

M E M O R A N D U M

February 13, 1970

TO: JOHN D. MAHARG, County Counsel, and
JOHN H. LARSON, Chief Assistant County Counsel

FROM: ALFRED CHARLES DE FLON,
Deputy County Counsel

RE: Crawford v. Board of Education
("integration" case)

Following is a summary of the proposed judgment of the superior court in the above-referenced proceedings:

Summary of the Proposed Judgment

The Board of Education must prepare a Master Plan for integration of the pupils of the district for presentation to the court for its approval on or before June 1, 1970. (Min. Ord. 100.)

Said Master Plan shall provide for a completely "integrated" school system as such term is hereinafter defined. "Said Master Plan shall be designed for and be placed into operation prior to the school year commencing on

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or about September, 1970, so that in and during said school year and not to exceed under any circumstances the school year commencing September, 1971, it be made effective as to all of the schools of Board." (Min. Ord. 100.)

As I understand, the Board must adopt a district-wide plan, the implementation of which shall commence preferably in September, 1970, but not later than September, 1971. The plan need not provide for instant, districtwide integration but may provide for integration by stages. (Min. Ord. 99.)

The parameters for integration shall be those prescribed by the State Board of Education, Title V, Calif. Adm. Code, secs. 2010 and 2011, unless the Board of Education "cannot comply therewith within its District." (Min. Ord. 99.) If the local Board of Education cannot comply with the State Board rules, it should petition the State Board for modification of said rules. In the meantime, while petition for amendment is pending, the local board shall proceed to effect integration so that each school will have a student population of not less than 10 percent minority students and not more than 50 percent minority students.

The present State Board parameters are that each school shall have a percentage of each minority in its school population equal to the percentage of such minority in the

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district as a whole, plus or minus 15 percentage points. For example, if there are 20 percent Negroes in the school district, each school shall have a proportion of Negroes within the range of 5 percent to 35 percent.

The court shall appoint its expert to audit the proceedings of the local board during such times as such board is formulating its Master Plan. (Min. Ord. 66.) The board shall pay to the court's expert such sums of money as the court finds reasonable.

Prior to the approval of the Master Plan by the court the board shall not select new school sites, construct new schools, change attendance boundaries, build additions to existing schools, etc., if the effect thereof will preserve the existing racial imbalance and not provide integration.

Attorneys for petitioners will be awarded attorneys' fees of \$65,000 plus costs and disbursements. (Min. Ord. 101.)

Appeal Will Effect Stay of the Judgment

It is my present opinion that appeal from the judgment will operate as a stay thereof.

Judicial remedies are divided into two classes:

(1) actions, and (2) special proceedings. (C.C.P., secs. 20 and 21.) Mandate is a special proceeding. C.C.P. secs. 901 et seq. provide for appeals in civil actions or proceedings.

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(Sec. 901.) An appeal may be taken from a judgment of the superior court. (Sec. 904.1 (a).) With the exceptions provided by secs. 917.1 through 917.9, an appeal operates to stay proceedings in the trial court. (Sec. 916.) The only possible applicable exception to the general rule of 916 -- that an appeal stays execution of a judgment -- may be sec. 917.1 requiring an undertaking if the appeal is to stay payment of a money judgment. (Here attorney fees of \$65,000 were ordered paid.) Agencies of districts are excused from the requirement of posting undertakings. (C.C.P., sec. 1058.) If an undertaking should be required, the district will post it.

C.C.P., sec. 1110b provides. "If an appeal be taken from an order or judgment granting a writ of mandate the court granting the writ, or the appellate court, may direct that the appeal shall not operate as a stay of execution if it is satisfied upon the showing made by the petitioner that he will suffer irreparable damage in his business or profession if the execution is stayed."

To my mind sec. 1110b is not applicable because petitioners as students are not engaged in a "business or profession." Even if students were thus engaged, I would argue that sec. 1110b is repealed by implication because it is

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inconsistent with C.C.P., secs. 901 et seq. which apply to
all civil actions and proceedings.

If the trial court should order that appeal shall
not operate as a stay, we should seek writ of prohibition
or other appropriate writ from the court of appeals.

ACD:lw