JUDICIAL FEDERALISM IN THE SOUTHERN DISTRICT

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INTRODUCTION

The role of the federal judiciary in the American legal system has undergone profound change during the 100 years the United States District Court for the Southern District of Indiana has done its business in the new courthouse. The ratification of the Fourteenth Amendment and the Judiciary Act of 1875, which gave the district courts federal question jurisdiction, signaled a new role for the federal judiciary, and the federal courts became increasingly involved with questions concerning the scope and role of the federal government's involvement in the political, economic, and social life of the United States.[1] When the Courthouse was built, however, the business of the federal courts was still primarily the resolution of private disputes between citizens of different states.

Professor Felix Frankfurter said in 1928 that with the creation of federal question jurisdiction, the federal courts "ceased to be restricted tribunals of fair dealing between citizens of different states and became the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States."[2] Frankfurter's statement proved to be prophetic, but about 25 years premature.

With the arrival of the Warren Court in 1953, Frankfurter's vision became a reality. *Brown v. Board of Education*,[3] began a period of dynamic development of federal constitutional law which redefined the relationship between individuals and the government and the federal judiciary became the enforcer of the newly identified limitations on government power. This new, rapidly developing federal public law presented many challenges to the judges of the Southern District. The Supreme Court opinions established broad new principles of constitutional law but in the Southern District of Indiana, and across the country, it was left to the district courts to adapt the new constitutional principles to local conditions.

This Article will discuss two areas, school desegregation and prison reform. The district court managed major class action litigation during a period in which the law was very unpredictable. This discussion will demonstrate that prior to *Brown*, the Constitution of the United States was interpreted in such a way that

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1. The trend, however, began only in the early Twentieth Century, three decades after passage of the Judiciary Act of 1875. Sampling cases every five years, Solomon found that "by 1902 the private law cases had reached a high of 96.8% of the total cases decided" by the Seventh Circuit. RAYMOND L. SOLOMON, HISTORY OF THE SEVENTH CIRCUIT 1891-1941, at 160 (1981).

2. FELIX FRANKFURTER & JAMES M. LANDIS, THE BUSINESS OF THE SUPREME COURT: A STUDY IN THE FEDERAL JUDICIAL SYSTEM 65 (Johnson Reprint ed. 1972) (1928).

3. 347 U.S. 483 (1954) [hereinafter Brown I].

the federal judiciary was not involved in these two insidious social problems. The Warren Court brought the federal courts into both areas in a big way. The zenith of judicial power in the control of local institutions in the southern district may have been in 1973 when Hon. S. Hugh Dillin appointed two commissioners to exercise some of the power of the Board of School Commissioners of the Indianapolis Public Schools.

This new role for the federal courts was short-lived, however, and as the Warren Court gave way to the Burger and the Rehnquist Courts the Court reversed its field and rolled back the constitutional limitations on state officials.[4] Just as the Warren Court acted aggressively to protect the federal constitutional rights of the school children and prison inmates, the Burger and Rehnquist Courts have acted aggressively to reinterpret the constitution in a way that has extricated the federal judiciary from these areas. During all of this transition, the district courts were deciding important cases which had significant impact on large numbers of people without clear direction from the Supreme Court. The expansion and then contraction of the limitations on state officials by the appellate courts meant that the law which the district court judges were expected to apply to challenging social conditions was in a constant state of flux from *Brown* to the turn of the century.

District court judges have the power to interpret and enforce the principles established by the Supreme Court, particularly in times of transition. When the law is settled for a period of time, as it was in these areas before 1954, the law is predictable for citizens, litigants, attorneys, and district courts. When the law is in a period of transition, however, as it was in these areas from 1954 to the turn of the century, the lawyers present new theories and arguments to the district courts to promote or retard the change, and the legal foundation for the decisions of the district court judge is unstable and unpredictable.

The decisions of a district court judge on the merits of the case has an impact on the community regardless of whether the opinion is ultimately affirmed or rejected by higher courts. The district court judge controls the process which creates the record on appeal and factual determinations shape the issues presented to the appellate courts.[5] Beyond the case before the court, the opinions of the district court encourage or discourage litigants from filing new litigation and the opinions provide a context in which other cases are settled. Legislative and executive decisions of state and local governmental officials are no doubt influenced by the decisions of the local federal district court.

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4. Congress contributed to the Court's withdrawal from the enforcement of constitutional limitations. *See, e.g.*, Prison Litigation Reform Act, 42 U.S.C. § 1997 (1980).

5. In spite of a Supreme Court decision that double-celling was not per se unconstitutional, Rhodes v. Chapman, 452 U.S. 337 (1981), Judge Dillin's injunction which prohibited double celling at the Indiana Reformatory was upheld by the United States Court of Appeals for the Seventh Circuit, French v. Owens, 777 F.2d 1250 (7th Cir. 1985); the same court reversed a district court decision which enjoined double-celling at Illinois' Pontiac Correctional Center. Smith v. Fairman, 690 F.2d 122 (7th Cir. 1982).

I. SCHOOL DESEGREGATION

The new era in federal jurisprudence was ushered in dramatically when the newly-installed Chief Justice Earl Warren wrote the opinion in *Brown v. Board of Education*,[6] for a unanimous Court. In its brief opinion (less than eight pages in the Supreme Court Reporter) the Supreme Court threw out the well-settled doctrine of "separate but equal," and replaced the certainty of that precedent with far-reaching questions about both the scope and substance of constitutional requirements and the procedures by which the courts would provide for wholesale change. The Court found that "[s]eparate educational facilities are inherently unequal," and therefore racial segregation in public education violated the Fourteenth Amendment.[7] Recognizing "the wide applicability of this decision," the Court ordered reargument on the issue of relief, and invited the Attorney General and the Attorneys General of states with segregated schools to participate.[8]

Following reargument, the Supreme Court remanded the three federal cases back to their originating federal district courts to remedy the segregation found unconstitutional in *Brown I*.[9] It recognized that, in fashioning remedies, the district courts would need to invoke their broad equity powers.[10] In doing so, the Court said, the lower courts

> may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving [the constitutional violations].[11]

Although it endeavored to give guidance to the lower courts in fashioning remedies, the Court in *Brown II* raised many more questions than it answered about the nuts and bolts of desegregating segregated school systems. Those questions were left to the district courts to resolve as they forged ahead into the new area of school desegregation.

The complaint filed on May 31, 1968 by the United States Department of Justice against the Board of School Commissioners of the City of Indianapolis, Indiana brought the District Court for the Southern District of Indiana into the process of developing school desegregation law in the face of constantly evolving appellate court precedent. The case was one of the first so-called Northern desegregation cases brought by the Department of Justice against school districts in which segregation was perpetuated despite being officially discarded, and it

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6. *Brown I*, 347 U.S. at 483.
7. *Id.* at 495.
8. *Id.*
9. Brown v. Bd. of Educ. of Topeka, 349 U.S. 294, 299 (1955) [hereinafter Brown II].
10. *Id.* at 300.
11. *Id.* at 300-01.

was one of the first to impose an interdistrict remedy for the violation. Judge S. Hugh Dillin faced not only novel substantive and procedural issues, but also became intimately involved in social and educational decisions far outside the traditional realm of the district court. In applying the theory of *Brown* to the day-to-day life of every student in the Indianapolis Public Schools, the district court became the engine driving the quickly developing law of school desegregation.

Before 1949, Indiana schools were segregated by law. During the 1948-49 school year, only five percent of elementary school children in the Indianapolis Public Schools attended racially mixed schools.[12] Following the passage of a state law requiring phased desegregation in 1949, little changed in the Indianapolis schools. Both because of residential segregation and purposeful acts of the Indianapolis Public Schools, the school system remained largely segregated.[13]

In March 1967, a black parent whose children attended Indianapolis public schools filed a complaint with the United States Department of Justice challenging the segregated school system.[14] The Department of Justice investigated, and, finding a violation of equal protection, notified the school board that it would file suit unless it took corrective action by May 6, 1968.[15] When the Board proposed only a voluntary transfer program for teachers, the Department of Justice filed its complaint in the district court.

Although the Board denied any improper segregation, the litigation began in the spirit of compromise. The case was divided into three components: first the desegregation of faculty and staff, next the desegregation of the high schools, and finally the desegregation of elementary schools.[16] Judge Dillin mediated the parties' negotiations on the desegregation of teachers, and a settlement was reached in July 1968.[17] Although it was not without controversy,[18] the plan was implemented for the 1968-69 school year. The Board then turned to desegregation of the high schools and proposed that it integrate the high schools by closing the city's two black high schools, Crispus Attucks and Shortridge, and busing the black students to the remaining nine high schools, which were predominately white.[19] The Board's proposal drew ire from disparate voices in the community, and was ultimately abandoned. With it, the Board abandoned

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12. United States v. Bd. of Sch. Comm'rs, 332 F. Supp. 655, 665 (S.D. Ind. 1971) [hereinafter Indianapolis I].

13. *Id.* at 666.

14. William E. Marsh, *The Indianapolis Case: United States v. Board of School Commissioners*, *in* LIMITS OF JUSTICE: THE COURTS' ROLE IN SCHOOL DESEGREGATION 314 (Howard I. Kalodner & James F. Fishman eds., 1978).

15. *Id.*

16. *Id.* at 317.

17. *Id.*

18. The Indianapolis Education Association filed suit in state court alleging that the settlement, which included mandatory transfers, violated teachers' due process rights. Although the suit was not successful, the teachers did have input into the implementation of the plan.

19. Marsh, *supra* note 14, at 319.

hope that the matter could be resolved without the court's direct involvement.

This set the stage for the trial of *United States v. Board of School Commissioners*, which began on July 12, 1971, and focused on whether the Board had committed a constitutional violation in operating a segregated school system.[20] Judge Dillin concluded that it had. He found that the Board had perpetuated a dual school system for black and white students through the use of optional attendance zones in racially mixed areas,[21] construction of new schools,[22] in the assignment of special education classes,[23] and in its general choice of techniques for alleviating school overcrowding.[24]

After identifying overt acts by which the Board perpetuated the dual school system, Judge Dillin found that "various factors not of its own making have contributed" to maintaining segregation in the schools.[25] He considered demographic changes that had increased the number and proportion of blacks in the IPS area and housing policy that perpetuated those changes by situating low-income housing, with predominantly or exclusively black residents, within IPS rather than in the surrounding suburban school districts. Judge Dillin also raised questions about the constitutionality of the Uni-Gov Act, by which the Indiana General Assembly had expanded the borders of the City of Indianapolis to be coterminous with the borders of Marion County, and expressly excepted the school corporations within Marion County from the Act.[26] Prior to Uni-Gov IPS had the power to expand its territory as the City of Indianapolis expanded, but this statute froze the boundaries of IPS by precluding future annexation. As of 1970, Center Township, which includes most of the original City of Indianapolis

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20. 332 F. Supp. 655, 656 (S.D. Ind. 1971).

21. *Id.* at 668. "White students in optional zones almost always attended white schools." *Id.*

22. *Id.* Judge Dillin found that

> new elementary schools to be attended by students of predominantly one race have been constructed adjacent to schools attended primarily by students of the opposite race, new middle schools have been constructed to enroll the students of one race adjacent to schools attended by students of the opposite race, and new high schools have been located and constructed where they have served predominantly white student populations.

Id. at 668-69.

23. *Id.* at 669.

24. *Id.* at 667.

> The defendant Board has constructed numerous additions to schools since 1954; more often than not the capacity thus created has been used to promote segregation. It has built additions at Negro schools and then zoned Negro students into them from predominantly white schools; it has built additions at white schools for white children attending Negro schools; it has generally failed to reduce overcrowding at schools of one race by assigning students to use newly built capacity at schools of the opposite race.

Id.

25. *Id.* at 672.

26. *Id.* at 676.

and most of IPS, was 38.8% black. Excluding Center Township, Marion County, by contrast, was 97% white.[27] This raised the question of whether Uni-Gov was unconstitutional as tending to increase segregation in the public schools of Marion County.[28]

Judge Dillin held that the IPS schools were unconstitutionally segregated.[29] Judge Dillin recognized immediately that a remedy which was what he called a "massive 'fruit basket' scrambling of students within the School City" could at least temporarily eliminate segregation in IPS, but "in the long haul, it won't work."[30] A long term solution to segregation in the IPS schools would need to acknowledge and address the many factors that went into perpetuating segregation. To move forward to the remedy stage, Judge Dillin posed specific questions to the parties regarding Uni-Gov and the possibility of a remedy encompassing not only IPS, but the surrounding districts as well.[31] He ordered that the Justice Department bring the surrounding school districts and the State of Indiana into the litigation as defendants, and told both sides to bring in other parties necessary to fashion a remedy and encouraged other interested parties to move to intervene on their own.[32] In the interim, Judge Dillin ordered immediate measures directed towards the creation of a unitary school system.

Less than two weeks after Judge Dillin delivered his opinion, the Board voted to appeal the order to the Seventh Circuit, but decided not to seek a stay pending appeal.[33] The Seventh Circuit affirmed, concluding that "this case was tried to a judge who obviously gave it considerable conscientious thought and attention and by able counsel on both sides," and that the findings of fact supported the conclusion that "during much of the period from 1954 to 1968 the Board continued affirmative policies which promoted a dual system, and that last-minute efforts have been totally insufficient to eliminate the consequences of those yeas of discrimination."[34]

Less than five months after the Seventh Circuit affirmed Judge Dillin's finding of a violation, he convened the remedy trial on June 12, 1973.[35] Pursuant to the court's order in *Indianapolis I*, a number of new parties were added on both sides of the caption. As ordered, the Justice Department served the surrounding school districts, including the non-IPS Marion County school districts, two Municipal School Districts within Marion County, and two school

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27. *Id.* at 672.

28. *Id.* at 679.

29. *Id.* at 665.

30. *Id.* at 678.

31. *Id.* at 679.

32. *Id.* at 679-80.

33. Marsh, *supra* note 14, at 329.

34. United States v. Bd. of Sch. Comm'rs, 474 F.2d 81, 89 (7th Cir. 1973).

35. Marsh, *supra* note 14, at 335. The added school defendants objected to the term remedy trial, insisting that no remedy could be imposed against them because they had not been found guilty of a constitutional violation.

districts serving suburbs of Indianapolis in adjoining counties.[36] Because the government did not allege any acts of *de jure* segregation against the added defendants (it simply served them with a summons and a copy of the court's order in *Indianapolis I*), the parents of two black IPS students moved to intervene as plaintiffs on behalf of all school-age children in IPS. Their petition was granted, and they subsequently added additional state defendants.[37] The trial raised challenging procedural issues, not the least of which was how to administer a trial when the defendants were represented by at least twenty-five different attorneys.[38]

Judge Dillin concluded that his fears, expressed in *Indianapolis I*, that a remedy affecting only IPS would result in resegregation of the Indianapolis schools, were well founded.[39] He found that "when the percentage of Negro pupils in a given school approaches 25% to 30%, more or less, in the area served by IPS, the white exodus from such a school district becomes accelerated and continues," and that "once a school becomes identifiably black, it never reverses to white, in the absence of redistricting."[40] Because at the time of the second trial the percentage of black students in IPS had risen above 40%, and continued to rise, a remedy involving only IPS would not eliminate segregation for any significant period of time.[41]

In *Indianapolis II*, Judge Dillin held that the discriminatory acts of IPS found to be a constitutional violation in *Indianapolis I* could be imputed to the State of Indiana, which under Indiana law was ultimately responsible for education.[42] Citing to the decision of the Sixth Circuit in *Bradley v. Milliken*[43] (the Detroit desegregation case), the court concluded that a multi-district remedy was appropriate because the state controlled education through its instrumentalities and had allowed IPS to maintain a dual school system through its acts and omissions.[44] Further, because no desegregation plan involving IPS alone would be effective in remedying the constitutional violation, "[I]f we hold that school district boundaries are absolute barriers to an IPS school desegregation plan, we would be opening a way to nullify *Brown v. Board of Education*."[45] Judge Dillin relied on extensive demographic and geographic information in concluding that the appropriate remedy should involve all of the Marion County defendants and

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36. *Id.* at 330.

37. United States v. Bd. of Sch. Comm'rs, 368 F. Supp. 1191, 1995 (S.D. Ind. 1973) [hereinafter Indianapolis II].

38. Marsh, *supra* note 14, at 335. "The large number of lawyers complicated the proceeding, particularly in such matters as authenticating evidence. The lack of clear controlling principals of resulted in the introduction of a great deal of essentially immaterial evidence." *Id.*

39. *Indianapolis II*, 368 F. Supp. at 1197.

40. *Id.*

41. *Id.* at 1198.

42. *Id.* at 1205.

43. 484 F.2d 215 (6th Cir. 1973).

44. *Indianapolis II*, 368 F. Supp. at 1205.

45. *Id.* at 1206.

some of school districts directly adjoining Marion County.[46]

Having determined that an inter-district remedy was both necessary and appropriate, Judge Dillin postponed devising a judicial remedy. Instead, he gave the Indiana General Assembly "a reasonable time" in which to devise and implement its own remedy. In the interim, the court ordered measures that included transfers of black IPS students to each of the metropolitan school districts.[47]

Soon after he handed down his opinion, Judge Dillin stayed the portions of his order that required busing to the metropolitan school districts for the 1973-74 school year.[48] He gave IPS one week to submit a plan to meet certain objective criteria, including ensuring that no elementary school would have less than 15% black students and balancing the racial make-up of Shortridge and Howe High Schools.[49] IPS submitted a proposed plan that met none of the criteria, and Judge Dillin found that IPS was in default of his order in *Indianapolis II*.[50]

On the motion of the intervening plaintiffs, Judge Dillin appointed two court commissioners to formulate an interim plan for the 1973-74 school year.[51] In addition to requiring that IPS provide office space and support to the commissioners, Judge Dillin ordered that the Board defendants "assign their professional planning staff wholly to the services of the Commissioners" until they had completed their interim plan.[52] In this remarkable order, the court effectively removed planning authority from the Board and vested it in two outside experts.

Although the commissioners worked feverishly to develop an interim plan with only fifteen days before the first day of school, the Indiana General Assembly failed to act. Judge Dillin issued a supplemental opinion in December 1973, in which he clarified his earlier requirement that the General Assembly act within "a reasonable time" and proposed possible solutions; no metropolitan plan was introduced in the legislature.[53]

In the meantime, *Milliken v. Bradley*, which Judge Dillin had relied on in fashioning his multi-district remedy, had reached the Supreme Court. On July 25, 1974, the Court reversed the Sixth Circuit and held against a multi-district remedy in Detroit.[54] Soon thereafter, the Seventh Circuit reversed Judge Dillin's order of a multi-district remedy in light of the fact that there had been no finding

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46. *Id.* at 1207 (concluding that including some of the defendant school districts outside of Marion County would be impractical, and therefore did not recommend that those districts be involved in a metropolitan plan).

47. *Id.* at 1231.

48. Marsh, *supra* note 14, at 343.

49. *Id.* at 344.

50. *Id.*

51. *Id.*

52. *Id.* at 345 (quoting Order of Judge Dillin in United States v. Bd. of Sch. Comm's, entered August 27, 1973, at 4-5).

53. *Id.* at 348.

54. Milliken v. Bradley, 418 U.S. 717 (1974).

that the suburban districts had committed acts of de jure segregation.[55] The court remanded for a determination of whether Uni-Gov, and the purposeful exclusion of the school districts from Uni-Gov, supported the imposition of a multi-district remedy within Marion County.[56] In the same opinion, Judge Dillin's appointment of the commissioners to create an interim plan was affirmed.

On remand, Judge Dillin again found that an inter-district remedy within Marion County was warranted.[57] The commissioners completed their interim plan, were released from service, and IPS's planning functions were returned to the Board. Following additional appeals, the inter-district remedy was finally implemented in 1981, more than fourteen years after the Justice Department had filed suit. The supervision of the district court continued for another seventeen years. On June 25, 1998, Judge Dillin found IPS to be a unitary school district, and approved a phase-out of the desegregation plan.[58]

Over the three decades of school desegregation in Indianapolis, the district court faced legal issues as the law was evolving. The district court was both reacting to new precedent as it was handed down from the Seventh Circuit and the Supreme Court and driving these new directions of development by implementing novel solutions to unique issues.

II. PRISON REFORM

When *Brown v. Board of Education* was decided, the federal judiciary had no relationship with state jails and prisons or their inmates. The Eighth Amendment prohibition of cruel and unusual punishment did not apply to the states;[59] and 42 U.S.C. § 1983 had not been recognized as creating a federal cause of action for violation of those constitutional provisions, such as the First Amendment, which were applicable to the states through the Fourteenth Amendment.[60]

The constitutional underpinnings of the prison reform litigation were created when the United States Supreme Court held in 1961 that 42 U.S.C. § 1983 created a private cause of action for violation of the constitutional rights of an individual under color of state law[61] and in 1962, when the Court held that the Eighth Amendment's cruel and unusual punishment clause was applicable to the states through the Fourteenth Amendment.[62] Even those two cases, however, did not immediately open the doors of the federal courthouse to prison inmates. In

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55. United States v. Bd. of Sch. Comm'rs, 503 F.2d 68, 86 (7th Cir. 1974).

56. *Id.*

57. United States v. Bd. of Sch. Comm'rs, 419 F. Supp. 180 (S.D. Ind. 1975).

58. Caroline Hendrie, *In Indianapolis, Nashville, a New Era Dawns*, EDUC. WEEK, July 8, 1998, at 8-9.

59. *See, e.g.*, Adamson v. California, 332 U.S. 46, 78 (1947); *In re* Kemmler, 136 U.S. 436 (1890).

60. *See, e.g.*, Stift v. Lynch, 267 F.2d 237 (7th Cir. 1959).

61. Monroe v. Pape, 365 U.S. 167 (1961).

62. Robinson v. California, 370 U.S. 660 (1962).

1963, the United States Court of Appeals for the Seventh Circuit affirmed the dismissal of a prisoner's § 1983 claim that denying him medical care constituted cruel and unusual punishment. The Seventh Circuit said, "[i]t is not the function of federal courts to interfere with the conduct of state officials in carrying out such duties under state law."[63]

The United States Supreme Court first recognized in 1964 that a state prisoner's complaint that prison officials were depriving him of a constitutionally guaranteed liberty stated a claim upon which relief could be granted. In *Cooper v. Pate*,[64] the Supreme Court reversed a Seventh Circuit decision which upheld the dismissal of the *pro se* complaint of a Black Muslim who alleged that he was being discriminated against because of his religious beliefs in violation of the First and Fourteenth Amendments.[65] The floodgates were not yet open, but the dike was beginning to leak.

The prison reform movement received additional encouragement from the Supreme Court in 1974 when the Court held that the district court correctly refused to abstain in a case challenging, on First Amendment grounds, restrictions on a prisoner's personal correspondence with persons outside the institution.[66] In his opinion for the Court, Justice Powell recognized the federal judiciary's growing recognition of the constitutional rights of prisoners and contemplated the difficult litigation ahead. Justice Powell said,

> Traditionally, federal courts have adopted a broad hands off attitude toward problems of prison administration. . . . Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. . . . Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. . . . [C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. . . . Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.[67]

Despite these cautionary words, law reform lawyers and prison writ writers read the opinion as an invitation to take their grievances to federal court.

Prisoners began the reform litigation in the Southern District of Indiana in November 1975, when four inmates, two black and two white, who worked in the law library at the Indiana Reformatory at Pendleton, filed a class action complaint alleging that the conditions of confinement at the maximum security prison constituted cruel and unusual punishment in violation of the Eighth and

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63. Lawrence v. Ragen, 323 F.2d 410, 412 (7th Cir. 1963).

64. 378 U.S. 546 (1964).

65. *Id.*

66. Procunier v. Martinez, 416 U.S. 396 (1974).

67. *Id.* at 404-05.

Fourteenth Amendments to the Constitution of the United States.[68]

The complaint was assigned to Judge S. Hugh Dillin who dismissed the complaint with leave to file an amended complaint; on May 13, 1976, four days before the twenty-second anniversary of the *Brown* decision, lawyers from the Legal Services Organization in Indianapolis[69] filed the amended complaint which led the judges of the Southern District into the rapidly developing constitutionalization of prisoners' rights and the responsibility of state officials to provide for the needs of the prison inmates.

The theory that conditions of confinement in a state prison could be unconstitutional was first recognized in the South, where prison conditions were the most severe. District Judge Frank M. Johnson, Jr. from the Middle District of Alabama led the way in holding that conditions of confinement could in their totality be a violation of the Eighth Amendment, even if the conditions, taken individually, did not violate the Constitution.[70]

When the *French* case went to trial in July and August 1978, the theory had not been recognized by either the Supreme Court or the Seventh Circuit. For some reason, Judge Dillin did not make a decision in *French* for more than three years after the trial. In March 1982, the case was still under advisement, and the evidence was stale; the court reopened the record and heard additional testimony. By that time, the United States Supreme Court had recognized that "[c]onfinement in a prison or in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards."[71] When Judge Dillin decided *French* on May 7, 1982, ten days before the twenty-eighth anniversary of *Brown*, conditions of confinement at the prison were worse than they had been when the case was first tried in 1978. For example, "[t]he number of inmates housed in the Reformatory in August, 1978 was 1,215. By January 27, 1982 it had risen to 1,972."[72]

Judge Dillin held that the conditions of confinement at the Indiana Reformatory constituted cruel and unusual punishment and issued a comprehensive remedy, one which would be beyond the wildest imagination of prison reform advocates in 2004.[73] The court ordered a phased reduction in the

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68. French v. Owens, 538 F. Supp. 910 (S.D. Ind. 1982).

69. William E. Marsh was one of the Legal Services Organization lawyers who represented the plaintiffs from 1976 to 1994.

70. *See* Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976), *aff'd,* Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).

71. Hutto v. Finney, 437 U.S. 678, 685 (1979).

72. *French*, 538 F. Supp. at 913.

73. *Id.* at 927-28 (ordering the defendants to hire a new doctor, add other medical and mental health personnel, and develop new procedures for the delivery of medical care; provide substance abuse and mental health counseling for all inmates who need and want them; the Maximum Restraint Unit, which had been used for disciplinary segregation, was ordered closed; provide additional recreation time for all inmates; submit to the court a plan for hiring additional correctional officers in order to provide a safe environment for the inmates; give each inmate an educational, vocational, or job assignment; and bring all work locations into compliance with

population from more than 2000 at the time of the decision to 1375 twenty months later, along with an elimination of double-celling in the cell houses and double bunking in the dormitories.[74] The order came in spite of two Supreme Court decisions which reversed district court decisions eliminating double-celling or double-bunking.[75] Judge Dillin held that the overall conditions of confinement were significantly harsher at the Indiana Reformatory than at the prisons in those two cases.[76]

An intriguing federalism issue was presented when Judge Dillin held that the conditions at the Indiana Reformatory were in violation of numerous Indiana statutes, and in an exercise of pendent jurisdiction, ordered the defendants to come into compliance with the state law.[77] Judge Dillin ordered that the kitchen and dining room be brought into compliance with standards of the Indiana Board of Health and that all buildings which required structural changes be brought into compliance with the standards of the office of the Indiana State Fire Marshal.[78]

While the appeal to the court of appeals was pending, the United States Supreme Court held that the Eleventh Amendment does not permit a federal court to compel state officials to follow state law.[79] Following a remand from the Seventh Circuit for reconsideration in light of *Pennhurst*, Judge Dillin held that most of the conditions which violated Indiana law were also in violation of the Eighth Amendment and entered essentially the same order on Eighth and Fourteenth Amendment grounds. The Seventh Circuit upheld the amended order as to the kitchen and dining room but vacated the enforcement of Fire Marshal standards, as well as the OSHA requirement.[80]

For more than a decade the case produced repeated flare-ups of litigation. Attorneys for the plaintiffs regularly filed contempt petitions asserting that the defendants were not complying with the district court's orders and the defendants filed numerous petitions to modify the injunction. The ultimate demise of the case came in a landmark United States Supreme Court decision[81] which upheld the constitutionality of the Prison Litigation Reform Act of 1995 (PLRA).[82]

Occupational Safety and Health Administration standards. A preliminary injunction against the use of mechanical restraints, which had been issued during the pendency of the litigation, was made permanent.).

74. *Id.* at 910.

75. Rhodes v. Chapman, 452 U.S. 337 (1981); Bell v. Wolfish, 441 U.S. 520 (1979).

76. *French*, 538 F. Supp. at 910.

77. *Id.*

78. *Id.*

79. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).

80. French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985) (holding that "The eighth amendment does not constitutionalize the Indiana Fire Code. Nor does it require complete compliance with the numerous OSHA regulations."). The Seventh Circuit also vacated the injunction regarding recreation for all inmates and programs for persons in protective custody. *Id.* at 1251.

81. Miller v. French, 530 U.S. 327 (2000).

82. 18 U.S.C.A. § 3626 (1995).

The statute provided that any prospective relief ordered in a prison conditions case, such as the district court injunction in *French*, would be terminable upon the motion of any party two years after the injunction was entered, and required "[t]he court [to] promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions."[83] If a judge does not rule on the motion to modify or terminate the injunction within thirty days the prospective relief ordered is automatically stayed.[84]

In June 1997, the defendant Indiana Department of Corrections officials filed a motion in the district court to terminate the prospective relief Judge Dillin had ordered in the case. Pursuant to a motion of the plaintiffs, Judge Dillin held that the automatic stay provision was an unconstitutional violation of separation of powers; the Seventh Circuit affirmed.[85] The United States Supreme Court reversed.[86]

The Supreme Court construed the statute as precluding the district court from enjoining the automatic stay provision of the PLRA and then held that the automatic stay provision was not a violation of separation of powers. Upon remand to the district court, the parties agreed that the automatic stay was in effect and entered into an agreement which resulted in the termination of all prospective relief in the case.[87]

CONCLUSION

The last half of the first century in which the United States District Court for the Southern District of Indiana has conducted its business in the courthouse has seen dramatic and dynamic changes in the work of the court. The role of the federal judiciary in solving serious social problems has expanded and contracted, changes which have presented the judges with significant challenges. The judges have responded with courage and integrity, values the new courthouse built in 1904 was no doubt intended to symbolize.

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83. *Id.* § 3626(e)(1).

84. The court can extend this time period for up to sixty days. *Id.* § 3626(e)(2).

85. French v. Duckworth, 178 F.3d 437 (7th Cir. 1999).

86. *Miller*, 530 U.S. at 327.

87. French v. Miller, 234 F.3d 1273, 2000 WL 1180299 (7th Cir. 2000) (unpublished).