

*Getting to the Roots of School Segregation: The Challenges of Housing Remedies in Northern  
School Desegregation Litigation*

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## **I. Introduction**

In the landmark case of *Green v. County School Board*, the Supreme Court held that school boards are “clearly charged with the affirmative duty to take whatever steps may be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.”<sup>1</sup> The predominance of racially identifiable neighborhoods in northern cities is a root of school segregation that scholars, lawyers and courts have all recognized. However, despite the close interrelationship between residential segregation and the racial composition of northern schools,<sup>2</sup> civil rights litigators have been frustrated in attempts to gain the courts’ approval of combined school and housing remedies. This essay seeks to illustrate the challenges of winning housing remedies in northern school desegregation cases: (1) proving causation in combined school and housing claims is difficult and requires more resources than most plaintiffs are willing or able to expend; and (2) the Justice Department remains either unable or unwilling to tackle both issues at once.

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<sup>1</sup> *Green v. County School Board*, 391 U.S. 430, 437-438 (1968).

<sup>2</sup> John Jackson, *Remedy for Inner City Segregation in the Public Schools: The Necessary Inclusion of Suburbia*, 55 OHIO ST. L. J. 415, 440 (1994).

Despite these challenges, evidence of residential segregation has still played a significant strategic role in school desegregation litigation. This essay highlights the Indianapolis Public Schools litigation as an example of how litigators were able to harness resources and overcome increasingly strict causation standards to gain an interdistrict school desegregation plan which included a significant, though limited, housing remedy.

## **II. The Relationship Between Housing and Schools in the North**

The dense concentration of blacks in northern cities began during World War I, when more than 500,000 blacks left the South to fill jobs in the quickly industrializing North.<sup>3</sup> As these new residents found jobs and homes, they encouraged friends and family to migrate as well. During the 1920s, nearly one millions blacks migrated from southern states to the North.<sup>4</sup> This period of time marked the formation of black urban ghettos – highly concentrated areas close to the city center where blacks found homes.<sup>5</sup>

Northern whites, particularly in the working class, viewed this influx of blacks with antagonism and resentment.<sup>6</sup> These new residents were not just economic competition – their distinct culture was viewed as inferior by whites who were unaware of the customs and life experiences of these poorly educated and poverty-stricken former sharecroppers.<sup>7</sup> As the population of blacks in northern cities increased, so did racially-motivated violence.<sup>8</sup> Blacks were steadily turned away from housing, education, and employment in white areas and pushed

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<sup>3</sup> DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 29. *See also* W. DENNIS KEATING, THE SUBURBAN RACIAL DILEMMA: HOUSING AND NEIGHBORHOODS 9.

<sup>4</sup> MASSEY & DENTON, *supra* note 3, at 29.

<sup>5</sup> KEATING, *supra* note 3, at 9-10.

<sup>6</sup> MASSEY & DENTON, *supra* note 3, at 29.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 30.

into small, dense urban neighborhoods.<sup>9</sup> By World War II, the basic structure of the modern urban ghetto was complete.<sup>10</sup>

In subsequent decades, both public and private housing discrimination continued to perpetuate black segregation in urban neighborhoods. Race-based covenants were finally outlawed in 1948,<sup>11</sup> but outright discrimination by housing realtors occurred at least until the passage of the Fair Housing Act in 1968.<sup>12</sup> While many of the overt refusals to sell or rent to blacks ended beginning in the 1970s, other more subtle discrimination through lies and misdirection about housing and mortgage availability persisted in the 1970s and 1980s and remains common even today.<sup>13</sup> For example, in 1977, Department of Housing and Urban Development auditors found that blacks nationwide faced housing discrimination in nearly half of their interactions in the real estate sales market.<sup>14</sup> A similar study conducted by HUD in 1988 found that 65 percent of available audited properties were shown to white auditors but not to black auditors.<sup>15</sup>

Public housing faces its own set of challenges, despite the Fair Housing Act's ban on racial discrimination and the Housing and Community Development Act's 1974 prohibition on concentrating subsidized housing projects in low income areas.<sup>16</sup> Prior to 1970, public housing projects were targeted toward blacks through siting in low-income urban neighborhoods where minorities were prevalent.<sup>17</sup> Once the government began enforcing new housing laws, many

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<sup>9</sup> *Id.* at 31.

<sup>10</sup> *Id.*

<sup>11</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948).

<sup>12</sup> MASSEY & DENTON, *supra* note 3, at 97.

<sup>13</sup> *See e.g. id.* at 97-101; KEATING, *supra* note 3, at 13-15.

<sup>14</sup> MASSEY & DENTON, *supra* note 3, at 100.

<sup>15</sup> *Id.* at 103.

<sup>16</sup> MODIBO COULIBALY, ET. AL, SEGREGATION IN FEDERALLY SUBSIDIZED LOW-INCOME HOUSING IN THE UNITED STATES 101.

<sup>17</sup> *Id.* at 131-133; MASSEY & DENTON, *supra* note 3, at 227.

localities simply stopped building public housing projects.<sup>18</sup> Alternative types of public housing, such as low-density, scattered-site subsidized housing, have often been thwarted by community groups through restrictive zoning and protests.<sup>19</sup>

As a result of public and private housing discrimination, the majority of northern blacks were pushed into dense, homogenous neighborhoods, and school segregation “naturally” followed. Residential segregation was often extremely intense in northern states, particularly in the early 1970s when school desegregation litigation began to build momentum.<sup>20</sup> Many northern neighborhoods were more racially segregated than in the South.<sup>21</sup> As a consequence, much of the school desegregation litigation moved further north, to cities like Denver, Indianapolis, St. Louis, New York City, Chicago and Detroit.<sup>22</sup>

A distinct interrelationship between school and residential segregation exists that is generally unique to the North. Northern school districts typically encompass much smaller geographical areas than their southern counterparts,<sup>23</sup> and northern black families tend to be highly concentrated in urban centers, rather than spread between urban, suburban and rural areas as in the South. County government is historically more important in southern states, and as a result, county-wide school districts are very common.<sup>24</sup> These expansive districts generally contain a large segment of the local housing market and a substantial proportion of white students, allowing for relatively simple intradistrict remedies for school desegregation.<sup>25</sup> In

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 228-229.

<sup>20</sup> Brian Landsberg, *The Department of Justice and the Civil Rights Act of 1964: A Symposium*, 26 PAC. L. J. 765, 780 (1995) (see comments by Gary Orfield).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 781.

<sup>23</sup> Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825, 840 Table 2.

<sup>24</sup> GARY ORFIELD & SUSAN EATON, *DISMANTLING DESEGREGATION* 304 (1995).

<sup>25</sup> *See id.*

contrast, smaller urban school districts in the North generally lack such student diversity,<sup>26</sup> allowing schools to more easily become racially identifiable and requiring interdistrict remedies to cure the segregation.

The Supreme Court first began to articulate law regarding housing and schools in its discussion of neighborhood schools in a southern city, Charlotte, North Carolina, in 1971. Chief Justice Burger took note of the obvious interrelationship between these two areas: “The location of schools may [] influence the patterns of residential development of a metropolitan area and have important impact on the composition of inner-city neighborhoods,” he wrote. New construction “may well promote segregated residential patterns which, when combined with ‘neighborhood zoning,’ further lock the school system into the mold of separation of the races.”<sup>27</sup>

The Supreme Court’s amenable attitude toward investigating the relationship between schools and residential segregation did not last much beyond *Swann*.<sup>28</sup> By 1974, evolving precedent in both housing and school desegregation law would present an extremely large obstacle to obtaining many affirmative remedies aimed at resolving these issues together.<sup>29</sup>

### **III. The Challenges to Combining Housing and School Litigation**

For civil rights lawyers, combining a housing and school remedy is considered a sort of holy grail of school desegregation litigation – a route to an effective and longstanding

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<sup>26</sup> *Id.*

<sup>27</sup> *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20-21 (1971).

<sup>28</sup> Landsberg, *supra* note 20, at 781 (see comments of Gary Orfield).

<sup>29</sup> *Id.*; See *infra* p. 7.

desegregation of schools.<sup>30</sup> But it is an elusive goal. Few school desegregation cases have fashioned broad, affirmative housing remedies which have been duly executed.

### **1. Proving Causation in Combined School and Housing Claims Is Difficult and Requires More Resources Than Most Plaintiffs Are Willing Or Able to Expend.**

The issues of proof in school desegregation cases alone are difficult. Until the Supreme Court's 1973 decision in Denver, *Keyes v. School District No. 1*,<sup>31</sup> plaintiffs had to show "constitutionally or statutorily mandated racial separation of students in [] schools," a condition which did not exist in the overwhelming majority of northern school districts.<sup>32</sup> After *Keyes* the door opened to pursuit of de facto school segregation cases, but the causation bar remains extremely high: Plaintiffs must show "that government actions are intentionally discriminatory rather than that they simply have discriminatory effects."<sup>33</sup>

Proving intentional government discrimination often requires a skill set beyond that of the typical civil rights lawyer.<sup>34</sup> Since modern-era school boards are unlikely to announce their racist intentions or confess in court, proving discriminatory intent requires significant reliance on circumstantial evidence, and in-depth statistical and historical analysis is generally required. Even in relatively simple intradistrict cases, Plaintiffs must be prepared to present detailed evidence on issues such as "school construction, feeder patterns, grade levels, boundary-drawing,

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<sup>30</sup> Interview with William Taylor, March 17, 2008 (civil rights attorney and chair of the Citizens' Commission on Civil Rights; participated as counsel in both the Indianapolis and St. Louis school desegregation cases) (transcript on file with author).

<sup>31</sup> 413 U.S. 189 (1973).

<sup>32</sup> Nathaniel Jones, *Civil Rights After Brown: "The Stormy Road We Trod,"* in RACE IN AMERICA 102 (Herbert Hill & James Jones, Jr., eds., 1993).

<sup>33</sup> Eric Stein, *Attacking School Segregation Root and Branch*, 99 YALE L. J. 2003, 2004 (1990).

<sup>34</sup> Nathaniel Jones, *The Judicial Betrayal of Blacks – Again: The Supreme Court's Destruction of the Hopes Raised by Brown v. Board of Education*, 32 FORDHAM URB. L. J. 109, 119 (1972).

student assignments, faculty assignments, and other administrative practices” and directly connect them to deliberate segregative actions.<sup>35</sup>

To complicate matters, the Supreme Court’s 1974 decision in *Milliken v. Bradley* made it clear that interdistrict remedies would not be permitted unless clear, unambiguous evidence proved that segregative acts of surrounding school districts had an effect on the alleged discrimination. “Before the boundaries of separate and autonomous school districts may be set aside,” the Court held, “it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district.”<sup>36</sup>

The Court’s application of the facts in *Milliken* is also problematic for litigators. Despite the district court’s findings of fact that the state legislature overrode a voluntary school desegregation plan adopted by Detroit Public Schools, voted for school construction plans which perpetuated existing residential segregation, and refused to adequately fund transportation for the school district’s students – virtually ensuring they could only attend walk-up neighborhood schools – the Court refused to hold the state liable for any part of the segregation.<sup>37</sup> Instead, the Court overruled the Sixth Circuit en banc panel’s decision to uphold the findings of the trial court that the state of Michigan and Detroit Board of Education committed constitutional violations requiring interdistrict desegregation of Detroit Public Schools. The Court rejected the lower courts’ finding of any state control over local education and held there was insufficient evidence proving entities outside Detroit Public Schools acted with segregative intent.<sup>38</sup>

Even where intentionally discriminatory government action can be shown, crafting a housing remedy can be difficult. Public housing is generally administered locally and often

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<sup>35</sup> *Id.*

<sup>36</sup> *Milliken v. Bradley*, 418 U.S. 717, 744-745 (1974).

<sup>37</sup> *Id.* at 770 (White, J., dissenting).

<sup>38</sup> Jones, *supra* note 34, at 123-124; *Milliken v. Bradley*, 418 U.S. 717 (1974).

“treated legally as a voluntary, local, civic endeavor.”<sup>39</sup> Housing claims can be extremely challenging to prosecute unless they deal with public housing that has already been built or proposed.<sup>40</sup> Private housing discrimination is difficult to connect to school desegregation because it must be traceable to government actions.

Compounding the difficulty of pursuing housing remedies in modern school desegregation claims is the view that most of today’s residential segregation stems from voluntary choice rather than past discrimination. For instance, in his concurring opinion in the 2007 case *Parents Involved in Community Schools v. Seattle School District No. 1*, Justice Thomas was insistent that school segregation only encompasses deliberate efforts by school officials to operate a dual system based on race.<sup>41</sup> “Racial imbalance is not segregation,” he wrote. “Although presently observed racial imbalance might result from past *de jure* segregation, racial imbalance can also result from any number of innocent private decisions, including voluntary housing choices.”<sup>42</sup> A decade earlier, in *Missouri v. Jenkins*, he stated this proposition even more bluntly: “It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior . . . that racial imbalances constitute[] an ongoing constitutional violation that continue[s] to inflict harm on black students . . . that blacks cannot succeed without the benefit of the company of whites.”<sup>43</sup>

In addition, the sheer size of combined housing and school desegregation cases and the subsequent problems of proof they entail can be unforgiving. In 1974 in Coney Island, New York, litigants successfully convinced the district court that “housing and school patterns feed on

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<sup>39</sup> Philip Tegeler, *Housing Segregation and Local Discretion*, 3 J.L. & POL’Y 209, 213-214 (1994).

<sup>40</sup> *Id.*

<sup>41</sup> *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738, 2769 (2007) (Thomas, J., concurring).

<sup>42</sup> *Id.*

<sup>43</sup> *Missouri v. Jenkins*, 550 U.S. 70, 96-99 (1995) (Thomas, J., concurring).



each other.”<sup>44</sup> But despite a finding that discriminatory public housing policies were a primary cause of school segregation, the court found the housing authority’s activities to be too massive to fashion a specific remedy that would make a substantial impact. Instead, the court merely ordered monthly progress reports from the defendants.<sup>45</sup>

Similarly, in the St. Louis desegregation case, despite substantial evidence developed by the plaintiffs’ lawyers that state and local housing authorities had engaged in discriminatory practices, housing remedies were never seriously broached in negotiations with the special master appointed for settlement.<sup>46</sup> Intent on an interdistrict remedy, both the plaintiff’s counsel and the special master admitted it was a challenging case, and the plaintiffs simply “had [their] hands full seeking school relief.”<sup>47</sup>

Plaintiffs also have to contend with the plethora of resources tapped by defendants.<sup>48</sup> For example, defendant school boards and state and local governments typically have “the financial resources to employ top legal talent,” along with “ready access to the media and the ability to exert considerable political leverage.”<sup>49</sup> Defendants’ strategies are not limited to courtroom arguments. “They [can also] ignite backfires even within the minority community, through the use of such buzz terms as ‘forced busing’ and ‘white flight.’”<sup>50</sup>

The length of litigation and number of appeals can also be daunting. In Indianapolis, for example, twelve years passed from the date the initial complaint was filed until the remedy was

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<sup>44</sup> Hart v. Community School Bd., 383 F. Supp. 699, 706 (1974).

<sup>45</sup> See Marjorie Heins, *Housing Remedies in School Desegregation Cases: The View from Indianapolis*, 12 HARV. C.R.-C.L. L. REV. 649, 650 n.4 (1977).

<sup>46</sup> Interview with William Taylor, *supra* note 30; Interview with Bruce La Pierre, March 17, 2008 (transcript on file with author). See also Dennis Judd, *The Role of Governmental Policies in Promoting Residential Segregation in the St. Louis Metropolitan Area*, J. NEGRO EDUC. (Summer 1997).

<sup>47</sup> Interview with Bruce La Pierre, March 17, 2008 (transcript on file with author); Interview with William Taylor, *supra* note 30.

<sup>48</sup> Jones, *supra* note 34, at 118.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

actually implemented.<sup>51</sup> The case was heard on direct appeal three times over that time period. Long after the remedy was implemented, litigation over various issues continued until a final settlement occurred thirty years after the date of filing.<sup>52</sup>

## **2. The Justice Department Is Unwilling Or Unable to Pursue Combined School and Housing Desegregation Litigation.**

The Civil Rights Division of the Justice Department had neither statutory nor jurisdictional authority over both school and housing segregation cases until the late 1960s with the passage of the Civil Rights Act in 1964 and the Fair Housing Act in 1968. Prior to the enactment of these statutes, resources were spent almost exclusively on enforcing Fifteenth Amendment rights in the Deep South.<sup>53</sup> The Division is considered the most capable of taking on combined housing and school segregation cases<sup>54</sup> because of the budget and manpower available<sup>55</sup> and the ability to seek broad injunctive relief essential to institutional reform.<sup>56</sup>

However, despite gaining the necessary jurisdictional authority and having significant advantages over private litigants, the Justice Department has never showed significant leadership in pursuing joint school and housing remedies in northern cities. While the administrative separation between the Division's housing and education sections likely contributed to the lack of combined litigation,<sup>57</sup> political considerations in the executive branch of nearly all

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<sup>51</sup> See discussion *infra* pp. 15-28.

<sup>52</sup> *Infra* pp. 27-28.

<sup>53</sup> Transcript of Testimony of Brian Landsberg, Senate Judiciary Committee, June 21, 2007.

<sup>54</sup> Interview with William Taylor, *supra* note 30; see also Testimony of Theodore Shaw, president of the NAACP Legal Defense & Education Fund, U.S. Committee on the Judiciary Hearing on the 50<sup>th</sup> Anniversary of the Civil Rights Act of 1957 and Its Continuing Importance (Sept. 5, 2007) ("The Civil Rights Division is second to none in terms of the time, resources and capacity it has to bring systemic litigation") (available at [http://judiciary.senate.gov/testimony.cfm?id=2885&wit\\_id=6632](http://judiciary.senate.gov/testimony.cfm?id=2885&wit_id=6632)).

<sup>55</sup> Testimony of Theodore Shaw, *supra* note 54.

<sup>56</sup> *Id.* ("The broad-based injunctive relief that the Division can pursue cannot be matched through the efforts of individual or private lawsuits alone because often the pecuniary interests of plaintiffs lead to much more narrow relief and no institutional reform.").

<sup>57</sup> E-mail from Brian Landsberg (March 14, 2008) (transcript on file with author).

administrations virtually eliminated the possibility of widespread school and housing desegregation litigation. These combined cases have been highly likely to involve interdistrict remedies and as a consequence, busing – a remedy no president other than Bill Clinton has supported.

Beginning with the Nixon Administration in 1968, Republicans in the executive branch staunchly opposed busing as a remedy for school desegregation.<sup>58</sup> President Nixon opposed the Supreme Court’s decision to employ busing as a means to thwart segregation resulting from neighborhood schools in Charlotte, and he supported the Court’s decision to deny an interdistrict remedy to black students in inner-city Detroit.<sup>59</sup> In 1972, Nixon even went on national television to announce the introduction of legislation to halt busing plans mandated by the federal courts.<sup>60</sup>

Nixon also considered amending the Constitution to restrict the remedies available for school desegregation.<sup>61</sup> Soon-to-be Supreme Court Justice William Rehnquist was charged with drafting the proposal, which would have outlawed the busing remedy, preserved neighborhood schools, and made freedom of choice plans constitutional.<sup>62</sup> Nixon ultimately rejected the proposal, although not on altruistic grounds – its fatal flaw was that the constitutional amendment process “takes too long.”<sup>63</sup>

Nixon’s successor, Gerald Ford, was no better. Rather than immediately send troops to quell violence after court-ordered desegregation in Boston and Louisville, Ford instead waited

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<sup>58</sup> Lawrence McAndrews, *Talking the Talk: Bill Clinton & School Desegregation*, 79 Int’l Soc. Sci. Rev. (Fall-Winter 2004).

<sup>59</sup> *Id.*

<sup>60</sup> Jones, *supra* note 34, at 115.

<sup>61</sup> Brad Snyder, *How the Conservatives Canonized Brown v. Board of Education*, 52 RUTGERS L. REV. 383, 431 (2000).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

nearly a month to reluctantly proclaim that he believed the courts went too far in ordering busing, but that citizens should respect their interpretation of the law.<sup>64</sup>

This distaste in the executive branch for busing continued in the Reagan and Bush administrations and did not give the Justice Department a viable position for pursuing combined housing and school desegregation remedies in the North. The small geographical area of most northern school districts and the density of black students located in urban areas<sup>65</sup> meant that any effective school desegregation remedy would invariably require interdistrict busing. As a result, housing and school desegregation litigation has not been jointly pursued by the Justice Department in any Republican administration.<sup>66</sup>

Democratic administrations fared little better. While the Justice Department's single major success in sparse efforts to combine school and housing litigation came from a case initiated in the Carter administration,<sup>67</sup> President Carter has little else to show from his four years in office. While the housing and education sections of the Civil Rights Division were combined during his administration – and subsequently eliminated by his Republican successor<sup>68</sup> – Carter's enthusiasm for actually enforcing school desegregation was uneven.<sup>69</sup> Like his predecessors, Carter continued to publicly denounce busing plans.<sup>70</sup>

The Yonkers litigation initiated under the Carter administration continues to be the only major combined case the Justice Department has successfully spearheaded. Finally settled in

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<sup>64</sup> McAndrews, *supra* note 58; see also McAndrews, Lawrence, *Missing the Bus: Gerald Ford and School Desegregation*, 27 *Pres. Studies Q.* (1997).

<sup>65</sup> See discussion *supra* pp. 4-5.

<sup>66</sup> See McAndrews, *supra* note 58.

<sup>67</sup> See e.g. Department of Justice Civil Rights Division Web site, <http://www.usdoj.gov/crt/housing/caselist.htm> (last visited March 22, 2008).

<sup>68</sup> BRIAN LANDSBERG, ENFORCING CIVIL RIGHTS 109-110.

<sup>69</sup> McAndrews, *supra* note 58 (Jimmy Carter adopted a hands-off policy on the enforcement of the provision . . . The record of enforcement during the Carter years," [political scientist Stephen] Halperin adds, "suggests that enforcement of Title VI under a liberal Democratic president was not, in its national effect, strikingly different from enforcement under Republican administrations.").

<sup>70</sup> *Id.*

May 2007, the district court ordered an intradistrict school desegregation remedy along with a housing remedy that consisted of the construction of 200 units of public housing and reservation of 600 homes for low income families in a predominantly white area of town.<sup>71</sup> However, even this lone success is tempered by the reality that the small amount of additional housing is unlikely to effect a widespread change in racial composition of the neighborhood.

The only other Democratic president during the era of modern school desegregation litigation was Bill Clinton. The Clinton administration also instituted a brief initiative to bring together school and housing litigation,<sup>72</sup> but no major new combined litigation was initiated. While Clinton did not oppose busing, he generally remained silent on the issue.<sup>73</sup>

Much of the Division's work during Clinton's tenure was spent dealing with litigation seeking to end school desegregation plans through unitary status hearings,<sup>74</sup> and it is possible that neither the time nor resources existed for much else. However, the Division did successfully negotiate the inclusion of housing remedies in several consent decrees that modified or ended school desegregation plans.<sup>75</sup> For example, in Tunica County, Mississippi, an affordable housing plan was implemented which required the county to provide home buying seminars, mortgage assistance and fair housing training to low and moderate income households, and required the school district to market these programs to families with school-age children.<sup>76</sup>

Because no president until Clinton supported busing, there was at the very least a consistent tacit disapproval of interdistrict remedies. Thus, the Justice Department has rarely

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<sup>71</sup> Fernanda Santos, *After 27 Years, Yonkers Housing Desegregation Battle Ends Quietly in Manhattan Court*, N.Y. TIMES, May 2, 2007.

<sup>72</sup> Department of Justice Civil Rights Forum Newsletter, Volume 14, No. 2, Spring 2000, available at <http://www.usdoj.gov/crt/cor/Pubs/forum/00spr.htm> (last visited March 22, 2008).

<sup>73</sup> McAndrews, *supra* note 58.

<sup>74</sup> THE TEST OF OUR PROGRESS: THE CLINTON RECORD ON CIVIL RIGHTS, REPORT OF THE CITIZEN'S COMMISSION ON CIVIL RIGHTS 195-196 (William Taylor & Corrine Yu, eds.)

<sup>75</sup> *Id.*

<sup>76</sup> Consent Order, U.S. v. Tunica County School District, 2:67-cv-00018 (1999).

been in a position to undertake any widespread initiatives combining housing and school desegregation. With the exception of Yonkers, where the borough's density and demographics made an intradistrict remedy possible, northern school districts simply cannot overcome urban residential segregation without the inclusion of outlying school districts – a solution to which busing is inextricably linked.

#### **IV. Using Housing to Create Positive Outcomes in School Desegregation Litigation**

Civil rights lawyers have most successfully utilized evidence of residential segregation in the North to buttress their arguments for interdistrict school desegregation. Because housing remedies are difficult to come by, any such remedy which emerges is considered a “bonus” of successful litigation. A particularly good example is school desegregation litigation in Indianapolis. This litigation represents one of the first cases where a district court not only recognized the strong correlation between schools and housing, but tried to frame a remedy dealing with both issues in an attempt to have long-lasting resonance.<sup>77</sup> Evidence of housing discrimination was used by attorneys strategically to strengthen the case for an interdistrict remedy, and subsequently resulted in a desegregation plan which included an injunction aimed at stemming the flow of public housing segregation in the city.

#### **V. CASE STUDY: Indianapolis Public Schools**

##### **1. Introduction**

At the height of litigation to desegregate the public school system in Indianapolis, Indiana, the racial composition of the city's public housing projects for families was more than

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<sup>77</sup> Heins, *supra* note 45, at 650.

98 percent black.<sup>78</sup> Despite groundbreaking “Uni-Gov” legislation passed in 1969 to consolidate major government functions of metropolitan Indianapolis, two areas were noticeably ignored – schools<sup>79</sup> and public housing<sup>80</sup>. While myriad city departments merged with the surrounding townships, the idea of expanding the jurisdiction of Indianapolis Public Schools or expanding public housing beyond the traditional municipal limits was disregarded to avoid exacerbating racial tensions between suburban and urban areas.<sup>81</sup> When the Indianapolis Public Schools litigation was initiated, these facts formed the basis for the plaintiff’s theory that public officials in Indiana conspired to keep black schoolchildren confined to the urban areas of the city.

School desegregation litigation lasted in Indianapolis from 1968-1998<sup>82</sup>, but the bulk of substantive issues were decided in three phases of trials between 1971 and 1979 – *Indianapolis I*<sup>83</sup>, *Indianapolis II*<sup>84</sup>, and *Indianapolis III*<sup>85</sup>. This case study seeks to illustrate the substantial obstacles to combining housing and school desegregation issues in a single litigation and how simultaneous evolution of housing and school desegregation law sought to thwart the best efforts of both civil rights lawyers and the district judge overseeing the case.

## 2. Background

When the Indiana legislature passed Uni-Gov in 1969, current U.S. Senator Richard Lugar was then mayor of Indianapolis. A proponent of extending city authority to outlying

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<sup>78</sup> Testimony of John Mullin, Official Reporter’s Transcript of Proceedings Had Upon Trial, *U.S. v. Board of School Commissioners of the City of Indianapolis*, No. IP 68-C-225, March 18, 1975, p. 72 lines 20-22.

<sup>79</sup> EMMA LOU THORNBROUGH, *THE INDIANAPOLIS STORY: SCHOOL SEGREGATION AND DESEGREGATION IN A NORTHERN CITY* 260 (1993) (available at the Indiana Historical Society).

<sup>80</sup> Testimony of John Mullin, *supra* note 78, at 94:22-25, 95:1-7.

<sup>81</sup> BRUCE KATZ, *REFLECTIONS ON REGIONALISM* 236.

<sup>82</sup> Docket, *U.S. v. Board of School Commissioners of the City of Indianapolis*, No. IP 68-C-225.

<sup>83</sup> *U.S. v. Board of School Commissioners of the City of Indianapolis*, 332 F. Supp. 655 (S.D. Ind. 1971) [hereinafter “*Indianapolis I*”].

<sup>84</sup> *U.S. v. Board of School Commissioners of the City of Indianapolis*, 419 F. Supp. 180 (S.D. Ind. 1975) [hereinafter “*Indianapolis II*”].

<sup>85</sup> *U.S. v. Board of School Commissioners of the City of Indianapolis*, 456 F. Supp. 183 (S.D. Ind. 1978) [hereinafter “*Indianapolis III*”].

suburban townships in order to retain federal funding lost due to citizen flight from the city center, Lugar's plan selectively merged areas of city and county governments over the entire metropolitan region.<sup>86</sup> Neither consolidation of school districts nor expansion of public housing services was considered.

Immediately preceding his tenure as mayor, Lugar spent nearly three years as an elected member of the school board of Indianapolis Public Schools.<sup>87</sup> His experience on the school board taught him that proposals to extend IPS jurisdiction or consolidate with suburban schools were fraught with political peril.<sup>88</sup> A stark racial contrast existed between Center Township, which made up the bulk of pre-Uni-Gov Indianapolis, and the outlying townships. While Center Township was nearly 40 percent black<sup>89</sup>, the surrounding townships were 97 percent white.<sup>90</sup> Lugar himself publicly admitted that any Uni-Gov proposal which included school consolidation simply would not have passed suburban scrutiny. He summarized the political opposition to extending city control under Uni-Gov from residents of the suburbs at a conference of the National Association of County Officials:

They said again and again, 'We worked hard to get out of a mess. Now you have the gall to ask us to be united with the crime, the dirt, the racial tension, the traffic jams, the odors, and the dismal atmosphere that we escaped. Furthermore, we know that our taxes will be higher, public housing very likely in our backyards, and our schools may be racially integrated, and a big brother government will sweep over us.'<sup>91</sup>

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<sup>86</sup> KATZ, *supra* note 81.

<sup>87</sup> Extended Biography of Senator Richard Lugar, <http://lugar.senate.gov/bio/extended.cfm> (last visited April 2, 2008).

<sup>88</sup> See THORNBROUGH, *supra* note 79, at 260; KATZ, *supra* note 81, at 236.

<sup>89</sup> Andrea Marsh, *Judicial Federalism in the Southern District*, 37 IND. L. REV. 629, 633-634 (2004).

<sup>90</sup> *Id.*

<sup>91</sup> THORNBROUGH, *supra* note 79, at 260-261.



Because the state legislature refused to broach the subject of extending schools and public housing services outside the traditional city limits, opposition by suburban residents was appeased and Uni-Gov was passed.<sup>92</sup>

But refusing to consider IPS in the development of Uni-Gov did not mean Mayor Lugar, the city of Indianapolis, and the Indiana General Assembly were able to sweep political and racial tensions entirely under the rug. During the time that Uni-Gov was under consideration, school desegregation litigation in Indianapolis had been quietly building steam. In March 1967, a complaint was filed with the Department of Justice by a parent of black children who attended IPS schools alleging the city of Indianapolis was operating a segregated school system.<sup>93</sup> Following an investigation by the Department of Justice, IPS was ordered to voluntarily desegregate or face a lawsuit. IPS responded by creating a voluntary school transfer program, a token offering which did not satisfy the government, which subsequently filed its own lawsuit against IPS to seek an intradistrict desegregation remedy.<sup>94</sup>

The first trial in the Indianapolis case would occur over seven days in 1971. Lawyers from the Justice Department argued a relatively simple theory of their case: that the IPS school board engaged in de jure segregation by consciously assigning black students to certain elementary schools.<sup>95</sup> Housing issues were not a principle part of the Plaintiff's theory in *Indianapolis I*, but testimony from IPS officials regarding the impact of public housing siting<sup>96</sup> on the racial composition of the school district foreshadowed the more prominent role housing would play in subsequent phases of the trial.

### **3. The Role of Housing in IPS School Desegregation**

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<sup>92</sup> See *id.* at 260; KATZ, *supra* note 81, at 261.

<sup>93</sup> Marsh, *supra* note 89, at 632.

<sup>94</sup> *Id.*

<sup>95</sup> THORNBROUGH, *supra* note 79, at 281.

<sup>96</sup> *Id.* at 283.

Housing played a strategic role in attempting to secure an interdistrict remedy for school desegregation.<sup>97</sup> Residential segregation in Indianapolis was obvious. Census data collected in 1970 showed that nearly 82 percent of blacks would have needed to move residences in order for Indianapolis to be considered integrated.<sup>98</sup> Housing segregation persisted throughout the 1970s, leading to the conclusion that Indianapolis was among sixteen “hypersegregated” cities in the U.S.<sup>99</sup>

The statistics speak for themselves: Nearly 94 percent of blacks lived in and around the city’s central business district, mostly concentrated in densely populated black neighborhoods which occupied 80 percent less physical space than predominantly white areas.<sup>100</sup> 62 percent of blacks lived in all-black neighborhoods which provided no opportunity for residential contact with whites.<sup>101</sup>

Both public housing projects and private housing markets had significant effects on the city’s residential segregation. Public housing projects for families in Indianapolis were almost exclusively black.<sup>102</sup> The probability of blacks encountering racial discrimination in the private housing market – whether renting or selling – was 6 in 10.<sup>103</sup>

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<sup>97</sup> See E-mail from Charles Kelso (Feb. 28, 2008) (on file with author); Interview with William Taylor, *supra* note 30.

<sup>98</sup> MASSEY & DENTON, *supra* note 3, at 63-64. This study was conducted based on the 1980 census. *Id.*

<sup>99</sup> *Id.* at 75-77. A hypersegregated city was defined as a metropolitan area which scored at least 60 out of 100 in four of five defined areas of segregation: (1) unevenness of the distribution of black residences; (2) isolation of blacks within racially homogenous neighborhoods; (3) clustering of black neighborhoods; (4) concentration of blacks within a small geographical area; (5) centralization of blacks around the urban core of the city. *Id.* at 74.

<sup>100</sup> *Id.* at 76.

<sup>101</sup> *Id.*

<sup>102</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182 (S. D. Ind. 1975); see also COULIBALY, ET. AL., *supra* note 16, at 111 and Heins, *supra* note 45, at 659.

<sup>103</sup> MASSEY & DENTON, *supra* note 3, at 101. This study was conducted in 1977. Racial discrimination was defined as “when white auditor receives favorable treatment on at least one of the following items and black auditors receive favorable treatment on none: housing availability, courtesy to client, terms and conditions of sale or rental, information requested of client, information supplied to client.” *Id.*

Housing played a minimal role in the initial trial in *Indianapolis I*, which focused on proving de jure segregation within the district. However, stalling by IPS in creating an intradistrict desegregation plan convinced Judge Dillin that a more drastic remedy was needed.<sup>104</sup> In a remedy trial that would proceed in 1973, Dillin ordered the government to add the suburban school districts as defendants.<sup>105</sup> In accordance with President Nixon's opposition to interdistrict remedies and busing, the Department of Justice refused to file grievances against them. Instead, an intervening class of black schoolchildren joined the suburban districts, along with a number of state officials, including the Housing Authority of the City of Indianapolis, as defendants.<sup>106</sup> Dillin would proceed to order the creation of an interdistrict desegregation plan.

During *Indianapolis I*, Judge Dillin told litigants that he feared a single district desegregation plan would result in white flight that would ultimately resegregate the district. In the 1973 remedy phase, with all non-IPS Marion County school districts, two municipal school districts within Marion County, and two school districts serving suburbs of Indianapolis in adjoining counties now party to the case, Judge Dillin became insistent on finding a way to craft an interdistrict plan.<sup>107</sup> He espoused his "tipping point" theory: "When the percentage of Negro pupils in a given school district becomes accelerated and continues . . . [and] once a school [reaches 40 percent and] becomes identifiably black, it never reverses to white in the absence of redistricting."<sup>108</sup>

Further complicating the case, the timing of the Indianapolis litigation occurred simultaneously with important Supreme Court precedent in both the housing and school desegregation areas. In 1974, while an appeal of the district court's decision and remedy in

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<sup>104</sup> THORNBROUGH, *supra* note 79, at 283-290.

<sup>105</sup> Heins, *supra* note 45, at 655-656.

<sup>106</sup> *Id.*

<sup>107</sup> Marsh, *supra* note 89, at 635 (2004). *See also* Interview with William Taylor, *supra* note 30.

<sup>108</sup> *Id.*

*Indianapolis I* was pending, the Supreme Court handed down its decision in *Milliken v. Bradley*, which severely limited the ability of the courts to order interdistrict school desegregation remedies.<sup>109</sup> The majority of the court in *Milliken* held that interdistrict remedies were only warranted where “it [is] first shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district.”<sup>110</sup> Without evidence that a particular government practice either conducted by a specific suburb or which significantly affected that suburb contributed to the cause of the alleged school segregation, an interdistrict remedy was no longer an option.

While the majority’s holding in *Milliken* appeared to dim the fate of pending interdistrict remedies such as that in Indianapolis, civil rights lawyers held out hope that a concurring opinion by Justice Stewart left the door open for proving interdistrict violations through other means, including evidence of housing violations.<sup>111</sup> Justice Stewart wrote that an interdistrict remedy could be proper in cases where it was shown “that state officials had contributed to the separation of the races by drawing or redrawing school district lines . . . [or] by transfer of school units within districts . . . or by purposeful, racially discriminatory use of state housing or zoning laws.”<sup>112</sup> Justice Stewart had considered evidence of housing discrimination in coming to his determination – the rest of the majority dismissed it on the grounds it was not stated in the cause of action – but found the evidence insufficient to prove anything other than job opportunities and other economic and social conditions were drawing blacks to inner city Detroit. Given the number of automotive plants where black citizens worked in suburban areas of the city, Stewart’s theories on job opportunities seemed a bit dubious, but nevertheless, civil rights

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<sup>109</sup> *Milliken v. Bradley*, 418 U.S. 717 (1974).

<sup>110</sup> *Id.* at 744-45.

<sup>111</sup> Interview with William Taylor, *supra* note 30.

<sup>112</sup> *Milliken v. Bradley*, 418 U.S. 717, 755 (1974) (Stewart, J., concurring).

lawyers were happy to be given at least a short leg to stand on following the verdict in *Milliken*.<sup>113</sup>

Just one month after the Court's decision in *Milliken*, the Seventh Circuit remanded the Indianapolis case for consideration in light of the new law on interdistrict remedies. In *Indianapolis II*, lawyers had Uni-Gov to boost their hopes of proving government action which significantly affected the outlying suburbs. Indianapolis was the only major municipality in the entire state whose city and school boundaries did not mirror one another.<sup>114</sup> The idea of consolidating the urban and suburban schools had been considered by the IPS school board during Lugar's tenure in the mid-60s, but was rejected due to vigorous opposition from many of the suburban schools.<sup>115</sup> The idea was only broached once during the discussion of Uni-Gov, brought up by a reporter for the city's African-American newspaper at a community forum regarding the legislation, but was quickly dismissed by several city officials as untenable based on the school board's earlier experience.<sup>116</sup> In *Indianapolis II*, Lugar admitted to the court that it was his political judgment at the time that Uni-Gov would not have passed through the state legislature if it included consolidation of schools.<sup>117</sup>

Attorneys pushing for an interdistrict remedy sought additional evidence to prove intentional race discrimination was occurring at all levels of local government.<sup>118</sup> At the time of the Indianapolis litigation, observers considered site selection to be "the most serious problem" facing public housing nationwide.<sup>119</sup> Recalling Justice Stewart's concurring opinion in *Milliken*,

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<sup>113</sup> See Interview with William Taylor, *supra* note 30.

<sup>114</sup> Heins, *supra* note 45, at 649, 655 n.29.

<sup>115</sup> Transcript of Testimony of Richard Lugar, U.S. v. Board of School Commissioners of the City of Indianapolis, No. IP 68-C-225, 159-160 (March 19, 1975).

<sup>116</sup> *Id.* at 163-164.

<sup>117</sup> *Id.* at 165.

<sup>118</sup> E-mail from Charles Kelso, Feb. 28, 2008 (transcript on file with author).

<sup>119</sup> Stephen Buell, *Racial Discrimination in Public Housing Site Selection*, 23 STAN. L. REV. 63, 64 (1970).

attorneys looked to city decisions on where to build public housing projects for families, whose racial composition was almost entirely black.<sup>120</sup> The Housing Authority of the City of Indianapolis had the authority to build 10 out of 11 existing housing projects five miles beyond city lines within Marion County, which could have placed some of the projects in suburban school districts<sup>121</sup>. However, no projects had ever been built beyond IPS territory and all of the children living in the projects – who were 98 percent black – attended IPS schools.<sup>122</sup>

The city of Indianapolis argued that housing projects were sited only in the city in order to place them within proximity of social services and transportation needed by low-income families, as well to ensure that all sites had proper water, sewage and other utility services.<sup>123</sup> However, the city had no explanation for why certain projects, such as Clearstream Gardens, which was built exactly on the border between the city and a township, were not sited across the street where land had been available and services, transportation and utilities were exactly the same.<sup>124</sup>

Judge Dillin found that housing and zoning issues were not mooted by the Supreme Court's decision in *Milliken*.<sup>125</sup> In addition, he found the racial aspect of the public housing decisions overwhelming.<sup>126</sup> In his opinion in *Indianapolis II*, the court held that “the location of

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<sup>120</sup> Interview with William Taylor, *supra* note 30.

<sup>121</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182 (S. D. Ind. 1975); *see also* Heins, *supra* note 45, at 658-659 (1974).

<sup>122</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182 (S. D. Ind. 1975); *see also* Heins, *supra* note 45, at 649, 659.

<sup>123</sup> Transcript of Testimony of Mike Carroll, U.S. v. Board of School Commissioners of the City of Indianapolis, IP 68-c-0225 (March 18, 2005).

<sup>124</sup> *See id.*

<sup>125</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182 (S.D. Ind. 1975).

<sup>126</sup> Interview with William Taylor, *supra* note 30.

these housing projects by instrumentalities of the state of Indiana has obviously tended to cause and to perpetuate the segregation of black pupils in IPS territory.”<sup>127</sup>

The court additionally found that suburban school districts were responsible for containing black schoolchildren within city limits. According to the court,

The evidence in the record, as taken in all hearings, clearly shows that the suburban Marion County units of government, including the added defendant school corporations, have consistently resisted the movement of black citizens or black pupils into their territory. They have resisted school consolidation, they resisted civil annexation so long as civil annexation carried school annexation with it, they ceased resisting civil annexation only when the Uni-Gov Act made it clear that the schools would not be involved. Suburban Marion County has resisted the erection of public housing projects outside IPS territory, suburban Marion County officials have refused to cooperate with HUD on the location of such projects, and the customs and usages of both the officials and inhabitants of such areas has been to discourage blacks from seeking to purchase or rent homes therein, all as shown in detail in previous opinions of this Court.<sup>128</sup>

On this basis, the court again ordered an interdistrict remedy, including providing for an injunction against the city housing authority to prevent construction of any further housing projects within IPS territory.<sup>129</sup> The court also enjoined the housing authority from renovating and re-opening the Lockefield Gardens public housing unit unless it was offered to elderly tenants, whose racial composition within city housing was far more mixed.<sup>130</sup>

But the victory was short-lived. Despite being affirmed 2-1 by the Seventh Circuit, the Supreme Court again remanded the case back to the district court for consideration in light of new housing law, *Washington v. Davis* and *Village of Arlington Heights v. Metropolitan Housing Development Corporation*. The Court limited the consideration of housing discrimination

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<sup>127</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182 (S. D. Ind. 1975).

<sup>128</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 182-183 (S. D. Ind. 1975).

<sup>129</sup> See Landsberg, *supra* note 20, at 780 (1995) (Brian Landsberg: “Indianapolis is a very good example [of overcoming *Milliken* by proving state action resulted in racial imbalance between city and suburbs].”)

<sup>130</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 419 F. Supp. 180, 186 (S. D. Ind. 1975).

evidence only to public housing siting decisions. In *Washington*, the court held that while a facially neutral statute cannot be applied “so as to invidiously discriminate on the basis of race . . . nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another.”<sup>131</sup>

The *Arlington* case affirmed and built on the holding in *Washington*, further articulating a non-exhaustive list of standards for determining discriminatory racial intent in official actions.<sup>132</sup> The court held that evidence should be evaluated regarding the historical background of the decision, the specific sequence of events leading up to the decision, departures from the normal procedural and/or substantive sequence of events regarding the decision, and the legislative and/or administrative history.<sup>133</sup>

On remand in *Indianapolis III*, the plaintiffs were able to meet the demands of the *Washington* and *Arlington* precedents. Considering the *Arlington* factors, the district court noted that the state of Indiana had a history of de jure segregation similar to southern states because it practiced segregation by decree of the Indiana General Assembly until 1949.<sup>134</sup> Additionally, the court emphasized the suburbs’ and the city’s resistance to all attempts to consolidate schools in any merger or annexation proposal,<sup>135</sup> as well as the General Assembly’s implicit repeal of an important part of Indiana school desegregation law by enacting Uni-Gov without a provision for schools.<sup>136</sup>

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<sup>131</sup> *Washington v. Davis*, 426 U.S. 229, 242 (1976).

<sup>132</sup> *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1976).

<sup>133</sup> *Id.* at 266.

<sup>134</sup> *U.S. v. Board of School Commissioners of the City of Indianapolis*, 456 F. Supp. 183, 187 (S.D. 1978).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 188.



Speaking specifically to the alleged housing violations, the court also noted the Seventh Circuit's approval of the finding of fact that racial discrimination in housing "by realtors licensed by the state, by state courts and legislative bodies, and by private citizens"<sup>137</sup> was evidence of discrimination sufficient to establish the intent required by *Arlington*. According to the court,

Against this background of racial discrimination, can it be said to be a mere benign coincidence that HACI and the Commission located all public housing projects within IPS boundaries? This court thinks not and specifically holds that the action of such official bodies in locating such projects within IPS, as well as the opposition of the suburban governments to the location of public housing within their borders, were racially motivated with the invidious purpose to keep the blacks within pre-Uni-Gov Indianapolis and IPS, and to keep the territory of the added suburban defendants segregated for the use of whites only.<sup>138</sup>

With these findings, the district court overcame its last major substantive hurdle to ordering an interdistrict remedy that included both housing and school components.

The district court's order, which was ultimately affirmed by the Seventh Circuit<sup>139</sup> and denied certiorari by the Supreme Court, called for one-way busing of black students from Indianapolis Public Schools to suburban school districts beginning in 1980. Ultimately, approximately 7,000 black IPS students annually would attend suburban schools for a period of more than 20 years.<sup>140</sup>

In June 1998, Judge Dillin approved a settlement between the Department of Justice, the various Marion County school districts, and the state of Indiana to phase out busing from inner city Indianapolis to the suburbs and end judicial supervision of school desegregation.<sup>141</sup> The

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<sup>137</sup> *Id.* at 188-189.

<sup>138</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 456 F. Supp. 183, 189 (S.D. 1978).

<sup>139</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 637 F.2d 1101 (1980).

<sup>140</sup> Rob Schneider, *Desegregation Order Transformed IPS*, THE INDIANAPOLIS STAR, Dec. 28, 1999.

<sup>141</sup> U.S. v. Board of School Commissioners of the City of Indianapolis, 68-C-0225 (June 25, 1998). *See also Court Accepts Busing Phaseout for Schools in Indianapolis Area*, CHI. TRIB., June 23, 1998.

settlement included an agreement by the Indianapolis Housing Agency<sup>142</sup> to establish a Housing Counseling and Recruitment Center which would offer home ownership plans, mortgage plans and counseling, and other services to help aid the integration of all of Marion County.<sup>143</sup>

Despite the implementation of Judge Dillin's desegregation plan, the number of black students in IPS reached and exceeded his tipping point of 40 percent,<sup>144</sup> and continues to increase. Nearly 60 percent of IPS students are black, compared to 34 percent when the litigation was initiated.<sup>145</sup> IPS has also suffered a dramatic decrease in white students – more than 40,000 have left the school district since 1968.<sup>146</sup>

While the desegregation plan failed to remedy the isolation of inner city black students, Judge Dillin's plan had a substantial impact on integration of suburban school districts. For example, the number of black students in Lawrence Township, located in northeast Marion County, increased from 0.6 percent in 1968 to 36.7 percent in 2006.<sup>147</sup> Since 2000, two years after the court agreed to begin dismantling the city's desegregation plan, the population of black students in Lawrence Township has more than doubled. Similar situations have occurred in Washington, Warren and Pike Townships.<sup>148</sup>

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<sup>142</sup> The Indianapolis Housing Agency was formerly called the Housing Authority for the City of Indianapolis (HACI).

<sup>143</sup> *Court Accepts Busing Phaseout for Schools In Indianapolis Area*, CHI. TRIB., June 23, 1998.

<sup>144</sup> Marsh, *supra* note 89.

<sup>145</sup> The State of Public School Integration: Ethnic and Racial Composition of Indianapolis Public Schools, Brown University Initiative in Spatial Structures in Social Science American Communities Project (available at <http://www.s4.brown.edu/schoolsegregation/schoolsegdatapage/codes/schoolseg.asp>); Federal Education Budget Project, The New America Foundation Project (citing National Center for Education Statistics, 2005-2006) (available at [http://www.newamerica.net/education\\_budget\\_project/districts/indianapolis\\_public\\_schools#districtform-2](http://www.newamerica.net/education_budget_project/districts/indianapolis_public_schools#districtform-2)).

<sup>146</sup> The State of Public School Integration, *supra* note 145.

<sup>147</sup> The State of Public School Integration: MSD Lawrence Township, *supra* note 145; Federal Education Budget Project, The New America Foundation Project (citing National Center for Education Statistics, 2005-2006) (available at

[http://www.newamerica.net/education\\_budget\\_project/districts/m\\_s\\_d\\_lawrence\\_township#districtform-2](http://www.newamerica.net/education_budget_project/districts/m_s_d_lawrence_township#districtform-2)).

<sup>148</sup> The State of Public School Integration: MSD Washington Township Schools, *supra* note 145; Federal Education Budget Project, *supra* note 145, at [http://www.newamerica.net/education\\_budget\\_project/districts/m\\_s\\_d\\_washington\\_township#districtform-2](http://www.newamerica.net/education_budget_project/districts/m_s_d_washington_township#districtform-2);

Indianapolis has fewer public housing projects today than during the IPS litigation and the racial composition of those projects is only marginally different. Only seven of eleven family housing communities remain, all still within the city limits of Indianapolis and IPS territory.<sup>149</sup> The Indianapolis Housing Agency is currently designated a “troubled agency” by the Department of Housing and Urban Development.<sup>150</sup> More than 1,200 families are on the city’s public housing waitlist, 91 percent of whom are black.<sup>151</sup>

Combining school desegregation and housing in the Indianapolis litigation failed to provide an effective solution for black students and families who remain in Indianapolis Public Schools. However, the litigation’s impact on suburban Indianapolis has been long lasting. As a result, Indianapolis has the most integrated metropolitan schools of any area in the Midwest.<sup>152</sup>

## **VI. Conclusion**

The housing remedy ordered in Indianapolis was limited. Through the negative injunction against the city’s housing authority, the court only succeeded in fashioning a remedy which prevented the city from exacerbating the public housing problem, rather than helping to fix it.<sup>153</sup> Remedial efforts to combat private housing discrimination did not come to fruition until the case’s settlement thirty years later.

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The State of Public School Integration: MSD Warren Township Schools, *supra* note 126; Federal Education Budget Project, *supra* note 145, at [http://www.newamerica.net/education\\_budget\\_project/districts/m\\_s\\_d\\_warren\\_township#districtform-2](http://www.newamerica.net/education_budget_project/districts/m_s_d_warren_township#districtform-2); The State of Public School Integration: MSD Pike Township Schools, *supra* note 145; Federal Education Budget Project, *supra* note 145, at [http://www.newamerica.net/education\\_budget\\_project/districts/m\\_s\\_d\\_pike\\_township](http://www.newamerica.net/education_budget_project/districts/m_s_d_pike_township). Black students now outnumber white students in Pike Township. *Id.*

<sup>149</sup> Indianapolis Housing Authority Web site, <http://www.indyhousing.org>.

<sup>150</sup> Department of Housing and Urban Development 2007 PHA Plan for Indianapolis Housing Authority p. 2 (available at <http://www.indyhousing.org/Annualplan/in017v01-2007Complete.pdf>).

<sup>151</sup> *Id.* at 7.

<sup>152</sup> Landsberg, *supra* note 20, at 784.

<sup>153</sup> See Heins, *supra* note 45, at 664.

While the results were neither perfect nor timely, civil rights lawyers in Indianapolis achieved what some thought impossible in the years subsequent to *Milliken* – a judicially imposed interdistrict school desegregation plan – with the added bonus of a housing remedy. What distinguished success in Indianapolis from failure in Detroit was the unique and large-scale nature of the city’s Uni-Gov plan. Instead of offering a compilation of small discriminatory legislative actions as in *Milliken*, lawyers challenged a state statute which provided for a groundbreaking overhaul of city government that substantially affected the outlying townships. Given the direct connection between the state legislature and the city’s ability to expand jurisdiction of its schools and public housing, it was neither difficult nor circumstantial to trace responsibility for school segregation beyond just the IPS school board. The larger a single government action, the more likely it appears that the Court will recognize the state’s control of local education, preserving the possibility of interdistrict remedies in the future.

Forty years after the passage of the Fair Housing Act, housing discrimination is still prevalent across the nation. Racial steering by real estate agents and others continue to perpetuate the problem of segregated neighborhoods and segregated schools.<sup>154</sup> The Supreme Court has struck down voluntary programs in schools in Seattle<sup>155</sup> and Louisville<sup>156</sup> that attempted to tackle residential segregation and better integrate schools. Despite the challenges, the Justice Department and civil rights organizations must re-examine the critical relationship between housing and schools and try to fashion a remedy that will eliminate this prominent root of school segregation once and for all.<sup>157</sup>

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<sup>154</sup> Testimony of Theodore Shaw, *supra* note 54.

<sup>155</sup> *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007); *see id.*

<sup>156</sup> *Id.*

<sup>157</sup> *See* Testimony of Theodore Shaw, *supra* note 54; Landsberg, *supra* note 20, at 782.

**CASE CATALOG: HOUSING REMEDIES IN SCHOOL DESEGREGATION CASES**

Case Name	Location	Docket #	Attorneys	Filing Date	Closed
U.S. v. Board of School Commissioners of City of Indianapolis	Indianapolis, IN	IP68-C-0225	DOJ/ISTA/Plaintiff's Attnys/McGeorge Prof	5/31/1968	6/25/1998
332 F. Supp. 655 (S.D. Ind. 1971)					
466 F.2d 573 (7th Cir. 1972)					
368 F. Supp. 1191 (S.D. Ind. 1973)					
503 F. 2d 68 (7th Cir. 1974)					
419 F. Supp. 180 (S.D. Ind. 1975)					
421 U.S. 929 (1975) (cert denied)					
541 F.2d 1211 (7th Cir. 1976)					
429 U.S. 1068 (1977) (remanded)					
456 F. Supp. 183 (S.D. Ind. 1978)					
573 F.2d 400 (7th Cir. 1978)					
439 U.S. 824 (1978) (cert denied)					
506 F. Supp. 657 (S.D. Ind. 1979)					
637 F.2d 1101 (7th Cir. 1980)					
449 U.S. 838 (1980) (cert denied)					
677 F.2d 1185 (7th Cir. 1982)					
128 F.3d 507 (7th Cir. 1997)					
Keyes v. School District No. 1	Denver, CO	1:69-cv-01499	NAACP	11/30/1968	9/12/1995
303 F. Supp. 279 (D. Colo. 1969)					
396 U.S. 1215 (1969)					
313 F. Supp. 61 (D. Colo. 1970)					
313 F. Supp. 90 (D. Colo. 1970)					
445 F.2d 990 (10th Cir. 1971)					
404 U.S. 1036 (1972)					
406 U.S. 941 (1972)					
406 U.S. 966 (1972)					
409 U.S. 818 (1972)					
413 U.S. 189 (1973)					
368 F. Supp. 207 (D. Colo. 1973)					
413 U.S. 921 (1973)					

380 F. Supp. 673 (D. Colo. 1974)  
 521 F.2d 465 (10th Cir. 1975)  
 423 U.S. 1066 (1976)  
 439 F. Supp. 393 (D. Colo. 1977)  
 474 F. Supp. 1265 (D. Colo. 1979)  
 540 F. Supp. 399 (1982)  
 576 F. Supp. 1503 (D. Colo. 1983)  
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Liddell v. Board of  
Education

St. Louis,  
MO 4:72CV0010  
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NAACP

2/8/1972

3/12/1999

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U.S. v. Yonkers Board of  
Education

Yonkers, NY 1:80-cv-  
06761

NAACP/DOJ

12/1/1980

7/9/2007

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U.S. v. Tunica County School District

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2008)

Hart v. Community School  
Board District No. 21

Brooklyn, NY 1:72-cv-  
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NAACP

8/4/1972

