THE ROLE OF FEDERAL DISTRICT COURTS ON DESEGREGATION: A LOGISTIC
REGRESSION ANALYSIS OF THE FACTORS THAT INFLUENCE
PRODESEGREGATION OUTCOMES

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In this study I analyzed the 1089 desegregation outcomes in federal district courts that occurred between 1994 and 2004 in order to identify a) the legal and non-legal factors in the litigation process that predict pro-desegregation outcomes and b) the judicial patterns that impact the future of desegregation policy. Twenty-one legal and non-legal variables were analyzed via logistic regression analysis to identify factors that predict pro-desegregation outcomes. Only three predictor variables were statistically significant: Government Litigants; Region 3 (West) and Region 4 (Northeast.) Descriptive analyses of the data identified two trends in the pattern of litigation: The percentage of defendant wins increased after 1991 at a lesser rate than has been previously reported. I conclude that based on the results of both the quantitative and qualitative analyses the federal district courts are not a barrier to desegregation and can still be a part of a comprehensive desegregation strategy.
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In 2004, the nation celebrated with great fanfare the 50th anniversary of the landmark Supreme Court decision in *Brown v. Board of Education* that ended legal segregation. In a speech from the Senate floor, Senator Sam Brownback declared *Brown* “one of the greatest Civil Rights cases in our nation’s history” that “set this nation on a path ensuring freedom and equality in America” (2004, http://brownback.senate.gov/pressapp/record). Attorney General John Ashcroft lauded the decision and declared that “integration has become the tide that lifts all boats by uniting us as a people” (2004, http://www.usdoj.gov/archive/ag/speeches.htm). Meanwhile, public schools in America have been resegregating at an alarming rate. Over the course of two decades, levels of racial segregation have risen to such an extent that schools in some areas of the country are more segregated than in 1972. The issue is further complicated by the interaction of race and poverty. Schools segregated by race are also segregated by wealth, causing disparities that are not easily addressed. Comparison studies consistently show differences between affluent and poor schools in terms of test scores, advanced placement opportunities, and college acceptance rates.

In 2002, the Harvard Civil Rights Project convened a multi disciplinary gathering of scholars, practitioners, and activists to assess the state of public schools and the future of integration. Of particular concern was evidence of judicial retreat from desegregation. The Supreme Court, once praised as the agent of change in the fight to end legal apartheid in America, has recently issued a series of decisions suggesting a reluctance to uphold the legal standards set forth in *Brown v. Board of Education*. District court decisions releasing school
districts from existing desegregation orders have resulted in immediate segregation of previously integrated school districts. One of the main outcomes from the 2002 conference was a call for research on the role of courts in the resegregation of American public schools and the future of desegregation policy. This study addresses the role of the courts in desegregation by examining the judicial process of desegregation litigation over the course of several judicial eras to determine the relative influence of values, ideology, legal doctrine, and manipulative case factors on desegregation outcomes. First, in this study I analyzed via logistic regression analysis the legal and non-legal factors in the litigation process that predict pro-desegregation. Second, I examined the judicial decisions on desegregation to identify patterns and trends that impact the future of desegregation policy.

In 2002, I attended the first conference on resegregation at the University of North Carolina, Chapel Hill. Also attending said conference was a colleague of political science scholar Kimi King. In 1998, King published a comprehensive analysis of district court Fair Housing cases examining the relative influence of legal doctrine and non-legal factors on case outcomes. King’s study contributed to the theory of judicial decision-making by combining the fragmented research on legal decision-making that was divided between competing theoretical models (legal and non-legal.) Dr. King was looking to replicate the study with desegregation litigation because of the similarities in the decision-making environment of desegregation and Fair Housing. First, both areas of case law involve civil liberties and public policy. Second, both involve issues complicated by demographic trends. Third, both have a legal history of inconsistent Supreme Court signals and varying levels of support in the legislative and executive branches of government. Conditions are appropriate for assessing the impact of values, policy preference, and bias on judicial outcomes. Such an investigation is a massive undertaking in that
one must read every District Court opinion within the specified timeframe, which numbers in the thousands. I took part in the project as it provided an opportunity to answer the call of the 2002 conferences to assess the role of courts in the future of desegregation policy. This is the most comprehensive quantitative analysis of desegregation litigation and one of the few predictive analyses specific to desegregation.

This chapter provides a background on the topic of desegregation and illustrate the current rates of segregation in public schools today and the educational implications of segregated schools. This chapter also introduces the specific impact of judicial decisions on the daily operation of education. The background is then distilled into specific research questions which are followed by definitions of key terms.

Purpose of the Study

The purpose of this study was to examine the judicial processes specific to desegregation litigation that impact desegregation policy. To assess those processes, this study examined the body of desegregation litigation in Federal District Courts from 1954 to 2004 in order to identify a) the legal and non-legal variables in the litigation process which best predict a pro-desegregation outcome and b) judicial trends that impact desegregation policy.

Background

Despite 50 years of litigation since Brown v. Board of Education, American public schools remain segregated by race and poverty. Segregated schools are a structural barrier to educational equality. Though today’s segregation may be the result of a myriad of factors, it is the judiciary that has the most immediate impact on levels of segregation and desegregation policy. To affect meaningful reform regarding educational equality, it is necessary to understand the judicial processes that are shaping the future of desegregation policy. The federal district
courts, in particular, are responsible for the contours of desegregation policy. Desegregation started with a district court order and was continually redefined and enforced by subsequent district court rulings. Educational changes such as re-zoning, tracking, compensatory programs, teacher assignment, staff development, and testing were all mandated by specific court decisions. The U.S. Supreme Court has made it clear that the District Justices have the discretion to declare school systems unitary and therefore release them from desegregation orders (Chemerinsky, 2002; Orfield & Lee, 2004; Parker, 2002). Recent Supreme Court decisions, however, have suggested a reluctance to uphold the standards set forth in *Brown*. District court reaction to these Supreme Court signals will determine the future of integrated public schools (Goldring & Smreker, 2002; Horn & Kurlaender, 2006; King, 1998; Mills, 1999; Orfield & Lee, 2004; Reardon & Yun, 2002). An examination of the evolution of desegregation law from beginning to present along with an in-depth analysis of judicial behavior at the district level will help determine the ultimate direction of the District Courts towards desegregation policy. In addition, scholars argue that a better use of litigation is required to stem the current tide of resegregation (Goldring & Smreker, 2002; Horn & Kurlaender, 2006; Kahlenberg, 2002; King, 1998; Mills, 1999; Orfield, 2004; Reardon & Yun, 2002). Although there is a growing body of research on factors that can increase the probability of favorable outcomes in other categories of case law, there are very few predictive studies specific to desegregation.

Segregation by Race, Ethnicity and Socioeconomic Status

The most comprehensive analysis of the distribution of students in public schools has come from research commissioned by the Civil Rights Project (CRP). Through the efforts of the CRP the issue of resegregation has returned to the forefront of public discussion and academic debate. Fueled by concern over the declining momentum of the Civil Rights movement, scholars
Gary Orfield and Christopher Edley, Jr. founded the CRP at Harvard University in 1996 as “a multidisciplinary research-and-policy think tank and consensus-building clearinghouse” committed to building a network of collaborating legal and social science scholars across the nation (www.civilrightsproject.ucla.edu/aboutus). The Civil Rights Project, now based at the University of California Los Angeles, has convened dozens of conferences, commissioned more than 400 research and policy studies, published twelve books, and provided technical support to members of Congress. Work from the CRP was cited in the recent Supreme Court decision Grutter v. Bollinger (2003) upholding race conscious admissions policies in universities as a means to achieve diversity.

Using data from the Common Core of Statistics, the CRP has commissioned several reports on the distribution of students in American public schools. The first report on the segregated state of public schools was published by Gary Orfield and John Yun in 1999 and was expanded and updated in 2002 (Yun & Reardon), 2003 (Frankenberg, Lee, & Orfield), 2005 (Lee), 2006 (Orfield & Lee), and 2007 (Lee & Orfield). These reports calculated the level of integration in public schools and compared the educational outcomes and resources of racially and economically identifiable schools. Two measures of integration were used. The Exposure Index (EI) measures the percentage of a particular ethnic or racial group present in a school attended by the average student of a comparison group. For example, a 78% Hispanic-White Exposure Index means that the average Hispanic attends a school that is 78% White (Lee, 2005, p. 5). Researchers also used the percentage of students attending predominantly minority schools as a measure of integration. Predominantly minority schools are operationally defined as those in which 50% or more of the students are minorities. Extremely segregated schools are defined as those in which at least 90% of the student population is minority.
Reports released by CRP from 1999 to 2007 show that levels of integration in American public schools have been steadily declining since the 1980s. Seventy-five percent of students in America attend schools with student populations that are between 50 and 100% minority. Almost 40% of students in America attend schools with student populations that are at least 90% minority. Put another way, the average Black student in 2004 attended a school that was 30.5% White, while the average white student attended a school that was 79% White. Interestingly, the studies reveal that the South is resegregating at a faster rate than any other region (Lee, 2005). In the thirty years after Brown, the South went from the most segregated region to the most integrated region. The percentage of Black students in majority white schools rose from 0% in 1954 to a high of 43.5% in 1988. By 1996, however, the percentage of Black students in majority white schools dropped to 30.5%.

According to analysis by Orfield and Lee (2006), the pattern of segregation today is different from that of the early decades. The most segregated schools are found in large metropolitan areas that are characterized by urban centers surrounded by white, middle/upper class suburbs. In rural districts where only one school serves the community at each level, integration remains stable. Hispanic students are becoming the most segregated minority, especially in the West. The percentage of Hispanic students in predominantly minority schools has doubled from 42% in 1968 to 80% in 2001 (Orfield & Lee, 2001). In addition, the share of Hispanic students in minority schools has tripled during the same time period.

Though there is some criticism of the CRP research, no one has disagreed with the core conclusion that since the 1980s, more minority students attend schools in which the majority of the student population is minority and of poverty. Instead, critics either challenge the cause of the increased segregation or the use of the term “segregation” to describe what has transpired
since the late 1980s. In their book, *No Excuses: Closing the Racial Gap in Learning*, Abigail and Stephen Thernstrom (2003) make the semantic argument that segregation implies separation of the races by legal policy. The Thernstroms argue that the racial isolation in public schools today is strictly a result of demographic trends and would have occurred regardless of any public policy decisions on desegregation.

Some have questioned the rates of segregation reported by CRP researchers. In 2004, the Mumford Center at the University of Albany published a report by John Logan based on data from the 1999-2000 U.S. Census suggesting only a slight increase in segregation during the 1990s. Using the Dissimilarity Index (DI) to measure segregation, Logan concluded that the DI rose from 47.6 in 1990 to 48.6 in 2000. Some social scientists, however, question Logan’s reliance on the Dissimilarity Index (DI) as the sole measure of segregation (Gibson & Asthana, 2000; Taylor, Gorard, & Fitz, 2000). The DI is a research tool used frequently in social science that measures the degree to which two groups are evenly spread among schools in a given city (Cortese, Falk & Cohen, 1976; White, 1983.) The evenness of distribution is defined with respect to the racial composition of the unit of analysis (e.g. city, district, state). The index ranges from 0 to 100, giving the percentage of children in one group who would have to attend a different school to achieve racial balance. The DI can be misleading because a school district can look very good on these measures and still be segregated. In a 90% non-white school district, for example, a 97% nonwhite school would look integrated. In many of the suburban school districts, the DI would describe a virtually all-white school as very highly integrated and one that brought in 35% minority children from the city as relatively far more segregated.

Notably the same author issued an earlier report in 2002 showing a substantial increase in segregation from 1999 to 2000 (Logan, 2002). In this analysis, Logan reached many of the same
conclusions as those of Orfield and his colleagues at the CRP. Using the exposure index as a measure of integration, Logan reported a 10% increase in the percentage of Black students attending schools in which more than 50% of the study body was minority from 1990 to 2000. He also reported an increase in the percentage of minority students attending intensely segregated minority schools (more than 90% minority). Furthermore, in a comparative analysis of residential and educational segregation, Logan concluded that “increased school segregation in these cases did not result from changes in where children lived. It was caused by changes in policies that once worked effectively to reduce school segregation, but that were reversed in the 1990s” (p.5).

Schools segregated by race and ethnicity are also segregated by socioeconomic status. Studies document that the share of high poverty schools increases as the minority population of that school increases (Orfied & Lee, 2005). In contrast, as White enrollment increases, the share of schools that are high poverty decreases. A student in an intensely segregated minority school is ten times more likely to be in a school of concentrated poverty than a student in a segregated white (Lee & Orfield, 2007). Data compiled from the National Center for Education Statistics (NCES) show that of the predominantly White schools in the United States, only 15 percent are schools of concentrated poverty. In contrast, 86.6 percent of the predominantly minority schools are of concentrated poverty. The average White student in America attends school in which only 31 percent of the student body is poor. In contrast, the average Black student attends a school in which 59 percent of the student body is poor while the average Hispanic student attends a school in which 58 percent are poor (Orfield & Lee, 2007). These differences are more pronounced in comparisons of urban and suburban districts. In 24 of the nation’s largest central city districts, more than 70% of minority students attend schools that are both majority minority and of
concentrated poverty. In 20 of these districts, more than 90% of Black students attend majority minority schools that are high poverty. In 15 of these districts 90% of Hispanic students attend majority minority schools that are also high poverty.

This pattern of concentrated poverty and racial segregation is not limited to inner city school districts. In their report on segregation and educational equality, Orfield and Lee (2005) find that a growing number of suburban districts with increased minority populations experience a corresponding increase in the number of schools that are of concentrated poverty.

Educational Implications of Segregated Schools

The educational implications of segregation are inherently linked to the intersection of race, SES, and educational outcomes. There are substantive differences in segregated poor and non-poor schools that call into question the role of public education in a democratic and just society (Crenshaw, 1995; Delgado, 1992 Gotanda, 1991; Peller, 1985). Segregation creates structural differences that either limit or expand the opportunities available to students (Darling-Hammond, 1998; Ladson-Billings & Tate, 1995). Ultimately, these differences result in a societal mechanism that perpetuates systemic inequality and bias rather than a “tide that lifts all boats” (Ashcroft, 2004, p. 2).

Many of structural and curricular differences stem from disparities in resources between segregated minority and White schools. Macro-level educational spending data mask substantial variances in per pupil spending at the district level (Heuber, 1999; Sugarman & Kemerer, 1999). On average, poor, urban districts have fewer funds available per pupil than more affluent schools. In seven of the largest metropolitan areas, 2004 per-pupil expenditures in schools of concentrated poverty were $4,000 to $11,000 lower than per-pupil expenditures in the surrounding schools that were middle-class or affluent (Kozol, 2005). In four of these districts,
the per-pupil expenditures for schools of poverty were half that of per-pupil expenditures in non-poverty schools. Even in areas where funds are redistributed to make up for funding disparities, the real impact of money is not the same. Schools of poverty, especially those in urban areas, typically spend up to one-quarter of their education budgets to address the social and psychological needs of high-poverty students, leaving fewer funds for regular classroom programs and enrichment activities (MacIver & Estein, 1990; Oakes, 1985, 1990; Orfield & Lee, 2005). Middle class or affluent schools are free to spend funds on technology, enrichment programs, and staff development. In some districts, such as the Carroll Independent School District (CISD) in Southlake, Texas, parents themselves fund classes lost to budget cuts. Parents in the CISD independently fund music education for all the elementary schools in the district (Southlake Educational Foundation).

Studies show that high-poverty schools have insufficient curriculum materials and advance course offerings; unequipped science labs; high student to teacher ratios; inadequate number of professionals to provide counseling, speech, and diagnostic services; and minimal of athletics, art, or music classes (Orfield & Lee, 2005; Rusk, 1993). Curriculum content in inner-city schools focuses on the mechanics of phonics, writing, spelling and math. These basic skills are presented to students in the form of dittos and workbooks and dominate the inner-city curriculum to the exclusion of other more conceptual, manipulative, analytical and critical analyses (Anyon, 1994; 1995; Haberman, 1996). Studies of inner-city school systems also document the superficiality of social studies and science content offered to high school students and the lack of honors courses and advance placement courses. (The College Board, 2006; Annenberg Challenge, 1999; Anyon, 1997; Christman & Macpherson, 1996, Oakes, 1985, 1986; Valencia, 2002).
High-poverty schools tend to have a less stable and less qualified teaching staff. In 2004, the U.S. Department of Education reported high poverty schools employed three times as many uncertified or out-of-field teachers in both English and science. In 1996, The Education Trust reported that nearly one in four central city schools had vacancies that they could not fill with a qualified teacher. In response, principals use substitutes, hire less qualified teachers, or cancel courses. Consequently, central city high school students have only about a 50 percent chance of having a qualified math or science teacher. In the high-poverty schools of Charlotte, North Carolina, almost one-third of the teachers transfer out of these districts each year (Mickelson & Ray, 2003). Teachers in affluent suburban areas, however, are more likely to be certified in the subject they are teaching and have a more complete background of education courses (Annenberg Challenge, 1999).

These differences are manifested in measured outcomes and educational opportunities. Poverty at the individual level is consistently linked to lower levels of achievement. For example, score gaps between poor and non-poor students on the mathematics portion of the National Assessment of Educational Progress (NAEP) have remained the same for nearly a decade. The score difference between poor and non-poor students actually rose from 25 points in 1996 to 27 points in 2005. By the end of the fourth grade, Black, Hispanic, and low-income children are two years behind their White counterparts. By eighth grade they are three years behind and by 12th grade they are four years behind their white counterparts (Lee, 2007). While the racial gap on the reading and mathematics portion of the NAEP narrowed in the 1980s, it has widened from 1990-1999. According to analyses by the College Board (2005) scoring gaps continue to widen on the Scholastic Achievement college Admissions Test (SAT). In 2005 the average Black score on the combined math and verbal portions of the SAT was 17% lower than
the average White score. The average score for White students from low-income families was
75 points below the average for students from higher income families. In contrast, the average
score for students from low-income families was 236 points below the average for students from
higher income families. In this same year, 28% of all SAT test takers were from families with
annual incomes below $20,000. Only 5% of White test takers were from families with incomes
below $20,000. At the other extreme, 7% of all test takers were from families with incomes of
more than $100,000. The comparable figure for white test takers was 27%.

The impact of poverty on educational outcomes is magnified when poverty is
concentrated in one’s school or community. Schools of concentrated poverty have lower test
scores, higher drop-out rates, fewer advance placement courses, and fewer students going on to
college (Becker, 1990; MacIver & Epstein, 1990; Oakes, 1990; Orfield & Eaton, 1996; Orfield &
Lee, 2007.) One third of the schools in the U.S with more than 50% minority student population
graduated fewer than one-half of their class (Orfield & Lee, 2005). The national gap between
high and low income districts in 2001 was 18.4% (Orfield, Losen, Wald, & Swanson, 2004).
These substantive curricular differences and informal networks that pave the way to higher
education opportunities perpetuate inequalities long after high school is over (Becker, 1990;
Braddock, 1980; Braddock, McPartland, & Braddock, 1981; Granovetter, 1986; Darling-
Hammond, 1998; Wells & Crain, 1994; Wells, Crain, & Uchitelle, 1994). This is the antithesis
of a public educational systems in a democracy. As Richard Unger explains, “the role of
education in a democracy is not to reproduce family, community, and racial hierarchies but to
reduce these constraints in favor of equal opportunity and democracy” (p.12).

Benefits of Integration
Segregation has implications for education in the broader context of a society that perpetuates systemic inequality. Studies have documented that even at its lowest level of implementation, integration has a positive influence on interracial attitudes because contact with persons of another race or ethnicity improves attitudes and dispels negative racial stereotypes (Braddock, 1994; Braddock, Crain, & McParland, 1986; Nieto, 2000; Trent, 1991; Wells & Crain, 1994; Wells, Crain, & Uchitelle, 1994). Furthermore, the effects of integration can improve levels of integration beyond the school experience. In a survey of more than 1,000 Black students in northern metropolitan areas, Braddock, Crain, and McPartland (1986) found that students attending segregated high schools had negative perceptions of mixed race work and social environments. Trent (1991) examined the 1979 cohort of the National Longitudinal Survey of Youth and Labor and Market experiences and found that minority students from segregated schools perceived racially mixed work groups as threatening. Students from desegregated high schools were more likely to be working and living in desegregated environments. Trent’s work suggests that desegregated school experiences have a long-term diminishing effect on negative feelings toward co-workers of other ethnic groups in later life. More recently, Orfield and Yun (2002) surveyed students in Cambridge, Massachusetts, and found that students who attended racially diverse schools were better prepared for living in a multi-ethnic society. Overall, substantial majorities of students reported a strong level of comfort with members of other racial and ethnic groups. Most importantly, students indicated interracial experiences increased their level of understanding of diverse points of view and enhanced their desire to interact with people of different backgrounds in the future.

Experiences that reduce bias and increase tolerance are most effective if introduced at a young age when biases and prejudices are being formed (Gollnick and Chin, 2004; Banks, 2001;

Research in higher education supports these findings (Astin, Green, Korn, & Shalit, 1986; Hurtado, 1990; Smith, 1990). The most influential of these recent studies is the work completed by Gurin (2003) at the University of Michigan. In three parallel empirical analyses, Gurin found that racial diversity reduced bias among the races. Furthermore, follow-up research indicates that the effects observed by Gurin were long-lasting. Students with the most contact with students of a different race or ethnicity during college had the most cross-racial interactions five years after leaving college.

The most compelling evidence of the positive impact of integration on racial attitudes is from a recent project that assessed the feelings and perspectives of graduates of integrated schools 25 years after the experience. Wells, Holme, Atanda, and Revilla (2005) surveyed and interviewed 540 subjects who had participated in the integration of high schools in six different communities in the 1970s. Subjects were all graduates of the class of 1980. This study differs from previous studies on integration in that it assesses the participants’ feelings years after the experience, giving the participants the chance to weigh the value of the integration experience with the hindsight of knowing its limits.

The results overwhelmingly confirm earlier findings on the positive impact of integration on racial attitudes and stereotypes. The central themes expressed across the board among participants included a) the experience increased the participants’ comfort level with other races; and b) the experience decreased fear and intimidation. White graduates described themselves as being different from other Whites who had attended segregated schools. In fact, it was in
juxtaposition to White friends who had not attended integrated schools that these graduates
realized the effect of integration on their own attitudes. For example, one graduate described
attending a retirement party in which most of the attendees were Black. She talked about feeling
very comfortable and at home in that setting, but said her husband was very nervous. He ended
up having a good time and expressed surprise that the Black people he met were nice. She said,
“I don’t remember his exact words but, ‘God, they were actually really nice’…(p. 2156).” There
were many other stories such as this one from both Black and White graduates.

Another common theme in at least one-third of the White graduates was a greater feeling
of empathy toward the experiences of minorities in a predominantly White society. This is a
promising finding given the importance of minority voice in civil rights discourse (Bell, 1980,
1992, 2000; Delgado, 1987; Delgado & Stefancic, 2001; Dixon & Rousseau, 2006; Ladson-
Billings, 2000; Ladson-Billings & Tate, 1995). Members of the dominant racial group lack the
personal experiences necessary to grasp and accept the reality of living as a marginalized
minority. But to witness an insult (or worse) to a teammate or classmate can create a cognitive
dissonance that forces one to confront his or her preconceived notions of race and White
privilege.

All graduates concluded that the experience was positive and they believed they had
benefited from attending an integrated school. Despite the value that these graduates placed on
their high school experiences, they found it difficult to maintain the same level of integration
after high school. Graduates reported that the extracurricular activities that had brought students
together across racial lines in high school were more segregated in college. Fraternities and
sororities in particular added another degree of separation. It seems the only level of integration
these graduates experienced as adults occurred in the workplace. The communities these graduates lived in and the churches they attended were segregated.

The focus of this section has been on the benefits of integration. Now imagine the consequences of a school system that is bifurcated by race and then poverty. The absence of personal interaction with persons of other races can foster negative stereotypes and increase feelings of intimidation and/or superiority. In the context of a society that has historically promoted inequality, it is not hard to imagine how segregated White students can internalize the message that minorities are less ambitious, less intelligent, less qualified, and therefore, not deserving of affirmative initiatives (Crenshaw, Gotanda, Peller & Thomas, 1995; Delgado, 1992; Lynn & Adams 2002; Darling-Hammond, 1998; Ladson-Billings & Tate, 1995).

The Role of Courts in Resegregation

The issue of educational equality requires a broader analytical lens that considers unconscious bias in societal structures that thwart meaningful reform (Bell, 1980a, 1980b, 2000; Darling-Hammond, 1998; Delgado, 1992; Gotanda, Peller & Thomas, 1995; Ladson-Billings & Tate, 1995) Segregation, whether voluntary or forced, is a structural barrier to educational equality. The biased structure of the educational system is in part due to a combination of judicial, legislative and executive action but the judiciary has had the most immediate impact on levels of segregation and desegregation policy. The judiciary has been at the center of desegregation both in the formulation of law and the shaping of desegregation policy in individual districts. Legal segregation was challenged in district courts and finally ended by the Supreme Court in the controversial Brown v. Board of Education in 1954. In the decisions that followed, District Courts were called on to manage the content and implementation of desegregation. However, recent court decisions described in Chapter two evidence judicial
retreat from desegregation enforcement. This section describes the impact of district court desegregation outcomes on school segregation and student achievement at both the aggregate and the individual level.

Data compiled by the Civil Rights Project show that the national percentage of students attending racially isolated schools across the nation rises and falls with Supreme Court decisions that expand or hinder desegregation (Lee & Orfield, 2007; Orfield & Lee, 2004). In 1968, the Supreme Court in Green v. County School Board of New Kent County declared an affirmative duty to desegregate and outlined six areas in which schools must prove themselves unitary. In the two decades following the Green decision, levels of racial isolation for Black and Hispanic students decreased substantially. The national percentage of Black and Hispanic students attending racially isolated schools dropped from 74% in 1968 to 66% in 1988. This drop occurred despite a simultaneous increase in the number of minority students in the population. In the late 1980s and early 1990s, the Supreme Court issued a series of decisions reviewed in Chapter 2 that marked a retreat from desegregation. In 1991, the Supreme Court in Oklahoma v. Dowell, (498 U.S. 237[1991]) handed down a verdict allowing districts to terminate desegregation orders despite evidence that the standards set forth in previous decisions had not been met. In the ten years that followed this decision, levels of segregation increased so that some regions were segregated at levels equal to those in the early 1970s. The percentage of students attending minority schools rose from 56% in 1988 to 69% in 2001.

Though it is true the number of minority students in the population has substantially increased since 1968, this demographic trend alone cannot account for the growing levels of racial isolation in schools. According to the Mumford report on racial isolation released in 2004, the level of segregation in public schools during the 1989-1990 school year was lower than the
level of residential segregation for the same year. Using the DI as a measure of segregation, Logan and his colleagues compared the level of school segregation in the top metropolitan areas of the country to the corresponding levels of residential segregation. In 27 of the 59 top metropolitan areas of the country, school segregation increased by 10 points while the corresponding levels of neighborhood integration declined. The report concluded that “increased school segregation in these cases did not result from changes in where children lived. It was caused by changes in policies that once worked effectively to reduce school segregation, but that were reversed in the 1990s” (p. 5).

Three examples from North Carolina, Florida, and Ohio illustrate the immediate impact of judicial decisions releasing districts from desegregation orders on a school district’s level of integration. By 1991, the Charlotte-Mecklenberg school district in North Carolina had integrated the public school district so successfully that only 4% of the district’s minority students attended a school that was racially identifiable. In 2001, the district court in the Western District of North Carolina granted unitary status to the district and released the Charlotte-Mecklenberg school district from all prior desegregation orders. By the 2003-2004 school year, the percentage of minority students attending racially isolated schools rose from 13 to 58%. Within this same time frame, the test score gap between urban and suburban districts on the North Carolina accountability tests increased by 10% (Kumberger & Palarday, 2005; Mickelson, 2005).

Researchers report similar experiences in Florida (Borman, Eitle, Micheal, & Eitle, 2004). By 1990, only 4% of minority students in Florida were attending racially identifiable schools. A series of district court rulings in the late 1980s, however, released most of Florida’s school districts from their longstanding desegregation orders (U.S. v. Board of Education of St. Lucia, Florida, 1997; Smiley v. Blevins, 1991; Mannings v. Hillsborough City, FL, 1998). By
2001, 41% of Florida’s minority students were attending schools in which 90 percent or more of the student population was minority. Indeed, six of the seven largest districts were segregated at levels higher than in 1972.

In 1976, the District Court in the Northern Ohio ordered a desegregation plan for the Cleveland, Ohio city schools (Reed v. Rhodes). In 1996, the same court released the district from the bussing requirements laid out in the original desegregation order. In 2001, the desegregation order was removed entirely. The Exposure Index in the elementary schools rose from 38 in the 1989-90 school year to 71 in the 1999-2000 school year. The rise in school segregation could not be explained by residential segregation as the level of neighborhood segregation declined from 84 to 75 during the same time period (Logan, 2002).

This evidence of increasing levels of segregation in response to judicial outcomes at both the local and national level illustrates the integral role of the judiciary in desegregation policy and implementation. The role of the federal district courts has been largely unexplored. The following research questions guided this study in the examination of the role of federal district courts in desegregation.

Research Questions

The following questions guided the study:

1. What legal and non-legal variables in the litigation process predict a pro-desegregation outcome?

2. How did the pattern of litigation change among three Judicial Eras?
   a) Judicial Era I: 1954-1974
c) Judicial Era III: 1992-2004

3. How did the pattern of litigation vary by Region?
   a) South
   b) Border
   c) Northcentral
   d) Northeast
   e) West

4. Based on current judicial trends, what can be said about the future of desegregation policy?

Summary

This chapter provided the background for this study by describing the current levels of segregation in public schools and the accompanying educational disparities. The impact of judicial decisions on levels of segregation was illustrated at both the national and district levels. This was followed by an articulation of the research questions. Chapter II reviews the evolution of desegregation law and the body of research on factors that affect judicial outcomes.

Definition of Terms

**Amicus curiae** – “Friend of the Court” brief filed by parties who have an interest in the litigation without being a named litigant.

**Compensatory damages**—relief awarded by a court to reimburse the injured party only for the actual loss incurred; not punitive.

**De jure segregation**—the assignment of students to public schools and within public schools with regard to race.
De facto segregation—separation of the races that exists but is not the result of state law or the actions of its agents.

Desegregation—the principle that government-imposed segregation of the races in public education is fundamentally unconstitutional and must be eradicated.

Extralegal model—theoretical framework of judicial behavior that assumes justices’ decisions are influenced by cues from the litigation process that trigger attitudinal responses. Also called the “attitudinal model.”

Extremely segregated school-- a school in which 90% of the student body is of one race/ethnicity.

Federal District Courts—The name of one of the courts of the United States. It is held by a judge, called the district judge. There are 94 Federal District Courts in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. All District Court judges are appointed for life by the President with the advice and consent of the Senate. There are 649 judges.

Legal model—theoretical framework of judicial behavior that assumes justices’ decisions are constrained by legal parameters.

Legal precedent—preceding instance or cases that may serve as an example for or justification in subsequent cases.

Litigation cues—various parts of the litigation process that can influence outcomes such as lawyers, defendants, plaintiffs, other participants, characteristics of the participants, etc…

Majority-minority school—a school with a student population that is greater than 50% minority
Minority—a term for people in a predominantly Caucasian country who are not Caucasian, including African-Americans, Asians, indigenous Americans (Indians) and other people supposedly "of color."

No majority of minority—the principle that no school could have a majority of its enrollment comprised of minority-race students.

Pairings—a desegregation strategy that takes two segregated schools in one district and assigns all students in the lower grades to one school and all students in higher grades the other.

Per curiam opinion—an opinion of the court where the individual author is not identified; distinguishes the opinion of the whole court from the opinion of an individual judge.

Procedural law—that part of the law which prescribes the method for enforcing rights or obtaining redress for violations.

Race—an arbitrary classification of modern humans, sometimes, esp. formerly, based on any or a combination of various physical characteristics, as skin color, facial form, or eye shape, and now frequently based on such genetic markers as blood groups.

Racially isolated school—a school in which more than 75% of the student body is of one race or ethnicity.

Regions:

Border—Kentucky, Maryland, Missouri, Delaware, Oklahoma, West Virginia, District of Columbia

South—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.

North Central—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin


**Remand**—to send back to a trial court with orders to conduct limited new hearings, an entirely new trial, or to take some further action.

**Resegregation**—the segregation of a public schools by race after legal actions to desegregate.

**Schools of concentrated poverty**—schools in which 40% of the students receive free or reduced lunch.

**Schools of high poverty** —a school in which 75% or more of the student population is on free or reduced lunch.

**Segregated school**—a school in which 50% of the student body is of one race/ethnicity.

**Separate but equal**—a principle engendered in the legal notion that the Constitution did not prohibit racial classifications; the separation of the races was permitted as long as the separate facilities essentially were equal, though no requirement existed for identical facilities.

**Substantive law**—the part of the law that creates, defines, or regulates rights.

**Unitary status**—legal recognition of a disestablished dual school system.

**Stare decisis**—a principle of discipline self-imposed on the judiciary. It doesn’t prevent the overruling of precedents, but it puts a heavy burden on the party seeking to have precedent overruled.

**State courts**—a judicial body with jurisdiction over the state law matters
CHAPTER II  
REVIEW OF LITERATURE

This chapter reviews the body of literature on desegregation law and factors that influence judicial outcomes. Section one of the chapter summarizes the history of Supreme Court decisions on desegregation and the socio political context in which these decisions occurred. This section gives a brief synopsis of each desegregation case decided by the Supreme Court and summarizes historical descriptions of the political and social forces shaping desegregation policy by scholars from multiple disciplines (Bell, 1980a, 1980b, 2000; Button, 1989; Cashin, 2004; Delgado, 1992; Dudziak; Kluger, 1975; Ogletree, 1984, Morris, 1999; Peltason, 1961, Rosenberg, 2004; Sarrat, 1996; Wilkinson, 1979). Section two describes how desegregation changed the very nature of the litigation process and created a new area of public law litigation that is more vulnerable to external influences than traditional adversarial case law. The last section reviews the body of research related to factors that influence judicial outcomes. This is a broad section that begins with an explanation of judicial theory, moves on to empirical studies of each level of the judiciary, and ends with studies specific to desegregation case outcomes.

The Evolution of Desegregation Law

The racial gaps in student distribution and achievement described previously persist despite the decades long battle for desegregation in the judicial system. The fight to end legal segregation was won in 1954 with the controversial *Brown v. Board of Education*. A year later the Supreme Court made its implementation decision known as *Brown II* (1955) which urged districts to desegregate with “all deliberate speed.” District Courts were called on to manage the content and implementation of desegregation. In recent years, the dismantling of those
desegregation plans has also been left to district courts. This section describes the evolution of
desegregation law in the context of sociopolitical environment of three Judicial Eras:

- **Judicial Era I**: Cases decided between *Brown* (1954) and *Milliken* (1974) when the
  Supreme Court was aggressive in its approach to desegregation and was backed by
  support in both the executive and legislative branches of government.
- **Judicial Era II**: Cases decided between *Milliken* (1974) and *Dowell* (1991) when the
  Supreme Court was ideologically divided and support from the executive and legislative
  branches waned.
- **Judicial Era III**: Cases decided after *Dowell* when full Supreme Court retreat
  corresponded with an absence of support for desegregation in the executive and
  legislative branches of government.

### Judicial Era I: Courts Enforce Desegregation

Taking advantage of a ripe political climate, the National Association for the
Advancement of Colored People (NAACP) decided to aggressively challenge legal segregation
through the courts by invoking the fourteenth amendment. The strategy was calculated to take
advantage of a philosophical shift in legal thought that made judges more willing to hear these
types of cases (Cashin, 2004; O’Connor & Epstein, 1983; Peltason, 1961). By 1930, the major
legal obstacle was the separate but equal principle established in *Plessy v. Ferguson*. NAACP
lawyers Thurgood Marshall and Nathan Margold began their strategy by first challenging forced
segregation in institutions of higher learning where inequalities would be easier to prove. The
strategy was to emphasize the inequalities in dual systems and force institutions to upgrade the
minority versions thus making it fiscally impossible to maintain two systems. Two pivotal
victories in 1950 set the stage for the legal victory in *Brown v. Board of Education* that would
follow. In *Sweat v. Painter* (1950), the Court declared segregated law schools in Texas unequal and ordered Sweat’s admission to the all-White University of Texas. In, *McLaurin v. Oklahoma* (1950), the Court extended the principle to professional schools.

In 1951, a class action suit was filed in district court against the Board of Education of the City of Topeka, Kansas. The original case included 13 plaintiffs, all of whom had been recruited by the NAACP. By the time the case reached the Supreme Court in 1954, it had combined five cases from four states: Brown itself, *Briggs v. Elliott* (filed in South Carolina), *Davis v. County School Board of Prince Edward County* (filed in Virginia), *Gebhart v. Belton* (filed in Delaware), and *Bolling v. Sharpe* (filed in Washington D.C.). All were NAACP-sponsored cases. Only one of these cases originated from a student protest. The Davis case began when sixteen year old Barbara Rose Johns organized and led a 450-student walkout of Moton High School in Virginia. The Brown case was the eleventh legal challenge to segregation in Kansas.

There was intense internal struggle within the Supreme Court over this issue. Chief Justice Earl Warren, who was committed to the cause of desegregation, had to lobby each justice to forge a consensus on the Court to outlaw segregation (White, 1982). To achieve this elusive consensus, Warren initiated a delicate process of revision that allowed the Court to issue a strong moral declaration without addressing the practicalities and politics of implementation (Kluger, 1975; White, 1982).

The political climate was ripe for the legal challenge to legal segregation (Brownell, 1993; Dudziak, 1988; Stern, 1989). Presidents Truman and Eisenhower supported the end to legal segregation and had urged the Supreme Court to act against racial segregation in the South. Truman was committed to the advancement of civil rights and proposed legislation to eliminate
segregation and discrimination in housing while Eisenhower desegregated the military. Some argue that it was the pressure of external factors more than concern for civil rights that cemented the Brown verdict more than an altruistic concern for civil rights (Bell, 1980b, Dudniak, 1988). The Brown litigation occurred in the post World War II era when the U.S. was concerned with containing communism and spreading democracy. Compounding this concern was the growing threat of domestic unrest as the civil rights movement gained momentum. Critical legal theorist Derrick Bell (1980b) argues that the fortuitously timed convergence of civil rights momentum, litigation opportunities, and concern about the impact of segregation and racial unrest on U.S. foreign policy prompted the legal end of segregation more than a judicial concern for civil rights.

One year after the official end to segregation, the Court made its implementation decision known as Brown II (1955). This decision urged districts to desegregate with “all deliberate speed” and the Court gave local school districts and state officials the responsibility for implementation. District courts were called on to monitor progress. The terms of the decision were vague and no one really quantified “all deliberate speed” in practical terms. Without clear guidelines as to what the Court desired, both the black and white communities developed conflicting sets of expectations. What followed was years of litigation and confusion marked by district federal judges “who wanted neither the distinction nor controversy of being the first to ascertain what was expected of them, and what opinions they should render” (White, 1994, p. 4). It was three years before a single case was clearly decided in favor of a desegregation plaintiff. On October 4, 1957, Chief Judge Shelbourne ruled for the plaintiffs in Wilburn v. Holland. The plaintiff in this case filed action against the city school board to force them to admit Black students to the city high school. The defendant was ordered to begin the new admitting policy during the following school term.
After 14 years of evasive non-compliance by local school authorities and district judges, the Supreme Court clarified in practical terms the process of desegregation. *Green v. County School Board of New Kent County* (1968) struck down the popular “freedom of choice” plans that purported to allow minority students the option to transfer to majority White schools and for the first time established an affirmative duty to desegregate. The Court declared in *Green* that districts must eliminate segregation “root and branch” and identified six areas of school district operation from which segregation must be eliminated: faulty assignment, staff assignment, student assignment, physical facilities, extracurricular activities, transportation, and resource allocation. District courts that were left in charge of monitoring local plans used these factors as a guide for desegregation plans. In later years, these factors would become standards used to determine whether or not a district had achieved unitary status.

The standards set forth in *Green* could not have been enforced without cooperation from the legislative branch (Decat & Dudley, 1989; Halpern, 1995; & Orfield & Eaton, 1996). The Civil Rights Act of 1964 gave the courts the backing needed to enforce segregation. Title VI of the act banned discrimination on the basis of race, color or national origin by any agency that receives federal funding. Title VI also authorized the attorney general to initiate class action lawsuits against recalcitrant school districts. In addition, Title VI also authorized the secretary of Health, Education and Welfare to withhold funds from schools who failed to integrate as per the *Green* standards. Congress followed this with the *Elementary and Secondary Education Act* of 1965, which provided new federal funding for school districts. As Gary Orfield suggests in his study of the 1964 act, federal authorities combined the “stick of Title IV with the carrot of ESEA funds to motivate districts to comply with desegregation orders” (Orfield, 1969, p. 46).”
Even with the new legislation, demographic trends made it difficult for some schools to establish racial balance in districts with homogeneous neighborhoods. The Supreme Court in *Swann v. Charlotte-Mecklenberg Board of Education* (1971) addressed this issue by introducing large scale, proactive remedies as part of the affirmative duty to desegregate. *Swann* effectively struck down racially neutral student assignment plans. In 1960, the Charlotte and Mecklenberg County school systems in North Carolina were consolidated into a single district composed of the urban core and the surrounding suburbs (Mickelson & Ray, 1994). Demographically, the majority of the urban core population was Black while the majority of the suburban population was White. Litigation began in 1965. In 1969, District Judge James McMillan ruled that the school board’s freedom of choice plan had not fulfilled its affirmative duty to desegregate its system and ordered the board to submit a new plan. The new plan, approved in 1974, was a complex combination of strategies that included “pairings”, one-way bussing, and magnet schools. Throughout the 1970s and 1980s, the Charlotte-Mecklenberg system was considered one of the proudest achievements of desegregation (Orfield & Eaton, 1996). By 1975, merely one year after the plan was implemented, the percentage of Black students in any school in the district did not exceed 45%. The plan was reviewed annually so that revisions could be made in response to demographic shifts. As a result, by the 1980s, the district had no more than five schools with a population of more than 52% minority (Mickelson, 2003).

Until this point, most judicial remedies targeted southern school districts where overt laws made segregation easy to identify. In other regions of the country complex school policies, such as the drawing of attendance zones or the construction of schools serving residentially segregated areas, effectively segregated the schools even though no official segregation laws existed (Orfield & Eaton, 1996; Rosenberg, 2004; Wilkerson, 1979). This made successful
litigation much harder in for civil rights lawyers in the North. The breakthrough came with the Supreme Court decision in *Keyes v. Denver School District No. 1* (1973). Under this ruling, school districts were deemed responsible for “neutral” policies that resulted in racial segregation in the school system. In addition, the Keyes decision extended the right of integrated schools to Hispanic students. The Court further added that violations found in any one part of a district would implicate the entire district. The decision was not unanimous and Justice William Rehnquist became the first clear dissenter on school desegregation in the 18 years after *Brown* (Davis, 1984). In his dissenting opinion, Rehnquist called the decision a “drastic extension of Brown” (In Orfield & Eaton, 1996, p. 324).


By 1974, the desegregation alliance among the judicial, executive and legislative branches of government began to fragment. During Lyndon Johnson’s presidency, the federal government vigorously enforced desegregation. Elimination of federal aid to school districts and extensive litigation by Justice Department civil rights lawyers resulted in rapid and dramatic change (Orfield, 1969). The election of President Richard Nixon in 1968 marked a clear reversal in executive approach to desegregation. Nixon ran on a campaign strategy that attacked early bussing policies and other desegregation remedies. Once in office, he pushed for strong congressional action to limit urban desegregation (Dent, 1978, Panetta & Gall, 1971). Following Nixon’s election, H.R. Halderman, his chief of staff, recorded the President’s explicit directives to staff to do as little as possible to enforce desegregation. The following is an excerpt from Halderman’s diary:

Feb. 4…he plans to take on the integration problem directly. Is really concerned about situation in Southern schools and feels we have to take some leadership to try to reverse
Court decisions that have forced integration too far, too fast. Has told Mitchell [Attorney General] to file another case, and keep filing until we get a reversal” (1994, p. 126).

During his tenure, Nixon appointed no less than four Supreme Court justices, including William Rehnquist who, according to a law review analysis, “never voted to uphold a single desegregation plan” (Davis, 1984, p. 288). Rehnquist’s position on desegregation was made clear in a memo he wrote expressing approval for the Plessy “separate but equal” doctrine. The memo quoted in the 1986 Senate Committee on the Judiciary read:

“realize that it is an unpopular and unhumanitarian position, for which I have been excoriated the “liberal colleagues, but I think Plessy v. Ferguson was right and should be reaffirmed (p. 19).

The turnaround in political support for desegregation efforts was followed by a judicial shift in the approach to desegregation law. The first Supreme Court decision retreating from the support of desegregation came in 1974 with the Supreme Court case Milliken v. Bradley (1974). The initial suit filed in district court found both school and government officials responsible for the segregated state of the school districts. District Judge Stephen Roth concluded in his opinion Government actions and inaction at all levels, federal, state and local, have combined, with those private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and maintain the pattern of residential segregation throughout the Detroit metropolitan area” (Milliken v. Bradley, 1971, p.1).

The district court then ordered a citywide desegregation plan but the proposed remedies were found inadequate since the city schools did not have a sufficient non-minority population with which to diversify and achieve appropriate racial balances. The district court then ordered a
metropolitan plan that would include the surrounding suburbs. This plan was held up in the court of appeals.

The case went before the Supreme Court in February, 1974. In a five to four decision, the Court struck down the Detroit metropolitan desegregation plan, finding that school desegregation remedies should not cross the boundaries of individual school districts where there was no evidence of constitutional violations. The decision prohibited such remedies unless the plaintiff could demonstrate that the suburbs or the state took actions that contributed to segregation in the city. Because proving suburban and state liability is often difficult, *Milliken* effectively shut off the option of drawing from heavily White suburbs to integrate city districts with large minority populations (Frankenberg, 2003; Halpern, 1995; Orfield & Eaton, 1996; Rosenberg, 2004). The decision essentially insulated predominantly White suburban school districts from the constitutional imperatives of *Brown*, gave suburban citizens more incentive to create their own separate school districts, and offered White parents in urban districts predominantly White public schools to which they could flee. Detroit’s city school system went from a Black-White ratio of 60/40 in 1967 to 91/4 in 2000 (Rusk, 2003).

Legal theorists note that the legal reasoning used to reach the *Milliken* decision marks a clear shift in Supreme Court ideology from activist to restraintist (Gibson, 1978; Bell, 1980a; Delgado, 1992; Gibson, 1978; Rowland & Carp, 1996). The Court’s ruling in *Milliken* contradicts the legal precedents established in *Green* and *Swann* that residential housing patterns cannot be used to justify segregated schools. As discussed above, these two decisions called for sweeping remedies that went further than removing discriminatory policies by requiring proactive remedies to achieve racially mixed schools. In his dissenting opinion, Justice Marshall argued that the decision was legally and philosophically inconsistent with the Court’s prior
holdings: “Our precedents firmly establish that where, as here, state-imposed segregation has been demonstrated, it becomes the duty of the State to eliminate root and branch all vestiges of discrimination” (Milliken, 1974, p 1205). Milliken established a new principle that no remedy exists for de facto segregation. As the dissenters all pointed out, the district, circuit, and Supreme courts all agreed that the demographic segregation in Detroit was partly a result of government action. The five concurring opinions let the state officials off the hook and set the nation on a path toward resegregation. Justice Marshall’s dissent culminated with the resounding accusation that the reasoning of the majority was guided more by politics than by sound legal principles. The Milliken decision also reflects Nixon’s use of the judicial appointees as a tool to further his own policy objectives as four of the five concurring justices were Nixon appointees.

Many scholars consider Milliken legal saga as the beginning of a retreat from the proactive pursuit of racial balance (Gibson, 1978; Bell, 1980a; Delgado, 1992; Gibson, 1978; Rowland & Carp, 1996). The momentum of past decisions, however, meant that lower courts continued issuing desegregation decisions (McDermott, Bruno, and Varghese, 2002). Orders that had been handed down in the 1960s and early 1970s continued to be enforced using the same tools employed in earlier cases. Major desegregation plans were ordered for Border districts such as Louisville, Kansas City, Missouri, and New Castle County, Delaware. In the North, major orders affected Dayton, Buffalo, Milwaukee, and Cleveland.

Executive and legislative support of desegregation remedies continued to wane. While President Jimmy Carter remained committed to civil rights issues and appointed civil rights officials who supported desegregation, he opposed mandatory bussing. During his administration, Congress severely limited enforcement tools of the courts by prohibiting the use of federal fund cutoff sanctions to enforce civil rights compliance in bussing issues (Orfield &
Carter did not have the opportunity to appoint a Supreme Court justice (Rowland & Carp, 1996). President Ronald Reagan was intensely opposed to mandatory desegregation. During his administration, the Justice Department supported some of the very school districts the department had once prosecuted for intentional segregation. The Department also failed to file any new desegregation lawsuits (Rowland & Carp, 1996). The administration also supported the use of “voluntary” choice plans, strategies that had been rejected by the Green decision. Reagan elevated Rehnquist to Chief Justice. He also appointed numerous lower court justices. By 1995, sixty percent of sitting federal judges had been appointed by Reagan and Bush (Carp & Songer, 1993). This is significant because the lower federal court judges would soon have the power to decide whether a school district was unitary.

Several pivotal decisions were handed down during this era of waning legislative support for desegregation. The district court in *Riddick v. School Board of the City of Norfolk*, in 1975 became the first federal court case that permitted a school district, once declared unitary, to dismantle its desegregation plan and return to local government control. Despite being officially released from its court-mandated desegregation order in 1975, the Norfolk school district continued to use bussing to maintain racial balance in the schools. In 1981, however, the Norfolk school board tired of administering the mandatory transportation plan and developed a new student assignment plan that eliminated bussing. The new plan was unsuccessfully challenged by the parents of Black school children. Civil rights lawyers appealed to the Supreme Court, but the Court refused to hear the case. The unitary declaration in 1975 was held to erase Norfolk’s discriminatory history, thereby allowing the court in the *Riddick* case to evaluate the school board action by a lenient standard. As will be discussed below, decisions that follow in
the early 1990s made it easier for school districts to prove unitary status, thereby paving the way for leniency in future desegregation decisions.

In 1991, the Supreme Court outlined circumstances under which districts could be released from an obligation to maintain desegregated schools. In *Board of Education of Oklahoma City Public Schools v. Dowell* (1991), the Court awarded unitary status to a district that had been under a desegregation order for 12 years. The Court held that once declared unitary a school district was assumed to have repaired the damage caused by segregation and minority students would no longer have the special protection of the Court. The Supreme Court established the standards for unitary in this case but left the application of the more relaxed standard to the lower courts. The decision in the originating district court case, however, has been criticized for being based on flawed logic. In his 1991 decision freeing the Oklahoma City public schools from court oversight, District Judge Luther Bohannon cited the district’s establishment of an Equity Committee in his rationale as insurance that educational equality would be guaranteed. Because Judge Bohannon had refused to hear any new factual evidence, his decision was made without the knowledge that the Equity Committee had been abolished the year before (Orfield & Eaton, 1996). Nonetheless, the case escalated through the appellate courts and culminated in a Supreme Court ruling that changed the course of desegregation policy (Black 2002; Cashin, 2004; Fine, 2000; Morris, 1999; Stern, 1989).

*Judicial Era III 1992-2004: Judicial Return to Local Control*

The Supreme Court decision in *Freeman v. Pitts* (1992) confirmed the Supreme Court’s goal to return matters of education to the local and state authorities—at the expense of integrated schools. In 1992, the Supreme Court once again addressed the issue of de facto segregation. The case originated in Dekalb County, Georgia where demographic shifts made it impossible for
the original desegregation plan to meet the racial balances required by the original order. The Court released the county from its original obligations even though the school had not met the Green standards in the areas of faculty assignment and resources. In its ruling, the Court held that demographic shifts were “inevitable” and that “the demographic makeup of school districts…may undergo rapid change” and cited evidence that “racially stable neighborhoods are not likely to emerge” because of preferences and “private choice” (Pitts, 1992, p. 126). The Court said that it was “beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts (p. 153).” In other words, districts were no longer liable for de facto segregation. Once again, the Court’s legal philosophy in this decision directly contradicted the philosophy in the Brown, Green, Swann and Keyes decisions. If a similar analysis of “natural preferences had been applied by the Court in Brown, desegregation of the South would have never been ordered” (Orfield & Eaton, 1996, p.42).

The Supreme Court decision in Missouri v. Jenkins (1995) was also pivotal in that it established return to local control as a priority of desegregation and equality. In a five to four decision, the Court held that school districts need not show any actual correction of the education harms of segregation before being declared unitary. The Court established rapid restoration of local control as the primary goal in future desegregation cases. The case originated in Missouri where the trial courts found that the State had at one time mandated segregated public schools. The district court also found that neither the state of Missouri nor the Kansas City Missouri School District had fulfilled their obligations to eliminate all vestiges of past discrimination. A desegregation plan mandating a number of instructional improvements was first ordered in 1985.
By 1988, the school district had achieved reasonable levels of integration. However, a substantial increase in the number of minority students in the district made it difficult to maintain racial balances in the schools. Because the *Milliken* decision prevented metropolitan remedies, the district took various measures to improve the Kansas City urban schools to attract non-minority students from suburban districts. Not only did the Supreme Court reject the plan, it went as far as to criticize the plan as an attempt to create magnet schools that would lure students away from the suburban districts (Orfield & Eaton, 1996). The Court declared this effort an attempt at an inter-district remedy that had been prohibited by the *Milliken* case.

The influence of executive policy objectives is apparent in the *Jenkins* decision (Rowland & Carp, 1996). Justice Clarence Thomas was the deciding vote on the case. Thomas, a staunch critic of desegregation, was appointed by Reagan to replace Thurgood Marshall, who launched the desegregation effort. Before being nominated to the Supreme Court, Thomas was employed by President Reagan to begin dismantling enforcement activities in the civil rights office at the Education Department. He was appointed to the Supreme Court by President George H. W. Bush and become the deciding vote of the 1995 *Jenkins* decision. He became a solid supporter of resegregation decisions that reflected the ideology of Reagan and the elder Bush. Justice Thomas was the first member of the Supreme Court to suggest that segregated Black schools might be better for Black students.

The fallout from the *Jenkins* case began almost immediately. Within a year, school districts everywhere were filing suit to take advantage of the new relaxed judicial standards (Orfield & Eaton, 1996). In Denver, a federal judge found its schools sufficiently desegregated and released them declared an affirmative duty to desegregate and outlined six areas in which schools must prove themselves unitary. In the two decades following the *Green* decision, levels
of racial isolation for Black and Hispanic students decreased substantially. In 1968, 74% of the nation’s Black and Hispanic students were attending schools that were racially isolated.

Desegregation and the Creation of Public Law

The battle over segregation through the district courts did more than end legal segregation on paper. Desegregation litigation effectively changed the nature of the litigation process and initiated the use of courts as agents of social reform (Brooks, 1998; Fair, 1981; Horowitz, 1987; Tushnet, 1974). Prior to this period, going to court was the preferred option for large industrial concerns that wanted to slow social reform. The judicial process was much less complex (Bosworth, 2001; Mills, 2002; Parker 2004). Cases involved a single plaintiff and a single defendant arguing over issues that were relatively discrete. The judges’ role was to allow each side to present its case and then rule on a claim of right. Desegregation litigation and the social reform cases that followed changed every element of this process. First, it gave rise to class action suits in which all plaintiffs of a class joined one case. In addition, judges allowed “interested” parties to join controversial cases that had profound effects on the community; thereby creating polycentric cases that added plaintiff and defendant interveners to the mix. The biggest change, however, had to do with the judges’ roles in crafting remedies. In traditional adversarial litigation, the judgment usually involved a material compensation to the injured party. In contrast, desegregation remedies required carefully crafted plans that needed on-going monitoring. Because any number of remedies could be ordered, the judge, rather than any legal principle, was crucial in determining the contours of the remedy (Chayes, 1976). Furthermore, judges had to become political power brokers as state authorities were often parties to cases and had to be coerced into compliance (Tushnet, 1974).
This expanded complexity and duration of litigation forced judges to make value judgments. For instance, the Supreme Court may have ruled that segregation violated the 14th amendment but the lower courts were left to define “segregative intent.” District judges also had to make judgment calls about the relative culpability of discrimination by local districts and state authorities to assign fiscal responsibility. This afforded the district courts an unusual amount of power in shaping the public policy of institutions normally left to state and local authorities.

After the Brown verdict, the number of cases seeking institutional reform rose substantially, creating a new form of litigation now called “public law litigation.” (Brooks, 1998; Fair, 1981; Grossman, 1987).

The creation of public law litigation coincided with a philosophical shift in the conception of law from a neutral science to a social creation infused with society values and goals, which widened the critique of the justice systems to include the influence of non-legal factors. Scholars argue that public law litigation such as desegregation leaves the judge more open to external influences beyond the prima facie facts of the case at hand (Chayes, 1976; Horowitz, 1987 Kairys, 1998). The following section explores the theory and research on the factors that can influence case outcomes when the issues at hand require value judgments.

Research on Factors that Affect Judicial Outcome

In non-juried trials, the unit of analysis is the judge. Unlike jury trials where the judge controls the process and a jury of peers controls the outcome, in non-juried trials a judge or panel of judges controls both the litigation process and outcome;. Therefore, much of what we know about the factors that influence case outcome has been generated by research derived from theories of judicial decision making. The bulk of research on judicial outcomes has been generated by two competing theoretical models of decision-making: legal and attitudinal. More
recently, scholars developed more integrated models of case outcome that acknowledge the simultaneous interaction of legal doctrine and non-legal influences. This section reviews the evolution of judicial theory and the empirical studies on the Supreme Court, district courts, and those specific to desegregation litigation.

**Legal Models of Judicial Behavior**

Early research on case outcome and judicial decision making was shaped by legal formalism, a philosophy of law that dominated legal thought and doctrine in America from the late 1880s to the 1940s. Legal formalism is a conception of law as a science that “transcends the political conflicts of everyday life” (Mills, 2002, p.15). From a legalist perspective, the adjudication process is the objective application of legal doctrine to case facts. Judges are viewed as neutral “interpreters who remain unfettered by social biases and can focus on case facts, precedent and legislative intent” (King, 1998, p.388). Theoretical models of decision making based on legal formalism assume that legal facts and doctrine are the primary determinants of case outcome. Analyses focus on textual extraction to explain the application and development of legal precedent.

Early case studies such as Cushman’s analysis of Supreme Court decisions from 1936 to 1937, reinforced the assertion legal decisions were based solely on legal doctrine (Cushman, 1929, 1938, Corwin, 1924). Articles published during the early part of 1900s summarized references made to legal precedent with no consideration of other possible factors. These early studies failed to overcome criticism that judicial opinions are written with the express purpose of explaining a given decision in the context of legal precedent (Roland & Carp, 1983; Wrightsman, 1999). Rarely would a judge issue an opinion without citing case fact and precedent, regardless of the motivation. Summaries of legal precedent given after a case has been decided do not
allow for the possibility of external motivation for the legal justification as expressed in the written opinion.

Legal models evolved to demonstrate systematically, rather than contextually, that legal facts are the primary determinants of case outcome by isolating areas of law and using legal doctrine in statistical models to predict judicial outcomes (Kort, 1957, Segal, 1984, 1986). Researchers compared the predictive value of legal and non-legal factors in single issue categories of law. For instance, Jeremy Segal (1984) analyzed search and seizure cases from 1962-1981 and concluded that legally relevant facts accounted more strongly for Supreme Court outcomes than did extra legal factors such as the race of the defendant. Tracey George and Lee Epstein’s analysis of death penalty cases from 1972 to 1992 found legal facts to be more predictive of sentence severity than external factors such as a defendant’s race or a judge’s political affiliation. In an analysis of criminal sentencing, Hagan (1974) also concluded that legal facts were more relevant to criminal sentencing than were extra legal factors. However, George and Epstein admit that the post hoc manner in which legal models are constructed may bias results because the variables of interest are chosen after the case has been decided. In effect, the important legal factors are included only because the judges’ written opinions or interview responses say they are important, not because the researcher had a priori knowledge of a variable’s relevance.

Attitudinal Models of Judicial Behavior

The legal realism movement of the 1930s challenged the orthodoxy of legal formalism and widened the scope of inquiry into judicial outcomes. Heavily influenced by the dominance of pragmatism and naturalism in American social thought, legal realism defines law as a body of rules created by men and therefore infused with the values, goals, and perceptions of the society
in which it was created. From this perspective, law is viewed as a product not an abstract, much like curriculum is understood not as an abstract ideal from which we extract material but a product based on the goals and values that society wants perpetuated through the educational process. The scientific ideal of impartiality in legal decision-making is considered unrealistic because “judges, as are all other humans, are influenced by the values and attitudes absorbed from infancy” (Rowland & Carp, 1983, p. 246). Justice Benjamin Cardoza, who served on the Supreme Court from 1932 to 1938, acknowledged that “deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convections, which make the man, whether he be litigant or judge” (1921, p.167). For legal realists, rules are only one of many sources used in the formulation of a legal decision. For instance, in Brown v. Board of Education, the Supreme Court justices rejected the social science research used to formulate the Plessy decision and challenged the “rightness” of the Plessy doctrine rather than adhering to precedent for the sake of consistency (Brooks, 2002). This new conception of law widened the scope of inquiry into case outcome and judicial behavior to include the influence of external, non-legal factors. The first theoretical models that emerged from legal realists were based on the assumption that values were the main determinants of case outcome.

Scholars credit the work of C. Herman Pritchett (1948) with bringing legal realism to the study of judicial decision-making. Pritchett analyzed the voting patterns of Supreme Court justices during Franklin D. Roosevelt’s administration and found that the voting patterns of individual justices and the voting differences between justices were predictable and consistent over time. The Supreme Court is a collegial court so individual votes are based on identical case facts and stimuli. Pritchett’s work suggested a systematic interpretation and response to case
facts and constitutional clauses that varied not by legal standard but by policy preference. The organizing element was assumed to be the inherent attitudes and/or values that individual judges brought with them to the bench. Subsequent investigations sought to operationally define attitudes and then quantify the effect on case outcome.

The predictability of individual justices was further documented by Schubert (1974), who proposed that Supreme Court justices’ votes were a function of their ideological positions on the case at hand and the nature of the case stimulus. Schubert drew from psychometric models in the field of psychology to explore the nature of values in case outcome. Studies followed that tested a host of variables thought to index values such as appointing president, political party affiliation, and local context. Empirical analyses of the Supreme Court have found that appointing president, political party affiliation, and social background variables are strong predictors of voting in Supreme Court justices. For example, Donald Leavitt analyzed the votes of Supreme Court justices between 1941 and 1970 and found that Democrats were more liberal on economic matters than were Republicans. Stuart Nagel’s 1961 analysis of Supreme Court voting patterns found both appointing president and political party identification more strongly related to voting patterns than social background, context, or race. Nagel’s study found that Democratic justices were more liberal in 15 policy areas than were their Republican counterparts, with the differences between Republicans and Democrats statistically significant in nine of those areas. One of the most comprehensive analyses of values and voting patterns was that of C. Neal Tate (1981) who used differences in social and political backgrounds to explain more than 80% of the civil liberalism variance among 25 Supreme Court justices. Empirical analyses have confirmed the link between values and voting patterns in Supreme Court justices (Schubert, 1967, 1954; Ulmer, 1969, Roland & Carp, 1996, Goldman & Sarat, 1978; Leavitt,

Though these analyses made clear that attitudes and/or values were an important part of case outcome, political science and legal scholars acknowledged that attitude alone did not explain all of the variance in judicial outcomes (Gibson, 1978; Wrightsman, 1999; Carp & Rowland, 1983; Parker, 1990; King; 1998; Rowland & Carp 1996). These early studies assumed that the relationship between attitude and behavior was direct, even though the cognitive understanding of attitude was that of an information filter that influenced the cognitive perception and processing of stimuli (Fiske & Taylor, 1991). Political scientist James L. Gibson did much to advance the theory of judicial decision-making by expanding analyses to incorporate the mediating influences of case stimuli and environment. Political scientist James L. Gibson did much to advance the theory of judicial decision-making by expanding analyses to incorporate the mediating influences of case stimuli and environment. A major contribution from Gibson is the understanding that attitudes are related to judges’ perceptions of their role in society. Gibson theorized that judicial outcomes are a function of “what judges want to do and what they think they ought to do” (1978, p.17). The premise role theory is that the behavior of individuals acting within a context is affected by the expectations of the other individuals in the same context. Within the judicial context, there exists a set of normative beliefs (role expectations) about how judges (role occupants) should adjudicate. Each individual in the larger context synthesizes the collective expectations of the group to develop his or her unique role orientation. Therefore, though there is a collective expectation of how judges should apply law, this role is internalized by individuals in a variety of distinctive ways.
Researchers have used a variety of data summary and reduction techniques to construct measures role orientation and to develop typologies (Flango, Wenner, & Wenner, 1975; Galanter, 1973 Gibson, 1981, 1983; Glick & Vines, 1973; Howard, 1977). Typically, the role orientations of judges are operationalized as points on a continuum of judicial activism to restraintism. Activists (also called innovators) see their function as that of promoting the common good through law. Restraintists (also called interpreters) view their function as interpreting legal doctrine and applying it as closely as possible to the case at hand. Researchers assert that role orientations act as normative weights on values and case facts to influence case outcomes. Empirical research on the degree to which role orientations impact outcome is inconsistent. Howard’s (1981) research on the U.S. Court of Appeals was the first study to document a statistical impact of role orientation on actual case outcome. Other studies, however, have failed to replicate Howard’s results (Berry, 1974; Flango, Wenner, & Wenner, 1975; Galanter, Palen, & Thomas, 1979; Gibson, 1981; Glick, 1971; Glick & Vines, 1969.)

Gibson and others, however, others have established an ideological link to judicial role perceptions. Political conservatives tend toward the restraintist end of the role spectrum, while political liberals tend toward the activist end of the spectrum (Bosworth, 2002; Brook, 2002; Gibson, 1981; Howard, 1982; Rosenberg, 1996). However, one’s role orientation at either end of the spectrum does not direct equate to conservative or liberal outcomes. Role orientation affects the process by which one interprets cases and stimuli because role orientations specify which facts are to be considered. For example, restraintist judgments are linked to ideology only to the extent that the “narrow construction of precedents, and statutes favors conservative interests” (Gibson, 1978, p.19). The connection between role orientation and ideology has been used to politicized the terms in the general media. For political science and legal scholars,
however, the terms restraintist and activist are merely used to operationalize a variable and do
connote any negative or positive value to either term.

The research on role orientations did much to augment the knowledge of decision making
as it led to more comprehensive analyses of decision-making that explored the influence of non-
legal factors related to the case outcome. Studies on the non-legal case variables that affect case
outcome have basically followed two lines of inquiry. One is that non-legal factors such a
litigant’s race, may stimulate one’s attitude or bias, which subsequently affects one’s decision.
Following this line of inquiry, scholars have added to the body of research by empirically testing
the influence of variables related to non-legal factors such a litigant characteristics, resources,
and case stimuli.

Studies suggest that judges are biased toward Black litigants in a qualitatively different
way than other protected categories (Wright, 1990; Bell, 1980). Concerns about racial bias are
raised typically in criminal procedure studies. Results are mixed. Some studies (Spohn, et al.,
1981; Hagan, 1974) report strong effects of racial bias in case outcome but others suggest
different factors may be more determinative in predicting outcomes (Pruitt & Wilson, 1983;
Ulmer & Whomson, 1981). In issues of criminal sentencing, Castleberg (1971) reported modest
effects of race on case outcome. Mills’ (2002) study of social security claims found that
socioeconomic status was more predictive of case outcome than race. King’s (1998) analysis of
fair housing cases did not find a statistically significant relationship between race and fair
housing outcomes.

Researchers suggest a judicial bias toward government litigants. Sovereign immunity
shields public officials from liability, indicating a legal preference for protecting state or federal
litigants (Kushner, 105; Schwemm, 1993; Zarembka, 1990; Schwartz, 1986). Judges use
immunity to protect officials when balancing the goals of liability and equal opportunity (Metcalf, 1988). When in doubt, judges refuse to second guess a complex process fraught with multiple layers of public decisions. The tension between deference and intervention is resolved by favoring the government (King, 1998; Songer & Sheehan, 1992; Parker, 2004).

Scholarship on the role of special interest groups in social reform litigation has generated some evidence that the participation of interest groups should be considered in comprehensive models of case outcome. Special interest groups have played a significant role in shaping public policy through successful litigation. The NAACP initiated the use of courts as an agent of social reform when it focused efforts to end enforced segregation on litigation that invoked the 14th amendment. After the success of *Brown v. Board of Education*, a profusion of cases involving institutional reform created a new area of law called “public law litigation.” Today, the majority of Supreme Court cases are associated with a special interest group and lawyers for high profile organizations such as the NAACP and the American Civil Liberties Union (ACLU) enjoy exceptionally high win rates. In fact, the interest group litigation model once associated with liberal causes has now been adopted and refined by conservative groups (Epstein & Rowland, 1991; O’Conner & Eptstein, 1983). Though it is true that special interest group participation affords higher win rates, researchers caution that it is analytically difficult to separate the effects of other variables of the cases in question. For instance, Kobylka (1987) argues that high win rates are due to the fact that groups prioritize requests for representation and only select those cases that are likely to win. Others (Galanter, 1974, Segal, 1984) argue that lawyers for these groups enjoy “repeat player” status which affords them a familiarity with the key players in the system. Repeat players prime the court for their cause by publishing articles justifying their legal claims in prominent law reviews and quoting them in legal briefs. Statistical analyses on the
impact of special interest group participation on case outcome will be discussed below in the section on research specific to district courts.

Integrated Models of Judicial Decision Making

Much of the research described above is derived from two opposing philosophical conceptions of law, legal realism and legal formalism. Scholars testing the relative predicative value of legal versus non-legal factors have produced mixed results. For example, the study by George and Epstein described above applied two models to death penalty cases between 1972 and 1992. Both models had predictive value but the legal model overestimated liberal outcomes while the attitudinal model overestimated conservative outcomes. The authors concluded, therefore, that legal and extra legal frameworks were “codependent and not mutually exclusive” (George & Epstein, 1992, p. 323). They suggested more integrated models of decision-making that considered the interaction among legal and non-legal variables. Other scholars have called for more integrated models that recognize the complex relationship among values, case stimuli, and legal doctrine. In his work on the impact of role perception and case outcome, noted political science scholar James L Gibson (1983) concluded “Judges’ decisions are a function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do” (p.9). There is a tipping point in which the strength of a judge’s personal policy preference is tempered by the legal doctrine specific to each case area. Scholars have demonstrated that when district judges are afforded freedom to interpret legal standards, the effects of ideology and policy preference are stronger (Bell, 1980a, 1980b; Brooks, 2002; Delgado, 1987, Mills, 2002; Rowland & Carp, 1996; Wrightsman, 1999).

Building on Gibson’s theory that judicial attitudes are stimulated by case stimuli and policy preferences but constrained by legal doctrine, political science scholar Kimi King
developed a comprehensive model of judicial outcome for fair housing cases that incorporated both legal and non legal predictors. King (1998) analyzed 350 district court cases on fair housing between 1968 and 1989. The model included eight non-legal variables (litigant status, background, and ideology) and two legal variables (Supreme Court signal and higher authority mandates). Two separate versions of the model were estimated. Estimation using only legal variables correctly classified 53.6% of cases, while the integrated model correctly classified 77% of cases.

Research Specific to District Courts

Though scholars readily acknowledge the impact of district judges on public policy, there is less research on the decision-making process specific to this level of the judiciary. The U.S. district courts represent the basic point of input for the federal judiciary and since the vast majority of their decisions are not appealed, district judges often have the last say about most of the legal issues resolved in federal court (Carp & Stidham, 1998). Most of the research described above was developed in response to Supreme Court voting patterns and is not readily generalizable to district court decision-making. First, the Supreme Court is a collegial court, meaning one case evokes nine votes. The analysis considers different responses to the same set of stimuli. Supreme Court justices’ legal interpretations are applied consistently and predictably over time and can be understood in the context of each judge’s particular belief system and preferences. District court analysis, on the other hand, must consider singular responses to singular cases. There are more than 400 courts and judges in 94 districts in more than 50 states, making district court analyses cumbersome. In their own study of policymaking in federal district courts, Rowland and Carp (1983) acknowledge “the very multiplicity of district courts that makes them so relevant also makes them difficult to analyze” (p. 8).
The role of district courts in the judicial hierarchy differs from that of the Supreme Court and the appellate courts and may mediate the effects of external factors on case outcome. While the role of the Supreme Court is to interpret the constitution, the role of trial judges is to establish facts and fit them to legal standards already established by the appellate courts. Traditional legal approaches to decision-making have assumed that because trial judges are subordinate to appellate courts, they are immune to external influences. The body of empirical evidence, however, suggests that there still exists much room for interpretation and, therefore, bias in the fact finding mission of the district courts. As Rowland and Carp (1996) explain:

The lines between interpretation and fact-finding are often blurred at the trial court level. For example, in our analysis of civil rights decisions it was often clear that legal interpretation was relatively straightforward once evidence had been evaluated. And judges may be more likely to “find” these facts that are consistent with their preferred policy interpretation. Likewise, trial judges have more room to interpret statutes in some cases than others. (p. 146)

The breadth and ambiguity of public law litigation such as desegregation invite personal and ideological bias and give the court wide berth to interpret legal precedent (Bell, 1987; 1992; Brooks, 2002; Delgado, 1987; Kennedy, 1979; Mills, 2002; Minow, 1995). Desegregation litigation in particular has been subject to varying degrees of bias because of ambiguous symbols from appellate courts and the Supreme Court. Following the first two Brown decisions, the Supreme Court deliberately left the specifics of the desegregation remedies to district courts. Even after the Court articulated the Green standards, the acceptable measures of integration and specific remedies (e.g. bussing, redistricting, or transfers) were left to district court judges. Now district court judges can exercise their complete discretion to determine whether a district may be
released from a desegregation order, even when standards enunciated in *Green* have not been met.

Valued-based models described above have been applied at the district court level to assess the role of ideology and social background in district court outcomes. Descriptive analyses of voting patterns in district court justices show that there are consistent differences between Democratic appointees and Republican appointees in the level of support for certain types of legal claims. This is not surprising as historical analyses reveal that every president from Nixon on has weighed heavily the political orientation of their judicial nominees (Schmidhauser; Goldman; Rowland & Carp, 1983; 1996.). The ideological congruence is reflected in judicial behavior. For example, federal judges appointed by Carter are six times more likely to support a woman’s right to abortion than are judges appointed by presidents Bush and Reagan (Biker, 1982). However, empirical analyses testing the predictive value of ideology as represented by political party affiliation or appointing president in judicial outcomes are inconsistent. Thomas Walker (1974) examined 1,177 randomly selected civil rights decisions and found no correlation between appointing president or political party affiliation and case outcome. Dolbeare (1968) analyzed partisan influence on voting behavior of district judges in 20 urban areas and found that political party affiliation was not a statistically significant predictor of case outcome. Recent studies, however, covering longer time periods, yield different results. Rowland and Carp (1991) analyzed 45,826 district court decisions between 1933 and 1987 by judges appointed by Reagan, Carter, and Bush in 23 legal categories. Results showed that Carter nominees are more liberal than Bush or Reagan appointees on issues of racial minority discrimination, right to privacy, and government regulation. These results confirmed their earlier analysis (1983) of district court decisions handed down between 1969 and 1976. Stidham and Carp’s comparison of Democratic
and Republican nominees (1988) also showed that Republican appointees were consistently less supportive of civil rights claims than were their Democratic counterparts for cases filed between 1977 and 1985. Furthermore, of all the Republican appointees, those appointed by Reagan are consistently more conservative on issues of civil liberties than any other democratic or republican nominee (Rowland & Carp, 1983; Rowland & Carp, 1996; Stidham & Carp, 1988, Rowland, Carp, & Stidham, 1984; Sheldon, 1999). This is a result of Reagan’s express commitment to place conservative judges on the bench. Not only did he succeed in doing so, he made of point of selecting younger judges for the purpose of prolonging his judicial legacy. King’s(1998) analysis of fair housing cases did not reveal a statistically significant effect between case outcome and the ideology of a judge’s appointing president. Re-estimating the model with a dummy variable for each of the presidents, however, revealed a statistically significant relationship between outcomes that expanded fair housing rights and judges appointed by Lyndon B. Johnson.

Because district courts are local entities, research on this level has explored the contextual effects of cases on judicial decisions. The assumption is that district court judges have strong ties with the state or region in which their courts are located. Results among studies of different categories of law yield different results. Biker’s (1982) research on the propensity for Carter nominees to support abortion show the effects of appointing president are more pronounced in the North than in the South. Stidham and Carp’s (1988) analysis of Reagan and Carter appointees, however, did not vary by region. Richardson and Vines (1970) examined all reported civil liberties cases in the third, fifth, and eighth circuit courts between 1956 and 1961 were inconclusive. Other studies of the lower appellate courts, however, show correlations
between region and case outcome across various case categories (Songer & Gunn, 1972; Carp & Wheeler, 1972).

Building on research on the impact of non-legal variables on Supreme Court outcomes, scholars have explored the predictive value if non-legal variables on case outcome at the district court level. As described above, case variables such as litigant attributes, characteristics of legal representation, and participation by high profile organizations such as the NAACP can impact case outcome. One of the most scrutinized variables related to litigant status is that of race and ethnicity, usually in relation to criminal sentencing and civil rights claims. Again, the results are inconsistent. Though studies at the Supreme Court level show no effect of race on outcome, some studies of the lower courts show effects of race in employment discrimination, and social security claims (Mills, 2002). King’s (1998) analysis of fair housing litigation found no relationship between race of the defendant and case outcome. In addition to race, there is a growing body of evidence that indicates government litigants are more likely to prevail in district court cases (Songer & Sheehan, 1992; Rowland & Todd, 1991). King (1998) found statistically significant effects for all levels of government and fair housing case outcomes. According to King, cases litigated by the Department of Justice are four times more likely to win as compared to the other variables. Judges tend to protect federal entities because of the key role that courts play in protecting the federal-state relationship. Wendy Parker (2003) in a qualitative study of district court opinions on desegregation decisions between 1992 and 2002 found that district court judges cited commitment to federalism as a deciding factor in granting unitary status to school districts.

The role of special interest groups in social reform has generated some analyses of the impact of interest group participation on case outcome. As described above, special interest
groups can impact social policy by litigating, generating publicity, and setting the Supreme Court agenda by filing amicus curiae briefs on certiorari which helps set the agenda (Caldeira & Wright, 1988). High win rates among high profile special interest groups leads to the assumption that these groups are invincible. Early research (Galanter, 1974; Wanner, 1974) showed modest correlations between non-profit participation and case outcome. Olson’s (1990) analysis of nonprofit participation in district courts of Minnesota suggests that the only advantage of non-profit participation comes from an increase in the access to courts and not from any interaction of judicial process. Others have argued that the influence of special interest groups comes from greater resources and familiarity with the court system and its key players (Scanlon, 1984; Wasby, 1986; Clark, 1989). Epstein and Rowland tried to control for these effects in their 1991 assessment of district court cases involving employment discrimination, death penalty, and religion. This study matched analogous cases that were tried in the same year by the same judges. Analysis of a data set of 40 matched pairs showed no difference in the win rates of cases tried by special interest groups and those tried by private clients. King’s (1998) study found that the participation of a non-profit group reduces the probability of success, although King cautions that this might be due in part to limited nonprofit participation in fair housing cases (24%). Despite the lack of empirical analyses, the impact is worthy of further investigation since special interest groups continue to play a significant role in desegregation litigation.

**Research Specific to Desegregation Case Outcomes**

Public law scholars now realize that importance of building a body of research within individual issues (Songer & Haire, 1992; Segal, 1984; Rowland & Todd, 1991; Tate, 1981; Gibson, 1977; Hall & Brace, 1990). Certain constitutional issues are more open to ideological
influence because some issues are more deeply held than others and some areas of case law are more ambiguous and afford the adjudicator more room for interpretation. When there is more room for interpretation, there is more room for the influence of external factors (Wrightsman, 1999; Carp & Rowland, 1983; Parker, 1990; King, 1998; Rowland & Carp 1996).

Legal scholars stress the importance of building a body of research within specific legal issues. The interaction of variables and decision-making in criminal sentencing cases are not directly generalizable to civil liberties cases. Even in the area of civil rights, results may vary among issues such as social security claims and desegregation. For example, although Mills’ (2002) found a statistically significant relationship between a claimant’s socio-economic status, studies on employment discrimination found no link between socioeconomic status and outcome (McCann, 1992). One theory on the discrepancy in outcomes on race is that the strength and consistency of Supreme Court signals vary in different areas of public policy. The Supreme Court may be sending conflicting messages leaving the district courts unsure of legal doctrine. For example, the desegregation decisions by the Supreme Court were sometimes confusing. In Swann, the court established an affirmative duty to desegregate that included bussing across district lines. In the same year, the Court in Milliken refused to allow the Detroit city district to cross district lines into the surrounding suburbs to desegregate the urban districts. And while recent Supreme Court decisions have signaled and end to desegregation efforts, the Supreme Court in Grutter v. Bollinger (2003) upheld the use of racial considerations in university admissions policies to achieve diversity which is cited as both desirable and beneficial. Fair housing cases are subject to scrutiny because of the profusion of fair housing laws and confusion over the appropriate legal standard which leaves cases more open to interpretation. There are between one and twelve federal housing laws that may be alleged in a single complaint. In
addition, fair housing complaints usually involve different levels of government suing one another. Desegregation litigation is analogous in the sense that Supreme Court signals are inconsistent and different levels of government are often suing one another.

Most of the analyses on desegregation law are descriptive, historical, and not quantitative (Yin, 1986; Parker, 2003; Kluger, 2004) Studies by scholars such as Gary Orfield (2007, 2003); Richard Kahlenberg (2002), Mary Dudniak (1988), Derrick Bell (1980); and Richard Kluger (1975, 2004) described patterns of desegregation outcomes in relation to the social and political climate in which decisions occurred. (These works were summarized in the first section of this chapter.) Wendy Parker (2003) analyzed the desegregation outcomes in federal district courts that were handed down between 1992 and 2002 in order to reconceptualize the role of district courts in desegregation litigation. Of the 84 opinions available for analysis, Parker found that more than 70% of judicial outcomes during this period were for the defendant. Parker argues that this unnatural deference to defendants in desegregation cases indicates a reluctance among Federal Judges to prolong desegregation orders even in the case of continued violations. In a qualitative examination of the decisions granting districts unitary status, Parker found that district court judges cited a commitment to federalism as a deciding factor in their decisions. Given the prior research on judges’ role perceptions, Parker might have explored the ideological positions (as measured by appointing president, political party, or regional values) of those judges expressing a shift in priorities to judicial federalism.

There are four predictive analyses specific to desegregation. In 1964, Vines compared the relative influence of various non-legal variables on desegregation case outcome for district court decisions between 1954 and 1962. Vines considered social background variables such as age, education, region, political party, and previous experience in local, state and federal
government positions. Previous experience as a state official was the only statistically significant variable. Vines research only covered the early era of desegregation litigation and did not consider the influence of legal doctrine or higher authority mandates in the form of Supreme Court signals or policy preferences. Giles and Walker (1975) also compared the relative influence of individual background variables (birthplace, education, experience in government office) and the local environment (racial makeup of school, size of school). The study analyzed the relationship between these factors and the level of integration in 151 school districts. The only statistically significant predictor in the analysis was whether or not the judge had attended law school. Francine Sanders (1995) analyzed 132 desegregation cases from 1944-1964 to compare the relative influence of region and legal doctrine. For legal doctrine, Sanders used the introduction of Brown I as evidence of judicial adherences to precedent. Results for this analysis showed that legal doctrine was more influential on case outcome than region. Michael Combs (1986) analyzed the effects of political and legal factors on case outcome in Michigan and Ohio. Combs found that the district justices in these states were less reluctant to interfere with local and state authorities in matters of desegregation remedies while the circuit justices were more willing to pursue aggressive strategies. Combs concluded that the relative isolation of the 6th Circuit from political forces shield courts from pressures felt in other levels of the judiciary and in other parts of the country.

Although Dr. King’s 1998 study was not specific to desegregation, it is worth reviewing in this section as fair housing litigation is legally analogous to desegregation. Both issues concern Civil Rights that are complicated by demographic trends that hinder court ordered racial integration. King analyzed 350 district court cases on fair housing between 1968 and 1989. The model included eight non-legal variables (related to litigant status, background, and ideology)
and two legal variables (Supreme Court signal and higher authority mandates). Two separate
versions of the model were estimated. Estimation using only legal variables correctly classified
53.6% of cases, while the integrated model correctly classified 77% of cases. Of the independent
variables under investigation, the only statistically significant predictors were government
litigants; Supreme Court signal (but in the opposite direction of hypothesis); and the political
party of judges’ appointing presidents. Defendants’ race as a predictor variable was not
statistically significant.

Summary

The chapter reviewed the evolution of desegregation law as interpreted through Supreme
Court decisions and the socio-political context within which these decisions occurred. Section
two of this chapter examined how desegregation litigation altered the process of adjudication and
created a new area of law called public law. Section three reviewed the research on factors that
influence judicial outcomes beginning with judicial theory and ending with empirical studies
specific to desegregation litigation.
CHAPTER III

PROCEDURES AND METHODOLOGY

The purpose of this study was to identify the factors in the litigation process that predict a pro-desegregation outcome. In addition, this study examined the pattern of litigation over the course of five decades in order to assess the future of integrated public schools. This chapter reviews the specific methodology procedures used in analyzing the data. The chapter is divided into five sections. Section 1 reviews the selection of cases and construction of the database. Section 2 reviews the instrument used to collect the data and the variables selected for analysis. Section 3 focuses on the statistical procedures selected for the quantitative analysis addressed in Research Question 1: What variables in the litigation process are most predictive of a pro-desegregation outcome? Section 4 discusses the descriptive techniques used to illustrate the pattern of litigation across the specified dimensions of Research Questions 2, How did the pattern of litigation change among three Judicial Eras?; RQ 3, How did the pattern of litigation vary by Region?; and RQ 4, Based on current judicial trends, what can be said about the future of desegregation policy? Section 5 discusses the limitations of the study.

Case Selection and Database Construction

The data for this study were taken from all desegregation cases filed in U.S. Federal District Court between May 17, 1954 (Brown v. Board of Education) and May 17, 2004, the 50th anniversary of the Brown decision. The cases were drawn from the Westlaw legal database which contains the published opinions from circuit, state, district, and Supreme Court case outcomes in the United States as well as unpublished oral opinions offered by the justices. The initial search using the search string “SCHOOL OR EDUCAT! W/10 DISCRIMINAT! OR INTEGRAT! OR DESEGREGAT! OR SEGREGAT! & DATE (BEF DEC 31 1976 & AFT
DEC 31 1975)” produced 4,775 results. Each case was examined to determine its relevancy to desegregation. Cases concerning the Fair Housing Act, Fair Employment Act, or voting rights were excluded as these are considered separate legal issues that are distinct from desegregation. Each published opinion of the remaining 1,089 cases was read in its entirety. Variables of interest were then recorded on a codesheet (Appendix A), which was revised several times to reflect changes in the theoretical model, as described in section two. Dr. Kimi King and her colleague, Dr. Amy White, participated in the initial data collection process since data collected for this study were used in the replication of King’s study on the relative influence of legal and non-legal factors in civil rights outcomes (King, 1998). To ensure interrater reliability among the author, Dr. King and Dr. White, any case with a questionable outcome was flagged and discussed among all three researchers. Since 246 of the final cases were coded by Drs. King and White, a subsample of the articles (n=109, 10%) was coded by all three raters to assess interrater consistency. The percentage of perfect agreement between raters was computed for each of the coded variables and ranged from 93% to 100% agreement.

Instrumentation and Variables

A codesheet (Appendix A) was initially created using King’s fair housing study (King, 1998) and the body of literature on desegregation litigation, then revised as coding progressed. The codesheet was then used to transfer information on each case to an EXCEL spreadsheet. Each codesheet was given an observation number that corresponds to the case record in the spreadsheet. The following information related to each case was recorded and entered into the database as nominal data:

**Date** of the court decision

**Federal Supplement identification number**
Federal District in which the case was decided

City, State, and Region

Plaintiffs and Defendants

Ruling—the judges ruling was recorded in detail and then coded as “Case Outcome.” Decisions that expanded or protected desegregation were coded as “1”; decisions that were anti-desegregation were coded as “0.” For cases in which the outcome was not a clear victory for either side, the outcome was coded as “.5.” These cases were excluded from the analysis.

Based on the review of literature described in Chapter 2, the following variables related to legal and non-legal factors in the litigation process that influence case outcomes were recorded and coded as follows:

Non-Legal Factors Related to Litigant Status:

Government Intervention:

O=no government intervention

1=State government intervention as plaintiff

2=State government intervention as defendant

3=Federal government intervention as plaintiff

4=Federal government intervention as defendant

Special Interest Group—There were only three non-profit special interest groups that participated as litigants in the body of litigation included in this study: the National Association for the Advancement of Colored People (NAACP), Mexican American Legal Defense Fund (MALDEF), and the American Civil Liberties Union (ACLU). This variable was coded and recorded as “0”=no participation and “1”=participation as
litigant. The name of the participating special interest group was recorded as a nominal variable in the database. In addition, participation by any special interest group whether local or national, by filing an amicus brief was also recorded for possible future analysis.

*Non-legal Factors Related to Context:*

**Region**-- Cases were coded by one of five regions:

- **South (coded as 0)**—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia
- **Border (coded as 1)**—Kentucky, Maryland, Missouri, Delaware, Oklahoma, West Virginia, District of Columbia
- **North Central (coded as 2)**—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin

**District**—There are 94 Federal judicial districts. Each district was recorded and “dummy codes” were employed for the future statistical analysis.

*Non-legal Factors Related to Ideology:

**Appointing President**—The application of this variable as a non-legal factor represents one divergence from the King study that positioned appointing president as a signal from a higher authority mandate much like a signal from the Supreme Court. Scholars, however, point to the fact that carrying out a policy directive from one’s appointing president is a manifestation of policy preferences that are steeped in ideology. Scholars
make clear that the use of the judiciary to further a presidential agenda is a clear
departure from the legal formalist conception of law as a value-free science. This is
especially true in the case of desegregation which is highly politicized. As described in
Chapter 2, Presidents Nixon and Reagan chose judicial nominees with anti-desegregation
policies in mind. The president who appointed the judge issuing each case outcome was
recorded and “dummy codes” were again employed for the statistical analysis. Judges in
this dataset were appointed by one of the following:

Woodrow Wilson: WW
William G. Harding: WGH
Calvin Coolidge: CC
Herbert Hoover: HH
Franklin D. Roosevelt: FDR
Harry S. Truman: HST
Dwight D. Eisenhower: DDE
John F. Kennedy: JFK
Lyndon B. Johnson: LBJ
Richard M. Nixon: RMN
Gerald R. Ford: GRF
Jimmy E. Carter: JEC
William J. Clinton: WJC
Ronald W. Reagan: RWR
George H. Bush: GHB

Judicial Ideology
0=Democrat
1=Republican
2=Other

Judicial Background—The following information background variables related to
parochial values were recorded and entered into the database:

Law School (“0”=did not attend; “1”=did attend)
If attended law school outside own district. (“0”=no; “1”=yes)
If attended law school different from undergraduate school (“0”=no; “1”=yes)

Judicial Era—Three distinct periods of judicial support for desegregation have been
identified. Cases were coded according to the judicial era in which decisions occurred:

Judicial Era I: May 17, 1954-July 25, 1974 (coded as 0)—The period between
Brown v. Board of Education and Milliken v. Bradley in which the courts at all
levels expressed support for desegregation efforts. The judicial level of support
was accompanied by structural support from the executive and legislative
branches of government.

Judicial Era II: July 26, 1974-January 15, 1991 (coded as 1)—The period
between Milliken v. Bradley and Oklahoma v. Dowell in which the Supreme Court
sent inconsistent signals regarding desegregationam executive support waned, and
legislative support remained steady.

Judicial Era III: January 16, 1991-2004 (coded as 2)—The period after Dowell
in which the Supreme Court retreated from support of active desegregation and
there is no structural support from the executive and legislative branches of
government.
Legal Factors:

Supreme Court Signal—the only legal variable selected for analysis was whether or not the most recent Supreme Court decision was anti or pro-desegregation. This variable was coded as “1” for yes and “0” for no.

Research Questions 2 and 3 seek to identify patterns and trends that inform the future of judicial approach to desegregation policy. Information gleaned from each case was first recorded in text form, then later sorted by categories, and finally coded for statistical comparisons during the codesheet revision process. At certain points in the coding process (after 100 cases or 10 years of cases) the notes were reviewed and discussed to make sure the codesheet captured all pertinent information specifically related to desegregation litigation.

Case Category—The judge’s ruling for each case was recorded in detail on the codesheet. This information was later used to categorize 44 types of desegregation cases filed during the period of analysis (see Appendix C).

Case Outcome—Anything unusual about a particular case or case outcome was noted as each opinion was read. These were evaluated at the end of each decade of litigation to detect emerging patterns. These patterns of case outcome were eventually coded as follows:

0=Defendant win that was pro-desegregation
1=Defendant win that was anti-desegregation
2=Plaintiff win that was pro-desegregation
3=Plaintiff win that was anti-desegregation

Judicial Panel—Sometimes district court cases are decided by a panel of three judges.
**Judge presiding in home district**—Evidence suggests that judges who are presiding over cases outside of their home districts are less susceptible to community pressures and threats of violence. Qualitative analyses reveal this was especially true in the first two decades of desegregation litigation when desegregation remedies met with extreme resistance that often erupted into violence.

**Decisions published as Per Curiam**—Sometimes opinions handed down by a panel of three were authored as a group, or per curium, so that no individual judge was responsible on paper for unpopular decisions. Again, this was common in the early decades of litigation when judges feared repercussions for unpopular desegregation remedies.

In addition to the information described above, information about the lawyers representing each litigant was recorded and entered into the database. The inclusion of this information was based on research suggesting that in some districts, the number of lawyers representing a litigant may affect case outcome. In addition, some suggest that in some districts, the use of out of town law firms is an advantage, while in others it is a liability. However, the information published on Westlaw regarding legal counsel for each litigant was inconsistent and difficult to confirm. I could not be sure that the variable was accurately represented.

**Statistical Procedures**

To answer Research Question 1, “What factors in the litigation process predict a pro-desegregation outcome”, logistic regression was used to analyze the predictive value of the independent variables. The dependent variable was measured according to whether the court
decision was pro-desegregation (coded as “1” for yes and “0” for no). A pro-desegregation outcome was defined as a decision that initiated or expanded desegregation. For cases in which the outcome was not a clear victory for either side, the outcome was coded as “.5”. These cases were excluded from the analysis. Eighteen independent variables related to litigant status, higher authority mandates, and case stimuli were selected based on the body of research on judicial outcomes reviewed in Chapter Two. These variables were as follows:

*Non-Legal variables:*

**Government intervention as defendant or plaintiff**

**Special Interest Group**—participation as a litigant

**Region**—there were five levels of the region variable:

- Region 0 (South)
- Region 1 (Border)
- Region 2 (North Central)
- Region 3 (West)
- Region 4 (Northeast)

**Judicial Era**—there were three levels of this variable:

- May 17, 1954-July 25, 1974 (0)
- July 26, 1974-January 15, 1991 (1)
- January 16, 1991-2004 (2)

**Appointing President**—there were nine levels of this variable:

**OTHER:** Cases in which there were an insufficient number or observations were collapsed into one variable labeled “other”, these included cases coded for WW (n=1), CC (n=5), HH (n=3)
RMN and GRF: There were not enough cases coded as GRF (n=10) to serve as a stand-alone variable. Therefore, cases decided by judges appointed by President Gerald Ford (GFR) were collapsed with those cases decided by judges appointed by President Richard Nixon (RMN) as Ford served as Nixon’s Vice President and succeeded Nixon as president after Nixon’s impeachment.

JEC and WJC: There were not enough cases coded as WJC (n=11) to serve as a stand-alone variable. Therefore, cases decided by judges appointed by President William Clinton (WJC) were collapsed with those cases decided by judges appointed by President Jimmy Carter (JEC) as both were ideologically similar in their approach to desegregation policy. Both Presidents Carter and Clinton supported civil rights but opposed mandatory bussing. Neither supported new litigation by the Department of Justice.

RWR and GHB: There were not enough cases coded as GHB (n=7) to serve as a stand alone variable. Therefore, cases decided by judges appointed by President George H. Bush (GHB) were collapsed with those cases decided by judges appointed by President Ronald Reagan (JEC) as both were ideologically similar in their approach to desegregation policy.
Judge’s Political Party

0 = Democrat
1 = Republican
2 = Other

Judicial Background

Whether or not attended law school
Law school attended out of home state
Presiding in home district

Legal variables:

Most Recent Supreme Court Signal

Categorical variables with two levels may be directly entered as predictor or predicted variables in a multiple regression model. However, categorical variable with more than two levels were transformed into variables each with two levels. The process of creating dichotomous variables from categorical variables is called dummy coding. Three of the independent variables listed above, Region, Judicial Era, and Appointing President, were categorical with multiple levels and binary dummy coding was employed for the logistic regression analysis.

Binary logistic regression is a form of regression that is appropriate for analyses in which a single dependent variable is dichotomous (Huck, 2000). The dependent variable in this study is dichotomous meaning there are only two choices for outcome—“pro” or “anti” desegregation (coded as “0” and “1”, respectively). Similar to other types of regression, binary logistic regression specifies the effect that a particular independent variable (e.g., region) has on a dependent variable while controlling for the other independent variables (Huck, 2000). Unlike
linear regression, however, logistic regression calculates changes in the log odds of the dependent variable and not changes in the dependent variable itself. Logistic regression does not assume a linear relationship between the independent variable(s) and the dependent variable, does not require normally distributed variables, and does not assume homoscedasticity. However, logistic regression does require that observations be independent.

In logistic regression, the relationship between the predictor and the predicted values is assumed to be nonlinear. The analysis yields a sigmoidal curve that never falls below zero or reaches above one. Therefore, the predicted values obtained using the logistic model can always be interpreted as probabilities that given observations belong to each of the two groups. The formula for the logistic regression curve is as follows:

\[ P = \frac{e^{a + bX}}{1 + e^{a + bX}} \]

Where \( P \) is the probability of a 1 (the proportion of 1s, the mean of \( Y \)), \( e \) is the base of the natural logarithm, and \( a \) and \( b \) are parameters of the model. The value of \( a \) yields \( P \) when \( X \) is zero, and \( b \) adjusts how quickly the probability changes with changing \( X \) a single unit.

The logistic regression coefficients (\( b_i \)), also called unstandardized logistic regression coefficients, log odds ratios, logit coefficients, effect coefficients, or parameter estimates, estimate the change in the log odds of the dependent variable for any one unit increase in the independent variable. (These values are analogous to b coefficients in OLS regression.) The \( b \) coefficients vary between plus and minus infinity. A positive or negative \( b \) coefficient indicates whether or not the variable increases (positive) or decreases (negative) the logit of the dependent variable. To better interpret the logistic regression coefficients of the predictor variables, the probabilities are converted to odds. The odds of membership in the target group (in this case, a pro-desegregation outcome) are equal to the probability of membership in the target group
divided by the probability of membership in the other group. The odds tell one how much more likely it is that an observation is a member of the target group than the other group. However, because of the non-linear nature of the logistic curve, the unit changes in the dependent variable are not equal from one observation to another. Therefore, the odds ratio is computed to help interpret the individual contributions of the predictor variables. The odds ratio estimates the change in the odds of membership in the target group for a one-unit increase in the predictor. An odds ratio is computed by using the regression coefficient of the predictor variable as the exponent of \( e \). For example, if the predictor coefficient for a given analysis is \( b_1=2.69 \), the odds ratio equals \( e^{2.69} \), or 14.73. Therefore, the odds of belonging to the target membership group are 14.73 times greater for every one unit increase in the predictor variable under observation.

In linear regression analysis, the model coefficients minimize the sum of the squared differences of the data points to the regression line. In logistic regression, the maximum likelihood method (MLE) is used to calculate the logit coefficients. MLE seeks to maximize the likelihood that observed values of the dependent variable may be predicted from the observed values of the independent variables. It is an iterative algorithm which starts with an initial arbitrary estimate of what the logit coefficients should be then determines the direction and size change in the logit coefficients which will increase the log likelihood. After this initial estimate, the residuals are tested and re-estimated with an improved function. The process is repeated until the LL does not change significantly. (McCullagh & Nelder, 1989).

There is another statistic, \( G \), used to judge the overall fit of a model that compares the fit of the model with and without the predictor(s). This is similar to the change in \( R^2 \) when another variable has been added to the equation. But here, the deviance is expected to decrease because the degree of error in prediction decreases as we add another variable. To do this, we compare
the deviance with just the intercept \((-2LL_{null} \text{ referring to } -2LL \text{ of the constant-only model})\) to the deviance when the new predictor or predictors have been added \((-2LL_k \text{ referring to } -2LL \text{ of the model that has } k \text{ number of predictors})\). The difference between these two deviance values is often referred to as \(G\) for goodness of fit.

\[
G = \chi^2 = D_{null} - D_k \\
= -2LL_{null} - (-2LL_k)
\]

where \(D_{null}\) is the deviance for the constant only model an \(D_k\) is the deviance for the model containing \(k\) number of predictors.

One can look up the significance of this test in a chi-square table using \(df\) equal to the number of predictors added to the model (but the test is also provided in the printout). The chi-square values reported in the SPSS printout compare the \(-2LL\) for the model tested to the \(-2LL\) for a model with just the constant (i.e., no predictors), but one could use the difference in deviance values to compare any to logistic models.

A classification table summarizes the fit between the actual and predicted group memberships. The overall percentage of cases correctly classified yields the percentage accuracy in classification \(PAC\) defined by the number of accurately classified cases divided by the total number of cases classified. The positive and negative predictive values of the model are computed. The positive predictive value is the percentage of observations that the model classifies as belonging to the target group that are actually in the target group. Negative predictive value is the percentage of individuals that the model classifies in the other group that are actually in the other group. These values help assess the usefulness of the model for making actual decisions.
Descriptive Statistics

For the second and third research questions, descriptive statistics were used to examine patterns of desegregation litigation and outcomes over five decades. As described above, case types and case rulings were first noted in detail, categorized, and then coded for analyses. Based on prior empirical analyses (Combs, 1986; Giles & Walker, 1975; Sanders, 1995; Richardson & Vines, 1964), and descriptive analyses (Bell, 1980; Dudziack, 1988; Cherminsky, 2002; Kahlenberg 2002; Laosa, 2002; Paker, 2004) the data were sorted by the following:

- Percentage of Pro-Desegregation outcomes by Judicial Era and by region
- Percentage of Defendant wins by Judicial Era and by region
- Number of Unitary Petitions Filed and Granted by Judicial Era and Region
- Number of Cases Filed by Judicial Era and by Region.

Unusual Case Outcomes

- When Defendants Win and Outcome is Pro-Desegregation
- When Plaintiffs Win and Outcome is Anti-Desegregation.

Limitation of the Study

The study, though guided by literature and grounded theory is a much broader look at the statistical issues in desegregation than the political science community has previously examined. By approaching this issue in relationship to the changing demographics of schools, many variables (e.g. lawyers, judge background, amicus support) were excluded from this data set that might otherwise be of interest in a political science setting. It is also crucial to realize that this study analyzes factors that are not static. The courts, the presidents and even the litigants in the same named case change significantly over time. Every effort was made to make the study robust.
(examination via three different judicial eras, addition of the variable for the Supreme Court signal, et cetera).

Another limitation is that of the degradation of available perspectives over time. While tracking outside party involvement, it is often difficult to determine these party affiliations. For instance, though early cases adequately identified lawyers known to work for the NAACP, etc, as time progressed, often this becomes more difficult to track. Though the NAACP was contacted about their legal representatives during later desegregation litigation, they were not willing to provide that information. Other parties, MALDEF, for instance, are not always indicated, but were tracked across time whenever it was possible to determine association with such groups.

Summary

This chapter described the selection and coding of variables in the study and the statistical procedures used to analyze the data. A logistic regression model with 12 independent predictor variables was used to answer Research Question 1. Descriptive statistics were used to identify trends and patterns in desegregation to answer Research Questions 2 and 3. The following chapter reviews the results of the study in terms of the three research questions.
CHAPTER IV
RESULTS AND DISCUSSION

The purpose of this study was to examine the judicial processes specific to desegregation litigation that impact desegregation policy. To assess those processes, this study examined the body of desegregation litigation in federal district courts from 1954 to 2004 in order to identify the legal and non-legal variables in the litigation process which best predict a pro-desegregation outcome and to identify judicial trends that impact desegregation policy. The following questions guided the study:

1. What legal and non-legal variables in the litigation process predict a pro-desegregation outcome?
2. How did the pattern of litigation change among three Judicial Eras?
3. How did the pattern of litigation vary by Region?
4. Based on current judicial trends, what can be said about the future of desegregation policy?

Section 1 of this chapter reviews the sample of data used in the analysis. Section 2 presents the finding of the logistic regression analysis employed to answer Research Question 1. Section 3 of this chapter presents the findings of the descriptive analyses used to answer Research Question 2. The discussion of results in relation to previous research is presented after the research findings for each of the two research questions.

Data Sample

The data for this study were taken from all desegregation cases filed in U.S. federal district cases between May 17, 1954 (Brown v. Board of Education) and May 17, 2004, the 50th anniversary of the Brown decision. The cases were drawn from the Westlaw legal database.
which contains the published opinions from circuit, state, district, and Supreme Court case outcomes in the United States as well as unpublished oral opinions offered by the justices. The initial search produced 4,775 results. Each case was examined to determine its relevancy to desegregation. Cases concerning the Fair Housing Act, Fair Employment Act, or voting rights were excluded as these cases are considered legally distinct from desegregation. This left 1,089 desegregation cases that were read and coded for variables of interest. After eliminating cases for which there was no clear outcome for either plaintiff or defendant (n=97), 988 cases remained for analysis.

Research Question 1

In order to answer Research Question 1, “What legal and non-legal variables in the litigation process predict a pro-desegregation outcome?” logistic regression was employed to analyze the predictive value of 21 independent variables. The dependent variable was measured according to whether the court decision was pro-desegregation (coded as “1” for yes and “0” for no). As explained above, cases in which there was no clear outcome were excluded from the analysis (n=97). Cases involving procedural issues (e.g. attorney fees, petitions to intervene, filing changes to paperwork) were excluded from the analysis as I could not verify that procedural outcomes were not affected by the outcomes of the original substantive case (n=207). Five cases were removed due to missing data. This left 726 cases available for logistic regression analysis. The null hypothesis for the overall model is stated as follows:

Hypothesis 1

Ho1: None of the predictor variables in the overall model affect the log odds of a pro-desegregation outcome.
The overall model was statistically significant at the $p<.05$ alpha level ($X^2=37.3$, 20df) and this null hypothesis was rejected. This result indicated that at least one of the predictor variables was related to the log odds of a pro-desegregation outcome at the $p<.05$ level of statistical significance. The percent accuracy in classification (PAC) of the model was 62.5%. The positive predictive value of the model was 84%, while the negative predictive value of the model was 32.7%. The null hypotheses statements and subsequent tests for each of the independent predictor variables in the model are as follows:

Sub Hypothesis 1A

$H_01A$: Supreme Court Signal has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant ($p=.183$) at the $p<.05$ level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1B

$H_01B$: Judicial Era 1 (1975-1991) has no effect on the log odds of a pro-desegregation outcome as compared to Judicial Era 0 (1954-1974).

The test statistic for this hypothesis was not statistically significant ($p=.215$) at the $p<.05$ level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1C

$H_01C$: Judicial Era 2 (1992-2004) has no effect on the log odds of pro-desegregation outcome as compared to Judicial Era 0 (1954-1974).

The test statistic for this hypothesis was not statistically significant ($p=.631$) at the $p<.05$ level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1D
Ho1D: Federal Government Participation as Defendant has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant (p=.424) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1E

Ho1E: State Government Participation as Defendant has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant (p=.410) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1F

Ho1F: Federal Government Participation as Plaintiff has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was statistically significant (p=.004) at the p<.05 level and the null hypothesis for this variable was rejected. The odds ratio of Federal Government participation to pro-desegregation outcomes was 1.827. The logit coefficient for this variable was .602.

Sub Hypothesis 1G

Ho1G: Region 1 (Border) no effect on the log odds of a pro-desegregation outcome as compared to Region 0 (South).

The test statistic for this hypothesis was not statistically significant (p=.434) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1H
Ho1H: Region 2 (North Central) no effect on the log odds of a pro-desegregation outcome as compared to Region 0 (South).

The test statistic for this hypothesis was not statistically significant (p=.421) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1I

Ho1I: Region 3 (West) no effect on the log odds of a pro-desegregation outcome as compared to Region 0 (South).

The test statistic for this hypothesis was statistically significant (p=.037) at the p<.05 level and the null hypothesis for this variable was rejected. The odds ratio Region 3 (West) to pro-desegregation outcomes was 2.610. The logit coefficient for this variable was .959.

Sub Hypothesis 1J

Ho1J: Region 4 (Northeast) has no effect on the log odds of a pro-desegregation outcome as compared to Region 0 (South).

The test statistic for this hypothesis was statistically significant (p=.016) at the p<.05 level and the null hypothesis for this variable was rejected. The odds ratio of Federal Government participation to pro-desegregation outcomes was 1.942. The logit coefficient for this variable was .664.

Sub Hypothesis 1K

Ho1K: Judicial Party has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant (p=.455) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1L
Ho1L: Appointing President DDE (Eisenhower) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.229) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1M

Ho1M: Appointing President FDR (Roosevelt) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.898) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1N

Ho1N: Appointing President HST (Truman) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.542) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1O

Ho1O: Appointing President JEC (Carter) and WJC (Clinton) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.498) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1P

Ho1P: Appointing President JFK (Kennedy) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.
The test statistic for this hypothesis was not statistically significant (p=.970) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1Q

Ho1Q: Appointing President LBJ (Johnson) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.604) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1R

Ho1R: Appointing President RMN (Nixon) and GRF (Ford) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.581) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1S

Ho1S: Appointing President RWR (Reagan) and GHB (Bush) has no effect on the log odds of a pro-desegregation outcome as compared to Appointing President OTHER.

The test statistic for this hypothesis was not statistically significant (p=.524) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1T

Ho1T: Law School Out of State has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant (p=.192) at the p<.05 level and the null hypothesis for this variable could not be rejected.

Sub Hypothesis 1U
Ho1U: Presiding in Home District has no effect on the log odds of a pro-desegregation outcome.

The test statistic for this hypothesis was not statistically significant ($p=.384$) at the $p<.05$ level and the null hypothesis for this variable could not be rejected.

The logistic regression output for each of the predictor variables in the model is summarized in Table 1. Of the 21 predictor variables in the model, only three were statistically significant ($p<.05$): Federal Government as a Plaintiff, Region 3, and Region 4. The $\beta$ weights in the last column represent the odds ratio of each independent variable with the dependent variable (pro-desegregation outcome). This means that for every unit increase in the Federal Government as Plaintiff, the log odds of a pro-desegregation outcome increases by 1.827; for every unit increase in the Region 3 variable, the log odds of a pro-desegregation outcome increases by 2.610; and for every unit increase in the Region 4 variable, the log odds of a pro-desegregation outcome increases by 1.942.

Table 1

For Entire Sample: Variables in the Equation

<table>
<thead>
<tr>
<th>Predictors</th>
<th>$\beta$</th>
<th>S.E.</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Exp($\beta$)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Litigant Status</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Gov Plaintiff</td>
<td>.602</td>
<td>.209</td>
<td>8.340</td>
<td>1</td>
<td>.004</td>
<td>1.827</td>
</tr>
<tr>
<td>Federal Gov Defendant</td>
<td>.291</td>
<td>.372</td>
<td>.612</td>
<td>1</td>
<td>.434</td>
<td>1.338</td>
</tr>
<tr>
<td>State Gov Defendant</td>
<td>.138</td>
<td>.168</td>
<td>.678</td>
<td>1</td>
<td>.410</td>
<td>1.149</td>
</tr>
<tr>
<td>Special Interest Group</td>
<td>.194</td>
<td>.162</td>
<td>1.430</td>
<td>1</td>
<td>.232</td>
<td>1.214</td>
</tr>
<tr>
<td><strong>Context</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Region 1</td>
<td>.357</td>
<td>.252</td>
<td>2.013</td>
<td>1</td>
<td>.156</td>
<td>1.429</td>
</tr>
</tbody>
</table>

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Discussion of Logistic Regression Results

Though the overall logistic regression model with 21 predictors was statistically significant (p.=010) the predictive capabilities of model were less than moderate. The model successfully classified 62.5% which just slightly over the number of cases correctly classified
when there are no predictors in the model (58.1%). Furthermore, the false negative rate of the model was quite high (67.3%). However, the classification table is not the only measure of model fit and the Omnibus Chi Square test of statistical significance indicated that at least one of the predictors was statistically significant in the model.

*Legal Factors:* The only legal variable in the model was Most Recent Supreme Court signal which was not a statistically significant (p=.212) predictor of pro-desegregation outcomes. However, it should be noted that the odds ratio for this variable was larger than for any other predictor in the model (3.191). This finding is inconsistent with Sanders (1996) on the impact of Supreme Court signal in desegregation litigation, but is consistent with King’s analysis of fair housing litigation (1998). This finding is also inconsistent with the qualitative analyses of desegregation (described in Chapter 2) that suggest a lower court response to Supreme Court retreat from desegregation. It should be noted, however, that the odds ratio of this predictor was higher (3.191) than the odds ratio any other predictor in the model. It is perhaps the size of the standard error for this predictor (.871) that makes it difficult to achieve statistical significance even with such a large effect size.

*Non-legal Factors:* Of the non-legal variables included in the model, only three were statistically significant (p.<.05). When the federal government is party to a desegregation case as a plaintiff, the log odds of a pro-desegregation increase (B=1.808). This is consistent with the body of research described in Chapter 2 that shows courts favor government litigants. This may be the only variable in the litigation process that may be manipulated to increase pro-desegregation outcomes as there is a significant number of desegregation cases in which the federal government is a party but is not actively litigating. The implications of this are discussed in more detail in chapter 5.
Region 3 (West) and Region 4 (Northeast) were also statistically significant predictors in the model. It is unclear, however, what conclusions may be drawn from this analysis. It could be that because fewer cases were tried in these two regions or that only those cases assured of a winning outcome were pursued. Based on the qualitative research described in Chapter 2, one would expect the Border and South regions to be inversely related to pro-desegregation outcomes at a statistically significant level. However, the statistical analysis did not support this qualitative finding.

The model included non-legal variables that were associated with values and ideology (Judicial Party, Appointing President, Law School out of Home State). Based on the qualitative descriptions of desegregation law one would expect to find a statistically significant relationship between Appointing President and case outcome. This assumption is based on prior historical research that details the executive use of judicial appointments to further policy-making objectives. As described in chapter 1, there is substantial evidence that Presidents Nixon, Reagan, and Bush nominated justices who would further their own policy goals of anti-bussing, neighborhood schools, and local control. Previous research, however, either focused solely on the voting patterns of Supreme Court Justices or described the ideological tendencies judges appointed by different presidents. As yet, no quantitative analysis of district courts has found a statistically significant relationship between appointing president and case outcome.

These results suggest that values and ideology did not bear out. Perhaps the impact of values on behavior is not as direct as this and other models imply. A more sophisticated representation of values that reflects the conception of values as filters that moderate behavior in an imprecise manner is required in order to more accurately assess the impact of values and ideology and values on case outcome.
Research Question 2

For Research Question 2, “How did the pattern of litigation change among three Judicial Eras?”, descriptive statistics were used to identify meaningful patterns in case outcomes among the three Judicial Eras. Out of the 1,089 cases examined, 761 involved substantive legal issues in which there was a clear outcome for the plaintiff or defendants. These cases were examined, coded and sorted by Region, Judicial Era, Case Outcome, and Case Categories. As each case was read and coded, notes were taken to record anything that was unusual in comparison to the cases already read and coded. After each decade of cases was examined, the notes were reviewed and examined to see if the codesheet was capturing all the relevant information on case facts and outcomes. Information from the codesheets was transferred to an EXCEL spreadsheet, then converted to an SPSS data file for sorting and analysis. Table 2 summarizes the pattern of case outcomes by Judicial Eras I, II and III. There are four notable observations: 1) The percentage of pro-desegregation outcomes is lower in cases that occurred in Judicial Era III (38.7%) than in Judicial Eras I and II; 2) The percentage of pro-defendant outcomes for cases in Judicial Era III (65.3%) is higher than in Judicial Eras I and II; 3) The number of unitary cases filed and granted in cases filed in Judicial Era III is four times that of cases filed between 1954 and 1974; and 4) There were only seven new desegregation cases filed after 1991, all were cases in which existing desegregation plans were challenged by non-minority students.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>Unitary</th>
<th>Unitary</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro</td>
<td>Defendant</td>
<td>Petitions</td>
<td>Petitions</td>
</tr>
<tr>
<td>N Deseg</td>
<td>Win Rate</td>
<td>Filed</td>
<td>Granted</td>
</tr>
</tbody>
</table>

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To answer Research Question 3, How did the pattern of litigation vary by Region?, cases involving substantive legal issues with clear outcomes (n=761) were examined, coded and sorted by Region, Judicial Era, Case Outcome, and Case Categories. Table 3 summarizes the pattern of litigation by region. There was a higher proportion of pro-desegregation outcomes in the West (69%) and Northeast Regions (72%) than in other Regions, a trend that was supported by the statistical analysis described previously. Most of the petitions for unitary status were filed and litigated in the Border (n=6) and South Regions (n=18). The defendant win rate does not appear to vary substantially by Region, although the win rate in the Northeast (33.3%) was almost 10% lower than the national average (42.7%).

Table 3

Desegregation Litigation by Region

<table>
<thead>
<tr>
<th></th>
<th>Unitary</th>
<th>Unitary</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954-1974</td>
<td>470</td>
<td>61.5%</td>
<td>40.2%</td>
</tr>
<tr>
<td>Brown-Milliken</td>
<td>(n=61.5)</td>
<td>(n=189)</td>
<td></td>
</tr>
<tr>
<td>1975-1991</td>
<td>221</td>
<td>57.5%</td>
<td>41.2%</td>
</tr>
<tr>
<td>Milliken-Dowell</td>
<td>(n=127)</td>
<td>(n=91)</td>
<td></td>
</tr>
<tr>
<td>1992-2004</td>
<td>75</td>
<td>38.7%</td>
<td>65.3%</td>
</tr>
<tr>
<td>Dowell-2004</td>
<td>(n=29)</td>
<td>(n=49)</td>
<td></td>
</tr>
<tr>
<td>1954-2004</td>
<td>766</td>
<td>58.1%</td>
<td>42.6%</td>
</tr>
<tr>
<td>(n=445)</td>
<td>(n=329)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pro Deseg</td>
<td>Defendant Win Rate</td>
<td>Petitions Filed</td>
</tr>
<tr>
<td>------------</td>
<td>-----------</td>
<td>--------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>South</td>
<td>57.2%</td>
<td>42.6%</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>(n=273)</td>
<td>(n=203)</td>
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</tr>
<tr>
<td>Border</td>
<td>57.7%</td>
<td>44.2%</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>(n=60)</td>
<td>(n=46)</td>
<td></td>
</tr>
<tr>
<td>North Central</td>
<td>53.2%</td>
<td>45.6%</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(n=42)</td>
<td>(n=36)</td>
<td></td>
</tr>
<tr>
<td>Northeast</td>
<td>72.0%</td>
<td>33.3%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>(n=18)</td>
<td>(n=9)</td>
<td></td>
</tr>
<tr>
<td>West</td>
<td>69.0%</td>
<td>42.2%</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>(n=56)</td>
<td>(n=35)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>58.3%</td>
<td>42.7%</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>(n=449)</td>
<td>(n=329)</td>
<td></td>
</tr>
</tbody>
</table>

Research Question 4

There were 44 identified categories of desegregation cases. Cases were examined, coded and sorted by Judicial Era, Region, Case Outcome, and Litigant to detect any pattern in the categories of litigation across these variables. There was no discernible pattern in the types of case won and lost by either plaintiff or defendant in Judicial Eras I and II (1954 -1991). In Judicial Era III (1992-2004), however, most of the cases won by defendants were petitions filed for unitary status. The remaining defendant wins were distributed evenly across case categories.
A clear pattern also emerged in the categories of cases lost by defendants in Judicial Era III. The majority of (78%) Defendant losses fell into one of two categories: a) Defendants suing one another for financial responsibility (n=46); and b) Defendants opposing petitions for unitary status (n=6).

The only noteworthy observation in the pattern in litigation by category was the emergence of pro-defendant outcomes that favored desegregation. Throughout Judicial Eras I and II, cases won by defendants resulted in anti-desegregation outcomes. Defendants represented segregated school districts opposing forced desegregation remedies. In Judicial Era II (1975 -1991) there was one case in which a pro-desegregation outcome was the result of a pro-defendant win. In Judicial Era III, however, there were nine such cases. In eight of these cases, the defending school district was sued by non-minority students challenging the race-based student assignment plans required by the district’s desegregation order. One case concerned the application for a charter school that threatened the racial balances in the district’s schools.

Discussion of Results For Research Questions 2, 3 and 4

Descriptive statistics were used to compare case outcomes by Judicial Era Region, Case Outcome, and Category. The following patterns were identified:

1. The percentage of pro-desegregation outcomes decreased after 1991. The percentage of pro-desegregation outcomes decreases from 61.5% in the period between 1954-1874 to 38.7% in the period between 1992 and 2004. Although this result is interesting, one must be careful about making causal inferences from the observation. The phenomenon could be a function of the decrease in desegregation filed and litigated, or a decrease in the need to sue for desegregation remedies.
2. *The percentage of pro-defendant outcomes increased after 1991.* This is consistent with previous research (Parker, 2003) that interprets an increase in defendant win rates as a sign of judicial deference to defendants in desegregation issues. This is an unnatural outcome in the litigation. According to the cross-selection theory of judicial outcomes, litigation win rates should favor neither plaintiff or defendant but instead should be evenly split so that they converge on a 50/50 outcome as the law becomes clear and known (Eisenberg, 1998). A defendant win rate of 65.3% suggests a judicial deference to the defendant in desegregation cases.

3. *The majority of petitions filed for unitary status are granted.* Eighty-seven percent of the cases filed for unitary status over the dataset were granted. In unitary cases filed after 1991, 93% were granted. In fact, eight petitions for unitary status were granted in the period between 1992 and 2004 even though racial disparities remained in the areas of achievement and student and faculty assignment.

**Summary**

The results of the data analysis were presented in this chapter. Section one reviewed the cases selected for examination. Section two presented the results from the logistic regression analysis. The overall model was statistically significant (*p*<.05). Three of the predictor variables in the model were related to the odds of a pro-desegregation at a statistically significant level (*p*<.05). Section three of this chapter presented the descriptive analyses of the pattern of litigation by Judicial Era, Region, Case Outcome, and Case Category. The following chapter discusses these findings in terms of prior research and suggestions for future research.
CHAPTER V

CONCLUSIONS

The purpose of this study was to examine the judicial processes specific to desegregation litigation that impact desegregation policy. To assess those processes, I examined the body of desegregation litigation in federal district courts from 1954 to 2004 in order to identify the legal and non-legal variables in the litigation process which best predict a pro-desegregation outcome and to identify judicial trends that impact desegregation policy. Chapter I addressed the background of the topic and presented four research questions that guided the study. Chapter II reviewed the body of literature on desegregation and factors that influence case outcomes. Chapter III presented the procedures and methodology employed in the analysis. Chapter IV presented the findings from the statistical analyses employed to answer the research questions. Section 1 of this chapter presents four study conclusions. Section 2 reviews implications for future research. The final section of this chapter reviews the overall implications of this research for educators.

Educational inequality cannot be addressed without considering the issue of resegregation because segregated schools perpetuate systemic inequality. Likewise, re-segregation cannot be addressed without considering the role of district courts because desegregation policy is crafted and enforced through the district courts. Though the Supreme Court issued the landmark decision in Brown, the Court, in its most basic opinion, simply stated that separate was inherently unequal. It was the judges of the district federal courts who were faced with the real work of crafting and monitoring desegregation remedies. They issued over 1,000 substantive and procedural opinion from 1954 to 2004. Although the appellate courts are always an option for a willing and able litigant, most litigation begins and ends in the district courts. These jurists,
guided by different perceptions of their role in interpreting the law, have set desegregation policy for three generations of school-aged children. Based on the results from the qualitative and quantitative results of this study, the following conclusions were drawn about the role of the federal district courts in desegregation policy.

1) The Federal District Courts have not abandoned desegregation

The prevailing assumption in the current body of literature on re-segregation is that the judiciary at all levels has abandoned desegregation and is in the process of reversing desegregation altogether. Examination of Supreme Court decisions on desegregation from 1954 to the present certainly confirms a retreat from desegregation by the Supreme Court. Beginning in 1974 with *Milliken v. Bradley*, the Supreme Court has reversed its legal position on de facto segregation, mandatory bussing, compensatory programs, and standards for unitary status established in *Green* (1968). Several studies detailed in the background section of chapter one demonstrated the impact of individual District Court decisions on levels of segregation in the district schools. The only comprehensive study specific to desegregation at the district court level was Wendy Parkers (2003) qualitative analysis of desegregation decisions handed down between 1992 and 2004. Her study suggests a decline in judicial decision making in desegregation issues, while others interpret individual district experiences as evidence of a judicial retreat from desegregation at the by the district courts.

Neither the qualitative nor the quantitative results of this study bear this out. First, results of the logistic regression analysis do not support this assumption. If the district court outcomes followed a strict adherence to Supreme Court signals, one would expect a strong statistical relationship between Supreme Court signal and case outcome. However, Supreme Court Signal was not a statistically significant predictor of pro-desegregation case outcomes in the logistic
regression model. In addition, examination of the pattern of litigation across three distinct judicial eras failed to confirm this assumption. In this study, the body of litigation was divided into three distinct legal eras based on analyses of Supreme Court desegregation decisions and the corresponding levels of support from the executive and legislative branches of government:

Judicial Era I: Cases decided between *Brown (1954)* and *Milliken (1974)* when the Supreme Court was aggressive in its approach to desegregation and was supported by support in both the executive and legislative branches of government.

Judicial Era II: Cases decided between *Milliken (1974)* and *Dowell (1991)* when the Supreme Court was ideologically divided and support from the executive and legislative branches waned.

Judicial Era III: Cases decided after *Dowell* when Supreme Court issued a series of anti-desegregation decisions and there was no support for desegregation in the executive and legislative branches of government.

Again, if the district court approach to desegregation were to follow the trajectory of the Supreme Court one would expect a significant statistical connection between Judicial Era and case outcome. The hypothesis is that cases decided in Judicial Era I have a higher probability of a pro-desegregation outcome while cases decided in Judicial Era III, when levels of support for desegregation were low, have a lower probability of a favorable outcome. However, Judicial Era was not a statistically significant predictor in the logistic regression model.

Results from the descriptive analysis of the pattern of litigation among Judicial Eras support this conclusion. First, there was no discernible pattern in the category of litigation or outcome of cases for the Judicial Eras I and II (1954-1991). In Judicial Era III (1992-2004), however, a pattern emerges: The percentages of cases won by defendants increased by 10% and
defendants’ petitions for unitary status were almost always granted (93%). Others have interpreted high defendant win rates and increasing numbers of successful petitions for unitary status as evidence of district court retreat from desegregation. However, closer examination of these petitions for unitary status in Judicial Era III reveals that more than 40% were decided by two judges. Table 4 shows that 32% (n=6) of all the unitary petitions in Judicial Era III were filed in the Middle District of Alabama and decided by Judge Myron H. Thompson. In addition, 11% of the total petitions for unitary status decided in the Southern District of Georgia by Judge Berry Avant Edenfield.

Table 4

Summary of Cases Filed for Unitary Status

Substantive and Procedural Cases

<table>
<thead>
<tr>
<th>State</th>
<th>District</th>
<th>Unitary Granted</th>
<th>% of Total</th>
<th>Unitary Granted</th>
<th>Partial Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>MDAL</td>
<td>9</td>
<td>32%</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Arkansas</td>
<td>EDAR</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Colorado</td>
<td>CO</td>
<td></td>
<td>3%</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Delaware</td>
<td>DE</td>
<td>1</td>
<td>3%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>SDFL</td>
<td>2</td>
<td>7%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>SDGA</td>
<td>3</td>
<td>11%</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Kansas</td>
<td>KS</td>
<td>1</td>
<td>3%</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>WDKY</td>
<td>1</td>
<td>3%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Assumptions made about judicial trends based on cases filed for unitary status are based on the judicial processes of 2% of judges presiding over federal district courts. If the cases filed for unitary status in Alabama are removed from the analysis, the percentage of defendant wins drops to 62% (Table 5). If the cases filed for unitary status in Georgia are also removed from the analysis, the percentage of defendant win rates drops to 60%. If all cases involving petitions for unitary status are excluded from the analysis, the percentage of defendant wins drops to 46.2%, which is consistent the defendant win rates across all three Judicial Eras.

Table 5
Defendant Win Rate With and Without Unitary Cases
Substantive Cases Only 1992-2004

<table>
<thead>
<tr>
<th></th>
<th>DWR for all cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWR Total</td>
<td>65.3%</td>
</tr>
<tr>
<td>DWR with Unitary in Alabama Removed</td>
<td>62.3%</td>
</tr>
<tr>
<td>DWR with Unitary in Alabama and Georgia Removed</td>
<td>60.0%</td>
</tr>
<tr>
<td>DWR with All Unitary Cases Removed</td>
<td>46.7%</td>
</tr>
</tbody>
</table>
These results suggest that retreat from desegregation may stem from the Supreme Court and appellate courts and is not yet reflected at the District Court level. Parker’s 2003 analysis of desegregation litigation reported a much higher defendant win rate (91%) in cases examined between 1992 and 2002. This is because Parker included only those District court cases that were held up on appeal. The discrepancy in outcomes suggests the Circuit courts are following Supreme Court lead and are abandoning desegregation efforts while the District courts have continued to support and monitor the desegregation plans crafted in the decades after Brown.

2) Judicial Shift in Values Favors Return to Local Control: Even though the district courts may not have completely abandoned desegregation, the opinions read for this study do reflect a shift in judicial values from civil liberties to the separation of powers principle (also referred to as federalism). As reported in section one of chapter 2, the language of the Supreme Court decision in *Dowell* (1991) gives priority to return of school matters to local and state governments. Some decisions at the district court level have tolerated evidence of lingering discrimination in favor of restoring local control (*Tasby v. Moses*, 2003; *Hoots v. Commonwealth of Pennsylvania*, 2003). Scholars attribute this shift to judges’ collective and individual perceptions of their role(s) as adjudicators (Brooks, 2002; Gibson, 1978, 1983; Rowland, 1983; Schauer, 1988).

Scholars attribute the shift in judicial approach to desegregation at the Supreme Court level to an ideological shift in the role orientation of the Court from activistist (Ginsberg, Stevens) to restraintist (Scalia, Thomas). The prevailing assumption is that this shift has also occurred at the District Court level. However, results from empirical studies are inconclusive and the relationship among ideology, role perception and judicial outcomes has been unexplored. This and other analyses of desegregation litigation lead one to question 1) whether not a judge’s
position on the continuum is fixed; and 2) if said position (e.g. perceived role as a judge) impacts decision-making in a direct manner. Political science scholar James L.Gibson has long argued that judges’ decisions are a function of what they want to do, what they think they ought to do, tempered by what the law lets them do (Gibson, 1978, 1981,1983). Tentative theories of role perception assert that the relative influence of these factors varies according the nature of the issue at hand and external events occurring at the time of the decision. In other words, extenuating circumstances may move one along the continuum of activist to restraintist. Descriptive analyses of desegregation litigation support this assertion (Bell, 1980; Cashin, 2004; Dudziak, 1988; Kahlenberg, 2002). For instance, activism of the District Courts in the early decades of desegregation may have been due to external factor such as:

- Perceived Need. The harms of legal segregation were concrete, egregious, and directly attributable to law.

- Foreign Pressure: The US was trying to spread Democracy and contain Communism.

- Civil Unrest: There was growing pressure from threats of domestic violence as the Civil Rights Movement gained momentum and Black soldiers were returning from WWII to a segregated society.

In the current era of desegregation litigation, the external pressures are somewhat different. First, the perceived need for activism in desegregation matters is not high. Legal apartheid has been overturned and many attribute the current levels of segregation to factors beyond the control of the Courts or Congress. Second, concerns over the pending economic crisis and the war in Iraq have eclipsed Civil Rights issues as national priorities. Educational priorities have also shifted from justice and equality to standards and accountability. It is likely that in this sociopolitical context, judges may feel that the activism required to right an egregious
wrong in the 1960s and 1970s is no longer justified. This is reflected in pattern of litigation in this study. District Court judges are upholding and monitoring existing desegregation orders. These cases were decided at a time when the perceived need for activism was great. New petitions for desegregation remedies, however, are adjudicated from a more restraintist perspective. The same judges who ordered desegregation remedies in the 1970s do not always rule favorably in new cases seeking desegregation remedies. In these cases, judges rule in favor of state local control of educational matters.

As noted previously, the terms used to operationalize role orientations do not imply any value proposition for either term. The terms “activist” and “restraintist” have been used outside of a research context to imply positive or negative political orientation to the nature of judicial decision-making. In this context, however, it simply used to denote opposite ends of a continuum that indexes the types role perceptions held by individual judges.

The implication is that desegregation efforts (and civil rights reform in general) require a different kind of advocacy. In the early decades of desegregation, activists and legal strategists could use the *Plessy* doctrine as a concrete rallying cry to motivate institutional reform through judicial activism. Although this strategy succeeded in overturning legal segregation, it failed to address the hidden bias in American society that hindered the path to equality. Competing goals such as neighborhood schools, improved standards, and accountability, though not overtly racist goals, certainly hinder educational equality and justice as they foster re-segregation (Crenshaw, Gotanda, Peller & Thomas, 1995; Bell, 1980; Darling-Hammond, 1998; Delgado, 1992; Ladson-Billings & Tate, 1995). A refurbished desegregation strategy should re-establish the consequences of segregation and basically publicize the need for judicial participation despite the lack of a concrete law (such as *Plessy*) as a rallying cry for reform. The Civil Rights Project,
described in the introduction to this study, was established to re-ignite civil rights reform by re-setting the national agenda and addresses the hidden bias thwarting traditional reform efforts.

3) **Factors may Increase Pro-Desegregation Outcomes:** The only manipulatable factor in the litigation process that was statistically significant in the logistic regression model was whether or not the federal government was a litigant. Results suggest that cases litigated by the federal government improve the odds of a pro-desegregation outcome. Legal practitioners often study the non-legal factors in the litigation process that might be manipulated in order to improve chances of a favorable outcome (Brooks, 2002; Mills, 2002; Wrightsman, 1999). For example, in juried trials, lawyers make use of predictive legal and psychological research in order to carefully vet potential jurors. In the early days of desegregation litigation, part of the NAACP legal strategy was to “judge shop” and file cases in districts more apt to support pro-desegregation outcomes (Cashin, 2004; Kennedy, 1979). The results of this study, however, suggest that the only litigation factor that may be manipulated to improve desegregation outcomes is to maximize cases in which the federal government is involved as a plaintiff. Of course, the ability to impact this variable is not direct. Students in segregated school districts so not have the option to initiate lawsuits on their own behalf through the Department of Justice (DOJ).

Therefore, inactive cases in which the Federal Government is a plaintiff should be examined for desegregation opportunities and pursued before these districts petition for unitary status. Only 24 of the 70 cases examined in Judicial Era III were cases litigated by the US Government or pursued by the DOJ. However, the DOJ lists over 400 desegregation cases to which the DOJ is a party (Civil Rights Division, 2002). That means that more than 300 cases are either inactive or have been decided without the benefit of published opinions—an unlikely
assumption. The implication for educators and civil rights advocates is that district courts can only work with those cases that are actively pursued. A comprehensive desegregation reform effort should include efforts to improve the structural support for desegregation by targeting the Civil Rights Division of the DOJ through civic participation, lobbying, and legal pressure.

Suggestions for Future Research

The role of ideology, role perception, and judicial approach to desegregation should be explored in further detail. As previously described, political science and legal scholars have assumed a proximate relationship between ideology and role. Empirical analyses of Supreme Court voting patterns support this theory. Scholars have tried to generalize a role theoretic model to the district courts but results at this level were inconclusive and the issue has not pursued. The conventional wisdom, however, among educators and reformers still assumes the role perception of district court judges in desegregation issues is rooted in ideological policy preferences—as demonstrated studies of the Supreme Court. Results of this and other studies suggest that the role perceptions may not be fixed at the district court level. The relationship between a judge’s role perception in relation to desegregation issues should be studied further to quantify the impact, if any, of contextual factors on judicial outcomes. For those concerned with maximizing judicial processes for desegregation, this question is timely since the judicial approach to desegregation may be have shifted regarding new cases filed for desegregation remedies.

Future research should examine the role of the appellate courts in desegregation policy. Previous research has concluded that abnormally high defendant win rates in the last decade of litigation represents a judicial abandonment of desegregation. However, discrepancies between the defendant win rates in this study and those of previous studies mean that a good number of
pro-desegregation outcomes are being overturned at the appellate level. The questions explored regarding district courts in this study should be replicated for litigation in the appellate courts. It could be that the appellate and Supreme Courts are more susceptible to ideological influences and policy preference and are forcing a shift in legal doctrine back down through the District courts. The research reviewed in chapter two supports this hypothesis as most of the research on the impact of non-legal factors was generated by studies of the Appellate Courts. The discrepancy between these levels of the judiciary should be explored.

Figure 1 shows that the evolution of desegregation law through the judiciary is a combination of a top-down, bottom-up process. Statistical models of judicial decision making show that decisions handed down by the Supreme Court are the result of inputs such as legal precedent, ideological values, and external events. However, cases must first proceed through district courts before trial at the Supreme Court level. Therefore, issues such as desegregation bubble up to the Supreme Court from local challenges. The inputs affecting judicial decision-making at this level are similar to those affect Supreme Court decisions but interact in different ways to affect case outcomes. In other words, the models of judicial decision making at the Supreme Court level are not directly generalizable to the district court level. Perhaps further research could clarify the differences in the weights of the inputs at varying levels of the judiciary.
Figure 1: Top-down, Bottom up Evolution of Legal Doctrine

INPUTS:
Values
Ideology
Perceived Need
Demand
Global Events

INPUTS:
Legal Doctrine
Perceived Need
Role Perception
Ideology

OUTPUTS

Desegregation Remedies
Desegregation Precedent

OUTPUTS

INPUTS:
Values
Ideology
Perceived Need
Demand
Global Events

INPUTS:
Legal Doctrine
Perceived Need
Role Perception
Ideology

OUTPUTS

OUTPUTS

1954 Brown
1955 Brown II
1968 Green
1971 Swann
1973 Keyes
1974 Milliken
1977 Milliken II
1991 Dowell
1992 Pitts
1995 Jenkins

Supreme Court

Appellate Courts

District Courts
One surprising finding in this study is that a large number of desegregation cases filed through the Department of Justice that have been inactive for more than a decade. The logistic regression model from this study suggests that cases litigated by the federal government are more likely to result in pro-desegregation outcomes. Therefore, these cases should be examined to find out why they have not been pursued. Perhaps the school districts in question no longer require desegregation remedies. Or perhaps the parties to the cases in question have had no substantive disagreements. In rural districts for example, once dual systems were consolidated and all six areas of structure and curriculum (as per Green) were fully integrated no issues remained for to litigate. In these small districts, expansive strategies such as bussing and redistricting that require court monitoring were not necessary. Once the courts were satisfied that extra-curricular activities, staffing, and class tracking were unitary, further litigation was unnecessary. These cases should be examined to identify possible desegregation opportunities for those districts in danger of re-segregation. These should be activated and pursued before districts appeal for unitary status.

Summary and Conclusions

There is no doubt that despite 50 years of desegregation litigation, public schools in America are still segregated by race and socio-economic status. Segregation, whether forced or voluntary, is a structural barrier to education equality and educational reform most address the reality of segregation to effect meaningful reform. Meaningful educational reform requires a and legal—that work to facilitate or mitigate the goals of reform. Figure 2 is a graphic representation of the factors that impact integration. Each circle represents a key factor in the desegregation and the overlapping area represents effective desegregation. The external factors pressures that push these circles together or pull them apart are a combination of economic, political, and
sociological factors. The judiciary plays a substantial role in the effectiveness of desegregation remedies.

The federal district courts, in particular, play a crucial role in maintaining desegregation remedies. Research reviewed in this study has documented an official retreat from legal desegregation remedies by the Supreme Court. Furthermore, a shift in the prioritization of national values from equity and justice to standards and accountability has subjugated desegregation a primary goal. Although this shift is reflected in the legal doctrine of the Supreme Court, the results of this study suggest that the federal district courts have not yet abandoned the cause of desegregation. This study concludes that the Judiciary can still be a tool for integrating public schools. An effective desegregation strategy should target the Department of Justice to increase structural support for desegregation and to maximize desegregation cases that are currently inactive. By all means, steps should be taken to prevent districts from applying for unitary status.
Observation Number: 
Date: 
F Supp Page: 
State: 
District: 

Plaintiff
Race: 
Fed State Spec Int Group: 
P Intervenors?

Defendant
Race: 
Fed State Spec Int Group: 
D Intervenors

Ruling:

Outcome

Pro Defendant? (0=yes, 1=no)
Pro/Anti Desegregation (0=yes, 1=no, .5=inconclusive)

Per Curium: 
Judge: 
Panel: 

Visiting: (0=yes, 1=no)
Home district: (0=yes, 1=no)

Amicus: Y/N
Group:
Fed Gov State Gov Spec Int Group

Parties:

Race Words: Lawyers
White American Indian Local NonLocal
Caucasion Pacific Asian 
Anglo Indian Plain
Black Pacific Islander Def
Negro
African American
Asian
Hispanic
Latino
American Indian
Indian

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APPENDIX B

CODES FOR CASES
1 = facilities
2 = resources (textbooks/curriculum/)
3 = funding / failure to fund/ capital improvement/funding for bilingual
4 = building new schs/location of schs/closing of schs/improve schs
5 = faculty/staff (hiring/firing/numbers/races)
6 = student assignment / transfer
7 = admissions
8 = challenge legislation statutes policies/systemic litigation
9 = file a plan
10 = unacceptable plan/review/amend plan
11 = busing
12 = speed of action
13 = protection from threats/interference
14 = enforce plan
15 = immediate integration/injunction/enjoin practices
16 = attys/fees/reimbursement
17 = challenge jurisdiction/request 3 judge panel/remove to state jurisdiction
18 = drop/change injunction
19 = failure to obey ruling
20 = freedom of choice challenges
21 = halt integration
22 = unequal protection under civil rts act/seggregative intent
23 = motion to intervene in sch deseg/consolidate litigation/add intervenors
24 = denial of due process
25 = interim agreement which modifies plan / damages
26 = show how still in compliance or violated plan
27 = modify plan & remove deseg order/deseg achieved
28 = need more $ for consent decree/release $ granted under consent decree
29 = accept plan imposed by ct/by party under consent decree/settlement agreement
30 = reopen sch deseg case
31 = accept budget for deseg/release funds to carry out deseg order/provide taxes to carry out
    deseg/can’t rebate taxes for closing schools
32 = judge should recuse self b/c can’t carry out order/judge can’t order parties gagged
33 = sch dist suing insurance co to cover expenses in deseg/insurance co. liable for deseg
34 = stop funding sch deseg order
35 = interdistrict remedy / interdistrict degeg requested
36 = can’t use deseg to prevent hiring white teachers
37 = special master fees requested/ordered
38 = make land available for bldg schs
39 = challenges to magnet schools (formation)
40 = sovereign immunity under 11th A/financial liability
41 = compel discovery
42 = mootness
43 = committee to oversee desegregation disbanded
REFERENCES


Riddick v. School Board of the City of Norfolk, Virginia, 148 F.2d 521 (4th Cir. 1986).


