[ms-0234.002.003.001]

[Anna]

TF Members: Please be prepared to discuss this at the meeting on September 22, 1980.

FILED
Robert D. Zumwalt, Clerk
SEP 8 1980
BY L. SLAUGH, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

KARI CARLIN, et al., Plaintiffs, v. BOARD OF EDUCATION OF THE SAN DIEGO UNIFIED SCHOOL DISTRICT, Defendant.	CASE NO. 303800 MEMORANDUM OF INTENDED DECISION

I

At this annual review the Court finds the School District's programs together with natural demographic distribution[1/] have "held the line" so that segregation has not increased

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1/ Plaintiffs' counsel points out "that although the minority population in the District increased by 1,868 students between 1978-79 and 1979-80, the minority resident population in the 23 segregated school neighborhoods increased by only 80 students. In other words, 1,788 of the new minority students in the District took up residence in neighborhoods outside of the 23 segregated schools." 1,419 of these students are Asian and Alaskan/Indian students, 687 are Hispanic. There was a loss of 238 Black students.

during the past year, but no particular progress toward further desegregation has been made.[2/] The prevention of further deterioration in the situation is significant since there has been an exodus of white families from the district and overall percentages have dropped from 61.8% white in 1979 to 58.9% white in 1980. It is encouraging that the Integration Task Force found ". . . that in most schools students are more aware of cultural distinctions, cultural contributions and the racial/ethnic make up of our community."

The Voluntary Ethnic Enrollment Program (VEEP) continues to be the only significant desegregation device for secondary students. Magnet schools have proved effective in desegregating elementary students. During the past year, two additional minority isolated elementary schools have lowered minority percentages below 80%, bringing the total number of such schools to four. Fulton, an athletic magnet, has moved from 1.2% white to 21.1% white and Johnson, an academic magnet, has moved from

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2/ Distribution of Minority Students

% Minority in School	1976-77	1979-80
80-100% (Isolated)	30%	26%
60-79% (Tipping)	17%	18%
0-59% (Desegregated and "White")	53%	56%
	100%	100%

Information obtained from annual Pupil Ethnic Census.

0.8% white to 26.1% white. Valencia Park and Webster continued to enroll over 20% white. On the other hand, ten of the minority isolated schools had slight increases in the percentage of minorities, and tipping schools (those with fewer than 50% white) show a large loss of white students.

In 1978, there were 15 elementary schools and one junior high school with more than 50% minority enrollment. In 1979 there were 18 elementary schools and two junior high schools in this category. Moreover minority percentages increased in all but one of the original 16 tipping schools, and one school, Paradise Hills, has slipped to 21.9% white. Comparison charts of all minority isolated schools and all tipping schools have been attached as Appendixes A and B respectively.

The Court adheres to its view that mandatory assignments will further speed up white departure and have the ultimate effect of creating city-wide segregation. The withdrawal of white children from the system during the last three years is greater than that forecast by Dr. David J. Armor in 1976. According to his testimony, the District would probably become an imbalanced district in 1990. Present projections indicate this point could be reached as early as 1983.[3/] Our High Court has warned that the cry "white flight" cannot become a refuge for those who resist desegregation, but there can be no doubt that "the California Supreme Court has expressly authorized the

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3/ See Exhibit 4N's. Armor projected that white enrollment would be in the range of 68,000-75,000 by 1979. The actual figure is 66,000 and the loss curve, when superimposed on the projection (Exhibit 4N's), shows a sharp downtrend between 1978 and 1979.

consideration of resegregation patterns in designing decrees for school litigation under the State Constitution."[4/] The mandate of Crawford allows sufficient flexibility to trial judges to formulate remedies based upon an intelligent evaluation of all data to the end that the ultimate goal of integration shall be achieved. (Appendix C.)

In an effort to achieve meaningful progress toward desegregation and alleviate the harms of isolation without devastating side effects the Court will once more order the District to proceed as the District itself had originally planned; namely, with the expansion of the elementary exchange program for both isolated and tipping schools. The Court will also order the District to implement an educational program which must result in

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4/ Estes v. Metropolitan Branches of Dallas NAACP, et al., 444 U.S. 437, 62 L.Ed.2d. 626, 100 Sup.Ct. 716 (Powell, Stewart and Rehnquist dissenting from dismissal of cert.) The wisdom of the California court's de facto rule or "no fault desegregation" is clearly etched against the background of the federal cases that apply the de jure rule. Once a federal court has determined that intentional desegregation has occurred, the Court is compelled to decree a remedy that will "let the punishment fit the crime". Federal cases require a remedy to restore plaintiffs to substantially the position they would have occupied had there been no violation. This is an absurd criterion since no one can possibly know where plaintiffs would have lived had there been no violation. However, the Federal Courts assume that without intentional segregation all races would have been nearly equally mixed throughout the community. Thus the only remedy available in the Federal Court is busing at any cost unless, of course, the community is already overwhelmingly minority, in which case it is suitable to improve the children's education. In California a variety of remedies can be fashioned to alleviate the harms of segregation, provide quality schools and equal educational opportunities before the community has become a minority community. (See Appendix C, a collection of the Crawford court's directives to trial judges in fashioning desegragation decrees.)

substantial improvement in the achievement of minority children.[5/]

The credibility of the District with this Court has deteriorated because of lack of candor. Statistical analyses in District evaluations are changed from report to report in order to exaggerate claimed successes and minimize failures. "Changes each year in the format of the data furnished by the school district have made comparisons between years difficult, and sometimes impossible. . . ."[6/] As a result, the Court has had to seek additional information and undertake the tedium of matching raw data in order to get a fair comparison of last year with this year.

Moreover, this year's report and evaluation makes no mention of the Race/Human Relations Program or how it has been monitored; there is nothing said about the promise to expand the elementary exchange program or the future of that program. The District advertisement "Better Education by Choice" is misleading. The choice is only available to those who are in the right place with the right color skin at the right time. The Court has informally urged the District to take the Court's orders as minimum requirements; the Court has stated the

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5/ If it is not reasonable and feasible to physically desegregate the entire community, then one of the means available to alleviate the harms associated with racial isolation is the implementation of programs that will produce improved educational outcomes for minority children. Crawford v. Board of Education (1976) 17 Cal.3d 280, 309; Milliken v. Bradley (1976) 433 U.S. 267, 275-279, 53 L.Ed.2d 745; Evans v. Buchanan (1978 C.A.3 en banc), 582 F.2d 750, 767-774).

6/ Brief of plaintiffs filed August 18, 1980, page 6.

District could show its good faith by enlarging on Court directives, e.g., the number of elementary exchanges, but the District has never gone beyond the Court order. And now, as will be presently explained, the Court believes it has been misled concerning the nature and content of the proposed Achievement Goal Program.

The District, as a representative of the people, is not in the same position as a private litigant who may be forgiven for twisting facts to win a case. We seek a just solution for the children, their parents and all citizens, not for the members of the Board, the educational establishment or partisan groups who presume to represent minority or majority interests.

The District would be well advised to follow the suggestion of its former Schools Attorney, Thomas A. Shannon, now Executive Director, National School Boards Association who wrote in a recent issue of the Journal of Law & Education:

> "A corollary to credibility is openness and candor in school governance matters. There really is nothing to hide in public school district operations. Acting as if there is does nothing except promote the festering of suspicion and distrust which propels employee groups to erroneous judgments that lead invariably to heightened tensions . . . ¶Answering questions truthfully is not enough. School Boards must extend themselves to ensure that all the facts relevant to the district's financial plight . . . are made conveniently available to employees in a reasonably understandable form."7/

Mr. Shannon was speaking of credibility and candor when dealing

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7/ "How to Cope with Collective Bargaining in Times of Fiscal Crisis", 9 Jour. of Law & Education 243, 245-246.

with teachers in the adversary setting of collective bargaining. How much more important it is to be candid with the public, the children, and the Court, the forum charged with the duty of deciding what course of action will best protect the rights of all citizens.

If the Court shall finally conclude that the Distirct will not boldly and vigorously pursue those desegregation techniques now available, e.g.: the voluntary pairing of schools, the replication of successful magnet programs, the effective implementation of proved educational programs that raise student achievement and others, then despite the risk of resegregation, radical surgery in the form of mandatory assignments must be undertaken. When constitutional rights have been transgressed, a remedy must be prescribed; preferably, an effective one with no side-effects, but in any event, some remedy.

II

EVALUATION OF CURRENT PROGRAMS

A.

VEEP

As stated above, VEEP continues to be the primary tool for desegregating secondary students. The program is criticized as "one way busing". In a sense, this is correct since it is used almost exclusively by the minority community. In another sense the epithet is misleading because no one is forced to participate in the program. If this Court's judgment concerning white flight is correct, two way busing would make San Diego a minority district like Los Angeles, Inglewood,

Pasadena, San Franciso and all other major cities throughout the nation.

The VEEP program has also been criticized because it causes a "brain drain" from minority schools -- depriving them of worthwhile role models. The criticism is well taken. Additionally, the persistent phenomenon of fewer senior high participants than junior high enrollees suggests that many of the youngsters or their parents have become disappointed in the program in the junior high school.

The program is far from a complete success. Nevertheless, the Court finds the operation of the VEEP program entails more plusses than minuses and encourages its use until something better comes along. This decision like most decisions in this case has been, in the words of Crawford, "an exceedingly difficult, sensitive and taxing . . . [one], requiring the balancing and reconciliation of many competing values." (P. 310)

The Court congratulates the District on the system-wide inauguration of the "buddy" system and encourages more emphasis on promoting a loving receptive attitude from resident teachers, staff and students toward the VEEP students. It is in the implementation of VEEP that the Race/Human Relations plan is of the most importance and the Court will require close monitoring of the program and effective enforcement by all personnel.

B.

RACE/HUMAN RELATIONS PROGRAM

The Court could not find this program mentioned in the District's evaluation. Early in the school year, the District forwarded to the Court a "check-list" concerning the plan to

monitor the program. This directive provides that everyone (hence no one) is responsible to see that effective implementation is taking place throughout the District. The Task Force engaged the services of Dr. Guthrie to evaluate the program and his report was due July 28. It still has not been received. Therefore the Court is unable to evaluate the program at this time. The District is ordered to explain in detail how programs in the several schools are monitored, what is actually being done and how successes in some schools are communicated to and implemented in other schools.

C.

MAGNET SCHOOLS

Enrollment statistics in magnet schools support the conclusion that magnets have been primarily useful in desegregating elementary pupils. 4,191 white children and 4,763 minority children participated in elementary magnets last year. 689 white students and 462 minority students participated in secondary magnets.

Plaintiffs have charged that the claimed success of elementary magnets located in white neighborhoods is unwarranted because many of the enrolled minority students have merely transferred from other desegregated schools. After studying enrollment records, the Court finds that 75% of minority students in elementary magnets located in white residential communities come from minority isolated or tipping schools (see Appendix D). It would of course be preferable to have 100% come from isolated and tipping schools, but only those who apply can be enrolled.

There are, however, some enrollment practices that need explanation. The District is ordered to submit an explanation of practices which involve the enrollment of white children from tipping and isolated schools. There are 44 white children enrolled from such schools. (See Appendix D.)

Most magnets in majority neighborhoods succeeded in attracting minority youngsters. In minority neighborhoods, however, white children are primarily attracted by programs that emphasize effective teaching in basic skills (reading, language and mathematics). The one exception is Fulton where the magnet program is athletics. (See Appendix A.) Those minority isolated magnet schools that do not succeed in attracting a substantial number of white students should either be switched to another magnet that shows promise of success or the schools should be included in the expanded elementary exchange program to be discussed hereafter

D.

ELEMENTARY EXCHANGE PROGRAMS AND LEARNING CENTERS

There has been justifiable complaint that the Learning Centers produce a lot of movement but very little education. These large groups that meet only one day a week were intended as "ice breakers" to build mutual trust, break down racial barriers and dispel myths and false stereotypes produced by isolation. The Learning Centers fulfilled this function.

The Integration Task Force, in its June 1980 report, recommended that the Learning Centers be expanded into more comprehensive exchange programs patterned after the existing ones. The Task Force found that the 9 week Elementary Exchange programs

produced meaningful integration and that few parents exercised their option to remove children from the program. In 1978 the District represented that it would indeed phase out the Learning Centers and phase in paired and clustered schools. In 1979 the Court reminded the District of this promise, but to the Court's knowledge, nothing further has been planned, said or done. In its 1979 order, the Court stated:

> ". . . the long term plan will be to increase these [elementary] exchanges and phase out the Learning Centers. By long term, the Court envisages that all exchanges will replace Learning Centers by the 1983-84 academic year."

The Court now orders the District to present a plan by November 1, 1980 to accomplish this directive. The plan must pair or exchange each elementary school with 70 percent or more minority students, (where the school will not become or remain a total school magnet) with elementary schools that are 70% or more majority (and the school is not a total school magnet). The program will be completely implemented by the 1984-1985 school year and the Learning Centers will be concurrently phased out.[8/]

E.

SECONDARY EXCHANGE PROGRAM

The Integration Task Force reported that the Secondary Exchange program is too small and the participants do not spend enough time together. The District states it will provide

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8/ Because nothing has been done to further this plan to date, the original target year, 1983-84, appears unrealistic.

greater opportunites for non-classroom activities (field trips) but the two hour class periods cannot be extended. Last year, the program involved only 550 students of whom 203 were minority isolated. The exchanges were for various durations, ranging from less than a semester to a year.

This program, like the magnet schools, has made no significant inroad on minority isolation in secondary schools. The District must come up with a better plan; perhaps programs patterned after the elementary exchanges. In the meantime, secondary academic programs must be revised. Among other things, the District shall cooperate with the Basic Study Skills Center at San Diego State University to develop a writing program for secondary students. The District is ordered to submit on or before December 15, 1980 a joint report with Dr. Don Basile on the progress in developing the writing program and the District will submit other suggestions concerning the manner in which secondary education can be improved and the effects of isolation in such schools can be alleviated.

F.

PROJECT LINCOLN

Information submitted to the Court suggests that this project has had some positive and beneficial effect at Lincoln High School, but much more remains to be done. A group of Lincoln teachers claim that the school needs more "stable, seasoned, strong, academically competent teachers." Complaints have been made that at least 50% of all students in an English class are pulled out and put in Title I laboratories; it is claimed that 40% of the faculty have been there two years or

less. The Court will meet with the above said group of teachers, in the presence of counsel to discuss Lincoln's problems so that a suitable order may be drawn concerning this school.

G.

SECURITY AND ATTENDANCE

Information received by the Court indicates that during the 1979-80 school year there has been greater enforcement of the Discipline Code with good results. The District is ordered to continue strict enforcement of this code and to follow through on its representations to improve student attendance through various means including the immediate contact of parents whose children are absent without excuse.

H.

LANGUAGE PROGRAM

The District's report on the language program is confusing. The Court is unable to discern whether a cohesive program or plan to teach the children standard English exists. The Court has received a syllabus for such a program from the Dallas Schools which the Court will make available for review by Counsel and the District. The District is ordered to provide clear information on the content and implementation of this program.

III

EVALUATION OF PROPOSED EDUCATION PROGRAM

Before the beginning of the 1979-80 school year, the Court appointed a team of three outstanding educators to examine, evaluate and report on the quality of education in San Diego's

isolated schools and to submit pertinent recommendations. "The Achievement Goals Program" that will be instituted in the coming school year was the District's response to criticisms and suggestions made by this team. They exposed the "undisputed fact that the academic skills . . . are grossly deficient in the minority schools in comparison with the total San Diego District . . . ."[9/] They pointed out that ". . . if leaders are satisfied, or blame the victim for poor achievement, then a vigorous approach to the task of improving teaching and learning will be lacking." These educators recommended central control of materials, methods of instruction, supervision and in-service training of staff. ". . . Principals and supporting leadership staff should be continuously evaluated in terms of their students' achievements." Two instructional programs they found to be "exemplary" in respect of supervision and in-service staff training were Distar and the Bilingual Demonstration Program at certain schools.

A.

PROPOSED GOALS

The goals proposed by the District for its Achievement Goals Program are nine percentile points on the Comprehensive

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9/ In 1978 ". . . the San Diego District had a 59th percentile median achievement at the 6th grade level on the Comprehensive Test of Basic Skills, a national testing program, while the minority schools averaged 31st percentile with a low of 24th percentile. The District was in the 58th percentile at the 8th grade level, while the three isolated junior high schools reached the 24th percentile. The District was in the 63rd percentile at the 10th grade level, while the isolated high schools reached only the 30.3rd percentile." (Consultant's report.)

Test of Basic Skills in reading and mathematics, Grades 3 and 6, for the period 1980-83. Plaintiffs and Amicus Curiae, The Urban League, argue the goals are insufficient. The Court agrees. In order to determine what goal is reasonably attainable, the Court has searched out and studied successful programs throughout the Country. On the basis of this study, the Court concludes that each of our minority isolated schools should have a median achievement rate for 70% of its students at the national norm of standardized achievement tests (50th percentile) in reading, mathematics, and language by 1983-1984.

Recent experience with schools in poor minority urban districts reveals that if the schools are properly run, virtually all students, no matter how disadvantaged, can be taught to read, write and calculate at a level sufficient to function in American Society.

East St. Louis, Illinois began a Follow-Through Program in 1968 using Distar. By remaining with the program they have produced outstanding results. The pupils of this district, which is over 90% black, test on pre-school examinations below 88% of the nation's students but by the end of the third grade, they test above 50% of the nation's students in both reading and mathematics. In South East San Diego, a far more economically advantaged community, the average third grader is 19.48 percent to 13.57 percent behind the District's average.

In the early 1970's San Diego used Distar on an experimental basis at Emerson Elementary School. As in most places where it has been used, it was remarkably successful. In April 1974 the Emerson principal, August Castille, hosted a

symposium of educators to demonstrate this success. Mr. Castille told the story of his experience with Distar, including his early rejection of the system, "My first impression was that it was chaos and was certain to be discontinued within a short period of time." Nevertheless, he stuck with the program and was eventually won over because of the results it produced. Kindergartners who had been in the Distar program were given first grade entry level tests. They had a composite score "above the District Median and at the 75 percentile," he reported. "The other 'mean' scores were as follows: Immediate recall near 30 percentile (low) Letter Recognition 75 percentile (well above District) Auditory Discrimination 85 percentile (35% units above District) Visual Discrimination 55 percentile (above District) Language Development 75 percentile (well above District). I feel quite confident," he continued, "that much of the progress and the successes that our first graders are experiencing, at the present, is related to the fine instruction that they've received through the Distar program."[10/] The Court has not yet been advised why Distar was discontinued in San Diego and was not used again until 1978. But the Court is pleased that Distar is once more being used in San Diego with the same

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10/ S R A Reports, May 1976.

outstanding results.[11/] This effective program must not again be discarded before another equally effective or better one is found.

Another school district that stayed with Distar was Mount Vernon, New York. Generally, Distar is considered to be a teaching method best suited for underprivileged children. Mount Vernon, however, has used the program district-wide in all its schools with success. Mount Vernon had been the district with the lowest scores in Westchester County. Now it is the district with the highest scores. After eight years its third graders who failed state competency examinations dropped from 37% to 8%; for sixth graders the drop was from 46% to 28% in reading and from 53% to 24% in mathematics. Improvement in student outcomes from 1977 to 1978 was about 50% in the third grade and 30% in the sixth grade.

But success with underprivileged minorities is not simply the story of Distar. Some authorities, such as Rudolf Flesch, author of Why Johnny Can't Read, contend it comes down

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11/ In the past school year, the mean reading score in Distar kindergartens was at the 72nd percentile (range from 60th to 87th percentile). For mathematics, the mean total score was at the 57th percentile. In first grade, the children were tested at the 18th percentile in reading and 20th percentile in mathematics at the beginning of school and they tested at the 46th percentile (average) at the end of the year in both reading and mathematics. There were seven classes combined in this average. The individual class averages were: 79%, 61%, 56%, 55%, 48%, 37% and 29%. The monitor from the University of Oregon in her report concerning this result stated "This is well above the predicted scores for inner city low income first graders and well above comparable scores at these schools in 1977 and 1978." The results at the second grade level were not comparable. However, the success fully justifies expansion and continued use of the program.

to direct-instruction through phonics rather than "Look-And-Say". He endorses five phonics publishers, Addison-Wesley, Distar, Economy Co., J. B. Lippincott Co. and Open Court Publishing Co. The December 1979 issue of Basic Education carries an article "Beginning Reading Revisited". It states, "Open Court, Lippencott, and Distar have contributed to the outstanding achievement of students in Rochester, New York. None of these is 'fail safe' or denies the influence of classroom teachers, but their underlying philosophy and structure help insure success in reading for the majority of boys and girls whose teachers use them."

Rochester, New York introduced its new program in 1975. At that time the district's scores were among the nation's lowest in reading and mathematics. In 1980 the children did as well or better than others in the nation in most grades on standard mathematics and reading tests. In 1971, 43% of all third graders read below grade level. In 1979 only 20% failed. For several years there had been severe resistance to the use of a phonics system by the self-protective educational bureaucracy. This resistance to change was finally broken down by insistent parents, mostly black, who deserve great credit for their accomplishment. The Rochester system primarily relies on materials published by Open Court.

Here in California we we have a story of achievement written by an inspired and capable leader. In 1976 Jim Enochs, Assistant Superintendent for Curriculum and Instruction for the Modesto City Schools, embarked on a program designed to restore educational standards. He instituted a complete system

and a coordinated program including a code of conduct that specifies the punishment for particular offenses, goals for achievement and detailed methods for attaining them. Students are not promoted until they have mastered the required skills. All personnel in the chain of command (supervisors, principal and teacher) are held accountable through effective monitoring and pupils at all levels of training, Kindergarten through 12, are tested so that responsibility for success or failure can be identified.

Enochs is in charge of the entire program. The result: the number of students failing competency tests each year has fallen dramatically. 70% are at or above their expected grade levels in reading and mathematics. Is there any reason San Diego should expect less?

Other communities such as New York and Chicago report exceptional results in certain schools with outstanding principals and innovative teaching programs that are enthusiastically and properly implemented. Many of the schools discussed in this section are located in abysmal ghettos. If positive outcomes are possible there, how much easier it should be to produce noteworthy results in South East San Diego -- a community of homes and open space where the physical, social and psychological environment is relatively uplifting in comparison. The Court will accept no less than that which has been achieved elsewhere. We have the possibility to produce the best in the nation. Should not that be our goal?

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B.

CAPABILITIES OF THE PROPOSED PROGRAM

The District's Proposed Achievement Goals Program was approved by the Court on May 22, 1980 to enable the District to proceed immediately and prepare for the coming year. The Court had been presented with a four page statement of the program and a brief oral report with no details. It was represented as an instructional program in reading and mathematics based on the principles of Mastery Learning developed at the University of Chicago and used successfully in the Chicago schools. The Court was therefore under the impression that the successful Chicago program was to be replicated here. The Court was informed that the District had sought and was receiving advice and counsel from those in charge of the Chicago program and therefore assumed that the elements of that program, namely, the materials used, uniformity of methods of instruction, supervision, continuous in-service staff training and continuous evaluation of principals and teachers would necessarily be the heart of this program. Such a program, together with the plan to continue and expand Distar would have reasonable promise for successful student outcomes. It would be a good start and a square response to the evaluation by the Court's team of consultants.

Then the Court received a letter from Michael Katims, Coordinator, Mastery Learning Program Development in the Chicago Public School System. Mr. Katims stated that he wished to correct any misunderstanding that Chicago's program was the one San Diego was intending to implement. ". . . we in Chicago have not contributed to San Diego's conceptualization of Mastery

Learning nor do we support it," he said. Katims pointed out that San Diego was developing its own materials from an existing Ginn text,[12/] that the materials will not have been field tested before they are put into use and that it is unlikely that the problems of an untested program can be solved while simulataneously reaching achievement goals. In Chicago, Katims said, they use materials that have been revised and developed through five years of field testing in the classroom. Only now are they ready to put the program into system-wide use.

San Diego's Deputy Superintendent, Dr. Ralph V. Patrick, is reported to have responded to Katim's criticism as follows:

> "We recognize the magnitude of this extremely complex undertaking. But we make no apologies. We know we will need one year to get feedback on the program from the teachers and two years to implement the revisions -- and three more years probably before we get an initial true picture."[13/]

This forthright statement shows that our District now plans to start all over. Instead of adopting ready made, field tested, successful programs that are available for immediate use, the district has undertaken the tedious process of developing a totally new system of instruction in order to use books which it already has. This step will further delay improvement of learning outcomes. If our District believes it can improve on the available "ready-to-wear" merchandise with its own "tailor

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12/ Ginn is denominated by Rudolf Flesch as one of the "Dismal Dozen" publishers because it follows a "Look-Say" rather than a phonics appraoch.

13/ San Diego Union, August 1, 1980.

made" plan, why not use the tried and tested product while developing a San Diego program?

Upon receipt of Katim's letter, the Court forwarded it to Mrs. Yvonne Larsen, the president of the Board of Education, through counsel, with the suggestion that she select impartial educators to evaluate the planned Achievement Goal Program. She promptly did so, for which the Court is grateful. One of those selected to review the program was Dr. Sidney Estes, Superintendent of Instruction, Atlanta.[14/] In his 14 page report, dated August 18, 1980, Estes stated: ". . . much has yet to be done as the opening of the 1980-81 school year approaches. The task at hand is monumental, . . ." He referred to "the complexity and magnitude of what is proposed."

Dr. Estes was diplomatic but clearly critical of the absence of principal and teacher evaluation in the upcoming program.

> ". . . the Central Administration appears to believe in, and have confidence in the expertise and abilities of currently assigned teachers and local site administrators. . . . there is conviction that these personnel presently possess most of the necessary skills and competencies to implement the program and make it fully operational. However, it is suggested that some type of assessment devices and mechanisms be instituted and utilized to verify or refute this belief. . . . ¶ . . .

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14/ The other consultant, Herbert J. Walberg, reviewed materials at his desk in Chicago, made a few telephone calls to personnel in San Diego and sent in a two page report with a 22 page curriculum Vita.

> administrators and, most definitely, teachers, should be 'certified' that they can do what is being expected. . . ."

He went on to state:

> "The planned in-service segment . . . appears to be brief and may be inadequate. . . . It is felt that this initial in-service needs monitoring in regard to adequacy in preparing pertinent personnel for their responsibilities."

Estes continues:

> "The site plans reviewed begin to reflect many differences in what local sites envision as an outgrowth of their planning. . . . It would appear that inequality and inequitability could be possible without guidelines."

According to Dr. Estes, the plan that is offered as a response to the critique of the Court's consultants carries with it all the defects discussed in that critique; namely, insufficient training, lack of coordination, lack of central control and insufficient monitoring.

To the Court's knowledge, all programs, including Distar and Chicago's Mastery Learning, that achieve the goals of improving student outcomes in minority isolated schools, are carefully monitored and controlled. The school principal and the teacher, not the course of study, are the keys to the learning process, "The heart of any school system is the instructional program -- the curriculum as it is actually experienced by students hour after hour and day after day and the learning outcomes that students achieve." (Report of Court Appointed Consultants.) How can the Board or the administration know what is going on in the classrooms or how well the principals and teachers are doing--when there is neither

monitoring nor accountability?

Systems such as Distar, Mastery Learning, Open Court and others have value only insofar as they are properly prepared, coordinated, implemented and monitored. The test of the District's proposed program will be in students' achievements. The Court hopes it will succeed. It can if some fundamental changes are made -- now! The program cannot be directed by a committee. The Board must require the person at the top to follow through or find someone else who will.

If, by the end of the current school year this Court finds the academic programs and method of implementation used by the District are not suitable to achieve the desired result, the Court will specify the programs and take such action as may be necessary to assure proper implementation of an effective program (School Desegregation and Federalism, 5 U. of Day. L.Rev. 77, 78; The Effect of the Search for Equality Upon Judicial Institutions, A. Cox 1979 Wash. U. L.Q. 795, 799-802, 805).

IV.

NEED TO RE-EXAMINE ADMINISTRATION

From the perspective of the Court, lack of coordination, lack of communication, and the absence of clear-cut lines of responsibility are common features of the San Diego Unified School District. If there are a dozen curricular offerings in a school, there may be a dozen persons responsible for their implementation. Successful solutions to common problems in one school will be unknown to those at other schools. There appears to be no solid coordination among programs. For instance

there is no clear explanation of how Distar and the Goals Achievement Program will mesh. In most school districts that have experienced success with minority student achievement, one person is in charge of curriculum and instruction or reading or mathematics or both for the entire district. Dr. Estes remarked that "the concepts and elements of 'Systems Planning & Management' common to business and industrial complexes need to be brought to bear on this enterprise."

The present management tree, organizational chart, and lines of authority must be re-examined by capable persons approved by the Court and not connected with the District to determine what if any changes should be made to better serve the District's primary objective, education. The administration should be structured to make it responsive to classroom activity and capable of communication that will enable quick replication of outstanding programs and discontinuance of poor programs.

The Integration Task Force has recommended that the District work with the business community and universities who can assist in developing new programs or maintaining current ones designed for integration and producing a higher quality of education. The Court agrees. The Court will continue to seek assistance from the Integration Task Force, professional educators and others. Funds now on hand may be sufficient to meet expected expenses this year. The Court orders the District to budget $25,000 as a contingent fund that may be drawn upon by the Court if needed.

. . . .

Traumatic though it may be to the community, busing is an easy way out -- temporarily. Busing can be carried out by superintendents reluctant or unwilling to do so. It is visible, easily enforced by the Court and immediately satisfying to those minorities who see it as a symbol of victory over the white community or who have been misled to believe that it will magically produce better educational results for their children.

Educating children requires willing cooperation on the part of the top administrators, principals, teachers and the organizations that represent them. It requires hard work, inspiration, imagination and perseverence. It is less newsworthy and less visible, but more fulfilling. It works to lift the children out of isolation -- permanently.

This is a crucial year. The choice for the future is up to the Board of Education.

The Board of Education of the San Diego Unified School District will:

1. Implement a course or courses of study in all minority isolated schools which will result in 70% of the students in each of such schools having a median achievement rate on the Comprehensive Test of Basic Skills at the national norm (50th percentile) in reading, mathematics, and language by 1983-1984. The outcomes of children in the minority isolated schools at the end of the 1980-1981 school year must reflect significant achievement toward this goal; achievement sufficient to justify the conclusion that it is reasonable to expect the final goal to be accomplished in the time designated. The Court will consider the achievement significant if the test results are 25% better than current

ones.

2. Expand the present elementary exchange programs so that each elementary school with 70% or more minority students (when the school will not become or remain a total school magnet) is paired with a majority school with 70% or more majority students (when the school will not become or remain a total school magnet) for the entire school year at or before the 1984-1985 school year. At the same time the present Learning Centers will be gradually phased out.

3. Investigate and study a writing program for secondary students similar to that used by San Diego State University. Implement such a program during the second semester of the current school year (February 1981) and submit to the Court on or before December 15, 1980 a joint report with Dr. Don Basile concerning the details of the proposed program.

4. With the help of outside assistance from persons or organizations approved by the Court, undertake a study of the administrative structure and organization of the School District to redesign such structure so that it will be responsive to the educational needs of the students, better able to detect both superior and inferior performance in the classroom, improve communications for the purpose of replicating outstanding programs and discontinuing ones that are not productive and for facilitating the supervision and monitoring of school principals and classroom teachers. Consideration should be given to the establishment of a Deputy Superintendent in charge of curriculum who would have authority over all teaching programs in all schools. Such study should be conducted during the 1980-1981 school year and a full

report from the outside consultant together with the District's evaluation and conclusion should be presented to the Court by February 15, 1981.

5. Continuously evaluate the effectiveness of the superintendent, school principals, supporting leadership staff and teachers during the current school year.

6. Minimize fragmentation of resources and interruption of instruction in the classroom, particularly in the basic skills area (see Report of Court Appointed Consultants dated April 1, 1980, Recommendation No. 4).

7. Place the actual interaction between a caring and competent teacher and his/her students as the central focus in the classroom (Report, Recommendation No. 5).

8. Provide intensive high quality focused assistance directly to classroom teachers (Report, Recommendation No. 6).

9. Establish full day kindergartens at each of the isolated schools where possible and report to the Court by November 15 which if any of the schools do not have full day kindergartens and why they do not have them (Report, Recommendation No. 7).

10. Disseminate the oral communications program throughout the District as quickly as possible and advise the Court by November 15 at which schools the program has been implemented, in how many classrooms and specifically of what the implementation consists (Report, Recommendation No. 8).

11. Arrange for discussions between staff and parents concerning the value of homework and develop school-wide policies concerning homework; advise the Court by November 15

concerning the school-wide policy relating to homework which has been established at each of the isolated schools (Report, Recommendation No. 9).

12. Establish additional career center courses at Lincoln, Morse, and San Diego High Schools (Proposed by the District).

13. Establish an on-site opportunity school at Gompers, and an additional high school diploma program at San Diego High School (Proposed by the District).

14. Supervise classrooms and school facilities so as to maximize integration within each school (Report, Recommendation No. 12).

15. Insure that instructional materials used by all students in the exchange programs and Learning Centers are the same so that integrated instruction can be maximized (Report, Recommendation No. 13).

16. Take all necessary steps to improve the attendance of pupils in minority isolated schools with concern for those who do not attend regularly as well as for those who do. In this connection, implement a program whereby the parents of each absent student will be contacted by a School District representative, either by telephone or in person, shortly after the student is found to be absent. Further, revise record keeping procedures so that it will be possible to identify patterns of attendance of individual students (e.g., those regularly absent on Monday or Friday). Prepare monthly reports of attendance by school of the apportioned and non-apportioned absences and re-establish the Social Agency Coalition and Survey School Retention Program for Pregnant Girls. Finally, improve attendance by motivational techniques, alternative curriculum time

schedules, expansion of alternative schools and vocational education opportunities (Report, Recommendation No. 14 and District Proposals).

17. Explore with the appropriate bargaining unit the possibility of providing incentives to the staff at minority isolated schools with the goal of entering into long term contracts with the most able and inspiring principals and teachers (Report, Recommendation No. 15).

18. Cooperate with the business community and universities in developing new programs or maintaining current ones designed for integration and producing a higher quality of education (Integration Task Force Report dated June 1980).

19. Direct staff to refuse to promote students until they have mastered the required skills for their grade level, define competencies for each level and provide for testing of students at all grade levels, Kindergarten through 12.

20. On or before October 15, 1980, submit to the Court a detailed explanation as to how the Race/Human Relations Program is monitored; what the program consists of and how successes in one school are communicated and replicated in others.

21. On or before October 15, 1980, explain why there are 44 white children from tipping and isolated schools enrolled in magnet schools in white neighborhoods.

22. On or before December 15, 1980, submit a plan to reduce minority isolation in secondary schools and improve educational outcomes for students in those schools.

23. Continue strict enforcement of the discipline code.

. . . .

24. Budget $25,000.00 to be available for draw by the Court if such funds shall be needed to defray necessary expenses for consultants, Integration Task Force expenses or other assistants.

DATED: SEP 1995

JUDGE OF THE SUPERIOR COURT

LMW/sv

APPENDIX A

SCHOOL	MAGNET	1979-80 WHITES EXPECTED	1979-80 WHITES ACTUAL	% MAJORITY 78-79	% MAJORITY 79-80	1980-81** WHITES EXPECTED	1980-81** WHITES RETURNS	COMMENTS	
Baker	U.Lab.	67	55	1.4	10.4	68	46	Started 79/80	X
Balboa	None	0	49	6.1	5.0	-	-		X
Burbank	None	0	4	1.6	1.2	-	-		
Chollas	None	0	18	4.2	4.7	-	-	Learning Ctr.	X
Emerson	None	0	10	3.3	1.7	105	-	Fundamental to start 80/81	
Freese	None	0	90	18.9	12.9	-	-	Learning Ctr.	X
Fulton	Athletics	93	77	1.2	21.1	160	30	Started 79/80	
Horton	Spanish	81	43	9	12.2 (3.7)*	53	35	School w/in school 64-474***	X
Johnson	Academic	62	98	.8	26.1	117	46	Started 79/80	
Kennedy	None	0	10	1.6	1.6	-	-	Learning Ctr. Paired/Curie 118-622	X
Knox	French	64	19	2.7	9.9 (4.4)	31	15	School w/in school 9-294	X
Logan	None	0	8	3	.8				X
Lowell	Spanish/ English	84	25	3.7	6	45	19	Started 79/80	X
Mead	None	0	7	4.6	2.5	-	-	Paired/Daillard 49-275	X
Sherman	Indivd. Instr.	58	17	8.6	5.9 (4.5)	13	6	School w/in school 54-963	X
Stockton	None	0	12	3.6	2.1	-	-	Learning Ctr.	X
Valencia Pk.	U.Lab	204	170	27.4	24.4	115	71		
Webster	Fund.	200	205	41.4	44.4	137	131		
Gompers	Math/Sci	165	195	11.7	33.9 (7.5)	302	172	School w/in school 113-433	X
Memorial	None	0	53	3.6	5.8	-	-	Intercultural Lang. 80/81	X
O'Farrell	Fund.	90	62	14.6	15.6 (8.6)	22	9	School w/in school 37-644	X
Lincoln	Ctr. Medicine	50	24	.7	.5	19	0	52-996	
Morse	Ctr, Urban Studies	100	53	21.9	17.9	11	4	143-1486	
San Diego	Ctr/Commun.	50	53	19.8	21.8	11	3	47-1205	

** Based on district estimates in August.
* Figures in ( ) are for school outside magnet.
*** 64-474 means 64 minority students out of 474 are included in program.
X Designated to receive Goal Achievement Program.

APPENDIX B

TIPPING SCHOOLS

ELEMENTARY SCHOOL	% Whites 1978-79	% Whites 1979-80	Differences
Audubon	37	31.3	- 5.6
Boone	30.6	25.7	- 4.9
Brooklyn	47.8	44.9	- 2.9
Carson	47.6	42.1	- 5.5
Central	36	29.5	- 6.5
Dewey	47.5	49.9	+ 2.4
Euclid	48.8	43.9	- 4.9
Keiller	31	25.9	- 5.1
Lee	39.3	36.6	- 2.7
Linda Vista	33.1	27.8	- 5.3
Oak Park	48.6	46.7	- 1.9
Paradise Hills	27.5	21.9	- 5.6
Penn	47	39.8	- 7.2
Perry	49.3	45.2	- 4.1
Washington (1)	43.4	34.3	- 9.1
Beale (2)	71.5	49.5	-22.0
Marshall (3)	52.7	44.5	- 8.2
Rowan	50.2	45.7	- 5.5
JUNIOR HIGH SCHOOL			
Bell	31.6	28.3	- 3.3
Montgomery	51.8	47.4	- 4.4
SENIOR HIGH SCHOOL			
San Diego	19.8	21.8	+ 2.

(1) Lost 22 Whites, gained 7 Hispanics and 16 Asian & Alaskan/Indians.

(2) Lost 31 Whites, gained 87 Asians.

(3) Lost 32 Whites, gained 28 Asians.

APPENDIX C

ANALYSIS OF

CRAWFORD V. BOARD OF EDUCATION (1976) 17 Cal.3d 280

AS IT PERTAINS TO THE CHOICE OF REMEDIES

AVAILABLE TO CORRECT SEGREGATION

> "The Constitutional evil inheres in the existence of segregated schools. It is the elimination of such segregation and the harms inflicted by such segregation that is the ultimate Constitutional objective." (285)

To accomplish this "ultimate Constitutional objective," the School District must undertake ". . . reasonably feasible steps to alleviate segregation and its accompanying harm . . . [t]he task of integration is an extremely complex one which entails much more than the assignment of specified percentages of pupils of different races or ethnic groups to the same school." (286)

The goal is not simply the mixing of races but the elimination of the harms to minority children which have generally flowed from the maintenance of segregated schools (e.g., 308). The Supreme Court acknowledges that the trial court's task ". . . is an exceedingly difficult, sensitive and taxing one, requiring the balancing and reconciliation of many competing values." (310) To effectively discharge this task, ". . . a trial court retains broad equitable power to order implementation of a realistic program. . . ." (286)

". . . a trial court should take into account the long range effects of the adoption of alternative proposals; a court may reject a particular approach if it finds that its implementation is likely to result in a 'one race' or 'all minority' school district and consequently in less ultimate opportunities for the benefits of a desegregated education.

"We do not mean, of course, that the threat of 'white flight' may be used as a smoke screen to avoid the Constitutional obligations of a school district . . . [however,] a realistic evaluation of the ultimate consequences of a particular course of action cannot be ignored . . . In the end, if a Court finds that certain alternatives are not realistically available or particular goals reasonably attainable, it may require the board to take greater efforts in some other direction in attempting to alleviate the consequences of school segregation. (c.f. Bell, Waiting on the Promise of Brown (1975) 39 Law & Contemp. Prob. 341, 354-355.)" (309)

On pages 354-355 of Bell's article, the author refers to "educationally-oriented relief". Bell observes:

> ". . . Perhaps paradoxically, separate schools which, through the implementation of alternative remedies first become (in the educational sense) quality schools, may stand a better chance of eventually becoming integrated schools as well.[61]" (355)
>
> "61. See K. Clark, A Possible Reality: A Design for the Attainment of High Academic Achievement for Inner-City Students (1972). This alternative remedy to integration for past discriminatory school policies, if vigorously enforced by the courts, might avoid the dire situation contained in Justice Douglas' warning that the court's rulings in San Antonio Independent School

Dist. and Milliken v. Bradley, will return the problems of blacks and the society to the 'separate but unequal' period. 418 U.S. at 759."

In California ". . . education has been explicity recognized for equal protection purposes as a 'fundamental interest'. (See Serrano v. Priest, supra, 5 Cal.3d 584, 604-610 . . .) . . . the 'fundamental' nature of the right to an equal education derives in large part from the crucial role that education plays in 'preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background . . . [t]he public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American Society.' (5 Cal.3d at p. 609)" (297).

APPENDIX D

ELEMENTARY MAGNETS IN WHITE SCHOOLS

SCHOOL	TOTAL MINORITIES	ISOLATED SCHOOLS	TIPPING SCHOOLS	COMMENTS
Fremont	59	31	9	17 whites from Brooklyn, Carson and Washington
Green	104	63	28	
Lindbergh	133	97	15	
Longfellow	192	57	48	5 whites from Carson, Central and Linda Vista
Rolando Park	129	72	41	
Spreckles	164	103	42	
Sunset View	71	51	13	
Silver Gate	162	120	22	

CREATIVE AND PERFORMING ARTS

Elementary	68	28	22	5 whites from Brooklyn, 1 from Oak Park
Secondary	49	25	5	3 whites from Montgomery, 1 from Bell, 1 from O'Farrell