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# Our Selma Is Here: The Political and Legal Struggle for Educational Equality in Denver, Colorado, and Multiracial Conundrums in American Jurisprudence

Tom I. Romero II[1]

In late October 1968, the Denver Board of Education for School District Number One of the City and County of Denver (the School Board) held its monthly meeting.[2] Like most of its recent meetings, the gathering of the School Board promised to provoke a heated exchange over the efficacy of Superintendent Dr. Robert Gilberts's plan (the Gilberts Plan) to desegregate the district's schools.[3] As a sizeable crowd filed into the auditorium, a large and boisterous group of Chicanos made their presence known.[4] Singing *We Shall Overcome* loudly in Spanish, the "Chicano"[5] attendees occupied several seats near the stage. Not long into the meeting, Rodolfo "Corky" Gonzales, the well-known ex-prize fighter, emerged from the crowd.[6] Gonzales "stepped to the speaker's platform, accompanied by several black-bereted followers," who proceeded to form a semicircle around him.[7] Although Gonzales had been scheduled to make a statement before the School Board later in the evening, he instead used an intermission in the proceedings to give his own impression on the Gilberts Plan.[8]

The president of the School Board immediately demanded that Gonzales step down and ordered the microphone and television cameras shut off.[9] Undeterred, Gonzales pulled out a bullhorn and then proceeded to read a two-page statement demanding, among other things, that any equality of educational opportunity plan include provisions for bilingual education, community control of schools, and a Chicano-based curriculum.[10] According to Gonzales, the Gilberts Plan, which called for limited busing of

minority students, failed on all accounts and by this measure was "misleading, false, facetious and pretentious" to the goal of desegregation.[11]

At the conclusion of his statement, Gonzales declared that integration, particularly the solution of busing, "[is] obviously not a panacea . . . [it] won't solve the problems of Mexican American youth."[12] Gonzales warned that if the Gilberts Plan were instituted "the future may hold the burning of racist books, boycotts of schools, and vacant lots where schools now stand."[13] Then, Gonzales and nearly one hundred Chicano supporters emptied the room, leaving board members Allegra Saunders, A. Edgar Benton, Dr. John Amesse, and Superintendent Robert Gilberts to try to restore order.[14]

The demands made by Gonzales on behalf of Denver's Chicano youth typified the complexities of school integration in cities with racially diverse student populations during the desegregation era. Providing education to a geographically, racially, and ethnically broad student body, the Denver Public School (DPS) system attempted to balance a host of conflicting demands made upon educators, administrators, students, parents, and teachers in the Denver metropolitan area. In 1969, "Negro," "Hispano," and "Anglo" parents sued the DPS Board on behalf of their children because it was unable to respond effectively to many of these challenges.[15] This case, *Keyes v. School District No. 1*, received national attention, becoming the first non-southern school desegregation case heard by the United States Supreme Court.[16]

Significantly, *Keyes* posed a set of questions never before encountered by the Supreme Court. Chief among such questions was how segregation would be determined and integration achieved in a city not split along black and white lines.[17] While non-white and non-black students, parents, and activists like Rodolfo Gonzales struggled for a culturally wide-ranging and racially sophisticated concept of school desegregation, the ultimate inability of the then-current constitutional jurisprudence to articulate a meaningful

understanding of a multiracial student body severely fractured the political and legal efforts to integrate Denver's public schools.

This article analyzes the attempts by Denver's administrators, parents, students, and courts to achieve equality of educational opportunity among a racially diverse student body. Although this struggle is rooted in the revolution catalyzed by *Brown v. Board of Education*,[18] it both predates the *Brown* decision and signifies the extent to which distinctive multiracial tensions and experiences emerged outside of those encountered by courts deciding cases based in the Jim Crow American South.[19] The article begins its discussion in part I with a narrative describing the DPS system's attempt to integrate Chicano students by adopting a philosophy of cultural pluralism in the classroom and in the curriculum in the late 1940s and 1950s. Although at the outset administrators believed that this philosophy would serve as a model for racial relations in Denver's public schools, in time the method proved incapable of diffusing the multiple and divergent color lines taking shape in the city.

Part II addresses the experiences of African American students in the same system during the 1950s and 1960s. In a series of highly contested administrative decisions regarding school boundaries and attendance policies during this time, the DPS system exacerbated the problem of school segregation caused, in part, by residential segregation. As a result, African American parents and students who were dissatisfied with identifiable racial schools in the DPS forced administrators into a grudging acknowledgment of widespread racial inequality in the multiracial school district. However, it was not until 1968 and 1969 that the Denver School Board attempted to respond systematically to the inequality and segregation of its schools.

Part III analyzes a series of school walk outs in the late 1960s by Chicano students, parents, and activists. Although these parents, students, and activists mobilized against discriminatory treatment directed against Chicano students, their protests fundamentally challenged the ability of the DPS to provide equal education for all of its students. Similar to well-

known nonviolent civil rights protests in the American South, the Chicano demand for educational equality turned into a violent and bloody confrontation.[20] Denver's Chicanos declared that their "Selma [was] here,"[21] claiming that educational equality was as essential to the American creed as the civil rights demands of African Americans. However, these students, parents, and activists articulated a much different vision of integration than the ones proposed by many in Denver as well as the nation's white and black communities.

Such issues passionately intersected with the filing of *Keyes* in 1969. As Judge William Doyle of the United States District Court, Colorado, quickly discovered, there were inherent problems in applying the Constitution to populations where the question of "majority" and "minority" were not clear. Part IV of the article examines the legal foreground of school desegregation in the Denver metropolitan area and the jurisprudential resolution of the questions raised by a multiracial student body. The *Keyes* case focused not only on the discriminatory actions of the School Board, but also on the social, economic, and political *place* that Denver's Mexican American community held *vis-à-vis* whites and blacks. To the extent that different racial groups in the city had dissimilar visions of educational opportunity, this section unravels the difficult decisions that the federal courts made in giving meaning to and ultimately collapsing racial differences among Denver's communities.

By 1975, appellate decisions and an amendment to the Colorado Constitution left the future of educational equality in the tri-ethnic DPS system on very uncertain ground, while simultaneously solidifying the clear racial polarization of the city. In a city divided along black, brown, and white lines, the issue of educational and social equity posed complicated and multifaceted questions not envisioned by the court-ordered biracial desegregation strategies applied in the American South. Indeed, as the United States Supreme Court explicitly suggested when it made its decision,

Denver's "tri-ethnic" or, perhaps more accurately, "tri-racial" situation had national implications for a rapidly transforming United States.[22]

## I. THE "DENVER EXPERIMENT": MEXICAN AMERICANS AND CULTURAL PLURALISM IN DENVER'S PUBLIC SCHOOLS

Beginning shortly after the end of the World War II, DPS administrators and educators confronted the issue of how to assimilate a newly diverse ethnic and racial student body. Unlike some metropolitan areas in the American West, the DPS never adopted an official and explicit policy of racial or ethnic segregation of its classrooms, nor did state law legally prescribe such a result.[23] As the shifting boundaries of Denver's diverse populations brought racial tension, especially between Mexican Americans and other racial groups, directly into the area's schools, Denver's demographic transformation in the middle of the twentieth century forced the DPS to confront the meaning of educational equality.[24] As a result, DPS officials, as well as parents and civil rights activists, hoped that a pedagogical practice known as "cultural pluralism" would bring about positive results. According to one proponent of this philosophy,

> modern educators have confirmed the principle that the public schools and the public school curriculum should properly reflect the total culture. Now, we who are cultural pluralists or intercultural educationists, insist that the total culture does not mean <u>only</u> the dominant culture. The total culture embraces every ethnic, racial, or religious group in our midst.[25]

Dubbed by one commentator as the "Denver Experiment," the DPS's early post-World War II cultural pluralism programs highlighted the difficulties of embracing "every ethnic, racial, or religious group" in the public school system.[26]

The DPS's first indication of systemic deficiency came soon after the end of World War II when Denver teachers lobbied the school board for information and material regarding the many groups residing in the city.[27]

These teachers wanted to include in their curriculum a study of the ethnic and racial geography and history of Denver including "which racial groups settled here, where they came from, why they left their previous homes, why they came here, what they found, how they adjusted themselves to the physical and social conditions, and what share each group has had in the building of our city as we know it today."[28] Yet, the recognition of the diversity of Denver's citizenry was not the sole reason behind such curricular changes. Rather, tensions between Mexican American students and other groups in junior high and high school compelled Denver educators to speed the process of "intercultural" exchange and education.[29] As a result, the DPS developed two specific divergent intercultural programs to resolve racial differences and discrimination among these groups.

The first project developed out of a desire by DPS educators to develop an "intergroup" curriculum beginning as early as 1947.[30] One of the outcomes of this work was an effort to develop knowledge about the different "Americans" in the public schools.[31] A group of Denver junior high teachers coordinated the first project in 1951.[32] The teachers, with the support of several principals, school administrators, and community activists, produced the first and only textbook called *The People of Denver: Book One, Spanish-Speaking People*.[33] The book attempted to "set forth pertinent information" about Denver's most recent newcomers through historical narrative, oral testimony, and illustration.[34] From the housing trials and tribulations of the Martinez family to the discriminatory treatment in employment experienced by Victor Joseph, the book personified the ways that many Mexican Americans had been relegated to the lowest rungs of Denver's social order.[35]

The DPS and the Mayor's Commission on Human Relations established the second broader-based program in 1953.[36] This program, called the City-School Project (the Project) attempted to address the high delinquency, truancy, and dropout rates among the city's Spanish American youth.[37] The

goal of the Project was simple: "[a]s the public schools are the nation's time-honored assimilative institution, what is more natural under American customs than that the city and its public schools should work together to bring about the complete integration of Spanish-surnamed citizens."[38]

The Project's strategies to "integrate" the Denver's Mexican American youth ranged from after-school reading programs to health service clinics. Through these efforts, the Project proponents hoped to promote understanding about Denver's Mexican Americans and tolerance among those school and government officials and administrators who came into daily contact with the larger community.[39] As DPS administrators took explicit notice of multiracial differences in the schools, it became evident that the intercultural approach to education attempted by these programs would not be able to overcome these divides.

On the one hand, the Project catalyzed intense and often positive engagements between municipal bureaucrats, parents, students, and community activists.[40] On the other hand, some programs produced and sponsored by Project educators tended to focus on Mexican Americans in negative ways.[41] At the inception of the Project, for instance, one DPS principal made the following observation: "[n]ow that there are more of the Spanish Americans, they feel there is safety in number[s]. . . . Because most of them are not so large and strong as the average Anglo, they feel they have to use clubs, knives, and other weapons."[42] Accordingly, the question of cultural pluralism did not revolve around the issue of how Mexican Americans culturally contributed to the educational process; rather, as one teacher adamantly declared, the question is "how to help these people learn to handle Anglo life and culture effectively."[43]

In 1962, the intercultural approach to the integration of DPS students was dealt a serious blow when the United States Supreme Court struck down a New York school district's decision to allow "nonsectarian" prayer in its schools.[44] Although the decision specifically threatened the nominally related issue of religious plurality in the Denver Public Schools, it also

symbolized a great deal of skepticism about the intercultural approach to integration. For example, one participant in a cultural workshop vividly complained: "[t]o concentrate upon the Spanish community per se is to pose the problem as being only one-sided, and indeed may unreasonably inculcate a general feeling of inferiority by undue emphasis of the assumption that the culture is less desirable and therefore subject to investigation."[45] Though proponents of cultural pluralism anticipated many of the sociological arguments that would be made in relation to school desegregation litigation,[46] its application contributed to a negative perception of Mexican Americans in Denver's public schools as well as in the larger community.[47]

By the mid-1960s, little remained in the DPS's general curriculum regarding the culture, history, and contributions of Denver's largest and most visible minority groups because of a lack of institutional and community support. Instead, as part II shows, growing numbers of black students in the city and their movement across previously impenetrable neighborhood boundaries forced school administrators and educators to revisit the meaning of integration. Ironically, in a school district that previously attempted to integrate its students through intercultural exchange, Denver witnessed an alarming rise in the number of racially segregated and by legal definition, unequal and inferior schools.

## II. BOUNDARIES AND BORDERS: AFRICAN AMERICANS AND NEIGHBORHOOD SCHOOLS

On a warm September afternoon in 1956, several thousand people filled the Denver Auditorium beyond its capacity. Many, if not all, of the people in the audience were delegates to the annual national convention of the National Baptist Church held in Denver, and all had come to hear the Reverend Dr. Martin Luther King Jr. give the keynote address.[48] Dr. King's message centered on the convention's main theme: civil rights and the compelling need for integration not only in the South, but throughout the

United States.[49] The Denver meeting provided Dr. King a perfect opportunity to take integration out of its southern setting. In addressing the convention's participants Dr. King stated that "[t]he cancer of segregation cannot be cured by gradualism. The United States cannot afford to slow up the move toward justice. The very life of this nation and its future position in the world affairs depend upon how we dispose of the matter of racial integration."[50]

Dr. King's message held particular resonance for many parents in Denver's black community. Only a few months earlier, a group of black parents had engaged in a heated conflict over "inferior" schools in the heart of Denver's Five Points Neighborhood with the current Superintendent Kenneth Oberholtzer and the Denver School Board.[51] At the heart of the debates to desegregate Denver's schools was the meaning and maintenance of racial borders erected in Denver since World War II. This section accordingly assesses the contradictory ways that Denverites battled both to shatter and maintain the color line that had been established around their neighborhoods. The resulting inability of the DPS to achieve a meaningful racial balance among African Americans and whites in Denver's Public Schools only worked to polarize racial tensions in the Denver School District and larger metropolis.

The push for racial balance in Denver began in earnest in 1956, when African Americans and other parents forced attention to the stark differences in the school district's junior and senior high schools. Inequality among Denver's various public schools had been a point of contention between DPS officials and parents since the late 1940s. In response to parents' concerns about overcrowding, an aging physical plant, and the emergence of African Americans as a significant portion of the student body, the DPS Board decided to tear down and rebuild a new high school located in the heart of Denver's African American neighborhood in the 1950s.[52]

The hopes of African American parents and the promises made by the DPS Board, however, were quickly dashed. Although the new Manual High School was the newest high school in Denver, parents and students were disappointed when the school opened its doors.[53] Parents soon discovered that the School Board drew the attendance boundary for the school in a manner that reduced racial integration rather than promoted integration.[54] Just as troubling, the School Board left little money for furnishing the school or buying new books. It had a "weak and watered-down curriculum, [and had a] large number of probationary teachers."[55] Moreover, school officials enforced segregation in explicit ways. According to one account, the dean of the girls at Manual High "lectured" and "belittled" "Caucasian, Spanish, or Japanese girl[s] who [were] friendly with a Negro boy . . . [and] on one occasion where the girl resented the 'advice,' [the dean] encouraged the parents to take her to a psychiatrist."[56]

In January 1956, Peter Holme, Assistant Superintendent of the Denver Public Schools, made a proposal to redraw the "optional" and "mandatory" attendance zones for Manual High School and its respective feeder junior high school.[57] Though Holme and other DPS officials noted that the boundary change was a necessary measure to respond to the demographic change in Denver, African American parents and activists believed that the policy was designed to contain the movement of the black community.[58] As a result, African American parents organized to fight the suggested boundary change.[59] One group charged the DPS administration with knowingly segregating Negro and Mexican American students.[60] Instead of accepting Holme's plan, these parents asked the DPS Board and the administration to extend the mandatory attendance zone of predominately African American schools in order to increase their zone's white student population.[61]

In addition to the racial imbalance of these schools, a local citizen's committee was also troubled by differences between the educational curricula of black and white high schools located in adjacent

neighborhoods.[62] At the predominately white high school, students could take college preparatory classes such as Shakespeare, Modern History, Advanced Mathematics, and Latin while students at the largely black high school had remedial and vocational options such as Career Home Economics, Office Practice, and Photography.[63] In the DPS administration's estimation, educational differences in schools were to be expected. According to Superintendent Oberholtzer, curriculum differences were "a matter of student choice" because more students from the white high school were going to college.[64] Such an attitude begged the question from one parent: were fewer students considering college at the predominantly minority schools because they did not want to further their education or because a vocational curriculum, inadequate counseling, and poorly trained teachers led to no other result?[65]

In spite of the administration's opposition to curricular change, the Denver School Board and DPS officials, including Superintendent Oberholtzer, decided to study the attendance proposal submitted by some of the African American parents.[66] This decision, in turn, raised consternation among several white parents in the potentially affected areas.[67] In early spring, Oberholtzer received a petition from some four hundred residents of one white neighborhood warning that its parents would refuse to send their children to the African American high school if they were included in the school's boundaries.[68]

On June 20, 1956, the School Board met and approved Assistant Superintendent Holme's original recommendations to redraw the attendance boundaries that reflected the highly segregated nature of Denver's neighborhoods.[69] In response, LeJean Clark, chair of a citizen's committee organized to fight unequal schools in their East Denver neighborhood, charged that the School Board and its administration had "a designed plan of segregation."[70] Inspired by the language and spirit of *Brown*, decided only two years earlier, Denver parents threatened to sue the School Board

and its administration for unconstitutionally maintaining two separate and unequal schools.[71]

In contrast to the factual situation in *Brown* and its companion cases, discriminatory animus on the part of the DPS Board and its administration was hard to define. Indeed, the DPS often took positions that indicated its administrators' ambivalence about the issue of racial segregation. For example, one Denver Urban League and DPS report studied minority teacher employment in the DPS from 1946 to 1957.[72] The report found that "the number of Negro teachers has increased from five in 1946 to seventy-five regular and eight substitute teachers as of May 1957. Negroes are now teaching in fourteen elementary, two junior high and one senior high school in Denver; in 1946 they taught at only one elementary school . . . . The number of teachers from other minority groups has also increased."[73] Yet, other evidence indicated problems with this policy. Of the black and other minority teachers that the school district hired, almost all were placed in schools with predominately minority student bodies.[74] Also of concern was evidence that many DPS principals "sought the approval of white faculty members before they would place a black teacher in a white school. Some [white] property owners . . . were afraid that [black teachers] and their families might move" into all-white neighborhoods.[75] Such collective data led Denver Urban League Director Sebastian Owens to argue that the segregation of "Negro teachers give[s] some basis to a community feeling" that the DPS used attendance boundaries to mask discriminatory practices.[76]

The neighborhood school policy of hiring minority teachers and the pedagogy of cultural pluralism obscured the legal culpability of the Denver Public Schools, its School Board, and its administration in maintaining segregated and unequal schools.[77] In fact, no other recently litigated school desegregation case presented such seemingly contradictory tendencies on the part of a school board and its administration. Thus, because of the lack of an explicit district policy that compelled segregation, lawyers representing the Denver chapters of the American Civil Liberties Union

(ACLU) and the National Association for the Advancement of Colored People (NAACP), as well as the Denver Urban League decided to forego a legal challenge to bring DPS in compliance with *Brown*.[78] Yet, many continued to believe that the DPS Board and its administration improperly took race into account when making its decisions. As NAACP lawyer Sam Menin noted, "[t]his is a subtle type of discrimination that is difficult to put your finger on, but we know it exists."[79]

The DPS policies through the first half of the 1960s, especially in regard to school boundaries and the maintenance of neighborhood schools, further divided Denverites.[80] The Denver School Board, however, repeatedly affirmed that the racial identity of local students played no part in its decisions.[81] Instead, DPS administrators and officials argued that a school's student body should be strictly anchored to the neighborhoods of which they were a part. According to one school board member, "[w]e don't keep track by race. We put schools where the children are . . . . If we have ghetto schools it's because we have ghettos. The basic answer to this problem is the dispersion of the Negro population . . . the school board is not responsible for neighborhood housing patterns, you are."[82] In the minds of many DPS Board members, the legal mandates of *Brown* compelled such a colorblind approach.[83]

However, continued pressure, including a threatened boycott by African American parents and other concerned civic groups, compelled the School Board to appoint a Special Study Committee on Equality of Education Opportunity (Study Committee) in 1962.[84] Two years later, the Study Committee found that the School Board's actions contributed to segregation, even though there was no official policy to segregate Denver's students.[85] Taken together, the Denver Public Schools contained clusters of minority racial ("Negro") and ethnic ("Spanish-surnamed") groups within the city that made unavailable to these children "the democratic experience of education with members of other race[s] and groups with which they will have to live and compete."[86]

In spite of the report's attempt to distinguish Denver's largest minority groups on the basis of race and ethnicity, it nonetheless found that concentrations of specifically black and Mexican Americans in a neighborhood school system only perpetuated the poor scholastic achievements of minority students.[87] As a result, the Study Committee concluded that Denver's minority groups would "never be able to compete and succeed in accordance with the standards of the dominant urban middle class culture" if the DPS adhered to the status quo.[88]

In response to the Study Committee's report, the DPS adopted a change, but not a repudiation of the neighborhood school concept.[89] The administration "recognized that all children within the School District, regardless of racial or ethnic background, are equally entitled to the benefits of good education and that to secure such benefits the needs and aspirations of all children must be considered" to combat "barriers of prejudice, discrimination, and ignorance."[90] Although the DPS administration argued that it did not intend to abandon the "neighborhood school principle," it hoped to incorporate "changes or adaptations which would result in a more diverse or heterogeneous racial and ethnic school population, for both pupils and school employees.[91] The School Board thus committed the Denver Public Schools in theory, if not in practice, to addressing racial segregation in its schools.[92]

In spite of such actions, however, the DPS Board and its administration continued to keep the district's black and Mexican American students concentrated in certain schools. While DPS bused white students into the city's and the school district's newly annexed areas in southeast and southwest Denver to alleviate school overcrowding, the administration utilized mobile and temporary classroom units to respond to overcrowding in black and Mexican American schools.[93] In such schools, parents and activists derogatorily referred to these mobile units as "Oberholtzer Wagons."[94]

To many, it was becoming clear that DPS needed to respond more actively to the concentration of black and Mexican American students.[95] The choices, however, were not popular. As one news article declared, DPS could educate students in segregated classrooms or it could achieve racial balance by busing.[96] The article stated that many Denver parents, especially the city's whites, found busing repugnant.[97] However, the failure to achieve racial balance in Denver's schools led minority parents to demonstrate at school board meetings and to again threaten a lawsuit against the school district.[98] The Denver School Board "caught between two strong arguments . . . favored study rather than action. They wanted to put the whole question into the hands of a committee to be composed in large part of minority group persons."[99] To appease both sides, in 1966, the DPS ordered limited busing for a few select schools and commissioned another taskforce to study the feasibility of maintaining neighborhood schools in the face of widespread residential segregation.[100]

The Advisory Council on Equality of Educational Opportunity (Advisory Council) was comprised of thirty citizens selected from all facets of the Denver community.[101] Membership was designed to represent the complexity of minority interests and social identities in the Denver area. [102] Perhaps the biggest obstacle faced by the Advisory Council was the "practical considerations involved in efforts to eliminate inequalities of educational opportunity" in a diverse, yet segregated community.[103]

Given the highly divisive and emotional nature of the desegregation debate, the Advisory Council's final report thus attempted to appease all sides. The report of the council first reaffirmed the practicality of neighborhood schools, but recognized that racial and ethnic disparity existed in the school system.[104] The Advisory Council argued that "due consideration must be given to certain basic legal principles and decisions enunciated by" the nation's federal courts.[105] Indeed, the Advisory Council pointed out that "the question now confronting all school boards where such racially imbalanced schools exist in fact is whether there is an affirmative

duty to integrate and to correct racial imbalances. So far, the United States Supreme Court has not ruled directly on this . . . question."[106]

Although the Advisory Council found that jurisprudence and statutory precedent suggested a legal duty to respond to *de facto* segregation, they nevertheless argued that the Colorado Constitution required "the State, its agencies and political subdivisions to be color-blind rather than color-conscious."[107] In "view of the above-stated conflicting legal and constitutional principles," the Advisory Council made several recommendations "to evolve feasible methods of achieving integration and quality education without violating fundamental legal and constitutional doctrines."[108] Consequently, the Advisory Council recommended voluntary busing, intensive compensatory education in black and Mexican American schools, the creation of an educational park in a neighborhood straddling one black and white community, and the establishment of a Cultural Arts Center where all students (one-half day a week) would learn about "the cultural contributions by various ethnic components of our region, including European, Negro, Hispanic, American Indian of the Southwest and Plains regions, [and] other ethnic groups."[109]

The Advisory Council's report called for broad-based programs including voluntary integration, continued use of neighborhood schools, and even revived the idea of cultural pluralism in the curriculum.[110] Nevertheless, the recommendations were harshly criticized.[111] Indeed, Advisory Council member Stephen Knight expressed a scathing critique of the Advisory Council's recommendations in a Minority Report to the larger council's recommendations.[112] The Minority Report articulated a fear that Denver schools would be used as a "forced instrument of integration" and consequently, would not alleviate the housing, employment, government, social, and economic problems of the city's largest minority groups.[113] To further distinguish the multiracial nature of the issue, the Minority Report argued that insufficient attention had been paid to the city's white majority, who, at a personal sacrifice, moved into areas on the basis of neighborhood

schools.[114] The Minority Report warned that if the neighborhood-school concept was undermined through the adoption of the Advisory Council's recommendations, "mainly [w]hite, middle-income" Denverites would leave the city and be replaced by the "in-migration of low-skill, low income, multi-problem families."[115] Although the Minority Report did not mention the race or ethnicity of such supposed problem families, its tone nevertheless suggested a degree of racial polarization over Denver's attempt to achieve equality of educational opportunity.

Despite the Minority Report's scathing review, later in November 1967, Denver citizens voted on a bond issue to implement the Advisory Council's recommendations.[116] However, for the first time since 1938, Denverites, by a margin of three to one, failed to endorse a school bond issue.[117] Notwithstanding the bond vote setback, two DPS Board members introduced Resolution 1490 to the School Board on April 25, 1968. The resolution served as a response to the reality that the "continuation of neighborhood schools has resulted in the concentration of some minority racial and ethnic groups"[118] and required the DPS superintendent to prepare a comprehensive integration plan for the DPS system by September 1968.[119] After a month of acrimonious debate, the DPS Board, by a margin of five to two, voted to adopt the resolution. The School Board then asked DPS's new superintendent, Dr. Robert Gilberts, to devise a plan to implement the School Board's integration policy.[120]

One of the members voting against the resolution, Stephen Knight, author of the Minority Report, again voiced his opposition to forced integration.[121] According to Knight, the DPS Board had been overly influenced by the "pressures of a small group of misdirected people" and its actions were "contrary to the wishes" of Denver's white majority.[122] Despite vocal and strident opposition, Superintendent Gilberts's desegregation plan was enacted through a series of resolutions between January and April of 1969.[123] Shortly after the School Board passed the first of the three resolutions, one angry parent declared: "[a]s of last Monday (the day the

school board began discussing the integration resolution), the value of my home decreased 10 percent."[124] Other parents suggested that they would move away from Denver rather than be bullied by integrationist beatniks and hippies whom they believed had appropriated the School Board.[125]

As such sentiments made clear, school integration signified the extent that racial tension polarized Denver during the 1960s. While the issue appeared split between black and white lines, many Chicano Denverites, the city's largest minority group, had their own ideas about neighborhood schools and integration.

## III. THE CHICANO/A RESPONSE TO INTEGRATION

Seemingly lost in Denver's integration debates was the role that the city's Chicanos would play in both policies. While Mexican Americans were collectively Denver's largest and most impoverished minority group, they did not easily fit into the racial politics of school desegregation and metropolitan growth.[126] As a result, the desegregation debate emerged in public discourse as a black and white issue. However, the DPS's Advisory Council reports made clear that Mexican American students were increasingly concentrated in many substandard Denver schools.[127] As Rodolfo Gonzales's interruption of the DPS Board meeting in 1968 demonstrated, the convergence of interests among the city's non-white groups was not as seamless as many assumed.[128] While Chicano activists, parents, and students knew well the consequences of discrimination and racial inequality, many were highly skeptical about racial balance and busing as a solution.[129]

As a result, Denver's Chicano community articulated a fundamentally different understanding and definition of *integration* in comparison to the general understanding of the term in the black community. This section accordingly analyzes a series of school walkouts by Denver's Chicano students in 1969 to demonstrate a Mexican American vision of equal education. Rather than working to achieve racial balance in the numbers of

minority and non-minority students in Denver schools, Chicanos in the Denver metropolitan area attempted to achieve integration and equality by forcing the school district to come to grips with the unique needs and concerns of Mexican American students.

On February 27, 1969, concerned parents, students, and Chicano activists, including Rodolfo Gonzales and school board member A. Edgar Benton, met with West High School administrators over concerns that social studies teacher Harry B. Shafer allegedly made racist and bigoted remarks to Chicano students.[130] At the meeting, Chicano students and parents confronted Shafer about allegations that he had said, "If you eat Mexican food you'll get stupid and even look like a Mexican . . . Hispanos are stupid because their parents are stupid and their parents were stupid."[131] At the meeting Shafer explained that "he had made the statements but only in an attempt to prompt debate, not as an insult."[132] Despite pleas by Chicano parents and activists that Shafer be immediately dismissed for his actions, school officials instead ordered an investigation into the teacher's conduct.[133] A few days later, Shafer argued that he had been subjected to a kangaroo court when he filed a grievance with the Denver Classroom Teachers Association in order to protect his interests.[134]

Not long after this meeting, Superintendent Gilberts became involved.[135] After interviewing students, parents, and teachers for a week, Gilberts declared that Shafer's actions were not motivated by bias, bigotry, or discrimination.[136] In a letter to Shafer and West High School's administration, Gilberts declared: "It is our judgment that these charges have not been substantiated and do not seem to reflect either Mr. Shafer's philosophy or conduct."[137] Despite being exonerated, Shafer, in a meeting with Gilberts on March 19, asked to be transferred to another school.[138] Angered by the result of Gilberts's findings, Chicano students presented a list of demands to West High School's administration and stated that they would walk out of classes if their demands were not met.[139]

The demands made by Chicano students signified the extent to which they viewed Shafer's conduct as something more systemic than individual bigotry and bias. The students asked not only for Shafer's resignation, but they also pressed the DPS administration to place Mexican Americans at the center of its efforts to eliminate prejudice and bigotry in Denver's public schools.[140] The students demanded the implementation of Chicano culture and history classes and bilingual education programs from kindergarten through high school, the creation of a West High Neighborhood School Board, and a dramatic reduction in class sizes.[141] The ultimate goal was to encourage a reorientation of the curriculum and school structure to emphasize varying perspectives.[142]

On March 20, 1969, Chicano students began to walk out of their classes after DPS officials failed to respond to their demands.[143] The students, along with community supporters, held a rally in a park across the street.[144] Rodolfo Gonzales, in a speech, echoed the demonstrators theme: "The young people demand an equal education, and they're going to get it. These teachers will have to start listening to the demands of our youth."[145] After speeches from several student leaders and Chicano activists, the demonstrators marched to nearby Baker Junior High School where others joined in support.[146] When the demonstrators continued their march back to West High School, the student protesters and Chicano activists encountered several units of the Denver Police Department.[147]

Once the demonstrators began marching up the front steps of West High School, Denver Police "holding riot sticks across their chests . . . started moving the crowd [and] . . . several small struggles broke out. Suddenly, according to witnesses, the air was full of rocks and pop bottles."[148] The Denver Police acted on the authority given to them in a recently legislated Colorado campus disorder law and used mace and physical force to subdue the crowd.[149] At least twenty six people were arrested, two were hospitalized, and several others were injured in the violent confrontation between students, activists, and the police.[150] Afterward, the demonstrators

regrouped, their ranks bolstered by members of the Students for Democratic Society (SDS) from the University of Colorado at Boulder, and protested at City Hall and Denver police headquarters.[151]

The next day, the events of the previous day were repeated. An estimated 1,200 to 1,500 student demonstrators and political activists again congregated at the school and rallied against unequal education and racial discrimination at West High School.[152] One placard held by a demonstrator boldly declared: "Our Selma Is Here."[153] However, Denver's "Selma" reflected a racial complexity and racial coalition that did not exist in efforts to desegregate southern public schools. As the West High School demonstrators supported Chicano studies and bilingual education, many Denver students believed that the culprit preventing true integration was the educational policy that distinguished and segregated the city's Chicano and black students from their white peers.

Consequently, black students from Denver's East and Manual High Schools marched from their schools to West High School in support of the Chicano student demands.[154] One newspaper, with pictures of large groups of black and Chicano students marching together, reported on the multiracial dynamic in the struggle for educational equality in the city.[155] According to the *Denver Post*, "[A]s helmeted officers wearing gas mask containers and carrying riot sticks stood by, local Black Panther leader Lauren Watson, told the crowd 'this is a day of black and brown unity.'"[156] The action of Chicano and black students and activists suggested that integration in Denver needed to be understood in multiracial terms. One student from East High School echoed the newly reoriented racial identities that were at the heart of Denver's school desegregation and integration debate: "Black and white together is a bunch of bull . . . . We're going to sing black and brown together."[157]

Similar to the struggle of black parents and students attempting to achieve equality in their schools,[158] the demands of Chicano students were dismissed as the belligerent actions of a small minority. Indeed, the *Rocky*

*Mountain News*, in an editorial condemning the violence, made the following accusatory remarks: "NOBODY—MOST OF ALL the students recruited into the demonstrations—seemed sure of what the rock throwing, police-taunting fracas was all about . . . . This outburst was promoted by people long past the high school age."[159] Despite the perceived sense of unity among Denver's black and brown students, the "West High Blowouts"—as Chicano activists came to call the events—symbolized the complex struggle for equality of educational opportunity and subsequent multiracial fractures in Denver. One news report, for instance, noted that at one point during the demonstrations, blacks and Chicanos argued about the focus of the protest.[160]

Significantly, the discontent of the students did not just suddenly emerge. As State Senator Roger Cisneros, of Denver, told the Denver Public School Board, "The demands and aspirations are not the demands of a few militants—but the demands of the entire Hispano community. The dramatization last Thursday . . . said all the things we've been saying for the past four or five years. But no one has been listening."[161] Integrationist Denver Board of Education member A. Edgar Benton "was distressed that some of the most influential Denverites he had been talking to about last week's violence at West seemed to feel the key issue was 'how to get rid of Corky Gonzales.'"[162] Benton pointed out that "this viewpoint is patently absurd on its face. Corky Gonzales is irrelevant to the problem at West High School."[163] Instead, Benton implicated racial attitudes that permeated throughout the city. He stated that "[t]he problem is in southeast Denver, and East Denver, and other parts of the community wherever people continue to rest on a lot of wrong assumptions about Mexican Americans. One of those assumptions is that 'the Mexican isn't worth a damn and there isn't much that can be done about him.'"[164] Benton articulated the reality that in multiracial Denver, equality of education would not be accomplished by any one means.[165]

In the weeks and months that followed, DPS Superintendent Gilberts answered the students' demands. He promised to expand the teaching of Chicano history, culture and language at West High School and other Denver public schools; increase the Chicano studies collection in West's library; enlarge present elementary school foreign language programs; work with parents, students, teachers, and activists to get each into a dialogue regarding "the social and economic problems of the community surrounding West High School"; serve Mexican food in the lunchroom; and continue efforts to increase the number of Chicano teachers in the DPS.[166] Although Gilberts did not accede to all of the demands of Chicano youth, Rodolfo Gonzales called the proposal "the greatest victory in the history of Denver."[167] Moreover, later that summer, state legislators repealed a law that banned teaching in any language other than English and enacted another law providing for comprehensive bilingual and bicultural education in the state's public schools.[168]

There were, however, other developments that suggested a dramatic retreat from efforts to provide educational equality in the Denver public school system. In the spring of 1969, lawyer James Perrill and former state senator and realtor Frank Southworth campaigned for two open seats on the Denver School Board.[169] One of the open seats belonged to integrationist Benton.[170] Perrill and Southworth exclusively campaigned on the premise that Denver's schools should not attempt to correct "all of the social ills of the society," promising to end the current Board's policy of forced busing and to repeal the integration resolutions if they were elected.[171] In commenting on the creative redundancy of Perrill and Southworth's message, one national observer stated that "[i]n their public appearances, Perrill and Southworth mentioned crosstown busing, massive busing, and massive crosstown busing. By the end of the campaign, Southworth was talking about 'forced mandatory crosstown busing on a massive scale.'"[172]

The strategy worked. In May of 1969, Perrill and Southworth won in a landslide victory.[173] Importantly, Perrill and Southworth's opponents "lost

soundly in the Anglo sections of Denver. They even lost the white areas that would not have been touched by the busing plan."[174] Consequently, Perrill and Southworth spearheaded the rescission of the integration resolutions at the meeting of the new board on June 9, 1969.[175] As a result, the newly constituted anti-busing board enacted Resolution 1533 and reinstated the previous voluntary open enrollment plan of the Denver Public Schools.[176] Ten days later, on June 19, 1969, a group of black, Hispano, and white parents and their children filed suit against the Denver Public School Board and its administration in the United States District Court, Colorado, for maintaining a policy of intentional segregation of the district's diverse student body.[177]

Less than a week after Chicano students at West High School became involved in violent confrontations with the Denver Police Department and within months of the newly reconstituted DPS Board's decision to rescind its integration policies, Dwight D. Eisenhower passed away.[178] For many, it was the end of a seemingly simpler, nobler, and purer time in American society.[179] For others, however, it was the continuation of a culture of racism and discrimination that had barely changed since the Supreme Court's apparent rejection of such thinking in *Brown v. Board of Education* in 1954.[180] Tellingly, the *Denver Post's* editorial tribute to Eisenhower was surrounded by editorial reactions to the "racial confrontation" at West High School and racial segregation in American society.[181] According to one of the accounts, "five years ago a demonstration the size of the one at West would have been inconceivable for the Denver area . . . . Why the change? Because the Denver area leaders have chosen to attack isolated problems . . . rather than concentrate on basic issues of human dignity."[182] Indeed, only twelve years removed from President Eisenhower's reluctant decision to use the National Guard to enforce a federal court's order to integrate a high school in Little Rock, Arkansas,[183] the Denver Public School Board openly rejected the "human dignity" aspirations behind the effort to provide equal education in the city's schools. In the aftermath of Perrill's and

Southworth's elections, one Denverite noted that "[a]s a black citizen, I'm not so sure South Denver does not really look like Little Rock."[184]

In contrast to school desegregation in the American South, the terms, conditions, and meaning of integration were dramatically different in this western city. The Denver Public School District attempted to balance the concerns of all of these groups by a variety of means. The philosophy of cultural pluralism, the adherence to a policy of neighborhood schools, and grudging acknowledgment of racial imbalance all amounted to the inability of the DPS to come to grips with racial inequality in its schools. Given such contradictory policies, racial discrimination in Denver's public schools seemed too disconnected and disparate for many in the Denver community. Moreover, the multiple, and at times conflicting, positions of Denver's black, Chicano, and white communities in how Denver schools should implement integration only obscured many of the core issues.

The Denver Public School Board's ambivalence regarding these issues put into sharp relief the importance of racial difference and antagonism in Denver. For African Americans and Mexican Americans, in particular, the DPS Board's vote to reverse its position on integration further reinforced Mexican and African Americans' belief that they were not full and equal metropolitan citizens. In response, one integration activist declared, "We're going to probe, lobby, protest, embarrass, enjoin, and whatever else is *legally* available to accomplish our aims."[185] The *Keyes* complaint represented the centerpiece of such an endeavor. For many, this litigation against the Denver School Board served as a litmus test to spell out clearly and define what equality, fairness, and justice meant for black, Chicano, and white parents and students.

## IV. Race Making, Equality Jurisprudence, and the Desegregation of American Schools

On July 16, 1969, Judge William Doyle of the United States District Court, Colorado, held the first of many hearings in *Keyes v. School District*

*Number One*.[186] Of the 96,000 students who attended Denver's public schools, 66 percent were Anglo, 20 percent Hispano, and 14 percent Black.[187] Despite being the smallest minority group in the school system, black parents and activists, mobilized by nearly a decade of adverse school board decisions, took the lead in pursuing litigation after the School Board voted to rescind its integration policies.[188] Accordingly, the complaint asked the court to consider whether the "use of various techniques such as the manipulation of student attendance zones, school site selection, and a neighborhood school policy, created or maintained racially or ethnically (or both racially and ethnically) segregated schools throughout the school district, entitling the plaintiffs to a decree directing desegregation of the entire school district."[189]

Over the following six-day hearing, Judge Doyle considered the plaintiffs' motion to enjoin the School Board from rescinding the School District's integration plan.[190] In his written opinion, Judge Doyle made it clear that in "any case involving discrimination in public schools," the Constitution's equal protection clause of the Fourteenth Amendment was "designed to protect fundamental rights, not only of the majority but of minorities as well, even against the will of the majority. The effort to accommodate community sentiment or the wishes of the majority of voters . . . cannot justify abandonment of our Constitution."[191]

The issues in the case, however, very quickly revealed the problems of applying the Constitution to populations where the question of "majority" and "minority" were not so clear. Although federal courts had long recognized that the Fourteenth Amendment was not subject to a "two-class" theory of protection, there was little jurisprudence in 1969 that spoke to the ways in which the law balanced the varied and often competing interests of a multiracial population.[192] As Harvard Professor Christopher Jencks remarked at the time, "Denver will have to redraw its zones in such a way as to offset the effects of neighborhood segregation and produce racially mixed schools."[193]

However, courts were confronted with the question of what the meaning of "racially mixed" legally entailed in a city not split between black and white lines. In answering this question, Justice Brennan of the United States Supreme Court in 1973 summarized the legal dilemma facing the federal courts, "Denver is tri-ethnic, as distinguished from a bi-racial community. . . . [Thus,] [s]hould Negroes and Hispanos . . . be placed in the same category to establish the segregated character of a school?"[194] The resolution of this question and the subsequent application of a desegregation remedy to the Denver Public School system highlighted the challenges of integrating a tri-ethnic student body.

*A. Multiracial Categories and American Law: A Brief Overview*

Beginning in the second half of the nineteenth century, American courts encountered great difficulties incorporating non-white and non-black groups into American law.[195] As Ian Haney-López demonstrated, the most extended legal and jurisprudential discussion regarding the racial positions of these groups occurred in relation to naturalization prerequisite cases.[196] Of the fifty-one cases decided by federal courts between 1878 and 1952, a majority took place in jurisdictions in the American West and involved the racial status of Chinese, Japanese, Hawaiians, Burmese, Mexicans, Native Americans, Asian Indians, Syrians, Armenians, Filipinos, Punjabis, and Afghanis.[197] In these cases, courts used common knowledge, contemporary science, congressional intent, and legal precedent to find each of these groups non-white and, in turn, to deny most of these petitioners' naturalization claims.[198]

However, one of the few exceptions involved the claim of a "pure-blooded Mexican" in 1897.[199] In *In re Rodriguez*, the federal district court in Texas allowed a Mexican petitioner to become a citizen, although "if strict scientific classification of the anthropologist . . . [were] adopted, he would probably not be classed as [W]hite."[200] Over thirty years later, the United States Supreme Court contributed to further confusion by declaring

that "[w]hether a person of [Mexican] descent may be naturalized in the United States is still an unsettled question."[201]

Rather than clarify any ambiguity regarding the meaning of "whiteness" in such jurisprudence, courts instead assumed the whiteness and blackness of various groups. For example, in *Gong Lum v. Rice* in 1927, the Supreme Court did not question the state of Mississippi's decision to classify a "Chinese citizen of the United States . . . among the colored races."[202] Although the *Gong Lum* opinion specifically indicated that a "white, brown, yellow, or black" racial typography existed, it did not provide any hard-and-fast constitutional rules for determining multiracial rights.[203] Instead, the Supreme Court reinforced the "colored" and "non-colored" distinction found in Mississippi's state law.[204] As in the naturalization cases, however, the racial status of Mexican Americans proved troublesome for the nation's racial constitutional jurisprudence.

By the late nineteenth century, Mexican American litigants, in particular, found themselves arguing two related types of constitutional issues that were also common among African Americans: the exclusion of Mexican Americans from juries; and the segregation of Mexican Americans in jury pools, public schools, and public accommodations.[205] By the early twentieth century, however, the racial status of Mexican Americans in constitutional cases rejected any similarities to the nation's black community.[206]

In Texas, for example, Clare Sheridan has shown that prior to the 1950s, state courts repeatedly held that "Mexicans were part of the white race, and, therefore, as whites, they were not discriminated against when juries were constituted solely of whites."[207] Although Mexican Americans were socially and politically treated as non-white in places like California and Texas, courts maintained the fiction that they were white in the eyes of the law.[208]

Such cases were based on two arguments. First, state courts throughout the American West continued to argue that the Fourteenth Amendment was

based on a two-class theory of race that applied only to white discrimination against non-whites.[209] In 1937, the Colorado Supreme Court followed this rationale by holding that a "White Trade Only" sign hung on the outside of a quasi-public pool did not apply to plaintiffs of Spanish descent.[210] According to the Supreme Court of Colorado, the sign, even "in its [most] offensive sense, was without application to [the Spanish] petitioners."[211] However, despite evidence that the pool's proprietors discriminated against "Spanish Americans," the court refused to hear their claim.[212]

The second argument assumed that even if Mexican Americans were discriminated against, they as a group were a nationality subject to a lower degree of constitutional protection.[213] In this line of reasoning, "'nationality groups' did not carry the same constitutional meaning as racial groups . . . and because Mexicans were a nationality group, the equal protection clause did not apply to them."[214] Although the Supreme Court suggested in *Yick Wo v. Hopkins* in 1887 that race and nationality were on equal footing, the whiteness and non-Americaness of Mexican Americans prevented them from being successful in many of their Fourteenth Amendment claims.[215]

In some cases, the whiteness of Mexican Americans proved an asset. For instance, the first court-ordered school desegregation case in the United States involved Mexican Americans in the multiracial West.[216] In 1931, a county court in California evaluated the decision of a local school board to build a Mexican school based on state law that permitted the segregation of African and American Indian students.[217] The county court held that Mexican Americans did not fall under the rubric of either of these racial designations and as a result, invalidated the school board's decision.[218] In other cases, however, the two-class and nationality theories of discrimination, especially in Texas, allowed courts to consistently uphold the segregation of Mexican Americans from other whites.[219] In such cases, courts held that migrant work patterns, English-language deficiencies, and the need to "Americanize" Mexican students justified segregation.[220]

In 1947 and 1954, two cases disrupted the racial and nationality limitations applied to Mexican Americans in Fourteenth Amendment jurisprudence. The first was when the Ninth Circuit Court of Appeals, in *Westminster School District of Orange County v. Mendez*, upheld the decision of a California federal district court to invalidate one school district's policy to segregate Mexican students.[221] Although both the trial court and the appellate court noted that none of the parties to the case made a claim of racial discrimination, the Ninth Circuit nonetheless briefly assessed the racial dynamics of the case.[222] The Ninth Circuit noted that all school segregation jurisprudence written by state and federal courts included "only children of parents belonging to one or another of the great races of mankind."[223] To further elaborate what these races were, the court stated the following:

> Somewhat empirically, it used to be taught that mankind was made up of white, brown, yellow, black and red men. Such divisional designation has little or no adherents among anthropologists or ethnic scientists. A more scholarly nomenclature is Caucasoid, Mongoloid, and Negroid, yet this is unsatisfactory, as an attempt to collectively sort all mankind into distinct [racial] groups.[224]

The court's inability to arrive at a satisfactory definition of race indicated the racial ambiguity of the Mexican American litigants in the case. Indeed, the court's unwillingness to defer to scholarly nomenclature suggested that the Ninth Circuit may have considered Mexicans as their own specific racial group.

The Ninth Circuit, however, never had to address this issue because California law already specifically distinguished separate Indian, Chinese, Japanese, and Mongolian schools.[225] Thus, because the Mexican American students did not belong to any of these groups, the Ninth Circuit held that the school board's segregation policies were arbitrarily applied and, thus, violated the Fourteenth Amendment.[226] While neither the Ninth Circuit, nor the parties to the case settled the issue of the racial status of Mexican

Americans, the *Mendez* decision made it clear that Mexcian Americans could not be lumped together with these non-white groups.[227]

In the second case occurring in 1954, the United States Supreme Court, in *Hernández v. Texas*, addressed the long-standing exclusion of Mexican Americans from juries in Texas.[228] The Court rejected arguments that had been historically used by Texas courts to deny "Mexican Americans" constitutional protections.[229] According to the decision's architect, Chief Justice Earl Warren, "The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro."[230] Instead, Warren argued that "community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact."[231] In asking whether a Fourteenth Amendment violation had been committed, the Supreme Court seemingly suggested that the relevant inquiry was not whether Mexicans were a racial nationality group, but whether Mexicans were part of a class that had been arbitrarily denied constitutional rights.[232] Although Justice Warren declined to address explicitly the racial and national implications of the decision, Hernández's own lawyers saw Mexican Americans as "another white race" that merited Fourteenth Amendment protection.[233]

Importantly, 1954 was also the year that the United States Supreme Court wrote its opinion in *Brown v. Board of Education*.[234] As the named case of four consolidated cases, *Brown's* fact patterns in Kansas took place on the periphery of the multiracial American West. Yet, the region's racial diversity played no role in its disposition. Indeed, neither the parties, nor the amici, nor the authors in *Brown* cited Mexican American school desegregation in the American West at any stage in the case, even though the Supreme Court decided *Brown* a mere twelve days after it decided *Hernández.*[235]

Despite the failure to connect racial school segregation and discriminatory jury selection in the "multi-class" West, the Court's 1954 *Hernández* and *Brown* cases nevertheless indicated the inability of the Supreme Court to imagine a multiracial United States. As one study noted, "the Court was considering the issues of Latino [racial identity] and of school desegregation concurrently. Because the Court carefully dodged the question of Latinos' racial identity in *Hernández* . . . it is not surprising that the Court did not address the question of Latino school segregation in *Brown*. After all, *Brown* occurred within the familiar black-white binary."[236] In this binary, the constitutional presumption was that Mexican Americans were white, even if they were "another white race."

Although the color line played very different roles in *Brown* and *Hernández*, each case highlighted the centrality as well as the ambiguity of race in constitutional jurisprudence. The American West's Fourteenth Amendment jurisprudence demonstrated that legal and social distinctions and categories were not static but were subject to rapid change and contradiction. Ironically, however, jurisprudence, particularly the Supreme Court's jurisprudence that commented on the rights of non-white and non-black groups, only reinforced the binary of race and color in constitutional law, rather than disrupting it. Indeed, it would be over a decade before non-black groups, including Mexican Americans and Asian Americans and Pacific Islanders in the American West, utilized the presumptions of racial inferiority established in *Brown* to challenge segregation of these same groups.[237] In such litigation, Mexican American activists, no longer argued that they were another white race.[238] On the other hand, as the battle to integrate Denver's schools demonstrated, Mexican Americans did not view themselves as another black race.[239] At the time that *Keyes* was filed, courts and other governmental institutions were only beginning to consider the meaning of race in a multi-class environment.[240] While constitutional jurisprudence indicated a color spectrum between whites and blacks, it did not anticipate many of the problems that would arise when the facts of the

case did not fit racial preconceptions and prescriptions forged in a racially binary legal world.

*B. The Legal Boundaries of Inequality and Chicano/a Identity*

At the time that the black, Chicano, and white students filed their case in Denver in 1969, there were no reported school desegregation cases that specifically involved representatives from all three groups. Nevertheless, the complaint argued that "Negro and Hispano children residing in the School District" were not receiving the same "educational opportunities, advantages, and facilities afforded and available to Anglo children of public school age similarly situated in the School District."[241] Although the plaintiffs' complaint left open the question of whether such practices were the result of discrimination based on "race, color, or ethnicity," the complaint alleged that the principles of equality in *Brown* had been violated.[242] In contrast to *Brown*, however, the issue of equality in Denver literally could not be understood in only black and white terms. Accordingly, the complaint asked the court to determine whether the policies and practices of the DPS system failed to prepare practically the district's white, black, and Chicano students to live in a multiracial world.[243]

Despite the multiracial school system described in the complaint, the plaintiffs constructed their argument in a dual-system, "minority/majority" framework.[244] During the testimony of the preliminary injunction hearing in July of 1969 and the trial on the merits in the spring of 1970, the plaintiffs posed the constitutional violation as one that had been inflicted by a white majority upon the School District's Chicano and black minorities together.[245] For this reason, the plaintiffs' legal team argued for system-wide integration.[246]

As Judge Doyle pointed out, a threshold problem in evaluating a constitutional remedy "[was] a definition of segregation."[247] For Judge Doyle, segregation did not only revolve around the "heavy concentration of a minority group,"[248] it also involved the "racial and ethnic composition of

faculty and staff, [the] equality of educational opportunity offered at the school," the community attitudes towards the school, and most importantly, the explicit acts of a school board and its administration in creating such conditions.[249]

Outside of the schools in one particular racially concentrated neighborhood, the relationship of all of these issues seemed harder to connect. To frame their case in relation to the entire school system, the plaintiffs identified "core city" schools that had large concentrations of black and /or Chicano students, faculty and staff.[250] Rather than describe discernable differences among the educational experiences and the integration remedies of these minority students, the plaintiffs instead introduced evidence that explained how each group, both individually and collectively, had been denied the equality of an educational opportunity.[251] Such evidence included reports and studies that concluded Denver's core-city black and Chicano schools tended to have: "(1) low average scholastic achievement; (2) less experienced teachers; (3) higher rates of teacher turnover; (4) higher dropout rates; and (5) older buildings and smaller sites."[252]

The discriminatory acts of the School Board and DPS Administration regarding these schools, however, were more difficult to prove. According to Superintendent Kenneth Oberholtzer, the conditions at such schools were not the result of any explicit or tacit desire of the School Board or the administration to discriminate against minority students.[253] Rather, Oberholtzer argued that poor student achievement at such schools was the result of "[a person's] home environment, his mother and dad, his sisters and brothers, [and] the neighborhood in which he grows up and becomes a person."[254]

The School District's desire to explain school desegregation as the product of the Chicano and black condition did not carry much weight. Instead, Judge Doyle found that the DPS had a policy of willful ignorance in relation to such schools.[255] Although Judge Doyle pointed out that "the

Board's eye-closing and head-burying" regarding such schools "normally is not the kind of conduct" reached by the Fourteenth Amendment desegregation jurisprudence,[256] he nevertheless decided that the Constitution could not ignore the "relationship between racial concentration" in Denver's core-city schools and "inferiority in achievement and low standards and consequently low morale" among the multiracial students.[257] The question remained, however, what did "racial concentration" mean in a case involving Hispano, Negro, and Anglo students?

The plaintiffs' legal team argued that Denver schools were segregated if they had large concentrations of Negro *and/or* Hispano students.[258] Accordingly, counsel for the plaintiffs targeted twenty-five schools that had a racial concentration of Chicano and African American students. While some schools had undeniable concentrations of Chicano and African American students, the racial concentration of other schools required a more complicated analysis.[259] The plaintiffs recognized that a minority and therefore unequal school in Denver would not appear as segregated if Chicano or African American students were counted separately.[260] Moreover, in many such core-city schools, separately counting these minority students would give the appearance of an integrated school district if the court considered Chicanos to be just another white race.[261]

Judge Doyle was not prepared to agree that African American and Chicano students should be counted together.[262] As Judge Doyle pointed out, the plaintiffs' attempts to "place Hispanos as well as Negroes . . . all in one category and [to] utilize the total number as establishing the segregated character of the school . . . is often an over-simplification, . . . and [to] lump them into a single minority category . . . remains a problem and question."[263] Although Judge Doyle, who was influenced by his understanding of Denver and its group politics, conceded that African American and Chicano people shared economic and cultural deprivation and discrimination, he observed that "Hispanos have a wholly different

origin, and the problems applicable to them are often different."[264] Accordingly, the different histories and obstacles of African Americans and Chicanos posed problems over what actually constituted a segregated or racially imbalanced school.

Rather than engaging in a long and inconsistent discourse of racial and ethnic differences in American constitutional jurisprudence, Judge Doyle simply noted that the mission of the federal courts in school desegregation cases was to determine the "inequality based upon race or ethnic origin."[265] Consequently, Judge Doyle's opinion suggested that there was no need to distinguish between racial or ethnic discrimination in terms of school desegregation litigation. Judge Doyle opined that to "the extent that Hispanos, as a group, are isolated in concentrated numbers," such schools are "segregated."[266] Thus, Judge Doyle found that a "concentration of *either* African American *or* Chicano students constituting approximately 70 to 75 percent of the school's general population was a school likely to produce the kind of inferiority with which the courts were concerned."[267]

Applying this formula to each school, Judge Doyle found that fifteen of the twenty-five schools identified by the plaintiffs separately denied African American and Chicano students equal educational opportunity, and as a result, these minority-concentrated schools were subject to a school desegregation order.[268] Judge Doyle ordered these schools to improve their faculty, to institute a voluntary transfer policy out of "inferior schools to good schools," to initiate limited busing to integrate the core-city and Park Hill schools with minority concentrations, and to offer compensatory education, including "human relations training, Spanish training, and classes in Negro and Hispano culture and history."[269]

In addition, the court determined that such schools would be integrated when each "has an Anglo composition in excess of 50 percent."[270] Judge Doyle further outlined his vision for the remaining 50 percent: "Although it is probably not constitutionally required, the desirability of having the minority student population in each of these schools apportioned equally

between Negro and Hispano children is apparent."[271] Despite Judge Doyle's conviction that Chicano and black students could not be counted together, he described the so-called "minority factor" that exacerbated the problem of racial concentration.[272] Judge Doyle noted that "the minority citizens are products, in many instances, of parents who received inferior educations and hence the home environment, which is looked to for many fundamental sources of learning and knowledge, yields virtually no educational value."[273] In Judge Doyle's opinion, the only hope was bringing Denver's Hispano and Negro citizens into contact with knowledgeable Anglos.[274]

Judge Doyle's early disposition of the multiple issues in *Keyes* highlighted an already muddled understanding of racial difference in American law and jurisprudence.[275] Although Judge Doyle did not have a body of multiracial understanding in the law at his disposal to use for consistency or to justify his decision to apportion rights among the Denver School District's many groups, he was not the only jurist to have such a first impression of the multiracial interests at stake.

In south Texas, for instance, the legal effort to desegregate one urban school district demonstrated an emerging awareness of the multiracial interests involved in the nation's constitutional jurisprudence.[276] The case *Cisneros v. Corpus Christi Independent School District*[277] challenged the maintenance of a dual school system erected against Mexican American and black students in the Corpus Christi Independent School District.[278] As a result, *Cisneros* provided another way that American courts have attempted to reconcile race and rights among a racially diverse student body. On June 4, 1970, Judge Woodrow Seals issued his opinion.[279] The court confronted the question of whether *Brown* and its progeny applied to Mexican Americans, and if so, what constituted a segregated school when Negroes and Anglos were also involved?[280]

Like Judge Doyle's opinion, Judge Seals's opinion is not consistent in its use of racial and ethnic terminology. Moreover, Judge Seals argued that

such terms were subject to change and redefinition over time and that all group identification labels such as Chicano, black, and, even the term "ethnic-minority," were misnomers dependent upon variances in time, place, and context.[281] In one footnote, Judge Seals explained: "The court used the term 'minority' simply because the case involves ethnic groups that are numerically in the minority. Nationally, Mexican American and Negro populations are decidedly in the minority . . . . The court recognized that either group may represent a majority in the United States at some time in the future."[282] Because Judge Seals was convinced that racial or ethnic misidentification limited the constitutional analysis, he indicated that a court needed to closely analyze a city's history in order to determine if various groups, particularly Mexican Americans, were disadvantaged in ways that denied them constitutional rights.[283] Such evidence revealed that in Corpus Christi, as in Denver, racial discrimination did not easily split between black and white lines.

To determine the constitutional remedy for the Mexican American and African American students, Judge Seals argued that "the constitutional inquiry is concerned with whether a particular disadvantaged group is being substantially segregated from the more advantaged group. . . . The constitutional ill is not cured simply by commingling two similarly disadvantaged groups (the Negroes and the Mexican Americans), both of which are substantially segregated from the more advantaged group, which in this case is the Anglo American population."[284] As a result, Judge Seals indicated that Mexican American and black students should not be counted separately. Because Mexican American and black students had educational experiences that were inferior to the educational experiences of white students, Judge Seals held the entire Corpus Christi school system unconstitutionally segregated regardless of the racial concentration in a few particular schools.[285] His order included not only a plan for limited busing, but also the creation of a "human relations commission" that had equal

membership from the city's Mexican American, African American, and Anglo groups.[286]

Despite important analytical differences, both Judge Doyle's and Judge Seals's opinions ultimately recognized the social complexity of constitutional rights brought before the courts. In their separate ways, both judges recognized the challenges of determining rights outside the familiar black and white binary. While Judge Doyle believed it was necessary that either black *or* Mexican Americans represent an overwhelming majority of students to determine the segregated nature of a school, Judge Seals was not prepared to constitutionally count separately Mexican American and black students.

As a result, these two opinions demonstrated two very different visions of court-ordered desegregation in multiracial cities like Denver and Corpus Christi. Courts could examine segregation on a school-by-school racial analysis, or they could presume that the system-wide disadvantages extended to all non-white groups. Although he ultimately concluded that Corpus Christi's Mexican American and black students suffered similar inequalities when compared to white students, Judge Seals remarked: "We are not a homogeneous people; we are a heterogeneous people; *we have many races*, many religions, *many colors* in America."[287] Indeed, the very different needs and issues impacting multiracial groups in the United States invariably indicated that no single desegregation remedy would suffice.

### *C. From Theory to Application: Creating a Meaningful National Standard of Multiracial Equality*

The months leading up to Judge Doyle's rulings demonstrated just how complicated and fractured racial tensions had become in the Denver area. In February 1970, twenty-three Denver Public School buses were destroyed and fifteen were damaged by dynamite.[288] In that same year, Judge Doyle's house was bombed.[289] An editorial in one local newspaper highlighted the ways that Denverites might assign blame:

> The Denver school buses were bombed and burned. How awful! Your first thought might be that the white racist segregationists who have fought busing for so long might be at fault. . . . Next, your thoughts might turn to blacks who have had bad experiences with integration and have become disillusioned. Your thoughts [might then] turn to the Mexican-American community.[290]

Rather than apportion responsibility among Denver's multiracial groups, however, the editorial further noted that such acts have "been done even in Denver, and if you look around you, it is being done over and over again throughout the United States."[291] It was becoming apparent that the issue of equality and the multiracial battle for civil rights was not unique to Denver. Accordingly, the *Keyes* case took on heightened significance for the manner by which the court would balance all of the competing multiracial interests.

At the center of the issue was the extent to which the experiences of multiracial groups were fundamentally the same. In their brief to the Tenth Circuit Court of Appeals, the plaintiffs in *Keyes* challenged the separation of Hispanos and Negroes in Judge Doyle's remedy by arguing that the trial court, "for the first time as a principle in constitutional law," established "that segregation exists only when it is of one race at a time . . . . The precedent, . . . if allowed to stand, would have broad restrictive application in cities all over the country."[292] Simply put, the plaintiffs asked whether the effects of discrimination for different minority groups were the same, and if not, what were the implications of requiring a separate determination of inequality for Mexican Americans as opposed to blacks and other disadvantaged groups?

In their decision, the Tenth Circuit Court of Appeals indirectly addressed the plaintiffs' argument by affirming Judge Doyle's ruling with respect to black schools in one Denver neighborhood, but the court reversed his ruling with respect to the Hispano and black core-city schools.[293] According to the Tenth Circuit, Denver Public School Board discrimination concerning concentrated African American schools did not create a presumption of unconstitutionality in the entire school district of concentrated black *or*

Mexican American schools.[294] Because of the Tenth Circuit's belief that the concentration of African American and Chicano students in the core-city was the result of race-neutral polices,[295] the court indicated the extent to which that racial animus had to be specifically proven by either one of these groups.[296] Although black and Chicano students were individually and collectively concentrated in core-city schools, the various, and at times differing, positions taken by the DPS Board and its administration toward these two communities obscured the nature of the racial discrimination throughout the entire district.

The *Keyes* plaintiffs filed a writ of certiorari to the United States Supreme court to review the Tenth Circuit's final judgment and opinion.[297] In opposition to the writ, the DPS legal team argued that the "case has no significant national implications . . . largely because . . . [the] facts . . . vary from district to district."[298] Such facts included Denver's social and neighborhood distribution along African American, Chicano, and Anglo lines. The emergence of Mexican Americans and other ethnic minorities in school desegregation jurisprudence, however, compelled the Supreme Court to reject such reasoning.[299] The court heard oral arguments in October 1972 and made their decision in June 1973.[300]

For the first time in its post-*Brown* school desegregation jurisprudence, the Supreme Court did not deliver a unanimous ruling in the case.[301] Instead, the Supreme Court was sharply divided over the extent that constitutionally permitted segregation had taken place "in a school district the size of Denver's."[302] Part of the Court's division rested on the degree to which constitutionally impermissible discrimination could be inferred outside of a black and white social context.[303] Justice Brennan's majority opinion confronted this decision early when he declared: "Unlike cities in the American South, Denver is tri-ethnic, as distinguished from a bi-racial, community."[304] Justice Brennan assessed the usefulness of Judge Doyle's decision not to count Negroes and Hispanos together in order "to establish the segregated character of a school."[305]

Justice Brennan's analysis of this issue did not rely on evidence showing that Hispano and black schools in Denver were inferior to Anglo schools. Instead, Justice Brennan utilized a series of late 1960s and early 1970s United States Commission on Civil Rights (USCCR) studies on the experiences of Mexican American students in the states of Arizona, California, Colorado, New Mexico, and Texas.[306] The studies found widespread social and cultural segregation of Mexican American students throughout the school districts of these states.[307]

In evaluating the findings of the USCCR on Mexican Americans, Justice Brennan repositioned the racial stance of Mexican Americans in constitutional law. Citing *Hernández*, Justice Brennan unambiguously indicated that "Hispanos constitute an identifiable class for purposes of the Fourteenth Amendment."[308] Justice Brennan's analysis, however, suggested that this class could not be considered another white group; instead, he stated that there was "much evidence that in the Southwest, Hispanos and Negroes have a great many things in common."[309] Most importantly, according to Justice Brennan, "Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students."[310] This conclusion allowed Justice Brennan and the majority of the United States Supreme Court to argue that discrimination against one non-white group, of which Hispanos were now a part, created a presumption of discrimination against other non-white groups in tri-ethnic Denver.[311] Although such reasoning allowed the Supreme Court to have a more expansive definition of racial discrimination in a rapidly transforming and heterogeneous United States, it collapsed important differences between racialized groups around a color line. Particularly for Denver's Chicano and black student bodies, it invariably complicated any attempt to provide an effective and multifaceted remedy.

*D. Busing, Bilingual-Bicultural Education, and the Legal Limits of Equal Protection*

In responding to the Supreme Court's disposition of *Keyes*, Judge Doyle ordered the DPS Board to desegregate the entire school system "root and branch." [312] Accordingly, Judge Doyle worked to fashion a remedy that addressed the unique needs of Denver's tri-ethnic student population.[313] In his desegregation plan, Judge Doyle not only ordered a traditional busing remedy, but on the recommendation of the Mexican American Legal Defense and Education Fund (MALDEF), he ordered the adoption of a bilingual and multicultural plan instead of "racial balancing" in certain schools.[314]

Significantly, MALDEF did not join the litigation until after the United States Supreme Court made its 1973 decision.[315] For Chicano educators and parents, Justice Brennan's recognition of Denver as a tri-ethnic city indicated the need for Mexican American students to have their own advocate in the case.[316] Thus, MALDEF took a position that racially juxtaposed Chicano students with blacks and whites. According to MALDEF, the *Keyes* plaintiffs, "who [were] primarily black, and their counsel lack[ed] exposure to the diverse problems that confront[ed] the Chicano community."[317] Although both Justice Brennan and the United States Commission on Civil Rights argued that blacks and Hispanos shared similar discriminatory treatment, MALDEF argued that the competing interests and the different needs of the two communities mandated that Chicanos, as their own racially categorized group, have their own distinct interests represented.[318]

According to MALDEF, the "issues presented to the Court have clearly been black- dominated."[319] Similarly, MALDEF noted that "Chicanos cannot be counted as whites for any purpose" in school desegregation.[320] In the words of MALDEF, as a non-white and non-black group, Chicano students and their distinct racial interests promised to cause a metamorphosis in constitutional law—one in which the distinct racial rights

of Chicanos needed to be recognized and incorporated into the legal analysis and remedy.[321] As a consequence, MALDEF created its own integration policy to specifically protect the needs of the Mexican American students. The MALDEF proposal, known as the "Cardeñas Plan," represented the spirit of the Mexican American students, parents, and activists who opposed large-scale busing and supported neighborhood schools.[322] Through its provisions for the teaching of Chicano studies as well as the implementation of a comprehensive bilingual educational program, the Cardeñas Plan attempted to institutionalize, at the constitutional level, many of the same integration demands made by Denver's Chicano and other non-white students when they walked out of their schools in 1969.[323]

As a result, the Cardeñas Plan attempted to chart the distinct needs of Chicano students who would be most burdened by traditional bi-racial desegregation remedies. As MALDEF noted that "the burden of busing at the high school level is placed upon minority students. Although minorities constitute only one-third of the [DPS's] high school students, minorities will comprise more than three out of every four high school students bused from satellite areas to main attendance areas."[324] Thus, the Cardeñas Plan submitted by MALDEF contemplated desegregation in terms that were very different than the racial balance philosophy advocated by the courts.

At the center of the Cardeñas Plan rested a commitment to bilingual and multicultural programs at every level of the school system.[325] According to MALDEF and Dr. Cardeñas, such programs positively and effectively fostered a social identity that they hoped would develop a wholesome respect for the intrinsic worth of every individual.[326] In crafting such a plan, MALDEF and Dr. Cardeñas reimagined a new role for cultural pluralism in not only the educational process, but also in combating racial inequality. In this sense, cultural pluralism did not mean "Chicano History Week" or a section of the semester devoted to multiracial issues. Rather, the Cardeñas Plan contemplated a complete re-centering of the educational

process from history and music courses to language instruction and economic education that would integrate the Chicano student into a multicultural and multiracial American society.

In addition, the Cardeñas Plan, which was ultimately accepted by Judge Doyle, rejected one of the major premises of school desegregation litigation—the idea that white students and their culture would lift minority students out of poverty, indifference, and inferiority.[327] Instead, the Cardeñas Plan advocated that the equality interests of the Chicano students would be best served by allowing them to learn about, identify with, and eventually emulate and celebrate their own racial and cultural heroes.[328] In these terms, integration into American society meant a legal and social recognition of Chicanos as a distinct and separate racial group apart from the nation's black and white communities.

Perhaps the greatest indicator of the extent of the strength of MALDEF's argument is reflected in Judge Doyle's own changing terminology in the case. No longer referring to Mexican American students as "Hispanos" in his decisions after 1973, Judge Doyle believed that the Cardeñas Plan "[was] particularly appropriate for the Denver school system because of the [C]ity and the region's long tradition of Mexican and *Chicano* influences."[329] In adopting the Cardeñas Plan and responding directly to the unique needs and historical experiences of Chicano students and their parents, Judge Doyle held strongly to his original ruling that African American and Chicano school segregation was different.[330] Judge Doyle's change in terminology suggested a new understanding of multiracial differences in desegregation litigation and constitutional law. His multifaceted remedy contemplated the possibility that a constitutional remedy appropriate to one racial group may not be as effective when applied to another racial group. The Cardeñas Plan recognized an opposition of interests between non-white groups, even though their racialized experiences produced similar results.

Judge Doyle's attempt to provide a truly tri-ethnic remedy was challenged and immediately appealed to the Tenth Circuit Court of Appeals.[331] Not surprisingly, the Cardeñas Plan was a highly contentious issue. For instance, the Colorado State Board of Education charged that "the process of desegregation [was] explicitly subordinated to the bilingual-bicultural program. The Cardeñas [P]lan . . . can be viewed as fostering a dual system—one for Chicanos and one for Anglos."[332] Indeed, the Colorado State Board of Education categorically rejected cultural pluralism in its schools because it would "force the philosophical and sociological principles of one group upon all the people of the [s]tate of Colorado."[333] Once a viable solution to racial and ethnic tension in schools, cultural pluralism, as defined by MALDEF and Dr. Cardeñas, became an "ostensibly utopia-seeking" solution.[334] The Cardeñas Plan was even challenged by the *Keyes* plaintiffs. According to their counsel, Gordon Griener, "the trial court has concluded . . . that it is constitutionally permissible to substitute bilingual programs for desegregation."[335] Although the *Keyes* plaintiffs had asked for a remedy that prepared Denver students to "live in a multiracial world,"[336] they were not prepared to abrogate either the definition of integration or an appropriate response to such an end.

Such arguments carried quite a bit of weight and the Tenth Circuit rejected the Cardeñas Plan as an appropriate desegregation remedy.[337] The court noted that the Cardeñas Plan "requires an overhaul of the system's entire approach to the education of minorities; its proposals extend to matters of educational philosophy, governance, instructional scope and sequence, curriculum, student evaluation, staffing, non-instructional service and community involvement."[338]

Although the Tenth Circuit failed to explain how the traditional desegregation remedies did not disrupt the educational system, the court made clear that bilingual and multicultural education "is not a substitute for desegregation."[339] Most importantly, the Tenth Circuit rejected the

complexity of post-World War II struggles among African Americans and Mexican Americans to achieve equality of educational opportunity in the Denver Public Schools. As a consequence, the court dramatically limited the implications of the Supreme Court's 1973 decision and Judge Doyle's subsequent tri-ethnic remedy by failing to approve a remedy beyond the traditional busing and racial balanceing approach.[340]

The Tenth Circuit explained that "[t]he clear implication of arguments in support of the court's adoption of the Cardeñas Plan is that minority students are entitled under the Fourteenth Amendment to an educational experience tailored to their unique cultural and development needs. Although enlightened educational theory may well demand as much, the Constitution does not."[341] While Chicanos were now considered black for purposes of constitutional law, it was evident that courts were not prepared to provide a remedy that contemplated their own distinct non-white and non-black racial identity.[342] At the same time that the court dramatically limited the ability of the Denver Public Schools to overcome the tri-ethnic racial lines of the city, many Denver parents worked to preserve Denver's racial boundaries.[343] To illustrate, "some grumbled and talked of organizing an alternate school system. Some moved to the suburbs; others put their children in private institutions."[344] Still others turned to often violent and extralegal means to maintain the heterogeneity of their neighborhoods and schools.[345] By 1974, anti-integrationists used the city's tri-racial divisions to encourage Colorado citizens to pass the Poundstone Amendment to the Colorado State Constitution.[346]

Touted by its supporters as a measure to deprive Denver of power over the metropolitan area, the Poundstone Amendment greatly limited the ability of the city to acquire land through annexation in order to end metropolitan educational segregation.[347] One editorial noted,

> It is, I think, right to suppose that the primary reason for the easy passage of the Poundstone Amendment was the suburbs' fear of busing. If, in other words, there is to be a ghetto, and busing is to

> relieve the pressures and injustice of the ghetto, let it all be within the City and County—and school district—of Denver."[348]

According to one study, the Amendment allowed "Colorado voters permanently [to] split Denver from its suburbs in the 1974 election. Suburbanites decided that remaining separate from the city would permit them to maintain racially and economically segregated communities and schools, and to thereby evade the social and economic problems of the central city."[349] In 1975, bi-racial tensions (white versus "non-white") divided the metropolitan area while tri-racial differences, forged in the years and decades after World War II, invariably complicated efforts to achieve legal and social equality in the city.

## IV. CONCLUSION

Shortly after January 1, 1969, the Denver Chamber of Commerce and the Denver School Board distributed a joint memo to Denver's business and industrial community. Headlined "Here could lie a potentially great city!" the memo included a drawing of a cemetery with gravestones for Detroit, Newark, Watts, Chicago, and New York City. Situated prominently in the center of the image sat a gravestone that read: "DENVER: BORN–1859, DIED–1969. CAUSE OF DEATH, SEGREGATED EDUCATION."[350]

Less than a year later, the slow death knell for the city seemed to be underway. The most prominent indicator of Denver's demise centered on the intense passions raised by school desegregation. While Denver Public School buses and Judge Doyle's house were bombed, Denverites were bitterly divided over the social, political, and legal meaning of integration.

The "Great City" envisioned by the Denver Chamber of Commerce and the Denver School Board eroded further through the city's multiracial tensions. Although white and non-white school desegregation issues received the most publicity in the 1970s, violence in Denver's Chicano and black communities also harkened unsavory images of Harlem, Detroit, and Los Angeles. In 1973, for instance, a nearly four-hour gun battle between

Chicano activists affiliated with the Crusade for Justice and Denver Police culminated in the death of a young Chicano man and the explosion of an apartment building.[351]

Throughout the 1970s, Denver's Chicano activists repeatedly clashed with the police over the issues of guns, bombs, violence, and brutality.[352] By the 1980s, health, education, and welfare "became a lower priority for Denver and the nation as a whole. The gap between rich and poor expanded, and the percentage of people living below the poverty line grew at an alarming rate."[353] In the realm of education, only 43 percent of Chicanos completed high school.[354] Moreover, the Poundstone Amendment and other state policies limiting Denver's growth had a significant economic and demographic impact on the metropolitan area.[355] As a result, Denver was unable to expand and to develop highly profitable commercial and residential properties.[356] According to one study, these developments ensured that Denver was "denied . . . substantial numbers of middle-class and affluent residents who might have provided resources . . . for the city and its schools" as well as the fiscal benefits that would have resulted from commercial and residential development.[357] The Poundstone Amendment allowed Denver's suburbanites to decide "that remaining separate from the City would permit them to maintain racially and economically segregated communities and schools, and to evade the social and economic problems of the central city."[358]

The multiracial transformation of Denver in the second half of the twentieth century and subsequent battles continue to this very day. Although the *Keyes* case officially ended in 1996, the battle for educational equality in the city's public schools remains heated. Not surprisingly, the racial character of the city lies at the heart of many debates. Denverites, as well as most Americans, still cannot agree on a common understanding of the meaning of race and equality in the metropolis. Were differences that remained in Denver and American society the result of racial ideologies, or

were they the result of other factors, including ethnicity and economic status?

In a recent editorial, the *Rocky Mountain News* highlighted the inability to answer such questions when it declared that a 2004 study was "nonsense" when the study alleged that Denver and Colorado schools were among the least integrated in the nation, especially for Hispanic students.[359] According to the article, the reality of segregation in Denver's public schools is "in fact . . . a lot less ominous than its principal author would have us believe" as a result of "huge influx of Hispanic immigrants [in the 1990s] . . . [who] tended to cluster in the same neighborhoods rather than disperse throughout the city. It would be miraculous under such circumstances if many schools *hadn't* found themselves with far greater concentrations of 'minority' students. . . . The challenge isn't *ethnicity* these days; it's socioeconomic status."[360] The *Rocky Mountain News* analysis, however, failed to consider that in the 1940s and 1950s, a similar demographic influx of both Mexican Americans and African Americans created segregated schools. While socioeconomic status was certainly a factor in this development, it is important to remember that the extreme racial categorization of the groups and the legal and social barriers that were in place ensured that neither group would be able to effectively enter mainstream American society.

The issue, then and today, is not socioeconomic status, ethnicity, or some other social factor, but rather a recognition of the multiracial color lines and identities that emerged in post-World War II United States. Significantly, these were lines and identities that were given meaning by the complicated interplay of law and social change, which were represented most vividly in the context of school desegregation in Denver.

The struggle for equality of educational opportunity and the recent histories of demographically diverse post-war urban cities gave courts an unprecedented opportunity to develop principles, methodologies, and understandings of the multiracial character of the law. *Keyes* provided such an opportunity. Although most studies of the *Keyes* decision have focused

on the case's distinction between *de jure* versus *de facto* discrimination in constitutional law, there is little commentary on the Court's analysis of Denver's multiracial student body.[361] The extended treatment of the issue at both the trial court and the Supreme Court, however, altered not only the dynamics of the desegregation struggle but also recognized, for a moment, a multiracial United States.

Although Denver's diverse racial populations challenged the usefulness of the black-white dichotomy in constitutional law, the Tenth Circuit's rejection of Judge Doyle's desegregation remedy ensured that Chicanos never seriously threatened the polarized premises of American jurisprudence. In the legal battle to desegregate Denver's schools, Mexican Americans were consistently described in relation to their relative whiteness or blackness, not their Chicanoness. Whether they were considered "other white" or, more recently, "other black," Mexican American students were denied a viable constitutional remedy and were left to compete with African Americans for limited resources in non-white Denver.

The attempt of Denver students, parents, educators, activists, lawyers, and judges to come to grips with its multiracialized citizenry suggests the challenges facing a demographically changing United States. The equality claims of Denver's diverse student body vividly demonstrated the extent that all these groups not only distinguished themselves, but also claimed legal rights in multiracial terms. Although in 1973 the United States Supreme Court wanted to use tri-ethnic Denver to develop national principles of equality, subsequent jurisprudence and legislative acts limited the implications of that decision and instead reinforced the bi-racial fiction of law. Thus, despite the efforts of Denver's Chicanos to declare that their "Selma" would take place in the city's public schools, the law failed to appreciate the multiracial transformation of the United States.

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[2] Charles Carter, *Rights Leader: Integration Plan Talks Disrupted,* DENVER POST, Oct. 27, 1968, at 1.

[3] *See* Frederick D. Watson, Removing the Barricades From the Northern Schoolhouse Door: School Desegregation in Denver 105–107 (1993) (unpublished Ph.D. Dissertation, University of Colorado at Boulder) (on file with Auraria Library, University of Colorado at Boulder).

[4] Carter, *supra* note 2, at 1.

[5] The terminology used to describe the various communities in this article has a contentious and by no means settled genealogy. In fact, the changing terms reflect important transformations in the racial identities of each group and their subsequent legal claims to equal rights. As will become evident by the end of the text, these shifting and multiple racial identities raised some of the most challenging issues for those involved in school desegregation in the decades after *Brown v. Board of Education*. Accordingly, I attempt to strike a balance between the various ways that historical actors labeled social groups in particular time periods in contrast to more inclusive and empowering contemporary categories of racial self-identification. To maintain this balance, I use quotes ("") when I reference group identities for the first time. All subsequent references that I make will use more contemporary nomenclature (e.g. White, Mexican American, Black, Asian, etc.). When I quote materials, however, I will not change the manner or the form in which the historical figures in this article used and deployed racial terms and categories.

[6] *See*, *e.g.*, Tom I. Romero, II, *Wearing the Red, White, and Blue Trunks of Aztlán: Rodolfo "Corky" Gonzales and the Convergence of American and Chicano Nationalism*, 29 AZTLAN: J. OF CHICANO STUD. 83–117 (2004).

[7] Carter, *supra* note 1, at 1.

[8] In 1968, a contentious and bitterly divided Denver Public School Board ordered Dr. Robert Gilberts to prepare an integration plan by September 1968. In the final product, "Planning Quality Education: A Proposal for Integrating the Denver Public Schools," Dr. Gilberts proposed busing for minority students who wanted to transfer to White schools with open space, the continued maintenance of the neighborhood school, and the creation of "cluster" elementary, junior, and senior high schools to provide administrative and academic support to the neighborhood school. Though the Gilberts Plan did not call for major change of the Denver Public School system's current practices, its recommendations—particularly the limited busing—provoked heated exchanges in the ensuing public hearings and School Board deliberations. Watson, *supra* note 3, at 94–109.

[9] Carter, *supra* note 1, at 1.

[10] *Id.*

[11] *Id*.

[12] *Id.*
[13] *Id*.
[14] When Gonzales refused to give up the microphone, Board Members James D. Voorhees, William G. Berge, and Stephen J. Knight left the stage. *Id*. These members, in particular Stephen Knight, were vocal opponents of school integration. *See infra* notes 109–113.
[15] Keyes v. Sch. Dist. No. 1, 413 U.S. 189 (1973).
[16] *Id.*
[17] *Id*. at 196–198.
[18] Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954); Anthony Lewis, *Since the Supreme Court Spoke: It's Historic Decision on School Desegregation Launched 'the Racial Decade' in America—Ten Years Of Irreversible Revolution In The Patterns Of Negro-White Relations*, N.Y. TIMES (Sunday Magazine), May 10, 1964, at 9. For the most recent synthesis of the importance of the decision, see JAMES T. PATTERSON, BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY (2001).
[19] *See also* Cooper v. Aaron, 358 U.S. 1 (1958); Goss v. Bd. of Educ., 373 U.S. 683 (1963); Griffin v. Sch. Bd. of Prince Edward County, 377 U.S. 218 (1964); Green v. Sch. Bd. of New Kent County, 391 U.S. 430 (1968); and, Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1(1971).
[20] The African American story to dismantle Jim Crow in the Cold War United States is well-known and extensively documented. For a synthesis of this literature, see GARY GERSTLE, AMERICAN CRUCIBLE: RACE AND NATION IN THE TWENTIETH CENTURY 268–310 (2001). Particularly important were the highly publicized fights to desegregate schools, open public accommodations, and voting rights. In the aftermath of *Brown*, for instance, violent confrontations in Little Rock, Arkansas, in 1957, put the nation on the brink of Constitutional and international crisis. *See* MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS 115–151 (2000). During the early 1960s, civil rights activists known as Freedom Riders consistently confronted violence from local southern authorities. *See* CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S 31–44 (1981).
[21] In 1965, civil rights activists began a series of peaceful marches in Selma, Alabama to focus nationwide attention on the disenfranchisement of African Americans. As the days went by, hundreds of activists were arrested and widespread police brutality occurred. On March 7, 1965, Alabama state troopers descended upon the activists and beat them with nightsticks, trampled them with horses, and unleashed tear gas. In national news reports, "nightsticks could be seen through the gas, flailing at the head of the marchers." DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR. AND THE VOTING RIGHTS ACT OF 1965, at 394–399 (1978). A few days later, President Johnson sadly proclaimed: "What happened in Selma was an American tragedy. The blows that were received, the blood that was shed . . . must strengthen the determination of each of us to bring full and equal and exact justice to all of our people. . . . It is the heart and purpose and meaning of America itself." DUDZIAK, *supra* note 20, at 232.
[22] Justice Brennan pointed out that school segregation in Denver allowed the Court to develop "constitutional principles of national rather than merely regional application."

*Keyes*, 413 U.S. at 219. In a fundamental way, the case represented a critical revaluation of America's White and Black dilemma. *See* GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND AMERICAN DEMOCRACY (1944).

[23] In *Jones v. Newlon*, the Colorado Supreme Court held that the Denver School Board's decision to segregate "Colored" and "White" pupils at social functions as a result of "certain unpleasant incidents" violated the state's constitution. 253 P. 386, 387 (Colo. 1927). Courts in many other Western states, however, either upheld the constitutionality of segregated schools or ignored policies and practices that created such a result. *See* Indep. Sch. Dist. v. Salvetierra, 33 S.W. 2d 790, 795 (Tex. Civ. App. 1930); Dameron v. Bayless, 126 P. 273, 275 (Ariz. 1912).

[24] *See* Tom I. Romero, II, Of Race and Rights: Legal Culture, Social Change, and the Making of a Multiracial Metropolis, at ch. 1 (Ph.D. Dissertation, University of Michigan 2004) (on file with the *Seattle Journal for Social Justice*).

[25] Christmas-Chanukah Observances: The Denver Experiment, Draft of Talk given to the Temple Men's Club, Wilshire Boulevard Temple, Los Angles, CA (Mar. 7, 1956), *in* Anti-Defamation League Collection, Beck Archives, Denver Public Library, Box 11, FF 6, at 11 [hereinafter ADL Collection].

[26] *Id.*

[27] DENVER PUBLIC SCHOOLS, PEOPLE OF DENVER: BOOK ONE, SPANISH-SPEAKING PEOPLE ix. (1951).

[28] *Id.*

[29] In the late 1940s and early 1950s, tensions between Mexican American and particularly Jewish students was especially acute. Accordingly, relatively minor incidents turned into "gang" conflict between Mexican Americans and Anglo students. *See also* Report of Meeting Held Concerning 'Lake Junior High Incident' reported in Rocky Mountain News, Oct. 3, 1949, *in* CHR Papers, Box 2; Principal's Report and Recommendations to the Lake Human Relations Council, Mar. 2, 1950, *in* CHR Papers, Box 2; Minutes of the Lake Junior High School Human Relations Council, Mar. 2, 1950, *in* CHR Papers, Box 2; *Garden Hose Cools Fighting Spirit: Gang Battle at School Broken Up by Woman*, ROCKY MTN. NEWS (Denver), Oct. 1, 1949, at 22; *Inter-Racial Friendship at Lake Jr. High,* INTERMOUNTAIN JEWISH NEWS (Denver), Oct. 6, 1949, at 1; Robert S. Gamzey, *Mile High View*, INTERMOUNTAIN JEWISH NEWS (Denver), Sept. 5, 1950, at 1.

[30] Denver Commission on Human Relations, *Inventory on Human Relations*, Sept.-Oct. 1954, at 172–173.

[31] *Id.* at 173.

[32] *See* DENVER PUBLIC SCHOOLS, *supra* note 27, at ix.

[33] *Id.*

[34] *Id*.

[35] *Id.*

[36] JAMES A. ATKINS, HUMAN RELATIONS IN COLORADO: A HISTORICAL RECORD 163 (1968).

[37] Representation on the City-School Project included fifteen principals and faculty from schools with heavy concentrations of "Spanish-speaking" youth, representatives from the Mayor's Commission on Human Relations, the Denver Public Schools, the Mayor's

office, the Department of Health and Hospitals, Recreation, Housing, Public Welfare, and the Juvenile Bureau of the Denver Police Department. *Id.* at 163.

[38] *Id.* at 162.

[39] *Id.*

[40] Evaluation Report City-Schools Project for Work Among Spanish-Named People of Denver, Sept. 1957, at 4–11.

[41] Romero, *supra* note 24, 381–383.

[42] Memorandum from Ed Lucas to Commission on Human Relations, Mar. 2, 1953, *in* CHR Papers, Box 2.

[43] Letter from Travis Taylor to Helen Burke, Mar. 29, 1955, *in* CHR Papers, Box 2.

[44] Engel v. Vitale, 370 U.S. 421 (1962).

[45] Jack Gaske, *Programs Menaced in Denver Schools*, ROCKY MTN. NEWS (Denver), July 22, 1962.

[46] For example, one Denver proponent noted that "the Jewish child . . . sees his Christian friends participating in activities which are obviously not only enjoyable but also ones which appear quite proper. . . . He may frequently translate this feeling of being different into one of self-group inferiority." Letter on 'Religious Holidays and the Child,' attached to 'Your ADL Reports,' 1952, *in* ADL Collection, Box 11, FF 3.

[47] *See also* Romero, *supra* note 24, 173–176; Minutes of Meeting with Mayor and Members of Spanish-Speaking Community, Feb, 11, 1959, *in* CHR Papers, Box 2.

[48] George Brown, *Keynoter Hits Out at Churches: Baptists Tackle Explosive School Integration, Civil Rights Issues*, DENVER POST, Sept. 8, 1956, at 3. *See also* Barbara Browne, *Negro Minister Says Integration To Advance U.S. Cultural Pattern*, ROCKY MTN. NEWS (Denver), Sept. 5, 1956.

[49] Brown, *supra* note 48.

[50] *Id.* at 3.

[51] Betty Jean Lee, *Manual-Cole Parents Charge School Opportunity Not Equal, and Oberholtzer Defends Manual's Curriculum,* DENVER POST, Apr. 5, 1956, at 40.

[52] One former student noted that during the late 1940s, Manual was a "dismal and soul stifling place. . . . During lunch, [W]hite kids were allowed to dance in the gym while Black students were forced to have their social hour in a vacant second floor room. . . . The prom was usually held at the Brown Palace Hotel because it restricted Blacks." Watson, *supra* note 3, at 26.

[53] *Id*. at 14.

[54] The Denver School Board in 1953 decided to fix the eastern boundary of the school's attendance area at York Street; a street separating the largely African American Five Points neighborhood from the increasingly integrated Clayton Park neighborhood. In turn, the Denver School Board gave parents in Clayton Park the option of sending their children to the overcrowded, but predominately White East High School of Clayton Park or to the under-capacity, but predominantly minority Manual. At this time, "East High School was over capacity by about five hundred students, while Manual was under capacity by about six hundred students." *Id*.

[55] *Id*.

[56] *Id*. at 48.

[57] *Id.* at 15.

[58] *Id.*
[59] *Id.* at 16–18.
[60] Betty Jean Lee, *Plans Caused Controversy: School Boundary Changes Approved*, DENVER POST, June 21, 1956, at 2.
[61] Watson, *supra* note 3, at 16.
[62] *Id.* at 16–25.
[63] *Id*. 20. *See also* Lee, *supra* note 51, at 40.
[64] Watson, *supra* note 3,at 16-20.
[65] *Id*. at 22.
[66] *Id.* at 16–17.
[67] Jack Gaske, *Group Renews Charges of School Segregation*, ROCKY MTN. NEWS (Denver), May 17, 1956**,** at 49.
[68] *Id.*
[69] Lee, *supra* note 60, at 2.
[70] Betty Jean Lee, *Schools Face 'Segregation' Suit: Minorities Hit Denver Proposal*, DENVER POST, July 11, 1956.
[71] *Id*. at 1.
[72] Denver Urban League, Fact-Letter: A Focus on Education, Aug. 1957, *in* Keyes Collection, Box 2, FD 5.
[73] *Id.*
[74] Betty Jean Lee, *Schools Deny Race Segregation in Boundaries, Hiring Policy Hit*, DENVER POST, Jan. 15, 1956, at 2A.
[75] Watson, *supra* note 3, at 29.
[76] *Id.*
[77] In *Brown v. Board of Education*, African American students "[i]in each instance . . . have been denied admission to schools attended by white children under laws requiring or permitting segregation according to race." 347 U.S. 483, 487 (1954). Accordingly, the standard laid down by the Court focused on laws or official policies explicitly segregating White and "non-White" students.
[78] Although unstated, this is one of the earliest recognitions of the distinction between de jure as opposed to de facto segregation. Indeed, it was open question whether a school board who never adopted an explicit policy to segregate students, nevertheless had a duty to respond to the reality that residential segregation caused segregated schools. Urban League Board Director and Colorado Supreme Court Justice Albert Franz, noted the problem: "We cannot as a professional agency accuse the school board of the intent to discriminate unfairly, but neither can we deny the basis for such feeling on the part of the Negro community." *Urban League Skips Stand on Schools*, DENVER POST, May 21, 1956, at 40.
[79] *ACLU Holds Off on Race Suit*, DENVER POST, Oct. 30, 1956, at 15.
[80] GEORGE E. BARDWELL, PARK HILL AREAS OF DENVER, 1950–1966, at 23 (Commission on Community Relations for City of Denver 1966). Although there were predominately White schools whose attendance districts crossed busy streets, the Denver Public School Board—in the name of safety—set the attendance boundary at Colorado Boulevard. Black parents and community activists believed that such actions were done to deliberately segregate Black students in inferior schools. Watson, *supra* note 3, at 30–

32. As in 1959, the Denver School Board proposed relieving overcrowding at predominately Black, Cole Junior High School, by building a new junior high on the western corner of 32nd Avenue and Colorado Boulevard. Despite a DPS report that indicated that Gove and Smiley Junior High Schools in predominately White Park Hill were operating under-capacity, the Denver School Board—against the pleas of many Black parents—proposed to again set the attendance boundaries for the new school at Colorado Boulevard. Vocal protest on the part of several Black and "White" parents and activists, however, led the Board to shelve the proposal until it could "study" the situation. *See id*. at 41–43. In addition, the DPS Board proposed to relieve additional overcrowding at Cole by shifting "Black" students from Cole to Morey Junior High to the south. Morey, a predominately White school, was "76 percent under capacity." Objections by the Morey parents, however, led the board to extend its "optional" area to Morey students so they could attend the all-"White" Byers Junior High. As a result, White "enrollment at Morey Junior High declined by 49%." *Id*. at 49–51. In one letter, one Park Hill resident expressed his fear that, "[by] busing approximately 500 or more pupils in from the underprivileged sections of Five Points . . . we will eventually become a completely segregated district." Letter from Lester Friedman to Jackson Fuller (Nov. 19, 1963), *in* Park Hill Action Committee (Interdenominational) and Greater Park Hill Community Incorporated Collection, Special Collections Dept., Penrose Library, University of Denver, Box 3, FF 4, [hereinafter PHAC Collection].

[81] Watson, *supra* note 3, at 42–43.

[82] *Id.*

[83] *See* DENVER PUBLIC SCHOOLS, REPORT AND RECOMMENDATIONS TO THE BOARD (1964).

[84] Watson, *supra* note 3, at 51.

[85] *Id*. at 51–52.

[86] REPORT AND RECOMMENDATIONS TO THE BOARD (1964), *supra* note 83, at 6–7.

[87] The Committee found that the African Americans and Chicanos lived in overcrowded and poorly maintained housing, suffered from chronic unemployment, lacked the skills to compete in an urban and industrial society, blindly adhered to values as odds with "the dominant urban middle class culture," and members from each ground had little motivation for "traditional education" while each possessed "lower educational standards." *Id*. at 4–5. Such sentiments echoed a plethora of post-World War II reports conducted by a variety of Denver's municipal agencies concerning Denver's "minority" communities. *See also* Romero, *supra* note 24, at 136–156.

[88] *Id.* at 3.

[89] Watson, *supra* note 3, at 52–53

[90] Oberholtzer to Board of Education, May 6, 1964, *in* PHAC Collection, Box 5, FF 10, at 1.

[91] *Id.*

[92] Shortly after the Committee submitted its findings, the DPS Board and Administration drafted Policy 5100, offered open enrollment for the 1964-1965 academic year at twenty-nine (out of 117) schools, eliminated optional areas, instituted compensatory education programs, and began to keep statistics on the number of "Anglo," "Negro," "Spanish

American," "Oriental," and "Indian" students in their schools. *See id.*; Watson, *supra* note 2, at 52-53.

[93] REPORT AND RECOMMENDATIONS TO THE BOARD (1964), *supra* note 83, at Appendix 9; DENVER PUBLIC SCHOOLS, FINAL REPORT AND RECOMMENDATIONS TO THE BOARD 10 (1967); Watson, *supra* note 3, at 52–53. DPS officials argued that busing was used only in schools and areas where overcrowding was seen as temporary. In those areas where overcrowding was seen as permanent, however, DPS officials sought to use temporary mobile units, build additions to schools, or build a new school. Jack Gaske, *School Concept Faces Acid Test*, ROCKY MTN. NEWS (Denver), Dec. 21, 1965**,** at 86. Such actions, however, only exacerbated the racial divide when the DPS officials found that of the 29 mobile units in use in the entire Denver Public School system, 28 were at schools with substantial "Negro" and "Spanish-surnamed" populations. FINAL REPORT AND RECOMMENDATIONS TO THE BOARD (1967), *supra*, at 10.

[94] Watson, *supra* note 3, at 55.

[95] *Id.* at 70–76; Jack Gaske, *Who's in School: Minority, Majority Ratio Growing Stronger*, ROCKY MTN. NEWS (Denver), Mar. 14, 1966, at 6–7.

[96] Greg Phinney, *Park Hill's Racial Schools Problem Stymies Officials*, DENVER POST, Jan. 19, 1966, at 88.

[97] *Id.*

[98] Watson, *supra* note 3, at 69–75.

[99] Gaske, *supra* note 93, at 86.

[100] Greg Pinney, *Study of Segregation Bus Plan Improved*, DENVER POST, Jan. 21, 1966, at 1, 26; Watson, *supra* note 3, at 72–75.

[101] Watson, *supra* note 3, at 76.

[102] These council included members from such groups as the Park Hill Action Committee, the National Association for the Advancement of Colored People, the Congress of Racial Equality, and the Latin American Research and Service Agency (LARASA). Also included where members of Denver's professional and municipal communities. *Id.* at 76.

[103] FINAL REPORT AND RECOMMENDATIONS TO THE BOARD (1967), *supra* note 93, at 30.

[104] *Id*. at 39–40.

[105] *Id*. at 30.

[106] *Id.* at 31.

[107] *Id*. at 35.

[108] *Id.*

[109] *Id.* at 39.

[110] Watson, *supra* note 3, at 78–82

[111] *Id.*

[112] FINAL REPORT AND RECOMMENDATIONS TO THE BOARD (1967), *supra* note 93, at 181.

[113] *Id*.

[114] *Id.* at 184.

[115] *Id.*

[116] Watson, *supra* note 3, at 82.

[117] *Id.* at 82.

[118] *Id*. at 94.
[119] *Id.*
[120] Charles Carter, *Integration Ordered: School Board Avoids Bus Issue*, DENVER POST, May 17, 1968, at 1,4. *See also Negro Teacher Group Plans School Boycott*, DENVER POST, May 13, 1968; and *Busing Should Be Voluntary*, THE UNIVERSITY PARK NEWS-CHERRY CREEK NEWS (Denver), May 9, 1968, *in* ADL Collection, Box 17, FF 7.
[121] Watson, *supra* note 3, at 100.
[122] *Id.*
[123] The School Board Actions, known as Resolution 1520, 1524, and 1531 and enacted by the Board respectively on January 30, 1969, March 20, 1969, and April 24, 1969, targeted specifically those schools in East and Northeast Denver with large "African American" communities. *See id.* at 107–108. *Id.* at 109.
[124] *Id.* at 108.
[125] *Id.* at 109. To get a sense of the intense passion revolving around the DPS' school desegregation resolutions, see *School Integration—I: Part-Time or Full Time?*, DENVER POST, Sept. 19, 1968; Charles Carter, *Panel Hears Talks Backing Integration*, DENVER POST, Sept. 27, 1968, at 35; Charles Carter, *School Plan Criticism Mounts*, DENVER POST, Nov. 27, 1968; *If It's Change, They're Against It*, DENVER POST, Nov. 26, 1968, at 20.
[126] *See* Romero, *supra* note 18, at ch. VII.
[127] REPORT AND RECOMMENDATIONS TO THE BOARD (1964), *supra* note 83, at 4–5; FINAL REPORT AND RECOMMENDATIONS TO THE BOARD (1967), *supra* note 93, at 11.
[128] Carter, *supra* note 1, at 1.
[129] *Id.*
[130] Martin Moran, *Charges Against Teacher Are Called Unfounded*, ROCKY MTN. NEWS (Denver), Mar. 21, 1969, at 8.
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Prelude to Disturbance: Complaint Against Teacher*, DENVER POST, Mar. 20, 1969, at 3. Later, Shafer backed away from these comments and argued, instead, that he was misquoted and that his statements were taken out of context. Fred Giles & Bob Huber, *Teacher Caught in West Storm Gets Student Backing*, DENVER POST, Mar. 30, 1969.
[135] *See* Bob Saile, *Teacher Hub in Controversy*, DENVER POST, Mar. 21, 1969; Moran, *supra* note 130; Giles & Huber, *supra* note 134.
[136] Saile, *supra* note 135, at 46.
[137] Moran, *supra* note 130; Saile, *supra* note 135, at 46.
[138] *Prelude to Disturbance*, *supra* note 134, at 3.
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*; Duane Howell & Ira Gay Sealy, *Clash at West High*, DENVER POST, Mar. 20. 1969, at 68; *SDS Urges Support of West Students*, ROCKY MTN. NEWS (Denver), Mar. 22, 1969, at 8.

[144] *Prelude to Disturbance*, *supra* note 132, at 3.
[145] Howell & Sealy, *supra* note 143, at 68.
[146] There is some question about whether other students joined the march and demonstration. Mainstream newspaper accounts indicate that only West High students participated in the walkouts. *See id.* Bill Marvel, *West High School Students and Police Fight*, ROCKY MTN. NEWS (Denver), Mar. 21, 1969, at 1. Other accounts, however, indicate a much fuller participation. *See* ERNESTO VIGIL, THE CRUSADE FOR JUSTICE: CHICANO MILITANCY AND THE GOVERNMENT'S WAR ON DISSENT 83 (1999).
[147] VIGIL, *supra* note 146, at 83.
[148] Marvel, *supra* note 146, at 1, 5.
[149] *Id.* at 1
[150] *Id.*
[151] *SDS Urges Support of West Students*, *supra* note 143, at 8.
[152] VIGIL, *supra* note 146, at 85.
[153] George Kane, *One Man Shot in New Violence at West High*, ROCKY MTN. NEWS (Denver), Mar. 22, 1969, at 5 (emphasis added). *See* VIGIL, *supra* note 146, at 85.
[154] *See* VIGIL, *supra* note 144, at 85; Duane Howell et al., *From East to Manual to West*, DENVER POST, Mar. 21, 1969, at 72; *Militants Join Move for Boycott at West*, DENVER POST, Mar. 21, 1969, at 1.
[155] Kane, *supra* note 153, at 5.
[156] *Militants Join Move*, *supra* note 152, at 1.
[157] Bob Jain, *400 Support School Boycott*, DENVER POST, Mar. 21, 1969, at 46. Like the previous day's events, however, the demonstration was again marred by violence. As police and demonstrators again clashed, one man was shot as Denver Police armed themselves with shotguns, filled with birdshot, to protect themselves and "private citizens" who were "pinned down" by the "ranging (sic) mobs." Kane, *supra* note 151, at 5; *Birdshot Fired by Police Answers Rock Barrage: 1 Wounded in Skirmish Near West*, DENVER POST, Mar. 22, 1969. Walkouts by "Chicano/a" students were also reported at a few schools in "suburban" Adams and Arapahoe counties. *See* VIGIL, *supra* note 146, at 87. Although violence between police and students did not escalate further, racial tensions not only in West, but throughout the city remained high. Indeed, for the remainder of the school year, "shot-gun wielding police offices were stationed inside" West High School. George Kane, *Parents Present Demands at West High*, ROCKY MTN. NEWS (Denver), Mar. 25, 1969, at 5.
[158] *See supra* note 123 and accompanying text.
[159] *Violence at West High School*, ROCKY MTN. NEWS (Denver), Mar. 23, 1969, at 6. *See also* John Dunning, *West Incident Laid to Small Minority*, DENVER POST, Mar. 25, 1969, at 1; Bill Myers, *Police Chief Ties Adults to Violence*, DENVER POST, Mar. 25, 1969, at 3.
[160] Kane, *supra* note 153, at 5.
[161] Gene Cooper, *Hispano Demands Partly Won*, DENVER POST, March 26, 1969. *See also Minority Unit Unified, School Board Warned*, DENVER POST, Mar. 26, 1969.
[162] Alan Cunningham, *Hispanos Push for Unity to Effect School Change*, ROCKY MTN. NEWS (Denver), Mar. 24, 1969, at 8.
[163] *Id.*
[164] *Id.*

[165] *See also Minority Area Teacher Call for School Funds*, DENVER POST, Mar. 29, 1969.
[166] Martin Moran, *Gilberts Answers Quest For West High Changes*, ROCKY MTN. NEWS (Denver), Mar. 27, 1969, at 5–6. *See also* Gene Cooper, *Hispano Demands Partly Won*, DENVER POST, Mar. 26, 1969, at 1.
[167] Bob Huber, *Return to School, Gonzales Says*, DENVER POST, Mar. 28, 1969, at 27.
[168] Colorado and several other states were especially influenced by the United States' Congress passage in 1968 of the Bilingual Education Act as a new provision of the Elementary and Secondary Education Act of 1965. Accordingly, the act authorized funds for local school districts to enact bilingual education programs. Bilingual Education Act of 1968, Pub. L. No. 90-247, 81 Stat. 783 (codified as amended at 20 U.S.C. §§ 7401-7491 (2000)).
[169] Calvin Trillin, *Doing the Right Thing in Denver*, NEW YORKER MAG., May 31, 1969.
[170] Watson, *supra* note 3, at 109.
[171] Trillin, *supra* note 169.
[172] *Id.*
[173] Watson, *supra* note 3, at 111.
[174] *Id.*; *See also* Harold Jackson, *Discrimination and Busing: The Denver School Board Election*, 8 ROCKY MTN. SOC. SCI. J. 102–107 (1971).
[175] Watson, *supra* note 3, at 111.
[176] *Id.*
[177] Two of the named and racially described plaintiffs, "Negro" Kris Colley, and "Hispano" Carlos Perez, respectively attended East and West High Schools—schools that were at the center over the battle to eliminate discriminating and bias from Denver's schools during the 1950s and 1960s. Complaint for Permanent Injunction and Declaratory Judgment, June 19, 1969, *in* Keyes Collection, Box 4, Book 1, Vol. 1.
[178] Wikepedia, The Free Encyclopedia, Dwight D. Eisenhower, *at* http://en.wikipedia.org/wiki/Dwight_D._Eisenhower (last visited Nov. 20, 2004).
[179] *See* Roscoe Drummond, *Ike: A Great American*, DENVER POST, Mar. 29, 1969, at 12.
[180] Brown v. Bd. of Educ., 347 U.S. 483 (1954).
[181] Tom Cadwallader, *Racial Confrontation*, DENVER POST, Mar. 29, 1969, at 12; Roy Wilkens, *Racial Separation Can Only Lead to Racial Inequality*, DENVER POST, Mar. 29, 1969, at 12.
[182] Cadwallader, *supra* note 181, at 12.
[183] *See*, *e.g.*, DUDZIAK, *supra* note 20, at 115–151.
[184] Fred Thomas, *War on Unequal Education Will Continue in Denver*, DENVER POST, May 28, 1969.
[185] *Id*. (emphasis added).
[186] Complaint for Permanent Injunction and Declaratory Judgment, *supra* note 177.
[187] *Keyes*, 413 U.S. at 191, 195.
[188] Their concerns rested in the pattern of school board decisions that contributed to racially concentrated Black schools extending northeast from Five Points to Park Hill. *See* Romero, *supra* note 24, ch. VIII generally, notes 42–73 and accompanying text. Although the lawyers recognized that a case existed against the Denver Public School system, they did not have the time nor the resources to prosecute such a large case.

Accordingly, the lawyers contacted Denver law firms who had the resources to take the case on a pro-bono basis. Watson, *supra* note 3, at 112.

[189] *Keyes*, 413 U.S. at 191.

[190] Complaint for Permanent Injunction and Declaratory Judgment, *supra* note 177.

[191] *Keyes*, 303 F. Supp. 279, 288 (D. Colo. 1969).

[192] Hernández v. Texas, 347 U.S. 475, 478 (1954).

[193] Christopher Jencks, *Busing—The Supreme Court Goes North*, N. Y. TIMES (Magazine), Nov. 19, 1972.

[194] *Keyes*, 413 U.S. at 195–196 .

[195] *See* Romero, *supra* note 24, at 431–440.

[196] IAN F. HANEY-LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996). The term "prerequisite" refers to the 1790 Naturalization requirement that naturalization be restricted to "White persons." Act of March 26, 1790, ch. 3, 1 Stat. 103. The requirement was repealed by the Immigration and Nationality Act of 1952, § 311, ch. 2, 66 Stat. 239 (codified as amended at 8 U.S.C. § 1422 (1988)).

[197] HANEY-LÓPEZ, *supra* note 196, at 203–208 (Appendix A).

[198] *See* i*d.* at chs. 2–3.

[199] *In re* Rodriguez, 81 Fed. 337, 349 (W.D. Tex. 1897).

[200] *Id*.

[201] Morrison v. California, 291 U.S. 82, 95 n. 5 (1933).

[202] In the case, the Supreme Court held that a Mississippi "colored" school desegregation statute was properly applied to an American citizen of "pure Chinese blood." Gong Lum v. Rice, 275 U.S. 78, 85 (1927).

[203] *Id.*

[204] *Id.* at 87

[205] Clare Sheridan, '*Another White Race:' Mexican Americans and the Paradox of Whiteness in Jury Selection*, 21 LAW AND HIST. REV. 109, 111 (2003).

[206] *Id.* at 118–122.

[207] *Id.* at 120 (citing Sanchez v. Texas, 243 S.W. 2d 700 (1951), Rogers v. Texas, 236 S.W. 2d 141 (1951); Bustillos v. Texas, 213 S.W. 2d 837 (1948); Salazar v. Texas, 193 S.W. 2d 211 (1946), Sanchez v. Texas, 181 S.W. 2d 87 (1944); Lugo v. Texas, 124 S.W. 2d 344 (1939); Carrasco v. Texas, 95 S.W. 2d 433 (1936); and, Ramirez v. Texas, 40 S.W. 2d 138 (1931)).

[208] *See*, *e.g.*, MARTHA MENCHACA, RECOVERING HISTORY, CONSTRUCTING RACE: THE INDIAN, BLACK, AND WHITE ROOTS OF MEXICAN AMERICANS 285–296 (2001); DAVID MONTEJANO, ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836–1986, at 157–256 (1987).

[209] Sheridan, *supra* note 205, at 120; Ian Haney-López, *Race, Ethnicity, Erasure: The Salience of Race to Lat Crit Theory*, 85 CALIF. L. REV. 1143, 1166–1170 (1997).

[210] Lueras v. Town of Lafayette, 100 Colo. 124, 124–25 (1937).

[211] The Court, however, failed to discuss the fact that the town of Lafayette had virtually no "Negroes," Chinese, or Japanese citizens. *Id.* The largest single identifiable "minority" group was "Spanish-American." *Id*. at 125–126.

[212] *Id.* at 126,

[213] Sheridan, *supra* note 205, at 120.

[214] *Id.*
[215] *Id.*; Haney-López, *supra* note 209, at 1166–1170; Yick Wo v. Hopkins, 118 U.S. 356 (1886).
[216] Robert R. Alvarez, Jr., *The Lemon Grove Incident: The Nation's First Successful School Desegregation Cases*, J. OF SAN DIEGO HIST. 116 (1986).
[217] *Id.*
[218] *Id.* (the case was never appealed).
[219] Cisneros v. Corpus Christi Indep. Sch. Dist., 33 S.W. 2d 790, 795 (Tex. Civ. App. 1930).
[220] GILBERT G. GONZALEZ, CHICANO EDUCATION IN THE ERA OF SEGREGATION 118–120 (1990); *see also* Kristi Bowman, *The New Face of School Desegregation*, 50 DUKE L.J. 1751, 1772 (2001).
[221] Westminster Sch. Dist. of Orange County v. Mendez, 161 F.2d 774 (9th Cir. 1947).
[222] *Id*. at 780; Mendez v. Westminster Sch. Dist. of Orange County, 64 F. Supp. 544, 546 (S.D. Cal. 1946).
[223] *Mendez*, 161 F.2d at 780.
[224] *Id.* at 781 n. 7.
[225] *Id.* at 780.
[226] *Id.* at 781.
[227] *Id.* at 780–81.
[228] *Hernández*, 347 U.S. at 478.
[229] *Id.* at 478–479.
[230] *Id.* at 478.
[231] *Id.*
[232] *Id*. at 478–479.
[233] Sheridan, *supra* note 205, at 131.
[234] *Brown*, 347 U.S. at 483.
[235] Bowman, *supra* note 220, at 1776.
[236] *Id. See also* Steven H. Wilson, *Brown Over 'Other White:' Mexican Americans' Legal Arguments and Litigation Strategy in School Desegregation Lawsuits*, 21 LAW AND HIST. REV. 145, 164 (2003).
[237] *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973); Lau v. Nichols, 414 U.S. 563 (1974).
[238] *See* Wilson, *supra* note 236, at 173–190.
[239] *See infra* Part III and accompanying notes 126–181; *see also* VIGIL, *supra* note 146, at 94–100.
[240] *See*, *e.g.*, Cisneros v. Corpus Christi Indep. Sch. Dist., 324 F. Supp. 599 (S.D. Tex. 1970) (filed in late 1968). In places such as Texas, some school districts, to get around *Brown*, assigned "Mexican American" and "African Americans" to the same schools and argued that such schools were integrated. GUADALUPE SAN MIGUEL, JR., "LET THEM ALL TAKE HEED:" MEXICAN AMERICANS AND THE CAMPAIGN FOR EDUCATIONAL EQUALITY IN TEXAS 1910–1981, at 175–177 (1987).
[241] Complaint for Permanent Injunction and Declaratory Judgment, *supra* note 177, at 1.
[242] *Id.* at 1–2.

[243] *Id*. at 1–2 (emphasis added). The racial implications of the case were further accentuated by the interests of self-described "White" "tax-paying" Denverites. In their motion to intervene in the case, these citizens declared that the desegregation plans of the DPS Board discriminated against "White" children by unnecessarily exposing them to traffic hazards; requiring them to spend more time going to and from school; removing them from the familiar surroundings of their neighborhoods and homes; depriving them of benefits of attending neighborhood schools; as well as not being able to participate in all school activities which are available to other students within the school district. Accordingly, these "White" "tax-paying" interveners argued that "it is constitutionally impermissible to discriminate against a [W]hite person" in favor of other "minority" groups. Intervening Defendants' Memorandum Brief, *in* Keyes Collection, Box 4, Book 3, at 4–7.
[244] Complaint for Permanent Injunction and Declaratory Judgment, *supra* note 177, at 8–14. Watson, *supra* note 3, at 127–137, 142–150.
[245] Watson, *supra* note 3, at 127–137, 142–150.
[246] *Id.* at 142–143.
[247] Keyes v. Sch. Dist. No. 1, 313 F. Supp. 61, 74 (D.C. Colo. 1970).
[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.*
[252] *Id.*
[253] Watson, *supra* note 3, at 146.
[254] *Id.*
[255] *Keyes*, 313 F. Supp. at 76.
[256] *Id.*; Importantly, the Court cited several recent 10th circuit decisions that rejected so-called "de facto" segregation in schools. *See* Bd. of Educ. v. Dowell, 375 F.2d 158 (10th Cir. 1967), *cert. denied*, 387 U.S. 931 (1967); Downs v. Bd. of Educ., 336 F.2d 988 (10th Cir. 1964), *cert. denied*, 380 U.S. 914 (1965).
[257] *Keyes*, 313 F. Supp. at 77.
[258] *Id.*
[259] *Id.* (see table).
[260] *Id.*
[261] In many of the schools that the court looked at Whites, Black and Mexican Americans individually constituted sizable, but by no means overwhelming majorities or minorities. For example, the court looked at Boulevard, Crofton, Ebert, Garden Place, Gilpin, Wyatt, and Wyman elementary schools, Baker and Morey junior high schools, and East, West, and Manual high schools.
[262] Doyle grew up in Denver's westside in the 1910s. Once the center of Denver's "Irish-American" community, the neighborhood had transitioned to a largely "Mexican American" community in the years following World War II. During his youth, Doyle attended West High School. In 1937, Doyle graduated from George Washington University Law School. He returned to Denver, took the bar and worked in both private practice and as a deputy district attorney for Denver. After serving in World War II, Doyle returned to Denver and resumed his private practice while he was also an adjunct

lecturer at Denver's Westminster Law School, the University of Denver, and the University of Colorado. In 1947, Doyle served as a delegate to the Denver Charter Convention. In 1948, Doyle filled a two-month vacancy on the Denver District Court bench. As a Democrat, Doyle ran an unsuccessful campaign for a seat on the Colorado Supreme Court. Doyle was elected to the Colorado Supreme Court in 1958 after becoming a prominent member of the Democratic party, where he became close to Rodolfo "Corky' Gonzales, and other Chicano and Black Democrats. In 1961, President John F. Kennedy appointed Doyle to an opening on the bench of the United States District Court, District of Colorado. *See* John L. Kane, Jr. & Sharon Marks Elfenbein, From Guns to Gavels: A History of the Federal Territorial and District Courts of Colorado 82–85 (1991) (unpublished manuscript); *see also*, Barbara Browne, *Political Pugilists Cheer Corky's Cause,* ROCKY MTN. NEWS (Denver), Jan. 9, 1959.

[263] *Keyes*, 313 F. Supp. at 69.

[264] *Id.*

[265] *Id.* at 77.

[266] *Id.* at 69.

[267] *Id.* at 77 (emphasis added).

[268] *Id.* at 84. Two months later, the court added Elyria and Smedley Elementary schools to the already identified fifteen "core city" schools. *Keyes,* 313 F. Supp. at 96.

[269] *Id.* at 96–99.

[270] *Id.* at 98.

[271] *Id.*

[272] *Id.* at 97.

[273] *Id.*

[274] *Id.*

[275] Such matters in Judge Doyle's own circuit were further complicated in December 1969 when the United States District Court, District of New Mexico refused to certify Mexican Americans as a class in a school desegregation complaint. According to the New Mexico court:

> The . . . class is designated as 'Indo-Hispano, also called Mexican-American and Spanish- American'. The plaintiffs allege this class is generally characterized by having Spanish surnames, Mexican, Indian, and Spanish ancestry, and that the class speaks Spanish as a primary or maternal language. The complaint alleges that the minors of public school age in the Indo-Hispano class constitute over thirty per cent of the children of public school age in the State of New Mexico. In connection with this class, the complaint also designates a class of 'non-Indo-Hispano' meaning only white or Caucasian, or Anglo-American. The classes of 'Indo-Hispano' or non-Indo-Hispano', as designated in the complaint, do not include either Negroes or Indians.

Lopez Tijerina v. Henry, 48 F.R.D. 274, 275–76 (D. N.M. 1960). The plaintiffs attempted in this case to define the class using criteria such as Spanish-surname, Mexican, Indian and Spanish ancestry, and bilingualism, according to the New Mexico District Court, were wholly unworkable and inconsistent given New Mexico's complicated racial and ethnic past. *Id.*

[276] *Cisneros*, 324 F.Supp. at 599.

[277] *Id.*
[278] In contrast to *Keyes* and the Colorado District Court that used the term "Hispanos," Judge Seals used the term "Mexican American" to differentiate this group from Black and White students. *Id.* at 601.
[279] *Id.*
[280] *Id.* at 604.
[281] *Id.* at 606 n. 27.
[282] *Id.* at 606.
[283] Judge Seals' opinion evaluated an overwhelming litany of historical and social evidence of discrimination by Whites against Corpus Christi's Mexican American community. This evidence led him to conclude that Corpus Christi's Mexican Americans were a distinctly identifiable ethnic-minority group who, like African Americans who suffered a long history of past and present discrimination in the city. Judge Seals noted that Mexican Americans an African American were not the only groups "susceptible to [similar types of] discrimination," in American history, but Corpus Christi's own historical patterns of discrimination necessitated the finding that discrimination against both groups led to a "dual school system." *Id.* at 615. In making this determination, Judge Seals recounted a history of Mexican Americans in Corpus Christi that was remarkably similar to that of Denver's community. Thus, the collective result of all these experiences and actions was the creation of largely Mexican American as well as African American schools. *Id.* at 605–612, 616–623. And as in Denver, such discrimination and its impact on the Mexican American community was something that was impossible to ignore. As Judge Seals noted, "it seems to this court that . . . Mexican American organizations . . . were called into being in response to this problem. This is why, perhaps, we are having so many hearings, so many government commissions studying these problems, and so many publications and books being published concerning this very real problem." *Id.* at 615.
[284] *Id.* at 616.
[285] *Id.* at 626–27.
[286] *Id.* at 627. Judge Seals referenced the American South for the value of such commissions:

> Because the courts, especially in the South, are finding that a bi-racial or human relations committee appointed by the court can aid the school boards and the courts through these trying times, and in these complex problems of creating a unitary system and maintaining them, this court is of the opinion that a human relations committee appointed by this court will be of great help.

*Id.*
[287] *Id.* (emphasis added).
[288] STEPHEN J. LEONARD & THOMAS J. NOEL, DENVER: FROM MINING CAMP TO METROPOLIS 380 (1990).
[289] *Id.*
[290] Madestella C. Holcomb, *Equality is the Key*, DENVER POST, Feb. 19, 1970.
[291] *Id.*
[292] Plaintiff's Opening Brief in Support of Cross-Appeal, *in* Keyes Collection, Box 4, Book 4, at 50.

[293] Keyes v. Sch. Dist. No. 1, 445 F. 2d 990, 1002–1006 (10th Cir. 1971).
[294] *Id.*
[295] Such policies, according to the Tenth Circuit, included the "prevailing educational theory of the day" that allowed Black teachers to be placed in minority schools, and the refusal of the district to bus minority students from overcrowded schools while approving the "busing of Anglo students" in areas recently annexed by the city that did not have school buildings. *Id.* at 1006.
[296] *Id.* at 1005.
[297] On Pet. for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, Brief for Respondents in Opposition, Nov. 23, 1971, *in* Keyes Collection, Box 4, Book 6, at 14–15.
[298] *Id.*
[299] The Fifth Circuit upheld Judge Seals finding that Mexican Americans were a distinct minority that suffered a constitutional harm. Cisneros v. Corpus Christi Indep. Sch. Dist., 467 F. 2d 142 (5th Cir. 1972), *cert. denied*, 413 U.S. 922 (1973).The appellate court, however, rejected the integration plan formulated by the trial court. *Id.* Based on such reasoning, the Fifth Circuit also overturned another district court's decision to classify Mexican American interveners in different school desegregation suit as White. Ross v. Eckels, 467 F. 2d 649 (5th Cir. 1972).
[300] Keyes v. Sch. Dist. No. 1, 413 U.S. 189 (1973).
[301] *Id.* at 256.
[302] *Id.*
[303] *Id.* at 195.
[304] *Id.*
[305] *Id.* at 196. Indeed, the *Keyes* plaintiff's argued that the placement for Mexican Americans and African American in school desegregation jurisprudence was "a case of first impression" for the court. Plaintiff's Opening Brief in Support of Cross-Appeal, *supra* note 292, at 6. The Plaintiff's argued that they "are aware of no precedent for not combining the minority groups." *Id.*
[306] United States Commission on Civil Rights, Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest–Report 1 (Government Printing Office 1971).
[307] *Id.*
[308] *Keyes*, 413 U.S. at 197.
[309] *Id.*
[310] *Id.* at 198.
[311] *Id.* at 198–99.
[312] *Id.* at 213 (citing Green v. County Sch. Bd., 391 U.S. 430, 438 (1969)).
[313] Keyes v. Sch. Dist. No. 1, 380 F. Supp. 673, 695 (D. Colo. 1974), *aff'd and rev'd in part*, 521 F.2d 465 (10th Cir. 1975).
[314] MALDEF represented an organization of Chicano parents and teachers known as the Congress of Hispanic Educators.
[315] Complaint of Intervention, *in* Keyes Collection, Box 5, Book 1
[316] *Id.*
[317] Motion to Intervene as Parties Plaintiffs, *in* Keyes Collection, Box 5, Book 1, at 3.
[318] *Id.* at 18.

[319] *Id.*
[320] Mexican American Legal Defense and Education Fund, Memorandum of Law in Support of Motion to Intervene as Parties Plaintiffs, *in* Keyes Collection, Box 5, Book 1, at 13.
[321] *Id.* at 22, 29. MALDEF argued that although Blacks and Chicanos shared common questions of law and fact, courts needed to recognize appropriate remedies targeted to the distinct needs of each group.
[322] The "Cardeñas Plan," which was drafted and submitted by Dr. Jose Cardeñas, adopted the following as its guiding principles:

> That the culture, heritage, and language of minorities are worthy of study and recognition by the educational system, its students, and its personnel;
> That the development of pride, coupled with resilience, will motivate minority youngsters toward higher academic goals and aspirations;
> That learning another language at very early age is instrumental for developing a student's appreciation of all languages;
> That it is essential for students to participate in a strong oral English language program before beginning other English language skills.
> That it is essential for students initially to receive instructing in the dominant language.
> That it is essential for the schools to evidence concretely the recognition of other cultures, especially those of the Southwest and Mexico.
> That it is essential for the schools to make available materials which accurately and objectively reflect the culture, history, and language of minorities.

Mexican American Legal Defense and Education Fund, Addendum to the Intervener's Plan for the Denver Public Schools (1974), *in* Keyes Collection, Box 5, Book 2, at 8.
[323] *See* discussion *supra* Part III and accompanying notes 138–140.
[324] Addendum to the Intervener's Plan for the Denver Public Schools, *supra* note 322, at 8–9.
[325] *Id.* at 1–4.
[326] *Id.* at 8.
[327] As Justice Earl Warren noted, to separate Black and White students "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown*, 347 U.S. at 494. Judge Doyle in *Keyes* explained such segregation and resulting inferiority as the "minority factor." *See supra* notes 41–42 and accompanying text.
[328] MALDEF, *supra* note 321, at 6–7.
[329] *Keyes*, 380 F. Supp. at 696 (emphasis added).
[330] *Keyes*, 313 F. Supp. At 69.
[331] Keyes v. Sch. Dist. No. 1, 521 F. 2d 465 (10th Cir. 1975).
[332] Colorado State Bd. of Educ., Brief of Amicus Curiae, Sept. 6, 1974, *in* Keyes Collection, Box 5, Book 5, at 16.
[333] *Id.* at 22.
[334] *Id.* at 20. For similar arguments, see Colorado Assoc. of Sch. Executives, Brief of Amicus Curiae, *in* Keyes Collection, Box 5, Book 5, at 27.

[335] Brief of Appellants Keyes in Support of Cross-Appeal, Sept. 10, 1974, *in* Keyes Collection, Box 5, Book 5, at 57.
[336] *See* Complaint for Permanent Injunction and Declaratory Judgment, *supra* note 177, at 1–2.
[337] *Keyes*, 521 F.2d at 465.
[338] *Id.* at 480.
[339] *Id.* at 480–81.
[340] *Id* at 483.
[341] *Id.* at 482.
[342] *See*, *e.g.*, Lau v. Nichols, 414 U.S. 563 (1974) (upholding bilingual education program aimed at children of Chinese ancestry). In *Serna v. Portales Municipal Schools*, the Tenth Circuit held that lack of effective bilingual and bicultural education program created unequal educational opportunity for Mexican American students. 499 F. 2d 1147 (10th Cir. 1974). Because both *Lau* and *Serna* were upheld on the basis of Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, the Tenth Circuit ultimately concluded that bilingual and bicultural programs were not an appropriate Fourteenth Amendment remedy. *Keyes*, 521 F.2d at 480–82. Four years later, however, five justices of the Supreme Court in *Bakke* concluded that Title VI's prohibitions were co-extensive with the Fourteenth Amendment. Regents of Univ. of Cal. v Bakke, 438 U.S. 265, 287 (Powell, J); *Id.* at 328 (Brennan, White, Marshall, and Blackmun, JJ, concurring in part, dissenting in part). This suggested that its proscriptions—including bilingual and multicultural education—were co-extensive as well. By this time, however, the parameters of desegregation in Denver were entrenched.
[343] LEONARD & NOEL, *supra* note 288, at 378–80.
[344] *Id.* at 378.
[345] *Id.* at 380.
[346] COLO. CONST., art. XX, § 1 and art. XIV, § 3. *See also* LEONARD & NOEL, *supra* note 288, at 379. The Poundstone Amendment anticipated the Supreme Court's 1977 ruling in *Milliken v. Bradley* that desegregation plans based upon the 14th Amendment could not extend beyond the boundaries of a school district found by courts to be segregated**.** Milliken v. Bradley, 433 U.S. 267 (1977).
[347] LEONARD & NOEL, *supra* note 288, at 379.
[348] Franklin J. James & Christopher B. Gerboth, *A Camp Divided, Annexation Battles, the Poundstone Amendment, and Their Impact on Metropolitan Denver 1941–1988*, COLO. HIST., 2001, at 173 n. 87. James and Gerboth's study noted that Frida Poundstone, the author of the Amendment, "intentionally stoked suburban fears by raising the specter of court-ordered busing on a metropolitan scale." *Id*. at 158.
[349] *Id.* at 163.
[350] Denver School Board and Denver Chamber of Commerce, 'Here Could Lie a Potentially Great City!' (1969), *in* ADL Collection, Box 17, FF 9.
[351] Frank Moya, *Chicano-Police Gunfight, Bombing Kill 1, Injure 18*, ROCKY MTN. NEWS (Denver), Mar. 18, 1973; Harry Gessing & John Ashton, *1 Killed, 19 Hurt, 36 Held in Denver Gunfight, Blast*, DENVER POST, Mar. 17, 1973.
[352] VIGIL, *supra* note 146, at 288–363.
[353] LEONARD AND NOEL, *supra* note 288, at 469.

[354] *Id.* at 470.
[355] *See* James & Gerboth, *supra* note 348, at 163.
[356] *See id.*
[357] *Id.*
[358] *Id.*
[359] *The Nonsense About 'Resegregated' Schools,* ROCKY MTN. NEWS (Denver), Jan. 23, 2004 (emphasis added).
[360] *Id.* (emphasis added). *See also* Gary Orfield & Chungmei Lee, *Brown at 50: King's Dream or Plessy's Nightmare*, THE CIVIL RIGHTS PROJECT 2004.
[361] For example, see J. HARVIE WILKINSON III, FROM BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION 1954–1978, at 193–202 (1979); PATTERSON, *supra* note 18, at 160–162; Kevin Brown, *Has the Supreme Court Allowed the Cure for De Jure Segregation to Replicate the Disease?*, 78 CORNELL L. REV. 1 (1992). Scholars, however, are beginning to recognize the many interests that existed in *Keyes*. See, for instance, Bowman, *supra* note 220, at 1751, and Margaret E. Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 LA RAZA L.J. 159 (2001).