ing such attendance lines to avoid the possibility of "tipping."

A majority of the Board of Education believes that the constitutional requirements of desegregation will be achieved by the restructuring of attendance lines, the restricting freedom of transfer and other provisions of this plan. The majority of the Board has, therefore, discarded further consideration of pairing, grouping, clustering and transporting. If the majority of the Board of Education is in error in its conviction that such measures are not constitutionally mandated, the Board respectfully requests clear direction to the contrary through the careful consideration of perplexing questions as they apply to the Charlotte-Mecklenburg School System. These questions include the following:

1. What is a unitary school system?
2. What makes a school racially indistinguishable?
3. Will this school system which bases its plan primarily on geographic zoning be considered to have a unitary school system?
4. Will this system be unitary even though it operates more schools with all white student populations?
5. Will this system be unitary even though it operates one or more schools with all black student populations?
6. What constitutes a racially indistinguishable faculty?
7. If a pupil percentage ratio (black/white) is used, what are the acceptable limits?

The Amendment to Plan for Further Desegregation of Schools

8. If pupil ratios (black/white) are used in individual schools, must the same ratios be maintained indefinitely in spite of changing neighborhood patterns?

Free Choice of Transfer

Any black student will be permitted freedom of choice transfer if the school to which he is originally assigned has more than 30 per cent of his race and if the school he is requesting to attend has less than 30 per cent of his race and has available space. Any white student will be permitted freedom of choice transfer if the school to which he is originally assigned has more than 70 per cent of his race and if the school he is requesting to attend has less than 70 per cent of his race and has available space. Availability of space will be determined by the school administration under rules of uniform application established by the School Board.

In addition, transfers may be granted to students whose request for transfer evidences conditions of hardship. Hardship will be determined on the basis of uniform rules developed by the administrative staff.

The administrative procedures for such transfer shall be readily available to each student.

Faculty Desegregation

During the 1970-1971 school year, the Board of Education will staff each school so that the faculty at each school will be predominantly white and, where practicable, will reflect the ratio of white and black teachers employed in the total faculty of the school system.

Recognizing that the assignment procedures necessary to achieve this goal will place many teachers in circum-

stances with which they are unfamiliar and for which they have only limited preparation, the Board will therefore seek to provide special assistance to them by requesting additional funds in its 1970-1971 budget for in-service education and by deploying its central office staff in the most effective way possible.

It is impossible at this time for the Board to specify the precise percentage of racial mix in each school faculty since the school system will lose approximately 600 teachers at the end of the current year and will employ approximately 750 teachers new to the system. Race and qualification of these teachers are unknown at this time, and faculty assignments cannot be made until the summer months immediately preceding the opening of the school year.

School Construction Program

Until such time as the restructuring of attendance lines is final, a comprehensive review of the new construction program cannot be completed. As indicated in the Board's plan filed with the Court on July 29, 1969, a part of the study will be completed by February 1, 1970, and a more general long-range study will be completed by June of 1970.

The Building and Sites Committee has undertaken this study at the direction of the Board of Education. The Committee has conducted an extensive study involving the 90 projects identified in school system's master plan for construction. The Committee has reported to the Board that 46 of the 91 projects are either completed, under construction, or are far along in planning. Of the 45 projects remaining, 5 ($1,850,000.00) are unaffected by any

plan for further desegregation because they are already integrated; and 19 ($2,690,000.00) projects are unaffected because the work planned will have no effect on the pupil capacity of the physical plant. The Building and Sites Committee has authorized the staff to proceed with planning on all projects unaffected by any anticipated moves in desegregation.

The Committee concluded that the work on the remaining 21 projects might be affected by plans for further desegregation and delayed planning on these projects pending further study. Funds set aside for these 21 projects amounts to $10,475,000.00.

The names of these projects are as follows

1. Moore's Chapel
2. Allen Hills
3. Thomasboro
4. Cotswold
5. Lincoln Heights
6. University Park
7. Villa Heights
8. Highland
9. Lakeview
10. Briarwood
11. Newell
12. Midwood
13. Berryhill
14. Selwyn

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15. Center City Elementary
16. Fairview
17. Wilora Lake
18. Elizabeth
19. Piedmont, Jr.
20. Irwin Avenue, Jr.
21. Metropolitan, Sr.

The Building and Sites Committee has analyzed the present housing conditions for the school system. A copy of this analysis is attached as Exhibit "A".

I, William C. Self, Superintendent of the Charlotte-Mecklenburg school system and Secretary to its Board of Education, do hereby certify that the foregoing is a true, perfect and correct copy of the Amendment to Plan for Further Desegregation of Schools as adopted by the Board of Education on the 13th day of November, 1969, and spread upon its minutes.

This the 17th day of November, 1969.

/s/ WILLIAM C. SELF
William C. Self
Secretary to the Board

Report Submitted in Connection With the November 13, 1969 Amendment to Plan for Further Desegregation

On November 7, 1969, the Court denied the defendant's motion for an extension of time for submission of a plan for further desegregation and ordered submission of a report as directed in the order of August 15, 1969. The defendant's amendment to its plan for further desegregation is submitted contemporaneously herewith, following adoption by the Charlotte-Mecklenburg Board of Education.

The plan should be considered against the background of progress in desegregation accomplished by the School Board. The desegregation of this system began during the school year 1962-1963 by the closing of schools and partial redestricting of attendance lines which was completed in 1965. Through this program, the former dual system of schools which had existed prior thereto was disestablished.

In 1965, this proceeding was instituted by the present plaintiffs and the district court (1965) and the Court of Appeals (1966) approved the plan of desegregation under which the schools were operated through the school year 1968-1969. As set forth below, the degree of desegregation accomplished under that plan has been substantial. It should be kept in mind that the School Board during that period was guided by the following pronouncement of the U. S. Court of Appeals for the Fourth Circuit, to wit:

> "Whatever the Board may do in response to its own initiative or that of the community, *we have held that there is no constitutional requirement that it act with the conscious purpose of achieving the maximum mixture of races in the school population* . . . So long as

> the boundaries are not drawn for the purpose of maintaining racial segregation, *the School Board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns.*" (Emphasis supplied.)—*Swann* v. *Charlotte-Mecklenburg Board of Education,* 369 F. 2d 29 (October 24, 1966)

For almost four years, the Board proceeded in conformity with the plan approved by the District Court and the Court of Appeals. It was not until 1969 that the Board was informed that its plan was no longer acceptable and that additional, but generally unspecified steps were required to effect further desegregation.

The School Board has acted affirmatively in many ways to assure an equal educational opportunity for all students and to further desegregate the system, many of these actions having been taken on its own initiative. This positive action is reflected by the following illustrations:

1. Twenty schools have been closed and pupils reassigned primarily in order to increase racial mixing.
2. A single athletic league has been created without distinction between white and black schools or athletes.
3. Employment practices are on a nondiscriminatory basis and employment ratios reflect the black/white ratio of the community.
4. Individual school faculties have been desegregated.
5. In the school year 1970-71, all faculties will be predominantly white.

Report Submitted in Connection with the November 13, 1969 Amendment to Plan for Further Desegregation

6. Black principals have been assigned to predominantly white schools and white principals have been assigned to predominantly black schools.

7. Black professional personnel have been appointed to ranking administrative positions.

8. A black minister was appointed by the Board of Education to its membership when the community twice failed to elect him to the Board. This member currently serves on the Board of Education.

9. The dual school bus system was eliminated.

10. Nondiscriminatory practices are, and have been, followed in all facets of the school system, including the following:

    a. School fees
    b. School lunches
    c. Library and other instructional materials
    d. Quality of school buildings
    e. Use of federal funds
    f. Course offerings
    g. Evaluation of students

11. The black and white P.T.A. Councils have been merged into a single organization at the urging of the school administration.

12. Specialized and supplementary programs, such as the residential school for underachieving students (the Learning Academy) and the kindergarten and nursery school programs (Child Devel-

opment Centers), have been designed and implemented in such a way that desegregation has been substantially increased.

13. Freedom of choice has been redesigned so that its only effect is to promote increased desegregation and to give stability to the racial mix of individual schools.

14. The current restructuring of attendance lines is designed to promote additional desegregation.

15. The current plan provides for periodic review of the racial mix at each school so that corrective action may be taken to inhibit "tipping" and avoid further black racial isolation in the schools.

This portion of the report deals with further information concerning the nature and effect of the Plan.

The Order dated August 15, 1969, approved the policy statement of the Board and, therefore, a restatement of the same is deemed unnecessary.

A review of the plan discloses that the provisions for restructuring attendance lines are in conformity with the plan as submitted on July 29, 1969, supplemented by later action of the Board which was subsequently submitted to the Court. It is important to know that the Board is now submitting preliminary information relating to theoretical ratios in the elementary schools which promise a remarkable degree of desegregation. It is important that the Court does not construe the information submitted in the plan relating to racial ratios of elementary schools as being in the nature of a guarantee by the Board since it is anticipated the results of restructuring the attendance lines may

produce a greater or lesser degree of desegregation, the extent of which cannot be determined at this time. Comparing the theoretical ratio with the present racial ratio of desegregation in the elementary schools, the following information is disclosed:

Elementary Schools

Percent Black	*Number of Schools 1969-70 Actual Ratios*	*Number of Schools Theoretical Ratios*	*Number of Schools Not Computed 1969-70 Actual Ratios*
0%	9	2	1
1–5%	17	11	3
6–10%	11	2	2
11–15%	6	4	3
16–40%	13	29	8
41–100%	21	8	0

It is noted that it is theoretically possible to reduce the number of all white schools by six and the number of schools which are all black or likely to become predominantly black has been reduced by thirteen schools. The precise ratios must wait the difficult task of locating all attendance lines.

An illustration of the difficulty in designing school attendance lines and in preserving maximum desirable results is shown on Exhibit "A" attached hereto. This exhibit shows three adjacent schools, each of which requires grids needed by one or more of the other schools to reach maximum desirable desegregation. However, by reason of the enormous number of alternative grid combinations available, it is believed that substantial further desegregation may be achieved under this approach.

Report Submitted in Connection with the November 13, 1969 Amendment to Plan for Further Desegregation

The Court has previously expressed concern over Harding High School, Wilmore Elementary and other schools which have shown a rapid shift in student population from white to black. The Board will employ three methods in an attempt to produce stable desegregation. The methods to be used are as follows:

1. In determining the initial attendance lines, the ratio of black to white students will not exceed 60% white—40% black where the school is desegregated.
2. Severe restrictions will be imposed on freedom of choice so that exercise of freedom of choice may have only the effect of improving desegregation in the system.
3. The school staff will keep a watchful eye on schools experiencing unusual growth in black student population. The school staff will report to the Board such shifts so that attendance lines may be altered to counteract neighborhood shifts which often lead to racial isolation of blacks. (See Exhibit "B" attached hereto for examples of such shifts.)

The Court will, therefore, note that the Board's plan is well calculated to produce stable desegregation.

With reference to faculty desegregation, great progress has been achieved for the second school year 1969-70. The plan will produce substantially more desegregation since each school will have a preponderance of white teachers and, where practicable, a more desirable ratio. The Board is not only interested in numbers but also in assisting its faculty with preparation for new teaching conditions and situations. Precise statistics for the next school year cannot

be furnished at this time for the reasons stated in the plan.

To develop a meaningful, enduring and comprehensive construction program, the Board and staff must know the precise location of the new attendance boundaries since the capacities of nearby schools and the effect of new construction on such capacities are critical factors in determining the placement of new schools. Therefore, development of this phase of the plan must await restructuring of attendance lines.

It is noted that with respect to current construction, the five projects unaffected by the desegregation plan involve an expenditure of $1,850,000; projects for standardization of facilities to meet educational programs where capacity is not a factor involve an expenditure of $2,690,000, and projects which may be affected by desegregation involve an expenditure of $10,475,000. The latter sum is being held pending development of the building program specified in the plan.

The Court has previously been furnished information for the 1968-69 school year which indicates that Charlotte-Mecklenburg ranks 43rd in size among the 100 largest school systems of the Nation.

Of the 15 systems which have comparable pupil enrollments and comparable percentages of black students, Charlotte-Mecklenburg ranks 5th in the percentage of schools having a racial mix. Locally, significant additional progress has been made for the 1969-70 school year.

These comparisons are not intended as any indication of a self-satisfied complacency on the part of the Charlotte-Mecklenburg Board of Education regarding the progress which it has made to date in the desegregation of its schools or as a justification for any slow-down in its con-

tinuing efforts to afford every child in the system the education to which he is entitled. However, these comparisons (and similar ones for prior years) do show that Charlotte-Mecklenburg has been among the leaders in facing up to the responsibility of providing quality education on a desegregated basis for all children—white or black.

The Board has no intention of tailoring its performance to those of other systems. On the contrary, the Board on its own initiative is committed to the proposition that every child in the system is entitled in full measure to a quality education unimpaired by any restraints or restrictions upon his constitutional rights.

As outlined above, in response to the June 20, 1969, order of the Court, this Board submitted a plan for the desegregation of teachers and a plan and time-table for active desegregation of pupils. These plans were conditionally approved by the Court on August 15, 1969, with instructions to submit a more comprehensive plan by November 17, 1969.

In compliance with the directions of the Court, the Board of Education and its administrative staff have worked diligently to formulate a plan which will satisfy the mandate of the Court and protect and promote the Constitutional rights of every child, without sacrificing the quality of education which we desire for all our children and without jeopardizing the community support which our schools must have. It is the belief of the Board of Education that the current plan, as detailed in this report, will achieve both these goals.

The Board of Education, however, has been handicapped in its work. It has been required to proceed without clear directives regarding exactly what is required of the Board and the plan to satisfy the mandates of the Constitution

to provide for our children a "non-racial", "desegregated", "unitary" school system.

The Board is now, and always has been, ready and willing in good faith to fully acquit its Constitutional duty and to incorporate in any plan whatever may be required by the Constitution—regardless of what the Board may conceive to be the effect of such compliance on the process of educating children or upon community support for the schools.

The Board takes very seriously its obligation to act responsibly— actions which vitally affect in a direct and personal way the lives and welfare of 85,000 students, their parents, 5,500 school personnel and the community at large. The formation of a stable and workable desegregation plan involves intelligent planning and hard decisions. These decisions should not be made more difficult by requiring the Board to speculate unnecessarily about what must or can be done.

If the Board is in error in its interpretation of its constitutional duty, then the time has come when the Board must be given specific directions as to what are and what are not necessary or permissible ingredients of an acceptable plan. When the Board understands what is required, it can more effectively get on with the job of implementing its plan—without the disruptive uncertainties and protracted litigation involved in the submission of numerous piecemeal, tentative, speculative or conditionally approved plans which are the likely results of plans submitted without a clear understanding of what must be done. It is the Board's conviction that, once the community understands what is required, it will support the Board and accept what-

ever adjustments must be made to comply with these requirements.

Respectfully submitted this 17th day of November, 1969.

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Law Building
Charlotte, North Carolina

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Attorneys for Defendants

Report Submitted in Connection with the November 13, 1969 Amendment to Plan for Further Desegregation

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Dr. Robert C. Hanes, of lawful age, being first duly sworn, on his oath states that he is the Assistant Superintendent of Defendant named in the above and foregoing matter and that the facts stated therein are true according to his best knowledge and belief.

/s/ ROBERT C. HANES
Dr. Robert C. Hanes

Sworn and subscribed to before me
this 17th day of November, 1969

/s/ FAYE JALLEY
Notary Public

My commission expires: 3/27/71

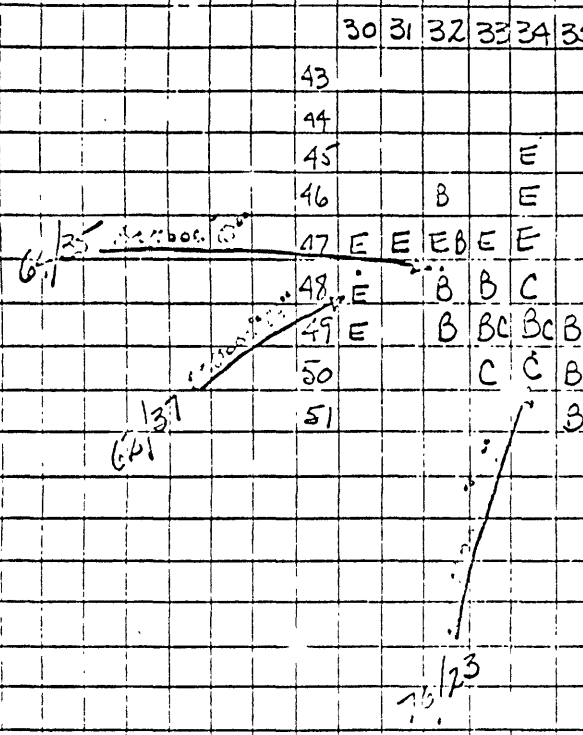
(See Opposite) ☞

SYSTEMS ASSOCIATES, INC.

Development _____ Exhibit _____ File No. _____

Subject _____ Sheet No. _____ of _____

By _____ Date _____



Three adjacent school districts representing schools b, c, and e. The squares represent grid squares as disclosed on master elementary map. The designation of school grid represents the location of the school within these grids. The letters within the grids represent those grids required achieving desegregation ratios indicated of 64% white/35% black for school b; 62% white 37% black for school E and 76% white and 23% black for school c. It is noted that several schools claim the grids requ[illegible] for other schools.

EXHIBIT "A"

Formerly White Schools Experiencing Change to Predominantly Black Schools, 1954-55 through 1968-69

School	PUPILS 1954-55 B	1954-55 W	1965, March B	1965, March W	1968-69 B	1968-69 W
Barringer Elem.		190		604	668	131
Bethune		373	343	9	223	3
Elizabeth		718	5	448	270	194
First Ward		597	473		749	
Lakeview		341		400	269	147
Seversville		361	96	229	*	
Zeb Vance		221	465		257	
Villa Heights		772	23	594	796	126
Wesley Heights		225	214		*	
	-0-	3798	1619	2284	3232	601
				+ Est. at Bruns	500	4
					3732	605
Hawthorne Jr. High		785	25	670	492	447
Piedmont		919	121	291	428	53
	-0-	1704	146	961	920	500
Total	0	+ 5502	1765	+ 3245	4652	+ 1105
	5502 (0% B)		5010 (35% B)		5757 (81% B)	

Does not include

(1) Parks Hutchison (121 white in 1954-55) closed as white (not needed) at end of 1958-59 nor North Charlotte (261 white in 1954-55) closed: assigned to new Highland 1955-56.

(2) Seven all-black schools which were closed in 1966-67 to eliminate dual-school boundaries - -

Crestdale, Gunn, Ada Jenkins, Plato Price, Sterling, Torrence-Lytle, Woodland
97 + 696 + 431 + 505 + 699 + 1005 + 360

or 3793 black students, as reported March 6, 1965.

(3) Three all-black schools: Biddleville, Morgan + Myers Street
434 + 305 + 820 (1559 in 1965)
or 390 + 211 + 559 =(1160 in 1967-68)

and all-white Woodlawn school (273).

--These four along with Seversville* and Wesley Heights* were closed at end of 1967-68.

Plaintiffs' Response to Defendants' Amendment to Plan for Further Desegregation of Schools

(Filed November 21, 1969)

On three different occasions this Court has urged, encouraged and requested the defendant School Board to carry out its constitutional duty to desegregate the Charlotte-Mecklenburg public schools. The Court has literally leaned over backwards to seek voluntary compliance by the Board. Even in its last order, in rejecting additional delay to submit a plan, the Court left the opportunity open to the Board for additional time to comply by merely making some showing now of the Board's intent to implement its obligation at some definite time in the future. Despite these efforts, however, the Board now unequivocally, defiantly and contumaciously advises the Court that it will not now, nor in the future, carry out its constitutional responsibilities.

Irrespective of whether the Court's directives are constitutionally mandated, and plaintiffs submit that they are and further that they are required to be implemented with more haste than the Court has heretofore required, the Board is constitutionally obligated to implement these directives pending some change, modification or vacation by this or some other Court. *Walker* v. *City of Birmingham,* 388 U.S. 307, 18 L.ed 2d 1210; *United States* v. *Mine Workers,* 330 U.S. 258, 91 L.ed. 884; *Howat* v. *Kansas,* 258 U.S. 181, 66 L.ed 550. As the Supreme Court stated in *Walker*: "This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and [disobey the directives of the Court] . . . . [R]espect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." 388 U.S. at 321, 18

L.ed 2d at 1220. Here this Court has unequivocally directed a plan for complete desegregation of the Charlotte-Mecklenburg public schools. Notwithstanding this directive, however, the defendants, by the Amendment to Plan for Further Desegregation of Schools, in utter contempt of the Court's order, have simply refused to comply. Plaintiffs, therefore, respectfully submit that they are not only entitled to an order requiring defendants, and each of them, to show cause why they should not be held in contempt, *Walker* v. *City of Birmingham, supra,* but certainly now to an order appointing educational consultants to devise a plan for complete and immediate desegregation of the school system. Cf. *Dowell* v. *Board of Education of Oklahoma City Public Schools,* 244 F. Supp. 971 (W.D. Okla. 1965), aff'd in part 375 F.2d 158 (10th Cir. 1967), cert. den., 387 U.S. 931, 18 L.ed. 2d 993; *Alexander* v. *Holmes County Board of Education,* —— U.S. —— (No. 632).

1. The Board's response to the Court's order of November 7, 1969 does no more than reiterate the rejected request for more time. The Board rejects any affirmative obligation to take appropriate steps to disestablish the segregated school system it has created. *Green* v. *School Board of New Kent County,* 391 U.S. 430, 20 L.ed. 2d 716; *NLRB* v. *Newport News Shipbuilding and Dry Dock Company,* 308 U.S. 241, 84 L.ed. 219; *United States* v. *Crescent Amusement Company,* 323 U.S. 173, 89 L.ed. 160; *Standard Oil Company* v. *United States,* 221 U.S. 1, 55 L.ed. 619. The Board questions "tipping", and well it should for the record clearly demonstrates that "tipping" has been caused by the Board's own action and conduct. See Plaintiffs' Further Response filed on November 3, 1969. The Board

then inquires what are its duties, when this Court, the Fourth Circuit and the Supreme Court have clearly instructed the Board with respect to its duties:

> The pattern of separate "white" and "Negro" schools in the [Charlotte-Mecklenburg] school system established under compulsion of state laws is precisely the pattern of segregation to which Brown I and Brown II were particularly addressed, and which Brown I declared unconstitutionally denied Negro school children equal protection of the laws. . . . [S]chool systems were *required* by Brown II "to effectuate a transition to a racially nondiscriminatory school system." . . . . The School Board contends that it has fully discharged its obligation by adopting a plan by which every student, regardless of race, may "freely" choose the school he will attend. The Board attempts to cast the issue in its broadest form by arguing that its "freedom-of-choice" plan may be faulted only by reading the Fourteenth Amendment as universally requiring "compulsory integration," a reading it insists the wording of the Amendment will not support. But that argument ignores the thrust of Brown II. In the light of the command of that case, what is involved here is the question whether the Board has achieved the "racially nondiscriminatory school system" Brown II held must be affectuated in order to remedy the established unconstitutional deficiencies of its segregated system. In the context of the State-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former "white" school to Negro children and of the "Negro" school to white children merely begins, not ends, our in-

> quiry. . . . Brown II was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. *School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmatively duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . . Green,* 391 U.S. at 435-438, 18 L.ed. 2d at 722-723. (Emphasis added.)

Further delay has now been clearly enjoined. *Green, supra; Alexander* v. *Holmes County Board of Education,* —— U.S. —— (No. 632) and theCourt has been directed to take immediate steps which will disestablish the segregated school system.

2. Defendants propose to restrict freedom-of-choice, allowing limited racial majority to minority situations, but also to allow transfers in hardship cases as "determined on the basis of uniform rules developed by the administrative staff". Defendants' past practices and present defiance of the directives of the Court clearly entitled plaintiffs to some express constitutional standards which can be shown will not further perpetuate this racially dual school system.

3. Defendants further promise to hire and assign teachers and school personnel without regard to race, the same promise made in 1965 which the Court found in April, 1969 had not been implemented.

Plaintiffs' Response to Defendants' Amendment to Plan for Further Desegregation of Schools

4. Defendants finally promise to withhold construction on 21 proposed projects while proceeding with 24 projects. Defendants contend that the 24 projects will not affect desegregation. There has been no showing even as to the 24 projects that they will not adversely affect whatever plan may subsequently be devised and directed by the Court. Plaintiffs submit that pending the approval of a plan by the Court, or at least some showing by the defendants, all construction and additions should be enjoined.

5. The Court has been further directed to devise its own plan and to insure its prompt and effective implementation, particularly where school officials simply refuse to do so. *Alexander* v. *Holmes County Board of Education, supra,* and may do so without further hearings. While the Court may hear and consider objections by the Board to the Court's directed plan, such is permitted only after the Board has fully complied in all respects with the plan directed. *Alexander, supra.*

Plaintiffs, therefore, respectfully submit and pray that the Court reject the defendants' Amendment to Plan for Further Desegregation of Schools; that the Court appoint educational consultants to devise a plan for complete desegregation to be instituted forthwith; that the Court direct that the expenses of the educational consultants be borne by the defendants; that the Court enjoin any further construction or additions pending the complete implementation of the plan directed by the Court; that the Court order that the defendants, and each of them, immediately show cause why they should not be held in contempt of the Court's orders; that the Court award plaintiffs' costs herein, including reasonable counsel fees; that the Court

retain jurisdiction of this cause and award plaintiffs such other and further relief as the Court may deem the plaintiffs entitled.

Respectfully submitted,

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Attorneys for Plaintiffs

Opinion and Order dated December 1, 1969

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

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

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

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

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

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

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

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

Concerning faculty desegregation the plan says:

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

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

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

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

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

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

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

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

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

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

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

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

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

The Schools Are Still Segregated

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

The Result is Unequal Education

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

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

If the courts should accept the defendants' contention that all they have to do is re-draw attendance lines and allow a type of freedom of choice, two-thirds or more of the black children in Mecklenburg County would be relegated permanently to this kind of separate but unequal education.

AVERAGE ACHIEVEMENT TEST SCORES, GRADE 6, REPORTED IN GRADE EQUIVALENT, 1965-66/1968-69

	WM		PM		SP		LANG		ACM		ACN		AAPP		SS		SC	
	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69
GROUP A - 100% Black Elementary																		
Billingsville	37/39		39/42		43/45		36/37		37/38		41/44		38/39		42/43		37/38	
Marie Davis	42/43		42/44		49/48		39/41		43/45		45/48		43/41		43/45		39/40	
Double Oaks	44/40		42/40		49/46		35/36		41/39		45/44		41/37		44/40		41/37	
First Ward	43/40		42/41		50/48		39/36		40/39		44/46		43/41		48/44		42/40	
Lincoln Heights	45/44		44/44		52/49		44/42		45/43		46/48		43/41		47/46		42/41	
Oaklawn	44/44		42/45		50/53		42/47		41/45		50/49		43/44		41/49		40/47	
University Park	44/44		44/47		51/48		43/43		40/44		46/48		41/44		46/46		41/43	
GROUP B - 100% White Elementary																		
Devonshire	52/59		54/62		57/60		57/64		49/53		53/63		55/59		57/64		57/65	
Hidden Valley	/59		/62		/61		/62		/51		/60		/59		/64		/67	
Merry Oaks	62/60		66/66		66/67		66/71		53/54		59/65		67/64		70/68		73/72	
Montclaire	66/67		68/72		69/70		71/76		58/60		61/67		66/68		70/71		76/77	
Pinewood	67/64		68/68		71/68		71/71		58/61		62/67		68/71		72/71		73/70	
Rama Road	68/67		68/72		70/71		73/76		58/61		64/67		70/70		72/73		76/78	
Shamrock Gardens	59/56		61/57		66/57		64/62		52/53		58/57		63/57		65/61		62/61	
Thomasboro	58/55		59/55		63/58		59/58		52/51		55/57		60/56		63/59		64/61	
Windsor Park	61/64		63/68		61/66		65/69		55/53		59/63		63/62		65/69		67/72	
GROUP C - Barringer	61*/46#		63*/46#		64*/50#		66*/42#		53*/45#		59*/48#		64*/44#		65*/47#		68*/45#	

*100% white in 1965
84% black in 1968-69

AVERAGE ACHIEVEMENT TEST SCORES, GRADE 8, REPORTED IN GRADE EQUIVALENT, 1965-66/1968-69

	PM		SP		LANG		ACM		ACN		AAPP		SS		SC	
	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69	1965-'66	1968-'69
GROUP D - Junior High																
Randolph Road (28% black)	/80		/82		/79		/62		/79		/76		/79		/81	
Williams (100% black)	55/52		67/64		55/52		52/49		58/61		58/55		56/56		55/56	
Northwest (100% black)	59/58		73/71		59/56		54/50		60/61		58/58		59/57		59/58	
Eastway (96% white)	84/82		85/86		83/81		74/67		79/82		81/75		83/82		87/87	

Opinion and Order dated December 1, 1969

THE LAW STILL REQUIRES DESEGREGATION

Segregation in public schools was outlawed by the decisions of the Supreme Court in *Brown* v. *Board of Education,* 347 U. S. 483 (1954) and 349 U. S. 294 (1955).

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

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

Quoting a lower court opinion, the Supreme Court continued:

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

and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. *Separate educational facilities are inherently unequal.* * * *." (Emphasis added.)

* * * * *

"* * * Such segregation has long been *a nationwide problem, not merely one of sectional concern.*" (Emphasis added.)

The selection of cases for the *Brown* decision demonstrates the nationwide reach of that concern; Brown lived in Kansas and the defendant board of education was that of Topeka, Kansas; defendants in companion cases included school authorities in Delaware and the District of Columbia. Later important cases have involved not just Southern schools, but also schools in New York, Chicago, Ohio, Denver, Oklahoma City, Kentucky, Connecticut and other widely scattered places.

Court decisions setting out the principles upon which the various orders of this court have been based include the following:

SUPREME COURT CASES

Alexander v. *Holmes County* (Mississippi), No. 632 (October 29, 1969).

Brown v. *Board of Education of Topeka* (Kansas), 347 U. S. 483 (1954), 349 U. S. 294 (1955).

Cooper, Members of the Board of Directors of the Little Rock (Arkansas) *Independent School District* v. *Aaron*, 358 U. S. 1 (1958).

Green v. *County School Board of New Kent County* (Virginia), 391 U. S. 430 (1968).

Griffin v. *County School Board of Prince Edward County* (Virginia), 377 U. S. 218 (1964).

Keyes v. *Denver* (Colorado) *School District Number 1,* Application for Vacation of Stay (Justice Brennan, Supreme Court, August 29, 1969).

Monroe v. *Board of Commissioners of the City of Jackson* (Tennessee), 391 U. S. 450 (1968).

Raney v. *Board of Education of the Gould School District* (Arkansas), 391 U. S. 443 (1968).

United States v. *Montgomery County* (Alabama) *Board of Education,* 395 U. S. 225 (1969).

CIRCUIT COURT CASES

Brewer v. *School Board of City of Norfolk* (Virginia), 397 F.2d 37 (4th Cir., 1968).

Felder v. *Harnett County* (North Carolina) *Board of Education,* 409 F.2d 1070 (4th Cir., 1969).

Wanner v. *County School Board of Arlington County* (Virginia), 357 F.2d 452 (4th Cir., 1966).

Henry v. *Clarksdale* (Mississippi) *Municipal Separate School District,* 409 F.2d 682 (5th Cir., 1969) (*petition for cert. filed,* 38 U.S.L.W. 3086) (U. S. 9/2/69) (No. 545).

United States v. *Greenwood* (Mississippi) *Municipal Separate School District,* 406 F.2d 1086 (5th Cir., 1969) (*cert. denied,* 395 U. S. 907 (1969)).

United States v. *Hinds County School Board,* Nos. 28030 and 28042 (5th Cir., July 3, 1969).

Clemons v. *Board of Education of Hillsboro, Ohio,* 228 F.2d 853 (6th Cir., 1956) (*cert. denied,* 350 U. S. 1006).

United States v. *School District 151 of Cook County, Illinois* (Chicago), 404 F.2d 1125 (7th Cir., 1968) (*rehearing denied,* January 27, 1969).

DISTRICT COURT CASES

Eaton v. *New Hanover County* (North Carolina) *Board of Education,* No. 1022 (E.D. N.C., July 14, 1969).

Keyes v. *School District Number One, Denver* (Colorado), 303 F. Supp. 289 (D. Colo., 1969).

Some of these principles which apply to the Charlotte-Mecklenburg situation are:

1. Racial segregation in public schools is unlawful, *Brown I; Green* v. *New Kent County, Virginia; Clemons* v. *Hillsboro, Ohio.* Such segregation is unlawful even though not required nor authorized by state statute, *Clemons* v. *Hillsboro.* Acts of school boards perpetuating or restoring separation of the races in schools are *de jure,* unlawful discrimination, *Cooper* v. *Aaron; Keyes* v. *Denver, Colorado School Board* (August 14, 1969), approved by the Supreme Court of the United States two weeks later, *Keyes* v. *Denver,* U. S. Supreme Court, August 29, 1969.

2. Drawing school zone lines, like "freedom of transfer," is not an end in itself; and a plan of geographic zoning which perpetuates discriminatory segregation is unlawful, *Keyes* v. *Denver; Brewer* v. *Norfolk; Clemons* v. *Hillsboro; Henry* v. *Clarksdale, Mississippi; United States* v. *Hinds County; United States* v. *Greenwood.*

3. No procedure, plan, method or gimmick will legalize state maintained segregation. The constitutional test of a plan is whether it gets rid of segregation in public schools, and does it "now," *Green* v. *New Kent County; Monroe* v. *Jackson; Alexander* v. *Holmes County.*

4. Good faith of the school authorities, if it exists, does not excuse failure to desegregate the schools. ". . . The availability to the Board of other more promising courses of action may indicate a lack of good faith; and at the least *it places a heavy burden upon the Board to explain its preference for an apparently less effective method.*" *Green* v. *New Kent County.* (Emphasis added.)

5. "Natural boundaries" for school zones are not constitutionally controlling. If a zone encloses a black school in a district like this one where white students are in a heavy (71% white, 29% black) majority, the "naturalness" of the boundary or the existence of reasons for the boundary unrelated to segregation does not excuse the failure to desegregate the school, *Keyes* v. *Denver, Colorado; Henry* v. *Clarksdale; Clemons* v. *Hillsboro.*

6. It is appropriate for courts to require that school faculties be desegregated by formula, if necessary, and by a definite time or on a definite schedule, *United States* v. *Montgomery.* Faculty assignments so that each school has approximately the same ratio of black teachers as the ratio of black teachers in the school system at large are appropriate and necessary to equalize the quality of instruction in this school system, *United States* v. *Montgomery; United States* v. *Cook County; Eaton* v. *New Hanover County* (North Carolina).

7. Bus transportation as a means to eliminate segregation results of discrimination may validly be employed, *Keyes* v. *Denver; United States* v. *Cook County,* Illinois, 404 F.2d 1125, 1130 (1969).

8. Race may be considered in eliminating segregation in a school system, *Wanner* v. *Arlington County, Virginia; United States* v. *Cook County; Green* v. *New Kent County.*

9. ". . . Whatever plan is adopted will require evaluation in practice and the court should retain jurisdiction until it is clear that state imposed segregation has been completely removed." *Green* v. *New Kent County; Raney* v. *Board of Education.*

10. The alleged high cost of desegregating schools (which the court does not find to be a fact) would not be a valid legal argument against desegregation, *Griffin* v. *School Board; United States* v. *Cook County, Illinois.*

11. The fact that public opinion may oppose desegregating the schools is no valid argument against doing it, *Cooper* v. *Aaron, Green* v. *New Kent County; Monroe* v. *Jackson.*

12. Fixed ratios of pupils in particular schools will not be set. If the board in one of its three tries had presented a plan for desegregation, the court would have sought ways to approve variations in pupil ratios. In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from that norm may be unavoidable.

13. School location and construction and renovation and enlargement affect desegregation. Courts may properly restrain construction and other changes in location or capacity of school properties until a showing is made that such change will promote desegregation rather than frustrate it, *Felder* v. *Harnett County.*

14. Where pupils live must not control where they are assigned to school, if some other approach is necessary in order to eliminate racial segregation, *Green* v. *New Kent County; Keyes* v. *Denver; Eaton* v. *New Hanover County, North Carolina Board of Education.*

15. On the facts in this record and with this background of *de jure* segregation extending full fifteen years since *Brown I,* this court is of the opinion that all the black and predominantly black schools in the system are illegally segregated, *Green* v. *New Kent County; Henry* v. *Clarksdale; United States* v. *Hinds County.*

16. The school board is endowed by Chapter 115, Section 176 of the General Statutes of North Carolina with "full and complete" and "final" authority to assign students to whatever schools the board chooses to assign them. The board may not shift this statutory burden to others. In *Green* v. *New Kent County,* the Supreme Court said of "freedom of choice":

> "Rather than foster the dismantling of the dual system the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board. The Board must . . . fashion steps which promise realistically to convert

promptly to a system without a 'white' school and a 'Negro' school but just schools."

17. Pairing of grades has been expressly approved by the appellate courts, *Green* v. *New Kent County; Felder* v. *Harnett County.* Pairing, grouping, clustering, and perhaps other methods may and will be considered and used if necessary to desegregate the schools.

18. Some 25,000 out of 84,000 children in this county ride school busses each day, and the number *eligible* for transportation under present rules may be more than 30,000. A transportation system already this massive may be adaptable to effective use in desegregating schools.

19. The school board has a duty to promote acceptance of and compliance with the law. In a concurring opinion in *Cooper* v. *Aaron,* 358 U. S. at 26 (1958), Justice Frankfurter said:

> "*That the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding, is especially true when they are confronted with a problem like a racially discriminating public school system.* This is the lesson to be drawn from the heartening experience in ending enforced racial segregation in the public schools in cities with Negro populations of large proportions. Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze the supreme Law,

precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

"Lincoln's appeal to 'the better angels of our nature' failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, *is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.*" (Emphasis added.)

Order

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. All facts found in this and previous orders, and all competent evidence including plans, reports and admissions in pleadings in the record are relied upon in support of this order.

2. The November 17 plan entitled "AMENDMENT TO PLAN FOR FURTHER DESEGREGATION OF SCHOOLS" is disapproved.

3. The defendants are directed to desegregate faculties in all the schools effective not later than September 1, 1970, so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio of black teachers to white teachers in the entire school system.

4. A consultant will be designated by the court to prepare immediately plans and recommendations to the court for desegregation of the schools. The legal and practical considerations outlined in detail in earlier parts of this opinion and order are for his guidance.

5. The defendants are directed to cooperate fully with the consultant. This cooperation will include but not be limited to providing space at the headquarters of the board of education in which he may work; paying all of his fees and expenses; providing stenographic assistance and the help of business machines, draftsmen and computers if requested, along with telephone and other communications services. He shall have full access to maps, drawings, reports, statistics, computer studies, and all information about all phases of the school system which may be necessary to prepare plans or reports. He shall be supplied with

any studies and plans and partial plans for desegregation of the schools which the defendants may have. The defendants will provide this consultant with full professional, technical and other assistance which he may need in familiarizing himself with the school system and the various problems to be solved in desegregating the schools. Any and all members of the board of education who wish to cooperate in the preparation of such a plan may do so. The cooperation of the school administrators and staff will be requested and will be appreciated.

6. Action on the motion of plaintiffs for an order directing immediate desegregation of the entire system is deferred.

7. Further orders with reference to restraining construction and enlargement of schools are deferred.

8. Motion has been filed for a citation of the school board members for contempt of court. Litigants are bound by court orders and may be punished for disobedience of such orders even though such orders may ultimately be reversed on appeal, *Walker* v. *Birmingham,* 388 U. S. 307 (1967). The evidence might very well support such citations. Nevertheless, this is a changing field of law. Despite the peremptory warnings of *New Kent County* and *Holmes County,* strident voices, including those of school board members, still express doubt that the law of those cases applies to Mecklenburg County. This district court claims no infallibility. Contempt proceedings against uncompensated public servants will be avoided if possible. Action on the contempt citation is deferred.

9. If the members of the school board wish to develop plans of their own for desegregation of the schools, with-

ut delaying or interfering with the work of the consultant, hey may proceed to do so, and if they wish any guidance rom the court they will find their guidance in the previous pinions and orders of this court and in the court decisions nd principles set out in this opinion and order.

10. Jurisdiction is retained for further orders as may e appropriate.

This is the 1st day of December, 1969.

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

Order dated December 2, 1969

The court appoints as a consultant under the terms outlined in the court's order of December 1, 1969, Dr. John A. Finger, Jr., of Providence, Rhode Island.

The school board and staff are directed to cooperate with Dr. Finger as set out in the December 1, 1969 order.

This the 2nd day of December, 1969.

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

Motion for Immediate Desegregation of the Public Schools in Charlotte and Mecklenburg County

(Filed January 20, 1970)

Plaintiffs, by their undersigned counsel, respectfully move the Court for an order directing Dr. John A. Finger, Jr. to immediately file with the Court his plan for the desegregation of schools and to order the defendants to implement Dr. Finger's plan immediately and, as grounds therefor, show the following:

1. On April 23, June 20 and August 15, 1969, the Court found the defendants to be operating an unconstitutionally segregated school system. Each Order required the defendants to file a plan for the desegregation of the schools. Each plan was blatantly defective and was rejected by the Court.

2. On December 1, 1969, the Court entered an Opinion and Order rejecting the plan filed by the Board on November 17, 1969 and determined that a consultant would be appointed by the Court to prepare immediate plans and recommendations to the Court for the desegregation of the schools. The following day, December 2, the Court entered an Order appointing Dr. John A. Finger, Jr. of Providence, Rhode Island to act as a consultant to the Court in preparing a plan for the desegregation of the schools.

3. Plaintiffs are informed that Dr. Finger has completed the essential elements of his plans and is in the process of refining and perfecting his proposal.

4. On October 29, 1969, the Supreme Court unanimously reversed the United States Court of Appeals for the Fifth

Circuit which had granted delays for the desegregation of schools in Mississippi.

> "Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *Griffin* v. *School Board,* 377 U.S. 218, 234 (1964) ; *Green* v. *School Board of New Kent County,* 391 U.S. 430, 438, 439, 442 (1968)."

Alexander v. *Holmes County Board of Education,* 396 U.S. 19 (1969).

5. The day following this Court's Opinion and Order disapproving of the defendants' November 17 plan, the United States Court of Appeals for the Fourth Circuit entered an Order in five cases, three from North Carolina.

> "We consolidate these appeals for hearing and disposition in light of *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (October 29, 1969). That recent decision of the Supreme Court teaches '[u]nder explicit holdings of this Court the obligation of every school district is to eliminate dual school systems at once and to operate now and hereafter only unitary schools.' The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit. No school district may continue to operate a dual system based on race. Each must function as a unitary system within which no person is to be excluded from any school on the basis of race."

Nesbit v. *Statesville City Board of Education,* No. 13,229 —— F.2d. —— (Dec. 2, 1969). The three school districts from North Carolina were given until the end of the Christmas vacation within which to implement plans for complete desegregation of the schools. The two districts from Virginia were given until the end of the first semester. Each district was required to integrate faculties as well.

> "All plans must include provisions for integration of the faculty so that the ratio of Negro and white faculty members of each school shall be approximately the same as the ratio throughout the system."

6. Following the Supreme Court decision in *Alexander* v. *Holmes County,* the United States Court of Appeals for Fifth Circuit heard and decided a large number of cases from various states within the Circuit. The Court *en banc* unanimously decided that complete integration would not be required until the Fall of 1970. In several of the cases where the plaintiffs were represented by private counsel, petitions for certiorari were filed with the United tSates Supreme Court. The petitioners requested that the Supreme Court order the school districts to prepare for complete desegregation by February 1, 1970 pending a decision by the Court on the merits. The petitioners were granted the preliminary relief which they sought. *Carter* v. *West Feliciano Parish School Board,* —— U.S. —— (Dec. 13, 1969); *Davis* v. *Board of School Commissions of Mobile County,* —— U.S. ——; and *Bennett* v. *Evans County Board of Education,* —— U.S. —— (Opinions of Justice Black in Chambers, December 13, 1969). On January 14,

1970, the Court in a per curiam and decided without oral argument that the Court of Appeals had misread *Alexander* v. *Holmes County Board of Education.*

> "Insofar as the Court of Appeals authorized deferral of student desegregation beyond February 1, 1970, that Court misconstrued our holding in *Alexander* v. *Holmes County Board of Education,* —— U.S. ——. Accordingly, the petitions for writs of certiorari are granted, the judgments of the Court of Appeals are reversed and the cases remanded to that Court for further proceedings consistent with this opinion. The judgments in these cases are to issue forthwith."

Carter v. *West Feliciano Parish School Board,* —— U.S. —— (Jan. 14, 1970). The decision of the Court, representing the views of four members, was concurred by Mr. Justice Harlan and Mr. Justice White. They discussed what they thought were the practical requirements of *Alexander* and found a "maximum" timetable from a Court finding of non-compliance with the requirements of *Green* to the time of the actual operative effect of the relief to be eight weeks. Justices Black, Douglas, Brennan and Marshall found this view to be a "retreat" from the holding in *Alexander* v. *Holmes County Board of Education.* Justices Berger and Stewart dissented, being of the view that the cases should not be decided without oral argument.

7. Findings of non-compliance with the requirements of the *Green* case were made by the Court on April 23, June 20, August 15 and December 1, 1969. Eight weeks, the

"maximum" timetable which Justices Harlan and White viewed as permissible from the date of a finding of noncompliance, a determination which four others viewed as a "retreat" from *Alexander*, has long since passed since the decisions of April, June and August. Eight weeks from December 1, 1969 would be January 26, 1970. That would clearly be the outside date for the implementation of a comprehensive plan for the desegregation of schools in this case.

8. Dr. Finger has not yet filed his plan with the Court. However, even if his plan remains somewhat rough, that plan should be implemented now and any suggested modifications, by the Board, by the plaintiffs or possibly by Dr. Finger can be made later.

> "It would suffice that such measures will tend to accomplish the goals set forth in *Green*, and, if they are less than educationally perfect, proposals for amendments are in no way to suspend the relief granted in accord- are in no way to suspend the relief granted in accordance with the requirements of *Alexander*."

Carter v. *West Feliciano Parish School Board*, —— U.S. —— (1969) (concurring opinion of Justice Harlan).

> "The intent of *Alexander*, as I see it, was that the burden in actions of this type should be shifted from plaintiffs seeking redress for a denial of constitutional rights, to defendant school boards. What this means is that upon a prima facie showing of noncompliance with this court's holding in *Green* v. *New Kent County School Board*, 291 U.S. 430 (1968), plaintiffs may apply

for immediate relief that will at once extirpate any lingering vestiges of a constitutionally prohibited dual school system."

(Concurring opinion of Justice Harlan.)

9. In this Court's Opinion and Order of December 1, 1969, the Court held:

"12. Fixed ratios of pupils in particular schools will not be set. If the board in one of its three tries had presented a plan for desegregation, the court would have sought ways to approve variations in pupil ratios. In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from that norm may be unavoidable. . . .

15. On the facts in this record and with this background of *de jure* segregation extending full fifteen years since *Brown I,* this court is of the opinion that all the black and predominantly black schools in the system are illegally segregated, *Green* v. *New Kent County; Henry* v. *Clarksdale; United States* v. *Hinds County.*"

In its Order, the Court invited the Board to submit a plan conforming to the requirements established by the Court.

> "If the members of the school board wish to develop plans of their own for desegregation of the schools without delaying or interfering with the work of the consultant, they may proceed to do so, and if they wish any guidance from the court they will find their guidance in the previous opinions and orders of this court and in the court decisions and principles set out in this opinion and order."

The School Board decided not to appeal from the decision of December 1, 1969 as it had decided not to appeal from the previous orders of the Court. Nor has it submitted a plan as it was invited to do. Instead, members of the Board have continued to criticize the law of the land and to pretend that they do not know what the Court means when it says that all-black schools in this system are constitutionally impermissible. The Court and the plaintiffs have waited patiently and in vain for an indication that the Board would finally accept its burden to devise a constitutional plan for the desegregation of the schools. Since the Board has refused to assume its responsibility, the Court must act to vindicate the constitutional rights of children within the School System.

WHEREFORE, plaintiffs respectfully pray that the Court direct Dr. Finger to file his plan forthwith and upon receipt of his plan, order the defendants:

1. To completely implement the plan filed by Dr. Finger on or before January 26, 1970; and

2. To reassign faculty within the School System so that the ratio of black and white faculty members of each school shall be approximately the same as the ratio throughout the System and that such reassignments be implemented on or before January 26, 1970.

Respectfully submitted,

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Plan for Desegregation of Schools

In response to the invitation of the Court in its order dated December 1, 1969, the Board of Education submits its plan for desegregation in substitution of all prior plans for implementation in September, 1970, as follows:

Policy Statement

Equal opportunity to develop all capabilities to the fullest potential is the right of every individual in a democratic society. Since this right is a basic precept of education, it becomes the responsibility of those who make educational decisions to see that equality of opportunity is provided for all.

The Charlotte-Mecklenburg Board of Education affirms the long held principle that equality of educational opportunity for all children without regard to socio-economic, ethnic, religious or racial differences is essential to the continued growth of our community and is basic to a free and open American democratic society.

The Board further believes that equality of educational opportunity can best be provided by attempting to free individuals from the burden and handicaps imposed by varied circumstances, backgrounds and environmental differences. To this end, the Board has devised an educational program which will to the greatest extent possible, provide for the equal development of all students regardless of such burdens and handicaps.

In this light, the Board of Education firmly believes further desegregation of students and professional staff will contribute to the educational and social development of all children.

Plan for Desegregation of Schools

I.

Attendance Areas

Attendance areas are established for all schools within the Charlotte-Mecklenburg County Administrative School Unit and the boundaries thereof are hereby established as shown onmaps dated January 31, 1970, identified as "Map No. 1, Attendance Areas of Elementary Schools," "Map No. 2, Attendance Areas for Junior High Schools" and "Map No. 3, Attendance Areas for Senior High Schools," copies of which are attached. Practical administrative considerations may require revision of some of the attendance lines shown on these maps to conform to streets, streams, railroads and other identifiable monuments. The administrative staff, with the approval of the Board, may make such revisions provided they do not materially affect adversely the racial mix of the schools involved. A copy of each map (together with any revisions) shall be kept at each school in the attendance areas shown thereon and shall be open to public inspection in the office of the Superintendent and at the schools.

Board Comment:

1. The Board has devised new and comprehensive restructured attendance lines to achieve the degree of desegregation which it believes the Constitution requires. Thse outlines of the attendance lines shown on these maps have been established with the assistance of a computer system analysis which had as its purpose the identity and selection of contiguous grid areas having pupil populations that would most nearly achieve an optimum 70% white to 30% black racial mix for as many of our schools as possible.

The criteria used in the establishment of these attendance areas are as follows:

A. Each school district must be comprised of a single set of contiguous grids. (A grid is a 2500 foot square as shown on the school attendance maps as filed as exhibits in this matter.)

B. No combination of grids could be considered if they exceed the rated capacity of the school by 20 per cent. Further, such combinations could not underpopulate the school by more than 20 per cent.

C. A school district could not contain the home grid of another school.

D. A school district, if feasible, must contain the home grid in which the school is located.

E. Wherever practicable, no school district to which white students were assigned should have less than 60 per cent white student population to avoid "tipping."

After the meeting these five tests, all possible combinations of grids were printed separately for each school. The combinations were reviewed to determine their desirability. Desirability was determined by the following factors: (1) closeness of the integration ratio to 70% white-30% black, (2) compactness of the school district and (3) combination of grids which yields a student population closest to 100% of the school's capacity.

Attached (marked Exhibit "A" and made a part hereof) is a report of Systems Analysis Associates, Inc. which reflects the scope, nature of work performed, recommendations and results achieved through their efforts in consultation with school administrative staff and the Board of Education.

Plan for Desegregation of Schools

2. It has been the purpose of the Board to desegregate as many of the 103 schools as possible and, in order to do so, attendance lines have been drastically restructured and gerrymandered, resulting in 100 schools having some degree of desegregation. The Board is gratified with the results of its desegregation. Sixty-eight (68) of the 103 schools in the system will have a student body composed of 10% to 41% blacks. Of the remaining 35 schools, only 25 will have less than 11% black and 10 will have more than 41% blacks.

3. The Board does not believe that it is required to supplement its restructuring of attendance lines by other techniques, all of which have the primary feature of necessitating involuntary bussing of students from one school attendance zone to another. Such compulsory transportation would violate legislative policies of the United States Congress and the State of North Carolina.

In 1964, Congress enacted 42 USCA 2000 C. et seq., commonly referred to as the HEW Act of 1964, which provides that in an action instituted by the Attorney General under such Act, the court may give "such relief as may be appropriate" with the following limitation:

> ". . . provided that *nothing* herein *shall empower any* official or *court* of the United States *to issue any order* seeking to achieve a racial balance in any school by *requiring transportation* of pupils or students *from one school to another* or one school district to another *in order to achieve* such *racial balance,* or otherwise enlarge the existing power of the court to assure compliance with constitutional standards . . ." (Emphasis supplied).

Plan for Desegregation of Schools

The North Carolina legislative policy is expressed in G.S. Sec. 115-176.1, which specifies:

> "... 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 a student in contravention of this article is prohibited, and public funds shall not be used for any such bussing." (Emphasis supplied).

It is observed that the HEW Act of 1964 relates to desegregation actions instituted by the United States Attorney General, whereas the Board is involved in an action in the District Court which was instituted by private litigants. However, the purpose of each type of action is the same; namely, to secure an adjudication of the constitutional rights of all members of a class in a community who are similarly situated (i.e. black students). Compulsory measures imposed by the court cannot be dependent upon who brings the action—the United States Attorney General or private litigants. If a court is prohibited from requiring bussing to achieve a racial balance in the one instance, it must be prohibited from doing so in the other. This same limitation should be equally applicable to any court order which (although silent on the subject of transportation) can be implemented as a practical matter only by compulsory bussing.

By way of summary, the Court cannot require transportation to achieve a racial balance in our schools and voluntary action of the Board would be contrary to the law of the State of North Carolina. Under the circumstances, the Board rejected any arrangement for involuntary bussing of any student outside of his attendance area. This would

be a clear violation of the law as expressed by the United States Congress and by the North Carolina Legislature.

4. Aside from the legal reasons which prohibit involuntary transportation of a student outside his attendance area, in the judgment of the Board, educational and practical considerations preclude such action:

A. It is the judgment of the Board that the supposed benefits to be obtained from the use of extensive additional transportation to eliminate the 10 remaining black schools referred to above would be far outweighed by the resulting burdens, inconvenience and cost. Bussing in a school system as large as the Charlotte-Mecklenburg system is at best an expensive and complex operation. It is acknowledged that a large number of children are already being bussed to and from school. However, the burden, expense, hardship, inconvenience, hazards, expenditure of unproductive time and the added administrative problems occasioned by any bussing program should be minimized.

B. The Board cannot justify on any reasonable basis the very substantial additional cost and burden of the compulsory bussing that would be required for the sole purpose of effecting a desired racial mix in the remaining 10 black schools. Under the best arrangement, the Board could envision to eliminate these black schools, massive cross-bussing would require the transportation of about 11,500 black and white children—5,150 into and 5,150 out of the inner-city at the elementary level and 590 into and 590 out of the inner-city at the secondary level. This involuntary bussing would involve an approximate 15-mile trip each way (30 miles round drip) for each student moved through the heart of the business and residential sections

of the City. Pertinent information relating to such transportation is attached marked Exhibit "B".

C. A plan that generates unnecessary transportation costs and occasions unnecessary burdens and inconvenience for parents and children alike would jeopardize the public support which provides the tax and bond money upon which our schools are totally dependent for financing the already high cost of education.

D. The burden of extra bussing that would be required to desegregate each of the 10 remaining predominantly black schools would fall primarily on elementary children. The major impact of this burden would be imposed upon children who, because of their tender years, are the most illogical candidates to bear this burden.

E. The Board has retained its neighborhood school concept, although admittedly, it has been strained by the gerrymandered attendance lines adopted in this plan. It is a concept which the Board believes is beneficial to the children and enhances the support that comes when children and parents identify themselves with a particular school and its programs. A fragmentation of this type of association is not in the best interest of our schools.

5. With reference to ratios of black students in the various levels of education, attention is called to the fact that blacks comprise 30% of the elementary, 28% of the junior high and 24% of the senior high school population. To the extent possible, the Board has sought to reach these approximate ratios in each school.

Plan for Desegregation of Schools

II.

Assignment of Pupils

All pupils within any attendance area shall be assigned to the school of his or her grade within such attendance area. Assignment for any school year shall be made not later than the last school day of the preceding year or as soon thereafter as possible. In the case of children enrolled during such school year, notice of assignment may be given by noting the same on the report card of the pupil thereof or any other means which will adequately insure the delivery of written notice to the parent. Except for beginners, pupils not then enrolled shall be assigned at the time of their application for enrollment. In order to undo the existing "freedom of choice" assignments heretofore permitted, such assignments will be terminated and the students involved re-assigned to the appropriate school of his or her attendance area.

III.

Continuation of Elementary Voluntary Inner-City Re-Assignments

In its plan submitted to the Court on July 29, 1969, the Board of Education closed certain black schools and temporarily re-assigned the students of those schools as well as the students of certain other black schools whose facilities were overcrowded. Elementary students who were re-assigned and accepted re-assignment under the plan of July 29, 1969, at their election will be assigned to the school of their present attendance provided such school offers instruction at their grade level during the 1970-1971 school term. Free transportation will be provided such students.

Board Comment:

The Board is mindful of the educational advantages and the desires of a student and his parents to continuing one's education in the school of last attendance. Therefore, the Board has made available to those elementary inner-city black students who in good spirit accepted transfer to other schools the right to continue attendance at those schools provided the grade level is offered.

IV.

Restricted Transfers

In order to encourage, facilitate and maintain desegregation, transfers from the school to which a student is originally assigned shall be allowed only on the limited basis outlined below. Any black student will be permitted to transfer only if the school to which he is originally assigned has more than 30 per cent of his race and if the school he is requesting to attend has less than 30 per cent of his race and has available space. Any white student will be permitted to transfer only if the school to which he is originally assigned has more than 70 per cent of his race and if the school he is requesting to attend has less than 70 per cent of his race and has available space. Availability of space and rules of transfer will be determined by the school administration under rules of uniform non-racial application authorized by the School Board.

In addition, transfers may be granted to students whose request for transfer evidences conditions of hardship. Hardship will be determined on the basis of uniform non-racial criteria developed by the administrative staff.

The administrative procedure for such transfers will be readily available to each student.

Plan for Desegregation of Schools

Board Comment:

1. Under this provision, transfers are rigidly limited to those which promote desegregation of our schools, excepting only transfers with reference to hardship situations which shall be determined on a strictly non-racial basis and which necesarily must be allowed for the effective administration of the schools and the welfare of the children involved.

2. These restrictions on transfers are designed to complement the limitations imposed by the geographic assignments and to assure the stability and permanence of the desegregation achieved by this plan. Specifically, the plan is designed to accomplish these objectives:

A. Encourage the transfer of black students from predominantly black schools or schools likely to become predominantly black to a school which will promote the permanence of a desirable racial mix.

B. Encourage white students from predominantly white or all white schools wishing to transfer to help stabilize desegregation to do so.

C. Prevent the movement of white students from predominantly black schools or schools likely to become predominantly black.

D. Prevent black students from singling out a school for attendance so that blacks predominate or nearly predominate.

3. It is believed that the foregoing restrictions will tend to minimize tipping and resegregation.

V.

Transportation

Transportation will be provided to and from school for all students who are entitled thereto under State law and applicable rules and regulations promulgated by the State.

VI.

Stability of Enrollment

A student enrolled in any school after original assignment or by transfer after original assignment shall remain in the school of enrollment for the school year and no subsequent transfer will be permitted for such year except for hardship or a change of residence from one attendance area to another. In the event of change of residence, the pupil may elect to remain in the school of enrollment for the remainder of the school year. A student enrolled in a school by virtue of utilizing a restricted transfer authorized by Article IV (Restricted Transfers) shall be advanced to the next grade in such school from year to year unless such student prior to the expiration of any current year gives notice of his or her wish to return to the school serving the attendance area of his residence. A pupil enrolled in a school in an attendance area other than that of his or her residence shall be advanced at the appropriate time to the junior or senior high school, as the case may be, serving the attendance area in which the pupil resides. This provision shall not have the effect of denying or enlarging such pupil's right to transfer to another school of his grade pursuant to Article IV.

Board Comment:

The purpose of this section is to prevent voluntary transfers of students during the course of any school year other than those permitted for hardship or change of residence. The Board foresees that an unrestricted right with reference to time to transfer could create a chaotic condition in the administration of our schools. Additionally, this provision in effect sends the student back to his attendance area for re-assignment to secondary schools at the appropriate level. However, restricted transfer is still available to the student.

VII.

Faculty Desegregation

The faculties of all schools will be assigned so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio of black teachers to white teachers in the entire school system.

Board Comment:

This provision is in conformity with the order of the Court dated December 1, 1969.

Concluding Comments of Board

With all due respect to the previously expressed views of the Court (pursuant to whose order this plan is submitted) the Board still adheres to its conviction that the Constitutional requirements of desegregation in the school system will be achieved by the restructuring of attendance lines and further faculty desegregation. In reiterating this conviction, the Board acknowledges that it does so with-

out clear guidance from appellate courts concerning a clear definition of a "unitary" or "desegregated" school system. In its search for guidance from the Supreme Court regarding the true meaning of these and similar terms, the Board is not alone. However, recent appellate and district court decisions acknowledging this lack of guidance have arrived at conclusions that square with the Board's position. The most recent appellate decision comes from the Sixth Circuit Court of Appeals, *Northcross* v. *Board of Education of Memphis,* CA 6, —— Fed. 2nd (January 12, 1970), wherein the court stated:

> ". . . Upon the oral argument of this appeal, we asked counsel for plaintiffs to advise what he considered would be the 'unitary system' that should be forthwith accomplished in Memphis. He replied that such a system would require that in every public school in Memphis there would have to be 55% Negroes and 45% whites. Departures of 5% to 10% from such rule would be tolerated. The United States Supreme Court has not announced that such a formula is the only way to accomplish a 'unitary system.' We have expressed our own view that such a formula for racial composition of all of today's public schools is not required to meet the requirement of a unitary system. *Deal* v. *Cincinnati Board of Education* (Ohio schools) 369 F(2) 55 (6th Cir. 1966), *cert denied,* 389 U.S. 847 (1967); *Mapp* v. *Board of Education* (Tennessee schools) 373 F(2) 75, 78 (6th Cir. 1967); *Goss* v. *Knoxville Board of Education* (Tenn. schools) 406 F(2) 1183 (6th Cir. 1969); *Deal* v. *Cincinnati Board of Education* (Ohio schools) —— F(2) (6th Cir. 1969)."

Plan for Desegregation of Schools

Three district judges, Judges Smith, Edenfield and Henderson of the Northern District of Georgia in *United States of America* v. *State of Georgia, et al.,* USDC, ND, Ga. (Dec. 17, 1969), stated there was uncertainty with respect to specific standards which should be uniformly applied in desegregation cases and went on to state further:

> ". . . In this respect, the higher courts have not yet issued definitive rules as to just what steps are legally required of each local school district."

In that opinion, ratios were specified which permitted retention of some schools entirely populated by the minority race.

In *Bivins* v. *Bibb County,* USDC, M.D. Ga. (Jan. 21, 1970), the Court indicated its impatience with the vague terms typically employed in desegregation cases:

> "The phrase 'student body merger' is new in school desegregation law . . . The word 'merge' is a most imprecise term. Just as some of the other customary expressions used by the courts in this field, for instance, 'desegregate', 'integrate', 'black schools', 'all-black schools', 'white schools', 'just schools', 'dual system', 'unitary system'; the word 'work' in 'a plan which promises realistically to work.' When appellate courts use language like this, they must intend to leave its interpretation and application to the trial courts in the light of the facts and circumstances of each particular case. If the Congress were legislating in this field it would necessarily have to use precise language. If it used language such as that quoted, it would have to define such terms; otherwise, its enactments would be struck down by the courts as being 'void for vagueness.'"

Plan for Desegregation of Schools

In *Bickett, et al.,* v. *School of the City of Norfolk, et al.,* USDC, ED Va. (Dec. 30, 1969), Judge Hoffman indicated a similar concern over the lack of clear guidance from appellate courts; approved a plan for the Norfolk, Va. schools in which the percentage of Negroes in the school levels (attending schools housing less than 10% of one race) will be 23% in elementary schools, 43% in junior high schools and 100% in senior high schools; declined "to require massive compulsory bussing merely to achieve desegregation"; and concluded:

> "Nor do we feel that the Constitution commands racial balancing in each school building predicated upon percentage of white and black children in the several levels of public education; to wit, elementary, junior high school and senior high school."
>
> ". . . Until the Supreme Court speaks on the subject, no one can tell what is correct ('racially unidentifiable' or 'desegregated')." (Information in parenthesis supplied.)

In *Bivins, supra,* the court addressed itself to the question of a merged or desegregated system in which approximately 75 per cent of the blacks were in all black schools and concluded:

> "This court is of the opinion and finds and concludes that the student body in this system is sufficiently so merged, especially when we take into consideration the complete faculty merger above mentioned. . . ."

That same court found no legal mandate requiring racial balances in each school and stated:

> "(A)ll three plans were drawn under the impression or apprehension that the law requires the achievement of racial balances. The Board probably came to this apprehension from the repeated use of more and more sweeping and expansive, though still imprecise, language by the courts. For instance, a recent order refers to 'full implementation of complete desegregation.' We look in vain for any authoritative statute or decree defining 'complete desegregation.'"

Further comment on the unsettled state of the law appears in *Thornie* v. *Houston County*, USDC, M.D. Ga. (Jan. 21, 1970), to wit:

> "No one affected by this area of the law as fast as it is moving should let his hopes soar too high or his fears sink too low. Tomorrow might be a new day."

It is apparent that the courts have not reached a common understanding of what is required under the Constitution. The Board understandably is prone to exercise caution lest, in protecting the rights of some of its citizens, it tramples upon the rights of others in the absence of a clear mandate from the Supreme Court.

The Board has great faith in the citizens of this community and shares the conviction of the court in *Hilson* v. *Washington County*, USDC, M.D. Ga. (Jan. 28, 1970), when it stated:

> "This is a nation of law abiding people. When we know what the law is and that it is the law, faithful compliance can be fully expected from everyone."

Plan for Desegregation of Schools

Respectfully submitted this second day of February, 1970.

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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, WILLIAM C. SELF, do hereby certify that I am Superintendent of Charlotte-Mecklenburg public schools and that the foregoing is a true and complete copy of the plan of desegregation with official Board comments duly adopted at a meeting of the Charlotte-Mecklenburg Board of Education on the 31st day of January, 1970.

This the 31st day of January, 1970.

William C. Self

Sworn to and subscribed before me
this 31st day of January, 1970.

Notary Public

My commission expires:_____

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70 *				Board Plan				Additional Pupils to Transport (By State regulations)
	Base	+12%	B	W	T	%B	B	W	T	%B	
Albemarle Rd.	432	484	4	510	514	1%	4	469	473	1%	
Allenbrook	540	605	61	452	513	12%	59	496	555	11%	
Ashley Park	621	696	27	574	601	4%	155	421	576	27%	
Bain	702	786	33	735	768	4%	25	706	731	3%	
Barringer	486	544	843	16	859	98%	203	320	523	39%	197
Berryhill	836	936	98	639	737	13%	247	574	821	30%	274
Beverly Woods	540	605	68	684	752	9%	8	648	656	1%	
Billingsville	594	665	596	0	596	100%	113	325	438	26%	259
Briarwood	540	605	6	680	686	1%	2	663	665	0%	
Bruns Ave.	675	756	759	10	769	99%	624	73	697	90%	
Chantilly	432	484	0	472	472	0%	142	303	445	32%	
Clear Creek	324	363	48	229	277	17%	43	266	309	14%	
Collinswood	621	696	111	443	554	20%	224	448	672	33%	233
Cornelius	459	514	181	235	416	44%	182	265	447	41%	
Cotswold	540	605	23	537	560	4%	128	449	577	24%	195
Davidson	324	363	104	186	290	36%	102	174	276	32%	
Marie Davis	756	847	662	0	662	100%	666	82	748	88%	
Derita	783	877	150	678	828	18%	152	595	747	20%	
Devonshire	648	726	0	903	903	0%	0	925	925	0%	
Dilworth	648	726	90	317	407	22%	241	376	617	39%	
Double Oaks	675	756	836	0	836	100%	825	3	828	100%	
Druid Hills	486	544	472	3	475	99%	465	20	485	96%	
Eastover	648	726	42	559	601	7%	157	478	635	25%	62
Elizabeth	405	454	314	125	439	72%	112	294	406	28%	
Enderly Park	513	575	3	371	374	1%	119	238	357	33%	

* Not including Special Education in self-contained classes

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity Base	1970-71 Capacity +12%	1969-70 B	1969-70 W	1969-70 T	1969-70 %B	Board Plan B	Board Plan W	Board Plan T	Board Plan %B	Additional Pupils to Transport (By State regulations)
First Ward	702	786	805	0	805	100%	770	7	777	99%	
Hickory Grove	459	514	70	533	603	12%	74	556	630	12%	20
Hidden Valley	648	726	0	1100	1100	0%	1	1077	1078	0%	
Highland	297	333	69	305	374	18%	76	237	313	24%	
Hoskins	297	333	13	212	225	6%	124	219	343	36%	
Huntersville	675	756	145	531	676	21%	130	554	684	19%	
Huntingtowne Farms	594	665	7	603	610	1%	3	614	617	0%	
Idlewild	567	635	47	581	628	7%	59	549	608	10%	
Irwin Ave.			292	0	292	100%	*				
Amay James	378	423	462	3	465	99%	90	169	259	35%	
Lakeview	378	423	346	89	435	80%	119	285	404	29%	47
Lansdowne	756	847	75	802	877	9%	79	719	798	10%	
Lincoln Heights	648	726	711	0	711	100%	903	6	909	99%	
Long Creek	702	786	267	468	735	36%	259	523	782	33%	
Matthews	945	1058	86	802	888	10%	81	837	918	9%	
Merry Oaks	486	544	0	442	442	0%	0	557	557	0%	
Midwood	459	514	9	437	446	2%	116	401	517	23%	
Montclaire	675	756	0	718	718	0%	1	781	782	0%	35
Myers Park	432	484	22	444	466	5%	150	314	464	32%	
Nations Ford	621	696	43	669	712	6%	177	548	725	24%	153
Newell	594	665	74	438	512	14%	64	436	500	13%	
Oakdale	540	605	69	517	586	12%	202	460	662	31%	
Oakhurst	594	665	5	616	621	1%	92	504	596	15%	105
Oaklawn	594	665	584	0	584	100%	597	3	600	99%	
Olde Providence	540	605	80	512	592	14%	83	461	544	15%	

*distributed to surrounding schools

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70				Board Plan				Additions Pupils to Transport (By State
	Base	+12%	B	W	T	%B	B	W	T	%B	regulations)
Park Road	540	605	44	548	592	7%	41	571	612	7%	
Paw Creek	594	665	27	609	636	4%	83	602	685	12%	
Paw Creek Annex	270	302	30	271	301	10%					
Pineville	486	544	136	356	492	28%	123	379	502	25%	
Pinewood	648	726	0	674	674	0%	0	900	900	0%	
Plaza Road	459	514	80	340	420	19%	181	350	531	34%	
Rama Road	648	726	1	815	816	0%	3	744	747	0%	
Sedgefield	540	605	3	548	551	1%	223	364	587	38%	
Selwyn	486	544	31	617	648	5%	32	459	491	7%	
Shamrock Gardens	486	544	0	515	515	0%	84	496	580	15%	
Sharon	459	514	72	361	433	17%	91	421	512	18%	
Starmount	648	726	25	712	737	3%	67	833	900	7%	
Statesville Road	648	726	333	522	855	39%	160	553	713	23%	
Steele Creek	378	423	5	509	514	1%	195	475	670	29%	86
Thomasboro	729	816	0	690	690	0%	135	777	912	15%	353
Tryon Hills	486	544	309	164	473	65%	200	342	542	37%	
Tuckaseegee	540	605	58	578	636	9%	57	510	567	10%	30
University Park	648	726	825	1	826	100%	735	132	867	85%	
Villa Heights	810	907	902	83	985	92%	877	170	1047	83%	
Westerly Hills	405	454	46	539	585	8%	144	332	476	30%	156
Wilmore	378	423	222	210	432	51%	153	250	403	38%	
Windsor Park	648	726	1	748	749	0%	1	782	783	0%	
Winterfield	648	726	48	688	736	7%	52	653	705	7%	140
Total	40,391	45,239	13,010	31,278	44,288		12,885	31,523	44,408		2,345

Research Report
January 31, 1970

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Junior High Schools

School	1970-71 Capacity		1969-70				Board Plan				Additions Pupils to Transport (By State regulations)
	Base	+20%	B	W	T	%B	B	W	T	%B	
Albemarle Road	948	1138	63	995	1058	5%	19	753	772	2%	
Alexander	874	1049	328	761	1089	30%	303	698	1001	30%	
Cochrane	1190	1428	72	1544	1616	5%	571	1150	1721	33%	534
Coulwood	704	845	101	770	871	12%	313	551	864	36%	220
Eastway	1093	1312	61	1356	1417	4%	375	971	1346	28%	
Alexander Graham	996	1194	101	1028	1129	8%	261	888	1149	23%	
Hawthorne	850	910	550	472	1022	54%	276	704	980	28%	
Kennedy	801	961	802	9	811	99%	325	510	835	39%	
McClintock	923	1100	84	1288	1372	6%	25	1048	1073	2%	
Northwest	1068	1282	1032	1	1033		296	675	971	30%	
Piedmont	631	757	408	55	463	89%	758	84	842	90%	
Quail Hollow	1238	1486	129	1421	1550	9%	138	1144	1282	11%	
Randolph	972	1170	279	710	989	28%	307	683	990	31%	59
Ranson	851	1021	246	548	794	31%	295	558	853	35%	
Sedgefield	777	930	167	809	976	17%	234	612	846	28%	
Smith	1093	1312	51	1436	1487	4%	330	957	1287	26%	400
Spaugh	826	1091	262	839	1101	24%	346	752	1098	32%	
Williams	801	967	1081	0	1081	100%	336	722	1058	32%	
Wilson	1044	1253	60	1145	1205	5%	346	795	1141	30%	164
Carmel	558	670					2	555	557	0%	
J. H. Gunn (Wilgrove)	558	670					49	470	519	9%	
Total	18,796	22,546	5,877	15,187	21,064		5,905	15,280	21,185		1,377

Research Report
January 31, 1970

7498

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Senior High Schools

School	1970-71 Capacity		1969-70				Board Plan				Additions
	Base	+20%	B	W	T	%B	B	W	T	%B	Pupils to Transport (By State regulations)
East Mecklenburg	1700	2040	215	1925	2140	10%	360	1716	2076	17%	273
Garinger	1874	2249	492	2148	2640	18%	721	1914	2635	27%	78
Harding	1202	1442	612	720	1332	45%	395	692	1087	36%	
Independence	1047	1256	101	1111	1212	9%	23	1241	1264	2%	
Myers Park	1679	2015	224	1767	1991	12%	426	1883	2309	18%	
North Mecklenburg	1158	1390	446	1185	1631	28%	440	998	1438	31%	
Olympic	807	968	351	512	863	41%	201	687	888	23%	
South Mecklenburg	1523	1828	90	2024	2114	5%	482	1846	2328	21%	600
West Charlotte	1593	1912	1641	0	1641	100%	597	1045	1642	36%	53
West Mecklenburg	1374	1649	141	1444	1585	9%	494	998	1492	33%	198
Total	13,957	16,749	4,313	12,836	17,149		4,139	13,020	17,159		1,202

Transcript of February 2 and 5, 1970 Proceedings

(Excerpts)

[43] * * *

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

Direct Examination by Mr. Waggoner:

Q. State your name and official position, please, sir. A. William C. Self, Superintendent, Charlotte-Mecklenburg Schools.

Q. Dr. Self, with reference to the plan for desegregation submitted on behalf of the Charlotte-Mecklenburg Board of Education, would you briefly review the circumstances leading to the adoption of this plan? A. The Board of Education was ordered to come up with a plan for desegregation. They employed the services of Systems Analysis, Inc., instructed this firm to use the technique of restructuring attendance lines with the express purpose of achieving a racial balance in schools.

Q. Did Systems Associates, Inc., submit to you a report of their efforts? A. Yes, they did.

Q. Is that attached to and forms a part of the plan for desegregation that was submitted to the Court? [44] A. I believe it was.

Q. I direct your attention to the document attached to the plan for desegregation entitled A plan for Student Desegregation by Systems Associates, Inc., and ask you, if you will, to briefly review the contents of this document for the benefit of the Court.

Mr. Chambers: I object. I think that document would speak for itself.

Court: Well, if the answer is brief enough, I'll overrule the objection. I assume he's asking for a brief summary of what it does or says.

A. The document contains several sections. The first one is entitled Scope and in that section the author of the document sets forth the objectives of the study, the three functions of the computer program, the computational rules that were employed, the criteria for selecting the various grade combinations. Section 2 consists of a set of recommendations. The great majority of those has to do with how we might improve our present system of pupils census operation. The third section consists of a section entitled Statistics, and in this section the statistics have to do with what the study was able to accomplish in the way of desegregating the various schools. They are shown by elementary schools, junior high schools and senior high schools. The Fourth section is the largest part of the document. In this section are attached [45] the maps of all of the attendance areas of the schools. The fifth section and the last is simply an account by the firm as to the chronology of events that took place.

Q. Dr. Self, with reference to the scope of the computer assisted approach to restructuring grid lines, would you briefly describe what was involved in this approach? A. Well, using pupil census data and computer programming techniques, the firm attempted to achieve a racial balance under the guilding principles that they would try to get as nearly as possible a 70-30 white to black ratio in every school, that they would attempt to preserve the compact or contiguous neighborhood school attendance area and would attempt to find a student body that would neither overcrowd nor underpopulate the school building.

William C. Self—for Defendant—Direct

Q. Could you briefly describe the method of computation that was used? A. The rules which governed the computation are listed on Page 3 of the document. The first one states that a combination of grids which is considered acceptable must contain only grids contiguous to one another on at least one full side, contain only grids contiguous to one another and at least must be contiguous on one full side to the grids in which the school is located and not contain the home grid of another school of a type similar to the one for which the computations are being made. The second rule had to do with the [46] capacity. Any combination containing a number of students whose total was less than 80% or more than 100% of the school's rated capacity is not considered acceptable in the initial computation.

Court: Mr. Waggoner, I don't want to interrupt you if this is pertinent, but all this is on the record in the previous evidence in this case filed last October and November and December.

Mr. Waggoner: If the Court please, this plan does differ in some slight . . .

Court: Don't you remember that you put it in the record?

Mr. Waggoner: Yes, sir, I remember I put it in the record for our other plans, but this present plan does differ and the results do differ somewhat from what was previously submitted.

Mr. Chambers: I have further objection that this document that Dr. Self is discussing is already in evidence and we can read that. Our objection is to the whole proceeding. It's just a further delaying tactic on the part of the School Board.

Mr. Waggoner: If the Court please, this is not a delaying tactic.

Court: I'll overrule the objection so proceed, but try not to duplicate stuff already introduced. This has been [47] before the Court four months.

Mr. Waggoner: All right.

Q. Continue, Dr. Self. A. I think I had completed the answer to your question.

Mr. Waggoner: I'd like for these to be marked as Defendant's Exhibit #3.

Court: If you have any other exhibits, get them marked now so we can proceed with them, or are they already marked?

Mr. Waggoner: One moment, Your Honor.

Court: The rolled up maps are just like the folded maps?

Mr. Waggoner: The rolled up will spread out smoothly.

Q. Dr. Self, I hand to you Defendant's Exhibit #3 and ask you if you can identify it. A. This is the computer printout on Midwood Elementary School.

Q. What do the various columns represent on this printout? A. The first two columns represent the racial breakdown in the school. The next column is a column entitled Cell Difference which is really a term that has to do with the compactness of the grid. The next columns have to do with the number of pupils, total black and white. The next column has to do with the capacity and the last columns are headed Cells Used and in these columns are listed the various grid combinations that can be used to make up the attendance area of the school.

[48] Q. All right, sir. I direct your attention to the last

page of that document and ask if you can tell the Court the number of combinations that were printed out for that particular school. A. The words at the bottom of the printout are "Number of records read 320, number of records printed 320."

Q. I next hand you another exhibit entitled Defendant's Exhibit #4 and ask you if this relates to another school. A. This relates to the Bruns Avenue Elementary School.

Q. I direct your attention to the last page as to the number of records read and records printed. A. The number of records read 1065, number of records printed 1065.

Q. Dr. Self, does that represent the total number of combinations the computer tried for the various schools to reach a grid configuration? A. Yes, it does.

Mr. Stein: Your Honor, could we have a description of these exhibits so we could have a list to know what he's talking about. Perhaps he could call off the exhibits he has marked and give us descriptions.

Court: Well, have you got copies of what he's talking about?

Mr. Waggoner: No, sir, these are the only copies. They are on rolls, tremendous sheets.

[49] Court: This hearing was called at the request of the defendant on short notice and it wasn't scheduled until last night after we found out everybody could be here and we may get along faster if you all come up here and look over his shoulder, which is a bit unusual. Dr. Self, if you'd like to get down here to the Clerk's desk so that everything you're displaying can be seen by all counsel, just stand there or sit, as the case may be. It may help everybody.

Mr. Waggoner: If the Court please, I don't plan to go into specifics. I'm just submitting these as examples of the nature of the work of the computer.

Court: Let me ask a question. Did the computer decide what line to draw for Midwood School or did people have to do that after looking at the printouts?

A. No, sir. A human factor entered the picture at this point. From all of the various grid combinations that were listed one was chosen and that combination was drawn on the map which is part of the court record.

Court: So the maps you've got are people plans instead of computer plans.

A. Well, the person actually made a choice from among the grid combinations but it wasn't a random choice. There were some criteria which were used in that selection and the criteria are listed on Page 5 of the report. There is also an example [50] given of how that selection was made which uses the Lakeview Elementary School and that begins on Page 7 and lasts through Page 10.

Mr. Chambers: Your Honor, we'd just like to know right now what is Exhibit 1 and 2, the plan the Board filed?

Court: Exhibit 1 is the minority opinion or statement made by Mrs. Mauldin and Rev. Kerry. I'm not sure that these are identical, but anyhow, #1 is Mr. Kerry's dissenting opinion. #2 is the combination plan and brief of the School Board that was filed the other day. Do you have copies of those?

Mr. Chambers: We have copies of those. I guess #3 is one of these documents.

Mr. Waggoner: Yes.

Court: Midwood computer data.

Mr. Waggoner: Those two as samples of the nature of the work performed by the computer and our next develops how it was used.

Court: Mr. Waggoner, if this is for my information, this has been exhaustively developed already in your previous testimony and I see no reason to go ahead with it.

Mr. Waggoner: This information has not been before [51] the Court prior to this time.

Court: I am aware that there are various pieces of information that may not be but if your purpose is to show the function of the computer, I think it's already been shown. It produces possible plans and then the people who draw the plan take the computer information and use it as a starting point to draw a plan. Now and then I suppose it would produce something you could just print and use. Does this help in any decision I have to make?

Mr. Waggoner: It would show an Appellate Court the great extremes we went to in trying to seek all the alternatives to redistrict the zones in this system.

Court: How much longer are you going to spend on this computer?

Mr. Waggoner: Not very long, Your Honor. We propose moving to the maps quickly.

Court: All right. If you promise not to take long, I will instruct Mr. Chambers not to object but give him an objection to all the rest of the testimony.

Q. Dr. Self, will you describe to the Court the manner in which the [52] printouts of the computer information as

appears on Exhibits 3 and 4 was utilized in preparing the maps that we will introduce later? A. From the various alternative grid selections one was selected in accordance with the criteria on Page 5 of the firm's report and the one that was selected was drawn on the map. At that point you go to the next school, print it out, make your selection of it, put it on the map. You determine whether or not there is a conflict between the attendance line of the second school and the attendance line of the first school. If there is, you attempt to resolve it and move on to another school. In that way you build the attendance lines of all of your schools in the district.

Q. So you took this information and then physically and manually plotted on the map the grid zones or school zones that are on the maps, is this correct? A. The actual selection of the grid combination was done by the consulting firm. The lines were put on the map by the firm. Our staff was involved in terms of reviewing this work and offering suggestions for modification.

Q. Dr. Self, were you submitted any statistics with references to the restructured lines that were proposed by Systems Associates? A. Yes. The statistics are a part of the report.

Q. Did your school staff participate in drawing the school lines [53] which appear on the maps? A. The school lines, we looked at what the consultant had done. We offered suggestions for revision or modification. We actually involved the principals of the schools in this examination and permitted them an opportunity to offer suggestions.

Q. Could you give us several examples of suggestions that would be made with reference not to particular lines but just generally? A. One suggestion that came in rather frequently from principals was you have altered my line and you've put some children out of my school and taken in some others, yet both of these groups of children are of

the same race so what do you profit by altering the line. Of course, in this case it was a valid point and on the basis of that the line could be restored to its original purpose. There were some cases where principals made suggestions conforming to natural boundary-type reasoning which were rejected because to accept them would have upset the racial balance achieved under using the grid pattern.

Q. All right, sir. Did the transportation or access to the school form any factors in the development of these school lines? A. It did not, not up to this point. I would say that there is probably some additional work that needs to be done on these lines [54] and that accessibility, blocked off sections of the community, things like that would have to be considered. I do believe that the consultant says that this adaptation can probably be accomplished and not change the statistical data by more than 2%.

Mr. Chambers: May I ask for a clarification and have Dr. Self define which consultant he's talking about.

Court: He's talking about Mr. Weil.

A. The consultant employed by the Board of Education, yes, sir.

Q. Dr. Self, based on this technique of restructuring attendance lines, could you give us comparisons between the 1969-70 school populations and those for the projected 1970-71 school year? A. I think to show that comparison, Mr. Waggoner, you would use the summary of the results page which is Page #23 of the report. Without going through elementary, junior and senior high schools, if you

look at the total at the bottom of the page, you can see the comparison of the two years in terms of the number of students and also by the number of schools that would be involved. The figures are listed by the percent of black pupils that would be in the schools. For example, using the percent black, let's say 16 to 41, these are schools in which the student population ranges from 16 to 41%. The number of black pupils in 69-70 is 15,852. Using the restructured attendance line technique, that number is tripled, [55] overtripled to 49,748.

Q. Dr. Self, I direct your attention to Page 25 and ask if you can indicate the percentage of students that would be in schools having a black student population ranging between 16% and 41%. A. That data would be at the bottom of the page. The percent of black students in that particular category would be 61.4.

Q. Dr. Self, are there any schools in this system which do not have white students that will be assigned to them? A. Examining pages 26, 27—I believe that there are three. I think you would find this fact by looking down the column entitled Black Students and if there were a zero in that column this would indicate that was a school which fell in the category you were trying to identify.

Q. This is all white you're talking about? A. That's right, sir. The three schools are Devonshire, Merry Oaks and Pinewood, I believe.

Q. Are there any black schools at which there are no white students? A. To answer that question you would move over to the column entitled white students and see if you found any zeros, and there are none.

Q. So there are no all black schools in the full sense of the term, is this correct? [56] A. According to these statistics and that assignment pattern, yes, sir.

Court: Have you got a copy of the report of the School Board describing the population of various schools under the proposed Board plan?

Mr. Waggoner: Yes, sir, we do.

Court: I thought I had one here but I don't seem to find it.

Mr. Stein: Your Honor, could we make an inquiry at this point? Mr. Waggoner began his questioning by going through the history of the process of the development of the plan and we'd like to know whether what he's talking about now are statistics relating to the plan submitted to the Court or whether they are statistics relating to proposals by Weil at some intermediate stage.

Court: What are you reading from, Dr. Self?

A. From the report.

Court: You're reading from Mr. Weil's information.

A. That's true.

Court: Let's get away from that and get to what you submitted to the Court.

A. If I might offer . . .

Court: Is that identical with the information sheet that was filed as a part of the proposed plan of the [57] Board?

A. There is one exception, if I'm not mistaken. The Weil plan presumes to continue the Erwin Avenue Elementary

School. Under the plan which the Board of Education submitted this school was closed. If there is variance in terms of the data submitted under the Weil plan and that supportive data sheet which is part of the Board's report, it's because Mr. Weil was working with pupil census data from October 1 and this has been updated to January 21 in the Board's report.

Mr. Chambers: Sir, I'd like to make one further inquiry. I understand Dr. Self is talking about three all white schools and getting his percentages from Pages 26 and 27.

A. I was not using percentages, Mr. Chambers, I was using numbers of pupils.

Mr. Chambers: May I make one further inquiry? Which column were you reading from, the last columns on Pages 26 and 27?

A. No, sir, the last line is percent. My information came from the third column which is entitled black students.

Mr. Stein: Your Honor, at this point we would suggest at this point if we go through statistics relating to October and then statistics relating to January, the Board could keep us here for two or three weeks and we think we have passed the stage where we have that [58] kind of time.

Court: Well, I've given an indication at the outset as to the amount of time that I can devote to this, so, Mr. Waggoner, you be guided as to how you spend the time.

Mr. Waggoner: If the Court please, the purpose we have is to develop our evidence as fully as we can and we will try to do it in the shortest time possible. We feel we must present our case in our own manner and this is what we propose doing and I am moving as quickly as I can. Now, with reference to the question Mr. Chambers asked, there is no substantial difference between the Weil statistics, the summaries, and those that the Board has submitted. Is this correct, Dr. Self?

A. That's correct.

Court: Well, I have studied the information submitted by the Board and have not studied the Weil information to know in what way it varies. I had not intended to go back and study the Weil figures in detail.

Mr. Waggoner: If the Court please, I am merely pointing out some broad categories. I haven't gotten into specifics except in the predominant figure of 16 to 41%.

[59] Court: Let me ask a question. Are there any schools with a black population of between 41 and 84%? Are there black schools either under 41 or over 83%?

Mr. Waggoner: Yes, sir, 84% is the minimum percentage in the all black schools.

Court: So you've got schools which run up to 41% black and a majority of white and then you have no schools with a black population anywhere between 41 and 84.

Mr. Waggoner: That's correct.

Court: So any reference to a collection of schools from 42 to 100% really means 84 to 100%, doesn't it?

Mr. Waggoner: That is correct and it is so clearly set out in the Weil report.

Q. Dr. Self, will you name the all black schools that will remain in that range of 84% and 100%? A. The elementary schools are Bruns, Marie Davis, Double Oaks, Druid Hills, First Ward, Lincoln Heights, Oaklawn, University Park, Villa Heights.

Q. Erwin Avenue has been closed, is this correct? A. That's correct.

Q. I understand there are certain schools that were predominantly black or are now predominantly black that will not be predominantly black under the projected figures. I direct your attention to Page 29. [60] Would you name those schools? A. The schools that were predominantly black in 69-70 or at this particular time and would not be predominantly black next year under the Board's plan are Barringer, Billingsville, Elizabeth, Amay James, Lakeview, Tryon Hills.

Q. Each of the schools you just named will have less than 41% black, is that correct? A. That's correct.

Q. Now, with reference to the elementary schools with 99 to 100% white population, which ones have been removed from that category under your projected figure? A. Those schools are Chantilly, Enderly Park, Oakhurst, Sedgefield, Shamrock Gardens, Steel Creek and Thomasboro.

Q. Dr. Self, I direct your attention to Page 31 and ask you to tell me those junior high schools which it is projected will have less than 15% black student population. A. One of those would be Albemarle Road with 2% black;

McClintock with 2%; Carmel Road with 0% and J. H. Gunn with 9%.

Q. I direct your attention to Quail Hollow. A. I beg your pardon, Quail Hollow would have 11%.

Q. Dr. Self, with reference to the high schools would you tell us the percentage of black students that it's projected would be attending those schools? A. West would be 33%; Olympic 23; Harding 36; West Charlotte 36; [61] South Mecklenburg 21; Myers Park 18; Garringer 27; East 17; Independence 2; North Mecklenburg 31.

Mr. Waggoner: If the Court please, can we take a short recess to get the maps on the board?

Court: They won't go on the board. Why don't you lay them on the floor. That's what I do with them so I can see them. Let's take a recess until 11:00 o'clock so these maps can be straightened out. Be ready to go again at 11:00.

SHORT RECESS

Q. Dr. Self, will you come down to the maps which are on the board which represent the Board maps that were submitted in connection with this plan for desegregation and I ask you to identify the first map that you see there. A. The first map is a map of the attendance areas of the elementary schools.

Q. Dr. Self, with reference to the lines that appear on that map, can you describe those lines for us? A. There are two sets of lines. First there is a dotted blue line which represents the attendance area as it exists at the present time. There are solid lines superimposed over those which represent the line as drawn by Systems Associates study.

Q. All right, sir. I direct your attention to the outlying or so-called county elementary schools and ask you if there

has been any substantial differences in the configuration of those [62] attendance lines. A. No substantial change in those.

Q. Where has the substantial change taken place? A. For the most part I think in the schools under this particular belt which would be the northwest to west to southwest section. There are some rather drastic changes through here. In other words, I guess you would call it the suburban area of the city.

Q. In what would be normally regarded as the city limits but the outer perimeter of that, is that correct? A. That's right.

Q. Dr. Self, applying the technique used in drawing those lines could you illustrate how one district may have been formed? A. Well, I think perhaps the best way to do that would be to trace the dotted line to show how it exists now and then to point out the grid line as it would be recommended. This is Nations Ford. The old attendance line comes down Highway 49, follows the branch here, comes out through the countryside, heads north again, again to open countryside for the most part, picks up with . . . I was wrong on this, that's South Blvd. This is Highway 49 and York Road . . . and uses the new north-south expressway at this point and goes cross country to join the line again. The new Nations Ford Road you can see is straight lines like this, following the general configuration of the old line in this section but departing from [63] it rather radically here to reach up into and take a part of what was the Amay James attendance area so as to bring the black student population up in Nations Ford.

Q. That is a rather long elementary district, is it not? A. Yes, it is.

Q. All right, sir. I direct your attention to the Marie Davis attendance district. A. Right here.

Q. Do you know what the racial population of that school will be approximately? A. Marie Davis is one of the schools we listed as predominantly black.

Q. What efforts were made to desegregate that school? A. Well, the same stipulation governed the attempt to change the Marie Davis line as did here. The difficulty is that as you move out from Marie Davis you get into a heavy student population and you have very soon rounded up enough pupils to fill your building to capacity. The net effect of the move is to leave the school as predominantly black.

Q. Do the surrounding schools to the attendance lines of Marie Davis have a substantial degree of desegregation? A. Yes. The neighboring school to Marie Davis is Barringer. That is one of the schools that I indicated would be changed from an all or predominantly black school to an approximately 70-30 ratio this next year.

[64] Q. With reference to the Barringer School where does its new attendance line extend generally? A. Well, it actually moves up into what is presently the Ashley Park area, crosses Wilkinson Blvd. to pick up a complement of white children. It excludes a section of black children in this particular section. The effect is to move black youngsters out and incorporate a group of white youngsters to get the racial balance in Barringer.

Q. Does it remove some of the students who live in the Barringer Woods subdivision or Rollingwood section? A. I'm sorry, I'm not that familiar with the section.

Q. Now, as I understand, this map does leave a substantial or some black schools in it in the so-called inner-city which lies generally northwest of Tryon Street, is that correct? A. That's correct.

Q. What efforts were made to desegregate those schools?

A. We looked at other possibilities. We thought in terms at one time of pairing or clustering arrangement with Marie Davis but to have done that would have upset the surrounding schools. The schools that are up in this particular section could not be desegregated through restructuring attendance lines.

Q. I direct your attention to Billingsville. What efforts were made to desegregate that school? A. Billingsville is desegregated by using restructured attendance [65] lines.

Q. I next direct your attention to the next map which I understand is the junior high attendance map. As I understand this map, many of the outlying junior high schools were not affected substantially by the desegregation on this map, is that correct? A. Well, I think the same condition prevailed with the junior high schools in the outer region of the county. For example, very little was done in terms of the Alexander Junior High School attendance lines. It is already desegregated.

Q. All right, sir. With reference to Northwest Junior High, what efforts were made to desegregate this school? A. We draw the attendance line and through that technique and through projecting the attendance lines out in a westerly direction, Northwest can be desegregated.

Q. I ask you about Williams Junior High. A. The same technique was employed except this time the direction was in the easterly direction.

Q. With reference to Cochran. A. The Cochran area was actually reduced a bit and the area extended in to pick up black students to get the black student complement for Cochran.

Q. I next direct your attention to the map called the senior high map under the Board of Education plan and

again ask you about the outlying or so-called county schools. [6]6 A. Well, the attendance lines at the senior high school level were affected by our attempts to desegregate West Charlotte.

Q. Could you say this is the beginning point in trying to formulate a desegregation of the senior high school system? A. I think that would be a true statement.

Q. Would you describe the former West Charlotte attendance area? A. The former West Charlotte attendance area is very compact, one located around the school itself. The northern boundary is Interstate 85, the southern or southwestern boundary is West Trade, for the most part the boundary on the east is Graham Street.

Q. What did the resulting attendance lines, what area did it encompass that it didn't formerly encompass? A. The major change, of course, was to extend the West Charlotte area westerly for this block of students and into an easterly direction for this block of students.

Q. That line extends to the Cabarrus County line, does it not? A. It does.

Q. I direct your attention to Harding. What efforts were made to reduce the black population for that school? A. Efforts were made to extend the surrounding school districts by Harding School in such a way as to pick up black students and bring the black ratio up in the surrounding schools and reduce it at Harding.

Q. I direct your attention to South Mecklenburg. Would you [67] describe the former attendance area there? A. The former attendance area produces some desegregation in South Mecklenburg by penetrating up into a section of the inner city. The revised attendance area does the same thing except branches out in to pick up more black students.

Q. I next direct your attention to East Mecklenburg.

Describe the present attendance line. A. The East Mecklenburg attendance lines, of course, start at the county. There is a section which is pie-shaped which accommodates East Mecklenburg at the present time, one of the boundaries being Central Avenue, Lawyers Road and out U. S. 74, and the other boundary being Randolph and Providence and going to the county line.

Q. What efforts were made to desegregate that school? A. The same technique as we used on South Mecklenburg, extend the area up into the city to bring in more black students.

Q. You may return to the stand. (The witness does so.) Dr. Self, I understand the Board plan contemplates providing transportation as permitted by state law. Under these revised attendance lines would there by any additional students transported? A. The Board's provision is correct as you stated it. We do not intend to extend the transportation system beyond its present limits. However, in Board deliberations it has been acknowledged that a hardship probably would be placed on some [68] students and for these students we would need to come back and make some sort of provisions for transportation. Our handicap, of course, in this is we must secure the funds with which to act.

Q. Now, I believe in the press of time you have requested Mr. J. D. Morgan to familiarize himself with the transportation information, is this correct? A. This is correct.

Q. Dr. Self, are you familiar with the Finger plan for desegregation of the schools? A. Yes, I am.

Q. Could you use the maps we now have to briefly describe the difference between his plan and the plan that the Board has submitted? A. Yes, sir.

Q. With reference to the high schools, describe in what way differently he treats the assignment of students. A. Well, looking at the high school map and at the figures which are a part of the Weil document, the thing that concerned Dr. Finger was the 2% black enrollment at Independence. He instructed our staff to try to modify the lines in such a way as to correct this factor. The way to do that is to designate a section of the inner city as a satellite district for Independence and bus those children to Independence High School.

[69] Q. Do you know generally where the area is that would be used as a satellite district? A. It is in the inner city section and I believe it's shown in color on the maps which Dr. Finger submitted.

Q. With reference to the junior high plan, how does his differ from the Board's plan? A. His concern with the junior high plans was the high percentage of black at Piedmont and the correspondingly low percentage of white in the schools that I named earlier, Albemarle Road, McClintock, Quail Hollow, Carmel Road and J. H. Gunn, and he instructed our staff to attempt to redraw the lines in such a way as to rectify this condition. Again, through the use of satellite districts we were able to do this. It enabled us to redraw an attendance area around Piedmont and also to set up some satellite districts for those predominantly white junior high schools that I named.

Q. Under this junior high plan would it be basically busing the blacks out of the Piedmont district or cross-busing? A. Cross-busing if you think in terms of a system because the elongated junior high school district for Northwest and Williams would certainly require that white pupils be bused into them. Also the same would be the case for

Kennedy Junior High School. The black youngsters would be bused out to the predominantly white schools.

Q. All right, sir. Now, with reference to the elementary how [70] does his plan differ basically from that of the Board? A. Again, starting with the plan and examining it, Dr. Finger notes, of course, there were some all black schools and some all or predominantly white schools remaining.

Q. Let me ask you this, did he basically utilize the Board's restructured lines in these three systems to formulate his plan? A. I think it would be fair to say that Dr. Finger had access to these maps. He also thought that, at least he seemed to think that restructuring attendance lines was a legitimate approach to achieving desegregation.

> Mr. Chambers: Objection.
>
> Court: Why don't you confine yourself to your own opinions, Dr. Self, and observations instead of seeking to testify for him. That's the basis of the objection.

A. All right, sir.

Q. Now, with reference to the elementary plan, how does his plan differ from that of the Board of Education? A. It uses pairing for the schools that are all black and those that are all or predominantly white.

Q. Now, could you come down again to the elementary map and briefly describe the white schools he would propose pairing and the black schools he would propose pairing. (The witness does so.)

[71] Court: Have you got a list of those schools?

A. Yes, sir. They are a part of Dr. Finger's plan.

Court: That's what I was going to hand you if you wanted it. Go ahead.

A. The black schools that we mentioned earlier as being Bruns Avenue, Marie Davis, Double Oaks, Druid Hills, First Ward, Lincoln Heights, Oaklawn, Tryon Hills, University Park and Villa Heights, and they are found in this particular section. The white schools or predominantly white are Huntingtown Farms, Sharon, Starmount, Park Road, Pinewood, Briarwood, Devonshire, Hidden Valley, Beverely Woods, Lansdowne, Old Providence, Albemarle Road, Idlewild, Merry Oaks, Allenbrook, Paw Creek, Paw Creek annex as a part of Paw Creek, Tuckaseegee, Hickory Grove, Montclaire, Rama Road, Selwyn, Windsor Park and Winterfield.

Q. All right, sir. Would you basically describe how he would effect his pairing? A. The pairing plan assumes that the white schools that were named would become schools in which grades 1 through 4 are housed. The 5th and 6th grade youngsters would be taken out of those schools. The black schools would become schools in which grades 5 and 6 are housed. The 5th and 6th grade youngsters from the white neighborhood would be bused into the 5th and 6th grade schools in the inner city and at the same time the 1st through 4th grade black youngsters would be [72] bused into the white schools I named.

Q. Generally what is the size of a pairing group that he would propose here? A. It ranges in terms of the capacity of the schools but by and large it would be pairing a black school with either two or three whites. (The witness returns to the witness stand.)

Q. Dr. Self, with reference to the pairing plan proposed

by Dr. Finger, how does his plan propose getting the students to the schools? A. I believe that Dr. Finger recommends that children beyond a mile and a half distance from the school be transported.

Q. Do you know how many total students this would involve? A. You can come to a very rough approximation. Again, I think this figure could be polished, if you care to, in Mr. Morgan's testimony. The black inner city schools number approximately 7000 youngsters. If you assume you want a 70% white ratio in there, you must also assume that you're going to move 70% of the youngsters who are there. That would be approximately 5000 youngsters. If there are 5000 youngsters who are moved out of these schools, then 5000 white are moved in to replace them. This gives you a rough approximation of 10,000 youngsters involved in the paired schools.

Q. Is there additional busing that his plan contemplates? A. In the satellite districts of the junior and senior high schools, yes.

[73] Q. Dr. Self, do you as an educator have any preference with reference to Dr. Finger's plan or to the plan submitted to the Board?

Mr. Chambers: Objection.

Court: Well, answer the question if you can from the standpoint of the educational desirability of the two plans as to the three different levels of schools educationally and administratively, I suppose. You're asking both of those rather than personal opinion.

Mr. Waggoner: Yes, sir.

Court: Go ahead.

A. As far as the secondary schools are concerned—

Court: What do you mean secondary?

A. Junior and senior high schools. I think I could support the idea of using the elongated districts and, if necessary, the busing arrangement to achieve the racial balance in the secondary schools. I think that there is a basis for Dr. Finger's work in that area. In the elementary schools your question forces me to make a value judgment against the relative worth of the neighborhood school as against the benefits of the desegregated classroom. I think I have testified in this hearing before that I do think that there are values of a desegregated classroom. You're in a quandry as to whether or not the steps that would be necessary to achieve Dr. Finger's plan would be so traumatic that what you were [74] hoping would happen in a desegregated classroom would be beyond the realm of possibility. In other words, if people would be so upset this would never occur.

Court: You're talking now about whether people like it or not, aren't you?

A. I'm talking about whether the system can adapt to that drastic a change, whether teachers can be—

Court: Let's confine ourselves not to whether we like what the law requires but to the educational questions involved.

Mr. Waggoner: Can we get his testimony in the record?

Court: I don't think it's pertinent and I told you Monday that we're not holding a popularity hearing on this question, and I'm not going to do it today.

Mr. Waggoner: If the Court please, what he is stating is that the opinion of children and parents can so affect the educational system that the bene-