

## HAS MARTIN LUTHER KING'S DREAM BECOME A NIGHTMARE?

When we celebrate Martin Luther King Day, students in schools where there are no whites and almost everyone is poor enough to get a free lunch – the very kind of schools Dr. King fought to eliminate – will be reciting the “I have a dream” speech. In these immortal words almost four decades ago, King told of his dreams of integration, that “One day, right there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.”<sup>5</sup>

Four years earlier, King spoke to 20,000 students protesting for integration in Washington, hailing them as the “generation of integration” and calling for “total integration and total equality now.”<sup>6</sup> Writing for a religious publication, King spoke of the “ultimate tragedy” of segregation:

It injures one spiritually. It scars the soul and distorts the personality. It inflicts the segregator with a false sense of superiority while inflicting the segregated with a false sense of inferiority.<sup>7</sup>

King saw the Supreme Court’s decision against segregated education as a critical event: “The United States Supreme Court decision of 1954 was viewed by Negroes as the delivery of part of the promise of change. In unequivocal language the Court affirmed that ‘separate but equal’ facilities are inherently unequal, and that to segregate a student on the basis of his race is to deny that child equal protection of the law. This decision brought hope to millions of disinherited Negroes.... But the implementation of the decision was not to be realized without a sharp and difficult struggle.”<sup>8</sup>

King advocated going beyond mere desegregation. He accepted the critique of those who said that merely getting the students into the same building was not enough. “Desegregation,” he wrote, “... simply removes these legal and social prohibitions. Integration is creative, and is therefore more profound and far reaching.... Integration is the positive acceptance of desegregation and the welcomed participation of Negroes into the total range of human activities.”<sup>9</sup> His solution was not to abandon desegregation but to deepen it.

When protests against school segregation in Northern cities surged in the mid-1960s, King praised those running school boycotts and demonstrations for “trying to loosen the manacles of the ghetto from the hands of their children.”<sup>10</sup> He spoke out in school integration protests in Chicago, where he led his last large movement, the Chicago

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<sup>5</sup> Martin Luther King, Jr. “I Have a Dream” speech. Washington, D.C. August 1963.

<sup>6</sup> “Speech before the Youth March for Integrated Schools,” in James B., Washington, ed., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, San Francisco: Harper San Francisco: 1991, p. 21.

<sup>7</sup> Ibid, “The Current Crisis in Race Relations,” p. 85.

<sup>8</sup> Ibid, “The Burning Truth in the South,” p. 95.

<sup>9</sup> Ibid, “The Ethical Demands for Integration,” p.118.

<sup>10</sup> Ralph, Jr., J.R. (1993). *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil rights movement*. Cambridge, MA: Harvard University Press, p. 31.

Freedom Movement. In his speeches, he often described the inferior quality and dehumanizing aspects of slum schools, comparing them to the privileges of white schools.

The Civil rights movement and the federal government's response lead to the enactment of the 1964 Civil Rights Act and the beginning of much more serious enforcement of civil rights law. Before the Act was passed, the federal government had no power to enforce school desegregation. After its passage, the government was legally required to take action against any school district not complying with civil rights law. Education officials were given authority to cut off all aid funds, and the Department of Justice was authorized to file civil rights cases in federal court. The enforcement of that law and the Supreme Court's decisions in the late 1960s and early 1970s greatly tightened desegregation requirements. Educationally, the South moved from virtual apartheid in the early 1960s to become the nation's most integrated region.<sup>11</sup>

King was assassinated in 1968. The Civil rights movement split and its momentum diminished. In 1969, President Nixon, whose "Southern strategy" to win the 1968 presidential election included a campaign against desegregation orders, ended enforcement of the 1964 law in the schools.<sup>12</sup> Further, Congress drastically cut back desegregation enforcement power in the 1975 Eagleton-Biden amendment when President Carter threatened to resume serious enforcement of the law.<sup>13</sup> By 1974, a Supreme Court reshaped by four Nixon appointments had rejected metropolitan desegregation as well as financial equalization of schools, and the expansion of desegregation law was ended.<sup>14</sup> Later, in the 1980s, President Reagan would name as Chief Justice the most consistent opponent of desegregation on the Supreme Court, William Rehnquist.<sup>15</sup>

The progress of King's dream was clearly regressing. When King appealed for integration in Alabama in 1963, the Alabama public schools were still totally segregated nine years after the 1954 Supreme Court decision. That fall, Governor George Wallace would try to block the first black students to enroll in any white school in his state. Five years later Wallace would be running for President as a segregationist and the GOP candidate, Richard Nixon, would adopt much of his platform.<sup>16</sup> Alabama, however, did desegregate to a considerable degree. In fact, by 1980 there were 38% whites in the

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<sup>11</sup> See discussion of black segregation in the South *infra*, Table 10.

<sup>12</sup> He was later found to be openly violating the 1964 Civil Rights Act and was ordered by a federal court to resume enforcement. (Orfield, G. and Eaton, S. (1996). *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education*. New York: The New Press.)

<sup>13</sup> Orfield, G. (1978). *Must We Bus? Segregated Schools and National Policy*. Washington: Brookings Institute.

<sup>14</sup> Orfield and Eaton, *supra* note 8.

<sup>15</sup> Rehnquist had been a clerk on the Supreme Court when *Brown* was decided and had written a memo recommending that the "separate but equal" provision from the 1896 *Plessy* decision be retained. Later, he claimed that this was just the opinion of the Justice, but President Nixon's Counsel, John Dean, who supervised the appointment, said he was convinced Rehnquist was lying. (Dean, J.W. (2001). *The Rehnquist Choice*. New York: The Free Press.) As a justice, Rehnquist strongly opposed much of school desegregation law and consistently voted to limit desegregation. (Davis, S. (1989). *Justice Rehnquist and the Constitution*. Princeton: Princeton University Press, pp. 58-60.)

<sup>16</sup> Panetta, L., and Gall, P. (1971). *Bring Us Together*. Philadelphia: Lippincott.

school of the average black student, much higher levels of integration than, for example, New York State or even the North as a whole. By 2000, however, the dream was fading in Alabama, with the white percentage in the average black student's school falling to 30%. In Birmingham, where King's marchers had peacefully faced police dogs and fire hoses in the 1963 demonstrations that triggered the March on Washington and the Civil Rights Act, black students in 2000 attended schools with an average of 2% whites.

In King's home state of Georgia the pattern was very similar to Alabama, with a decrease in black exposure to white students from 39% in 1980 to 31% in 2000. The typical black student in Atlanta, King's city, was in a school with only 3% whites in 2000, a generation after the Supreme Court summarily rejected an effort to merge Atlanta and suburban schools in spite of proof that housing and many aspects of the metropolitan area's racial development had been intentionally segregated for generations.<sup>17</sup> Chicago, where King's last campaign targeted urban segregation with very limited success, never desegregated. The federal government backed off enforcing desegregation in Chicago even at the height of the civil rights era.<sup>18</sup> In the 2000-2001 school year, there were only 3% white students in the school of the typical black student. Further, the percentage of white students even enrolled in these districts is very low: Chicago had only 9.6% white students, Birmingham 2.8%, and Atlanta 6.8% white students.

Although each of these cities has a clear history of intentional segregation of schools, and each has a powerful connection with Martin Luther King, each was only a few percentage points from an experience of total apartheid for black students nearly a half century after the Supreme Court found segregated schools to be "inherently unequal."<sup>19</sup>

### WAS THE DREAM WRONG?

Common responses to school desegregation issues are that it was a good idea that didn't work, it was tried but it just drove out the whites, or it didn't solve the educational problems plaguing the schools it was intended to benefit. Some critics go so far as to say that it led to more racial polarization. In the early 1980s, the National Institute of Education and the Ford Foundation supported a major effort by leading national scholars to summarize the existing knowledge on desegregation, leading to the publication of the classic book, *Strategies for Effective Desegregation*. The panel identified what was emerging as a new misguided "mythology" about desegregation:

- 1) Desegregation didn't reduce racial isolation, but has increased racial separation and white flight.

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<sup>17</sup> See *Armor v. Nix*, 446 U.S. 930 (1980), for a description of the background of the case and the findings of the trial court, see Gary Orfield and Carole Ashkinaze, (1991). *The Closing Door: Conservative Policy and Black Opportunity*. Chicago: University of Chicago Press, chapter 5.

<sup>18</sup> Orfield, G. (1969). *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act*. New York: Wiley-Interscience, chapter 4.

<sup>19</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

- 2) Mandatory plans (such as busing) aren't necessary to achieve desegregation, but it can instead be accomplished with voluntary plans.
- 3) Desegregation is disruptive to schools and lowers the educational quality. It also leads to interracial strife, which actually increases racial prejudice.
- 4) Desegregation also creates discord at the community level in terms of race relations and support for public schools.

The experts concluded, however, “the new mythology does not jibe with available evidence from social science research.”<sup>20</sup> For example, countering the first claim, analysis showed that by 1981 there was no school system that was more segregated at that time than before desegregation was ordered.<sup>21</sup> As this report will show, there have been very significant increases in segregation following the ending of desegregation plans. The highest levels of long-term desegregation and some of the lowest levels of “white flight” were recorded in metropolitan districts with very extensive mandatory city-suburban desegregation orders, though those tended to become increasingly choice driven over time.<sup>22</sup> There was a major decline in the racial achievement gap that coincided with the desegregation era, but the gap began to grow again in the 1990s.<sup>23</sup> There is clear evidence that racial attitudes became far more positive in the desegregation era and that these changes were particularly dramatic in the South where enforcement was most rigorous.<sup>24</sup>

Since the Ford panel’s work during the early 1980s there are other myths that have become widespread, including the idea that school officials now know how to make segregated schools equal, that transferring dollars to schools will be as effective as desegregation, that whites will return to urban school districts if neighborhood schools are reinstated, and that parental participation will increase in neighborhood schools. In fact, there is not proof that any district has produced resegregated schools that are equal. Evidence on the government’s largest compensatory program, Title I, shows that it tends to be the least effective in concentrated poverty schools, which are often segregated minority schools, as this report will show. Likewise, parental participation did not increase in Oklahoma City, the first district approved for resegregation by the Supreme Court, or in Norfolk, Virginia, the first district that was allowed to terminate a federal desegregation plan before the Supreme Court’s 1990s decisions.<sup>25</sup>

King and many civil rights leaders believed that desegregated schools would be better for minority students and would be very important in helping Americans of all

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<sup>20</sup> Hawley, W., et.al. (1983). *Strategies for Effective School Desegregation*. Lexington, MA: Lexington Books, p.2.

<sup>21</sup> Ibid, p. 7.

<sup>22</sup> For a comparison of interracial exposure in districts with varying desegregation plans see, Frankenberg, E., and Lee, C. (2002). *Race in America: Rapidly Resegregating School Districts*. Cambridge, MA: The Civil Rights Project. p. 13.

<sup>23</sup> Grissmer, D., Flanagan, A., and Williamson, S. (1998). “Why Did the Black-White Score Gap Narrow in the 1970s and 1980s?” in C. Jencks and M. Phillips (eds.), *The Black-White Test Score Gap*. Washington D.C.: Brookings Institute.

<sup>24</sup> E.g. Gallup poll data discussed below.

<sup>25</sup> See discussion of these districts in Orfield and Eaton, *Dismantling Desegregation*. Supra note 8.

racess to move beyond stereotypes toward genuine equality and respect—toward integration. The desegregation movement developed as a centerpiece of a major attack on practices of exclusion and inequality within the very institutions (public schools) that were supposed to provide mobility between the generations. It emerged as part of a social movement dedicated to creating a single society from a society that had been born divided by race and had, for centuries, built up institutions, beliefs, and practices that tended to perpetuate separation and inequality in order to keep the country polarized by race. It was a directed at a system—the public schools—that has long been valued by both the public and the nation’s leaders not only for its impact on student academic learning but also for its central role in building the nation, socializing children, preparing citizens, communicating the basic values of our Constitution and democratic system, and helping immigrants from every part of the globe work and live together peacefully and successfully in a single democracy. When we look at the short-term outcomes of schooling such as test scores, our focus is too narrow and we are severely underestimating the roles that schools play. There has been a vast amount of research on these questions since King’s time and much of it supports King’s vision, though the impacts are smaller than he would have wished. It is clear that the benefits are larger when a school works seriously on integration.<sup>26</sup> It is also clear that many of the benefits are not just about test scores but also about the chances for a better and different life.<sup>27</sup>

### WHAT DOES RESEARCH TELL US?

Research regarding desegregation has led to the following general findings:

- 1) Segregated schools have much higher concentrations of poverty and other problems and much lower average test scores, levels of student, teacher qualifications, and advanced courses.<sup>28</sup> With few exceptions, separate schools are still unequal schools. Ending desegregation plans tends to produce a rapid increase of such schools within a district, and more qualified teachers tend to leave these segregated schools.<sup>29</sup>
- 2) In systems with desegregation plans, particularly those in areas with substantial white enrollment, minority students tend to transfer to better schools and to learn more, though a racial achievement gap remains.<sup>30</sup> Going to desegregated schools

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<sup>26</sup> Slavin, R.E., and Madden, N. (1979). “School Practices that Improve Race Relations.” *American Educational Research Journal* 16, 179-180.

<sup>27</sup> Crain, R. & Mahard, R. (1983). “The Effect of Research Methodology on Desegregation-Achievement Studies: A Meta-Analysis.” *American Journal of Sociology*, 88 (5), 839-854.

<sup>28</sup> For data regarding the poverty concentration in high minority schools, see Table 9 in this report; B.A., and Smith, T.M., “The Social Context of Education,” Findings from the *Condition of Education* 1997, National Center for Education Statistics 97-991, 1997.

<sup>29</sup> Freeman, C., Scafidi, B., & Sjoquist, D.L. (2002). Racial segregation in Georgia public schools, 1994-2001: Trends, causes, and impact on teacher quality. Paper presented at the Resegregation of Southern Schools Conference, University of North Carolina at Chapel Hill. The Educational Testing Service reports that the increasing use by states of examinations controlling entry to the teaching profession is linked to a sharp decline in minority teachers. See ETS’s studies “The Academic Quality of Prospective Teachers: The Impact of Admissions and Licensure Testing.” <[www.ets.org](http://www.ets.org)>

<sup>30</sup> The Gautreaux program, a remedy for public housing discrimination in Chicago, allowed thousands of very impoverished public housing applicants to move to suburban neighborhoods. Research on this

- improves students' chances for a desegregated future life, for going to college and succeeding in college, and for living and working in interracial settings.<sup>31</sup>
- 3) When teachers are trained and use techniques to create positive academic interactions in racially diverse schools, the benefits of desegregated schools increase substantially.<sup>32</sup>

Most of the earlier research on desegregation impacts looked at very simple short-term testing results and assumed that benefits from desegregation would flow to the minority students from contact with better educational opportunities and networks of information and counseling. This early research focused almost exclusively on test score changes.<sup>33</sup> American schools, however, were never created and operated simply to produce higher test scores—however important that may be—but have always been seen as ways to educate the coming generation to be good citizens, successful workers, and able to function more successfully in the diverse society America has become. In fact, it was the long-term effects of access to higher-status networks and information that were part of the legal and theoretical framework for pursuing a strategy of school desegregation as a means of attacking the larger societal segregation. Wells and Crain examined twenty-one studies of the long-term effects, and they concluded that interracial exposure in K-12 education can help break the perpetual cycles of educational and occupational segregation that result from segregated access to information by black and Latinos.<sup>34</sup>

Studies have shown three areas of student outcomes that are strengthened by an integrated classroom: enhanced learning, higher educational and occupational aspirations, and positive social interaction among members of different racial and ethnic backgrounds. Students in integrated environments seem to perform better on tests, perhaps through the increased opportunities available to them at such schools, or perhaps as a result of informal networks at these schools; networks that would not be available at

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program has shown that after initial adjustment, those moving to suburban neighborhoods experienced many positive social benefits. Educational gains for children included lower dropout rates, a higher likelihood to attend college and be in college-track classes, more teacher support, smaller classes, and higher student achievement. These students also were more likely to have friends who were both black and white, and did not experience any more harassment from their peers than those who remained in the city did. (Rosenbaum, J. (1995). "Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the Gautreaux Program." *Housing Policy Debate*. 6 (1), 231-269.

<sup>31</sup> A long-term qualitative study of the life experiences of scores of Boston students who had access to white suburban public schools has documented powerful life-long consequences in preparing African American adults to succeed in college and assume leadership roles in the community and in jobs. (Eaton, S.E. (2001). *The Other Boston Busing Story*. New Haven: Yale University Press.); Wells, A.S., and Crain, R.L. (1994). "Perpetuation Theory and the Long-Term Effects of School Desegregation." *Review of Educational Research*, 64, 531-555.

<sup>32</sup> Slavin and Madden, supra note 23.

<sup>33</sup> For a discussion of this research see Weinberg, M. (1977). "The relationship between school desegregation and academic achievement: A review of the research." In B. Levin & W.D. Hawley (Eds.), *The courts, social science and school desegregation* (pp.241-270). New Brunswick, NJ: Transaction Books.

<sup>34</sup> Wells and Crain, supra note 26.

even the best segregated school with the most resources.<sup>35</sup> Higher aspirations resulting from integrated schools have been linked to a difference in expectations: predominantly minority schools tend to transmit lower expectations to their students.<sup>36</sup> Finally, simple exposure to desegregation as children causes people to live more integrated lives as adults.<sup>37</sup>

Some more recent research, now under way in a number of school districts across the country, shows educational and civic benefits for all groups; for whites, who are the nation's most segregated group of students, as well as for minority students. To further study the effects of integration on both whites and minority students, The Civil Rights Project assembled a group of leading researchers to help develop a study in collaboration with the National Education Association and school systems in a number of metropolitan communities. These surveys, released so far in three communities, show strikingly positive results on important outcomes for the future of our communities and businesses. In Cambridge, Massachusetts, where the public schools are extremely ethnically and economically diverse, there has been integration for a generation. A survey of all high school juniors in this system showed that the vast majority of students (over 90 percent) say they are prepared to live and work among people of diverse racial and ethnic backgrounds. Across all racial groups of students, over seventy percent indicate that their school experiences have "helped a lot" or "helped somewhat" their ability to work with members of other races and ethnic groups.<sup>38</sup>

The results from metropolitan Louisville-Jefferson County, Kentucky, the largest urban area in the nation's most integrated state, showed very similar results. Louisville implemented city-suburban desegregation in 1975 and has kept a desegregation plan in place without a court order for more than 20 years. The school district recently successfully defended their basic desegregation plan in court by showing its deep importance to the community. Students, both black and white, reported very positive results on a broad range of questions regarding educational and social outcomes. Ninety-three percent of white juniors and 95 percent of African Americans, for example, reported that they were comfortable working with students of other races on group projects. Even higher percentages of white and black students said they were comfortable in classes learning about each other's cultures (94 and 97 percent respectively). Ninety-three percent of whites and 88 percent of African Americans said they had been encouraged to go to college, and college aspirations were similar across racial lines.<sup>39</sup>

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<sup>35</sup> Braddock II, J.H. (1980). "The Perpetuation of Segregation across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis." *Sociology of Education* 53, (3), 178-186.

<sup>36</sup> Young and Smith, supra note 24

<sup>37</sup> Schofield, J.W. (1995). "Review of Research on School Desegregation's Impact on Elementary and Secondary School Students," in *Handbook of Research on Multicultural Education*, ed. James Banks and Cherry McGee Banks (New York: Simon & Schuster MacMillan), pp. 597-617.

<sup>38</sup> *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District*, Civil Rights Project, Harvard University, January 2002.

<sup>39</sup> Kurlaender, M. and Yun, J.T. (2001). "Is Diversity a Compelling Educational Interest? Evidence from Louisville" in Orfield, G. with M. Kurlaender, eds. *Diversity Challenged: Evidence on the Impact of Affirmative Action*. Cambridge, MA: Harvard Educational Publishing Group, 111-141.

Eric Hanushek recently published striking evidence about the educational advantages of integration using Texas panel data, the nation's largest dataset that includes data on millions of Texas students tracked over time. The author concludes that, particularly for high-achieving black students, larger percentages of black students in the school can have detrimental effects on academic achievement, when controlling for other factors such as school quality. These effects are especially pronounced in earlier grades. The study estimates that equally distributing black students throughout the state in grades 5-7 would reduce almost one-quarter of the seventh grade black-white achievement gap. They also suggest that the leveling off of gains in closing the test gap in the 1980s might be a result of the leveling off of desegregation gains in the previous decade.<sup>40</sup>

University of Michigan Psychologist Patricia Gurin, who has studied race relations in higher education, explains that “students learn better in a diverse educational environment, and they are better prepared to become active participants in our pluralistic, democratic society once they leave such a setting.”<sup>41</sup> By frequently interacting with students from diverse backgrounds, students are challenged to think in deeper and more complex ways. Another benefit is that students educated in such an environment are better able to participate in a heterogeneous democracy because they have already had experience dealing with multiple perspectives and the resulting conflicts that arise in such an environment. She concludes that, across racial lines, “there is a consistent pattern of positive relationships between diversity in higher education and both learning and democracy outcomes.”<sup>42</sup>

King’s dream of moving from desegregation to integration actually was reflected in federal law for some years in the 1970s. The federal desegregation assistance program, called the Emergency School Aid Act, provided money to retrain staff, work on improving race relations within schools, develop curriculum on minority culture and history, and undertake a number of other strategies to move beyond mere desegregation. Unfortunately, this program was the largest federal education program eliminated in the first year of the Reagan Administration and there has been no significant federal investment in successfully integrating schools for the last 22 years. This program, which did not finance busing and was very popular with the cities it aided, showed significant evidence of educational benefits from the efforts to move toward integration. When it was combined with other monies in a block grant, the states did not use it for integration.<sup>43</sup>

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<sup>40</sup> Hanushek, E., J. Kain, & S. Rivkin, (2002). “New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement.” Working Paper 8741. Cambridge, MA: National Bureau of Economic Research.

<sup>41</sup> Gurin, P. *The Compelling Need for Diversity in Higher Education*. Expert Report for University of Michigan pending lawsuit, *Gratz & Hamacher v. Bollinger et al.* 1999.

<sup>42</sup> Ibid.

<sup>43</sup> Wellish, J.B., et al. (1977). *An In-Depth Study of Emergency School Aid Act (ESAA) Schools: 1975-1976*. Santa Monica: Systems Development Corporation; Nathan, R.P., et al. (1983). *The Consequences of Cuts: The Effects of the Reagan Domestic Program on State and Local Governments*. Princeton: Princeton Urban and Regional Research Center.

## HAVE AMERICANS LOST THE DREAM?

If schools are becoming more segregated all over the country, is it because Americans believe that desegregation has been a failure and want to return to segregated schools? Gallup poll data show an extremely high level of acceptance and approval of integrated education among both blacks and whites. A strong majority, over two-thirds, say that desegregation improves education for blacks, and a growing proportion of the public believes that desegregation also improves education for whites.

The Gallup Poll's 1999 "Social Audit of Black/White Relations in the U.S." asked about school integration and found both blacks and whites increasingly positive about its educational benefits. In 1988, 55% of Americans believed that integration had "improved the quality of education" for blacks, and 35% believed it had made white education better. By 1999, 68% of the public saw an improvement for blacks, and 50% said that it made education better for whites. In 1988, 37% of Americans believed that we needed to do more to integrate the schools. That number climbed to 59% by 1999.<sup>44</sup> A 1999 survey of young adults (ages 18-29) showed that 60% felt that the federal government should make sure that the schools were integrated.<sup>45</sup> A 1998 survey also found that 60% of blacks and 34% of whites said it was "absolutely essential" for schools to "have a diverse student body with kids from different ethnic and racial backgrounds," and only 8% of blacks and 20% of whites said that this was "not too important."<sup>46</sup> A second 1999 Gallup Poll showed that across the U.S., parents believed their children needed to learn about race relations at school: 56% thought that there should be a required course, and 35% believed it should be an elective.<sup>47</sup>

These poll results do not mean that most Americans do not also prefer neighborhood schools—they clearly do. The basic point is that Americans say they believe, by large and growing majorities, that integrated schools are important. Poll data from the last three decades show that both white and black opposition were highest at the beginning of mandatory busing in the early and mid-1970s and declined significantly since that time. The studies also show considerable support from parents of all races whose children have actually been bused for desegregation purposes. More than two-thirds said it was a positive experience and opposition was highest among those with no direct experience.<sup>48</sup>

One interesting fact that is seldom considered is that surveys show that attitudes toward desegregated education in the South improved dramatically following, not before, desegregation took place. A striking example comes from higher education at the

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<sup>44</sup> "Gallup Poll Topics: Education," poll conducted August 1999. (Gallup.com website).

<sup>45</sup> Zogby International Poll, "Racial Attitudes Poll of Young Americans," August 16, 1999.

<sup>46</sup> Steve Farkas and Jean Johnson, with Stephen Immerwahr and Joanna McHugh, *Time to Move On: African-Americans and White Parents Set an Agenda for Public* (New York: Public Agenda, 1998).

<sup>47</sup> "Gallup Poll Topics: Education," poll conducted August 1999. (Gallup.com website).

<sup>48</sup> Harris and Associates, *The Unfinished Agenda on Race in America*, report to the NAACP Legal Defense and Educational Fund, January 1989; Harris, Louis, and associates, *A Study of Attitudes toward Racial and Religious Minorities and Toward Women*, report to the National Conference of Christians and Jews, November 1978.

University of Alabama: “In 1963, 56 percent of white students...said they would be willing to attend class with blacks. In 1982 the figure was 97 percent. Desegregation itself almost certainly played some role....”<sup>49</sup>

Gallup surveys show equally dramatic changes in southern attitudes toward public school desegregation. In the year of the *Brown* decision, more than four-fifths of Southerners believed the decision was wrong; four decades later, only 15% still believed the Supreme Court had been wrong.<sup>50</sup> In 1959, 72% of white Southerners objected to even a few black students in white schools and 83% objected to white children attending schools that were half black. By 1975, these percentages had fallen to 15% and 38%, respectively.<sup>51</sup>

### WHY IS RESEGREGATION HAPPENING?

If the schools are not resegregating either because it was a bad idea educationally or because the public turned against it, why is it happening? In the areas where desegregation actually took place at a substantial level, the two basic causes of resegregation are: 1) changes in the racial composition of communities and school-aged population; and 2) changes in the desegregation plan.<sup>52</sup> A third, much more limited factor is high private school enrollment in some places.

If everything else stayed the same and the country had more African Americans and Latinos, and, at the same time, fewer whites, there would tend to be fewer whites in the average African American or Latino student’s school. That is clearly happening as evidenced by the major demographic changes occurring in this country.

In particular, demography is quite important in explaining the rising segregation of Latino students—their numbers are soaring while white enrollment is declining, they are highly concentrated in metro areas in a few states, and they are becoming more residentially segregated.<sup>53</sup> Latino segregation may also be due to the fact that there were very few court orders desegregating Latinos even though the Supreme Court recognized their right to desegregation in the 1973 Denver case.<sup>54</sup>

However, there is another demographic factor pushing in the other direction. Neighborhoods, on average, have become less segregated residentially for blacks during the last decade, although this was less true in the older large cities of the Northeast and

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<sup>49</sup> Stephan, W. “School Desegregation: Short-Term and Long-Term Effects.” In Knopke, H.J., Norrell, R.J., and Rogers, R.W. (eds.) *Opening Doors: Perspectives on Race Relations in Contemporary America*. Tuscaloosa: University of Alabama Press, p. 112.

<sup>50</sup> Orfield, G. “Public Opinion and School Desegregation” *Teachers College Record* 96, no. 4 (Summer 1995): 654-670.

<sup>51</sup> Gallup Opinion Index, February 1976, p. 9.

<sup>52</sup> Orfield and Eaton. *Supra* note 8.

<sup>53</sup> One study for the National Center for Education Statistics (NCES) found that most of the Latino school segregation increases were demographic. National Center for Education Statistics, *The Condition of Education* report.

<sup>54</sup> *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

Midwest.<sup>55</sup> (Latinos actually became more residentially segregated during the last decade.) Because of the geographical nature of school attendance zones, for black students these demographic changes should have resulted in more contact with whites in schools even without desegregation plans.

For African American students, particularly in the South, however, the resegregation seems clearly related to the change in the federal court's position on desegregation law. In spite of similar demographic trends before and after 1988, desegregation of blacks increased steadily from the early 1960s to the late 1980s. Since then, the progress of desegregation has reversed and segregation has been consistently growing.

#### **LAWS AFFECTING THE DESEGREGATION OF AFRICAN AMERICAN STUDENTS**

The 1954 decision of *Brown v. Board of Education*<sup>56</sup> outlawing *de jure* segregation was the result of decades of struggle by civil rights lawyers; the transformation of the Supreme Court through judicial appointments by Presidents Roosevelt, Truman and Eisenhower; the work of experts documenting the harms of segregation; and the recommendation of two Administrations that the Court outlaw apartheid schools. As Martin Luther King, Jr. recognized, the decision helped spur a huge civil rights movement.<sup>57</sup>

When President Kennedy asked Congress in 1964 to prohibit discrimination in all programs receiving federal aid, 98% of Southern blacks were still in totally segregated schools.<sup>58</sup> In the late 1960s and early 1970s, the efforts to desegregate schools peaked. The only period in which both the courts and the Executive Branch of the government actively supported these efforts was the four years following the enactment of the 1964 Civil Rights Act. During this period, federal education officials, the Department of Justice, and federal courts all maintained strong and consistent pressure for achieving actual desegregation.<sup>59</sup>

The Supreme Court authorized busing to desegregate Southern cities in 1971.<sup>60</sup> In 1973, almost two decades after *Brown*, it extended desegregation to the North.<sup>61</sup> All Supreme Court decisions on desegregation were unanimous until the Nixon era. The expansion of Supreme Court remedies soon came to an end, however, with key 5-4 decisions against desegregation across city-suburban lines and against equalizing

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<sup>55</sup> Iceland, J. and Weinberg, D.H. with Steinmetz, E. (2002). "Racial and Ethnic Residential Segregation in the United States: 1980-2000." Washington, D.C.: U.S. Census Bureau.

<sup>56</sup> 347 U.S. 483 (1954).

<sup>57</sup> "Speech before the Youth March for Integrated Schools," supra note 2.

<sup>58</sup> Southern Education Reporting Service in Reed Sarratt, *The Ordeal of Desegregation* (New York: Harper & Row, 1966), p. 362; HEW Press Release, May 27, 1968; OCR data tapes: 1992-3, 1994-5, 1996-7; and 1998-9 NCES Common Core of Data.

<sup>59</sup> Orfield, G. (1969), supra note 14.

<sup>60</sup> *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

<sup>61</sup> *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

finances among school districts.<sup>62</sup> A closely divided Supreme Court was stalemated on desegregation policy for a long period and left the law basically unchanged between the mid-1970s and 1991. The legal standards in place during this time allowed civil rights organizations to almost always win a lawsuit claiming unconstitutional racial segregation in a school district because almost all urban school districts had discriminated in relatively overt ways over time.<sup>63</sup> Also, during this period, when faced with mandates to desegregate districts that had long had rapidly declining white and middle class enrollment, many districts and courts adopted limited plans that desegregated part of the student population and that emphasized choice.<sup>64</sup> Such plans often took the form of implementing magnet schools or “controlled choice” plans. Magnet school plans generally offered attractive educational alternatives with students admitted under desegregation guidelines; “controlled choice” plans required all parents to rank their preferences among schools, and then school districts assigned students to their highest choice that was compatible with preserving integration. The federal government modestly supported magnet schools in the 1970s and then again after the mid-1980s.<sup>65</sup>

The Reagan Administration, however, brought a shift in the position of the Justice Department, which took a stance of strong opposition to desegregation litigation, opposing even the continuation of existing desegregation plans.<sup>66</sup> The Administration developed theories that desegregation had failed and that existing desegregation orders should be cancelled after only a few years. The Justice Department began to advocate such a policy in the federal courts in the mid-1980s.<sup>67</sup>

In 1991, the *Oklahoma City v. Dowell* ruling<sup>68</sup> substantially altered the Supreme Court’s position on desegregation cases and made it more likely that school districts would be declared “unitary” and freed from further court supervision. It moved from the Warren Court’s position in 1968— that school districts must end systems of separate racially defined schools and become “unitary” systems where all schools were part of a common interracial system and all had fair treatment— to the Rehnquist Court’s position in 1991 that years of compliance with a court order and a judicial determination that the district had done what was feasible to eliminate any remaining effects of the prior discrimination, whether or not it had actually overcome the history of discrimination constitute a “unitary” system. Before this ruling, school districts with a history of discrimination were in violation of the Constitution if they took actions that would have the foreseeable impact of restoring segregation. Many assumed that this would be true after court supervision ended as well. The Supreme Court, however, announced that once

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<sup>62</sup> *Milliken v. Bradley*, 418 U.S. 717 (1974); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

<sup>63</sup> Orfield, G. (1975). *Congressional Power: Congress and Social Change*. New York: Harcourt Brace Jovanovich.

<sup>64</sup> Orfield and Eaton (1996), *supra* note 8.

<sup>65</sup> Steele, L., and Levine, R. (1994) *Educational Innovation in Multiracial Contexts: The Growth of Magnet Schools in American Education*.

<sup>66</sup> Meese III, E. (1992). *With Regan: The Inside Story*. Washington, D.C.: Regnery Gateway, p. 314-9.

<sup>67</sup> Amaker, N.C. (1988). *Civil Rights and the Reagan Administration*, Washington: Urban Institute Press, chapter 3.

<sup>68</sup> *Bd. of Educ. of Oklahoma v. Dowell*, 498 U.S. 237 (1991).

a school district is declared “unitary”, school authorities are free to do whatever they want, even if it would obviously increase segregation, so long as the actions were not intentionally discriminatory. School districts could resume assigning students to neighborhood schools that were segregated as the result of residential isolation, for example, on the justification that they merely wanted children closer to home.<sup>69</sup>

Once the Supreme Court offered this new interpretation of “unitary” status” many districts returned to court to seek the end of their desegregation orders.<sup>70</sup> In districts where they did not, some white parents sought to end these desegregation efforts.<sup>71</sup> Although federal judges usually delayed implementation of desegregation for years and often ordered limited plans that had to be expanded through appeals, a number acted on their own initiative and with considerable speed in terminating desegregation orders.<sup>72</sup> In the recent past, lower federal courts in some parts of the country have been active in terminating desegregation plans even when a school district believes it needs to continue work on its desegregation obligations under a plan.<sup>73</sup>

### LAWS AFFECTING THE SEGREGATION OF LATINOS

The story for Latinos is very different. In most states, segregation of Latinos occurred because of residential segregation and through customs and traditions developed over time rather than by official laws.<sup>74</sup> While efforts to desegregate Latinos occurred at the state and local level throughout the 1940s, 1950s and 1960s,<sup>75</sup> the Supreme Court only recognized the Latino right to desegregation in 1973,<sup>76</sup> long after the most active part of the civil rights era had ended. In many of these cases, Latinos sought quality bilingual education programs as part of the remedy for the illegal desegregation as a means of obtaining equal access to the curriculum and eventually an opportunity to be fully integrated.<sup>77</sup> During the Nixon Administration, Executive Branch officials

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<sup>69</sup> The Supreme Court had already ruled that there was no right to equal schools in the 1973 school finance decision. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

<sup>70</sup> See Table “Selected “unitary” Status Rulings, 1990-2002,” *infra in Appendix A*

<sup>71</sup> E.g. *Belk v. Capacchione*, 274 F.3d 814 (4<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 1537 (2002).

<sup>72</sup> Orfield, G. (1999). “Conservative Activists and the Rush toward Resegregation,” in Jay P. Heubert, ed., *Law and School Reform: Six Strategies for Promoting Educational Equity*, New Haven: Yale University Press, p. 39-87.

<sup>73</sup> See for example, *Belk v. Capacchione*, 274 F.3d 814 (4<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 1537 (2002); *Hampton v. Jefferson County Bd. of Educ.*, 102 F.Supp. 2d 358 (W.D. Ky. 2000).

<sup>74</sup> See, Margaret E. Montoya, *A Brief History Of Chicana/O School Segregation: One Rationale For Affirmative Action 12 BERKELEY LA RAZA L.J. 159* (2001); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and The Mexican-American Litigation Experience: 1930-1980*, 27 UCCLR 555 (1994)

<sup>75</sup> See Carlos M. Alcalá & Jorge C. Rangel, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV. C.R.-C.L. REV. 307 (1972); Margaret E. Montoya, *A Brief History Of Chicana/O School Segregation: One Rationale For Affirmative Action 12 BERKELEY LA RAZA L.J. 159* (2001); George A. Martinez, *Legal Indeterminacy, Judicial Discretion and The Mexican-American Litigation Experience: 1930-1980*, 27 UCCLR 555 (1994).

<sup>76</sup> *Keyes v. School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973).

<sup>77</sup> See *United States v. Texas*, 342 F. Supp. 24 (E.D. Tex. 1971) (ordering bilingual/bicultural education to prevent segregation of Mexican-Americans), *aff'd*, 466 F.2d 518 (5<sup>th</sup> Cir. 1972); George A. Martinez,

consciously decided to offer Latinos enforcement of bilingual education rather than pursue their rights under traditional desegregation laws.<sup>78</sup> The Supreme Court recognized the right of federal civil rights enforcement officials to devise policies to address discrimination in schools on the basis of language in the 1974 *Lau* decision.<sup>79</sup> By the late 1990s, of course, there was a very active movement to outlaw bilingual education and voter referenda to do so have now succeeded in California, Arizona, and Massachusetts even as the segregation of Latino children grows.<sup>80</sup> Colorado is the only state that has so far defeated a voter initiative to eliminate bilingual education.

Many recent school desegregation decisions are inconsistent with the original spirit of *Brown* and the progeny of decisions flowing from it. A number of courts, reflected in the decisions in the “unitary” status table in Appendix A of this report, have approved “unitary” status and dismantled desegregation plans, and in some cases racial segregation remained. Also, some courts have found voluntary local race-conscious efforts to produce desegregated schools impermissible.<sup>81</sup> On the other hand, courts have supported continuation of desegregation efforts in Rochester, New York, Louisville, Kentucky, and Seattle, Washington as an appropriate policy.<sup>82</sup>

Considerable confusion about the status of desegregation law exists but clearly the basic trend is toward the dissolution of desegregation orders and return to patterns of more intense segregation.

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Legal Indeterminacy, Judicial Discretion And The Mexican-American Litigation Experience: 1930-1980, 27 UCCLR 555 (1994)

<sup>78</sup> Orfield, G. (1978). *Supra* note 9.

<sup>79</sup> *Lau v. Nichols*, 414 U.S. 563 (1974) (school district violated Title VI of the 1964 Civil Rights Act and discriminated on the basis of race and national origin because the Chinese-speaking students were receiving fewer benefits than their English-speaking peers and were denied a meaningful opportunity to participate in the educational program).

<sup>80</sup> See chapters 7 and 9 in Orfield, G. (1978). *Supra* note 9. Garcia, E.E. “Chicanos in the United States: Language, Bilingual Education, and Achievement.” In J. Moreno (1999), *The Elusive Quest for Equality: 150 Years of Chicano/Chicana Education*. Cambridge, MA: Harvard Education Review.

<sup>81</sup> *Tuttle v. Arlington County School Bd.*, 195 F.3d 698 (4<sup>th</sup> Cir. 1999), *cert. dismissed*, 529 U.S. 1050 (2000); *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (4<sup>th</sup> Cir.), *cert. denied*, 529 U.S. 1019 (1999); *Wessman v. Gittens*, 160 F.3d 790 (1<sup>st</sup> Cir. 1998).

<sup>82</sup> *Brewer v. West Irondequoit Central School Dist.*, 212 F.3d 738 (2d Cir. 2000); *Hampton v. Jefferson County Bd. of Educ.*, 102 F.Supp. 2d 358 (W.D. Ky. 2000) (the court recognized “the democratically-elected school board’s power to use race in limited, constitutional ways to maintain its desegregated school system”); *Parents Involved in Cmty. Schools v. Seattle School Dist. No. 1*, 137 F.Supp. 2d 1224 (W.D. Wash. 2001) (this decision was appealed, and a final decision about whether the school district’s voluntary efforts are permissible is still pending)