

## *KEYES V. SCHOOL DISTRICT NO. 1: A PERSONAL REMEMBRANCE OF THINGS PAST AND PRESENT*

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### ABSTRACT

William Faulkner famously said: “The past is never dead. It’s not even past.” So it is with the *Keyes* case. Although the case was conceived and filed over forty years ago, it endures in the effects it had on the community of Denver and the nation at large as still the leading United States Supreme Court case on school desegregation and equal educational opportunity. And it abides vividly in the memories of those who were involved, bore witness, and stood up for what was right, as their lights allowed them to see the right. These are the remembrances of one of those many.<sup>1</sup>

### TABLE OF CONTENTS

I. INTRODUCTION .....	1083
II. HOW AND WHY I GOT INVOLVED IN THE <i>KEYES</i> CASE .....	1091
A. <i>Park Hill: The Crucible of the Keyes Case</i> .....	1092
B. 1966–1967.....	1093
C. <i>The Coleman Report</i> .....	1096
D. 1968.....	1098
E. <i>How the Keyes Case Became a Reality</i> .....	1102
III. JUNE 9, 1969: RESCISSION OF THE DESEGREGATION RESOLUTIONS AND PLAN .....	1110
IV. CONCLUSION.....	1113

### I. INTRODUCTION

Because of my role in the case of *Keyes v. School District No. 1*,<sup>2</sup> I was asked to speak at Denver University Law Review’s symposium on the fortieth anniversary of the United States Supreme Court’s landmark decision in that case. I could not attend but instead have written the per-

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<sup>†</sup> My thanks to my compatriots Edwin (Ed) S. Kahn and Lawrence (Larry) Treece for reviewing and improving this Remembrance. Their work on the case was invaluable. The author graduated from Yale University (B.A. *magna cum laude*, 1962), taught Humanities at Emory University in the 1962–1963 school year, and graduated from Harvard Law School in 1966. He was an Associate and then Partner at the Holland & Hart law firm from 1966 to 2006 and is now retired, living in Denver’s Park Hill area, which became the epicenter of the *Keyes* case and remains an important neighborhood in the school district’s ongoing efforts to provide equality of educational opportunity.

1. Larry Treece, whose contribution to *Keyes* is discussed below, suggested the text of this Abstract.

2. 413 U.S. 189 (1973).

sonal remembrance that follows with the hope of contributing to an understanding of how and why the *Keyes* case happened. If ever there was a case that “took a community” to make it happen, it was the *Keyes* case.

On the morning of Thursday, August 28, 1969, I was at the front door of the U.S. Supreme Court waiting for the Court to open. There were five days left before the opening of the Denver Public Schools (DPS) on Tuesday, September 2, 1969, after the long Labor Day weekend. I had come directly from the airport in the lifting dark of the early morning on a red-eye flight from Denver, Colorado, the last flight in the middle of the night that could get me to the Supreme Court before it opened the next day. There was not a moment to spare. In the late afternoon on Wednesday, I had received a call from the clerk of United States Court of Appeals for the Tenth Circuit informing me that the court had stayed a modest desegregation plan slated to go into operation the day after Labor Day.

After I sat for a couple of hours under the portico at the entrance to the Court in the warm drizzle of a Washington, D.C. summer morning, a dapper, courtly gentleman opened the door, invited me in, and asked me why I was there. I told him I had an urgent motion to reinstate a modest school integration plan affecting thousands of Denver schoolchildren, who would otherwise be sent back to segregated schools on the coming Tuesday. The Court was silent and empty at this early hour, and we seemed to be the only people in its vast halls. The great hall of the Court was majestic. It inspired awe and reverence in a young lawyer three years out of law school.

The courtly gentleman invited me into his office and asked me to explain in more detail what the case involved. I put on his desk the Motion to Vacate Suspension of, and to Reinstate an Order of the United States District Court for the District of Colorado Ordering Partial Implementation of School Desegregation Plan,<sup>3</sup> together with Exhibits A through M. The pile of paper was several inches thick and was addressed to Associate Justice Byron R. White, the Circuit Justice for the Tenth Circuit, who would ordinarily act on such matters during the summer when the Supreme Court was not in session.

I did not know who had welcomed me, or his duties at the Court, but assumed he was an official in the clerk’s office. We talked for more than an hour about what had occurred in Denver that led to the motion I was presenting. I walked him through the marathon of events, court hearings, and decisions that had occurred in Denver during 1968–1969. It became clear that he was an astute and learned lawyer, and wanted to

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3. This motion is on file with the Norlin Library Archives at the University of Colorado at Boulder under *Wilfred Keyes v. Denver School District*, 1st Accession, Box 22, Book 2, No. 23A.

know the facts and the law in enough detail to decide what to do with it. He had lots of questions. We went through the filing step by step.

I explained that Judge William E. Doyle of the United States District Court for the District of Colorado in Denver had held five days of hearings in mid-July on a class action filed there on June 19, 1969. A mere ten days after the new majority was elected to the Denver Public Schools Board of Education election on May 20, 1969, the new school board rescinded a modest school desegregation plan adopted by the prior board.<sup>4</sup> Adopted by a 5–2 majority of the prior board, the rescinded plan had been based on over eight months of study, development, and extensive community involvement. Judge Doyle issued his order orally on July 23, 1969, finding *de jure* segregation in several schools in my Park Hill neighborhood and in other parts of northeast Denver. In his written opinion dated July 31, 1969, Judge Doyle held:

Under the Fourteenth Amendment the plaintiffs . . . have the right to be protected from official action of state officers which deprives them of equal protection of the laws by segregating them because of their race. The denial of an equal right to education is a deprivation which infringes this constitutional guarantee. The precipitate and un-studied action of four of the members of the Board rescinding and nullifying the school integration plan, which plan had been adopted after almost ten years of debate and study, and the adoption in its place of a substitute plan which would have had the effect of perpetuating school segregation . . . must be ruled unconstitutional, and . . . enjoined.<sup>5</sup>

It was only later that I found out that the courtly gentleman who had been so considerate and welcoming was none other than John Davis, clerk of the Supreme Court and a distinguished former Assistant Solicitor General of the United States. He had been a law clerk to Justice Earl Warren, who had written the opinion of the Court in *Brown v. Board of Education (Brown I)*,<sup>6</sup> the landmark school desegregation decision. Because Mr. Davis wanted to know the basis for the district court’s conclusion, I did my best to describe the highlights of the evidence presented in the case, including gerrymandered school boundaries that segregated schools; the building of a new school that opened segregated; the location of mobile classrooms to contain minority students in already segregated schools; the building of new classrooms at segregated schools when capacity was available in nearby “white” schools; discrimination in teacher assignments; and “optional” transportation of predominantly

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4. The plan desegregated several elementary schools and a junior high school in northeast Denver, Colorado, *see infra* Part II.C–D, a small part of the approximately 120 schools in the Denver public school system at the time. It did so in part by busing primarily black students, constituting an estimated 2%–4% of total students in the DPS system.

5. *Keyes v. Sch. Dist. No. 1*, 303 F. Supp. 279, 288 (D. Colo. 1969).

6. 347 U.S. 483 (1954).

white students out of “transitional” areas to predominantly white schools. We then went through the stay hearing conducted by the U.S. Court of Appeals for the Tenth Circuit, its remand to the U.S. District Court for the District of Colorado, further consideration by the district court, its issuance of a second injunction, and argument again before the Tenth Circuit. On August 27, 1969, the Tenth Circuit issued an order staying, and in effect vacating, the district court’s ruling only two business days before school started.

Significantly and tellingly, the Tenth Circuit’s ruling did not disagree with the district court’s “carefully prepared findings of fact and conclusions of law.”<sup>7</sup> Indeed, the Tenth Circuit found that Judge Doyle’s findings of fact and conclusions of law “represent[ed] a painstaking analysis of the evidence presented” after “an extensive hearing,” and explicitly stated that “we accept” those findings.<sup>8</sup> Nor did the court disagree that the constitutional rights of the children were affected, or that the relief Judge Doyle had granted was appropriate to protect those rights. Instead, the Tenth Circuit said that “in the time permitted, we are unable to make an examination of the record [in the case] and the law”<sup>9</sup> and that in its view, the public interest was better served by delaying the implementation of the modest integration plan.<sup>10</sup> The Tenth Circuit interpreted the command of the United States Supreme Court as requiring desegregation “with all convenient speed.”<sup>11</sup> The net result of its decision was to reassign the children to their segregated schools.

After our conversation ended, Mr. Davis picked up the telephone and called Justice White, who was staying at the mountain home of friends near Creede, Colorado. Mr. Davis briefly explained the case and motion to Justice White. Justice White said that during his time in private practice, he had represented the Denver school board and thought he might have a conflict of interest. He inquired as to who was available at the Court to handle the case, and Mr. Davis replied that Justices Marshall and Brennan were in town. Justice White asked him to see if either of them could handle the motion and to get back to him if they could not.

Mr. Davis then called Justice Marshall’s home. Mrs. Marshall answered. They had a brief social chat before Davis asked if Justice Marshall was available. She told him that the Justice was out “trimming the roses.” Mr. Davis said that of course they should not disturb him while he was trimming the roses. He then called Justice Brennan, who had al-

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7. Sch. Dist. No. 1 v. Keyes, No. 432-69, slip op. at 1 (10th Cir. Aug. 27, 1969) (on file with Norlin Library Archives, University of Colorado at Boulder, Wilfred Keyes v. Denver School District, 1st Accession, Box 23, Book 1, No. 62A).

8. *Id.*

9. *Id.* at 2.

10. *Id.* at 3–4.

11. *Id.* at 3.

ready arrived at the Court. Justice Brennan said he would consider the matter.

I provided a copy of the Tenth Circuit's August 27, 1969 decision with the filing. I told Mr. Davis that I had a handwritten draft of a supplement to our motion that covered our view of that opinion and that I would submit it as soon as I could get its few pages typed. I also told him that the motion itself had been served on the defendants, together with notice that we were filing it with the Court that morning, and that the supplement to the motion would also be hand-delivered to them. He was gracious and understanding of the exigency of the moment.

I hurried off, got the supplement typed, conferred with Gordon Greiner and Craig Barnes, co-counsel in Denver, as well as with Jim Nabrit and Conrad Harper of the NAACP Legal Defense and Educational Fund (LDF), incorporated their thoughts, went back to the Court, and got it filed and served. And then I waited, pondering the fate of my community and its schoolchildren.

Craig Barnes and Gordon Greiner tried and argued the case in the U.S. District Court for the District of Colorado and U.S. Court of Appeals for the Tenth Circuit. At the time of the Tenth Circuit's stay order, they were fishing together in the Flat Tops wilderness area in western Colorado. They were thus out of reach when the Tenth Circuit made its August 27, 1969 decision. We anticipated an adverse ruling from the Tenth Circuit after its August 5, 1969 action remanding and in effect staying and vacating Judge Doyle's preliminary injunction<sup>12</sup> for failure to consider the Civil Rights Act of 1964, a subject that neither party had raised or addressed.

On August 8, 1969, Ed Kahn began researching and drafting a motion to stay the Tenth Circuit's anticipated action and to reinstate Judge Doyle's injunction. I drafted a statement of facts for the motion. We all knew that the success of that motion was likely to determine whether the desegregation plan would go into effect on September 2, 1969. Gordon Greiner, Craig Barnes, and I reviewed and worked on the motion, and conferred with Conrad Harper of the LDF, which had experience with such motions. The motion and exhibits were ready, with blanks left for the date of the Tenth Circuit's action. Gordon, Craig, and I conferred one last time on the motion on August 26, 1969.

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12. *Keyes v. Sch. Dist. No. 1*, 303 F. Supp. 289, 289–90 (D. Colo. 1969). The Tenth Circuit heard the appeal on August 4 and 5, 1969 (arguments I attended), and issued its opinion and formal order vacating the preliminary injunction and remanding the case on August 5, 1969. The citation in this footnote is to Judge Doyle's written opinion referencing the remand, making additional findings of fact and conclusions of law, and issuing a preliminary injunction restoring the prior school board's partial desegregation plan. Reference to these actions is also made in the motion, *supra* note 3, citing Appendix G to that motion.

I was at Holland & Hart's office in the late afternoon of August 27, 1969, when the Tenth Circuit's clerk called and told me that the court's stay opinion was available. I went to the court, obtained a copy of the opinion, read it, filled in the blanks of our motion, prepared a certificate of service, and had Marge Apperson, Gordon Greiner's secretary, work overtime to finalize the filing, arrange its service on the defendants, and make travel arrangements to get me to Washington, D.C., pronto. My time records show that Gordon called in from western Colorado, having heard news of the decision on the car radio as he and Craig were about to drive home. We tied in Conrad Harper of the LDF, and I read them the court's opinion.

Craig Barnes was still in Denver on Thursday morning. He briefed the Denver media, flew to Washington, D.C., later in the day, and, from what I remember, joined me late Thursday. I recall that Craig and I strolled around the Lincoln Memorial. The school board's counsel also flew to Washington, D.C. They filed their response to our motion. We all waited. I believe it was early afternoon on Friday, August 29, 1969, when Justice Brennan ruled that the decision by the Tenth Circuit "supplied no support in law for its action" staying Judge Doyle's injunction and that its action was "improvidently granted."<sup>13</sup> He ordered the reinstatement of Judge Doyle's injunction, which required implementation of a modest, first step in integrating Denver's schools.

Undaunted, on Saturday, August 30, 1969, the school board filed a motion asking the Tenth Circuit for relief from the Supreme Court's ruling. Unsurprisingly, the Tenth Circuit denied its motion.

In my appearance before the Tenth Circuit panel (probably when it announced its decision in mid-September to deny the school board's request), I recall Chief Judge Murrah, in his perfunctory recitation of the names of those appearing before him, reading my name in the same tone and volume in which he had read the names of others. Then, looking up, startled, he exclaimed in an exasperated voice, "MR. CONNERY!" Recovering his composure, he said: "My, you have been a busy boy." The U.S. Supreme Court reversed his panel's ruling in less than forty-eight hours.

It was well known at the time that Safeway Stores, Inc. was one of Holland & Hart's major clients. Knowing this, opponents of the Supreme Court's decision hanged Justice Brennan in effigy in front of one of Safeway's supermarkets and boycotted Safeway's stores in Denver. I was called into the office of the senior partner at Holland & Hart who represented Safeway Stores, Bill McClearn. He told me that he had the general counsel of Safeway Stores on the telephone from Oakland, California, and that he wanted to talk with me about the school case. As I

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13. *Keyes v. Sch. Dist. No. 1*, 396 U.S. 1215, 1216 (1969).

recall, the general counsel said something pretty close to the following: “Our stores are being boycotted, we’re losing money, and we don’t like it one damn bit. But those are constitutional rights you are defending. I just wanted to let you know that we understand what you are doing, and we are not going anywhere.” To this day, I admire both Bill and this general counsel for their character and their respect for constitutional rights and the rule of law. There were and are those senior partners and general counsels who would not be so understanding or respectful of what we were doing.

I wrote a letter to Mr. Davis forwarding a picture that appeared in the *Denver Post* of Justice Brennan being hanged in effigy in front a Safeway store. I told him that there might be a time when he would find it appropriate to show it to Justice Brennan. I don’t know whether he ever did.

My visit to the U.S. Supreme Court in 1969 imbued in me an immense respect for that institution for what it did to provide equal educational opportunity and hope for the future to several thousand children in Denver, not to mention the fact that it salvaged the hope of then-Mayor of Denver Tom Currigan, the Denver Chamber of Commerce, and many thousands of the Denver citizens who supported integration and equal educational opportunity. I remain grateful to this day for the courage and commitment shown by Holland & Hart in providing representation to those children, for without it and its resources, we never would have succeeded, and for the courage and commitment of Gordon Greiner, Craig Barnes, Larry Treece, Ed Kahn, and the many other volunteer lawyers involved. Nor can adequate thanks be given to our primary experts, George Bardwell, a professor of statistics and mathematics at the University of Denver, and Paul Klite, who had taught at the University of Colorado School of Medicine. They had an extraordinary ability to marshal and present one of the most complex cases in the history of school desegregation. The evidence they gave was the bedrock of the case.

Holland & Hart, a relatively young Denver law firm that encouraged public interest work, had risen in two decades to become Colorado and the region’s largest law firm. While sustaining the work of several attorneys for many years, Holland & Hart weathered the adversity of an unpopular cause and along with the city, witnessed the bombing of the home of lead plaintiffs Wilfred Keyes and Lyla Keyes and their children, the home of Judge William Doyle’s family, and about thirty school buses, a third of the Denver Public Schools’ fleet. It was no small contribution.

I also like to believe that the pro bono representation in the *Keyes* cases provided impetus for representation in civil rights, environmental, and other public interest cases in Colorado. One day, Bill McClearn got a call from Jay Topkis of the Paul, Weiss law firm in New York. So did Pat Westfeldt, also a senior partner at Holland & Hart. Both were asked

if they would join in the formation of a branch of the Lawyers' Committees on Civil Rights Under Law. They said yes. Bill, Pat, and I walked across Seventeenth Street for a meeting of several law firms that together decided to form the Colorado Lawyers Committee, which to this day continues to bring major public interest cases, such as *Lujan v. Colorado State Board of Education*<sup>14</sup> and *Lobato v. State*,<sup>15</sup> to protect U.S. and Colorado constitutional rights.

The *Keyes* case would go to trial and remain in the courts for twenty-five years. It would be the subject of a landmark decision by the Supreme Court in 1973 that would guide the provision of equal educational opportunity to minorities throughout the nation. It would require the Denver Public Schools to dismantle "root and branch"<sup>16</sup> the "dual school system"<sup>17</sup> it had operated. The *Keyes* decision would also provide Denver a second chance to avoid the fate of center cities in other metropolitan areas throughout the nation.

I had hoped that Gordon Greiner, the lead Holland & Hart attorney in the case, who died several years ago, might have written about the case. His contribution was monumental and indispensable to its outcome. Indeed, it became Gordon's case. He was a masterful trial lawyer in his prime, made the commitment, and bore the burden and responsibility of the case from its inception in 1969 through the cessation of the courts' jurisdiction in 1995. Gordon's judgment and integrity gave not only Holland & Hart but also the courts, the media, and opposing lawyers confidence that the case would be presented in accordance with the highest standards of the legal profession. His arguments and cross-examination laid bare the actions taken by the Denver school board that had resulted in school segregation and minority isolation, as he pled passionately and skillfully for their constitutional rights to be restored. For Gordon, the case was an inspired pursuit of truth and justice. He unstintingly gave his all to it, and then some. He was for many years a member of the board of the LDF and was recognized by his community (Park Hill) as Man the Year in 1969 (along with George Bardwell, Paul Klite, Craig Barnes, and Bob Connery).

I have tried to review and refresh my memory of the events of 1966 through 1969 by reviewing the news articles and important pleadings, transcripts, briefs, decisions, the extensive press coverage of events that occurred in that time period, and the daily time entries that Gordon Greiner, Larry Treece, Ed Kahn, and I (the Holland & Hart attorneys)

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14. 649 P.2d 1005 (Colo. 1982).

15. 218 P.3d 358 (Colo. 2009).

16. *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 213 (1973) (quoting *Green v. Cnty. Sch. Bd.*, 391 U.S. 430, 438 (1968)).

17. *Id.*



kept during that period.<sup>18</sup> Nonetheless, some of what follows is my remembrance.

## II. HOW AND WHY I GOT INVOLVED IN THE *KEYES* CASE

In the mid-1960s, I was impressed by the vital role that lawyers and the courts were playing in protection of the civil rights of minorities, and in particular their access to equal educational opportunity in the South and throughout the nation. My wife, Willow, had grown up in Washington, D.C., during the years 1946 through 1957 and had gone to public schools there through the tenth grade. The Supreme Court's decision in *Bolling v. Sharpe*,<sup>19</sup> a companion case to *Brown*, that addressed segregation in the schools of Washington, D.C., meant that after years of never seeing black kids in her school, one day fifty showed up. She was passionately committed to desegregation and equal rights, knew whereof she spoke, and was very persuasive. I listened, learned, and was moved. Willow and I got married in the summer of 1963, and I started law school in the fall of 1963. She put me through law school and provided the support that made it possible for me to participate in the *Keyes* case.

I spent the summers of 1962 and 1965 in Washington, D.C., working as a summer intern for U.S. Congressman Al Quie of Minnesota, a farmer and former school board member, who was on the House Education and Labor Committee. That Committee was then headed by Harlem, New York Congressman Adam Clayton Powell Jr. Powell made civil rights issues, including school desegregation, a priority of his Committee's work. I became deeply committed to the principle of equal educational opportunity, convinced that it was embedded in the ideals and values embodied in the Declaration of Independence and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

My work for Al Quie, a member of the House Education and Labor Committee, included legislative consideration of school desegregation issues occurring across the nation and in Washington, D.C., as the result of the Supreme Court's landmark ruling in *Brown*, which held that separate, segregated education for "Negroes" compelled or permitted by law could not be equal<sup>20</sup> and had to be desegregated "with all deliberate speed."<sup>21</sup> Washington, D.C. was also struggling with desegregation and would soon be involved in far-reaching litigation over equality of educational opportunity in its schools. The lawyer leading that litigation was

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18. Most of these documents are housed in the archives of the University of Colorado's Norlin Library in Boulder, Colorado. The documents cover the years 1963–1986 and are archived under *Wilfred Keyes v. Denver School District*, first and second accessions. The thirty-four boxes of materials were donated by Gordon G. Greiner.

19. 347 U.S. 497 (1954).

20. *Brown I*, 347 U.S. 483, 493 (1954).

21. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

William Kunstler, a well-known trial lawyer at that time. Washington, D.C.'s schools were approximately ninety percent African-American in the mid-1960s. As was the case in the center of many major metropolitan areas, Washington, D.C. (excluding the Federal Triangle and a few neighborhoods), included large ghettos with substandard schools.

In my last year of Harvard Law School (1965–1966), my wife Willow and I looked around the country for places to settle down and raise a family. Neither of us had been to Denver, but by reputation it was a progressive place with good schools. Colorado, under Governor John Love and its legislature, had been among the first states in the nation to pass open housing and other civil rights legislation. Denver ranked among the very top U.S. metropolitan areas in the educational level of its populace.

I interviewed at two Denver firms in my last year at Harvard Law School. They flew Willow and me to Denver to interview me and allow us to view the city. On that visit, we were introduced not only to Denver and Holland & Hart but also to the Park Hill neighborhood. It was a family neighborhood with beautiful, tree-lined boulevards and avenues that had grown up slowly over the prior five decades, full of large and small homes, and all kinds of people. Park Hill was home to many of Denver's oldest and largest churches. When segregation began to affect Park Hill schools in the late 1950s, those churches founded the Park Hill Action Committee (PHAC) to assure that Park Hill welcomed integration and helped make it work, including school integration.

Willow and I were sold on Park Hill, Denver, and the law firm of Holland & Hart. Park Hill was in central Denver, fifteen minutes by bicycle to the downtown offices of Holland & Hart. In June 1966, Willow and I moved to Denver in large part because of the promise of a good integrated education for our children, what the Park Hill community, Denver, and Colorado promised for the future, and the opportunity to work at an extraordinary law firm, Holland & Hart. Its lawyers were living lives that balanced hard work and hard play, with significant contributions to their communities, the state, the nation, and the world.

All of this background may seem irrelevant to the *Keyes* case. But it is not. It was serendipitous. I ended up in an integrated community. I had an expertise in school desegregation law and integration issues, and an acquaintance with the cases being litigated on those issues. My law firm had a history of public interest involvement and support.

#### *A. Park Hill: The Crucible of the Keyes Case*

Park Hill and northeast Denver were at the center of the desegregation and integration effort in Denver. And Park Hill was the area where the incipient and insidious segregation of schools in Denver was confronted. As federal district court Judge William E. Doyle noted in his first opinion on Denver school segregation under the heading “The Evi-

dence of the Case,” “[a]ttention at this hearing has focused primarily on the schools in northeast Denver, and particularly on the area which is commonly called Park Hill.”<sup>22</sup>

### B. 1966–1967

Soon after Willow and I moved to the Park Hill neighborhood in the summer of 1966, I became active in PHAC and its Schools Committee. In that work, I became acquainted with the work of Dr. George E. Bardwell, a professor of statistics and mathematics at the University of Denver. He had studied Park Hill housing and school developments for many years and prepared a report for the Denver Commission on Community Relations, published in 1966, entitled *Park Hill Areas of Denver*. He laid out there, and in his presentations throughout the city, what was happening in housing, schools, and their gradual segregation in Park Hill and northeast Denver. Its schools were being segregated and that segregation was impairing educational opportunity for minority children. Professor Bardwell’s work defined the problem, catalyzed concern, and focused action in Park Hill, as well as Denver as a whole. George Bardwell had many friends in Park Hill, including Fred N. Thomas, chairman of PHAC, and fellow University of Denver Professor Jules Mondschein, a vice chairman of PHAC.<sup>23</sup>

Beginning in 1960, black students who had previously attended Park Hill Elementary School were reassigned to Barrett Elementary School, a new elementary school with an inferior education program and a segregated, predominantly black student body.<sup>24</sup> Barrett’s eastern boundary was Colorado Boulevard. At the time Barrett opened, the area across Colorado Boulevard to the east, namely Park Hill, was predominantly white, while the area to the west was predominantly black.<sup>25</sup> The opening of Barrett in 1960 was the school board’s clearest action, taken with full knowledge, that it was creating a segregated school.<sup>26</sup>

The real estate practices known as redlining and blockbusting were also at work in these school areas. The net effects of school board actions were dramatic. Stedman Elementary School went from 4% black in 1960 to 50%–65% black in 1962, and to 94.6% black in 1968.<sup>27</sup> Hallett Elementary School went from 1% black in 1960 to 90% black in that same period.<sup>28</sup> At the same time the school board opened Barrett as a segregat-

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22. *Keyes v. Sch. Dist. No. 1*, 303 F. Supp. 279, 282 (D. Colo. 1969).

23. George was also a favorite storyteller for my children, whom he regaled with tales of the adventures of his flying Volkswagen.

24. Trial Transcript at 26–28, *Keyes v. Sch. Dist. No. 1*, No. C-1499 (D. Colo. July 16, 1969) (testimony of Rachel Noel) (on file with Norlin Library Archives, University of Colorado at Boulder).

25. *Keyes v. Sch. Dist. No. 1*, 303 F. Supp. 289, 290 (D. Colo. 1969).

26. *Id.* at 290–91.

27. *Id.*

28. *Id.* at 293.

ed school, it exacerbated racial isolation at other Park Hill schools. At Hallett Elementary, over neighborhood protests, the board authorized the building of eight new classrooms as well as the addition of mobile or temporary classrooms at Smith Elementary in northeast Park Hill. Additional classrooms were also thought to be under consideration at Stedman.<sup>29</sup>

Both Hallett and Stedman were predominantly black schools by 1969. All of the actions already described above—including changing boundaries, locating mobile classrooms at already segregated schools, and busing white students out of “transitional” areas to predominantly white schools—departed from the school board’s avowed policy of not increasing segregation in northeast Denver by building new schools or additions there. The school board’s actions at Barrett, Stedman, Smith, Hallett, Park Hill, and Phillips Elementary Schools affected the junior high and high schools into which they fed, namely Smiley Junior High School and East High School.<sup>30</sup> All of the school board’s actions contributed not only to further segregation but also to white flight. And as we later proved, these segregatory effects were not accidental or fortuitous.

Through work on PHAC’s Schools Committee, I also became acquainted and worked with Fred N. Thomas, who was African-American and the chairman of PHAC in 1966–1967. As I recall, his oldest son went to Dartmouth College after graduating from the Denver Public Schools, while his oldest daughter went to Smith College after graduating from Denver Public Schools. His younger children, going to now-segregated schools in northern Park Hill, were getting straight A’s but were not getting homework and were not learning. Fred was incensed with the segregation that was occurring. Its adverse effects on his kids’ education and lives were a daily, palpable part of his life. Fred’s children encountered what was then called “the expectancy factor.” Minority children were assumed to have lower learning abilities and were given less work and lower demands in school. And they were rewarded with high grades for this self-fulfilling prophecy. The schools were satisfied with the education offered to these children and its results.

Fred was a force to be reckoned with: an educated, articulate, tenacious parent who would not let the school board sweep its actions under the rug and pretend that they did not have the effects felt by his family and community. He was supported by the influential Park Hill community and leaders in business, government, and education supported integrated education.

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29. *Id.* at 290–94.

30. *See id.* at 295.

In November 1967, the school board sent Fred Thomas to the U.S. Commission on Civil Rights' national conference on race and education to learn what other cities like Berkeley, California, and Evanston, Illinois (where Gordon Greiner had lived), were doing to provide equal educational opportunity. He went to sessions on equal educational opportunity and the law, on how to deal with the bilingual and bicultural child, on how to provide school financing for needed change, and on how to improve school performance.<sup>31</sup> When Fred returned from the conference, he reported to PHAC and the community, and took his message to the school board: school integration could work in Denver; other communities were doing it successfully. In 1966, in order to appease minority protests at board meetings and threats of legal action, the school board ordered limited busing at a few select schools and commissioned yet another study.<sup>32</sup>

Fred was also a supporter of Denver's public schools. He believed in building community-wide support and getting the elected school board to take the necessary action to provide equal educational opportunity. As a member of PHAC's Schools Committee, I did my best to help him with school issues. After Fred's term as chair of PHAC expired in May 1967, he became co-chair of the Schools Committee with Joe Nold, a director of the Colorado Outward Bound School and Park Hill resident.<sup>33</sup>

Fred knew and worked with several members of the Denver Public Schools Board of Education including Edgar Benton and Rachel Noel, the first black board member, who was appointed to fill a vacancy on the board in 1961. She was also appointed to the school board's special committee on equal educational opportunity created in 1962. That committee was created in response to strong protest when DPS proposed a new junior high school at East 32nd Avenue and Colorado Boulevard (on the same site with Barrett Elementary School) that would be predominantly black and segregated the day it opened.<sup>34</sup>

Rachel's daughter had been bused from an "optional," predominantly white residential area adjacent to Park Hill that allowed busing to predominantly white, integrated schools. She attended Park Hill Elementary School, which was integrated, for second, third, and fourth grades, but was transferred to brand new Barrett Elementary School, which opened 90% black in 1960. Her daughter "was having the same thing in the fifth

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31. *Chairman Thomas Attends Race, Education Conference*, PARK HILL ACTIONNEWS (PHAC, Denver, Colo.), Nov. 1967, at 1–2.

32. Tom I. Romero II, *Our Selma Is Here: The Political and Legal Struggle for Educational Equality in Denver, Colorado, and Multiracial Conundrums in American Jurisprudence*, 3 SEATTLE J. SOC. JUST. 73, 85–87 (2004); see also Betty Jean Lee, *Manual-Cole Parents Charge School Opportunity Not Equal*, DENVER POST, Apr. 5, 1956; Betty Jean Lee, *Schools Deny Race Segregation in Boundaries, Hiring Policy Hit*, DENVER POST, Jan. 15, 1956.

33. *The Schools Sub-committee*, PARK HILL ACTIONNEWS (PHAC, Denver, Colo.), Oct. 1968, at 1.

34. Trial Transcript, *supra* note 24, at 29 (testimony of Rachel Noel).

grade that she had had in the fourth grade [and] not having much homework or not seemingly having much interest.”<sup>35</sup>

Among Rachel Noel’s accomplishments on the board was the adoption of Policy 5100 in 1964. That policy had been recommended by the school board’s 1962 special committee on equal educational opportunity on which she served. In it, DPS recognized “that the continuation of neighborhood schools has resulted in the concentration of some minority racial and ethnic groups in some schools and that a reduction of such concentration and the establishment of an integrated school population is desirable to achieve equality of educational opportunity.”<sup>36</sup>

### C. The Coleman Report

Another development in this period was the issuance by the U.S. Commission on Civil Rights in 1967 of what was known as the Coleman Report, formally titled *Racial Isolation in the Public Schools*. Fred Thomas and I were familiar with that publication. He had attended a session entitled “Equal Opportunity and the Law” at the 1967 U.S. Civil Rights Commission conference referenced above.

The Coleman Report summarized the law with respect to judicial decisions on the constitutional duty to eliminate racial isolation:

In 1954, the U.S. Supreme Court decided in *Brown v. Board of Education* that public school segregation compelled or expressly permitted by law violated the equal protection clause of the 14th amendment. Later decisions have applied *Brown* to purposeful school segregation resulting from administrative actions of State or local public officials even where such segregation is not dictated or sanctioned by State or local law. The courts have indicated that such purposeful segregation is unconstitutional even where it is less than complete, and even when it is accomplished by inaction rather than by action.

The courts have not been so ready to declare adventitious segregation—segregation not resulting from purposeful discrimination by school authorities—unconstitutional. The Supreme Court has not ruled on this issue.<sup>37</sup>

On the issue of so-called adventitious segregation, the report stated that “[t]he issue of whether the equal protection clause forbids adventitious school segregation has been litigated frequently, but remains an open question.”<sup>38</sup> It also noted that “[i]n a large urban setting, however, it is

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35. *Id.* at 28.

36. Mary Jean Taylor, *Leadership Responses to Desegregation in the Denver Public Schools, a Historical Study: 1959–1977*, at 111 (June 1990) (unpublished Ph.D. dissertation, University of Denver) (on file with author) (quoting summary of Policy 5100 in Resolution 1490).

37. U.S. COMM’N ON CIVIL RIGHTS, *RACIAL ISOLATION IN THE PUBLIC SCHOOLS* 185 (1967).

38. *Id.* at 223.

difficult to find a set pattern sufficiently uncomplicated that the motive emerges with clarity. With the school board necessarily making a great number of decisions—some complex—over the relevant period of time, the search for the real ‘motive’ becomes frustrating.”<sup>39</sup>

I continued to follow court decisions on school desegregation for the PHAC Schools Committee on which I served. On June 19, 1967, came the decision by D.C. Circuit Judge J. Skelly Wright, sitting by designation as a federal district court judge for the District of Columbia in the case of *Hobson v. Hansen*.<sup>40</sup> It involved the public schools of Washington, D.C. In a massive set of detailed fact-findings covering eighty-four pages, Judge Wright covered all of the school policies and practices that resulted in a denial of equal educational opportunity in Washington, D.C. schools. They included (1) the use of “optional zones,” “optional features,” and “emotional upset” policies by the Washington, D.C. school administration as a basis for whites to escape predominantly black “neighborhood schools” (the attitude of school administrators in administering these exemptions was “simply, that whites should not be compelled to attend” predominantly black schools); (2) a virtually guaranteed minority position for blacks on the governing school board over a period of sixty years, despite the district’s 90% black pupil population and 60% black city population when the case was tried; (3) personnel segregation and discrimination, including a close examination over time of the placement and transfer of teachers, administrators, and principals; (4) whether there was equality in the distribution of educational resources, including buildings (their condition and adequacy), library resources, textbooks, and supplies; (5) per-pupil expenditures in predominantly black schools (\$292) and predominantly white schools (\$392); (6) whether curricula and programs were adequate and equal in such schools; and (7) the use of the track system to resegregate integrated schools within the school itself.<sup>41</sup>

Judge Wright’s finding on pupil placement was that “the defendants’ pupil placement policies discriminate unconstitutionally against the Negro and the poor child whether tested by the principles of separate-but-equal, de jure or de facto segregation.”<sup>42</sup> With respect to the neighborhood school policy that the Board of Education of the District of Columbia had adopted to comply with the *Brown* decision, Judge Wright found that the policy, as explained by the defendants, had “exposed and explained their neighborhood [school] policy and shown that this is the agent responsible for the segregation.”<sup>43</sup> Based on those facts and the history of the Equal Protection Clause of the U.S. Constitution, Judge

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39. *Id.* at 222.

40. 269 F. Supp. 401 (D.D.C. 1967).

41. *Id.* at 408–92.

42. *Id.* at 515.

43. *Id.* at 417–18.

Wright first held that that clause applied “in its full sweep,” including “the doctrine of equal educational opportunity.”<sup>44</sup>

Judge Wright’s overall holdings of unconstitutionality were an amalgam of de jure intentional acts, separate-but-unequal provision of educational opportunity, and the Fourteenth Amendment’s requirement of equal educational opportunity. The facts he found supported the remedy he required on both separate-but-equal and equal protection grounds, and required school authorities to provide equal educational opportunity. Judge Wright’s decision was food for thought and discussion among Fred Thomas, PHAC’s Schools Committee, and me as 1967 ended.

*Hobson*’s facts and findings bore an uncanny similarity to what was happening in Denver, such as the use of optional zones, building a new school in a segregated area when capacity was available in nearby predominantly white schools, discriminatory teacher assignments and transfers, and inferior curricula and programs. George Bardwell’s work, described above, had already documented many of the same actions found in *Hobson*. George’s organization Speak Out was presenting that information to citizens groups throughout the city.<sup>45</sup>

#### D. 1968

Dr. Martin Luther King Jr. was assassinated on April 5, 1968. In the midst of the convulsion that followed his death, pressure, protests, and moral suasion turned into demands for action. Grieved and profoundly shaken, school board member A. Edgar Benton, and Denverites from all walks of life demanded action, not just another study and more promises. Ed Benton spoke eloquently at the *Keyes* symposium about getting together with Rachel Noel and her husband, Dr. Edmund Noel, on the evening of the assassination and of writing Resolution 1490 with Rachel. It became known as the Noel Resolution.

Resolution 1490 directed the superintendent of DPS to submit to the school board “a comprehensive plan for the integration of the Denver Public Schools” as soon as possible, but no later than September 30, 1968.<sup>46</sup> The plan was to be reviewed and commented on by the board, the

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44. *Id.* at 493. Judge Wright also invoked the separate-but-equal doctrine. He held that “a separate-but-equal rule, a variation perhaps of *Plessy v. Ferguson*, does apply, and that violations of this rule have been recorded here in the District.” *Id.* at 494 (citation omitted). In essence, this meant that if schools were separate, even though adventitiously so, they still had to be equal in some objective and measurable sense. He was persuaded that the Washington, D.C. schools were both separate and not objectively equal, and that was enough by itself to require a remedy. *Brown*, of course, went further, holding that separate schools required or permitted by law could not be equal. *Brown I*, 347 U.S. 483, 495 (1954). The plaintiffs in *Hobson* had thus done what was so rare, complex, and difficult that it was viewed as almost never possible.

45. See *Speak Out on School Integration*, PARK HILL ACTIONNEWS (PHAC, Denver, Colo.), Oct. 1968, at 3.

46. Taylor, *supra* note 36 (quoting Denver Public Schools Board of Education, Meeting Minutes (Apr. 25, 1968)).



staff, and the community, and then considered for adoption by the board no later than December 31, 1968.<sup>47</sup> Proposed on April 25, 1968, Resolution 1490 generated a citywide controversy.

Mary Jean Taylor interviewed all of the then-members of the school board who considered the Noel Resolution and has given their accounts of their support or opposition, and their reasons for their positions, in her fine Ph.D. dissertation.<sup>48</sup> In summary, passage of the Noel Resolution was very much in doubt, hinging on the two swing votes of James Voorhees, a lawyer, and Dr. John Amesse, a physician. In his own words, Voorhees described what persuaded him and Dr. Amesse to vote for the Noel Resolution:

Amesse called me up . . . and said, "I've got something I want to show you. . . . Come on out."

We went out to some motel out on East Colfax and [George] Bardwell . . . was out there with this map. And there it was, right there—race and low achievement—segregation and low achievement!

[John] said: "We've got to do something about this."

. . . .

John and I were sort of in the middle, it was . . . our conversion. I really think it had more to do with that map that Bardwell produced than anything else, because that was [the] physical evidence of what Rachel had been talking about: that in fact, there was inequality in the schools and in opportunity and it did have a minority/racial connection.

All of a sudden, the light dawns, and you say, "Well look, I'm here, I have a responsibility, I ought to do something about this." That's the way it happened to me. Fred Thomas and a couple of Black ministers . . . made a big impression on me and I'm sure on John Amesse. . . . It changed the two of us . . . [; we recognized] that something was really wrong . . . . You listen to enough black parents talk about their expectations and their hopes for their kids—these are people who have menial jobs, last hired, first fired, people who are counting on the educational system so their children won't have the same experience. . . . After awhile it gets to you. At least it did to me.<sup>49</sup>

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47. *See id.*

48. *Id.*

49. *Id.* at 114–15 (third, fifth, seventh, and ninth alterations in original) (quoting Interview with James Voorhees, Member, Denver Pub. Sch. Bd. of Educ. (Aug. 1, 1989)).

Voorhees also had the patience to listen to me on the legal authority that might require the board to act.<sup>50</sup>

Voorhees and Amesse were not alone. The mayor of Denver, the Denver Classroom Teachers Association, the Denver Chamber of Commerce, and business, civic, union, neighborhood, and other organizations endorsed the Resolution. There was also heated opposition. With Voorhees and Amesse voting for it, the Noel Resolution passed with amendment on May 16, 1968.<sup>51</sup>

The moderates had prevailed. Voorhees and Amesse, who accurately described themselves as “in the middle,” had been convinced, as a matter of conscience and of their responsibility as school board members, that school integration was necessary. Later, Stephen J. Knight, a school board member who voted against the Noel Resolution and its implementation, recalled: “Jim Voorhees approached me . . . . He said at that point he knew what the plaintiffs had lined up if we went to court. He warned me and I didn’t believe that they really had a case all made.”<sup>52</sup>

DPS Superintendent Robert Gilberts developed a desegregation plan that was closely tailored to the problems detailed above affecting Park Hill and northeast Denver. It affected only a handful of schools and did not pretend to be the “comprehensive plan” for integration of the Denver Public Schools, but was clearly moderate and aimed at community support and acceptance. It was presented to the board on October 10, 1968, and was the subject of board meetings all over Denver in the following months. Superintendent Gilberts’s plan was a modest one for gradual integration of a small number of schools in Park Hill and northeast Denver over a four-year period.<sup>53</sup>

PHAC opposed the Gilberts Plan: “[It] sounds exciting educationally, [but] it wouldn’t really integrate the schools. . . .”<sup>54</sup> PHAC Chairman Fred N. Thomas further commented: “We’re sick of gradualism. I want

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50. I had come to know Jim Voorhees primarily through my representation as a member of the PHAC Schools Committee and through formal and informal appearances before the Denver school board on several occasions, usually with Fred Thomas and Joe Nold. The subject of school integration and what the law required of DPS and the school board was a continuing discussion between us and became more relevant as time went on.

51. See Taylor, *supra* note 36, at 116.

52. *Id.* at 139 (quoting Interview with Stephen Knight, Member, Denver Pub. Sch. Bd. of Educ. (Aug. 18, 1989)). Knight’s reference to “the plaintiffs” that Voorhees mentioned probably relates to the discussions Voorhees had with George Bardwell (discussed in the text above) on the facts that Bardwell had developed on Park Hill and northeast Denver, as well as to discussions I had had with Jim Voorhees on what was legally required. The reference may also relate to other threats of litigation I am unaware of. To my knowledge, individual plaintiffs had not been identified at that juncture.

53. *Id.* at 119.

54. *Id.* at 120 (first and second alterations in original) (quoting DENVER POST, Nov. 6, 1968) (internal quotation marks omitted).

integration because I don't trust the power structure. I know that if your kids are getting a good education, my kids will, too."<sup>55</sup>

Over the course of the next several months, the school board carefully considered, revised, and adopted Resolutions 1520, 1524, and 1531, making changes to attendance areas of high schools, junior high schools, and elementary schools in northeast Denver and Park Hill, and using bus transportation as necessary to desegregate them. The plan was to go into operation with the beginning of the school year in September 1969.

A school board election was set for May 20, 1969, to elect two members. Ed Benton and Monte Pascoe were two of the leading candidates and supported the board's action. The other two leading candidates, James Perrill and Frank Southworth, vowed to rescind the resolutions as their first action if elected. The election campaign was among the most bitter and vitriolic ever conducted in Denver, bordering on violence in some instances. The *Park Hill Actionews* for May 1969 framed the issue for its neighborhood:

The issue is segregation or integration in our schools now, and very soon in our city. Denver will decide on May 20 whether to move ahead with integration or to abandon the central city to segregation. We are at a clear turning point. . . . [T]he issue of integration is vital to the survival of our community, and . . . segregation would destroy it.<sup>56</sup>

I worked harder in the Benton–Pascoe campaign than in any campaign before or since, and so did my friends and neighbors. It was a hopeful, optimistic campaign about the future of the city. The evidence demonstrated that white performance in integrated schools was not diminished, and in some cases was improved. This proposition had been proven and found in cases such *Hobson v. Hansen*.<sup>57</sup> In addition, the proof showed that there was significant improvement in school performance for minorities integrated into white majority schools. The evidence from other cities indicated that Denver's schools could be integrated with general improvement of minority pupils' performance and no change in the performance of white students. Much of the Denver minority population was middle-class, educated, and valued education highly. Integration had worked well at Park Hill Elementary School for both the majority and minority students and parents. We could not have had more qualified, committed, and eloquent candidates than Ed Benton and Monte Pascoe. And they gave their all to the campaign.

The pro-integration side did not believe that Denverites would buy "playing the race card" or that they would fear busing. Busing primarily

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55. *Id.* (quoting DENVER POST, Nov. 6, 1968) (internal quotation marks omitted).

56. *The Issue*, PARK HILL ACTIONEWS (PHAC, Denver, Colo.), May 1969, at 1–2.

57. 269 F. Supp. 401, 419 (D.D.C. 1967).

white children to good schools was in wide use in Denver and its suburbs. It was what was at the end of the bus ride that counted, namely the school and the education. The black population of Denver was 6.1% in 1960.<sup>58</sup> The integration of some of the schoolchildren of that population into the Denver school system seemed to be a moderate strategy and a reasonable alternative to the neighborhood-by-neighborhood segregation that had happened in other major metropolitan areas and was in full swing in Denver.<sup>59</sup> Throughout the Park Hill community and northeast Denver, there was good hope and faith that integration could work and that its importance to the future of the city would be supported. Benton-Pascoe supporters believed that Denver was different and that the school board's modest integration plan would be accepted.

When the votes came in, District 16, which included most of Park Hill and northeast Park Hill, had voted 3–1 in favor of the school integration candidates. The rest of the city had voted 3–1 in favor of the candidates who had promised to rescind the board-adopted desegregation plan.<sup>60</sup> The neighborhood school–anti-busing candidates had won by more than a 2–1 margin. The integration community was defeated and devastated. As Mary Jean Taylor observed, “The illusion that Denver was ‘different’ had been shattered.”<sup>61</sup>

#### *E. How the Keyes Case Became a Reality*

As discussed above, in November 1968, Fred Thomas had spoken against the school board's limited desegregation plan on the grounds that it would not achieve comprehensive integration of the city's schools. A month before, as noted in the October 1968 *Park Hill Actionews*, the Schools Committee co-chairs “held a planning session with Atty. Robert Connery and the Rev. Richard Kozelka” to study and react to the school board's plan and coordinate with “East Denver educational interests.”<sup>62</sup> Fred and Reverend Kozelka wanted to know what could be done if the school board did not vote to integrate the Denver schools comprehen-

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58. Jessica Pearson & Jeff Pearson, *Litigation and Community Change: The Desegregation of the Denver Public Schools 6* (U.S. Comm'n on Civil Rights, Staff Paper No. CR6AC007, 1976) (on file with Denver Public Library, Papers of Edmond Noel Jr., Series 1, Box 1, Folder 15).

59. Census data on the Hispanic population, the largest minority population in Denver, were not kept separately prior to 1960. Although the desegregation plan adopted by the school board primarily addressed the black population in northeast Denver, it also affected some Hispanics, whose population was primarily concentrated in northwest Denver and generally spread over a much larger, less-defined geographical area. *Id.* at 5–6. Although desegregation cases had largely dealt with black populations, they had yet to deal the equal educational opportunity in the context of the Hispanic population, which was deprived of equal educational opportunities in ways just as serious and significant as those suffered by blacks. *Id.* The remedy stage of the *Keyes* case, which is beyond the scope of this Remembrance, was the first attempt, even if a marginal one, to deal with the more broadly based equal educational opportunity issues of the Hispanic population.

60. *Schools and Zoning*, PARK HILL ACTIONEWS (PHAC, Denver, Colo.), Sept. 1969, at 2.

61. Taylor, *supra* note 36, at 131.

62. *The Schools Sub-committee*, PARK HILL ACTIONEWS (PHAC, Denver, Colo.), Oct. 1968, at 1.

sively, as directed by the Noel Resolution. They asked whether legal action could be brought on grounds of denial of equal educational opportunity, as had happened in *Hobson*.

My answer, based on what I knew about what had happened and was happening in Park Hill and northeast Denver, was that there was a sound basis for bringing a constitutional challenge. It would require an enormous effort and an evidentiary showing as broad and citywide as that in *Hobson*. Fortunately, George Bardwell's work had developed much of that evidentiary showing. It would be costly, burdensome, divisive, and time-consuming. It seemed preferable to us to continue to devote our efforts to persuade the school board and elect school board candidates who favored integration. We agreed that legal action should not be filed or threatened in the circumstances existing in November 1968, or as leverage in the upcoming school board election.

However, as the 1969 school board election progressed and the candidates opposing integration threatened to rescind the plan to implement the desegregation resolutions, the many lawyers involved in the Benton-Pascoe election informally discussed legal action. Benton, Pascoe, and many of the lawyers who supported them and the resolutions believed that the law required more explicit, intentional, documented school board action for a legal action to be successfully maintained. I spent a good bit of time during the campaign trying to convince them and others that the law had moved beyond the early cases such as *Brown*, which seemed to require official, written, mandatory segregation, to cases such as *Hobson*, which were grounded on the principle of equal educational opportunity and the consequences of segregation itself. I became chair of the PHAC Schools Committee in early 1969.<sup>63</sup>

There were three lawyers at Holland & Hart, Ed Kahn, Larry Treece, and me, who spent time discussing what such a case would require in late 1968 and early 1969. Ed and Larry were litigators. Ed was already an experienced and well-respected litigator. Larry was fresh out of law school, but as law clerk to the general counsel of the University of Colorado, he had written the prevailing briefs in the university's successful defense of its requirement that fraternities and sororities eliminate racial restrictions on membership. I was not a litigator but had spent several years studying the legal requirements for school desegregation or integration. Together, we doped out legal theories and thought about the mechanics of mounting a legal action.

Following the defeat of the integration candidates in the May 20, 1969 election and the celebratory announcement by the winning candidates that they would rescind the integration plan, I invited several Denver lawyers who had expressed an interest in possible legal action to a

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63. *Committees*, PARK HILL ACTIONNEWS (PHAC, Denver, Colo.), Mar. 1969, at 4.

meeting at Holland & Hart in late May 1969. The meeting's purpose was to discuss whether a suit should be prepared and filed if the integration plan scheduled to be implemented in September 1969 was rescinded. Those lawyers included Ed Benton, Dale Tooley, Don MacDonald, Dick Young, Jim Culhane, Dick Bernick, Hal Haddon, Ed Kahn, Larry Treece, Gail Oppeneer, me, and I'm sure others whose names I do not presently recall.

There had been a sea change in thinking about the bringing of a lawsuit against the Denver school board because rescission of the modest desegregation plan had become a virtual certainty. Legal action was therefore the only recourse remaining to those who supported school integration. Many at the meeting had not studied the legal holdings on the subject in the last few years and were not familiar in detail with the school board actions since 1960 in Park Hill and northeast Denver. That subject was presented and discussed at length. There was general support for the idea of filing a lawsuit to invalidate the threatened rescission if it occurred and to require implementation of the Noel Resolution. Larry recalls a meeting at which he pointed to the need of a "real trial lawyer" to try the case. Although he recalls some expressing the view that we young ones could do it, he was persistent and persuasive, and the group agreed that excellent trial counsel was needed. We therefore divvied up contacting a number of Denver's most respected trial lawyers to determine their willingness to take the case. Those contacted included Dan Hoffman, Jim Carrigan, Bill Ris, and Gene Hames.

In the last days of May and the first days of June 1969, there was a flurry of activity preparing for litigation. Larry Treece, Ed Kahn, and I worked on developing the theory of the case and discussing the evidentiary showing that would be required. Larry, I believe, took the first crack at drafting a complaint, a motion for preliminary injunction, and a supporting brief. Ed Kahn and I worked on these as well. As noted above, because Ed and I lived in Park Hill, we were familiar with George Bardwell's work through PHAC, the essential role it would play in presenting the case, and the ability of Ed Benton and Rachel Noel to testify on the school board's actions and inactions that resulted in increasing segregation in the schools of Park Hill and northeast Denver.

Larry Treece started at Holland & Hart in the fall of 1967. He was from Chicago originally but moved to Wheat Ridge, an incorporated suburban municipality to the west of Denver, before going to the University of Colorado (CU) for college and law school. As noted above, he had worked on a significant discrimination case at CU and thought segregation was just plain wrong, constitutionally, legally, and morally. Larry and I were good friends, and to this day, he insists that I was responsible for his participation.

One of Larry's many contributions to the case was an idea that dawned on him pondering the case on a bench in City Park—namely that

much of the evidence would fit comfortably within the theory of *Plessy v. Ferguson*,<sup>64</sup> the nineteenth-century case that allowed separate but equal treatment, but not separate and unequal treatment<sup>65</sup>—and had not occurred to the other lawyers involved. That stroke of constitutional insight and ingenuity meant that in addition to the act of rescission, our case fit within a doctrine and Supreme Court holding that was a requirement even when segregation had been allowed. It changed our approach, the legal standard, and the evidence presented. Larry added it to the draft complaint. It is no coincidence that Larry taught constitutional law at the University of Colorado Law School.

Ed Kahn was an outstanding associate litigator in his fourth year at Holland & Hart. He was president of the Denver Young Democrats and a recognized leader at Holland & Hart with an active pro bono practice that included work for the American Civil Liberties Union. He and his wife Cyndi moved to Park Hill during the same summer that Willow and I moved there. Ed was a strong, mature, and wise voice in our deliberations. His participation increased Holland & Hart's confidence in the litigators that would handle the case. Ed too devoted part of his career to teaching constitutional law at University of Colorado Law School and has been exemplary for his entire professional life, and after it, in devoting large amounts of his time to public interest, pro bono, and civil liberties cases. Ed Kahn was a pillar of strength, good judgment, and superb legal work. Among the many briefs, motions, and analyses he prepared, perhaps the one that stands out in the period covered by this Remembrance is his research and preparation of the critically important motion that resulted in Justice Brennan's decision overturning the Tenth Circuit and reinstating Judge Doyle's decision desegregating several schools in Park Hill and northeast Denver.

As the respected Denver trial lawyers we contacted turned us down one by one, largely based on the massive size and scope of the case and the limited size of their firms, Larry Treece suggested that we contact Gordon Greiner, a Holland & Hart antitrust lawyer with experience in managing and trying major complex litigation. Larry was a nascent antitrust lawyer who had worked a lot with Gordon. He believed that a lawyer with Gordon's talents and experience was an absolute requirement if the case were to have any chance of success.

Although Gordon then was a conservative Goldwater Republican with close-cropped hair and a home on Lookout Mountain west of Denver, Larry thought the challenge of managing and trying such a complex case might intrigue him at this stage in his career. Being a friend and mentee of Gordon's, Larry agreed to approach him. Larry made a spirit-

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64. 163 U.S. 537 (1896), *overruled by Brown I*, 347 U.S. 483 (1954).

65. *Id.* at 550–52.

ed and persuasive presentation to Gordon on the case and why he should take it. He at least did not reject the idea out of hand, as some feared he might, and agreed to think about it.

I did not know Gordon well at that point but also went to Gordon's office in the hopes of persuading him to take it on. I briefed him on what had happened in Park Hill and northeast Denver, and the law on the subject as I knew it, together with the evidence that had been developed by George Bardwell and others. Gordon Greiner was not at all opposed to civil rights generally and embraced equal educational opportunity. They were consistent with his Republican conservatism. He had grown up in Evanston, Illinois, in integrated schools and had black friends there and at Northwestern University School of Law. I told Gordon that the case would present important issues nationally as well as in Denver, dealing with the de jure and de facto segregation that the Supreme Court had not yet ruled on. I expected that the case would go to the U.S. Supreme Court. Gordon later said that we "young lawyers" were "uncovering pretty emphatic evidence of intentional acts of discrimination by school authorities."<sup>66</sup>

Gordon recalled in an interview how he became involved:

These young attorneys began knocking on doors throughout the Denver . . . legal community. I think their hands were probably pretty sore by the time they hit my door, because they'd been turned down. There weren't many lawyers willing to take on what was obviously going to be a controversial, outright unpopular case. At the time, I had just settled an anti-trust case and I had some time on my hands but I was very concerned. I was used to being paid very well for my work, and I was [a very conservative, John Birch Society Republican]. I was worried about whether I could truly and fairly represent minorities in this community. After a long weekend, over Memorial Day, of agonizing about it, I decided to say yes.<sup>67</sup>

About four months later, Gordon moved in two doors down from our home in Park Hill and became a dear friend. As Larry Treece and I have often said, the most important thing we did in the *Keyes* case was to get Gordon involved.

The "young attorneys" at Holland & Hart had many contacts with other attorneys volunteering to help. Among them were those listed as of counsel on the complaint, namely Susan Barnes, Harold A. Haddon, William H. Lewis, Robert B. Miller, Gail E. Oppeneer, James W. Schroeder, and Dick Young. There were also volunteer attorneys from the law schools at the Universities of Denver and Colorado.

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66. Taylor, *supra* note 36, at 141.

67. *Id.* (alterations in original).



George Bardwell was on the Resource Panel of PHAC and kept Fred Thomas and its Schools Committee briefed on his work.<sup>68</sup> George was joined in his work during this period by Paul D. Klite, M.D., an extraordinary professor of medicine at the University of Colorado School of Medicine. He graduated from college at age sixteen and from medical school at age nineteen. He had already done significant original research and writing on tropical diseases in Panama. Paul was also an accomplished concert musician and a masterful statistician. George and Paul had been active in the school board election. After the election, they met with the Holland & Hart group of attorneys and focused their energies on a potential lawsuit.

Fred Thomas became a major force in organizing the case. Our burgeoning group worked with Fred to identify plaintiffs among the many in the community who supported bringing a class action. Our work included research on the legal standing a group of individual plaintiffs must have in order to represent a class of those who would be adversely affected by rescission of the school board's partial desegregation plan, as well as those affected by unequal educational opportunity.

There was also national support for bringing the case. I (and probably others) had been in contact with the LDF and the Mexican American Legal Defense and Educational Fund (MALDEF). The LDF had agreed to pay the out-of-pocket expenses of the lawsuit. As noted above, there was also broad support in Denver's business, financial, professional, political, and educational leadership for the school board's desegregation plan. They included not only the Denver Chamber of Commerce and Denver Mayor Tom Currigan but also Bruce Rockwell, president and chairman of Colorado National Bank, his wife, Ginny, Kay Schomp and her husband, Ralph, Martha Radetsky, Douglas Hoyt, and the leaders of several citizens groups intensely active in the civil rights and integration movement and the school board election. In June 1969, Bruce Rockwell, Fred Thomas, and many others formed Denver Equal Educational Opportunity Fund, Inc. and raised funds to support the case. Kay Schomp and Ginny Rockwell would be elected to the Denver school board a few years later.

The final hurdle in getting the case off the ground was deciding who was actually going to do the work, take responsibility for representation, assign and review work, meet deadlines, and make final decisions. With respect to Gordon Greiner, Ed Kahn, Larry Treece, and me, that meant obtaining Holland & Hart's approval to undertake the litigation as a pro bono case, without expectation of remuneration. Larry Treece and I had gotten together soon after the school board election, and the new board members announced their intent to repeal the modest desegregation re-

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68. *Resources Panel*, PARK HILL ACTIONNEWS (PHAC, Denver, Colo.), Feb. 1969, at 1.

quired by Resolutions 1520, 1524, and 1531. Larry said, “I’m in!” Ed Kahn agreed. Gordon joined right after Memorial Day weekend. We had a working group, a core.

The informal meetings, discussion, and research of what Gordon Greiner called the “young attorneys group” also included many attorney volunteers, but all of the volunteers were fully engaged in busy practices, and few were willing to commit to the kind of timely production of research and writing required by the emergency action litigation required in the case.

Holland & Hart had a strong record of pro bono involvement, but no firm in Denver had ever considered a task of the magnitude of the case proposed. Holland & Hart was the largest law firm in Denver. It represented many of the major corporations and businesses in Denver. Individuals in the firm included some who were opposed politically or philosophically to school integration or desegregation. However, the matter of whether the plaintiffs deserved representation and the presentation of important constitutional issues was not a political or philosophical issue. The economic resources entailed—namely the time of four of its lawyers (out of about sixty) for an extended period of time (probably several years)—were considerable. It was no small matter economically. We were going up against a school district that had ample resources, and dogged opposition from the majority of the school board.

By early June 1969, the size and scope of the case had become clear. As Larry Treece had said from the beginning, we needed not only a lead trial lawyer but also the resources of a firm like Holland & Hart. Holland & Hart’s consideration of whether to take on the representation reinforced that reality. By early June there was no question that if Holland & Hart did not take the case on, it would not happen. With Gordon Greiner at the helm of the *Keyes* litigation, Holland & Hart fully supported and approved the pro bono representation of the plaintiffs.<sup>69</sup> The very first time entry was Gordon’s on June 6, 1969. It read, “C[onference] W[ith] RTC[onnelly].”<sup>70</sup>

Holland & Hart made clear in giving its approval that the firm did not want the case to be solely a one-firm undertaking. It wanted broad representation in the legal community and at least one other attorney to commit to the kind of responsibility that Gordon had agreed to shoulder, namely to head the trial team. Gordon could not handle the trial by himself. Another full-time lawyer was essential.

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69. WILLIAM H. HORNBY ET AL., *THE LAW OUT WEST: HOLLAND & HART 1947–1988*, at 135 (1989). Hornby was a former editor of the *Denver Post*.

70. HOLLAND & HART, *RECORDS OF HOURLY BILLINGS FOR DENVER SCHOOL BOARD CASE 1* (1969) (on file with Norlin Library Archives, University of Colorado at Boulder, Wilfred Keyes v. Denver School District, 1st Accession, Box 7, Folder 5).

My suggestion for that attorney was Craig S. Barnes. I admired Craig's many talents, thoughtfulness, and eloquence on the pressing issues of the day. Craig was a close personal friend. We and our wives were in a book group together. Craig, like Gordon and me, was a former Republican. Like so many young men and women in Colorado at the time, he left the Republican Party over issues such as the war in Vietnam and civil rights, including school segregation or integration. He had been an associate at Holland & Hart from 1965 to 1968 but was working on a graduate degree in international relations at the University of Denver (DU). Also, Craig had been in the group of attorneys who had sought out the best candidates for school board to run on an integration platform. He lived in University Park in south Denver, near DU, and had led a group of University Park school parents in seeking DPS support for a voluntary exchange of several hundred students integrating both University Park Elementary School and Hallett Elementary School. DPS refused to lend its support to the effort.

I called Craig, told him what I wanted to talk about, and we discussed his participation. Craig was happy to discuss the possibility but was clearly absorbed in pursuing another path, one that dealt with conflict resolution, international negotiation and mediation, the antiwar movement, and the peace movement. He was in the midst of his program in international relations at DU. He had many questions and concerns: "Why me?" "What would my role be?" "Isn't there somebody else who can do it?" I told him that I thought adding his eloquent voice to the case would make a significant difference. We also discussed why the case was important to Denver and the kids who would be reassigned to segregated schools, the disillusionment of the minority communities, and the need to defend those minorities in court who had nowhere else to enforce what they and we thought was their right to equal educational opportunity.

Craig and I discussed Gordon Greiner's willingness to be the lead trial lawyer and Holland & Hart's position that it did not want to go it alone. Although Holland & Hart was willing to donate Gordon's time and the help of Ed, Larry, and me part-time, it was essential to have a second full-time attorney on the case in court with Gordon. I also told him about the unsuccessful search for high-profile, recognized trial lawyers, trying to get other firms to sign on, the Denver Equal Educational Opportunity Fund and LDF funding and lawyer support, the meeting of the many lawyers in the wake of the board election, and the other lawyers who had indicated a willingness to sign on to the complaint and work on discrete assignments.

I did not know whether Craig could interrupt and later resume his studies but told him the commitment would need to be for at least the time necessary to get us through the application for immediate, emergency relief that would happen in a matter of a few weeks, and possible appeals of that emergency relief. I knew that such an undertaking would be

a huge, disruptive sacrifice for Craig and his family. Craig said he wanted to talk to his wife, Mikaela, and think about it.

Craig talked to Mikaela and his advisers at DU, and called back to say that he would join us as co-counsel. He said it was important to him and needed to be done. Craig was urgently needed and essential to trying the case. The team needed to do the work was, I thought, now complete.

We had already arranged a meeting at Holland & Hart for June 12, 1969, to go over a draft complaint that Larry, Ed, Gordon, and I were working on. Craig joined Gordon Greiner, Drs. Bardwell and Klite, Gail Oppeneer (a volunteer attorney from the law firm of Fairfield & Woods), and me on June 12. It was for the purpose of getting the facts we alleged straight and consonant with the legal theories that we were pretty well settled on. We were off and running to enjoin the school board and the Denver Public Schools from reneging on the desegregation resolutions and implementation plan. The assignments of pupils, changes in boundaries, purchase of buses, and myriad other tasks that had to take place in order to put the plan into effect had to be done by the start of school on Tuesday, September 2, 1969.

### III. JUNE 9, 1969:

#### RESCISSION OF THE DESEGREGATION RESOLUTIONS AND PLAN

The two new school board members were sworn in and had scheduled a school board meeting on June 9, 1969, for the express purpose of rolling back the resolutions and integration plan. Although Superintendent Robert Gilberts had advised caution by the board in considering rescission, the board rescinded the desegregation plan. We no longer had to worry about proving *de jure*, deliberate board action to segregate. We had to reverse it.

Working on a final complaint, a motion for preliminary injunction, a brief in support of the motion; working out the presentation of the case to the federal district court; preparing witnesses and exhibits; assigning legal research to volunteers; reviewing that research and briefing the law on every aspect of the case; preparing factual research and investigations; responding to the media; and coordinating with and drawing on the experience of the LDF utterly consumed the team that had been assembled. Gordon, Craig, Larry, Ed, Drs. Bardwell and Klite, and I spent hundreds of hours on that work through the first half of June. So did the many volunteer attorneys.

The complaint and motion for preliminary injunction were filed on June 19, 1969, and set for hearing to begin on July 16, 1969. The work continued right up to the first day of the hearing, when Gordon Greiner stood up to give his opening statement. As expected, it was wonderful and powerful, and perfectly set the tone and themes for the train that was coming down the tracks right at the school board.

Gordon's first witness was Rachel Noel, the very embodiment of the struggle for equal educational opportunity for Denver. She was spectacular. Her grace, poise, and utter sincerity infused the entire courtroom. She testified on her kids' experience at the integrated Park Hill Elementary School, her daughter's assignment to the new and segregated Barrett Elementary School, and the effect on her daughter's education of doing in fifth grade what she had already done in fourth grade at Park Hill Elementary School. She also spoke with simple eloquence of the isolation of black students resulting from school board actions over several years, the resulting segregation of black students at Stedman, Hallett, and Smith Elementary Schools, and the effect that segregation was having on Park Hill and Phillips Elementary Schools, Smiley Junior High School, and East High School. Her testimony continued, describing the effect of the death of Martin Luther King Jr. and the introduction and passage of the Noel Resolution (No. 1490) calling for the development of "a comprehensive plan for the integration of the Denver Public Schools"<sup>71</sup> by the end of 1968, intended to go into effect in September 1969.<sup>72</sup> Judge Doyle, who had grown up in west Denver, was largely unaware of these developments. He listened with rapt attention in a hushed courtroom.

Next, Craig Barnes put on Ed Benton, a school board member who had supported the Noel Resolution. Ed testified to his specific suggestions to broaden the implementation to accomplish the Noel Resolution's purpose of comprehensive integration and the inadequacy of the plan presented by DPS to accomplish that purpose.<sup>73</sup> However, he also testified to the desegregation that would be accomplished by the plan that the school board had rescinded, which included changing Barrett from 100% black to 80% Anglo, Smiley from 70%–75% minority to 70%–75% Anglo, and the maintenance and improvement of integration at Park Hill and Phillips Elementary Schools, as well as at East High School.<sup>74</sup>

These witnesses were followed by (1) Dr. Klite, who demonstrated with maps, overlays, and graphs the segregatory effects wrought by the school board's rescission of the desegregation resolution changing elementary, junior high, and high school boundaries;<sup>75</sup> (2) school board member Voorhees, who testified to the reasons that had persuaded him to change his position and vote for the desegregation resolutions;<sup>76</sup> and (3) Dr. Bardwell, who attested to the boundary changes in primarily Park Hill schools that had resulted in their segregation and to the discriminatory assignment of probationary teachers, teachers with fewer than ten

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71. Taylor, *supra* note 36 (quoting Denver Public Schools Board of Education, Meeting Minutes (Apr. 25, 1968)).

72. Trial Transcript, *supra* note 24, at 26–28, 37–47 (testimony of Rachel Noel).

73. *Id.* at 61–72 (testimony of A. Edgar Benton).

74. *Id.* at 75–77.

75. *Id.* at 88–105 (testimony of Paul Klite).

76. *Id.* at 113–15 (testimony of James Voorhees).

years' experience, and minority teachers to segregated schools in Park Hill and northeast Denver.<sup>77</sup> It was detailed, complex testimony but had been reduced to maps and graphs with overlays that dramatically demonstrated the DPS and school board actions and their consequences. Map after map, boundary change by boundary change, optional zone by optional zone, addition of mobile and temporary classroom by classroom addition, the pattern of consistent effect and association with segregation was irrefutably established.<sup>78</sup> Finally, Dr. Bardwell reduced the mass of data on race and distribution in the school system to a single number, a segregation index that demonstrated the effect on segregation of the rescission of the integration plan. Rescission clearly and vividly increased segregation in the Denver Public Schools.<sup>79</sup>

The last witness for the plaintiffs was Dr. Dan Dodson, professor of education at New York University. He had testified in the Delaware companion case to *Brown* and studied the effects of segregation on minority performance in Northern schools since the *Brown* decision in 1954.<sup>80</sup> He testified to the educational and other damage done to minority children in segregated schools, noting that it made no difference whether the segregation was caused by de jure or de facto segregation.<sup>81</sup> Dodson's view was that there was no distinction between de jure and de facto segregation because school authorities made mandatory assignment of children to schools in both situations, except for voluntary enrollment areas.<sup>82</sup> There was, Dodson said, no way to get rid of or legitimize "our school[s]" and "their school[s]" other than to make them community schools, reflective of the community as a whole.<sup>83</sup> "[J]ustice," he believed, could not be done "in the Jim Crow [s]chool."<sup>84</sup>

In fewer than two days of testimony, the plaintiffs were able to put a massive factual case into the record. The organization, ease, and seamlessness of this evidentiary presentation reconfirmed the need for a trial lawyer of Gordon Greiner's talent.

The DPS and school board defendants did not put on any members of the rescinding majority of the school board to defend their rescission of the desegregation plan. Simply stated, the school district's defenses were that the actions of the board and DPS had been "colorblind," and that the plaintiffs had shown nothing more than a classic de facto case. The expert attorney brought in from Ohio to present the defense congratulated the plaintiffs on presenting a case he understood had been more

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77. *Id.* at 124–70, 175–200, 224–27 (testimony of George Bardwell).

78. *Id.*

79. *Id.* at 197–99.

80. Trial Transcript, *supra* note 24, at 307 (testimony of Dan Dodson).

81. *Id.* at 307–14.

82. *Id.* at 309.

83. *Id.* at 314, 321–22.

84. *Id.* at 322.

than a year in preparation but that had not, he said, provided evidence to support their case.<sup>85</sup> The defendants objected vociferously that the plaintiffs' evidence was irrelevant and not appropriate for a preliminary hearing. They claimed that it should only be heard upon a full trial. They contended that plaintiffs were trying to put on their full trial evidence in a preliminary hearing.

#### IV. CONCLUSION

I have described at the beginning of this Remembrance what transpired over the course of the rest of the summer of 1969. The case went to full trial on the issuance of a permanent injunction dismantling Denver's dual school system in February 1970.<sup>86</sup> It was hard-fought, long, and exhausting. The permanent injunction was issued and ultimately ended up in the U.S. Supreme Court, again. Gordon Greiner and Jim Nabrit argued the case for Wilfred and Lyla Keyes, the rest of the plaintiffs, and the class they represented. They prevailed in a major city, where racial segregation had not been legally mandated historically. *Keyes* provided a detailed precedent and blueprint for dealing with segregation based on housing, transportation of white students, building schools intended to be segregated upon opening, unequal provision of learning opportunities and school resources, changes to school boundaries, assignment of probationary and inexperienced teachers, and numerous other criteria, such as "tracking" minority children into separate classes. Taken as a whole, *Keyes* provides the constitutional basis for cases beyond *Brown*, whose facts, based on legally mandated separation and inherent inequality, are no longer relevant throughout most of the nation. The legacy of the Supreme Court's 1973 decision in *Keyes* continues to be written by courts and scholars that are addressing not only separation and isolation of minorities but also the many forms that deprivation of equal educational opportunity may take under the Constitution's promise of equal protection in this broad and diverse country of ours.

In April 1970, the U.S. invasion of Cambodia was announced. Craig Barnes decided to run what we initially thought of as a "Cambodian protest candidacy" for the first congressional district of Colorado (Denver). He left the case and announced his candidacy in May, I believe. I was the head of the Committee to Elect Craig Barnes that officially set up that candidacy. He won the primary but, as he has described in his memoir,<sup>87</sup> lost the election.

After Craig's departure to run for Congress, Jim Nabrit of the LDF became more active in the case, largely filling the gap left by Craig's

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85. Trial Transcript, *supra* note 24, at 355 (testimony of Robert Maneley).

86. The full trial on the merits in 1970, the ensuing hearings on remedy, appeals, and decisions are beyond the scope of this Remembrance.

87. See Craig Barnes, *A Personal Memoir of Plaintiffs' Co-counsel in Keyes v. School District No. 1*, 90 DENV. U. L. REV. 1059, 1078–79 (2013).

departure. Ed Kahn and I continued to work on the case in part-time support roles until the late 1970s.

Gordon Greiner and Holland & Hart continued to bear the brunt of the school board's unrelenting recalcitrance for most of the more than twenty-eight years that passed before the courts declared that a "unitary" school system had been achieved in Denver and finally dismissed the last appeals of the case in 1997.<sup>88</sup> There really are no words to describe adequately the unstinting dedication and personal sacrifice given to the *Keyes* case by Gordon Greiner. I know of no comparable sustained effort to provide the promise of equal educational opportunity under the U.S. Constitution's Equal Protection Clause. It remains a towering contribution to America's legal landscape.

Larry Treece left the case in September 1969 to teach constitutional law at his alma mater, the University of Colorado Law School. The academic independence of the university was under siege from student protests of the war, and Larry, being so young himself, believed that he could help deal with the angst and disruption at the time. He taught as a tenured professor for seven years and returned to the practice in 1976 to help Bob Hill set up the antitrust division in the Office of the Attorney General of the State of Colorado, following the election of J.D. MacFarlane to that office. Although all of us worked on the complaint, preliminary injunction, and numerous motions and briefs, my recollection is that it was Larry's legal brilliance that added some of the most creative legal theories and powerful, persuasive writing that affected the outcome of the preliminary injunction and appeals phase of the case during the summer of 1969. He was sorely missed.

This short narrative is what I can glean from remembrance and a detailed review of my participation in the *Keyes* case through the events of the summer and September of 1969. The how and why of the *Keyes* case was a citizens' and community movement of many years, an effort to provide equal educational opportunity to all of Denver's children. My hope remains that that goal will continue to be pursued in Denver's, and America's, future.

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88. *Keyes v. Cong. of Hispanic Educators*, 902 F. Supp. 1274, 1307–08 (D. Colo. 1995).