration," he found that "whether Blacks and Whites attend school together is an issue over which school districts often exert little control...[and] integration levels reveal as much about the economic factors and racial prejudice that determine housing patterns." Further, he states, "only students' movements across district boundaries will reduce the present level of racial isolation" (p. 291). The "white flight," noted by Mr. Justice Powell in his dissent, may be relevant across district lines, while ironically the solution to integration may rely on cross-district transfers, due to intradistrict housing patterns. The Supreme Court found in these cases, as held in *Keyes*

*v. School District No.1, Denver, Colorado* (1973), that the intention to segregate in part of the district was substantial to find the intention of segregating the entire district. Similarly, the intent to segregate one district may be interpreted as intent to segregate another district.

There were additional areas outside of the scope of the study, which may prove beneficial to the study of segregated systems. Based on the theory of Equal Protection, Feinberg (1996) speaks to the idea of "simultaneity." Simultaneity is a "policy that is intended to advance individuals' chances for fair treatment given under representation resulting from historical discrimination suffered because of shared characteristics such as sex or skin color" (Feinberg, p. 378). Similar to what courts have found in segregation cases under Equal Protection, Feinberg (1996) asserts that past vestiges should be alleviated by way of continuous educational and occupational chances geared toward blacks. He suggests that it is necessary for government to administer and guard educational opportunities specifically toward blacks, while simultaneously increasing their occupational opportunities. With this assertion, a study about governmental involvement with anti-discrimination laws, legislation and case law, may be warranted.

At least until 1979, intradistrict, race-based segregation persisted and was remanded in cases to the Supreme Court. The Supreme Court, in the two cases studied, reemphasized the relevance of the *Brown v. Board of Education* (1954) and *Brown v. Board of Education* (1955) rulings. This suggests that the judicial involvement, especially that of the Supreme Court, is binding even in more current times. Another study could evaluate the effectiveness of the Civil Rights Act of 1964, and subsequent Civil Rights legislation for minority groups, by determining whether and when federal

legislation is noted in case law. Likewise, a study to determine the frequency and relationship of that frequency of citations of seminal segregation cases would provide information about governmental effectiveness in eliminating segregation.

Additional studies also are suggested by the study. The limitation of dates from 1965 and 2000 could be expanded to 1955 and 2000. *Brown v. Board of Education* (1955) was a constantly marked date in the litigation because it placed the "affirmative duty" on school systems to disestablish dual school systems. Cases between 1955 and 1965 may also prove particularly informative because that time range would include cases after the pivotal *Brown v. Board of Education* (1955), but before federal legislative efforts to eradicate racial discrimination. Although schools are locally funded, many may receive federal funds for various programs and the Civil Rights Act of 1964 removed funds from schools that discriminated, profoundly effecting any subsequent litigation. In addition, a comparison between the number and nature of cases, which evolved between 1955 until 1965 and 1965 until 1975, may suggest the effectiveness of the Civil Rights Act of 1964 on schools' discriminatory activities.

Although the study limited the cases to race-based discrimination, other kinds of discrimination, as well as reasons a particular child attends a particular school may prove useful. For example, *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994) was not included in the study because it concerned a religious-based exclusionary district. Similarly, *Cook v. Hudson*, 429 U.S. 165 (1976) raised concerns about public school teachers who enrolled their children in private school. Expanding a study on this topic could include the rate of students' departure from public schools to private schools between 1955 and 1965, or 1965 and 2000. In a

similar vein, the same charter schools may prove to be a solution for parents as private schools. O'Brien (1997) contends that the "reform raises important civil rights questions regarding whether school choice must legally include racially proportional representations...[and] whether school choice may include voluntary, curriculum and geographically inspired segregation" (p. 1084).

The study does indicate that from 1965 to 2000, there were only two cases on intradistrict, race-based, dual systems. These cases were not used to establish guidelines for Supreme Court cases, which would have followed, because there were no other cases. Further, the importance of these two cases for education or public places in general, like *Plessy v. Ferguson* (1896), *Sweatt v. Painter* (1950), *Brown v. Board of Education* (1954), was not examined. However, the binding nature of the Supreme Court's discussions may make them important in relation to other public contexts affected by discrimination.

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U. S. CONST. art. III, § 1.

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# APPENDICES

# APPENDIX A: ABBREVIATED COPY OF THE UNITED STATES CODE ANNOTATED
# TITLE 42. THE PUBLIC HEALTH AND WELFARE
# CHAPTER 21--CIVIL RIGHTS
# SUBCHAPTER V--FEDERALLY ASSISTED PROGRAMS

*§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin*

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

*§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action*

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective

unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected 1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or 2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

*§ 2000d-2. Judicial review; administrative procedure provisions*

Any department or agency action taken pursuant to section 2000d-1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue

financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d-1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

*§ 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment*

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

*§ 2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty*

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

*§ 2000d-4a. "Program or activity" and "program" defined*

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of 1) a department, agency, special purpose district,

or other instrumentality of a State or of a local government or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government; 2) a college, university, or other post secondary institution, or a public system of higher education a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system; 3) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-- if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation or the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or 4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

*§ 2000d-5. Prohibited deferral of action on applications by local educational agencies seeking federal Funds for alleged noncompliance with Civil Rights Act*

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.], by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) [20 U.S.C.A. § 236 et seq.], or by the Cooperative Research Act [20 U.S.C.A. § 331 et seq.],

on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: Provided, that, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

*§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies*

Declaration of uniform policy is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C.A. § 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation. Nature of uniformity refers to one policy applied uniformly to de jure

segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found. Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally-assisted programs and activities as required by Title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.]. It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

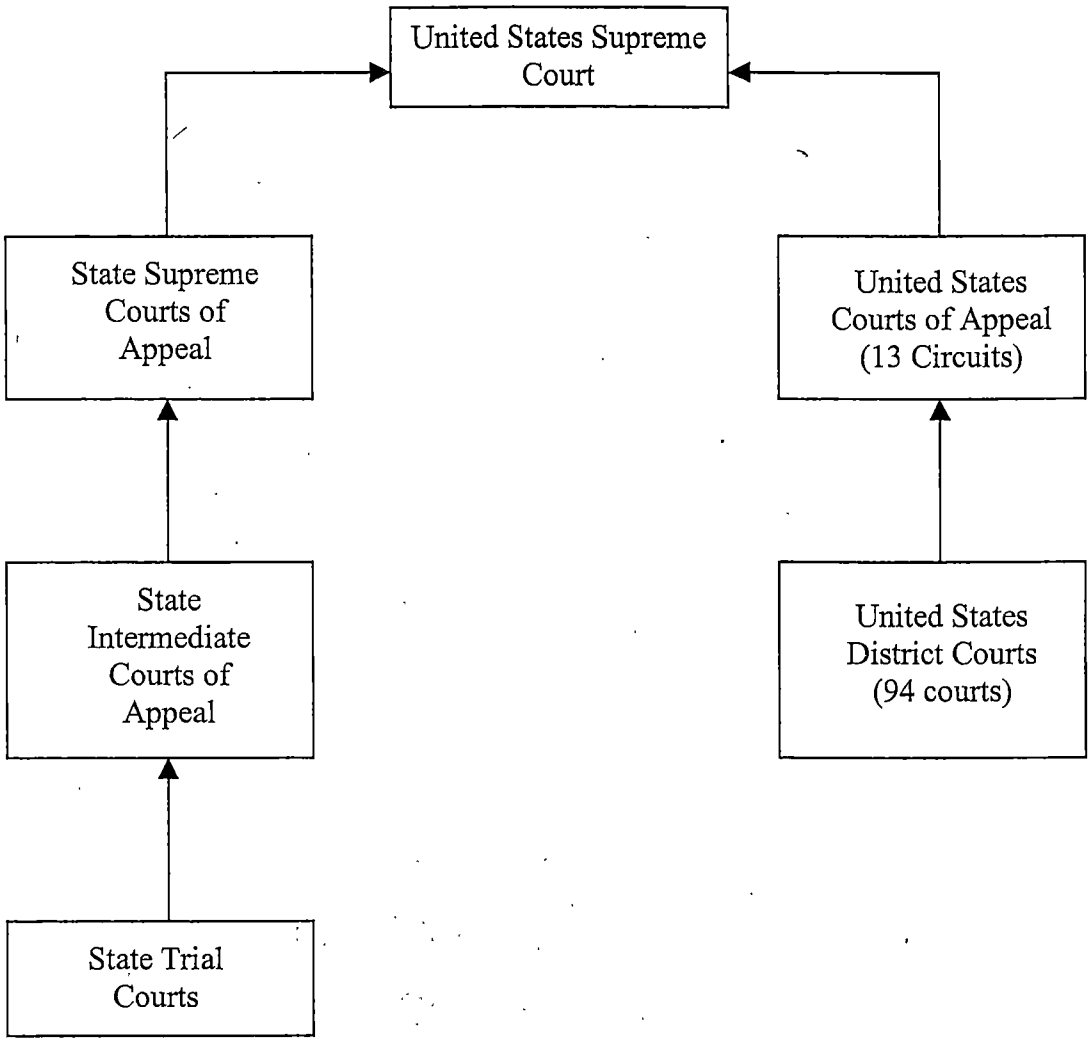
*§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies*

Declaration of uniform policy is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C.A. § 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation. Nature of uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

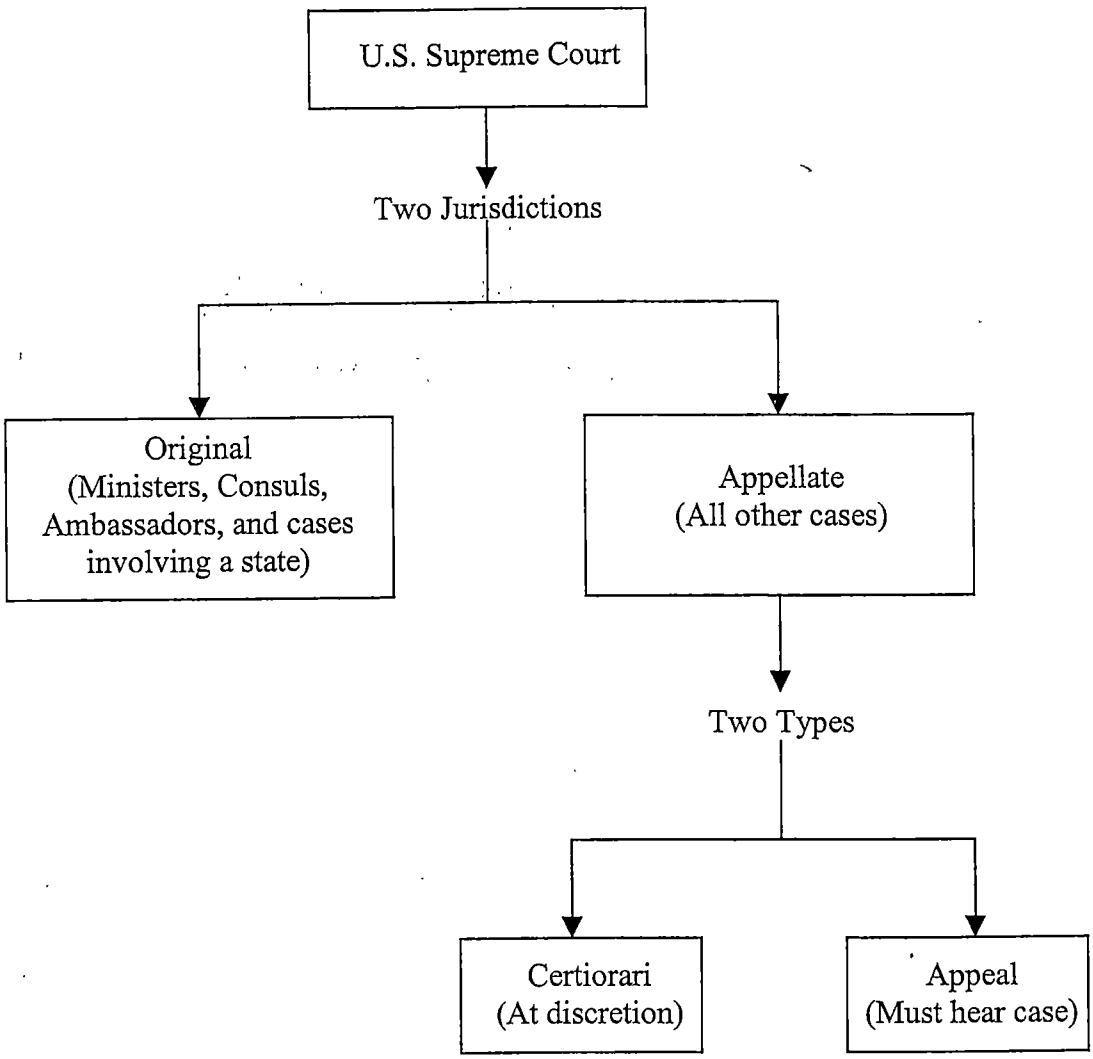
Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally-assisted programs and activities as required by Title VI of the

Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.]. It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

# APPENDIX B: APPEALS PROCESS FOR THE U.S. SUPREME COURT



# APPENDIX C: SUMPREME COURT JURISDICTION



# APPENDIX D: LIST "TERMS IN THE QUERY" AND "RELATED TERMS"

| Terms in the query | Related Terms Group 1 | Related Terms Group 2 | Related Terms Group 3 | Related Terms Group 4 | Related Terms Group 5 |
|---|---|---|---|---|---|
| Race | Ancestry<br>Ethnic<br>Kin<br>Lineage | Campaign | Accelerate<br>Hurry<br>Rush | Haste<br>Preci-pitousness<br>Speed<br>Zeal | N/A |
| Racism | "Racial Prejudice"<br>Bias<br>Bigotry<br>Discrimination<br>Inequality<br>Injustice<br>Prejudice<br>Segregation<br>Bigotry<br>Sexism | N/A | N/A | N/A | N/A |
| Racist | Bigot<br>Chauvinist<br>Discriminator<br>Sexist<br>Zealot | N/A | N/A | N/A | N/A |
| Racket | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched |
| Racketeer | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched |
| Racketeering | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched |
| Racy | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched |

| | | | | | |
|---|---|---|---|---|---|
| Secondary | "Not Direct"<br>Collateral<br>Derivative<br>Indirect<br>Remote | Extra<br>Fringe<br>Supplement<br>al | Inferior<br>Junior<br>Lessor<br>Subordinate | Minority | N/A |
| Public | Civic<br>Municipal | Civic<br>Civil<br>Governmental<br>Partisan<br>Political | "General Public"<br>Citizenry<br>Community<br>Society | Open<br>Unrestricted | N/A |
| Education | Background<br>Experience | Training<br>Upbringing | Academic<br>Learning<br>Training | Instruction | Learning<br>Literacy |
| University | "Higher Education"<br>College<br>School | N/A | N/A | N/A | N/A |
| Higher | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched | Related Terms Not Searched |

# APPENDIX E: CHANGES TO THE QUERY

Original Search

rac! & dual-systems & elementary or secondary & public & education & intradistrict and not university or higher education from January 1, 1965 until December 31, 2000

Step 1

rac! & dual-systems & elementary or secondary & public & education & intradistrict % university % higher education from January 1, 1965 until December 31, 2000

Step 2

rac! & dual-systems & elementary secondary & public & education & intradistrict % university % higher education from January 1, 1965 until December 31, 2000

Step 3

rac! & "dual system!" & elementary secondary & public & education & intradistrict % university % higher education from January 1, 1965 until December 31, 2000

Step 4

rac! & "dual system!" & elementary secondary & public & education & intradistrict % university % "higher education" from January 1, 1965 until December 31, 2000

Step 5

rac! & "dual system!" & elementary secondary & public & education & intradistrict % "higher education" % college from January 1, 1965 until December 31, 2000

Step 6

rac! & "dual system!" segregat! & elementary secondary & public & education & intradistrict % "higher education" % college from January 1, 1965 until December 31, 2000

Step 7

rac! & "dual system!" segregat! & "school system" "school district" elementary secondary & public & education & intradistrict % "higher education" % college from January 1, 1965 until December 31, 2000

Step 8

"dual system!" segregat! /p "school system" "school district" elementary secondary & public & education & intradistrict & rac! % "higher education" % college from January 1, 1965 until December 31, 2000

Step 9

"dual system!" segregat! /p "school system" "school district" elementary secondary & public & intradistrict & rac! % "higher education" % college from January 1, 1965 until December 31, 2000

Step 10

"dual system!" segregat! /p "school system" "school district" secondary & public & intradistrict & rac! % "higher education" % college from January 1, 1965 until December 31, 2000

Step 11

"dual system!" segregat! /p "school system" "school district" & public & intradistrict & rac! % "higher education" % college from January 1, 1965 until December 31, 2000

Step 12

"dual system!" segregat! /p "school system" "school district" & public & rac! % "higher education" % college from January 1, 1965 until December 31, 2000

Step 13: Final Query

DA (AFT 01/01/1965 & BEF 12/31/2000) & "dual system!" segregat! /p "school district" "school system" & public & rac! % "higher education" % college

# APPENDIX F: LIST OF CASES FROM QUERY SEARCH

1. *Rogers v. Paul*, 382 U.S. 198 (1965)
2. *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968)
3. *Raney v. Board of Education of Gould School District*, 391 U.S. 430 (1968)
4. *Monroe v. Board of Com'rs of City of Jackson, Tennessee*, 391 U.S. 450 (1968)
5. *U.S. v. Montgomery County Board of Education*, 395 U.S. 225 (1969)
6. *Gaston County, N.C. v. U.S.*, 395 U.S. 285 (1969)
7. *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969)
8. *Alexander v. Holmes County Board of Education*, 396 U.S. 1218 (1969)
9. *Northcross v. Board of Education of Memphis, Tennessee, City Schools*, 397 U.S. 232 (1970)
10. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)
11. *North Carolina State Board of Education v. Swann*, 402 U.S. 43 (1971)
12. *Guey Heung Lee v. Johnson*, 404 U.S. 1215 (1971)
13. *Dandridge v. Jefferson Parish School Board*, 404 U.S. 1219 (1971)
14. *Winston-Salem/Forsyth County Board of Education v. Scott*, 404 U.S. 1221 (1971)
15. *Gomperts v. Chase*, 404 U.S. 1237 (1971)
16. *Wright v. Council of City of Emporia*, 407 U.S. 451 (1972)
17. *U.S. v. Scotland Neck City Board of Education*, 407 U.S. 484 (1972)
18. *Drummond v. Acree*, 409 U.S. 1228 (1972)
19. *National Association for the Advancement of Colored People v. New York*, 413 U.S. 345 (1973)
20. *Norwood v. Harrison*, 413 U.S. 455 (1973)

21. *Edelman v. Jordan*, 415 U.S. 651 (1974)

22. *Bradley v. School Board of City of Richmond,* 416 U.S. 696 (1974)

23. *Gilmore v. City of Montgomery, AL*, 417 U.S. 556 (1974)

24. *Milliken v. Bradley*, 418 U.S. 717 (1974)

25. *Rizzo v. Goode*, 423 U.S. 362 (1976)

26. *Buchanan v. Evans,* 423 U.S. 963 (1975)

27. *Hills v. Gautreaux*, 425 U.S. 284 (1976)

28. *Washington v. Davis*, 426 U.S. 229 (1976)

29. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976)

30. *Cook v. Hudson*, 429 U.S. 165 (1976)

31. *Austin Independent School District v. U.S.*, 429 U.S. 990 (1976)

32. *Milliken v. Bradley*, 433 U.S. 267 (1977)

33. *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977)

34. *School District of Omaha v. United States*, 433 U.S. 667 (1977)

35. *Brennan v. Armstrong*, 433 U.S. 672 (1977)

36. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978)

37. *Columbus Board of Education v. Penick*, 439 U.S. 1348 (1978)

38. *United Steelworkers of America, AFL-CIO-CLC v. Weber*, 443 U.S. 193 (1979)

39. *Columbus Board of Education v. Penick,* 443 U.S. 449 (1979)

40. *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979)

41. *Estes v. Metropolitan Branches of Dallas NAACP*, 444 U.S. 437 (1980)

42. *City of Mobile, Alabama v. Bolden*, 446 U.S. 55 (1980)

43. *Delaware State Board of Education v. Evans*, 446 U.S. 923 (1980)

44. *Board of Education of City of Los Angeles v. Superior Court of California, Los Angeles County*, 448 U.S. 1343 (1980)

45. *South Park Independent School District v. U.S.*, 453 U.S. 1301 (1981)

46. *Washington v. Seattle School District No. 1,* 458 U.S. 457 (1982)

47. *Crawford v. Board of Education of City of Los Angeles*, 458 U.S. 527 (1982)

48. *Pulliam v. Allen*, 46 U.S. 522 (1984)

49. *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984)

50. *Bazemore v. Friday*, 478 U.S. 385 (1986)

51. *Local 28 of Sheet Metal Workers' International Association v. E.E.O.C.*, 478 U.S. 421 (1986)

52. *U.S. v. Paradise*, 480 U.S. 149 (1987)

53. *City of Richmond v. J.A. Croson Co.,* 488 U.S. 469 (1989)

54. *Missouri v. Jenkins*, 495 U.S. 33 (1990)

55. *Spallone v. U.S.*, 493 U.S. 265 (1990)

56. *Board of Education of Oklahoma City Public Schools, Independent School District No. 89, Oklahoma County, Oklahoma v. Dowell*, 498 U.S. 237 (1991)

57. *Freeman v. Pitts*, 503 U.S. 467 (1992)

58. *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994)

# APPENDIX G: LIST OF CASES NOT RELATED TO PUBLIC SCHOOLS AND THEREFORE EXCLUDED

1. *Gaston County, North Carolina v. United States*, 395 U.S. 285 (1969)
2. *National Association for Advancement of Colored People v. New York*, 413 U.S. 345 (1973)
3. *Edelman v. Jordan*, 415 U.S. 651 (1974)
4. *Gilmore v. City of Montgomery, Alabama*, 417 U.S. 556 (1974)
5. *Washington v. Davis*, 426 U.S. 229 (1976)
6. *Hills v. Gautreaux*, 425 U.S. 284 (1976)
7. *Rizzo v. Goode*, 423 U.S. 362 (1976)
8. *Monell v. Department of Social Services of City Of New York*, 436 U.S. 658 (1978)
9. *United Steelworkers of America, AFL-CIO-CLC v. Weber*, 443 U.S. 193 (1979)
10. *City of Mobile, Alabama v. Bolden*, 446 U.S. 55 (1980)
11. *Pulliam v. Allen*, 466 U.S. 522 (1984)
12. *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984)
13. *Bazemore v. Friday*, 478 U.S. 385 (1986)
14. *Local 28 of Sheet Metal Workers' International Association v. E.E.O.C.*, 478 U.S. 421 (1986)
15. *U.S. v. Paradise*, 480 U.S. 149 (1987)
16. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)
17. *Spallone v. U.S.*, 493 U.S. 265 (1990)

## APPENDIX H: *DAYTON BOARD OF EDUCATION V. BRINKMAN* (1979)

### PRECEDING CASE LIST

1. *Brinkman v. Gilligan*, 503 F.2d 684 (1974)
2. *Brinkman v. Gilligan*, 518 F.2d 853 (1975)
3. *Dayton Board of Education v. Brinkman*, 423 U.S. 1000 (1975)
4. *Brinkman v. Gilligan*, 539 F.2d 1084 (1976)
5. *Dayton Board of Education v. Brinkman*, 429 U.S. 1060 (1977)
6. *Board of Education v. Brinkman*, 433 U.S. 406 (1977)
7. *Brinkman v. Gilligan*, 561 F.2d 652 (1977)
8. *Brinkman v. Gilligan*, 446 F.Supp. 1232 (1977)
9. *Brinkman v. Gilligan*, 583 F.2d 243 (1978)
10. *Board of Education v. Brinkman*, 439 U.S. 1066 (1979)
11. *Board of Education v. Brinkman*, 443 U.S. 526 (1979)
12. *Board of Education v. Brinkman*, 444 U.S. 887 (1979)

## APPENDIX I: *COLUMBUS BOARD OF EDUCATION V. PENICK* (1979) PRECEDING CASE LIST

1. *Penick v. Columbus Board of Education*, 429 F.Supp. 229 (1977)
2. *Columbus Board of Education v. Penick*, 439 U.S. 1348 (1978)
3. *Penick v. Columbus Board of Education*, 583 F.2d 787 (1978)
4. *Columbus Board of Education v. Penick*, 439 U.S. 1066 (1979)
5. *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979)
6. *Columbus Board of Education v. Penick*, 443 U.S. 916 (1979)
7. *Columbus Board of Education v. Penick*, 444 U.S. 887 (1979)
8. *Penick v. Columbus Board of Education*, 519 F.Supp. 925 (1981)
9. *Penick v. Columbus Board of Education*, 663 F.2d 24 (1981)
10. *Ohio State Board of Education v. Reed*, 455 U.S. 1018 (1982)

# APPENDIX J: DESCRIPTION OF CONSTITUTIONAL VIOLATIONS

1. Optional attendance zones: Zones which overlap in attendance areas creating a choice for students to attend more than one school in that area. These zones permitted white students from attending schools with predominantly black populations.

2. Faculty and staff assignments: Faculty and staff were purposely assigned to schools based on their race. White teachers were sent to predominantly white schools and black teachers were sent to predominantly black schools.

3. School closing and site selection: Most of the schools opened since the 1950's were opened with racially dominant populations or as "one race schools." The schools were opened with knowledge of their potential effect of maintaining dual systems.

4. Grade structure and reorganization: Middle schools created and the schools which would promote students into the middles schools assisted with maintaining the dual system in place.

5. Pupil transfers and transportation: At times, the school system in some areas were overcrowded, but no relief was offered by the system to transport students to less crowded schools due to racial considerations.

# VITA

LaRonda Conley-Townsend was born in Huntsville, Alabama and attended primary and secondary schools in the Huntsville Public School System, graduating from Lee High School in May 1992. For undergraduate studies, she attended Auburn University, Auburn, Alabama, receiving the Bachelor's of Science in Elementary Education in March of 1996. She received the Master's of Education in Elementary Education from Alabama Agriculture & Mechanical University, Normal, Alabama in July 1997. The Doctor of Philosophy in Education was received in December of 2001 from the University of Tennessee, Knoxville, Tennessee.

LaRonda Conley-Townsend counseled, tutored, and taught middle and high school students in Huntsville, Alabama. She has also taught fourth grade in the Lee County School System and worked as a primary and elementary associate teacher for the Houston Independent School District. During her doctoral studies, she worked as an intern supervisor for graduate students, pursuing teacher certification in secondary education. She was most recently employed by Auburn University's Athletic Department, in the Student-Athlete Support Services division. She would like to work with current or former professional athletes, who wish to complete undergraduate and graduate degree requirements, as well as gain experience with corporate philanthropy and nonprofit organizations.