A history of the Las Vegas school desegregation case: Kelly et al v the Clark County School District

Ronan Matthew
University of Nevada, Las Vegas

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A HISTORY OF THE LAS VEGAS SCHOOL
DESEGREGATION CASE: KELLY ET
AL. V. THE CLARK COUNTY
SCHOOL DISTRICT

by

Ronan Matthew

A dissertation submitted in partial fulfillment
of the requirements for the degree of

Doctor of Education

in

Educational Leadership

Department of Educational Leadership
University of Nevada, Las Vegas
August 1998
The Dissertation prepared by

Ronan Matthew

Entitled

A History of the Las Vegas School Desegregation Case: Kelly ET AL. v. The Clark County School District

is approved in partial fulfillment of the requirements for the degree of

Doctor of Education in Educational Leadership

Examination Committee Chair

Dean of the Graduate College

Dean of the Graduate College

Graduate College Faculty Representative
What happens to a dream deferred?
Does it dry up
like a raisin in the sun?
Does it fester like a sore
or does it explode? . . .

From river to river
Uptown and down,
There’s liable to be confusion
When a dream gets kicked around.

Langston Hughes
This dissertation is dedicated to my family who sacrificed so that I could receive a tertiary education. It is also dedicated to my two children, Rona and Lucian, with the hope that they will learn to persevere to accomplish their goals.
ABSTRACT

A History Of The Las Vegas School Desegregation Case: Kelly et al. v. The Clark County School District

by

Ronan Matthew

Dr. Lloyd Bishop, Examination Committee Chair
Professor in Educational Leadership
University of Nevada, Las Vegas

Kelly et al. v. Clark County School District (1972) is the title of a case initiated in 1968. The lawsuit alleged that de facto segregation existed in six elementary schools in Westside Las Vegas, 14 years following Brown v. Board of Education (1954) which called for the desegregation of American public schools. The case ended in 1972 with a victory for the plaintiffs, with the ordering of desegregation of the elementary schools in question. The purpose of this study was to examine the history of Kelly et al. v. Clark County School District (1972). Included in the study were a review of legal cases beginning in 1820 that led to Brown and a chronology of the Kelly lawsuit from its inception in 1968 through its 1977 conclusion. The ruling to institute the sixth grade center plan was made in 1972, however the court made the final ruling in 1977, five years after the plan was operational. At this time, the court was satisfied that the school district was carrying the order to desegregate by using
busing and terminated its jurisdiction. In addition, three notable participants in the case were interviewed in person and one, though he did not agree to an interview in person, filled out an interview questionnaire. The questionnaire contained essentially the same questions which had been asked of the other three interviewees. The questions that guided this historical study concerned the cause of the lawsuit, the position of the Nevada legislature, the efforts toward desegregation following Brown, the course taken by the Clark County School District after Brown which fostered segregated elementary schools, and the drawbacks or obstacles to desegregation experienced by the district. This study found that the schools were segregated and according to the courts, official actions on the part of the Clark County School District contributed to the segregation which existed.
# TABLE OF CONTENTS

**ABSTRACT**

<table>
<thead>
<tr>
<th>Chapter 1</th>
<th>Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clark County School District</td>
<td>3</td>
</tr>
<tr>
<td>Segregation in Nevada</td>
<td>7</td>
</tr>
<tr>
<td>Segregation in Las Vegas</td>
<td>8</td>
</tr>
<tr>
<td>Purpose of the Study</td>
<td>18</td>
</tr>
<tr>
<td>The Study</td>
<td>19</td>
</tr>
<tr>
<td>Definition of Terms</td>
<td>19</td>
</tr>
<tr>
<td>Significance and Need for the Study</td>
<td>22</td>
</tr>
<tr>
<td>Methodology</td>
<td>23</td>
</tr>
<tr>
<td>Summary</td>
<td>25</td>
</tr>
</tbody>
</table>

**Chapter 2 | Historical Overview**

| Brown I and II | 26 |
| Kelly v. Clark County School District: Initial Complaint and Proposed Remedies by the Plaintiffs | 28 |
| Evolution of the Sixth Grade Center Plan and Busing | 33 |

**Chapter 3 | Review of Significant Court Cases Relevant to Kelly v. Clark County School District**

| Introduction | 36 |
| Nineteenth Century Cases | 37 |
| Supreme Court Cases Related to Kelly v. Clark County School District | 43 |

**Chapter 4 | Chronological Account of Kelly v. Clark County School District, 1968 - 1972**

| Introduction | 58 |
| Kelly v. Clark County School District | 58 |
| Conclusion | 99 |
CHAPTER 1

INTRODUCTION

One of the most controversial issues in American education over the past four decades has been the issue of court-ordered desegregation of public schools. This problem has historical roots.

Slavery, primarily of Blacks from Africa, was accepted and legal in some of the United States of America, particularly in the South, until the end of the Civil War in 1865. The Civil War and the Emancipation Proclamation, the decree that freed the slaves, did not bring about all the rights which had been expected on behalf of Black Americans. During the period of Reconstruction, for example, civil rights laws were enacted in the South; however, some states continued their old ways of discrimination and segregation. Black Americans were at times deprived of their constitutional guarantees of life, liberty, or property without due process of law.

A number of states resorted to passing segregation or Jim Crow laws which curtailed the gains which should have emerged with the legislated abolition of slavery after the Civil War. Blacks were commonly denied the right to vote or to exercise other rights of citizenship because of their color and previous condition of servitude.
One significant feature of Jim Crow laws was their "separate but equal" definition of separate facilities and other areas of public accommodation for people of different races. These statutes deemed that races should be separated by color. This legalized concept of "separate but equal" persisted well into the sixth decade of the twentieth century.

Towards the end of the nineteenth century, Black Americans started to seek redress of their grievances concerning segregation by utilizing the courts. For the most part, their efforts were not successful. The concept of "separate but equal" established by the Jim Crow laws was affirmed in the court decision of Plessy v. Ferguson (1896). This case involved public accommodation on railroad cars in the State of Louisiana. Although not related to education, that decision was used to foster and justify segregation in virtually all walks of life.

Segregated facilities of all types persisted for 58 years. The doctrine of "separate but equal" in terms of education was struck down by Brown v. Board of Education (1954). This decision outlawed segregation in schools and provided the impetus which was needed to start the process of desegregating the public schools throughout the country. After this decision, many states still made few or no efforts to desegregate their schools. According to Taeuber (1990), "In most cases, school districts did not devise desegregation plans in good faith; instead, they sought to preserve as much racial segregation as judges and federal administrators would tolerate" (p. 19).
Clark County School District

Clark County School District, centered in Las Vegas, covers about 8,000 square miles at the southern tip of Nevada. Consisting of only about 7% of the land mass of the state, Clark County has grown to include about two-thirds of the population. "The Clark County School District, with an official 1997-1998 enrollment of 190,822 students, is the largest district in the state and the 10th largest school district in the nation." (CCSD, 1997 Annual Report, p.1) On page four of this report the student population by ethnic group is given as, "56.3% White, 13.8% Black, 23.3% Hispanic, 5.7 Asian, and .9 American Indian."

The history of Las Vegas in terms of race relations is not a proud one. In fact, the presence of a large proportion of Black residents continues on the Westside as a testimony to the time when, for the most part, they could afford to reside only in that part of town. "Between 1947 and the mid-1950s, top black performers were forced to rent rooms on the Westside." (Moehring, 1989, p. 182) This occurred even while they were engaged to entertain and perform in these very same strip hotels. Not surprisingly, as in other parts of the country where segregation had been institutionalized, the Clark County School District went through a period in which it had to deal with desegregation issues. This led to the case of Kelly v. Clark County School District which lasted from 1968 through 1972.

When Brown v. Board of Education (1954) legally ended legislated segregation in schools in the United States, Nevada did not have a law which mandated the segregation of school children. Similarly, the Clark County School...
District did not practice segregation by law; nevertheless, in practice, segregation at the elementary school level existed. It must be noted, however, that Black students at the elementary level were not excluded from any school on account of their race. Rather, segregation was a direct result of housing patterns, with Blacks heavily in residence on the Westside of Las Vegas. Further, 10% of the population of Las Vegas was Black, and 85% of them lived on the Westside in 1968 when *Kelly v. Clark County School District* (1972) was initiated. Because the district sent elementary students to neighborhood schools, the result was a preponderance of Black children in Westside schools and the lack of them in others, as shown in the following chart.
### Clark County School District Elementary School Enrollment by Race, 1964-1965

<table>
<thead>
<tr>
<th>School</th>
<th>Location</th>
<th>Other</th>
<th>Black</th>
<th>% Black</th>
<th>Total</th>
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<td>EW Griffith</td>
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<td>Fay Herron</td>
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<tr>
<td>Halle Hewetson</td>
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<td>0.00</td>
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<tr>
<td>HJ Stewart*</td>
<td>201 E Washington</td>
<td>137</td>
<td>5</td>
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<tr>
<td>Highland</td>
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<td>1,014</td>
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<td>Jefferson</td>
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<td>Mountain View</td>
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<tr>
<td>Nellis</td>
<td>Baer St - NAFB</td>
<td>702</td>
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<table>
<thead>
<tr>
<th>School</th>
<th>Location</th>
<th>Other</th>
<th>Black</th>
<th>% Black</th>
<th>Total</th>
</tr>
</thead>
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<td>0.00</td>
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<tr>
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<tr>
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* Special school
(Kelly et al. v. Clark County School District, 1972, p. 50).

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At the time of *Kelly v. Clark County School District* (1972), then, about 13.6% of elementary students in the metropolitan Las Vegas area were Black and 93.1% of those students attended five schools which enrolled at least 93% Black students.

**Segregation in Nevada**

The level of segregation in the schools represented in the preceding chart did not come about in a vacuum. Segregation was deeply rooted in the State of Nevada, in general, and the City of Las Vegas, in particular. Therefore, what occurred in the Westside elementary schools reflected the attitudes and customs of what was happening on a larger scale throughout the city. Elliott (1973) reported this in its historical context:

> It is interesting to note how segregated schools developed in the State of Nevada. From the early days, blacks in Nevada faced discriminatory laws and fought against them using the court system. The problems of the black minority in Nevada have persisted from the earliest days of statehood. The fur trade and the Overland Trail era brought some blacks into the Great Basin. . . . Both the territory and the new state constitution of Nevada in 1864 reflected the dominant midnineteenth-century intention to exclude blacks from politics by designating only white men as suffrage holders. The territory prohibited nonwhites from giving evidence in criminal cases against whites and outlawed the cohabitation and intermarriage of the races. (p. 392)

In terms of education in Nevada, an 1865 statute stipulated that "... Negroes, Mongolians and Indians shall not be admitted into public schools." (State of Nevada v. Duffy, 1872, p. 984)
As early as 1872, Blacks in Nevada fought for the right to have their children attend school, albeit segregated ones. In Carson City, for example, the small Black community sued the local school board for the right to have their children attend school. The local school board refused to build a school for Blacks; the Blacks sued. In the case of *The State of Nevada v. Duffy* (1872), "... the Nevada Supreme Court declared the discriminatory school law unconstitutional" (Nevada Black History Project, 1992, p. 4). As a result, Black children in Carson City were permitted to attend school; however, the school was segregated.

**Segregation in Las Vegas**

Las Vegas did not exist as a city until 1905. By 1910, Las Vegas had a Black population of 10; by 1930, it had reached 150. The heaviest influx of Blacks to Las Vegas resulted from recruitment by the Magnesium Plant during World War II. Because of his belief that integration would cause Whites not to settle in the railroad town, however, Walter Bracken, vice president of the Las Vegas Land and Water Company, tried to confine Black residents to Block 17. (Moehring, 1989, p. 173) This was generally successful.

The first Black child was born in Las Vegas around 1920 to a prominent family, the Mitchells, who owned a home in the downtown areas and a ranch in Paradise Valley, not on the Westside *(Las Vegas Voice, 1968, May 30 p. 3).* A 1925 photograph of the Paradise Elementary School shows young Natalie Mitchell with White and Asian classmates. Another prominent Black family headed by Uncle Jake
Innesly and his son Boise opened the Oklahoma Cafe in downtown Las Vegas in 1931. They later relocated their business to the Westside and added the Ebony Club which included liquor and gambling.

Their next move was to merge with P. I. Jefferson, who was operating the Brown Derby with only a beer license. In 1955, Boise sold out to P. I. and went into business at the Community Grocery Store on "D" Street which he later sold to Roland Johnson. (Las Vegas Voice, 1968, May 30, p. 3)

This exemplified the flight by Blacks from downtown to the Westside to operate their businesses.

According to Moehring (1989), Las Vegas in the 1930s reflected the rest of the nation:

Gambling became legal in Las Vegas in 1931. Businesses which operated as taverns now were operating as casinos and there was strong competition for business between them. Ironically, by the late 1930's, despite their growing importance to the community's infant resort industry, blacks faced more segregationist barriers. Although southern dam workers were gone, tourists (many of them southerners transplanted to California) increasingly expected southern Nevada to mirror the Jim Crow atmosphere of not only Dixie but the rest of the nation. In response, Fremont Street clubs increasingly barred "Negroes" from bars and gaming tables. Although the practice was not universal until World War II, it was widespread enough to prompt black leaders in 1939 to push for a race and color bill in the Nevada assembly to integrate all public accommodations. The measure died in committee after resort owners expressed fears that such a law would discourage out-of-state visitors and threaten the state's economy. In the meantime, blacks now found themselves being denied service not only in hotels, but in a growing number of restaurants and stores. (p. 176)

In order to polish the image of Las Vegas as an all-American resort, White downtown business owners successfully fought to move the few Black-owned operations across the tracks to the area known as the Westside (Moehring, 1989, p.176).

This area called the Westside was also known as the McWilliams Townsite. It
was located across the railroad track, northwest of the downtown area which was called the Clark Townsite. This map depicting Las Vegas from 1905-1909 appears on page 11. (Paher, 1971, p.81) This map gives a visual perception of Las Vegas at the time and the geographical move of blacks from the Clark Townsite to the McWilliams Townsite.
Map of Las Vegas (1965-69)

(Paher, 1971, p. 81)
The mayor at that time cooperated in this venture by refusing to award or renew business licensed to Black businessmen unless they moved to the Westside. White landlords contributed to the overall movement of Blacks to the Westside by banning them from tenancy in virtually every other area of the valley. Ironically, White residents on the Westside also attempted to block the relocation of Blacks to their area by filing a petition to limit some of the lands to possession only by Whites. Because of the influx of Blacks during World War II, however, these limitations were denied. With the combination of these actions, segregation in Las Vegas became a reality.

It appeared the Blacks in Las Vegas were being discriminated against in virtually every quarter. By 1930, the construction of the Hoover Dam was in progress, and Blacks experienced difficulty in securing jobs on the project.

The job bonanza ballyhooed in the press had turned out to be a bust so far as Las Vegas blacks were concerned, as first the preliminary highway and railroad work, and then the dam job itself, began with a lily-white, mostly out-of-state construction force. The government's contract with Six Companies stipulated that American citizens were to be hired, with preference given to veterans. (Stevens, 1988, p. 176)

Citizens were interpreted to mean White American males, and the work force of more than 1,000 employees did not include a single Black individual.

As a result of the lack of Blacks working at the dam, William Pickens, field secretary for the NAACP (National Association for the Advancement of Colored People), came to southern Nevada to investigate:
Shortly after Pickens' visit, Archie Cross, the federal employment director for Nevada, stated that Six Companies had not hired blacks because it was afraid of dissension at the dam site and did not want to have to erect a separate blacks only dormitory in Boulder City. (Stevens, 1988, p. 176)

Consequently, several Blacks were hired including 10 men who were veterans. As laborers, they were assigned to the gravel pit. This was considered to be the hottest and most tedious assignment. In addition, they were not permitted to live locally in Boulder City and were forced to travel 30 miles back to Westside Las Vegas every night.

Las Vegas needed the Westside to house this unprecedented influx of Blacks--from 178 before World War II to 300 by 1943--who came from the southern states, particularly Mississippi, Arkansas, and Louisiana. Blacks fought segregation, but lost. In 1949 and 1953, for example, the local chapter of the NAACP attempted to get a comprehensive civil rights ordinance passed that would ban segregation in all public accommodations, but it died in an all-White committee. The presence of Nellis Air Force Base should have helped the fight against segregation because Black servicemen stationed at Nellis and their families were faced with discrimination especially in housing. In spite of pressure placed by Air Force officials on city officials, discriminatory practices against Blacks continued on a wide scale in Las Vegas.

In 1953, city attorney Howard Cannon suggested that efforts to integrate Las Vegas might be unconstitutional because, “Nevada's constitution and statutes did not specifically provide for racial integration.” (Moehring 1989, p.181) In response, city leaders were concerned that civil rights legislation might lead to bloodshed or trouble.
A lawyer sent from San Francisco by the NAACP in 1954 to negotiate with city leaders, Franklin Williams, warned,

Las Vegas is a non-southern city with the pattern of the deep South. There will always be discrimination and race trouble in Las Vegas if the ordinance is not on the books. (Moehring, 1989, p. 182)

He further urged officials to "... have a cup of coffee or throw a few nickels in the slot machines, ... you don't have to sleep with me or let me into your home" (p. 181) in working through the civil rights issues.

Las Vegas Strip performers such as Sammy Davis, Jr. and Nat King Cole who were Black were subject to discrimination as well. According to Moehring (1989),

Prior to 1947, black headliners like Eartha Kitt and Lena Horne ate, slept, and gambled at the hotels where they entertained. But, as Las Vegas attracted a larger clientele from the south and east, barriers rose. Between 1947 and the mid-1950s, top black performers were forced to rent rooms on the Westside. (p. 182)

It was not until 1955 that only the Sands relented and allowed its Black performers to stay at the hotel although the general Black population was still excluded.

By 1950, the proportion of the population of Las Vegas had risen to 10% Black, but no casinos would welcome them. An attempt had been made to permit the Shamrock Hotel downtown to cater to all races; however, city officials at the behest of White protesters opposed the move. Instead, the Moulin Rouge opened away from downtown on Bonanza Road in 1955, and catered to an inter-racial clientele. After seven months, it closed only to reopen under different owners, but it never regained popularity or stature.

In order to gain some political clout, Dr. James McMillan of the NAACP...
formed the Nevada League in 1957. Votes were delivered to those candidates friendly to integration, but segregation prevailed. Consequently, by the 1960s. Las Vegas suffered the same fate as other cities dealing with civil rights issues, although several problems were specific to Las Vegas. First, the city depended heavily on tourism and gambling; therefore, the explosive situations of riots and obvious civil unrest had to be minimized at all costs. Second, the problem was compounded by the fact that Las Vegas operated in a clearly discriminatory manner. Third, the general consensus was that White tourists did not want to be associated with Blacks during their stay in Las Vegas. According to Moehring (1989),

> Casino gambling reinforced postwar segregation, because the tables and slot machines attracted thousands of southern gamblers as well as upwardly mobile eastern, midwestern and California tourists who would have questioned the presence of black dealers, Hispanic bellmen, and Chinese bartenders. So, to preserve its hard won image as an all-American vacation town, Las Vegas felt compelled to keep its hotels, casinos, pools and showrooms "lily white." Racism, however, was not merely a postwar phenomenon; its roots lay deep in the city's past. (p. 176)

Dr. McMillan and the NAACP threatened passive resistance to force the goal of integration of public facilities. In spite of Dr. McMillan's efforts, however, reforms came slowly, and the frustrations of Blacks became apparent. By 1962, no substantial progress had been made: Blacks were excluded from the casinos not only as guests and patrons, but also as dealers, waiters, or waitresses. Only the most menial jobs were available to Blacks in Las Vegas.

In 1968, elementary schools on the Westside were totally segregated. A group of individuals represented by Charles Kellar of the NAACP decided that it was time to
resolve this issue in a court of law. Charles Kellar had come to Las Vegas in 1960 under the direction of future Supreme Court Justice Thurgood Marshall, who acted as chief counsel for the plaintiffs in the original Brown v. Board of Education (1954). Thurgood Marshall was also the head of the Legal Defense Fund of the NAACP. Born on the Caribbean island of Barbados, Charles Kellar moved to New York at an early age. He decided to become a lawyer because he lived close by to a court house in Brooklyn and often walked by on his way to and from the subway station. He said that the attorneys always had an air of importance as they entered or departed the court house. He was impressed by this and thus chose his profession accordingly. (Mr. Kellar is interviewed in Chapter 5 of this document.)

The situation in Las Vegas was similar to the situation in Topeka, Kansas, the site of Brown v. Board of Education (1954), only elementary schools were segregated "... in the first six grades of public schools" (Muse, 1964, p. 9) at the time. In both cases it was alleged that segregation was evident only in the first six grades. The plaintiffs and their attorney in the Las Vegas case found the time was right to seek redress for their grievances through the Federal Courts since Congress had passed the Civil Rights Act of 1964 only four years earlier. It appeared, and Charles Kellar decided, that Clark County School District was not about to institute a program which would desegregate the elementary schools on the Westside. Charles Kellar believed that the law was on his side. In addition to the verdicts in Brown v. Board of Education (1954) and Brown v. Board of Education (1955), Congress had passed the Civil Rights Act in 1964. He decided to take matters into his own hands by
spearheading the lawsuit. Titles IV and VI of the Civil Rights Act addressed issues specifically related to this case. Title IV, in part, states the responsibility for desegregation:

We have tried to point out that the progress in school desegregation so well commenced in the period 1954-57 has been grinding to a halt. The trend observed in 1957-59 toward desegregation by court order rather than by voluntary action has continued. It is not healthy nor right in this country to carry the sole burden and face alone the hazards of commending costly litigation to compel school desegregation. After all, it is the responsibility of the Federal Government to protect constitutional rights. This responsibility is not being shouldered when the U.S. Government is only free to enter a desegregation suit as amicus curiae, unless of course a court decree should already be in effect. We do not think it is proper to require organizations such as the NAACP to take the lead here either. This is the peoples' responsibility and it must be carried out. . . . The committee, therefore, has adopted a provision authorizing the Attorney General, upon receipt of a signed complaint, to institute a legal action in behalf of school children or to intervene in a legal action already commended in behalf of schools and colleges. This proposal has received bipartisan support for many years. (U.S. Code Congressional and Administrative News, 1964, p. 2508)

Title VI stipulates:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (U.S. Code Congressional and Administrative News, 1964, p. 2510)

If found guilty, Clark County School District may have lost millions of dollars in federal funds.

The Las Vegas case continued for four years from 1968 through 1972. In 1969, a young man by the name of Kenny Guinn became the superintendent of the Clark County School District. He was merely 29 years old when he took on this major task. (Dr. Kenny Guinn is also interviewed on p. 120 of this document)
The court eventually decided the case in favor of the plaintiffs, and the district was ordered to desegregate the elementary schools. A sixth-grade center plan was implemented to accomplish the task through cross-busing Black students out of the Westside for grades one through five. The elementary schools on the Westside were converted to sixth grade centers where Black students from the neighborhood attended and White students were bused in from the greater Las Vegas area.

Purpose of the Study

The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas, Nevada, *Kelly et al. v. Clark County School District* (1972). From 1968 through 1972, the case was tried and the resolution was implemented to desegregate the schools through the creation of sixth-grade centers. Nationally, Las Vegas was not alone on the issue; therefore, information regarding other federal cases was used and analyzed in relation to the context of the case involving Clark County School District.

The district continues to experience phenomenal growth which has forced the district to supply services for an increasingly diverse student and employee population. This study may be useful to those who wish to understand the background of zoning decisions for maintaining racial balance. In addition, it may add to the body of literature on the history of school desegregation in the United States.
The Study

Information presented in this examination has been presented in chronological order starting with the plaintiffs’ realization that judicial action would be necessary in order to accomplish school integration. Next was the litigation itself, followed by the court decision and then the implementation of the court order beginning in September 1972. The following questions guided the research:

1. What was the catalyst behind the decision of the plaintiffs to seek redress by way of the court?

2. What was the position of the Nevada legislature in ending segregation in the elementary schools in Clark County?

3. What efforts, if any, were made by the Clark County School District to follow the mandate of Brown v. Board of Education in 1954?

4. In terms of zoning, what actions of the Clark County School District caused a continuation of segregation in elementary schools after the Brown v. Board of Education decision of 1954?

5. What were the major drawbacks or obstacles to the desegregation of the elementary schools of the Clark County School District?

6. Was the financial burden of desegregating the elementary schools too difficult for the Clark County School District to bear?

Definition of Terms

The following terms, used consistently throughout the text, may prove helpful:

1. **Amendment V to the Constitution of the United States (1791)**: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject
for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. **Amendment XIV to the Constitution of the United States** (1868, Section 1): All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. **Brown Decision**: Supreme Court decision which declared racial segregation in public schools to be in violation of equal protection clause the Fourteenth Amendment. (Black, p. 175)

4. **Civil Rights Act of 1964**: Federal statutes enacted after the Civil War and more recently in 1957 and 1964, intended to implement and give further force to basic personal rights guaranteed by the Constitution. Such acts prohibit discrimination based on race, color, age, or religion. (Black, p. 224)

5. **De Facto Segregation**: Segregation which is inadvertent and without assistance of school authorities and is not caused by any state action but rather by social, economic and other determinates. (Black, p. 375)

6. **De Jure Segregation**: Generally refers to segregation directly intended or mandated by law or otherwise issuing from an official racial classification or, in other words, to segregation which has or had the sanction of law. (Black, p. 383)

7. **Desegregation**: The judicial mandate eliminating color of a person as a basis for disqualification to attend the school of his or her choice or to work at the place of employment of his or her choice. (Black, p. 401)

8. **Discrimination**: Unfair treatment or denial of normal privileges to persons because of their race, age, nationality or religion. (Black, p. 420)
9. **En Banc**: In the bench. Full bench. Refers to a session where the entire membership of the court will participate in the decision rather than the regular quorum. In the United States, the Circuit Courts of Appeal usually sit in a panel of judges but for important cases may expand the bench to a larger number, when they are said to be sitting *en banc*. Also refers to an appellate court in which all the judges who are necessary for a quorum are sitting as contrasted with a session of such a court presided over by a single justice or panel of justices. (Black, p. 472)

10. **Equal Protection Clause**: That provision in the 14th Amendment to the Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of its laws. (Black, p. 481)

11. **Integration**: The act or process of making whole or entire. Bringing together different groups such as races as equals. (Black, p. 726)

12. **Jim Crow Laws**: The term *Jim Crow* was derived from a song by Jim Crow Rice, the father of American minstrels. It was applied to the sections within racially segregated facilities that were intended for Black people. (Robbins, p. 258)

13. **Magnet School**: A magnet school is a public school that offers special training in a particular field, such as engineering or the visual and performing arts. Unlike traditional neighborhood schools, magnet schools are open to students from an entire school district. But students must apply for admission. (World Book Encyclopedia, p. 106)

14. **Prestige School**: A school which has the human and material resources, program elements and methodology necessary to maximize learning opportunities for students. (CCSD Action Plan for Integration 1969, p. 1)

15. **Prima Facie Case**: A court case which has proceeded upon sufficient proof to that stage where it will support findings if evidence to the contrary is disregarded. (Black, p. 1071)

16. **Segregation**: The act or process of separation. The unconstitutional policy and practice of separating people on the basis of color, nationality, religion, etc. in housing and schooling. (Black, p. 1218)

17. **Sixth Grade Center Plan**: Under the plan, only the sixth grade would be taught in each of the predominantly black elementary schools on the
Westside. Black children in grades 1-5 were transported to elementary schools outside of the Westside area, while white sixth graders were to be transported to the Westside to attend one the sixth grade schools. (A Report of the United States Commission on Civil Rights, p. 201)

18. **Writ of Certiorari**: An order by the appellate court which is used when the court has discretion on whether or not to hear an appeal. If the writ is denied, the court refuses to hear the appeal and, in effect, the judgment from the court below stands unchanged. (Black, p. 1443)

**Significance and Need for the Study**

Like many school districts in the United States, the Clark County School District was ordered by a court of law to integrate its schools. For more than 20 years, the plan implemented in 1972 remained unchanged with the busing of Black students out of their communities for all but non-mandated kindergarten and sixth grade.

On June 8, 1992, this researcher witnessed a group of Black community members representing a group opposed to the 1972 court order with the acronym WAAK-UP disrupt a meeting of the Clark County Board of School Trustees and urged the Board to change its integration policy. Arguing that the plan was flawed in its placing the disparity of the burden of busing on the Black students, speakers reminded the Board that the Westside had been ignored in the rush to build new schools, and none had been built there in two decades. In response, the Board approved and the district implemented the new Prime 6 Plan which allowed Black students either to attend neighborhood schools or to continue to be bused.

To date, no major study of the history of the integration of schools in Clark
County School District has been undertaken. Given the continued debate about school desegregation as a result of de facto segregation particularly in urban environments, a historical perspective is very timely. The discussion and analysis about this issue appear to be far from over.

Methodology

The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas, Nevada, *Kelly et al. v. Clark County School District* (1972). Historical research has been defined as "the systematic search for facts about the past. By studying the past, the historian hopes to achieve a better understanding of present institutions, practices, and issues in education" (Borg & Gall, 1989, p. 806). While similar studies had been conducted of the desegregation of other school districts, Clark County School District's situation in Las Vegas had not yet been studied in detail. Consequently, the focus of the study was *Kelly et al. v. Clark County School District* (1972), although decisions of the Supreme Court relating to desegregation were researched, and comparisons were made, analyzed, and reported chronologically in relation to the local issue.

Data Collection

Court records from *Kelly et al. v. Clark County School District* (1972) served as the major and primary source of information. The complete court record of this case was obtained from the Federal Court in Las Vegas, Nevada. This document
contains page numbers. Another document, *The Clark County School District's Integration Program for 1969/1970* (Clark County School District, 1969), and minutes from meetings of the Clark County Board of School Trustees as well as accounts from local newspapers, *the Las Vegas Sun*, *the Las Vegas Review Journal*, and *the Las Vegas Voice* were also used. The *Las Vegas Voice* was geared primarily to the African-American community.

In order to gain some first-hand accounts, several people who participated in this litigation still reside in Las Vegas and were interviewed. Kenny Guinn, Superintendent of Schools from 1969-1978; Charles Kellar, counsel for the plaintiffs; Robert Petroni, counsel for Clark County School District; and Eva Simmons, currently an Area Superintendent for the district's Elementary Education Division who taught at the time and was a strong supporter of efforts to desegregate the elementary schools, participated in the research. It is recognized that there are other individuals who were involved in the case and could have been interviewed, however, the focus of the dissertation and the focus of data collection was not the interview component. The attorneys for the plaintiffs and defendants were chosen for their undeniably major roles in the case. Kenny Guinn was interviewed because of his role as the Superintendent of Schools for the majority of the case. The will of the school board was carried out through him and their attorney, Robert Petroni. Kenny Guinn continues to be a high profile individual in the State of Nevada. He became a successful businessman after he left the superintendency. For a period of time, he also served as interim-president of UNLV. It is now likely that he will become the next governor of the state. Eva
Simmons was a teacher at Madison Elementary School, one of the schools in question, at the time of the case. She also was a strong supporter of the efforts of the plaintiffs. Additionally, she served as a member of the district’s Task Force on Integration. The interviews of these four persons added a personal and somewhat intimate flavor to the events of the case.

Summary

In this chapter, the problem of school desegregation was presented from an historical, a national, a local, and a school district level. The history of desegregation in Las Vegas was reviewed. The purpose of the study was identified, the research questions were listed, the terms used consistently throughout the study were defined, the significance and need for the study were explained, and the methodology was described. In the second chapter, an historical overview is presented, while the third chapter contains a review of court cases relevant to *Kelly et al. v. Clark County School District* (1972). In the fourth chapter, the case under examination is presented chronologically and summarized. Chapter 5 includes the interviews of Charles Kellar, attorney for the plaintiffs; Eva Simmons, an influential Clark County School District teacher; Kenny Guinn, Superintendent of Schools; and Clark County School District attorney, Robert Petroni. Chapter 6 includes the summary, conclusions and recommendations.
CHAPTER 2

HISTORICAL OVERVIEW

Brown I and II


History

In 1954, the following 17 states along with the District of Columbia required segregation by race in schools as a matter of law: (a) Alabama, (b) Arkansas, (c) Delaware, (d) Florida, (e) Georgia, (f) Kentucky, (g) Louisiana, (h) Maryland, (i) Mississippi, (j) Missouri, (k) North Carolina, (l) Oklahoma, (m) South Carolina, (n) Tennessee, (o) Texas, (p) Virginia, and (q) West Virginia (Lewis, 1964, p. 22). In addition, "There were some segregated schools in three other states whose statutes permitted the practice: Arizona, Kansas, and New Mexico" (Lewis, 1964, p. 22). Brown v. Board of Education (1954) came out of circumstances in Topeka, Kansas.
The plaintiffs in this case had two arguments: (a) they were denied equal protection under the law as guaranteed by the Fourteenth Amendment, and (b) segregated public schools are not and cannot be equal which challenged the doctrine of separate but equal set forth in Plessy v. Ferguson (1896). The Supreme Court, deciding in favor of the plaintiffs, concluded that

in the field of education, the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal. Plaintiffs and other similarly situated were deprived by segregation of equal protection of the laws guaranteed by the Fourteenth Amendment. (Brown v. Board of Education, 1954, p.495)

This decision stipulated and mandated that school systems could no longer segregate students on the basis of race. In the second Brown decision in 1955, the Supreme Court further ordered that admission to public schools on a racially non-discriminatory basis proceed with "all deliberate speed." This wording posed a problem for speedy school desegregation.

The two words, deliberate and speed, with almost opposite meanings, presented a juxtaposition of ideas in the second Brown decision in 1955. "Deliberateness took precedence over speed. Remarkably little desegregation occurred in the next 10 years [in Clark County or anywhere else], but there was ample time for state and local mobilization of powerful opponents to the Court's mandate" (Taeuber, 1990, p. 19). In one case, Griffin v. County School (1964), the Supreme Court stated that the time for all deliberate speed had run out. By 1969, Justice Black declared that all deliberate speed had become a euphemism for delay when the Supreme Court was asked for another stay by a Mississippi school district in the case
The Civil Rights Act passed by Congress in 1964 forbade the payment of federal aid to school districts that continued to discriminate. The Act boosted and hastened desegregation in some districts as a result. On May 13, 1968, four years after the passage of the Civil Rights Act, members of the Las Vegas community along with the local chapter of the NAACP filed a court complaint alleging that Clark County School District had pursued policies of segregating black students in the elementary schools:

The rules and regulations promulgated by the Defendants and obligate the great majority of the Negro children to attend segregated schools in the area known as the West Side, which said schools are known by the style of C.V.T. Gilbert, Matt Kelly, Highland School, Jo Mackey, Kit Carson, and Madison School. The pupil attendance of the schools is 98% or more of Negro children, who are compelled to attend the schools by the fiat, edit and direction of the Defendants. *(Kelly et al. v. Clark County School District, 1972, p. 2)*

The Highland School was later renamed Kermit Booker. The following maps show the location of the six schools in question. These six elementary schools were subsequently made into sixth grade centers at the end of the litigation. The seventh school, Quannah McCall, was not one of the original schools which was segregated, however, in 1972, its proximity to the other six, indicated that it was also going to be segregated if it remained as an elementary school.

*It was selected because it lay on the fringe of the Westside, and its student population was 35% Black. Future enrollment statistics for Quannah McCall*
Projected an increase of black students attending the school that would exceed the 56% enrollment of any school or grade which was stipulated by the Court. (A Report of the United States Commission of Civil Rights, 1973, p. 204)

The second map by Robert Barringer (1960) gives a clearer depiction of the greater Las Vegas area. The large square in the center of the map depicts the Westside and the six elementary schools located within the boundaries. The area is bounded by Bonanza Road on the south, Owens Avenue on the north, Highland Drive on the west and Avenue A on the east.

(CCSSD Sixth Grade Center Plan 1972-73, p. 45)
Map of Las Vegas by Robert Barringer (1960)

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The remedy sought by the plaintiffs was for the Clark County School District Board of Trustees and its successors in office to discontinue the practice of assigning the Black elementary school students to the schools in question because the schools were segregated. The decision of the Court, Judge Bruce Thompson presiding, was to direct the Board to formulate and propose a plan by April 10, 1969, to accomplish the integration of the six elementary schools located on the Westside.

In compliance, Superintendent James I. Mason submitted the "Action Plan for Integration" to United States District Judge Bruce Thompson on the required date. By March 1970, the district was expected to report to the Court the effectiveness of the plan to integrate the six elementary school cited in the case. James Mason, a White male, served as superintendent from 1966 to 1969.

The Action Plan for Integration relied on voluntary actions by parents. Black students in grades K-5 from three Westside schools were reassigned to other Las Vegas area elementary schools. C.V.T. Gilbert and Jo Mackey elementary schools were designated prestige schools, meaning that they were specifically provided the human and material resources, program elements and methodology necessary to maximize learning opportunities for students (Clark County School District, 1969). Parents of White students were encouraged to volunteer their children for attendance in prestige schools because

\[ \ldots \text{the available resources are far in excess of what is normally found in other schools. For example:} \]

\begin{itemize}
  \item a) A more favorable teacher pupil ratio.
  \item b) A greater quantity and variety of equipment and learning
\end{itemize}
The plan further stipulated that in fall 1970, Madison Elementary School would be converted to a career-trade-vocational-technical center for grades 7 - 10, Kit Carson Elementary School would become a specialized school for pre-school and talented students and include a reading center, and Matt Kelly Elementary School would continue its designation as a community school with emphasis on adult education and would also house a pre-school program. Jo Mackey Elementary School was designated part of a voluntary education plan in connection with Nellis and Manch elementary schools.

The underlying critical factor was that the plan was voluntary. White parents were not required to send their children to the schools designated for desegregation, and, for the most part, they did not. The order of the court had been carried out, and the district reported to Judge Thompson as dictated on March 2, 1970. After careful review, on December 2, 1970, the court ordered the Board to adopt a plan for the following school year which would limit enrollment of Black students in any grade or class to 50%. The judge's decision was based on his belief that the Action Plan for Integration did not live up to his expectations and to the intent to desegregate the elementary schools on the Westside.

The headline of the Review Journal on the following day, December 3, 1970 was, “Fall enrollment balance ordered for county schools by Reno judge.” The article
which followed the headline was written by Nedra Joyce. The article explained the order but did not give any reaction of the community relative to the order.

The precedent for the 1970 ruling was the case, *Green v. County School Board of New Kent County, Virginia* (1968). Justice Brennan delivered the opinion of the Court which stated in part:

The New Kent School Board’s “freedom-of-choice” plan cannot be accepted as a sufficient step to “effectuate a transition” to a unitary system. In three years of operation not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent school in 1967 (up from 35 in 1965 and 111 in 1966) 85% of Negro children in the system still attend the all-Negro Watkins school. (p. 1696)

Similarly, Judge Thompson concluded that the Clark County School District’s plan was not adequate to bring about desegregation and it placed the burden on black children and their parents.

**Evolution of the Sixth Grade Center Plan and Busing**

The next plan to achieve mandatory integration involved cross-busing to sixth grade centers located on the Westside. Cross-bussing means that White students would be bussed to the Westside and Black students would be bussed to the greater Las Vegas area. The *Sixth Grade Center Plan* required Black elementary school students in first through fifth grade to be bused from the Westside. Elementary schools on the Westside were designated sixth grade centers, and all Las Vegas area students attended those schools for sixth grade. This meant that White students were bused for one year, and Black students from the Westside were bused for 11 of the
required 12 years of school. High schools were not a part of the litigation because they
had already been integrated by bussing Black students out of the Westside. It must be
noted that no high schools existed on the Westside. The goal of this plan was to
insure that no elementary school exceeded 50% enrollment of Black students in any
one grade or classroom.

Judge Thompson, on May 10, 1972, ordered the implementation of the Sixth
Grade Center Plan for the 1972-73 school year. As a result, a series of motions and
counter-motions ensued both by the plaintiffs and the defendants to stay the plan's
implementation and culminated in an appeal to the United States Court of Appeals for
the Ninth Circuit which ultimately concurred with the lower court. The decision of
Judge Thompson was based on the Swann v. Charlotte-Mecklenburg Board of
Education (1971) U.S. Supreme Court decision that specified that children of both
races could be bused out of their neighborhoods to achieve integration. Chief Justice
Burger opined:

The District Court's conclusion that assignment of children to the school
nearest their home serving their grade would not produce an effective
dismantling of the dual system is supported by the record.
Thus the remedial techniques used in the District Court's order were within
that court's power to provide equitable relief; implementation of the decree is
well within the capacity of the school authority. (p. 1283)

Findings of the United States Court of Appeals
for the Ninth Circuit

During a period of fact finding, the U.S. Court of Appeals for the Ninth Circuit
found that school authorities had deliberately attempted to fix or alter demographic
patterns to affect the racial composition of schools. "In contrast between 1956 and 1966, four new elementary schools were constructed in Westside and one of the two existing schools was extensively renovated to accommodate additional students."(Kelly v. Guinn, 1972. P. 104)

It was clear that the district had built four new elementary schools on the Westside after Brown v. Board of Education (1954), indicating an official policy of segregation. In addition, the Westside schools comprised nearly all African-American teaching staffs when the complaint was filed. Combined with methods of placing teachers, this pattern established a prima facie case of violation of substantive constitutional rights. The court found that the Clark County School District fostered a segregated system by the discriminatory location of new schools, enlarged schools for Black students instead of transferring them to predominantly White-enrollment schools nearby, assigned teachers using race as a factor, and continued a neighborhood school policy. The case was appealed to the United States Supreme Court when Kenny C. Guinn was superintendent. The petition for a Writ of Certiorari filed by the district was denied by the United States Supreme Court. The decision of the Court of Appeals for the Ninth Circuit was upheld, and the Sixth Grade Center Plan was used as the means to effectuate school desegregation in Clark County from 1972 to 1993.
CHAPTER 3

REVIEW OF SIGNIFICANT COURT CASES RELEVANT TO

KELLY v. CLARK COUNTY SCHOOL DISTRICT

Introduction

The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas, Nevada, Kelly et al. v. Clark County School District (1972). The historical overview explained the background of Brown v. Board of Education (1954) and the original Kelly v. Clark County School District (1972) complaints. In this chapter, significant court cases related to the issue of desegregation are reviewed. In the first section, the earliest case relating to segregated education in Nevada, State of Nevada v. Duffy (1872), is recounted followed by two similar ones from other states, Roberts v. City of Boston (1849) and Enos Van Camp v. the Board of Education of the Incorporated Village of Logan (1855). In the second section, United States Supreme Court decisions were reported including Plessy v. Ferguson (1896), Brown I and II, Green et al. v. County School Board of New Kent County, Virginia et al (1968) and Swann v. Charlotte-Mecklenburg Board of Education (1971).

Brown I and II were reviewed because the first case struck down the concept of
separate but equal which had been in effect since Plessy decision of 1896. The Brown I case in fact is the pivotal case in the history of school desegregation in the United States. In Brown II the term all deliberate speed was used for the first time. In actuality, this term using words, “deliberate and speed” which had opposite meanings was used to circumvent the order of the court. As previously stated, in some cases, “deliberateness took precedence over speed.” (Taueber, 1990, p. 19)

In the Green case, the Supreme Court allowed a freedom of choice plan to be utilized to seek to end segregation. A freedom of choice plan was also the first plan used in Las Vegas. The plan was determined to be inadequate by the court to bring about desegregation.

In Swann, the Supreme Court, allowed busing as the means to desegregate schools. Bussing was one of the tools which was eventually used to desegregate the six elementary schools on the Westside of Las Vegas.

Nineteenth Century Cases

State of Nevada v. Duffy

State of Nevada v. Duffy (1872) was the first case in the state which dealt with racial segregation in schools. In Carson City, Blacks wanted to send their children to public school and were denied access based on an exclusionary state statute which deemed Blacks a separate class of people. The statute said, “Negroes, Mongolians and Indians shall not be admitted into public schools…” (State of Nevada v. Duffy, 1872, p. 984) The Nevada Supreme Court ruled in favor of the Blacks and decreed the statute

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unconstitutional:

While on one hand they may not deny to any resident person of proper age an equal participation in the benefits of the common schools; and while in the present case upon the facts presented, the defendants should have admitted the relator into the school in question; yet on the other hand, it is perfectly within their power to send all blacks to one school, and all whites to another; or, without multiplying words, to make such classification, whether based on age, sex, or any other existent condition, as may be seem to them best... (State of Nevada v. Duffy, 1872, p.986)

While this decision invoked the rights of Black students to attend public schools, it did not permit them to accompany Whites. The implication was that the Blacks must have their own school, so the school board hired a teacher and opened a school for Black children.

This decision presented one of the first arguments about segregated schools.

Justice C. J. Lewis, in his concurring opinion, stated that the law forbidding Blacks to attend public schools

. . . deprives an entire class of citizens of one of the most inestimable privileges of political organization; makes the most invidious discrimination against them, exacting a revenue from their property for the organization and support of public schools, and denying them their advantages; holding them amenable to the law, but withholding from them its highest privileges. (State of Nevada v. Duffy, 1872, p. 988)

In addition, Justice Lewis argued against the statute that determined that Blacks constituted a separate class of people:

. . . the legislature has no more right to designate a class by the color of the skin, than by the color of the hair. Negroes, possessing all other qualifications, are, by the highest law of the land, citizens of the state. No law now in force, or which we are bound to recognize, places them in any different position, so far as citizenship is concerned. (p. 991)

Agreement was not unanimous, however. In his dissenting opinion, Justice J. Garber argued that Blacks did not have the right to attend school: "... the equal
protection of the laws cannot well be denied to a right which never existed" (State of Nevada v. Duffy, 1872, p. 995). He further suggested that God intended for the races to be different and this difference was based in natural law. He expressed this argument:

It is not denied that the legislature may classify persons by sex, age, occupation, residence, or the like, but it is said that it cannot make or adopt novel and arbitrary classifications; that all persons are to be deemed in the like situation, between whom there exists neither a substantial distinction, nor a distinction which has been customarily recognized, or which precedent has sanctioned as warranting this sort of discriminating legislation. It is then assumed that the only difference between a Negro child and a white child lies in the color of the skin; and on this assumption it is argued that this statute introduces a classification entirely novel and arbitrary. The fallacy of this argument is patent. It singles out the most trivial and unimportant of the marks of distinction between the two races. The other and vital ones, those the existence of which alone induced the legislature to enact this section of the statute, are ignored. . . . The question is one of difference not of superiority or inferiority. Why the creator made one black and the other white, we know not; but the fact is apparent, and the races distinct, each producing its own kind, and following the peculiar law of its constitution. Conceding equality, with natures as perfect and rights as sacred, yet God has made them dissimilar; with those natural instincts and feelings which He always imparts to His creatures when He intends that they shall not overstep the natural boundaries He has assigned to them. The natural law which forbids their intermarriage, and that social amalgamation which leads to a corruption of races, is as clearly divine as that which imparted to them different natures. (pp. 997-998)

The ruling led to the formation of a school for Blacks, however, it was a school for Blacks only.

Roberts v. The City of Boston

Even before Nevada became a state in 1864, the issue of segregation of Blacks in schools was tried in court. As early as 1846, George Putnam, along with other Black citizens of Boston, petitioned the primary school committee to abolish schools designated for Black students only. One of the two such schools had been established in 1820, and
had been in continual operation. The school committee denied the petition, stating,

Resolved, that in the opinion of this board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, is not only legal and just, but is best adapted to promote the education of that class of our population. (Roberts v. Boston, 1849, p. 201)

Following on the heels of Putnam's petition and similar to the Brown I case in 1954, in 1849, the father of five-year-old Sarah Roberts decided that the requirement that she walk past one school on her way to the school for Black children was a violation of her rights. Only four years earlier, the City of Boston had enacted a statute which stated, in part, "... that any child, unlawfully excluded from public instruction in this commonwealth, shall recover damages therefore against the city or town by which such public instruction is supported" (Roberts v. Boston, 1849, p. 198).

In the case of Sarah Roberts, her father applied for her ticket to attend school in the area in which she lived; the request was denied on the basis of her race. Her father tried on several occasions and was refused every time for the same reason. Finally, Sarah Roberts showed up at the school nearest her home and was forbidden entry by the teacher. Instead, she was offered entry at one of the primary schools designated for Black children. The plaintiffs argued that "... the separation of the schools, so far from being the benefit of both races, is an injury to both. It tends to create a feeling of degradation in the blacks, and of prejudice and uncharitableness in whites" (Roberts v. Boston, 1849, p. 204).

In court, the lawyers for the plaintiffs argued that the constitutions of the Commonwealth of Massachusetts and the United States of America confirmed that all men
are created equal. In addition, the laws of Massachusetts did not distinguish between races or colors in the establishment of public schools, and it would be an inconvenience to Black children and their parents for them to be excluded; therefore, the rights of the Black children are violated. A further issue, qualification, was argued as well. The attorneys asserted that the school committee had no power under the state constitution to discriminate on account of race or color and could not, therefore, legally disqualify a child from a particular school by virtue of the fact that the child was Black. In as much as the school committee had the power to determine the qualification of each applicant, race should not be considered either as a qualification or as a disqualification. Qualification, they argued, should be limited to age, sex, and the moral and intellectual fitness of the applicant.

The court, in its decision, did not argue about the distance of the school from the child's home. The argument, instead, focused on the issue of "separate but equal":

... the plaintiff had access to a school, set apart for colored children, as well conducted in all respects, and as well fitted, in point of capacity and qualification of the instructors, to advance the education of children under seven years old, as the other primary schools: the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children and are at a greater distance from her home. Under these circumstances, has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the courts are all of the opinion that she has not. (Roberts v. Boston, 1849, p. 205)

The decision further asserted that the Massachusetts constitution implied a broad general principle of equality regardless of age, sex, color, or national origin before the law:

But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civic and political powers, and that
children and adults are legally to have the same functions and be subject to the same treatment, but only that rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law, for their maintenance and security. (p. 206)

The inference is that the court will decide whether or not to enforce the law on a case-by-case basis.

If separate schools caused feelings of inferiority in Blacks and superiority in Whites as well as the creation of a caste system, the court suggested that this merely reflects the prejudices evident in the greater society and "this prejudice, if it exists, is not created by law, and probably cannot be changed by law" (Roberts v. Boston, 1849, p. 209). In its final analysis, the court ruled, "the increased distance, to which the plaintiff was obliged to go to school from her father's house, is not such, in our opinion, as to render the regulation in question unreasonable, still less illegal" (p. 210).

Enos Van Camp v. The Board of Education of the Incorporated Village of Logan

Enos Van Camp lived in Logan, Ohio, in the 1850s. In 1853, the Ohio legislature, superseding an 1829 act excluding colored children from public schools, created a specific act requiring that colored children be educated in schools separate from White children and that each local board of education was responsible for organizing schools for colored children.

In 1855, Enos Van Camp attempted to enroll two children from his household in public school and was denied. He claimed that the refusal to allow the children to attend school caused him damage; therefore, he filed suit in the amount of $500. In response to
the suit, the defendants acknowledged the following: (a) the students were denied admittance because they were Black, (b) the children had more White blood in them than African blood, (c) the schools were established for White children, (d) fewer than 10 Black children lived in the district, (e) no school had been established for Black children, and (f) the rule stated that in order for a school to be created, 10 children had to be served. In ruling against the plaintiff, the court said that the statute of 1853, to provide for the reorganization, supervision and maintenance of common schools is a law of classification and not of exclusion, providing for the education of all youths within the prescribed ages, and the words "white" and "colored" as used in said act, are used in their popular and ordinary signification. Children of three-eighths African and five-eighths white blood, but who are by the community where they reside, are not, as of right, entitled to admission into the common schools set apart under said act for the instruction of white youths. (Van Camp v. Board of Education of the Incorporated Village of Logan, 1855, p. 407)

The case was not decided unanimously. One of the two dissenting jurists, Justice Sutliff, stated that "caste legislation, the inveterate vice of absolute government, is inconsistent with the theory and spirit of a free and popular government like ours, asserting in its bill of rights the equality of all men" (p. 416).

Supreme Court Cases Related to
Kelly v. Clark County School District

Plessy v. Ferguson

Although it was not directly related to education, Plessy v. Ferguson (1896) affected virtually all facets of life in the United States for more than 50 years. It began with railroad cars... Louisiana enacted a statute in 1890 prohibiting Whites and Blacks
from riding in the same railway cars:

... that all railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by partition so as to secure separate accommodations: provided that this section shall not be construed to apply to street railroads. No person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to. (Plessy v. Ferguson, 1896, p. 1139)

On June 7, 1892, Homer Plessy, who was 12.5% Black and 87.5% White, purchased a first-class train ticket to travel from New Orleans to Covington, Louisiana. He boarded the train and sat in a coach reserved for White passengers. When ordered by a conductor to move to a car reserved for Black passengers, he refused and was subsequently arrested for violating the state statute which required the separation of Blacks and Whites on railway cars.

The irony inherent in this case was that, since Plessy was 87.5% White, his appearance was more of a White man, so he was not distinguished by the color of his skin. There was no specific information in the case regarding how the conductor knew that Homer Plessy was Black.

The petitioner was a citizen of the United States and a resident of the State of Louisiana, of mixed descent in the proportion of seven-eights Caucasian and one-eighth African-blood; that the mixture of colored blood was not discernible in him... (Plessy v. Ferguson, 1896, p. 1138)

Justice Brown delivered the opinion of the court which stated, in part,

Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily, imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of state legislatures in the exercise of their police power.
The most common instance of this is connected with the establishment of separate schools for white and colored children, which have held to be valid exercise of the legislative power even by courts of states where political rights of the colored race have been longest and most earnestly enforced. *(Plessy v. Ferguson, 1896, p. 1141)* [Emphasis added.]

The opinion further stated,

While we think the enforced separation of the races, as applied to the integral commerce of the state, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws within the meaning of the fourteenth amendment, we are not prepared to say that the conductor, in assigning passengers to the coaches according to their race, does not act at his peril, or that the provision of the second section of the act that denies to the passengers compensation in damages for a refusal to receive him into the coach in which he properly belongs is a valid exercise of legislative power. *(Plessy v. Ferguson, 1896, p. 1142)*

In the final analysis, the United States Supreme Court ruled that the concept of separate but equal was constitutional.

Of the nine Supreme Court judges, only Justice John Harlan of Kentucky dissented:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. *But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens.* In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment of citizens of their civil rights solely upon the basis of race. *(Plessy v. Ferguson, 1896, p. 1146)* [Emphasis added.]

Justice Harlan was most critical of his colleagues on the bench who denied that these laws...
did not imply racial inferiority. He foreshadowed the future of "separate but equal" in his comments:

The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution. *It cannot be justified upon any legal grounds* . . . If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. *The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done.* *(Plessy v. Ferguson, 1896, p. 1147)* [Emphasis added.]

This landmark decision reaffirmed the doctrine of *separate but equal* in the United States and provided the justification for school districts to build separate schools for Black and White students for the next 58 years.

Homer Plessy, a man 87.5% White who lived in Louisiana, lost his case, and the doctrine of "separate but equal" continued to be used to justify state laws and statutes throughout the nation which separated the races in schools and other places of public accommodation. According to Muse (1964),

It was near the end of the first decade of the twentieth century when its [separate but equal] peak was reached. By then segregation had been extended, whether by law or by custom, to include hotels, restaurants, saloons, rest rooms, drinking fountains, libraries, churches, parks, hospitals, orphanages, prisons, asylums, all places of public assembly, all means of transportation, nearly all fields of industrial employment, and ultimately funeral homes, morgues and cemeteries. Because the resources of the Negroes themselves and the facilities and opportunities left open to them were meager, segregation generally meant in effect exclusion. The schools provided for Negroes were still few and rudimentary in their offering; employment above the level of menial or unskilled labor was almost closed to them. *(p. 2)*
Thus, "separate but equal" became the norm in the South, "... but the emphasis was entirely on separate. The history of the separate but equal doctrine is one grotesque disregard of the equal end of the phrase" (Muse, 1964, p. 2).

**Brown v. Board of Education**

*Brown v. Board of Education*, decided on May 17, 1954 was initially four separate cases from four distinct jurisdictions: (a) Kansas, (b) South Carolina, (c) Virginia, and (d) Delaware. The United States Supreme Court decided to hear the cases together because they all involved minor students who sought to be admitted to public schools in their respective communities on a non-discriminatory basis. "In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race" (*Brown v. Board of Education*, 1954, p. 488). In three cases, plaintiffs had been denied relief based on "separate but equal." In the Delaware case, however, the state court agreed with the doctrine of "separate but equal," but found that the schools for Black children were not equal to those for Whites. Consequently, the Delaware court ordered that Black students be admitted to schools designated for Whites because of the deficiencies in the schools for Blacks.

The general contention of the plaintiffs in all four cases was that "segregated public schools are not equal and cannot be made equal and that hence they are deprived of the equal protection of the laws" (*Brown v. Board of Education*, 1954, p. 488). In the specific Kansas case for which the decision is named, Mr. Brown filed suit on behalf of his young daughter who sought to attend an elementary school closer to their home, which
she had to walk past on her way to the school designated for Blacks. Mr. Brown believed that this circumstance violated his daughter's constitutional rights as expressed in the

Fourteenth Amendment. In this case, argued by lead counsel for the NAACP Thurgood Marshall who became the first Black justice of the United States Supreme Court, Chief Justice Earl Warren wrote,

Here, unlike Sweatt v. Painter, there are findings below that the Negro and white schools involved have been equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education. (Brown v. Board of Education, 1954, p. 492)

Sweatt v. Painter, heard by the United States Supreme Court in 1950, granted relief for Mr. Sweatt who was denied admission to a White law school in Texas. "In effect, the Supreme Court held that there was no such thing as separate but equal law schools" (Clark, 1963, p. 149).

The United States Supreme Court unanimously declared the doctrine of "separate but equal" invalid in the pivotal case related to desegregation in the history of the system of public American education, Brown v. Board of Education (1954). The Court declared:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of equal protection of the laws guaranteed by the Fourteenth Amendment. (Brown v. Board of Education, 1954, p. 495)

This approach differed from past practice and asked questions as well as gave answers:

- Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be
equal, deprive the children of the minority group of equal education opportunities? We believe that it does. (Brown v. Board of Education, 1954, p. 493)

- To separate [minority children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. (Brown v. Board of Education, 1954, p. 494)

Thus, their conclusion that "... in the field of public education the doctrine of separate but equal has no place" (Brown v. Board of Education, 1954, p. 495) was unanimous.

The Afermath of Brown v Board of Education

The arguments in Brown v. Board of Education (1954) included the question of who should make the decision about school segregation in the first place. The plaintiffs, led by Thurgood Marshall, believed that the Supreme Court, the highest court in the land and defender of the Constitution, was the appropriate body. The defense team led by John W. Davis, a former Democratic nominee for President of the United States and former ambassador to Great Britain, argued that

the inequalities in "separate but equal" schools were well on their way to being remedied; that parents were entitled to respect for their wishes about the racial composition of schools that their opposition to integration was so strong that its introduction might destroy the public school system in the South; that decisions on the racial composition of public schools were the proper province of the state legislatures, not the Federal government. (Ward, 1964, p. 61)
Clearly, the Supreme Court of the United States unanimously supported the plaintiffs' contention and decreed in 1954 that segregated schools would no longer be sanctioned by the courts. That began the long and arduous struggle to desegregate the nation's schools, for the court did not address how or when desegregation must occur.

On May 18, 1954, the day after the Brown decision was handed down, the New York Times, called the ruling "A Sociological Decision" and subheaded the article, "Court Founded Its Segregation Ruling on Hearts and Minds Rather Than Laws" (May 18, 1954, p. 14) because the court had considered reports of sociologists and psychologists in its deliberations. Hailing the decision as a great victory for those who wished to see the country move away from segregation, the Amsterdam News, a Black newspaper in New York City, editorialized, "The Supreme Court decision is the greatest victory for the Negro people since the Emancipation Proclamation. It will alleviate racial trouble in many fields other than education" (New York Times, May 18, 1954, p. 19).

The South, as expected, was not in favor of the decision. According to the Birmingham News,

This newspaper deeply regrets that the Supreme Court has come to a decision that the segregation of Negro and white students in public schools is unconstitutional. . . . The News believes that the considerations of public interest and states' rights which underlay the superseded decision of 1896 still apply and would better serve progress in racial relations and education. (New York Times, May 18, 1954, p. 19)

In addition, Marvin Griffin who was running for governor of Georgia contended, "Come hell or high water, races will not be mixed in Georgia schools" (Ward, 1964, p. 63).

This was only one backlash. Segregationists holding political office began drafting laws in Southern states which would halt the integration process. Mississippi and
Louisiana chose to close their schools rather than to integrate them. Some states even provided state funds to private schools which had been established to avoid the order to desegregate. Georgia went so far as to amend its constitution allowing the state police to use their power to maintain segregation in schools. (Ward, 1964, p.63)

Locally in Las Vegas, the news of May 17, 1954 did not appear to cause a major stir. The news did not make the front page headlines of either the two daily newspapers, the Las Vegas Sun and the Las Vegas Review Journal. On May 18, 1954 neither the Las Vegas Sun or the Las Vegas Review Journal ran editorials regarding the decision. The Vegas Sun ran an article by the Associated Press on page 6 entitled, “Supreme Court Bans Segregation in Schools in Historical Decision.” The Review Journal ran a story by the United Press on page 11 by Al Kuettner entitled, “Dixieites Plan to Battle Segregation Upset.” It must be noted that no locally written articles appeared in either paper. This historical decision did not appear to have an immediate effect on the Las Vegas community at large.

In the South, however, the opposition to desegregation reached a high point in the attempt to integrate nine Black students into Central High School in Little Rock, Arkansas, in 1957. Governor Orval Faubas initially sent members of the Arkansas National Guard to prevent their attendance; however, President Dwight D. Eisenhower provided federal paratroopers to enforce the integration order and to protect the students. The situation calmed; the nine students attended Central High School; Ernest Green became the first Black graduate of the school at the end of the school year and later served as an official in the Carter Administration.
Brown II

With the initiation of a similar case, Brown v. Board of Education (1954) became known as Brown I. The second case involving the original four states became known as Brown II. Brown II concerned the missing piece from Brown I: how and when should schools be required to desegregate? The United States Supreme Court rendered its decision on May 31, 1955, and Chief Justice Earl Warren again delivered the opinion:

... the fundamental principle that racial discrimination in public education is unconstitutional... All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded. (p. 755)

In his opinion, Chief Justice Warren further stated,

Full implementation of these constitutional principles may require solutions of varied local school problems. School authorities have the primary responsibility of elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. (p.756)

The decision ended with the introduction of their term, all deliberate speed.

The judgments below, except that in the Delaware case, are accordingly reversed and the cases are remanded to the District courts to take such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. (p. 757)

The use of the term, "all deliberate speed," posed a problem as segregationists applied its contradictory meaning as a block to desegregation. Further, some took advantage of this window of opportunity to negate the original ruling of Brown I. Once again according to Taueber, "deliberateness took precedence over speed. Remarkably little desegregation occurred in the next ten years, but there was ample time for state and local mobilization of
powerful opponents to the Court's mandate." (Taueber, 1990, p.19)

On June 1, 1955, the day after the Brown II ruling, James Kilpatrick, who later became a noted nationally syndicated columnist, wrote an astounding editorial in the Richmond News Leader. It is reported here in full because of its complete foreshadowing of actual events:

In May of 1954, that inept fraternity of politicians and professors known as the United States Supreme Court chose to throw away the established law. These nine men repudiated the Constitution, spit upon the Tenth Amendment, and rewrote the fundamental law of this land to suit their own gauzy concepts of sociology. If it be said now that the South is flouting the law, let it be said to the high court, You taught us how.

From the moment that abominable decision was handed down, two broad courses only were available to the South, one was to defy the Court openly and notoriously; the other was to accept the Court's decision and combat it by legal means. To defy the Court openly would be to enter upon anarchy; the logical end would be a second attempt at secession from the Union. And though the idea is not without merit, it is impossible of execution. We tried that once before.

To acknowledge the Court's authority does not mean that the South is helpless. It is not to abandon hope. Rather, it is to enter upon a long course of lawful resistance; it is to take lawful advantage of every moment of the law's delays; it is to seek at the polls and in the halls of legislative bodies every possible lawful means to overcome or circumvent the Court's requirements. Litigate? Let us pledge ourselves to litigate this thing for fifty years. If one remedial law is ruled invalid, then let us try another; and if the second is ruled invalid, then let us enact a third...

When the Court proposes that its social revolution be imposed upon the South as soon as practicable, there are those of us who would respond that as soon as practicable means never at all. (Muse, 1964, p. 29)

James Kilpatrick interpreted all deliberate speed to mean as soon as practicable and in effect as soon as practicable would mean never at all.

Green v. County School Board of New Kent County, Virginia

As recently as 1968, New Kent County, Virginia, operated only two schools--New
Kent School enrolling about 560 White students; George Watkins School, approximately 740 Black. To transport students, the county operated 21 buses which traversed overlapping routes—10 to New Kent School; 11 to George Watkins School. Clearly, a dual system, mandated by Virginia law to be segregated by race, operated in New Kent County. “However, on August 2, 1965, five months after the suit was brought, respondent School Board, in order to to remain eligible for federal financial aid, adopted a freedom of choice plan for desegregating the schools.” (Green et al. v. County School Board of New Kent County, Virginia et al., p. 1692)

Justice Brennan delivered the opinion of the United States Supreme Court which determined that:

Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a “white” school and a “Negro” school, but just schools. (Green et al. v. County School Board of New Kent County, Virginia et al., p. 1696)

Very simply, the school board had not lived up to its obligations under Brown II to make reasonable efforts to dismantle the state-mandated dual system. Further, the freedom-of-choice plan had not been put into effect until 1965, a full 10 years after the Brown II decision. Therefore, the Supreme Court ascertained that this was not "deliberate speed," but rather was deliberate foot-dragging to maintain segregation. Consequently, the Court determined that the freedom-of-choice plan was intolerable in view of the fact that it failed "to provide meaningful assurance of prompt and effective disestablishment of a dual system" (p. 1694) and ordered the school board to fashion a plan which would realistically
convert the system into one in which there was no White school and no Black school.

**Swann v. Charlotte-Mecklenburg Board of Education**

This case is particularly important because it was the first instance of court-ordered busing of students to end segregation in schools. North Carolina had enacted anti-busing legislation to prevent the desegregation of schools. Through this case, the United States Supreme Court determined that anti-busing legislation was unconstitutional.

The four major areas of the case relating to the assignment of students to schools were:

1. to what extent racial balance or racial quotas may be used as an implement in a remedial order to correct a previously segregated system;
2. whether every all-Negro and all-white school must be eliminated as an indispensable part of a remedial process of desegregation;
3. what the limits are, if any, on the rearrangement of school districts and attendance zones, as remedial measure;
4. what the limits are, if any, on the use of transportation facilities to correct state-enforced racial school segregation. *(Swann v. Charlotte-Mecklenburg Board of Education, 1971, p. 1279)*

The district court had ordered and imposed a requirement that the schools maintain a racial balance component for each school—71%/29%:

... a dual school system had been maintained by the school authorities until at least 1969... that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the District Judge who, on at least three occasions, urged the board to submit plans. *(p. 1280)*

That ratio was never attained; in fact, the school board's plan had left 10 schools with Black enrollments of between 86% and 100%. Further, the school board refused to pair...
and/or cluster schools and to assign any White student to a school with less than 60% White students. Because of the school board's failure to act on its own, the district court engaged Dr. John Finger to develop a desegregation plan for the district.

The Supreme Court did not agree that each school had to reflect the racial composition of the entire school district. In its deliberations, the justices realized that its objective in dealing with the issues in the case was to ensure "... that school authorities exclude no pupil of a racial minority from any school, 'directly or indirectly' on account of race" (Swann v. Charlotte-Mecklenburg Board of Education, 1971, p. 1279). They further recognized that a court order "does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools" (p. 1279).

In deciding this case, the Supreme Court considered that a majority-to-minority transfer plan was also a consideration in achieving desegregation. This simply meant that students could be cross-bused--either from a majority to a minority area or from a minority to a majority environment--for the purpose of attending school and ending segregation by race.

On April 20, 1971, the Supreme Court rendered its decision:

Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. . . . This system compares favorably with the transportation plan previously operated in Charlotte under which each day 23,600 students on all grade levels were transported an average of 15 miles one way for an average trip requiring over an hour. In these circumstances, we find no basis for holding that local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school. (Swann v. Charlotte-
The Supreme Court now accepted busing as an acceptable means of desegregation.
CHAPTER 4

CHRONOLOGICAL ACCOUNT OF KELLY et al. v. CLARK COUNTY SCHOOL DISTRICT, 1968 - 1972

INTRODUCTION

The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas, Nevada, Kelly et al. v. Clark County School District (1972). The investigation was introduced with a history of segregation and schooling in Nevada and Las Vegas. Nineteenth century and United States Supreme Court cases that chronicled the establishment of separate, segregated, and desegregated schools have been reported. In this chapter, the case that desegregated Las Vegas schools is presented chronologically. As stated, the complete court records of Kelly et al. v. Clark County School District was used. The records include the initial complaint, motions, briefs, decisions and orders.

Kelly et al. v. Clark County School District

In the Beginning

On May 13, 1968, attorney Charles Kellar filed a class-action lawsuit in Federal
District Court against the Clark County School District. The plaintiffs alleged that their rights under the Fifth and Fourteenth Amendments of the Constitution of the United States had been violated. The suit named the Board of School Trustees and Superintendent James Mason as defendants in the case, charging that residents in Westside Las Vegas are denied the equal protection of the law, and the opportunity to be assigned to schools which are not segregated, and which are not constituted to provide inferior educational opportunities. The rules and regulations promulgated by the defendants and obligate the great majority of the Negro children to attend segregated schools in the area known as the West Side, which said schools are known by the style of C.V.T. Gilbert, Matt Kelly, Highland School, Jo Mackey, Kit Carson and Madison School. That the pupil attendance of the said schools is 98% or more of Negro children, who are compelled to attend the said schools by the fiat, edict and directions of the Defendants. That the said pupils are deprived of the equal protection of the law and an integrated education by the said rules and regulations of the Defendants, and are, thereby, provided an inferior education and deprived of the opportunity for a fuller life and to prepare themselves for their future lives in America. That the practices complained of deprive the Negro child illegally and without due process of law of the chance for the same education available to the white child. That because of this inferior education the Negro child is deprived of the opportunity of learning and acquiring the skills to compete in the economic market and to earn the same sums of money as would white and other students not similarly situated and assigned, as are the class of persons represented by the Plaintiffs. (Kelly et al. v. Clark County School District, 1972, p. 3)

In addition to alleging discrimination by means of segregated schools, the lawsuit also charged the defendants with discrimination in personnel practices:

... the Defendants also segregate the personnel. That there are three Negro principals now in the Clark County School District, all of whom are assigned to Negro schools. That there are three or more vacancies, or there will be soon, among the six Negro schools in the Clark County School District and the Defendants contemplate continuing their practices of assigning Negro personnel and administrators at the Negro schools by refusing to assign others and have never assigned any Negro administrators to a white school, and that this practice is contemplated to continue even for the school year 1968-69, and that Defendants
use discriminatory policies and practices in the assignment of their personnel and administrators and consciously continue to do this, which breaks down the morale of the Negro student, the Negro parent, the Negro teacher, the Negro principal and the esprit de corps of the Negro community, its aims, aspirations and leadership. (Kelly et al. v. Clark County School District, 1972, p. 5)

Having made these charges, the plaintiffs concluded their complaint by asking the court to grant them relief in the following manner:

1. That this Court, in view of the short time remaining before the start of the 1968-69 school year, advance this cause upon the docket and order a speedy hearing, and after said hearing enter a decree enjoining the Defendants, their agents, servants and employees, and successors in office, and all persons in active concert and participation with them from:

   a) Assigning Negro children to Negro schools to which there are not an equal amount of white or other racially different students assigned.

   b) From hiring and assigning teachers, principals, custodians and other personnel on the basis of race, and directing a redistribution of all personnel throughout the Clark County School system without regard to race, creed or color.

   c) Instituting, approving, maintaining or continuing any policies or programs having the design or the effect of maintaining or supporting racial segregation and discrimination in the Clark County School District.

   d) From continuing to deny the Plaintiffs and others similarly situated equal curricula, library facilities, transportation, teacher placement, salaries and opportunities for the advancement; vocational, rehabilitative and industrial training to equal recreational facilities and programs; on-the-job training and other benefits provided the white school population.

2. That the defendants be directed to reassign by the start of the 1968-69 school year at least 50% of the Negro children now assigned to Negro schools to generally integrated facilities as an indication of their good faith and their will to undertake the equal protection of the law and to secure to the Plaintiffs their rights, privileges and immunities.
That the Court enjoin the Defendants from continuing the bond issue until they have carried out provisions 1 and 2 of this prayer for relief. (Kelly et al. v. Clark County School District, 1972, p. 10)

On May 27, 1968, the defendants asked the court for more time to respond to the lengthy charges; the court complied. On June 17, 1968, the defendants answered and denied the majority of the charges and requested dismissal of the case.

A shift in players then occurred. On September 20, 1968, in a letter to Judge Roger Foley, attorney for the plaintiffs, Charles Kellar, asked that Foley recuse himself from the case because of his strong connections to the Las Vegas community power structure. Judge Foley honored that request on September 23, 1968. It was subsequently assigned to Judge Bruce Thompson who set the trial date for October 14, 1968, and ordered...

that counsel for the respective parties, at said time and place, shall present to the Court a written stipulation of the facts containing the statistics for four school years last past containing the identity, location, geographical area served and student and teacher assignment for each elementary school in the District, specifying numbers of white and Negro students and white and Negro teaching and administrative personnel and comparing these factors before and after the adoption of the "Integration Policy in Action Plan." (Kelly et al. v. Clark County School District, 1972, p. 45)

The "Integration Policy in Action Plan" had been adopted by the Board of School Trustees in 1966, and was in effect at the time of the case. According to Eva Simmons, who was a teacher at the time, the "Integration Policy in Action Plan" was used in the two Prestige schools, C.V.T. Gilbert and Jo Mackey. The plan called for teachers to be hired who had a college degree in a field other than education. These teachers would be mentored by senior teachers on staff at these two schools. The plan did not address the mandatory
reassignment of students. (Eva Simmons is interviewed on p.116 of this document)

The defendants supplied the data as ordered and, on the trial date, filed motions in opposition to previous motions filed by the plaintiffs. For example, the plaintiffs had asked that the defendants produce student achievement records from the six Westside elementary schools, and the judge required them to present the data in two weeks time. The trial continued for three days, October 14 through 16. The defendants argued in their defense on several Points of Law:

A school system developed on the neighborhood school plan, honestly and conscientiously conducted, with no intention or purpose to segregate races, need not be destroyed or abandoned because the resulting effect is to have racial imbalance in certain schools where districts are populated almost entirely by Negroes or whites, and racial imbalance in public schools is not constitutionally mandated. (Kelly et al. v. Clark County School District, 1972, p. 126)

If the policy formulated by a school board, after exercising its accumulated technical expertise and balancing all legitimate interests, is one conceived without bias and administered uniformly to all who fall within its jurisdiction, the courts should be extremely wary of imposing their own judgment on those who have a technical knowledge and operating responsibility for the educational system. There is no constitutional duty on the part of a school board for the sole purpose of alleviating racial imbalance to construct any school sites solely in the furtherance of such purpose. (p. 127)

The fact that in a given area a school is populated almost exclusively by children of a given race is not of itself evidence of discrimination, since the choice of school sites is based on density of population and other geographical considerations of administrative discretion. No litigation should be started in Federal Court where the school authorities show themselves willing to remedy the fact of segregation, and a school board may adopt a policy of integration designed to remedy any de facto segregation. (p. 128)

These Points of Law appear to be an acknowledgement by the district that elementary schools were, in fact, segregated, albeit on a de facto basis, and that they were willing to adopt measures to end this de facto segregation. The district court, presided over by
Judge Bruce Thompson, concurred, and ordered the district to prepare and submit an integration plan for approval by April 10, 1969. Judge Thompson specified a plan that would accomplish integration, not just merely address it.

Kellv et al. v. Clark County School District (1972) was a major issue locally, and the Black perspective is critical at this point. The Las Vegas Voice, the Black newspaper, ran the story on the front page:

In a landmark decision for the State of Nevada, Federal Judge Bruce Thompson ruled that the Clark County School District is illegally segregating the Negro children in West Las Vegas. He advised the District further that by April 10, 1969, they must come up with a feasible plan to integrate physically the Negro children with other children in the School District.

Judge Thompson continued the case until April 10, 1969, when presumably, the Clark County School District will have an integration plan approved by the Clark County School board, which will "accomplish integration and not just talk about it." The Superintendent of Schools, James I. Mason, had made many, many statements previously, both on radio, television and in the press, that the school suit brought by Charles L. Kellar, President of the Las Vegas Branch of the NAACP, was just a "nuisance" and that it had no merit. Superintendent Mason had claimed all the time that everything the Clark County School District was doing was "legal and proper" and that when the school suit was tried their plans, programs and policies would be vindicated.

Just the opposite was true when the school suit was abruptly called to a halt last Wednesday, October 16, 1968. Judge Thompson ruled, as Kellar had claimed, that the practice of the School District of assigning Negroes to the West Side schools, essentially all Negro, and assigning white children to other schools, essentially all white, was an illegal practice and that it fostered the segregation of the races and deprived the Negro children and the white children of the opportunity of knowing one another, of meeting with one another and learning to get along with one another. The Judge did not "buy" the Superintendent's statement that if there was integration, he, Mason, "feared a revolution."

Kellar has claimed constantly that Mason had no plans to integrate in spite of his protestations to the contrary. His policies and activities were nothing but procrastination. Clark County gave the School District 47 million dollars in 1964. Instead of using that money to integrate and to provide better education for the children of the West Side and others, the School Board built more schools to foster segregation. Dr. Mason admitted on the stand that segregation had grown rather than decreased since he came to the District on July 1, 1966.
The Judge however, freed the 59.5 million dollars in bond money so that the District could use it to build other schools which the Court hoped would help to foster integration. In their testimony Mason and others pledged that there would be no schools built in West Las Vegas and that nothing would be done further to promote the segregation practices of the past.

The entire encounter was one essentially between Charles L. Kellar, the President of the Las Vegas Branch of the NAACP, and Dr. James I. Mason, Superintendent of Schools of Clark County. Mason was the star witness for the defendants. In his cross-examination Kellar compelled Mason to admit that segregation had increased since Mason had become Superintendent of Schools. Mason testified that he had no plan for the desegregation of the West Side six schools and that there are schools surrounding the six West Side schools which could be paired and integrated effectively. This law suit has compelled the Clark County School District to face the question of integration and the School Board is now ordered to come up with a plan to bring this about. (*Las Vegas Voice*, October 24, 1968, p. 1)

In February 1969, several community members filed motions to intervene in the case, and Judge Thompson permitted them to do so. They claimed that their interests were at stake, the outcome would affect their lives, and the representation of their interests by the plaintiffs and the defendants may have been inadequate. Reverend Prentiss Walker and Sharron Jordan of the League of Women Voters of the Las Vegas Valley were among this group as was David Canter, attorney for *Parents Who Care*. Mr. Canter ultimately was elected to the school board and, as a consequence, became a defendant in the case. Two months later, Woodrow Wagner and Virgil Nelson entered motions, but they were denied.

The interest of the League of Women Voters centered on the argument that segregated schools were academically inferior to other district. Their brief filed with the court stated in part, "this academic inadequacy seriously impairs the Negro's ability to compete in society and deprives society of an appreciable amount of talent" (*Kelly et al. v.*
Clark County School District, 1972, p. 169). Similar to arguments applied to Brown I, the League stated in their conclusion,

... the deliberate integration of schools contrary to the will of a substantial part of the community is to propose trouble; but to fail to do so is to invite more serious trouble. There is reason to believe that resistance to integration may be due less to recalcitrance or prejudice than to simpler and more traceable causes. It appears that what parents most want is reasonable assurance that schools their children attend after integration will be at least equal to those which they have been accustomed. A plan for integration should therefore include, for all the children involved, provisions that will respond to this understandable parental concern. (p 192)

As with any controversial topic, rumors abounded about the outcome of the suit.

Once Judge Thompson determined the schools were segregated, forced busing for desegregation was the community gossip.

*Parents Who Care* was an organization composed of Patricia Fahey, Douglas Williams, Bradley Hoskin, and Jack McCutcheon who were opposed to forced busing and in favor of neighborhood schools. In their motion to the court, they stated,

... the vast majority of both the white and black citizens of Clark County, Nevada, who favor the voluntary integration of the Clark County school system through voluntary bussing of children while recognizing the need to utilize some form of public transportation in order to integrate schools. It is imperative for the Court to have before it representatives of the mainstream of the citizens of Clark County, Nevada, as opposed to representatives of peripheral factions of the local citizenry who either favor forced bussing or are opposed to any bussing whatsoever. (Kelly et al. v. Clark County School District, 1972, p. 155)

As required by the court, the district submitted the "Action Plan for Integration of the Six Westside Elementary Schools," also called "Freedom of Choice," on April 10, 1969. Relying on the concept of the "prestige" school, similar to the current "magnet" school, prestige elementary schools were located in Black neighborhoods and offered
special programs with greater amounts of perks such as more supplies, more teachers and staff, and more teacher in-service training. The hope was that White parents would volunteer to send their children to prestige schools because these schools offered special programs and lower student-teacher ratios.

Based on the ensuing interactions of motions and filings, some confusion seemed to occur regarding the effect of the "Action Plan" on Madison School. There was a question regarding whether or not the plan would go into effect before the court decision. Consequently, Mr. Kellar, attorney for the plaintiffs, filed a motion on May 8, 1969, for a preliminary injunction against implementation of the plan prior to the court's approving it.

As a case in point, Mr. Kellar submitted to the court a letter distributed by the principals of Matt Kelly and Madison schools which indicated that all students from the six Westside elementary schools would attend Madison School in the fall. Robert Petroni, attorney for the defendants, filed opposing papers requesting the denial of the preliminary injunction because his clients had not intention of implementing the plan before the court approved it.

Shortly thereafter, Mr. Kellar filed a brief explaining the plaintiffs' opposition to the defendants' integration plan:

... the plan's commitment to the concept of voluntary reassignment of students shifts the burden of integration to the black community and offers no guaranty of successful integration; the Plan effectively abolishes the neighborhood school in the westside while preserving this "institution" in the white community; the Plan denounces the use of forced and cross bussing but utilizes these procedures in transporting Negro students; the restructuring of the six westside elementary schools eliminates regular classrooms at a time when extensive overcrowdedness exists; the sixth grade students from the westside schools will be segregated in Madison for an entire school year; and, it is unrealistic to believe the plan can be implemented according to its timetable in light of the resignation of the Plan's author, the current labor dispute and the almost total absence of community.
teacher, and student preparation for integration. (Kelly et al. v. Clark County School District, 1972, p. 244)

The brief included Nevada Revised Statutes (N.R.S.) 388.040 and 392.300, indicating the authority of the Board of School Trustees to determine the schools to be attended by students and the bus transportation assignments:

In any school district having and maintaining more than one school offering instruction in the same grades, the board of trustees shall have the power to zone the school district and to determine which pupils shall attend each school. (N.R.S. 388.040, 1987, p. 8676)

As provided in this title of NRS, the board of trustees of a school district may, in its complete discretion, furnish transportation for all resident children of school age in the school district attending public school. (N.R.S. 392.300, 1987, p. 8762)

In concluding the brief, the attorney indicated six guidelines regarding school zoning created and approved by the school board that they were not following:

1. It is the intent of the Board in establishing school attendance areas that every feasible and reasonable opportunity consistent with sound education shall be explored in promoting desegregation and integration of the student population.

2. New schools shall be located as to maximize the opportunities for desegregation.

3. It is the intent of the Board that its recruitment, selection, assignment and supervision of staff processes shall be carried on with the express purpose of providing opportunities for integration as well as providing a positive image for the students.

4. The Board of School Trustees will seek to identify and maintain the best obtainable pattern of integration through cooperative efforts with responsible governmental and civic leaders to forestall the drift of additional schools into the segregated category.

5. Every possibility regarding new concepts of school plants, such as the educational park and the like, will be explored and examined in the ongoing program of school facilities.
6. It is the policy of the Board to seek out and welcome informed views and the active participation of all those who may be affected by these guidelines and or principles both prior to adoption of a formal policy and any time when change appears necessary. (Kelly et al. v. Clark County School District, 1972, p. 261)

The court formally approved the "freedom of choice" plan on June 23, 1969, with implementation for the 1969-70 school year. The court ordered:

1. "Integration of Six Elementary Schools" filed with the Court on April 10, 1969, is hereby approved and the Clark County Board of School Trustees is ordered to put said plan into effect the school year commencing in September of 1969.

2. On or before October 15, 1969, defendants shall file with the Clerk of this Court a report of accomplishments with respect to staff redeployment and integration in effective implementation of the plan.

3. On or before March 1, 1970, the defendants shall file with the Clerk of this Court a report of its accomplishments toward effective integration of the six Westside elementary schools, together with any suggested modifications of the plan deemed necessary for more fruitful attainment of its objectives. (Kelly et al. v. Clark County School District, 1972, p. 292)

It should be noted that the leadership of the district was in transition. James Mason resigned as superintendent, Richard Brown assumed the position on an interim basis, and Kenny Guinn was appointed superintendent and remained in the position for the duration of the case. Because the superintendent was named in the suit, each appointment provided a new defendant.

The Middle of the Case

The "freedom of choice" plan had been in place for little more than one semester
when Charles Kellar filed another motion in district court on February 2, 1970, to do away with it and establish a unitary school system. Decisions of the United States Supreme Court and the Court of Appeals for the Fifth Circuit had already ordered school systems in Mississippi, Louisiana, Florida, and Alabama to dismantle their dual systems in favor of a unitary school district. In his argument, Kellar cited the Green case of 1968 whereby the Supreme Court ruled that the "freedom of choice" plan was not working to bring about integration. Calling the Clark County School District's plan a sham and a delusion, Kellar commented, "It does not produce a unitary system and continues in full force and effect the dual system" (Kelly et al. v. Clark County School District, 1972, p. 302). He further contended that before implementation of the voluntary plan, the elementary schools in question enrolled virtually only Black students; afterwards, the children were still almost all Black. Nor had the teaching staff been integrated:

It is apparent that the defendants will not create a unitary school system without an order from the court and that they will continue to use one after another continuing the segregated and dual school system. There is no alternative but to create a unitary school system, and none of them will be forthcoming until there is an order by the Court. (p. 304)

As required by the court, Robert Petroni, attorney for the school district, filed the progress report on the integration plan on March 2, 1970, with the court and with the San Francisco Regional Office of Education. The regional Office of Education oversaw the allocation of federal funds to school districts in the western region. In addition to a discussion of funding, the report of Mr. Petroni to the court indicated the success of the integration plan:

Out of the total of 50 elementary schools in the Las Vegas attendance area, the
enrollment figures of the second semester of 1969-70, show that all but three had Negro students enrolled. In comparing the school year 1968-69 to the school year 1969-70, of the total Negro students enrolled in the 50 elementary schools, 33 of the elementary schools had more Negro students enrolled in the beginning of the 1969-70 school year as compared with the Negro enrollment in the schools during the 1968-69 school year. In the 1969-70 school year, out of a total enrollment of 5,534 Negro elementary students in the attendance area, 2,549 are attending elementary schools outside of their neighborhood Westside schools as a result of the Integration Plan and the provision of transportation by the school district. (Kelly et al. v. Clark County School District, 1972, p. 308)

The defendants' report included information about the Program of Social Enrichment (P.O.S.E) which called for students of different races to work on projects together.

P.O.S.E. was a "voluntary student exchange program, whereby the parents consent to black and white elementary students participating in a program designed for inter-group activity" (p. 308). The goals of the program were to promote and create a better understanding and respect between the races at an early age and also to relieve the fears of the parents. In spite of the district's efforts and the P.O.S.E., Judge Thompson rejected the voluntary plan on the basis that it was not realistically impacting segregation. The schools were still segregated.

The report filed to the court and with the Office of Education in San Francisco covered the period of September 19, 1969, through January 5, 1970. Regarding compliance with the provisions of Title IV of the Civil Rights Act of 1964, the district summarized:

... in September 1969, the Clark County School District began its integration efforts in the elementary schools by transporting approximately 1,320 students from predominantly all black schools to other elementary schools in the district. At present there are 319 Caucasian students attending C.V.T. Gilbert Prestige School in the ghetto area. All bussing is done on a voluntary basis. The total school population is 70,734.
Ethnic Group distribution:

Caucasian 58,443
Negro 8,972
Oriental 395
American Indian 237
Spanish American 2,238
Puerto Rican 53
Other 376
Total 70,734

Of the 50 elementary schools in the Las Vegas attendance area, all with the exception of four schools, have some black students. (Kelly et al. v. Clark County School District, 1972, p. 319)

The report also included a document of the Clark County School District entitled, “Mid year Progress Report.” A section of the report states,

White parents are still asking, "Why should I send my children to Westside schools in order to achieve integration? What do these schools have to offer white children?" The C.V.T. Gilbert Prestige School, with its individualized instruction program and low teacher ratio (15-1), has been the only incentive provided to attract white students into the ghetto area. (p. 330)

Two weeks after Mr. Petroni filed the report with the court, he filed an addendum to it asking that the voluntary integration plan in place for the 1969-70 school year be continued the following school year as well. According to the district's addendum,

It is recognized that there is a need to expand efforts in this area, not only at the elementary level but at the secondary level, but the Clark County School District has not received support from the appropriate State or Federal agencies to provide funds for this purpose. (Kelly et al. v. Clark County School District, 1972, p. 348)

The focus here was on the C.V.T. Gilbert Prestige School which would cost the district more than $500,000 to continue for another year. No other school had been designated a "prestige school." On the other hand, however, Kit Carson Elementary School was to be
labeled the *Kit Carson Special Reading Center*. This would be a diagnosis and remediation center for about 300 students from throughout the Las Vegas valley.

Two days after the addendum was filed, March 19, 1970, Judge Thompson ordered both the plaintiffs and the defendants to complete the serving and filing of objections to the reports on the voluntary integration plan by May 1, 1970. On April 9, 1970, the attorney for the plaintiffs, Charles Kellar, filed 25 objections to the report of which a few are included here:

- There is no true commitment on the part of the Defendants to integrate the Clark County School System, nor to establish a unitary system in accordance with directions of the Supreme Court of the United States.

- The Superintendent of Schools and other high officials in the highest echelons of government in the Clark County School System have indicated that they will not make any real effort to integrate until there is an order from the Federal District Court to that effect.

- The defendants have just reorganized the administration of the Clark County School system and the entire bureaucracy is distinguished by its singular Caucasian character.

- Only in the so-called integration program has any Negro been assigned any administrative authority, and even there the assignment is subject to the control and direction of the white administrators, and the Negro in charge of that program has no authority or power truly to do anything toward functional integration. The system still consists of black and white divisions.

- The Negro personnel is still prevailingly assigned to the "West Side Schools" (the black ghetto schools).

- The Negro school children and parents have to bear the entire brunt of the integration program. School authorities have by their actions and by design designated the schools of West Las Vegas, with the exception of the so-called "prestige school" as second-class schools occupied only by Negroes and only Negroes are assigned to them.
• The only white persons who are assigned to Negro schools in West Las Vegas are those who "volunteer" for the prestige school and this number is dwindling. No real effort to seek volunteers or to give leadership to the white community to volunteer their youngsters to be educated in the West Las Vegas area is being made. By design, practice and procedure these are second rate schools in which equipment, facilities for learning and opportunities for obtaining a first-class education are inferior.

• Voluntary procedures for obtaining a unitary school system will not work. all other categories of administration are directed by the Board of Trustees and the administrators and are obligatory. Only desegregation is voluntary.

• The School Board has refused to re-zone the school system to effect and is using every device to procrastinate and delay the day when integration is a reality.

• No real attempt has been made to establish better social, sociological and psychological relationships among the pupils, staff or administrators.

• The only thing which has been effected has been an increased mixing of bodies. No real attempt to encourage tolerance, understanding or the other social and psychological requirements for a truly unitary educational system is encompassed by the current voluntary plan.

• The money being spent on the so-called "integration program" is generally wasted and could infinitely better be spent in creating a unitary school system.

• The zoning of the school system which existed for the past 20 years must be radically rezoned to produce a unitary system.

• A unitary school system should assure to each child, no matter where he may live, no matter what his personal means, no matter what school he attends, no matter what his socio-economic, racial or ethnic background, an equal educational opportunity. The voluntary integration plan does not do this.

• That the voluntary integration plan which has been invoked has increased the class sizes so greatly that some elementary school classes now have as many as 45 children assigned to them when the median of student assignment is 22, so that no education is being had by the disadvantaged students as a result of this plan and they are worse off now than they were ever before the so-called voluntary integration plan was permitted to be put.
into operation.

In short, the voluntary integration program has been a failure, and will continue to be such until the Court orders the creation of a unitary school system. The effective change of attitude on the part of the administrators and school trustees to create a single school district will never come without a court directive. (Kelly et al. v. Clark County School District, 1972, pp. 428-432)

Based on Judge Thompson's time limitation for objections, other community organizations filed motions to intervene in the case. On April 28, 1970, the League of Women Voters of Las Vegas filed a motion preliminary to their filing of a brief in support of the plaintiffs' position that the defendants' integration plan had failed. In favor of maintaining neighborhood schools, the Parents Who Care filed objections on May 1, 1970.

- Defendants have failed to adequately provide for a system of voluntary bussing maintaining the neighborhood school system and avoiding ultimately forced cross-bussing of pupils as evidenced by defendants failure to consult with any of the intervenors to the alternative of adopting an educational park system to achieve voluntary desegregation of the school system, without forced bussing, the court having directed the Defendants to consult interested citizens in reference to adopting a voluntary program alternative to its own.

- Defendants' plan reinforces racial polarization in the schools which of necessity negates the primary purpose of the plan because of the cost of the programs and the location of the schools that purportedly are to be desegregated, which results in the discrimination in favor of and against children depending upon their locations.

- Defendants have failed to properly delineate between a policy of open enrollment and a policy of maintaining the neighborhood school concept and have attempted through its plan to amalgamate both policies purportedly under one educational program.

- Defendants' plan fails to consider the alternative of utilizing the west side schools for zone or area directors offices for the Clark County School District and for in-service training centers for inter-group teachers and parents, in addition to the use of the schools for educational purposes.
Defendants plan fails to adequately provide safeguards against forced bussing and set forth guidelines providing for the achievement of assimilation of minority group children and quality education in the Clark County School System. (Kelly et al. v. Clark County School District, 1972, pp. 436-438)

Clearly, the Parents Who Care objections were restricted to the issue of forced busing to achieve integration even though this had not yet been mandated by the court. These objections put the defendants on notice to ensure the existence of procedural safeguards should forced busing be proposed as an option.

The League of Women Voters of Las Vegas Valley, Inc., describing themselves as a non-profit organization composed of interested citizens and parents, filed a motion with the court to intervene on May 11, 1970. Two days later, both the plaintiffs and the defendants filed an opposing motion to avoid unnecessary delays in the now two-year-old case and on the basis that other parties had already been denied their motions. According to the plaintiffs, "the motion is not timely, is not in good faith and is made only for the purpose of satisfying the personal aims and ambitions of politically inclined individuals" (Kelly et al. v. Clark County School District, 1972, p. 444). In spite of their opposition, Judge Thompson granted the motion by the League of Women Voters to intervene on June 26, 1970. He stated,

A case of this kind does not involve the normal characteristics of timeliness and status present in standard litigation. Standing to intervene should be judged on the basis of whether the applicant has sufficient interest to be accorded standing to plead, appear and participate without obtaining special permission from time to time. (p. 452)

The original purpose to the objections by the Parents Who Care was,
to bring before the Court the views of the vast majority of the citizens of Clark County, Nevada, who favor voluntary integration of our local schools but who object to any forced bussing of either black or white children to achieve integration and who support the preservation of the neighborhood schools system. (Kelly et al. v. Clark County School District, 1972, p. 456)

After careful consideration, however, the organization, through its spokeswoman Patricia Fahey, withdrew its objection on August 3, 1970:

... that after a careful and thorough study and analysis of defendants integration plan, affiant believes that said plan adheres to the principle of voluntariness in attempting to achieve integration of the Clark County School System for the reason that said plan contains no present provisions requiring the forced bussing of any elementary school children, black or white, and will preserve the neighborhood school system. (p. 457)

An underlying reason for withdrawal was the imminence of the new school year. In addition, the group conceded that the integration plan continued to be voluntary and the neighborhood character of schools was maintained.

On August 14, 1970, the attorneys for the League of Women Voters filed another brief detailing the ineffectiveness of the district's plan for integration. It pointed out that the "freedom of choice" plan, which would cost at least $1 million in the 1970-71 school year, had cost $800,000 in the 1969-70 school year with the following results:

A. Each of five Westside elementary schools has more than 99% Negro enrollment and the white enrollment in four said schools has decreased markedly since 1968.

B. One Westside elementary school has a 70% Negro enrollment.

C. Of the remaining 44 elementary schools, 28 are 95 to 100 percent Caucasian, 9 are 90 to 95 percent Caucasian, 5 are 80 to 90 percent Caucasian and 2 are 70 to 80 percent Caucasian.

D. Fewer that 1,000 Negro elementary school students are attending elementary schools outside their six neighborhood westside schools as a
result of the board's integration plan, rather than the 2,549 claimed by the said board.

E. Out of a Caucasian elementary school population of over 58,000, the author does not know of a single white volunteer student in 5 of the 6 westside schools. (Kelly et al. v Clark County School District, 1972, pp. 462-463)

Using standard precedent case methodology, the attorneys for the League of Women Voters applied Spangler v. Pasadena Board of Education (1970) to show that the Clark County School District's plans were not in accordance with recent court decisions. According to Spangler, "A school board may not, consistently with the law and the 14th amendment, use a neighborhood school policy as a mask to perpetuate racial discrimination" (Kelly et al. v. Clark County School District, 1972, p. 464). Further, based on past experience, the plan developed by the Board did not accomplish integration and the 1970-71 school year plan did not appear to be an improvement. Clearly, this belief violated Judge Thompson's 1968 order to "develop a plan for integration which will actually accomplish integration" (p. 467). The League of Women Voters additionally contended that the school board's plan circumvented the court order, did not accomplish integration, and perpetuated segregation. Also, the plan was unfair:

Almost the entire burden of desegregation has been shifted from the School Board to the parents of Negro elementary students and the Negro students themselves. The Board has made a half-hearted attempt to get Negro parents to volunteer their children for reassignment to white schools while doing nothing to encourage white parents to volunteer their children for reassignment to the westside schools. The Plan, if successful, would eliminate the neighborhood school in the westside while preserving the neighborhood school in the white community. (p. 469)

A part of the plan, called for skill centers within a school. After its operation of one year, a survey taken by the district's office of intergroup education shows that in at least five schools designated as skill centers the teachers stated they did not
want any more black students. (p. 476)

In response to the claims of the League of Women Voters, the attorneys for the defendants claimed that they were in compliance with Article 2, Section 2, of the Nevada Constitution which provides for a uniform system of common schools with no provision relating to race or color. By definition, then, the district had a unitary system. No students were excluded on account of their color, but neighborhoods had become segregated by living arrangements which were independent of school policies. Mr. Petroni’s brief stated that, "Racial imbalance in the Clark County School District is a result of innocently arrived at de facto segregation with no intention or purpose to segregate Negro pupils from white" (Kelly et al. v. Clark County School District, 1972, p. 492). In other words, the district admitted that racial imbalance was evident in elementary schools, but neither were they responsible for the situation, nor did they accept any obligation to remedy it:

The Clark County elementary school system presently does have racial imbalance, however, it is a unitary school system in which no student is effectively excluded from any school because of race or color. Must the Defendants rectify the racial imbalance in the elementary school system even if it means forced cross bussing. I submit that the defendants do not have any constitutional obligation to abandon the neighborhood school concept and mix students racially by percentages. (p. 500)

The defendants argued vehemently against forced busing to retain the neighborhood school policy at the elementary level. How, then, would integration be accomplished? Robert Petroni, attorney for the defendants, contended that they are not constitutionally required to maintain balanced neighborhoods. It is only necessary that the school system be a unitary one. The Court has no authority to order transportation to correct any racial imbalance as requested by the intervenors.
and plaintiffs. (Kelly et al. v. Clark County School District, 1972, p. 509)

Reports were filed by all parties involved in the litigation for the hearing held August 17-19, 1970, regarding the effectiveness of the plan. Judge Thompson studied all the information and issued his judgment and decree on December 2, 1970, in a victory for the plaintiffs:

The existing plan, in operation under tentative approval has not proved adequate or effective to accomplish elementary school integration and it is not anticipated that further pursuance of the present plan will substantially change the white-black pupil ratio in the Westside elementary schools at any time in the future. The neighborhood school concept must be abandoned to accomplish integration in a racially segregated residential area. Because of the demonstrated reluctance of white parents to volunteer their children for education in the Westside schools, the burden of accepting bussing to accomplish elementary school integration has been placed on the black parents. (Kelly et al. v. Clark County School District, 1972, pp. 512-513)

In summary, Judge Thompson decided that the current plan did not work and that the neighborhood school concept would have to be abandoned. He conceded, however, that the C.V.T. Gilbert Prestige School was successful in accomplishing substantial integration in that particular school. In addition, integration had already occurred in junior and senior high schools.

Integration in junior and senior high schools was a function of abandonment of the neighborhood school concept at the secondary level. Not immediately obvious was the notation that Black children were bused from the Westside to accomplish integration at the secondary level. In order to achieve the same goal at the elementary level would require the busing in to the Westside of elementary school students.

Judge Thompson declared that the policies of the school district had clearly been
responsible for the continued segregation of elementary schools:

... while eliminating segregation for students above the sixth grade level, the district, at the same time, aggravated the incidence of segregation at the elementary level by constructing two new elementary schools in the black residential area. This bifurcated neighborhood school policy of the Clark County School District is principally responsible for the aggravation of racial segregation in the elementary schools. The policy, implemented long after *Brown v. Board of Education*, 349 U.S. 294, had clearly abjured the employment of official power to further the maintenance of segregated schools. (*Kelly et al. v. Clark County School District*, 1972, p. 514)

Judge Thompson acknowledged the added cost burden to the district of creating and implementing a new plan and urged the defendants to seek relief from the Nevada legislature. He then decreed on December 2, 1970:

1. The elementary schools in the Westside area of Las Vegas, Nevada, shall be desegregated with the result that the black student enrollment in any grade level in any elementary school in the Clark County School District shall not exceed fifty per cent of the total student enrollment in such grade.

2. The board and Administrators shall forthwith adopt and effectuate an integration plan in compliance with the foregoing order, using whatever devices are available (e.g., rezoning, pairing of schools, voluntary bussing, enrichment programs to attract volunteers, and directive placement of students in designated schools, perhaps by lot), with the result that the elementary school pupil attendance will be so integrated upon the commencement of the 1971-1972 school year.

3. The plan effectuated shall not be permitted to result in a distortion of the pupil-teacher ratio in any class in comparison with the average pupil-teacher ratio of all elementary schools in the metropolitan area of Las Vegas, allowing a tolerance of ten per cent, and excepting specialized schools such as the C.V.T. Gilbert Prestige School.

4. If not otherwise required by the unavailability of plant facilities and increased elementary school enrollment in the district, the plan shall not include the establishment of double sessions at any elementary school.

5. The existing policies respecting the furnishing of transportation services to elementary students shall not be modified to the detriment of students.
whose placement is affected by the integration plan.

6. In the event a "middle" school plan is effectuated by the district, such schools to one or more of the present elementary grades, the schools shall be integrated in compliance with the foregoing requirements.

7. The defendants shall file a report in this action on or before November 1, 1971, demonstrating the accomplishment of the integration objectives contemplated by the foregoing orders. (p. 517)

Eight days later, the defendants filed a motion requesting the court to clarify, alter, or amend the order. The hearing on the motion, scheduled for January 19, 1971, occurred on February 8. The amended judgment and decree resulting from the hearing changed number 1 by adding a sentence and number 3 as follows:

1. This percent requirement shall not apply in those special classes involving federal or other remedial or experimental programs of the School District

3. The plan effectuated shall not be permitted to result in a distortion of the pupil-teacher ratio in any race class so as to discriminate in those classes involved in the integration plan, and excepting specialized schools such as the C.V.T. Gilbert Prestige School. (p. 527)

The comparison with all other elementary schools in the Las Vegas metropolitan area was omitted.

Shortly thereafter on March 9, 1971, the defendants appealed the Amended Judgment and Decree with the United States Ninth Circuit Court of Appeals, requesting "[an] order staying enforcement of any proceeding to enforce said Amended Judgment and Decree pending final disposition of Defendants' appeal" (Kelly et al. v. Clark County School District, 1972, p. 534). The timing of this appeal favored the school district.

In March 1971, four cases were pending before the United States Supreme Court regarding desegregation of schools. Before implementing the local ruling, Clark County
School District wanted to see the outcome of those other cases. Secondly, a delay would prevent the large-scale reassignment of teachers, staff, and students which, the district administration thought, would cause irreparable harm and bring about forced busing at a cost of an approximately $500,000. The League of Women Voters, attempting to move the proceedings forward, filed a motion on April 12, 1971, in opposition to the school district's motion for a stay on appeal. The League of Women Voters accused the district of being disingenuous and hypocritical in its position:

1. Defendants' MOTION FOR STAY ON APPEAL is now moot inasmuch as said defendant formally adopted a plan of integration on April 8, 1971, and identified a source of funds from which the cost of said plan could be financed.

2. An ORDER STAYING ENFORCEMENT OF THE AMENDED JUDGMENT AND DECREE entered herein on February 8, 1971 is not necessary to preserve the Court's jurisdiction to make and enter future orders based upon any future decisions rendered by the Supreme Court of the United States.

3. Defendant's allegation that it will suffer irreparable injury unless a stay order is granted is wholly without merit for the following reasons:

   A. Defendant claims that adopting a plan of integration would cost over $500,000 and defendant does not have such funds. (More precisely, the plan now adopted by the defendant would cost approximately $575,000.) Yet, if a stay order is granted and the status quo is maintained, defendant would have to continue its 1970-71 Action Plan for Integration which accomplished little integration, but did cost the defendant and taxpayers $1,000,000. Therefore, if a cost analysis is to be the measure, more irreparable injury will be suffered by defendant if its own motion is granted, than if it is denied.

   B. Defendant also intimates that it will suffer irreparable injury if it is required to adopt an effective plan of integration which would violate the neighborhood school concept. This position signifies the height of defendant's hypocrisy since it has been pursuing a policy
of busing junior and high school students out of their neighborhoods for the purpose of integration since 1958.

4. The defendant has not and cannot make a showing that it will prevail on the merits of its appeal. The District Court, per Hon. Bruce Thompson, merely ruled that the Constitution of the United States prohibits segregated educational facilities and ordered the Defendant to implement an effective desegregation plan using whatever methods or devices were available. For the decisions presently pending before the Supreme Court to have any effect on the Judgment entered in this case, the United States Supreme Court would have to overrule their decision in Brown v. Board of Education and resurrect the Separate but Equal doctrine of Plessy v. Ferguson. (Kelly et al. v. Clark County School District, 1972, pp. 543-544)

The argument continued,

The United States Supreme Court's denial of Certiorari on or about April 5, 1971, in the San Francisco Unified School District v. Donald Johnson, 479 P. 2d 669 (1971) case might be prophetic. In this case, the Supreme Court of California held that assignment of pupils to schools beyond reasonable walking distance from their homes for the purpose of improving racial balance within the school district does not violate the Fourteenth Amendment to the Constitution of the United States. In effect, the California Supreme Court held that the neighborhood school concept was not constitutionally protected. (p. 544)

The League of Women Voters then pointed out the Supreme Court refused to review San Francisco v. Johnson (1971) which implied their belief that the neighborhood school did not fall under the protection of the Constitution.

The school district responded to the motion of League of Women Voters by defending the neighborhood schools in spite of the Supreme Court's denial to hear San Francisco v. Johnson (1971):

... if the amended judgment and degree were put into effect, it will cause irreparable harm to the defendants and the parents of the school district in that it will take great expense to carry out the order, and will cause the abandonment of the neighborhood school concept at the elementary level, where children of young ages should be allowed to attend school as close to home as possible. Therefore,
irreparable injury will result as to those elementary school students who would be forced to leave their nearest neighborhood school to attend a school outside of the neighborhood and beyond walking distance in every instance. Parents unable to furnish transportation to a child who is presently within walking distance of a school would be forced to bus their children to the assigned school, thereby causing great concern and anxiety as to the safety and welfare of the child, having no way of getting to the child immediately in the event the child suffers injury, sickness or other harm. The injury resulting to a parent in this situation being one of concern and anxiety certainly is irreparable. (Kelly et al. v. Clark County School District, 1972, p. 549)

The plaintiffs contested the plan which would result in busing Black children out of their neighborhoods for 11 years and busing White children for only one year to achieve integration by filing a motion for a stay of implementation of the current plan as well as other relief. At the same time on April 23, 1971, the plaintiffs requested amending the sixth grade center plan to make it fairer and more equitable. They argued:

The plan which is now proposed is a palliative to pacify that portion of the white community which is so arrogantly arrayed against any kind of integration. It is recognized by the School Trustees to be unfair to the black community, as it provides for compulsory assignment and attendance by black children out of the so-called "neighborhood school" to distant areas for twelve (12) years of the compulsory thirteen (13) years of school life. Only a portion of the white community would be assigned to the Westside schools, and then only for the sixth grade. The white population would then have "neighborhood schools" all their school lives except for that small time which would be involved in the sixth grade program. The concept of "neighborhood school" is disregarded when Blacks are concerned, but retained when whites are concerned. . . . the program now proposed by the District, subjects the black child to greater physical hardship and psychological disaffection than children of other ethnic and racial stock. The black child, constitutionally, is entitled to equality, not inequality. (Kelly et al. v. Clark County School District, 1972, pp. 556-558)

Parents Who Care, seeing themselves as defenders of the neighborhood schools and preventers of busing for integration, filed a motion on April 27, 1971, to alter, modify, and amend the amended judgment and decree to:
provide therein that in the adoption of any integration by the defendant, Clark County School District, that said Defendant shall not utilize the involuntary assignment of transportation of elementary school students outside their neighborhood schools in order to achieve racial balance of the schools for the reason that neither the State of Nevada, nor the Clark County School District has any history of state-imposed racial segregation in its public schools. . . . in its recent decision in Swann v. Charlotte-Mecklenburg Board of Education, the United States Supreme Court held that absent a showing of state-imposed racial segregation in the schools that it was constitutionally prohibited for lower federal district courts to order the involuntary assignment and transfer of public school students in order to achieve racial balance in the schools. (Kelly et al. v. Clark County School District, 1972, pp. 561-562)

Parents Who Care contended that open housing is the appropriate remedy for the problems of integration of the schools since it preserves neighborhood schools and "will promote the indispensable harmony between the races and will ensure a better education for all children" (p. 567).

Clark County School District also applied Swann v. Charlotte-Mecklenburg Board of Education (1971) in filing a motion for the court to consider the amended judgment and decree on April 29, 1971. The district insisted that "a constitutional violation occurs when there are state enforced separation of races in public schools so as to violate the equal protection clause" (Kelly et al. v. Clark County School District, 1972, p. 573), and, of course, the district was not guilty of "state enforced separation of races." Housing, they said, caused segregation in schools and, in Swann, the objective of the Supreme Court was "to eliminate from public schools all vestiges of state imposed segregation" (p. 574). They continued the argument:

The defendants by controlling the transfer of students in their voluntary plan of integration and limiting it to a transfer from a majority to a minority follows the guidelines set down by the Supreme Court in the Swann case. The record in this case shows no action on the part of the defendants to use the neighborhood
schools as a means of state-imposed segregation. There is no state imposed dual system which the defendants are legally obligated to effectively dismantle and this is supported by the record in this case. (p. 576)

At this time, David Canter was both attorney for Parents Who Care and a member of the Board of School Trustees; consequently, the plaintiffs filed a motion to disqualify him, citing obvious conflict of interest. He, along with trustee Helen Cannon, were accused of undermining the order of the court through their public comments. This situation served only to divide the community further which was counter-productive. Helen Cannon was quoted in a Las Vegas Sun editorial on 5/28/70 saying that, "integration was to blame for current school problems." (p. 36) In arguing for Mr. Canter's disqualification, the plaintiffs stated,

Both trustees, Helen Cannon and David Canter, are using their positions as trustees to prevent implementation of the Court order and frustrate any plan for the integration of the schools and to give quality education to all members of the school community. Their actions and behavior show disrespect for the democratic system of judicial law enforcement and is entirely antithetical to their roles as school trustees. (Kelly et al. v. Clark County School District, 1972, p. 589)

The plaintiffs asked the court to punish both David Canter and Helen Cannon for contempt of court. Mr. Canter filed a counter-motion claiming he was providing pro bono legal services to Parents Who Care; therefore, there was no conflict of interest.

The school district maintained that it was in compliance with federal guidelines because it neither fostered nor enforced state-mandated segregation. Therefore, on April 29, 1971, the district filed a motion for the court to reconsider the amended judgment and decree and to consider further evidence and testimony on whether or not the district maintained a state-imposed segregated school system. The very next day, April 30, the
district filed another motion in opposition to the original motion for Stay of Implementation of Current Proposed School Plan, requesting the court to reconsider and vacate its present amended judgment and decree and reinstate the voluntary plan of integration. Clearly, the district feared the adoption of the school pairing plan recommended by the plaintiffs which called for matching about 40 schools in white neighborhoods with the 6 elementary schools on the black Westside. Arguing that a pairing plan is neither workable nor feasible, the district claimed.

This plan would pair or match each Westside school with three predominately White schools. All schools would keep all the grades: kindergarten, first, second, third, fourth, fifth and sixth. Twenty-five percent of the Westside students on each grade level would be sent to each of the receiving schools. They, in turn, would send to the Westside schools at least that many students in each grade or more if they are currently overcrowded. (Kelly et al. v. Clark County School District, 1972, p. 629)

Suddenly, the Sixth Grade Center Plan became the lesser of two evils.

On May 3, 1971, the League of Women Voters of the Las Vegas Valley again filed a motion, this time in opposition to the plaintiff's motion for stay of implementation of the currently proposed plan for integration. They claimed, in part,

2. The 6th grade plan formerly adopted by the school district has the positive advantage of involving the entire white community and not just a select few schools as would be required under any pairing plan.

3. The defendants' 6th grade plan will have the effect of completely integrating all faculty, staff and administration to a degree not yet attained.

4. The defendants' 6th grade plan guarantees to an extent not possible in any pairing plan a continuity of peer groups and minimizes the separation of siblings.

5. The 6th grade plan adopted by the defendants will not appreciably increase the percentage of black children being bused in comparison to any pairing
plan that has been suggested. Since there are approximately 60,000 white elementary school students and 5,000 black elementary school students, it is obvious and has always been obvious to all parties involved that an effective plan of integration would require a larger percentage of black children being bused than white children although the total number of white and black children being bused would be comparable.

6. The defendants' suggestion that there be a pairing plan involving 30-40 white schools in K-3, 4-6 pairing scheme is impossible, inasmuch as there are not enough black children or black elementary schools to make such a plan successful.

7. The pairing plan recently proposed by the defendants involving 18 white schools and 6 black schools is unacceptable for the following reasons:

   a. Only approximately 40% of the white schools in the community would be involved rather than the entire community.

   b. Defendants' proposal would require 75% of the black children to be bused out of their 6 schools to the other 18 white schools with the following results:

      (1) Either the 75% transported would be bused for their entire elementary school career, thereby never being able to attend a local school or,

      (2) The continuity of peer groups would be disrupted at least twice, thereby disturbing friendships that might have been established between white and black children. (Kelly et al. v Clark County School District, 1972, pp.590-592)

On May 27, 1971, the Clark County School District Board of Trustees adopted the "Amended Integration Plan," in their own words, "really a modified continuation of the Action Plan for Integration filed with the Court in April of 1969" (Kelly et al. v. Clark County School District, 1972, p. 641). Since the original plan had already been rejected by the court as an unacceptable method of desegregating the schools on the Westside, the plaintiffs questioned its reintroduction as perhaps a ploy either to prolong the litigation or
to appease the opponents of desegregation. According to the records, the "Amended Integration Plan" is

... both voluntary and requires reassignment and transportation of children. It is more expensive than any other plan and gives defendants a chance to go forward with a plan wherein one million six hundred thousand dollars ($1,600,000) has already been invested. ... Even though defendants contend that presently they are not guilty of any constitutional violation of equal protection of the laws, nor of any deliberate discrimination or gerrymandering of blacks in order to maintain racially segregated schools, the defendants are willing in good faith to put this Plan into effect and once and for all eliminate residential segregated neighborhood schools in Las Vegas. (p. 642)

In the modified plan, Kermit Booker and Matt Kelly elementary schools would remain all Black for a short period and then be phased out and closed over a period of a few years.

After presenting this plan, the Clark County School District went on record ad "favoring integration to the extent there is the least possible forced integration of the races" (p. 648)

Several actions occurred at the beginning of June. On June 2, 1971, Judge Thompson disqualified David Canter as attorney for Parents Who Care. At the same time, he did not find either Mr. Canter or Helen Cannon to be in contempt of court. On June 3, Judge Thompson denied the motions of the district and Parents Who Care to modify the court decree of February 8, 1971, which stipulated the limitation of Black enrollment to 50% in any grade or class in any district elementary school. Further, he denied the plaintiffs' motion to stay the implementation of the sixth grade center plan.

On June 7, the plaintiffs filed a cross-appeal to the United States Ninth Circuit Court of Appeals, stating their opposition to the sixth grade center plan on the basis that it would phase out elementary schools in Black neighborhoods while maintaining schools in White residential areas. Further, the plaintiffs cited Judge Thompson for his failure to
direct the school district to establish and administer a single unitary school system.

The school district followed the court's order and submitted the sixth grade center plan for the court's consideration, but the district simultaneously filed an appeal to this judgement. The court accepted the sixth grade center plan and ordered its implementation; the district filed an appeal of that court order and sought a stay of execution on account of the pending appeal. Similarly, the plaintiffs also filed a motion to prevent the implementation of the sixth grade center plan. The district won its stay on June 11, 1971, about three months before the plan was to be implemented.

On June 14, 1971, the district notified the court that it had appealed the decision on the denial of the Motion to Reconsider Amended Judgment and Decree to the United States Court of Appeals for the Ninth Circuit. The higher court remanded the case back to the district court without limitation of scope on July 8, 1971. More than one month later on August 13, a Special Finding of Fact was issued explaining to a degree the ruling of the circuit appellate court. The issues were twofold: (a) there was strong local resistance to extensive busing of elementary children to achieve desegregation and (b) segregation resulted from housing patterns in neighborhoods. Judge Thompson concluded,

...that a stay of implementation of the integration plan was justified pending an authoritative determination of the difficult legal issues, believing that after such a ruling, the community resistance to the school district's efforts to accomplish elementary school integration will be substantially dissipated and a peaceful solution anticipated. (Kelly et al. v. Clark County School District, 1972, p. 671)

As a result of this decision, the United States Court of Appeals for the Ninth Circuit denied the motion to vacate the stay ordered by the District Court and set a hearing for
November 8, 1971, in San Francisco, the regional center.

In preparation for the November 8th hearing, the plaintiffs filed another motion on August 23, 1971, asking the appellate court to consider certain facts. For example, when Brown I was decided in 1954, Clark County School District had only one school with a 50% Black enrollment and:

that thereafter, by zoning, assignment of pupils, sanctification of the neighborhood school concept, which has been used only in the Black schools in West Las Vegas. those schools being the only ones to which no white pupils were assigned. bussed or otherwise directed prior to the so-called creation of the prestige school, an event which occurred subsequent this lawsuit. . . . The records show unequivocally that the school district assigned and bussed white pupils many miles past Black Schools, which had empty seats, all for the purpose of preventing integration, the equal protection of the law and the enforcement of Brown v. Board of Education. . . . The records further show that all the Black administrators were assigned to the Black schools and that almost all Black personnel were assigned to the Black schools, there being no integration either in personnel or administration. . . . The only reason why there was integration in the junior and senior high schools was because of the remonstrances of the Black community and the economic unfeasibility of building junior and senior high schools in the Black community while the discriminatory attitude and policies (tacit or overt) pervaded the School Board and administration. (Kelly et al. v. Clark County School District, 1972, p. 686)

On December 10, 1971, the appellate court determined that the plaintiffs' appeal was not frivolous.

The End of the Case

Circuit Judge Browning rendered his opinion on February 22, 1972:

. . . that the almost total segregation of races in elementary schools of racially mixed school district, plus the almost completely black composition of the teaching staffs of certain schools, when combined with district's methods of placing teachers, as well as its practice in building new schools and abandoning old ones, and its decision to continue a "neighborhood" school policy at elementary level
while abandoning it at secondary level supported finding that school district used its official powers to further segregated elementary schools in district. It was further held that district court did not abuse its discretion in ordering school district to adopt and effectuate an integration plan that would result in a black student enrollment of no more than 50% in any grade level in any elementary school. (Kelly v. Guinn, 1972, p. 105)

In coming to its decision, the court considered certain factors. For example, the Westside Las Vegas area had only three schools in 1954 when Brown v. Board of Education became the basis for desegregating schools. After 1954, the population on the Westside increased and was predominantly Black, generating large Black student enrollments. The need to desegregate was approaching.

In order to deal with rapidly segregating schools, Clark County School District stopped building junior and senior high schools on the Westside. This necessitated the transport of Black students out of the Westside. At the same time, however, the district continued the neighborhood schools policy at the elementary level, knowing that this practice would cause elementary schools to be segregated by race. According to Kelly v. Guinn (1972),

Between 1956 and 1966, four new elementary schools were constructed in the Westside and one of the two existing schools was extensively renovated to accommodate additional students. The first of the four new elementary schools opened the same year the school district decided to open no new secondary schools in the area to avoid racial segregation at those grade levels. (p. 104)

In 1968 when Kelly et al. v. Clark County School District was initiated, the percentage of Black students enrolled in each of the six elementary schools on the Westside exceeded 97%. In addition, of 1,359 teachers, 102 (7.5%) were Black; of the Black teachers, 83 (81.4%) were assigned to schools on the Westside. Only 19 Black teachers worked in
predominantly white schools (Kelly v. Guinn, 1972, p. 105).

At the same time that the district was eliminating segregated junior and senior high schools,

... the school district closed two predominately white schools on the fringe of the Westside, between black and white neighborhoods. If these schools had not been closed, their enrollment would now be about half white students and half black. At about the same time the school district built a new elementary school in a more distant white residential area. (Kelly v. Guinn, 1972, p. 105)

Findings such as these necessitated filing appeals and motions on the part of both the plaintiffs and the defendants. The defendants pressed forward all the way to the United States Supreme Court. The Supreme Court justices ultimately refused to hear the case.

The struggle had not yet ended. On April 3, 1972, the United States Court of Appeals for the Ninth Circuit, en banc, denied a motion by the defendants for a rehearing. On April 18, 1972, the plaintiffs filed another motion to vacate the stay granted by the district court. They argued that the stay of June 11, 1971, regarding the implementation of the sixth grade center plan should no longer be in effect since the appellate court had found that the district had, in fact, fostered segregation. Therefore, they demanded that the defendants proceed with plans to implement the sixth grade center plan for the 1972-1973 school year, with reporting on the progress of the planning to be made to the court on May 15, 1972, July 1, 1972, and August 15, 1972. Their insistence was based on a ruling of the United States Court of Appeals for the Fifth Circuit, Robert L. Acree et al. v. County Board of Education of Richmond County Georgia 399 F. 2d 151 (1968) which decreed that no unnecessary delays on the part of school districts to implement the constitutional requirements of desegregation would be tolerated.
In response, the Clark County School District, hoping to keep the stay in place, filed a motion on April 19, 1972, in opposition to the motion of the plaintiffs. The defendants believed that all of their rightful appeals had not yet been exhausted, and they added a new twist to their arguments:

...[the defendants] do intend and are presently preparing a Petition for Writ of Certiorari to the Supreme Court of the United States for the purpose of reviewing the decision rendered by the United States Court of Appeals for the Ninth Circuit on February 22, 1972.... It is further requested that said Stay Order of June 11, 1971, be continued in effect on the basis of legislation pending presently before Congress which may create a moratorium on the busing order of this Court and limit the jurisdiction and remedies of federal courts in ordering the use of busing to create a certain degree of racial mixing in neighborhood schools. (Kelly et al. v. Clark County School District, 1972, p. 707)

At that time, it was quite well-known that President Nixon did not favor busing as a means of achieving desegregation in schools. Further, a movement was rife in Congress, as the district indicated in its motion, to create legislation to prevent the courts from using busing as its tool for integration. Clearly, the district sought the stay to see what would happen at the federal level. In a similar situation, Northcross v. Board of Education of Memphis 397 U.S. 232 (1971), the school board also used pending federal legislation as the reason for delaying integration. The court denied the request because the outcome of the legislation could not be determined and ramifications of previous Supreme Court decisions on or as a result of that legislation could not be anticipated.

On May 10, 1972, in a long-awaited decision, Judge Thompson vacated the stay order stating that "defendants shall carry in effect the approved sixth grade center plan effective for the 1972-73 school year and thereafter, subject to the further orders of the Court" (Kelly et al. v. Clark County School District, 1972, p. 725). In making this ruling,
the judge rejected the defendants' argument that they should wait for the Supreme Court decision on their case or the possibility of legislation regarding busing. What Judge Thompson could not predict was that district administrators and school board members were stating publicly that they would not implement the sixth grade center plan despite the order of the court. On August 9, 1972, the Review Journal carried a story by Mary Hausch titled, “L.V. Busing Contempt Charged.” In the story, Deputy School Superintendent, Dr. Cliff Lawrence was quoted as saying that, “the busing moratorium bill passed by Congress and signed by President Nixon provides a stay for the district. You don’t have to ask for a stay if you already have one.” (p.2)

As a result of these statements by the defendants, Frank Schreck, attorney for the League of Women Voters, filed a motion on August 14, 1972, demanding that the defendants show cause why they should not be held in contempt of court.

Two weeks later, August 24, 1972, Judge Thompson ordered the defendants to appear in court to explain why they should not be held in contempt of court for their public announcement of intended violation of the order of the court and refused to grant their stay. They appeared and responded that they had complied with the order by preparing the sixth grade center plan and that they were well within their rights to appeal to the highest court in the land. Therefore, while they were in the appeal process, they simply had to wait until the Supreme Court decided the case or refused to hear it.

To complicate matters even further, President Nixon signed the Education Amendments of 1972, P.L. 92-318, Title VIII, Sections 801, 802, and 803, which interfered with the legal process of implementing busing to achieve integration:
No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance. No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. . . . Not withstanding any other law or provision of the law, in the case of any order on the part of any United States district court which requires that transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974.  


Clark County School District argued that Section 803, in particular, was the appropriate rationale for staying the order to implement the sixth grade center plan. Deputy Superintendent Clifford Lawrence was quoted in the Las Vegas Review-Journal (August 9, 1972) as interpreting P.L. 92-318 to mean that a stay was in place by virtue of the Education Amendments.

In response to the defendants' claims of the power of P.L. 92-318, Mr. Schreck filed an affidavit claiming that,

. . . section 803 of the Education Amendments of 1972 is not self-executing and to hold so would destroy the independent status of the Judicial Branch of Government and eliminate the system of checks and balances basic to our Democratic form of Government, contrary to the provisions of the Constitution of the United States of America. (Kelly et al. v. Clark County School District, 1972, p. 739)

Too, the court had already made a specific ruling against the district which had been found
to have taken actions that fostered segregation. The district countered that it was "merely following a Congressional Act which is presumed to be Constitutional until held otherwise by a Court of Competent Jurisdiction" (p. 746). Consequently, on August 30, 1972, the school district filed another appeal to the appellate court regarding Judge Thompson's denial of the stay on August 24.

A new group protesting busing appeared claiming irreparable harm to themselves and their children if the sixth grade center plan were implemented. Bus-Out was adamantly opposed to busing, and they sued the school district in the Eighth Judicial District Court. In fact, "Leaders of Bus-Out and Parents for Neighborhood Schools also called for a mass march of citizens opposed to forced busing at the Convention Center at 9 A.M. Saturday" (Las Vegas Review-Journal, September 2, 1972, p. 1). The protest march was led by State Senator Floyd Lamb who was seeking re-election. To accelerate the movement, he took out paid advertisements in local newspapers, affirming his opposition to forced busing and expressing his hope that "the U.S. Senate immediately passes the strong anti-forced busing bill approved by the House of Representatives" (p. 10). Lamb further wrote that he believed, "in the inalienable right of children to attend their neighborhood schools and not to suffer the rigors of massive busing across vast geographical areas merely to satisfy a quota of some kind" (p. 10).

The plaintiffs asked for and received a preliminary injunction from Judge Carl Christensen in the 8th Judicial District Court on September 5, 1972, in their case, Garland Jones v. Clark County School District. The order granting the preliminary injunction stated in part:
1. The value of the plaintiffs' homes, purchased in substantial part by relying on the quality of the schools nearest to said homes, will be greatly diminished by virtue of the fact that their children will not be allowed to attend them;

2. The time for the control and parental instruction of, and the enjoyment of the company of, their children will be diminished by the time necessary for transportation to non-neighborhood schools, including a waiting time;

3. Since the Nevada Revised Statutes 292.340 does not waive the District's immunity from tort liability, plaintiffs will be required to face a contingent liability for their children's injuries, if any, without a legal remedy against the potential tort feasor. (Kelly et al. v. Clark County School District, 1972, pp. 793-794)

This ruling on the first day of classes for the 1972-73 school year postponed the start of school for elementary school students.

Garland Jones v. the Clark County School District (1972) had named the school district as defendants; however, the posture was quite different from Kelly et al. v. Clark County School District (1972). For example, in Jones, the district did not oppose the motion for a preliminary injunction against them to prevent the immediate implementation of the sixth grade center plan. In reality, perhaps, they were in favor of the plaintiffs' action as evidenced by their action or inaction in response to this new case.

The plaintiffs in Kelly however, reacted strongly to the appearance of Jones. Therefore, on September 7, 1972, the Kelly plaintiffs filed a motion asking for a temporary restraining order against Judge Christensen's judgment and that the plaintiffs in Jones as well as Judge Christensen also be named defendants in Kelly.

Judge Thompson made several rulings on September 12, 1972. First, he accepted the plaintiffs in Jones and Judge Christensen as defendants in Kelly. Second, he included
Clark County School District attorney Robert Petroni as a defendant in Kelly due to his failure to object to the motions of the plaintiffs in Jones. Third, Judge Thompson ordered.

... that the original defendants herein are enjoined and restrained to immediately carry out implementation of the sixth grade center plan in accordance with prior orders of this court ... subject only to the further order of this Court or the granting of a stay by the Court of Appeals or a Justice of the Supreme Court of the United States. (Kelly et al. v. Clark County School District, 1972, p. 807)

Finally, Judge Thompson announced that Justice William O. Douglas of the United States Supreme Court had denied the defendants' request for a stay of the implementation of the sixth grade center plan and for a Writ of Certiorari. Therefore, on September 18, 1972, the elementary schools in Las Vegas finally opened for the start of the 1972-73 school year. The sixth grade center plan for integration of the elementary schools in Clark County was in place. The school district had the responsibility to implement the plan taking into consideration the financial ramifications as well.

Conclusion

Due to the order of the court and the refusal of the United States Supreme Court to get involved, the elementary schools in Las Vegas opened on September 18, 1972, with the sixth grade center plan in place. The forces in the community which opposed mandatory busing for desegregation had lost the battle, but had not yet given up the fight.

The anti-busing coalition was able to get a bill on the legislature's docket which would essentially prohibit forced busing. A.B. 136 was introduced in January 1973 and referred to the Committee on Education, but it never was heard in committee. One reason for the inaction of the bill was lack of support from the Clark County School District.
administration, notably Superintendent Kenny Guinn. The district was ready, willing, and able to proceed with the sixth grade center plan to achieve integration as ordered by the court. As a result, it was never presented to the legislature for debate—a de facto defeat, and the sixth grade center plan was implemented, continued, and unchanged without any further litigation for three years.

In an interview with Superintendent Kenny Guinn, which appears in the next chapter, he was asked about the cost of implementing the sixth grade center plan. He did not state a specific numerical figure, except to say that the district had spent a lot of money. According to a Report of the United States Commission on Civil Rights (1973) entitled, "School Desegregation in Ten Communities," there indeed was a financial cost attached to the sixth grade center plan.

"The primary effect of the desegregation plan upon the school district's budget related to the increase in the number students the busses were to carry. To meet the need, the school district purchased 30 new vehicles—each costing $18,000 apiece. The total budgetary cost of desegregating the elementary schools was $1,544,196, of which the transportation department's share was $855,494. Some $540,000 of the money was spent for the purchase of new buses. The remaining money was used to pay drivers, mechanics, gas, oil, tires, and parts, servicemen, insurance and employee benefits. The transportation cost to the school district to desegregate the schools represents only 2.3 percent of the district's 1972-73 budget of approximately $64 million." (p. 209)

At the March 13, 1975 meeting of the Clark County Board of School Trustees, the board passed a motion to change Mabel Hoggard Elementary School to a sixth grade center due to changing demographics in the neighborhood. They also sought to comply with Judge Thompson's order that no elementary school grade or class enroll more than 50% Black students. School board member Dr. Van Betten
... moved that Mabel Hoggard elementary school be made a sixth grade center at the beginning of the 1975-76 school year so that the Board will remain in compliance with the existing court order. The motion carried with Mrs. Moten voting no. (Minutes of School Board meeting on March 13, 1975)

Immediately, the plaintiffs in Kelly, through their attorney Charles Kellar, filed a motion with the court to prevent this change at Mabel Hoggard. They contended that the school was naturally integrated and should remain so. The school district responded by pointing out that the demographics of the school were headed for a mainly Black enrollment: in October 1972, 37% of the students were Black, and by March 1975, 51.7% were Black (Kelly et al. v. Clark County School District, 1973, p. 873).

As a result of this motion, Judge Thompson changed his ruling that no school or class could have more than 50% Black students to no more than 60%. This change enabled the district to continue Mabel Hoggard as an elementary school rather than converting it to a sixth grade center. This was only a temporary solution, however, since the population in the Mabel Hoggard sending area which bordered the Westside in a development called Bonanza Village was rapidly becoming predominantly Black. It was only a matter of a short time before the school population would exceed 60% Black. The district took responsibility for pointing out this fact to the court on July 12, 1976: "At the end of the 1975-1976 school year Mabel Hoggard exceeded sixty percent minority enrollment and will be approximately sixty-eight percent minority enrollment at the beginning of the 1976-1977 school year" (Kelly et al. v. Clark County School District, 1973, p. 891).

At the same time, the school district was experiencing pressure from the United
States Department of Health, Education and Welfare for lack of compliance with the court order to desegregate the schools. In fact, the district had been denied federal funds under the Emergency School Aid Act for this reason.

The current racial/ethnic enrollment data which the District submitted at the request of this office indicated that the current enrollment of the Mabel Hoggard School is 64.9 percent black and 67.5 percent minority. This enrollment obviously causes one or more grade levels or classes at the school to exceed the 60 percent figure provided in the court order. Your district is therefore ineligible for ESAA funds due to its failure to fully implement its court-ordered desegregation plan.

(Department of Health, Education, and Welfare, letter to Superintendent Kenny Guinn, June 6, 1976, p. 3)

On August 4, 1976, Judge Thompson authorized an exemption to the 60% specification for Mabel Hoggard Elementary School for the 1976-77 school year.

Finally, on May 3, 1977, Judge Thompson issued his final order in the case of

**Kelly et al. v. Clark County School District:**

It is hereby ordered that this Court does hereby terminate its reserved jurisdiction to amend, change or modify the judgement and decree entered December 2, 1970, as amended, and the management and supervision of the Sixth Grade Plan for desegregation of the Clark County elementary schools is restored to and vested in the exclusive control of the defendants, free from further supervision in this action.

(Kelly et al. v. Clark County School District, 1972, p. 906)

Thus, after the operation of the sixth grade center plan for a period of five years, the judge decided to terminate its jurisdiction over the case. In considering his decision, Judge Thompson relied on decisions rendered in **Spangler v. Pasadena Board of Education** (1970) and **Swann v. Board of Education of Charlotte-Mecklenburg** (1971). These decisions instructed that "it is not the business of the courts to maintain constant and repetitious supervision over the situation in a particular school district where the original racial imbalance caused by official action has been cured" (p. 906). Judge Thompson had
found that the Clark County Board of School Trustees had in no manner continued to foster school segregation by any official action. On the contrary, he observed that Clark County School District had "meticulously and conscientiously complied with the mandates of this Court's decree" (p. 904).

The seven maps in Appendix II depict the location of the seven sixth grade centers on the Westside and also the locations of their feeder elementary schools. These maps are actual Elementary Attendance Areas Maps for the 1972-1973 school year produced by the Clark County School District.
CHAPTER 5

INTERVIEW WITH KEY PLAYERS
IN THE CASE OF KELLY ET AL.
V. CLARK COUNTY
SCHOOL DISTRICT

INTRODUCTION

The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas, Nevada, Kelly et al. v. Clark County School District (1972). This was accomplished through review of the historical cases leading up to the submission of the case to the courts in 1968, the four years of litigation, and subsequent filings and motions to its ultimate closing on May 3, 1977. To expand upon the written history of the case, four interviews were conducted with four individuals who were directly involved with the case. They were chosen because of their direct involvement. The persons interviewed are Charles Kellar, Eva Simmons, Kenny Guinn and Robert Petroni. Charles Kellar was the attorney for the plaintiffs. Eva Simmons was a teacher at one of the segregated elementary schools, Madison Elementary School. Kenny Guinn became the Superintendent of the Clark County School District in 1969. In essence, he inherited the case during the litigation process because the case was initially filed in 1968. He was still the Superintendent when the case ended in 1972. Finally, an
attempt was made to conduct a face to face interview with Robert Petroni, the attorney for the Clark County School District. He did not agree to a face to face interview but he did in fact agree to fill out the interview questionnaire. It must be noted that all the interviewees were asked essentially the same questions. Their perspectives on what took place are reported in this chapter.

Attorney for the Plaintiffs Charles Kellar:
December 28, 1996

Before relocating to Las Vegas, Charles Kellar was an attorney in Brooklyn, New York, and the president of the Brooklyn Chapter of the National Association for the Advancement of Colored People (NAACP). According to Mr. Kellar, Thurgood Marshall, head of the NAACP Legal Defense Fund and chief attorney for the plaintiffs in Brown v. Board of Education (1954) had called a meeting of the leaders of the NAACP chapters throughout the country. Mr. Marshall, who eventually became the first Black Supreme Court justice, expressed disappointment that segregation in schools was still prevalent and, in places such as Las Vegas, was practiced in other areas of public accommodation as well. This earned Las Vegas the epithet "the Mississippi of the West." (origin unknown) since Black entertainers like Sammy Davis, Jr., Eartha Kitt, and others performed on the Strip, but they had to room on the Westside.

Thurgood Marshall unveiled a new strategy to combat segregation in schools. First, he discovered which states had no Black attorneys practicing law. Next, he sent at least one Black attorney to settle in those states to start the process of desegregating the
schools there. Mr. Kellar's fate was sealed by a roll of the dice: he was assigned to Nevada and arrived in 1960. Mr. Kellar found segregation deeply entrenched in Las Vegas in schools, housing, and public accommodations.

Las Vegas is known as a city that honors money. Mr. Kellar arrived in Las Vegas with more than $250 thousand in a cashier's check, revenue from the sale of an apartment building in Brooklyn. When he entered the bank and attempted to open an account with the check, the police were called to investigate. They found out that he had been a successful attorney in New York who had 10 other attorneys on his staff. As an aside, when the Kelly case ended and Mr. Kellar asked the defendants to pay his fees, the judge refused, stating, "Mr. Kellar I am not going to award you attorney's fees because I hear that you are a very wealthy man." Judge Thompson was apparently referring to this incident.

In order to become licensed as an attorney in Nevada, however, Mr. Kellar had to take and pass the state bar exam and then be admitted to the bar by the Nevada Bar Association. The test was offered in Reno, and he made reservations for a hotel room and flew there. Upon arriving, he was denied accommodations on the basis that he was Black and spent his nights sleeping at the airport while taking the tests by day. Mr. Kellar passed the exam, but he was not admitted to the bar. He subsequently had to go through the Character Committee which again denied his admittance. Governor Paul Laxalt intervened by recommending five different attorneys to represent him in his suit against the Nevada Bar Association, and the Nevada Supreme Court ruled in Mr. Kellar's favor two-to-one. He was admitted to the bar.
In 1962, Mr. Kellar was elected president of the Las Vegas Chapter of the NAACP. Shortly thereafter, the national civil rights movement was gaining momentum, and Las Vegas was affected. As others fought the battle to integrate hotels as guests and employees, Kellar focused on integrating the six Westside elementary schools. Mr. Kelly, plaintiff in *Kelly et al. v. Clark County School District* (1972), was a local teacher whose daughter attended one of those elementary schools, who became the front for Charles Kellar and the NAACP in the suit against the school district. The suit had the widespread support of the Black community and the Black staff of the school district, the majority of whom worked tirelessly on behalf of the issue behind the scenes in fear of repercussions from the district.

The primary cause for the suit, according to Charles Kellar, was "the lack of desire on the part of the [school district] administration to accomplish an integrated environment for all pupils." He further stated that despite the fact that there was no law which dictated that elementary school children attended a specific school based on their race, "custom was the primary factor. Segregation was the order of the day as it was in the South." He commented that the school district really did nothing to end segregation or to follow the mandate of the Brown decision which had occurred more than a decade before. It was an accepted practice, and the general attitude was "to let sleeping dogs be."

Charles Kellar reflected on the superintendents during the time of the case, James Mason and Kenny Guinn. He said, "They were essentially followers who were carrying out the will of the people based on the prevailing custom, so they were pragmatic in their willingness to let the courts decide and then follow the mandate of the court."
to the influence of the Nevada legislature, he responded, "The legislature accepted the court's ruling and passed legislation to fit." The prevailing attitude was to let the courts decide since there were few Black voters and no Black elected officials to apply political pressure to support desegregation. To remedy this situation, "Dr. West and Dr. McMillan organized the Nevada Voters League which generally led the struggle with the NAACP and the Black churches."

The sixth grade center plan required that Black students be bused all but one of the 12 mandated years of schooling, while White students were bused for only one year to the sixth grade centers on the Westside. The apparent disparity was obvious, yet the general feeling in the Black community was that this inconvenience was better than segregation. The sixth grade center plan was often discussed in terms of its origin. It was suggested that the plan would not be supported by the Black community or approved by the judge; therefore, the litigation would continue interminably, providing the school district even more of an opportunity to drag its feet on desegregation. When queried on this issue, Mr. Kellar was succinct: "The judge and the politicians dreamed up the plan."

After the court ordered that the sixth grade centers be implemented, Kellar appealed on the basis of the disparity in the burden of busing on Black families. The court denied the appeal, the Black community accepted the sixth grade centers, and the plan was implemented. According to Kellar, the Black community recognized that "it was the best that could be had at the time."
Teacher Eva Simmons:  
March 18, 1996

Eva Simmons, a teacher at Madison Elementary School on the Las Vegas Westside at the time of Kelly, is now an area superintendent in the Elementary Education Division, Clark County School District. She was an active supporter of the desegregation of the elementary schools and served as chair of the Human Relations Committee of the League of Women Voters of Las Vegas and as a member of the district's Task Force on Integration. On March 27, 1969, Ms. Simmons and Bernice Moten, also a teacher and member of the Task Force on Integration, filed a report to the Board of School Trustees stressing their own support of desegregation and challenging the board to make the system just. They said, in part,

While everyone is entitled to hold his own views, the problem arises when attitudes are translated into social practice and policy. Before we allow the perpetuation of learning environments that reflect and enforce negative attitudes, we ask you to do some sincere introspection. We admit that there are fears which make the issue of desegregation an emotional and hazardous one for you to tackle. Yet, tackle it you must. Children cannot wait for their elders to overcome bigotry and prejudice. They are growing and learning now. What they learn and whether they learn it together in classrooms in both black and white communities where there is respect for and understanding of the differences among the family of man, only you can control. The responsibility for a just decision rests squarely upon your shoulders as our elected officials.

We do not ask any special favors for black or white Americans but rather for simple justice in the name of Democracy for which we all stand. We must unite under these cherished democratic principles and move toward the common goal of a united people working for justice for all. For if principle is good for anything, it is worth living up to. As Americans, we can no longer afford the luxury of ignoring our real problem, white racism. How many studies will it take to drive this fact home? ... 

The schools have a more pervasive influence on the developmental years of a child's life than any of our public institutions. Granted, other institutions must pull their full share, but historically, the public schools have provided courageous
leadership in the implementation of needed change. Fortunately, you as elected officials are in the position to make a courageous stand for justice. We challenge you to take a position that favors integration for all without placing undue burden on any segment of the total population. Make a decision that is fair and just. 
(Simmons & Moten, March 27, 1969)

The report submitted by Ms. Simmons and Ms. Moten (1969) outlined a scenario to be incorporated into a desegregation plan which included recommendations and rationales. They did not favor a voluntary plan because it lacked teeth. They suggested.

A fair plan for metropolitan Las Vegas would include the following:

1. Five Westside elementary schools would be retained as regular classroom facilities.

   **Rationale:** As a school district, we need additional classrooms and next year's student population projections indicate that we will need fifty to seventy-five new classrooms.

2. Highland Elementary School should be converted into a prestige school.

   **Rationale:** Highland School because of its location and the advantage of new and modern equipment that no other school in the district possesses should be an ideal setting for a Social Science Resource Center to help achieve quality integrated education.

3. Expand school at the elementary level.

   **Rationale:** Because of the need to achieve school integration, school zones must be broadened so each Westside school will be included in a separate school zone.

4. Student assignment to insure black and white in each school in accordance with the generally accepted concept of each school population reflecting the total population of metropolitan Las Vegas.

   **Rationale:** Rotation of school assignments so every child will attend his neighborhood school for part of his elementary school life and be transported outside of his neighborhood the rest will provide experience broader than his immediate neighborhood which is so essential to total life adjustment.
5. Retain controlled open zoning policy as it now exists on the basis of seats available with parent-provided transportation, if needed.

**Rationale:** We recognize that we must respect the wishes of some of those parents who have justifiable reasons for a zone variance.

Their proposal offered options to the neighborhood schools policy which fostered segregation that would not be voluntary and would not place an unfair burden on the Black population.

Eva Simmons is a lady of passion and conviction. She was clearly proud of the role she played in the desegregation of the elementary schools in Las Vegas and stated she would repeat every activity again. Her presence in the interview was commanding and motherly, and it was obvious that she does not readily accept *no* for answer when the response she expects is *yes*.

Ms. Simmons supported Charles Kellar's statements regarding the use of Herbert Kelly, a teacher at Matt Kelly School at the time of the litigation, to initiate the case against the school district and the clear support of the Black teachers and the Black community. She attributed the cause of segregation in the schools to the social mores and political circumstances of the times and housing practices. In terms of housing, she said that Blacks were generally relegated to low-paying jobs so that the only housing they could afford was on the Westside. In addition, although it was not law, landlords rented to Blacks only on a limited basis. "Essentially, de facto segregation was the reason that Blacks settled in that area."

As early as 1956, the school district bused junior and senior high school students...
to eliminate segregation, on the other hand it maintained the neighborhood school policy for elementary school students. According to Ms. Simmons, busing elementary school students was not a popular notion because "parents had strong feelings about their little ones staying closer to home. It was just not done." Further, it was generally felt that the district ensured compliance with the mandates of the Brown decision to the smallest extent possible. She stated, "They stalled and took the path of least resistance and attempted to placate the judge, but in reality, the district did very little to voluntarily bring about desegregation."

When asked about James Mason and Kenny Guinn, superintendents at the time of the litigation. Ms. Simmons commented, Guinn was "a pragmatist, his job was to take the position of the board and he did so." The Black community at the time might also be characterized as pragmatic because of their willingness to accept a busing plan which placed an inordinate burden on Black children for most of their years in school.

According to Ms. Simmons,

Black citizens were seeking quality education. Busing was the burden to bear in order to achieve desegregation. This was a step in the right direction with a vision towards modifying the plan at a later time. Lobbying has always been done to make the plan more equitable.

Ms. Simmons was also asked about the appeals in Kelly which eventually took the case to the United States Supreme Court. She responded,

It was part of the process at arriving at the ultimate decision. Exercising one's legal rights is a part of the legal game. Ultimately, the plan had to be put into place because it was ordered by the court. The school board was also forced to accept the plan as ordered by Judge Thompson. . . . There were two major financial considerations after the plan was ordered. One was the cost of
transportation, and secondly, the cost of upgrading the schools on the Westside.

Superintendent of Schools Kenny Guinn:
February 15, 1995

Kenny Guinn followed James Mason as superintendent of the Clark County School District in 1969, shortly after Kelly was filed. His major task was to see the suit through to completion, and he served in that position until 1978, after the final order of the court. He has had a stellar career as both an educator and a businessman, and he is considered by many to be one of Nevada's most well-liked and respected citizens. He has been director of Primerit Bank, now Norwest, and CEO of Southwest Gas, the major provider of that product in southern Nevada. He was interim president of the University of Nevada, Las Vegas, and now seeks election to the governorship of the state in the next race.

An interview with Dr. Guinn is an easy proposition. His manner is easygoing; he is direct and earnest in his interactions. He spoke highly of the plaintiffs' attorney Charles Kellar and referred to him as a friend who was doing his best to see that his people got a fair shake in the process of desegregation. Both Mr. Kellar and Ms. Simmons had spoken highly of Dr. Guinn, citing him as a man who was just doing his job and did not appear to oppose desegregation.

When asked about the cause of segregation in the elementary schools, Dr. Guinn commented,

It was more geographic causation. The majority of the Black population lived in this area of the Westside and then the schools became predominantly Black. As more Blacks moved in, the White population had a tendency to move out. Thus, over the years, the schools in this area became all Black. So the causation was geographic because of residential patterns.
When asked why the junior and senior high schools were already desegregated and the elementary schools were not, he said,

The population was never big enough on the Westside to have junior and senior high schools in that area, so no secondary schools were built. Students from the Westside went to Gibson Junior High, J.D. Smith Junior High, and to Western and Rancho High Schools. If secondary schools were built at that time, they would have been all Black, so the decision was made to place them in other areas. If a high school or junior high had been built there at the time, those schools would also have been all Black.

Dr. Guinn's candor and honesty were apparent in the interview. He knew the background—that the Brown decision had been rendered in 1954, that many lawsuits regarding desegregation had occurred in the 1960s and 1970s, and that in the case of Kelly, 14 years had elapsed since Brown. When asked what the district had done in response to Brown during those 14 years, he said, "To the best of my knowledge, very little had been done before the suit came into effect. The lawsuit was in 1968, and in 1969, we started working on a plan to involve the community to get their input." He also acknowledged that it was apparent that sooner or later a lawsuit would have been filed in order to desegregate the elementary schools. He further commented,

The League of Women Voters were also instrumental in bringing it to the attention of the voters, and the community became more and more involved. It was one of those difficult times. The League of Women Voters wanted a fair plan which would gain approval of the Federal Court, namely Judge Thompson. A plan was also developed to force the issue of open housing for Blacks in areas other than the Westside.

It appeared to be clear that opening housing to Blacks would help integrate schools outside the Westside. This would not, however, have alleviated the segregation on the Westside.
Another issue involved in the desegregation of the elementary schools was financial. Kenny Guinn commented on what the district had done to try to desegregate the schools at a low cost:

Originally, we tried to desegregate on a voluntary basis. We spent a lot of money on the magnet [prestige] schools. We did everything to get students to come, but it just was not successful. The White parents just did not send their students to the magnets. Another method which was used to integrate some districts was called pairing. In its simplest form, pairing involves having the segregated elementary schools paired with schools outside the Westside. There would be cross-busing involved with those schools which were paired. The management team of the CCSD did not support pairing because in other areas of the country it was not working where it had been tried. If there was not full participation, it could not work. In some cases, the Whites who were selected to be paired would move. Thus, there were not enough Whites to be bused in. This situation was called hedge-hopping. Our plan, then, would have to include everyone. The burden of busing was on the Black community. There was no doubt about that, but everyone had to participate. We wanted to make sure that everybody in every school had to participate and that is how the sixth grade center plan came about. Only persons in private schools were exempt. It was designed that kids in elementary schools would stay together through junior high and high school.

When desegregation plans were put in place, they were generally modeled on other plans which had been in effect successfully in other parts of the country and could be modified for local circumstances. Apparently, this was not the case with the sixth grade center plan.

According to Guinn, "It's the only plan like this that I know of."

Desegregation of schools was an extremely volatile issue throughout the country. Political ramifications abounded. According to Dr. Guinn, the mayor, the city council members, and the legislature did not get involved in Clark County School District's case: "No, they were not involved at all. Everybody pretty much just stayed out of it and allowed the court to decide." In 1972, after Judge Thompson ordered that the sixth grade center plan should be put into effect, both the plaintiffs and the defendants appealed the
decision. It is noteworthy that the defendants, the school district, had proposed the plan. Yet, when the ruling came that the plan should be put into effect, they also appealed. Dr. Guinn commented:

I think that the school board appealed because they felt that the judge had taken the authority for local zoning and also authority over a local school board. Mr. Kellar appealed because he did not like the sixth grade center plan. The school board was sending a final message that this is the law of the land. If the judge said that we have to do it and we appeal and we lose the appeal, then let's just get on with it. This is what we have to do. We do not have any choice. After this, everything settled down. It has proven to be a workable plan because it has been in effect since 1972.

Clark County School District Attorney
Robert Petroni

Robert Petroni, Clark County School District attorney for the defense in Kelly, did not agree to an interview. Instead, he offered to respond in writing to a questionnaire on the topic of the case. The points covered were essentially the same.

Robert Petroni became the attorney on the Kelly case because "I was already the attorney for the CCSD." He asserted that the cause for segregation in the elementary schools on the Westside was "housing patterns and the adherence to the neighborhood school concept." All those interviewed had agreed on the fact of de facto rather than de jure segregation.

When asked, "In 1956, the school board bused on the junior high school and senior high level to eliminate segregation. Why was it not done on the elementary level as well?"

He replied in writing,

I was not practicing law or living in Las Vegas when this decision was made by the school board. I was told that because of no growth in West Las Vegas, there was
no need to finance junior and senior high schools in that neighborhood.

This response suggests that the decision not to build secondary schools on the Westside was not related to efforts to eliminate segregation. Rather, the decision was a financial one based on lack of population growth in that area. This may be a catch-22 situation with new schools and population growth as the variable cause-and-effect. Certainly, unlike the current growth in Summerlin on the northwest and Green Valley on the southeast sides of the Las Vegas valley, the Westside was contained by some physical boundaries that limited growth. To attract a different, more affluent population segment, no renovation of housing or building of schools has occurred on the Westside except for one new elementary school (H.P. Fitzgerald) in recent years.

Mr. Petroni was also asked what measures were taken by the school district to eliminate segregation in the elementary schools during the 14 years between Brown and Kelly. He responded, "I have no direct knowledge of the years from 1954 to the filing of the case; however, in Brown there was involved de jure segregation by law, and this was not the case in Las Vegas." This difference between Brown and Kelly was repeated frequently during the case, but the court did not agree with this rationale. Instead, the de facto segregation of housing patterns in Las Vegas which fostered segregation and the lack of action on the part of the school district to integrate in spite of the segregated housing caused the ultimate court decision to desegregate.

Two community organizations, the League of Women Voters of Las Vegas and Parents Who Care, in addition to the local chapter of the NAACP played significant roles in this case. LWV, according to Mr. Petroni, "... intervened in the case and presented a
pairing plan as a way of integrating students in the elementary schools. The plan was not accepted by the District Court judge or the 9th Circuit." He further wrote,

Parents Who Care acted as intervenors with David Canter, the attorney, later elected to the school board and County Commission. I have no access to the file and I don't recall what they proposed. I believe they were in favor of neighborhood schools.

Asked why the school board continued to oppose integration by vigorously opposing the suit by the plaintiffs, Mr. Petroni answered, "the school board maintained its support of neighborhood schools at the elementary level and was not found to be practicing de jure segregation as in Brown."

Mr. Petroni's response to the question about the financial consideration on the part of the school district in its attempt to win the suit was more direct, "This is a leading question because the school board did not have segregation as a school policy or practice. I imagine busing costs concerned the school board." While the answer was forthright, the court did, in fact, rule that the district's policies fostered segregation in the areas of placement of schools and faculty assignments.

Mr. Kellar, Ms. Simmons, and Dr. Guinn had stated that the Nevada legislature did not play a role in this case. Mr. Petroni disagreed:

I believe it enacted some type of legislation directed to the State Board of Education concerning integration of schools in the state. Also, additional funds for busing were provided when it became apparent the school board would have to move elementary students around to satisfy the courts.

Further, the others had said that the sixth grade center plan was unique to Las Vegas. On the other hand, Mr. Petroni asserted that it was based on a plan used in Florida which had federal court approval.
Finally, Mr. Petroni was asked why the district had appealed to the United States Supreme Court. He responded simply, "I don't have the petition filed with the U.S. Supreme Court and it was so long ago, I don't recall." He acknowledged, however, that both the plaintiffs and the defendants had appealed the decision of the District Court even though the sixth grade center plan was proposed by Clark County School District.
CHAPTER 6

SUMMARY

The circumstance of court-ordered busing to achieve integration in schools combined with the utilization of the sixth grade center concept engendered interest for doing this study. The obvious disparity in busing Black children from the Westside for all but one year and busing White children from the metropolitan Las Vegas area for only one year, was a striking phenomenon that also led to this research. The comparison of 11 years to 1 year did not seem equitable and there was an interest in determining how this circumstance developed. In 1968, the elementary schools in the area known as the Westside were segregated albeit on a de facto basis. Under the auspices of Charles Kellar, a local attorney who also was the president of the local chapter of the NAACP, a suit was brought against the Board of Trustees of the Clark County School District. The suit, filed in Federal District Court, alleged that actions on the part of the school district contributed to the segregation which existed. The plaintiffs believed that the school district clearly operated a segregated system relative to the elementary schools on the Westside. It was this belief which caused them to file suit. The case, entitled Kelly et al. v. Clark County School District (1972) began in a segregated school system that was forced by the courts to change.
The purpose of this study was to examine the history of the case that ended segregation in six elementary schools in Las Vegas. The study was historical in design. An examination was made to determine the underlying historical factors which caused the lawsuit to be filed in the first place. This necessitated delving as far back as the beginning of the nineteenth century to cases dealing with access to schools and other public accommodations on the basis of race. Next, cases from the United States Supreme Court were reviewed for their relationship to Kelly. Finally, Kelly was reported chronologically.

To add to the narrative, four key players were asked for interviews concerning their recollections of the events of the time. Three agreed to be interviewed in person; one other responded to written survey questions.

The events and circumstances of this case developed in the context of the prevailing attitudes of Las Vegas at the time. According to historians, segregation emerged as a result of economics in southern Nevada. The nature of the tourism and gaming industries combined with the belief that tourists from the South would balk at commingling with Blacks while on vacation added to the problem. These obvious practices of limiting Blacks to low-paying and low-prestige jobs and living on the Westside earned Las Vegas the nickname "the Mississippi of the West."

Kelly began in 1968 and ended in 1972. To be exact, the last ruling on the case was made in 1977, when the courts found that the school district had followed the 1972 order to end segregation and released the district from court supervision. The 1972 plan involved the busing of students to accomplish desegregation. Beginning in 1992, however, Clark County School District began making changes to the busing plan that enabled
release from court supervision. Initially, the schools which had been converted to sixth grade centers became *Prime 6* schools and returned Westside children to their neighborhoods. Next came magnet schools at the elementary level in one or two of those schools. Sixth graders throughout the Las Vegas metropolitan area now attend middle or junior high schools instead of being bused to sixth grade centers on the Westside to achieve integration.

The greatest argument against the initial integration plan presented by the school district, *Freedom of Choice*, was struck down by the court because it was voluntary in nature. As a result, very few, if any, White parents chose to send their children by bus to the *Westside*. Even the advent of *prestige schools* which, theoretically at least, had more of all the materials and equipment deemed necessary at the time for enhancing education was not enough to entice parents of White children. The current attraction, magnet schools, have the same purpose: to achieve integration on a voluntary basis. These schools are attracting White children to the Westside, and integration is being achieved at these schools.

In examining *Kelly et al. v. Clark County School District* (1972), six research questions guided the research. They are repeated here with responses.

1. What was the catalyst behind the decision of the plaintiffs to seek redress by way of the courts?

   The national chapter of the NAACP under the guidance of Thurgood Marshall, who later became the first Black justice of the United States Supreme Court, determined which states had no practicing Black attorneys.
Nevada was among them, and Charles Kellar, a Black attorney with his own firm in Brooklyn, New York, was assigned to southern Nevada. Mr. Kellar passed the bar examination, was admitted to the practice of law with help from the governor, became president of the local NAACP, consolidated the forces opposed to segregated schools, and initiated the lawsuit under the name of a teacher at Matt Kelly School, Herbert Kelly. Fourteen years had passed since the Brown I decision by the United States Supreme Court which ended segregation in schools. Therefore, the mood was right for initiating the suit.

2. What was the position of the Nevada legislature in ending segregation in the elementary schools in Clark County?

Based on the review of the case and the interviews with the key players, the legislature appeared to play no role in the desegregation of the elementary schools in Clark County School District. Their posture was that it was a matter for the courts, and they affirmed this stance by not taking a public position on the issue. The belief among legislators was that de facto segregation had occurred in metropolitan Las Vegas as a result of housing patterns; in their minds, this allowed them the leeway to remain apart from the problem. At the same time, however, several comprehensive civil rights bills were introduced to the legislature, but they all died in committee.

3. What efforts, if any, were made to follow the mandate of Brown v. Board
of Education in 1954?

In Brown I in 1954, the court concluded that "In the field of public education, the doctrine of separate but equal has no place." In Brown II in 1955, the judge ordered that "desegregation must take place with all deliberate speed." In the 14 years following Brown I, Clark County School District did little or nothing to desegregate the elementary schools in Las Vegas. According to Kenny Guinn, superintendent of schools during most of Kelly, "To the best of my knowledge, very little had been done after the Brown decision."

4. In terms of zoning, what actions of the Clark County School District caused a continuation of segregation in elementary schools after the Brown v. Board of Education decision in 1954?

The United States Court of Appeals for the Ninth Circuit found that there was a clear indication that the official policy of the Clark County School District favored segregation of the elementary schools on the Westside. This is evidenced by the fact that four of the six schools in question were built after 1954. Further, schools in predominantly Black areas were enlarged rather than transferring the children to nearby schools with predominantly White enrollments. In addition, almost all the teaching staffs of each Westside elementary school were composed of Black persons.

5. What were the major drawbacks or obstacles regarding the desegregation of the elementary schools of the Clark County School District? When
change is involved, people become uneasy. When the change involves children, social customs, money, and lawsuits, it can be delayed for a very long time. Perhaps the greatest single drawback to integration of the six Westside elementary schools was time. The long, drawn out battle over the mixing of White and Black elementary students in the school and classroom was excessive. Struggles also have long memories. That is to say that people remember and their anger, resentment, and discomfort with the topic of integration continues. That is the reason that magnet schools are still a necessity in Clark County School District and that if care is not taken, the racial imbalance in the schools will reoccur.

6. Was the financial burden of desegregating the schools too difficult for the Clark County School District to bear? This apparently was not the case. After the final court order to desegregate, busses were purchased to implement the sixth grade center plan without an overwhelming burden on the school district. The transportation cost to purchase new busses was $540 thousand of the district's $64 million budget.

CONCLUSIONS

The conclusions presented are based on the analysis of this case. It is safe to assert that the schools in questions were indeed segregated, because the courts found them to be segregated. The schools were not segregated solely on a de facto basis because the courts found that official decisions on the part of the school district hierarchy were contributing
factors which exacerbated segregation in the elementary schools on the Westside. From the court rulings it is concluded that it is within the power of the court to order the school district to put a particular desegregation plan in place and to monitor the effects of the plan to determine whether or not the plan effectively brings about desegregation. This was the case with the *Freedom of Choice* plan. It is also within the power of the court to order the school district to discontinue the plan if it is determined that the plan is not effective. The court then orders a new plan to be implemented. Time is allotted to also make the determination on the new plan. After a plan has been in place for a number of years and has proven to be successful in ending segregation, the court has the authority to release the school district from its supervision.

**RECOMMENDATIONS**

Research in the area of school desegregation clearly shows that the final arbiters are the courts. For the most part court battles are long, arduous and generally costly both in financial and social terms. School boards are charged with the enormous responsibility in ensuring equity for all of the students within the district regardless of race. It would be worthwhile for school boards, including the Board of Trustees of the Clark County School District and its top administrators to utilize the services of legal experts in the area of desegregation to ensure that their actions would meet the test of legal challenges. Ultimately it is the responsibility of the school board to ensure that constitutional rights are not violated under their auspices.

Future researchers might wish to examine whether or not the school district’s
current policy of allowing black elementary students on the Westside to remain in those schools for grades 1 through 6, would meet the test of another legal challenge.

Research in the area of outcomes for black students attending magnet programs for purposes of integration would also be useful. Lastly, it would be worthwhile to determine if there is a significant difference in the drop-out rate for black students attending magnet programs in their neighborhoods to those attending the magnet programs outside their neighborhoods.
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APPENDIX I
INTERVIEW SCRIPT

1. How did it come about that you represented the CCSD in this case?

2. The case was entitled Kelly vs. CCSD. Was there a particular community feeling which caused Kelly to bring the matter to court at this time?

3. What was the primary cause of segregation in elementary schools in Las Vegas?

4. Was there ever a law which dictated the separation of the races in the schools of Las Vegas?

5. In 1956, the school bused on the junior high school and senior high school level to eliminate segregation. Why was it not done on the elementary level as well?

6. In 1968, this case was in court. The Brown decision was in 1954. What actions did the CCSD take to eliminate segregation at the elementary level during this 14-year period?

7. Was the community divided along racial lines? In other words, were Blacks against segregation and Whites in favor of it?

8. What role did the League of Women Voters play?

9. What role did Parents Who Care play?
10. Why did the school board continue to oppose integration by vigorously opposing the suit of the plaintiffs?

11. Were financial considerations a factor in the school board's decision to attempt to continue segregation?

12. What role or influence did the Nevada legislature have on the case?

13. Did Nevada lawmakers actively make their positions known on the segregation issue?

14. The sixth grade center plan was modeled on what plan? How did the idea for this plan come about?

15. Why was the busing plan accepted by the Black community when it appeared to place an inordinate burden on Black children?

16. Did both the plaintiffs and defendants appeal to the Court of Appeals for the Ninth Circuit? If so, why?

17. Why did the CCSD appeal to the United States Supreme Court?

(Note that the four interviewees were asked essentially the same questions, however; the adjustment made was made in question one to apply specifically to the attorney for the plaintiffs and the attorney for the defendants.)
APPENDIX II

C.C.S.D. Elementary Attendance Area Map, 1972-73

136
C.C.S.D. Elementary Attendance Area Map, 1972-73

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