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Opinion and Order dated April 23, 1969 Regarding Desegregation of Schools of Charlotte and Mecklenburg County, North Carolina

Preliminary Summary

The case, originally filed in 1965, is now before the court under the "Motion for Further Relief" filed by the plaintiffs on September 6, 1968. The motion seeks greater speed in desegregation of the Charlotte-Mecklenburg schools, and requests elimination of certain other alleged racial inequalities. Evidence was taken at length on March 10, 11, 12, 13, 17 and 26, 1969. The file and the exhibits are about two and one-half feet thick, and have required considerable study. In brief, the results of that study are as follows:

The Charlotte-Mecklenburg schools are not yet desegregated. Approximately 14,000 of the 25,000 Negro students still attend schools that are all black, or very nearly all black, and most of the 24,000 have no white teachers. As a group Negro students score quite low on school achievement tests (the most objective method now in use for measuring educational progress); and the results are not improving under present conditions. The system of assigning pupils by "neighborhoods," with "freedom of choice" for both pupils and faculty, superimposed on an urban population pattern where Negro residents have become concentrated almost entirely in one quadrant of a city of 270,000, is racially discriminatory. This discrimination discourages initiative and makes quality education impossible. The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live—or find they must live—nor on the color of his skin. The neighborhood school concept never *prevented* statutory racial segrega-

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tion; it may not now be validly used to *perpetuate* segregation.

Since this case was last before this court in 1965, the law (or at least the understanding of the law) has changed. School boards are now clearly charged with the affirmative duty to desegregate schools *"now"* by positive measures. The Board is directed to submit by May 15, 1969 a positive plan for faculty desegregation effective in the fall of 1969, and a plan for effective desegregation of pupil population, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Such plan should try to avoid any re-zoning which tends to perpetuate segregated pupil assignment. The Board is free to consider all known ways of desegregation, including bussing (the economics of which might pleasantly surprise the taxpayers); pairing of grades or of schools; enlargement and re-alignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon *de facto* segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community.

The Law Which Governs

This case vitally affects 83,000 school children of Charlotte and Mecklenburg County—and their families. That means virtually all of us. The School Board and this court are bound by the Constitution as the Supreme Court interprets it. In order that we think in terms of law and human rights instead of in terms of personal likes and preferences, we ought to read about what the Supreme Court has said.

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Before 1954, public education in North Carolina was segregated by law. "Separate but equal" education was acceptable. This *de jure* segregation was outlawed by the two decisions of the Supreme Court in *Brown* v. *Board of Education,* 347 U. S. 483 (1954) and 349 U. S. 294 (1955).

The first *Brown* opinion held that racial segregation of schools by law was unconstitutional because racial segregation, even though the physical facilities and other tangible factors might be equal, deprives Negro children of equal educational opportunities. The Court recalled prior decisions that segregation of graduate students was unlawful because it restricted the student's "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." The Court said:

> "Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Quoting a lower court opinion, the Supreme Court continued:

> " 'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard]

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> the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'
>
> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . . ."

The second *Brown* case, decided May 31, 1955, directed school boards to do whatever was necessary to carry out the Court's directive as to the pending cases "with all deliberate speed" (349 U. S. 301).

North Carolina's most significant early response to *Brown* was the Pupil Assignment Act of 1955-56,[1] under which local school boards have the sole power to assign pupils to schools, and children are required to attend the schools to which they are assigned.

It is still to this day the local School Board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution.

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[1] N.C.G.S., § 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.—Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this article, *the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete*, and its decision as to the assignment of any child to any school shall be final. . . . No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the *orderly and efficient administration* of the public schools, and *provide for the effective instruction*, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this article. (Emphasis added.)

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It is the court's duty to assess any pupil assignment plan in term of the Constitution, which is still the Supreme law of the land.

Some token desegregation of Charlotte city schools occurred during the late 1950's. In 1961, upon economic and administrative grounds not connected with questions of segregation, the Charlotte City schools and the Mecklenburg County schools were consolidated into one school administrative unit under one nine-member board known as the Charlotte-Mecklenburg Board of Education. By 1964 a few dozen out of more than 20,000 Negro school children were attending schools with white pupils.

This suit was filed on January 19, 1965, by Negro patrons, to seek orders expediting desegregation of the schools. At that time, serious questions existed whether *Brown* required any positive action by school boards to eliminate segregated schools or whether it simply forbade active discrimination. An order was entered in 1965 by the then District Judge in line with the law as then understood, substantially approving the Board's plan for desegregation. The Fourth Circuit Court of Appeals affirmed the order.

Pursuant to the approved plan the Board closed certain all-Negro schools, established school zones, built some new schools, and set up a freedom of choice arrangement for the entire system. The students in a zone surrounding each school are assigned to that school; a period is allotted each spring to request assignment to another school; no reason for transfer need be given; all transfer requests are honored unless the requested schools are full; no transportation is available to implement such transfer.

In appraising the results under this plan in 1969, four years later, we must be guided by some other and more recent things the Supreme Court has said.

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In *Green* v. *New Kent County School Board,* 391 U. S. 430 at 435 (1968), the Supreme Court held unlawful a county school pupil assignment system which maintained a black school and a white school for the same grades. The Court said:

> "It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were *required* by *Brown II* 'to effectuate a transition to a racially nondiscriminatory school system.' 349 U. S., at 301. It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the 'white' schools. See, *e. g., Cooper* v. *Aaron,* 358 U. S. 1. Under *Brown II* that immediate goal was only the first step, however. *The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about; . . .*"
>
> * * * * *
>
> "It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's 'freedom-of-choice' plan to achieve that end.
>
> * * * * *
>
> ". . . In the light of the command of that case, what is involved here is the question whether the Board has achieved the 'racially nondiscriminatory school system' *Brown II* held must be effectuated in order

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to remedy the established unconstitutional deficiencies of its segregated system. *In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequte to abolish its dual, segregated system. Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. *School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . .*"

* * * * *

"*. . . 'The time for mere "deliberate speed" has run out,' Griffin* v. *County School Board,* 377 U. S. 218, 234; *'the context in which we must interpret and apply this language* [of *Brown II*] *to plans for desegregation has been significantly altered.'* "

* * * * *

"*. . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.*

"The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. . . ."

* * * * *

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"We do not hold that 'freedom of choice' can have no place in such a plan. We do not hold that a 'freedom-of-choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that *in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself*. As Judge Sobeloff has put it,

> "'*Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects.* If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.'" *Bowman* v. *County School Board,* 382 F. 2d 326, 333 (C. A. 4th Cir. 1967) (concurring opinion).

". . . Although the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, 'freedom of choice' must be held unacceptable."

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> ". . . The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."
>
> (All emphasis added except for the word "required" in the first quoted paragraph and the word "now" in the fifth quoted paragraph.)

It is obvious that between 1955 and 1968 the meaning and the force of the constitutional guaranty that education if tax paid be equal for all has been intensified. The duty now appears as not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of such historical *apartheid*. It is in this light that the actions of school boards must now be studied.

Findings of Fact

Some Facts About the Charlotte-Mecklenburg School System:

a) *General Information.*—The system covers 550 square miles and serves more than 82,000 pupils. It is 43rd in size among the school administrative units of the United States. The county population is over 335,000. The population of Charlotte is now about 270,000. The student population increases at a rate betwen 2,500 and 3,000 students per year. The schools are 107 in number, including 76 elementary schools (grades 1 through 6), 20 junior high

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schools (grades 7 through 9) and 11 senior high schools (grades 10 through 12). The Board also operates a learning academy, 4 child development centers (kindergartens for the underprivileged) and 3 psycho-educational clinics.

The students on the rolls as of January 1969 include 44,835 elementary students, 20,675 junior high students and 16,690 senior high students. Of these students, about 29% are Negro and about 71% are white. The ratio of black to white of all ages in the county is about one to three.

The 5,880 school employees include 3,553 classroom teachers; 404 other members of the instructional staff including principals, directors and special staff members. These include 60 guidance counselors and 114 librarians. Other employees include 325 secretaries and other clerical employees, 995 cafeteria employees, 357 janitors and maids, 219 maintenance and transportation workers and 27 people assigned to educational television work. The school system is the largest employer in the state's most populous county.

The nine members of the Board of Education are elected three every two years on a non-partisan basis for six-year terms.

Over 18% of the 3,553 classroom teachers have graduate certificates. Some 2,870 or nearly 81% have Class A certificates. Some 852 teachers are men.

Of 1968's 4,095 high school graduates, about 62% or 2,539 entered college. The drop-out rate for the past two years has been approximately 2.3% of the total enrollment of the schools.

The operating budget for the system (not counting construction costs) was nearly $40,000,000 last year. Average per pupil expense was over $530. Teachers' salaries range

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from $5,669 to $10,230.25. School funds come 58% from the state, 35% from local sources, and 7% from federal funds.

Class size averages approximately 28 students in elementary schools (the first six grades); 26.4 in junior high schools and 29.3 in senior high schools.

All schools have libraries. The total number of books in the libraries is over 806,000, which is nearly 10 books per pupil, with a value estimated at $2,677,804. (This may be compared with the average of roughly one-half a book per pupil in the schools of the District of Columbia a couple of years ago.) These are not the textbooks which are furnished free by the state for individual use, but are library books for general circulation. Circulation last year was 2,884,252, or an average per pupil of 36 books.

The Board operates the largest food service industry in the state, serving over 70,000 meals a day on a budget of four and one-half million dollars.

Nearly one-fourth of the students (almost 20,000 last year) attend classes at the planetarium in the Children's Nature Museum. This is reportedly more children than attend regular classes at any other planetarium in the country.

Special consultants and teachers are provided in special areas such as art, music, languages, social studies, science, mathematics and physical education. Special teachers are employed to teach classes for the gifted, the mentally retarded and the physically handicapped. Guidance counselors, school psychologists and social workers are available where needed.

Faculty salaries are higher in Mecklenburg County than in most other counties of the state, by virtue of a substantial salary supplement from local taxpayers.

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b) *History and Geography; Background of De Facto Segregation.*—Charlotte (270,000-plus) sits in the center of Mecklenburg County (550 square miles, total population over 335,000). The central city may be likened to an automobile hub cap, the perimeter area to a wheel, and the county area to the rubber tire. Tryon Street and the Southern Railroad run generally through the county and the city from northeast to southwest. Trade Street runs generally northwest to southeast and crosses Tryon Street at the center of town at Independence Square. Charlotte originally grew along the Southern railroad tracks. Textile mills with mill villages, once almost entirely white, were built. Business and other industry followed the highways and the railroad. The railroad and parallel highways and business and industrial development formed something of a barrier between east and west.

By the end of World War II many Negro families lived in the center of Charlotte just east of Independence Square in what is known as the First Ward—Second Ward—Cherry—Brooklyn area. However, the bulk of Charlotte's black population lived west of the railroad and Tryon Street, and north of Trade Street, in the northwest part of town. The high priced, almost exclusively white, country was east of Tryon Street and south of Trade in the Myers Park—Providence—Sharon—Eastover areas. Charlotte thus had a very high degree of segregation of housing before the first *Brown* decision.

Among the forces which brought about these concentrations should be listed the original location of industry along and to the west of the Southern railroad; the location of Johnson C. Smith University two miles west of Tryon Street; the choice of builders in the early 1900's to go south and east instead of west for high priced dwelling construction; the effect of private action and public law on choice of dwelling sites by black and by white pur-

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chasers or renters; real estate zoning which began in 1947; and the economics of the situation which are that Negroes have earned less money and have been less able to buy or rent expensive living quarters.

Local zoning ordinances starting in 1947 generally allow more varied uses in the west than in the east. Few if any areas identified as black have a residential restriction stronger than R-6, which means that a house can be built on a lot as small as 6,000 square feet. Zoning restrictions in other areas go as high as 12,000 and 15,000 square feet per lot. Nearly all industrial land in the city is in the west. The airport in the southwest with its jet air traffic inhibits residential development. Many black citizens live in areas zoned industrial, which means that the zoning law places no restriction on the use of the land. The zoning laws follow the pattern of low cost housing and industry to the west and high cost housing with some business and office developments to the east.

City planning has followed the same pattern.

Tryon Street and the Southern railroad were not built to segregate races. In the last fifteen years grade crossings have been eliminated at great expense at Fourth Street, Trade Street, Twelfth Street and Independence Boulevard; and an elevated half-mile bridge, the Brodie Griffith Skyway, is now being built across the railroad in North Charlotte at a cost of more than three million dollars. The ramparts are being pierced in many spots and inner-city highways now under construction will make communication much simpler.

However, concentration of Negroes in the northwest continues. Under the urban renewal program thousands of Negroes were moved out of their shotgun houses in the center of town and have relocated in the low rent areas to the west. This relocation of course involved many ad

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hoc decisions by individuals and by city, county, state and federal governments. Federal agencies (which hold the strings to large federal purses) reportedly disclaim any responsibility for the direction of the migration; they reportedly say that the selection of urban renewal sites and the relocation of displaced persons are matters of decision ("freedom of choice"?) by local individuals and governments. This may be correct; the clear fact however is that the displacement occurred with heavy federal financing and with active participation by local governments, and it has further concentrated Negroes until 95% or so of the city's Negroes live west of the Tryon—railroad area, or on its immediate eastern fringes.

Onto this migration the 1965 school zone plan with freedom of transfer was superimposed. The Board accurately predicted that black pupils would be moved out of their midtown shotgun housing and that white residents would continue to move generally south and east. Schools were built to meet both groups. Black or nearly black schools resulted in the northwest and white or nearly all white schools resulted in the east and southeast. Freedom of students of both races to transfer freely to schools of their own choices has resulted in resegregation of some schools which were temporarily desegregated. The effect of closing the black inner-city schools and allowing free choices has in overall result tended to perpetuate and promote segregation.

Some Board Actions Found Not To Be Discriminatory

No racial discrimination or inequality is found in the following disputed matters:

1. *The use of federal funds for special aid to the disadvantaged.* The testimony and the exhibits failed to show

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that federal money was used with any discrimination by race or with any improper displacement of local money.

2. *Use of mobile classrooms.* In recent years the system has required the addition of nearly two classrooms per week. Mobile classrooms have been used to provide extra space temporarily to cope with shifts and growth in school population. Mobiles are not inferior in quality and comfort to permanent classrooms, and recent models are superior in many ways to many existing permanent classrooms. Their use and location are matters to be determined by the Board in light of the court's instructions hereafter on the preparation of a new plan for pupil assignment.

3. *The quality of the school buildings and equipment.* The evidence showed the per pupil value of the land and buildings and equipment of the various schools. Average value of these items per pupil for elementary schools was $861; for junior high schools $1,229; and for senior high schools $1,567. Schools described by witnesses as "white" ranged well up and down on both sides of that average figure and schools described by witnesses as "black" showed a similar variation. Several of the oldest and most respected "white" elementary schools in the county (Sharon Road and Steele Creek, for example) have very low per pupil facilities values. One of the newest but still all black high schools (West Charlotte) has one of the highest per pupil facilities values. The highest priced school (Olympic High) is totally desegregated (522 white and 259 black students). No racial discrimination in spending money or providing facilities appears.

4. *Coaching of athletics.* Coaches at the predominantly black schools are usually black. Coaches at the predomi-

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antly white schools are usually white. Several black coaches have been employed at "white" schools. No black coach was shown to have applied and been refused a job. No pattern of discrimination appears in the coaching ranks.

5. *Parent-Teacher Association contributions and activities.* Parents contribute to school projects through voluntary Parent-Teacher Associations. This voluntary parental action is not racial discrimination against children whose parents are less able to make such contributions, and it does not come about through state action.

6. *School fees.* It was contended that the school fee system is discriminatory. For example, at the elementary level, grades 1 through 6, each student is supposed to bring a dollar to school at the beginning of the year to provide some extra learning aids in the form of paper, art materials and the like. In poor communities collection of this fee averages only about 50%, whereas nearly all wealthy children pay all the fees assessed in their schools. This non-payment of school fees by the poor is not a racial discrimination against the poor. The schools where people are poorer have other funds by which this 50¢ per pupil can be made up.

7. *School lunches.* School lunches are provided free to needy students. The court finds that no one has ever knowingly been denied a free lunch on racial grounds if he could not pay for it.

8. *Library books.* Library books of comparable quality and content are available to all students, black and white, in all schools in an average number of nearly ten per pupil.

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9. *Elective courses.* Some elective courses such as German are offered at some but not all of the high schools. They are offered at a school only if enough students express a desire for the course. Not all schools therefore have all elective courses every year. This situation is not the result of discrimination on account of race.

10. *Individual Evaluation of Students.* Individual students are evaluated annually in terms of achievement in particular subjects, and divided into groups for the study of particular subjects in accordance with their achievement. (This is not, truly described, the "track" system which was elaborately criticized by Judge Skelly Wright in his 119-page opinion in *Hobson* v. *Hansen,* 269 F. Supp. 401 (D.C. D.C., 1967).) Few black students are in the advanced sections and most are in regular or slow sections. Assignments to sections are made by the various schools based not on race but on the achievement of the individual students in a particular subject. There is no legal reason why fast learners in a particular subject should not be allowed to move ahead and avoid boredom while slow learners are brought along at their own pace to avoid frustration. It is an educational rather than a legal matter to say whether this is done with the students all in one classroom or separated into groups.

11. *Gerrymandering.* Gerrymandering was contended in the 1965 hearing of this case. Perhaps the evidence comes closer to proving it this time. The court is not by this order foreclosing the later assertion of that contention or for that matter any other contention which may be advanced, because it is the court's duty to keep the matter under advisement. However, in view of the court's orders herein which are expected to produce substantial changes in the

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pupil assignment system and a reappraisal of all zoning considerations, it is believed that nothing in particular need be said here about specific school district lines.

Some Comment on Specific Issues

a) *The Present State of Desegregation.*—Defendant's Exhibit Seven (attached as an appendix to this opinion) shows pupil and faculty population for each school in the system, by races, in March of 1965 and in October of 1968. From this and other evidence the following facts are apparent:

1) *The Rural Schools Are Largely Desegregated.* Of the 32,000 rural children of all twelve grades, some 23,000, black and white, are being hauled by bus to desegregated schools. No rural schools are all-black. The only all-white county schools are four new schools in the south and east portions of the county: Beverly Woods, Devonshire, Idlewild and Lansdowne.

2) *The City Schools are Still Largely Segregated.* A few city schools, Elizabeth (58% Negro); Highland (13% Negro); Plaza Road (19% Negro); Randolph (28% Negro); Sedgefield (19% Negro); Spaugh (18% Negro) and Harding (17% Negro) have a substantial degree of apparently stabilized desegregation. However, most of the fully desegregated city schools are not stable in that situation, but are rapidly moving (through a temporary desegregation) from an all-white to an all-black condition. Dramatic examples are Barringer (84% Negro); Villa Heights (86% Negro); Piedmont (89% Negro); Tryon Hills (50% Negro); Hawthorne Junior High (52% Negro); Lakeview (65% Negro); and apparently Dilworth (39% Negro) and Wilmore (33% Negro).

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3) *More Than Three-Fourths of the Children Attend Schools Which Have One or More Children of the Opposite Race.* In Cornelius (49% Negro), Dilworth (39% Negro), Elizabeth (58% Negro) and a few others, the races are close to being balanced in numbers. However, most schools have only a small handful of the minority race. Illustrations are: Second Ward High School (1,139 black and three white); Midwood (522 white, one black); Lincoln Heights (817 black, two white).

4) *Most Black Students Attend Totally or Almost Totally Segregated Schools.* Out of 24,000 black students:

4,780	attend nine all-black elementary schools;
3,380	attend six elementary schools which are more than 99% black;
2,491	attend three all-black junior high schools;
727	attend York Road with only six white fellow junior high students;
1,569	high school students attend all-black West Charlotte; and
1,139	black Second Ward High School students have only three white classmates.
14,086	

In other words, of the 24,000 or so black students, 14,086 of them attend school daily in schools that are all-black unless at York Road they see one of the six white students or at Second Ward they see one of the three white students, who were enrolled there last October.

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5) *Most White Students Attend Largely or Completely Segregated Schools.* Thirteen elementary schools with 8,044 pupils are 100% white; eighteen other elementary schools with a pupil enrollment of 10,651 have only 150 black students. The total number of white elementary students is only 31,545. At the junior high level, 7,641 out of 14,741 white students attend school with only 193 black students in six schools. In the high schools, 12,310 white students attend school with 1,642 blacks, while 2,735 black students at West Charlotte and Second Ward attend school with three white students.

b) *The Opinions of Experts.*—Doctors Larson, Finger and Passy, all from Rhode Island College, of Providence, Rhode Island, testified at length. They submitted a 55-page report which outlines several possible plans for realignment of school zones and for provision of transportation; for pairing schools; for setting up feeder systems; for educational parks; and other approaches towards desegregation. None was as familiar with the local situation as the local Board and school administrators. All drew certain conclusions from the Coleman Report, which is a collection of statistics on performance of school children in certain areas about the country. Some said that kindergarten for all children would help the situation. Some said underprivileged children should start getting public education several years before first grade age. Some said that improving the faculty was important. Available statistics and expert opinion agreed that Negro students as a group do noticeably worse on achievement tests than students generally. The experts agreed that if children are underprivileged and undercultured, their school performance will be generally low. One expert, Dr. Passy, said that socio-

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economic-cultural background is the sole major determinant of school performance. The Abraham Lincoln-Charles Kettering theory of the rise of Americans from poor backgrounds received small support.

One point on which the experts all agree (and the statistics tend to bear them out) is that a racial mix in which black students heavily predominate tends to retard the progress of the whole group, whereas if students are mingled with a clear white majority, such as a 70/30 ratio (approximately the ratio of white to black students in Mecklenburg County), the better students can hold their pace, with substantial improvement for the poorer students.

c) *The "Neighborhood School" Theory.*—Recently, the School Board has followed what it calls the "neighborhood school" theory. Efforts have been made to locate elementary schools in neighborhoods, within walking distance of children. The theory has been cited to account for location and population of junior and senior high schools also.

"Neighborhood" in Charlotte tends to be a group of homes generally similar in race and income. Location of schools in Chalotte has followed the local pattern of residential development, including its *de facto* patterns of segregation. With a few significant exceptions, such as Olympic High School (about ⅓ black) and Randolph Road Junior High School (28% black), the schools which have been built recently have been black or almost completely black, or white or almost completely white, and this probability was apparent and predictable when the schools were built. Specific instances include Albemarle Road Elementary (99%+ white); Beverly Woods (100% white); Bruns Avenue (99%+ black); Hidden Valley (100% white); Olde Providence (98% white); Westerly Hills (100+ white); Albemarle Road Junior High (93% white).

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Today people drive as much as forty or fifty miles to work; five or ten miles to church; several hours to football games; all over the county for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood. Parents with children of all ages may be members of two or three separate and widely scattered school "communities." *Putting a school in a particular location is the active force which creates a temporary community of interest among those who at the moment have children in that school.* The parents' community with the school ordinarily ends the day the youngest child graduates.

If this court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships. The neighborhood school concept may well be invalid for school administrative purposes even without regard for racial problems. The Charlotte-Mecklenburg School Board today, for example, is transporting 23,000 students on school buses. First graders may be the largest group so transported. If a first grader lives far enough from school to ride a bus, the school is not part of his neighborhood.

When racial segregation was required by law, nobody evoked the neighborhood school theory to *permit* black children to attend white schools close to where they lived. The values of the theory somehow were not recognized before 1965. It was repudiated by the 1955 North Carolina General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56, which is quoted above. The neighborhood school theory has no standing to override the Constitution.

d) *Bussing.*—Under North Carolina General Statutes, §115-180, the Board is expressly authorized to operate

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school busses to transport school children. The state pays bus expenses only for rural children and for some who have been annexed into the city in recent years. This apparent discrimination against city dwellers is reportedly under attack in another court. This Board already transports 23,000 students to school every day out of the 32,000 who live in the area presently eligible for bus service. The present cost of school bussing is about $19 for bus operation plus the cost of the bus which at $4,500 per bus should not exceed $20 per pupil a year. In other words, it costs about $40 a year per pupil to provide school bus transportation, out of total per pupil school operating costs of about $540. The income of many black families is so low they are not able to pay for the cost of transportation out of segregated schools to other schools of their choice.

The Board has the power to use school buses for all legitimate school purposes. Buses for many years were used to operate segregated schools. There is no reason except emotion (and I confess to having felt my own share of emotion on this subject in all the years before I studied the facts) why school busses cannot be used by the Board to provide the flexibility and economy necessary to desegregate the schools. Busses are cheaper than new buildings; using them might even keep property taxes down.

e) *Faculty Desegregation.*—The Board employs over 2,600 white teachers and over 900 black teachers. New teachers hired last year numbered 700. Technically their contracts are with the Board of Education to teach where assigned. The Board makes no sustained effort to desegregate faculties. The choice where to teach is a matter between the principal and the prospective teacher. The Board assumes white teachers will tend to choose white schools and black teachers black schools.

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The results of this passive selection policy are obvious. Of the thirteen all-black schools in the system serving 8,840 students, only four have any white teachers. Those four have ten white teachers and 161 black teachers for 3,662 students. Few predominantly black schools have any substantial number of white teachers, except a few schools which serve areas rapidly turning from white to black. Eight other schools 99% or more black had only six white teachers among them for 5,246 black and 24 white pupils. Second Ward and West Charlotte High Schools, with 2,700 black students and three white students, have 131 black teachers and only nine white teachers.

All of the white elementary schools have at least one and in a few cases as many as three or four black teachers. The proportions of black teachers in the junior and senior high schools run slightly higher. The system has not operated, however, to produce any substantial teaching of black students by white teachers.

Desegregation of faculties does not depend upon proof of superiority of one group of teachers or students over the other. Whatever the discrimination that may result from a segregated faculty, it will be eliminated only when a child attending any school in the system will face about the same chances of having a black or a white teacher as he would in any other school. Mecklenburg schools pay a sizeable salary supplement. Desegregation is proceeding in other counties and school districts. It can not be assumed and should not be a tacit part of Board policy that white school teachers are opposed to equality of education or that they will refuse to teach in black schools. In fact, white and black teachers are working together in substantial numbers in several schools of this system and there was no evidence at the hearing of any friction or

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difficulty caused by a bi-racial faculty. It is from the teachers that children learn their first glimmerings of the right to equality of opportunity which still constitutes America's chief contribution to modern civilization. The right of all children to equal education is part of that right. It is believed that if the Board takes a stand that requires faculty desegregation and treats all teachers equally in working towards that end, the teachers will participate wholeheartedly.

f) *Metropolitan High School.*—Supported by impressive recommendations from Engelhart, Engelhart & Leggett, educational consultants, the Board has planned and has two million dolars on hand to build Metropolitan High School at or near the location of present Second Ward High School. In addition to being a school for conventional high school work, it is to be a center for vocational training and special courses in music, the creative and performing arts and other special subjects not practical to offer in all the high schools. Second Ward is now a 99%+ black school in the Brooklyn urban renewal area four or five blocks south of the Court House and City Hall. The First Baptist Church and the School Board itself have buildings under way on adjacent or nearby land. This is near the geographical and traffic center of the city and county, one-half a mile from the central business district, a few blocks from Central Piedmont Community College and within easy travel distance of most of the city. The location and proposed purposes appear ideal.

Plaintiffs' attorneys object to Metropolitan High School. Some present school patrons want the school built. The School Board has announced a stoppage of work on that school pending this decision.

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All three groups may be proceeding upon an erroneous assumption—that the school if built will be a black school because the pupil and faculty populations will be governed by freedom of transfer and school zones as presently administered. That assumption should no longer be entertained. Pupils for regular and vocational subjects can travel or be transported to and from this area, in all directions, with greater ease than is true of any other location in the county. The nearest other high schools, Harding, West Charlotte, Garinger, East and Myers Park, form a hollow pentagon six or seven miles on the side surrounding Second Ward. It would be tragic to refrain from building a needed educational facility simply upon the assumption that it has to be an all-black school and therefore either unlawful or unattractive. The School Board is advised to make plans for desegregation of this school along with other schools in the system. With the unrestricted statutory power to assign pupils and provide transportation, the only thing necessary to build Metropolitan High School according to the dreams of its planners is the decision to do so.

g) *The Percentage Racial Mix.*—Counsel for the plaintiffs says that since the ratio of white to black students is about 70/30, the School Board should assign the children on a basis 70% white and 30% black, and bus them to all the schools. This court does not feel that it has the power to make such a specific order. Nevertheless, the Board does have the power to establish a formula and provide transportation; and if this could be done, it would be a great benefit to the community. It would tend to eliminate shopping around for schools; all the schools, in the *New Kent County* language, would be "just schools"; it would make all schools equally "desirable" or "undesirable" de-

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pending on the point of view; it would equalize the benefits and burdens of desegregation over the whole county instead of leaving them resting largely upon the people of the northern, western and southwestern parts of the county; it would get the Board out of the business of lawsuits and real estate zoning and leave it in the education business; and it would be a tremendous step toward the stability of real estate values in the community and the progress of education of children. Though seemingly radical in nature, if viewed by people who live in totally segregated neighborhoods, it may like surgery be the most conservative solution to the whole problem and the one most likely to produce good education for all at minimum cost. It would simply put the all-white and all-black school people in the same school situation now being experienced by patrons of Cornelius, Davidson, Ranson, Long Creek, Dilworth, Olympic, Huntersville, Pineville, Randolph Road Junior High, Statesville Road, and similar schools. Such action would be supported by the unanimous testimony of all the experts and by inferences from the Coleman Report that although mixing a few whites and a heavy majority of blacks retards the whole group, nevertheless mixing a *substantial majority of whites* and a few blacks helps the blacks to advance without retarding the whites.

h) *A Word About the School Board.*—The observations in this opinion are not intended to reflect upon the motives or the judgment of the School Board members. They have operated for four years under a court order which reflected the general understanding of 1965 about the law regarding desegregation. They have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and have exceeded the performance of any school board whose actions have been re-

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viewed in appellate court decisions. The Charlotte-Mecklenburg schools in many respects are models for others. They are attractive to outside teachers and offer good education. The problem before this court is only one part (albeit a major part) of the educational problem. The purpose of this court is not to criticize the School Board, but to lay down some legal standards by which the Board can deal further with a most complex and difficult problem. The difference between 1965 and 1969 is simply the difference between *Brown* of 1955 and *Green* v. *New Kent County* of 1968. The rules of the game have changed, and the methods and philosophies which in good faith the Board has followed are no longer adequate to complete the job which the courts now say must be done "now."

Conclusions of Law

1. Since 1965, the law has moved from an attitude barring discrimination to an attitude requiring active desegregation. The actions of school Boards and district courts must now be judged under *Green* v. *New Kent County* rather than under the milder lash of *Brown* v. *Board of Education.* The court has outlined changes which should be made in the activity and theory of the local Board.

2. The manner in which the Board has located schools and operated the pupil assignment system has continued and in some situations accentuated patterns of racial segregation in housing, school attendance and community development. The Board did not originate those patterns; however, now is the time to stop acquiescing in those patterns.

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3. Freedom of transfer as operated in this system does not answer the problems of racial segregation. The evidence shows that the black students as a group have very low incomes. Freedom of transfer without transportation is to such a student often an empty right.

4. The faculties have not been adequately desegregated as directed. This permits and promotes inequality of education.

5. The court does not find any inequality based upon racial motives or reasons in the use of federal funds; the use of mobile classrooms; quality of school buildings and facilities; athletics; PTA activities; school fees; free lunches; books; elective courses; nor in individual evaluation of students. The problem of alleged gerrymandering of district lines need not be covered separately from the general order herein made.

6. There has been substantial desegregation in many areas—mostly the rural areas—of this large and complicated school system. A majority of the black students, however, still attend segregated schools and seldom, if ever, see a white fellow student. Many all-black and all-white schools still remain. The neighborhood school concept and freedom of choice as administered are not furthering desegregation.

7. The School Board has an affirmative duty to promote faculty desegregation and desegregation of pupils, and to deal with the problem of the all-black schools.

8. The School Board is free and encouraged to use school busses or other public transportation and to use

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mobile classrooms as needed to provide equality of educational opportunity.

9. The Board has assets and experience beyond the reach of a judge to deal with all these problems, and should be requested to formulate a plan and time table of positive action.

Order

1. All findings or statements of fact in this opinion and order shall be deemed conclusions of law, and all conclusions of law shall be deemed to be findings of fact as necessary in support and furtherance of this order. All competent and relevant evidence in the record has been considered in support of this order.

2. The defendant is directed to submit by May 15, 1969, a plan for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year. Such plan could approach substantial equality of teaching in all schools by seeking to apportion teachers to each school on substantially the same ratio (about three to one) as the ratio of white teachers and black teachers in the system at large. It is suggested that teachers' preferences not be especially sought and that teachers be assigned as a routine matter for the purpose of accomplishing this equalization of the application of educational manpower and womanpower in the public schools. Such a plan should provide safeguards against racial discrimination in the discharge of any teachers whose jobs might be changed or abolished. Such safeguards should include provisions that if anyone has to be discharged, his qualifications will be weighed against

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those of all personnel in the system rather than simply against those in the capacity in which he has been working; no teacher should be dismissed or demoted or denied employment or promotion because of race or color. In other words, the Board will be expected to see to it that teachers displaced by virtue of this order will not be discriminated against on account of race.

3. The defendant is directed to submit by May 15, 1969, a plan and a time table for the active desegregation of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Freedom of choice and zoning may be used in such a plan provided they promote rather than defeat desegregation. If freedom of choice is retained in such plan, it should include provision for transportation free for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation.

4. In formulating its plan the Board is, of course, free to use all of its own resources and any or all of the numerous methods which have been advanced, including pairing of grades and of schools; feeding elementary into junior high and into senior high; combinations of zone and free choice where each method proceeds logically towards eliminating segregation; and bussing or other transportation. The Board may also consider setting up larger consolidated school units freely crossing city-county lines to serve larger areas. There is no magic in existing school zone lines nor in the present size of any school. The Board is encouraged to get such aid as may be available from state and federal agencies including the offices

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of the Department of Health, Education and Welfare. The court does not direct a treaty with the Department, but does suggest that since its employees are in the business of dealing with these problems, they have a store of technical assets and manpower and information which could be useful in the Board's making any particular judgment or analysis.

5. The plan should be the plan of the Board for the effective operation of the schools in a desegregated atmosphere, removed to the greatest extent possible from entanglement with emotions, neighborhood problems, real estate values and pride. The court's task has not been easy, but it is fully realized that the task facing the Board is far more difficult and will require a conspicuous degree of further public service by the Board's members.

This the 23rd day of April, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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The Charlotte-Mecklenburg Schools

Research Report 2-'69

SUMMATION OF DEGREE OF INTEGRATION 1965 (MARCH) AND 1968-69 (OCT. 1,

For Pupils | Professional Staff

I — Schools Having Integration

	1965	1968		1965	1968
. For Pupils	1 N + 22 W = 23 of 109 or 21%	16 N + 68 W = 84 of 112 or 75%	. For Staff	3 N + 0 W = 3 of 109 or 3%	16 N + 82 W = 98 of 112 or 87½%

II

	1965 N	1965 W	1968 N	1968 W	1965 N	1965 W	1968 N	1968 W
A. Number in Minority Race (integrated)								
.Pupils	9W	476N	1192W	6704N	5.7W	0N	131W	208N
B. Number in Majority Race (integrated)								
. Pupils	343N	16,446W	8697N	47,356W	143.3N	+0W	374N	2575W

Total Involved by Integration

	Pupils 1965	Pupils 1968		Staff 1965	Staff 1968
. Predominantly Negro Schools - - Pupils	352	9889	Staff	149	505
. Predominatly White Schools - - Pupils	16,922	54,060	Staff	0	2783
.Total - - Pupils	17,274 or 24% of 72,336 Enrolled	63,949 or 77% of 83,111	Staff	149 or 5% of 3140 incl. part assignments in schools	3288 or 91% of 3613 assigned at one definite school

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The Charlotte-Mecklenburg Schools

RACIAL DISTRIBUTION OF PUPILS AND PROFESSIONAL STAFF
1965 (March) and 1968-69 (Oct. 1, '68)

Grade	No. School	1965 Pupils N	1965 Pupils W	No. School	1968 Pupils N	1968 Pupils W	Professional Staff 1965 N	Professional Staff 1965 W	Professional Staff 1968 N	Professional Staff 1968 W
1-6	72	9,364	27,696	76-	13,290	31,545	377+	1161½	478	1329
7-9	17	2,475	11,804	21	5,934	14,741	111-	533	228	706
10-12	8	1,625	10,677	11	4,377	12,313	65	479½	178	644
	97	13,464	50,177	108-	23,601	58,599	553½	2184	884	2679
					28.7%	82,200 / 71.3%				
Other	12	6,877	1,818	4+	640	271	323½	79	23	27
				: Kgn. + Trainable						
1-4	1	360					15½			
1-7	2	431	207				17	9½		
1-9	3	729	1611				32	68		
5-9	1	505					25½			
1-12	3	2400					113½			
7-12	2	2452					120	1½		
Total	109	20,341	51,995	112	24,241	58,870	877	2263	907	2706
		72,336T			83,111T		Include Part-time		Not Include Part-time	
		28.1%	71.9%		29.2%	70.8%				

Among teachers assigned to more than o·e school

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

	School	1965 Pupils			1968-69 Pupils			Professional Staff 1965			Professional Staff 1968-69*		
	Elementary	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
	Albemarle Rd.				4	1%	499				6	32%	13
	Alexander Street	342	100%		257	100%		14.1	100%		11	100%	
	Allenbrook				50	10%	452				2	10%	18
	Ashley Park		0%	694		0%	553		0%	22.9	2	9%	20
1-9 '65	Bain		0%	674	25	3%	699		0%	28.2	1	3%	28
	Barringer		0%	604	668	84%	131		0%	24.8	13	42%	18
	Berryhill		0%	1026	119	15%	685		0%	39.6	2	6%	32
	Bethune	343	97%	9	223	99%	3	17.6	100%		11	100%	
	Beverly Woods					0%	286				1	8%	12
	Biddleville	434	100%					17.2	100%				
1-9 '65	Billingsville	729	100%		619	100%	2	32.1	100%		25	100%	
	Briarwood	2	0%	582	8	1%	640		0%	23.9	3	12%	22
	Bruns				740	99%	4				26	93%	2
	Chantilly		0%	445	2	0%	491		0%	18.8	1	5%	21
1-7 '65	Clear Creek		0%	207	58	20%	225		0%	9.6	1	8%	12
	Collinswood		0%	375	72	13%	490		0%	16.1	1	5%	21
	Cornelius		0%	241	239	49%	252		0%	11.3	7	33%	14
	Cotswold		0%	631	11	2%	567		0%	25.0	1	5%	21
	Crestdale	97	100%					5.0	100%				
	Davidson		0%	178	101	35%	186		0%	7.8	1	8%	11
	Marie Davis	808	100%		705	100%		34.3	100%		29	100%	
	Derita	6	1%	892	165	18%	728		0%	35.4	3	9%	32
	Devonshire	2	0%	474		0%	889		0%	19.5	4	10%	37
	Dilworth	100	20%	401	223	39%	355		0%	23.8	4	15%	22
	Double Oaks	703	100%		800	100%		28.2	100%		32	100%	
	Druid Hills	520	100%		504	99%	3	20.7	100%		20	100%	
	Eastover		0%	704	49	8%	580		0%	27.1	1	4%	24
	Elizabeth	5	1%	448	270	58%	194		0%	22.9	2	9%	21
	Enderly Park		0%	368	2	1%	374		0%	14.9	1	6%	15
	Fairview	702	100%		363	100%		28.0	100%		19	100%	

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	School	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
	First Ward	473	100%		749	100%		22.8	100%		30	100%	
1-12 / 65	J. H. Gunn	696	100%					33.6	100%				
	Hickory Grove		0%	530	80	13%	531		0%	21.7	1	4%	23
	Hidden Valley					0%	977				2	5%	35
	Highland	2	1%	273	47	13%	324		0%	14.0	1	7%	14

* Does not include staff assigned to more than one school per HEW request.

% N is nearest whole per cent that N is of total

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

	School	1965 Pupils			1968-69 Pupils			Professional Staff 1965			Professional Staff 1968-69*		
	Elementary	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
	Hoskins		0%	342	18	6%	261		0%	14.7	2	15%	11
	Huntersville		0%	553	162	22%	560		0%	22.9	2	7%	25
	Huntingtowne Farms		0%	358	7	1%	695		0%	15.1	1	4%	26
	Idlewild		0%	592	2	0%	521		0%	23.9	1	4%	22
1-4 / 65	Amay James	360	100%		477	100%	1	15.5	100%		19	100%	
1-7 / 65	Ada Jenkins	431	100%					17.0	100%				
	Lakeview		0%	400	269	65%	147		0%	18.5	14	74%	5
	Lansdowne		0%	633		0%	758		0%	23.9	1	3%	30
	Lincoln Heights	783	100%		817	100%	2	29.1	100%		30	100%	
	Long Creek		0%	423	250	35%	466		0%	17.6	2	7%	26
1-9 / 65	Matthews		0%	937	(1-6) 93	11%	742		0%	39.7	1	3%	32
	Merry Oaks		0%	538		0%	469		0%	21.9	1	5%	19
	Midwood		0%	560	1	0%	522		0%	24.9	2	9%	21
	Montclaire		0%	720		0%	722		0%	29.1	1	4%	27
	Morgan	305	100%					14.9	100%				

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School	1965 Pupils N	% N	W	1968-69 Pupils N	% N	W (other)	Staff 1965 N	% N	W	Staff 1968-69 N	% N	W (other)
Myers Park		0%	575	23	4%	543		0%	24.9	1	4%	23
Myers Street	820	100%					32.2	100%				
Nations Ford		0%	513	63	10%	585		0%	21.6	1	4%	25
Newell		0%	463	73	15%	423		0%	18.3	1	5%	18
Oakdale		0%	402	72	13%	480		0%	17.2	1	5%	21
Oakhurst		0%	548	2	0%	615		0%	22.8	1	4%	23
Oaklawn	666	100%		650	100%		26.0	100%		25	93%	2
Olde Providence				10	2%	434				1	6%	17
Park Road		0%	583		0%	551		0%	22.7	1	5%	21
Paw Creek		0%	793	63	7%	861		0%	30.3	1	3%	31
Pineville		0%	364	168	32%	363		0%	16.2	1	5%	21
Pinewood		0%	719		0%	707		0%	28.1	1	4%	26
Plaza Road		0%	400	99	19%	409		0%	17.7	1	5%	21
Rama Road		0%	442	2	0%	777		0%	18.7	2	7%	27
Sedgefield	3	1%	526	7	1%	545		0%	21.8	2	9%	20
(5-9 '65) Plato Price	505	100%					25.4	100%				
Selwyn		0%	531	5	1%	598		0%	21.9	1	4%	22
Seversville	96	30%	229					0%	14.8			
Shamrock Gardens		0%	536		0%	539		0%	21.9	1	5%	20
Sharon		0%	591		0%	519		0%	22.9	1	5%	20

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff 1965			Professional Staff 1968-69*		
Elementary	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
Starmount		0%	481	25	3%	713		0%	20.9	1	3%	28
Statesville Road		0%	650	295	36%	534		0%	25.9	3	9%	29
Steele Creek		0%	222	12	2%	531		0%	10.7	1	5%	20
(1-12 '65) Sterling	699	100%					33.9	100%				
Thomasboro		0%	885		0%	705		0%	34.3	2	7%	25
(1-12 '65) Torrence-Lytle	1005	100%					46.1	100%				
Tryon Hills		0%	324	241	50%	245		0%	15.0	1	5%	20
Tuckaseegee		0%	631	61	10%	553		0%	23.9	1	4%	23
University Park	700	100%		777	100%		25.8	100%		30	97%	1
Zeb Vance	465	100%		257	100%		19.5	100%		11	100%	

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School	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
Villa Heights	23	4%	594	796	86%	126		0%	28.3	23	62%	14
Wesley Heights	214	100%					8.3	79%	2.2			
Westerly Hills					0%	569				1	4%	22
Wilmore	6	2%	323	145	33%	293		0%	15.4	8	40%	12
Windsor Park	1	0%	679	2	0%	737		0%	25.8	1	4%	27
Winterfield		0%	455		0%	689		0%	18.7	1	4%	26
Woodland	360	100%					14.8	100%				
Woodlawn		0%	283					0%	14.0			
Isabella Wyche	383	100%		222	100%		18.6	100%		12	100%	
Child Development (Kgn.)												
Davidson, Center #1				83	41%	117				3	30%	7
Pineville, Center #2				166	82%	37				2	20%	8
Seversville, Center #3				174	87%	26				8	80%	2
Morgan, Center #4				188	97%	6				8	80%	2

APPENDIX

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff 1965			Professional Staff 1968-69 *		
Junior High	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
Albemarle Road				66	7%	881				4	9%	43
Alexander		0%	577	347	31%	755		0%	28.9	6	12%	44
Cochrane		0%	872	76	5%	1444		0%	35.4	6	10%	56
Coulwood	3	1%	574	119	14%	727		0%	27.1	4	11%	34
Eastway		0%	1046	3	0%	1364		0%	43.2	3	5%	55
Alex. Graham		0%	1048	8	1%	1084		0%	43.8	4	9%	43
Hawthorne	25	4%	670	492	52%	447		0%	33.9	12	27%	33
Irwin Ave.	785	100%		666	100%		42.7	100%		32	97%	1
McClintock		0%	1273	46	4%	1228		0%	51.5	2	4%	49
Northwest	773	100%		932	100%		33.7	100%		39	100%	

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School	N	% N	W	N	% N	W	N	% N	W	N	% N	W
Piedmont	121	29%	291	428	89%	53		0%	26.8	13	52%	12
Quail Hollow		0%	766	171	12%	1261		0%	35.2	3	5%	61
Randolph				272	28%	711				2	5%	38
Ranson	9	1%	658	253	30%	586		0%	30.0	6	16%	31
Sedgefield	6	1%	920	189	19%	802		0%	40.5	5	11%	39
Smith		0%	1115		0%	1389		0%	48.6	3	5%	57
Spaugh	1	0%	930	186	18%	871		0%	42.5	6	12%	43
Williams	752	100%		893	100%		34.9	100%		37	100%	
Wilson		0%	1064	60	5%	1132		0%	45.6	4	8%	45
York Rd.	(7-12) 1041	100%		727	99%	6	49.9	100%		32	97%	1
Learning Academy - 7th & 8th grades counted in JH, above,										5	19%	21

APPENDIX

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff 1965			Professional Staff 1968-69*		
Senior High	N	% N	W	N	% N	W (other)	N	% N	W	N	% N	W (other)
East Mecklenburg		0%	1782	155	8%	1739		0%	79.2	6	7%	85
Garinger	2	0%	2266	202	9%	2157		0%	100.0	6	6%	102
Harding		0%	1002	169	17%	814		0%	48.0	4	8%	49
Independence				92	9%	962				6	9%	59
Myers Park	31	2%	1772	158	8%	1855		0%	76.7	6	6%	87
North Mecklenburg	1	0%	1155	410	27%	1109		0%	51.8	6	9%	63
Olympic				259	33%	522				5	11%	39
Second Ward (7-12 / 65)	1411	100%		1139	100%	3	70.0	98%	1.5	57	95%	3
South Mecklenburg	30	2%	1430	106	6%	1812		0%	72.0	4	5%	78
West Charlotte	1560	100%		1569	100%		65.0	97%	2.0	74	93%	6
West Mecklenburg	1	0%	1270	118	8%	1340		0%	61.4	4	5%	73

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Order dated June 3, 1969

The defendants have filed a proposed plan of action pursuant to the court order of April 23, 1969. The plaintiffs have filed a motion requesting restraint on further school construction until the school board has dealt satisfactorily with the segregation question. A further hearing is indicated. The court has two weeks of criminal court starting June 2; and Monday, June 16, 1969 is the earliest predictable time that a hearing could be conducted.

All parties are therefore notified that a hearing will be held in the United States Court House in Charlotte starting on Monday, June 16, 1969, at 10:00 a.m. All parties are requested to be present.

Under the law the burden is upon the school board to come forward with a plan which "promises realistically to work now" to eliminate segregation in the Charlotte-Mecklenburg schools. The obligation of the court under the law is "to assess the effectiveness of a proposed plan in achieving desegregation." Evidence will be received from all parties on these general subjects.

Without limiting any party in the scope and type of relevant evidence which he may wish to produce, the court directs the parties to come forward with exhibits, statistics, records, and other information so that the court will be in adequate position to make findings upon the following subjects, among others:

1. What has been accomplished, by June 16, toward achieving the duty which the defendants have accepted of "achieving substantial faculty desegregation," and what the plan proposed by the defendants may be expected to accomplish further along that line by September, 1969.

2. What school zones may fairly be said to have been gerrymandered (either by control of their boundary lines

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or by control of their student capacity or both) so as to fit a particular pocket or community of all- or nearly all-black or all- or nearly all-white students; and what could be done to reduce or eliminate segregation in those zones.

3. What progress if any toward desegregation of pupils may reasonably and predictably be expected by September, 1969, from the pupil plan presented by the defendants.

4. What effect if any the pupil plan may be expected to have upon the present large group of all-black or 99%+ black schools, and upon the more than 14,000 children who still attend them.

5. Why students allowed to transfer from one zone to another to avoid racial discrimination should be penalized by being required to wait a year before taking part in varsity athletics, as the proposed pupil plan requires, which self-admitted "penalty" is lifted if they return to the zone originally assigned by the defendants.

6. The actual meaning of the "free transfer" plan—the numerical extent to which the plan requires that students wishing to transfer and being supplied transportation to transfer will actually find space in the schools of choice if they exercise their option to transfer. This is not a trick question but one directed to the ambiguity of the plan and the conflicts in the language used in the plan. Clarification is requested.

7. What steps will be followed to insure that the transfer-with-transportation choice is actually communicated personally to children who may be entitled to the choice, and to their parents, and affirmatively accepted or rejected by them.

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8. Statistics on school population by race in the system for the years since consolidation and similar statistics for the separate county and city units from 1954 until consolidation.

9. The facts about school bussing operations of the Charlotte-Mecklenburg school system, including such records as already exist on bus routes, year by year, since 1961, including where the busses get the pupils and where they take them, and the races of the pupils transported.

10. The pupil attendance zones or school zones, year by year, for all years since 1954.

11. What the pending school construction programs will do in terms of creating pupil accommodations, and whether the programs will tend to perpetuate or to alleviate segregation in the schools.

12. Why decision on the construction and purposes of Metropolitan High School should not be postponed until after a final court ruling, appellate or otherwise, has been rendered, so that the decision on the educational questions can be made in a quieter and non-racial atmosphere. Also, why the defendants should not retain any land or control over any land they may now have, pending such decision.

13. Why no action has been taken by the defendants on the various possible methods for further reduction of segregation such as re-examination of zones, enlargement or combination of school zones, reorganizing the existing 23,000 pupil bus system, pairing of schools, consultation with the Department of Health, Education and Welfare, and other possible methods.

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14. Scholastic aptitude tests and achievement tests and intelligence tests for all grades for which such data are available in all schools in the county and city since 1954.

15. What concrete and specific steps, if any, plaintiffs would have the defendants adopt in order to comply with the Constitution. The court is not interested in a restatement of the previous demand of plaintiffs that all the schools in the system be populated on a 70/30 basis, because as previously stated the court does not have the power to make such an order and the defendants have served notice that they will not undertake such an assignment themselves. What is desired is some tough and detailed thinking and planning as to detailed methods to reduce and promptly eliminate segregation in the Charlotte-Mecklenburg schools.

The above questions and requests, insofar as they call for facts and figures, call for the production—not the creation—of the desired information. Counsel are requested to advise the court immediately if the production of already existing records does not provide any of the statistical information mentioned above. It is not the intention of the court to put the parties to work creating new charts nor re-assembling existing statistics, but rather to make available existing information.

This the 3rd day of June, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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Order Adding Additional Parties dated June 3, 1969

Several changes in the personnel of the defendant school board have taken place since this suit was instituted. In order that all parties may be fully before the court and that there be no avoidable technical irregularity.

It Is Ordered that all the present members of the Charlotte-Mecklenburg Board of Education be and they are hereby made formal parties to this action; that copies of the Motion for Further Relief filed September 6, 1968 be served upon them and that there also be served upon them copies of all orders and motions that have been filed since that time.

Service of these motions and orders (including this order making new parties and the order of this same date regarding the further hearing of June 16, 1969) should be made by the United States Marshal. The members of the school board and their addresses are:

Mr. William E. Poe, Chairman
2101 Coniston Place (Home)
1014 Law Building (Office)
Charlotte, North Carolina

Mr. Henderson Belk
529 Hempstead Place (Home)
308 East Fifth Street (Office)
Charlotte, North Carolina

Rev. Coleman W. Kerry, Jr.
1022 Kohler Avenue
Charlotte, North Carolina

Mr. Dan Hood
Route 4
Matthews, North Carolina

Mrs. Julia Maulden
Box 6
Davidson, North Carolina

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Order Adding Additional Parties Dated June 3, 1969

Mr. Ben F. Huntley
Box 128
8301 Pineville Road
(Office)
Pineville, North Carolina

Mr. Sam S. McNinch, III
2914 Hampton Avenue
(Home)
4037 E. Independence Blvd.
(Office)
Charlotte, North Carolina

Mrs. Betsey Kelly
3501 Mountainbrook Road
Charlotte, North Carolina

Dr. Carlton G. Watkins
1223 Marlwood Terrace
(Home)
1630 Mockingbird Lane
(Office)
Charlotte, North Carolina

This the 3rd day of June, 1969.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

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Opinion and Order dated June 20, 1969

Pursuant to notice dated June 4, 1969, a hearing was held in Charlotte on June 16, 17 and 18, 1969, on various matters including (1) the motion of the individual defendants for dismissal; (2) the motion of the plaintiffs for contempt citations against the individual defendants; (3) the proposals offered by the defendants pursuant to the April 23, 1969 order as a plan for desegregating the Charlotte-Mecklenburg schools; and (4) the motion of the plaintiffs for an order restraining further school construction until the segregation issue has been satisfactorily resolved.

I.

The Motion of the School Board Members to Dismiss.

The motion of the individual defendants, members of the school board, to dismiss was and is denied. This is a suit under the Civil Rights Act involving questions of equal protection of laws and racial discrimination and segregation in the public schools. The individual defendants are proper parties and their presence is appropriate and desirable.

II.

The Motion for a Contempt Citation.

The motion of the plaintiffs that the individual defendants be found in contempt of the court is on this record denied. The board is badly divided and many of its recent decisions appear to be made by a five to four vote. Supreme Court judges now and then make five to four decisions. (Fortunately their votes in all major school segregation cases appear to have been unanimous.) The members of

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the board have had uncomplimentary things to say about each other and about the court, and many of them obviously disagree with the legality and propriety of the order of the court; but these latter sentiments may be regarded by the court as evidence of disagreement with rather than contempt for the court who is himself not far removed from active participation in the time-honored custom of criticizing a judge who has ruled against him. Moreover, on an issue of such significance, the amount of foot-dragging which has taken place, up to now at least, should not be considered as contempt of court.

III.

The Plan of the Defendants.

1. *The history of the plan.*—The order of this court directing a further plan for desegregation was entered April 23, 1969. Within hours, various of the defendants expressed sharp views pro and con. The board met on April 28, 1969, and for the first time briefly discussed the order. By a five to four margin, apparently, they decided informally not to try to appeal immediately, upon the basis that the right of appeal from the order to prepare a plan was doubtful. The school superintendent was instructed to prepare a desegregation plan. No express guidelines were given the superintendent. However, the views of many members expressed at the meeting were so opposed to serious and substantial desegregation that everyone including the superintendent could reasonably have concluded, as the court does, that a "minimal" plan was what was called for, and that the "plan" was essentially a prelude to anticipated disapproval and appeal. In a county and city criss-

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crossed by school bus routes for 23,000 pupils, more than twenty thousand citizens, mostly from affluent suburbia, many of whose children undoubtedly go to school on school busses, signed petitions against "involuntary" bussing of students. The frenzy of parents received a ready forum in televised meetings of the board. The staff were never directed to do any serious work on re-drawing of school zone lines, pairing of schools, combining zones, grouping of schools, conferences with the Department of Health, Education and Welfare, nor any of the other possible methods of making real progress towards desegregation.

The superintendent revealed the general terms of his plan within a few days and later presented it formally on May 8, 1969. It provided for full faculty desegregation in 1969, which the superintendent said he considered feasible. It provided moderate changes in the pupil assignment plans; and it contemplated future study of the other methods of desegregation suggested in the April 23, 1969 order.

The board then met, struck out virtually all the effective provisions of the superintendent's plan, and asked for more time from the court, which had previously been promised.

The board's committee on buildings and sites, newly reconstituted, met and voted to cancel the long standing plans for Metropolitan High School, and voted to build it as only a specialty and vocational school without including the comprehensive high school which consultants and experts, including the school board's staff and superintendent, had recommended and still recommend. No new facts except the order of court had developed to account for the sudden change of plan. The stated reason for the change was that a general high school in Second Ward (though not a vocational or technical school) would necessarily be black and

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therefore should not be built. [The Second Ward school site, where Metropolitan is scheduled to be built, is squarely in the center of the city's population; is a scant four blocks from the south boundary of its zone; and is apparently the easiest high school in town to desegregate; its boundaries could easily be re-drawn by extending its southern boundary (Morehead Street) and its eastern boundary (Queens Road) a few blocks.]

Thereafter, on May 28, 1969, the plan was filed. Volunteers were requested among the teachers; pupil transfer requests were set out; and data on the workings of the plan began to accumulate.

During the early debate over the court order, events transpired between the chairman and the superintendent which were thought by an assistant superintendent and others to threaten the superintendent's job if he pushed for compliance with the court's order. A few days before this hearing, the board committee on personnel declined to accept the superintendent's recommendation that Robert Davis, a Negro, be appointed principal of one of the schools. This was the first time such a recommendation had not been accepted. After some debate, the decision was postponed, with the superintendent requested to bring in alternate names. The publicly stated reasons for not approving the appointment were that Davis, whose training, experience and qualifications were unquestioned, is a plaintiff in this case and a member of the Negro Classroom Teachers Association and has spoken out publicly in favor of compliance wth this court's order—including one television appearance before the board itself to which the board had invited interested citizens. Davis, according to the press, was eventually confirmed for the job on June 19, 1969, but only after a "loyalty oath" had been exacted. The

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effect of the so-called "job threat" and the Davis incident, following the public statements of board members, is a clear message: School employees voice opinion contrary to the board majority on desegregation at personal risk.

2. *The June 16, 1969 hearing.*—The defendants, under the law, had the burden of showing that their plan would desegregate the schools. To carry that burden they introduced a short written brief and some statistical data and rested their case without live testimony. The plaintiffs called all members of the school board and the Rhode Island expert, Dr. Finger, who testified at the March hearing, and a few other witnesses. There was some rebuttal from the board.

3. *Findings as to General Board Policy.*—

a) The board does not admit nor claim that it has any positive duty to promote desegregation.

b) School sites and school improvements have not been selected nor planned to promote desegregation and the board admits no such duty.

c) Board policy is that the Constitution is satisfied when they locate schools where children are and provide "freedom of transfer" for those who want to change schools.

d) Despite its inclusion in the "Plan," the decision of the board about Metropolitan High School is not really a final one; several members consider the issue in doubt, and the full board has not formally considered it.

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4. *The Pupil Assignment Plan.*—The plan now proposed is the plan previously found racially discriminatory, with the addition of one element—the provision of transportation for children electing to transfer out of schools where their races are in a majority to schools where they will be in a minority. Such provision of transportation is approved.

Another provision of the plan makes high school athletes who transfer from one school to another ineligible for varsity or junior varsity athletics until they have been a year in the new school. For the current year, with the returns almost complete, only two white students out of some 59,000 have elected to transfer from white schools to black schools. Some 330 black students out of some 24,000 have elected to transfer to white schools. Only the tiniest handful of white students have ever in any year asked to transfer to black schools. The effect of the athletic penalty is obvious—it discriminates against black students who may want to transfer and take part in sports, and is no penalty on white students who show no desire for such transfers. The defendants' superintendent considers athletics an important feature of education. This penalty provision is racially discriminatory. The board is directed not to enforce it any more and to give adequate individual notice to all rising 10th, 11th and 12th grade students that they may reconsider their previous choice of schools in light of the removal of the penalty.

Freedom of transfer increases rather than decreases segregation. The school superintendent testified that there would be, net, more than 1,200 additional white students going to predominantly black schools if freedom of transfer were abolished. The use of a free transfer provision is a decision for the board; it may make desegregation more palatable to the community at large; it is not, per se,

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if the schools are desegregated, unconstitutional. Nevertheless, *desegregation of schools is something that has to be accomplished independent of freedom of transfer.* This is a fact which because of the complexity of the statistics has only become clear to the court since the previous order was issued.

5. *The Faculty Assignment Plan.*—The plan originally proposed by the superintendent would have desegregated the faculty as a routine matter in 1969. The plan proposed by the board however is not materially different from the already existing plan. It continues to rely upon voluntary transfers and it contemplates affirmative assignment of teachers to black schools only late in the day after a hopeful routine of filling vacancies (some of which do not exist) has been followed. The board has not taken a position of leadership with the teachers and the results are apparent. Only 28 out of 2,700 white teachers, and only 38 out of 900 black teachers, had on June 18, 1969 indicated a willingness to transfer to schools of the opposite race. Testimony of the board members who comprise the majority of the board suggests that they do not really contemplate substantial faculty desegregation and that they may consider figures of "10%"; or one black teacher to each white school and one white teacher to each black school; or filling vacancies from the opposite race as they arise, to be compliance with the needs of the situation. None of these ideas, of course, amounts to desegregation of the faculty. The evidence submitted by the board does not demonstrate that the faculty plan will work. Several board members said that the plan to assign teachers is not an "idle promise."

All that it takes to make the faculty plan work is timely decision by the board to implement the assignment of teach-

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ers. Board members are requested in this connection to consider the latest unanimous Supreme Court decision, *United States* v. *Montgomery County Board of Education* (October Term 1968), Case No. 798, decided June 2, 1969, reversing the Fifth Circuit Court of Appeals and upholding a district court order for faculty desegregation under a mathematical formula. Ruling on the factulty plan will therefore be deferred until after August 4, 1969, by which time the board is directed to file a report stating in detail what the plan has done and what the status of faculty assignments then is. The court considers the faculty assignment plan to be important and agrees with the superintendent of schools that immediate desegregation of the faculty is feasible. This is a substantial improvement which is available without arousing ghosts of "bussing," "neighborhood schools," or additional expense.

IV.

Gerrymandering

This issue was passed over in the previous opinion upon the belief which the court still entertains that the defendants, as a part of an overall desegregation plan, will eliminate or correct all school zones which were created or exist to enclose black or white groups of pupils or whose population is controlled for purposes of segregation. However, it may be timely to observe and the court finds as a fact that no zones have apparently been created or maintained for the purpose of promoting desegregation; that the whole plan of "building schools where the pupils are" without further control promotes segregation; and that certain schools, for example Billingsville, Second Ward, Bruns Avenue and Amay James, obviously serve school

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zones which were either created or which have been controlled so as to surround pockets of black students and that the result of these actions is discriminatory. These are not named as an exclusive list of such situations, but as illustrations of a long standing policy of control over the makeup of school population which scarcely fits any true "neighborhood school" philosophy.

* * * * *

The findings of fact in the April 23, 1969 order and all statements in this opinion are treated as findings of fact in support of the order. All of the evidence in the case is considered in support of the order.

Order

Based upon the evidence and upon the foregoing findings of fact the orders of the court are as follows:

1. The motion of the individual defendants to dismiss is denied.

2. No citations for contempt are made.

3. Decision on the faculty assignment plan is deferred pending receipt of a progress report from the board on or before August 4, 1969.

4. The one year penalty on transferring high school athletes is disapproved with direction as above for appropriate personal communication to rising high school students.

5. The provision of transportation for students transferring from a majority to a minority situation is approved.

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6. The board is directed to proceed no further with action on Metropolitan High School pending a showing by the board that the school if constructed will be adequately desegregated and a finding by the court to that effect. This is based upon the previous findings that the board's decision on Metropolitan was unduly affected by racial considerations and that the board has not accepted its affirmative legal duty to build school facilities so as to promote desegregation.

7. As to the other building projects referred to in the motion for restraint on construction, the burden remains upon the defendants to show that these programs will produce desegregation. The written material tendered by the defendants on this subject is lengthy, and does not appear to sustain that burden. However, decision on the request for injunction against projects other than Metropolitan will be delayed pending further study of the evidence.

8. It is further ordered that the defendants proceed to prepare and submit by August 4, 1969, a positive plan for desegregation of the pupils of the Charlotte-Mecklenburg school system, as originally directed on April 23, 1969. A witness, Dr. Finger, described in detail a plan for desegregation by changing certain school zone lines and merging certain schools into districts and using certain schools as feeders for others. This plan shows a high degree of realism in that it minimizes the necessity for long-range transportation and takes substantial advantage of location and makeup of populations. Local school administration consider such a plan feasible. The local school administrative staff are also better equipped than Dr.

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Finger, a "visiting fireman," to work out and put into effect a plan of this sort. It is believed that if the resources of the board can be directed as originally ordered toward preparing a Charlotte-Mecklenburg plan for the Charlotte-Mecklenburg schools, desegregation of both faculties and students may be accomplished in an orderly fashion. Counsel are requested to notify the court promptly if more time beyond August 4, 1969 is needed.

This is the 20th day of June, 1969.

James B. McMillan
James B. McMillan
United States District Judge

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Supplemental Findings of Fact in Connection With the Order of June 20, 1969 (Dated June 24, 1969)

The relatively complete extent of the segregation of the schools in this system is demonstrated by study of the defendants' statistics which were attached to and included in the original opinion of this court of April 23, 1969. There are about 24,000 black students in the county. As near as can be estimated, approximately 21,000 of these attend schools within the City of Charlotte. When *Brown v. Board of Education* was decided in 1954, the City of Charlotte had less than 7,500 black students. Today within the City of Charlotte 14,086 black students attend 21 schools which are totally black or more than 99% black. An additional 2,895 black students attend six schools whose black population is between 50% and 86% black. These schools are all rapidly moving to a totally or near-totally black condition under present policies. When all this is put together and understood, it becomes clear that of the City's 21,000 or so black students, nearly 17,000 of them according to the figures, and certainly more than 17,000 when the population trends are considered, are attending racially identifiable black schools.

This the 24th day of June, 1969.

James B. McMillan
James B. McMillan
United States District Judge

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Order dated August 15, 1969

Preliminary Summary

Pursuant to this court's June 20, 1969 order, the defendants submitted on July 29, 1969 an amended plan for desegregation of the Charlotte-Mecklenburg schools, including a highly significant policy statement accepting for the first time the Board's affirmative constitutional duty to desegregate students, teachers, principals and staffs "at the earliest possible date." On August 4, 1969, a report was filed in connection with the plan. A hearing was conducted on August 5, 1969. The plan is before the court for approval.

Because the schools must open September 2, and because the Board's plan includes both substantial action and genuine assurance of sustained effort toward prompt compliance with the law of the land, the plan of operation, for 1969-70 only, is approved and as indicated below, the defendants are directed to prepare and file by November 17, 1969, detailed plans and undertakings for completion of the job of desegregating the schools effective in September, 1970.

The Amended Plan—And Its Reception

The plan proposes, among other things, to close seven old all-black inner-city schools and to assign their 3,000 students to various outlying schools, now predominantly white, mostly in high rent districts.

This technique of school closing and reassignment has been employed in dozens of school districts to promote school desegregation. It is not original with the local School Board.

The school closing issue has provoked strident protests from black citizens and from others; evidence showed that

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an estimated 19,000 names are listed on a petition denouncing the plan as unfair and discriminatory. The signers add their own brand of protest to that of the 21,000 whites who last May (though protesting their acceptance of the principles of desegregation) raised a "silk-stocking" community outcry against bus transportation except to schools of individual choice. Another 800 white Paw Creek petitioners have joined in protest against a part of the plan under which some 200 fifth and sixth grade pupils would be assigned to re-opened Woodland, a new unused (and formerly black) school. Comment from people who have not studied the evidence tends to ignore the law—the reason this question is before a *court* for decision—and to concentrate on public acceptance or what will make people happy. A correspondent who signs "Puzzled" inquires:

> "If the whites don't want it and the blacks don't want it, why do we have to have it?"

The answer is, the Constitution of the United States.

The Constitution—The Law of the Land—Requires Desegregation of Public Schools

North Carolina reportedly refused to ratify the United States Constitution until the Bill of Rights had been incorporated into it. The Fourteenth Amendment to that Constitution, now part of the Bill of Rights, guarantees to all citizens the "equal protection of laws." In *Brown* v. *Board of Education,* 347 U. S. 483 (1954), 349 U. S. 294 (1955), the Supreme Court held that racial segregation in public schools produces inferior education and morale, restricts opportunity for association, and thus violates the equal protection guaranty of the Constitution and is unlawful. In *Green* v. *New Kent County School Board,* 391

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U. S. 430 (1968), and two other simultaneous unanimous decisions, the Supreme Court held that school boards have the *affirmative duty* to get rid of dual school systems, to eliminate "black schools" and "white schools," and to operate "just schools." The Court said:

> "The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work *now*." (Emphasis on the word *"now"* was put in the text by the Supreme Court.)

For years people of this community and all over the south have quoted wistfully the statement in *Briggs* v. *Elliott* by Judge John J. Parker (who at his death was one of my few remaining heroes) that though the Constitution forbids segregation it does not require integration. Passage of time, and the revelation of conditions which might well have changed Judge Parker's views if he had lived, have left Judge Parker's words as a landmark but no longer a guide. The latest decision on this subject by the Fourth Circuit Court of Appeals (which is the court that first reviews my actions) contains this statement:

> "The famous Briggs v. Elliott dictum—adhered to by this court for many years—that the Constitution forbids segregation but does not require integration, is now dead." *Hawthorne* v. *Lunenburg,* Nos. 13,283, 13,284, Fourth Circuit Court of Appeals, *July 11, 1969.*

"Freedom of choice," as this court has already pointed out, does not legalize a segregated school system. A plan with freedom of choice must be judged by the same standard as a plan without freedom of choice—whether or not the plan desegregates the public schools. The courts are concerned primarily not with the techniques of assigning

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students or controlling school populations, but with *whether those techniques get rid of segregation of children in public schools.* The test is pragmatic, not theoretical.

Continued Operation of Segregated Public Schools Is Unlawful

The issue is one of law and order. Unless and until the Constitution is amended it is and will be unlawful to operate segregated public schools. Amending the Constitution takes heavy majorities of voters or lawmakers. It is difficult to imagine any majority of Supreme Court, of Congress or of popular vote in favor of changing the Constitution to say that public school pupils may lawfully be kept in separate schools because they are black. A community bent on "law and order" should expect its school board members to obey the United States Constitution, *and should encourage them in every move they make toward such compliance.* The call for "law and order" in the streets and slums is necessary, but it sounds hollow when it issues from people content with segregated public schools.

The questions is not whether people like desegregated public schools, but what the law requires of those who operate them.

The Duty to Observe the Constitution and Desegregate the Schools Cannot Be Reduced or Avoided Because of Soothing Sayings From Other Government Officials Nor Outcries From Those Who Want the Law to Go Away.

The rights and duties of the parties to this suit are in this court for decision according to *law*—not according to HEW guidelines or public clamor. The court and the school board are bound by the Constitution. *So are the legislative and executive branches of government.* No one in Washing-

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ton or Raleigh or local government is above or beyond the Constitution. None have power to change it except by lawful means. None have *or claim* the power to interfere with the courts in cases like this one. The malleable HEW "guidelines" put out by the President's administrator for educational affairs, and dubious inferences from statements of other officials, however highly placed, are irrelevant to the constitutional rights of the parties in this case. Also irrelevant are soothing sayings of the Vice President (who has the duty in this area) to black-tie political audiences, and the not-so-soothing sayings of citizens who erroneously talk as if the school segregation issue were a simple matter of political pressure and short-term public opinion. As for the Attorney General of the United States, he has just filed the biggest desegregation suit of all—*against the whole State of Georgia!* Segregation of children in public schools, whether they be black or white, and regardless of whether they do or don't want to stay apart, is unlawful. As the Supreme Court said in *Brown II*:

> ". . . the vitality of these constitutional principles can not be allowed to yield simply because of disagreement with them."

The School Board's New Plan Represents Substantial Progress.

Against this background the Board's new plan is reviewed:

1. The most obvious and constructive element in the plan is that the School Board has reversed its field and has accepted its affirmative constitutional duty to desegregate pupils, teachers, principals and staff members "at the earliest possible date." It has recognized that where people

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live should not control where they go to school nor the quality of their education, and that transportation may be necessary to comply with the law. It has recognized that easy methods will not do the job; that rezoning of school lines, perhaps wholesale; pairing, grouping or clustering of schools; use of computer technology and all available modern business methods can and must be considered in the discharge of the Board's constitutional duty. This court does not take lightly the Board's promises and the Board's undertaking of its affirmative duty under the Constitution and accepts these assurances at face value. They are, in fact, the conclusions which necessarily follow when any group of women and men of good faith seriously study this problem *with knowledge of the facts of this school system and in light of the law of the land.*

2. In the second place, by the following actions the Board has demonstrated its acceptance of its stated new policies:

a) The desegregation of faculties and the non-racial reassignment of principals and employees from newly closed schools. In the formerly all-black faculties the Board has dramatically exceeded its goal. It is assumed by the court that this process of faculty desegregation will continue and that the goal for 1970-71 will be that faculties in all schools will approach a ratio under which all schools in the system will have approximately the same proportion of black and white teachers.

b) The closing of seven schools and the reassignment of 3,000 black pupils to schools offering better education.

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c) The reassignment of 1,245 students from several overcrowded primarily black schools to a number of outlying predominantly white schools.

d) The announced re-evaluation of the program of locating and building and improving schools, so that each project or site will produce the "greatest degree of desegregation possible."

e) The Board correctly and constructively concluded that the so-called "anti-bussing law" adopted by the General Assembly of North Carolina on June 24, 1969, does not inhibit the Board in carrying out its constitutional duties and should not hamper the Board in its future actions. Leaving aside its dubious constitutionality (if it really did what its title claims to do) the statute contains an express exception which renders it ineffectual in that it does not prevent "any transfer necessitated by overcrowded conditions or *other circumstances which in the sole discretion of the School Board require reassignment*."

f) The elimination without objection of the former provision which had the effect of inhibiting transfer rights of black would-be athletes.

g) Quite significantly, the Board calls upon the Planning Board, the Housing Authority, the Redevelopment Commission and upon real estate interests, local government and other interested parties to recognize and share their responsibility for dealing with problems of segregation in the community at large as well as in the school system.

h) The proposals for programs of "compensatory education" of students, and for teacher orientation and

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exchange of activities among black and white students. The court assumes that these somewhat vaguely stated ideas will become implemented with concrete action.

3. *The Seven School Problem.*—The Board plan proposes to close Second Ward High School, Irwin Avenue Junior High School and five inner-city elementary schools (five of which were already marked for abandonment) and to reassign their 3,000 students to outlying white schools. This part of the plan has struck fire from black community leaders and some other critics. Counsel for the plaintiffs contend that it puts an unconstitutional and discriminatory burden upon the black community with no corresponding discomfort to whites. One spokesman for a large group of dissenting and demonstrating black citizens was allowed to express his views at the August 5, 1969 hearing. Threats of boycotts and strikes have been publicized.

This part of the plan is distasteful, because all but 200* of the students being reassigned *en masse* are black. It can legitimately be said and has been eloquently said that this plan is an affront to the dignity and pride of the black citizens. Pride and dignity are important. If pride and dignity were all that are involved, this part of the plan ought to be disapproved. The court, out of forty-year memory of four years of transportation on an unheated Model-T school but thirteen miles each way from a distant rural community to high school in a "city" of 4,000, is fully aware how alien and strange are the sensations experienced by a school child who is hauled out of his own community and into a place where the initial welcome is uncertain or cool.

* The 200 students being reassigned from Paw Creek to Woodland are white.

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However, this part of the plan is not compulsory. Students who want to remain in the comfort of their familiar area may elect to attend the Zebulon Vance School instead; alternatives are also provided for the junior high school students.

Moreover, as one of the attorneys remarked at the first hearing in a discussion about reassignments and school busses: "The question is really not one of 'bussing' but whether what the child gets when he gets off of the bus is worth the trouble."

I personally found the better education worth the bus trip.

Despite their undoubted importance, pride and dignity should not control over the Constitution and should not outweigh the prospects for quality education of children. The uncontradicted evidence before the court is that segregation in Mecklenburg County has produced its inevitable results in the retarded educational achievement and capacity of segregated school children. By way of brief illustration a table follows showing the contrasting achievements of sixth grade students in five of the closed schools (Bethune, Fairview, Isabella Wyche, Alexander Street and Zeb Vance) and in five of the schools to which black students are going to be transferred:

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AVERAGE ACHIEVEMENT TEST SCORES

SIXTH GRADE—1968-69

	SP.	*LANG.*	*ACM. (Math)*	*WM (Word Meaning)*
(Bethune	45	34	41	41
(Ashley Park	61	62	56	58
(Fairview	46	38	42	39
(Westerly Hills	61	61	52	57
(Isabella Wyche	41	34	40	38
(Myers Park	80	84	58	73
(Alexander Street	45	38	34	40
(Shamrock Gardens	57	62	53	56
(Zeb Vance	38	34	39	42
(Park Road	71	75	58	66

This alarming contrast in performance is obviously not known to school patrons generally.

It was not fully known to the court before he studied the evidence in the case.

It can not be explained solely in terms of cultural, racial or family background without honestly facing the impact of segregation.

The degree to which this contrast pervades all levels of academic activity and accomplishment in segregated schools is relentlessly demonstrated.

Segregation produces inferior education, and it makes little difference whether the school is hot and decrepit or modern and air-conditioned.

It is painfully apparent that "quality education" can not live in a segregated school; *segregation itself is the greatest barrier to quality education.*

As hopeful relief against this grim picture is the uncontradicted testimony of the three or four experts who

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testified, some for each side, and the very interesting experience of the administrators of the schools of Buffalo, New York. The experts and administrators all agreed that transferring underprivileged black children from black schools into schools with 70% or more white students produced a dramatic improvement in the rate of progress and an increase in the absolute performance of the less advanced students, without material detriment to the whites. There was no contrary evidence. (In this system 71% of the students are white and 29% are black.)

Moreover, the Board's announced policy and the uncontradicted testimony of the superintendent show that serious arrangements are being made to welcome, rather than rebuff, the transferees into all school activities. This is something new and important.

No legal authority is cited that the Constitution prohibits transport of consenting black children from an inferior educational environment into a better educational environment for the purpose of complying with the constitutional requirement of equal protection of laws.

The choice of how to do the job of desegregation is for the School Board—not for the court.

The Board has wide discretion in choosing methods; many effective methods are described in the evidence; the court's duty is simply to pass on the legality of the Board's actions. It appears to the court that the improvement in the education of 4,200 school children is the one most obvious result of the Board's plan of action for 1969-70, and that this is more important constitutionally than other considerations which have been advanced.

It is not the intention of this court to endorse or approve any future plan which puts the burden of desegregation primarily upon one race. However, there is not time before September 2, 1969 to do a complete job of reassign-

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ing pupils; the plan is a step toward more complete compliance with the law; the court reluctantly votes in favor of the 4,200 school children and approves the plan on a one-year basis.

THE MAJOR TASK LIES AHEAD THIS FALL

The big job remains to be done. After implementation of the current plan, further large scale faculty transfers will still be necessary. Sixteen years after *Brown* v. *Board of Education,* some thirteen thousand school children will remain in black or nearly all-black schools. Most white students will remain in substantially all-white schools. The failure of the plan to deal with those problems of course can not be approved. The failure of the plan to include a time table for the performance of specific elements of the program of course can not be approved, *Felder, et al.* v. *Harnett County Board of Education, et al.,* 409 F. 2d 1070 (4th Cir., 1969). These matters must be covered by specific instructions to the Board.

All findings of fact in the previous orders of April 23, 1969, and June 20, 1969, and the supplemental findings of June 24, 1969, are incorporated herein to the extent that they are consistent with the findings, conclusions and orders herein reached and given. All evidence at all hearings is considered in reaching these conclusions.

ORDER

1. The policy statement of the Board is approved.

2. The faculty desegregation program is approved.

3. The plan to desegregate pupils by closing seven all-black schools and assigning their pupils to outlying white

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schools is approved only (1) with great reluctance, (2) as a one-year, temporary arrangement, and (3) with the distinct reservation that "one-way bussing" plans for the years after 1969-70 will not be acceptable. If, as the school superintendent testified, none of the modern, faculty-integrated, expensive, "equal" black schools in the system are suitable for desegregation now, steps can and should be taken to change that condition before the fall of 1970. Unsuitability or inadequacy of a 1970 "black" school to educate 1970 white pupils will not be considered by the court in passing upon plans for 1970 desegregation. The defendants contended and the court found in its April 23, 1969 order that facilities and teachers in the various black schools were not measurably inferior to those in the various white schools. It is too late now to expect the court to proceed upon an opposite assumption.

4. The plan to reassign 1,245 students from presently overcrowded black schools is approved.

5. Reassignment of the Paw Creek students to Woodland is approved.

6. The proposals of the Board for restructure of attendance lines; for consideration of pairing and grouping schools; for review of the construction programs; and for support programs, student exchange and faculty orientation are approved in principle, although for lack of specific detail and time table they are not approved as presented.

7. The Board is directed to prepare and present by November 17, 1969, the following:

(1) Plan for complete faculty desegregation for 1970-71.

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(2) Plan for student desegregation for 1970-71, including making full use of zoning, pairing, grouping, clustering, transportation and other techniques, complete with statistics and maps and other data showing precisely what (subject to later movement of pupils) the assignment of pupils and teachers will be for the year 1970-71, having in mind as its goal for 1970-71 the complete desegregation of the entire system to the maximum extent possible. (The assumption in the Board's report that a school is desegregated when it has as many as 10% of a minority race in its student body is not accepted by the court, and neither the Board nor the court should be guided by such a figure.) "Possible" as used here refers to educational—*not* "political"—possibility. If Anson County, two-thirds black, can totally desegregate its schools in 1969, as they have now done, Mecklenburg County should be able to muster the political will to follow suit.

(3) A detailed report showing, complete with figures and maps, the location and nature of each construction project proposed or under way, and the effect this project may reasonably be expected to have upon the program of desegregating the schools.

8. Since a mid-city high school may prove most desirable, the Board is directed pending further orders of court not to divest itself of any land, options, rent arrangements or other access to or control over real estate which it may now have in the Second Ward area.

9. Jurisdiction is retained.

This the 15th day of August, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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Order dated August 29, 1969

The School Board's amended plan for desegregation of the Charlotte-Mecklenburg schools was approved by order of court dated August 15, 1969. The Board has now tendered a modification to this plan which was filed today, August 29, 1969.

The modification relates to the facilities to be provided for those black children whose parents exercise freedom of choice to attend a black elementary school in the inner city instead of attending the white schools listed in the July 29, 1969 plan which has already been approved by the court.

The amendment calls for using the building of former Irwin Avenue Junior High School with certain minor renovations, instead of Zeb Vance School, and a limit of six hundred students upon those who would be admitted to this program at Irwin Avenue School. This part of the motion to amend is approved. The choice of building, *per se,* is a matter for the School Board, not the court.

The amendment proposes that the Irwin Avenue School would be operated "as an innovative school." The court does not know what this means. If by this phrase is meant that anything will be done to make this school more attractive to the black students than the black schools they have been attending, then the program will constitute the location and use of a school facility for the purpose of promoting segregation which by previous decisions of this and other courts the defendants have been fully advised is unconstitutional. *Felder, et al.* v. *Harnett County, North Carolina,* 409 F.2d 1070 (4th Circuit, 1969) (decided April 22, 1969), and cases cited therein. The addition of "innovations" at Irwin Avenue School will not be approved by the court unless these "innovations" have been arranged and

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provided for all the black students who transfer to white schools under the July 29, 1969 plan of the Board previously approved. The phrase "innovative" may refer to what the Board has heretofore called "compensatory education." The court has not yet been advised of any performance by the Board in line with the undertaking in its July 29, 1969 plan to provide "compensatory education" for pupils who lag behind their classmates in academic achievement. Unless and until the court can be informed and satisfied that this "compensatory education" is provided in the other schools, the court is of the opinion that providing it in the Irwin Avenue School would set up a magnet to attract black children away from desegregated assignments and therefore on the present record at least that part of the plan is disapproved.

The proposal to provide transportation for any of the students attending Irwin Avenue School is expressly disapproved. The effect of providing transportation is to subsidize at tax payers' expense those who are actively seeking to defeat the constitutional mandate to desegregate the schools. No authority is advanced or suggested to justify such a flagrant violation of the law, and none has been imagined by the court. The Board is expressly restrained from and enjoined against providing transportation in any form to any student in the system, black or white, which may or might enable him to travel any part of the distance from his home to or from any school elected by or for him under "freedom of transfer" or "freedom of choice," except that the Board may provide transportation as previously ordered by this court to those students who elect to transfer or who are transferred by the Board from a school in which their race is in a majority to a school in which their race

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is in the minority. As this court pointed out before, bus transportation has too long been used as a tool to promote segregation. The year 1969 is too late in the day to start using this tool for that purpose in new situations.

This the 29th day of August, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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Order dated October 10, 1969

On April 23, June 20 and August 15, 1969, orders were entered directing the defendants to submit a plan and a time table for the desegregation of the Charlotte-Mecklenburg schools, to be completed by the fall of 1970. Nearly six months after the original order, faculty desegregation is well along and there have been a number of substantial improvements in the stated policies of the Board, including the stated assumption of duty by the Board to desegregate the schoools "at the earliest possible date." Limited steps have been taken toward compliance with the pupil desegregation provisions of that original order. However, the major part of the job remains undone, and no plan for desegregation of the entire system has apparently been voted on by the Board.

The latest order set November 17, 1969, as the revised date for defendants to file a complete plan and time table. Defendants have now filed a 15-page motion and supporting affidavit asking the court to extend by another two and one-half months, to February 1, 1970, the time for compliance with the orders. Plaintiffs oppose the extension.

The justification advanced for this delay is that they have hired a systems analyst to re-draw attendance lines, and that the three months between August 15 and November 17 are not enough time to program a computer and prepare a plan.

It would be a happy day if the job could be turned over to a computer. A computer, if programmed objectively, could produce objective results; all could blame the machine (in addition to the court) for any unpleasant decisions. Also, the court would like to avoid unnecessary pressure on the school staff and administrators.

However, the information thus far available is inadequate to justify the extension. Computers are for time-*saving,*

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not delay. The computer work was estimated by the Board's chosen systems analyst, Mr. Weil, to require ninety man days of work. He proposes to consume ninety calendar days with this job! The Board's motion says that their decisions about construction and location of 21 building projects (involving many millions of dollars) are to be held up pending development of the plan. The school budget approaches fifty million dollars. The question fairly arises why the Board should not employ or assign more than one person at a time to feed the computer. Mr. Weil's original plan, which is in evidence, was prepared in a very few days. The court has on file also three or four other plans, including at least one which local school officials say is educationally and technically feasible, which were prepared in a few days each. The use of a computer does not appear to justify the delay.

Moreover, computers cannot make political nor legal decisions; they react to what is fed into them; and the request for postponement leaves the court to speculate over what will be fed into the computer. The motion does not say that Mr. Weil has been instructed by the Board to frame a plan to desegregate the schools; his commission, by a Board committee only, is limited to re-drawing attendance lines; the vague references in the Board's motion to his instructions as to travel limitation and specified school capacities and desirable racial balance permit the inference, in fact, that his mission could be *re*-segregation of much of the system.

The motion also contains no commitment on the part of the Board to adopt any plan that the computer may produce; it gives no information about the Board's intentions as to other desegregation methods it will use; and it promises no *result* from the delay except *consideration* by the

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Board of a computer plan for re-arranging school lines.

The motion is preoccupied with one *method,* and silent about *results.*

Before passing on the motion, the court has a duty to discover what the Board has accomplished since its July 29 promises were made, and whether the extra time will promote genuine progress toward compliance with the Constitution or whether it will just be time lost.

The Board is therefore directed to file with the court by October 29, 1969, the following information:

1. A full statistical report on the results of the closing of the inner-city schools and where the 4,200 black pupils the Board proposed on July 29 to transfer to white schools are actually going to school as of October 10, 1969.

2. The figures regarding the effect of freedom of transfer on the desegregation proposed in the July 29, 1969 plan for closing inner-city schools and transferring their students.

3. A report on freedom of choice or freedom of transfer: How many children, by school or location and race, chose to transfer out of and into the various schools for the 1969-70 year.

4. Full reports on the current numbers and races of the children and teachers in the system, school by school, with percentages of each race for each school.

5. A report on the children being provided bus transportation, school by school.

6. A description of what has been done to provide the compensatory education programs proposed in the July 29 plan and policy statement.

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7. A copy of all September and October, 1969, reports of the Board to the Department of Health, Education and Welfare.

Unless the Board has made the hard decisions needed to desegregate the schools, the time spent on a computer plan may well be just more time lost, and delaying decision may simply compress into fewer months next year the decisions that should have already been made. Therefore, in addition to the above, the Board is directed to answer by October 29, 1969, the following questions:

1. What, in verbatim detail, are the instructions that have been given to Mr. Weil?

2. What is Mr. Weil's assigned mission or goal?

3. What areas of the district is he directed to include in his program of re-drawing attendance lines?

4. What areas, if any, is he directed to exclude?

5. What schools will his program affect?

6. Will pairing, grouping or clustering of schools be used by the Board as needed to supplement the computer plan?

7. Will the Weil program of re-drawing attendance lines produce desegregation of all the schools by September, 1970?

8. If the Weil program does not produce desegregation of all the schools by September, 1970, what does the Board plan to do to produce that result?

9. Will any plan produced by the Weil method or any other re-drawing of attendance lines desegregate

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the schools if unrestricted freedom of transfer or freedom of choice is retained?

The value of the answers to these nine questions is substantially dependent on whether they are made by vote of the full Board or by non-voting representatives such as attorneys or other agents.

Pending receipt of the above information, the court will defer action on the request for time extension. Action will also be deferred for the present on the motions which have been filed by the plaintiffs which include requests for abolition of freedom of choice and appointment of an outside expert to devise a plan in default of Board action.

This the 10th day of October, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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Order dated November 7, 1969

On October 29, 1969, the United States Supreme Court announced its decision in the Mississippi school case, *Alexander* v. *Holmes County,* Case No. 632. That decision, the most significant in this field since *Brown* v. *Board of Education,* peremptorily reversed an order of the Fifth Circuit Court of Appeals which, upon request of the United States Attorney General, had postponed until 1970 the effective desegregation of thirty Mississippi school districts, and had extended from August 11 to December 1, 1969, their deadline for filing desegregation plans. The Supreme Court held that the Court of Appeals

> "* * * *should have denied all motions for additional time* because continued operation of *segregated schools* under a standard of allowing all deliberate speed for desegregation is no longer constitutionally permissible. *Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. Griffin* v. *School Board,* 377 U. S. 218, 234 (1964); *Green* v. *School Board of New Kent County,* 391 U. S. 430, 439, 442 (1968)." (Emphasis added.)

The Supreme Court further directed the Fifth Circuit Court of Appeals to make such orders as might be necessary for the *immediate* start in each district of the operation of a "totally unitary school system for all eligible pupils without regard to race or color."

It is this court's opinion that the word "dual" in the Supreme Court opinion is another word for "segregated," and that "unitary" is another word for "desegregated" or "integrated." It is also this court's opinion that although,

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as defendants say, this is not Mississippi, nevertheless the Supreme Court's prohibition against extension of time as laid down in *Alexander* v. *Holmes County* is binding upon this court and this school board, and bars the exercise of the court's usual discretion in such matters, and that to allow the request of the defendants for extension of time to comply with this court's previous judgments would be contrary to the Supreme Court's decision and should not be done.

Therefore, and based also upon the considerations set out in the memorandum opinion to be filed contemporaneously herewith, the motion of the defendants for extension of time for compliance with the court's August 15, 1969 order is denied. Ruling on all other pending motions is deferred.

This the 7th day of November, 1969.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

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Memorandum Opinion dated November 7, 1969

Preliminary Statement

On Wednesday, October 29, 1969, the United States Supreme Court announced its decision in the Mississippi school case (*Alexander* v. *Holmes County,* Case No. 632). That decision peremptorily reversed an order of the Fifth Circuit Court of Appeals which, upon request of the United States Attorney General, had postponed until 1970 the effective desegregation of thirty Mississippi school districts, and had extended from August 11 to December 1, 1969, their deadline for filing desegregation plans. The Supreme Court held that the Court of Appeals

> "* * * *should have denied all motions for additional time* because continued operation of *segregated schools* under a standard of allowing all deliberate speed for desegregation is no longer constitutionally permissible. *Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. Griffin* v. *School Board,* 377 U. S. 218, 234 (1964); *Green* v. *School Board of New Kent County,* 391 U. S. 430, 439, 442 (1968)." (Emphasis added.)

The Supreme Court further directed the Fifth Circuit Court of Appeals to make such orders as might be necessary for the *immediate* start in each district of the operation of a "totally unitary school system for all eligible pupils without regard to race or color."

The Mississippi school districts in the *Holmes County* case had degrees of desegregation ranging from nearly zero to about 16% of the Negro pupils. They like Mecklenburg hoped that their "freedom of choice" plans would satisfy the Constitution.

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The request for time extension, and all later proceedings in this cause, must be considered in light of the Supreme Court's reaffirmation of the law which this court has been following, and in light of the urgency now required by the *Holmes County* decision.

THE RESULTS OF THE 1969 PLAN

For pupil desegregation, the July 29, 1969 plan proposed to close seven black inner-city schools (most or all of which had previously been ear-marked for eventual "phase-out") and to transfer their 3,000 students in specified numbers to named suburban schools. All the transferee schools except West Charlotte were white. In addition, 1,245 black students, in specified numbers, were to be transferred from eight black or largely black schools to other designated suburban white schools.

The plan was accepted and approved because of its apparent promise to extend the opportunities of a desegregated education to over 4,000 new black students.

The plan has not been carried out as advertised: (a) Only 73 of the 1,245 scheduled for transfer from overcrowded black schools have been so transferred; those 73 were transferred not to the schools designated, but to other schools not mentioned in the plan. (b) It is now revealed that the closed schools, which were billed in July to produce 3,000 black students for transfer, actually had only 2,627 students in them when the schools closed in June! (c) The Board allowed full freedom of choice for students from the closed schools, and those students in large numbers elected to go to Harding High School, and to Williams Junior High, Northwest Junior High and other black schools, instead of to the assigned white schools. As a result, Harding High School was transformed immediately

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from 17% black to 47% black. This produced community consternation but no racial disorder among the students. The result may be deplorable, but the fact that the students at Harding High School have adjusted peaceably to the situation (like others before them at Cornelius, Davidson, Olympic, Randolph Road, Hawthorne and Elizabeth, and like the people of Anson and other North Carolina counties) shows that Mecklenburgers can live with desegregated schools. (d) The transfers proposed simply appear never to have been made to most of the suburban schools named in the plan. (e) *The plan therefore transferred to white schools only 1,315 instead of the promised 4,245 black pupils!* From closed schools, the elementary transferees numbered 463 instead of the advertised 1,235; junior high transferees were 273 instead of 630; and senior high transferees were 506 instead of 1,135; and from overcrowded schools 73 instead of 1,245. If Harding (47% black, 630 Negro students), Olympic (42% black, 376 Negro students), and Wilmore (49% black, 228 Negro students) should be allowed to continue their rapid shift from white to black, the net result of the 1969 pupil plan would be nearly zero.

Faculty desegregation has significantly and commendably improved since the April 27 order. Nevertheless, only six "black" schools and one "black" kindergarten have predominantly white faculties; and 98 out of the 106 schools and kindergartens in the system are today readily and obviously identifiable by the race of the heavy majority of their faculties.

The "performance gap" is wide.

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THE SITUATION TODAY

The following table illustrates the racial distribution of the present school population:

SCHOOLS READILY IDENTIFIABLE AS WHITE

% WHITE	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
100%	9	6,605	2	6,607
98–99%	9	4,801	49	4,850
95–97%	12	10,836	505	11,341
90–94%	17	14,070	1,243	15,313
86–89%	10	8,700	1,169	9,869
	57	45,012	2,968	47,980

SCHOOLS READILY IDENTIFIABLE AS BLACK

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
100%	11	2	9,216	9,218
98–99%	5	41	3,432	3,473
90–97%	3	121	1,297	1,418
56–89%	6	989	2,252	3,241
	25	1,153	16,197	17,350

SCHOOLS NOT READILY IDENTIFIABLE BY RACE

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
32–49%	10	4,320	2,868	7,188
17–20%	8	5,363	1,230	6,593
22–29%	6	3,980	1,451	5,431
	24	13,663	5,549	19,212
TOTALS:	106	59,828	24,714	84,542

Some of the data from the table, re-stated, is as follows:

Number of schools	106
Number of white pupils	59,828
Number of black pupils	24,714

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Total pupils	84,542
Per cent of white pupils	71%
Per cent of black pupils	29%
Number of "white" schools	57
Number of white pupils in those schools	45,012
Number of "black" schools	25
Number of black pupils in those schools	16,197
Number of schools not readily identifiable by race	24
Number of pupils in those schools	19,212
Number of schools 98-100% black	16
Negro pupils in those schools	12,648
Number of schools 98-100% white	18
White pupils in those schools	11,406

Of the 24,714 Negroes in the schools, something above 8,500 are attending "white" or schools not readily identifiable by race. More than 16,000, however, are obviously still in all-black or predominantly black schools. The 9,216 in 100% black situations are considerably more than the number of black students in Charlotte in 1954 at the time of the first *Brown* decision. The black school problem has not been solved.

The schools are still in major part segregated or "dual" rather than desegregated or "unitary."

The black schools are for the most part in black residential areas. However, that does not make their segregation constitutionally benign. In previous opinions the facts respecting their locations, their controlled size and their population have already been found. Briefly summarized, these facts are that the present location of white schools in white areas and of black schools in black areas is the result of a varied group of elements of public and private action, all deriving their basic strength originally from

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public law or state or local governmental action. These elements include among others the legal separation of the races in schools, school busses, public accommodations and housing; racial restrictions in deeds to land; zoning ordinances; city planning; urban renewal; location of public low rent housing; and the actions of the present School Board and others, before and since 1954, in locating and controlling the capacity of schools so that there would usually be black schools handy to black neighborhoods and white schools for white neighborhoods. There is so much state action embedded in and shaping these events that the resulting segregation is not innocent or *"de facto,"* and the resulting schools are not "unitary" or desegregated.

Freedom of Choice

Freedom of choice has tended to perpetuate segregation by allowing children to get out of schools where their race would be in a minority. The essential failure of the Board's 1969 pupil plan was in good measure due to freedom of choice.

As the court recalls the evidence, it shows that *no white students have ever chosen to attend any of the "black" schools.*

Freedom of choice does not make a segregated school system lawful. As the Supreme Court said in *Green* v. *New Kent County,* 391 U.S. 430 (1968):

> "* * * If there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, 'freedom of choice' must be held unacceptable."

Redrawing attendance lines is not likely to accomplish anything stable toward obeying the constitutional mandate

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as long as freedom of choice or freedom of transfer is retained. The operation of these schools for the foreseeable future should not include freedom of choice or transfer except to the extent that it reduces segregation, although of course the Board under its statutory power of assignment can assign any pupil to any school for any lawful reason.

THE "NATIONAL STANDINGS"

The defendants filed some statistics concerning the one hundred largest school systems in the country, and say that Charlotte-Mecklenburg desegregation compares favorably with that in most of those systems. That may well be so. The court is not trying cases involving the other ninety-nine school boards, and has not studied any evidence about them and does not know their factual nor legal problems. The court in its first order of April 23, 1969 has noted the substantial desegregation achieved in certain areas in the Charlotte-Mecklenburg system, and is still aware of it. The fact that other communities might be more backward in observing the Constitution than Mecklenburg would hardly seem to support denial of constitutional rights to Mecklenburg citizens. The court doubts that a double standard exists. The Attorney General of the United States has filed suit for desegregation in Connecticut as well as in the whole State of Georgia. One of the most stringent desegregation orders on record was entered recently against a school board in the City of Chicago. Constitutional rights will not be denied here simply because they may be denied or delayed elsewhere. There is no "Dow-Jones average" for such rights. With all due deference to the complexities of this school system, which have already been fully noted

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in previous opinions, the Board and the community must still observe the Constitution. The fact that the school system ranks high in some artificial "national standings" or that one-third of the Negro students do attend desegregated schools or predominantly white schools is no answer to the constitutional problems presented by sixteen thousand black Mecklenburgers still going to all-black or largely black schools in this predominantly white community.

The Prospects for the Future

The second part of the Board's report is answers to the court's questions designed to determine whether the Board has made the hard decisions necessary to desegregate the schoos.

The answers show that those decisions have not been made.

The computer expert has been given restrictions which, taken at face value, indicate that his work will not lead to desegregation of all the schools. One such restriction has the apparent effect of limiting attendance to those who live a maximum of roughly a mile and a half from the school. (This is the requirement that all grids or areas must be "contiguous to the home grid or to grids which are contiguous to the home grid.") Another is the limitation that no school attended by whites should have less than a 60% white student population. (Unless this were coupled with a further requirement that no school attended by blacks shall have more than a 40% black student population, this appears to put the black schools "off limits" for his study.) The original verified motion of the School Board contained two other limitations. Those were that "a 'desirable' racial balance should be obtained" and that "reasonable limitation on distance of travel for a child has been imposed." The

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record is silent on what these limitations mean and whether they are still in effect.

The Board has not accepted pairing and grouping and clustering of schools as legitimate techniques, but has simply indicated that it will "consider" those techniques where they offer "*reasonable* prospects of producing *stable* desegregation * * *." (Emphasis added.)

The report states unconditionally that:

> "*The information supplied by the systems analysis approach will not produce desegregation of all schools by September, 1970.* Dramatic results are expected. It is *hoped* that the number of all white and all black schools will be substantially *reduced.* The number of such schools cannot be determined at this time." (Emphasis added.)

The report also says that:

> "* * * *The Board of Education does not feel that it will be possible to produce pupil desegregation in each school by September, 1970.* It is expected that faculties will fairly represent a cross section of the total faculty so that most and *possibly* all schools will not have a racially identifiable faculty. Furthermore, the restructuring of attendance lines coupled with faculty desegregation *may* satisfy constitutional requirements." (Emphasis added.)

The School Board is sharply divided in the expressed views of its members. From the testimony of its members, and from the latest report, it cannot be concluded that a majority of its members have accepted the court's orders as representing the law which applies to the local schools.

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By the responses to the October 10 questions, the Board has indicated that its members do not accept the duty to desegregate the schools at any ascertainable time; and they have clearly indicated that they *intend not to do it* effective in the fall of 1970. They have also demonstrated a yawning gap between predictions and performance.

Withholding or delaying the constitutional rights of children to equal educational opportunity on such vague terms as these is not the province of the School Board nor of this court.

Furthermore, since the Supreme Court has now prohibited lower courts from granting extensions of time, it may well be that the gradual time table laid down by this court's April 23, 1969 order contemplating substantial progress in 1969 and complete desegregation by September 1970) was and is too lenient.

If the plan tendered by the School Board on November 17, 1969 is thorough and informative, and sufficiently shows an unconditional purpose on the part of the Board to complete its job effective by September, 1970, the Board may perhaps be allowed to adhere to the existing time table. Certainly a Mecklenburg plan ought if possible to be prepared by the Mecklenburg School Board and its large and experienced staff, rather than by outside experts. Decision on that and other pending questions must await further developments, including the Board's November 17, 1969 report.

Conclusions

The school system is still discriminatorily segregated by race and maintained that way by state action. In many ways it is not in compliance with the Constitution. The Board has not shown a valid basis for an extension of time

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to comply with the court's judgment; it has shown no intention to comply by any particular time with the constitutional mandate to desegregate the schools; and it has suggested its intention *not* to comply by September, 1970. In spite of those facts the court would like as a matter of discretion to grant some of the time extension requested, but is of the considered opinion that in *Alexander* v. *Holmes County* the Supreme Court has prohibited the exercise of such discretion. The findings of fact in this opinion will be considered, along with facts found in previous orders, opinions and memoranda, as the basis for such future judgments and orders as may be appropriate, including such judgments and orders as may be appropriate upon receipt of the Board's November 17, 1969 plan. All statements of fact in this memorandum opinion, whether or not labeled as such, shall be deemed findings of fact, as necessary to support such judgments and orders.

This the 7th day of November, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

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Opinion and Order dated December 1, 1969

On April 23, June 20 and August 15, 1969, the defendant school board was ordered to file plans to desegregate the schools of Charlotte and Mecklenburg County, North Carolina. The defendants have admitted their duty to desegregate the schools; considerable progress has been made toward desegregation of faculties; and progress, previously noted, has been made in some other areas. The schools, however, remain for the most part unlawfully segregated. The facts supporting that conclusion in all the court's previous orders are reiterated here.

The issue is what to do pursuant to the board's latest plan, filed November 17, 1969. The plan recites the following ostensible purpose:

> "The Board of Education has embarked upon a comprehensive program for the purpose of restructuring attendance lines involving all schools and all students served by the system. The primary purpose of this program is to achieve further desegregation in as many schools as possible * * *."

The plan says that a computer analyst has been hired to draw up various *theoretical* possible school zone attendance lines, and that school personnel, before February 1, 1970, will draw the *actual* lines.

The details of the plan show that it contains no promise nor likelihood of desegregating the schools.

The plan and the report accompanying it say (emphasis added):

> "No school district *to which white students are assigned* should have less than 60 per cent white student population to avoid 'tipping.'" (Plan, page 2.)

* * * * *

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> ". . . it is the plan of this School Board to limit schools *to which white students are assigned* to those schools in which it is possible to provide a student population which is at least 60 per cent white." (Plan, page 5.)

* * * * *

> "In determining the initial attendance lines, the ratio of black to white students will not exceed 60% white—40% black WHERE THE SCHOOL IS DESEGREGATED." (Report, page 5.)

* * * * *

> "*A majority of the Board of Education believes that the constitutional requirements of desegregation will be achieved by the restructuring of attendance lines, the restricting freedom of transfer, and other provisions of this plan. The majority of the Board has, therefore, discarded further consideration of pairing, grouping, clustering and transporting.*" (Plan, page 6.)

The strongest claim made in the plan with respect to the all-black schools is that among 43 elementary schools in the densely populated areas of Charlotte it is "*theoretically* [school board's emphasis] possible to populate these schools with the following ratios of black students: . . . Seven (7) schools in which the black student population is 100 per cent." (Plan, pages 3 and 4.) Since the 100% black elementary schools in the system (Billingsville, Marie Davis, Double Oaks, First Ward, Lincoln Heights, Oaklawn and University Park) number exactly seven, this language obviously proposes that these seven schools will remain all-black.

The plan contains no factual information nor estimate regarding plans for desegregation of the 31 other elemen-

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tary schools, the 20 junior high schools, and the 10 senior high schools in the system.

Concerning faculty desegregation the plan says:

> "*During* the 1970-71 school year, the Board of Education will staff each school so that the faculty at each school will be *predominantly* white and, *where practicable* will reflect the ratio of white and black teachers employed in the total faculty of the school system." (Plan, page 7.)

With regard to the physical facilities, the court on August 15, 1969, ordered the defendants to produce by November 17 "A detailed report showing, complete with figures and maps, the location and nature of each construction project proposed or under way, and the effect this project may reasonably be expected to have upon the program of desegregating the schools." In response to that order, the plan lists the names of 21 out of 91 projects, expresses a few opinions and conclusions about the building program, and promises a partial study by February 1, 1970 and a "general long range study" *"by June of 1970,"* but it sheds no factual light on the effect of any part of the building program on the segregation issue. Since the board has, in seven months, failed to produce a program for desegregation, it is only natural that they can not predict the effect of any particular building project on such a program. The court has yet not received information necessary to appraise the effects of current building activity on the current unprogrammed course of desegregation.

When the plan is understood, it boils down to this:

1. It proposes to re-draw school zone lines, and to restrict freedom of choice, which the court had already

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advised the board to eliminate except where it would promote desegregation. It states no definable desegregation goals.

2. The "60-40" ratio is a one-way street. The plan implies that there will be no action to produce desegregation in schools with black populations above 40%, *and that no white students are to be assigned to such schools.*

3. Continued operation of all seven of the all-black elementary schools would be assured. The same would appear to be true for the entire group of 25 mostly "black" schools, mentioned in the court's November 7 order, which serve 16,197 of the 24,714 black students in the system.

4. Transportation to aid children transferring out of segregated situations (which was ordered by the court on April 23 as a condition of any freedom of transfer plan, *and which was a part of this plan as advertised in the board's October 29 report*) has been eliminated from the plan as filed with the court. Inevitable effects of this action would be to violate the court order and to leave the children recently reassigned from seven closed black inner-city schools with no way to reach the suburban schools they now attend! This is *re*-segregation.

5. Other methods (pairing, grouping, clustering of schools) which could reduce or eliminate segregation—and which the board, on October 29 when it was asking for a time extension, promised to consider—have now been expressly left out of the plan.

6. No time is set to complete the job of faculty and pupil desegregation.

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7. In the written argument ("Report") filed with the plan, with the candor characteristic of excellent attorneys, the board's attorneys say:

> "It is important that the Court does not construe the information submitted in the plan relating to racial ratios of elementary schools as being in the nature of a guarantee by the Board since it is anticipated *the results of restructuring the attendance lines may produce a greater or lesser degree of desegregation, the extent of which cannot be determined at this time.*" (Report, page 4; emphasis added.)

The defendants have the burden to desegregate the schools and to show any plan they propose will desegregate the controls. They have not carried that burden. Re-drawing school zone lines won't eliminate segregation unless the decision to desegregate has first been made.

The Schools Are Still Segregated

The extent to which the schools are still segregated was illustrated by the information set out in previous orders including the order of November 7, 1969. Nearly 13,000 out of 24,714 black students still attend schools that are 98% to 100% black. Over 16,000 black students still attend predominantly black schools. Nine-tenths of the faculties are still obviously "black" or "white." Over 45,000 out of 59,000 white students still attend schools which are obviously "white."

The Result is Unequal Education

The following table further illustrates the results. Groups A and B show that sixth graders, in the seven

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100% black schools the plan would retain, perform at about fourth grade levels, while their counterparts in the nine 100% white elementary schools perform at fifth to seventh grade levels. Group C shows that sixth graders in Barringer, which changed in three years from 100% middle income white to 84% Negro, showed a performance drop of 1½ to 2 years. Group D shows however that Randolph Road, 72% white and 28% Negro, has eighth grade performance results approximately comparable to Eastway, which is 96% white, and Randolph results are approximately two years ahead of all-black Williams and Northwest. Until unlawful segregation is eliminated, it is idle to speculate whether some of this gap can be charged to racial differences or to "socio-economic-cultural" lag.

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