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DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN PROCEEDMENT RETURNS
1-19-65	#1 Fil complaint w/bond for costs and petition w/judgment therefor authorizing parents and guardians of minors to maintain this action as next friends. Iss summons and handing to Marshal - orig. and 2 cys of complaint, petition and judgment. Iss JS 5	
1-22-65	#2 Fil summons returned executed by Marshal by serving David M. Harris and Dr. A. Craig Phillips on 1-19-65	
2-5-65	#3 Fil answer w/certificate of service	
2-10-65	#4 Fil interrogatories of pltf., w/cert. of serv.	
2-19-65	#5 Fil motion w/affidavit and notice of hearing w/cert. of service	
2-23-65	#6 Fil pltf's opposition to def's motion for extension of time to answer answer interrogatories w/affidavit therefor.	
3-11-65	Hearing on def.'s motion for extension of time to answer interrogatories- Def. allowed until April 15, 1965	
3-11-65	#7 Ent and fil order allowing def. until April 15, 1965 to file objections to Interrogatories or to answer the interrogatories. Cy of order mailed to Mr. Chambers and Mr. Barkley.	
4-15-65	#8 Fil answers to pltf.'s interrogatories w/cert. of serv.	
5- 3-65	#9 Fil notice of taking depositions - Drs. A. Craig Phillips and William L. Anderson	
5-26-65	#10 Fil motion for preliminary injunction, together with cert. of serv. one copy handed to U. S. Attorney's office	
5-27-65	#11 Fil answer to motion for preliminary injunction, with certificate of service.	
6- 1-65	#12 Fil notice, motion to intervene, and Complaint in Intervention, w/ certificate of service	
6- 1-65	#13 Fil memorandum of decision and order on motion for preliminary injunction - motion for preliminary injunction denied; copies mailed to counsel of record	
6- 9-65	#14 Fil answer to motion of the N. C. Teachers Association to intervene or be added as a party plaintiff, w/cert. of serv.	
6-21-65	#15 Fil deposition of Dr. A. Craig Phillips	
6-25-65	#16 Fil plaintiff's interrogatories, w/cert. of serv. (1 copy handed to USA)	
7- 9-65	#17 Fil defendant's answers to interrogatories, with certificate of service.	
7-12-65	Case called, issues joined, proceeds to trial w/o intervention of jury. Pltf's. wit. Dr. Reginald A. Hawkins S & Ex & X-Ex. Pltf's. wit. Louis I. Kramer S & Ex & X-Ex. Pltf. rests. Def's. wit. Richard H. Brown S (not examining	
7-13-65	Case recalled. Proceeds to trial before court w/o intervention of jury. Pltf's. wit. Dr. A. Craig Phillips recalled & X-Ex completed and Re-Ex & Re-X-Ex and Re-Ex. Def's. wit. Frank Dowd, Jr. S & Ex & X-Ex. Def's Wit. David W. Harris, S & Ex & X-Ex. Pltf's. wit. Mrs. Betsy McCloud Kelly S & Ex. Pltf. submits briefs to Court. Def. makes closing statement & submits briefs. Pltf. makes closing statement. Court adjourned .	
7-14-65	#18 Fil memorandum of decision	
7-14-65	#19 Ent and fil judgment approving proposed plan of desegregation submitted by Charlotte-Mecklenburg Board of Education except that the resolution with respect to teachers and staff is ORDERED to be amended so as to delete the word "ultimate" and substitute the word "immediate" therefor; and jurisdiction is retained to consider (upon motion of parties) implementation of the plan. Iss JS 6. (#19, Civ. Ord. I)	
7-16-65	#20 Fil defendant's answer to complaint in intervention, with certificate of service.	
7-16-65	#21 Fil plaintiffs' notice of appeal, with designation of record on appeal, and certificate of service.	

(Cont'd on page 2)

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN ENROLLMENT RETURNS
		PLAINTIFF	DEFENDANT	
7-21-65	#22			
7-27-65	"			
8-20-65				
11-25-66	#24			
11-29-66				
12- 2-66	#25			
12-15-66	#26			
1- 4-67				
9- 6-68	#27			
9- 10-68	#28			
9-16-68	#29			
9-16-68	#30			
10-4-68	#31			
10- 7-68	#32			
10-31-68	#33			
11-13-68	#34			
11-26-68	#35			
1- 9-69	#36			
1-21-69				
1-21-69	#37			
2- 3-69	#38			
2-10-69	# 39			
2-13-69	#40			

Cont'd on page 4

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
2-26-69	#43 Filing Defendant's Interrogatories to Plaintiff, w/cert. of service			
3- 3-69	#42 Fil plaintiffs' answers to interrogatories, with certificate of service			
3- 3-69	#43 Fil plaintiffs' interrogatories to defendants, with cert. of service.			
3- 4-69	#44 Fil Defendants Answers to Plaintiffs' interrogatories, w/cert. of serv.			
3- 6-69	#45 Fil Plaintiffs' answers to Defendants' Interrogatories, w/cert. of serv.			
3-10-69	#46 Fil depositions of Carroll O. York, Ralph W. Eaton, James Burch, Dorothy Boone, James Clark, Mary Jane Kistler, Dr. William C. Self, William E. Poe, Gertrude Coward, J. B. Davis, Jr., Joseph Frankford, Dr. James Mikkelson, William L. Anderson, Dr. Robert C. Hanes, John W. Phillips, Dr. W. Leslie Bobbitt, Herbert L. Prickett, John W. Harrilson, Ann Hausmann, Henry L. Smith			
3-10-69	Case called - hearing on pltf.'s motion for further relief. Pltf. enters documentary evidence. P-wit. Chas L. Green s, ex and x-ex. P-wit. Daniel C. Hennigan s and ex. Def. moves testimony of this witness be stricken - motion denied. P-wit. Paul R. Leonard s, ex and x-ex. P-wit. Jack L. Larson s and ex. - JEM -			
3-11-69	Case re-called - Dr. Jack L. Larson ex and x-ex. P-wit. John A. Finger, Jr., s, ex and x-ex.; P-wit. Robert A. Passy s and ex.			
3-12-69	Case re-called - P-wit. Robert A. Passy ex and x-ex. Pltfs. rest. D-wit. James Thomas Burch s, ex and x-ex. D-wit. William C. Self s, ex and x-ex.			
3-13-69	Case re-called - D-wit. Wm. C. Self ex and x-ex.; P-wit. Ralph W. Eaton s, ex and x-ex.; D-wit. Robert C. Hanes s, ex and x-ex.; D-wit. John W. Phillips s, ex and x-ex. Further testimony for pltfs. to be taken 3-17-69. Record remains open for any further evidence either party might want to introduce. Parties to submit briefs, etc. by 3-24-69			
3-17-69	Case re-called- P-wit. Yale Rabin s, ex and x-ex. Record left open until further notice. Pltfs. to submit findings of fact, etc., by March 24 and defendants to have five days thereafter.			
3-26-69	Case re-called. D-wit. Wm. McIntyre s, ex and x-ex.			
4-23-69	#47 Ent & fil Order (JEM) - Defendant is to submit by May 15, 1969, a plan for active and complete desegregation of teachers, to be effective with 1969-70 school year; defendant to submit by May 15, 1969, a plan and time table for active desegregation of pupils, to be predominantly effective in fall of 1969 and completed by fall of 1970; Board is free to use all of its own resources and any or all of numerous methods; plan should be for effective operation of schools in a desegregated atmosphere. CO. VOL. IV, #180 Copies to counsel.			
5- 1-69	#48 Fil Court Reporter's transcript, two volumes			
5-14-69	#49 Fil Petition for Extension of Time to File Plan of Desegregation w/cert. of service			
5-14-69	#49a Ent & Fil Order (JEM) allowing extension of time extended to and including May 29, 1969. Copies to counsel. CO VOL. IV, #194.			
5-15-69	#50 Fil Motion for Temporary Restraining order restraining the def. from initiating or continuing construction of new schools or new facilities at any existing schools without specific prior approval of Court. Cert. of service attached.			
5-28-69	#51 Fil Plan for Desegregation of Schools w/certificate of service.			
5-28-69	#52 Fil Report in Connection with Submission of Plan of Desegregation ( certificate of service with Plan over: this document also.)			
5- 29-69	#53 Fil Defendant's response to Motion for Temporary Restraining Order, w/cert. of service			
6-4-69	#54 Ent & Fil Order (JEM) ordering members of Charlotte Mecklenburg; Board of Education formal parties to this action. CO. VOL. IV, #210.			

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
6-9-69	#54 Ent & Fil Order (JPM) CO. VOL. IV, #211 Ent Pursuant to Order of Court dated 6-9-69 Requesting writ w/respect to production of existing records, w/cert. of serv.			
6-10-69	#57 Fil Marshal's return on Nos. 54 and 55 - served on Board Members William E. Poe; Dan Hood; Ben Huntley; Coleman Kerry; Julia Mauldin; Sam S. McMinch III; Betsy Kelly - June 5, 1969			
6-12-69	#58 Fil Motion to set aside order joining additional parties defendant, w/cert. of service			
6-12-69	#59 Fil Plaintiffs' response to Defendants' Plan for Desegregation of schools and Motion for Civil Contempt, w/cert. of serv.			
6-13-69	#60 Fil Motion to set aside or drop William E. Poe as a defendant.			
6-13-69	#61 Fil Marshal's return - served on Board Member Henderson Belk, at 4:00 P.M. on June 10, 1969.			
6-16-69	#62 Fil Response of Defendant William E. Poe to Motion of Plaintiffs, w/cert. of serv.			
6-16-69	#63 Fil Response to Defendants' Motions to Strike Additional Parties Defendant, w/cert. of serv.			
6-18-69	#64 Fil Marshal's Return served on Dr. Carlton G. Watkins, at 1630 Mockingbird Lane, Charlotte, N. C., at 11:15 A.M, June 13, 1969.			
6-16-69	#64 Case called (JBM). Motion of individual members of Board of Education to set aside order joining additional defendants denied. Hearing on Plan for Desegregation submitted by Board of Education held. P-wit. Dan Hood s and ex and x-ex.; P-wit. Ben F. Huntley s, ex and x-ex.; P-wit. Rev. Coleman W. Kerry, Jr., s and ex.			
6-17-69	#64 Case re-called - P-wit. Rev. Coleman W. Kerry examined and x-ex.; P-wit. Sam S. McMinch III s, ex and x-ex.; P-wit. Wm. E. Poe, s, ex and x-ex.; P-wit. Julia Mauldin s, ex and x-ex.; P-wit. Mrs. Betsy Kelly s, ex and x-ex.; P-wit. Mary Hazel Hatchett s and ex.			
6-18-69	#64 Case re-called - proceeds to trial. P-wit. John Finger s, ex and x-ex.; P-wit. Henderson Belk s, ex and x-ex.; P-wit. Carlton C. Watkins s, ex and x-ex.; P-wit. Jo G. Foster s, ex. Pltf. rests. Def. wit. Dr. Robert C. Hanes s and ex; D-wit. Dr. William Self s, ex and x-ex. Dr. Robert C. Hanes re-called and x-ex. by Mrs. Betsy Kelly.; Dr. Watkins re-called by Mrs. Kelly and examined; D-wit. Wm. E. Poe re-called and examined. Defendants rest. Matter taken under advisement.			
6-20-69	#65 Ent & Fil Opinion and Order (JPM) CO VOL. IV, #220. (Copies mailed to Mr. Barkley and Mr. Waggoner. Copies picked up by Julius Chambers office). Copy to Gaston Gage and Mrs. Betsy Kelly. 8 copies sent to Mr. Barkley for school board members. (1) Motion of individual defendants to dismiss denied; (2) No citations for contempt are made; (3) Decision on faculty assignment plan deferred pending report on progress on or before Aug. 4, 1969; (4) Penalty on transferring high school athletes disapproved; (5) Transportation provision for transferring students approved; (6) Directed to halt action on Metropolitan High School until adequate proof of desegregation of school; (7) Motion restrained on construction of other building projects; (8) Defendants ordered to proceed to prepare and submit a positive plan for desegregation - Plan to be submitted by August 4, 1969.			

(Contd on page 6)

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
6-16-69	#66			
6-16-69	#67			
6-24-69	#68			
7-15-69	#69			
7-22-69	#70			
7-22-69	#71			
7-22-69	#72			
7-22-69	#73			
7-22-69	#74			
7-23-69				
7-29-69	#75			
8-4-69	#76			
8-5-69				
8-7-69	#77			
8-11-69	#78			
8-12-69	#79 a			
	#79 b			
8-15-69	#80			
8-15-69	#81			
8-15-69	#82			

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS
8-29-69	Fil defs' motion for order authorizing and approving proposed amendment to use IRWIN AVE Junior High instead of ZEB VANCE Elementary
8-29-69	#84 Ent and fil order allowing dis. motion to amend plan to use IRWIN AVE. Junior High instead of ZEB VANCE ELEMENTARY; disapproving proposal to provide transportation for any students attending IRWIN AVE. Copy mailed to counsel of record. Ten copies mailed to Waggoner for School Board Members
9- 2-69	#85 Fil pl'tfs.' motion for further relief and for show cause, w/cert. of serv.
9- 4-69	#86 Fil Court Reporter's Transcript (orig.) of proceedings of 8-5-69
9-11-69	#87 Ent and fil order releasing certain plaintiffs' exhibits to plaintiffs' counsel for period of 30 days - JBM. CO-Vol. V-#82
9-12-69	#88 Fil defs' response to motion for further relief, w/cert of serv.
9-16-69	#89 Ent and fil order (JBM) allowing Board of Education to surrender premises formerly occupied by GLIDDEN PAINT CO-Vol. V-92. Copies to counsel
10- 2-69	#90 Fil defs' motion for extension of time to file desegregation plan w/cert. of serv.
10- 8-69	#91 Fil pl'tfs' response to motion of defs. for extension of time, w/cert. of serv.
10-10-69	#92 Ent and fil order (JBM) - Board directed to file w/Court by 10-29-69 answers to numerous questions re results to date of efforts, as well as details of instructions to Mr. Weil, mission, goals, etc. Action deferred on motion for extension of time, as well as pl'tfs' motion which requests abolition of freedom of choice and appointment of outside expert to devise plan in default of Board Action. CO-Vol. IV-#123. Ten copies mailed Waggoner for counsel and school board members; copies mailed Chambers and Barkley, and two copies mailed VANORE
10-30-69	#93 Fil defendants' Report to Court Pursuant to Order of 10-10-69 w/cert. of serv.
11- 3-69	#94 Fil plaintiffs' further response to defendants' motion for extension and motion for further relief, w/cert. of serv.
11- 5-69	#95 Fil defendants' reply to plaintiffs' further response to defendants' motion for extension of time and plaintiffs' motion for further relief, w/cert. of serv.
11-10-69	#96 Fil order (JBM) - motion of defendants for extension of time denied. CO-Vol. V-#136 - also filing Memorandum Opinion
11-17-69	#97 Fil defendants' Amendment to Plan for Further Desegregation of Schools, and Report submitted in connection with 11-13-69 amendment to plan for further desegregation
11-18-69	#98 Ent and fil order (JBM) directing pl'tfs to file by 11-21-69 objections or comments to amendment to plans of defendants. CO-Vol. V-#143. Copies mailed counsel
11-19-69	#99 Fil certificate of service for amendment to plan for further desegregation and report in connection therewith.
11-21-69	#100 Fil pl'tfs. response to defs.' amendment to plan for further desegregation of schools, w/cert. of serv.
12- 1-69	#101 Ent and fil Opinion and order (JBM) that November 17 plan is disapproved; defs. directed to desegregate facilities in all schools effective not later than Sept. 1, 1970, so ratio of black teachers to white teachers in each will be approximately same as ratio of black teachers to white teachers in entire school; consultant will be designated by court; defs. directed to cooperate w/consultant, providing space, pay fees and expenses, etc.; pl'tfs.' motion for order directing immediate desegregation of entire

DATE		PROCEEDINGS	Date Of Judgment
		(Cont'd from page 7)	
12- 2-69	#102	school system deferred; further orders re restraining construction and enlargement of schools deferred; motion for citation of school board members for contempt of court deferred. CO-Vol. V-#150 Ent and fil order (JBM) appointing DR. JOHN A. FINGER, JR., consultant. CO-Vol. V-#151. Copies mailed to counsel.	
1-20-70	#103	Fil motion for immediate desegregation of public school, w/cert. of service	
1- 20-70	#104	Ent and fil order (JBM) directing Clerk to set case for immediate hearing	
2- 2-70	#105	Fil defendants' plan for desegregation	
2- 2-70		Hearing - JBM - on plaintiffs' motion for immediate desegregation. Motion taken under advisement. School Board Plan and Statement of Coleman Kerry presented to Court. Dr. Wm. C. Self s and questioned by Court. Court will discuss w/counsel need for further testimony on school plans - hearing left open	
2- 4-70	#106	Fil defendants' motion for hearing on plans for desegregation of schools, w/cert. of serv.	
2- 5-70		Hearing - JBM -(further hearing) - on plans for desegregation. D-wit. Wm. C. Self s, ex and x-ex.; D-wit. J. D. Morgan s, ex and x-ex.; D-wit. D. J. Dark s and ex.	
2- 5-70	#107	Ent and fil order (JBM) setting out guidelines for desegregation of schools. Jurisdiction retained. CO-Vol. VI-#59.	
2-12-70	#108	Fil Report of the School Board to Judge McMillan, dated this day.	
2-13-70	#109	Fil motion to add additional parties defendant and for further relief w/certificate of service	
2-13-70	#110	Fil points of authorities in support of above motion, w/certificate of service	
2-18-70	#111	Fil reporter's transcript of proceedings February 2, 1970 and Feb. 5, 1970	
2-19-70	#112	Fil Report of the School Board to Judge McMillan, dated this day.	
2-20-70	#113	Fil Notification and Request for Designation of Three-Judge Court	
2-24-70	#114	Fil DESIGNATION OF THREE-JUDGE COURT - designation of Judges Craven and Butzner, Circuit Judges, and Judge James B. McMillan, District Judge	
2-24-70	#115	Fil certificate of mailing - notification and request for designation of three-judge court and designation of three-judge court	
2-24-70	#116	Fil Tender of Evidence Nunc Pro Tunc and Objections by Defendants, together with Affidavits of Dr. William C. Self, J. D. Morgan, Louis W. Alexander, Herman J. House and Robert L. Deaton and tender of evidence contained in Report of Court Consultant delivered to Court but not introduced into evidence, w/cert. of serv.	
2-25-70	#117	Fil notice of appeal of Charlotte-Mecklenburg Board of Education, Wm. E. Poe, Henderson Belk, Dan Hood, Ben F. Huntley, Betsey Kelly, Sam McNinch, III and Carlton G. Watkins to Fourth Circuit Court of Appeals from the following orders: 1. Opinion and Order dated 4/23/69; 2. Two Orders dated 6/4/69; 3. Opinion and Order dated 6/20/69; 4. Order dated 8/15/69; 5. Order dated 8/29/69; 6. Order dated 10/10/69; 7. Order dated 11/7/69; 8. Order dated 12/1/69 and opinion; 9. Order dated 12/2/69; and 10. Order dated 2/5/70, - together w/findings of fact and conclusions of law in support of foregoing orders. Copies of notice to J. LeVonne Chambers, Ralph Moody, and Andrew A. Vanore, Jr.	
2-25-70	#118	Fil appeal bond, cash bond in amount of \$250.00 - R#47334	

(Cont'd on page 9)

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS
2-25-70	#119 Fil notice of three-judge court to consider current matters before Judges Craven, Baltzer and McMillan, at US District Court, Charlotte, N. C., at 10 A.M., Tuesday, March 10, 1970. Copies mailed - certified, return receipt requested - to additional parties, defendant. Copies mailed to other counsel by regular mail.
2-25-70	#120 Ent & Fil Order (JBM) additional party defendants made parties - Hon. Robert W. Scott, Hon. A. C. Davis, Hon. W. K. McLean, Tom B. Harris, G. Don Roberson, A. Breece Breland, James M. Postell, W. E. Roric, Jr., Chalmers R. Carr, R. T. Wilson, Concerned Parents Association, James H. Carson, Jr., and W. H. Booe. Plts. directed to prepare and file on or before Monday, March 2, 1970, proposed findings of fact and conclusions of law and a proposed order, and brief in support of their position. Other parties directed to prepare and file on or before Friday, March 6, 1970, proposed findings of fact and conclusions of law and a proposed order, and brief in support of their position. CO VOL. VI, #91
2-26-70	#121 Fil answer of Defs. N. C. STATE BOARD OF EDUCATION, Dr. A. Craig Phillips, Superintendent of Public Instruction, Robert H. Scott, Governor of the State of North Carolina, A. C. Davis, Controller of the State Department of Public Instruction, and William K. McLean, Judge of the Superior Court of Mecklenburg County to Motion to Add Additional Parties Defendant and for Further Relief, w/certificate of service.
2-26-70	#122 Fil report to Judge McMillan by Supt. Self of Charlotte-Mecklenburg Schools
2-27--70	#123 Fil Plaintiffs' motion to add additional parties defendant and for further relief
2-27-70	#124 Fil motion of plaintiffs for temporary restraining order and for contempt, with certificate of service
2-27-70	#125 Fil plaintiffs' request for admission, to be served on pltfs' attorneys within ten (10) days - w/cert. of service
3- 2-70	#126 Fil 1 copy of application for stay, w/accompanying papers, directed to Judge J. Braxton Craven, Jr., Circuit Judge
3- 2-70	#127 Fil motion for hearing on Superior Court Order in Civil 2631
3-2-70	#128 Fil Deposition of J. D. Morgan
3-2-70	#129 Fil Deposition of William C. Self
3-2-70	#130 Fil Deposition of D. J. Dark
3-2-70	#131 Fil Deposition of E. D. McMillan, Jr.
3- 2-70	#132 Fil motion to dismiss and vacate order (making Concerned Parents Assn. additional defendant) by their counsel, Wm. H. Booe, w/cert. of service
3- 2-70	#133 Fil motion to dismiss and vacate order (making Harris, Roberson et al. additional parties defendant), w/cert. of service
3- 2-70	#134 Fil motion for continuance, w/cert. of service.
3- 3-70	#135 Fil Plaintiffs' proposed findings of fact, conclusions of law and order, together w/brief and cert. of serv.
3- 2-70	#136 Fil Defendants' Application for Order
3- 2-70	#137 Fil Plaintiffs' Brief in Support of their Motion for a Temporary Restraining Order and for Contempt
3- 3-70	#138 Fil Motion of Defendants, State Officials, for Continuance, together with Notice of Motion
3- 3-70	#139 Ent and fil order continuing three-judge hearing to 10:00 AM on Tuesday, March 24, 1970. Copies mailed all counsel of record. CO-Vol. VI-#98

(Cont'd on page 10)



DATE	PROCEEDINGS	Date Filed
3- 3-70	#141 Ent and fil Amendment, correction or clarification of order of February 5, 1970. Copies mailed to all counsel of record. CO-Vol. VI-#99	
3- 4-70	#142 Fil Plaintiffs' List of Additional Exhibits and Proposed Evidence w/cert. of service	
3- 5-70	#143 Fil Defendants' answers and objections to plaintiffs' Request for Admission, w/cert. of serv.	
3-5-70	#143 Fil Motion of Robert Morgan, Attorney General of N. C. requesting that the Honorable James B. McMillan disqualify and remove himself from the panel assigned to hear this case; w/certificate of service.	
3- 5-70	#144 Fil School Board's Report to Judge McMillan for the week ending March 5, 1970	
3- 6-70	#145 Fil Objections to Plaintiffs' List of Additional Exhibits and Proposed Evidence	
3- 6-70	#146 Fil Motion of William H. Booe, et al, to Recuse and Disqualify	
3-6-70	#147 Fil motion for relie from conflicting orders from the courts , w/certificate of service	
3-6-70	#148 Ent & Fil Order (JBM) motion filed by Atty. Gen. requesting Judge James B. McMillan to disqualify himself from three-judge panel denied . CO VOL. VI, # 101	
3-6-70	#149 Ent & Fil Order (JBM) motion to recuse and disqualify by William H. Booe, disallowed. CO VOL. VI, # 102	
3-6-70	#150 Ent & Fil Order (JBM) objections of defendants to requests for admissions submitted by plaintiffs overruled, and defendants directed to answer all requests for admissions, under oath, in full, not later than Fri., March 13, 1970. CO VOL. VI, #103	
3-6-70	#151 Ent & Fil Order (JBM) order heretofore signed by Judge Snapp in Civil Action #2631 in Superior Court of Meck. County hereby suspended and held in abeyance and of no force and effect pending the final determination by a three-judge court or by the Supreme Court of the issues which will be presented to the three-judge court; and, that the Moore Case, No. 2631, be referred to the three-judge court on March 24, 1970, for such hearing and determination as that court may find proper. CO VOL. VI, # 104	
3-6-70	#152 Ent & Fil Order (JBM) court directed to prepare and file with Clerk of this court not later than Fri., March 13, 1970, all evidence they would like the court to consider hearing upon factual questions referred to in March 5, 1970 order of Court of Appeals; counsel for all parties directed to produce upon written request of opposing counsel all documents, etc. requested by opposing counsel; counsel directed to appear before the court at 2 P.M., Monday, March 16, 1970 for purpose of examining such evidence as may then be available, etc.; if further hearing is necessary after conference among court and counsel scheduled for March 16, 1970, it will be conducted on Tuesday, March 17, 1970, at 10 A.M. CO VOL. VI, # 105	
3-6-70	#153 Ent & Fil Order (JBM) parties directed to procure and supply the court by March 13, 1970, with information and stastitics. CO VOL. VI, #106	
3-9-70	#154 Fil motion to The Honorable, The Chief Judge of the United States Court of Appeals For The Fourth Circuit by Attorney Gen. of N. C., Robert Morgan, requesting that The Honorable James B. McMillan be disqualified and removed from the panel of the three-judge court.	
3-9-70	#155 Ent & Fil Order (Chief Judge, Fourth Circuit of Appeals, Clement F. Haynsworth, Jr.) denying motion that Judge McMillan be disqualified and removed from panel of three-judge court. CO VOL. VI, # 109	
3-9-70	#156 Fil notice of deposition - depositions of James H. Carson and Dr. John A. Finger and J. D. Morgan to be taken by plaintiffs on March 11, 1970 , w/ certificate of service.	

(continued)

D. C. 110A Rev. Civil Docket Continuation

DATE		PROCEEDINGS	Date of Judgment
3-11-70	#157	File motion to quash subpoena for taking deposition of J. D. Morgan, w/certificate of service	
3-11-70	#158	File plaintiffs' response to defendants' motion to quash subpoena, w/certificate of service	
3-11-70		Hearing - WW - on defendants' motion to quash subpoena for taking deposition of J. D. Morgan - Court ruled deposition should be taken at 5:00 P. M., 3-11-70.	
3-12-70	#159	File stipulation - by pl'tfs. and State Supt of Public Instruction and State Board of Education - re enrollment in public schools of N. C.	
3-12-70	#160	File Report of School Board to Judge McMillan	
3-13-70	#161	File Brief in behalf of Robert W. Scott, Governor of North Carolina; State Board of Education; State Superintendent of Public Instruction; A. C. Davis, Controller; William K. McLean, Judge of the Superior Court, and James H. Carson, Jr., Member of the North Carolina General Assembly. Copies mailed to Judges Craven and Butzner.	
3-13-70	#162	File Submissions to Court in Response to March 6, 1970 Order and Motion for Extension of time, including Maps requested by Court Order of March 6, by def. Affidavit of Herman J. Hoose, Director of Traffic Engineering for city of Charlotte att., w/cert. of service.	
3-13-70	#163	File Def's Response to pl'tf's Request for Admissions; w/cert. of service.	
3-13-70	#164	File Motion for Public Hearing or Presence of Court Reporter at Conference. w/certificate of service.	
3-13-70	#165	File Adoption of Attorney General's Brief on Behalf of the Defendant Board of Education and the Individual Board Members. w/cert. of service.	
3-16-70	#166	File Findings of Fact and Conclusions of Law submitted by Robert Morgan, Attorney General. Copies to Judges of Three-Judge Court.	
3-16-70	#167	File Deposition of J. D. Morgan.	
3-16-70	#168	File Deposition of James H. Carson, Jr.	
3-16-70	#169	File Deposition of John A. Finger.	
3-16-70	#170	File plaintiffs' submission of additional data pursuant to order of the court of March 6, 1970 (plus exhibits), w/certificate of service	
3-17-70	#171	File submissions to Court on behalf of defendants (affidavits of John W. Harrison, J. D. Morgan, John W. Harrison Sr., and letter from Chas. M. Lowe to Wm. E. Poe - all dated March 16, 1970) w/	
3-17-70	#172	File defendants' submissions pursuant to orders of March 6, 1970, cert.	
3-17-70	#173	File submissions to Court in response to March 6, 1970, order (data), w/certificate of service.	
3-18-70	#174	File plaintiffs' list of additional exhibits, w/certificate of service	
3-18-70	#175	File objection to further submission by plaintiffs of exhibit 30, part II, w/certificate	
3-19-70	#176	File Transcript of Proceedings of March 16, 17, 1970.	
3-19-70	#177	Ent and File Order (JBM) for deposition of Mr. J. D. Morgan, and allowing Exhibit 30 to be filed with Clerk, and that all parties be accorded opportunity to examine same. Copies to Counsel of record. CO Vol. #V #113	
3-19-70	#178	File Report to Judge McMillan of William C. Self, Superintendent of Schools.	
3-20-70	#179	File Brief in behalf of Tom B. Harris, G. Don Roberson, A. Breece Breland, James M. Postell, William E. Rorie, Jr., Chalmers R. Carr, Robert T. Wilson, and William H. Booe. w/certificate of service.	
3-23-70	#180	File COPY of Renewal of application for stay of portion of court order of February 5, 1970 as amended by order of March 3, 1970	
3-23-70	#181a & b	File copy of Judge McMillan's supplementary findings of fact and supplemental memorandum submitted to U.S. Court of Appeals, Richmond, dated 3/21/70	

DATE	PROCEEDINGS	Date of Judgment
3-23-69	Issuing summons making additional parties	
3-23-70	#182 Fil Defendants' Response to Plaintiffs' Supplemental Exhibit of March 20, 1970, with certificate of service.	
3-24-70	#183 Fil Plaintiffs' Memorandum of Additional Points of Authority. w/cert. of service.	
3-25-70	#184 Ent and fil order noting exceptions to order by Court on 3-6-70 disallowing motion to recuse and disqualify filed by Wm. H. Boone and others. CO-Vol. VI-#122.	
3-25-70	#185 Ent and fil order staying time table for implementation of this court's order of 2-5-70 until September 1, 1970. CO-Vol. VI-#123. JPM Copies mailed to counsel of record.	
3-26-70	#186 Fil by Defendants Charlotte-Mecklenburg Board of Education and individual members, objections and exceptions to Supplementary Findings of Fact of March 21, 1970, and motion for modification and clarification thereof	
3-26-70	#187 Fil Notice of Appeal by plaintiff. Copies mailed to counsel of record.	
3-31-70	#188 Fil Plaintiffs' appeal bond in sum of \$250.00 - United States Fidelity and Guaranty Company, Society	
3-30-70	#189 Fil Marshal's return of service of summons, complaint and exhibits for plaintiffs on additional defendants, executed by serving Whiteford S. Blakeney (individually and as attorney) and William H. Boone (individually and as attorney), representing Mrs. Robert Lee Moore et al., additional parties-defendant - on March 23, 1970	
4- 2-70	#190 Fil Deposition of J. D. Morgan, taken 3/19/70 - 98 pages	
4- 2-70	Certifying record to Clerk, USCA, Richmond	
4- 6-70	#191 Fil Further Findings of Fact on matters raised by March 26, 1970, Motions of Defendants (original filed by Court with Clerk, USCA)	
4-29-70n	#192 Fil Opinion - Three Judge Court - Copies to counsel.	
6- 9-70	#193 Fil copy of order USCA - Judge Craven's order of disqualification and memorandum of decision	
6-22-70	#194 Ent & Fil Final Judgment (JBC-JDB-JBM) - N. C. General Statute 115-176.1 prohibiting assignment by race and bussing be and is hereby held unconstitutional; pltf's. motion to hold defendants in contempt denied; various motions to dismiss are denied. CO VOL. VI, #208 - Copies to counsel	
6-30-70	#195 Fil Submission Pursuant to Order of Court of Appeals for the Fourth Circuit w/certificate of service and exhibits A (HEW's plan for the establishment of a unitary system for the Charlotte-Mecklenburg School District; exhibit B (Statement of Board Minority Members); and, exhibit C (Resolution).	
7- 2-70	#196 Fil Notice of Appeal to Supreme Court of United States by Defs. Scott, Davis, McLean, N. C. State Board of Education and Phillips. Copy mailed to counsel for all parties.	
7-7-70	#197 Fil Plaintiffs' Response to the Defendants' Submission to Order of the Court of appeals for the Fourth Circuit. w/cert. of service	
7-13-70	#198 Fil deposition of John P. Cross, July 8, 1970	
7-13-70	#199 Fil deposition of Henry L. Kemp, July 8, 1970	
7-14-70	#200 Fil deposition of Dr. Carlton G. Watkins - July 8, 1970	
7-14-70	#201 Fil deposition of William E. Poe - July 10, 1970	
7-14-70	#202 Fil motion for leave to participate as amicus curiae	
7-14-70	#203 Ent & Fil Order (JBM) granting leave for the United States to appear and participate in the July 15, 1970 hearing respecting the HEW plan. CO. VOL. #217 Copies mailed to counsel	

## D. C. 110A Rev. Civil Docket Continuation

DATE		PROCEEDINGS	Date Judge
7-15-70	#204	Fil Deposition of J. D. Morgan.	
7-15-70	#205	Fil Deposition of Dr. william C. Self.	
7-17-70	#206	Fil objection and exception to certain portions of final judgment of 3-judge court by additional parties-defendant, signed by Judge McMillan; also object to the signing and entry of the judgment. Copies to Mr. Waggoner, Hon. Robt.Morgan, Mr. Chambers, and Mr.Booe (who submitted paper). (CO V7 #8)	

## **Docket Entries**

**Motion for Further Relief**

(Filed September 6, 1968)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION No. 1974

---

JAMES E. SWANN, *et al.*,

*Plaintiffs,*

and

THE NORTH CAROLINA TEACHERS ASSOCIATION, a corporation,

*Plaintiff-Intervenor,*

—vs.—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,  
a public corporate,

*Defendant.*

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The plaintiffs and plaintiff-intervenor, by their undersigned counsel, respectfully move the Court for further relief in the above-styled cause, and, as grounds therefor, show the Court as follows:

1. This cause was initially filed by plaintiffs on January 15, 1968, seeking injunctive relief against the racially discriminatory practices and policies of the defendant in the operation of the Charlotte-Mecklenburg Public Schools.

*Motion for Further Relief*

Plaintiffs challenged at that time (a) the attendance zones of the various schools which limited or restricted desegregation; (b) the exception by the School Board of 10 Negro schools from attendance zoning; (c) the use of freedom of choice imposed on attendance zoning, permitting students assigned to integrated schools to transfer out, thus re-segregating the schools and (d) the failure of the board to take immediate and effective steps to desegregate teachers and staff personnel.

2. Following the hearing of this cause in July, 1965, the District Court entered an order dated July 14, 1965 approving of the plan adopted by the school board providing for attendance zones for 99 of the 109 schools, exception of the 10 Negro schools from geographic attendance plan, transfer of pupils from integrated schools to segregated after initial assignments, and modification of the plan with respect to teachers, requiring immediate integration of teachers. The United States Court of Appeals for the Fourth Circuit affirmed the District Court order on December 24, 1966, reasoning that the 10 excepted Negro schools had been closed, that there was no affirmative duty on the school board to act consciously for the purpose of achieving the maximum mixture of races in the schools, and holding further that any party may apply to the District Court for further relief or for modification of the District Court order, the United States Supreme Court decided *Greene v. County School Board of New Kent County*, — U.S. —, 20 L.ed.2d. 727; *Monroe v. Board of Commissioners of the City of Jackson*, — U.S. —, 20 L.ed. 2d 733, and *Raney v. Board of Education of Gould School District*, — U.S. —, 20 L.ed. 2d 727, and the United States Court of Appeals for the Fourth Circuit decided *Brewer v. School*

*Motion for Further Relief*

*Board of the City of Norfolk*, — F.2d — (Fourth Cir. #11782, May 31, 1968). It is clear from these decisions that the further modification of the District Court order of July 14, 1965, is warranted.

3. Since the District Court order of July 14, 1965, the school board has closed the 10 Negro schools, excepted from the geographic attendance program of 1965 and has established new boundary lines for the schools. In addition, the school board has constructed and made additions to several new schools. The new boundary lines established and the placement of the new schools and additions to existing schools were designed and have had the effect of perpetuating segregation in the school system. The defendant has also continued the free transfer provisions allowing students to transfer out of integrated schools and has failed to take appropriate steps to completely desegregate staff and school personnel.

4. Specifically:

(A) Defendant has perpetuated attendance area school districting in such manner as to maintain and perpetuate segregated schools. The all-white, all-Negro and tokenly integrated schools in this system result from racially gerrymandered school districts, the use of attendance areas based on racially segregated and developed housing, both publicly and privately contrived, the use of a feeder system which perpetuates the racially segregated system as existed before *Brown v. Board of Education*. This practice has been condemned both by the Supreme Court and by the United States Court of Appeals for the Fourth Circuit. Alternative methods exist here for complete disestablishment of the segregated system, and, under the decision cited



*Motion for Further Relief*

above, the school board is required to pursue these alternative methods.

(B) Defendants use of the freedom of choice or free transfer plan is clearly for the purpose of perpetuating segregated schools. The use of freedom of choice in this system, imposed on geographic attendance zones where the results have been to perpetuate segregated schools, has been condemned by the Supreme Court and the United States Court of Appeals for the Fourth Circuit. Under the decisions cited above the school board is constitutionally required to eliminate this practice.

(C) Defendant's "feeder system" has also been used to perpetuate racial segregation of students. This system, as used by the defendant, tends to filter Negro and white students, who initially began their education in segregated elementary schools, into segregated junior and senior high schools. Such a system, if properly oriented, may be a constitutionally permissible step in the integration of the public schools. See *Monroe v. Board of Commissioners of the City of Jackson, supra*. However, where such a system is used to perpetuate segregation, as here, it violates the requirements of *Brown v. Board of Education*.

(D) Defendant has failed to take immediate and effective steps to desegregate its teachers and school personnel. Where such integration has taken place, the school personnel assigned have consisted primarily of librarians, music, art, reading and Special Education teachers. Schools with large Negro or white student enrollments have fairly completely segregated faculties. This practice fails to meet the constitutional mandate of the Supreme Court, the United States Court of Appeals for the Fourth Circuit and the Court order entered in this case.

*Motion for Further Relief*

(E) Defendant has followed a practice and policy of discrimination against predominantly or all-Negro schools by providing them with inferior educational programs and facilities. Defendant has maintained ability grouping (“advanced,” “regular,” and “basic”) systems in predominantly white schools. Negro students in predominantly white schools, are for the most part, relegated to the lower groupings and given little opportunity to reach the “advanced” levels. In general, the curriculum in the white schools is broader and more varied than that in the Negro schools.

Defendant has failed to provide adequate funds for building and school construction and the purchase of needed school facilities at the all-Negro or predominantly Negro schools. Funds even though immediately allocated to Negro schools have been diverted to white schools often to the detriment of the Negro schools. Moreover, even with the construction of new schools or the additions to existing schools, the effect has been to limit the integration of schools. There is presently no plan for the construction of new schools which would bring together a highly integrated student body.

WHEREFORE, plaintiffs respectfully pray that this matter be set for hearing at the earliest possible date and that upon such hearing the Court permanently enjoin defendant:

(1) to present a plan within a period of time that will permit its implementation at the beginning of the 1969-70 school year, establishing school zone lines, school and grade consolidation, or both, in order to completely desegregate all schools in the school system, and to eliminate the racial identity of the various schools;

*Motion for Further Relief*

(2) to completely desegregate all teachers and school personnel in the school system so that for the 1969-70 school year the percentage of Negro and white teachers and school personnel in all schools in the system will approximate the number of Negro and white teachers in the school system;

(3) to cease planning and constructing schools, additions to schools, and school facilities on the basis of race and color. In this connection, that the defendant be enjoined to present to the Court, with copies being served upon plaintiffs, a report of any planned construction, addition, alteration or closing;

(4) to eliminate, effective with the beginning of the 1969-70 school year, any and all disparities in school facilities, school buildings, curriculum and equipment;

(5) to discontinue and eliminate any and all other practices in the school system based on race and color.

Plaintiffs further pray that pending a full and complete implementation of the Order of the Court that the Court retain jurisdiction of this cause; that the plaintiffs be awarded the causes herein and granted such other and further relief as the Court may deem equitable and just.

*Motion for Further Relief*

Respectfully submitted,

CONRAD O. PEARSON  
203½ East Chapel Hill Street  
Durham, North Carolina

JULIUS LEVONNE CHAMBERS  
JAMES E. FERGUSON, II  
JAMES E. LANNING  
216 West Tenth Street  
Charlotte, North Carolina 28202

JACK GREENBERG  
JAMES NABRIT, III  
ROBERT BELTON  
10 Columbus Circle  
New York, New York

*Attorneys for Plaintiff*

**Answer to Motion for Further Relief**

(Filed September 6, 1968)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION No. 1974

---

JAMES E. SWANN, *et al.*,

*Plaintiffs,*

—vs.—

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,

*Defendant.*

---

The defendant, answering the motion of the plaintiffs filed herein on the 6th day of September, 1968, says and alleges

1. The allegations of paragraph 1 deal with matters and things appearing of record in this case and this defendant is not required to either admit or deny said allegations, except that it is alleged that this cause was initially filed on January 12, 1965.

2. The allegations of paragraph 2 deal with matters and things appearing of record in this case and this defendant is not required to either admit or deny the same except that it is denied that further modification of the District Court order of July 14, 1965 is justified.

*Answer to Motion for Further Relief*

3. Answering the allegations of paragraph 3, it is admitted that since said Court order of July 14, 1965, the defendant has abolished the dual school system as it relates to race, has made some necessary changes in boundary lines of attendance areas, has constructed and made additions to new schools and old schools and has permitted pupils to transfer from one attendance area to another when there was sufficient room in such other attendance area to accommodate the pupils. Except as herein admitted the allegations of paragraph 3 are denied.

4(A). The allegations of paragraph 4(A) are denied.

4(B). Answering the allegations of paragraph 4(B), this defendant denies that the transfer plan permitting pupils to transfer from one attendance area to another has been for the purpose of perpetuating segregated schools and this defendant alleges that such transfer plan has been used by pupils without regard to race and has proven of value and convenience to pupils without regard to race.

4(C). The allegations of paragraph 4(C) are denied.

4(D). The allegations of paragraph 4(D) are denied.

4(E). The allegations of paragraph 4(E) are denied.

Wherefore, the defendant prays the Court that the relief demanded by the plaintiffs in said motion be denied, that this action be dismissed and that this plaintiff recover its cost and have such other and further relief as it may be entitled to receive.

**BROCK BARKLEY**

*Attorney for the Defendant*

814 Law Building

Charlotte, North Carolina 28202

**Transcript of Hearing March 10, 1969****[18] \* \* \***

All right, the plaintiffs may proceed with their testimony.

Mr. Chambers: We would like to identify Plaintiff's Exhibit #1, Defendant's answers to plaintiff's interrogatories of September 9, 1968, defendant's answers being dated October 31, 1968.

Court: This is the defendant's answers?

Mr. Chambers: Yes, sir, defendant's answers. As Plaintiff's Exhibit 2 the defendant's answers to plaintiff's interrogatories of January 31, 1969, defendant's answers being dated March 3, 1969. We would like permission of the Court to substitute the original of these answers now on file with the Clerk in lieu of our copies.

Court: I was looking at the exhibit and didn't realize you were asking a question. You asked if the original might **[19]** be substituted, it may be, yes.

Mr. Chambers: Plaintiff's Exhibit 3, Collective Exhibit 3, consists of the depositions of Mrs. Gertrude Coward, Mr. James Burch, Mrs. Mary Jane Kistler, Dr. Robert C. Hanes, Mr. Joseph Frankford, Mr. John B. Phillips; Mr. William L. Anderson, Mrs. Ann Hausmann, Mr. Carroll C. York, Mr. John W. Harrison, Mr. Henry L. Smith, Mr. Ralph W. Eaton, Mr. Herbert L. Puckett, Mr. James Clark, Mr. J. B. Davis, Jr., Dr. James Mikaelson, Mrs. Dorothy Boone, Dr. Leslie Bobbitt, Dr. William C. Self, and Mr. William E. Poe.

Plaintiff's Exhibit #4 I'd like to identify an overlay showing the racial housing pattern in the City of Charlotte.

Court: That's an overlay on itself or on something else?

Mr. Chambers: It's an overlay of the County map of the various district lines of the School Board.

Mr. Chambers: Prepared by Mr. Green. We will call him as the first witness. We just wanted to identify them

*Colloquy*

now. As Plaintiff's Exhibit 5, a census tract map of Mecklenburg County for 1960.

Court: What is a census tract map?

Mr. Chambers: The Bureau of the Census prepares various districts for the County for census purposes.

Court: What does a tract mean?

**[20]** Mr. Chambers: That is the district, the tract itself.

Mr. Barkley: We are not admitting the competency.

Mr. Chambers: Plaintiff's Exhibit 6, we have a racial breakdown on the census tract map showing the percentages of non-whites in the various tracts in the City of Charlotte as of 1960. As Plaintiff's Exhibit 7 we have an overlay of that census tract map showing the racial composition as of 1968, October 31, 1968. As Plaintiff's Exhibit 8 we have a map showing the income for family in the various tracts of Mecklenburg County as of the 1960 census. As Plaintiff's Exhibit 9 we have a zoning map for the City of Charlotte for 1947.

Court: Mr. Chambers, we have some visitors in the back who may be personally involved in the suit. Is the nice looking lady in the back row in charge of these folks? Are you the teacher?

Voice from the Audience: Yes, I am.

Court: If you'll tell us who you are, we'll be glad to welcome you to the court as long as you want to stay.

Mrs. Kelley: Thank you. I am Betsy Kelley, member of the School Board and this is a group of students from St. Gabriel's Elementary School, eighth graders.

Court: We are glad to have you with us, Mrs. Kelley.

Mr. Chambers: Plaintiff's Collective Exhibit 10, zoning ordinance for the City of Charlotte 1968 and the **[21]** zoning maps with index for the City of Charlotte 1968. Plaintiff's Exhibit 11, copy of zoning ordinance for the County of Mecklenburg.



*Colloquy*

Court: Is that current?

Mr. Chambers: Current. Plaintiff's Exhibit 12, a publication of the Charlotte-Mecklenburg Planning Commission entitled *The Next 20 Years* with the map showing the recommended residential zoning and industrial zoning for the next twenty years for the City of Charlotte. Plaintiff's Exhibit 13, a map showing the major thoroughfares for the City of Charlotte dated June 1, 1968. Plaintiff's Exhibit 14 a map showing the urban renewal areas for the City of Charlotte dated November, 1968. Plaintiff's Exhibit 15, a publication of the Charlotte-Mecklenburg Planning Commission entitled *Residential Blight in Charlotte* dated September, 1962. Plaintiff's Exhibit 16, a copy of a publication of the Charlotte-Mecklenburg Planning Commission entitled *Review of Community Facilities*, dated 1964. Plaintiff's Exhibit 17, a copy of publication by the Charlotte-Mecklenburg Planning Commission entitled *A Statistical Summary of Population and Economic Data* dated March, 1968. Plaintiff's Exhibit 18, publication of the City of Charlotte entitled *Model Neighborhood Proposal* dated April, 1967. Plaintiff's Exhibit 19, a copy of the *Workable Program Report* submitted by the City of Charlotte to the United States Department of Housing and [22] Urban Development, dated January 27, 1969. Plaintiff's Exhibit 20, a two volume publication of the Charlotte Area Fund prepared by the North Carolina Fund entitled *A Profile of Community Problems* dated 1964. Plaintiff's Exhibit 21, a publication of the Charlotte Area Fund prepared by the North Carolina Fund entitled *Characteristics of Individuals in Areas Served by the Charlotte Community Action Program*, dated August, 1967. Plaintiff's Collective Exhibit 22, a copy of the Code of the City of Charlotte 1946, Chapter 14; Code of the City of Charlotte 1946, Chapter 1; Code

*Colloquy*

of the City of Charlotte 1931, Chapter 5, Section 320(a), Chapter 14, Sections 483 through 486, Chapter 15, Section 544; Code of the City of Charlotte dated 1902 showing the City census Part 1 and the unofficial appendix attached to the code. Plaintiff's Collective Exhibit 23, interim reports and summary prepared by Engelhardt & Engelhardt for the Charlotte-Mecklenburg Board of Education.

Your Honor, for the purpose of the hearing we would like to identify also exhibits that are attached to defendant's answers to interrogatories which show elementary, junior high and senior high school distribution for the City of Charlotte.

We'd like to follow with Exhibit 24, a map of the City of Charlotte elementary school districts; as Plaintiff's Exhibit 25 the map of the City of Charlotte junior high [23] school districts; and as Plaintiff's Exhibit 26, the map of the senior high school districts for the school system.

Court: What vintage is that?

Mr. Chambers: 1968-69.

Court: Are they separate, you say the City of Charlotte.

Mr. Chambers: The Charlotte-Mecklenburg School System.

Court: You're still talking about the same thing. Those three are all 1969.

Mr. Chambers: 1968-69 school year. We'd like to call at this time Mr. Green.

Court: Let's take a ten minute recess.

## SHORT RECESS

Mr. Chambers: In connection with Plaintiff's Exhibit 14, we have a statistical listing by the Charlotte Redevelopment Commission showing where families in the urban

*Charles L. Green—for Plaintiffs—Direct*

renewal areas were located and we'd like to have this document attached to our Exhibit 14.

Court: All right.

Mr. Barkley: We haven't had a chance to read any of these or check them. We have agreed that we will admit that the source of the material comes from where it appears that it comes. This particular document, it doesn't show it, but we have one like it and we will admit it comes from the Redevelopment Commission.

Court: Let me see if I can put this question in a [24] light that will leave everybody at ease about it. I intend to entertain all objections to any evidence before the record is closed, but I intend to consider all evidence that is pertinent to the case that is introduced if, in my opinion, it is pertinent to the case and is not incompetent for some clear reason. But all of these exhibits are being accepted subject to your right to make any objection that appears when you have had time to study them and before the record is closed with the presumption being that the Court is going to sift the wheat from the chaff in making any decision that is made and with your objections in mind when that is done.

Mr. Barkley: It is understood that we do not admit the competency of any of this material.

Court: That's all right.

Mr. Chambers: As Plaintiff's Exhibit 27 we'd like to introduce a copy of the regulations of the Department of Agriculture dealing with the school lunch program.

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CHARLES L. GREEN, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

*Charles L. Green—for Plaintiffs—Direct**Direct Examination by Mr. Chambers:*

Q. Will you state your name, please? A. Charles L. Green.

Q. What is your address, Mr. Green? **【25】** A. 711 Baugh Building in Charlotte.

Q. What is your occupation, Mr. Green? A. I am engaged in Marketing Research.

Q. Would you describe for the Court what this consists of? A. It consists of various studies, statistical, primarily in the development of information dealing with a number of things, socio-economic problems, the testing of radio commercials, interviewing people for consumer products, sales, any sort of information that is concerned with marketing or social problems.

Q. Does your work consist at any time of counting houses or where people live or determining where people live? A. That is correct. I have done a considerable amount of this type of work.

Q. How long have you been involved in this particular kind of practice? A. Since 1954.

Q. In studying where people live, have you concerned yourself with racial areas where people live, whether they were black or white? A. I have done a study on this, yes, sir.

Q. Have you studied residential patterns according to the income of families? A. This was in connection with the study on the white and non-white population distribution.

**【26】** Q. Now, were you requested, Mr. Green, to make a study of the City of Charlotte for us for this lawsuit? A. That is correct.

Q. Were you requested to do a map to show the racial housing patterns in the City of Charlotte? A. That is correct.

*Charles L. Green—for Plaintiffs—Direct*

Q. Were you requested to do a study for the plaintiffs to show the income of families according to the census tract? A. That is correct also.

Q. Did you prepare such maps? A. I did.

Q. I show you a document which has been marked plaintiff's Exhibit 4 and ask if you prepared this document. A. I did, sir.

Q. Would you state for the record what this exhibit is. A. This is an overlay of a map of Mecklenburg County. On the overlay the census tracts are outlined and the overlay itself is color-coded by census tract as to the percentage of non-white population within the individual tract. These percentages are as of September 1, 1968. I think you should clarify that in view of the other exhibits.

Q. The overlay, Plaintiff's Exhibit 4, is a representation of the non-whites in the various census tracts as of September 1, 1968? A. Right.

**[27]** Q. Now I show you a document marked Plaintiff's Exhibit 5 and ask if you will tell us what that is. A. This is a blank census tract map showing the census tracts within the Charlotte area, commonly called the urbanized area of Charlotte.

Q. Who prepared that document, Mr. Green? A. The base map was prepared by the Bureau of Census.

Q. Do you know the basis for the divisions of the tracts? A. The Bureau of Census, in connection with a local committee, establishes census tracts and they try as much as possible to get homogeneous groups of population, income, size, not necessarily geographic size but the size of the population should be fairly consistent. The average of 4000 is the national average within a census tract.

Mr. Waggoner: We object to this line of testimony because it's based on what he assumes other

*Charles L. Green—for Plaintiffs—Direct*

people have done and at best on hearsay.

Court: Is this identification necessary for any testimony he is going to give? It's a map of an area. Do I understand you're going to fill in what you want the Court to know about his testimony?

Mr. Chambers: Yes, sir.

Court: I think the objection is technically well taken. I'll sustain it.

Q. Mr. Green, is there a publication that sets out how the [28] census tracts are established? A. Yes, sir.

Mr. Chambers: I'd like to identify as Plaintiff's Exhibit 28 a document prepared by ServAnalysis of Charlotte entitled Charlotte, North Carolina, Census Tracts 1 through 54, estimates of number of households and populations by tract as of June 1, 1966.

Mr. Barkley: It's not contended that was prepared by him, is it?

Mr. Chambers: By Mr. Green. I'm just going to establish that.

Q. Would you look at that document, Mr. Green, and tell us what it is? A. It is an update of the 1960 census figures, estimated number of households and population by census tract in the '54 urban census tracts of Charlotte as of the 1st of June, 1966.

Court: Updated from—?

A. 1960 census figures.

Q. Did you prepare this document, Mr. Green? A. I did.

Q. I show you another document marked Plaintiff's Exhibit 6 and ask if you will state what this is? A. This is a

*Charles L. Green—for Plaintiffs—Direct*

map showing by census tract the percentage of non-white population in Charlotte as of 1960. These are 1960 census figures.

**【29】** Q. Did you prepare that document, Mr. Green?

A. I did, sir.

Q. I show you a document marked Plaintiff's Exhibit 7 and ask if you will state what that is. A. This is an overlay for Exhibit 6, which is the previous map, showing the estimated percentages of non-white population in the census tracts of Charlotte as of 1968, September 1.

Q. I show you a document marked Plaintiff's Exhibit 8 and ask if you will state what that document is. A. This is a map showing by census tracts the median family income for the Charlotte census tracts as of 1960. These also are Census Bureau figures.

Court: Is this exhibit something you prepared?

A. Yes, sir.

Court: You prepared #4, #6, #7 and #8?

A. That is correct, Your Honor.

Q. Mr. Green, would you state to the Court the procedure you followed in preparing Exhibit #4? A. Well, having the 1960 census figures and the percentages and the number of people within the various tracts according to race, I had conferences with the City Planning Commission, with the Redevelopment Board, relocation people, with real estate agents, with the Chamber of Commerce, with various and sundry people who would have some knowledge of any shift in population since 1960. We established roughly the areas **【30】** into which there had been population shifts, especially of the non-white. That

*Charles L. Green—for Plaintiffs—Direct*

was really the main thing we were trying to determine, where the non-white population had migrated since 1960. Having established these areas, we were then able to work from small maps that the Planning Commission has and street by street to come up with percentages of the non-white population on these streets. This was done only in the areas of transition. There were some areas that were quite obvious there had been no change, no significant change. Having established these percentages, of non-white population, we could then equate that to numerical population. The overlay was prepared from the percentages. It is color-coded in 20% gradations.

Q. Looking at the overlay, Mr. Green, would you tell the Court the various percentages represented by the colors?

Court: Are they set out on the face of the exhibit?

Mr. Chambers: Yes, sir.

Q. Would you accompany me over here to this map and explain how this overlay is to work on the maps of the School Board? (The witness does so.) Mr. Green, where would your greatest concentration of non-whites reside?

A. Your greatest concentration of non-whites would be in the areas of shaded purple. That percentage runs from 81 to 100% of non-white population, in these purple areas.

Q. That would include this section down here indicated by 23? [31] A. That would include census tract 23.

Court: Is that near Griertown?

A. Yes, sir.

Q. As you indicated just a moment ago, the overlay is based on the various census tracts? A. That is correct. The black lines on the overlay are the outlines of the census tract



*Charles L. Green—for Plaintiffs—Direct*

boundaries. These are the census tract numbers.

Q. Now, while you're there, Plaintiff's Exhibit 8 is also based on the census tract as of 1960, is that right?

Court: This exhibit on the board, #4 and 24, this speaks as of what time, 1968?

A. Yes, sir.

Court: Go ahead.

Q. This exhibit shows the income level in the community as of 1960, is that correct? A. That is correct.

Court: You're talking now about exhibit what?  
Mr. Chambers: Exhibit 8.

Q. The only difference in your Exhibits 6 and 7 and Exhibit 4 is that you show a change in the population in Exhibit 6 and 7 from 1960 to 1968. A. Right.

Q. Take the stand. (The witness does so.)

Mr. Chambers: I'd like to mark as Plaintiff's Exhibit **【32】** 29 copies of the census tracts 39 and 36, and as Plaintiff's Exhibit 30 copy of the census tract 38.

Q. Mr. Green, would you look at Exhibit 29 and explain to the Court what that is? A. Your Honor, this is a more detailed map of all portions of these two census tracts. They are two that are in transition as far as black and white inhabitants go.

Court: Those tracts are what?

*Charles L. Green—for Plaintiffs—Cross*

## A. Tract 36 and Tract 39.

Court: Where is that in the town?

A. Both of these tracts are bounded on the north by the Southern Railway tracks. They are in the western part of town, West Boulevard runs through them. You get into the Clanton Park area.

Q. Would you look at Exhibit 30 and tell the Court what that exhibit is? A. This is also a more detailed map of census tract 38 which is north of Yorkmont Road. It runs over off the Revolution Park area. All three of these tracts are together. This is the northern portion and this includes also portions of the Clanton Park, Rolling Wood area.

Q. Mr. Green, you prepared the Exhibit 4, the Exhibit 6 and 7, the Exhibit 29 and 30 which you have just been testifying about. In your opinion do they truly and accurately represent the non-white population in the County of Mecklenburg? 【33】 A. Yes, sir, I think they do. We consider they are accurate within plus or minus 5% which, in the fields of statistics, is quite an acceptable figure.

Q. You also prepared Exhibit 8, which is the income distribution by census tract for 1960. In your opinion does that exhibit truly and accurately represent the income by census tract for 1960? A. I think that as far as Government figures go, that is 100% accurate.

Mr. Chambers: I have no further questions.

*Cross Examination by Mr. Barkley:*

Q. Mr. Green, what is your profession? A. Marketing research.

Q. Did you graduate from college in Marketing Research?

*Charles L. Green—for Plaintiffs—Cross*

A. No, sir. My degree is Bachelor of Science on Commerce. It included courses in marketing, marketing research, statistics. At that time we were required to write a thesis for a degree and my thesis was in the field of Marketing and Research, or Polling, really, at the time.

Q. Where did you graduate? A. Washington and Lee University.

Q. When did you graduate? A. 1949.

Q. And you went into this business in 1954? **[34]** A. Yes, sir.

Q. For whom do you prepare charts and make surveys of this nature? Have you done this before? A. Yes. Some of my clients have included local banks in connection with the location of branch banks, the Chamber of Commerce, the Model Cities people, several insurance companies. There is a wide range of people who need and use marketing research of one kind or another.

Q. And your specialty is Marketing Research, I would figure. A. Yes, sir.

Q. Now, this overlay that you have here, Exhibit #4, it's not based on school attendance lines under any circumstances, is it? A. No. My commission was to work by census tracts.

Q. And you worked solely by census tracts? A. That is correct, yes, sir.

Q. And you have no knowledge as to the attendance areas in those particular sections? A. Not as such, no, sir. I tried to do no correlation between the two.

Q. Can you tell us the approximate distance between the southern boundary of this purple, which I believe you say is colored, and the northern boundary, just your best estimate as to the number of blocks or miles that it would be. A. Sir, would you object if I came closer?

*Charles L. Green—for Plaintiffs—Cross*

**[35]** Q. Well, the northern boundary of the Negro area with the southern boundary of the Negro area, which appears to be about Dilworth Road. A. It runs up to I-85, if I am not mistaken.

Q. That is what it may be, yes. A. Well, I would estimate that that would possibly be five miles.

Q. Now what is the yellow here, the orange, what is this supposed to show? A. You have the color-coding chart on the overlay, sir. I do not have it before me.

Q. You don't remember what your code was? A. No, sir, I code so many things it's difficult to remember.

Q. Well, on your code of orange you have 61-80%, what does that mean? A. That means that within the census tracts coded in orange your estimated non-white population is between 61 and 80%.

Q. It would be between 61 and 80%? A. Yes, sir.

Q. Now, what area of the community is that, do you know? A. That is west of Pineville Road and parts of South Boulevard, your large area there.

Q. Well, would that also take in large residential areas in there? A. Yes, sir. Parts of those tracts are industrialized but the southern part of, I think it's tract 38, the lower part there, **[36]** has had a tremendous residential growth in the past several years.

Q. And you say that is only 61% white? A. Non-white, sir.

Q. 61% non-white? A. Yes, sir.

Q. Do I understand that a majority of the people living in the area shown by the orange color would be Negro?

A. That is correct.

Q. What residential areas does it embrace?

*Charles L. Green—for Plaintiffs—Cross*

Mr. Chambers: Your Honor, Mr. Green would like to come down and look at the map.

Court: Go on down and look at the map.

A. I would like to look at it, sir. (The witness goes to the map.)

Q. This area here 38 and 39, first tell me, if you can, roughly where does it run? A. This is Camp Green, I believe it runs south of the Southern Railway tracks over to the Wallace Neil Road. It runs then on Byrum Drive and down to Beam Road to the Arrowood Road and then over to the Pineville Road.

Q. The southern part of that tract is Pineville Road, then? A. The boundary, yes, sir.

Court: Mr. Green, you're going to get me confused right at the beginning. I think Pineville Road runs **[37]** north and south and the Southern Railroad runs east and west. I'm wrong, of course, geographically, but that's the way it always seems to me. You're talking about an area west of the Pineville Road and south of the Southern Railroad generally speaking?

A. Yes.

Court: And it runs generally along the west side of South Boulevard and Pineville Road for three or four miles and extends along the Airport Road and south of that?

A. Yes, sir.

Court: What is the northern boundary, the upper boundary the way the map is hanging now?

*Charles L. Green—for Plaintiffs—Cross*

A. The upper boundary would be the Southern Railway.

Q. And what is this neighborhood in here? A. Arrowood Road down here.

Q. And you say that is 60% black? A. Between 60 and 80%, yes, sir. You see, you have a large concentration up in these areas.

Q. What does this green mean? Is that industrial or business? A. No, sir. That means between 41 and 60% of the population is non-white. (The witness returns to the stand.)

Q. Did you make the samples yourself from which you determined your estimate of the population within the area? A. I don't understand your question, sir.

**[38]** Q. Did you examine the residents to determine the number of Negro residents in a given area? A. Yes, we sampled. We did a great deal of visual inspection.

Q. How many people would you see during the course of your sampling? A. In certain areas there was no need to sample. In a transition area in some cases we checked each household.

Q. What are the transition streets or areas, can you tell me that? A. I can tell you by tract numbers. Would that help any?

Court: It won't mean a thing.

A. Well, your main areas are in the Clanton Park, Rolling Wood and Barringer Wood areas. You have some transition up off Tuckasegee Road. You have had a great deal over in the northeastern part of town, headed up towards North Charlotte, starting at the Seaboard Railroad tracks and working up north towards the North Charlotte area, up through Belmont and Villa Heights. That is in a tremendous state of transition. You're having some transition off

*Charles L. Green—for Plaintiffs—Cross*

North Tryon Street. Those are the major areas of transition.

Q. Your study wasn't concerned with the white race as far as its location and transition. A. Only in respect to if you get percentages for one, you have the percentage for the other.

Q. That would be by deducting the black percentage from the [39] total, would it not? A. Yes, sir, that's correct. . .

Court: Did your studies take into account that we've got a lot of pastureland where there used to be a lot of people living?

A. We allowed for that, yes, sir. It also takes into consideration the fact that there has been a considerable amount of demolition of housing through the Urban Renewal Programs and express right-of-ways, and such.

Q. You were really looking for transition areas, weren't you? A. I was looking for the total picture. The transition areas were the ones that we had to devote the most time to. There was no point, really, in taking a sample of the Greenville area, for instance, because that is, I would say, 100% non-white population.

Mr. Barkley: That is all I care to ask him, if it please the Court.

Mr. Chambers: Does the Court have any questions?

Court: No, sir.

Mr. Chambers: Thank you very much, Mr. Green.

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[41] \* \* \*

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*Daniel O. Hennigan—for Plaintiffs—Direct*

DANIEL O. HENNIGAN, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Chambers:*

Q. Will you state your name, please? A. I am Daniel O. Hennigan. The O is Othello.

Q. What is your address, Mr. Hennigan? A. 2500 Newland Road.

Q. That's here in Charlotte. A. Here in Charlotte.

Q. What is your occupation? A. I am an ordained Presbyterian Minister and a real estate broker.

Q. Would you tell the Court your educational background? [42] A. Yes. I completed the elementary and high school education, Salisbury, North Carolina; I am a graduate of Johnson C. Smith University, both college and seminary with majors in mathematics and Bachelor of Divinity.

Q. Have you had any further study since then? A. Not formally. I have attended a number of institutes in relationship to appraising and in relationship to the pursuit of brokerage work, etc. I have not pursued anything in terms of a Masters or Doctorate.

Q. Were you born in Charlotte? A. I was not. I was born in Salisbury and at the age of 2 I came to Charlotte. My father and grandparents, this is their home, and from age 2 on I have lived principally in Charlotte and Salisbury, North Carolina. Because of family reasons I did my elementary and high school education in Salisbury. However, until that time I lived in Charlotte and after which I returned to Charlotte.

Q. Where did you live when you first moved to Charlotte?



*Daniel O. Hennigan—for Plaintiffs—Direct*

A. My home place is on Douglas Street, 2224-26, and my grandparents on my father's side have lived here as long as I can remember.

Q. Is Douglas Street in the northwestern part of Charlotte? A. It is.

Q. Is it out near Johnson C. Smith University? A. Beyond Johnson C. Smith University. Douglas Street intersects [43] Beatties Ford Road, or enters Beatties Ford Road. It does not go all the way across, just in front of the City Water Works.

Q. When you first moved to Charlotte had Beatties Ford Road developed to the extent that it is today? A. It had not. Beatties Ford Road was, of course, one of the main and respected streets and so was Douglas Street at that time and perhaps was the section where most of the echelon Negroes lived when I was a boy.

Court: What is your age, Mr. Hennigan?

A. Sorry you asked that, sir, but I am 43.

Q. Now, when you first moved to Charlotte had the Griertown area been developed to the extent that it is today? A. Grier Heights had not been developed. When I first moved to Charlotte there was some scattered families in that section. Arthur Grier developed the Griertown section I think somewhere around age 12 or 13. I was somewhere in that age range when the Grier Heights section developed as a community as such under the leadership of the late Mr. Arthur Grier.

Q. Had the Cherry section of Charlotte developed to the extent that it is today? A. The section in Cherry was a budding community and had developed to some extent but not to the extent to which it is today. Cherry, as most of

*Daniel O. Hennigan—for Plaintiffs—Direct*

us who are settlers in Charlotte know it, is the section that was principally developed for [44] the convenience of those who were servants to the Myers Park and I believe the Dilworth area, and this characteristically is what Cherry has meant to the City of Charlotte and to us who have lived here.

Q. Would these servants be black or white?

Mr. Barkley: I don't want to be interrupting the court but we object to all of this testimony. I take it to be testimony relative to racial patterns. I don't want to keep interrupting the Court but it is understood we can object to these questions after they are all in?

Court: Yes, sir. It's all right with me if you object at any time.

Mr. Barkley: I just don't think it's competent.

Court: I have a little trouble knowing what is relevant and what isn't. This would be competent, if relevant, and I think we just have to go ahead and find out what the relevance is. There may not be any. You may object any time or later on, if you want to. The real problem is one of relevance to any question the Court has to decide.

Mr. Barkley: Yes, sir, I think relevance is more correct than my idea of incompetency. The point that I am undertaking to make is that the testimony with reference to racial patterns, residential patterns, is [45] not relevant to this case.

Court: I'd have to turn my strainer down a little finer than I have it now to say it's not relevant. So let's go on and see what he says. If it's not relevant, it will be disregarded.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Q. Mr. Hennigan, what were basically the Negro or black sections of Charlotte when you moved to Charlotte?

Court: When is this you're talking about now, what year?

Q. What year did you move here, Mr. Hennigan? A. 1927, or '28.

Q. What basically were the Negro or black areas of Charlotte at that time? A. Greenville was a Negro community at that time. The Brooklyn area and, of course, the First Ward area, and we have mentioned already the Cherry community and of course, the Grier Heights area. These were the principal Negro communities at the time I came to Charlotte.

Court: How do you locate the Greenville area today?

A. How do I locate it?

Court: How would you describe it?

A. Generally the northwest section. Statesville Avenue back over to Beatties Ford Road and Beatties Ford Road on now to the new I-85 which, I guess, would be a natural divider. We normally consider it to be in the northwest section.

**[46]** Court: How far into town do you come in locating what you refer to as Greenville?

A. We come to the Seaboard Railroad. That comes across, let's see—there's a school there on Burton Street, Fairview

*Daniel O. Hennigan—for Plaintiffs—Direct*

I believe it is, and the Seaboard Railroad track comes across there on the other side of that property and on—

Court: Generally north between Beatties Ford and Statesville Road?

A. That's right. Oaklawn Avenue, perhaps, would be the other boarder for Greenville going north?

Court: Oaklawn?

A. Oaklawn.

Court: Oaklawn is a Quartermaster Depot, isn't it?

A. No, that's on Statesville Avenue, between Graham and Statesville, and Oaklawn is, I guess, the last natural thoroughfare this side of Newland Road and the next thoroughfare going across to Beatties Ford would be I-85.

Mr. Chambers: I'd like to identify as Plaintiff's Exhibit 31 a map of the City of Charlotte as of 1950 with various census tracts and wards.

Mr. Barkley: Let the map speak for itself. We admit the source of the map is as stated on the bottom but we don't admit anything else.

Court: All right, sir.

Mr. Chambers: And as Plaintiff's Exhibit 32, census [47] population figures by wards for the City of Charlotte 1940.

Q. Mr. Hennigan, you were talking about the general Negro areas of the City as of the time that you moved

*Daniel O. Hennigan—for Plaintiffs—Direct*

here. Could you point out by words on the Exhibit 31 the areas you were referring to? A. Yes, I can. What we normally consider to be the Brooklyn area is designated on this map as Wards 1 and 2. What we consider to be the First Ward area normally—

Court: You say that First Ward was thought of as including Brooklyn?

A. No. I am saying that what we consider to be the Brooklyn area is designated as Wards 2 and 1 on this map. What we normally consider to be First Ward is that section north of East Trade Street and I believe it's shown here as Wards 4 and 3.

Court: Wasn't the line between First and Second Ward East Trade or Elizabeth Avenue?

A. Just a minute, I think we have the map turned around. This is north here. In that particular case, that would be correct. South of Trade would be Wards 1 and 2 and north of Trade would be Wards 3 and 4. May I correct that with the map then being in its proper direction we find then that what we normally consider to be the Brooklyn area is designated on this map as Wards 3 and 2 and what we normally consider to be [48] the First Ward area is designated on this map as Wards 1 and 4.

Q. Now, where would the residents around Johnson C. Smith be indicated on that map, in which ward? A. In Ward 4 would be the designation of Johnson C. Smith on this map. Of course, it's beyond Ward 4.

Court: Did First Ward extend west of Tryon Street? It did not, did it?

*Daniel O. Hennigan—for Plaintiffs—Direct*

A. It did not extend west of Tryon. It extended east of North Tryon.

Court: I had the notion that the wards were numbered starting at Tryon you just go around the clock, 1, 2, 3 and 4, clockwise.

A. That's generally correct. I believe those four wards are around Tryon Street and I believe Ward 4 is from Tryon to Graham or Statesville, basically, and then of course the Greenville area adjoining Ward 4 going in a northerly direction which is not shown on that map.

Court: Does this make a difference in reading the exhibits?

Mr. Chambers: No, Your Honor, we just wanted to indicate where the areas were.

Court: Let's go on to something else, then.

Q. Mr. Hennigan, you have had an opportunity to observe the growth and development of Charlotte since you moved to Charlotte? **[49]** A. Yes, I have.

Q. Now, how long have you been in real estate as a broker? A. Since the spring of 1962.

Q. Has all of that time been here in Charlotte? A. It has been.

Q. Have you in your work had an opportunity to purchase property for clients? A. I have.

Q. Have you had an opportunity to sell property for clients? A. I have.

Q. Have you had an opportunity to rent apartments or houses for clients? A. I have.

Q. Have you had an opportunity to know the City of Charlotte residentially? A. I have.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Q. Have you in your work, Mr. Hennigan, encountered any discrimination in the sale or rental of houses?

Mr. Barkley: I'll object to that. I don't believe—how can you answer a question like that.

Court: What is the pertinence of this, Mr. Chambers?

Mr. Chambers: Your Honor, our contention here is that the residential housing pattern has developed through public and private discrimination and we propose to show through Mr. Hennigan and his experience in real [50] estate that we have had private discrimination in Charlotte in the sale and rental of housing. The Fourth Circuit Court of Appeals in the Norfolk school case indicated this would be a relevant and pertinent inquiry by the Court and we were trying to establish here that we have the housing pattern because of practices that the Court said should be considered by the District Court. I might say further that in the Fourth Circuit opinion that we are referring to, Brewer versus Norfolk City School Board, the Court specifically indicated to the District Court that the inquiry there should be whether the racial housing pattern in the City of Norfolk developed from public or private discrimination or both and that, if so, that the School Board would not be able to utilize the basic boundary lines they were then employing for the assignment of high school students to the school. This is our contention here relevant to the elementary, junior high and senior high schools.

Mr. Waggoner: We have a copy of the Brewer case and I can read the language Mr. Chambers was

*Colloquy*

referring to in its entirety, if you like. It's about one paragraph.

Court: I'm a little puzzled. You know, it's rough enough on a green judge when you allege what you're complaining about, but when you don't allege what you're **[51]** complaining about the theory is just a little strange, you make it even harder. You don't say anything in your pleadings about this subject you're now going into.

Mr. Chambers: In the motion for further relief we do, Your Honor.

Court: This is what I've just gotten through reading and I don't find anything in here on that point. That's not the end to inquiry on it, of course, but I just say you're launching off on a mission of your own on uncharted country as far as this case is concerned. Does it make any difference on your theory whether you do or don't prove the motive by which a pattern of living is developed?

Mr. Chamber: Your Honor—

Court: I don't think we can sit here and try the whole community and go into all the forty thousand reasons people build houses where they did as opposed to another over a forty-year period.

Mr. Chambers: We would contend that it should not make any difference. However, the Fourth Circuit said that this should be an inquiry by the District Court.

Court: Let me see the Brewer opinion.

Mr. Waggoner: Yes, sir. This is not very clear.

Court: Here it is. I don't see that an historical **[52]** study of why people bought, built, sold and rented houses is going to help us any, but if you want to pursue it, I'll hear what he knows about it.



*Daniel O. Hennigan—for Plaintiffs—Direct*

Q. Mr. Hennigan, have you encountered in your practice any discrimination in the sale, racial discrimination in the sale or rental of houses in Charlotte?

Mr. Barkley: I object to that as to the form of the question. Discrimination, I take it, is a conclusion from facts and not a fact itself.

Mr. Chambers: I'll rephrase the question.

Court: I think the objection is well taken. I don't know the history of Charlotte thoroughly but I would figure from what the place looked like twenty-five years ago that there had been mighty little built here from 1930 to about 1947, or '46, '45, and that whatever pattern was established, whatever building was done in these zones you're talking about had already been done in 1927 when he moved to town. This is a theory you're developing by an incompetent witness, I think. What he could testify about what happened after 1962 in the way of discrimination probably wouldn't be of any pertinence because you had a situation existing at that time in which the present school system operated. Am I wrong about that?

Mr. Chambers: Your Honor, I think we can establish [53] some practices of discrimination that further perpetuated the housing pattern subsequent to '62. In addition, I think that from 1929 when he moved to Charlotte until the time that he actually became involved in real estate, he can testify of his own knowledge of practices that existed that contributed to the racial housing pattern. That testimony as well as that subsequent to 1962 would clearly be competent. We have some other matters

*Daniel O. Hennigan—for Plaintiffs—Direct*

that are now in evidence relative to discriminatory practices even prior to 1929. We didn't propose through live witnesses to go back and show exactly how every house was set up or the housing pattern developed prior to the time he came in.

Court: To make this sort of question competent, I think you just probably have to ask him for occasions he knew of that people had refused to buy, sell or rent to people of the Negro race. This is what you're talking about, isn't it?

Mr. Chambers: That's correct, Your Honor.

Court: If he knows of instances of that sort, why he can testify to that.

Q. Mr. Hennigan, do you know of any instances where Negroes have been denied the right to purchase houses in white or predominantly white areas in the City of Charlotte? A. I know of, yes, some instances where this has been true [54] I was not the collaborating broker, however, in instances where Negroes have actually gone to see houses and have offered to buy and did not have the opportunity to do so. I have had personal experience where Negroes—and I have been a part of three groups where we have sought to buy land that we could develop housing for our people or for all people and for various reasons even though signs have been on these properties, either the selling broker would come back and say either we have a contract or I'm sorry, the price has suddenly gone up, and in other instances the property was suddenly taken off the market and reappeared three and four months later.

Mr. Barkley: Your Honor, I move that answer be stricken out on the ground that it states no fact

*Daniel O. Hennigan—for Plaintiffs—Direct*

whatsoever that would tend to show any discrimination.

Court: Motion denied.

Q. Mr. Hennigan, let me ask this; have you followed the Charlotte News & Observer in its advertisement of housing in the City of Charlotte? A. I have.

Mr. Barkley: I object to that.

Court: Objection overruled.

Q. Have you followed the Charlotte News in its advertising of housing in the City of Charlotte? A. I have.

【55】 Q. Prior to 1968, Mr. Hennigan, would you state whether they advertised housing for colored and housing for white? A. This has been the pattern of advertising as long as I can remember.

Mr. Barkley: Move that be stricken, the testimony what some third party has done.

Court: Motion denied.

Q. Now, Mr. Hennigan, would you tell us further some of the specific instances you know of where Negroes have been unable to purchase houses in white or predominantly white areas? A. I was involved, I was the broker in one instance where I had a house for sale in a white community and, of course, I had a purchaser. In this instance it was not a case of a non-cooperative owner, the owner was perfectly willing to sell the house to any qualified buyer. However, upon the submission of an application for a mortgage loan, the lending institution refused to get involved on the grounds that it might cause some reprisals on the part of

*Daniel O. Hennigan—for Plaintiffs—Direct*

their patronizing clientele if they should make a loan in this particular area.

Mr. Waggoner: Objection, motion to strike as to what the lending institution did, or reason it did the same.

Court: Motion denied.

Q. Go ahead, Mr. Hennigan. A. I think that completes that story and that was the end of that case. We, of course, could not find a lender that would make [56] a loan to this particular family in this particular instance. I had, of course, another experience where I had a house that was listed. Again, the owner had no compunctions about who bought the house. The house was for sale and the house was, of course, put on the market and was the next day bought off the market. The presumption was . . .

Mr. Waggoner: Objection.

Court: Don't tell us about presumptions. Tell us what you know.

A. All right. The house was bought off the market by a mortgage company who bought it in for a community organization that was formed in this particular community. There was an agreement when these homes were initially sold by this same mortgage company that developed the area with regard to the swimming pool. It was a covenant relationship whereby the initial owner had right to share and use the swimming pool but in the event that the property should be sold and should be sold to a client that was not desirable to this particular association, then the association had the right to buy the property back in, and the house was bought by this particular firm for this as-

*Daniel O. Hennigan—for Plaintiffs—Direct*

sociation, and subsequently sold to a white family.

Q. Are you familiar with the development of Double Oaks? A. I am.

Q. Now what section of Charlotte is that in, Mr. Hennigan? A. Double Oaks is just beyond the Greenville area to the north **[57]** of Oaklawn Avenue in the northwest section of the City of Charlotte.

Q. Is that presently occupied by Negroes or whites? A. Negroes.

Q. Was there built at the same time that Double Oaks was built an apartment project that is now occupied predominantly by whites? A. In what community, sir?

Q. In the section of Charlotte near Wilkinson Blvd. A. These two projects were built, according to my recollection, about the same time and the one on Wilkinson was for whites and the one called Double Oaks was for Negroes.

Q. Are you familiar with the development of Dalebrook? A. I am.

Q. Will you tell the Court approximately where that section is located in the City of Charlotte? A. Dalebrook is in the northwest section fronting on Newland Road, bound by I-85. Incidentally, I happen to live in that community.

Q. Would you tell the Court whether a similar white section was built in the City of Charlotte at the same time by the same developer? A. Yes, sir. There were several sub-divisions at the same time being built by the same developer and these were for white and the Dalebrook community was for Negroes.

**[58]** Q. Are you familiar with the development of University Park? A. I am.

Q. Would you tell the Court what section of town that is in? A. Northwest section of town. It's to the west of Beatties Ford Road. LaSalle Street and I-85 and Beatties

*Daniel O. Hennigan—for Plaintiffs—Direct*

Ford Road are the boundaries of this subdivision.

Q. Is that section or subdivision occupied by Negroes or whites? A. Negroes.

Q. Are you familiar with the development of Northwood Estates? A. I am.

Q. Would you tell the Court whether that section is occupied by Negroes or whites? A. It is occupied by Negroes. It's also in the northwest section beyond I-85. Prior to its development it was in the county, the Long Creek community. The developer was able to have it included as a part of the City of Charlotte and I'm sure it's the way it's classified currently. It is the only community outside of the city limits of Charlotte, so far as I know of, for Negroes that is incorporated as a part of the City of Charlotte.

Q. Let's indicate something on the map. Is this the area here, Northwood Estates?

Court: Is that north of I-85?

Mr. Chambers: North of I-85.

Court: And straddling Beatties Ford Road?

**[59]** Mr. Chambers: Yes.

A. Northwood Estates fronts on Beatties Ford Road and runs west from Beatties Ford Road about a quarter of a mile or maybe half a mile from I-85 going north.

Q. Would this be the section commonly referred to as University Park? A. That's right.

Q. That's tract 46. A. I can't see the tract but from what you say and from what I can see from here, I didn't bring my glasses—I do have an impairment—that is it.

Q. Would this be the section commonly referred to as the Dalebrook section, tract 48? A. To the east of Newland Road, bounded by Newland and I-85.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Q. That's correct? A. Yes.

Q. Mr. Hennigan, had Myers Park been developed at the time you came into the city? A. Yes. It was a developed community. However, it has developed some since that time. Dilworth was budding and the new community at the time I came.

Court: What did you say was the new community?

A. Dilworth.

Court: Dilworth is a much older community than Myers Park, isn't it, Mr. Hennigan?

**[60]** A. Both of them are old communities. When I say budding community, perhaps it was an expanding community at the time. I am not saying that Dilworth was beginning or a new community at that particular time, but Myers Park basically was developed and has not really developed substantially beyond the point that it was, I think, twenty-five or thirty years ago. However, the Dilworth community has had some substantial numbers of new homes built in that length of time.

Court: I think you've got it confused with business building but I don't think it matters here.

A. Well, of course, you know, we didn't really have much occasion to go into these communities unless we had a specific purpose there and that primarily would have been to perform some service. Most of what we knew is what we heard or read. So I could be in error on a lot of that.

Q. Mr. Hennigan, are you a member of the Charlotte Board of Realtors? A. I am.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Q. How long have you been a member of that organization? A. About a year and a half. October a year ago I was admitted to the Board of Realtors.

Q. Will you tell the Court what the Charlotte Board of Realtors is? A. The Charlotte Board of Realtors is a trade organization composed of persons who are interested in the real estate industry [61] or those who are practicing real estate brokerage and who subscribe to a specific code of ethics.

Q. How many Negroes are members of that Board? A. One, and that's me.

Q. Would you tell the Court your experience in becoming a member of the Board of Realtors? A. I'll be glad to. I went into real estate in 1962. Of course, there is a required state examination.

Mr. Waggoner: If the Court please, it seems this is straying quite far from the inquiry we are about today.

Court: I agree with you. Can you give us any reason for pursuing this, Mr. Chambers?

Mr. Chambers: Yes, sir. We are trying to establish, Your Honor that there was not only private discrimination but institutional discrimination in the sale and rental housing and we think in this testimony we can point out some evidence to substantiate the institutional discrimination.

Court: Now let me see where we're going. How much of your evidence is addressed to this general area, that the present Charlotte school plan is defective because once upon a time and now people practice racial discrimination in the sale and renting of houses? How big a part of your case is this?



*Colloquy*

Mr. Chambers: We have three witnesses we propose to [62] call to testify about the discrimination in the sale and rental of houses.

Court: Let's try the lawsuit first and then get around to that. I don't think it matters at all for the purpose of the present community problem we're dealing with why people are living now where they are now living. I'll be glad to hear you put all that evidence in but it does not help me in coming to any conclusion nor the School Board as to what we ought to do here.

Mr. Chambers: May I request of the Court whether the Court will take judicial knowledge of that fact.

Court: I'll be glad to hear your testimony on whatever you want to offer. I might take judicial knowledge of more than you can competently prove. I'd like to get to the lawsuit first.

Mr. Chambers: Your Honor, we considered it an important part of the lawsuit. We think that a showing of this further compounds the illegality of the Board's utilizing boundary lines on the pattern. If the Court feels, however, that this evidence would not be necessary, we can, of course, forego that. We would request, however, permission to depose the witnesses that we have.

Court: Well, if you've got them here it's cheaper for everybody, especially your client and including the [63] rest of us, to take the testimony while they're here. But I'm just telling you I don't see where it helps or hurts. I might be more impressed by it if you said more about it in the complaint or motion.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Mr. Chambers: We did refer in the motion, we thought, to the matter but perhaps not as clearly as we should have. We have, in fact, taken a lot for granted in the motion in terms of what the courts were now saying relative to utilization of boundary lines. We had assumed that this evidence would be some evidence that the Court would want to consider. Be that as it may, may we have a five minute recess and regroup our troops and move on to something else?

Court: Well, I'm not going to cut you off. If you want to make out a prima facie case on this theory, go head, but maybe under the circumstances that's the proper thing for you to do, but I think we're all far more interested in other phases of the case.

Mr. Chambers: Would the Court permit me to go ahead and finish with Mr. Hennigan and then go into something else?

Court: Sure.

Q. Now, Mr. Hennigan, would you go ahead and describe the problems you had in becoming a member of that Board?  
A. Yes. After completing the state examination and, of course, [64] opening up my business I did apply for membership in the Board and I was told that I would have to have at least three years of experience and that I would have to have an office and it would have to meet certain prescribed conditions, and etc. At the end of the third year I applied again and, of course, was told that I was not eligible for membership in that the bylaws had been changed and I would have to attend the Realtors Institute and complete Course 1. I then, of course, applied for admission to the Realtors Institute and found there was an-

*Daniel O. Hennigan—for Plaintiffs—Direct*

other requirement which was that I had to have three sponsors and since I was not a member of the Board I could not voluntarily enroll in the Institute. After, I guess, about three or four months and conversing with some thirty or forty different real estate brokers in this town appealing to them for their consideration of this request, I did get three persons to sign this application form and I went to Chapel Hill and, of course, took Course 1. At the end of Course 1 I then was advised that my enrollment was still contingent upon evidence that was to be received by the Institute and I learned that a state investigation had been launched and that persons from the state office had to come to Charlotte and had conducted an inquiry with regard to my business. And then on Saturday I was advised that my examination would be given and that I would be considered as a full-fledged student and I asked for the permission to then take Course 2 [65] while I was there, which was being offered the following week, in anticipation of maybe some changes in bylaws by the time I got back to Charlotte and I thought I'd get ahead of the game and go ahead and take Course 2. My examination paper was graded and I did pass Course 1 and was advised if I could get the same three endorsers then, of course, I could come back that Monday and enroll in Course 2. I then came back to Charlotte that Saturday afternoon and made contact with the three persons who had endorsed me for Course 1. One was out of the City and after a series of experiences I did make an appointment with the other two and they signed it and I went back to Chapel Hill that Monday and was admitted tentatively on the condition that the third person who was out of the city would endorse the application. On Wednesday I was advised that the third person had sent them a telegram ex-

*Daniel O. Hennigan—for Plaintiffs—Direct*

pressing his desire to sign and that he would do so and so I did complete Course 2. I came back to Charlotte and then went back to apply for membership in the Board and, having completed Course 1 and 2 successfully, I was advised that I could not then enroll or make application unless I got a member of the Charlotte Board of Realtors to get the application form. I could not go to this office to the Board office and myself pick up a form and fill it out and submit it for consideration. I then talked to some, I guess, sixty persons, members of the Board, and all of these declined the invitation to go get an [66] application for me and I had an attorney who worked with me and used his influence to get some of them to do so. After this I wrote the Board a letter and asked the Board of Directors if they would give me an application as a whole, hence eliminating the necessity of some one person either putting himself out in this particular way, just to pick up a form and give it to me. The Board, of course, declined, indicating that this had not been done in the past and saw no reason to break with the tradition to do this for me. I believe some four or five months later some Negroes had raised a concern that no Negro had been admitted to the Board and I believe one such person is present in this room, and this was a meeting with the Board of Realtors and some other interested persons and this group was told that there was no Negro in the City of Charlotte that would qualify for membership in the Board and they then advised the Board that they understood that I was qualified. The following day I was asked to pursue the matter again to see if I couldn't get an application. It so happened that I happened to have been in a governmental office the following day and one of the persons who was a part of this group wanted to know why I had not been admitted.

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I recited the story I have just recited here and this governmental agency then turned to one of their real estate practitioners and asked if he was aware of this and in the meanwhile the conversation then ended, that this **【67】** Real Estate Board member agreed to use his influence to get an application for me. He picked the phone up in our presence and called the Board office and after an hour and a half of conversation by telephone he was advised that if he wanted to do this he would, of course, have to do it and suffer any consequences that may come. He assured the person at the other end of the line that he was willing to assume any responsibility for any of the consequences and if he would leave the application where he could pick it up, he would be down to get it. I got the application in that way and this same person said that he would sign it and he would use his influence to try to get another Board member to do so, and I went to the other Board member and indicated all that I had done in the pursuit of this and this person agreed to sign and then I finally got a third person. I had to have three. In addition to this I got some supplementary references from two banks and from two attorneys that I knew and had worked with down through the years who could attest to my character and this sort of thing. I believe about two months later, after a series of conferences, these conferences centered around the concern that the Board had because my application had registered interest in becoming a full member of the Board to include a member of multiple listing. I was advised that if I pursued this matter of multiple listing that I could do so but that it would go against me and that perhaps I could **【68】** be hurt seriously if I insisted on this.

Q. Would you tell the Court what multiple listing is?

*Daniel O. Hennigan—for Plaintiffs—Direct*

Mr. Waggoner: If Your Honor please, I'd like to move to strike the last answer. It's based on statements attributed to other people, suppositions, it's hypothetical. It has nothing to do with this lawsuit, it's irrelevant.

Court: I think so, too. Motion denied.

A. Multiple listing is a separate organization of the Board and—

Court: You'll have to admit it's a good story, though.

A. And so is the Charlotte Board of Rental Agencies. These are sub-corporations of the overall corporation. You do have to be a member of the Board before you can become a member of multiple listings. Multiple listing is where all of the brokers who are members of multiple listing pool listings and any member has the right to show any home that has been listed and registered with the multiple listing agency. There is a key, for example, if I were a member of the multiple listing I would have a key and in the event that the house was empty I would not have to say to anybody when I wanted to go see the house or who I was bringing to see it. However, there is a code of ethics and matter of courtesy. If the home is occupied, naturally the brokers work together and in the interest of the owner the appointments are normally made through the listing broker. But all have the right to show [69] it and all have the right to sell it. The agreement is that the commission—and this is how we make our money in this field—the commission is split between the listing broker and the selling broker.

Q. Mr. Hennigan, if you were a member of multiple listing with the Board, you would have the opportunity, would

*Daniel O. Hennigan—for Plaintiffs—Direct*

you not, to show Negroes homes in white areas that might be listed in multiple listing? A. I'd have the opportunity to show anybody a home anywhere in the City of Charlotte if it's listed in multiple listing and I would have the opportunity to take a Negro and to show a home in a white community if I were a member of multiple listing.

Court: You are not now a member of the multiple listing?

A. I am not. We entered into an agreement, sir. I consented that perhaps what they were saying might be real true and, being young in the field and being in an area all alone, I did not see I had much opportunity to wage a battle with this strong body, but I did insist that, well, there is a fee that we have to pay. Currently it's \$1,200.00 to become a member and, of course, you have to be approved by the multiple listing committee and I did ask for the privilege of knowing and the privilege of joining prior to any subsequent changes in the rules or in the governing documents governing this [70] particular agency. Primarily if any increase in multiple listing enrollment should occur, I wanted the right to do this and then I also asked for the right to work and I asked the Board of Directors to use their influence among any brokers in the City of Charlotte who happened to be broadminded enough and willing to work with a Negro and I insisted that I did not particularly care for a working relationship or to force a working relationship on any who did not care to work with me. The Board agreed to use their influence to do this and also agreed to give me the privilege to join prior to any subsequent changes in the multiple listing bylaws.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Mr. Chambers: Your Honor, I'd like to mark as Plaintiff's Exhibit 32—

Mr. Barkley: I don't believe we've gotten him on the Board yet, Mr. Chambers.

A. I'm sorry, yes, you're right. After these conferences and these agreements then, of course, I was admitted to the Board membership, October a year ago. Of course, from the time I first pursued this until the time I got in was three and a half to four years.

Court: Are you selling any more houses?

A. I have not had the cooperation I anticipated. I do have some real friends, I think, at least I hope I have, but we have not been able to get down to a working relationship. I am not sure I can say just what the character of the relationship [71] is except we are good friends. We eat together, have dinner occasionally and I am on one committee that meets about twice a year and this has been the extent of my participation thus far.

Q. I show you a document marked Plaintiff's Exhibit 33 and ask you if you will state what this is. A. This is the Code of Ethics and this is published by the National Association of Real Estate Board.

Mr. Barkley: We object to that.

Mr. Waggoner: Could we take a look at this before he reads from it?

Court: Certainly.

Q. Would you state whether or not as a member of the Charlotte Board of Realtors you are governed by that Code of Ethics?



*Daniel O. Hennigan—for Plaintiffs—Direct*

Mr. Barkley: Objection.

A. I am, yes.

Mr. Barkley: That's another third party's interest. I don't see how it's got any business in this court . . . without someone competent to identify it.

Court: He said it's a copy of the regulations under which his trade organization operates and to which he subscribes. Isn't that what he said?

Mr. Barkley: Approximately, but I wonder if I would be competent to sit on the witness stand to testify to the Code of Ethics of the American Bar Association.

【72】 Court: I think you would, Mr. Barkley, as well as anybody I know.

Mr. Barkley: Well, I'll try that on Your Honor some day.

Q. I will show you another document marked Plaintiff's Exhibit 34 and ask you to state what that is. A. This is a circular that, of course, came to all members of the Board of Realtors. The date is March 8, 1968, and I did receive a copy of this and it has to do with the concern for the legislature to abolish the practice of allowing real estate brokers to list properties honoring the prerogative of the owner to say to whom this house may be sold and to whom it may not be sold.

Q. Was that sent out by—

Court: Now, what you said probably made good English but I got lost in it. That circular is in favor of—

*Daniel O. Hennigan—for Plaintiffs—Direct*

A. To have the option to say this. As perhaps most you know, the Real Estate Board nationally objected to the recent legislature which made it unlawful for an owner to restrict in his listing agreement to whom the house may be sold and this has been one of the practices, I think nationally and certainly here in Charlotte, if an owner listed property with a real estate agent, the owner had the right to say it may be sold to whites and not to Negroes and many of these listings were accepted under this arrangement. Of course, when this [73] open housing legislation came up, then of course the real estate industry nationally was a lobbying agency against the enactment of open housing legislation. This circular, of course, came from our Board. I received a copy of it and have one in my file, asking that we use our support to write our legislators and ask them to vote against this particular bill and that the inherent right of the owner should be supported and that this should be a continuing practice.

Q. I show you a document marked Plaintiff's Exhibit 35 and if that is a circular also from the Charlotte Board of Realtors. A. This is.

Q. Did you receive such a document in the mail? A. I did.

Q. As a member of the Board of Realtors? A. That's right. Might I say this, I don't know what the record would indicate but I did respond to this circular and I wrote to our Congressmen and I did ask them to use their influence to support the bill and I think at one of our meetings it was indicated that perhaps I was the only Board member that did this.

Court: What is the date of that circular?

A. March 25, 1968.

*Daniel O. Hennigan—for Plaintiffs—Direct*

Court: What did they ask you to do?

A. This comes from the Board of Realtors and Home Builders Association of Charlotte. The subject is: Forced Housing. [74] It indicates that the Directors of the Board of Realtors and the Directors of the Home Builders Association hereby reassert their support of the principle of equal opportunity in the acquisition or employment of real property . . . enjoyment, rather, of real property, and the right of individuals to determine the disposition of that property, and of course it goes on to say how they feel about it and they also indicate on this letter that the forced housing measure is supposed to remove discrimination in housing and, of course, the contention at that time was that they were taking the right away from the owner and giving it to a minority group and to take one right and to give it to another was discriminatory. This is the essence of this letter.

Q. Mr. Hennigan, the section of the Code of Ethics that dealt with the right of the owner to direct how his property should be sold or rented is what section? A. This is Part 2, Article 2, and the heading is Relationship to Client, and of course this is the article that, according to the Code of Ethics, gave to the real estate broker the real tie with an owner and indicated that his first responsibility, of course, was to the owner or the person who lists property with him and his rights should be protected above all else and that this was the moral responsibility of the realtor, to uphold and protect the private interests of the owner of the property, and of course this is the article that primarily [75] gave to the realtor the strength in his claim that the right of the owner was, of course, inherent and that he then as an agent for the owner should have his first

*Daniel O. Hennigan—for Plaintiffs—Direct*

loyalty to the owner and the request of the owner. So then the owner had the right when the property was listed with a broker to spell out how this property would be disposed of and realtor, then, of course, was bound contractually to an agreement with this owner in terms of a listing agreement.

Q. Would one be in violation of the Code of Ethics as a real estate agent if one sought to sell a house to a person of a race other than the one indicated by the owner? A. Today that is true. This, of course, in our national association and in our state association last September all of this, of course, has been legally clarified. The real estate industry has been advised that it is no longer constitutional for this to be done and any broker now listing property is in violation to list it indicating that it must be sold to a white or to a Negro or to some other ethnic group. So the listing agreements today do not carry along with it these built-in prerequisites that the owner has spelled out.

Q. You have had an opportunity to look at Plaintiff's Exhibit 4, which is this overlay here, indicating the racial composition of the census tracts of the City of Charlotte and the County of Mecklenburg, have you not? A. I have.

【76】 Q. You've also had an opportunity to observe the various neighborhoods in the City of Charlotte—

Mr. Barkley: I object to his leading now.

Court: That's the poorest objection you made yet, Mr. Barkley. That's the only one you made that hasn't bothered me.

Q. Have you, Mr. Hennigan, had an opportunity to observe the various racial housing situations in Charlotte? A. Yes, I have.

*Paul R. Leonard—for Plaintiffs—Direct*

Q. In other words, you know where the blacks stay and where the whites stay generally? A. Yes, I do.

Q. In your opinion does this map, overlay Exhibit 4, fairly and accurately depict where the blacks and whites stay in the City of Charlotte and County of Mecklenburg? A. It is a fair and relatively accurate picture of the housing situation today in the City of Charlotte.

Mr. Chambers: Your witness.

Mr. Waggoner: We have no questions.

Mr. Barkley: We move all the testimony be stricken out.

Court: The motion is denied but, although tremendously interesting, I'm still not sure it helps me to decide the case. Motion is denied.

Mr. Chambers: Thank you very much, Mr. Hennigan. May I approach the bench with opposing counsel?

【77】 Court: Yes, sir.

(Conference is had out of the hearing of the Court Reporter.)

## SHORT RECESS

PAUL R. LEONARD, a witness for the plaintiffs, having first been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Chambers:*

Q. State your name, please. A. Paul R. Leonard.

Q. What is your occupation? A. I am a Minister, ordained Presbyterian Minister.

Q. How long have you been a resident of Charlotte? A. Since June of 1964.

*Paul R. Leonard—for Plaintiffs—Direct*

Q. Have you had occasion, Rev. Leonard, to study the housing patterns and practices in the City of Charlotte?

A. Yes, I have.

Q. What has been your occasion to make that study? A. I made it in relation to a class in Urban Sociology that I was taking at the University of North Carolina at Charlotte and I chose the topic of Housing Patterns in Charlotte because of my relationship to the Charlotte Fair Housing Association as its President.

Q. What is the Charlotte Fair Housing Association?

A. This is a voluntary association of a membership of about [78] sixty-five citizens that was formed in February of 1968 to work for an end to discrimination in the sale and rental of housing in Charlotte and Mecklenburg County.

Q. Under whom were you studying at the time that you did this paper? A. Dr. Barbara Goodnight.

Q. And would you tell the Court how you proceeded with your studies?

Court: Was that here or in Chapel Hill?

A. It was here. From work with the Fair Housing Association we had compiled by the help of the Redevelopment Commission, primarily depending upon them, we had compiled a map, drawn up a map which showed the racial patterns in housing as they existed in Charlotte in the summer of 1968. My main attempt in the paper was to see what changes had taken place and how fast over the last eight years. I had really wanted to go back further than 1960 but the census material prior to 1960 was not broken down by tracts as it is now and as it was in 1960. So the paper was primarily an attempt to compare what had happened in Charlotte in the last eight years and to ask the

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question of why, what were the factors involved in the changing neighborhoods and in the racial patterns as they existed.

Q. In your work did you use census figures? A. I used census material; I used a good bit of material furnished by the Charlotte-Mecklenburg Planning Commission, one [79] report in particular. I can't quite remember the title but I think it was entitled Blight September 1962, and this report the Planning Commission had, by census tract, broken the census tracts into blocks, indicated which areas of the city were occupied by blacks and which areas were occupied by whites. So it became a relatively simple matter to use this as a basis of comparison with the present racial patterns.

Q. Did you consider any data supplied you by the Re-development Commission of the City of Charlotte? A. Yes, I did. I considered this in relation to the question of what had happened in those eight years.

Q. Did you consider any data supplied you by the Charlotte Public Housing Authority? A. Yes, primarily data concerning the existing housing projects and those that were planned and the racial makeup.

Q. Did you reach any conclusions? A. Yes. The major conclusion was that Charlotte is rapidly dividing . . .

Mr. Waggoner: Your Honor, we object to his giving a conclusion which is in effect an opinion. He is not qualified as an expert.

Court: Well, without couching it in terms of conclusions or estimates, tell us what you observed about the housing patterns or situations of last summer compared [80] with whatever the other time was you started with.

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A. Yes, sir. I observed that the city was divided and rapidly the division was increasing between blacks and whites living . . . with whites living in the east and blacks predominantly in the west and kind of taking a line from North Tryon to the Plaza to Independence Blvd., coming south on the map following those streets I found that, according to my figures, 96% of the Negro population in Charlotte lived west of that line. There appeared to be to me, if you consider the areas that were in transition, only one area in the west that still remained predominantly white and where transition had not taken place. So I found the city divided and the division increasing.

Q. Did you have an opportunity to see any data from the Redevelopment Commission of the City of Charlotte relative to relocation of families from the urban renewal areas? A. Yes, I did.

Q. I show you an exhibit marked Plaintiff's Exhibit 14 and ask if you had a chance to see that document. A. Yes.

Q. Does that document show that families in the redevelopment areas involved have been relocated in primarily Negro areas?

Mr. Barkley: He's telling us what some other document says. Wouldn't that document be the best evidence of that?

【81】 Court: It would, but if it shows that and enables me to put a label on that document while he's going at it—

A. I found that more than 50% of the families had been moved into areas which, according to the 1960 census, were high density black.

Court: What percentage?



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A. 50%, and the others had been moved into areas that since 1960 had changed from predominantly white areas of residence to high density black today.

Q. You referred to a document that you used in your study a moment ago called Residential Blight. Is this a copy of the document you referred to? A. Yes, it is.

Q. And that's Plaintiff's Exhibit 15. A. Yes.

Q. Did you observe anything else relative to the public housing in the City of Charlotte? A. As I began to try to answer the question of why the racial patterns existed as they did, in looking at the makeup of the public housing racially and in a conversation with Mr. Cock, who is the assistant to Mr. Dillehay, he indicated that approximately 95% of the occupants of public housing were Negroes.

Mr. Barkley: Move to strike Mr. Cock's testimony.

Court: That testimony is technically incompetent. The [82] motion is sustained. Have you got some other way of proving those figures, whatever they are.

Q. Were you given any figures, statistics, Rev. Leonard, about the occupation of public housing racially?

Court: Consistent with my ruling, he can't testify what those figures are? Have you got them in some official publication?

Mr. Chambers: We'll have them in the morning, Your Honor. The Public Housing Authority is giving them to us this afternoon.

Court: This is a valid objection he's making and I guess I ought to sustain it as to competency of the witness to testify about what he's saying.

Mr. Chambers: That's correct.

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Q. Rev. Leonard, I show you a document which has been marked as Plaintiff's Exhibit 36 and ask if you will state what that document is. A. This document is a mimeographed copy of the paper I did on the housing pattern in Charlotte.

Mr. Chambers: We have no further questions.

Court: You can review that if you wish and make objection to it later. The use I would make of such a study is simply as a convenient way of having collected whatever the figures are on which he's making his conclusions. You can make your objection now and I'll rule [83] on it after I read it and find out what parts of it are really incompetent and what parts are not.

Mr. Waggoner: We noted a difference in the exhibit we have and the one introduced and by agreement of counsel we are going to substitute our Page 3 in the official exhibit.

Court: All right. 36 is the one you're talking about?

Mr. Chambers: 14, Your Honor, the list showing the relocation of families in urban renewal. We have to duplicate his copy of Page 3 and insert that in the morning.

Court: Take it away now so we can be sure we've got it right in the morning.

Mr. Chambers: All right.

*Cross Examination:*

Q. With reference to your study on housing patterns, did you pay any particular attention to school districts as such? A. No, I didn't. In one particular instance involved

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in the paper which I reported about, this was concerning the Barringer Woods elementary school where there had been a rapid turnover of population from white to black in the year 1967-68 and, as President of the Fair Housing Association, I was involved in two community meetings in the Barringer Woods community prior to the opening of school in September of 1968 in which one black family had moved into the neighborhood and the [84] residents were coming together to ask what shall we do. In the meetings prior to the opening of the school they were pretty much in agreement to stay and not flee. They had been approached by realtors indicating that blacks would be moving in and their property values would be going down, but the day school opened the racial balance in Barringer Woods school had shifted because of the change in the other community from a predominantly white school to where there were now, according to the people, 75% black. And the—

Q. With reference to the Barringer—

Mr. Chambers: Your Honor, we request that the witness be permitted to finish his answer.

Court: Finish the rest of that statement.

A. And the day the school opened seven more houses went up for sale.

Q. Barringer Woods is a subdivision in itself, is it not?

A. Yes, fifty-six homes, right.

Q. Are there any other subdivisions in that school district? A. I don't know the makeup of that district. I think that the children from Clanton Park, which is the area that had gone from all white to black, I feel the children from this must be filtering into the Barringer Woods school. I don't know.

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Q. Are you familiar with Rolling Wood? A. Are you talking about the school?

Q. No, Rolling Wood subdivision. 【85】 A. Yes, next to Clanton Park.

Q. All of these areas were all white within the past several years, were they not? A. That's correct.

Q. And now they are practically all black, is that correct? A. Right.

Q. The white people sold their homes to the colored people, is that right? A. Yes.

Q. Your study was based primarily on the census tracts as we see them on the overlay, is that correct? A. That's right.

Court: Have you talked to any members of the School Board about these problems that you were studying?

A. I have on occasion talked to one, yes, sir.

Q. Who was the one School Board member you talked to?

A. Mrs. Kelley.

Mr. Waggoner: I have no further questions.

Mr. Chambers: I have nothing further. Rev. Leonard has indicated he would like to be excused unless the defendant needs him.

Mr. Waggoner: We have no objection.

Court: Thank you, Mr. Leonard.

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**[352]** \* \* \*

DR. WILLIAM C. SELF, a witness for the defendant, having first been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Waggoner:*

Q. Would you state your name and residence address, please? A. William C. Self, 6137 Devern Drive.

Q. What is your official position with the Board of Education? A. I am Superintendent.

Q. Dr. Self, what is your training in the field of education? A. I had my undergraduate degree at Catawba College; Masters Degree and Doctorate at the University of North Carolina at Chapel Hill.

Q. What is your educational experience from a work standpoint? A. I was a teacher and assistant principal, a principal in the elementary field at Winstom-Salem; I moved from the principalship to Directorship in Instruction in the central office capacity; I was Assistant Superintendent in Instruction in Winston-Salem City Schools; moved to Charlotte as the **[353]** Associate Superintendent prior to becoming Superintendent. This is the second year.

Q. Dr. Self, what is the size of the staff at the Board offices at the present time? A. In terms of the professional staff I think the number is 3558 teachers.

Court: Are there any exhibits that have these figures in them?

A. I can furnish a fact sheet which has these figures in it. I have only one copy right at the moment. I mentioned the teaching staff, 3553 is the exact figure. To this you add 404 other members of the staff. You begin to get into the non-professional people, the clerical, cafeterial, custodial, maintenance, transportation, television station, and

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the grand total would be slightly in excess of 5800 employees total.

Q. Dr. Self, how does this compare with other employers in the school district? A. I understand that the Charlotte-Mecklenburg School System is the largest employer in the County.

Q. With reference to the dimensions of the school district, have they always been the entire County of Mecklenburg? A. No. They have this size since 1960, the year of the consolidation of the two existing school systems. That was the Mecklenburg County System and the Charlotte City System.

【354】 Q. Were these two systems autonomous of each other? A. Yes, they were.

Q. As I understand it, you came here in 1962, is that correct? A. That's correct.

Q. Were there any problems that flowed from the merger of the two systems? A. Yes, very definitely.

Q. Has this been a time consuming problem that your staff has had to meet through the years? A. Yes.

Q. With reference to the composition of the City system of schools as against the County system of schools—

Court: Are you going to leave it right there? You say the merger created a lot of problems and I just wondered what they were.

Mr. Waggoner: Judge, I don't want to stir up some things that have been buried. I wanted to show the Board has been occupied.

Court: Go ahead.

Q. With reference to the racial composition of the City at the time of the merger as against racial composition of the County, do you have an opinion as to whether there were more whites percentagewise in the County than in

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the City? A. I have no facts to go on. I do understand that the changing ratio of Negro to white was one of the factors that entered [355] into the deliberations about consolidation.

Q. Has this merger of the two systems facilitated integration of the student population?

Mr. Chambers: Isn't that a conclusion of law?

Court: Is that an objection?

Mr. Chambers: Objection.

Court: Overruled.

A. Would you repeat the question?

Q. Has the fact of merger of the two school systems facilitated the integration of the student population in the schools? A. I think I would answer that in the affirmative because it relieved the problem I referred to previously, at least it made it a problem of the entire county, and it also solved the problem of the tax base, the diminished tax base behind the pupils that resided in the Mecklenburg County School System.

Court: Now you're beginning to make me think it was a pretty good idea after all.

Q. With reference to the size of the present school system, do you know the approximate number of square miles in the system? A. Yes. The county is right at 550 square miles, I believe.

Q. How far is it from north to south, do you know? A. The length is approximately 35 miles and width about 23 miles.

Q. Do you have some general facts about the educational system that we have in this county that you can give to the Court? [356] A. Do I have—again, please.

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Q. As I understand it, your office has distributive information sheets about the public school system and this is what I have reference to. Could you tell the Court some of the major points that may be of interest with reference to this system?

Court: Have you got that information sheet with you?

A. Yes. Are you referring to this paper, Facts about the Charlotte-Mecklenburg Schools?

Q. Yes.

Court: Let me look at that. Can I just get Mrs. Wentz to duplicate this and let you render any objection to it that you want to?

Mr. Chambers: That would be fine.

Court: It will save me taking notes. Go ahead, Dr. Self.

A. I really think what Mr. Waggoner was getting at was some indication of the size of the school system once again. If that's not what he wished, he can ask subsequent questions to get at it. The consolidation of the Mecklenburg County System and the Charlotte City System was the consolidation of the #1 and #2 systems in the State and, of course, when you combine two large school systems, as they were, you get a mammoth school system which is what we have today. At the time of the consolidation I understand that the student enrollment was right at 58,000. That was in 1960. Our size today is **[357]** 83,000, which indicates a prodigious growth over a relatively short period of time. There have been years when the pupil population increased by 3600 pupils. The low point in the terms of our increase



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was 2000. At the present time we feel that the pace of increase in terms of our pupil enrollment has slackened off slightly and we will probably be a school system increasing by about 2500 pupils per year from this point on.

Court: Is that about 100 classrooms a year or 90?

A. If we take 2500 pupils and if we figured arbitrarily on 25 per classroom for ease of division, you'd get your 100 classrooms. We are not fortunate enough to have that 25 pupils per classroom so you would assume that's 85 or 90 classrooms that would be required. This growth has produced some terrific problems for us in terms of being able to house youngsters. At the same time that we have tried to gear construction programs to meet the increased enrollment, we have been faced with the problems of trying to update facilities that went through the war years with very little money spent on them and with very little maintenance. So it has presented something of a problem for the Board of Education to deal with.

Q. With reference to the School Board which administers this district, how are the Board members selected? A. They are selected by an election process, bi-partisan [358] election. It occurs every two years and three of the nine members of the Board of Education are elected every two years.

Q. Have you had any vacancies created by moving from the County or any other reasons on the Board of Education in the past two years? A. Yes, sir. We had a resignation by reason of a move out of the City on the part of Mr. Tom Braden.

Q. Did the Board of Education appoint someone in his place? A. Yes.

Q. What is his name? A. Rev. Coleman Carey.

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Q. Will you state whether or not he is a Negro? A. Yes, he is.

Q. Has he been a candidate for the School Board in prior years? A. Yes.

Q. With reference to an elementary school, what procedure does the Board follow in deciding, or what does it do to reach the point of construction of a new school? What facts give rise to the location and selection of this particular location? A. Well, I'm sure that our studies would have revealed that this elementary school that you're talking about would have encountered housing problems for a number of years, its enrollment would have exceeded its rated capacity, and the excess of youngsters would be accommodated in existing facilities through the use of what we have called sub-standard spaces. [359] These may be basement classrooms, a classroom on a stage in an auditorium, partitioning of a larger classroom into two sections, things of this nature. In other words, there would be crowding within the elementary school. In all likelihood the neighboring schools would also be crowded. This would reflect a general tendency within the neighborhood of inability to house the youngsters in the neighborhood in the existing facilities. In all probability we would reach the point where mobile units would need to be brought into play to house the youngsters of these schools. I would have hoped that in the earliest stages we would have recognized the problem and might have acquired a site, at least, before homes were built on it, so that we would have a site available for that school. We have in the past employed architects to draw up plans and develop them to the stage of working drawings so that the moment the money becomes available we can build a school in that area. We eventually will reach the point where we must have a new facility and then we put that school down

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on that particular site. We are not able to afford the luxury of overbuilding which will mean that it is quite likely that everyone of the classes would be filled the first year. As a matter of fact, it is not an infrequent occurrence that a new school may have a mobile unit. As the elementary school nears completion, Mr. John Phillips, who is the Assistant Superintendent for Elementary Education, will have called in [360] to conference the principals of these surrounding schools and enlisted their aid and the aid of the principal of the new school, too, if we are fortunate enough to have appointed him, and ask these people to join him in designating the attendance area that will be served by this school. The starting point in their deliberations will be the capacity, the number of pupils that that school will house, and in essence their problem is carve out of the surrounding school areas enough territory to give us the required number of pupils so that that school may open at capacity when it's ready.

Q. Now, these principals make recommendations to the Assistant Superintendent in charge of that? A. Yes, they do. They are encouraged also to discuss this matter with the School Committees—there is a School Committee at every school—so that there will be communication with the lay public regarding the location of these attendance lines.

Q. Now, the final act of establishing the school lines is performed by whom? A. By the Board of Education.

Q. Is this on your recommendation? A. Yes, it is.

Q. With reference to Independence High School how did it become located at its particular location? Could you give us the history of that? [361] A. Of course, the problems of overcrowding that I spoke of appeared in the neighboring high schools, Garringer and East Mecklenburg. A site was selected. We used principles of triangulation in terms of

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selecting sites with a school located at each of the angles in the triangle. A piece of property was located by a real estate consultant employed by the Board of Education and negotiations were entered into to acquire the property. That deal was consummated, the property was available, the Board elected an architect and the school was built.

Court: Where is Independence High?

A. Independence High School is in the eastern section. It is off Wilson Grove Road.

Court: Wilgrove?

A. Wilgrove, I beg your pardon.

Q. Dr. Self, would you come to the large map and point that out, please. (The witness does so.)

Court: I believe that's off your map, Mr. Waggoner.

Mr. Waggoner: My map is a little dated.

Court: Is that between Central Avenue and Independence or is it above Central Avenue? It's south of Albemarle Road, isn't it?

(Conference is had out of the hearing of the Court Reporter.)

Q. Dr. Self, did the School Board own property adjacent to York Road Junior High for the purpose of constructing a high school nearby? **【362】** A. Yes, sir.

Q. Has a high school been constructed over in that site?  
A. No, it has not.

Q. What action was taken with reference to that project?  
A. The Board of Education had employed an architect and

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the architect had developed plans up to a particular point. The Board decided that to locate the school there would be to assure that it would be totally black from then on. They abandoned the plans, instructed the architect to alter his work, acquired a site, which we now know as the Olympic site, and built the school in that area.

Q. For the purpose of the record, what area is Olympic located in? A. Southwest section, off Sandy Porter Road.

Q. Now, with reference to Randolph Junior High School, could you tell us the considerations that went into the location of that school? A. The same pattern was repeated here. There was a site available and we referred to it commonly as the Mason Wallace Junior property. It was located off Billingsly Road. Again the same factor entered into the decision of the Board of Education. That site was abandoned and another site was acquired. This was the Wagner property off of McAlway Road and Randolph Junior High School was constructed there.

Court: Is that to the south of McAlway?

**[363]** A. It's actually to the east, where McAlway meets—I'm sorry, the name of the other road escapes me.

Q. Dr. Self, what kind of school population does Randolph Junior High serve? A. An integrated student population. Also one that I would judge varies in socio-economic level.

Q. What action, if any, did your office take with reference to freedom of choice at that school? A. Probably you are referring to the section of the Pupil Assignment Plan which prohibits transfers out of a newly established school. The reason for that, of course, is that the Board of Education has felt that there ought not to be freedom of transfer that first year, that the school ought to have an opportunity to

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establish itself. In this particular circumstance pressure was brought to bear to try to get the Board of Education to relax this particular policy. They did stand firm on it and the policy helped.

Q. With reference to Olympic, was the same rule enforced there? A. Yes.

Q. Is this also an integrated school? A. Yes, it is.

Q. With reference to the pupil assignment policy of the Board, have there been any changes in the operation of this policy since 1965? A. Yes.

**[364]** Q. In what way? A. It's quite difficult. Could I use an exhibit to explain it?

Q. Certainly.

Mr. Waggoner: We have a document entitled Charlotte-Mecklenburg Elementary Schools 1968-69 and we'd like it marked Defendant's Exhibit #1.

A. Mr. Waggoner, do you have the junior high and senior high document to go along with that?

Q. This is just the elementary. A. There is another group that was with it.

Q. I don't seem to have the senior high. A. It's stapled to the junior high.

Mr. Waggoner: Your Honor, we would offer the junior high and senior high as a composite part of Exhibit 1 for identification.

Q. Dr. Self, would you first tell the Court what Defendant's Exhibit for identification #1 is? A. In the first place, the title is quite misleading. It just says Charlotte-Mecklenburg Elementary Schools. What it is is an administrative work sheet which was used in making the recommenda-

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tion to the Board of Education regarding the capacity of schools.

Court: Do you have a copy of high and junior high.

Mr. Waggoner: Yes, sir, I'm sorry.

Q. Dr. Self, if you will, identify Defendant's Exhibit for [365] identification #1. A. It's headed Charlotte-Mecklenburg Elementary Schools. As I said, the title tells you nothing and I had sought to elaborate upon it by saying that this is a work sheet that was used by the administration in making a recommendation to the Board of Education preliminarily to their setting the capacities of all of our schools. Capacity, of course, is directly related to pupil assignment and to freedom of choice because the only thing that determines whether or not a request for change of transfer is granted is whether the receiving school has space to accommodate these youngsters. It stands to reason that if you have a school capacity that is set on rather generous terms that you have a more liberal freedom of choice. With that in mind, I think we can get the gist of the paper by looking across the column headings. The name of the school is in the first column, of course; the total teaching spaces is next. That's an actual count of the number of classrooms. In this case at Albemarle Road Elementary there were sixteen classrooms. We next multiply that number of classrooms, 16, by 28, 28 being the approximate average for the elementary school grades of the system. That gives us a rated capacity for Albemarle Road Elementary of 448 students. We are not always able to have 28 per classroom. Depending upon our [366] fortunes with the General Assembly, we have gone to 30

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and up. So we next get the figure in the third column, maximum capacity, by multiplying the 16 teaching spaces by 30. That would run the housing capacity of the school up to 480. We next take a look at the projected enrollment for the entire school system, Elementary, junior and senior high school youngsters, and we find that the projected enrollment invariably will exceed our rated capacity. We try to determine the percentage by which the anticipated enrollment exceeds our housing capacity and we use that percentage to multiply the maximum capacity to get an adjusted maximum capacity for the school. In this case Albemarle Road Elementary adjusted maximum capacity is 518. This is the figure which is used in terms of making a final judgment as to whether or not Albemarle Road can receive transfers by freedom of choice and the judgment is made by comparing that 518 by the projected enrollment, 431. You would judge from this that Albemarle Road can receive transfers. If you look on down to the third school, Allenbrook, the same computation gives you 518 as a maximum adjusted capacity and the projected enrollment is 530. This is in the spring of the year. If the projected enrollment exceeds the maximum capacity, we close the school immediately and will accept no pupils in there by way of transfer.

Q. It's closed to transfers is what closed means here.  
A. Right. The process which I have just described closed 32 [367] schools last year to freedom of choice. The reason I said there has been a change is that this computation was not done in a similar way in previous years. Let me tell you how it varied. In the first place, the teaching spaces included any sub-standard facilities like partitioned classrooms, mobile units, and the like, so it in effect inflated the number of teaching spaces. Then when you get over



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to the fourth column instead of comparing the projected enrollment with the maximum capacity, we looked at the number of pupils that were actually assigned and compared it with the maximum capacity and if it did not exceed the maximum capacity we permitted transfers. Of course, the flaw in this is that the number of pupils assigned in the spring does not allow for that increase in your student population that you're sure to get during the summer months. The projected enrollment is always a larger figure than would be the number of pupils assigned. So the net difference between the operation in 67-68 and 68-69 was to close more schools to freedom of transfer. The figure in the first year was 10 schools and the figure for 68-69 was 32; 19 elementary, 10 junior high and 3 senior high.

Q. Dr. Self, where are most of these closed schools located or a reasonable percentage of them? A. I think that you'd find that the majority of them are in the white neighborhoods. The word "closed" in the righthand column indicates the exact schools that were closed, Allenbrook, [368] Ashley Park, Bain, and so forth.

Q. Was there any particular concentration of closed schools? A. I think that the majority of them were at the junior high school level.

Q. Has the Pupil Assignment Act been administered without discrimination on account of race? A. Yes, it has.

Mr. Chambers: Objection.

Court: Yes, that's a legal conclusion that has to be drawn from the evidence. Objection sustained.

Q. Dr. Self, has freedom of choice to your knowledge, or the Pupil Assignment Act permitted substantially wholesale transfers of students from one school to another?

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A. That might have been the case before the tightening up process on freedom of choice. I do not think that is the case now.

Court: What is the number of the exhibit that has a listing in it of the assignments or transfers that were requested in various years, 66, 67, 68?

Mr. Chambers: Table 7 in the interrogatory, Exhibit 1; Table 7 in Exhibit #2.

Court: Dr. Self, let me ask the question about the accumulative effects of some of this. I'm looking at the table that shows 66, 67 and 68 for assignment and, for example, take Berryhill, which is about the eighth or ninth one down from the top. It shows that in '66 [369] there were 212 requests for transfers, in '67, 43; and in '68, 45. Are the requests listed for the later year duplicates of previous years or are they accumulative, in addition to those of previous years?

A. I believe they would be in addition to, Your Honor.

Court: Derita, for example, you have requests for those three years totaling 64 and those also are accumulative, I take it.

A. Yes, sir, they would be.

Court: Do you have data available from which you can determine how many school children of particular ages live within particular districts? By districts I mean the area served by a particular school.

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A. I could tell you what we do have. I noticed that Your Honor was examining the grid system that is on the map. This is a school system device for locating children. We work with the various utility companies planning department in developing it. What it was was the basis for computerizing the pupil census. The county was laid out, as you see by the map, in these grid sections. There is a heavy larger grid and the larger grid is divided into four smaller grids. Each one of four small grids is a 2500 foot square. So that if you think of the larger grid you have slightly less than one mile, 5000 feet instead of 5280.

Court: On that map there it's two miles.

**[370]** Q. Dr. Self, would you come down to the map and demonstrate the grid you're talking about.

Court: Are you telling me that you do not have figures which develop the number of children in a particular school zone?

A. We do have figures but this was to give us a map code. Our school secretaries will take the address of each child and will code it according to the grid on the map. They can tell that the child lives in census tract 19, square #208, subsection A, and this of course is all computerized and the information can be regurgitated from the computer so that we can then go to our map and say in this one particular 2500 foot square there live 100 children. Of these 100 children so many of them are first grade, so many 2nd and 3rd and so on. We are able also to tell how many of those first grade children are white and how many are Negro.

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Q. Dr. Self, do the mobile units that are utilized by the school system furnish an educational need? A. Yes, they do.

Q. Would you tell in what way you use these mobile units? A. Well, we accommodate problems of crowding. The most visible evidence of this, I think, is present at a school where you find a large number of mobile units clustered. Had we looked at McClintock Junior High School last year you would have found 17 mobile units. These mobile units were housing the [371] children who ultimately were assigned to Randolph Junior High School. They were housed there until their school was completed. The same situation was repeated at Landsdowne Elementary School—I think we had about 15 there—housing the children until the completion of the Old Providence School. As we get more and more in our construction program and deal with renovations of facilities instead of replacements or instead of additional classrooms, you will probably find the mobile units used to house the children who are displaced while the workmen are renovating the building.

Q. Are mobile units inferior classrooms? A. We have two types. The first unit that we bought was a smaller one, approximately 450 square feet. This unit is not as good as a comparable classroom that would be built in a new school. The second purchase was a larger unit. It's twice that size, approximately right at 750 square feet. This unit in a number of ways is superior to some of the classrooms in the regular building itself.

Court: What do these cost, the big ones?