215, 19 L. ed. 2d 422. The School Board cannot act without the action of the individual members of the Board. The individual members, and not some supposed, imaginary entity are the true parties preventing the implementation of the Court's order. Plaintiffs have moved that each of the members of the School Board be ordered to show cause why they individually, and in their representative capacity, should not be held in contempt of the Court's order. As the Court has stated in its order of June 4, 1969, in order to avoid any misunderstanding or technicality, it is necessary and proper that all of the members of the School Board be brought individually before the Court and fully apprised of the Court's instructions. Their joinder is necessary and proper in order that the plaintiffs might have complete relief in this proceeding.

3. Defendants have cited several North Carolina decisions, all of which are completely inapposite to the matters involved here. The cases cited by the defendants concern generally the question of how title of school property is held. Plaintiffs do not challenge that, under North Carolina law, title of school property is in the local board of education. We are dealing here, however, with the question of desegregation of the school system and implementation of the Court order. The Courts have long sustained joinder of the individual members of school boards in such cases.

WHEREFORE, plaintiffs respectfully pray that the Defendants' Motions to Strike Additional Parties-Defendant be

denied, and that plaintiffs be granted relief as they have prayed in this proceeding.

Respectfully submitted,

/s/ J. Levonne Chambers
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RECESS FOR LUNCH

Mr. Chambers: Your Honor prior to closing our case we have some additional documents we'd like to identify, introduce as exhibits for the plaintiff.

Court: All right. If you will prepare a list of [488] these documents and give a copy to the Clerk and to opposing counsel, we will dispense with reading the list or identifying them one by one. Just tell me what they're about.

Mr. Chambers: They consist of a list of the bus routes and descriptions in the Charlotte-Mecklenburg School System; annual reports on bus transportation by the Transportation Department of the Board.

Court: Where are they?

Mr. Chambers: For the school years 64-65 through 67-68; and maps showing the district boundary lines for the school system from 1965 through 1967-68.

Mr. Waggoner: These are the documents we brought in as a result of the Court's direction.

Court: Mr. Waggoner, I received as evidence to the extent that it contains evidence the paper that you filed Monday entitled Answer to questions posed by the Court in June 4 order.

Mr. Waggoner: If the Court please, do I understand that the Court also is receiving in evidence the report filed with our plan of desegregation on May 28?

Court: Yes. If there are any specific objections, I'll entertain the objections but I assumed there were none because none have been made.

Mr. Chambers: As to the Board's report?

[489] Court: Yes.

Mr. Chambers: We have no objection.

Court: Is there any further evidence for the plaintiffs?

Mr. Chambers: None, Your Honor. We would like to tender in evidence the exhibits that we previously identified.

Court: Let them be received.

Mr. Barkley: We'd like to have an objection entered to the whole bunch of newspaper clippings entered in evidence. I don't believe we can try the case on the basis of newspaper clippings.

Mr. Chambers: Your Honor, we don't have but about three or four newspaper clippings that we identified and used, and the only reason for introducing those was to corroborate some testimony given by a witness.

Mr. Barkley: I don't believe a newspaper corroborates necessarily. Bring the reporter in here, his testimony might tend to corroborate or might not.

Court: I don't know whether the newspaper clippings you're talking about would contain anything corroborative or not but if they are considered by the Court that will be the only purpose for which they will be considered, whether they corroborate or rebut or impeach the testimony that has otherwise been offered. So to that extent the objection is sustained.

[490] Mr. Chambers: We have nothing further, Your Honor.

Court: Any further evidence for the School Board?

Mr. Waggoner: Yes, sir. I'd like to call Dr. Hanes.

Dr. Robert C. Hanes—for Defendant—Direct

DR. ROBERT C. HANES, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Waggoner:

Q. Will you state your full name and residence address? A. Robert C. Hanes, 1510 Audubon Road.

Q. What is your official position with the Charlotte-Mecklenburg Board of Education? A. I am Assistant Superintendent for Secondary Education.

Q. You cover the junior and senior high schools, is that correct? A. Yes, sir.

Q. Dr. Hanes, did you have occasion to deliver some documents pertaining to Metropolitan High to Mrs. Betsy Kelly? A. Yes, sir, I did.

Q. Would you tell the Court the circumstances of the conversation you had with Mrs. Kelly?

> Mr. Chambers: Your Honor, I object again on the same ground that I raised yesterday. I take it that the defendant now tends to discredit his own client and a witness, I submit, should be a witness of the defendant. The party involved is a named party defendant [491] and I submit it would be improper for this type of examination to attempt to discredit one of the defendant's attorneys own clients.
>
> Court: I'm going to overrule the objection but I do want Mr. Waggoner to say whether he does or does not continue to represent the witness Kelly, or the party Kelly.
>
> Mr. Waggoner: If the Court please, I discussed this with Mrs. Kelly this morning and told her that in view of the developments of yesterday that I had some concern that I could properly continue repre-

senting her and offered to withdraw. She said that she had no personal feelings toward me and—

Court: I'm not asking a question about consent or lack of it applying but it raises a rather serious question about the propriety of the attorney in attacking the credibility of a client of his whom he is representing in court in this fashion. I have never seen it done before.

Mr. Waggoner: If the Court please, I ask permission of the Court to withdraw as counsel for Mrs. Betsy Kelly.

Mr. Chambers: I object to that, Your Honor.

Court: Tell the Court who you do represent, Mr. Waggoner. Do you represent all the members of this [492] Board except Mr. Poe.

Mr. Waggoner: If the Court please, we represent the Board of Education. The Court joined then all the members of the Board.

Court: The motion on behalf of Mrs. Kelly was filed by you and argued by you on her behalf.

Mr. Waggoner: Yes, sir. It was fairly well understood that we would continue representing the Board and represent the members of the Board for the purposes of this motion. I have had no private conversations with Mrs. Kelly in the nature of an attorney-client, no more than I have had with any other member of the Board. This was a convenience to them. We filed a joint motion on behalf of the Board and also on behalf of the individual members. I feel that perhaps it would be a little unfair for us at this time to withdraw as representing Mrs. Kelly because she hasn't had an opportunity to consult with counsel. By the same token, we have an obligation to the

Board of Education to present the facts as fully and fairly as we can. We did not introduce this evidence into the case.

Court: Was this conflict foreseeable?

Mr. Waggoner: No, sir, I was not aware of this. As late as last week we had a meeting and we discussed [493] the plan and what we proposed doing with the motion and at that time I understood that Mrs. Kelly fully supprted the Board policy.

Court: Wasn't it foreseeable that there would be some differences between some of your clients and some of your other clients about facts in the case?

Mr. Waggoner: Yes, sir, it was foreseeable but I had no idea it would ever reach the evidentiary stage. We objected to this but we have been pushed into this—

Court: As a professional matter does it leave you any comfort to know that you have come into a situation here where you are cavalierly making a choice in open court to abandon one client and pursue the others?

Mr. Waggoner: If the Court please, it is not cavalierly. The election to represent the individual Board members was purely a fortuitous circumstance that came up within the last two weeks. We have represented the Board continuously through this case. I came into it in February. If the Court please, to avoid any problem I will withdraw Dr. Hanes from the stand.

The Court: I'm not going to exclude his testimony. Frankly, I overlooked the problem when you were attacking Mrs. Kelly yesterday until it was all done.

Mr. Waggoner: It didn't occur to me until late in the evening that there was the professional possibility [494] of conflict. Mr. Gage is present. He has filed papers on behalf of Mr. Poe. Perhaps he could represent Mr. Poe as far as this aspect of the case is concerned. I think under any circumstances it would be unreasonable to expect new attorneys to come into the case when the order was entered to appear at this hearing and been of beneficial counsel to the parties.

Court: I don't know why that would be so. The order was entered two weeks ago.

Mr. Waggoner: If the Court please, this case is extremely complicated.

Court: The thing that is bothering me is a professional matter which I overlooked calling to your attention yesterday. A client is entitled to an attorney without a conflict of interests. Obviously you made a choice to pursue a conflicting course. I don't think you can pursue both courses. As a purely strongarm way out of it, if Mr. Gage wants to pursue the examination for this purpose, I'll let him question the witness but I believe in the interest of propriety you better not.

Mr. Waggoner: All right, sir.

Court: That doesn't satisfy the propriety but at least it keeps us from being afoul of it from this point forward.

[495] *By Mr. Gage*:

Q. Dr. Hanes, would you testify about the substance of your conversation with Mrs. Kelly, please, sir? A. I was not in court yesterday so I don't know exactly what was

said but I shall relate the incident that I think she was referring to as I recall it.

Q. We wish for you to give your own recollection of it. A. On a Saturday morning, shortly after the Court's order was published, Mrs. Kelly called me at home. She said that she and several of her friends were reviewing the Second Ward-Metropolitan situation and that she needed another copy of the staff study on the Metropolitan High School. I told her I would be glad to mail her a copy the first thing Monday morning. As we talked on she said she needed it before then and if I were going to the office any time over the weekend would I mind picking up the document and bringing it by her house. She suggested that I should just leave it in the mail box if she were not there. Late on Saturday afternoon I took the document by her house and gave it to her son. As I was getting in the car she came to the door and called me from the porch and I walked back down the walk and stood in front of her house on the walk and talked for a few minutes. We talked about a number of things. As I tried to recall all the things that we talked about, she was critical of me and other members of the staff because she felt that we did not [496] express our views strongly enough at Board-staff meetings. I replied to the effect that the Board members themselves were divided on most issues and this was a most difficult environment in which to work. She made some comment that we should not feel that our jobs as employees of the Board of Education were threatened in that she represented five votes on the Board. I disagreed with her and said, as I recall, that my estimate was that she was one of only four people on the Board who agreed on most matters and there were five others that disagreed. I do recall saying something to the effect that this kind of split was a threat al-

though I personally was not concerned about job security. I recall saying that the tensions were high among the Board and the staff and that people were under stress and that Dr. Self and Mr. Poe had certainly had disagreements as did other Board and staff members. I don't recall making such a statement that five members of the Board were threatening Dr. Self's position. If our conversation led Mrs. Kelly to this conclusion, I regret it but it's not to my personal knowledge that this is a fact. We talked briefly about the Metropolitan High School situation and about some other individual school situations which she asked me some questions about and we discussed.

Q. Was that the entire substance of the conversation? A. As I recall it.

Mr. Gage: Thank you, Dr. Hanes.

[497] Mr. Chambers: No questions.

Dr. William Self, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Waggoner:

Q. Dr. Self, will you state your name and residence address? A. Dr. William C. Self, 5834 Kirkpatrick Road.

Q. Are you Superintendent of Schools for Charlotte-Mecklenburg? A. I am.

Q. Dr. Self, when did you first receive a copy of the Court order dated April 23? A. I believe that I received it on that same day or if not, on the following morning.

Q. Did your office make these Court orders available to all members of the Board of Education? A. They did. I talked with Mrs. Gattis about this since this has been an

object of testimony and she informed me that the copies were in Mr. Poe's hands, that Board members were called individually and were told they were there and they might pick them up, if they chose to go by.

Court: Let me inquire about this. There's been a lot of testimony about an unnecessary thing. I handed about a dozen copies to the attorneys for the School Board. What happened to those copies that day before [498] this thing was delivered to the newspapers or Clerk? What happened to those copies?

Mr. Waggoner: If the Court please, the copies were handed to me on April 23 approximately 2:00 or 2:30.

Court: It was just before or within minutes after the thing was filed in the court. What is the mystery about the information getting to the Board?

Mr. Waggoner: There is none although there has been a suggestion of it. This is what Dr. Self is testifying to.

Court: I guess I'm asking what the lawyers did with the copies of the order. The thing was held up until the order could be duplicated so there would be a copy for every member of the Board so they could have it before they read the newspapers.

Mr. Waggoner: They were not duplicated, as I understand it. Perhaps they were.

Court: Duplicated by me.

Mr. Waggoner: I received the copies that the Court instructed me were copies for the members of the Board of Education. I delivered them to Mr. Poe's office and the Board members were called in-

dividually on the same afternoon and told they could come by and pick up a copy if they wanted to come get them in a hurry. Dr. Self was telling what happened next.

[499] Court: Let's go on. I've been wondering about this all along.

A. To complete the picture, I believe Mr. Watkins did go by and pick up his copy. Mrs. Maulden instructed Mrs. Gattis to have hers mailed to her and the other Board members received their copy by courier the following day.

Q. So no later than April 24 every Board member should have had their copy, is this correct? A. That is my understanding.

Q. Dr. Self, upon receiving the order did you hold any staff meetings with reference to reviewing the order? A. Yes, we did. We met the following morning.

Q. Did you distribute copies to members of your staff? A. I did.

Q. Now, did you have occasion prior to preparing the so-called Self Plan to confer with the attorneys for the Board of Education? A. On several occasions, yes.

Q. And at that time the various aspects of the order were reviewed with you, were they not? A. Yes.

Q. And based on this, our recommendations, recommendations of your staff and other sources of information, you began the preparation of the Self Plan, is this correct? A. That's correct.

[500] Q. Was very much time spent in preparation of this plan? A. Quite a bit, yes.

Q. Was any consideraiton given to pairing? A. Yes.

Q. Was any consideration given to establishing a feeder system? A. Yes.

Q. Was any consideration given to busing? A. Yes.

Q. Would it be fair to say that consideration was given to all the alternatives suggested by the Court? A. I think we considered all the alternatives.

Q. Were there other alternatives that you considered? A. We, at one point in our thinking, were talking about exchange programs of both students and teachers. I don't believe you have mentioned that. We considered the possibility of alteration of attendance zones in such a way as to accomplish more integration.

Q. Now, the plan that you finally submitted to the Board of Education, was this proposed by you and the staff as a final plan? A. It was proposed as a tentative plan and was so marked. It was intended to generate discussion among staff members and Board members.

Q. In other words, this was to get conversation going in various areas of the plan, is this correct? [501] A. That's correct.

Q. Dr. Self, with reference to the proposed plan, I understand that it was submitted to the Board of Education. A. Yes.

Q. Would you describe the circumstances under which it was submitted? A. Copies of the plan were given to the Board for study. A press conference was held prior to the meeting of the Board of Education to brief them so that they might have an opportunity to more thoroughly digest the information and perhaps do a good job of reporting. We met. The Board heard the staff presentation. They asked questions for clarification and agreed at that point to take it under advisement and come back later and discuss it.

Q. Was this a public hearing? A. It was.

Q. Were television cameras present? A. No, they were

not although we did meet at WTVI. I beg your pardon, the commercial cameras were present, the WTVI cameras. This was not a school televised meeting.

Q. Dr. Self, could you tell us the occasions on which the staff and/or the School Board met to consider the Court order of April 23? A. I have a chronology of the meetings that were held. Is it your intention that I review these dates?

[502] Q. Yes, if you would. Just tell us the meeting date and if you recall, what took place on that date. A. As I have said previously, on April 24 we held our first meeting of the executive staff to discuss the plan. On April 28 we met with the elementary principals, distributed copies of the plan and interpreted the plan, solicited their opinions and reactions. There was on that same date a meeting of the Board of Education at which time the Board directed the staff to begin preparation of the plan. On April 29 the executive staff set to work. We considered the results of the principals' meetings. We began to develop the format of the plan. We followed with meetings with the secondary principals, paralleled the meetings that we had with the elementary principals earlier. There was on April 29 a meeting of the Board of Education and the professional organizations study group representatives. This was just prior . . .

Court: What professional organizations are you talking about?

A. Your Honor, the professional organizations study group is a committee of the Presidents of the professional organizations.

Court: What professional organizations are you talking about?

A. The NCEA, the NCHA, the Classroom Teachers Association, and I believe it's called the Mecklenburg Classroom Teachers Association. This meeting was held just prior to an area [503] meeting of the Board of Education.

Court: Where was that?

A. Garinger High School. The executive staff continued to work on the plan, meeting again on May 1. On that same, May 1, there was a meeting of staff members, namely, Self and Anderson with the same representatives of the professional organization. The primary purpose of this meeting was to discuss faculty integration and how it might be implemented. This was held at Dilworth School, a site which we frequently choose for meetings because of its central location. On that same date, May 1, we met again with elementary principals to follow up the first meeting that we had with them. We met on May 2 to continue our work on the plan. It was on this date that I spoke to the faculties of the various schools and tried to share with them the problem we were facing. I asked them to meet as a faculty and to select one member of their faculty to follow back to the executive staff their opinions and their concerns. That same date there was a meeting of the Board of Education and the so-called Harris School Study Committee. On May 3, which was a Saturday, we manned our telephones at the central office to receive the comments from teachers who had viewed the telecast on the previous day.

Court: What telecast was that?

A. The one where I spoke to the faculty. We asked the faculties to meet in schools and I used the channel WTVI to speak to [504] them about what techniques we might employ to achieve faculty desegregation. We continued to work on May 4 and on May 5 the directors and coordinators of the school system, which I called our second line of people, began to consider the problem and what their contribution might be in terms of helping to resolve it. On May 8 I held a general staff meeting of all directors and coordinators and principals to interpret the developing staff plan to them and on that evening we met with the Board of Education to present the staff plan. I believe that May 12 was the meeting between the Board of Education and representatives of the same professional organizations. This meeting was held at Dilworth. On May 13 there was a meeting of the Board of Education and this was a televised Board meeting using the educational television channel. I recorded that on May 19 the Board held its work session on the staff plan at the education center. On May 15 we met as an executive staff to consider the reactions of the Board of Education to our staff plan and see what alterations or amendments were called for. We continued to meet, this time on May 20 and on May 21 the Board of Education met to adopt the plan of desegregation which is presented to the Court.

Q. Dr. Self, do you have any estimate as to how many people were involved in the preparation of the plan? A. In terms of what I would call making heavy contributions, the [505] executive staff did the prime work. Beyond that directors and coordinators were involved particularly as it concerns faculty desegregation, as were all the principals in the school system.

Q. Would it be fair to say that the proposal that you came forward with was not lightly made? A. It certainly was not.

Q. Dr. Self, were you given any detailed rules or regulations under which you were to formulate your plan? A. No, I wasn't, Mr. Waggoner. I thought our charge was a rather broad and general one. I took it that we had the restraint of attempting to comply to the Court order and at the same time to attempt to prepare a plan with which the professional family could live and at the same time prepare a plan with which the community as a whole could live.

Q. Dr. Self, what is your opinion with reference to the accomplishment on faculty desegregation as of the present time under the plan? A. Please state your question again.

Q. What has the plan of desegregation accomplished at the present time with reference to faculty desegregation? A. According to a report presented to me this morning by Mr. Anderson, Assistant Superintendent for Personnel, there are 66 teachers who have volunteered. Twenty-eight of these are at the elementary level; twenty of the twenty-eight are black [506] and eight are white. At the junior high school level—this would include the Learning Academy —there are twenty-five volunteers; fifteen are black and ten are white. At the senior high school level there are thirteen volunteers; three are black and ten are white. The total then is thirty-eight black and twenty-eight white and the grand total is sixty-six.

Court: Are these all teaching positions?

A. These are all teaching positions, Your Honor.

Court: This is the final report?

A. This is the report as of this date. We are continuing to get some of the blue assignment sheets in from time to time.

Court: What was the significance of Sunday the 15th of June in this connection?

A. Sunday the 15th of June is the terminal date for pupil request of transfers. There is no terminal date to accept a teacher request.

Court: I'm sorry, I'd forgotten what that date referred to.

Q. Dr. Self, with respect to newly employed persons, has there been change in the report we filed with the Court in which we indicated that seventy-six newly employed teachers would be assigned across racial lines? Has there been any change in this? A. It's still our plan to use newly employed teachers wherever [507] possible to effect faculty integration. That seventy-six, of course, can change from one day to another and hopefully we can increase it.

Q. Is the staff prepared to make assignment of non-voluntary personnel?

Mr. Chambers: I object to that unless he can show they have authorization from the School Board to make such assignments.

Court: The testimony is that the plan under which it has been operating for four years, all teachers are employed by the Board and are assigned wherever the Board says. Is there any testimony that that's been changed?

Mr. Waggoner: If the Court please, I'm simply asking him if his staff is prepared to make a recommendation on this.

Court: Objection overruled. You can ask him about the authorization later.

A. I am prepared to share some feelings with the Court in terms of what effect the volunteers and newly assigned teachers will have on the overall faculty integration picture. May I use a chart to do that?

Q. Certainly. Do you have additional copies of that, Dr. Self? A. Yes.

Mr. Waggoner: May I have this identified as Defendants' [508] Exhibit #1.

A. The chart which has been passed out is one that is familiar to the Court.

Q. Dr. Self, you're referring to Defendants' Exhibit #1?

Court: I'm sorry. This is a chart that I have spent some hours trying to read but have never become familiar with it. Have you got a better way to tell me what you've got in mind?

A. I think so, if you can follow with me down the righthand column. I share your frustration at trying to interpret the figures. They are rather difficult. Down the righthand column under the heading of Professional Staff we have accumulated data in terms of faculty desegregation. Beneath those words are the year 1968 which reveals that we had 98 of our 112 schools with some degree of faculty integration, some degree meaning one or more. Those 98

was really made up of sixteen predominantly Negro schools and 82 predominantly white schools.

Court: Are you talking now about the way it's been up through last month?

A. That's right and I was going to try to show you how it would be updated.

Court: You've got 900 black teachers and 2800 white teachers in the system? Maybe it's 2600 white teachers and 900 black, is that about right?

[509] A. The total is the total at the bottom of the page, 505 and 2783; grand total of 3288. The key figure is in the middle of the page where you see the 131 and the 208. Can we dwell on that? That 131 represented 131 white teachers that were in predominantly Negro schools. The 208 are 208 Negro teachers in predominantly white schools. With the assignment of our volunteers and of our new people, this number that Mr. Waggoner read out a moment ago, that 131 white teachers will grow to 170 white teachers. The 208 Negro teachers will become 292. Those figures are penciled in to the right.

Mr. Chambers: Your Honor, I object.

Court: You've got 208 black teachers teaching in white schools. Where do you get the other 56?

A. Newly employed personnel, Your Honor.

Mr. Chambers: Your Honor, I object to this testimony because it's more confusion than factual. I assume this 208 means he is going to have the same 208 Negro teachers in the school next year.

Court: Is that part of your assumption?

A. There are 13 of those Negro teachers who are no longer in the position. We have to make up that amount of integration that we had won before we assign from this point on. There are 24 of those 131 white teachers who are no longer with us and we have to make up that loss before we assign additional teachers.

Court: I have never followed the theory of this page. [510] Can you tell me in words what it is you've got in mind? This page doesn't confuse me, it just doesn't enlighten me at all or darken me at all because of the way it's made up. I'll have to get you to tell me what you've got in mind.

A. Well, Your Honor, there were fourteen schools last year that did not experience any degree of faculty integration. As I recall it, these were all black schools. If we are going to have faculty integration in these schools, we must place white teachers in vacancies which exist on those school faculties. There are vacancies in five of those all black schools now. We intend to fill them with white teachers. To move in faculty integration in the other nine schools, we will have to take teachers from the faculty roll and move them somewhere else before we can assign white teachers there. The staff is interpreting the Board's plan on faculty integration, that part of which says that if voluntary efforts fail that the Board will use its power to assign teachers, to mean that we can move staff members from these all Negro schools.

Court: Aren't all of the teachers in the system subject to assignment wherever you ask them to serve unless they want to quit?

A. Yes.

Court: Do you create a vacancy by just transferring a teacher from one school to another?

[511] A. If there are no vacancies, particularly in a school with a diminishing enrollment, then the only way that you can have a vacancy into which you can move a white teacher is by transferring the Negro teacher out.

Court: What do you have in mind other than filling vacancies?

A. Moving some teachers from the all black schools to create vacancies so we can effect faculty integration. Beyond that, I think we would go to those schools which have minimal faculty integration and attempt to increase it.

Court: Anything else?
Mr. Waggoner: Yes, sir.

Q. Dr. Self, is it true that of the approximately eight or nine hundred black teachers in the Charlotte-Mecklenburg system that 292 of those teachers will be in predominantly white schools? A. That's our projection.

Q. That is purely on the voluntary and newly assigned teacher basis. A. That's right.

Q. So this is nearly a third of the black teachers in the community that will be in these situations? A. That's correct.

Q. Now, do I understand the lower figures to indicate that 95% of all teachers will be teaching in integrated schools next [512] year insofar as this part of the plan

goes? A. Assuming that you accept one teacher of an opposite race as evidence of integration.

> Court: How do you view that particular proposition. If you've got one white teacher in a school with fifty black teachers is that an integrated faculty? And, if so, what benefits accrue to the students from having that arrangement?

A. Your Honor, it's integrated in terms of statistical accounting. In terms of it being a desirable situation, I would not judge it to be so.

> Court: What would deem to be a desirable situation in this county?

A. I would say that there ought to be enough members of that minority race on the faculty so they can produce reinforcement and support for one another. That would mean a considerable number.

> Court: Do you have the same essential feeling about the role of the black teacher who is assigned to a white school with fifteen or forty white faculty members?

A. I do.

> Court: If the plan were designed so that you reorganized the faculty of the schools so there was a thorough going desegregation of the faculty, wouldn't [513] the whole process be more acceptable to those teachers who participated in that?

A. I think that this was the sentiment that the heads of the professional organizations did state.

Court: Will desegregation of faculties produce closer to an equality of educational calibre in all the schools that it would be if we carried on the way we are? Would it tend to equalize the educational opportunities as far as instruction is concerned?

A. I don't believe it would guarantee it.

Court: I didn't ask to guarantee it, what would be the tendency of it?

A. It would be the tendency, yes.

Court: All right, go ahead.

Q. Dr. Self, with reference to the Court's question about gerrymandering, are there any zones or school attendance districts known to you which were developed on racial lines to perpetuate segregation?

Mr. Chambers: Objection.
Court: Overruled.

A. I think our attendance lines reflect natural boundaries. There are in most instances natural boundaries between white and black neighborhoods. I think the net result of this has been to draw out attendance areas that produce, in some instances, all white schools and all black schools.

[514] Q. Now, with reference to pupil desegregation, in the present desegregation as it pertains to pupils what do you expect to accomplish by the beginning of the school

year September 1969? A. Our tabulation in terms of pupil assignment thus far indicates that 1816 pupils have requested change of assignment. Of this 1816 requests, 1484 are what I term regular assignments; 332 are majority to minority transfers.

Court: How many of the 332 are white children asking to go to black schools?

A. Two at the present time.

Q. Dr. Self, as I understand it, it would be impossible to construct and equip the new Metropolitan High School prior to the beginning of this school year. Do you have a target date in mind for the availability of the new facility? A. We had hoped the fall of next year, not this year but next year. I would anticipate some difficulty in meeting that schedule right at the moment.

Q. What effect do you expect the pupil plan to have on the all black schools that exist in this system? A. The only effect that I can see that it would have would be to slightly decrease the enrollment in some of the all black schools.

Q. Is this circumstance of having all black schools peculiar to the Charlotte-Mecklenburg School System?

Mr. Chambers: Objection.

[515] Court: Overruled. It's a well known fact but it won't hurt to prove it again.

A. No.

Q. Now, with reference to the varsity athletics prohibition of engaging in sports where you transfer to a new high school, what is the rationale for this rule? A. I think the previous testimony on this has been correct. It was

actually an attempt to prevent pirating of star athletes from one school to another.

Q. Do you feel that this particular provision of the plan would act to the detriment of desegregation? A. I do not feel so. If it developed that it was proving to be a detriment, then I think it should be reviewed.

Court: Can you tell what the effect of it is when people don't apply that may be subject to the rule?

A. The only way that I can think of that you would be able to tell, Your Honor, would be that people who do not apply because of this rule would have a tendency to speak out.

Court: You assume they would.

A. Yes, sir.

Court: If you have only two requests from white students to transfer to black schools, whatever effect this athletic rule has is not one that is going to prohibit the freedom of choice for white students, is it?

[516] A. That's right.

Court: Because they're not choosing to go to black schools anyhow.

A. That's right.

Court: So the only prohibiting effect that rule has, as a practical matter, is on black ninth graders, isn't it? . . . ninth and tenth graders.

A. It would have a tendency to be more inhibitive to the students in eleventh or twelfth grade because this is where the student begins to make the varsity. He could participate on the other teams.

Court: If an athlete is required by this rule to choose between playing football and going to a school otherwise of his choice, the effect of the rule is to discourage him from exercising his theoretical freedom of choice, isn't it?

A. Yes, it would be.

Court: And it's only black people who would be deterred by this, isn't it?

A. According to the present facts, yes, sir.

Court: Are these facts substantially any different than they have been through the last four years?

A. No, they are not.

Court: You've never had more than a tiny handful of white students choosing to go to black schools, have [517] you?

A. That's right.

Court: How has that figure run through the years? Has it been two or three, a dozen or two?

A. I don't recall. I would agree it's been only a handful.

Court: Well, if it should develop that the restriction prevents the exercise of a constitutional right,

do you think that the constitutional right or the orderliness of the athletic recruiting program is more important to the community?

A. I think the constitutional right is, of course, more important.

Court: Did you ever play football?

A. Yes, sir.

Court: If you had to lay out a year, would you have chosen to go to a school as a first year high school when you had a school you could go to and play freshman football?

A. That's been a long time ago, sir, I don't know.

Court: You don't think you would, do you?

A. No, sir.

Q. Dr. Self, this varsity athletic transfer rule, what was the basis for originally formulating it, what circumstance? A. Well, it had to do with an attempt on the part of an aggressive coach to recruit athletes of known ability from other schools and it was a rule that was attempted to deter that [518] sort of practice.

Q. As an educator do you regard athletics as a major portion of the students education? A. Yes.

Court: You recommended striking that thing out of the plan in your first draft, didn't you?

A. Yes, sir.

Court: You still think it ought not to be in there?

A. I think it's subject to some question and I think that we might come up with some provision for having our athletic director to review cases where someone is being penalized in this case.

Court: You still consider it a penalty, though, don't you?

A. Yes, sir.

Court: And you so said in the plan.

A. Are you referring to the staff plan, sir?

Court: Well, this plan says this penalty will be lifted if he goes back to the school he was told to go to originally, doesn't it?

A. Yes, sir.

Q. Dr. Self, you're familiar with the language of the Court in the order of April 23 in which it says one point on which the experts all agree and the statistics tend to bear them out is racial mix in which black students heavily predominate tends [519] to retard the progress of the whole group. Do you recall this statement? A. Yes, sir.

Q. Now, referring to the data submitted to the Court . . .

Court: There's another piece of that sentence.

Mr. Waggoner: All right, sir, I'll read the entire sentence: Whereas if students are mingled with a clear white majority, such as a 70-30 ratio, approximately the ratio of white to black students in Mecklenburg County, the better students can hold their

pace, with substantial improvement for the poorer students.

Q. This is, as I understand it, the Court's language. Now, referring to the data submitted in connection with freedom of choice, do you have such a table? A. Are you referring to the statistics I just read out?

Q. No, sir. This is the preparation by Dr. Church consisting of three or four pages on the effects of a freedom of choice if it were abolished. A. Yes, I have that.

Court: Is that in the . . .?

Mr. Waggoner: In the report of May 28, I believe, Your Honor.

Court: This is Exhibit 71 or 73, whatever it was, that Mr. Belk was identifying . . . 71. All right, I'm with you.

[520] Q. Dr. Self, would you point out to the Court those schools which would tend to improve the ratio toward a 70 white-30 black population in the school.

Court: I haven't sustained many objections, but if you'll rephrase that so I can understand it, I would appreciate it.

Q. Will you point out those schools in which the black students heavily predominate to which a few whites would be returned? A. Well, to do this we would have to turn to the second page where the schools are actually listed. If I might just go across the top of the first line just to sort of get my own mind focused on the question, Mr. Waggoner. Albemarle Road Elementary School, which is indicated by the W as a predominantly white school—in the

next two columns we see that there are 72 pupils attending Albemarle Road from outside of their school district. 70 of these are white and 2 are Negro. In the next two columns, we see that there are 19 white pupils, no Negroes, who are from that district but who are attending other schools in the school system. If you eliminated freedom of choice and if you returned all of these pupils to their original school, it would have the effect of taking those 70 white pupils who are attending outside of the district. It would also have the effect of sending from Albemarle Road the two Negro pupils and bring back no Negro pupils. So [521] that the net effect in terms of the minority race at Albemarle School would be the loss of 2 Negro pupils and that's the last column, minus 2N.

Q. With reference to Barringer School, what effect would abolishing freedom of choice have on this school? A. It would have the net effect of sending 19 white pupils back into Barringer School.

Q. Barringer is a school that is heavily predominantly black, is this correct? A. It is predominantly black.

> Court: Is it a fair summary of all this data that if you eliminated freedom of choice you would return to mostly black schools some twelve or fourteen hundred white students and most of this would be in the north and west parts of town, most of it in low income areas?

A. That's true. The summary, Your Honor, is on the preceding page.

> Court: I'm asking the question primarily with reference to the places where this would take place.

Is it generally true that freedom of choice has tended to enable white people in low income areas to get out of black schools?

A. It has had that tendency.

Court: Such as in Amy James 216; Tryon Hills 89; Villa Heights 42; Piedmont 110; Hawthorne 144, and [522] so on.

A. Yes, sir.

Court: And York Road 190. Is this one of the problems that the Court called to the Board's attention in the previous opinion.

A. In that section, Your Honor, where you said that freedom of choice could be permitted if it did not have the effect of perpetuating segregation.

Q. Dr. Self, with reference to the beneficial effect or detrimental effect of the freedom of choice plan, has it had any substantial influence on creating a favorable educational condition for certain students?

Mr. Chambers: Objection.
Court: Overruled.

Q. Would you like the question restated? A. Please.

Q. With reference to the freedom of choice plan, from a sound educational standpoint, has it been beneficial or detrimental to retain it under the plan of desegregation?

Mr. Chambers: Objection.
Court: Well, you've got another element in there but I'll overrule it.

A. I think it's been beneficial to retain it for reasons other than educational.

> Court: You mean that people have raised less cain about [523] the situation because it's been in there?

A. I think it's proved to be an outlet, pop-off valve, yes, sir. I think that there might be education reasons associated with the assignment of a small handful of a minority race in another school, but to generalize on that topic, I don't think I can.

Q. Well, in the vast majority of schools there is a small handful or no students of the other race effected under this, is that correct? A. That's correct.

Q. Dr. Self, the Court has been puzzled by the free transportation provision of the plan. Could you elaborate on how the plan actually operates? A. Well, the plan states that if they are majority to minority transfers the Board of Education will provide transportation. The details of the plan have yet to be worked out. The administration assumes that if there are three pupils who elect to go from West Charlotte to Harding High School that it's our responsibility to furnish them with transportation, the same manner as we furnish transportation to the student going from a section of the county to Independence High School.

Q. All right, now, with reference to school capacities, would you explain how the mechanics of how the plan works with reference to determining which students will be accepted under free transfer? [524] A. The plan calls for the acceptance of majority to minority requests at any school up to a number which exceeds the maximum capacity by 20%. These transfer requests are to receive considera-

tion before any regular transfer requests receive consideration, so they are given priority.

Court: Suppose your school is already closed?

A. Then we would have to resort to a second or third choice if one were given and if second and third choices are not given, it's been our custom to communicate with the applicant and say the school is closed, would you care to select another one. This was the purpose of our publishing in the paper the names of the fifteen closed schools. We hoped to save some people some trouble in terms of applying for them.

Court: So those schools can be filled up already before any outside choices are made to go to those schools.

A. There are fifteen schools that are filled up already. By that we mean they are 20% over their capacity. There are two schools in which majority to minority requests would be effected. They are Ranson and Albemarle Road Junior High School. There were thirty requests to Ranson Junior High. 16 of the 30 requests listed a second choice so that we can accommodate them. 14 did not list a second choice and we would have to communicate with these parties and see if they would care to have another school. One request was made to [525] Albemarle Road Junior High School which is one of the 15 closed schools. They also had a second choice and we can grant their request to the second choice.

Court: So that freedom of choice means freedom of choice if they happen to have room over there under these rules.

A. Yes, sir, but it's a rather liberal interpretation or if they happen to have room.

Q. Dr. Self, do you feel that there is sufficient space in the white schools to accommodate the blacks who may request transfer?

Mr. Chambers: Objection.
Court: Objection overruled.

A. There is space, according to my previous statement, to accommodate all but fourteen of the majority to minority requests that I enumerated earlier. These may be accommodated in terms of second choices.

Court: Well, you're not going to get any more requests, are you?
Mr. Waggoner: No, sir.
Court: Do you expect any more?

A. No, sir.

Q. Dr. Self, what means of notice to students and parents was given with reference to the free transfer provision from majority to minority schools?

[526] Mr. Chambers: Objection, it's already in the record.
Court: What's in the record?
Mr. Chambers: The provisions or degree of notice the School Board gave to the parents. I call the Court's attention to the document filed with the Court on Monday, and we indicated at the time that we didn't have any objection to the document being introduced.
Court: Well, he may have something else in mind. Go ahead.

A. Notice was sent home with the children the last day of school and the notice had a letter which told of the assignment plan. One paragraph in the letter did state that free transportation would be furnished majority to minority transfers. Public notice was also given in the newspapers. These public notices were printed by the Board of Education as it had stated it would do in the plan.

Court: Is that the fine print ad that ran in the classified section?

A. Yes, sir.

Q. Dr. Self, was any prominence given in all notices with reference to the free transportation? A. If you mean was it set apart in bold type, yes. It was also set apart in bold type in the public notice but it was scarcely discernible.

[527] Court: The headlines in the public advertisement I believe were about two-thirds of the size of a typewriter, weren't they?

Q. Dr. Self, do you believe the measures employed to get notice to these students and their parents were reasonable means to communicate?

Mr. Chambers: Objection.

Court: I guess that's a matter I'll have to decide. Go ahead and answer the question.

A. Yes.

Court: Do you feel a fine print ad between the obituaries and classified ads is reasonably calculated to notify school children of anything, or are you

relying on the letter that was handed to them at school?

A. The letter would attract a good bit more attention, Your Honor. I think also that the attention surrounding this whole field and the news articles which have been written about it would attract more attention than the public notice.

Court: You're not including the published fine print advertisement in your feeling that a notice was reasonable, are you, as a part of it?

A. I think this was a satisfaction of a sort of a pseudolegal requirement that the Board felt it had to do.

Court: But as practically giving notice to a school [528] child, that printed notice in the paper wasn't worth much, was it?

A. It would be of much more value to the parent than the child.

Q. Dr. Self, have you had an opportunity to review Dr. Finger's proposed plan of desegregation of pupils? A. Very briefly.

Q. Did you find it to be substantially the same proposal he had made previously? A. It did seem to me to be a blending together of the three reports that were presented in earlier testimony.

Q. Did your office or your staff give consideration to redrawing some school attendance lines? A. Yes.

Q. And I assume that you rejected this idea, is that correct? A. At this time.

Q. For what reason? A. Well, the staff plan as it was proposed placed heavy emphasis on faculty desegregation. We had hoped to have a period of preparation of the community for further steps in pupil desegregation. So since the pupil desegregation major move was postponed, that particular type of intervention was not considered in the staff plan.

Court: When was it first postponed, was that at the first meeting?

A. As a part of the staff plan, sir.

[529] Court: Well, did the first staff plan make a staff decision to postpone everything but faculty desegregation?

A. Yes, sir.

Court: Was that pursuant to instructions from the Board or members of the Board?

A. No, sir.

Court: Was that decision postponed or understood when you started to work on the plan?

A. It was an understanding that developed as we worked on it, Your Honor. There were two major reasons I think for it. One of them was the tremendous amount of work that would need to be accomplished, and the second was the tremendous need that was apparent at that time for preparing the community for such steps.

Court: You're saying, then, that sometime shortly after the first meeting of the School Board the 25, 26, 27 or 28 of April, shortly after that the staff stopped work on the details of any possible plan for pupil desegregation.

A. We laid heavy emphasis on the faculty desegregation.

Court: I was asking you about the pupils. Your plan was prepared for presentation about the first of May, wasn't it, and withheld for presentation until the 8th of May?

[530] A. No, sir. It was almost a deadline job. We were coming off the press with it, I believe, about May 8.

Court: May 8 was the date of the Board meeting, wasn't it?

A. Yes, sir. We didn't finish it much before that date.

Court: And between the 23 of April and the 8 of May you had concentrated on the faculty desegregation question?

A. We had concentrated, our major emphasis was there. We had not overlooked student desegregation.

Court: And you had done no work on student desegregation plans since you reached that conclusion before firming up the May 8 plan, is that correct?

A. That's correct.

Mr. Waggoner: No further questions.

Mr. Gage: Your Honor, there are a few questions I'd like to ask for the same purpose as before either now or after cross examination.

Mr. Chambers: Objection.

Court: What do these questions relate to?

Mr. Gage: Concerning the allegations made about the Chairman of the School Board by Mrs. Betsy Kelly.

Court: Mrs. Kelly came to this hearing with a lawyer and she doesn't have one now.

Mr. Waggoner: Mrs. Kelly presented me with a note. [531] She would like to go on the stand as a witness. She has not released me as counsel and I will represent her to the best of my ability.

Mr. Chambers: Your Honor, I submit that this case is not involving a problem that counsel now proposes to go into. As the Court set forth at the beginning of the hearing, the question was whether or not a plan submitted by the Board complied with the Board's constitutional requirements. I understand now there's some question whether counsel wants to inquire whether some threat has been made against Dr. Self. I submit that has no relevance whatever to this matter now in controversy.

Mr. Gage: Your Honor, I'm puzzled that counsel for the plaintiff now wishes to limit the scope of the inquiry when he first broached the subject on cross examination of the Chairman on the witness stand and it was on his examination of Mrs. Betsy Kelly that all this came out. I believe that Mrs. Kelly has conferred with him. I believe Your Honor ought to strike all of this testimony out of the record if the scope of inquiry is to be now restricted.

Colloquy

Court: As I told you a while ago, I am not going to restrict the inquiry because we've been into it before. Mrs. Kelly, you may cross examine Dr. Hanes if you [532] want to recall him for that purpose and you may cross examine Dr. Self if you want to and if you now have a lawyer, which I thought twenty minutes ago you did not have, you may want to confer with him.

Mrs. Kelly: Do you want me to do it now?

Court: Do what, talk to Mr. Waggoner?

Mrs. Kelly: Yes.

Court: If you wish.

Mr. Waggoner: May we have a short recess, Your Honor?

Court: Take a ten minute recess.

SHORT RECESS

Court: Gentlemen, the Court yesterday was perhaps concentrating too much on what was being heard and not enough on the proportions of something that happened, I believe innocently, but it happened nevertheless. When your client is called by the opposite party and he gets through asking questions, the attorney who represents that client has a right to cross-examine his own client if he chooses to. This right does not extend to impeaching questions or suggestions. I overlooked this situation yesterday and I believe Mr. Waggoner overlooked it also and it did not come back to my attention until a moment ago when I interrupted the proceedings. Mr. Waggoner is in the position of having received confidences from two people who are in this [533] matter of impeachment on opposite

sides of the fuss and he has not been released by the School Board or by Mrs. Kelly and is in an impossible position. The Court has advised him on this subject to have nothing further to do with it by way of conducting the hearing or conferring with clients. The Court advises Mr. Gage that if his examination of the witness on the subject he is talking about is based upon information that came in any way from Mr. Waggoner, he must not ask questions based on that information. This is the reason I interrupted the conference between Mrs. Kelly and Mr. Waggoner a while ago because I thought for their mutual protection they ought to become separated immediately. A lawyer cannot have clients with interests which conflict and I am sorry I didn't see this when it first came up yesterday. This is probably not a matter of substance in the final conclusion of the case because, as I said a while ago, I expect to hear everything that may be pertinent and to make my decision on what I believe the facts to be. It is of importance to Mrs. Kelly and Mr. Waggoner that we get our amenities straightened out and proceed with some care from now on. She will be accorded the right to cross-examine Dr. Hanes, cross-examine Dr. Self if she chooses and to testify further or offer further [534] evidence if she wishes to after they conclude their testimony. Do the attorneys think that this now leaves us in a position to proceed without any further confusion?

Mr. Gage: Your Honor, I'd like to say that the information on which I now propose to proceed came to me directly from Dr. Self and Mr. Poe. I have not been briefed by Mr. Waggoner.

Dr. William C. Self—for Defendant—Cross

Cross-Examination by Mr. Gage:

Q. Dr. Self, would you state to the Court, please, sir, whether your job has ever been threatened by Mr. Poe. A. It has not. I think, as Dr. Watkins testified this morning, this is a time of tension. We have some very traumatic questions before the Board of Education and the staff. It is to be expected that the questions under consideration will produce differences of opinion and there have been differences of opinion among Board members, among the staff and among the Board and staff. At no time in my relationship with Mr. Poe have any differences of opinion which we have had reached the point where either of us felt that they must be resolved by my leaving the job.

Mr. Gage: Thank you, that's all.

Court: Mrs. Kelly, do you want to ask him some questions now?

[535] Mrs. Kelly: I would like to cross examine Dr. Hanes.

Court: Do you want to ask Dr. Self any questions?

Mrs. Kelly: No.

Court: If you're going to be asking questions, come up and sit at one of these tables so you can be heard a little better. Anybody else want to ask Dr. Self any more questions?

Cross Examination by Mr. Chambers:

Q. Dr. Self, you assisted in the preparation of the plan that was submitted to the Board on May 8, 1969? A. I did.

Q. The proposal submitted by the staff provided for the complete desegregation of teachers effective 1969-70. A. It did.

Dr. William C. Self—for Defendant—Cross

Q. In your professional opinion, Dr. Self, would it be feasible for this school system to completely desegregate the staff beginning September 1969? A. Yes, but I would qualify it by saying it would be extremely difficult at this point.

Q. It would, however, be feasible? A. Yes.

Q. Dr. Self, in answer to some questions from the Court you intimated that the staff early stopped consideration of combining any school districts, pairing of any schools or changing [536] or establishing a feeder system. Did you hear the testimony of one of the Board members yesterday —Mr. Poe, I believe it was—that the staff understood from the first Board meeting that the Board did not want to consider any changing in the student assignment which would require busing? A. I heard the testimony.

Q. Will you tell the Court, Dr. Self, whether when you began the preparation of your plan you proceeded with this understanding? A. Yes.

Q. Now, you testified about extensive consideration that the staff gave in the preparation of the plan it presented to the Board. A. Yes.

Q. Despite your extensive study, the Board saw fit to modify your plan and, in fact, water it down considerably. A. Acting within their authority, yes.

Q. So all of the study that you made with respect to teachers was changed by the Board. A. Again within their authority, yes.

Q. Did they spend half as much time as the staff in the staff's preparation of the plan? A. I do not know.

Q. From the time that you spent in the preparation of that plan, did you spend comparable time as Secretary to the Board with the Board in its consideration of the plan? [537] A. No.

Q. Did you hear Dr. Finger's testimony? A. Yes.

Q. And I think that you testified earlier that you had had a chance to glance at the proposal he submitted. A. Very briefly, yes.

Q. In your study or consideration of the Court's order, did you have a chance to consider some desegregation efforts in other communities? A. Not extensively. Some, but not extensively.

Q. Did you have a chance to consider some proposals dealing with pairing of schools? A. I did not read any information of this sort. I know generally about the pairing technique.

Q. Do you also know generally about consolidation of school districts? A. Yes.

Q. Do you also know generally about feeder systems? A. Yes.

Q. Are you familiar with the boundary lines for the Eastover Elementary School. A. Yes.

Q. Are you familiar with the boundary lines for Chantilly? A. Yes.

Q. Cotswald? A. Yes.

[538] Q. Is it Oakhurst? A. Oakhurst, yes.

Q. Approximately how far would Elizabeth be from Chantilly? A. In the neighborhood of two, two and a half miles.

Q. It would be feasible, would it not, Dr. Self, to combine these two school districts effective September 1969? A. From an administrative point of view it could be done. I think that a great deal of discussion has to go on regarding the use of transportation since I think transportation would have to be employed to do this.

Q. Now, if the districts of Eastover, Billingsville, Oakhurst and Cotswald were combined, approximately what

would be the mileage in diameter of those combined districts? A. I would estimate four to four and a half miles.

Q. Is it true that Eastover district presently has a diameter running north and south of approximately three and a half miles? A. I think that's a close estimate. It's elongated.

Q. Do you provide bus transportation in that district? A. No, we do not.

Q. Now, your combined district of Chantilly and Elizabeth would be about two miles. Would it be necessary to provide bus transportation within that district if they were combined? A. I think it would if you think in terms of the extremes of the district.

Q. Now, would it be feasible effective September 1969 to combine [539] the districts of Eastover, Billingsville, Cotswald and Oakhurst? A. Again, from an administrative point of view it could be accomplished. From the amount of community preparation standpoint, there is a tremendous amount of that that has yet to be done.

Q. Did you hear Dr. Finger's testimony about combining Marie G. Davis with Sedgefield and Collingswood? A. Yes.

Q. In your professional opinion would it be feasible to combine these districts effective September 1969? A. I would answer in the same way.

Q. You also heard his testimony about combining Bruns Avenue, Enderly Park and Ashley Park. A. Yes.

Q. Would your answer be the same with respect to doing that effective September 1969? A. I believe it would.

Q. You also heard his testimony about Thomasboro and Lakeview. A. Yes.

Q. Would your answer be the same with respect to combining those two school districts effective September, 1969?

A. It would be.

Q. You also heard his testimony about combining Tryon Hills and Hidden Valley. [540] A. Yes.

Q. Would your answer be the same with respect to combining those two school districts effective September 1969? A. Yes.

Q. Did you hear his testimony about the school districts of Plaza Road, Highland, Villa Heights, Alexander Street, Midwood, Shamrock Gardens and Merry Oaks? A. Yes, I did.

Q. Would you agree that the diameter, if these districts were combined, would be approximately two miles? A. I believe that would be a little bit on the slight side. I'm not sure.

Q. Would your answer be the same with respect to combining those school districts effective September 1969? A. That was not as clearcut as some of the others.

Q. It's not as clearcut? A. Yes.

Q. Did you hear his testimony about Wilmore, Dilworth and Myers Park? A. I did.

Q. Would it be administratively feasible to combine these districts effective September 1969? A. Administrative details could be accomplished.

Q. Now, did you look at the proposal with respect to establishing a feeder system for desegregating the junior high schools [541] and the senior high schools? A. Yes.

Q. Would it be administratively feasible to effect that proposal in your professional opinion effective September 1969? A. There are some points, I think, that would need clarification. I wasn't able to detect where Dr. Finger was proposing to send the children of the closed out schools, Fairview into McClintock, for example. I'm confused over that part.

Q. Otherwise, assuming that we found a place to put those children, would it be administratively feasible to implement the proposal with respect to the junior high schools and senior high schools? A. Yes.

Q. Now, is it true the Board presently proposes to close Bethune, Isabella Wyche and Zeb Vance Schools in September 1969? A. No. It is true that these schools that you mentioned are marked for abandonment but the final decision on that has not been made yet and before that can be done, the matter of whether or not they would be replaced by a school in locale or whether these students would be transported to outlying schools has yet to be made.

Q. Well, now, there was some consideration given to building a school to replace these schools when they were closed. A. That's correct.

Q. And I don't believe that the Board has yet decided where to [542] place this school to replace these three schools. A. That's correct.

Q. Now, would the schools in the adjacent districts be able to accommodate the students if these schools were closed effective September 1969? A. I am not certain of my facts but I doubt it.

Q. Well, we don't know the figures or the capacities of the schools in the adjacent districts? A. I could look that up, yes, sir.

Q. Do you have the figures with you? A. (No answer given.)

Q. Do you have a copy of Plaintiff's Exhibit #5? A. If I do, I don't know the number of it, Mr. Chambers.

Q. This is a copy of the proposal submitted by the plaintiff. A. Yes.

Q. Would you look at Page 2 of that proposal? In the

last paragraph would you look at the sentence beginning on the last line.

> Court: What are we looking at now?
>
> Mr. Chambers: This is the plan submitted by the plaintiffs.

Q. Would you read whether this plan requires the closing of those three schools we were talking about? A. The sentence begins: The Schools are Bethune, Wyche, Zeb Vance and Fairview. There are approximately 1,000 students [543] involved. The plan is not contingent upon the closing of these schools but if they are not closed, some modification in the plan will be required.

Q. It would be possible, therefore, to implement this plan and maintain those schools even next year? A. If I read this correctly, yes.

> Court: Dr. Self, I have some recollection of hearing you or reading about you telling the Second Ward students to put in a request to go somewhere else next year. Where are the high schools with room for those 1,100 or so students? Where is it contemplated they'd go?

A. Your Honor, that was Dr. Hanes, I believe, that spoke to the Second Ward students. The high schools, though, would be those that surround the Second Ward district, they being Harding, Myers Park, Garinger and West Charlotte.

> Court: Well is the Second Ward building substantially more decrepit now than it was sixty days ago? I just wondered.

A. No, sir.

Court: Is it the intention of the Board to close that school regardless of whether Metropolitan is built or not?

A. As I understand the intention of the Board, it is to establish a specialized school on that site.

[544] Court: I'm asking about the operation of Second Ward School in 1969-70. The inference from the urging of students to go somewhere else and this was the last graduating class was there would be no school there next year. Has that been decided?

A. Not fully, sir.

Mr. Chambers: I have nothing further.

Mr. Waggoner: I have nothing further, Your Honor.

A Tentative Plan for the Integration of the Charlotte-Mecklenburg Schools

For Discussion Purposes
Self Plan

Introduction

In accordance with the educational philosophy adopted by the Board of Education on December 18, 1968, it is the belief of the Board that the democratic way of life contributes the most benefit and happiness to members of society and that the school, as an agency of society, should be dedicated to the development, improvement, and preservation of democratic ideals. It is the feeling of the Board that all individuals should be given an equal opportunity to develop to the greatest possible extent their capacities for happy, useful, successful lives.

We feel that all individuals regardless of their abilities, past experiences, race, place of residence, social or economic status should have the right:

1. To share the skills, values, and knowledge of the human race.
2. To develop initiative and the ability to weigh facts, make judgments, and act cooperatively.
3. To attain a reasonable standard of living.

Note: The Board of Education is engaged in the process of developing a plan to comply with the District Court order of April 23, 1969. It should be emphasized that the statements made in this document are not final and should be regarded as such.

5/8/69

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4. To enjoy the widest share of freedom compatible with the equal freedoms of other people.

The schools have been recognized as the workshops of democracy. For generations the basic principles of American life have been introduced through the schools. By the effective use of the democratic processes, we believe that the complete integration of the Charlotte-Mecklenburg Schools can become a reality.

We are convinced that integration has provided and will continue to provide a more complete, realistic education for all individuals. It is our intent to present a reasonable plan for integration, which is designed to maintain and improve the quality of education in the Charlotte-Mecklenburg Schools.

As indicated in the District Court order of April 23, 1969, the Board of Education has "achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and has exceeded the performance of any school board whose actions have been reviewed in appellate court decisions. The Charlotte-Mecklenburg Schools in many respects are models for others." In this order the Court directed that the Board "submit by May 15, 1969, a plan for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year. Such plan could approach substantial equality of teaching in all schools by seeking to apportion teachers to each school on substantially the same ratio (about three to one) as the ratio of white teachers and black teachers in the system at large." The Court further directed the Board to "submit by May 15, 1969, a

plan and a time table for the active desegregation of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970."

In order to implement the Court order, we are prepared to take significant steps in achieving complete faculty integration beginning with the 1969-70 school year. In so doing, however, we realize that support must be given to faculty members through an intensive in-service education program. We intend to revise the present pupil assignment plan for the 1969-70 school year in order to promote further integration of pupils. It should be recognized that significant moves in pupil integration must be accompanied by a period of time during the 1969-70 school year in which the entire community will study and evaluate ways in which this might be accomplished. We are prepared to make some recommendations as alternatives for additional pupil integration to begin with the 1970-71 school year. Therefore, the objectives of the plan shall be as follows:

- To prepare the school system for complete integration.
- To achieve complete faculty integration.
- To revise the present pupil assignment plan.
- To prepare the community for additional pupil integration.
- To present some alternative plans for pupil integration.

Preparation of the School System

Much careful planning must be done to be certain that additional staff and pupil integration is accomplished with a minimum of disruption. The main thrust of this planning will call for significantly greater attention to the student's

individual needs and will require sustained and creative effort on the part of educators as they seek to cope with this problem. The planning must also deal with the employment of additional staff, the provision of a much broader range of curricular offerings, and the production of learning materials to reach pupils of varying levels of educational maturity.

In seeking to improve their own effectiveness, educators must gain a better understanding of pupils of both races. They must better understand individualized learning approaches and gain an appreciation of personal values and feelings. To accomplish these things during the 1969-70 school year, the staff must have time to plan adequately, especially for activities involving other staff members. Teachers must also have time to evaluate the effectiveness of newer teaching techniques. To accomplish the above:

a. Teachers who are transferred will be offered a two weeks summer workshop. Those who participate will receive a stipend of $100 per week. The cost of such a program is estimated as *$200,000.* An extensive effort will be made to underwrite the cost with funds from federal or state sources. If this attempt is unsuccessful, the project will be supported by local funds.

b. The Board of Education will renew the request for curriculum planning time for teachers which was approved by the Board of Education on October 8, 1968. The original plan which provided for planning time twice a month will be amended to provide for dismissal of pupils at approximately 1:00 p.m. one day

per week. If necessary, the Board will petition the legislative delegation for emergency enabling legislation.

c. The in-service education department will be assigned a sum of $10,000 for the employment of substitute teachers. The substitutes will be used to free experienced and highly qualified staff members for a period of time so that they may give added support to their fellow teachers through in-service workshops.

Other approaches to educational improvement involve staffing, curriculum, and supplies and materials. To facilitate improvement in these areas, supplementary support will be assured through the use of a special formula as follows:

Number of pupils in system two years or more below C-M median on paragraph meaning	times	$100 =	Supplementary allocation

Approximately 13 per cent of the pupils in the system have scores which are two years or more below the Charlotte-Mecklenburg median on paragraph meaning. In order to bring the expenditure for these pupils up to the national average per pupil expenditure will require an additional $100 per pupil. The total expenditure will be approximately $1,100,000. A small percentage of this amount will be used to employ support staff not assigned to a specific school, and the remainder will be apportioned among the schools on the basis of the percentage of qualifying pupils enrolled in each school. The principal and his teachers will

be asked to submit a plan outlining how the allocation is to be spent.

Faculty Integration

The integration of all Charlotte-Mecklenburg school faculties is a highly complex task in which the system has already had a great deal of positive experience. The degree of integration within respective schools has varied, but all schools have had some experience. In order to achieve an approximate three to one white to black racial balance in all grades and departments insofar as possible will require the cooperative effort of all teachers and administrators throughout the system. Based upon the experience of the past and the acceptance of professional responsibility by the members of our staff, we feel that complete faculty integration can be accomplished.

The school system will actively seek those teachers who have a high degree of motivation and are interested in volunteering for service to help in achieving this objective. Since the future will require a broad base of experience for all teachers, it is felt that most teachers will wish to become involved for a reasonable period of time in a variety of teaching opportunities.

The elementary, junior high, and senior high schools will be grouped geographically into clusters of schools in order to expedite the reassignment of teachers on the present staff for the 1969-70 school year. Such an arrangement will create smaller units within which there can be more cooperative effort and greater convenience of travel to those being reassigned.

The procedure for reassigning the present teaching staff will be as follows:

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1. Each principal will be provided a professional staff allotment for his school.
2. On the basis of this allotment, each principal will determine a table of organization for the 1969-70 school year.
3. Each principal will retain all teachers on his present staff who will have reached their sixtieth birthday by July 1, 1969, and who wish to remain in that school.
4. Each principal will retain all teachers on his present staff who are members of the black race in that school provided this number does not exceed the approximate desired ratio.
5. Each principal may retain on his staff such other teachers as he may believe to be absolutely essential to the continued efficient operation of the educational program in that school. The principal is urged to limit the number of teachers retained in #5 to a minimum. The total number retained in #3 and #5 may not exceed 25% of the total professional allotment.
6. Each principal will determine the number of volunteers on his present staff who wish to be reassigned for the purpose of helping to create a racial balance in all schools.
7. The principal of each predominantly black staff will determine the number of vacant positions in his school by reason of resignation, voluntary reassignment, or growth in pupil enrollment. He will then

determine the number of remaining teachers who must be reassigned in order to create the proper racial balance. The teachers to be reassigned will be determined by the principal and his staff using a procedure that they feel will be most effective for their particular school. This procedure may recognize factors such as seniority, travel, etc.; or the teachers to be reassigned may be chosen by random selection.

8. The principal of each predominantly white staff will determine the number of vacant positions in his school by reason of resignation, voluntary reassignment, or growth in pupil enrollment.

9. Volunteers from both races will be the first teachers placed in vacancies. Consideration will be given to allow teachers to move with co-workers wherever possible.

10. Black teachers who have been declared eligible for reassignment will be placed in vacancies in each predominantly white staff created in #8 above.

11. Those black teachers whose teaching assignment does not match vacancies created in #8 above will be assigned to each predominantly white faculty to provide the total proper number of black teachers on the school staff. White teachers will be reassigned to match the teaching assignment of the incoming black teachers. If more than one white teacher holds such assignment, the teachers to be reassigned will be determined by the principal and his staff using a procedure that they feel will be most effective for

their particular school. This procedure may recognize factors such as seniority, travel, etc.; or the teachers to be reassigned may be chosen by random selection.

12. All other vacancies will be filled by newly employed teachers.

13. All personnel to be reassigned will be notified in writing of their assignment for the school year 1969-70 prior to June 5, if possible.

14. A procedure will be established through which teachers may appeal their assignments.

Revision of Present Pupil Assignment Plan

At the present time, pupils are assigned to the various schools in the system under the provisions of the *Charlotte-Mecklenburg Schools Pupil Assignment Guidelines* officially adopted on June 13, 1967. The 1967 plan is based upon geographic zones surrounding each school. It permits freedom of transfer within the limits of available space.

It is the intention of the Board to revise the present pupil assignment plan as follows: (A copy of the revised plan is attached.)

A. "Attendance Areas," Item 1, Page 1

Eliminate the phrase "with the temporary exceptions hereinafter noted under the article entitled 'Exceptions'."

B. "Free Choice of Transfer," Item 4, Page 2

Alter the section to read as follows:

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"The right to exercise free choice of transfer is limited to any pupil who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority. Free transportation will be provided to any pupil who exercises and is granted a transfer under these conditions."

C. "Transfers Limited in Case of New Schools," Item 5, Page 3

Eliminate this section.

D. "Varsity Athletics," Item 6, Page 3

This section needs to be reviewed thoroughly (Eliminate, if possible).

E. "School Capacity to Be Determined," Item 7, Page 4

Eliminate this section.

F. "Transportation," Item 8, Page 4

Add the following after the first sentence:

"The only exception to this provision will be that for pupils who have exercised free choice of transfer as outlined in Item 4 (Revised), free transportation will be provided."

G. "Enrollment Continues for School Term," Item 9, Pages 4-5

Add the following after the third sentence:

"Rising 12th grade pupils for the school term 1969-70 may request to remain at the school to

which they were assigned and attended for the school term 1968-69. For the school term 1970-71, all pupils shall be assigned to the school serving the area in which they reside. A free choice of transfer will be considered as outlined in Item 4 (Revised)."

H. "Effective Date and Duration of Rules and Regulations," Item 12, Page 7

Change the first sentence as follows:

"These policies and guidelines shall control the assignment and reassignment of pupils for the forthcoming 1969-70 school term. . . ."

I. In addition to the above revisions the Board of Education will reassign all students (except 12th graders) now attending a school outside their geographic area to the school serving that area.

Preparation of the Community

In recent years the schools have become the focal point of action in connection with many broad social issues and a number of problems facing the community. Some examples are as follows: Providing for national defense education, teaching health and safety education, offering driver education, providing food for hungry children, combating poverty, lessening unemployment problems, easing social and racial tensions, caring for the mentally and physically handicapped, resolving civil rights issues, etc. As the most visible institution of community life, the schools have had to undertake these responsibilities with very little assistance from the community. In considering additional pupil

integration, it is imperative that the schools solicit the cooperative efforts of all, for the solution to this problem is complicated yet dependent upon finding answers to segregated housing, public transportation, employment practices, better financial support, a more tolerant attitude toward integration, and a real concern for all children.

In order to develop the pupil integration plans for the school year 1970-71 and succeeding years, the following procedures will be implemented immediately:

1. In assuming its leadership role, the Board of Education will solicit active help from all community groups. These groups will include the County Commissioners, City Council, Chamber of Commerce, news media, churches, civic clubs, PTA groups, real estate agencies, etc.

2. In order to involve the community, the Board will arrange to hold a number of public hearings at various locations throughout the county beginning at the earliest date possible. These meetings will be operated under strict guidelines in order to obtain the best thinking from every person or group who wishes to make a contribution. The guidelines for public hearings will be as follows:

a. The time and place will be announced publicly at least five days prior to each meeting.

b. Each individual who wishes to speak will make a written request to be heard to a designated person prior to the meeting.

c. The time for each individual speaker will be limited to five minutes except in the case of a group which will be allowed one spokesman who may speak for

ten minutes. A timekeeper will be provided by the Board of Education. Each person will be allowed to speak only once.

d. Each speaker will be asked to give his name and state whether he is speaking as an individual or in behalf of a group.

e. For the benefit of those who wish to speak and have not made a written request, they will be asked to come to the front and talk with a screening committee prior to the beginning of the meeting. If the request is legitimate, they will be given an opportunity to speak after the others have been heard provided there is sufficient time.

f. The speakers will be divided into proponents and opponents. Time will not be allowed for a rebuttal.

g. It will be stated at the beginning of the meeting that there will be no demonstrations, no applause, etc. If there is disruption during the meeting, the chairman may close the meeting at any time.

h. The Board members will not question individuals as they speak, but instead, will make notes, and after all have been heard, will ask questions.

i. The length of the meeting will not exceed 2½ hours.

j. These guidelines will be announced at the beginning of the meeting.

3. The Board will arrange to hold meetings with local school committees and with their help develop a plan for involvement of each local school community.

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4. The Board will call on such groups as the Chamber of Commerce, League of Women Voters, Junior League, and American Association of University Women to organize a committee or committees to receive calls from citizens who would like to make suggestions. These suggestions would then be organized and submitted to the Board of Education for study and action.

5. The Board will identify school systems such as Evanston, Illinois; Shaker Heights, Ohio; Berkeley, California; White Plains, New York; and Hartford, Connecticut that have in operation plans for integration of teachers and pupils and will arrange to visit and study these systems. It is highly recommended that other governmental, civic, and community leaders visit these places along with the Board.

6. The Board will request that individual schools develop innovative ways to bring about additional pupil integration. School principals, teachers, and school committees might work in integrated clusters or groups in geographic areas in order to find the most effective ways to integrate the schools in that particular cluster or group.

Some Alternative Plans for Pupil Integration

With positive action on the part of the community, the school system will be able to move in the direction of additional pupil integration. It should be recognized that there are no easy solutions to the problem and that the final outcome of any plan can not possibly be known in advance. Some of the alternative plans that have been used successfully in other communities that might be discussed and

evaluated through the involvement of the local community are the following:

1. *Redrawing of present geographical attendance areas.* This plan would accomplish some additional pupil integration and would reduce overcrowded conditions that now prevail at certain schools.

2. *Providing student exchange programs.* Students would be temporarily assigned to another school for a specified period of time, not to exceed one semester.

3. *Pairing of certain schools.* Students in grades 1-3 would attend one school, and students in grades 4-6 would attend the other school.

4. *Clustering specific schools.* There would be open enrollment to any of the schools within a cluster in which the student is enrolled provided the approximate desired white-black ratio ....

5. *Utilizing the educational park concept.* Under this plan, students would be brought together from elementary school through high school. It would require extra large sites and adequate building space.

6. *Providing students with the opportunity to go to another school for a specific type of program.* This would be particularly suitable for secondary students whose interests, aptitudes, and needs have been highly defined. At the elementary level the plan could be adopted for reading and other specialized instruction.

7. *Transporting students to another school.* Under this plan students would be bussed to another school in

order to obtain an approximate desired white-black ratio.

8. *Other alternatives.* Plans other than these might be developed for consideration.

In order to develop the most acceptable plan for further pupil integration, the Board of Education requests additional time for study and evaluation. A plan for pupil integration would be submitted to the court for its review on or before January 1, 1970. Elements of this plan may be tried out experimentally during the 1969-70 school year in order to gain practical experience. The approved plan will be put into effect beginning with the 1970-71 school year.

Summary

In summary, the Board of Education has made considerable progress in the integration of schools. In order to continue this positive approach and to carry out the Court order, the Board of Education will take the following action by the year indicated unless otherwise stated:

1969-70 school year

1. Achieve complete faculty integration.
2. Carry on an intensive in-service education program in order to assist teachers in their new assignments.
3. Provide staff, materials, and learning experiences to reach pupils of varying levels of educational maturity.
4. Revise the present pupil assignment plan to promote further pupil integration.

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5. Involve the entire community in the study and evaluation of ways in which additional pupil integration may be accomplished.
6. Submit a plan to the Court on or before January 1, 1970, which will provide for increased pupil integration.

1970-71 school year

1. Put into effect a plan which will provide for increased pupil integration.
2. Continue a program of teacher assignment which will maintain the same approximate racial balance in each school as that existing in the total school system.
3. Continue to offer an in-service education program to assist teachers in their new assignments.
4. Continue to provide staff, materials, and learning experiences to reach pupils of varying levels of educational maturity.

Opinion and Order dated June 20, 1969

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

I.

THE MOTION OF THE SCHOOL BOARD MEMBERS TO DISMISS.

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

II.

THE MOTION FOR A CONTEMPT CITATION.

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

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

III.

The Plan of the Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.

Gerrymandering

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

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

* * * * *

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

ORDER

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

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

2. No citations for contempt are made.

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

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

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

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

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

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

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

This is the 20th day of June, 1969.

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

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

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

This the 24th day of June, 1969.

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

Motion for Leave to File Supplemental Complaint, to Add Additional Defendants and for Temporary Restraining Order

(Filed July 22, 1969)

Plaintiffs, by their undersigned counsel, respectfully move the Court for leave to file a Supplemental Complaint and for a temporary restraining order restraining the defendants from giving consideration or effect to and from enforcing, administering, or applying certain provisions of North Carolina General Statutes §115-176.1 and as grounds therefor show the following:

1. Plaintiffs seek, by this motion, leave to file a Supplemental Complaint, copies of which are being forwarded this day to the Court together with summonses for service upon the North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina, parties which the plaintiffs seek to add as defendants to this action. Plaintiffs have served copies of the Supplemental Complaint upon counsel for those defendants now parties to this action.

2. The Supplemental Complaint seeks injunctive and declaratory relief against the following prohibitions contained in North Carolina General Statutes §115-176.1[1]

> "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio

[1] North Carolina General Statutes §115-176.1 was enacted as Chapter 1274 of the Session Laws of the 1969 North Carolina General Assembly which was ratified on July 2, 1969. A copy of the Ratified Bill is attached to the Supplemental Complaint as Exhibit A.

of race, religion or national origins. Involuntary bussing of students in contravention of this Article is prohibited and public funds shall not be used for any such bussing."

3. For reasons stated more fully in the Supplemental Complaint, plaintiffs allege that the purpose, motive and effect of the statutory provisions complained of therein is to forbid the defendants, now parties to this action, and other school officials in the State of North Carolina from complying with existing lawful orders of this and other courts and to forbid them from complying with the requirements of the Thirteenth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs allege that this is so because compulsory assignments and involuntary bussing, prohibited by North Carolina General Statutes §115-176.1, are necessary devices for complying with the orders of this Court entered on April 23, 1969, and June 20, 1969, and for complying with constitutional requirements.

4. Plaintiffs seek to add as parties-defendant, the North Carolina State Board of Education and Dr. A. Craig Phillips, the Superintendent of Public Instruction. These parties are charged by the constitution and laws of the State of North Carolina with the general supervision and administration of the public schools and the disbursement of public funds to the various public schools in North Carolina. They are thus required by North Carolina law to insure that public funds are not spent for involuntary buss-

ing and pupil assignments. They are therefore proper and necessary parties to an adjudication of the constitutional issues raised by the plaintiffs in the Supplemental Complaint. In addition, they are proper parties to this proceeding because, they, together with local school officials have an affirmative duty to take active steps to disestablish the dual school system in Charlotte-Mecklenburg County and other administrative units throughout the State.

5. Plaintiffs, in their Supplemental Complaint, request that a three-judge Court be constituted to determine their constitutional challenge to a statute of state-wide application. This motion for a temporary restraining order is addressed to the single District Court judge hearing this case pursuant to 28 U.S.C. §2284(3).

6. Plaintiffs allege that, unless immediately restrained, the defendants will apply the statutory provisions complained of herein and will thereby fail to comply with the orders of this Court of April 23 and June 20, 1969, thus causing plaintiffs irreparable damage. In support of this allegation, the plaintiffs attach hereto the affidavit of Reginald A. Hawkins, the next friend of plaintiffs in this action.

WHEREFORE, plaintiffs respectfully pray that they be granted leave to file their Supplemental Complaint, that they be allowed to add the North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina as defendants in this action and that all defendants be restrained

from enforcing the complained of provisions of North Carolina General Statutes §115-176.1.

Respectfully submitted,

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Attorneys for Plaintiffs

Order Granting Leave to File Supplemental Complaint and Adding Defendants

Upon motion by plaintiffs for leave to file a supplemental complaint and add The North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction for the State of North Carolina as defendants and it appearing to the Court that good cause is shown therefor

It is ORDERED that plaintiffs' motion for leave to file a supplemental complaint and to add The North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina as defendants is granted.

The United States Marshal is directed to serve the supplemental complaint and summons upon the above named defendants.

This 22nd day of July, 1969.

JAMES B. MCMILLAN
United States District Judge

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Supplemental Complaint

(Filed July 22, 1969)

I

This Supplemental Complaint is a proceeding for a temporary restraining order and a preliminary and permanent injunction against the enforcement of the portions of North Carolina General Statutes §115-176.1, (Chapter 1274 of the Session Laws of the 1969 General Assembly of North Carolina, ratified on July 2, 1969, a copy of which is attached hereto as Exhibit A) which reads:

> "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origin. Involuntary bussing of students in contravention of this Article is prohibited, and public funds shall not be used for any such bussing."

In addition, plaintiffs seek a declaratory judgment that the statutory provisions complained of are unconstitutional on their face and as applied.

II

A. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343, this being a suit in equity authorized by 42 U.S.C. § 1983 to redress the deprivation, under color of North Carolina Law, of rights, privileges and immunities guaranteed by the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

B. Jurisdiction is further invoked under 28 U.S.C. §§ 2281 and 2284, this being a suit for a temporary restraining order, an interlocutory and permanent injunction restrain-

ing the enforcement, operation and execution of portions of North Carolina General Statues §115-176.1 and requiring the convening of a three-judge Federal Court. Jurisdiction is further invoked under 28 U.S.C. §§ 2201 and 2202, this being a suit for a declaratory judgment declaring the unconstitutionality of portions of North Carolina General Statutes 115-176.1.

III

A. The plaintiffs bringing this Supplemental Complaint are those plaintiffs who originally brought this action styled *James E. Swann, et al.,* v. *Charlotte-Mecklenburg Board of Education,* Civil Action No. 1974, which was filed on January 12, 1965.

B. This Supplemental Complaint, as the original complaint, is brought on behalf of the individual plaintiffs and other black students and parents similarly situated, pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of such other black students, who are and have been limited, classified, segregated or otherwise discriminated against in ways which deprive or tend to deprive them of equal educational opportunities because of race or color. The members of the class are so numerous as to make it impracticable to bring them all before the Court. A common relief is sought and plaintiffs adequately represent the interests of the class.

IV

The defendants in this action are:

(a) The Charlotte-Mecklenburg Board of Education, the original defendant in this case, and the individual members

thereof heretofore added as defendants by order of the Court dated June 4, 1969;

(b) The North Carolina State Board of Education, a public body corporate of the State of North Carolina, which is charged by the State Constitution and laws with the duty and responsibility of the general supervision and administration of the public schools and educational funds of the State of North Carolina; and

(c) Dr. A. Craig Phillips, who is the elected State Superintendent of Public Instruction of the State of North Carolina, the administrative head of the Public School System of the State and by force of law, a member and the Secretary of the State Board of Education.

V

Plaintiffs initially commenced this action on January 12, 1965, (Civil Action No. 1974) against the Charlotte-Mecklenburg Board of Education seeking to obtain the elimination of racial segregation in the public schools in Mecklenburg County.

VI

On July 14, 1969, the Court entered an Order approving a plan submitted by the Board for the desegregation of the schools. The plaintiffs appealed and the decision was affirmed by the United States Court of Appeals for the Fourth Circuit. (*Swann* v. *Charlotte-Mecklenburg Board of Education,* 369 F.2d —— (Fourth Circuit 1966).)

VII

A. On September 6, 1968, the plaintiffs moved the Court for further relief contending that the Board was required

to take further steps to disestablish the dual school system in Mecklenburg County.

B. On April 23, 1969, the Court, following several days of testimony heard in March, 1969, entered an Opinion and Order Regarding the Desegregation of the Schools of Charlotte and Mecklenburg County. The Court found that the schools remained segregated, that the pupil assignment system and the placement of the schools continued to racially segregate the pupils, that the faculties had not been adequately desegregated as previously directed by the Court in 1965 and that the Board was to submit a plan for the desegregation of the schools by May 15, 1969.

C. The Order directed the defendants to submit a plan for the active and complete desegregation of the teachers within the system to be effective in the 1969-70 school year and that the plan should seek to apportion teachers to each school in substantially the same ratio (3 to 1) as the ratio of white teachers and black teachers in the system at large.

D. The defendants were also directed to submit a plan and timetable for the active and complete desegregation of the pupils within the system to be predominantly effective in the fall of 1969, and to be completed by the fall of 1970.

E. The Board was directed to consider several methods of desegregation which had been advanced by the plaintiffs, including pairing of grades and schools; feeding elementary schools into junior and senior high schools; combining zones and free choice where each method proceeds logically toward eliminating segregation; bussing and other trans-

portation; setting up large consolidated school units freely crossing city and county lines to serve larger areas; and to seek aid as may be available from State and Federal agencies.

F. The Court thereafter upon request of defendant, granted an extension of time until May 29, 1969, within which to file its plan.

VIII

A. On May 15, 1969, the plaintiffs filed a motion for a temporary restraining order seeking to restrain all school construction pending approval by the Court of a school construction plan designed to promote desegregation of the schools.

B. The Board filed its plan on May 28, 1969, as required by the Order of the Court.

C. On June 4, 1969, the Court entered orders setting a date for hearing on the adequacy of the defendant's plan and set forth certain questions to which the parties were to respond at the hearing. In addition, the Court ordered that all members of the Board of Education be added as parties-defendant.

D. On June 11, 1969, the plaintiffs filed objections to the plan submitted by the defendant and moved for civil contempt.

E. On June 11, 1969, the defendants moved to set aside the Order of the Court adding the individual Board members as defendants. On June 12, 1969, a similar motion was filed on behalf of the defendant, William E. Poe. The plaintiffs filed a response in opposition to these motions.

F. A hearing was held on the adequacy of the plan and on all pending motions on June 16, 17, and 18, 1969.

IX

A. The Court entered an Opinion and Order dated June 20, 1969, which was supplemented by additional findings on June 24, 1969.

B. The Court denied the motions of the individual Board members to dismiss and denied plaintiffs' motion for contempt.

C. The Court found that a desegregation plan had been submitted to the Board by the Superintendent, but that the Board struck out virtually all the effective provisions of the plan; that the plan filed as to pupils and teachers was nearly identical to the one previously found racially discriminatory; that the attendance areas of several of the schools were racially gerrymandered; that the defendants had not met their burden to show that the school construction plan would promote the desegregation of the schools.

D. The Court found that desegregation of schools is something that has to be accomplished independent of freedom of transfer.

E. The Court ordered the defendants to prepare and submit by August 4, 1969, a positive plan for the desegregation of the Charlotte-Mecklenburg School System as originally directed on April 23, 1969.

Supplemental Complaint

X

A. The April 23, 1969 Order of the Court contained the following findings by the Court:

"The 'Neighborhood School' Theory . . .

. . .

The neighborhood school concept may well be invalid for school administrative purposes even without regard for racial problems. The Charlotte-Mecklenburg School Board, today, for example, is transporting 23,000 students on school busses. First graders may be the largest group so transported. If a first grader lives far enough from school to ride a bus, the school is not part of his neighborhood.

When racial segregation was required by law, nobody evoked the neighborhood school theory to *permit* black children to attend white schools close to where they lived. The values of the theory somehow were repudiated by the 1955 North Carolina General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56, which is quoted above. The neighborhood school theory has no standing to override the Constitution.

Bussing. Under North Carolina General Statutes, §§115-180, the Board is expressly authorized to operate school busses to transport school children. The state pays bus expenses only for rural children and for some who have been annexed into the city in recent years. This apparent discrimination against city dwellers is reportedly under attack in another Court. This Board already transports 23,000 students to school every day out of the 32,000 who live in the

area presently eligible for bus service. The present cost of school bussing is about $19 for bus operation plus the cost of the bus which is $4,500 per bus should not exceed $20 per pupil a year. In other words, it costs about $40 a year per pupil to provide school bus transportation, out of total per pupil school operating costs of about $540. The income of many black families is so low they are not able to pay for the cost of transportation out of segregated schools to other schools of their choice.

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

B. The Court found that 95% of the blacks were concentrated in the western portion of the City of Charlotte and that official action taken on schools, zoning and planning had contributed to this concentration.

XI

A. On May 7, 1969, a member of the Mecklenburg County House delegation of the North Carolina General Assembly introduced a bill (House Bill 990, a copy of which is attached hereto as Exhibit B) entitled "AN ACT TO PROTECT THE NEIGHBORHOOD SCHOOL SYSTEM AND TO PROTECT THE INVOLUNTARY BUSSING OF PUPILS OUTSIDE THE DISTRICT IN