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Supreme Court, U. S.
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APPENDIX

Volume 3—Pages 1033a to 1514a

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-507

WILFRED KEYES, ET AL.,

PETITIONERS

THE UNIVERSITY
OF COLORADO

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SCHOOL DISTRICT NO. 1,
DENVER, COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

CERTIORARI GRANTED JANUARY 17, 1972

PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 8, 1971

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William Berge—for Defendants—Direct

【1197】 WILLIAM BERGE, a witness called by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ris:

The Court: Please give us your name, address and occupation.

The Witness: William Berge, 500 Capital Life Building, Denver, Colorado. Lawyer.

By Mr. Ris:

Q. Mr. Berge, your race is Anglo, is it not? A. Yes.

Q. How old are you? A. Forty-six.

Q. Are you a native of Denver? A. No. I was born in Cleveland, Ohio; moved out here when I was five years old and have been a native since 1928.

Q. Did you attend Denver Public Schools? A. Yes.

Q. What schools? A. Dora Moore, Park Hill, Aaron Gove, and East High School.

Q. What year did you graduate from East? A. 1941.

Q. Where did you go to college? 【1198】 A. Dartmouth College.

Q. And law school? A. University of Denver.

Q. Graduating what year? A. 1950. Dartmouth College, 1948.

Q. Are you married? A. Yes.

Q. Have children? A. Yes.

Q. How many? A. Three boys.

Q. Are they all in the Denver Public Schools? A. Yes, two are at Thomas Jefferson and one at Jessie Hamilton.

Q. What other schools have your boys attended? A. Pitts.

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Q. Since you have been married, what— A. Excuse me. Pitts and University Park.

Q. Since you have been married, what areas have you lived in Denver? A. When we were married we lived at 1414 Marion and then we moved to 2830 South Monroe and then we moved to our present residence at 3098 South Jasmine.

Q. How long have you been at that address? A. Since 1962.

【1199】 Q. Are you presently a member of the Board of Education, School District Number One, Denver, Colorado? A. Yes.

Q. When did you become a member of that group? A. In May of 1967.

Q. You were elected to the post? A. Yes.

Q. In the May 1967 election? A. Yes.

Q. Had you ever had any special education or employment in school administration? A. No.

Q. What was your first basic contact with the Denver Public Schools, either P-TA level or whatever it may have been? A. I think the primary introduction to school matters was with the advisory council at Pitts Elementary School.

Q. About what year was that? A. About 1963.

Q. What type of advisory council or committee was that? A. Each school in the district was requested to form an advisory council to make recommendations to the Board of Education as to what that particular advisory council felt that particular school needed. And it had to do primarily with the needs of each individual school in the district.

【1200】 Q. Did you actually participate in that council? A. Yes.

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Q. For what period of time? A. Two years.

Q. And then what was the occasion of your first having any citywide position in connection with the school district? A. I was appointed chairman of the advisory council on equality of education opportunities, which was a council appointed by the Denver Board of Education in 1966.

Q. Now the members of the board were selected by the Board of Education? A. Yes.

Q. And by whom were you designated as chairman? A. The Board of Education.

Q. Who was the vice-chairman? A. Bernard Valdez.

Q. What is his position? Or what is his job, do you know, at the moment? A. To the best of my knowledge, he is director of welfare.

Q. Of the City and County of Denver? A. Of the City and County of Denver.

Q. Could you describe generally the composition of the commission or council? A. The council was composed of 31 members and was [1201] representative of all districts in the school district. It had minority representation. It had the representation from certain designated groups such as the Park Hill Action Committee, CORE, NAACP, LARASO (?).

Q. What is LARASO? A. Latin American—

Q. A Latin American group? A. Yes.

Q. Representing the Hispano community as we have discussed it in this trial? A. Yes.

Q. Did the advisory council act basically as a full group or did you split it up into subcommittees or one job primarily, or— A. We divided it into subcommittees and each subcommittee had a program, and when that subcommittee had finished its objectives, why, then the entire

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committee met and formulated the report which was eventually submitted to the board of education.

Q. How often did the full committee meet? A. Oh, an average of once a week, usually every Tuesday night.

Q. Was that your regular meeting night? A. Yes.

Q. At what hour? **[1202]** A. Usually the meetings began at 7:00 or 7:30 and continued indefinitely. Some went way into the early morning hours and we made—we attempted to adjourn by 11:00 or 11:30 but that was not always possible.

Q. Where were these meetings held? A. Some meetings were held at Baker Junior High School. Most of them were held in the board room of the Capitol Life Building.

Q. East 16th Avenue and Grant Street? A. Yes, sir.

Q. Were these meetings open to the public? A. All meetings were open to the public except when the council went into executive session.

Q. How often was that? A. Not very frequently. It occurred more at the latter part of the schedule when we were attempting to formulate our plan and put it together in a written form.

Q. At the open meetings did people appear to present their positions on various facets of the educational programs? A. Yes.

Q. Did you have both members of the white community and the black community? A. Yes.

Q. What was the basic purpose of your committee? What were you charged to do? **[1203]** A. Well, basically we were given a charge to determine whether or not the school policy No. 1222-C, which dealt primarily with neighborhood schools, should be kept in effect so far as the construction of new buildings was concerned in northeast Denver.

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Q. Of course, the Voorhees report had already been published before you were appointed? A. Yes, that's correct.

Q. That was your point of departure, really; the Voorhees Committee? A. Yes.

Q. Now, you say there were 31 members? A. Yes, sir.

Q. How active was your committee? How many would attend an average meeting, would you estimate? A. The committee for the most part was very active. I believe the average attendance was somewhere between 18 and 23 of the 31 members for each meeting.

Q. And were the members of the public at virtually every public meeting you had; to express their views? A. I would say at the majority of the meetings members of the public attended. There were a few where no public people attended or participated.

Q. Now, at the conclusion of your deliberations was a report then drafted? [1204] A. Yes.

Q. What was the basis for doing that? A. A drafting committee was formed and the chairman of that committee, Minoru Yasui, and they drew a rough draft of the report based on the findings and recommendations of the subcommittee and then they presented it to the entire advisory council. Each council member or each member of the council had the opportunity to read it and evaluate and make any suggestions, changes or criticisms which the particular member deemed necessary.

Q. Were there some changes made from the rough draft? A. Yes.

Q. Were they as to form or substance? A. Mostly of form.

Q. Was the report adopted unanimously? A. No.

Q. Could you tell us how many dissents there were? A. I believe there were three—three or four.

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Q. Was there a minority report also drafted? A. Yes.

Q. Is that also in the report or appendix or part of it?
A. Yes.

Q. What was done with the report when it was finally concluded? [1205] A. It was submitted to the Board of Education.

Q. Now as to the report itself, Mr. Berge, did you make some preliminary findings, both fact and legal considerations— A. Yes.

Q. —that you felt were in existence or applicable to this particular case? A. Yes.

Q. And could you summarize those for us? A. Well, I think some of the preliminary findings were that de facto segregation did exist in certain districts in the city. But, to the best of our knowledge, neither the Board of Education nor the administration had taken any active part either directly or indirectly in promoting de facto segregation.

Q. With regard to the neighborhood school concept, what position did your council take? A. The council basically endorsed the neighborhood school concept as such.

Q. Did you make some specific recommendations? A. Yes.

Q. And were these based on some specific conclusions as to what should be done? A. Yes.

Q. And would you summarize those for us, please? [1206] A. Yes, one of the basic recommendations was the establishment of a cultural arts center which would be a school or group of schools designated by the administration which would concentrate primarily in music appreciation, art appreciation, and perhaps other forms of appreciation, depending upon the acceptance of the program.

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Eight schools at the primary level I believe were selected at random, but with the selection made so that the children who went from these eight schools to the cultural arts center would receive in exchange cultural and racial experience. In other words, the schools were selected so that there would be Hispanos, Negroes, and Anglos in attendance at the same time. I believe it was the sixth grade students from the elementary schools chosen to participate and were given the option of attending the cultural arts center. In other words, the purpose of the program was explained to the parents and then the parents were given the option of enrolling their students in the cultural arts program.

Q. What other recommendation? A. Another recommendation was for a superior school program for Smiley Junior High School and Baker Junior High School.

Q. What did that contemplate generally? A. That contemplated basically going into these schools, making evaluation of what was needed in each school to make [1207] that particular school a superior school.

Q. And another recommendation, the educational center? A. Oh, yes, there was—that was a third one. There was a recommendation that an educational center be established on a pilot study basis to determine whether or not this would be a step in the right direction as far as improvement in quality of education was concerned.

Q. And what was contemplated to being encompassed in an educational center? A. Well, basically, as we envisioned it, there would be an area somewhere between 50 acres and 250 acres to which could be established multiple purpose building which could be used for varying purposes such as an advanced science center, multi-lingual buildings, special purpose buildings whereby students from

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all over the city could attend for the specific purpose in which they were interested.

Q. This also contemplated vocational education? A. Definitely.

Q. And a centralized library? A. Yes.

Q. Did you also recommend a further school capacity study? A. Yes.

Q. Now, did you make any other recommendations or come to any conclusions concerning the northeast Denver area [1208] with respect to new schools? A. Yes, I believe the recommendation was that there should be no new construction made in northeast Denver until such time as the particular paragraph of Policy 5100 could be implemented. In other words, to the best of my recollection, that particular paragraph says that in the neighborhood school concept there can be some concentrations of racial and ethnic groups which are not necessarily in the best interests of those particular groups.

So the recommendation was that no new construction be made in northeast Denver until some formal alleviation could be made to comply with this requirement. It's either paragraph 1222-C, subparagraph (b)6, or 5100 of the same paragraph.

Q. With respect to 5100, did you make a specific recommendation as to what should be done or attempted in an attempt to make it workable? A. Yes.

Q. What did you have in mind in that regard? A. Well, I think the basic recommendation was that a voluntary open enrollment plan be established and that this be submitted and explained and advanced with the idea being that you could explain it to members of the community and to the parents and by getting community acceptance

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for this plan you would be able to accomplish some realistic integration.

[1209] Q. Why was community acceptance considered of consequence by the council? A. Well, if you don't have community acceptance for any plan, it just won't work.

Q. Now, with regard to the recommendation you made—I'm jumping a little ahead now. I'm sorry. I'll come back to that.

Mr. Ris: Will you strike that, please, Wayne.

(Addressing the reporter.)

Q. After your report was in, then did you retain any further interest in the school district and its problems? A. Yes.

Q. What did you do about it? A. I decided to run for the Board of Education.

Q. And what was your basic program upon which you ran? A. I think this can be boiled down to three primary reasons. I was interested in attempting to establish quality education to establish equality of educational opportunity and the basic retention of the neighborhood school concept as best it could be implemented in achieving integration.

Q. After you became a member of the Board then in May of 1967, did you see whether some of the recommendations that your council had made had been implemented or were you instrumental in seeing that some were implemented? A. Basically the recommendation of the—

[1210] Q. First, I should say, accepted by the board, rather than being implemented. I am jumping ahead here. I am sorry. A. They were accepted by the board.

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Q. All right. What was done with respect to the cultural arts center? A. The cultural arts center was established and was put into operation and it was well received by the parents and the students who were involved in it.

Q. And what was done with respect to the superior school program. A. The superior school program encompassed, as I recall, approximately 159 recommendations. These recommendations were submitted to the staff and faculty and to the administrative people involved in each school and in the central administration. A priority was established for each of these 159 recommendations, and within budgetary limitations and based upon the priorities as established, a number of these suggestions were put into actual operation.

Q. And what if anything has been accomplished on the educational center? A. A substantial effort was made to obtain land at Lowry Air Force Base, which we learned was to be declared surplus. We went to a great deal of effort through Congressman Rogers' office and Senator Allott's office and Senator [1211] Dominick's office in an attempt to obtain these for the board. We were unsuccessful in doing this. We felt this would be a logical site because of the location.

When we learned that this was unavailable, we attempted to get some land in the Platte Valley area, and we also recommended that Montbello be considered as a possible site for a central center, such as this.

Q. Has that land actually been acquired to date? A. No, sir.

Q. Do you have capital funds to go out and buy that much acreage in the open market? A. No.

Q. Since you have been on the board, have any new

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schools been opened? A. Yes, Traylor Elementary School was opened.

Q. When was it opened? A. I believe Traylor was opened in the beginning of the school year in 1968. I am not sure about that.

Q. All right. A. And Jesse Hamilton School was also opened.

Q. Prior to the opening of those schools, had children been bused from the subdistricts where those schools were located to other districts? A. The children who eventually ended up attending Traylor were bused primarily to University Park School, which [1212] is a substantial distance across town. University Park School, I believe, is located at approximately East Iliff and about South Fillmore.

Q. After Traylor opened, then that left some openings at University Park? A. Yes, approximately 200 vacancies existed in University Park School after Traylor opened.

Q. Did the board take any action with respect to filling that space? A. Yes.

Q. What was that? A. Students from, I believe it was Smith and Fallis School and possibly Philips, I am not sure, were moved to University Park.

Q. Was this on a voluntary basis or mandatory? A. To the best of my knowledge, it was a voluntary basis. I am not sure of that, but at least that was my intention at the time, that the advantages be explained to the parents who would be going from the sending school to the receiving school, and they would be urged to allow their children to make this change, since the vacancies existed.

Q. Who proposed this bus movement in the board? A. I believe I did, sir.

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Q. Was this plan intended to have any integrating effect racially? **[1213]** A. Oh, definitely.

Q. Do you know when that plan went into effect? A. It either went into effect with the opening of Traylor or at the beginning of the semester immediately following the opening of Traylor.

Q. When you became a member of the board, was LOE then the policy with respect to open enrollment? A. Yes.

Q. And that's without—the district furnished transportation and, regardless of the integrating effect on either the receiving school or the sending school, right? A. Yes.

Q. Was that changed during your term of office? A. Yes.

Q. And how was that changed? A. It was changed from a limited open enrollment program to a voluntary open enrollment program, in which the district would provide the transportation for the pupil who was making the move, and the requirement was also that in order to make the change from the sending school to the receiving school there had to be an improvement in the racial composition of the receiving school.

Q. Do you know when the resolution was adopted authorizing this plan? A. I believe it was in—I believe in November of '68.

[1214] Q. To become effective when? A. With the opening of the second semester in 1969.

Q. That would be January, '69? A. January of '69.

Q. Was that long enough to educate the public and to get community acceptance of that plan? A. No.

Q. Now, during the period roughly from April of 1968 to April, 1969, Resolution 1490, the so-called Noel Resolution, was adopted, and there was considerable activity. Can you just briefly tell us what the chronological pro-

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gression of this was? A. I believe the Resolution No. 1490 was introduced April of 1968, was tabled until May of 1968, at which time the resolution was passed. Numerous public hearings were held on this resolution.

Q. Where? A. Mostly at South High School.

Q. Were they well attended? A. They were extremely well attended.

Q. Many people expressed their views? A. Many, many views were expressed and many differences of opinion as to policies and procedures and programs were stated.

Q. By both blacks and whites? **[1215]** A. Yes.

Q. And Hispanos? A. Yes.

Q. And then following the adoption of 1490 in May, '68, then what happened? What was the development? A. Dr. Gilberts went to work on the plan which 1490 encompassed. I don't recall exactly when it was submitted to the board. I know—I believe the original resolution required that it be submitted no later than September of '68, but I don't believe he was able to complete it by that time and I think it was submitted to us in October or November of 1968.

Q. And is that report called "Planning Quality Education," which is marked as Exhibit D? A. Yes.

Q. Were there some very novel features in this plan, Mr. Berge? A. Yes.

Q. Now, during this period, was there apparent a substantial difference of opinion and philosophy between various members of the board? A. Yes, I think the board was united in two things. I think all members of the board were interested in quality education and equality of educational opportunity for each pupil in the district, but there was a substantial divergence **[1216]** among the board members as to how this should be accomplished.

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Q. So there was a common end in which everyone was in agreement, but the difference as to means? A. Yes.

Q. Now, with respect to the three resolutions, 1520, 1524 and 1531, was this difference in philosophy apparent during the consideration of those resolutions? A. Yes.

Q. And during the period of time that these resolutions were under consideration, were they hotly debated? A. Yes.

Q. Were members of the public heard on them or was this basically a board matter at this point in time? A. As best I recall, I believe members of the public were heard. I'm not positive on that point, but I knew they were vigorously discussed among the board members.

Q. And the three resolutions were adopted by what vote? A. I believe it was a five-two vote.

Q. Now, prior to the three resolutions, do you recall approximately how many students were already being bused in the school district? A. I believe approximately 10,000.

Q. Was it within the contemplation of the board that this was a permanent busing arrangement for that many students? [1217] A. No, it certainly wasn't in my contemplation and I don't believe it was within the contemplation of the majority of the school board members, but I may be in error on that.

Q. Where were these students being bused? What categories did they fall in? A. They were being bused primarily from the newly-annexed areas where there were no schools to schools where vacancies existed, and it was my understanding that that would be on a temporary basis and would not be on a permanent basis.

Q. Were there some students being bused within their own subdistricts because they lived beyond a certain dis-

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tance from the schoolhouse? A. Yes, sir.

Q. And then there were some being bused out of the Northeast Denver area? A. Yes, and, of course, those who were physically handicapped.

Q. Special education, you had various categories in that regard? A. Yes.

Q. What about the Montbello area? A. Yes, as far as the junior high school and senior high school level students were concerned, they were being bused, and I don't believe any of the elementary students [1218] at Montbello were being bused at that time, because I believe the cottage schools were able to accommodate them.

Q. What was the reason that you did not provide actual classroom space for the pupils in the newly-annexed areas?

A. Simply there were not funds available for capital construction.

Q. Was there a capital bond submitted to the people recently? A. Yes, sir, in November, 1967.

Q. Now, how big a bond issue did that contemplate? A. As I recall, it was approximately 35 million.

Q. It was not passed, is that correct? A. No, again, as I recall, I believe it went down to defeat, approximately seven to three.

Q. Then came the May, 1969, election, and you had two new members on the board, right? A. Yes.

Q. What now happened with respect to the members of the board and their philosophical concepts as the means by which these goals were to be achieved, or the new board?

A. Well, the philosophy of the board changed in that those who were proponents of the voluntary plan now constituted the majority of the members of the board.

[1219] Q. So, the previous minority now became the majority? A. Yes.

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Q. Then 1520, 1524 and 1531 were revoked, I believe, on June 9, 1969? A. Yes.

Q. Before those three resolutions were revoked, had any child under the program contemplated by those three resolutions actually, physically changed his school subdistrict or become subject to mandatory busing? A. Not to my knowledge.

Q. When was it contemplated that the three resolutions would go into effect? A. I believe it was the fall of 1969.

Q. The opening of the September term, 1969? A. Yes.

Q. And then immediately following the revocation of 1520, 1524 and 1531, Resolution 1533 was adopted? A. Yes.

Q. Could you state for us what policy is enunciated by 1533? A. Well, 1533 is basically the same resolution as 1531, with one phrase added, which phrase appears at the bottom of Page 3 of Resolution 1533, and that phrase is, "And that participation by individual families shall be optional."

[1220] Other than that, Resolution 1533 is identical with 1531, to the best of my knowledge. In other words, the complexes contemplated in 1531 are the same as 1533.

Q. Now, can you briefly summarize what 1531 contemplated? A. 1531 contemplated the pairing of certain schools into what would be known as complexes and the participation in these pairings and in these complexes by the individual schools which were so named. This was to be done under the direction of the administration and it was to be done after consultation with members of the community and with parental representation in the form of PTA groups and others.

Q. Was this to have a stabilizing effect on the ethnic and racial composition of the schools? A. I am sure this was one of the hoped for results.

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Q. That was one of the recitals in the resolution itself, was it not? A. Yes.

Q. All right, did 1533, the new resolution, retain this complex grouping idea? A. Yes.

Q. Or concept? A. They are identical.

Q. Were the schools to be involved listed in the initial resolution? **【1221】** A. Yes.

Q. Is a resolution of this nature, Mr. Berge, intended to set out all the details of the plan? A. No.

Q. What is required following an adoption of a resolution setting forth a policy of the district? A. Well, a great deal more further work is involved. You have to do all the administrative detail which is necessary to put the resolution into effect. The resolution itself would more or less or could more or less be described as the skeleton in the work that's necessary to make a complete entity out of what follows after the resolution is adopted.

Q. And then, of course, this litigation came along and the July hearings and the Court's injunction followed that? A. Yes.

Q. All right, now, so far as the four members presently constituting the majority of the board are concerned, has there been an opportunity to implement and determine whether 1533 would achieve its desired end? A. No.

Q. Does the board recognize there is a problem here that needs some attention, Mr. Berge? A. Oh, there is no question about that. All of the **【1222】** board members are cognizant of many of the problems which exist and I think all are very sincere and very dedicated and very motivated in attempting to reach a realistic solution, but the majority of the board feels that until you can get a plan which the majority of the people involved will accept and back, then, regardless of any plan which the board adopts, you are not going to be able to make it work.

William Berge—for Defendants—Direct

Q. Do you think there is a reasonable probability of 1533 succeeding, if given an opportunity? A. Yes.

Q. When—

Mr. Greiner: We object to the witness speculating, Your Honor.

The Court: Overruled.

A. I believe that there is a reasonable possibility of 1533 succeeding, and the reason I make that statement is because of the tremendous success which the voluntary plan on the cultural arts program obtained. It is my hope that you could take a plan such as the cultural arts center, enlarge it as far as the high schools are concerned. In other words, you might have certain classes at East High School which students from Thomas Jefferson and George Washington could attend, maybe twice a week or three times a week, or maybe full time, and by getting it started this way, then people would realize the advantages which can be [1223] obtained by communicating and by attending classes with people of other racial and ethnic backgrounds, and would, therefore, be willing to pursue it on a more intensive basis, but at least at this level it would receive the backing of the students and the parents who are directly involved, and, therefore, would have community support, even though it might be on a limited basis at the embryo portion of the program.

Q. Would this require a great deal of public education and orientation? A. In my opinion, yes.

Q. There has been testimony of one witness, Mr. Berge, that one of the members of the administrative staff made the remark that it was the policy of the district with respect to VOE that they had caused the VOE program to be formed but they were under no obligation to promote it.

William Berge—for Defendants—Cross

Is that the policy of the district, or was it? A. It certainly is not, not to my knowledge.

Mr. Ris: Thank you.

Cross-Examination by Mr. Barnes:

Q. Mr. Berge, the genesis of the 1967 advisory council was concern in the community about race relations, was it not? A. I don't think that was the primary genesis of the council, no. That was certainly one facet of it, in which we [1224] were all concerned.

Q. There was a great deal of talk about mixing of races in the schools at that time, wasn't there? A. Yes.

Q. And a great deal of consideration of how it could best be done? A. There was some consideration and some discussion as to how best it could be done. I am not trying to quarrel with you, Mr. Barnes. I am trying to be as factually accurate as I can. I don't think there was a great deal of it.

Q. But the term "equality of educational opportunity" is one which is generally connected to the problem of how to improve the education of minorities, isn't it? A. Well, as I understand the term "equality of educational opportunity," it is to put each pupil in the district in an educational environment which will enable that particular pupil to achieve to the best of his potential. Now, that's the way I understand the term.

Q. By each pupil is generally meant including minority pupils who are thought to have been previously not getting an equal education, is that right? A. Well, certainly, minority pupils are definitely considered, yes.

Q. Mr. Berge, does the advisory council's report state [1225] anywhere the conclusion that you mentioned that

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the school board had not had any responsibility in the creation of the de facto segregation in the city? A. I believe it is on Page 31. "Nonexistence," and I am quoting from Page 31, "Objective evidence is nonexistent that the Board of Education or the school administration of the Denver Public Schools deliberately intended to create such de facto segregation in certain schools within the district."

Q. Did the council, to your knowledge, consider the changes in the Columbine-Harrington-Stedman boundaries in 1951 and '52? A. To the best of my knowledge, I believe these were considered in subcommittee meetings, Mr. Barnes, but whether the full council considered these, I don't recall.

Q. Well, do you recall receiving any report about those optional zones in 1951 and 1952? A. We may have received them, but I do not recall receiving them or seeing them.

【1226】 Q. Did you receive any reports from any subcommittee concerning the boundary changes enacted in 1955 and 1956 from Manual and East, and Cole and Smiley? A. Not that I recall.

Q. Do you recall any substantial study on those changes? A. Not by the entire council. It may have been by one of the subcommittees but not by the entire council.

Q. There may have been but you're not aware that there was in fact? A. That's right. I didn't participate in all of the subcommittee meetings.

Q. Did the council or any of its subcommittees to your knowledge study the desirability of construction of Barrett in 1959 at the location it was constructed in? A. No, not that I recall.

Q. Did it consider the boundary changes between Morey and Byers in 1962? A. I don't believe so. But again, I'm not positive.

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Q. Who was the author of the minority report for the council? A. Stephen Knight.

Q. And he is now a member of the board? A. Yes.

Q. You spoke briefly about the cultural arts program, [1227] Mr. Berge. How many hours a day does a child who participates in that program attend wherever it is he attends? A. As best I recall, I believe the child goes for—it's a sixth grade level program. And the child goes either in the afternoon or the morning for two days a week.

Q. And it's optional? A. Yes, sir.

Q. And are there any courses there in math or science? A. Not that I— There may be now, but when it was originally proposed it was primarily for music, for arts, and one other factor which I don't recall at the moment.

Q. It's a program designed for non-college preparatory kinds of subjects, isn't it? A. Well, I don't know whether you would consider music—I think the answer to your question is yes.

Q. As I have a description here in Defendants' Exhibit F, which was introduced last summer, which indicates that they do such things as making silk screens and play auto-harps and act in plays—that isn't designed to overcome the achievement gap, is it, in minority schools? A. No, I think it's primarily to attempt to get the children to learn to work together and play together and understand each other.

Q. Was the superior school program which you described ever put into effect at Smiley Junior High School? [1228] A. Certain portions of it were. I believe I stated—let me clarify it—that within budgetary limitations and based on the priority as established of approximately 159 recommendations which were made a part of our study, the superior school program was put into effect at Smiley and at Baker.

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Q. Can you say specifically how many of the 199 things were actually done, was different? Ten? Fifteen? Was it a hundred? Can we get any idea of the proportion? A. I don't recall. I believe if my memory is correct that approximately \$600,000 was spent on this program.

Q. Let me ask it this way. Has there been any measurable evidence of improvement of achievement at Smiley Junior High School or Baker Junior High School as a result of this program? A. I believe there is some. The exact extent, I don't know. I think right after this program was put into effect some boundary changes were instituted whereby some of the pupils at Smiley were taken out of Smiley and sent to other schools, and I think that had some bearing on the results of the superior school program at that particular school.

Q. That would have been boundary changes since 1967 at Smiley? A. Yes.

Q. Can you describe them any further? [1229] A. With the opening of Jessie Hamilton, some of the children in attendance at Smiley were sent to Jessie Hamilton I believe—

Q. When was that? A. I think that was when Jessie Hamilton opened, which I thought was in 1968.

Q. Was there a change in the attendance district at Smiley in 1968? A. I don't recall.

Q. I don't mean to be leading you into this. I am not aware of any such change, and if there is one I would like to know about it. A. The only one I can think of—what I thought was the opening of Jessie Hamilton. I may be in error. It might have been in 1967.

Q. Were there any differences in the implementation of the superior school program at Baker and Smiley to your knowledge? A. The composition of the families at Baker

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enabled us to qualify for supplemental funds from the government under one of the programs and I believe it was determined that basically there were different needs at each school, and I'm sure that some of the programs that went into effect at Baker were not put into effect at Smiley, and vice versa. Although the particular differentiation, I don't know.

【1230】 Q. Let me turn your attention to educational centers which you mentioned. Was it conceived that these centers would be the location of the advanced or unusual courses in math and aeronautics and other such subjects? A. As I recall, and my understanding was that these certainly were considered. But, we had hoped that you would have multi-purpose buildings so that if you did want to go into a high school or a junior high school or an elementary school, then the buildings could be definitely used for these purposes as well as those which I have identified.

Q. Would they be centers where a child came to study all day or to study for part of the day? A. Well, I think it was hoped that they would come there all day. Maybe not in the beginning, but eventually they would definitely come there all day.

Q. Did the advisory council recommend that an interim center be established in the Montbello area? A. It did.

Q. Did it not? A. Yes.

Q. Would it have required bussing of most of the school children in Denver to get out to Montbello? A. Yes.

Q. Montbello is way out—of north—on the northeast corner of town beyond the airport, is it not? **【1231】** A. That's right. As I recall we figured that with the annexation of Montbello it was an ideal opportunity to establish an educational park on an experimental basis and with the growth of Montbello, you get an area big enough, as I said,

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50 to 250 acres, and in the area—as the area grew, building schools, which would encompass the educational park. I don't believe it was contemplated to bus the children as such at the inception.

The idea was that with the growth of the area, the area which was designated as the school area or the educational park area could grow.

Q. Well, in 1967 when you campaigned for the school board, was the issue of educational parks discussed? A. Definitely.

Q. Was it discussed by you? A. Yes.

Q. Were you in favor of it? A. I wanted to try an educational park on an experimental basis, yes.

Q. I would like to turn your attention, Mr. Berge, to page 129 of Exhibit 21, the 1967 council's report, and you will see there a statement of philosophy by the advisory council. And there are three paragraphs in the center which I'd like to have you read. These three here. A. "We therefore hold that the council's concern is to [1232] improve the educational opportunity of all children in all of the areas of the city and in all of the levels within the systems. We hold that the neighborhood school principle is educationally sound for elementary schooling so long as it does not interfere or impede the quality of education. We hold that desirable education for our children can best take place in a school system that is actively involved in furthering the racial and cultural integration of our school community."

Q. Now, isn't there something of a contradiction in the recitation of the neighborhood school policy and the same—the statement as to the recitation of the desire for cultural integration, racial and cultural integration? A. I don't believe so.

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Q. How can the neighborhood school policy be strictly maintained and cultural and racial integration be achieved?

A. By the use of a system such as the cultural arts center.

Q. And does racial and cultural integration achieve its ultimate in the cultural arts center? A. Not achieve its ultimate, but it's a step in the right direction.

Q. Has it done anything to improve the achievement test results in the schools? A. In my opinion it definitely did. It certainly has [1233] motivated my boy.

Q. Have you got any indication or any analysis of the effect of the cultural arts program or participation in it—that it has had on minority children back in their—in the minority schools? A. I don't know.

Q. With the music and autoharp playing—that isn't going to help much on English and literature, is it? A. No, with the possible exception that it might motivate the child to exert himself in a more concentrated way on those other subjects.

Q. Is there any evidence that it has in fact had that motivational result; any substantial evidence? Any statistical evidence? A. I don't know, Mr. Barnes.

Q. Is there any other way that the conflicting concepts of neighborhood school policy and the cultural racial integration can be resolved? A. Yes.

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[1235] * * *

By Mr. Barnes:

Q. Mr. Berge, referring then to the report of the advisory council on superior schools, was there not a request by the council that the results of the superior schools program be reported on? A. Yes, I believe there was such a request.

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Q. Was such a report ever compiled? A. I don't recall.

Q. And turning your attention to the statement that you made about the advisory council's recommendation on voluntary open enrollment, did in fact the advisory council address itself to that program? A. I don't—here, again, now, it has been quite some time, Mr. Barnes, and I don't—on reflection, I don't believe we did. I believe this came later. I don't think that was one of the recommendations of the advisory council. I am not sure, however.

Q. On page 47 of the advisory council report, there is a list at the bottom of the page of five general recommendations. No one of those includes voluntary open enrollment, does it? A. That's correct.

Q. Is there any other place in the report where **[1236]** recommendations might be contained? A. Not to my knowledge.

The Court: Well, all of the three programs remain recommendations? These were on a voluntary basis, Mr. Berge? In other words, this would be optional?

The Witness: I don't understand your question, Your Honor.

The Court: Well, you described on your direct testimony three main purposes or recommendations, rather. One was to have a cultural center concentrating on art and music. Two, a superior school program for Smiley and Baker. Three, an educational center, campus idea. Participation in these was to be optional, I assume.

The Witness: Not on the superior school concept, no.

The Court: Well, I mean the educational center and the cultural center?

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The Witness: Yes, sir.

The Court: So, then you would have a home room or home school and then movement to these centers on an optional basis, is that right?

The Witness: Yes.

The Court: So you would really be operating two systems, a home or neighborhood school, and then you would be bussing to these centers on the side, is that right?

[1237] The Witness: If there were enough people in agreement who wanted to participate in such a program, yes.

The Court: But you wouldn't expect it to be 100 percent, anyway, I don't suppose?

The Witness: No, and I would anticipate that the participation would be very small at the inception.

The Court: Thus, this is not unlike the program suggested by Superintendent Gilberts, I guess, only his was not voluntary. I think it contemplated that everybody would participate in this campus idea, when he testified here at the preliminary injunction.

The Witness: Yes.

The Court: He said that this was one approach, but I don't believe that he considered it to be an optional or voluntary program. His idea was that the neighborhood school would be the home base but that you would have a center, a campus, where special courses would be taken, and he called this the cluster program, I believe.

The Witness: Yes, I think that's correct, Your Honor.

The Court: But you would operate this on a voluntary basis? I mean, this would be an essential aspect from your standpoint?

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The Witness: Definitely, just the way the cultural arts center was operated.

[1238] The Court: There would be no compulsion about it?

The Witness: That's correct.

Q. Mr. Berge, turning your attention to page 135 of the advisory council report, do you see a paragraph there beginning with the words, "The advisory council," in the middle of the page? A. Yes.

Q. Would you read that paragraph for us, please? A. This is under Appendix 11, School Capacities?

Q. Yes. A. "Thinking Behind Recommendation on School Capacities"?

Q. Yes. A. "The advisory council in giving orderly consideration to matters affecting the quality of educational opportunity found that wherever there is a concentration of any minority racial or ethnic group, this fact in correlation with other social and economic factors usually adversely affects the quality of educational achievement."

Q. So, the council was aware even at that time of the educational disadvantages of concentrations of minority students, wasn't it? A. In some instances, yes.

Q. And in the charge cited on page 102 and 103, at the top of page 103, there is another reference to the adverse **[1239]** effect on educational opportunity on children living in areas of concentration of racial and ethnic minorities, isn't there? A. Yes.

Q. You came on the board in May of 1967? A. Yes.

Q. And from that time you have been aware of the educational disadvantages of being in or having racial concentrations in certain schools? A. For some people, there may be a disadvantage. For some others, it may be an advantage.

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Q. Well, the statement on page 135 of the report of which you are the chairman of the committee says it usually adversely affects the quality of educational achievement. A. Yes, there are some results exactly as stated in that paragraph, but that doesn't mean all the results are that.

Q. Turning your attention, Mr. Berge, to Plaintiffs' Exhibit 29, which is in evidence, on page 10, which are the minutes of a board meeting that was held June 29, 1967, do you see at the bottom of page 10 a reference to a statement made by you, third line from the bottom? A. "There was lengthy discussion about the implications of the motion and the amending motion. Mr. Berge contended his motion was intended to respect to the utmost [1240] degree the freedom of choice of individuals and to accommodate all of the children in the city, those whose parents want neighborhood schools and those who believe that a better education could be obtained outside of their area. He submitted that the harmful effects of segregation could not be changed with enforced integration."

Q. Now, even at that time while on the board you were willing to talk about the harmful effects of segregation, were you not? A. For some people, yes.

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[1241] * * *

Q. All right, considering the neighborhood school policy to which you have referred, Mr. Berge, the School District does not always act consistently with that policy, does it? A. I think for the most part it does, yes.

[1242] Q. Well, for example, looking at what we have up here on the easel as the 1956 boundary map, but which will give us a rough approximation of the location of the schools

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in the district, there is now Montbello district which would be out here off the edge of the map, would there not? A. Yes.

Q. And the children from that district and the—from the junior high school have been transported up until the Court's order last summer, up to Lake Junior High? A. Yes.

Q. And that is in pursuit of the neighborhood school policy? A. No.

Q. And the Barrett Elementary School which was built on Colorado Boulevard was built right adjacent to its boundaries, was it not? A. I don't know, Mr. Barnes. I wasn't on the Board at that time. And I don't know.

Q. Well, some elementary schools are sometimes built adjacent to their boundaries? You wouldn't contest that, would you? A. No.

Q. And that would be contrary to an idea of the school surrounded by subdistrict boundaries which are an equal distance away from it? [1243] A. Not necessarily.

Q. So it would be a modification—probably a modification which is followed in order to achieve some educational advantage, isn't it? A. Again, not necessarily.

Q. What other reason would there be? A. For example, when Thomas Jefferson was built, it was built at the edge of the boundary of the city at that time. And then with the annexations, the city just mushroomed out in that area so that now Thomas Jefferson, instead of being at the edge of the boundary, is now in the middle of the district, or the area.

Q. Well, though, that would not apply to Barrett, would it, located on Colorado Boulevard? Will you take my word for it that it is located on Colorado Boulevard? A. Are

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you sure it's located on Colorado Boulevard? It isn't. It's on Jackson.

Q. Its playground is between Josephine and Colorado Boulevard?

Mr. Ris: That's incorrect. Josephine is down near York Street.

Mr. Barnes: Through this trial I have been saying Josephine.

Mr. Ris: We have been aware of it.

The Court: We will take not that Jackson is one [1244] block west of Colorado Boulevard, and it was at all times. It was never Josephine.

Q. In addition, Mr. Berge, has there not been in the past while you were on the Board transportation from the southwest Denver, southwest corner of the city all the way across University Park? You testified to that earlier, didn't you? A. Yes.

Q. And that is a good ten miles, isn't it? A. Yes.

Q. And that is a modification of the neighborhood school policy? A. Yes, because there were no schools in the neighborhood.

Q. Well, there were schools in the neighborhood, some of which may have been—may have had empty spaces and some of which may not have? A. Well, they didn't.

Q. Are you sure of that? A. Yes.

Q. So you transferred the children all the way to University Park in order to take advantage of space there? A. Yes.

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Q. An expense in order to take advantage of an educational purpose, isn't it? **【1245】** A. Yes.

Q. Well, is the transportation from Traylor to University Park consistent with the neighborhood school policy?

A. I don't understand your question. Would you repeat it?

The Court: What he's saying is—I think we can save time here, Mr. Berge. The neighborhood school policy hasn't been carried out in its very purest form. There have been some compromises in various ways in order to utilize the physical plan. As a matter of fact, your program as a member of the advisory council would compromise it, wouldn't it? I mean, if you had a school and you had other institutions where you took special classes—this would not be pure adherence to neighborhood school policy, would it?

【1246】 The Witness: It would be a modification of it on a voluntary basis.

The Court: Right. So there are many compromises with it. I mean, it's not possible to maintain it in its purest form, I don't suppose.

Isn't this about all you want to develop?

Mr. Barnes: Exactly, Your Honor.

Q. The next question, Mr. Berge, is why if the policy can be modified or compromised in some instances, it was not and has not been modified or compromised in order to promote—in order to overcome the disadvantages which you noted on the page 135 and 103 of the advisory council report? A. Because the advantages which are noted in the pages which you suggested cannot be accomplished

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without community acceptance and participation. And until you can get a plan which the majority of the community will get behind and make work, it's just not going to be feasible to put it in operation.

Q. Community acceptance of integration? A. Community acceptance of modification of the neighborhood school concept.

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[1248] * * *

Q. Well, let's look at the concept of voluntary integration for a minute, Mr. Berge. Do you allow children in **[1249]** your school district to decide voluntarily whether to go to public schools? A. No.

Q. As a representative of the state or through the—you, through the school board, you enforce the educational decision on the child, do you not? A. Yes.

Q. And whether or not the child perceives the advantages of this education, he is forced to go to school, isn't he? A. That's correct.

Q. And whether or not the parents perceive these advantages, the child is forced to go to school? A. Yes.

Q. And you don't leave the educational decision to the child or to the parent in this case, do you? A. No.

Q. Well, perhaps you're referring then to the right to voluntarily choose a school. Is that what you consider to be important in the—as a voluntary choice? A. A portion of it, yes.

Q. There are modifications of that policy, too, aren't there? A. Yes.

Q. As a general rule, the child must go to the school in which he lives, the subdistrict in which he lives, isn't **[1250]** that the case? A. Yes.

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Q. So that child doesn't have a voluntary choice to go to any school he wants to in the district? A. That's true.

Q. And if a child happened to live in the area of the Traylor School before that school was built, he didn't have a choice whether or not to go to University Park? A. That I believe is substantially correct. I think there were exceptions to that, but basically your statement is correct.

Q. And these limitations on the absolute freedom of choice are done for the educational advantage of the child, aren't they? A. For the most part, yes.

Q. If we modify this voluntary principle on the choice of schools for the educational advantages of the child and we do it in this instance I have mentioned, why don't we do it again in order to achieve integration? A. You can if you get the acceptance of the community, the acceptance of the parents, and those who are going to be involved. But, until you get that acceptance and that participation and that backing, you're not going to make it work. They just won't accept it.

Q. Do you have acceptance of parents and the children [1251] in having them go to school if they don't want to go to school? A. For the most part, definitely yes.

Q. Do you suppose that when public schools were first instituted everybody wanted to go to school? A. I don't know what happened when they were first instituted. I presume not.

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[1268] * * *

Cross-Examination by Mr. Brega:

Q. Mr. Berge, as a result of your being chairman of the advisory council, did you and the council have occasion to

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study various educational proposals that existed throughout the country? A. Yes.

【1269】 Q. And did you have people who were attempting to determine the answer to this educational opportunity question that you were confronted with? A. Yes.

Q. And in this regard, did you study states and cities outside of the State of Colorado? A. Yes.

Q. Was there any answer that was found by the committee that was a complete answer to educational opportunity for all people? A. No.

Q. Did you find in your study that the forced busing that occurred in other cities created an educational opportunity that was equal and worked with the people of those communities? A. No.

Q. What in fact did the council find in regard to forced busing in other areas? A. Mr. Brega, I don't recall that the council made any specific finding as such, but I think the limited access which we had to the busing which was done in other areas against the will of the people resulted in a departure of the whites from the core area to the outlying and surrounding suburbs and a concentration of the minority groups in the core area.

【1270】 Q. In other words, it was your opinion that the forced busing aspects of this would leave even a worse problem than might exist at that time? A. Yes.

Q. Now, in consideration of your voting against 1520, 1524 and 1531, did you take these things into consideration? A. Yes.

Q. I want to call your attention to a provision of Resolution 1520, and I will read from it, if I may. It is in the middle of the opening paragraph: “. . . which changes are ones of the steps designed,” and then it says, “by revising

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and thereafter stabilizing the racial and ethnic composition of pupil memberships in such schools.”

Do you see that in the opening paragraph right towards the end? A. Yes.

Q. Was it your opinion that this proposal would in fact stabilize the racial and ethnic composition of pupil memberships over a long period of time? A. No.

Q. Why not? A. Well, because this plan was not presented to the people. It was not explained. It required mandatory busing of students from a particular area for the sole purpose of attempting to achieve racial and ethnic balance and without [1271] any regard to the wishes of the parents and the pupils involved. Secondly, for the reasons which I described to Mr. Barnes concerning the implementation of the transportation of senior high school people for the first time and limiting that to one area and not providing it for all students who were similarly situated. I didn't feel that it was worth the attempt to put it into operation.

Q. Now, turning to Page 5 of Resolution 1520, it talks about, in Paragraph 1, to recommend further changes in the boundaries of Smiley so that approximately 850 pupils who would otherwise attend Smiley will go to other junior highs beginning in September of 1969. Now, was that on strictly a racial composition? Was that the purpose of that paragraph? A. I think it was certainly the major consideration of that paragraph, yes.

Q. In other words, what was proposed by 1520 was taking 850 black students out of Smiley and moving them to other junior highs on a racial balancing basis? A. In my opinion, that was the primary consideration, yes.

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Q. Now, in looking to the bottom of Page 6 of Resolution 1520, the paragraph begins, "It is further resolved that those pupils entering their senior year of high school in September of 1969 and who reside in the senior **[1272]** high attendance areas changed shall have the option of attending the senior high where they previously attended."

Now, in your opinion, was this a good, valid provision to put in a resolution for attempting to treat all of the students equally and fairly? A. Well, it gave special consideration to the senior high school students. I didn't feel that it went far enough. I didn't feel that the taking of the children in the sophomore and junior years was fair. I thought it should have started, if it was going to start at all, with the beginning of the students when they entered the high school. In other words, having graduated from the school which was in an attendance area at East and in an area which was to be designated as a transfer to South, I thought it was better that the students graduating from the junior high school then attend South High School, rather than disrupting those who were already in attendance, unless they voluntarily wanted to make the disruption or the change.

Q. And are these reasons also in addition to the ones you stated for voting against Resolution 1520? A. Yes.

[1273] Q. Turning your attention, if you will, to Resolution 1531, do you have a copy of that before you? A. Yes, I do.

Q. Down at the third paragraph beginning, "Whereas, this Board of Education, having heard the views of citizens on the said proposal of superintendent, having considered the racial and ethnic composition, traffic patterns, distances and memberships, pupil achievement data. . . ."

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Did the Board in fact have all of that information presented to it in its consideration of Resolution 1531? A. Mr. Brega, I don't recall that all of these items listed were actually presented to the Board. I feel that all of these items were considered by the staff in making its recommendations to the Board. But I don't recall whether all of these were actually presented to the Board.

Q. Isn't your opinion that Resolution 1531 in its effect was merely an experiment?

Mr. Greiner: Your Honor, I believe we will object to the leading nature of counsel's question to this witness. I think it is now apparent that there is no adverse interest between the intervenors and this witness. There has been no demonstration that this is a hostile witness. And it seems to me that leading questions are inappropriate. We would object.

The Court: Well, if they are within the scope of the other examination, why, I think that he is within his [1274] rights.

I would say this: that they are extra-leading. They're not only leading— In other words, I think you're doing most of the testifying. But I guess you're entitled to if you wish. I don't think it has much probative value, though, when you conduct an examination in this fashion because it is the witness under oath who really counts, you know. What he has to say.

Q. What, in your opinion, was the purpose of 1531, the purpose why it was passed? A. My opinion, and I believe it was so stated by the superintendent, that this was an

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experimental program and was concerned to some extent with sociological experiences.

Q. Was it for the purpose of achieving some racial balance? A. I'm certain that element entered into it, yes.

Q. Did the reasons for your voting no on 1520, 1524 and 1531 differ from the reasons why you voted against it on June 9 of 1969, at the time it came up for consideration again? A. No, I don't believe so.

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[1283] * * *

The Court: Does the board have any long-term plans for Manual, Cole; these other schools in the near east side so as to bring them into equality from the standpoint of—I mean, for furnishing quality education?

That isn't even a separate but equal system from what I have heard.

The Witness: Well, I would disagree with that statement as far as Manual is concerned and partially as far as Cole is concerned. The board—to answer your question specifically—does not have any specific plan other than 1533, which we feel we have not had and opportunity to really put into effect the way we would like to do it.

The Court: What's going to be the eventual answer, do you think?

[1284] The Witness: Well, I think the eventual answer, Your Honor, is basically this: that you're only going to get some meaningful realistic integration in this city when you can adopt a plan which the majority of all segments—and by that I mean

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the majority of the Hispano community, the majority of the Negro community, and the majority of the Anglo community—will get behind and sponsor. To me, it's totally unrealistic to say to members of a minority community that you are—

The Court: Well, this isn't— Certainly, I recognize that we have always functioned in political areas on the basis of government by consent of the governed. That's desirable. I mean, particularly if you're in public office, you know.

The Witness: Yes.

The Court: It's almost essential. I mean, there is no problem there. I mean, you don't have to sell me that.

The Witness: I'm not trying to sell you.

The Court: I mean, as a feature. I can see the value of it. But then I take it that you're going to wait until the public accepts the necessity for integrating these schools, or the housing patterns change, is that right?

The Witness: Well, that would certainly enter into it, yes.

【1285】 The Court: Meanwhile, there is just not going to be any basic change except what you might work out on a voluntary open enrollment basis, is that right?

The Witness: That's the only way in our opinion that you will accomplish any realistic integration; is when you get a plan which the majority—and by majority I mean the majority of the minority areas will get behind. It's very revealing, Your Honor, to get the comments from the Hispano community

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and the Negro community to the effect that they want to live together, they want to stay there and they don't want their children moved out of that particular area. And using this as a major premise, we feel that the way to get it accomplished on a realistic basis is to afford to those who don't agree with that major premise, the opportunity to transfer their children to a school which would be a predominantly minority school. And there are others in the Anglo community that feel exactly the same way; to afford them the opportunity to do this.

The Court: Well, I think I have expressed myself a few times here to the effect that I don't suppose that black parents relish the idea of having their kids go to some far-away school, per se, just for the ride. Why should they? They've got the same apprehension that any other parent has.

The Witness: That's right.

[1286] The Court: They don't know what's going to happen, and they're going into the unknown. They don't know who they're going to associate with and they might get into a hostile environment when they get there.

The Witness: That's right. That's been one of our major concerns.

The Court: I don't think—I say, that's their concern. But, I'm sure they have concerns. But, undoubtedly, most of them would be willing to run the risk in order to get a better education for their children. You don't think this is true?

The Witness: Oh, I think they ought to have the opportunity to do exactly that. That's the position

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of the board. And that's the plan that we're attempting to foster.

The Court: Now, let me get this straight. Are you giving everybody who wants a chance to go to another school in, say, the Manual area, the right to do so, unconditionally?

The Witness: If the transfer would improve the racial balance to the receiving school.

The Court: And, if there is an opening in the receiving school. Right?

The Witness: Yes, sir, that has to be an element entered into.

The Court: Well, there is not going to be any [1287] opening from GW to Manual. Do you think? I mean, there is just not going to be transfers on that basis, are there?

The Witness: I don't know. You would be surprised at the interest that's been displayed. I can't answer your question specifically yes or no. We would like to attempt to explore that possibility. I know this, Your Honor, that of the 1,543 applications which we received on a voluntary basis, we were able to process and implement approximately 687, if my memory is correct.

The Court: This is at the elementary level?

The Witness: I believe that's at all levels, Your Honor.

The Court: When was this? This year?

The Witness: Yes, sir.

The Court: This was because you had that many openings in pure Anglo schools?

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The Witness: And because people were— Well, for example, at the meeting at East High School there were two parents, one a doctor and one another individual who got up and expressed gratitude to the board for allowing their children to go from George Washington—I believe one went to East and one went to Manual.

The Court: You anticipate, then, that there will be a large number of people who will pursue this route from, say, GW or Thomas Jefferson to Manual or Cole?

【1288】 The Witness: Not a large number at first on a total school day, but I think you will have a substantial number at first either for certain courses or for certain days of the week. And when people do it on this basis and see the advantages, just like they did with the cultural arts program, others will follow and then you will be able to magnify the program and by so doing you will get acceptance of all portions of the community which are involved.

The Court: Well, coming back once again to this other problem of improving the standards in minority schools—you don't have a top-to-bottom program, a head start and so on, whereby you're going to bring these culturally and economically deprived people into a place where they can compete and truly take advantage of an educational opportunity?

The Witness: Yes.

The Court: Do you have a program of this kind?

The Witness: Resolution 1533, Your Honor.

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[1292] * * *

JAMES C. PERRILL, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Will you take the witness chair? Give us your name and address.

The Witness: My name is James C. Perrill. I live at 1324 Birch Street, Denver, Colorado.

Direct Examination by Mr. Ris:

Q. Mr. Perrill, how long have you lived in Denver? A. Twenty years.

Q. You are an attorney by profession? A. Yes.

Q. You are Anglo? A. Well, I am English, Scotch, Irish, German, French and Dutch.

Q. Anglo within the context we have discussed it here. A. I don't know what that means.

Q. All right, you are Caucasian then? A. Yes.

Q. How old are you? A. How old?

[1293] Q. Yes. A. Forty-five.

Q. Are you married? A. Yes.

Q. And have children? A. Yes.

Q. Are they in the Denver Public Schools? A. Yes.

Q. What schools have they attended? A. We have a daughter who is a senior at East High School in Denver and a daughter who is an eighth grader at Gove Junior High School.

Q. How long have you lived at 1324 Birch, or in that area? A. We have lived fourteen years within a block. We lived six years in the 1200 block on Birch and eight years at our present address.

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Q. Where did you live before that? A. At East Tenth Avenue and Madison Street.

Q. You are now a member of the School Board, having been elected in May of 1969? A. Yes, sir.

Q. Have you held other public office? A. Yes.

Q. What office and when? **【1294】** A. This may be a little more than you asked for, but I served as an Assistant U. S. Attorney for Colorado from 1956 to 1959. I served as a Denver Municipal Judge in 1959 and '60, and as Chief of Staff of the Mayor of Denver from 1960 to 1962, and I was elected to the Colorado Senate in 1964, took office in 1965, January, and served until January of 1969.

Q. In the service that you had in the State Senate, did you have occasion to familiarize yourself with any matters pertaining to education, education finances or minority problems in general? A. During the four years I was in the senate there were a number of problems. Of course, education was an ongoing problem from the legislature, both in terms of state participation in the formulation of program and in finances. There were certain minority oriented, I think you could say, issues that did come before the legislature.

Q. Were you in the legislature when the open housing legislation was first enacted? A. Yes, that was my first session, in 1965.

Q. All right, did you vote for that bill? A. Yes.

【1295】 The Witness: Excuse me. I think I know which bill you're referring to. Would you please make sure that I understand what you're asking me?

Q. Well, I am referring to the bill that Senator Brown referred to the other day as being the first open housing

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bill in Colorado. A. Well, no, that was in 1959. I wasn't in the legislature.

Q. Was that amended then? A. Well, the amendment to the existing law—and I was present when he testified—in the 1965 bill to which he referred to was the one I voted for.

Q. That was the broadening amendment he referred to then? A. Yes, it was.

Q. Now with respect to the Denver Public Schools, School District No. 1, at what point in time and what capacity did you first become interested in the problems of either the district itself or any of the component schools? A. I think as a parent, we became—our family became involved in 1957 when our older daughter commenced public school. But, shortly after that—and I don't recall exactly the year—our older daughter attended Teller Elementary School which is at East 12th Avenue and Garfield Street, and I served on the lay advisory committee of Teller for two or three years, [1296] probably in the early 1960's.

Q. Was that advisory committee the same that Mr. Berge testified concerning yesterday, that he served on? Did you hear that? A. Yes, I'm sure it was, because the purpose of them was rather uniform throughout the School District.

Q. And then with respect to Gove, did you serve in any similar committee at that school? A. Yes, I served on the Gove lay advisory committee, although the record will show that my wife's name was listed for several years. But, she never did serve. It was I. She does now, incidentally. But, I served on that committee from 1964 to 1969.

Q. Were you active on that committee and in parent-teacher work during that period of time? A. As active as

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I could be. I think it's fair to say I was active. I was chairman for, I think, two years.

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[1310] * * *

Q. Then at one point in time you made the decision to run for the board? A. Yes, I did.

Q. You were elected? A. Yes.

Q. And then after you were elected were you the mover to rescind the three resolutions, 1520, 1524 and 1531? A. Yes.

Q. And then 1533 was enacted? A. Yes, all the same evening.

Q. The same agenda? A. Yes, June 9th, 1969.

Q. Now, with regard to 1533, can you explain to the Court exactly what your position and the position of the majority of the board was with respect to that particular plan and what you contemplated by that plan? A. That's quite a question.

The Court: Do you want him to break it down?

The Witness: No, no. If I can just be a little bit deliberate in my answer.

The Court: Okay. Help yourself.

[1311] A. Well, first of all, I had said during the campaign that the most basic problem facing the community and facing the matter of effective operation of the Denver school district was that prior to the election of last year, May of last year, the board had—this is what I said, the board had created a chasm between itself and the community. And that, in order for the board to make lasting

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progress and lasting decisions, it had to get back together with the community.

Now, the reason—the reason I moved to rescind the three resolutions, 1520, 1524 and 1531—the reason 1533 was offered all at the same time was to clear the air in the community to demonstrate to the community that we were making a new start, that we were making a genuine effort to reestablish credibility with the community and soliciting the trust in the community in what we intended to do in the community, all of the community, not certain portions of it; all the community. This is a neat trick today in Denver or anywhere else. But that's what we wanted to do. We felt we had to do this first.

Now, 1533 went with the Gilberts report—planning quality education report at the elementary level as far as we felt we could do consistent with the framework that I have just discussed with respect to working with and for the community. The Gilberts report almost placed participation [1312] in the pairing of schools, in the complex approach to schools, on a voluntary basis, but not quite. In the instance of participation in the complex approach, whether transportation that would be necessary from school to school for specific courses, I don't recall was ever stated in the Gilberts report. This is one of the many things left unanswered, purposely. So that the community feedback could help determine what these details should be.

With respect to the pairing of schools, the ultimate decision as to whether and to what extent schools should be paired and participate reciprocally was left to committees who were to work together from each of the schools involved. The committee, if the report were implemented, the committee could tell the members, the parents and the

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teachers and the youngsters in each school whether they would pair or not. It would not be shifted to the judgment of the entire school community whichever school it might be. And we felt that those resolutions—1531, which was basically looking down the road to working on the problem of understanding and the lack of understanding between ethnic and racial groups in the community, had some good ideas, but that we had to clarify the fact that no one would be forced to subscribe to a program, would be forced to understand somebody else. Because we felt you don't generate understanding in that atmosphere. So we went as [1313] far with 1531 as we could, and called it 1533. We went one step further. Item No. 2 on the agenda was a motion. It wasn't a resolution. And it referred to—well, it was a direction to the staff to get busy on the concept of voluntary open enrollment program with transportation provided in each case where the child's transfer or the high school and secondary school student's transfer from one school to another would improve the ethnic or racial composition in both the sending and receiving schools. And this is what I had high hopes for. And I had a speech prepared June 9th, 1969, which never came off because the atmosphere was such that anything I said would have been voted down so to speak by the people whose understanding and cooperation would be needed. But, the design of Item No. 2, which is really part of 1533 and really part of the new policy thrust initiated that night—that board meeting night, was to get the high school youngsters involved in helping to convince their parents that learning to understand people from other backgrounds was a useful thing. And that, if they could learn this very important consideration of life generally in school and then—then these people

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could learn to live better and more productively and more harmoniously as adults. And this is not my idea. This is an idea probably generating from people whose ideas over the broad spectrum I would probably disagree with to some extent, but this is a [1314] part of their thinking processes with which I do agree.

Now, we did not ever propose, and I would never propose that high school youngsters volunteer to go to a school against the wishes or even will of their parents. They're going to have to talk their parents into the advisability of this. We're not in the business of splitting families. But, if they can talk their parents into the usefulness of this kind of experience and helpfulness of this kind of experience, then we felt the youngsters take the lead on this and really generate a thrust to make VOE work on a secondary school level particularly.

Q. And do you feel this had any relationship to either quality education or offering equality of educational opportunity? A. Well, I think—your question addresses itself to two different but important considerations in public education. They're both important. One is—Quality education would presuppose the best opportunity available for each child to achieve. That's one thing. And I think quality education would also—this is my view, which I cannot impose upon the entire community by legislative action—in my view quality education also encompasses offering and participating in the case of our own children, in an experience of learning to know people from other backgrounds. They are both important. They are both part [1315] of quality education. One is the proper subject of legislative determination, in my view. That is formulating the best educational program that will make and achieve

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the best achievement atmosphere possible and the other is something that the district has to offer and encourage and furnish leadership and hope that support will be generated within the community for this business of voluntary involvement in the social, ethnic, racial problems of the community. This business of voluntary open enrollment, offering the children part-time or full-time opportunity of going to school under another social atmosphere; another social environment, another ethnic environment, if you will, as part of their educational process. I think it's useful. I'm glad our children go to school within this atmosphere because you cannot impose this legislatively, inflexibly upon the entire community.

Mr. Ris: Thank you.

Cross-Examination by Mr. Greiner:

* * * * *

[1319] Q. You mentioned that a boundary change at Gove—that was in 1964? A. Yes.

Q. That was at a time, was it not, when all of the optional zones in the school district were terminated, is that right?

A. I really don't know.

Q. You don't recall that.

Q. Now, as I recall, one of the areas that was picked up into the Gove area by that boundary change was the area served by Barrett Elementary School, is that **[1320]** correct? A. Yes.

Q. Do you know whether or not the children from that area were bused into Gove after that boundary change?

A. I know an awful lot of them got there by automobile and public transportation. I don't think they were. They

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may not still be bused. I really don't know. I suppose I should.

Q. You don't recall what the distance is from Gove to—
A. I can compute it. It's far enough to be bused, I think. Well, yes.

Q. They are bused, aren't they? A. Yes, I guess they are bused if they want to be bused, but a lot of them don't choose to be.

Q. And that resulted from a boundary change, a change in attendance area, is that right? A. Yes.

Q. And those children in the Barrett area then, by reason of the change, were required to change schools, were they not? A. Well, offhand I can't think of any other options they would have unless they would move or something like that.

Q. Those children used to go to Smiley, did they not?
【1321】 A. I think so.

Q. And then they were mandatorily assigned to Gove, is that right? A. Boundaries were changed. The word is yours.

Q. Well, my point, of course, Mr. Perrill, and I think you recognize it, is that that's the same kind of activity contemplated by 1520, 24 and 31, was it not; mandatory busing? A change in attendance area, and integration? A. Yes.

【1322】 Q. And it worked, according to your testimony, is that right? A. I think so. I think it worked pretty well.

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【1336】 Q. Now, between January of 1969 and April of 1969 you will recall that there were a series of public meetings held throughout the district, were there not, for the purpose of explaining the three resolutions that were then

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under consideration? A. You had better refresh me a little bit more. Are you talking about school board meetings or other meetings?

Q. School board sponsored meetings. Meetings where the public was invited to come and give its views on the proposed resolutions. A. Where?

Q. Oh, was there one at South High School? A. Yes.

Q. Now, do you know what I'm talking about? A. Yes, I do.

Q. And there were a whole series of those meetings, were there not? A. There really were not.

Q. How many were there? A. 1969?

Q. Yes. A. Well, the one—I missed a couple because I was campaigning. The one in January was televised, well publicized, and I think fits the description.

[1337] Q. What was the subject of that meeting? A. 1520.

Q. 1520 pertains to what level of education? A. Senior high. And I'm not entirely sure when 1524 was presented. I think it was March. I think they had a breather, but I'm not sure. I think the board asked for a recommendation at the junior high level for February but the administration wasn't able to cut it and they had to put it off until March—until—anyway, it's close, if it isn't right. And it seems to me that it was April, and this was a month before the election, a meeting at South High, and I'm pretty sure, where 1531 was passed. And I think the February or March meeting on 1524 was at South High and I know the January meeting was. There were a great number of people at those meetings that I attended although I didn't attend the one in April because I had a conflict.

Q. All right. Now, was one of the reasons, if you know, for those meetings to explain the plans in order to rally

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community support in their favor? A. That really wasn't the way it took place. I think by that time the community was really polarized.

Q. By what time? A. January, 1969. Polarized specifically on the issues of the approach embodied in 1520 and 1524 and not so much in [1338] 1531, although it got tainted by the brush in the earlier amendments. There was one-way communication only and the administration wasn't saying anything. 1520 was explained in a closed type program. It was almost a board conference without public participation on January 16th over Channel 6 by Dr. Gilberts. That's when 1520 was explained. Whether he went any further and indicated what he felt might be done a little later with respect to junior high and elementary schools, on January 16, 1969, I'm not sure. But that was the only real explanation on 1520.

The night people got up and screamed at the board on one side of the thing or the other—that would be the night of January 30, 1969—there must have been some explanation on 1524, because there wasn't a special televised meeting over Channel 6, in either this instance or 1531. So there had to be a brief explanation.

But the kind of communication that took place in response on the part of both sides, people on both sides of the issue wasn't very constructive. Nobody listened to anybody else, unless they agreed with them.

Q. I take it that you recognized, at least as early as January of 1969, that something was going to have to be done if these resolutions were to be successful, to rally community support behind them, did you not? A. I didn't think they were good policy in the first [1339] place, good public policy on the part of an elected legislative body.

Q. Well, I take it then that you would agree that your

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campaign for the school board was not at all designed to rally community support behind the resolutions, was it? A. The reason for my campaign was to be elected to the school board. Part of my campaign was that, if elected, I would vote to rescind these resolutions.

Q. So you were, in effect, campaigning against them, weren't you? A. Well, I felt my candidacy was a little more important than these three resolutions. But certainly, speaking for the rescision of them was part of my campaign. The rest of it was semantics, I think, isn't it?

Q. And during the course of that campaign, Mr. Perrill, did you recognize that there might be these other educational benefits of the resolutions which you described earlier? A. What other?

Q. The fact that achievement might be raised, aside from the nice social experience? A. Yes, these are possible benefits.

Q. I am asking if you mentioned them during your campaign? A. I mentioned the lack of achievement as a very important problem in the community. I probably also mentioned [1340] that I doubted lasting and significant improvement in achievement deficiencies could be achieved for the children to go somewhere on a bus to school away from their own locality.

Q. Well, it's fair for me to say, is it not, Mr. Perrill, that during your campaign, the thrust of your approach to the resolutions was to emphasize their inconvenience, the fact that children, as you have said, would be transported at distances from their immediate neighborhood; the fact that extracurricular activities of these children might be curtailed; the fact, if the children got sick, the parents would be just minutes away from the school? These were the things you emphasized, was it not? A.

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Yes, but you're misstating it, and it may be minor but it's kind of important. The way this issue was stated by me in my campaign was that people felt this way, and that is an important difference. People felt that the convenience aspect was an important thing, that availability for extracurricular activities was an important thing; the safety factor.

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[1342] Q. Now, one of the items which you campaigned on was the idea of building schools where the children were, is that correct? A. Yes.

Q. Now, I take it that when you build schools where the children are in Northeast Denver, those become black schools, do they not, for example? A. Mr. Greiner, if you build the schools where the children are, they are populated by the children in the midenvirons. Northeast Denver is substantially black. So that's the answer to your question.

Q. Right. Now, I take it that you haven't abandoned hope, Mr. Perrill, of eliminating all-black schools, is that right? You think voluntary open enrollment would achieve that purpose, is that correct? A. I don't know that all-black schools ever will be or should be abandoned. I don't have quite that much insight because I don't think we have the same definition of that term integration.

Q. Well, you understand what an all-black school is? **[1343]** That's pretty clear, isn't it? A. You don't really expect an answer to that, do you?

Q. Yes. A. I understand what an all-black school is.

Q. Of course. And the idea of voluntary open enrollment means, as I understand your direct testimony, was that it would be a device which might eliminate racial

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concentrations; concentrations of minority students in these minority schools, is that not right? A. No .

Q. No? A. Absolutely not.

Q. You don't look upon VOE then as a device which might in fact change a minority school to one which is predominantly Anglo? A. Well, look—

Q. Can you answer my question? A. Yes, I can. I can answer your question. You don't promote understanding by mixing people. This in itself doesn't do it. Integration—the definition of integration—or integration exists when, through resources, equal ability to generate resources and through a complete destruction of resistive-type attitudes, people are able to live wherever they really and truthfully want to live. Then you've got integration in the community. It's up here. It's [1344] a community attitude. Now, if people—if that atmosphere and attitude—if people then still want to live in somewhat—to some extent in a cluster situation, then, I'm not going to be for telling them they have to. It's what the atmosphere, the community attitudes reveal. Now, when you send school kids to another school for the purpose of helping improve that attitude, that's what you're doing. You're not sending them to that school so that you're going to break down and diffuse minority school kids throughout the community, because that won't do it. They're going to go back home after they get out of school.

Q. Well, I take it then that the answer to my question is that you don't think—you do not think that voluntary open enrollment will change a predominantly minority school to a predominantly Anglo school? A. I don't know. I don't know. I am just saying that that isn't necessarily the objective to be achieved.

Q. Now, when you build the schools for the children

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where the children are—or when you build additions where the children are, then—and those happen to be located in all-black neighborhoods, doesn't that increase the number of children, Mr. Perrill, who then become located in these minority schools? A. Well, it certainly does if the people attending them are the kids within the mid-subdistrict, yes.

【1345】 Q. And that every time you build one of those additions or build one of those new schools in a minority neighborhood you create more concentration which then has to be corrected by some measure, is that right? You magnify the problem? A. Correct by some measure? What would be corrected by some measure?

Q. Well, if I have understood some of the other people who testified here in behalf of the school board, that they had hopes this program such as voluntary open enrollment might in effect desegregate these minority schools, change them into Anglo schools— Now, I take it you don't comport with that view, if I understand you. A. Well, gee, it just isn't quite that simple. I think that, if that could be achieved with respect to any particular school it would be very much a help. But again, that's not the end. This is a means to an end, and maybe that's where you and I are a little hung up on that.

Q. Well, I take it the end that you're talking about is this cultural understanding, is that right? A. That's as good a word as any; as a good a term.

Q. I don't say that's the end. But I'm also talking about another end, namely, for the improvement of the educational opportunity for these minority children. And you understand that? 【1346】 A. All right. There are other ways to do that.

Q. Well, let's talk about some of those other ways. What are they? A. I think I just stuck my neck out a

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little bit. I don't know the entire answer to that question. And nobody else does. And I'm not an educator. And so I'm really at a disadvantage. But another alternative to improving the achievement of disadvantaged kids in public schools generally as it has been presented to me by educators is that probably—and there is a developing body of experience and evidence being accumulated on this point—but probably individualized instruction; differential staffing, modular construction, even, modern day techniques of presenting education will do so much to enhance the achievement opportunity of individual children as anything else, maybe more. Maybe this is the best way to go. But at this point in time, nobody knows anything conclusively, ironclad, un rebuttable conclusions in this regard. But I'm beginning to be persuaded that individualized instruction is a very important factor to consider in improving educational opportunities for disadvantaged kids.

Q. Does that mean, Mr. Perrill, that we're going to reduce the pupil-teacher ratio to one-to-one?

The Court: I doubt that.

A. That's not my understanding of individualized [1347] instruction.

Q. What is your understanding? A. Well, you don't hang that up in and by itself. As I understand, it's part of the modular concept of education generally. And within this whole context of education you have kids learning in all sorts of group compositions, maybe one in a high school—the whole school will learn something, if you can get them there in one place, through a movie or something like that. There may sometimes be several classes; maybe all the English classes at the fifth-grade level at a particular school will learn something together, if you have

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room and you don't have too many partitions and you can get them together. Maybe all the class in a traditional sense will take some courses together. But children who have deficiencies in their production, in their achievement, will be given special attention in terms of attacking that deficiency at a realistic level.

For example, if you have a seventh grader who is reading at a third-grade level, you don't pretend that child can read at a seventh-grade level. You have to have a teacher who is interested in and qualified in attacking that kid's problem of reading improvement. So, hopefully, that kid's reading ability will proceed from the third-grade level to the seventh-grade level or at the same level of [1348] whatever grade they're in at the time they win the battle. And whatever problems require a one-on-one situation or really a three-on-one situation, because individualized instruction, I think, presupposes that you've got one teacher, almost always certified, here, and about three kids in a semicircle around them, and a one-on-three situation.

A one teacher to three kids, attacking a particular problem that those kids have. Now, the most reoccurring problem is reading, reading deficiencies, but there are others; mathematics, emotional—lack of ability to get along with other kids, and whatever their problems are, individualized instruction attacks the problems that the kids have, particularly when they are deficient and tries to bring them up at their grade level as fast as possible.

* * * * *

[1394] *Cross Examination by Mr. Brega:*

Q. Mr. Perrill, would you look at Exhibit B, which is the blue exhibit that you have before you there? If you

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will, would you turn your attention to page 15 of that exhibit? This involves the Hallett plan. A. All right.

Q. Does the exhibit indicate to you the change in percentage of the racial and ethnic backgrounds of the students in Hallett between 9-27-68 and 9-27-69? A. Yes, 9-26-69.

Q. What was the Anglo percentage at the school in September of '68? A. 10.1 percent.

【1395】 Q. What had it become in September of '69? A. 38.2.

Q. Now, in regard to the number of Anglo students involved in that program, would you look at page 16 of that exhibit? A. All right.

Q. And under the last column, "Participation, September of '69," as I understand it the participation would only be Anglos moving into Hallett because they need to improve the racial balance, so would you look at the last number and tell the Court how many Anglo students were brought in, in September of '69? That would be voluntary open enrollment to Hallett, the last column. A. Well, the numbers present in September of '69 were 221.

Q. All right, and how many participated in leaving? How many of the black students at that time participated in leaving Hallett? A. 205.

Q. Do you have any feeling as to whether the present court action and the injunction have any affect on the efficiency of the Hallett program at this time or the VOE program itself?

Mr. Greiner: That's a double question, Your Honor, and I object to it.

【1396】 The Court: Overruled. He may answer.

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A. I think that community attitudes as such are having an effect upon the success of the Hallett and other VOE programs. I do think that there has been a continuation of the historical attitude not to settle for anything less than some kind of non-discretionary—that's not even a word—mandatory program for mixing children up, and that as long as there is a chance that this may be the outcome of legal action, that no one is willing to think about anything different or new.

In other words, the community is still largely hung up on the same issues that were generated a year ago, because there still remains a chance that the policy made by the Board prior to the election will be sustained judicially.

【1397】 Q. Now, in consideration of your presenting to the Board Resolution 1533 and also the agenda item 2, I would like to call your attention to the transcript at page 633 when Dr. Gilberts testified, and I would like to just read a portion of this to question you about 1533. He said:

“That is, as a part of the changing attitude of the community, a certain amount here of involvement in salesmanship in terms of the schools' part is going to be necessary. I believe the participation of people who do this willingly will be a lot more productive in terms of definition of integration than those who are put into situations who feel personally they are not acceptable to them.”

And then one other—“Question: Dr. Gilberts, you're telling me that mandatory integration is bad?”

And his answer: “No, I'm not saying that. I am saying that the other approach . . .” 1533—“. . . I think has some real merit and something that needs to be tested.”

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Now, when you created 1533, would you tell the Court whether this was done in conjunction with and upon the advice of Dr. Gilberts and the administration? A. We certainly consulted with him. We determined that in substance we were in agreement as to the thrust of the ideas incorporated in 1533. 1533 was not all some board [1398] member's idea. There was input from the administration, specifically from Dr. Gilberts.

Q. And he also was consulted with the agenda to the VOE program that you were talking about and instituted?

A. Yes. We were quite optimistic about the motion embodied in Agenda Item 2.

Q. Well, did they indicate—did Dr. Gilberts indicate to you that he thought this would work or could work? A. Yes. In fact, we had more discussion than that.

Q. Well, I'd like to bring that out so we'll know what went behind this. What was your thinking in 1533? A. Well, I referred to this I think earlier in my testimony, but the idea of getting students involved in generating interest and participation in voluntary open enrollment, particularly at the high school level, he thought was a good idea, and he had had thoughts on this technique himself using student councils, using officers of classes at the pertinent high schools, and getting the children interested in helping to change community attitudes, not in opposition to their parents, but each of them being responsible for convincing their parents that participation in VOE was a useful thing and a useful part of their education.

And we even proceeded to the point of starting to work out some of the mechanics of trying to get students [1399] together over the summer months of 1969, and it was about that time that the litigation was filed and sort of preempted many things.

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Q. Well, what is the Board doing at the present time for the educational achievement at the Cole School? Are they doing anything? Do they have anything on the planning board? A. Well, first of all, Mr. Brega, the Denver Board of Education is a part-time, non-paid board. That's a statement of fact, not complaint. We have to rely heavily upon the efforts and the recommendations and judgment in educational matters on our administration. Whatever the administration does can be said vicariously to be action of the board, to be sure. But it's primarily the administration that is involved in educational programs with our encouragement and hopefully our understanding and so forth.

Now, there are some new things going on at Cole Junior High School. I'm not as familiar with them as I should be. And I'm not even certain how new they are, except I think they are new as of last September.

One is that there is a new approach to dealing with the child who is emotionally distraught, for whatever reasons—maybe he brought the problem with him from home or maybe he didn't—from the classroom at Cole Junior High.

【1400】 Q. Does this program have a name or do you call it a name? A. Well, the principal has a name for the room where these kinds are sent—

Q. What's that? A. —on a non-disciplinary basis. It's called the crisis room.

Q. What happens there? A. What happens there—well, I think there is about a—about a ten-to-one relationship between staff and youngsters in the room. And they try to get them to settle down, to redirect their interest and their attitudes towards education and they send them back to their next hour, regular class, if they have been successful.

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The details of what this process involves would depend upon the situation, depend upon the child and the problem. Rather than—this is as opposed to just suspending a child.

A lot of these children who end up in the crisis room might have done something that would serve as a basis for suspending them, sending them home. But, this is felt not to be a thoughtful alternative in many cases at that school by the teachers and the staff. So that this is an additional tool—a tool in addition to the rather abrupt and arbitrary decision of suspending a child, keeping them [1401] there and getting them reoriented.

Q. Are they using additional educational studies for some of these pupils in this approach? A. Well, in a sense. There is also another program called the Cole extension, which is not immediately on the school grounds, and I'm not sure exactly how far away from the school grounds it is. I think it's several blocks away—where children are sent who are terribly far behind in terms of achievement with respect to their grade level. I spoke of this briefly earlier in my testimony.

And this example has been given to me by the principal of Cole Junior High, of a twelve-year-old seventh grader who was achieving in reading at the level of the fourth grade; simply was not benefiting from the educational process at the seventh grade level. As an example, this child was and has been sent to the extension center and an attack made upon the educational deficiencies with respect to that child at the level he or she needs to be picked up.

If the child reads at the fourth grade level and you start them at the fourth grade level and bring them up to grade level as soon as possible.

The alternative to this, when a child—and this is something that is in—I think it's fair to say pilot stage. It's

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in the development stage as an educational technique and approach. The thought is that this needs to [1402] be extended to the high school level. More involved and complicated, I am sure, at the high school level.

But, the point being, where the children reach the legal age where they no longer have to go to school, if they are reading at the age of 17 at the fifth grade level, that's a major contributing factor to the youngster dropping out. They can't relate to the school. They can't relate to what's being offered in terms of educational opportunity. And the only feasible alternative to that child in that situation too often seems to be just to drop out and forget the whole thing.

So the approach is, rather than using the absolutely rigid, uniform, stereotype approach to education so that everything is taught to the same kids, the same age, in each school in the city, is to relate what is taught and how it is taught to the needs of each child as nearly as we can.

Now, this is in the development stage.

For example, the modular approach to both construction and education is a new idea in Denver. We have bids let on the Cheltenham School in which modular education which would provide the physical means for implementing a modular type approach to education. This is new in Denver. But, it's something we're moving toward, we're moving to; with starts.

[1403] Q. How about the Board? Has it attempted to bring in the administrators or teachers? You mentioned you got this from the principal at Cole. How did you talk to him? Did the Board bring him in? Or— A. Yes. I happened to sit in on a committee meeting of the Colorado State Senate Education Committee where a presentation was made on the success of Senate Bill 174 funds, funds

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to be used for kids in a disadvantaged position in terms of their education. And the Education Committee of the Senate wanted to know, "Okay. \$2 million was appropriated by the state for use in local school districts in this area. And the Denver School District received 800-some-thousand. Now, what are you doing with this?" They made a presentation.

And Mr. George Morrison, the principal at Cole, made a presentation of the things that I had been discussing, what they're doing at Cole.

Jefferson County made a presentation, and so forth. I listened to Mr. Morrison's presentation and a teacher by the name of Ramona McHindry. Then about—as a matter of fact, two nights ago, the Board had sort of a running commentary over several meetings in several months and had concerns with respect to disciplinary problems and standards in the schools this fall and this winter. And we were not sure that we understand the nature—the extent of discipline problems that are being realized or that are generating in schools [1404] generally, but particularly schools where there is transportation involved as a result of the court order.

So we asked to come in—Mr. Mackie, the principal at Thomas Jefferson High School, which is incidentally nine through twelve. We asked Mr. Morrison to come in. We didn't personally do it. These were the people who came in. It was an administration decision, as to personnel.

Mr. Morrison; Mrs. Taylor, the dean of Kepner; the AP—the assistant principal—at Hamilton Junior High School whose name escapes me; and the assistant principal at Merrill Junior High, Mr. Astuno; and in a give-and-take two-way communication situation for several hours the Board I think gained tremendous insight into both problems and discipline at the school level on the line, so to

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speak, and problems in scholastic achievements and in grading.

This we intend to continue to do at the teacher level so we can gain more insight and perspective of operating problems, line problems, because it's almost impossible for board members who are part time and who can't possibly know all the problems and have all the information that's available within the district.

But we think that differentiated levels of communication will be helpful in the operation of the district and in the formulation of better policy, sound [1405] policy.

Q. I only have one other question. Mr. Greiner asked you whether you had carried the predominantly black precincts. Could you tell us whether you carried the predominantly Hispano precincts? A. Yes. On the average—well, the so-called Hispano areas to the west, the near west, the Platte Valley area, I carried approximately three to one. And, there is something of a Hispano area in the Harrington Elementary School neighborhood, which is 37th and Cook, I believe, northeast Denver. I carried several precincts there. And that was an area where former Smiley Junior High youngsters commenced going—who lived within the Harrington subdistrict, commenced going to Hamilton Junior High when it was opened in January of 1969. And, we carried that.

We carried that area, and I had considerable discussion with some people up there as to why.

[1406] Mr. Brega: No further questions.

Redirect Examination by Mr. Ris:

Q. Mr. Perrill, you read from the exhibit to the Agenda, Item Number 2, which you could not find at the moment

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any reference to there in the Board minutes of June 9, 1969, Plaintiffs' Exhibit 6. Have you had occasion during the noon recess to re-examine Exhibit 6? A. Yes.

Q. And do you find the motion set forth in that exhibit? A. Yes, on page 10. I had forgotten the Intervenors' Exhibit Number X, I believe, is incorporated in Exhibit 6 to the June 9th meeting, on page 10. It is the same thing.

Mr. Ris: All right, that's all.

Recross Examination by Mr. Greiner:

Q. I take it that there has been no evaluation of these programs at Cole? They are still in the preliminary stage? A. Yes, but I think that the staff at Cole is very encouraged with results and in that sense there has been an evaluation. No final lasting conclusions have been drawn yet, because it is new.

Q. Have children been tested for achievement in this [1407] program? A. If they have, I am not aware of it.

Mr. Greiner: No further questions, Your Honor.

The Court: This program is initiated by the staff at Cole, I guess?

The Witness: Your Honor, I don't know, but I think probably the initial idea did come from the staff at Cole.

* * * * *

JOHN E. TEMPLE, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Please give us your name and address.

John E. Temple—for Defendants—Direct

The Witness: John E. Temple, 6036 South Elizabeth Way, Littleton, Colorado.

Direct Examination by Mr. Creightons

Q. Mr. Temple, are you employed by the Denver Public Schools? [1408] A. Yes, sir.

Q. And when were you first employed? A. January, 1949.

Q. What was your first assignment? A. Teacher of mathematics at South High School.

Q. And how long were you at South in that capacity? A. I was at South until January of 1968, with the exception of one year, the school year of 1963-64, when I attended the University of Tennessee on a National Science Foundation Scholarship and obtained a master of mathematics degree.

Q. And what was your assignment after South High? A. I was assigned as a teacher on special assignment to the Title 3 Art Research Project as an evaluator of that project.

Q. And how long did that last? A. Til August 18th of 1969.

Q. And then where were you assigned? A. I was assigned to the Office of Planning Research and Budgeting of the Denver Public Schools as a coordinator.

Q. Now, is that department the present form of what was formerly called the Department of Budgetary Services? A. Yes, this department now includes the Department of Budgetary Services, yes.

Q. And can you tell the Court what the Department of [1409] Budgetary Services has done over the years in connection with pupil membership data? A. Well, the principals send reports to the administration building con-

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taining all the membership figures, and these are compiled in the Office of Planning and Research and Budgeting, which was formerly Budgetary Services.

Q. And you are still in that office? A. Yes.

Q. And since going there last August, have you participated in the preparation and assembling of certain exhibits for this trial? A. Yes.

* * * * *

[1412] Q. Mr. Temple, I hand you Defendants' Exhibit DA, which is now in evidence, and as Mr. Greiner has pointed out, this shows the percentage of new teachers employed in the schools during the period 1962 to '68 with previous teaching experience. Would you tell the Court just generally over that period of seven years what percentage of teachers in the schools have had experience?

[1413] A. Well, about the—

The Court: This will be the percentage of new appointees?

The Witness: Yes, sir.

The Court: To the system.

A. (Continued) About the lowest percentage was in 1964 when it was approximately 37 percent; during this period the highest percentage of new teachers with previous teaching experience was about 50 percent, and for the other years it ranges between around 37 percent and 50 percent.

The Court: So, 37 to 50?

The Witness: Yes, Your Honor.

The Court: Are the figures.

Q. Now, then, Mr. Temple, I hand you Defendants' Exhibit DB, which, as has been said, shows the percentage

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during those years new teachers in the system with three or more years' teaching experience. Now, is three years the period of time in the Denver Schools which leads to—which must be served to lead to tenure? A. That's correct.

Q. How do those percentages run in those seven years?

A. From a high percentage in 1966 and '67 of approximately 24 percent down to the lowest on this chart shows about 17 percent in 1968.

Q. And finally I hand you Defendants' Exhibit DC, [1414] which shows the percentage of teachers in the years we have mentioned, new teachers, having master's degrees, and what are the highest and lowest there again?

A. The low was in 1962.

Q. The first year of that series? A. Yes, and it was approximately I would say three and a half percent, and the high year was 1965 and it was approximately ten and a half percent.

Q. What was the second high year? A. Second high year was about a tie between 1966 and '68, when it was approximately 10 percent.

Q. And what has been the general trend in that regard? A. Well, it has been steadily upward.

Mr. Creighton: All right, does the Court wish to see them?

The Court: These all start out as probationary appointees, I guess, just as if they were coming into the system?

The Witness: Yes, for the first time in Denver.

The Court: So, having no seniority, they must accept whatever assignment they are given?

The Witness: To the best of my knowledge, yes.

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The Court: They have no right to request any particular one?

The Witness: No, sir.

* * * * *

[1421] Q. In terms of numbers in the elementary schools over the period in question, what has been happening to the absolute number of Anglo pupils? A. The absolute number of Anglo pupils has decreased **[1422]** from approximately 41,000 in May, 1962, to approximately 32,500 in September of 1969.

Q. In the meantime, what has been happening to the Hispano category? A. In May of 1962 there were approximately—I'd say—9,000 Hispano students. In September, 1969, approximately 13,000.

Q. And the Negro category? A. In May of 1962 there were approximately 6,000 Negro elementary school pupils and in September of 1969 approximately 8,000.

Q. And then, showing you Exhibit EE, Mr. Temple, does this show that same data in terms of percentages? A. Yes.

Q. Similarly, has the percentage of Anglo membership declined during that period in elementary schools? A. Yes.

Q. And similarly has the percentage of Hispano and Negro membership increased in the schools as a whole? A. Yes.

The Court: But not to a commensurate degree? The overall population is decreasing? Everybody?

The Witness: Yes. Well—

The Court: The decrease in the Anglo—

The Witness: The total number of membership, **[1423]** though, has increased to some degree.

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The Court: Oh, has it?

The Witness: In the period, I believe. Hasn't it?
From 1962 to 1968 or '9?

The Court: You said the Anglo pupils decreased
from 41,000 to—

The Witness: Yes.

The Court: —32,000.

The Witness: I thought you said, Your Honor,
that the total membership for all races had decreased
over the years.

The Court: Well, I meant the total overall popula-
tion in the elementary schools.

The Witness: Oh, in the elementary schools?

The Court: On the decrease?

The Witness: I would have to check this record.
I think it has, though.

The Court: Would you say so?

Mr. Creighton: Well, the Exhibit D, Your Honor,
shows it's leveled off.

The Court: We may be gaining some seats then,
you think?

Mr. Creighton: Well, the record is that generally
speaking, Your Honor, memberships have leveled
off. It is somewhat different as among the three
levels. I think the [1424] best evidence we have in
this case is the Exhibit D, the Gilberts report, which
has a graph to that effect.

Mr. Brega: Your Honor, the total school popula-
tion—we do have the figures in the exhibit. In 1962
it was 96,370. And in 19—in September, 1969, it's
96,534. An increase of maybe some odd—

The Court: That includes every level?

The Witness: Yes.

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The Court: We're just talking about—

Mr. Brega: I have to say the figure I read for 1962—excuse me—was a projection for 1962 estimate. 96,370.

The Court: Well, that undermines it somewhat.

(Whereupon, Defendants' Exhibits EA, EB, EC, ED, EE, EF, EG and EH were received in evidence.)

Mr. Creighton: Our next offering, Your Honor, is Exhibits EM, EN and EQ, all of which—

Mr. Greiner: No objection.

The Court: They will be received.

(Whereupon, Defendants' Exhibits EM, EN and EQ were received in evidence.)

Q. Mr. Temple, let me just show you as an example of these three exhibits, EM. Is that a bar graph? A. Yes, sir.

【1425】 Q. What does it show? A. That shows the expenditures of federal project funds in the elementary schools from the period of September 1968, to August 31st, 1969.

Q. And does it give us the total amount at the elementary level? A. Yes, it shows in the left-hand side—the bar shows the total amount of federal project funds that were spent in all the elementary schools in Denver.

Q. About how much was that? A. Nearly \$600,000.

Q. And then have you selected two categories of schools for your next two bars? A. Yes.

Q. What were those categories? A. The second category—those are the schools the plaintiffs had selected as minority schools and I think there were 20 schools in that group.

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Q. And the next bar? A. Those were the elementary schools that the plaintiffs had selected as Anglo schools.

Q. Then the final and fourth bar shows what? A. That shows the amount of federal project funds that were spent in all of the other elementary schools in Denver during that same period.

【1426】 Q. During that period how much of these funds was spent or received by the so-called 21 selected Anglo schools? A. I believe at that particular level it was zero.

Q. And how much was spent at the so-called selected minority schools? A. A little over \$500,000.

Q. And the other two categories show the same data, arranged the same way for the junior and senior high school levels? A. Yes, sir.

Mr. Creighton: Next, Your Honor, we offer Exhibits CG and CI.

Mr. Brega: Your Honor, could I correct that figure now? I do have the totals in 1962. It's 90,438, as opposed to the present 96,000 some.

The Court: You were right in principle, though.

Mr. Brega: Well, I didn't want it to be said I was trying to mislead the Court intentionally.

The Court: Well, that never occurred to me as a possibility.

Mr. Greiner: We have no objections, Your Honor.

The Court: CG and CI will be received.

(Whereupon, Defendants' Exhibits CG and CI were received in evidence.)

Q. Placing before you, Mr. Temple, Exhibits CG and CI, 【1427】 do they both relate to the same general subject matter? A. Yes.

John E. Temple—for Defendants—Direct

Q. What is that? A. The people participating in limited open enrollment in the Denver schools from 1965 through 1968.

Q. The first of the two, Mr. Temple, Exhibit CG, shows what? A. That shows the actual number of pupils by ethnic group now participating in limited open enrollment program and also the total number of pupils participating in the limited open enrollment program during those four years.

Q. And what are the three ethnic groups? A. Hispano, Negro and Anglo.

Q. Does the total of the line graph indications for those three groups then equal the total shown near the top of the graph of the overall total. A. Yes.

Q. Can one tell from that then in 1968 how many pupils in the Denver schools were participating in limited open enrollment? A. Approximately 970.

Q. And how many of that group were Negro? A. Approximately 470.

Q. And the other two groups are similarly shown, is that right? **[1428]** A. Yes.

Q. Then, turning to Exhibit CI, Mr. Temple, what does that show about limited open enrollment? A. This shows the percent of the total Anglo, Negro and Hispano groups that were participating in limited open enrollment program during the same years.

Q. Is that a percent of the group itself?

The Court: This is from 1965 to 1968?

The Witness: Yes, Your Honor.

Q. And the percentage appears—for example, the Negro percentage—is that for all the Negroes in the city who participated in LOE? A. That's correct.

John E. Temple—for Defendants—Direct

Q. Taking, for example, 1968, Mr. Temple, does that indicate what percentage of Negro students in the Denver schools were participating in LOE? A. That is correct.

Q. What is that percentage, approximately? A. The average is over three and a half percent of all the Negro pupils in Denver schools in 1968 that were participating in limited open enrollment program.

Q. How does that compare with the Hispano category? A. Of all the Hispano pupils—about—I would say one-half of one percent were participating in limited open enrollment.

【1429】 Q. How about Anglos that year? A. That would be a little bit less than—probably—less than one-half of one percent. About four-tenths of one percent.

Q. Mr. Temple, you previously indicated you had worked up enrollment figures. Have you had occasion to study the kinds of figures the school district uses in its enrollment projections for planning purposes? A. Yes, I have.

Q. First of all, where does the data come from? A. It comes from—once again, the principals to the office of planning, research and budgeting.

Q. And do the principals send in that at certain intervals? A. Yes, they do.

Q. Is any particular data selected for planning and tabulation purposes? A. It seems to me that the end of the fourth week, that is really the second report there, there is usually one report sent in about the end of the first week of school and the second one is sent in at the end of the fourth week of school, and that seems to be the one that is used quite often for future planning.

Q. Mr. Temple, I show you Exhibit 20, which is the Voorhees report, and particularly in its appendices, 【1430】

John E. Temple—for Defendants—Direct

beginning at Page 21 of the appendix, where membership data for the various schools is given, what date is used there? A. 9/28/62, and 9/27/63.

Q. And I show you Exhibit 405, which is the 1962 planning study. Are you familiar with this document? A. Yes.

Q. Have you studied it—the sources and nature of the 1961 actual membership shown on the various tabulations there? A. Yes, I have.

Q. What principals' report was used for that? A. I'm sure that this was the late September report, the one after the fourth week of school.

Q. Now, the plaintiffs have used average daily membership, Mr. Temple, from time to time, in discussing memberships. Can you tell the Court how average daily membership is determined by the schools? A. Well, they take the membership for all of the days of the school year when their pupils are in school. They take that sum and divide it by the total number of days that the pupils are in school.

Q. When can that tabulation be made? A. At the end of the school year.

Q. Is it made in the summer? **[1431]** A. Yes.

Q. Could that figure ever be available during the school year? A. No.

Q. I also show you Exhibit CF, which is the sequel to 405. What membership figures does it use for its current actual membership? A. 9/28/62.

Q. Is that, again, the fourth-week-in-September report? A. Yes.

[1432] Q. Now, Mr. Temple, have you studied pupil memberships in the various schools for other years than the years mentioned in 20-405 and CF I just mentioned? A. Yes, I have.

John E. Temple—for Defendants—Voir Dire

Q. And have you made a study of how capacities of schools are determined in the planning documents I just mentioned, Exhibits 20-405 and CF? A. Yes.

Q. At the elementary school, Mr. Temple, during those years covered by those exhibits just mentioned, which would be 1961, '62 and '63, how were capacities of elementary schools figured? A. The number of classrooms, including libraries but not gymnasiums, was multiplied by 30, and that is with the exception of rooms that are designated as kindergarten rooms are given a capacity of 60 and rooms designated as special education rooms are given a capacity of 15 pupils.

Q. Now, have you studied the capacities and memberships at Columbine, Harrington, Park Hill, Stedman, and Barrett in the years 1958, 1959 and 1960? A. Yes, I have.

Q. And I show you an exhibit marked for identification Defendants' Exhibit CA, and ask you if you compared that? A. Yes, I did.

[1433] Q. And is that prepared from official School District records? A. Yes.

Q. And the analysis you have just described? A. That's correct.

Mr. Creighton. Exhibit CA is offered.

Mr. Greiner: I would like to examine the witness briefly, if I may, Your Honor.

The Court: All right.

Voir Dire Examination by Mr. Greiner:

Q. What was the formula used to show or to determine the capacity reflected on Defendants' Exhibit A for Columbine in 1958? A. In 1958, for the room counts, I used some room tabulations reports that have been in use in

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Planning Services, and then I used—I took that number of rooms, multiplied it by 30, and also from the membership reports at the end of the fourth week, 1958, I found the number of pupils that were at Columbine in kindergarten classes, and also the number if any that were in special education.

Q. Now, is it true, Mr. Temple, that in 1958 the School District was using a formula different from the one that you have just described that you used? A. I don't think so in 1958. There have been other [1434] formulas used, different formulas used. For example, I know the formula used in the planning report in 1955 and the one for 1962 used different formulas than mine, but I believe from about '58 on I didn't see any reports just telling me what the formula was.

Q. Well, do you recall what the '62 planning report showed for the capacity of the schools listed on the exhibits?

Mr. Creighton: Is counsel referring to Exhibit 405?

Mr. Greiner: Yes.

Mr. Creighton: Will you show it to him?

Q. I just wanted to see if we can confirm that the same formula was used. A. Columbine, the adjusted capacity they say was 1185. Now—

Q. Pardon me, but what do you show the capacity—of course, that spoke as of what date? 1962, and the only other planning report we have is 1955, is that right? You don't have the subsequent planning reports between '55 and— A. No.

Q. Do you have those back at your office? A. No.

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Q. Were there some? [1435] A. Not to my knowledge. This stated the capacity. The ones that I have used are these actual room counts, this '62 report, and I have also looked at '55 and '62 reports.

Q. I notice that Exhibit 405 shows that the capacity of Columbine as of February, 1962, was 1185 students, yet Defendants' Exhibit CA shows the capacity at Columbine to be 570. Now, was part of that differentiation due to an addition built on Columbine? A. That's correct.

Q. When was that addition? A. Well, there were two additions, one in 1959 of seven rooms and one in 1961 of fifteen rooms.

Q. Now, is there also an addition built to Harrington between—that's another of the schools listed on CA—between 1958 and 1962? A. These room count sheets show that there were six additional rooms added on to Harrington in 1963.

Q. But not in 1962? A. No.

Q. Well, I note that Exhibit 405 shows Harrington with a capacity of 570 from the published data of the School District, and Defendants' Exhibit CA shows it at 450. Now, can you explain that difference?

Mr. Creighton: Counsel, if you are reading from [1436] page 9, you get 570, but if you read from page 8 you get 450.

Mr. Greiner: I am sorry. Am I reading from the wrong page?

Mr. Creighton: A different page.

Mr. Greiner: It just says adjusted building capacity on page 9.

A. Harrington shows a capacity of 450.

Q. 450. Park Hill— A. Park Hill, 660.

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Mr. Greiner: Park Hill, 660, and the next school, Stedman, 630. Very good. Then we have no further questions as to this exhibit, Your Honor.

The Court: We will receive it.

(Defendants' Exhibit CA was received in evidence.)

The Court: I have to call a halt, and I am sorry it worked out this way. I don't know whether I made it clear last night that we were going to have a short session this afternoon.

Mr. Greiner: Yes.

Mr. Creighton: We understand, Your Honor.

The Court: We will take up Monday at 1:30, because I have arraignments Monday morning, the criminal arraignments, and I think we will be able to finish next

* * * * *

[1440] * * *

The Court: Mr. Temple, you have been sworn. So, just be seated.

Direct Examination by Mr. Creighton (Cont'd):

Q. Mr. Temple, when we broke off last week you had just testified regarding Exhibit CA which is now in evidence. Have you prepared a bar graph with respect to the data shown on Exhibit CA? A. Yes.

Q. I hand you an exhibit marked for identification Exhibit CB. And I ask you if that exhibit shows the data in tabular form on Exhibit CA. A. Yes.

Mr. Creighton: Exhibit CB is offered.

Mr. Greiner: No objection, Your Honor.

John E. Temple—for Defendants—Direct

Mr. Brega: No objection.

The Court: CB will be received.

(Whereupon, Defendants' Exhibit CB was received in evidence.)

Q. Now, Mr. Temple, I have before you Plaintiffs' **[1441]** Exhibit BA and BB, which show the elementary boundaries respectively in 1959 and 1960. Now, the Barrett School was opened what year? A. 1960.

Q. In Exhibits CA and CB, Mr. Temple, you have shown Columbine, Harrington, Stedman and Park Hill for all three years and then Barrett, finally, in 1960, the year it was opened. What is the relationship among these schools? A. Well, the relationship is that Stedman, Columbine and Harrington are all adjacent to where the new school was constructed in 1960.

Q. Drawing your attention to Exhibit BA, is there an optional area in the vicinity of the Barrett site? A. Yes.

Q. And what is that optional with? It's Code I. Can you read from there?

The Court: Now, let's see—you're talking about Columbine, Harrington and Stedman?

Mr. Creighton: Yes, sir.

The Court: You remember, we have been out of action for a few days, and so if you will just slow down a little bit, I think we can get organized here.

A. I believe it's optional between Columbine and Harrington, isn't it?

Q. Well, the code reads Columbine and Park Hill. **[1442]**

A. Yes.

Q. All right, Mr. Temple. Your Exhibits CA and CB then relate to Columbine School, Harrington School, Sted-

John E. Temple—for Defendants—Direct

man School and Park Hill School; is that correct? A. That's correct.

Q. And you testified that Columbine, Harrington and Stedman are adjoining the Barrett site, and Park Hill's relationship with that site is what again? A. A little bit southeast.

Q. And is it within an optional area covered by the Barrett site? A. Yes.

[1443] Q. Now, would you just summarize for the Court the capacity utilization situation among Columbine, Harrington, Stedman and Park Hill two years before Barrett opened in 1958? A. 1958, Columbine' capacity utilization was 148; Harrington, 141; Park Hill, 128; and Stedman, 113.

Q. Now, the next year, was there a change in Columbine's capacity utilization?

The Court: Are you talking about percentages?

Mr. Creighton: Yes, sir, these are percentages.

The Witness: Yes.

A. Yes, there was a change in Columbine's capacity.

Q. What brought that about? A. It was an addition. I believe it was about seven rooms.

The Court: What year was this?

The Witness: 1959.

Q. So what happened to Columbine's capacity utilization between 1958 and 1959? A. Well, it decreased from 148 in '58 to 161 in '59.

Q. Meanwhile, between those two years, '58 and '59, Mr. Temple, what was happening to Harrington's capacity

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utilization? A. Well, Harrington kept increasing the next year from 141 in '58 to 153 in 1959.

Q. And where was Park Hill's capacity utilization in [1444] these two years, '58 and '59? A. It stayed pretty much the same. It was 128 in 1958 and 130 in 1959.

Q. And those are percentages are they? A. Yes, sir.

Q. How about Stedman's for those two years, 1958 and 1959? A. Well, Stedman decreased a little bit from 113 in 1958 to 109 in 1959.

Q. And were all four schools you have been testifying concerning overcapacity in 1959? A. Yes.

Q. Now, in 1960, do you show the situation among those four schools plus Barrett? A. That's correct.

Q. And were all five schools overcapacity in 1960? A. Yes, Park Hill was very slightly over.

Q. What happened to Stedman between 1959 and 1960? A. It increased from 109 percent to 121 percent.

Q. Was some relief given to Harrington, which had been 153 the previous year? A. Yes, from 153 in 1959 to 121 in 1960.

The Court: You skipped over that optional area between Park Hill and Columbine. Wasn't that the one you spoke of, you asked him about a few moments ago?

[1445] Mr. Creighton: Yes, I asked him—

The Court: That was before the building of Barrett, is that right?

Mr. Creighton: Yes.

The Court: Of course, that went as soon as Barrett was built, is that right?

Mr. Creighton: Yes.

Q. Mr. Temple, following the opening of Barrett as shown on Exhibit BB, was the optional area formerly be-

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tween Columbine and Park Hill still in existence? A. No, it wasn't.

Q. And, Mr. Temple, have you examined the School District records to determine approximately how many—

The Court: We grappled with that problem in the preliminary injunction, remember?

Mr. Creighton: Yes.

The Court: And we found some fault with the decision to build Barrett and to change these students from Park Hill to Barrett.

Mr. Creighton: Yes, these two exhibits, Your Honor, are specifically being offered in connection with the Barrett findings of last summer.

The Court: Right, okay.

Q. Mr. Temple, did you check the School District records to determine the approximate numbers of pupils going **[1446]** from the Option Area I on Exhibit BA, which was in the Columbine area that year, to Park Hill? A. Yes.

Q. About how many in 1959, the year before Barrett? A. I think it was about 200.

Q. And do you know whether they were going by bus? A. Yes, I believe they were being bused.

Q. Now, Mr. Temple, let me show you two exhibits put in evidence by the plaintiffs, being Exhibits 215 and 215-A.

The Court: Your point is that this was the necessity, the crowding of the situation produced this decision, is that right?

Mr. Creighton: Yes, Your Honor, we think the last two exhibits show that all the schools having a relationship to the Barrett site were overcrowded,

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that the planning of Barrett achieved exactly what it was designed to do, namely, to equalize the capacity utilization of the related schools, and further to show that Stedman in the year after the change actually increased in its capacity utilization.

The Court: To a point where it was impossible to accommodate everybody at that school?

Mr. Creighton: Yes.

Q. Mr. Temple, I am showing you Exhibits 215 and 215-A, which taken together are capacity utilization tables at the junior high level from 1951 to '63. Have you examined those [1447] exhibits? A. Yes, I have.

Q. Now, Exhibits 215 and 215-A shows, does it not, a major addition at Smiley effective in 1952? A. Yes, according to that exhibit.

Q. I hand you Exhibit 24, Mr. Temple, a Plaintiffs' Exhibit, and directing your attention to page 53, I will ask you if that shows the date of construction and the date of additions to Smiley. A. Yes, it does.

Q. And what was the date of construction? A. 1928.

Q. And what was the next addition? A. 1950.

Q. Have you checked the room count figures and data of the School District in connection with Smiley? A. Yes, I have.

Q. Does it show an addition in 1950? A. Yes.

Q. Does it show an addition in 1952? A. No, it does not.

Q. Have you recomputed the capacity utilization percentage for Smiley for 1951, using the same capacity as 1952? A. Yes.

Q. And I hand you two exhibits marked for identification, [1448] Defendants' Exhibit 215-B and 215-C and ask you if you prepared those. A. Yes.

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Q. And what have you done in preparing those two exhibits? A. I just changed the capacity of Smiley back to 1447, clear back to 1951, instead of 1952, as it was.

Q. And have you used copies of the plaintiffs' original exhibits for that purpose? A. Yes.

Q. And what is the corrected percentage capacity utilization for Smiley in 1951? A. I computed it to be 85 percent.

Mr. Creighton: Defendants' Exhibits 215-B and 215-C are offered.

Mr. Greiner: No objection.

The Court: They will be received.

(Whereupon, Defendants' Exhibits 215-B and 215-C were received in evidence.)

Q. Mr. Temple, I show you Exhibit marked Plaintiffs' Exhibit 210, received in evidence, which is the capacity utilization table for Manual-East during the period 1951 to 1961. Have you examined that exhibit? A. Yes, I have.

Q. Does Exhibit 210 show that certain years are missing [1449] for the computations? A. Yes, I believe there are three years that are missing.

Q. And what would those be? What years? A. 1955 and 1957 and 1959.

Q. Now, Plaintiffs' Exhibit 210 uses what figure for their memberships? A. They use the average daily membership.

Q. And that is computed at what time of the year? A. During the summer after the completion of the school year.

Q. Do you know what membership figure is used for staffing purposes at schools? A. It's my understanding

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that it's the membership figure at the end of the fourth week of school, in the fall.

Q. Is that membership report regularly reported to budgetary services? A. Yes, it is.

Q. Is it available for all years shown on Exhibit 210? A. Yes, sir.

Q. Have you made a determination what the capacity utilization figures would be for the years covered by Exhibit 210 if the fourth week in September membership figures were used? A. Yes, I do.

【1450】 Q. And does this change the capacity utilization figures from those shown on Exhibit 210? A. Yes.

Q. In general, what direction does the change occur? A. Well, for Manual—

Q. Just in general, Mr. Temple. Is it higher or lower? A. It's generally higher.

Q. And this is because you use the September figure rather than the average for the whole year? A. Yes.

Q. I hand you an exhibit marked for identification, Defendants' Exhibit 210-A, and ask you if you prepared that. A. Yes.

Q. What do you use for your base document? A. Plaintiffs' Exhibit 210.

Q. And have you added anything to that? A. Yes, sir, I have.

Q. What have you added, Mr. Temple? A. Well, I added the membership for all of the years using the fourth week of school membership, and I also computed it for the missing years, 1955, 1957, and 1959. And I computed a revised percent capacity utilization.

Mr. Creighton: The defendants offer Exhibit 210-A.

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Mr. Greiner: No objection.

The Court: It will be received.

【1451】 (Whereupon, Defendants' Exhibit 210-A was received in evidence.)

Q. Mr. Temple, you testified generally that capacity figures were increased. More specifically, can you tell the Court from Exhibit 210-A what the low figure is for Manual during that period? A. Using my new—

Q. Yes, using your data based on the fourth week in September figures. A. 1953 was 71 percent for Manual.

Q. And what does that percentage at Manual do for the next few years? A. It generally increases.

Q. Now, in the meantime at East in 1953, what was your recomputed capacity utilization? A. 101 percent.

Q. What does it do during the next three years? A. It increases also.

Q. Is there a sharp break in the capacity utilization of East at any time later in that decade? A. Yes, between 1959 and 1960 there is quite a break.

Q. Do you know what caused that? A. The opening of the three senior high schools in 1960.

Q. Mr. Temple, is teacher data available from the same 【1452】 source which you get pupil data for the various schools? A. Yes.

Q. Have you examined the files in budgetary services with respect to teacher data at the various schools? A. Yes, I have.

Q. Have you determined pupil-teacher ratios first of all at secondary level and specifically Cole, Smiley and Morey during the decade of the 50's? A. Yes, I have.

Q. Taking Cole, Mr. Temple, what is the range of pupil-

John E. Temple—for Defendants—Direct

teacher ratio during the period 1950 to 1959? A. From a high of 23 to a low of 21.

Q. Now, would you tell the Court what that number means? A. Well, it means the number of pupils and membership at that school not including special education pupils. That number is divided by the number of classroom teachers assigned to that building.

Q. Do you include such special ed. teachers? A. No, we did not. I did not.

Q. So the range at Cole is from 21 to 23 during the decade of the 50's, is that correct? A. Yes, that's correct.

Q. What was the range of pupil-teacher ratio at Smiley during that same ten-year period? A. From a low of 23.9 to a high of 26.2.

【1453】 Q. Does that mean, Mr. Temple, that there are during the ten-year period you have mentioned—there are relatively more pupils per teacher at Smiley than at Cole? A. That's correct.

Q. And similarly, Mr. Temple, at the senior high level have you studied pupil-teacher ratios at Manual and East during the decade of the 50's? A. Yes, I have.

Q. And what is the range at Manual during that ten-year period? A. From a low of 22.3 to a high of 24.7.

Q. And similarly at East during that period what was the range? A. From a low of 24.5 to a high of 25.6.

The Court: May I have that again?

The Witness: From a low of 24.5 to a high of 25.6.

Q. Mr. Temple, let me show you Exhibit marked Plaintiffs' Exhibit 406 which has been received in evidence. This, Mr. Temple, is labeled Capacity Utilization, Negro Population, at Columbine, Harrington and Stedman from 1949 to 1954. Have you studied that exhibit? A. Yes, I have.

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Q. Now, Mr. Temple, have you also looked at Plaintiffs' Exhibit 371, being the board minutes of a meeting on January 16, 1952, and particularly pages 12 and 13 thereof relating [1454] to the three schools just mentioned in that year? A. Yes.

Q. Now, Mr. Temple, turning back to Exhibit 406, is the capacity table for Stedman for the four years involved incomplete? A. Yes, it is.

Q. And what years are missing? A. 1949 and 1950.

Q. Now, were you present in court when Mr. Klite was testifying with respect to this exhibit? A. No, I wasn't.

Q. That was the first day of the trial, was it? A. Yes.

Q. Have you studied the sources of Dr. Klite's capacities and memberships with respect to Exhibit 406? A. Yes, I have.

[1455] Q. Do you understand that he used average daily membership for the first semester in all cases for his enrollment? A. Yes.

Q. Do you understand that he used the capacity statements in a 1952 bond planning study for the elementary schools for these years? A. Yes.

Q. Now, then, was there a change in capacity at Harrington effective in 1950? A. Yes, there was.

Q. Now, you will notice Exhibit 406 says that the capacity was 450 in 1950, the year of the edition, and Exhibit 406 also asserts that the capacity the previous year was 300. Do you see that? A. Yes.

Q. Now, have you studied the room count tabulations of Harrington for those three years, 1949 and '50? A. Yes.

Q. Using the standard applied in 1950, what would be the—what have you determined to be the capacity of Harrington in 1949? A. Well, Harrington had seven rooms

John E. Temple—for Defendants—Direct

in 1949, and there was a kindergarten session, so I determined the capacity of Harrington to be 240 in 1949.

Q. And applying Dr. Klite's average daily membership [1456] figure, what do you get as a percentage of capacity utilization for Harrington in 1949? A. 146.

Q. And turning back to Stedman, where the figures are missing, have you determined the capacity utilization for Stedman for those two years, using Dr. Klite's average daily memberships and the capacity figures that you determined? A. Yes.

Q. And what have you determined to be the percentage capacity utilization for Stedman, first of all, in 1949? A. 168.

Q. 1950? A. 139.

Q. Now, turning back to Exhibit 371, being the Board minutes, Mr. Temple, do those Board minutes disclose what the enrollments were in January, 1952, immediately prior to the optional area changes made that year? A. Yes.

The Court: What page are you on?

Mr. Creighton: This would be, Your Honor—

The Witness: Page 13.

The Court: This is Exhibit 371?

Mr. Creighton: Yes, sir, and specifically page 13.

Q. Now, Mr. Temple, have you taken the capacities at Columbine, or, rather, the enrollments at Columbine, [1457] Harrington and Stedman at the time of this Board meeting? A. Yes, sir.

Q. And have you applied that to the same capacities that Dr. Klite used that year? A. Yes.

Q. And what do you get? Have you computed these capacity utilizations? A. Yes.

John E. Temple—for Defendants—Direct

Q. For that point in time? A. Yes, sir.

Q. Let me hand you, Mr. Temple, an instrument marked for identification Defendants' Exhibit 406-A, and ask you if you prepared that in the light of your testimony a moment ago regarding capacities and utilization at the schools?

A. Yes.

Q. What have you used for your base instrument in preparing those? A. Defendants' Exhibit 406—I mean Plaintiffs' Exhibit 406.

Q. And have you added certain changes and figures to that? A. Yes.

Mr. Creighton: Defendants offer Exhibit 406-A.

Mr. Greiner: No objection, Your Honor.

The Court: It will be received.

[1458] (Whereupon, Defendants' Exhibit 406-A was received in evidence.)

Q. Mr. Temple, would you point out to the Court then what the capacity utilization computations would be for these three schools at the time immediately prior to the Board action in January, 1952? First of all, as to Columbine, what was its utilization? A. 122.

Q. Had that increased since the previous fall? A. Yes, from 114.

Q. And, meantime, what had happened to Harrington and Stedman? A. Well, Harrington remained at 104 and Stedman at 95.

Q. All right, Mr. Temple, were you here in the courtroom the other day when Senator Brown was testifying regarding a school site out near the Hallett area? A. Yes, I was.

John E. Temple—for Defendants—Voir Dire

Q. Have you checked the School District site index records to determine where sites have been owned by the School District in the northeast part of Denver? A. Yes.

Q. I show you an instrument marked for identification Defendants' Exhibit HB, and ask you if that's a record you have taken from the School District files. A. Yes.

[1459] Q. And what is it, Mr. Temple? A. It is the school property sites in numerical index.

Q. As of what date? A. April 18, 1968.

Q. And does it show in numerical order all of the School District sites owned up to that time? A. Yes.

Q. Does it show even those that have been disposed of and sold prior to the date of the exhibit? A. Yes.

Mr. Creighton: Offer Exhibit HB.

Mr. Greiner: I don't believe we have seen this before, have we?

Mr. Creighton: I handed it to you the other day.

The Court: What's the purpose of this?

Mr. Greiner: May I briefly examine, Your Honor?

The Court: Let me ask Mr. Creighton, what's the object of this?

Mr. Creighton: I will be happy to explain, Your Honor. This exhibit will show there was indeed a site about six blocks from the airport and about 26 blocks from Colorado Boulevard, a little east of Hallett, which was purchased in 1948 and which was sold in 1952.

Voir Dire Examination by Mr. Greiner:

[1460] Q. Mr. Temple, what is the time period covered by Exhibit HB? A. I am not sure just what the total

John E. Temple—for Defendants—Direct

time period is on this. I know that this particular one was issued April 18, 1968.

Q. Did you prepare this? A. No, it came from Mr. Geer's office in the Denver Public Schools.

Q. Do you know how often such tabulations are prepared? A. No, I don't know.

Q. And you don't know the time period that purports to be covered by the exhibit? A. Not specifically.

Mr. Greiner: Well, Your Honor, subject to that infirmity, we have no objection.

The Court: It will be received.

(Whereupon, Defendants' Exhibit HB was received in evidence.)

Direct Examination by Mr. Creighton (Cont'd):

Q. Mr. Temple, Exhibit HB does show all the numerically numbered sites, beginning with Site No. 1, does it not? A. Yes.

Q. Now—

The Court: I think you ought to put a mark on the **[1461]** site that you referred to.

Mr. Creighton: Yes, I will ask the witness to.

The Court: An "X" or cross. There is not point—I think when you are offering something for pinpoint purposes, it ought to be pinpointed.

Mr. Creighton: I am going to ask him to pinpoint it for the Court and for all of us.

Q. Turning to page 2 of Exhibit HB, Mr. Temple, do you have a copy before you? A. Yes.

John E. Temple—for Defendants—Direct

Q. And specifically to Site 104. Where is that site said to be located on the exhibit? A. From Magnolia to Niagara, from 30th to 32nd Avenue.

Q. That's consecutively numbered immediately after the Barrett site, is that correct? A. That's correct.

Q. What was the Barrett site number? A. 103.

Q. Do you know when the Site 104 was purchased? A. It was purchased July 30, 1948.

Q. Now, does Exhibit HB show that it was sold? A. Yes, it was sold October 21, 1952.

Q. And the exhibit itself says what in that connection? A. It shows that it was—

Q. Does it give the full date of the sale? **[1462]** A. No, it just says "Sold in 1952."

Q. And your investigation shows it was sold on a specific date that year? A. Yes.

Q. Mr. Temple, I am putting before you a copy of Exhibit 402, which is a plaintiffs' exhibit, being a map in October, 1951. Can you describe so that the Court can follow it on the original copy of this exhibit where Site 104 is? A. Site 104 is approximately seven blocks to the east and I think two blocks north of the Hallett site.

Q. And where is it with respect to the airport? A. That would be about—I think it is about—looks on this map like it would be about six blocks west of the boundary of the airport.

Q. And what street again was that on, Site 104? A. From Magnolia to Niagara—

Q. That would be about how many blocks from Colorado following the alphabetical rotation? A. Probably be around 26, wouldn't it? Something like that.

Mr. Creighton: All right.

Mrs Jean McLaughlin—for Defendants—Direct

The Court: That's close enough.

Mr. Creighton: You may examine.

Cross-Examination by Mr. Greiner:

[1464] * * *

Q. Now, is it fair to say, Mr. Temple, that the original Plaintiffs' Exhibit 210 showed that throughout this period, at least up until 1958 that Manual was underutilized while East was either at or over capacity; is that correct? A. Yes.

Q. That picture is exactly the same as depicted on your exhibit, is it not, on 201-A? A. Yes.

* * * * *

[1472] * * *

Q. Now, turning your attention back to Exhibit 215-C, I take it then that the only change that you made in plaintiffs' exhibit was this adjustment to the Smiley capacity back in 1951, is that correct? A. That's correct.

Q. Would you agree that between the years 1952 and through say 1958—Let's take it up until 1956 as depicted on Exhibit 215-C—that Cole throughout that period was underutilized; is that correct? A. That's correct.

Q. And Smiley throughout that period was either close to or over capacity? A. Yes.

Q. Is that right? A. That's correct.

Q. And Morey was also underutilized during that time period? A. That's correct.

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[1485] * * *

MRS. JEAN McLAUGHLIN, called as a witness by the defendants, being first duly sworn, on her oath testified as follows:

Mrs Jean McLaughlin—for Defendants—Direct

The Court: Will you please take the witness chair? State your name and address, please.

The Witness: I am Mrs. Jean McLaughlin. I live at 634 South Galena.

Direct Examination by Mr. Creighton:

Q. Mrs. McLaughlin, are you presently employed by School District No. 1, the City and County of Denver? A. Yes, I am.

Q. And when were you first employed by the School District? A. In 1945.

* * * * *

【1487】 * * *

Q. Then, after Eagleton, what was your next principalship? A. I went to Stedman Elementary School.

Q. What was the date of that change? A. I went to Stedman in February of 1958.

Q. Would that be the commencement of the second semester of that year? A. It was right after the beginning of the second semester.

Q. And then what was your next principalship? A. My next principalship was at Philips School in 1963.

Q. Commencing that fall? A. Yes, sir.

Q. And after that assignment, Mrs. McLaughlin? A. I went to Cory School in 1967.

Q. Is that where you are now? A. Yes, sir.

【1488】 Q. Did you grow up in Denver? A. Yes, I did.

Q. Did you go to the Denver Public Schools? A. Yes, I did.

Q. Where did you do your college work? A. I went to the University of Denver.

Q. Mrs. McLaughlin, where were you residing during

Mrs Jean McLaughlin—for Defendants—Direct

the forties and fifties? A. In 1948 we bought a home at 2945 Albion.

Q. And how long did you live there? A. We lived there thirteen years.

Q. Until when? A. Until 1960.

Q. And then where did you move? A. To 6015 Montview Boulevard.

Q. And you lived there until when? A. Until 1968.

Q. And then did you move to your present address? A. Yes.

Q. Mrs. McLaughlin, your Albion Street address, where you lived until 1960, is that near Colorado Boulevard? A. Yes, sir, it was a block.

Q. How far? A. One block.

Q. Do you recall the widening of Colorado Boulevard in [1489] the late 1950's? A. Yes, sir.

Q. Were you in a position to observe the traffic on the street after the widening? A. Yes, sir.

Q. How would you characterize the traffic on Colorado Boulevard after it was widened?

Mr. Greiner: Your Honor, I don't believe the witness has been qualified as a traffic engineer.

The Court: No.

Mr. Greiner: I believe she is now being asked to give an opinion for which there is no foundation laid.

The Court: I don't think she needs to be an expert to express herself. It will save us time.

A. It was a dangerous situation.

Q. Was the traffic heavy? A. Yes, it was.

Q. You were principal at Stedman at that point in time?

A. Yes.

Mrs Jean McLaughlin—for Defendants—Direct

Q. Were there shopping facilities on Colorado Boulevard opposite your address in the 2900 block? A. Yes.

Q. On both sides of the street? A. Yes, sir.

【1490】 Q. Did you patronize those shops and stores?
A. Well—

Q. Did you? A. Yes.

Q. Did the opening of the widened Colorado Boulevard have any effect on your ability to use those shopping facilities? A. Yes.

Q. What was that? A. Well, it was difficult to get across the street.

Q. To which side? A. To the west.

Q. And you resided on the east side? A. That's right.

The Court: Probably equally difficult to get by on the other side?

The Witness: That's right.

Q. Did you have trouble getting back? A. Yes.

Q. Was anything done about it? A. Yes, they installed some lights.

Q. And where was that? A. In the 2900 block.

Q. Can you give us any time that that was done? A. No.

【1491】 Q. Later, after the widening? A. After the widening, yes.

Q. Now, as an elementary principal at that time, Mrs. McLaughlin, would you have an opinion as to the hazard of that street for elementary pupils?

The Court: She has already testified, hasn't she, that it was dangerous? She gave that right off the bat.

Mr. Creighton: Well, that was, Your Honor, as

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to herself and adults. I am trying to focus in on elementary kids now.

The Court: Well, a fortiori—

Q. All right, Mrs. McLaughlin, what year again did you move from the 2945 Albion Street address? A. 1960.

Q. Were you familiar with the neighborhood, specifically the block in which you lived at that time, in 1960? A. Yes.

The Court: Was that at 30th and Albion?

The Witness: 29th and Albion.

Q. Do you recall anything about the racial makeup of those residing in your block, in the 2900 block of Albion Street, in 1960? A. Yes, our neighborhood was changing.

Q. And specifically in 1960, could you estimate the—well, first of all, were there Negro families living in your block? **[1492]** A. Yes.

Q. Could you estimate the proportion of Negro families living in your block? A. There were more Negro families in our block than white families in 1960.

Q. Now, could you say anything about the racial proportions in blocks in, say, the block immediately east of you? A. Well, there were more Negro families in our block and on Ash than farther east at that particular time.

Q. Now, that particular year, 1960-61 school year, Mrs. McLaughlin, you were principal of Stedman that entire year? A. Yes.

Q. Even though you moved during 1960, is that right? A. Yes, that's right.

Q. Were there Negro children in Stedman School in 1960-61? A. Yes.

Q. Do you know what part of your school subdistrict

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they lived in? A. Well, they lived in the area where I was residing.

Q. And was that on the extreme west side? A. That would be on the west side of Stedman.

【1493】 Q. That year, 1960-61, were Negro pupils coming from other parts of your Stedman subdistrict? A. No, not a lot of Negro children, no.

Q. Could you tell us where the bulk of the Negro students at Stedman that year were coming from within your subdistrict? A. In 1960 we had children coming from the Hallett area.

Q. No. Now, I'm just—I'm asking you about the Negro children in your school in 1961, and what part of your subdistrict they were coming from. A. I would say they were coming in from the west side.

Q. Now, Mrs. McLaughlin, moving ahead to the school year 1962-63, do you recall whether your school, Stedman, was crowded that year? A. In 1962-63? Yes, we were crowded.

Q. Were any students being bussed into your school? A. Yes.

Q. Where were they coming from? A. From the Hallett district.

Q. How did that come about? A. There had been an arrangement with a previous principal at Hallett and Stedman and the Administration Building, that children from the Hallett area should be bussed 【1494】 to Stedman because there were children on the waiting list in the Hallett area.

Q. For what? A. Kindergarten.

Q. And that was made prior to your arriving there in February of 1958? A. That's right.

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Q. About how many children in 1961 school year were coming in from the Hallett area to Stedman? A. A busload of children.

Q. How many would that be? A. Approximately 70 youngsters.

Q. And this had gone on for how long? A. Well, for a good many years, because we had children from kindergarten through the sixth grade when I was at Stedman that were coming from the Hallett area.

Q. Now, later in that school year, in 1961—

The Court: Are you maintaining these were white students who were being bussed into Stedman from Hallett?

Q. Can you tell us about the racial characteristics of the busload of kids coming in from Hallett? A. The majority of these children were white youngsters.

The Court: I thought that was what you were trying to put over.

Q. Now, later that year, in 1961-62 school year, [1495] Mrs. McLaughlin, were there discussions regarding boundary changes? A. Yes.

Q. At the elementary levels? A. Yes.

Q. Were there any meetings in that regard? A. Yes.

Q. What meetings were there? A. Well, in the early part of 1962 I was called to a meeting.

Q. Where was that? A. In the administration building.

Q. Anyone else called there? A. Yes.

Q. Who? A. Yes, there were other principals called at that time and we were told they were contemplating some proposed— these were proposed boundary changes.

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Q. About how many principals do you recall were at that meeting? A. About thirty.

Q. And where was it held again? A. The Administration Building.

Q. Where in particular? A. In the board room.

【1496】 Q. And were you told anything about these proposals at that time at that meeting? A. Well, we were given some materials and they said that these were proposed boundary changes.

Q. What were you supposed to do about it? A. Look at them, study them, and if we had any information that would be pertinent to changes, we were to communicate with the administration.

Q. Were you asked at that time for any racial data to your school? A. No.

Q. Now, did you comment on these changes? A. I did not.

Q. Were you told what the purpose of the changes were? A. To relieve overcrowded conditions.

Q. Did you believe the changes under discussion—well, first of all, were there any changes at that time under discussion for Stedman School at that meeting? A. Yes.

Q. Did you believe those changes were necessary in light of your numbers of pupils? A. Not at that particular time, no.

Q. Do boundary changes, Mrs. McLaughlin, have any effect on the kids involved? 【1497】 A. Oh, yes. They're very disruptive.

Q. Were you aware of the enrollment situations in the schools adjoining you and in particular, first of all, Hallett? A. Yes.

Q. Were you in touch with the principal there? A. Yes.

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Q. Did you have frequent conversations with these principals in your area? A. Yes.

Q. At the time of these early 1962 boundary proposals and discussions, did you have any information on the relative crowded conditions of, say, Hallett? A. Well, I knew from talking to the principal at Hallett that they were crowded.

Q. How about the Park Hill School? A. Yes, sir. We were aware of the overcrowded condition in that particular area.

Q. And does this apply to Smith School? A. Yes.

Q. Now, later that year, Mrs. McLaughlin, were the boundary changes under discussion early in the year made with respect to Stedman School, later that year, in 1962? A. Were they made?

Q. Yes. [1498] A. No, they were not.

Q. Did you believe they should have been made? A. No, I did not.

Q. Now, let's see, Mrs. McLaughlin—you went to Philips in the fall of 1963, did you not? A. Yes.

Q. And when you got to Philips in the fall of 1963, how was the enrollment situation there with respect to your facilities? A. We were not overcrowded. We were at capacity but we were not overcrowded.

Q. And Mrs. McLaughlin, were there some boundary changes affecting Philips the following year, 1964? A. Yes.

Q. Now, Mrs. McLaughlin, in front of you is the defendants' Exhibit BF which shows the elementary boundary lines effective in the fall of 1964 and also shows with arrows and lines the changes made that year. Now, also I want to show you in that connection Plaintiffs' Exhibit 71.

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First showing you Plaintiffs' Exhibit 71, Mrs. McLaughlin—have you seen that before? A. Yes.

Q. Have you seen this particular exhibit? A. Yes.

Q. This was introduced in evidence last summer, Mrs. **[1499]** McLaughlin, in connection with this case. Do the changes shown there on 71 reflect what happened that fall at your school, Philips? A. Yes.

Q. Now—please take a look at Defendants' Exhibit BF. Does that show the same changes that year? A. Yes.

Q. Now first calling your attention to the change in the southeast corner of your district—that represented a change to what school? A. That's Ashley School.

Q. Was a part of the Philips subdistrict changed to Ashley? A. Yes, that's right.

Q. Are you familiar with that part that was put in the Ashley district? A. Yes.

Q. Can you describe to the Court what the north half of that district consists of? A. That's Temple Buell College.

Q. Are there any elementary children coming out of that district? A. No.

Q. Do elementary children come out of the south half of that Ashley change? **[1500]** A. That's right.

Q. And are you familiar with the geography and the area there involved? A. (Nods affirmatively.)

Q. Can you tell us the comparative distances between the middle of the south half of the area changed to Ashley and the distance to Philips itself? A. It was about the same.

Q. The same distance? A. Yes.

Q. Now, Mrs. McLaughlin, take a look at the area that was moved into your district from Hallett. Do you see that on Exhibit BA? Is that in the southeast corner of the Hallett district? A. Yes, that's right.

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Q. How does the distance from the center of that Hallett change compare as between its distance to Hallett School and the distance to your school and Philips? A. It was the same.

Q. Was that distance such that the children from that area were entitled to a bus ride? A. Yes, sir.

Q. Do you know whether they were being bussed the previous year, 1963 ('64) to Hallett School? A. Yes, sir.

Q. After the change were they bussed to your school? **[1501]** A. Yes, sir.

Q. How many busses? A. One.

Q. Do you know what its capacity was? A. 72 passengers.

Q. Now, was that bus filled, the bus that came in from the former Hallett area to your school in 1964? A. There were approximately 70 children.

Q. Now, Mrs. McLaughlin, have you studied enrollment cards at Philips School made at the time you were there as to the children coming out of the former Hallett area? A. Yes, sir.

Q. What kinds of study did you make? A. Well, I went over the registration cards for that school year.

Q. And that was what year again? A. That is in 1964-65.

Q. And did you find the cards the children who came from the former Hallett area? A. Yes, sir.

Q. And you know those children well enough to know by their name what their race would be? A. Yes.

Q. Did you make a determination of the race of the children who came out of the former Hallett area? **[1502]** A. Yes, sir.

Q. Do you know how many of them were Negro? A. Approximately 50.

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Q. Out of how many? A. 70.

The Court: I believe this will be a convenient time to take our afternoon recess.

Mr. Creighton: Very well, Your Honor.

(Whereupon, the trial recessed at 3:13 p.m.)

【1503】 (After a recess, the court reconvened at 3:35 o'clock p.m.)

The Court: I expect we are ready to continue.

Mr. Creighton: I believe we are, Your Honor.

Mrs. McLaughlin, will you come forward?

By Mr. Creighton:

Q. Mrs. McLaughlin, we found during the recess Plaintiffs' Exhibit 76. Showing you this exhibit, Mrs. McLaughlin, this exhibit was admitted into evidence last summer in the preliminary hearing.

The Court: Isn't it any good, Mr. Creighton?

Mr. Creighton: We are going to discuss that, Your Honor.

The Court: All right.

Q. (Continued) This was prepared, Mrs. McLaughlin, by a mathematician and it is the map of your Philips subdistrict showing the changes in 1964, and the mathematician declared that the area shown as being detached from Hallett and put into your district contained 20 percent Negro pupils. Now, is that a correct estimate of the percentage of Negro pupils coming from the Hallett area in 1964?

Mr. Greiner: Your Honor, I object. I believe that mischaracterizes Dr. Bardwell's testimony at

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the summer hearing. It was that the population of that area was 20 percent Negro, not the student population.

Mr. Creighton: I have to differ, Your Honor. The record itself at page 215 of last summer's transcript has [1504] this exchange:

Question to Dr. Bardwell: "All right, then, taking your example, the Hallett-Philips area, you figure that 20 percent of those moved were Negro?"

Answer: "That's right, sir."

The Court: Well, you can ask her whether 20 percent were moved. Wouldn't that suffice?

Q. Mrs. McLaughlin, based on your study of the pupil records and what you have previously testified concerning the racial identity of the children coming from the Hallett area in 1964, what percentage did you find of those moved were Negro? A. Approximately 70 percent.

Q. Now, Mrs. McLaughlin, that same year, 1964, did your school, Philips, experience an increase in membership? A. Yes, sir.

Q. Was it a large increase? A. Yes, sir.

Q. Were you crowded that fall? A. Yes.

Q. At the beginning of that year, how many pupils did you have in some of your classes? A. Over forty.

Q. Did you have adequate staffing at that point? A. Yes, because we had two teachers assigned to these [1505] rooms that were so overcrowded.

Q. Was anything done later in the school year to deal with this increase in membership? A. Four mobile units were constructed.

Q. When did they get in operation at your school? A. The latter part of November.

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Q. Did this permit you to reduce the class size within the building? A. Yes.

Q. What age level did you put in the mobile units? A. Second and third grade children.

Q. Now, what was your planning behind that? A. Well, I felt that it was better to have the kindergarten and the first graders in the main building and the second and third grade youngsters out in the mobile unit. Younger children were in the building, the very youngest.

Q. All right, in addition to relieving the large classroom size in the building, did the use of the mobile units have other effects within your building? A. Well, it was a very practical situation because it relieved the hall situation, the lavatory situation, because our mobile units had drinking facilities, lavatory facilities. It was a much better situation.

Q. Now, as a principal in a school where there are and were mobile units used, Mrs. McLaughlin, have you [1506] observed the teaching situation within the mobile units as compared with the brick and mortar classroom? A. Yes.

Q. How would you compare the teaching situation in a mobile unit classroom? A. Well, it is the same, because they are very adequate. As I mentioned they have their own lighting system. They are connected—the fire alarm is connected to the main building. It is just another room.

Q. Now, Mrs. McLaughlin, in connection with this crowding situation, does crowding in elementary schools occur uniformly throughout the K-6 grades when it occurs? A. No.

Q. Specifically, in connection with back at Stedman in 1961-62, you mentioned crowding. Where was your crowding that year? A. In the primary grades, in the first and second grades.

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Q. How did you deal with crowding that year at Stedman? A. I went on double session.

Q. For all classes? A. Only for the first and second grades, because that's where our enrollment was the heaviest.

Q. Mrs. McLaughlin, as elementary principal this year, [1507] were you asked to make an estimate of the ethnic proportions within your elementary school this year? A. This year?

Q. Yes. A. Yes, sir.

Q. You have been doing that as principal for a number of years? A. Yes.

Q. Have you always done this as a principal? A. As a principal?

Q. Yes, in recent years. A. In recent years, yes.

[1508] Q. Did this request for ethnic information begin back in the sixties? A. Yes.

Q. Do you recall when you first got a request for ethnic information as a principal? A. It was in 1962.

Q. And how did you handle that request? A. Well, I asked my secretary to go into each one of the classrooms and to make a count.

Q. An announced visit or— A. No, I didn't want any fanfare. I did not want the teachers involved.

Q. Why didn't you want the teachers involved? A. Because I think that teachers should not think of children in terms of their racial background.

Q. Now had this ethnic estimate requested—had this existed prior to your teaching career? A. Well, when I first started teaching school in our class register, we were asked for this information.

Q. And you entered it in the class register as a teacher at that time? A. Yes, sir.

Mrs. Jean McLaughlin—for Defendants—Cross

Q. Now, Mrs. McLaughlin, you have been a principal at Stedman and Philips and Cory. And, as a principal of a school, do you determine your needs as to materials and [1509] supplies at your school? A. I don't. I work with my teachers in determining our needs and supplies.

Q. Are there limitations on how much you can get in the way of materials and supplies? A. It's figured on a membership.

Q. How is that figured, Mrs. McLaughlin? A. You are given so much money for each child in your building.

Q. Is that based entirely on—is the amount based entirely on the number of children? A. Yes, sir.

Q. Is it the same for all elementary schools? A. Yes.

Q. And then given that amount, Mrs. McLaughlin, how do you determine which materials and supplies you get with that budget amount? A. Well, you confer with your teachers, your staff.

Q. And then where do you request your materials and supplies? A. To the Administration Building.

Q. Have you ever experienced as a principal, Mrs. McLaughlin, any difficulty in getting materials and supplies you requested at the schools where you were principal? A. No, sir.

[1530] * * *

Cross-Examination by Mr. Brega:

Q. Mrs. McLaughlin, you went to Stedman in 1958? A. Yes, sir.

Q. You stayed until 1963? A. Yes, until spring of 1963.

Q. All right, during that period of time you were principal at Stedman? A. Yes, sir.

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Q. All right. During that period of time were there any boundary changes at Stedman? You will have to answer.

A. Wait. Oh, no, I am sorry. I shook my head.

Q. And also I presume that during that period of time [1531] the boundary of Stedman was well publicized so that the people in the area knew where it? A. Yes.

Q. Could you tell us now when you first went to Stedman, I presume it was predominantly Anglo or white?

A. Yes, sir.

Q. At the time you left in 1963, had it changed predominantly to black? A. Yes, sir.

Q. Will you tell the Court how rapid that transition was? That may be awfully difficult to do, but I mean instead of slow, was it— A. No, it was a fast movement.

Q. All right. At the time in 1960 that Barrett was built, I presume that in 1960 Stedman was still predominantly white? A. Yes.

Q. All right. Had the boundaries been put across to, let's say, Ash, the second street over on the east of Colorado Boulevard, what predominantly would that have taken in as far as black or white students? A. It would have taken in the Negro children.

Q. In other words, the Stedman area which was still predominantly white would have had less black in it, had the boundary been across? [1532] A. Yes, sir.

Q. And I presume likewise the black students then would have gone to Barrett? A. Yes, sir.

Q. At the time the 1962 proposal was delivered or mentioned or discussed, were the principals and teachers allowed to comment to the superintendent about the proposals involved? A. Yes, sir.

Q. They were allowed to express their opinions on the needs of the school and the capacity? A. Yes.

Mrs. Jean McLaughlin—for Defendants—Cross

Q. The utilization? A. Yes.

Q. During this discussion, were there any discussions about race or ethnic background of any of the students involved? A. No, sir.

Q. In other words, what you were talking about is pupils and how best to handle the number in the school? A. That's right, overcrowded conditions.

Q. Now, during the period of time that you taught in Stedman when it was changing from predominantly white to black, was there an influx of black students from out of the city or out of the state? [1533] A. Yes.

Q. How do you know that? A. Well, from the registration cards and the information on the registration cards.

Q. Well, did these black students present any unique problems to the teaching of students at Stedman? A. Many of these youngsters were lacking in opportunities and experiences, yes.

Q. They had come from out of state? A. Yes, sir.

Q. And in other words, the education that they had received prior to coming was not on the same level that we have here? A. Yes.

Q. Is that a fair statement? A. I think that's a fair statement to make.

Q. And did you have then to try to bring these children up to the norm of the children in the school that they were in, in Stedman? A. We tried, yes.

Q. Did you recommend—excuse me. A. That's a teacher's challenge.

Q. Did you recommend as you went along during this period of time and as you went from Stedman to Philips any special teaching programs for children? [1534] A. My advisory committee recommended a reading improvement center, a mobile unit, when I was at Philips School.

Mrs. Jean McLaughlin—for Defendants—Cross

Q. What was the purpose of that recommendation? A. To help children with reading difficulties.

Q. Now, at the time that you were at Stedman, I believe that there were some mobile units placed at that school?

A. No, not when I was at Stedman.

Q. At Philips? A. At Philips.

Q. All right. Did you have any discussion with the parents on the mobile units that were placed there? A. Yes, they wanted the mobile units.

Q. Did you show the teachers or the students the mobile units along with their parents? A. Oh, yes.

Q. How did you do that? A. Well, we had our back-to-school nights when we opened our mobile units, for our parents, but we watched—the faculty and I watched the mobile units being built and put together right there on the school ground, but our parents were anxious to have these mobile units because they knew that it was going to relieve an overcrowded condition.

Q. And they saw these on the parent-teachers night or [1535] something? A. Yes, at back-to-school night in November.

Q. What was it? Four units that you had? A. Four units.

Q. Did you find any obstruction to giving the same type of teaching equality in a mobile unit that you saw in the classroom or the regular building? A. No.

Q. In your opinion, is there any difference between the quality of education that one can obtain in a mobile unit? A. No.

Q. Were these mobile units air conditioned and self-sufficient? A. Yes, sir.

Mr. Brega: No further questions.

The Court: Mr. Creighton?

Dr. Harold A. Stetzler—for Defendants—Direct

Redirect Examination by Mr. Creighton:

Q. Mrs. McLaughlin, at that meeting down in the board room in early 1962, were principals there from all over town? A. Yes, sir.

Q. Not just from the Park Hill district? A. Oh, no.

【1536】 Q. And do you remember at all how many boundary changes were under discussion at that time over the city? A. Well, there were approximately thirty of us down there, so it must have been at least thirty.

Q. Now, Mrs. McLaughlin, you were asked something about the racial movement in Park Hill. In 1960 and '61, at that time, did you feel you could predict ahead as to the size of the movement? A. No, sir.

Q. Could you at that time predict the geographic extent of the movement? A. No, sir.

Q. And again, regarding that movement, could you at that time have foreseen how fast it would take place? A. No.

* * * * *

DR. HAROLD A. STETZLER, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Please take the witness stand. Please 【1537】 give us your name and address.

The Witness: I am Harold A. Stetzler. I live at 1436 South Yates.

Direct Examination by Mr. Jackson:

Q. Dr. Stetzler, would you review for us briefly, please, your educational background. A. My teaching experience?

Dr. Harold A. Stetzler—for Defendants—Direct

Q. No, your own educational background. A. Oh, I went to Denver Public Schools, graduated from West High School, attended Denver University to the Bachelor's and Master's degrees, and I have a Doctor of Education degree from Indiana University.

Q. And are you at present employed by School District No. 1? A. Yes.

Q. And what is your present position? A. I am director of elementary school personnel.

Q. And would you explain to the Court briefly what your duties are in that position? A. My duties have changed somewhat over the years. I first became—came into the position in 1964. At that time, the primary duty was the recruitment, assignment, transfer of teachers, concern with their grievances. I also had the duty of recommending pupil assignments. I did deal [1538] with parents in terms of complaints. I also made recommendations concerning transportation of the elementary schools.

Q. Now, you have been in this position, you say, since 1964? A. Since January of 1964.

The Court: Are you able to hear the doctor?

Mr. Greiner: It is a little marginal, Your Honor.

The Court: I think it would be helpful if we moved that lecturn behind counsel's table. There would be no problem of blocking anybody out and there would be some assurance that the witness would speak up at least loudly enough so that his voice carries to that place.

(Counsel moved lecturn.)

The Court: Is that any better, do you think? We will try it out, anyway.

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Mr. Jackson: As long as I don't need glasses, Your Honor, I think we will get along all right.

Q. Dr. Stetzler, at the time you took over your job in 1964, did you receive any special instructions regarding your responsibilities and duties at that time? A. Yes, I received a number of instructions relating to the duties. The most pertinent one here would be related to the assignment and employment of minority teachers. At this time the Assistant Superintendent for Personnel requested that we reduce within existing policies as much as we could [1539] any concentrations of minority teachers.

The Court: What year was this?

The Witness: In 1964, and that we assign minority teachers throughout the district to a great extent.

Q. Now, at that time you were concerned primarily with elementary school personnel? A. Only elementary school personnel.

Q. Do you know whether or not the policy was the same for the secondary schools as you have just described it? A. Yes, it was.

Q. Now, do you know, Dr. Stetzler, whether or not the same general recommendations were made by what has been referred to here as the Voorhees Committee, which reported in 1964 regarding the concentration and transfer of minority teachers? A. I recall that it touched this subject in the same vein.

Q. And you took over your responsibilities in January? A. Right.

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Q. I will hand you that Voorhees report, which is Exhibit 20. Does that bear a date on the front of it? A. This is March 1, 1964.

Q. Some three months after you assumed your job? A. Yes. Actually, I had gone to the position for orientation in late November, so I did have some opportunity [1540] to observe the operation of the position during the month of December.

Q. Now, Dr. Stetzler, you had some responsibility, I believe you indicated for hiring new teachers? A. Yes.

Q. And what generally is the method of hiring new teachers? A. Either through interviews, application interview in our office or the applicant arranges for an interview after they have submitted an application and completed it through references and transcripts, or through our visiting colleges arranging through placement officers to interview interested applicants.

Q. And did you perform any of the interviewing functions when you took over this job in 1964? A. Yes.

Q. And what generally did you do in the interviewing field? A. Interviewed teachers primarily for the elementary schools. However, at other colleges I would interview for elementary and secondary both.

Q. Did this involve any traveling? A. Yes.

Q. And generally what area did you visit? A. My out-of-state area was Minnesota, Wisconsin, [1541] Michigan, Indiana, Ohio, Illinois.

Q. Did you also interview within the State of Colorado? A. And then we visited the colleges in Colorado, Boulder, Greeley, Fort Collins, of course, Denver University, Loretto Heights, Temple Buell.

Q. During this period of 1964 to the present, how many interviewers have there been generally at one time that

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have been performing this one function? A. This has ranged from probably four or five up to over twenty.

Q. Now, does the interviewer, as he is talking with the teachers, have any authority to enter into contracts ?A. Recently, yes, in the last two or three years. Prior—

Q. Are these then subject to any further action by the administration? A. These are just subject to school board approval.

Q. They all must be approved by the board itself? A. Yes.

【1542】 Q. Now, during this same period, Dr. Stetzler, has there been any change in emphasis on the recruiting of teachers? A. We made continually greater efforts to recruit a larger number of minority teachers. In fact, this has probably been the greatest change in our efforts in recruiting during the period of time I've been in the position.

Q. In addition to the emphasis on minority teachers, have there been any other changes in terms of the qualifications or types of individuals that you are seeking as teachers? A. Increasingly, we discuss with our applicants our diversification. We have 92 elementary units to which we assign teachers. A number of those units are in neighborhoods where we would have numbers of minority students. And we have increasingly tried to find out at the interview the qualifications of these people to deal with minority students; their empathy for education of these youngsters; their general feeling about teaching in this kind of neighborhood.

Q. Has there been a corresponding change in emphasis in the curriculums offered by the various colleges in this area? A. The colleges have made efforts to educate teachers for this position. There hasn't been a tremendous

Dr. Harold A. Stetzler—for Defendants—Direct

number of teachers available through these programs. It is increasing.

【1543】 Q. Has there been a corresponding change in emphasis regarding teachers with advanced degrees or previous teaching experience? A. No, we have not set any recruiting quotas for teachers either with experience or with Master's degrees.

The Court: When you say minority teachers that you are recruiting, I guess you mean Spanish as well as Negro?

The Witness: And oriental.

The Court: Do you have any difficulty finding Spanish origin teachers?

The Witness: This is the most difficult of our jobs.

The Court: Are you able to hire very many of them?

The Witness: No, again, this number is increasing as we learn some things to do to find them.

By Mr. Jackson:

Q. Dr. Stetzler, I hand you Defendants' Exhibit DA, which has already been admitted into evidence and ask you if you can explain to the Court what that shows regarding the percentage of teachers employed from the years 1962 through 1968 that had prior teaching experience? A. This ranges from a low of about 37 or 38 percent to a high of approximately 50 percent. The average probably is, I would guess, 40 some percent; a little over 40 percent.

Q. So then, from the period 1962 until 1968, approximately 【1544】 40 percent of all teachers hired by the district had prior experience? A. Yes.

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Q. Now, directing your attention to Defendants' Exhibit DB, which has already been admitted into evidence, would you tell the Court, please, what that shows with regard to the percentage of new teachers with three or more years' teaching experience? A. This ranges from a low of about 18 percent to a high of approximately 24 percent.

Q. And again— A. An average would be about 20—21 percent.

Q. And what is the time period, again, covered by this exhibit? A. 1962 to 1968.

Q. So approximately 19 percent then of all the new teachers have at least three or more years' teaching experience? A. Yes.

Q. Now, handing you, Dr. Stetzler, Defendants' Exhibit DC, can you tell the Court what that shows with regard to the new teachers with advanced degrees? A. It shows that we employed teachers with Master's degrees from 1962 through 1968, a range of approximately four percent to ten percent. The last few years show [1545] an average of about nine percent or better.

Q. So, although there has been no specific emphasis on obtaining teachers with prior experience, the record indicates that a great percentage of teachers do have prior experience? A. Yes.

Q. Now, Dr. Stetzler, in connection with your duties regarding the assignment of these new teachers, when do you do the bulk of the assignments for the new teachers? What point in the year? A. Well, of course, our greatest number of vacancies occur for September, so we begin to make assignments in late June, early July. The largest number would be made, I would say, within the two or three-week period of late June until mid-July.

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Q. Now, at the time that you make these assignments, what do you have before you in the way of information regarding the teachers who are available for an assignment?

A. We use primarily a summary on the interview card. Of course, we do have the other references and transcripts available to us. We rely on the summary from the interviewer and the indications he has made on the interview card. Of course, we have the list of vacancies.

Q. Now, does this information on the interview card always show the race of the individual? **[1546]** A. Recently, almost always. Up until very recently, almost never.

Q. So there was a period of time during your tenure when you had no racial information on all teachers? A. That's right.

Q. How do you determine or how is it determined, Dr. Stetzler, the number of vacancies that you have to fill within the school system? A. This is a result of resignations, leaves of absence, and the transfer process would also enter into this where the vacancies would finally occur.

Q. Dr. Stetzler, I hand you what's been marked for identification as Defendants' Exhibit HH and ask you if you can identify it? A. This is a report put out by the Department of Personnel Services concerning resignations as—and there shows the number of years' experience the person has had and the reason for the resignation and also shows, by sex, men and women.

Q. What period of years is reflected in Exhibit HH? A. This is September, 1960, through October, 1969.

Mr. Jackson: At this time we offer Defendants' Exhibit HH.

Mr. Greiner: No objection.

The Court: It will be received.

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[1547] (Whereupon, Defendants' Exhibit HH was received in evidence.)

Q. Is this within that exhibit, Dr. Stetzler, the total each year of the resignations throughout the district? A. Yes.

Q. Would you thumb through this and indicate to the Court, please, what that total is for the various years. A. In 1962 the total would be just over—510.

In 1963, it's 445.

In 1964, it's 445.

In 1965, it's—

Mr. Brega: Doctor, I believe there is a total in the top right-hand corner.

The Witness: I'm looking in the wrong place. Here we go.

—418. They changed the place of the totals over the years.

In 1966, 420.

In 1967, 523.

And in 1968, 595—'69. There is no 1967 figure here.

Q. How are those reports received by the central administrative officer, Dr. Stetzler, regarding vacancies? A. Through a resignation card. You mean—

Q. Are they sent in by the principals—the vacancies **[1548]** in the schools? A. The individual teacher—Well, the individual teachers, of course, must send in resignation cards, requests for leave of absence or whatever. We do in the elementary schools get from each principal in about February of each year—we call it a request for faculty—

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and it does show their needs for the following year and has the teacher listed and any changes that they contemplate.

Q. Now, after you have determined what the number of vacancies you have to be filled in any one given year are, do you have certain priorities on the assignment of teachers to those vacancies? A. Well, the first thing that happens to the vacancies of course, is that we must—

Q. I'm speaking now, Doctor, only of those assignments where you are assigning a new teacher to a vacancy. A. When the vacancy list is final in September, yes, I always assign the minority teachers and the men teachers before I make any other assignments.

Q. Why is that? A. They're both priority items. We employ very few men teachers or fewer than we would like to for the elementary schools, and we have employed fewer minority teachers than we wished to in the past, so we must make these assignments with extreme care.

[1549] Q. Where, for example, would you assign a man teacher? A. Probably where there were no men teachers or where a man teacher might have been lost through resignation or transfer.

Q. Where, for example, might you assign a minority teacher? A. In the same fashion; where there probably had been no minority teachers or where a minority teacher has—Well, this would be different. We would not assign minority teachers in those schools that had some concentrations of minority teachers. So, we would look for schools that have not had a minority teacher or may have had one or two and that has decreased.

Q. Are there any other priorities on the assignment of these new teachers? A. We would then begin to look for those teachers who could probably function best in schools

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with minority youngsters, what may be described as disadvantaged neighborhoods, culturally deprived. There are a number of terms for it. And determine on a tentative basis which of our new teachers might do a fine job in those neighborhoods. Our next step there is to invite the principals of those schools to come in and review those assignments with us. Usually this happens about late June.

[1550] Q. How do you identify, in the first instance, a teacher that you feel might do well in one of these impact areas? A. From the summary at the interview, but this would be indicated through either a special program in their college work; prior experience, or experiences outside of school, Vista, Head Start, Peace Corps. These kinds of things that have given these people some experiences with these kinds of youngsters.

Q. And you indicated, I believe, that this was always reviewed with the principal before the assignment was actually made. A. The principals are invited to come review this assignment before it's final.

Q. Are there any other priorities in the teacher assignments that you take into consideration in assigning the new teachers? A. Once we have this group of schools taken care of, then it is a matter of—Well, we look, of course, at the teachers' experience and backgrounds. They apply for certain grade levels. And so we would assign them—they usually give us three choices so that this would become a priority of a—of assigning teachers to where—into the positions that they have applied.

Q. Is there an attempt on your part to assign the **[1551]** new teachers with previous experience to schools with the greatest number of new teachers? A. This would mark

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that new teacher as a prime consideration at least for assignment to a minority school.

Q. Now, you indicated earlier that—

The Court: You don't pay any attention to teacher requests at that stage, I take it?

The Witness: As teachers are employed, it is indicated to them that at the time they sign the contract we have no way of assigning them to a specific school. And so, they will be assigned in the best interests of the school system with the vacancies that exist.

The Court: But, later on, a teacher can pretty much write his own ticket, can't he?

The Witness: Later on, the teacher would have the privilege of requesting transfer through our regular transfer procedure.

【1552】 The Court: If a vacancy existed, why, he would be entitled to it?

The Witness: On a seniority basis.

The Court: All right, that's all I have.

By Mr. Jackson:

Q. You indicated earlier, Dr. Stetzler, that you attempted to assign new teachers either by their previous experience or upon the recommendation of the interviewer were those who you felt would do well in areas that you described I believe as culturally disadvantaged areas or impact areas. Are these areas identified in any other way, as, for example, through any federal programs? A. Yes, through the various titles these schools receive either additional personnel or additional materials through the supplementary appropriations of the federal government.

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Q. And it is into these schools that you are attempting to place these teachers? A. Right.

Q. Now, are you always successful—

The Court: These are what you call culturally deprived areas of the city, or these schools?

The Witness: Yes, these schools are identified by the federal government through such things as student mobility, the number of youngsters that would be on Aid to Dependent Children, these kinds of criteria.

【1553】 The Court: Go ahead.

Q. Are you always successful in making your assignments as you indicated? A. No, you finally may run out of people who have had the kind of experience that would be preferred either through their prior teaching or through their college experiences, and then you must go on to a group of people through the interviewing process that you feel would adjust well to these kinds of situations and again be successful.

Q. What about the situations in the individual schools, Dr. Stetzler? You testified that one of the requirements of your job from the beginning was to break up the concentration of minority teachers wherever they existed in terms of being consistent with the then current policies. What problems if any do you have in terms of the existing minority teachers in these schools?

The Court: You mean in transferring them?

The Witness: Yes.

The Court: To move any teachers? Schools which do not have a concentration? Go ahead.

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A. To move any teacher, once they are assigned, unless there is an administrative reason concerned with either their performance or a change in pupil population, we just don't move them without their request, so although minority teachers have the same procedure for requesting transfer, not very [1554] many of them have requested transfer unless it would be between levels, but, generally, in the same area of the City.

Q. Generally, what is the transfer policy that now prevails within the school district, Dr. Stetzler? A. This was changed. As it exists now, we publish a list of known vacancies in April.

Q. I mean, is this embodied in any written document? A. We have a negotiated agreement concerning the transfer policy, yes.

Q. And do you know or recall when that agreement first became effective? A. The first negotiated agreement would have been in—'65 or -6.

Q. I hand you Defendants' Exhibit E and ask you if you can identify that. A. Yes, this is the agreement between the School District No. 1 and the Denver Classroom Teachers Association.

Q. And is this the agreement to which you refer? A. This is November 1, 1967.

Q. Prior to the negotiated agreement, was there any written transfer policy within the school district? A. Yes, I believe Policy 1617A was the policy.

Q. And you indicated that you experienced some difficulties in minority teachers transferring out of their present school? [1555] A. Not very many request such transfer, right.

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Q. Was there any special effort put forth on your part or on the part of others to encourage these minority teachers to transfer from those schools with concentrations of minority teachers? A. Yes, from time to time I have asked the director or the executive director of our school community relations office if they could encourage minority teachers to transfer out of the culturally deprived or minority schools, and, if so, to let me know their names or help me make appointments with these people to discuss this possibility with them.

I have also had occasion from time to time to have an opportunity to discuss this with a minority teacher on my own.

Q. You mentioned the director of the community relations division. Who is that at the present time? A. Mr. Kruder.

Q. Do you know who preceded him in that office? A. Miss Mildred Biddick.

Q. Did you have this same conversation in contact with both of them? A. Yes.

Q. And what success did this bring about in terms of minority teachers transferring away from minority schools? A. Almost none. I can recall only one or two [1556] conversations as a result of this with minority teachers.

Q. Had there been during this period of time minority teachers who had transferred into schools with existing concentrations of minority teachers? A. Yes.

Q. Have you had any occasion to discuss with these teachers their applications to transfer? A. From time to time I have asked the person to reconsider this, yes, this transfer.

Q. And have you met with any success in that program? A. No.

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Q. Now, Dr. Stetzler, you indicated that your charge was to attempt to reduce the concentration of minority teachers in certain schools and to further the placement of minority teachers throughout the system. At the time you assumed your duties in 1964, how many elementary schools were there with one or more Negro teachers to your knowledge? A. Approximately 15,

Q. And do you know where these were located? A. In the central part of the city.

Q. And in 1970, today, how many elementary schools are there in the city with one or more Negro teachers? A. About 70.

Q. Pardon me? A. About 70. It varies from time to time.

【1557】 Q. So, from 15 elementary schools in 1964 to 70 today? A. Yes.

Q. Where were these schools located, Doctor? A. They are all over the city.

The Court: I would assume that means qualified minority teachers are on the increase? There perhaps is also competition to get their services?

The Witness: It is a very competitive thing to recruit a minority teacher.

Q. Dr. Stetzler, I am handing you what's in evidence as Defendants' Exhibit DG and ask you if you would tell the Court, please, generally what that describes. A. This is the percentage of Negro teachers from 1964 until 1968 in elementary schools with faculties 20 percent or more Negro as of September 1964.

Q. What are the schools noted on that exhibit, Dr. Stetzler? A. These are for Barrett, Columbine, Crofton, Ebert,

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Fairview, Gilpin, Harrington, Mitchell, Stedman, Whittier and Wyatt.

Q. And what does that exhibit show regarding the percentage of Negro teachers in those schools for the years indicated, '64 through '68? A. Let's see, in every case other than Barrett Elementary School, the percentage of Negro teachers has [1558] decreased.

Mr. Greiner: I am sorry, Your Honor, I can't quite hear.

The Court: He says that in every single school except Barrett the number of Negro teachers has decreased according to that exhibit. What's the number of that one?

Mr. Jackson: DG, Your Honor.

The Witness: It has remained—well, the '64-'68 percentage for Stedman is the same. The others have decreased except Barrett.

* * * * *

[1561] * * *

By Mr. Jackson:

Q. I believe yesterday, Dr. Stetzler, you testified that when you assumed your duties there were approximately fifteen elementary schools with one or more Negro teachers. A. Right.

Q. And these were again located where within the city? A. Primarily in the central area of the city.

Q. And what are the comparable figures for 1970? A. We have approximately 70 elementary schools that have one or more Negro teachers, and these are spread throughout the city.

Q. Now, Dr. Stetzler, directing your attention once again

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to Exhibit DG, and I believe you have a copy of that exhibit before you, do you not? A. Yes.

Q. You testified yesterday of the general decline in those particular schools of the percentage of Negro teachers. [1562] Did you in the course of your investigation make a detailed analysis of the situation at Barrett School, which is shown on that exhibit? A. Yes, I did.

Q. And would you recite again, please, for the Court the trend which is shown on that exhibit for Barrett and the years indicated? A. In 1964 Barrett was approximately 39 percent Negro teachers. It rose to a high of about 58 percent in 1967 and dropped back to about 52 percent in 1968.

The Court: In 1967 it was what?

The Witness: In 1967 it was approximately 58 percent

The Court: And what else?

The Witness: And in 1968 it dropped to 52 percent approximately.

Q. And do you know what that percentage is today? A. As of now, I believe it's right at 50 percent exactly.

Q. And do you know how many teachers there are on the staff at Barrett School? A. I do. I guess I do not. There are—

Q. I believe there are eighteen, are there not? A. Yes, there are eighteen teachers.

Q. And what did your investigation regarding the [1563] situation at Barrett disclose, Dr. Stetzler, during this period? A. During this period we made assignments of twenty-six teachers. There were twenty-six vacancies at Barrett School. Nine of the twenty-six teachers were Ne-

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gro. The remainder of them were Anglo; one Hispano. Of the nine Negro teachers assigned, five of them were assigned by their own request for transfer or by their request when they returned from leave. Four teachers then were—Negro teachers were assigned initially to Barrett, but upon receiving their first contract during that period. Of the four assigned on initial contract, one of them had come to Barrett through the first semester as a substitute teacher.

When a vacancy occurs after the beginning of a semester, we do appoint a teacher on a long-term substitute basis to complete that semester. That person was recommended by the principal to remain at Barrett and recommended for contract, and so we did that.

One other teacher would have been a fine gift for any school. He was a man who could teach fifth and sixth grades and also could teach music. This is a difficult combination to find. And in addition to that—at the time we did not have identification. I did not know this person was Negro. A third person, assigned to Barrett, had been a Denver Public School employee; had resigned; had done [1564] a considerable amount of work in reading and reapplied for contract, and we placed that man there to do a reading maintenance and improvement job. This is a special program.

Then the fourth teacher had twenty-one years' experience prior to coming to Denver; had quite a background in reading and was assigned in the teaching in reading program at Barrett.

Q. I believe you testified, Dr. Stetzler, that one you did not realize was a Negro at the time of the initial assignment, is that correct? A. That's right. We have had some considerable difficulty over the years in identification. When

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I first assumed this position there was quite a force to not identify teachers and not identify persons prior to employment because of possible discriminatory practices. Consequently, the practice of requiring a photograph with an application was stopped. We were requested a number of times to be sure that no separation of applications or any of this kind of thing was done.

Two or three years ago—I believe it's two years ago—we were even required to remove the birthplace from our application so that no identification of race might be gained from that. With this, we had concern that if we identified applicants by race, even after we had seen them, on our interview card or in any other way, we might be [1565] held to be discriminatory.

So during most of the time that I have been in this position, we have had a difficult time making sure as we placed people what their race was.

[1566] Q. Was this impetus for taking off the birthplaces and not utilizing photographs—did this come from the Denver Public Schools or from outside agencies? A. This came from outside agencies, as either requests or directives, I believe, from the Colorado Civil Rights Commission.

Q. Now, are you continuing to receive requests for minority teachers from those schools which have a high percentage of minority students in them? A. For transfer?

Q. For initial assignment or for transfer, yes. A. Yes, as we interview minority teachers they quite often indicate that their preference would be assignment to minority schools because they believe they have something to offer there. They often summarize it, "And I want to go back and help the youngsters where I grew up." Also, teachers

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assigned initially outside of the minority schools frequently after a year or so request transfer to minority schools.

Q. Dr. Stetzler, we have had quite a bit of testimony regarding teacher experience and percentages of new teachers versus teachers with three years or ten years of experience. How would you consider the new teacher of today with the new teacher of, say, five years ago? A. Well, first of all, I think we are dealing with a generation of young people with a much greater social awareness. [1567] This has become evident to me in recruiting over the past six years. Secondly, they are more apt to have been exposed during their college career to additional courses required by the college in sociology, urban problems, and this kind of thing. Also, the preparation of elementary teachers, I believe, has gotten considerably better over the years and so our new teachers coming to us each year we have reason to believe are somewhat better prepared than the teachers of five years or even four years before.

Q. How about the minority teachers? Are they good teachers? A. They are fine teachers. They meet the same requirements. All of our teachers are screened with the same requirements in mind, and they all meet those qualifications.

Q. In your discussion of Barrett School, you indicated that certain of the teachers transferred into Barrett. Would you tell us, please, what the transfer policy is, how it works? A. The transfer policy?

Q. Yes. A. We publish a list of known vacancies in April and again in May to all offices in the School District, and at that time teachers may submit a request for transfer on a regular teacher's request for transfer form. These come to our offices, are printed out from automatic data

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processing, giving the teacher's present school, the request for transfer— [1568] they may request more than one school to which they would like to go—the number of years experience that they have had and the number of years in their present position. At the time of the deadline for receiving transfers, this data is accumulated, and we work from the printout then with, of course, particularly in elementary school seniority being the prime factor, because people are equally qualified.

Q. How does seniority come to be the prime factor, Dr. Stetzler? A. This is stated in the negotiated agreement concerning transfer.

Q. Prior to the negotiated agreement, was it also contained within the Policy 1617A? A. Yes.

Q. Backing up for a moment, you indicated that you publish a list of vacancies. How are these vacancies established? A. These are established through my office when we receive the resignation from teachers or the approval for leaves of absence. Then we know on our list this needs to be a replacement for the following year.

Q. And in any given year, are these vacancies spread out throughout the city, or are they concentrated in any specific areas? A. This varies considerably from year to year.

[1569] Q. Are you familiar with the Traylor Elementary School? A. Yes.

Q. Do you recall when that school opened? A. In January of 1968.

Q. This was in the middle of the year? Did this present any particular problem regarding teacher assignments? A. Yes, midyear assignments, of course, are quite a different matter from September assignments in that we don't have the alternatives. We don't have the number of vacancies.

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Generally, we don't have the number of new teachers needed or even available. The January assignment of teachers is a quite different operation from September.

Q. How was the staff at Traylor selected? A. We determined that the fairest way to open Traylor was to publish the list of vacancies or the list of teachers needed at Traylor, as we publish the list in the spring of each year. So we did again print this list and sent it to all offices within the district and asked people to submit their request for transfer in the usual fashion.

Q. And how did you determine which teachers, assuming they had qualifications, would be assigned to Traylor? A. The same as in the spring, by seniority.

Q. Dr. Stetzler, I hand you what is in evidence as Plaintiffs' Exhibit 267, purporting to show the median years teacher experience at the minority elementary schools and at [1570] Traylor Elementary School. What does that exhibit show? A. In the twenty minority schools, the median experience would be just under four years, and at Traylor about eleven years.

Q. And you indicated that the assignments to Traylor were done on the basis of seniority? A. That's right.

Q. So the teachers that were assigned would be those teachers with the greatest experience for the particular opening that was available? A. Yes, who wished to move. Another factor, many times people might not wish to move mid year, although they might even have liked to have gone to Traylor. They feel loyalty and concern for the class they are teaching and do stay.

Q. What effort, if any, did you expend toward encouraging minority teachers to transfer to Traylor? A. We had one minority teacher who did make a request for transfer to Traylor in the position of teacher assistant. This is a

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position that is just what it says. It is a teacher assistant to the principal. This person has no classroom duties. He is assigned to the office to assist the principal with the routines and administration of the school. This requires a Master's degree and five years of experience in Denver. This person did not have the five years of experience. Also, this position is selected by the principal, so we would [1571] give the list of names for such a vacancy to the principal and ask him to make selections. But I did call the person, and on a couple of occasions, and asked if that person would not go to Traylor in a regular classroom, and he decided that he would not go to Traylor.

Q. Was the community relations office able to furnish you with any minority teachers desiring a transfer to Traylor? A. No.

Q. Now, are you familiar, Dr. Stetzler, with the opening of Montbello School? A. Yes.

Q. And when did that open? A. We opened the smaller unit in, I believe, January of 1967, and then the larger unit in September of 1967.

Q. Now, in the September opening, how were the teachers assigned to Montbello School? A. Through, first of all, the publication of a list of vacancies and the usual transfer procedure.

Q. Were you able to encourage minority teachers to transfer to Montbello? A. Yes, as we opened the larger unit at Montbello, we did open with three minority teachers.

Q. Out of a total teacher staff of— A. It would have been a total of ten, eight at the larger unit and two at the smaller one.

[1572] Q. Now, did the fact that Montbello opened in the fall of the year make your job any easier than when

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Traylor, for example, opened in the middle of the year?

A. Yes, I would say so, because the request for transfer would be greater. People that had desired to move would feel it a better time to transfer than they do in January.

Q. In your position as the director of elementary school services since 1964 was there a period of time, Dr. Stetzler, when you were responsible for elementary pupil services? A. I was responsible for making recommendations concerning pupil services, yes.

Q. And what did this involve? A. The assignment of pupils, the transfer of pupils, the administration of the boundary lines, the exceptions to boundary lines, the transportation of pupils.

Q. In what period of time did you have this responsibility? A. From '64 until reorganization began to be effective sometime in the '68-'69 school year.

Q. With regard to the assignment of pupils, Dr. Stetzler, what is the main problem with regard to assignment of students? A. Space, particular the assignment of students that we had gained through annexation over the number of years. The annexations come in sometimes rather rapidly. Housing is [1573] built rapidly. It is a continually fluid situation as you move through the years.

Q. What is your responsibility for children who are residing within an area that is annexed to Denver? A. To get them into schools generally immediately upon the effective date of the annexation.

Q. What considerations do you take into account in determining what recommendations you will make as far as the school to which these pupils will be assigned? A. Primary concern, of course, would be where is the space; secondly, where is the nearest space; and, thirdly, what does this do to the total transportation system? We usu-

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ally have conferences with the supervisor of transportation to make certain space available on buses.

Q. The question of space, Dr. Stetzler, would you tell us how you determine what space is available throughout the city? A. Through looking, first of all, at the membership reports that come to us during the year and then through conferences with those principals at those schools that would appear to have space. A primary source, of course, is the principal at the time we want to utilize the space.

Q. You say compare those schools that appear to have space? Are you familiar with the formula approach to determine rated space at schools within the Denver system? **[1574]** A. Yes.

The Court: You don't seek to transfer them necessarily to the schools nearest to them?

The Witness: From the annexations, we attempted to get youngsters into the school that would be the closest to that annexation.

The Court: Regardless of whether—I thought you said space was the primary—

The Witness: Nearest school with space, yes.

[1575] The Court: If you were following out the neighborhood school principle, you would give priority to the school that was nearest their place of residence, wouldn't you?

The Witness: That's right.

The Court: You don't do this?

The Witness: Yes.

The Court: You mean to say you don't haul them past these schools to other schools that have vacancies frequently?

The Witness: We would take them to the nearest

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school that had available space.

The Court: If it had space, then, that is the—

The Witness: Yes, right.

The Court: That's the real problem?

The Witness: Right.

The Court: Okay.

By Mr. Jackson:

Q. On this matter of space, Dr. Stetzler, you say that you are familiar with the rated capacity of the school and that you then compare the rated capacity with the membership? A. Yes.

Q. And then you discuss this with the principal? A. Right.

Q. Is the fact that a school has, for example, fifty [1576] children less than its rated capacity—does that necessarily indicate that you can select any group of fifty students and transport them or assign them to that school? A. Not necessarily. It would depend upon the time of the year when you needed to utilize that space; would depend upon the facility itself; would depend upon the grade level membership in that school. So a number of factors could enter—

The Court: The only thing I'm suggesting is that this is a compromise with the neighborhood school principle or policy. If you were adhering to that primarily, you would move them to the school closest to them and avoid busing, them, if possible.

The Witness: This would mean that the school closest would probably go on double sessions and become overcrowded and so forth.

The Court: Yes.

The Witness: Right.

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Q. Dr. Stetzler, are there neighborhood schools within these areas that are annexed? A. Well, of course, in the annexed areas there are almost no schools. Particularly, of course, they—when they are annexed, there aren't any.

Q. Is there any effort to keep children from the same general area together in terms of placing them in a [1577] school? A. Yes. This is a tremendous problem because once you start youngsters from an area to a school, we have attempted to keep them in that school. But finally, if that school runs out of space, you set a cutoff date and then youngsters moving into that neighborhood after that date are assigned to another school. It can be after two or three years that you have youngsters going to four or five schools from the same general area.

Q. What effect does the educational program of the receiving school have upon the spaces available at that school? A. Again it would depend upon the time of the year. If there are special programs in a school, even though it would be below capacity as rated, we would probably not consider it a school to receive pupils. Again, the January-September kind of concern enters into this. You mentioned fifty spaces—If this is in January, it may mean a complete relocation of the pupils within the school to take a particular area. In September this is an easier matter where youngsters are going to be reassigned to classrooms, anyway.

Q. What about the class size and pupil-teacher ratio at the school with apparently some capacity? A. This would be another factor in discussing space available with the principal. We would look at class size and [1578] pupil-teacher ratio in terms of keeping a reasonable educational program in that school, also.

Dr. Harold A. Stetzler—for Defendants—Direct

Q. Do you look also to the annexation areas as well as the area surrounding the receiving schools? A. You must also consider the potential of the annexation so that, if you start out with a few youngsters, we are aware generally of the speed within which the builder intends to erect homes and have some idea of the final potential of that area.

So we also need to look in the future to attempt to save some space in the school where those children are being received for the additional youngsters that are sure to come in.

Q. And you plan that at both ends of the line? A. Yes, by looking at the school on space and the annexation and how much potential it has.

Q. Is this busing from the annexed areas a temporary thing? Or is it a temporary thing until schools are built? A. Well, I'll say—obviously with the opening of Traylor, those youngsters were no longer transported to another school. So it is a temporary kind of thing until a school is built in that neighborhood.

Q. And would the same principle apply to the Montbello area? A. Yes. You see, they initially were transported until [1579] the unit—the larger unit was completed. And then those youngsters began to attend the Montbello unit.

Q. Approximately how many students are you required to accommodate each year from these annexation areas? A. This would vary, but something between 2,500, 3,000 youngsters must be accommodated from an annexed area in the elementary schools.

Q. And do the annexations themselves fluctuate in terms of rapidity or in terms of— A. Oh, sure.

Q. And have you experienced instances where areas have been annexed to the city and then disestablished and re-annexed? A. Yes, we have had a couple of these that I can

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recall that we didn't know whether the youngster belonged to us or not, over a period of a number of months.

Q. And you have to take that into consideration also in your planning? A. Right.

Q. Dr. Stetzler, with regard to the transfer of pupils which you testified was within your domain for a period of time, what are you speaking of when we talk about transfer of pupils? A. We do, of course, have some exceptions to the elementary boundary lines and they would be summed up where [1580] children may attend school where there is a baby-sitter. And, if a mother is working full time and does have a baby-sitter who resides in another school sub-district, the youngster may go to school from the baby-sitter's address, again depending upon the space available in that school.

We also make exceptions for medical reasons, both physical and mental health. We would make exceptions through the courts if sometimes the courts do recommend a change of school for youngsters.

Q. What about overcrowding in a particular school? A. And if a school became overcrowded, we might move, yes, some students from that school to another one.

Q. How would that process take place with regard to those schools which were overcrowded? A. Our first step would be to make sure that the present facility is fully utilized and again in conferences with the principal and other people, see if there are changes and program changes in scheduling. Changes in the use of space that would permit greater number of youngsters to remain there.

The second consideration would be mobile units or an addition.

A third consideration then would be transportation to another school.

Dr. Harold A. Stetzler—for Defendants—Direct

【1581】 Q. What about double sessions? A. Yes, earlier in 1964, '65, '66, we tried to avoid double sessions just as much as we could. Later we began to consider it also as a means of retaining youngsters in their school.

Q. Was there a general policy at that time of attempting to keep children within their own neighborhoods? A. Yes.

Q. And did this form one of the bases for your consideration of transportation, for example, or the placement of mobile units or additions? A. Well, the sequence would be to keep children in the school and to the utilization; then possible double sessions; and then mobile units or an addition, and then transportation being the last consideration.

Q. Once it was determined that it was necessary to remove some of the children from their neighborhood either because of lack of money or additions or other causes, how did you determine the school to which these children would be transferred? A. Again, look at the school nearest to their neighborhood with available space.

Q. And when you speak of space, did the same considerations apply as we discussed earlier with regard to the assignment of students from annexed areas? 【1582】 A. Yes.

Q. I take it then, Dr. Stetzler, that the determination of space is not a pure formula and mathematical approach to the question? A. No, it is not.

Q. Why is this? A. The mathematical approach to space available is just that. It's an indicator. But it really doesn't tell you the kind of programs that are being conducted within the schools. It didn't tell you very much about the facility itself. And some schools, particularly older ones, have smaller rooms than others; have other difficulties with special programs. So, it's a beginning point.

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The Court: So space is not the whole criterion?

The Witness: Not just the mathematical availability. That's right.

The Court: You had said a moment ago—indicated a moment ago that this was just about the sole criteria; availability of space. But you do look to the school; as you say, you determine from a number of criteria whether the students should go to that school, is that right, or the group of students?

The Witness: Yes, the mathematical formula would be the beginning point. Then you need to have the conference with the principal and, of course, we're aware of the [1583] schools as you work with them, the kinds of space available and the programs in the schools. But you must talk with the principals and others to make sure what the situation is at the time that you want to utilize additional space.

The Court: What do you mean? What situation?

The Witness: Well, you see, our reports are generally we get a membership report in right after school starts and another one about the 1st of October.

The Court: Well, could you just list the other criteria that you take into account.

The Witness: All right. This is one. What's happened to the available space since my last report? The school may have grown indeed from its neighborhood.

Second thing would be what special programs are going on in that school.

The Court: Like what?

The Witness: Like a special reading program, special education, team teaching. These kinds of

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programs that might—may utilize space in a different fashion.

The Court: In other words, special education?

The Witness: Special kinds of education, yes.

The Court: What else?

The Witness: The organization within that building indeed would have something to do with the space available, also, in terms of the movement of youngsters. The platoon [1584] versus the self-contained classroom.

The Court: You mean whether they move them from class to class for particular subjects?

The Witness: Yes, if you have a departmentalized school or a platoon.

The Court: Then you use a homeroom type of—

The Witness: Yes, and you can get more youngsters in that school.

The Court: You use that in the elementary level?

The Witness: In some schools, yes.

The Court: Okay. What else would be important?

The Witness: I believe those are the primary considerations.

Q. Do you also look, Dr. Stetzler, to the type of transportation available? A. Well, existing transportation.

The Court: Public transportation?

The Witness: Not for elementary schools, no. We would have to look at our own utilization of transportation and how it might fit.

Q. Is it important also to determine where the overcrowding exists in terms of the grade level or age of the

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students? A. Yes, particularly if you're going from school to school. So you must determine the school that is overcrowded. [1585] Are there grade levels that particularly are overcrowded? And then look at the receiving school to see if they can indeed receive youngsters from those grade levels or that grade level.

Q. And does this become an even more difficult problem in the secondary level in terms of where the spaces are or where the need is? A. I have not dealt with secondary—

Q. You indicated that as with the assignment of students from the annexation areas, that with the transfer of pupils, you attempt to assign the pupils, if necessary, to the closest school with available space, is that correct? A. Right.

Q. Is that same policy followed in the Northeast Denver area? A. The same consideration of utilization and so on would be followed, yes.

Q. I mean, in terms of the receiving school that would be selected? A. Yes, primarily. We make sure—Would you restate your question?

Q. Is the same policy of transporting children to the closest school with available space followed, also, in Northeast Denver? A. Primarily. There would be some exceptions to [1586] that.

Q. And what would some of those exceptions be, Dr. Stetzler? A. The available space that might be closest would be schools where—either they would be crowded—with available space, it would be schools that had a rather large number of special programs that in schools in which we have attempted to reduce class size and pupil-teacher ratio.

Q. Are you attempting also to transfer those students to the closest available Anglo school with space? A. In some cases, yes.

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Q. Dr. Stetzler, I have placed on the easel Plaintiffs' Exhibit 390 and 390-B showing the busing in the elementary school for the year 1968. I would ask you if you would leave the witness stand and come over to this exhibit for a moment.

We have had previous testimony, Dr. Stetzler, that on the base map which is Exhibit 390, the schools with red circles represent schools that are at least 51 percent Anglo that were ten or more undercapacity in 1968. The schools with blue circles are schools who had at least a pupil population that was 51 percent minority, and again, had a capacity utilization representing ten percent or more available space.

Now, would you please, for the Court and for counsel, indicate generally on this exhibit the areas that you have been discussing with regard to students from areas annexed to the City and County of Denver? A. This would be the general southeast and southwest areas of the city.

[1588] Q. And would you locate for us on that exhibit Traylor Elementary School? A. This is the Traylor School.

Q. And this exhibit does not show any busing from Traylor in 1968, does it? A. That's right.

Q. Do you recall, Dr. Stetzler, where those Traylor students were transported prior to the opening of Traylor School? A. Before Traylor opened, the youngsters from this area were transported to University Park, Cory and Asbury Schools.

Q. Would you locate those schools for us, generally? A. This is University Park, Cory and Asbury.

Q. Now, Dr. Stetzler, directing your attention to the Cowell area as shown on this exhibit, this indicates busing from the Cowell district to Johnson, which bypasses both

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an Anglo school and a minority school, does it not? A. Yes, it does.

Q. And can you tell us the reason for that? A. The Anglo school is Perry with a total capacity of about 150 youngsters. It is a very small school and really part of an administrative unit with the Westland School. The Westland School is one of the schools in which we have attempted to keep class size and pupil-teacher ratio minimal and in which there are some or have been some special programs. When we moved youngsters from Cowell, Cowell had become [1589] crowded and we utilized the space as best we could there and considered the matter of mobile units, and the site at Cowell does not lend itself—

The Court: I am just curious as to where Cowell is. Is it Barnum or some place?

A. (Continued) It is at 10th and Vrain, I believe, yes. This would be Sheridan Boulevard here. The site at Cowell is a multi-level site and did not lend itself to the establishment of enough mobile units to take care of the crowding, and it was determined then through meetings with the staff and the community that rather than go the double-session alternative that first graders would be moved. So we took, I believe, some ninety youngsters from Cowell School to Johnson School, because at Johnson there were at that time two empty rooms.

The Court: Where is Johnson?

The Witness: Johnson is at Irving and Jewell. So, we passed up Perry School. Ten percent below capacity there might mean fifteen youngsters. We passed Westland School because of our special programs and our attempts to keep teacher-pupil ratio and class size at a minimum at Westland School.

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Q. In directing your attention to the middle portion of the map, which indicates students being bused out from Elyria School with at least 51 percent minority, pupil population under capacity, to Swansea, can you tell us why that [1590] busing occurs? A. Elyria-Swansea once again is an administrative unit. It has the same boundary lines and same principal. Elyria has only five classrooms and has not had kindergarten within my experience. The kindergarten youngsters are transported to Swansea and back.

Q. You took into consideration just first graders from Cowell when those were bused to Johnson and just kindergarten from Elyria to Swansea? A. Yes, sir.

Q. Directing your attention to northeast Denver and in particular to Smith and Stedman Schools, would you locate those on the map for us, please. A. Smith School and here is Stedman School.

Q. Now, the pattern as shown for the transportation out from Smith and Stedman Schools, the receiving schools for those children are located where? A. Primarily in the south half of the city.

Q. And in the primarily Anglo portion of the city? A. Yes.

Q. And is this a specific practice, to move these students to Anglo schools? A. The Smith and Stedman transportation are again a little different.

The Court: I think that's an important question [1591] that ought to be answered directly. Do you ever take into account the presence of minorities when you are making these decisions as to transportation, and have you ever, and when did you start, if you did? I think we are all interested in this.

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The Witness: The transportation from these two schools, the primary consideration was to transport youngsters to schools of primarily Anglo attendance areas.

The Court: Was that the first time you have done that with that in mind? I have been led to believe here that the only motive you had was the existence of space plus special programs, organization and building.

The Witness: Yes, when these—

The Court: I concluded from what you said that whether they are minorities or not or whether they are in the receiving school was not considered by you.

The Witness: I would say up until the time of the Stedman, Smith and the Philips transportation, this would be true.

The Court: With the exception of these three?

The Witness: Right.

The Court: Very well.

Q. Now, this exhibit shows not only that transportation which is being conducted because of overcrowding but shows also inter-district busing, does it not, within various [1592] subdistricts? A. Yes.

Q. And would you give us some example of that? A. Well, you mentioned Traylor there. There are youngsters bused who live more than a mile from Traylor. Youngsters are transported to Brown who live more than a mile from Brown. I think there is some over here. The Asbury youngsters in the southeast corner living more than a mile are transported, and from Garden Place these youngsters are within the boundary but live more than a mile from the Garden Place School and are transported to Garden Place.

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Q. Does that type of busing bear any relationship at all to annexation or overcrowding? A. No, we have an established policy that youngsters in elementary schools living a mile or more from school are eligible for transportation to their school.

The Court: When you said that you sometimes assign to the nearest Anglo school—do you remember saying that? He asked you if you ever did and you said yes. Did you mean to say that?

The Witness: I would have to go back to the question. I am—

The Court: Well, Mr. Jackson walked up to the map and he said, “Do you sometimes make assignments in this transportation effort to the nearest Anglo school?” You said [1593] Yes.

The Witness: From northeast Denver, yes.

The Court: In other words, you had reference to Smith-Stedman-Philips, is that—

The Witness: Right.

The Court: When you made that answer?

The Witness: Yes.

Q. And the pupil population in Smith, Stedman and Philips, the pupils being transported, are you familiar with their racial composition? A. The majority of those youngsters would be Negro.

Q. And the reason for their being transported from Smith, Stedman and Philips is because those schools are overcrowded? A. Yes.

Mr. Jackson: You may examine.

*Dr. Harold A. Stetzler—for Defendants—Cross**Cross-Examination by Mr. Barnes:*

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[1598] * * *

Q. Turning your attention to your Exhibit DG, I'd like to ask you whether or not that shows whether there has been any increase in the total number of minority teachers in the elementary schools in the period 1964 to 1968? A. This does not relate to the total number of teachers.

Q. You recall, do you not, that in 1964 the percent of minority teachers in the elementary schools was nine percent? A. It was low.

Q. And that in 1968 it was still nine percent? A. I would agree that this is about right.

Q. And that is not contradicted by Exhibit DG, is it? A. No.

* * * * *

[1599] * * *

Q. You referred, Dr. Stetzler, to the use of photographs in the teachers' files. Can you tell us more specifically when that program began and when it ended? A. I don't know when it began. It was in force when I assumed the position.

At that time on the application there was a request that the person submit a picture with their application. Shortly after that, I would judge it to be in 1965 or 1966, we removed that request from the application.

Q. And do you now have photographs in the files? A. We do request a photograph after a person is employed and has signed a contract.

Q. And that—is that before or after he is assigned to a school? **[1600]** A. It could occur either way. In many cases the photograph arrives in September. We make requests for these. If the person has not complied with any

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of the requirements we do make requests to complete the application so it may occur at any time after they have signed the contract.

Q. And it may occur before he is actually assigned to the school? A. It may.

Q. Does it typically occur before he is assigned to a school? A. I don't know. Sometimes the photograph is there when we're making the assignment and sometimes they're not.

Q. You also mentioned that for some years race was identified in the file and for others it is not.

Could you specify what years the race has been identified in the file? A. The race is identified only through the photograph that was requested with the application. We have never on the application itself identified race.

Q. Does the photograph typically show up in every file? A. After we have employed the person, yes.

Q. After the person has been employed? A. Yes.

Q. And prior to the person being employed, you have **[1601]** an interview? A. Right.

Q. So you always know the race of the person prior to employment as well, don't you? A. Somebody does. The interviewer would.

Q. Whoever hires him does? A. Right. This would be in question, by the way.

Q. Are there some cases where you can't be sure? A. That's right.

Q. But not the majority of cases? A. Not the majority of cases.

Q. During what years, if any, Dr. Stetzler, while you have been in your present position has it been necessary to notify a principal in advance of the race of a teacher? A. It has never been necessary.

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Q. Has it ever been the practice? A. No. We begin by telling principals that they would receive teachers and they would receive good teachers and that they should be aware of our practice of increasingly assigning minority teachers all over the city.

* * * * *

【1606】 * * *

Mr. Barnes: I think that's right, Your Honor.

Q. I'd like to turn your attention, Dr. Stetzler, to Defendants' Exhibit E, Article 14 of the agreement between the School District No. 1 and the Denver Classroom Teachers Association, which is in evidence, and ask you if the agreement does not require the approval of the superintendent for transfer of teachers? A. Or his designee.

Q. Or his designee. And in Section 14-4-4, does it not indicate that some transfers may be requested by the administration? A. Yes, there is a procedure for administrative transfer.

【1607】 Q. And it indicates that transfers may be requested because of changes in enrollment or other unusual situations, doesn't it? A. That's right.

Q. So that in the case of a serious educational problem the superintendent might have the authority to make whatever transfers he thinks are educationally necessary, mightn't he? A. He has—according to the agreement, he has the authority to make transfers in unusual circumstances or when there is a change in pupil population within a school subdistrict.

Q. You indicated that it was the policy of the district, I think—I think you indicated that it was the policy of the district not to enforce transfers on teachers against

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their will or without their initiating the request. Is that accurate? A. That's right.

Q. But yet you have the authority under this agreement to do that, don't you? A. Under the—

Q. The superintendent does? A. Under those circumstances set forth in the agreement.

Q. Now, is there a policy of the district that probationary teachers will remain in their school, first [1608] assignment, for three years? A. Not now.

Q. Has there been in the past? A. In the past, there was a statement indicating that teachers should remain in assignment three years after their initial assignment or after transfer.

Q. Does that typically occur, still, today? A. It is no longer in the agreement.

Q. Is it the usual circumstances that a new teacher stays in her first school three years? A. With reference to the transfer, she may request transfer at any time after initial assignment. I would suggest that most teachers remain in their initial assignment for some period of time.

Q. Does the district discourage reassignment or transfer of probationary teachers? A. Not by the agreement. We have suggested to people that there are some disadvantages to them of transferring, particularly during their second or third year of probation.

Q. Is there any disadvantage to the school or to the pupil? A. In most cases, I think not.

Q. Do you recognize some advantage in teacher stability in a school? A. Given some other things, like teacher willingness [1609] and teacher empathy, teacher skill, and these kinds of things in that particular school this may be well.

Q. When there is not teacher willingness or empathy in a school, you might allow transfers—a transfer out of that

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school sooner than three years, is that correct? A. Under the present agreement, we would allow a transfer upon request under three years.

Q. And the grounds for granting that request might be that the teacher simply didn't want to be at that school?

A. As you will note, there are no reasons for transfer stated in the agreement. The reason is not a consideration.

The Court: Are transfers as readily given while a teacher is on probation as they are when he is not?

The Witness: Well, they have the seniority factor—probably more teachers on probation are not transferred at their request, you see, because they do not meet the seniority of others teachers requesting transfers.

The Court: So there is less inclination for the school board to honor a request if a teacher has not served the three years?

The Witness: We would be less inclined, yes.

By Mr. Barnes:

Q. And the purpose of that resistance is to improve the educational offering at the school, isn't it? A. Part of that would be. It's also a matter of [1610] the probationary period where we would like a person to remain in an assignment with a principal who is evaluating that person's effectiveness over a period of time long enough to indeed be able to evaluate the person.

Q. You have testified concerning your efforts in hiring of minority teachers. Can you give us some idea of how successful you have been in increasing the percentage of minority school teachers in the various levels? A. As circumstances change, we are becoming more successful as

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we learn more ways of recruiting and contacting minority teachers. We have made considerable efforts in the past few years to increase our number of minority teachers through those efforts.

Q. Plaintiffs' Exhibit 245 which is in evidence indicates that between 1964 and 1968 the percent of Negro teachers in elementary schools has remained constant at nine percent. And I think you said you didn't disagree with that, is that correct? A. Right.

Q. That same exhibit indicates that the percent of Hispano teachers between 1964 and 1968 has gone from one to two percent. Would you disagree with that? A. No.

Q. Plaintiffs' Exhibit 276 indicates that between 1964 and 1968 at the junior high level the percent of Negro [1611] teachers has gone from six to nine. Would you disagree with that? A. I have no knowledge of it. I assume it's right.

* * * * *

[1613] * * *

Q. Exhibit DG shows that there are a great many schools with 20 some percent minority teachers. There are also schools with 30 percent and more, are there not? A. Yes, there are.

[1614] Q. Such as Columbine with 33 percent in 1968? A. That's right, and I would suggest in that connection that these teachers are very fine teachers and that because there are 20 percent or more of Negro teachers in a school certainly would not indicate that it is a poor faculty. They are very fine teachers.

Q. In the assignment of teachers, isn't it a fact that the first decision about where a new teacher goes is made by your office? That is, for elementary schools? A. The initial assignment, yes.

Q. So that even though you have had difficulty transferring them out, part of the concentration which is already

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there results from their initial assignment, doesn't it? A. Those concentrations, if you want to use that term, that existed in '64 were, of course, from initial assignments.

Q. Well, then, there has been other assignments since you have been in your position of Negro teachers, haven't there, to Negro schools? A. Yes, there have.

Q. Hispano to Hispano schools? A. Yes, there have. The primary assignment practice has been not to assign minority teachers to minority schools, but we have made exceptions to that.

Q. I take it that your discussion of the Traylor experience indicates that the system was not geared up in a [1615] way to put minority teachers in Traylor; is that correct? A. We went through our usual procedure of publishing vacancies.

Q. It just illustrates, does it not, that senior teachers tend to move out of less desirable positions into the more desirable positions? A. I don't think that particular example does. Most of those teachers I believe you will find came from University Park, which is not an undesirable situation.

Q. But, few of them came from minority schools? A. They probably did.

Q. And there were no minority teachers, were there, in Traylor? A. As I testified, only one minority teacher requested transfer. We talked with that person more than once, attempting to get him to agree to a transfer to Traylor.

Q. Do you have any plan or any new way which will better accomplish the movement of minority teachers out of minority schools? A. We are beginning to talk with people about a teacher exchange. Part of the requirement would be moving from a minority school to a school out of

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that area, and part of the hope here being that we would also get people of different races to move on an exchange, so they can become acquainted with other areas, and our hope would then be that indeed they [1616] would request transfer to that school or a similar school. We are right now exploring this whole matter with two teacher committees, hoping that we can gain from them some ideas and some help that will further advance our efforts.

Q. When did that program begin? A. This is in the exploratory stages. We have contacted some teachers as a pilot kind of thing, to see what kind of considerations would need to be made before we did this on a citywide basis.

Q. Concerning the assignment of pupils, Dr. Stetzler, I think you indicated that space is the main consideration or at least that is part of what you indicated. Do you recall whether any Anglo children were ever moved into minority schools where there was space? A. I don't.

Q. If we look at Exhibit 390 and the overlay, 390-B, and identify the Montbello area out here, do you recall when that area was brought into the School District? A. Yes.

Q. When was that? A. I believe it was January 1967 when we first—no, it was before that because they were—we opened the first unit there in January '67.

Q. In January of '67, and were there any schools out there—you opened the first unit, I am sorry— [1617] A. Yes, so it must have been in September, probably September of '67, that we first began to receive youngsters from there.

Q. Where did those youngsters go? A. They went for the one semester to Palmer—

The Court: You mean they had gone prior to the opening of Montbello? Is that what you are inquiring about?

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The Witness: No.

Mr. Barnes: Yes, sir.

The Witness: Oh, yes, sir.

The Court: Do you understand?

The Witness: Yes. I know they went to Palmer, and I am not certain that some of them were transported to Teller. Palmer was the—

Q. Palmer being down south of Colfax? A. Yes.

Q. And Teller being even farther south? No, it is not. It is about equal latitudinally, isn't it? It was farther to the west. Do you recall that there were empty spaces at that time in Columbine School? A. Columbine School, of course, made empty spaces, but would be in that group of schools where we would be or have been attempting to lower the pupil-teacher ratio and the class size and to provide special kinds of programs.

Q. And one of the special programs was not integration [1618] of students, was it? A. They were educational programs designed in such areas as reading and mathematics and other kinds of material, kinds of things, at Columbine School.

Q. Was there any consideration that these children might be taken to Columbine? A. We would not consider those schools in that area because of our attempt to provide a lower pupil-teacher ratio and the special programs.

Q. Did you have anything to do or do you have any knowledge of the busing of the junior high school children out of the Montbello area? A. No.

Q. You do not know that they went past Cole Junior High School, which was empty, all the way over to the Lake—

Mr. Jackson: If the Court please, he just indicated he didn't any special knowledge of that.

The Court: Sustained.

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Q. In the identification of schools with space, does the principal have the final say as to whether or not his school has space? A. Probably not, if it came to a matter of just a final say. This is a cooperative kind of seeking between central administration and the principal. Often, they would be urged to take youngsters when they might have felt a little [1619] differently, but I guess I would say probably not the final say.

Q. What kind of a conference occurs between the administration and the principal to discuss whether or not there is space? Does he come to your office or you to his, or do you call him on the phone, or how is this discussed? A. Usually, it is a conference in an office in the central administration when we would ask the principal to bring current enrollment figures and assignments and so forth so we could look with the principal at the situation as it exists at the time.

Q. And do you discuss such things in addition to those you have mentioned as achievement gaps? A. No, sir.

Q. Do you consider such things as discipline problems? A. This is—I can't remember this being a matter of concern for a receiving school.

Q. You mean that—have you had a number of these meetings? This occurs fairly often, doesn't it? A. Yes.

Q. And that in none of these meetings, no principal ever raised the issue of—perhaps you are not saying it that strongly. Did any principal ever raise the issue of discipline or the changing character of his school? A. Not that I recall.

[1620] Q. Well, how do you explain the fact that there have not been any—or, how can you explain the fact that there have not been any transporting of Anglo students into Negro schools? A. Well, if you are talking about

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the schools designated here with the blue circles, we would not call the principal and ask him if they would receive youngsters because of the efforts that I have mentioned of reducing the pupil-teacher ratio for the special programs in those schools.

Q. You indicated with regard to Cowell busing that you had meetings with parents and representatives of the community to discuss whether or not to bus out or to go on double sessions? A. Yes.

Q. Is that kind of a meeting a common occurrence? A. Yes.

Q. Can you indicate other schools in which such sessions with parents and representatives of the community have been held? A. I remember going to, let's see, Ashgrove School, where crowding occurred, at the McMeen School prior to its addition, I remember going to the Hallett School.

Q. When was that? In 1966? A. I guess the Hallett School meeting was where they were able to come off double sessions, and the parents were so sold on double session that we met with them to try to get [1621] them to utilize the new space on regular session.

Q. Do you make a continuous effort to follow what you regard to be community opinion in these choices? A. When youngsters have to be moved or—yes, then in some fashion the principal or principal and representative from the central office would be discussing this with either PTA representatives or a meeting of the community.

Q. What do you mean, when youngsters have to be moved? A. A school becomes so crowded that decision has to be taken to remove youngsters to relieve the crowding, then there has to be communication of the parents involved.

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The Court: Excuse me, Mr. Barnes. We will take our morning recess now.

(The court recessed at 11:00 o'clock a.m.)

[1622] (Following a recess, the trial resumed at 11:22 a.m.)

By Mr. Barnes:

Q. Dr. Stetzler, I think before the recess we were discussing the offering by the district of transportation to some school communities where there was overcrowding. Do you always discuss with the parents transportation before children are in fact transported? A. Certainly, the principal would, at least.

Q. Do you always discuss mobile units with them before mobile units are put in? A. Yes. I do not, but the principal, again, or some persons from the central office would.

Q. Do you solicit their opinion or follow their choice? A. It's not always a matter of following their choice. This is not really the kind of thing that you can take a vote about and do. It's a matter of discussion with people over circumstances and what the alternatives are at the time.

Q. Do you offer mobile units to—

The Court: Let's pursue this. You mean to say you oftentimes have to decide on a policy and then you undertake to sell the parents on that policy? Is that right, because of what you regard as the alternatives?

The Witness: We would have—yes, we would have some alternatives that are impossible that the parents might prefer, but we cannot provide that. That's right.

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【1623】 The Court: And so, then, when you do institute a busing program, it is not always with the consent of the people who are bused?

The Witness: That's right. It would not always be.

The Court: So it would be mandatory busing sometimes, in effect?

The Witness: Yes.

The Court: I mean, to relieve overcrowding?

The Witness: Yes. In most cases.

By Mr. Barnes:

Q. You have had mandatory busing relieve overcrowding between Anglo schools, have you not? A. That's right.

Q. Have you ever relieved overcrowding at Carson and Knight by busing? A. Carson and Knight—

Mr. Brega: I'll object to that. I believe the facts show a great percentage of the students at Knight are bused in.

【1624】 The Court: Well, let him answer, why don't you, without any suggestions from you, you know?

A. This was a fact. At Knight School I believe you will find that at various times half the school population is transported in and that Carson School receives youngsters from a number of areas and other schools from time to time because they have not—they have had space.

Q. Where are they transported in from? A. Southeast Denver where there are no schools.

Q. Are they all transported in from annexed areas? Some of them are not, isn't that true, that some of them are

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transported from other areas in central east Denver? A. No, I don't think that's right. I think the Stephen Knight and Carson Schools have almost always received youngsters from southeast Denver.

Q. Has there ever been any of that transportation deferred to minority schools? A. These were the schools that were closest to southeast Denver with space.

Q. Did you offer those parents in those annexed areas mobile units as opposed to the transportation? A. When you don't have schools, you don't have sites on which to put mobile units, which require facilities that are in schools.

Q. You said that there are certain schools to which [1625] you would not consider transporting Anglo children because of special programs. How do you identify what those schools are? A. I would like to correct your statement. We wouldn't consider transporting pupils at all into southeast schools, primarily the ones with the blue circles on the map, because it has been our extreme effort in those schools to keep class size low, to keep pupil-teacher ratio low. They are the recipients of special programs, partially funded by federal money, and it would be in opposition to what we are attempting to do in those schools to transport additional youngsters into them.

Q. You said, I think, that you do not even contact the principals in those schools to ask them. A. That's right, because of the kinds of considerations we already have in staffing those schools and in the programs in those schools, it would be foolhardy to consider.

Q. How are those schools identified? A. They are identified primarily through—

Q. They are minority schools, are they not? A. Well, we set criteria for receiving additional staff and materials

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and programs through monies provided by the federal government under various titles.

Q. Well, are those all the schools where there are federal assistance and not other schools? [1626] A. The schools that are marked by blue on the map are not all of the schools that receive federal assistance, but these—

Q. When you are making these decisions, do you have a list of the schools that receive federal assistance in front of you to which you do not refer Anglo children? A. I wouldn't have a list. I know the schools and programs that are in them and the kinds of programs that are there, and these would not enter into our thinking.

Q. They include some schools which are not receiving federal aid, don't they, the list of schools to which you do not refer Anglo children? A. I am not sure I know what you are saying.

Q. Well, do you ever refer Anglo children to any predominantly minority schools?

The Court: Haven't we been through this before? I mean, has't he said that they don't, do not, isn't that correct?

The Witness: Yes.

The Court: In other words, Montbello is the one we were discussing, and I think we concluded from the answers that you gave that there you elected to send the children to Palmer and to Teller, because you said even though there were openings in the schools west of Colorado Boulevard, because there you had special programs and you were seeking to reduce [1627] the student-teacher ratio?

The Witness: That's right.

The Court: And this is a policy that's been followed pretty much?

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The Witness: We would have gone past the other predominantly minority schools because they are crowded.

The Court: The ones in Park Hill, you mean?

The Witness: Yes.

Q. Are all the Negro children in the minority schools in special classes, in special programs? A. No, all the youngsters in a school designated this way are in a special program.

Q. Could you add Anglos to those classes without limiting the level of attention that they would receive? A. This is not my area—it has not been the area in which I have dealt over these years. Certainly, through our department of instruction and elementary education we would not have added pupils to those schools that we had been attempting for quite some time to reduce the class size and the pupil-teacher ratio.

Q. Well, Anglo children with higher pupil-teacher ratios tend to get less attention, don't they? A. I guess I wouldn't agree with that.

* * * * *

[1634] * * *

Cross-Examination by Mr. Brega:

Q. Dr. Stetzler, in discussing Exhibit 390 and the round blue tab schools in 390, you specifically mentioned Columbine and why Columbine was not considered in the busing **[1635]** of the people from the Smith-Stedman area. You didn't mention the other schools which are in blue: Gilpin, Whittier, Crofton, Ebert, Elmwood, Fairview and Elyria.

Would you tell the Court how those schools compared to Columbine in the programs that you have and the special education that are going on in those schools? A. Well,

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these schools would have even more special programs than Columbine, particularly Mitchell, Gilpin, Ebert, Fairview. Elmwood, I believe, you mentioned, would have a greater number of programs probably over the years than Columbine.

Q. And would it be fair to say that the capacity of the schools below ten percent, but the schools are being utilized to this—to their fullest capacity according to the administration views of what should be done in these schools?

A. Yes. The special programs many times take additional space, a team teaching kind of thing; where, if you're going to reduce the pupil-teacher contact to 15 to 1 or 12 to 1, you need another room. If you're going to have such a program as we have had, an orientation room where youngsters initially, when they come to the school, are assigned to that particular room for orientation and some kind of assessment as to where they would best fit in the school and—this takes space. This room is limited or has been [1636] limited to a few pupils at a time.

Q. In other words, under the special education programs going on at the blue tab schools, the pupil-teacher ratio of 30 to 1, which we have had testimony is a general thing, then drops down to some lower figure? A. Right.

Q. So it's what? 15 to 1? Or in that area generally? Or is there a set figure? A. Class size and pupil-teacher ratios are different. But, for parts of the day it was the attempt, particularly for reading and maybe arithmetic, to get the pupil-teacher contact down to 15 to 1 or lower.

Q. In other words, you would take a class, say of 30, but in this class you would divide it—you try to divide it into two groups of 15? A. That's right.

Q. So that each would have a teacher so there would be more concentration on them? A. Right.

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Q. And this is one of the reasons that you didn't want—or the administration didn't want to bus these people into these blue tab areas? A. That's right.

Q. Now, considering these areas, they are all located in the old Denver. Are these the schools that are primarily **【1637】** classified as the poverty area under the federal program? A. Yes, called various things: target area, culturally deprived.

Q. And part of this program, I presume, is based then on the income of the students in the school? Supposedly there is some cutoff figure in that regard? A. Yes, one of the factors is the number of children receiving Aid to Dependent Children, yes.

Q. The number of children in the school? A. Right.

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【1641】 * * *

Q. How many people do you have in your interviewing that actually are here in the Denver office of the administration? A. There are three of us that take care of the majority of interviewing in our offices.

Q. As I understand it, when you went on your program in 1964, you began to enlarge the area where you recruited teachers? A. Actually, we began to enlarge that particular kind of area a year or so later.

Q. And where did you go? Down South and Southwest? A. Yes.

Q. During this period of time did you write to teacher institutions to attempt to promote interest in **【1642】** teachers for minority schools? A. We did some of this and I believe that's a directive of the 1964 study that the superintendent send a letter to a rather large number of colleges and universities indicating our concern.

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Q. Now, in your placement of the teachers in these elementary schools, do you have a special compensation for teachers who do extra work in the elementary school at these target areas or disadvantaged schools? A. Yes, and in some of them there are programs that go on either before or after school for which teachers are paid an hourly rate.

Q. And for—that's for teaching at extra times, before and after school? A. Yes.

Q. Do you have summer reading programs by these teachers in the elementary schools for these schools? A. The summer reading programs are for the total city and cover the total city so that a center will be placed or a number of centers will be placed. I believe we will have sixteen of those this summer. So that youngsters from all over the city may participate in those programs.

Q. Do you have an intercity tuition grant for elementary teachers in trying to promote their interest in these disadvantaged schools? **[1643]** A. The school district has from time to time initiated workshops with universities or colleges and also are instrumental in getting information to teachers about grants available generally through NBEA federal funds.

Q. And you would encourage the teachers to get themselves involved in this summer—in these summer programs? A. That's right.

Q. In the minority schools or the disadvantaged schools, do you employ teacher aids to help the elementary teachers? A. Yes.

Q. Tell the Court how that works and what the purpose of that is? A. Aides have been assigned to faculty for a number of reasons, primarily to relieve teachers of duties so that they could spend additional time at their teaching

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duties. Aides have been employed in the elementary schools to do such things as supervision of playgrounds and run lunchrooms.

They have been employed to actually help teachers at a grade level, prepare themselves, put up bulletin boards and this kind of thing.

They have been employed to indeed supervise youngsters and help in some ways after they have received instructions from the teachers. This kind of thing is the point of hiring lay aides.

Q. Do you also employ and staff certain of those [1644] schools with additional superintendents or assistant superintendents or principals? A. We've only got one superintendent. In some of these schools we have assigned an assistant principal when the school would not normally qualify for an assistant principal.

Q. Well, give us an example or two of this? A. We have an assistant principal at Whittier School. We have an assistant principal at Gilpen School, and we have an assistant principal at Westwood School. The initial policy of assignment of assistant principals in the elementary school was to those schools that had a thousand pupils or more. And these schools do not at present have a thousand pupils or more.

Q. Now, in the disadvantaged elementary schools you mentioned the orientation room. What's the purpose of that? A. An orientation room is established in a school that has a higher factor of pupil mobility. So they may be receiving youngsters that have attended even that current year two or three schools. And the idea is to do just what probably introduce that youngster in a personal fashion the name bespeaks, to orient the youngster to the school; to the principal and the nurse and the custodian and other

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people around the school so he feels comfortable. And also to assess his level of achievement at that point so [1645] that the orientation teacher has some idea of where this pupil may function best in that school. The youngster is assigned there from a few days to a few weeks. If achievement seems to be particularly low, the youngster will spend his time there with that teacher primarily, for instance, in reading or arithmetic, to bring that youngster as near grade level as possible, but certainly to bring that youngster to the level of some group within that grade level in the school when he is assigned and oriented to what's going on and has a better total orientation to his school situation.

[1646] Q. In other words, you attempt to put this child that comes into school in the best possible environment for him? A. That's right.

Q. Do you use team teaching in going about this process? A. This particular process is a teacher and they work, of course, in a team fashion with the other teachers in the building, discussing the assignment of the youngster, making sure the youngster is acquainted with that teacher.

Q. Do you also have special library augmentation for these type of schools and rooms? A. Yes, this room would have additional reading materials available to the teacher for instruction of these youngsters that have difficulty with reading.

* * * * *

[1648] * * *

Q. Is there a great deal of competition to obtain minority teachers at this time? A. Extreme competition.

Q. And how about with regard to the Hispano or Spanish-American? A. This is, yes, more difficult. We have found fewer of these people to interview. Fewer of them percentage-wise apparently are attending colleges and also not

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only other school systems but business and industry are recruiting, spending much time, spending their recruiting efforts, so they indeed will also interview people with an educational background and employ them for their particular business.

Q. Is it the policy of the School Board at this time that if an applicant says he would not teach in a minority school that the administration would refuse to hire him or [1649] offer him a contract, or her? A. This would be just almost tantamount to no employment, right.

Mr. Brega: You may examine.

Redirect Examination by Mr. Jackson:

Q. Dr. Stetzler, have you personally interviewed all the teachers that you have assigned during your period in this office? A. No.

Q. Do you have Exhibit 424 in front of you? A. Yes.

Q. Directing your attention to the first paragraph of that exhibit, Dr. Stetzler, does that indicate the school year for which those figures are given? A. It indicates requesting transfer at the close of the '62-'63 school year and—

Q. And that was prior to the time that you assumed your present job? A. That's right.

Q. And that was prior to the time that you received your instructions from the administration regarding concentrations of minority teachers and the assignment of new teachers? A. That's right.

[1650] Q. On cross-examination by Mr. Brega, you indicated that you had assigned or that there were assigned assistant principals to, I believe, you mentioned, Whittier and Gilpin, although they did not fit the district arithmetic criteria of 1,000 or more students. What was the reason

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for assigning those assistant principals? A. This is another attempt to give those schools where we have special programs a sufficient administrative staff to administer the programs and be as sure as we could that they were effective.

Q. You mentioned also under the current agreement between the Denver Classroom Teachers Association and the School District that you would have to have a reason for arbitrarily transferring a teacher without the teacher initiating the request, is that correct? A. That would be correct.

Q. Is there also within that agreement a grievance procedure if they disagree with your reason? A. Yes.

Q. And this is not unlike the grievance procedure in any other union or civil service? A. Where a person feels that we have not administered according to the agreement, they have a process for review, yes.

Q. One other item, Dr. Stetzler, on this question of space and how space availability is determined in any given [1651] school. Is each one of these schools in the same category? Does it have the same programs or the same considerations present? A. The receiving schools?

Q. Yes. A. Oh, look, this happens all the time, and none of these kinds of situations are precisely alike. We may be wanting to change an attendance area on December 8th and youngsters after that time go to a new school. The kinds of things that you must consider in each move often are—you do not need to sit down and discuss each item because I have an educational background, the principal does, and we are aware of the situation. Each time you do something like this, depending on the time of year and all kinds of things, it is just a different problem to solve.

Q. Is it ever possible to do it on a pure mathematical approach? A. That would make it very neat, and I would

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have a few less gray hairs if it were. No, it is not a mathematical thing. We are dealing with little kids and their education, where they are going to school.

Mr. Jackson: I have nothing further.

* * * * *

[1652] * * *

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 426 was received in evidence.)

Q. Do you see there an indication of a number of Anglo students that might be transferred from Stedman-correction, the number of Negro students that might be transferred from Stedman to any given Anglo school, in the last paragraph and the last sentence? A. Just indicates that a total of ninety additional pupils—these are not identified as to race.

[1653] Q. Doesn't your memo suggest that only three to four students should be put in a particular class in an Anglo school of these students that are discussed in that memo? A. This suggests that as in relation to Mr. Kruder, who had been working with us on the Stedman transportation. You see, this is the result of a capacity study at Stedman School where at this—prior to this time it was determined maybe there are some ways of determining capacity other than the list of rooms times thirty. The principal and the staff at Stedman were given an opportunity then to develop some other kinds of criteria, and this is the result of their indication that additional transportation would be necessary if they were to meet that total number they felt they could accommodate at Stedman.

Q. Well, this indicates that small numbers of Negro students were being bused—small numbers of students from

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Stedman were being bused to a large number of schools.

A. That's right.

Q. Would you read the last sentence in your memo? A. "There are empty rooms at Stevens and Beech Court, but the use of the rooms for thirty pupils from Stedman would require a larger number of Stedman in classes at Beech Court and Stevens than the three or four which Mr. Kruder has suggested."

Q. Do you know why three or four only were suggested [1654] by Mr. Kruder? A. Mr. Kruder had worked with us very closely through the office of school-community relations and had indicated that upon initial assignment of minority students, as we began this kind of move, that they should be—I believe he called it—well, the exposure should be probably at the rate—initially at the rate of three or four pupils per classroom.

Q. Is that the policy of the District now with regard to that busing? A. No.

Q. How long was that policy? A. I am not sure that "policy" is the word to use. This was a suggestion from a person who dealt with these kinds of matters. This was his expertise. He suggested we begin this way.

Q. Are you aware of any cases in which more than four or five or six minority students were placed in a single classroom in an elementary school? A. Yes.

Q. Are there many such cases? A. You are speaking of presently?

Q. Yes. A. Yes, I am sure there are.

Q. Is it accurate to say that presently the minority students being bused from northeast Denver are being spread [1655] fairly thin? A. This would depend on grade level and numbers going to a school. I suppose this is right.

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Lidell M. Thomas—for Defendants—Direct

【1657】 * * *

LIDELL M. THOMAS, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Please take the witness chair and give us your name and address.

The Witness: Lidell M. Thomas, 1951 South Oneida.

Direct Examination by Mr. Jackson:

【1658】 Q. Mr. Thomas, by whom are you employed? A. Denver Public Schools.

Q. And what is your present capacity? A. Presently the assistant executive director of secondary education.

Q. And how long have you been in that position? A. Since August of 1969.

Q. And how long have you been employed by the Denver Public Schools? A. Since January of 1948.

Q. And what was your first assignment with the schools? A. Teacher at South High School.

Q. And how long did you remain at South? A. I remained there as a teacher from 1948 until 1955, with a year and a half off, being recalled by the Marine Corps during the Korean war, so I was no longer a teacher after January, '55.

Q. What subjects were you teaching at South? A. Primarily science and chemistry, physics, mathematics.

Q. All right. Then, after your return from the Marines did you return to South High School? A. Yes, sir.

Q. And in what capacity? A. Well, again, I returned as a teacher. This was in 1952, and then in 1955 I became the assistant principal.

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【1659】 Q. And that was at South? A. Yes.

Q. And how long did you remain as assistant principal?
A. 1966.

Q. And then what was your assignment? A. I then became the principal at Hill Junior High School.

Q. And how long did you remain at Hill? A. For only one year, and the following year I became the principal at South High School.

Q. And you were the principal at South until your appointment as assistant executive director of secondary education in August of 1969? A. Yes, sir.

Q. Mr. Thomas, would you describe generally for the Court your duties in that position? A. Well, primarily, this is—well, obviously, I am the assistant to the executive director, but our basic job is the assisting in the day-to-day operation of the secondary schools in the Denver Public Schools, liaison between central administration and the individual high school principal and junior high school principal. We deal with personnel to a degree, budgeting, the budget allotments to the various schools, some areas of curriculum in that we assist in the development of new curriculum and the attempt to make it 【1660】 citywide in the offerings.

Q. Just so that the record will be complete, Mr. Thomas, the secondary schools are the junior and senior high schools of the district, is that correct? A. Yes, sir.

Q. Now, within the area of curriculum, generally, do you have any specific responsibilities? A. Basically, in my position I am now involved with a—there are four groups of committees that are made up both of faculty and administrators from various districts within the city. They develop, review and request deletions to certain curricular offerings or additions. These are then forwarded

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to the central instruction committee, of which I am the chairman. We review their requests and findings and then make a recommendation to the staff of the central administration that we would like to innovate a certain new curricular offering in a certain individual school or maybe in all of the junior high schools or senior high schools, so in this capacity I am involved indirectly in curriculum, yes.

Q. Is it possible to break down the general subject of curriculum into specific areas of instruction? A. Well, basically, I would say that the traditional or academic type subjects, English, social studies, math, science, would be—and this is more in recent years—this would be one facet. Another facet would be what we characterize now **[1661]** as the vocational arts, which primarily involve industrial arts, home economics and business education. Then there is another area of elective subject matter such as the—if you want to classify them, as the fine arts, language, art, music. Then there is physical education. That's kind of an entity of itself.

Q. Are there also some special programs within the general curriculum in various schools? A. Very much so, yes, both in the—I would say primarily more in the vocational arts area than would be in the academic or traditional, but there are special programs in all areas, yes.

Q. And are these the same in all schools, the special type programs? A. Not necessarily. There are many that are universal throughout the system, but there are also many very special specifics for certain individual schools.

[1662] Q. What is the philosophy behind this? A. Well, primarily you're dealing with young men, and your men especially in the secondary level, that the desire is to give them the best education that they have that is available to them, but we can have the traditional reading, writing

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and arithmetic, but we must also deal in the areas of their interest and their desires and their abilities, and as a result special programs have to be instituted in this area to assist them in completing the type of education that we think is the best for them.

Q. And this has been different at each of the secondary schools? A. Very much so, yes.

Q. Now, Mr. Thomas, how does a youngster approaching either junior high school or high school become aware of the various curriculum offerings available to him? A. Well, the normal procedure is that in the sixth grade or in the ninth grade, depending upon grade level, as they are planning to progress to the next level of education they are given a booklet, primarily a guidance booklet which gives them a listing of all the normal types of curricular offerings that are available to them, either in the junior high or senior high.

Q. Mr. Thomas, I hand you what have been marked for identification as Defendants' Exhibits HF and HG.

Mr. Jackson: Your Honor, I believe there is no [1663] objection to the authenticity of these documents.

Q. Would you please tell us what those documents are, Mr. Thomas? A. Yes, sir. The green one, HG, is a guidance handbook primarily designed for the use of junior high students and their parents. The red one is the similar type of a booklet, however, designed for senior high school students and parents.

Q. And are these the booklets currently being utilized by the District? A. Yes, they are.

Mr. Jackson: I would move the admission of those two exhibits, Your Honor.

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Mr. Greiner: No objection.

The Court: They will be received.

(Whereupon, Defendants' Exhibits HF and HG were received in evidence.)

The Court: Now, these apply to all the junior high and high schools?

The Witness: Yes, sir.

The Court: And where there are variations, I take it those books will specify what they are?

The Witness: Individual variances—

The Court: Only at South or East or Manual?

The Witness: No, sir, these are the universal **【1664】** offerings. Exceptions are not found in the individual book.

The Court: But, the cultural courses that you mentioned, that is, language and science, mathematics—do you offer identically the same courses in each of the high schools and junior highs?

The Witness: Yes, sir. I would preface it with this statement—

The Court: These are electives?

The Witness: Not all of them are elective. Well, in order to reach certain graduation requirements, they must elect certain subjects within an offering. For example, they must have a certain number of semester hours of English, but the choice of what English courses that they will elect is a combination between the parent and the pupil, and the counseling teacher as a request for a recommendation of what level is the best for them. There are some roughly 200 offerings, for example, in the senior high school booklet, and of that 200 there

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may be certain offerings that are not offered in school A but is offered in school B, and so on.

The Court: I am sorry. Go ahead.

Mr. Jackson: That's all right, Your Honor. Your Honor was anticipating my questions.

The Court: Well, I have been kind of curious about this.

Q. Is there any mention at all, Mr. Thomas within [1665] either of those guidance pamphlets of any limitations upon course offerings of any of the schools, be they junior high or senior high? A. In the booklet the only limitation, if I interpret your question, is that certain courses may not be offered every semester in each individual school because of lack of popularity, if you would like to call it that. In other words, if this is the question you're asking—felt the need for the number of students that request this certain specific course—that has some bearing on whether it will be offered or not.

Q. How is the specific curriculum or school determined each semester? A. Well, very early in the semester the counseling teachers work with the individual pupils and in a like token with the parent indicating the offerings which will be tentatively offered in this school. The pupils with their parents and the counseling teacher then elect the courses at which they feel they would like to take the following semester. These elections then are tabulated in each individual school and a grand total of those requesting each individual subject is listed. On the basis of that, then, the principal and his administrative staff develop a program, a schedule of classes which will take care of the requests of all the students. The administrator is under the problem of—if there aren't enough that elect

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a specific class, then he must work to the extent [1666] to say that “We won’t be able to offer this certain class this semester,” and those children that did elect that class then would have to review with the counseling teacher and their parents and find a substitute class for them. This is an exception rather than the rule.

Q. But the same courses that are available to all junior high schools, the same courses are available to all senior high schools? A. Yes, sir.

Q. Within this academic framework that we have been discussing? A. Right.

The Court: I think we will call a halt now, Mr. Jackson, and we will reconvene at 2:00 p.m.

You will return then, please.

The Witness: Yes, sir.

(Whereupon the trial recessed at 12:28 p.m.)

[1667]

AFTERNOON PROCEEDINGS

(The court reconvened at 2:04 o’clock p.m.; the witness Thomas resumed the witness stand.)

Direct Examination by Mr. Jackson (Continued):

Q. Mr. Thomas, just prior to the recess, we were discussing course selection and curriculum offerings in the various schools, and you indicated that after conferences with counselors and principals students made decisions as to those courses which they elected to take, primarily, I assume, the senior high level, is that correct? A. That’s right.

Q. Now, on the elective courses where the student has an opportunity to select, what guidelines are established

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in terms of whether all of the courses which are in the guidance handbook will be offered in a particular school? A. Primarily, as I stated, as the principal gets the tabbing as to the total number of students requesting a certain subject, he has to take into account if it is reaching a point as to whether it is economically feasible by way of having a teacher teach ten students in a class when you have the problem of overloading in other classes? The principal then makes a decision to evaluate whether it is proper to offer this course. If it is not, they then, the students in this smaller number would have to select a new course. Along with [1668] this, the principal has how many faculty he may have to operate his school, and in many cases in sequential courses he has to be careful to the extent that if there are 18, let's say, requesting to take a sequential course in one semester with the possibility of persons dropping out in the second semester of that sequential course, the numbers might go down, and yet he is obligated to offer this course because the boys and girls have begun a sequential course, and as a result this has some bearing on whether he decides to have the class offered that semester or not. Frequently, it has been expedient to offer a course every other semester. In other words, if children would like to take this one certain course but not sufficient in number to logically offer it this semester, he may hold off and offer it again next semester, hoping that he would have those boys and girls ask for it and then some additional, so that it would make it more economically logical to offer it. So frequently you will find many of them offered every other semester.

Q. Now, we are not talking, are we, about those courses we might classify as being the classical academic offering when we are talking about electives? A. Oh, no, in fact

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the classical academic ones, because they are a required type course, the numbers are always sufficient to offer all of these courses.

【1669】 Q. And are those the same in each of the schools throughout the system? A. Yes, sir.

Q. And within those academic areas, are all levels, and by that I mean the accelerated level as well as the regular level, taught in each of the schools? A. Yes, that's right.

Q. What happens, Mr. Thomas, if, for example, say, at Manual five to ten students elect to take Russian? A. Well, the principal has the prerogative to make his decision with his staff to either not offer the course or to offer it on the basis of seeking assistance from some other schools. For example, I am aware of the fact that in Manual there was a small number that did request this, and by working with central administration a teacher was transferred on a one-period basis and came from another high school, taught this one course, and then went back to his or her home high school, so to speak.

【1670】 Q. Now, you say that you're aware this happened. This is continuing to happen this school year A. Yes.

Q. At Manual? A. Yes.

Q. And is it happening in more than one Russian course that we made reference to? A. Yes, I believe this same thing is being done in Italian. However, it's involved with another teacher from another high school, but the same procedure is involved.

Q. So then if the students elect courses which are at that time not being offered at a particular school, there are ways in which these courses can be made available to these students? A. Another alternative to this as has been done

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in some instances, rather than have the teacher travel, we have the student travel. This is done in some cases also.

Q. Now, in the academic area from time to time people have referred to certain aspects of English, for example, as either accelerated, college level, advanced placement, referring to a higher achievement than normal. Does the Denver Public Schools system have complete control over the subject matter of those courses, the testing, the grading process? A. No, to this extent. Now, the individual teacher has the option to teach from the method by which they find [1671] the most success. However, in the ultimate, these accelerated programs are primarily designed to challenge and give the able and ambitious a better offering to educate themselves. However, the ultimate theoretically is so that in their senior year they may be taking college level courses, similar to the freshman year in college. As the result, one of the benefits derived from this is not only a better education or at least a more full education for the individual student, in many cases they are given credit upon entering college from the work that they had been doing in high school, and the method by which this is done—the college then prescribes what tests will be given at the end of the college level course in a senior year. As a result the test is written by college professors and also is scored by them.

So, the teacher in an individual school teaching it does not know the exact questions on the test. They just know the general area in which the child will be tested.

Q. And is this program presently operating in all senior high schools? A. Yes, it is.

Q. Mr. Thomas, you earlier distinguished within the curriculum field between the academic offerings, the vocational offerings and special offerings. Could you give us some

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examples of the special offerings at the senior high school level? **【1672】** A. Unique within individual high schools, you mean?

Q. Yes. A. For example, East High School is presently involved in a course called Senior Seminar, which is quite a unique approach to the normal, traditional type education in which there is a great deal of travel involved, not only in this country but in Mexico. They are studying ecology, urban problems, history, archeology to the extent that a number of them will be or have been in Mexico. They will study the Indian problems in the Southwest. They will take a trip down the Green River following Powell's expedition in making studies there. They study a governmental system here in this state.

There are presently a group involved at the State Capitol, noting how the legislature operates. This is one that is quite a unique program.

West High School has a program in which they are sending boys and girls to the University of Denver and receiving college level courses and are getting high school credits but also would be receiving college credit if they continue to go to college.

Q. Excuse me. That's the same type of program you discussed earlier with the college level courses within the high school? A. No, these are completely divorced from high school. **【1673】** They actually attend on the campus at the University of Denver and are instructed by college personnel.

Q. Go ahead. Other than that, West High School does also have a tutorial program that might be a little innovative in that they have students coming in from the University of Colorado—coming down and tutor the individual

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students right at the high school. Manual High School has quite an extensive list of special programs that are being offered uniquely there.

Q. With regard to Manual, why does it have a different type or a greater quantity of programs than the other schools? A. Well, I think it's basically from several standpoints: One, at the direction of the staff and the administration of Manual High School, seeing a felt need that the traditional type of program seemed not to be too relevant to the boys and girls, and as a result a fairly high dropout rate and poor attendance, which seemingly would be indicative if they were not offering the type of program that the boys and girls could relate with and see value in.

The community also had this similar feelings with the young boys and girls also. So, as a result, through this triangle, I would say, many innovative programs have been and are being produced now to improve the dropout rate—or to decrease it, I should say—to hope that they would retain the boys and girls, to give the boys and girls a better image and [1674] actually give the school a better image.

Q. Can you relate, please, some of those programs to us? A. Well, uniquely within this school that isn't offered at other high schools—I will go back to the D.U. program. It is similar to one at West High School. Manual has boys and girls going to arts and science programs, receiving both high school and college credits for programs taken on the campus. They also have a pre-med program going on in which actually the boys and girls are involved in programs at their own school in the traditional required type subjects and then spend three periods a day, for example, at Colorado General working with the professors, the doctors, nurses, technicians there, investigating possible vocations, professions, in the area of medicine.

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A similar program is involved in their pre-law set of classes in which the same general procedure is taken. However they are involving themselves in the actions of observing court hearings, working with lawyers, understanding their type of work in which they're involved, to see if—well, that it may be a relevant thing that they want to become a lawyer. That's the way in which they would determine what the real operations of a lawyer is and whether they are capable of doing it and actually working right with them.

Additionally, they very recently—I'm sure you saw **[1675]** in the newspapers of the building trades program in which the boys involve themselves in building a house from start to finish, and to the extent that the students drew the plans, ordered the materials, and actually erected the building. They had a corporation in which there are presidents, vice-presidents, business managers, and so forth. In other words, understanding not only in the area of building it as the—as with the typical hammer and nails, but there are many other types of duties and jobs involved.

Presently they have just completed the sale of this house to a person in the area, and now they plan to build five houses under a similar type of program.

The cosmotology program is unique in that it's the only one in the Denver high schools where the young ladies are given a complete program in cosmotology along with their regular high school program, which, at the conclusion of it will allow the girls to not only have a high school diploma but can be certified by the State under the regulations and be certified as cosmotologists.

In talking with Mr. Ward he indicated that there is a possibility that four of them upon graduation are planning

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to apply for a small business loan and go into business for themselves.

Let me just see if I have—There are some, I believe, forty-one young men and women attending part time the elementary [1676] schools in the immediate Manual vicinity, really finding out what the elementary education is about. They work as tutors. They work as teacher aids and assistants and work with the youngsters and with this desire, that this may be their area of emphasis, and this is what they might want to go on to.

In other words, Mr. Ward and his staff are trying to show avenues to these young men and women that possibly may have never been afforded them before. They don't understand what the possibilities are that exist for them, and he is trying to let me see that these possibilities are there.

[1677] Q. Do they also have a pre-engineering program?

A. Yes, sir, they have pre-engineering, which is again pretty basically like his pre-med, his pre-law, in which they go and work right in engineering concerns on part-day basis and find out what draftsmen do, what engineers do in their job, and assist. I mean, this is not just observation, but they actually are assigned duties where they are capable to assist these people to get actual indoctrination and on-the-job training.

Q. You mentioned the pre-medical program at Colorado General. This is conducted under the auspices of the University of Colorado Medical Center, is it not? A. That's right.

Q. And as a part of this program, are the students engaged in research activities at the Medical Center? A. Yes, actually they have been given at their first approach into this program an overall view of the operation of the

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Colorado Medical School, and then as they develop interest and within their area then they will somewhat specialize and work with individuals. They are planning this summer to take on a—well, actually it's a research project, in which they are going to study what—well, try to determine what causes adhesions, which as I understand it has been bothering the medical profession for years. And they are going to actually work with specialists at the C. U. Medical School and [1678] try to come up with some ideas about the cause. This would be, I would assume, pure medical research that they would be working with.

Q. Are you familiar with the filling station operated by the Manual students? A. Yes, sir, there was a rather large corporation that Mr. Ward has been working with, and they have received the use of a filling station in East Denver in which the young men are actually operating it under the guidance of instructors from Manual High School. They have their own board of directors. They must keep books, they must do the purchasing, and, obviously, they have to service the cars. As an offshoot of one of their industrial education programs, which is the automotive section, they have boys that have become quite proficient in their schooling at Manual in the area of automobile maintenance, and as a result they actually can operate under the supervision of the instructors on maintenance of automobiles as you would expect any filling station.

Q. Now, these various programs that you have been mentioning, are these programs in addition to the regular academic schedule of these students? A. Yes, sir.

Q. Has there been any transfer value, to your knowledge, of the experience of these students in the business world back to the classroom in terms of their ability to perform?

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[1679] A. Yes, I think that basically they now see, if I get the import of your question, they see a relevancy now to why they have to learn mathematics, what the values of science are, or English, because now they have seen the need and now they have a great desire to go back to the classroom and now improve themselves in areas in which they have found themselves in need. For example—also, for example, in the building trades, there is a great deal of geometry that is actually applied in building a house. If you attacked geometry from the standpoint of the traditional book-learning approach, in many cases it is found that, “I am not too concerned about a right triangle,” for example, or, how to determine the length of a hypotenuse, whereas in learning to develop the pitch on a roof, for example, there is a basic geometric method by which they develop it. And so, as they see how they need to have this on a house, it makes the geometry much more relevant and interest is therefore greatly increased.

Q. I would like to direct your attention to page 68 of Defendants’ Exhibit D, which is in evidence, otherwise known as the Gilberts Plan for Planning Quality Education, and ask you if you would advise the Court what is shown there on page 68 with regard to Manual High School. A. Yes, this is specifically headed “Manual-College High School.”

Q. Would you just generally tell us what it is? **[1680]**
A. Our present superintendent, Dr. Gilberts, in trying to develop Manual as being an outstanding school in the city and a model, proposed that Manual would have some kind of a contact with some recognized institutes of higher learning here in the state and develop a program at which there was sharing between that institution and the high school, primarily to develop the attitude in the student

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that college was for them, that they had the ability to work in this area if they had the approach from this standpoint, and basically I would say this was what Dr. Gilberts was desiring to develop.

Q. Are you aware of the present planning with regard to the operation of Manual along with Colorado State College? A. Yes, sir.

Q. Would you tell us about that program? A. About a year ago, approximately, a community—a group of persons from the community developed a committee or task force in relation to working with representatives from Colorado State College at Greeley and members of the administration both from Manual and from the central administration. Their plan was to develop a program in which both the teachers and the students at Manual would benefit, but also the faculty members from Colorado State College would benefit. The plan in essence is this, that Colorado State College has offered personnel from the School of Education to come to Manual High School to work with the students and with the teachers [1681] to improve their curricular offerings, to assist the teachers in better methods of instructing, and one of the real strong points, to contact the boys and girls and to get their understanding as to where the problems lie in Manual. For example, what they dislike and what they like about it.

Q. Is this in line with the recommendation of Dr. Gilberts in that exhibit? A. Yes, sir.

Q. In connection with that program, are college courses offered to the Manual students? A. They will be offered this present semester to the extent that they—a group will be sent actually to the campus at Greeley and work on campus in this special program. At the same time, Greeley has a need to participate in this program, too, because

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they feel that possibly they could do a better job of educating prospective teachers to come to an entire city course type school that Manual is, so they hope they may learn from their experiences coming from the college down to the high school, actually teaching the boys and girls and working with them and working with the teachers to find that they may have better methods by which they may educate their prospective teachers and gain that.

Q. The cooperative program at the University of Denver whereby students are taking courses at the University of Denver will be continued also? **[1682]** A. Yes, it is.

The Court: Under this plan, will the student composition of Manual remain about the way it is now?

A. Yes.

Q. Ultimately, Mr. Thomas is that section of "Planning Quality Education" directed to establishing Manual as the college high school for the entire city? A. Yes.

Q. Now, with these special types of programs and offerings at Manual, what effect have these programs had on factors such as attendance or the dropout rate or the attitudes within the school community? A. Well, basically, I could give you the feeling as I have discussed in talking with Mr. Ward, the principal, and also with a group of people in relation to my capacity as being a representative to the CSC-Manual High School Project, so I do have contact with them, that the image of the school, I think, has been greatly enhanced. The community is extremely eager about the various programs which are going on or are proposed at Manual. Certainly, the attitudes of the students are greatly improved. They feel, I think, that they are getting a more relevant education. It does give them a feeling that they are accomplishing a great deal

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at their school. I think it is reflected in the fact that the dropout rate has gone down at Manual in the last year and also the [1683] retention has gone up, which correlates with the dropout.

Q. What do you mean by the retention? Are you speaking about the dropouts who re-entered school? A. Right. In other words, may I go to this extent? This was one of the reasons that these various groups of persons desired to develop this program, because the dropout rate was high, and previously the students that did want to re-enter after being a dropout had the same program facing him when he did come back to school. So the only thing would be a definite change of attitude at which he would work harder to try to succeed and again maybe thinking the program wasn't very relevant it would be a little difficult for him to have this interest, and as a result, by changing the type of offering, it was the desire that they would decrease the dropout rate and also keep the boys and girls in the schools. And this seemingly for the time it has been operating is doing both of those things.

Q. What effect, if any, have these programs had upon the average daily attendance at Manual? A. It has gone up.

Q. Now, Mr. Thomas, are you aware of the percentage of Denver's high school graduates on the average who annually apply for admission into college? A. Yes.

Q. And what is that figure? [1684] A. Those are the graduating seniors in the high schools that at least indicate and make application to college, the city average, is 58 percent.

Q. Now, are you aware of the various percentages for the senior high schools in Denver for the graduates of last year? A. Yes, sir.

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Q. And could you tell us, please, what those figures are?
A. Estimated—

Mr. Greiner: Pardon me, Your Honor, but I would object unless the source of the information is identified, at least. He seems to be reading from handwritten notes.

The Court: You might lay a little foundation for this, if you will.

Q. All right, what figures are available to you in your capacity in secondary education regarding the seniors from Denver schools that go on to college? A. Well, basically, my—the source could be obtained from each individual senior high school by contacting them. However, we do make a study each year, and this information is passed to members in our pupil services portion of the central administration, and this is where I—

Q. This is a study that is made every year? A. Yes.

【1685】 Q. And pupil services maintains this information? A. Yes.

Q. And they have it for years in the past? A. Yes.

Q. Did you go to pupil services to gather the information?
A. Yes.

Q. I will ask again then if you can tell us what the percentages were from the various schools last year. A. Shall I just go down the—

Q. Yes. A. Abraham Lincoln was 48 percent. East High School, 59 percent. George Washington, 73 percent. John F. Kennedy, 74 percent. Manual High School, 58 percent. North High School, 41 percent. South High School, 51 percent. Thomas Jefferson, 78 percent, and West High School, 44 percent.

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Q. Now, I believe in the letter which you just read, Mr. Thomas, that North, South and West all had a smaller percentage than did Manual, is that correct? A. North, South, West and Abraham Lincoln.

Q. Are you aware of the racial composition of those schools last year? A. Relatively, yes.

Q. And are they all predominantly Anglo? A. I would say with the exception possibly of West, [1686] it could be very close, Anglo-Hispano. I don't know the percentage exactly.

Q. And Manual was right at the citywide average, is that correct? A. That's right.

Q. Now, Mr. Thomas, you testified earlier that you were an assistant principal at South for a period of, I believe it was eleven years, is that correct? A. Yes, sir.

Q. And were principal at South for a period of two years? A. Yes.

Q. In view of your experience as principal and your present job, have you had an opportunity to compare the Manual curriculum and offerings with the other high schools in the city? A. Yes.

Q. And how does it compare? A. Well, specifically, I would say that it compares in every aspect with any other high school and has more to offer than the other high schools.

Q. Has more to offer? A. Yes.

Q. In terms of physical resources and monies, do you know whether or not Manual received its share of those monies? [1687] A. Yes, specifically, the allotment of budgetary amounts are done on a per-pupil basis for educational equipment and materials, and this is universal throughout the city. In other words, the number of students you have, the proportional amount of money is granted.

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Q. Now, directing your attention, Mr. Thomas, to the senior high schools, we have had previously admitted the guidance handbook for the junior high school. Is there as much freedom in the junior high school for elective courses as senior high school? A. No, not to a great degree. Primarily, the junior high schools work pretty much on a block system in that most of the subject matter is required. There is not the great degree of freedom for electives in the junior high as you do in the senior high.

【1688】 Q. And by virtue of their being on the block system, the curriculum then I would assume would be almost identical in all of the junior high schools? A. Pretty much so, yes.

Q. Are you aware, Mr. Thomas, of any special programs in the junior high schools? In particular are you aware of any special programs at Cole Junior High School directed towards improving the achievement levels? A. Yes, I believe so. Cole Junior High in studying their problems in relationship to hoping to give the best education that they can for their boys and girls have studied their curricular offerings and the method by which they're doing them, and as a result have recently initiated many programs within the basic guidelines of the curricular offerings. For example, I mean, they are stressing reading as one of the achievement thrusts. Knowing that reading seems to have a very close relationship to success in high education. And, as a result, they are taking in many programs to improve or hoping to improve not only comprehension but speed in the level of reading in their students.

Q. Do you know what form this special program takes at Cole? A. Well, they have what they call a reading laboratory which is specifically designed to work with either the—they categorize it the late achiever or those that have above

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[1689] average ability and want to proceed. And this laboratory is open eight periods a day where the students may come in and work directly with teachers who are assigned in there to improve their comprehension, their speed and so forth in the reading lab.

In addition, they have a reading improvement program in the ninth grade which involves a kit—a reading kit in which they have had a great deal of success. It is an active concept, English, in which they again hope to improve the reading level and ability of the students. They have special reading classes in the seventh grade for those that are having difficulties or have indicated reading problems in which they have much more of a tutorial type reading approach with reading specialists and regular English teachers to assist. In this area where they have—are reading below expectancy, they are attempting to offer this child a two period approach in reading; putting more emphasis on hoping this will improve their abilities in the area of reading.

Q. Do you have the special emphasis on any other academic areas? A. Yes, they have the emphasis in mathematics, again involving themselves with late achievers or slower ability levels where they are attempting to make the mathematics more relevant, approaching it from a remedial standpoint, to improve their ability in the area of mathematics.

[1690] Q. Do they also have it in the science area? A. They have it in the science area. They are working in the area of social studies also in trying to develop again for those that are late achievers. This has been in operation for about three years, and it's a laboratory type thing and has been successful enough that it is now initiated in six other junior high schools in the city with the success that they seem to have had.

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They are also teaching a few specialized courses. For example, they do have Afro-American history classes in which—and a Hispano class—in which in most cases has been offered in the senior high level, and in most cases they have an urban study class in which it is uniquely the only one offered in the junior high. They are offered in the senior highs, but they are offering it in the junior highs now.

Q. Are you aware of any Cole students that are sent to Manual for courses? A. Yes, there were some that desired French, and they were sent to Manual just to take French and then returned to their own school for the rest of their courses.

Q. Does Cole in fact work closely with Manual in terms of preparing the students for the various programs available at Manual? A. Yes, I think there is very close articulation between the two schools. I think this could be for several [1691] reasons. I suppose that—well, the community is served by both these schools, so their needs are the same. The administration and the staff in the schools have the same attitudes and philosophy so that they work very closely together. There is a great deal of articulation with the fact, I would say, the principal, Mr. Morrison, at Cole is attempting to innovate programs which might even speed up these offerings at Manual because some of them will be filtered down into the junior high school to prepare them a little bit sooner before they get into Manual. Very close articulation.

Q. Are you aware of the effects of these special programs at Cole? A. Yes. I would say this, that again in speaking with Mr. Morrison who is the principal at Cole, he feels that the attitude of the community has improved greatly in relationship to their feelings of the value of Cole Junior High. The faculty has greatly improved the attitude and

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desire to work. In fact, he has indicated to me that they volunteer now to bring new programs to him, asking his okay to initiate these which I think indicates their interest. He feels there will be less turnover at Cole this year, teacher request to go to some other school. Students have a much better attitude, happier. They think that the school is a part of their community, and they have a high respect for it. The values specifically that you can indicate—Truancy is 15 percent of [1692] what it was last year. This year it's 15 percent of what it was last year. And as attendance is up 5.4 percent over last year. So, it would assume that the school must be meeting their needs to have this success.

Q. Now, you have mentioned a Mr. Morrison at Cole and a Mr. Ward at Manual. You have identified these individuals as the principals of those schools. Is that correct?

A. Yes, sir.

Q. Mr. Ward and Mr. Morrison are both Negro, are they not? A. That's right.

Q. Now, Mr. Thomas, you have indicated that although the academic offerings are the same at each and every senior high school, that the special programs do vary. Is there any way in which a student who feels that a particular course of instruction is the best for him can transfer between schools? A. Yes, this can be done on the basis if it is thought to be a bona fide reason and there is a real desire to obtain a certain type of course from one school to another, it can be done mutually between the principals of the two schools involved with pupil personnel in the central administration.

Q. As a matter of fact, to your knowledge, have students transferred into Manual for this very reason? A. Yes. This fall, I believe, the number was 22 young men and

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women that would normally have attended East High [1693] School, did attend Manual on the basis strictly because of class offering or subject offering.

Mr. Jackson: No further questions.

Cross-Examination by Mr. Greiner:

Q. Mr. Thomas, currently there are what, about 1600 students at Manual? A. I would say it's closer to about—a little less than 1500, I believe.

Q. In 1968 there were 1578 students there? A. Approximately. I have no figures.

Q. These pre-med, pre-law, pre-engineering programs which you have described, when were these instituted? A. This last year.

Q. What do you mean by this last year? This year? A. Yes, September.

Q. The 1970 school year? A. That's right.

Q. How many students at Manual are participating in the pre-med program? A. I believe that it is in the forties, I believe.

Q. Is that a program designed for twelfth graders, eleventh graders, tenth graders? A. Primarily twelfth graders.

Q. And there are forty in the pre-med program? [1694] A. Approximately. I can't give you the specifics.

Q. How many in the pre-law program? A. I can't give you the exact numbers.

Q. Can you give us a ballpark figure? A. Twenty-five.

Q. And how many in the pre-engineering program? A. Approximately the same number, twenty-five to thirty.

Q. Now, how are these children selected, Mr. Thomas? A. Purely on their own interest. This was a specific cri-

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terion; that ability had nothing to do with it. If they thought they could do it and they were interested in this, this was the method by which they applied.

Q. So you have some very low-achieving children in these courses, is that right? A. The only thing that I can give you basically is that I heard from Mr. Ward that there were fifteen involved in the D.U. program, and fourteen received A's and one received a B. What their levels were, I have no idea. College level course. I mean, they received A's in the course by the professors at D.U. There was no selectivity by way of—that you must have a certain IQ, for example, to participate in this program.

Q. Now, for example, for somebody who was interested in a pre-med program, Mr. Thomas, and this is a twelfth grader now that we're talking about, I assume, do you know what sort of—And it is also true, is it not, that for college entrance [1695] that certain courses are required to be taken in high school, is that right? A. That's right.

Q. And, for example, those would include science courses? Is that true? A. Specifically to be entered into a normal med school, yes, but not to get into arts and sciences colleges, necessarily.

Q. Well, with respect, for example, to somebody who wanted to enter into a liberal arts program, having a credit at college, he would have to have a certain amount for English in high school, is that right? A. Not necessarily.

Q. A certain level of English? A. All of them require English.

Q. And mathematics? A. Mathematics.

Q. And science? A. Not necessarily all. Most of them, I would say, require—

Q. Yes. A. —in the basic four areas, yes.

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Q. If a child had only basic science and there is such courses, is there not, in high school, basic science? A. Not specifically by that term.

【1696】 Q. It's a very low level science? A. Yes.

Q. That wouldn't be an exemption for college entrance? A. It would not necessarily rule him out of college. It doesn't necessarily have to be a laboratory subject to go to arts and science, a specific school. If you're speaking of college schools, or you're speaking of a pre-med program—in other words, specifically designed out of the arts and science,—yes, they would require a minimum of a year of chemistry and a year of physics. This is a normal minimum.

Q. Now, of the children in the pre-med program at Manual, do you know how many of these children have completed those requirements? A. May I enter this—that—

Q. Can you answer my question first? A. No.

Q. You don't know. All right. Go ahead. A. It is not the desire that if they have 25 going to the pre-med program at Manual that they're all going to become doctors. They are working in the area of nursing, in—working in the area of a possible feeling that if they do want to become a doctor—and I can specifically give you an example—one girl was investigating the nursing situation and voluntarily said she now wants to become an obstetrician. Whether she has the 【1697】 ability, I cannot say.

Q. Now, what about the pre-law program? Do all the children in the pre-law program plan on being lawyers? A. I have no idea. That is an area of their interest. This is what they want to investigate. This is one of the things this plan is desiring to do, is actually let them see what these programs are, and the typical approach is, “I want

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to be a doctor. In my senior year.” It is hoped to make the subject matter within the school relevant because they see that they have opportunities in these areas.

Q. Well, Mr. Thomas, these are twelfth graders. Isn't it a little late to start stimulating those children's interest in those programs? A. You're asking me an opinion?

Q. Yes. A. I would say it's never too late. I can give you a typical example of college seniors that haven't decided yet. The sooner the better. I would grant you I would much rather have them identify the situation at the tenth grade than as seniors. Better than that, possibly ninth or eighth grade, if they are mature enough and have a broad enough background, which is one of the reason in which Cole is trying to articulate with Manual so that they may identify in the eighth or [1698] ninth grade.

Q. Now, you mentioned the relevancy or curriculum at such schools as Manual and Cole. Do you recall that? A. Yes.

Q. What are the factors that make a given course relevant? Can you list them for us? A. Well, I would assume that the term basically would mean that the individual that is going to take these courses would see that it fits—would see that it fills the needs of that person. If I can see a reason for taking English, I have to become proficient in English to participate in my future, then it becomes relevant if I study it. To contrast it, maybe this is what I can hope to say. Many young men and women do not see the need for becoming proficient in mathematics. I can look up in a table and I can find out how much it costs and so on. The desire of making it relevant is to have them have experiences in which they see that they may not progress or attain the level that they would like to have without having this basic information. Then it

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becomes relevant because they say that I can't be a doctor if I have not had chemistry. Therefore, chemistry has more meaning for me. That's relevancy.

Q. Now, there are other inputs, are there not, Mr. Thomas, other than just relevancy as to a child's ability?

A. Absolutely.

【1699】 Q. To understand a given course? A. That's right.

Q. Or a given subject? A. Uh-huh.

Q. And as I understand your prior testimony one of the most important aspects of the child's ability to achieve is his reading abilities, is it not? A. I believe that is recognized, yes.

Q. And I take it in—that in tailoring the curricula at such schools as Manual and Cole, that you take into account the average achievement levels that are currently present in those schools, do you not? A. Yes.

Q. For example, it would be silly, wouldn't it to have at Manual High School nothing but college-bound courses?

A. Very much so.

Q. Because most of the children entering Manual could never get into college, could they, many times? A. Did you say most?

Q. That's right. A. Well, I would say that a large number of them wouldn't. Basically last year 58 percent applied, I would say a large number obviously could not be accepted in college.

Q. And one of the problems that those children have, isn't it, Mr. Thomas, is that by the time they enter the ninth 【1700】 grade at Manual they may only be reading at the seventh grade level? A. Many of them, yes.

Q. And that is the same problem you have at Cole, isn't it? By the time they enter Cole they may be reading

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two levels—two grade levels behind where they're supposed to be, is that right? A. The same in every junior and senior high school in Denver.

Q. Oh, is it in terms of proportion, Mr. Thomas? A. Not in proportion, but there are students.

Q. There are more of them in the minority schools, are there not? A. I will agree with that, yes.

Q. Now, you mentioned the dropout rate at Manual. Do you know what it is today; the cumulative dropout rate? A. By definition of "cumulative" what do you mean?

Q. Well, we have an exhibit— As opposed to the annual dropout rate. A. By that, if you mean that if a child drops and then re-enters and drops he is counted as a double dropout—

Q. You've got me. I don't know. But, do you understand what cumulative is? A. If that's what you're asking me, yes, I do understand that.

【1701】 Q. Do you know what that rate is at Manual? A. No, I don't.

Q. It's over 50 percent, isn't it? A. I believe it is.

Q. Even today? A. (No answer)

Q. Now, you mentioned the contents of courses offered at various—Let's talk first of the senior high school. Now, as I understand it in the general subject matter of a subject such as English, there are at a particular grade level, there are all sorts and types of English courses which may be offered, is that correct? A. That is right.

Q. Some may be remedial type courses? A. Yes.

Q. Some may be an average English course? Others may get into compositions, is that correct? A. Yes.

Q. And others may get into advanced literature? A. Yes.

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Q. So that the contents of these various offerings vary considerably from course to course? A. Yes.

Q. Within the general subject matter of English, is that right? **[1702]** A. Yes.

Q. Now, a child in order to graduate or to be graduated from Manual—what can you tell us about the level of difficulty—the minimum level of difficulty of the courses which that child must take in order to qualify for graduation? For example, I take it that the child need never have taken an advanced course in any subject, is that right? A. Accelerated, you mean?

Q. Right. A. That's true.

Q. Now, is it also true that you break up these courses, Mr. Thomas? Do you have a regular course and then you have what's called a modified course at the senior high school level, in academic subjects? A. In some areas of English—may I point out for example in the regular types of English, tenth grade, eleventh and twelfth grade, then they have to have them graded, regular and modified and specific courses such as contemporary literature—there's a regular and modified; American literature in most instances, it's just a regular course. There is no modified in that. So, specifically, we do have some subjects in the overall area of English in which there are graduations of ability within a certain type of subject in English.

Q. Now, that's also true in mathematics? A. Yes, it is.

[1703] The Court: Would this modified be a remedial course?

The Witness: Yes.

Q. It is for the slow learners, is it not? A. That's right.

Lidell M. Thomas—for Defendants—Cross

Q. People who are behind? A. Yes.

Q. Do you have those courses in mathematics? A. Yes.

Q. Do you have them in science? A. To a slight degree. Primarily, in science, rather than offering as English-10th grade, English-regular 10th grade, meaning English modified, a typical science course would be regular biology-special materials, which is primarily a laboratory approach, a little bit less depth in the area of biology, a little slower, which would be similar to a modified course in biology.

Q. All right, now, we have covered the three R's. What other areas of courses, Mr. Thomas, that we haven't mentioned yet are broken down into regular, modified and accelerated? A. Social studies.

Q. Social studies? A. Yes.

Q. Now, I take it, in order to be graduated from Manual [1704] a senior must have taken, for example, a certain amount of social studies, is that right? A. This is right.

Q. Can that entire requirement have been fulfilled by taking nothing but modified social studies courses? A. Yes, it could.

Q. Is that also true with the mathematics requirement? A. Yes.

Q. Is that also true with respect to the English requirement? A. Yes.

Q. The science requirement? A. Yes.

Q. So, a child who has graduated from Manual may never have even been in a regular course and is still qualified to graduate? A. No different than any other high school. They all offer the same.

Q. Now, is it also true, Mr. Thomas, that at the predominantly Anglo high schools, for example, at John F. Kennedy— A. Yes.

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Q. —Thomas Jefferson, if one examined the master schedules at those schools and compared them with Manual High School— [1705] A. Yes.

Q. —would one expect to find, for example, more sections of college calculus than one would find at Manual? A. If I could read your question, you are—the college calculus would be a wrong one. Probably only one in any school. But if I get the import of your question, you would probably find more accelerated courses at John F. Kennedy and Thomas Jefferson than you would at Manual or North.

Q. This in turn is a reflection on the demand for such courses? It varies from school to school, does it not? A. That is right.

Q. And it is also a reflection of the fact that there may be fewer children who could qualify for such courses in the minority schools, is that not so? A. Would you state that again, please?

Q. Well, for example, what does it take to get into college calculus? A. Well, to have gone through the entire accelerated program from ninth grade on. You must have had the equivalent of two full years of algebra, a year of geometry and a semester of trigonometry, which you can't get in an ordinary four years unless you do accelerate.

Q. All right, and what about getting into a college level physics class? Are they offered in some of the high [1706] schools? A. Not offered in any of the high schools.

Q. Is physics offered in any of the high schools? A. Yes.

Q. What does it take to get into that? A. A year of geometry and a year of algebra.

Q. Is there any sort of advanced biology? A. Yes.

Q. What are the prerequisites? A. To have had the

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basic year of biology, the regular biology. In order to take advanced, you must have had the basic biology course.

Q. I think you understand the import of my questions, and it is, is it fair to say that a school such as Manual, just in terms of numbers, are there fewer children at Manual who qualify for these advanced programs? A. Yes, I would say this is true.

Q. Now, Exhibits HG and HF are curricula descriptions. A. Oh—

Q. Yes. A. Yes.

Q. Is that printed each year? A. No.

Q. How often is that printed? A. Oh, I would venture to say maybe every three or [1707] four years.

Q. And what edition are we looking at there? A. I believe it is the 1967, May of '67.

Q. Do you happen to know, Mr. Thomas, how many copies of those are printed up at each printing? A. 40,000? A. Yes.

Q. And are they then distributed to every child in the school district? A. Well, every junior high school student gets one and every senior high school. Not—and they only get them one time. In other words, a tenth grader gets this. It is the desire that this follows him for the three years that he is in high school.

Q. As I understand it, those exhibits are not broken down by school or categorized by school, are they? A. No.

Q. These are the general offerings that may or may not be actually available, but at least they are tentatively offered at all the schools in the district? A. Yes.

Q. And if we wanted to find out what the elective courses were at various schools, what sort of—we wouldn't find the answer in Exhibits HG or HF? [1708] A. No, the actual class offerings would then be found in master schedules.

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Q. Now, you mentioned the question of budget allotments. Can you describe for us how it is determined, for example, how much money a given senior high school receives? A. I will try. It is pretty complicated. In fact, we are constantly trying to understand it ourselves. Basically, it is done on the basis of pupil enrollment. So much money is allotted for every child that attends that school.

Q. How much, do you happen to know, for this last school year? A. I believe \$2.75 per pupil for books and I believe \$4 per pupil for supplies, and this is I believe—

Q. What about for such things as teachers' salaries? A. Well, the school, individual school, is granted a number of teachers that they need, according to primarily, one, the number of pupils they have to instruct, but other extenuating things. If they have special programs, they are given extra personnel there. In other words, they don't have "X" number of dollars assigned to each school for teacher salaries, if this is what you are asking.

Q. Now, as I understand it, there tends to be more less-experienced teachers at these minority schools? A. You said more less-experienced?

[1709] Q. Yes. A. I would say yes.

Q. And those teachers are compensated at a lower rate of pay than are the more experienced teachers of the district, is that correct? A. Yes.

Q. There is a salary scale, is there not? A. This is true.

Q. Based on seniority? A. Yes.

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[1711] * * *

Q. All right, you mentioned the Russian and Italian programs at Manual. A. Yes.

Lidell M. Thomas—for Defendants—Cross

Q. How long have they been going on? A. Two years now. At least, this felt need was there. I cannot tell you whether there was Russian offered prior to that time or not.

Q. Are you familiar with the PAR tests? A. Yes.

Q. What is the PAR test? A. It is a test by name, "Proficiency and Review Test," which is a test that has been described by an outside agency, in which it is used as a basis of, one, of meeting—it must be passed in order to meet one of the graduation requirements for the Denver Public Schools, for a diploma.

Q. Could you tell us what subjects are tested in the PAR test? A. Basically, English and mathematics.

Q. Does English include reading ability? A. Yes.

[1712] Q. Vocabulary? A. Yes.

Q. Understanding and comprehension? A. Yes.

Q. Now, do you have any knowledge, Mr. Thomas, of the level of achievement that is reflected in that test? A. Not specifically. I know that it is a basic—it is the lowest level at which they decide to—if they fail it, then sufficient background isn't there to merit the diploma. This is the reason for the test. But, as to levels, I have no idea.

Q. Well, for example, in order to pass the PAR test, a student would have to be reading at least the sixth grade level, isn't that correct? A. It would be an assumption. There again, I—as being a principal, we gave the test. We let the experts that designed it and score it make the level. I don't know. I don't know whether it would be seventh grade or sixth grade. I would have no idea.

Q. But you know it isn't tenth or eleventh or twelfth grade, don't you? A. That is granted, yes.

Q. It is true, is it not, that there are courses offered in certain of the minority senior high schools to help prepare to take this test? **[1713]** A. I would have to ask you to go

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a little farther—if you are inferring a review course in the PAR?

Q. Yes. A. It is offered in every high school.

Q. Aren't there many more sections offered at Manual, for example, than there are at TJ? A. I haven't the slightest idea.

Q. Do you think that might be a possibility, Mr. Thomas? A. It is a possibility.

Q. Now, you said that 58 percent of the students graduated from Manual applied for college, is that right? A. Yes.

Q. How many actually got into college, Mr. Thomas? A. I haven't any idea. This was last year's figure.

Q. So you don't try to follow up on that? A. I don't know.

Q. And do you have any idea of those who actually get into college how many are able to stay in college? A. Specifically Manual in relation to any other school?

Q. Yes. A. No. I might add this. It may have some relevance to your questioning. This is also one of the special programs unique with Manual. They have a full-time counselor from the [1714] Manual High School on the Colorado University campus to do nothing but help counsel their students that have now gone on to Boulder. The prime need, in my estimation and many people's estimation, is that counseling that is given in college is not too strong. I mean, they aren't followed as closely as they are in high school, and as a result this has been developed to work with Manual students at Colorado University to assist them in getting started and staying on the ball. This is also a portion of the CSC program. They will also have this followup counseling if they attend Greeley.

Lidell M. Thomas—for Defendants—Redirect

The Court: Are you saying this is a Denver Public Schools employee?

The Witness: Yes, it is. It is a college counselor from Manual High School that is doing work on the Boulder campus to do followup work to assist working with those students.

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[1742] *Redirect Examination by Mr. Jackson:*

Q. Mr. Thomas, Mr. Greiner asked you if a student could progress through Manual taking only remedial courses or modified courses through math, science and social studies and still graduate. Could a student do the same thing at George Washington? A. Yes, sir.

Q. In fact, could a student do that at any of the high schools in Denver? A. Any of the nine high schools.

Q. I believe you have already covered this, but I want to make sure. Did you indicate that the programs at Manual and Cole are in fact pilot programs? A. Yes.

Q. Of recent origin? A. Yes.

Q. And hopefully would be implemented throughout the system if they prove successful? A. Yes.

Q. At the present time, can you tell us what the effect of these special programs at Manual and Cole have had on the motivation of the children? **[1743]** A. Well, the basis of my conversations with the administration has been it has been very good. The motivation of the students has increased. They relate to the school much more readily. Their attendance is better. As I believe indicated in one case, their estimate of themselves is better.

Q. In fact, this is directed more at giving the opportunity for equal educational opportunity to these students, is it not? A. Yes.

Lidell M. Thomas—for Defendants—Recross

Q. Now, this counseling program which goes on at the University of Colorado, this is in no sense a tutorial system, is it? A. Not whatsoever.

Q. This is not to get into the academic area, to assist in the achievement in that regard? A. No.

Q. Is this the same type of counseling that we might expect some children to receive at home through parents? A. Yes.

Q. From their own peers? A. Yes.

Q. Is there, Mr. Thomas, a program directed or one that we might classify as a vocational program at all of the senior high schools in Denver? [1744] A. Very definitely. Primarily in four basic areas, industrial arts, home economics, business education and an area called distributive education, which is primarily working in the area of salesmanship, office, working in clerical type work, and this is offered in all schools.

Q. Those are in all schools? A. Yes.

Mr. Jackson: Nothing further.

Recross-Examination by Mr. Greiner:

Q. Mr. Thomas, you said that there was a larger proportion of the modified or remedial type academic sources at the minority schools than at the predominantly Anglo and secondary schools, is that right? A. Well, I could categorize it, let's say, high school, there is really only one minority high school as such, 50 per cent or more, but I would assume where they had a high minority instance, yes, this is true.

Q. And do you think it more or less likely, Mr. Thomas, that a given elective course of an advanced nature might not have sufficient demand at Manual than, say, at GW? A. Possibility, yes.

Charles Armstrong—for Defendants—Direct

Q. Do you think the unavailability of those advanced courses coupled with the larger proportion of remedial courses has any effect on the image of the school in the [1745] A. I don't believe so, at this time, no. I believe that you will find that at Manual their image of the school is as high as any other school in the system.

Q. You didn't hear Senator Brown's testimony, is that right? A. No, I didn't.

Q. About the black community's attitude toward Manual? A. No.

* * * * *

[1748] * * *

Mr. Ris: Dr. Armstrong, please.

CHARLES ARMSTRONG, a witness called by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ris:

The Court: Give us your name and address, please.

The Witness: Charles Armstrong, 1190 South Race, Denver.

By Mr. Ris:

Q. What is your occupation? A. I work for the Denver Public Schools, Assistant Superintendent for Planning and Engineering.

Q. Dr. Armstrong, I hand you a document that's been marked Defendants' Exhibit HC. Is that a statement of your educational background and your job assignments? A. Yes, it is.

Charles Armstrong—for Defendants—Direct

Q. Is that correct? A. Yes.

Q. I hand you Exhibit HD, and what is that? A. That's a job description of the job that I am now employed in.

[1749] Mr. Ris: We offer in evidence HC and HD.

Mr. Greiner: May I inquire of counsel, Your Honor, as to whether Dr. Armstrong is being offered as an expert witness?

Mr. Ris: Yes.

The Court: I assume he is.

Mr. Greiner: In what areas? Education in general?

Mr. Ris: Education in general and in the administrative end of it.

Mr. Greiner: Your Honor, we have not been furnished with these previously. Might we take a few minutes now to look them over?

The Court: Surely.

Mr. Ris: They have copies now.

The Court: Well, we can receive these exhibits, I suppose.

Mr. Greiner: Yes, we have no objection to their receipt, Your Honor.

The Court: This is just for the purpose of saving time.

We will receive HC and HD.

(Whereupon, Defendants' Exhibits HC and HD were received in evidence.)

Mr. Greiner: Well, may it please the Court, as I understand it this witness functions in the areas of engineering **[1750]** services, the planning of new

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school facilities, the administrative supervision of additions to and remodeling of facilities, planning for new sites and additions to existing sites, establishment of pupil attendance areas. As I understood counsel's comments, he was being offered in a much broader area than those which I have just described.

Mr. Ris: Well, he has the qualifications. Whether we will ever get to ask him anything beyond that, I don't know.

Mr. Greiner: Well, we will simply cross that bridge, I guess, when we come to it.

The Court: Right.

Q. Dr. Armstrong, how long have you been employed by the School District No. 1, Denver, Colorado? A. Since 1935.

Q. How long have you been at an administrative level? A. Since 1946.

Q. At which time you were in the department of instruction, is that correct? A. Yes.

Q. And how long have you been in the planning area? A. Since 1948.

Q. And is the planning area as you have described it or as we will talk about it here generally set forth in your job description Exhibit HD? [1751] A. Yes, it is. Now, it was a little broader than that earlier.

Q. And it's now narrower by reason of the organization of the administrative staff? A. That's right.

Q. What year did that take place? A. Actually it was just this last year.

Q. Now, in planning what are there—are there two basic phases in planning? A. Yes, there are. One is to look at

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the information that is available now and to analyze it and to make decisions as to what ought to be done; and then to project data for the future, to see what may happen in the future.

Q. Look into the crystal ball? A. And we are from time to time making plans from one to ten years ahead. It's obvious that there are so many variables that enter into these decisions that it's almost impossible to plan ten years ahead or even three years ahead. Nobody can tell what is going to happen to the birth rate or the mobility of population. So, it's difficult.

Q. After you made a planning study and projected ahead various figures, at the end of the projected period have you taken a look at the actualities? A. Yes, we make continuing studies of what actually is taking place after we have made the projections. It's [1752] necessary to do it on a short-term basis.

Q. Have your projections always been accurate? A. No, they have not.

Q. Now, in doing this planning, is this a one-man job? A. No, it requires a team to do this.

Q. Is the administration under the Superintendent broken down into a few small categories or a few small in number, I should say, categories? A. Yes, really departments.

Q. And what are those basic departments? A. The basic ones, of course, planning and engineering would be one; another would be education; another would be business administration or business services; another is the—the present name is planning and budgeting. Those are the major ones, I believe. Oh, there is personnel is the other one.

Q. And in projecting ahead in the years to come, do all of these various categories have to be taken into consideration? A. Yes, all have a part to play.

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Q. And you draw on information furnished by the other assistant superintendents who head up the other departments? A. Yes, that's correct.

Q. Do you actually work with those other superintendents [1753] and are your planning projections done on a cooperative basis with them? A. Yes, very closely as among all the departments.

Q. Do you have to consider changes in the educational field? A. Yes, this is extremely important.

Q. Are there changes? A. Yes, always. There is very, very rapid change taking place in instruction and education all the time.

Q. Has it ever been static in the years you have been in the planning, since 1948? A. Not that I know.

Q. Now, with respect to the planning on buildings, site acquisitions and so forth, let's call it just generally housing of pupils and staff. Has this—has that been a static thing since the year 1948 or has there—has this been a fluid type of thing? A. It's been rapidly—a rapidly changing thing.

Q. I would like to discuss with you very briefly the matter of site acquisition, site planning, if you will, Doctor, and in determining the possible location of future buildings, for example, or locations where additions are going to be built to existing buildings, are there various factors or elements that are considered by you and the other superintendents and assistant superintendents who are going to work [1754] with you on such planning? A. Yes, there are many factors. Of course, the major two are how many children need to be accommodated, and I think we need to amplify that a little bit, and then what kind of program is going to be housed in the particular school that will be constructed. This thing of how many children is the one where there is some difficulty in assessing what these vari-

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ables are going to do. For example, birth rates in the city have a very marked effect on how many children will be accommodated. The mobility of population within the city has a very important effect, and both of these variables are difficult to assess.

Q. By mobility do you mean people coming in from outside as well as people moving from one part of the city to the other? A. Yes, in Denver from outside the city completely, and people moving out of Denver, and there are people moving about within the city itself. All of these are variables that we have to try to assess.

Q. Have there been variables in the birth rate since 1948—since World War II particularly? A. Yes, that's correct, both the birth and mortality rates. They work together, of course.

Q. And you stated another important element was what you were building for. Can you amplify that, please?

【1755】 A. Yes, the purpose of a building, of course, is to accommodate educational programs, and so we work very closely with the Division of Education to determine what kinds of programs they will be wanting to accommodate so far as they know now and also try to work with them to see what may be coming in the future so far as building needs are concerned in terms of spaces, the kind of spaces, and the amount of space.

Q. Are there matters pertaining to residence construction and annexation? A. Yes, one of the variables that has operated very markedly over the last—well, ten years particularly, has been that of annexation and residence development within the older areas of the city. In the last ten years—well, since 1960—the size of Denver has increased from approximately 75 square miles to 100. Now, in other words, a twenty-five square mile increase. Many

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of these new areas that come into Denver are undeveloped. In other words, they are vacant land. No children. And so as time goes on and the residences are constructed there, children, for example—families move in and we need to accommodate children in those areas.

It's difficult to determine what the rate of development will be for two or three reasons; one is, we do not know what the zoning will be when the thing is finally [1756] developed. We don't know what the financial situation is so far as the developers are concerned, and so it's difficult to know or to assess what numbers of children will be coming in from these annexations. There have been annexations come in that have been almost fully developed so that is relatively easy to count those children in those areas.

Q. What about obsolescence of old buildings as a factor?

A. In the older areas of the city or the existing buildings of the city of course become obsolete, not so much from a physical standpoint but from the standpoint of education obsolescence. Now, our maintenance program has operated effectively over the years and we feel that the buildings have been maintained in good physical condition, but as we mentioned before, the educational program is changing and it is important that we try to modify spaces or add spaces that will accommodate the program more effectively.

Q. Dr. Armstrong, what about the availability of capital funds? Is that one of the controlling factors that we have to face? A. In other words, it's easy enough to say that we need so many buildings or so many classrooms, but unless we have money to construct them, there is no real value in knowing what the needs are. We continue to project these even though money is not in sight.

[1757] Q. Can you tell me at the moment what the

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bonded indebtedness of the district is approximately? A. Oh, I can't exactly. I know that the 1948 bond issue has been paid off. The 1952 bond issue has been paid off, and the 1956 bond issue will be paid off in 1975.

Q. Dr. Armstrong, I hand you a little booklet that has been marked as Defendants' Exhibit HK. Do you know what that is? A. Yes, the annual publication from the Department of Information and Services of Denver Public Schools.

Q. A 1969 edition of that? A. Yes.

Q. Called Denver Public Schools Facts and Figures? A. Yes.

Mr. Greiner: No objection, Your Honor.

The Court: Very well. It will be received.

(Whereupon, Defendants' Exhibit HK was received in evidence.)

Q. I would ask you to refer to the pages referring to bond issues and state if there is reflected the information on the 1952, 1956 and 1959 bond issues? A. It's 19—yes, 1952, 1956, and the bonded indebtedness as of June 30, 1969.

Q. Could you tell us how much remains due and owing on the principal resulting from each of those issues? [1758] A. Yes, the total principal owed is \$23,897,000.

Q. On all three? A. Yes, I believe, yes, that's correct.

Q. Have you added them, Doctor? A. No, I didn't.

Q. They're stated separately there, I believe. A. This is the total, I believe. I am quite sure this is it.

Q. Yes, I guess you're right. I am sorry.

All right. Thank you. Do you recall what the estimated bonded indebtedness required under the so-called Gilberts plan is? A. The amount?

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Q. Yes. A. Of capital needs?

Q. Right. A. I don't remember the exact figure. It was something over a hundred—I can't remember.

Q. Would it be around \$125 million? A. I was going to say \$120 million. Yes, that's about right.

The Court: You're referring to the education report of Dr. Gilberts, is that right?

Mr. Ris: Yes, sir, I believe it's Exhibit D.

The Court: If the total of that were put into [1759] effect?

Mr. Ris: That's correct. Just highlighting the one figure; just if the whole thing would be put in effect; not that it's been approved or intended to be or anything of the sort.

The Court: What's the purpose of all this?

Mr. Ris: As being a very essential element in planning, the funding is one of the major things that has to be considered in any planning of the future at all. That's objective.

The Court: You mean as bearing on the actions that the school board has taken?

Mr. Ris: Yes, sir.

The Court: And its staff has taken through the years, is that right?

Mr. Ris: For example, in the last few years, why they haven't built more buildings.

The Court: What their motives were? Is that what you are coming to?

Mr. Ris: That's what I'm coming to ultimately.

The Court: They did the best they could with the limited funds?

Mr. Ris: If that's going to be conceded by everybody, I won't ask any more questions.

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The Court: I suppose that's always a problem in [1760] every unit.

Mr. Ris: It most certainly is. That's all I was trying to establish.

By Mr. Ris:

Q. In connection with such planning on site acquisition and planning additional buildings or additions—or planning new buildings or additions to existing buildings, can you take any one or two of those elements and ignore all the others, Dr. Armstrong? A. No, they are all variables, and if any one of those variables changes or operates differently it makes a difference in the long-range projection. So, it isn't possible to take any one or even two of them and make projections.

Q. Is it possible to take all of the various elements and give each of them a weight and say this weight will apply to every situation that we may consider? A. No, it isn't that easy.

Q. With respect to the site planning, Dr. Armstrong, in the years that you have been involved since 1948 has there ever been a site planned by you or by the administration for the purpose of containing minority students, meaning either Negro, Hispano, or both, in certain schools so as to keep them separate from Anglos? A. No.

Q. Now, with regard to the capacity and utilization [1761] of which there has been considerable testimony, and I don't want to beat a dead horse, Dr. Armstrong, but I would like to cover just a couple of items on this. Many of the exhibits that have been introduced into the case have been on the basis of rated capacity. That's generally been defined, I believe, as the number of classrooms times 30 for the average schools, is that correct? A. Yes, that's correct.

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Q. Now, does that necessarily depict the utilization efficiency of a particular school when it hits that particular point, being a hundred percent efficiency? A. No, it doesn't. The major reason for setting up this kind of capacity consideration is that we have some basic points from which we can move. And it is a theoretical kind of thing, but it does give us a base point. But, from that, then, we can move to adjust capacities for the kinds of programs, and after all, this is the important thing about a school building, is the kind of program that it houses. And so with that basic idea of 30 pupils per classroom and variation from that, we can then arrive at some kind of an adjusted capacity or a usable capacity or whatever the term you want to use.

Q. Is there any rule of thumb that has customarily been used by the administration of this school district with respect to a percentage of over-capacity which is within a [1762] permissible limit, for example?

Mr. Greiner: Could we have that defined as to the time period, Your Honor?

Mr. Ris: I said now and in the past has been, was my question.

Mr. Greiner: Same comment, Your Honor.

The Court: Overruled. You can cross-examine him.

A. There was a time when it was in the elementary schools, it was considered that a good educational program could be carried on in some schools, again, depending upon the program. If a school were crowded say 10 percent over or something like that. But, no hard and fast rule has ever been established.

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Q. Now, was this 10 percent over capacity a rule of thumb that was used and unless you are over that you wouldn't consider going into any new construction program or double session and so forth? A. No, it wasn't. The needs for future construction are based on these factors that I have talked about here and also whether a building is crowded in terms of the kinds of program that is being carried on. So, that 10 percent wouldn't necessarily apply all down the line.

【1763】 Q. Well, then, a reasonable utilization capacity of a building is not the same as a rated capacity on the standard formula of 30 times classrooms? A. No, it is not.

Q. All right, and you take these other factors into consideration in determining the capacity or future planning? A. Yes, we do. That's why we have maintained a close liaison with the Division of Education, because this is their responsibility, to develop the programs, and then they can help us to determine what size the building should be.

Q. All right, sir, thank you. Are you also involved in—

The Court: You are saying you need more square footage to carry on a manual arts program?

The Witness: Yes.

The Court: Then you do college preparation?

The Witness: Yes, generally I think that would be true, depending exactly on what kind of program, yes, sir.

Q. This varies also as to the number of pupils per classroom? A. Yes, it does.

Q. And is that also related to pupil-teacher ratio? A.

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Well, that affects the pupil-teacher ratio, yes, [1764] but the type of program is set up on the basis of how best the particular course or offering can be taught.

Q. Are there some instances where you have, say, forty pupils in a grade or class and you assign two teachers to that? A. Yes.

Q. Without breaking up the class? A. Yes, this would be true.

Q. So you may have one classroom with forty students and two teachers? A. Yes.

Q. But still it will be a low teacher ratio? A. Yes. A good example of that, it may not be relevant, but, in gym classes, for example, larger numbers of children can have classes in a gym, but in order to handle the larger classes more teachers are assigned.

Q. Does your responsibility also relate to establishing new boundaries after schools are open? A. Yes.

Q. And reestablishing or redesignating boundaries on existing schools? A. Yes.

Q. Do a great many of the criteria that you previously discussed with respect to site selection also refer to establishing the boundaries [1765] A. Yes, sir, they do.

Q. Are there also other factors that go into the establishment of boundaries? A. Yes, one that has been mentioned before, and that is the walking distance that the children live from the school. The size of the building, of course, enters into it.

Q. All right, and you have natural features? A. Yes, that's right, highways, the man-made features that are—make access to the school difficult or natural features such as gullies and so on that make it difficult for children to move from one place to another.

Q. Now, with regard to the creation of boundary lines

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for a new school or realignment of boundary lines for old schools, was there a period of time and up to a certain year during which racial and ethnic population figures were not taken into consideration? A. Yes, there were years—yes, before 1962, I believe, that these factors were not taken into account because the data was not available.

Q. Or was it after the Voorhees report in 1964, Doctor? A. I believe that's right. It was after that report, because we didn't have those data.

Q. And have they been taken into consideration since? A. Yes, they have.

【1766】 Q. And again with respect to all the elements that go into establishment or changes of boundaries, can any one or two be taken or isolated from all the others and put through a computer and arrive at an answer? A. No, this is not a strict mathematical process, so it isn't as simple as putting numbers into a calculating machine or computer, because there are social factors involved. We are dealing with human beings and not blocks of wood.

Q. Since you have been in planning since 1948 have there been any establishment of boundaries of new schools or realignment of boundaries for old schools which either you individually or members of the staff or the staff itself had plans for containing minority students in certain schools or to keep them separate from Anglo schools? A. No.

The Court: Just a moment, somebody said this afternoon that on no occasion in an overcrowding situation have white students been bused to a predominantly minority school. Would you agree with that?

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The Witness: I would have to think about it. I'm not sure. I just at this point—I don't know.

The Court: Let me ask you a question that might be somewhat embarrassing to you but I think it is on all of our minds. Wouldn't you hesitate because of parent reaction to send a group of white students down into the old [1767] Negro areas?

The Witness: I think what we need to do there is what—

The Court: I mean, you could anticipate a parent reaction, I suppose?

The Witness: I would suppose, or it could happen—

The Court: Would this deter you any?

The Witness: Well, it might, although I think we get almost as much reaction the other way. The reason I say that—

The Court: Well, I'm not concerned about the other way at the moment.

The Witness: Okay. I think we would need to look at the situation and talk with the parents, just as we do with any shift of boundaries or shift of assignment of students and look at all the factors involved, not just the parents' reaction, but the good of the district and so on. I think it is a little more complicated than just the parents' reaction from the group that might be moved.

The Court: I think the testimony was that they refrained from moving them into the Negro schools which were underutilized merely because they didn't want to disturb the special education programs.

The Witness: This might also apply to the situa-

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tion you just posed here and that is that probably there isn't [1768] enough room in the minority schools to accommodate these children. In other words, the same types of special education programs and so on.

The Court: Well, they hauled them quite a ways further.

The Witness: Yes.

The Court: From Montbello all the way to Teller and Palmer, which were right beyond the schools which were underutilized, and said, "Well, the reason for it was that they had these special education programs that require more space than other programs."

The Witness: Yes, I think this is part of it. On the other hand, I think, really, a simpler look at the transportation routes. Getting to Teller, for example, is pretty easy. In other words, I-70 to Colorado Boulevard and down there, and those schools, you see, are pretty close to Colorado and are accessible by transportation, whereas you know Columbine or Whittier or Gilpin are a little more difficult to get to, so this is one factor, a minor one admittedly, but we do have to look at it because of the need to utilize our transportation most efficiently, most effectively.

The Court: Well, I know, but you are always maintaining that you pick out the schools closest, regardless of whether you are transporting or whether you are walking, [1769] isn't that right, if you can?

The Witness: Yes, if we can.

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The Court: And if you have the space?

The Witness: Right, and for the same reason—

The Court: This is adhering to the neighborhood school concept in a sense?

The Witness: Yes, essentially, that's right.

By Mr. Ris:

Q. With respect to busing, does one bus just pick up one load of students and deposit that load at one school and then take up until school is out? A. No, it isn't possible to do that because of the number of children to be transported and the number of buses we have, so—well, there are really two or three programs. One is a special education program and so we transport the special education children early to utilize the buses for that purpose and then we begin to pick up children who go to the regular programs, and in cases where the bus run is short, then that bus can make as many as two runs, preferably two, more if we can, but they need—the buses need to be utilized for more than one run.

Q. Do some buses on short runs even make more than two? A. I'm sure they do, but I don't know how many.

Q. Is this in your department? A. No, this is Division of Administrative Services.

[1770] The Court: They seem to be moving pretty good whenever I see them, I will say that. They are not moving slowly.

The Witness: No, that's right. I will relay that on to Mr. Olander. He will like to hear that.

The Court: They are keeping up with the flow of traffic, I will say that.

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Q. Dr. Armstrong, in some of the past testimony, there has been reference to Dr. Holme and Mr. Ketcham as having been involved in some of the previous planning. Are both of those men deceased? A. Yes, they are.

Q. We have had a lot of testimony about Hallett and Park Hill. Again, I don't want to review all of that in detail, but I do want to ask you one thing, if I may, please.

I refer you to Plaintiffs' Exhibit 52, with particular reference to Pages 16 and 17, to which there has been previous reference made with other witnesses.

First of all, let me ask you what this exhibit is and what you had to do with its preparation? A. Well, this is a preliminary study that was prepared to the 1962 report. I believe it is Exhibit 405.

Q. All right. Now, on the face of this, it says, "For Study Only." What is the significance of that in planning? [1771] A. Well, in any kind of situation where we are trying to establish boundaries or assign children to schools, we need to look at a number of alternatives, and so this is one of the early studies which has some alternatives in it, before we finally made decisions or the board made decisions or the superintendent as to what should be done in these years.

Q. As these studies are made, are there changes made in some of the details as you go along? A. Yes, they are. From time to time. In fact, there are many changes made in all of them.

Q. Now, in addition to proposed changes that were being studied at the elementary level in the Northeast Denver area, there were apparently others in other parts of the city, were there not. A. Yes, there were many of them. As I recall, there were some 25 or 30 other situations, boundary changes.

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Q. Particularly concerned were the three pertaining to Stedman referred to on Page 16 of Exhibit 52. Would you look at that, please? A. Yes.

Q. And refer to the first three items, turning to Maps No. 10, 11 and 12, from Stedman to Smith, to Hallett, Optional Park Hill, Stedman to Park Hill, and the effective date therefor is shown as 1962, is that correct? **[1772]** A. Yes, sir, that's what's shown here.

Q. All right. Now, if you look at Page 17, you have estimated pupil membership for these schools referred to on Page 16, do you not? A. Yes.

Q. And those refer to what estimated projections would be if the proposed boundary changes had been made? A. Yes.

Q. Now, will you look particularly at Stedman there, and what did that show as to the actual membership in 1961? A. In 1961 the actual membership was 742.

Q. Could you take your pen and just underline that at that point, please? A. (Witness complied with counsel's request.)

Q. Now, if the effective date of any Stedman change was 1962, would that be reflected in the column headed "1962"? A. Yes, it will be under estimated membership.

Q. Was it so reflected? A. No.

Q. What do you show for '62? A. 750.

Q. Was it reflected in your projection for 1963? A. No.

Q. What do you show for 1963? **[1773]**A. 765.

Q. Was it reflected for 1964? A. Yes, it was.

Q. And what was your projected membership for Stedman that year? A. 651.

Q. Is there a variance between Page 17 and Page 16, your projections? A. Yes, there is.

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Q. Do you know which came first, the chicken or the egg? A. Well, I'm sure that the data on Page 16 were tabulated and studied before the numbers on Page 17.

Q. Well, which was the final recommendation then, 17 or 16? A. Page 17. The data on Page 17 reflects what went into the final report.

Q. And somehow or other the data on 16, were not changed to reflect that? A. No, that's right. We normally didn't go back and revise the studies. We—

Q. All right. On Page 17, the four years, the estimated membership for '61, '62, '63 and '64 for Stedman. I think you already underlined the '61 A. Yes.

[1774] Q. Would you underline the other three years, please? A. Yes.

All right. '62, '63 and '64.

Q. Right, and on Page 16, the 1962 effective dates as to Stedman, would you underline those three, please, for emphasis? A. (Witness complying with counsel's request.)

Q. Now, Dr. Armstrong, at the time that you make a study such as this, do you keep a workbook, looseleaf book? A. Oh, yes.

Q. And have you verified these figures on 17 from your workbook? A. Yes, I have.

Q. I hand you what has been marked as Exhibit CE, and would ask you to look at Page 3 of that and would further ask you if that is your work sheets from which the items on Page 17 of Exhibit 52 were ultimately prepared? A. Yes, that's correct.

[1775] Q. So that this Exhibit CE—that's your original source document for Exhibit 52? A. This is 52?

Q. Yes. A. Yes, they are the data that are incorporated here.

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Mr. Ris: We would offer Exhibit CE.

The Court: May I look at that 52?

Mr. Ris: Yes, sir.

Mr. Greiner: No objection, Your Honor.

The Court: It will be received.

(Whereupon, Defendants' Exhibit CE was received in evidence.)

Q. Dr. Armstrong, in both 1962 and 1964, what was the policy of the district with respect to the making of elementary school changes? Was that a matter for formal board action? A. No, it was not. It was the responsibility of the superintendent.

The Court: You mean on the elementary schools?

Mr. Ris: Yes, sir.

Q. The board did take formal action on secondary school changes, did it not, at that time? A. Yes.

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【1780】 * * *

Mr. Ris: Yes, sir. Before I call Dr. Armstrong there are a couple of court matters that ought to be on record. With respect to the daily transcript that was delivered this morning, I refer to page 1773, on line 7, in reference to "Is there a variance between page 17 and page 18." This should be with reference to "page 17 and page 16." And I would ask that that be—I mentioned this to Mr. Greiner, and he has no objection.

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

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Mr. Ris: And the same correction should be made at line 15 and also line 18. The "18" should read "16."

The Court: All right. We will change 18 to 16 on each of those lines.

Mr. Ris: All of our discussion at that point was on page 16 and 17. I may have misspoken, but certainly that was the intent of the examination.

Any objection?

Mr. Brega: No objection.

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[1781] * * *

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Mr. Ris: Yesterday the Court requested that we **[1782]** obtain figures concerning the voluntary open enrollment figures for Manual, for the first semester -1969-70 school year. We have gotten from the school records such figures for both the limited open enrollment, which is a carryover from those who were in LOE originally and even though that was superseded by VOE, those who had already made a change, as the Court will recall, were permitted to carry on. So, I have one exhibit consisting of two sheets, one pertaining to limited open enrollment for the fall semester of 1969 and the second sheet being the voluntary open enrollment. So I will hand it to the Court at this time, Exhibit HI.

Mr. Greiner: Your Honor, I believe that we have already had marked for identification as an intervenor's exhibit I, the full report on VOE.

Mr. Creighton: That's Exhibit B.

Mr. Brega: I believe it's in evidence.

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Mr. Greiner: Which I think is a little more complete.

The Court: Is that 1969-70, too?

Mr. Brega: Yes.

The Court: We will take this in evidence then.

(Whereupon, Defendants' Exhibit HI was received in evidence.)

Mr. Ris: Dr. Armstrong, please.

Direct Examination by Mr. Ris (Continued) [1783]

Q. Dr. Armstrong, when we recessed yesterday I think we discussed that basically during the period of time that we were discussing the changes in the elementary school boundaries that these were made by the Superintendent as an administrative matter and then reported to the Board of Education, is that correct? A. That's correct.

Q. That secondary school boundaries were actually made by formal resolution or action of the Board of Education itself? A. Yes.

Q. May I ask you whether the administration—whether the Superintendent was making the changes at the elementary level or whether the Board was making the changes at the secondary level, were studies invariably done with respect to those changes in advance? A. Yes, they were.

Q. Were the studies basically the same type of studies? A. Yes.

Q. With respect to your planning for construction of a new school building in an area, you previously indicated that you projected future student membership for some years ahead, is that correct? A. Yes.

[1784] Q. And that's one of the elements you considered among various other elements? A. Right.

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Q. Now, if you project a figure of future membership, do you always build or customarily recommend building to that figure. A. Not to the peak estimate of eventual enrollment. We have found—and this is generally true I think in other school districts—that the membership in schools in new areas tend to increase up to a peak and then begin to taper off, to fall back to an extent. And the ordinarily accepted figure for this decrease in membership over the eventual life of the school is about 85 percent of the peak enrollment. So rather than build schools to what we think the peak enrollment may be and then when the enrollment drops off have a vacant space available, we feel it is better to build to about 85 percent of what we think the peak enrollment will be.

[1785] Q. Did such a consideration go into the Barrett building? A. Yes, it goes into the consideration of all of the buildings that we construct.

Q. Dr. Armstrong, with respect to the junior high boundary changes in 1962 involving Cole, Morey and Byers, you will recall we have had considerable testimony on that. A. Yes.

Q. Prior to that change, you had made a substantial study of numerous boundaries and numerous schools, had you not, which is represented by Plaintiffs' Exhibit 405? A. Yes, throughout the city.

Q. In that did you make certain projections as to your best estimate of what the future pupil membership would be of the various schools involved in 405? A. Yes.

Q. Was that true also as to Morey? A. Yes.

Q. And if you will look at page 31 of Plaintiffs' Exhibit 405, pertaining to junior high schools, and estimated pupil membership with the proposed changes if adopted, of course, does that give your projections as to Morey, to the best of your ability at that time? A. Yes, it does.

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Q. And what was your 1961—first of all, what was your [1786] adjusted building capacity for Morey at that time? A. 1,170.

Q. What was the '61 actual membership as shown? A. 894.

Q. What was your projection for 1962? A. 1,004.

Q. And what was it for 1965? A. It increased to 1,073.

Q. Dr. Armstrong, would you just take your pen on page 31 and underline the word "Morey" and just run your line clear across on your projection for emphasis?

(Witness complied with counsel's request.)

Q. So, subsequently, in the years that followed, if it developed that the Morey population did not go as high as your projection, that would represent hindsight, or, rather, foresight at this point in time? A. Yes, it is impossible to assess all of the variables that go into these projections.

Q. In arriving at the figures in 405, were any racial figures taken into consideration at that time? A. No, they were not. It was strictly on the basis of building capacity and numbers of children.

Q. Did you have at that time any figures available to you giving the racial or ethnic numbers of various schools referred to in Exhibit 405? [1787] A. No, we did not.

Q. Were such figures available to you in your planning in 1948 when you went into the planning end of it until 1964 with the possible exception or with the exception of the new Manual? A. They were not available.

Q. Now, Dr. Armstrong, I would next direct your attention to the situation concerning which you have had some testimony pertaining to Ashland Elementary School, Boulevard and Brown Elementary School. Now, Ashland is on West 29th Avenue, is that correct? A. Yes.

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Q. And do you remember the approximate cross street, Bryant or Clay? A. No, I don't remember. It is in that general area.

Q. And Boulevard is on Federal Boulevard in the 2300 block? A. Yes, that's correct.

Q. And Brown is between Julian and Lowell in the 2500 block? A. Yes.

Q. Brown is the newest of the schools among those three? A. Yes.

Q. Now, Boulevard had an old school and a new addition, is that true? [1788] A. Yes, there were two sections.

Q. Two sections, all right. Was the old section one of the oldest schools in the city? A. Yes, it was.

Q. Was there any intent on the part of the District to phase out the old section and close it out? A. Yes, that was one of our proposals.

Q. Did that have anything to do with the 1961 boundary changes? A. Yes, it did, because that part was phased out.

Q. So, with that change, what effect would that have on the pupil membership in Boulevard? A. Well, it would mean the pupil membership would have to be decreased in some way to fit the building capacity.

Q. I hand you what has been marked as Defendants' Exhibit CM and ask you if those are also notes from your personal work book. A. Yes, they are.

Mr. Greiner: We have no objection, Your Honor, to CM.

The Court: All right.

Q. Does this reflect the projections on pupil membership in those three schools among others as between '61 and '62 and on to '66? A. Yes.

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[1789] Q. What does that reflect as to Boulevard? A. Well, it shows that the capacity of Boulevard was 375 and the actual membership in 1961 was 503 pupils.

Q. What was projected into '62 and thereafter? A. The projection for Boulevard was that the number of pupils would increase in 1962 to 538; '63, 561; and 577, 589, and up to 601 by 1966.

Q. Did each of those years also reflect taking off 150 pupils? A. Yes.

Q. Is that what is contemplated to be transferred to Brown Elementary School? A. That's correct.

Q. And is the same 150 figure reflected in the Brown projections for 1962? A. Yes, in the next entry, just below this.

Q. If you will wait until I finish my question, otherwise the reporter has us both talking at the same time, Dr. Armstrong. A. Sorry.

Q. At the time of this change between Boulevard and Brown, the maps that have been introduced also show an irregular section transferring or a boundary change from Ashland to Boulevard in the area between the Platte River and the Valley Highway and south of the 14th Street Viaduct. Do you **[1790]** recall what led to that boundary change or what the principal element was with respect to it? A. Yes, it was a very small area there, and those children were being transported, and since the number was small it had little effect on either the membership of Ashland or of Boulevard.

Q. Did the opening of that section of the Valley Highway have anything to do with this?

Mr. Greiner: I object to the question, Your Honor, because I don't think the record reflects when in fact

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the Valley Highway did open. I think it is a leading question.

The Court: It is somewhat leading, but we will let him answer.

The Witness: Would you repeat that?

The Court: Did the Valley Highway have any effect?

A. Oh, yes, it did, because it tended to cut off that section, so to speak, from the rest of the area.

Q. Can you state where the overpass from that section over the Valley Highway was to the west? A. No, I can't remember where it was.

Q. Well, West 23rd Avenue? A. Twenty-third, that's right. I am sorry. I couldn't remember exactly.

Q. Now, did your projection, Defendants' Exhibit CM, show there was any loss at all from Ashland and any gain to [1791] Boulevard from this boundary change? A. No, it was so small we felt it wasn't even essential to enter it here.

Q. Was there any racial or ethnic consideration at all in transferring that particular section to Boulevard? A. No, there was not.

Mr. Ris: I am not sure Exhibit CM was offered or admitted. May we have an order on that?

The Court: Yes.

Mr. Ris: All right.

(Whereupon, Defendants' Exhibit CM was received in evidence.)

Q. Now, I will direct your attention, Dr. Armstrong, to the situation pertaining to Colorado Boulevard as it relates to Teller and Steck Elementary School. Teller is located

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where? A. Well, it is west of Colorado Boulevard. I can't—I don't remember the exact address.

The Court: It is on Monroe?

The Witness: About 12th and Monroe, in that general area.

Q. Close to Gove? A. Yes, just south of Gove.

Q. Do you know approximately when that was built?
A. No, I don't, offhand.

【1792】 Q. Is it an older school? A. It is an older school and has had some additions.

Q. And Steck? A. East of Colorado Boulevard at 4th and Albion or Bellaire, in that general area.

Q. Do you know about when it was built? A. It is a newer school, but I don't remember the construction date.

Q. Were both of those already constructed when you got in the planning department in 1948? A. Yes.

Q. Was Colorado Boulevard at that time a six-lane divided street? A. No, it wasn't.

Q. During your planning period from 1948 on, since then has there been any device created with respect to Gove Junior High or traffic conditions across Colorado Boulevard? A. Yes, two years ago, an overpass was constructed there actually from the school. The school site is divided, one part on each side of Colorado Boulevard, and the overpass goes from one part of the site to the other. It also has landings so that the pedestrians using the public sidewalks can make use of the overpass.

Q. Is Teller so situated that this serves any purpose for Teller? 【1793】 A. Yes, it does. Some of the children who attend Teller Elementary School need to cross Colorado Boulevard, and this overpass serves as a way for them to get across.

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Q. Was this part of the planning for that overpass? A. Yes.

Q. Now, have there been any particular accidents in that area involving school children? A. Before the overpass was constructed, there was an accident where two children were fatally injured.

Q. From either Gove or Teller? A. They were from Gove Junior High School.

Q. Now, with respect to Steck, has that been given consideration as to what might be done with the boundary line and its relationship to Colorado Boulevard? A. Yes, consideration has been given to it and we worked closely with the City Traffic Engineering Department to make such crossings as safe as possible, and there have been installed at Colorado Boulevard and Fourth Avenue traffic control signals which helped the pedestrian traffic there, the school children, to get across Colorado Boulevard.

[1794] Q. Is Fourth Avenue completely— A. Fourth Avenue does not go through. So that actually Fourth Avenue terminates at the east side of Colorado Boulevard.

Q. Was that also made a one-way street some years ago? A. Yes, it was.

Q. Has there been given consideration to attempts to revise the boundary line for Steck, for example, to get rid of that? A. Yes, consideration was given to it but there seemed to be no feasible, practical way that this could be done and it was felt, with the safety programs and with the traffic control lights, that this was an adequate situation.

Q. In connection with your planning, Dr. Armstrong, could you tell us what has been done with respect to maintenance of the various school buildings in the district and with particular reference to the older buildings as compared

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to the new buildings? A. We have a very complete program of maintenance for the older buildings. This consists of keeping them in safe and healthful condition by means of painting, by means of repairs, replacing roofs, and inspection by the Fire Department and by our own engineering staff to be sure [1795] that the structure is adequate and safe. We have developed some programs of lighting classrooms, corridors, and we have installed fire detection systems. We have replaced boilers. Quite an extensive program to keep these buildings in operating condition, so that physically the buildings are, in our opinion, adequate.

Q. With respect to the lighting, what lighting program was it you mentioned? A. Several years ago the school district embarked on a program of replacing all the lights in all the schools of the city as a matter of fact where they were needed, which at that time were new, the fluorescent lights. And so all of the classrooms in all of the schools have been provided with fluorescent lights, bringing the lighting level up to a satisfactory amount, so that there is no problem of lack of illumination.

Q. Has this been accomplished in all the old buildings? A. Yes, in all schools.

Q. Has fire protection or smoke detection systems been installed in all the old schools? A. All the ones built before 1900. We have some thirty-five installations. I'm not just sure of the list but all of the older buildings.

Q. Dr. Armstrong, I would hand you first of all a document which has been marked as Intervenors' Exhibit E— [1796] if the Intervenor has no objection—and ask you what this is? A. This is a pupil membership report dated November 17, 1969.

Q. For all of the Denver Public Schools? A. Yes, all schools in the district.

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Q. And what does that reflect? A. It shows the name of the school, the building capacity, the membership in the grades, respective grades, including the special education as well as the regular pupils.

Q. Was this a report that was made in the regular course of conduct of the operation of the district? A. Yes, sir, it's a monthly report.

Mr. Ris: We offer in evidence Intervenors' Exhibit E.

Mr. Greiner: No objection

The Court: It will be received.

(Intervenor Defendants' Exhibit E was received in evidence.)

Q. Now, I will offer you specifically to the report of pupil membership as of November 17, 1969, as compared with membership of November 18, 1968, and with particular reference to the junior high schools. Would you tell us what the 1968 pupil membership was for the junior high [1797] schools? A. Yes, this is for November 18, 1968, the total membership in the junior high—these are the junior high pupils—whether they were housed in junior high schools or whether they were in a six-year school, 21,788.

Q. What is the 1969 membership for all the junior high schools? A. 21,971.

Q. Right at 22,000? A. Yes.

Q. And I would hand you what's previously been admitted into evidence as Plaintiffs' Exhibit 347. And I would direct your attention—I don't know what color it is. I'm color blind. Is that brown or green? A. Green.

Q. Does that actually reflect the 1968 actual membership as shown by Exhibit E—Intervenors' Exhibit E? A. It

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appears to me to be low. The number shown here is 21,788, which is nearer 22,000 than this line shows, so it is low here.

Q. Would you put an X approximately where it should be and put your initial on there. And then with respect to the 1969 membership in the 1969 column, would you put an X approximately where it would be? A. Let's see, that would have been nearly—

【1798】 Q. And if you would put your initials after that, also, please.

Thank you.

Would you refer to Exhibit 346 that pertains to certain schools, Doctor, and if you will notice the one line, the bottom line, capacity, refers to Hill, Merrill and Jefferson, and then the minority schools above—not so stated on the exhibit—

Mr. Ris: Correct me if I am wrong, Mr. Greiner, but those are Baker, Cole, Morey and Smiley, I believe; is that correct?

Mr. Greiner: I believe that's correct.

Q. Now, there has been some testimony here pertaining to overcrowding with respect to Hamilton Junior High and Place Junior High. Could you tell us what planning has been which has led to the construction of Hamilton and Place? A. Yes, Hamilton and Place are both located in Southeast Denver where there are large numbers of—eventually of junior high school children to be accommodated.

Thomas Jefferson Junior and Senior High School was on double sessions for a long time and it was our intention when the building was originally planned to accommodate only grades ten through twelve. With the completion of Hamilton, we were able to take the seventh and eighth

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grades out of Thomas Jefferson Junior and Senior [1799] High and accommodate them at Hamilton. There wasn't room at Hamilton to take the ninth grade. So the plan then is eventually to take the ninth grade out of Thomas Jefferson, accommodate those children in the schools in Southeast Denver, Merrill, Place and Hamilton, and possibly Hill, and make Hamilton a junior high school, seven through ninth grades, as are the other schools in the district. And to make Thomas Jefferson a senior high, grades ten through twelve. In order to do that—to balance the membership with the capacity, taking into account the potential growth in this area, the Place Junior High School will be necessary. There is one other factor which is an unknown and that is the potential for annexation just east of Place Junior High School. There has been talk and, as a matter of fact, there was before the City Council a request for annexation of some four square miles just east of Place Junior High School.

Q. Dr. Armstrong, has this been a planning that is looking some years ahead and on the basis of the best available figures that you have now, projecting into the future? A. Yes, and our figures for the total number of senior high school pupils in the area is around 2,100 to 2,500, senior high, that is, ten through twelve, and Thomas Jefferson Senior High School has a capacity in that [1800] same area. So we expect that the senior high school pupils can be accommodated there and the junior high school pupils accommodated as I indicated in the junior high schools in the area.

Q. Both in Southeast and Southwest Denver, your building plans over the last ten years have been for building schools right at or very close to the city limits, isn't that correct? A. Yes, that's correct.

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Q. And what is the reasoning behind that? A. Well, because of the annexation pattern that has developed over the years, we feel that it's important to look ahead so far as we can or as accurately as we can and locate schools so that they will be within a reasonable distance of the residence of the children they're going to serve. Two examples, I think, show what does happen.

Thomas Jefferson itself was located on the city limits when the land was acquired and the building constructed. Since then it's obvious what's happened. This whole area has been annexed, and numbers of children will be residing there that will need to be accommodated. Somewhat the same situation existed southwest when the John F. Kennedy Junior-Senior High School was constructed. That was just about on the city limits at the time it was constructed. And since then quite an area has been annexed [1801] to the city, both west and south from that building.

Q. George Washington, when it was constructed, was at the city limits? A. George Washington also was then at the city limits.

Q. During the period of time that you have been engaged in planning, could you tell us approximately—and let's restrict this to the last ten years, from 1960 to 1970—in 1960 what was the approximate square mileage of the district? A. About seventy-five square miles.

Q. And what is it now? A. It's about a hundred. Just under one hundred, I believe.

Q. So you picked up about another twenty-five? A. Another twenty-five square miles, yes.

Q. In the past ten years? A. Yes.

* * * * *

*Charles Armstrong—for Defendants—Cross***[1845]** * * **Cross-Examination by Mr. Brega:*

Q. I would like to refer, first, to your planning and design and work that went into the preparation of Hamilton and Place. Would you tell us about how long and what the procedure is for you to plan a particular school building in the district? A. It starts out with the appointment of an architect approved by the Board and then the preliminary planning goes on for several months. It varies with different buildings as much as six to eight or nine months for the preparation of preliminary plans. Then, after those have been approved, the staff is authorized to proceed with the preparation of working drawings and specifications. This takes another six to eight or nine months, depending on the project.

Q. Let's stop right there. How many people would you **[1846]** say are involved in this particular procedure? Is it just a one-man job? How many departments? A. All of the departments in the District are involved. It is important to know that in the Administrative Services, because they are affected from the standpoint of maintenance, operation, transportation, lunchrooms, and so on. Obviously, the Division of Education is important in working with us to develop these plans so that the educational program can be properly accommodated. The Division of Pupil Services is interested in various areas of the building. Counseling, for example, is one, so that all of the divisions are closely involved in these decisions, many people.

[1847] Q. Does any one person or department make the final decision on this? A. The final decision is made by the Board of Education.

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Q. And they get all of these composite studies done by all the groups over these months? A. Yes, and they take the form of preliminary plans and they are discussed then with the Board of Education, all of the implications involved, costs, and so on.

Q. Do you know when Place and Hamilton were approved by the board, roughly? A. Now, at what stage? The preliminary plans?

Q. Yes. A. Or the original authorization to proceed?

Q. Well, let's take the preliminary plans. A. No, I don't know the date.

The Court: Well, he wants to know about how long ago it was. Five years ago?

The Witness: Oh, Place was under construction as of this fall, so the preliminary plans were approved some six or eight months before.

Q. And in that study with Place, was there any provision for removing pupils from any of the Northeast schools? A. Yes, as part of a long-range plan involving [1848] Hamilton, Thomas Jefferson, Merrill, Gove and Smiley, there were plans to accommodate some of the children from Smiley in those junior high schools.

Q. Basically, where is Place located? A. It's in the— at East Florida and South Quebec Streets.

Q. That's Southeast Denver? A. Southeast Denver, yes.

Q. How many students were coming out of Smiley under these plans? A. There were two plans set up; one whereby 200 children would be coming out of Smiley to be accommodated at Place and then some also at Hamilton.

Q. Now, taking Place for the moment, that school hasn't

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been opened yet, has it? A. No, it's under construction.

Q. And they approved that 200 students should be removed from Smiley? A. Yes.

Q. What is or what was the condition at Smiley at the time that that was approved so far as double sessions extended or— A. Smiley was on double sessions at the time.

Q. And what was the purpose in trying to remove the students? [1849] A. To take Smiley off of the double sessions.

Q. Were you trying to get it down to a pupil number? A. Yes, trying to reduce the numbers there below the capacity of the building.

Q. Did you have a number in mind that you were trying to work with? A. Yes, we were working toward a pupil membership of a little over a thousand at Smiley eventually and that is a long-range program.

Q. And, in regard to Hamilton, were there any plans on pupil transfer from Northeast Denver for that school? A. Yes, some 150, as I recall, were to be transferred from Smiley and also from Gove and Hill to reduce capacity—or to reduce memberships there.

Q. In planning the two schools that we have talked about, was Northeast Denver considered as a possible site? A. Well, the 1962 study suggested that a junior high school be constructed at 32nd and Colorado Boulevard.

Q. But that was scrapped? A. Yes, it was.

Q. Was there any consideration to going back into that area when you planned these two schools? A. No, the consideration of the board was that a new junior high school would need to be constructed further [1850] south and east from that area. And at one time there was a con-

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sideration of the acquisition of some land around Lowry Field as a potential, not only for a junior high but for other facilities.

Q. And part of the planning behind it was to try to integrate these new schools, was it not, by—to bring pupils in from a wider, more diverse area? A. Yes.

Q. And this I presume then come out of the 1962 junior high that was planned at 32nd and Colorado Boulevard? A. Well, that was the time when these other studies began to evolve, yes.

Q. Was there a new junior high built in the eastern part of Denver between 1962 and 1968? A. No, there was not.

Q. So there was really—this was really the first planning since the junior high at 32nd and Colorado Boulevard? A. Yes.

* * * * *

[1858] The Court: When was Cole built, Mr. Armstrong?

The Witness: I don't know offhand. It was in the '20s. It was in the 1928 building program. It was in that era.

Mr. Brega: It was built in 1925, Your Honor.

The Court: At the same time West and East were built?

The Witness: Yes, the same building program.

The Court: Do you regard it as an adequate physical facility?

The Witness: I'm sorry, sir?

The Court: An adequate physical facility?

The Witness: Yes, physically it's in good shape, good condition.

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By Mr. Ris:

Q. Dr. Armstrong, with regard to planning for Hamilton and Place, was there also a resolution adopted by the Board of Education sometime during the '60s with the reference to no building in the Northeast Denver area?

A. Yes.

【1859】 Q. Is that policy in effect? A. It has never been rescinded to my knowledge.

The Court: Well, this one on 32nd and Colorado Boulevard, what was its purpose? What area was it intended to take in? Cole adequately took care of everything.

The Witness: Cole at that time was crowded, and so there was a need—and I believe Smiley was also, so there was a need for additional capacity in the area.

The Court: This was done to relieve Cole and Smiley?

The Witness: Cole and Smiley.

Q. Now, with regard to the planning for Hamilton and Place, were there certain recommendations made to the Board of Education at their meetings in 1968? A. Yes, there were.

Q. Did you personally appear at that time? A. Yes, I did.

Q. And did you present some recommendations to the Board with respect to this planning and this construction which would involve the movement of pupils from Smiley? A. Yes.

Q. Can you tell us expressly what those recommendations were? Movement from Smiley to what other schools?

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And involving how many pupils? A. Yes. At that April 25th meeting, it was recommended that an addition be placed on Hamilton Junior High School, [1860] which was then under construction, so that children from Smiley and from some of these other schools in the area could be transported to Hamilton to relieve the crowded conditions at Smiley, which was then on double sessions.

Q. And at that time, what was the recommendation of the number of pupils to be transferred from Smiley to Hamilton? A. It was 150.

Q. Now, at the same meeting of the Board, was there consideration also given and recommendations made pertaining to the construction of another junior high school on what we now know as the Place site? A. Yes.

Q. And did that also involve transportation of Smiley students? A. Yes, it did.

Q. Now, how many were contemplated and what recommendation was made to the Board? A. Two hundred from Smiley to be housed at Place Junior High School.

Q. Was this further studied at the May meeting in 1968? A. Yes, it was.

Q. And were some further recommendations made at that time with respect to these two junior highs, or either of them? A. Yes, that the planning proceed for construction of the addition at Hamilton and the construction of the new Place [1861] Junior High School.

Q. And what figures were given to the Board at the May, 1968, meeting concerning the removal of students from Smiley to alleviate its overcrowding and to move them into other areas? A. Well, the pupils be moved from Smiley to the Place Junior High School and that

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pupils from some of the other nearby junior high schools be accommodated at Place, also.

Q. Can you give us exactly how many pupils were to be moved from Smiley to Place? A. About 200 was the projected amount.

Q. Now, were some also to be moved from Smiley to Hill and some Hill students to Place? A. Yes.

Q. How many did that involve? A. Originally, there were to be 150 from Hamilton—or from Smiley to Hamilton—and then from Hamilton to—or, yes from Hamilton and TJ to Place were about 600. In other words, the idea was to eventually eliminate the junior high school at Thomas Jefferson and house it in those junior high schools.

Q. Was there also, as part of this overall plan, that some were to go from Smiley to Hill? A. Yes.

Q. Was this so recommended to the Board at the May meeting? [1862] A. Yes.

Q. How many? A. I believe it was a hundred.

Q. Now, also were some to be moved from Smiley to Merrill? A. Yes.

Q. Was there an estimate made then at the same meeting as to the total number of pupils that would be removed from Smiley to these other junior highs as the result of the opening of Hamilton? A. Yes, there was, but I don't remember this number.

Q. Well, see if this refreshes your recollection, Dr. Armstrong. "The effect of the indicated moves to reduce the number of pupils at Smiley from around 1600 to 1,000 and permit a reduction of about 100 pupils from Gove—"

Mr. Greiner: May I ask what counsel is reading from?

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Mr. Ris: May 16, 1968 minutes.

Mr. Greiner: Is that an exhibit?

Mr. Ris: Is that? No. Would you like to see it? He is using it to refresh his recollection.

Mr. Greiner: Has it been marked as an exhibit?

Mr. Ris: No, but I would be glad to show it to you, Mr. Greiner.

Q. Was there any discussion at that meeting as to the locations from which the Smiley students should be taken?

[1863] The Witness: No, it was to done on a geographic basis, however, because this was the way that—

The Court: What do you mean geographic?

The Witness: In other words, pupils in a certain area in the Smiley District would be assigned to a particular school. In other words, it wouldn't be on a name-by-name basis. We have ordinarily assigned children to schools on a geographic—

The Court: Which geographic areas were you considering?

The Witness: We hadn't at that time. This was just a proposal, and after the planning had been done and the school was under construction, we would then have made our assignments.

Q. Did you actually get to the point of making such assignments? A. No, we did not.

Q. Why not? A. This was a preliminary proposal and we normally do not make pupil assignments until a school is at least under construction and very nearly ready for occupancy.

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Q. What about the assignment of Smiley pupils to Hamilton? A. Well, that school was finished. The original part of the building was finished or very nearly finished and the [1864] addition was under construction.

Q. Well, at some point in time, were some pupils then moved from Smiley subdistrict to Hamilton? A. Yes, they were.

Q. And who did the planning on that? A. Well, this was a combined effort. In other words, Personnel and my department.

Q. All right. Is any part of that transfer now pursuant to the injunction of this court? A. Well, the original assignment of pupils from Smiley to Hamilton was done before the injunction and that still stands. They are still being transported.

Mr. Ris: All right, I am sorry, Mr. Greiner, do you have some other remark?

Mr. Greiner: Yes, Your Honor, rather than depend on the witness' general description of what went on at the board meeting, I would like to have those minutes marked as an exhibit and placed in evidence.

Mr. Ris: Counsel may do so if he likes. I was merely asking it to refresh the witness' recollection, if it were available for that purpose, and that's a proper evidentiary procedure.

The Court: Well, he can mark it and offer it as a plaintiffs' exhibit.

Mr. Ris: Oh, yes, if the plaintiff wishes to do so.

[1865] Q. Getting back to the board minutes, the portion I read to you concerning the reduction of the number of

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students from 1600 to 1,000, does that refresh your recollection? A. Yes. The purpose, of course, there was to provide additional space at Smiley for some other programs that were important.

Q. With regard to these monthly reports from principals that you previously mentioned, do those reports come directly to your office? A. No, they do not. They go to the Budgetary Services at that time. It is now Planning, Budgeting and Research.

Q. What is done with those reports, do you know? A. They are studied and compilations are made, analyses are made of the reports, and summaries provided as necessary.

Q. And do the summaries and compilations that are of interest to you come to you or are made available to you? A. They are made available to me.

Q. Is that what you basically rely on, rather than the broad data in the basic reports from the principals? A. Yes.

Q. Now, does planning automatically cease when projected pupil membership levels off? A. No, sir, it is a continuing project.

Q. Does leveling off of pupil membership mean the whole district becomes static and just rolls along? [1866] A. No, one of the factors we mentioned earlier in connection with planning is the mobility of the population within the city, and this occurs continually, among other factors.

Q. Insofar as having compilations or summaries of the ethnic data furnished to you by the department that gets in all the reports and so forth, or from the Community Relations Department, can you tell me specifically when you began to get this information on a regular basis? A. Yes, it was in '64. They began to collect it earlier, but we didn't have it available for our studies before 1964.

Kenneth Oberholtzer—for Defendants—Direct

Q. There has been dispute as to whether it was '62 or '64. I just wanted to get that in.

With regard to the Ashland-Boulevard-Brown 1961 change in boundary, have you given that any further thought as to any other matters that went into that boundary change? A. Yes, I mentioned the sole reason for changing the assignment of those pupils was membership, but it was actually a matter of access, also, because of the access of the overpass there that led directly to 23rd and made good access to Boulevard as contrasted with the more difficult access to Ashland.

* * * * *

[1877] * * *

KENNETH OBERHOLTZER, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Please take the witness chair and give us your name and address, please, Doctor.

The Witness: My name is Kenneth Oberholtzer. The address is 3244 South Gregg Court, Denver.

The Court: Thank you.

Direct Examination by Mr. Ris:

Q. Dr. Oberholtzer, I hand you a document that has been marked Defendants' Exhibit HE. Is that a summary of your past educational and professional history? A. Yes, it is.

Mr. Ris: Offer into evidence Exhibit HE.

Mr. Greiner: We have no objection.

The Court: It will be received.

(Whereupon, Defendants' Exhibit HE was received in evidence.)

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Q. Dr. Oberholtzer, you were Superintendent of Schools, School District No. 1, City and County of Denver, Colorado, from August 1, 1947, to 1967, correct? **[1878]** A. Correct.

Q. And the School District having been created by statute, there were various duties and responsibilities imposed upon the District by the Board of Education as a policy-making body? A. Yes, sir.

Q. And as Superintendent of Schools you were the administrative head of the District to carry out the policies of the School District? A. Yes, sir.

Q. And in many instances were your responsibilities of such a nature that you had to make recommendations to the School Board itself? A. Yes, sir. My duties were outlined largely in the bylaws of the Board of Education, which gave me certain broad powers, even policy-making rules not inconsistent with the policy.

Q. All right, sir, in a position such as Superintendent of Schools, could you give us a summary or an outline of various departments in which your administration was divided for administrative purposes and the general nature of the duties of each such department? A. Perhaps the easiest way to do it would be to use the terms for the assistant superintendents.

Q. All right, sir. **[1879]** A. There was an assistant superintendent for Personnel Services, which meant the matter of recommending personnel, the assignment of personnel, which was both certified and classified, all persons in the District, excluding only a few such as the attorney and others.

Q. And what is meant by certified and classified? A. Certified is defined by law as those certified to teach or to administer or to supervise in a School District. Classified

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in effect is all others in the employ of the District, such as persons in the lunchroom, custodians and the like.

【1880】 Q. Are certified personnel all entitled to tenure after a probationary period? A. All certified personnel as teachers—they have tenure as teachers. Certain other personnel recently has tenure, yes.

Q. And would you just briefly state for the record what tenure is in this concept? A. Tenure is defined by state law as in general a person who is appointed as a teacher, a certified person, to teach in the district and who serves with satisfaction for a period of three years and is reappointed. Upon that fourth reappointed he becomes a tenure person.

Q. What is meant by probationary in the sense that you use it? A. Probationary is essentially applied to teachers and refers to a person who is serving in their first three years in the District.

Q. Before they have tenure? A. Before they have tenure, yes, they are known as probationary.

Q. Will you continue on with your discussion of the various departments and divisions. A. Yes. I referred first of all to personnel. There is another large division which was known as instruction which included such services as instruction, curriculum and guidance. There is another large division called buildings 【1881】 and grounds. And this obviously refers to the construction, the maintenance and operation of the school plants, the various buildings of the District.

There was later introduced—that is when I say later, I am describing what was initially true in my tenure of office—later introduced a planning and engineering office which is an offshoot of buildings and grounds. But, in essence there are three major types of functions under the assistant superintendents. There are in addition some other officers

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who were not directly responsible to the Superintendent but to the Board of Education, but who worked with the Superintendent, such as the attorney for the District, the legal services.

There were also certain financial and secretarial services, for example. There is, for example, a secretary-treasurer of the School District. They worked in close collaboration with the Superintendent and generally under his direction although not responsible to him.

Q. All right, sir. At the time you arrived who was the attorney for the School District? A. Mr. S. Arthur Henry.

Q. Did he continue to serve as such during your entire 20-year period? A. During my entire period as superintendent.

Q. Sometime subsequent to your arrival was there a [1882] reorganization of the staff itself with some change in responsibilities of various departments? A. Yes.

Q. Is there any necessity to go into any of that? A. I could state it very briefly if it's of pertinence to you.

When I first came to Denver there were three assistant superintendents and the other officers that I have mentioned. One was an assistant superintendent for elementary schools. One for secondary schools. And one for business affairs. That was in 1947.

In 1950 there was a reorganization on a more functional line. We had an assistant superintendent for instructional services. One for personnel services. And one for business services. And that structure held until about 1962, I believe, when we introduced the planning and engineering services office, and that was an offshoot of the business affairs office, otherwise the same.

Q. You split up one part or division into two parts, is

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that basically it? A. Right. It was just a division of workload, so to speak.

Q. Upon your arrival in 1947, what did you find with respect to the population and population trend then in existence in Denver? **[1883]** A. This was one of the things that was talked over in connection with my appointment and which I took a look at when I arrived. There had been preceding 1947 a declining school population for several years. But at the same time there had been a rising birth rate, young people population. So that it was known that when the school year opened in 1947-1948 there would be a substantial increase, and I was asked especially to take a look at this whole situation and to try to make some recommendations soon as to what to do about it.

Q. Asked by whom sir? A. By the Board of Education. In taking a look at it, one of my early decisions was to employ the services of an expert in population prediction to make a survey of the population and to find out how many boys and girls would be expected in different parts of the city as the result of this population explosion. So, we employed the services of Professor Fitzhugh Carmichael of the University of Denver to make a study of the population over a period of years and to assist us in the location of school sites to meet the needs of this growing population, that is, to locate schools.

Q. All right, sir. Did the school population—the pupil population increase during your 20-year tenure? A. The year before I came, as I recall the population was a little over 45,000 pupils. In 1947, my first fall in **[1884]** Denver, it jumped by almost 3,000 pupils to about 48,000. It more than doubled during my tenure as Superintendent. The high point was a little over 97,000, as I recall, about 1962 or '63, in that neighborhood.

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【1885】 Q. Now, also during your tenure, to take care of this expanding pupil population, was there a substantial amount of building that was done? A. There was, a very substantial amount.

Q. Could you give us an idea of how many different projects during that 20-year period? A. As well as I recall, there was a hundred or more projects, building projects, during my tenure as Superintendent, and related thereto were three major bond issues which the citizens of Denver voted. One was in 1948. Another was in 1952. The third was in 1955. I heard this morning testimony, 1956. That's when the bonds were sold, but the bond issue was in '55, so there were three major bond issues totaling 79½ million dollars, and the other funds which were appropriated from current funds in the budget made the total well over a hundred million dollars for buildings.

Q. That's for capital construction? A. For capital construction and the equipping of buildings.

Q. Now, with regard to the source of these funds, you had your operating budget that you computed every year and recommended to the Board? A. Correct.

Q. And once the Board adopted a budget, was it the final body to approve this budget ordinarily, or did it have **【1886】** to go to City Council or any other agency? A. The Board of Education has the final approval on a budget, but by law if there is an increase of more than a certain amount each year in the operating budget you were obliged to report to the State Taxing Commission for approval or for referral to a vote of the people, and of the twenty years I was there I think I had to go up about eighteen years for approval.

Q. All right, sir, then did you have some portion of the annual budget which was allocated to a reserve for capital

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expenditures? A. There were two types of funds that related to the construction of buildings. One was the bond fund, to which I have referred, and that can be achieved only by a vote of the people. The other was known as the capital reserve fund, which is provided by state law, and this initially was limited to a one-mill levy. It later became a possible two-mill levy, to be used entirely for the construction of school building and equipping of school buildings, and this was the fund referred to in the testimony this morning where one could accumulate over a period of years. You could levy, for example, two mills from year to year, and could accumulate funds enough to build a particular school. For example, this was the way in which the Kennedy Junior-Senior High School was built, out of that capital reserve fund. It was not [1887] built out of bond funds.

There is also provision in law for what is called the capital outlay account within the general fund of the budget.

If I may add parenthetically, there are three major funds in a budget, the general fund, the bond fund, and the capital reserve fund. There is also a retirement fund. I mentioned three—four funds. It was three at one time and then four. It was divided.

Q. Now, you mentioned that there was about a total of 100 million including bond funds and also capital reserve funds combined which were available during your tenure for building purposes and equipment? A. Yes, sir.

Q. Was that all used up during your period of time? A. Yes, sir.

Q. When was the last bond passed prior to your tenure, do you know? A. I believe 1938, when Dr. Stoddard was Superintendent.

Q. And there have been none since 1955 that have

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passed? A. Well, yes—when you say that it passed, there was one recently that did not pass.

Q. That was in 1967? A. Right, in the fall of 1967.

Q. Yes, sir, you had just left office. [1888] A. That was after my term of office.

Q. All right, sir. Now, by reason of the increased school population and increased amount of school space, did you have major increases in personnel, both certificated and classified? A. There were major increases. For example, the number of classroom teachers when I came to Denver was about 1600, as I recall. When I left office, it was more than 4,000.

Q. Could you give us the approximate amount of your budget the year that you came and the last year that you were in office? A. I can give you approximate amounts. The first budget would have been in the fall of 1947 for the year '47-'48. It was a little over 12 million dollars. The last budget that I recommended, which would have been in the fall of 1968 for the school year '68-'69 was, as I remember, more than 76½-million.

Q. So the District itself is a sizeable operation? A. One of the largest in the City of Denver.

Q. When you arrived, what did you find with respect to community involvement in the affairs of the School District? A. I found some involvement. I would not say it was extensive. There were active Parent-Teacher Associations, a Parent-Teacher Association Council, but I don't recall any other groups directly affiliated with the schools. There [1889] were, in addition, a number of civic groups, of course.

Q. Was community involvement something with which you were interested or concerned? A. Very much.

Q. And why? A. Very much concerned. It seems to me

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that it is an important and integral part of school operations. The schools are public schools and finally responsible to the people, of course, and especially in view of the very great building needs at that time, it was obvious to me at the outset that we needed to have the community more involved in trying to solve this problem. And they must have an understanding of it. They should have had one better than they had at that time, because I remember very well some of my early meetings in the community when I made some statement about the needs of schools, there seemed to be an aura of incredibility, "This can't be, we aren't going to grow that way."

So we found it necessary to organize for a study of the school situation in addition to Dr. Carmichael's study of population, organized in other ways.

May I just add parenthetically there was formed a citizens committee, and there were committees formed in all of the schools.

Q. What were they called in the individual schools? A. School advisory committees.

【1890】 Q. And did those committees continue to function thereafter? A. They were in being when I left office.

Q. Were there substantial changes in curriculum during your tenure? A. Yes, sir, substantial and continuing changes.

Q. Now, Dr. Oberholtzer, we have already had considerable testimony here concerning the neighborhood school concept, and, again, I don't want to get into a lengthy dissertation on it, but would you again just give us your general definition of what is meant in your mind by the neighborhood school concept? A. The neighborhood school concept has been applied essentially to the idea of constructing a school in a given area of the city called a sub-

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district, for the most part within ready walking distance of a group of pupils, and by that, the definitions varied through the years, but in general, within a mile, for example, for the elementary schools, generally within two miles for the junior high schools. The senior high schools were at usually greater distances, and there there was some expectation that there might be transportation, bicycles, automobiles, other ways of getting to school.

Q. Is there any portion of the neighborhood school concept in your definition or in your thinking, Dr. **[1891]** Oberholtzer, that includes any direct or indirect attempt or being used as a device to segregate by races or ethnic groups? A. There was not, no, sir.

Q. During your twenty years as Superintendent, do you know of any instance where a pupil or pupils were refused attendance at a school within the subdistrict of his or her residence and denied attendance because of race or color? A. Not to my knowledge.

[1892] Q. Now, with respect to this racial and ethnic data, I'd like to know what you did and your motivation there, Dr. Oberholtzer—you came some seven years before Brown against the School District was decided by the Supreme Court. Right? A. Yes.

Q. When you came, what was the policy or practice of the District with respect to racial or ethnic matters and the assignment to schools or the determination of boundaries? What did you learn? A. Early in the fall after August 1 when I came, one of the staff members called my attention to a provision in the Constitution of the State of Colorado which says that there shall be no distinction or classification used in the schools for pupils; that is, no distinction or classification by race or color. This staff member called my attention also to the fact

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that there had been previous to my coming some annual reports which did state numbers by—I have forgotten—I think Negro, other classifications. When we both took a look at it we both concluded that this was not in keeping with the Constitution and that we would not pursue that practice, not continue it.

Q. You mean the reporting of figures in that matter?

A. The matter of requesting or reporting the figures. We found, for example, that—I think there was on the enrollment cards some designation from which apparently these [1893] statistics were gathered. My attention was called to the annual report, I think, of the superintendent and the secretary where such figures were published. But I directed—when I learned of this—that such not be done.

Q. Did you discuss this with the School District Council before giving such instruction? A. I did discuss this with Mr. Henry and his staff, and he agreed that this was desirable.

Q. And did you then publish such an order to your staff?

A. I did so, yes.

Q. This was in 1947? A. That was in the fall, yes, sir.

Q. Thereafter did you continue to get from your staff summaries or statistical analysis or anything comparable thereto by race, color or ethnic origin? A. I did not receive any. My attention was called and I must say on or about—I'm not positive at this late date—but around 1957, that despite my order there were some such statistics being collected. They had never been reported to the staff. And to my surprise were being collected. However, I was not aware of them until this was called to my attention, and when it did come to my attention I again issued an order that they not be collected and, thereafter, to the best of my knowledge, they were not [1894] collected.

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Q. During that tenure period when apparently they were coming in to the administration building, were these again from the principal report estimates? A. Apparently they were, yes.

Q. Did you see any of those yourself? A. I did not, no. I don't customarily see those basic reports. I see the summaries. But in this instance I did not see a summary of this report at any time.

Q. And to your knowledge so far as you know were any such summaries or tables or collations or anything of that sort prepared and directed to the other members of the staff? A. I do not know of any, no, sir.

Q. Now, when 1954 came along, the Brown decision was published. Did you take a second look at the situation? A. We certainly did.

Q. What did you do at that time? A. We took a look together, particularly with the attorney, to get his interpretation of the application of the Brown case to Denver. It was his opinion and our opinion that this related to what is now called the de jure segregation, that is, to school systems where by law there was a separation—a separate school facility; separate school systems for the Negro and the Anglo.

Q. Under the old separate but equal doctrine? [1895] A. Under the old separate but equal doctrine, yes, sir.

Q. Was the School District operating under the so-called separate but equal doctrine? A. It was not, no, sir.

Q. Dr. Oberholtzer, were there also professional publications which discussed this from time to time at that time? A. There were. There were publications and there were doubts expressed as to the applicability in those publications. In fact, that was generally assumed to be the case.

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Q. Did you also attend professional meetings on a national scale in which the same problem was discussed?

A. Yes, sir.

Q. And was there any consensus at those meetings as applied to a district such as Denver?

Mr. Greiner: Objection, Your Honor. It would be hearsay, I believe.

The Court: He can describe what he observed as bearing upon his state of mind. Go ahead.

A. Well, the discussions were again in a vein similar to those in the publications which I have just commented on.

Q. Now, Dr. Oberholtzer, there has been some testimony here that—

Mr. Ris: Excuse me just a moment.

Q. There has been some testimony here, Dr. Oberholtzer, that in January, in the months following in 1956, that there [1896] were certain members of the Negro community who appeared before the Board or conferred with you individually concerning some boundary changes, particularly a few blocks on the west side of York Street pertaining to changing the optional Manual-East district to all Manual; an optional Smiley-Cole to mandatory Cole; optional Morey-Cole to mandatory Cole. Do you recall that particular period of time? A. Yes, I do.

Q. And particularly with respect to Mr. Lorenzo Traylor who testified here—I don't believe you heard his testimony. A. No.

Q. I'm just attempting to bring this into some context for you. Do you recall meetings that were held at that

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time attended by various members of the Negro community? A. Well, let me see if I can put in context—Are we now talking about the proposals which related to, for example, the opening of Hill Junior High School and the boundaries of the junior high schools and the senior high schools that were interrelated about that time?

Q. Well, Hill Junior High was to open the end of January 1956. Yes, sir. Does that ring a bell with you?

A. Yes. Well, that's what I wanted to establish. You're talking about secondary school boundaries now?

Q. Yes, we are. [1897] A. Yes.

Q. Now, do you remember now whether with respect to the opening of Hill that your staff submitted to you various proposals for creation of new boundaries for Hill and changes in the surrounding subdistricts? A. Whenever you open one new junior high school, you inevitably affect certain other contiguous areas. In this case it would have been Smiley; probably Gove or Cole; Morey; that general vicinity.

Q. Now specifically do you recall that you made some recommendations to the Board in January of 1956 with respect to certain boundaries? A. I know I made some recommendations. I can't recall just exactly streets or localities at the moment.

Q. Do you recall whether those recommendations originated with the opening of Hill as the take-off point? A. Yes. This was the reason for the proposals. The basic reasons.

Q. Now, Hill was carved out of basically what other junior high subdistrict? A. It would have been basically Gove and Smiley most directly. To some extent, possibly Morey. But, Gove and Smiley.

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Q. So that would result in changes of the boundaries of those schools? **【1898】** A. Yes. And when you affect those particular schools you can also affect certain other neighboring schools. As I recall, they were affected.

Q. Do you recall that there was some opposition by members of the community to your proposal made in January of 1956? A. I do recall that there were some comments made to the Board, yes.

Q. Dr. Oberholtzer, I hand you what's been marked as Exhibit 332 and ask you if that refreshes your recollection as to the proposals that were made by you at that time. A. This certainly appears to be the proposals, yes, sir.

Q. And that is divided into how many major parts, with Roman numerals? A. There were four major parts.

Q. Were all those the outgrowth of the opening of Hill? A. Yes.

Q. Were all those adopted by the Board in the January meeting of 1956? A. No, they were not. As I recall, we were obliged to consider— Well, we had to have some boundary lines for Hill Junior High School. It was opening shortly. And as I remember we divided the action into two parts, the first part **【1899】** relating to Hill Junior High School, and the immediate contiguous school—junior high schools, and later the action with respect to—well, to be more specific, there were two parts: The first was the new boundary lines for Gove, Smiley and Hill. And Roman two for Morey, Gove and Hill. Three was between Cole, Morey and Smiley. And four, between Manual and East. As I recall, action was taken on I and II in January and the other two were deferred.

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Q. Would there be a tie-in between III and IV? A. Yes.

Q. Why is that? A. Primarily because the so-called feeder junior high schools related to both Manual and East were affected then.

Q. Now, do you remember when III and IV were enacted—or adopted by the Board, I should say? A. Apparently in June. That's my recollection. And, you have the Exhibit No. 333 here.

Q. That's a copy of the Board minutes at that time? A. And this is a copy of the Board minutes of June 20, in which action was taken on the changes in boundary lines between Cole, Morey and Smiley and between Manual and East High Schools.

Q. At the time that these changes were made then, as indicated in the Exhibits 332 and 333, did you have any racial statistics as to pupil membership in the various schools involved or in the neighborhood from which the [1900] pupils came? A. We did not.

Mr. Greiner: Pardon me. Could we have "you" identified? Is it the personal "you" or is it the School District?

The Court: I believe he could only testify concerning his own knowledge.

Q. Let me ask you first—did you have any personally? A. Personally, no.

Q. To your knowledge did any member of your staff? A. No, and I'll have to supplement that, because I know of no discussion or presentation of any such data.

Q. Were any such given to—

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[1901] The Court: You are talking about actual numbers?

Mr. Ris: Yes, sir.

The Court: This doesn't say they didn't have any knowledge?

Mr. Ris: No, sir, I am asking about statistics, was my question.

The Witness: Correct.

The Court: Well, that doesn't really mean very much. I suppose what we are really concerned with is were you aware of the conditions?

Mr. Ris: I will come to that in a moment, yes, sir.

The Court: In other words, at this stage I don't suppose that you could fail to know that all the population is increasing, particularly the Negro population, or expanding.

Mr. Ris: Well, this is—

The Court: You are going to bring that out?

Mr. Ris: I will pursue this along that line, yes, sir. May I proceed?

The Court: Surely.

Q. Were any statistics or figures presented to the Board?

A. No. No, sir.

Q. Now, there have been some figures in the new Manual publications, have there not, Dr. Oberholtzer? A. This is so, yes. There was a study of the new **[1902]** Manual High School, in which I think there was one table of statistics. That's the only exception that I know of.

Q. Do you know the source of those figures? A. No, I don't.

Q. You say it was a special study. Do you know how that special study was carried out? A. Well, the special study

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was carried out under the direction of an assistant superintendent and the principal of the high school.

Q. All right. When Manual was opened in 1953 was there any boundary change for the new Manual as compared to the old Manual? A. I don't recall that there was any particular change, no, sir.

Q. Now, at this same period of time and to develop along the line that the Court just asked about, with respect to the change proposed between Cole-Smiley, Cole-Morey, East and Manual, the particular area being immediately west of York Street, what personal knowledge did you have as to the racial composition of that area, generally, specifically, whatever it may have been? A. I had no statistical knowledge. As has been inferred here, I had some general knowledge, obviously, but no specific or statistical knowledge.

Q. Tell the Court as specifically as you can what your [1903] general knowledge was. A. Well, an obvious awareness that there was a presence of a large number of Negro pupils, for example, in Manual and in Cole and in that vicinity.

Q. To what extent did your knowledge as to the minority population in that area and the pupil membership coming from that area enter into your consideration at that time in the boundary changes that were being proposed? A. At that time it was not a consideration.

Q. Why not? A. Because, again, we were, as we understood it, under the mandate of the Constitution not to make distinction or classification by race or color, and this was not to be taken into account in the schools.

Q. Now, there were people who appeared before you at meetings, either in the community or before the Board,

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who told you that this should be taken into consideration, were there not? A. There were some.

Q. And what was your reaction to that and why? A. Well, again, our reply, as I recall, or our comments were that we were endeavoring to build schools where they were needed to accommodate the pupils who were in those particular areas of the city, and by that I am not referring to any particular line but a neighborhood, if you want to call [1904] it that, a particular area of the city.

Q. Was there any one person or any one group who appeared to you, Dr. Oberholtzer, to speak for the entire community there?

Mr. Greiner: Object, Your Honor. I don't believe that would be relevant.

The Court: I don't see the purpose of this, Mr. Ris.

Mr. Ris: Well, again, it goes to the matter of intent, motivation, causation, so forth, which is one of the plaintiffs' theories in this case.

The Court: That the Board or the Administration was primarily charged with following the community demands?

Mr. Ris: No, sir, but I think it enters into what he did and why he did it.

The Court: Well, the fact that there were splinters of opinion, I don't think is of much consequence. There probably always are.

Mr. Ris: My point is this, Your Honor, to hear Mr. Traylor talk he appeared before the Board and he stated his piece and gave his reasons and so forth, and from his testimony he was speaking for every-

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body, and there was no splinter. All I am attempting to establish is that there was.

The Court: All right.

【1905】 Mr. Ris: Many different viewpoints.

The Court: Go ahead.

Q. All right, Dr. Oberholtzer, I will restate this. At these various meetings, were there different opinions expressed by different people? A. May I ask the reference? At these meetings, what do you mean?

Q. These meetings—

The Court: Having to do with these boundaries.

Q. 1956. A. Yes, at the Board meetings there were. The reason I asked, I think if I may amplify a little bit, because of the presentation at the Board meetings I invited into my office and into the Administration Building a large number of people from time to time in small groups to discuss this situation, both from the Negro and Anglo communities, as to what their views were, and this is why I was asking you. I didn't know what meetings you were referring to. These were conferences with citizens of the area.

The Court: Well, I think there were some meetings described at Manual High, for example.

The Witness: Well, that's another type of meeting, Judge. That's why I am asking what he is referring to.

Q. I was just referring to any meetings, whether they were at the Administration Building, at Manual, or at Glenarm 【1906】 YM, during this period. I didn't want to

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take the time to go meeting by meeting, but try to cut it a little short here, on the discussions held during this period involving this particular boundary change. A. Right.

Q. Now, then, getting back away from this specific boundary change, Dr. Oberholtzer, and to the consideration by you individually, by you as the Superintendent, and by the Board, at what point in time did there come a change with respect to consideration of racial and ethnic groups? A. I would say in perhaps 1962 would be as good a point as any because at the time, in 1962, there was a proposal for a building program, including as one of the proposals a junior high school to be located at 32nd and Colorado Boulevard. That probably, as nearly as you can take any one point, would be a turning point of consideration. Now, there were some subsequent related matters there.

Q. But that was the major thing that— A. I think as a date, yes.

Q. Did this ultimately lead to the appointment of a special study committee which we have been referring to here as the Voorhees Committee? A. I have not heard all the testimony here. I presume that's what you are talking about, yes sir.

Q. There was a special study committee appointed in [1907] 1962? A. There was a special study committee on equality of educational opportunity. I presume this is the one you are calling the Voorhees Committee.

Q. Of which Jim Voorhees, James Voorhees, was the chairman? A. Yes, sir.

Q. Who authorized this committee to be formed, Dr. Oberholtzer? A. The Board of Education.

Q. Who appointed the committee? A. The Board of Education.

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Q. Were there numerous citizens recommended for it?

A. As I recall, there was a general invitation to the public to nominate persons to be members of this committee, and a large number of names were submitted to the Board of Education, and the Board of Education made the selection of the persons to be on the committee.

Q. Now, in connection with the study of that committee, were Mr. S. Arthur Henry and his staff requested to research the cases that have been decided in recent years following the Brown decision? A. He was asked to review and to present a written opinion or series of opinions.

Q. And was that done before the committee? **[1908]** A. It was done.

Q. Also in 1962, in this same connection, did you and anyone else take a trip to visit other schools districts than Denver, being faced with like problems? A. Dr. Henderman and I did in May or June of 1962, yes, sir.

Q. And what was Dr. Henderman's position at that time? A. Dr. Henderman then was Deputy Superintendent and also Assistant Superintendent for Instruction Services.

Q. Where did you go on this trip, Dr. Oberholtzer? A. We went to Philadelphia, New York, Detroit and Chicago.

Q. Upon your return did you report to the Board? A. I did make an oral report to the Board of Education, yes, sir.

Q. I hand you what has been marked as Exhibit HM and ask you if you know what that is. A. This is a transcript of notes taken on my oral report, taken by the secretary of the Board.

Q. Have you had occasion to look at that recently? A. Yes, I have.

Q. And is that a fair transcript of your remarks to the Board at that time? A. Yes, it is.

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Mr. Ris: We offer into evidence Exhibit HM.

【1909】 Mr. Greiner: Your Honor, we have never seen it before. Might we take a minute to read it?

The Court: Yes.

Mr. Greiner: It is several pages long.

(Document was handed to counsel.)

Mr. Greiner: Well, Your Honor, I have no doubt that this is an authentic transcript. We do object to it on the basis if it is offered for trying to establish the truth of the facts asserted in the report regarding what was going on in these various cities, I believe it is a hearsay statement, and we would object to it on that grounds.

The Court: I think it is only offered for the purpose of showing inferentially the attitude and state of mind of the Superintendent. For that purpose, we will receive it.

(Whereupon, Defendants' Exhibit HM was received in evidence.)

Q. Dr. Oberholtzer, I don't want you to attempt to read that report at all, but can you just very briefly summarize what you had done on this trip and what you found as reported to the Board? A. Yes, I can, and the purpose was, as the Judge has stated. I recommended this trip to ascertain more accurately what was going on in other large cities, particularly these four, with respect to consideration of racial and ethnic factors in the matter of building schools, programs of 【1910】 education and such, and when I returned I made this oral report that was made here simply with the idea of advising the Board generally as to what was taking place. No two of the cities were acting alike, but

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they were all concerned with such matters as teacher assignment, community relationships, school boundary lines, and the like.

Detroit had a study going under a citizens advisory committee on school needs which was chaired then by Mr. Romney and out of which grew a special committee to study the quality of educational opportunity.

At the conclusion of my remarks, I did say that there were two major ways of conducting a study which I felt was necessary in Denver at that time. One would be for the Board of Education to appoint a committee or commission involving citizens individually, citizens as representatives of organizations, and also some of our professional staff. Another way would be to have a professional staff study involving consultants and hearings so that the community could express itself.

I expressed to the Board a preference for the first alternative, which was later—and I recommended at a later date the Board adopt it, the idea of a committee composed of citizens and professional persons, and I would like to add here again my concern for that approach because I felt very much the need of a much better community understanding of the [1911] issues and the questions which were at stake. I did not feel that there was such understanding at that time.

Q. Then the Voorhees Committee was appointed, went to work, and did you get an interim report from that committee? A. There were some interim reports, yes, sir.

Q. And then the final report came out March of '64, and you have a copy there before you as Exhibit 20? A. I do.

Q. All right, after this report was published, did you have occasion to study it, Dr. Oberholtzer? A. I most certainly did.

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Q. What did you do about it? A. I studied it intensively, and one of the first things I did was to make a compilation of all the recommendations separately and to assign each of the recommendations to a major staff person for study in his office. I also made a summary of all the recommendations and provided copies for every person in the public schools staff so that they were aware of the recommendations of the study committee.

Q. You have before you a document marked as Defendants' Exhibit HN. What is that? A. It is entitled, "Recommendations of the Special Study Committee," and it is what I just referred to, my assignment to various members of the staff. For example, it has a number column in which we numbered all the recommendations of [1912] that special study committee so that we could refer to them readily. There were 155 recommendations.

Mr. Bis: We offer into evidence Exhibit HN.

Mr. Greiner: Does it bear a date, Dr. Oberholtzer?

The Witness: I don't see a particular date on this copy.

Mr. Greiner: Could we have a foundation, Your Honor, at least as to when it was prepared? Otherwise, we would have no objection.

Q. When was this prepared? A. This was prepared immediately after the presentation of the report. It would have been on or about April of 1964.

Q. And was there a follow-through on this, Dr. Oberholtzer? A. There was a follow-through, and in many ways—may I mention in addition to the staff study, I invited every faculty, school faculty, to make a study of the recommendations and to respond to those recommendations.

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Q. Was that done? A. That was done. As a part of the consideration, the special duty committee itself held public hearings throughout the city. Through the cooperation of the Parent-Teacher Association, meetings were held in various parts of the city to discuss the recommendations. I personally made [1913] reports to the Board of Education on the progress that we were making, our response to the recommendations, and what the schools were doing about them. Now, there were several types of responses. One of them was a report to the Board of the staff studies, but I think perhaps of more pertinence would be the summaries which I reported to the Board of Education.

[1914] Q. What was accomplished? A. What was accomplished? With respect to each of the recommendations?

Mr. Greiner: Your Honor, we have no objection to the introduction of HP and HQ which are being marked now.

The Court: All right, they will be received.

(Whereupon, Defendants' Exhibits HP and HQ were received in evidence.)

The Court: We have already taken HN, I guess. Were you satisfied then with the data on HN? You objected to it on that ground.

Mr. Greiner: Yes, Your Honor, I was.

Well, Your Honor, HQ—we would again object to it if it's going to be offered for the truth of the matters stated in it. It is a somewhat self-serving document. It's a report of Dr. Oberholtzer to the Board.

Mr. Ris: I had better lay a foundation as to what it is.

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Q. Dr. Oberholtzer, I hand you three exhibits, HO, HP and HQ. Will you take them one by one and state what they are, please? A. HO is entitled, "A Progress Report to the Board of Education by the Superintendent and Staff of the Denver Public Schools on the Recommendations of the Special Study Committee on Equality of Educational Opportunity, May 6, 1964, to May 6, [1915] 1965."

HP is entitled, "Two Years After a Progress Report to the Board of Education by the Superintendent and Staff of the Denver Public Schools on the recommendations of the Special Study Committee on Equality of Educational Opportunity, May 1964 to May 1966."

The third document, HQ, is a secretary's report of my oral comment to the Board of Education and its meeting on June 29, 1967. There is no other heading. But, this relates primarily to the advisory council on the equality of educational opportunity—the so-called Berge committee report.

Q. Have you had occasion to review the transcript shown, HQ? A. I have.

Q. It is a correct transcript of your oral remarks? A. To the best of my recollection, it is, yes.

Mr. Ris: We offer in evidence—

The Court: We will receive them all.

(Whereupon, Defendants' Exhibit HO was received in evidence.)

Mr. Ris: Was HN also received?

The Court: HN has been received. HQ will be received over the objection for the limited purpose of reflecting the thinking at the time and the knowledge that was communicated to the Board members.

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【1916】 Q. Dr. Oberholtzer, I am going to leave these exhibits for a moment and we will return to them shortly.

Now, Dr. Oberholtzer, we have already had considerable testimony, but I'm not sure it's entirely clear so I want you to explain it to us the best you can—what difference, if any, there be between what's known as a rated capacity of a school building and the actual utilization of a school building; what the relationship may be. And whether merely reflecting pupil membership to rated capacity is always a fair comparison; whether the actual utilization of that building must be taken into that consideration. A. I had heard some of the testimony with respect to this and I can understand why there might be some difficulty in understanding the matter.

We are obliged to have what amounts to certain base figures from which to consider capacity of a building or utilization of a building. And this has been—it was during my twenty years—different terms were used and there were some differing practices as was pointed out this morning in how you calculated capacity. We found it difficult to explain to citizens through the years, and I find it here. But, it is a necessary part of our consideration.

The tendency of most lay citizens is to take capacity as an ironbound—you go above or below a certain figure. That was not the purpose of this matter at all. It was to give 【1917】 an indication on the basis of a formula from which you derived the utilization. And just to repeat, usually building capacity was calculated on the basis roughly of 30 pupils per classroom with certain variations. But, that was the basic—there were variations, as was pointed out this morning with respect to major things.

For example, whether you included libraries or not. Whether you included the gymnasium or not. So it made

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some difference from year to year as to what a capacity was. But, this was simply the starting point of consideration of utilization.

And when we took a look at the—at a given pupil population in the school in terms of suitable programs, you always had a variation as to utilization. The confusing part is that we still find citizens referring to under-utilization and over-utilization based on this 30 pupil. This is really of no meaning, if you consider the program. I have to say it that way. And yet, we were obliged to publish a capacity figure, and this is why we got ourselves into arguments with people about what it meant, and I have heard some of them here.

For example, if there were—if we had testing results, achievements, and I'm referring to standardized achievement results. If there was generally let's say lower achievement than another school, there would be a different [1918] picture as to its utilization.

Let me generalize I hope in a meaningful way. Using the middle line of achievement as the median, if the major achievement was well above the median, it was possible to have larger class sizes, a larger number of pupils in a given building and still maintain a very good educational program. This is largely because in those areas or neighborhoods where there was a generally high achieving group of pupils, that group is more capable of self-direction in its own study activities and did not need lesser number of pupils.

If there was lower achievement in certain areas, it was necessary to have a larger number of teachers per pupil per group of pupils. That is, the number.

This is where you get into teacher-pupil ratio.

And generally speaking, one of the adaptations that we

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made through the years for those schools where achievement was not as high as I have just referred to, there would be lower pupil-teacher ratios. Every room would be occupied and the building would be utilized from our standpoint fully for that program.

Now, if you just take a 30-pupil average and calculate it, then that building was not utilized, and I have heard that term used here, underutilized. That in our estimation is not the case. The building was fully utilized and that's why I want to make it clear at this point because I can if advisable [1919] point to particular schools and that may be useful to do so.

But, this is in general the case. So, we instituted the other kinds of adaptations to endeavor to raise the achievement levels, but one of the basic adaptations was to lower the pupil-teacher ratio. In other words, if you want to translate this into pupil capacity and utilization, instead of let's say using 30 pupils as a normal capacity in those schools, you in fact ought to use closer to 25 as a rated capacity.

Q. Now, we had considered this at one time as a way in which to relate to this and we tried it. But, we found people constantly getting confused as between the two applications. This is in fact what has happened.

Q. And some of the comments that I heard this morning relate specifically to what I have just said.

Q. Can you relate this specifically to either Manual or Cole from the testimony you heard this morning?

A. Yes, sir. It would apply both to Manual and Cole. The achievement level at Manual and at Cole was not in this higher bracket that I am talking about generally, and please keep in mind that one of the basic facts of

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education is the individual differences, and I'm talking now only in general, not individual.

There was a need in both instances of a much lower pupil-teacher ratio and this was requested year after year by the principals in those schools. And we did accede in [1920] their request for lower-pupil teacher ratios as one of the means of endeavoring to raise the achievement levels.

Q. Dr. Oberholtzer, there has also been a problem with respect to this exhibit, which is 390 and 390-B. And there was particular reference to certain elementary schools which are represented by blue circles, Columbine, Whittier, Gilpin, Crofton, Ebert, Elmwood, Fairview, Westwood and Elyria.

Q. Can you relate what you have just been discussing with respect to utilization compared to rated capacity as to these particular schools?

Mr. Greiner: Your Honor, I object. That exhibit speaks as of September 1968; at a time when the Superintendent was no longer Superintendent.

The Court: Well, he can give us whatever information he has on this subject. It may not be in date particularly.

A. If it would be useful, I will comment, as I knew the schools.

Q. That's all we're asking. Anything you have of your own knowledge; what you know from your own experience. A. From what I know of those schools—they were generally in what would be termed low economic—socio-economic neighborhoods and this is based upon the average income of the family, and they would be generally

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in the portals that I was talking about, not of the high achieving schools, but of the lower achieving schools. Yes.

[1921] Q. Dr. Oberholtzer, you say that you had various adaptations that were used in those low achieving schools. Why were you using adaptations there? What was your objective? A. Our endeavor was to try to raise the achievement levels of the children in those schools. It has come to be known in these later terms as providing equality of educational opportunity. What we were trying to do was to provide the conditions whereby these boys and girls might achieve more nearly in keeping with their abilities.

Q. Directly tied in then to making available equality of educational opportunity? A. It was directly related to it, yes, sir.

Q. Now along the same line, but deviating a bit, there has been some evidence introduced at this trial concerning the achievement results by schools and particularly with respect to the triennial testing that was done and the fact that although there were publications made of the test results, that here were no publications to the general public or even to the Board itself at its meetings of analysis, school by school, so that schools were compared. Is that the fact? A. That was a fact during my administration.

Q. Why did you do that, Dr. Oberholtzer? A. May I comment then, because I recommended the institution of the triennial surveys of testing of achievements **[1922]** which began in 1950 and were continued at three-year intervals thereafter. At the same time an opinion survey which accompanied it, which is pertinent to this, I hope, later. We did consider many times in staff the desirability of reporting comparative results and decided not

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to do it, essentially for the same reasons that we did not publish comparative results of individual boys and girls. We felt that it would not be desirable. There are individual differences among boys and girls, many differences. There are many differences among schools. And it was in our judgment an unfair practice to do this.

Now, this is a very short answer to a difficult and complicated question, but I would add immediately that the results for every school were made public in the neighborhood. Where that school was located we did compare their results with the city wide results and it was an obligation of the principal and the faculty to discuss with the citizens of that community the results and at least one meeting was held in the schools to do this on each occasion.

The Board was furnished the overall results. The community at large was furnished the overall results. A special edition of the review, for example, was published.

Q. And the review is what? A. The review is an official publication of the Denver Public Schools issued at first once a year and then I think [1923] three times a year, which was an attempt to make a public report to the citizens of some important things going on in the schools.

Q. To whom is the review circulated? A. A copy was given to every boy and girl in the schools to take home, for one thing, so that there was a public statement of the results. We also mailed copies to organizations and to a large number of individuals who expressed an interest and wanted copies. The members of the Board were provided copies. All members of the staff, certified and classified, were provided with copies.

Q. Did the staff itself compare school by school? Did they have that material available? A. That material was available, and there, however, were no discussions with

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faculties or with schools comparing them with other schools. We did every year—when I say “we,” the deputy superintendent of instruction made a personal visit to every school at least once a year, all schools in the district, for the purpose of discussing these results with the principal and the faculty committee, usually the so-called instructions committee of the faculty, raising questions as to what they were doing to improve the situation.

[1924] Q. In each school, was there a standing instruction of the faculty? A. There was, for a long number of years. This is an old custom in Denver. It was here when I came and continued.

Q. Dr. Oberholtzer, as the years went by and we had overcrowded situations, you had various expedients to solve the problems, either temporarily or permanently, correct? A. We did.

Q. When you first came, was consideration given to the use of mobile units? A. There was some consideration at that early date.

Q. Were they being used at all in the Denver system? A. No mobile units. There were some so-called temporary buildings that had been there since World War I.

Q. At Gove primarily? A. There was, I think, one or more, perhaps one or two, at Gove, but there was another junior high school that had one or two.

Q. Was that the extent of the temporary buildings? A. That was the extent of the temporary buildings at that time. We called them temporary buildings. They were not temporary.

Q. Were mobile units being used in other districts in the metropolitan area? **[1925]** A. I don't recall any mobile units. There were some called, again, temporary buildings. For example, our neighboring Jefferson County embarked

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on, I think they called them cottage schools. They were homes, in fact, converted to schools temporarily, but I don't recall any so-called mobile units at that time.

Q. In the '60s, there was some use made of mobile units in Denver, were there not? A. There was a very late development, after we had considered other ways in which to meet the increasing population.

Q. What other ways were used? A. Well, basically, we made a decision early not to build temporary buildings in connection with the first bond issue, so we constructed no temporary buildings for elementary or secondary schools for a long period of time. I have to qualify that, because in the late 1960s, there was a change. Instead, we did utilize several sessions of schools and so there were at times as high as 200 rooms on double sessions in the district, mainly in the elementary schools, although there were at times some secondary schools, rather than building temporary or mobile units. Now, this was in lieu of permanent construction, until we could get it.

Now, our ideal was to provide permanent [1926] construction wherever possible. We had the usual problems of insufficient funds to do all the things that we wanted to, to meet the needs. A great many of the needs were met through the three bond issues and the other program that I referred to, but a lot of them were not met.

Q. Would you just define what is meant by double sessions? A. A double session—let me use the term in the elementary schools first—for example, it meant that a given classroom in a given grade would have two sessions in a day. There would be one teacher in the morning and one teacher in the afternoon, and, generally speaking, that, as I recall, went from 8:30 to 12:30 and 12:30 to 4:30 in the

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afternoon, with some overlap of teachers, so that there were in fact two teachers in a given room at a time.

Q. Two different groups of pupils? A. No, one group of pupils, but there were two teachers for that group in the overlap period of time at the noon hour.

Q. No, I'm speaking about the morning session and the afternoon session. A. There were two sessions of pupils but no overlap of pupils. The overlap was in the teachers who were working with the pupils. That was mainly in the—

[1927] Q. Just a minute, let's back up.

The Court: I thought double sessions involved full utilization of the buildings by starting at seven in the morning with one shift and commencing at twelve with the second.

The Witness: Now, Judge, we are coming to that in a moment. That's the secondary school, not the elementary school.

Q. Well, in the elementary school, do you have one group going in the morning and a second group going in the afternoon? A. In the secondary school, but they started—

Q. I am talking about the elementary. A. Two groups in one room.

The Court: When do they start?

The Witness: 8:30 in the morning to 12:30 and 12:30 to 4:30. What he is talking about is a secondary school. That's another matter. I will come to that.

Q. I don't think it is clear that you had separate teachers, morning and afternoon. A. That's what I stated.

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Q. Two groups of pupils, morning and afternoon? A. Yes, sir.

Q. And the teachers overlapped over the noon hour? A. That's right.

【1928】 Q. So the teachers overlapped? A. They had the same day as any regular teachers.

Q. All right. How about the secondary school? A. It was as the Judge indicated. We began there much earlier, and our endeavor was to provide, as nearly as we could, the full time element for them. We began about seven, went to twelve, and twelve to five. That's the secondary school, that's true. Here again, there were two groups of pupils and two faculties. There was not a continuation of teachers. Now, this was widely used in both elementary and secondary schools as a temporary measure to meet overcrowding. There was another means of doing this used in the secondary schools only.

Now, I have to refer to stages of overcrowding, if I may here. At the first stage, there would be extended days, and by that I mean they were taking normal school days, which began around 8:30 or so, and extended to about 3:30. They would add a period on in the morning and in the afternoon, or one or the other or sometimes both. This enabled them to accommodate another group of young people in the schools. When that did not meet the need, then we had to go to a double session, and that's the second stage.

Q. Was the extended day technically used only at the secondary level? 【1929】 A. In the secondary schools, yes.

Q. That had to be tied in to a so-called tutorial system where they went from class to class. A. This was adaptable in the secondary schools because you have a quite dif-

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ferent organization. You do it subject by subject. Certain subjects would be offered in the morning and certain in the afternoon.

Q. So, a normal day, say, at a high school, was seven periods and on an extended day you would extend it to nine periods? A. That would be typical.

Q. The pupils would still take the normal course? A. They would be involved for seven periods, for the most part.

Q. You could accommodate more pupils in the nine periods? A. Right.

The Court: I think we will take our afternoon break at this time, Mr. Ris.

(Whereupon, at 2:27 o'clock p.m., the Court recessed.)

[1930] (Following a recess, the trial resumed at 3:48 p.m.)

Q. Dr. Oberholtzer, we were discussing various—

The Court: Double sessions.

Mr. Ris: I think we were through with double sessions, unless the Court had some—

The Court: That was the last thing.

Mr. Ris: I'm through with it.

The Court: I'm pretty well checked out on that now.

Q. Now, what other options are there that have been used from time to time for a solution of overcrowding in the schools that we have not discussed so far? A. Well, a limited—to a limited extent, some transportation. But,

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transportation was used more often to accommodate pupils in areas where there were no schools and you transported them. The other was the mobile units to which you referred. But, that did not come into the picture until late 1960's, as I recall, around 1965-1966, somewhere in that time. Those were the principal ways.

Q. Did you on occasion or as a matter of practice have to determine what the wishes of the parents of the children or the students were as to some of these various options?

A. Yes, there were discussions. Sometimes extended discussions; sometimes very brief discussions, depending particularly on the differences between elementary and secondary schools. There was usually some discussion. Very often in [1931] the case of the elementary schools it would be the principal and the faculty with the citizens. Sometimes, the central staff would be involved. Rather frequently in the case of the secondary schools where board action was necessary and much larger numbers of pupils involved, there were hearings and sometimes in the schools there were meetings, representations were made at the board meetings.

So it varied greatly from school to school. But, there usually was some consideration of the citizen interest.

Q. Do you remember a circumstance pertaining to the Smith Elementary School and questionnaire to parents as to various alternates—or to various options, I should say?

A. I do have some recollection of it, yes. But at the same time that Smith was being considered, Stedman was also being considered. And Dr. Hendryman attended the series of meetings at Smith School and I attended a series of meetings at Stedman School. So I am familiar generally with what went on at Smith, but I did not attend the meeting.

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Q. You were not personally present that evening? A. I was not.

Q. Did Mr. Olander attend the one at Smith, if you know? A. He might have. But, Dr. Hendryman was the man primarily responsible, my deputy superintendent.

Q. At that meeting—at Smith, you were aware that **[1932]** the meeting was being held? A. Oh, yes. And he was assigned to go there.

Q. And at that time and prior to that meeting was it known busing was to be had out of Smith to what schools the children would be bused? A. I don't recall that particular—there was a discussion of possible busing and of possible mobile units, as I recall. These were the—or double sessions; such arrangements. But, the primary issues resolved between mobile units and busing.

Q. Boundary changes also a solution to overcrowding? A. I don't recall any extended—at least any extended discussion of any changes in boundaries at that time. There were perhaps some, but it is primarily ways of making a significant difference in the overcrowding.

Q. Dr. Oberholtzer—

The Court: Well, were the solutions—the discussions and solutions the same at Smith and Stedman?

The Witness: No, sir. The solutions were not the same.

The Court: Were you going to ask him about his experience at Stedman?

Mr. Ris: No, but I'll be glad to.

The Court: He said he attended Stedman.

Q. Would you tell us about your experience at Stedman. **[1933]** A. I'm glad to have the opportunity. I did discuss

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with Dr. Hendryman his experience so I had some general knowledge of what occurred.

Mr. Greiner: Pardon me. I thought the question pertained to Stedman, Your Honor.

The Court: Well, that was my object.

A. All right. I will discuss Stedman then.

The Court: Very good.

Q. That was the question. A. In the case of Stedman I was present at the meetings where there were citizens interested in solutions to the overcrowding of that school. The discussions resulted in the citizens recommending that we relieve the overcrowding by busing out some children from the school.

【1934】 Q. What type of meeting was this, Dr. Oberholtzer? A. A public meeting.

Q. Was it a PTA meeting or a special meeting called for this purpose? A. It was a special meeting called for this purpose, at which I understand a general invitation was extended to citizens of the community.

Q. Do you remember when this meeting was held? A. In the afternoon.

Q. What month or year? A. I can't recall precisely. It was, I think in the spring of the year.

Q. January, 1966? A. I was thinking of later. It might have been.

Q. There has been some evidence as to certain overcrowding in Columbine and Harrington in the early '50, specifically 1951 and 1952. Do you recall what the situation was at Columbine and Harrington in particular at that time? A. '51-52?

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Q. Right. A. There was an increasing population of students in that area, and as I recall, rather serious overcrowding of those schools.

Q. Do you recall what the situation was with **[1935]** increase in number of Negro students in either of those subdistricts at that time? A. Well, again, we had no statistics and I have no distinct recollection of the racial composition, no. I do know there was some general changing and moving of population beginning about that time, but not a large group.

Q. All right, do you recall making any changes or establishing of any optional zones in that area where the race, directly or indirectly, went into your consideration or decision? A. That was not a part of our consideration.

Q. Directly or indirectly? A. Directly or indirectly.

Q. Now, with respect to the 1956 boundary change, when those changes were made between Cole and Smiley and Cole and Morey and East and Manual, do you recall what was done with respect to the pupils that were already enrolled in any of those optional schools, as to whether they could continue or had to complete their junior high experience or the senior high experience at the new school? A. The general policy at that time, and I presume it was followed then, was to permit a boy or girl to continue in the school of attendance. For example, if you were in a junior high school, to continue his attendance **[1936]** there. In the senior high school, to continue there.

Q. I would direct your attention again to Plaintiffs' Exhibit 333, June 20, 1956, and Paragraph C. Does it so indicate that all the present seventh, eighth and ninth-grade pupils may continue at either Smiley or Morey or

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Cole, where they were presently attending? A. Correct. Paragraph C.

Q. With respect to Manual and East, referring to Paragraph B, what is provided? A. All present tenth, eleventh, and twelfth-grade pupils living in this area may continue at East and Manual High Schools under the present option.

Q. And when did it become mandatory then as to the future students? A. Well, all pupils entering the senior high school from the area in the future, beginning September, 1957, would attend Manual High School.

Q. Now, Dr. Oberholtzer, I would like to take a look, if we may, at Barrett. First, Barrett construction and, first, to the Barrett site selection. Can you tell us in what year the property was acquired by the school district, roughly, Jackson, Colorado Boulevard, East 29th Avenue to East 32nd Avenue? A. It, as I recall, was acquired in 1949.

Q. Were various school sites selected during your [1937] tenure in office? A. A great many sites and one of the first of my jobs was to participate in this selection, resulting—and this is an instance, the 32nd and Colorado site—resulting from the Carmichael study. This was one of the early sites acquired, and we acquired sites throughout the city where there was some projected increase and where we did not have, or where there was potential increase, and we did not have sites, and in this case it was a potential that we were looking to. 32nd and Colorado was a junior high school site, as I recall, because of its size, but we did acquire a goodly number of both elementary and secondary school sites in a period from roughly 1948 to 1950, and then thereafter periodically, as expansion, annexations occurred, so on.

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Q. Again, attempting to obtain a time sequence, you assumed your responsibilities on August 1, 1947? A. Right.

Q. Do you remember when Dr. Carmichael began his study and survey? A. Well—

Q. Or do you remember when you got his report? That's the important thing. A. Well, it came in 1948, as I recall, before the close of school or about the close of school. Dr. Carmichael [1938] was employed sometime before December of 1947, as I recall, to begin his studies, and he began promptly to make these studies of pupil populations and projections of populations and assisted us also generally in commenting on the location of sites, but we had in addition a committee of realtors who did the actual negotiation for sites at our direction. That is, the general locality. You can't always buy a site where you would like to have it, because the neighborhood perhaps was already built up. Rarely did we have the opportunity to go into an undeveloped territory and select a site where we would like to have it.

Q. All right, in your years of connection with the Denver Public Schools, have school site locations ever been selected for the purpose of containing minority pupils, that is, Negroes and Hispanos, in schools separate from Anglo students? A. No.

Q. Now, with regard to the Barrett construction, what was the problem that led to that construction, Dr. Oberholtzer? A. Well, again, as in other cases, a rising and in this instance a very rapidly rising school population and an overcrowding of schools in the immediate neighborhood. In this instance, the most contiguous schools would have been, I believe, Columbine and Harrington, but rapid [1939] rise there led us to recommend the construction of a school at 29th and Jackson. We had an available site.

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It was at the east end of the territory involved, where the children were. We would have much rather had a school farther to the west, but there was no site for it. This was the available site.

At the same time, there were other needs very closely related and similar to the Barrett situation. For example, the Denison Elementary School. I mention this because the plans of Barrett and Denison were identical. That is, they were prototype schools, and the situations very similar, rapidly rising population.

Q. Again, in connection with the decision to build on this site, were parents of the children in the community consulted? A. There were discussions, as I recall, about the construction of the school, yes.

Q. Do you remember when the authorization was given by the board for the schools? A. As I recall, I recommend that we construct the school late in 1958, somewhere in that neighborhood.

Q. Had planning been considered prior to that for any period of time? A. In this instance, as in others, yes, over a period of months, some consideration had been given.

[1940] Q. I hand you what has been marked as Defendants' Exhibit GC, which purports to be Pages 9 and 10 from certain minutes. Do you recognize what that is? A. These appear to be copies of minutes of the Board of Education.

Q. Relating to Barrett School? A. Yes.

Q. Have you reviewed these recently? A. I have had an opportunity to read them, yes.

Q. What is the date of the meeting? A. The date of the communication is April 8, 1959.

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Mr. Ris: We offer into evidence Defendants' Exhibit GC.

Mr. Greiner: No objection, Your Honor.

The Court: It will be received.

(Whereupon, Defendants' Exhibit GC was received in evidence.)

[1941] Q. Now at the same time do you recall what the situation was with respect to Columbine? I think you mentioned Harrington. A. I think I did mention Columbine and Harrington.

Q. I'm sorry. I missed that if you did. A. There was an increase in population at both Columbine and Harrington, yes.

Q. Was there any difference in the population movement between 1958 when Barrett was first being discussed and 1960 when it was completed and occupied? A. It's my recollection that about that period there was a considerable change in the population, increase, yes.

Q. Now, had you anticipated the amount of increase and the amount of population movement in that area during the planning stages? A. Well, we had anticipated some increase obviously, or we would not have constructed a school. But, as I look back on it now, there was more really than we had anticipated.

Q. Now, do you normally build for a hundred percent of your maximum estimated membership? A. That was not our customary practice. We usually tried to make an estimate of the peak population for a given area and then we would construct a school for about 85 percent of that peak.

Q. Do you recall any of the children in what turned out **[1942]** or what ultimately became the Barrett subdistrict

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for being bussed to any other school for that before Barrett opened? A. I believe there was some transportation at that time to Park Hill Elementary School.

Q. Do you recall whether or not there were double sessions at either Columbine or Harrington before Barrett was constructed? A. I can't recall precisely but I wouldn't be surprised if there were. There was a rather substantial increase. There probably were.

Q. With respect to the establishment of the eastern line of the Barrett Subdistrict to Colorado Boulevard, will you state the matters considered in coming to that conclusion?

A. Well, here, again, we were concerned with meeting the needs of a group of young people, boys and girls, in that immediate area. The school site was at the eastern edge of the area under consideration, next to Colorado Boulevard. We were concerned about the traffic on Colorado Boulevard, and I must say if you examine the map as we looked up and down Colorado Boulevard we tried where we had the responsibility of building schools not to set the boundary lines over. Elementary schools now I am talking about.

And so, we did set the eastern boundary with that—that was one of the factors; but not all of them.

Q. Even though the boundary line—even though the [1943] school site was on the eastern boundary line of the subdistrict, was the size of the subdistrict such that it was within the one mile walking distance for elementary students? A. Yes. We had, if I may add, a situation quite similar developing in the western part of the city, and I referred earlier to the two plans that were used, one at Barrett and one at Denison. Originally, keep in mind, this site was not intended to be an elementary school site, but as we found development in the city and in this

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instance a much larger population development over a relatively short period of time than we had expected, we were under the necessity of building an elementary school.

The same thing happened at Denison School, which is very comparable. The school site is right up against Sheridan Boulevard on the west side of that subdistrict. These are two instances, coincidental, that happened right about the same time, but similar circumstances of unusual increase, rapid increase.

Q. At the time of planning for the Barrett School in 1958, did the district own another site further east, in the Hallett area? Somewhere in there? A. Elementary school site now you're talking about?

Q. Yes, sir. A. I don't recall any within any relatively close distance, no.

【1944】 Q. Senator George Brown testified he understood or thought there was another available site further east. A. There might have been, but nothing close that I recall. Quite a distance.

Q. Was there any racial or ethnic basis for establishing the site of Barrett where it was built? A. That was not a factor in building the Barrett School.

Q. During the years of your association with the Denver Public Schools, have attendance and boundary line changes been drawn for the purpose of segregating minority students, that is, Hispanos and Negroes, so as to keep them separate from Anglo students? A. No, sir.

Q. Now apparently prior to the Voorhees report there was no detailed written policy as to boundary selection criteria or factors of boundary changes. Is that a correct statement? A. Yes, sir. There were such. I noticed—

Q. Will you tell us what they were? A. I noticed this and again as I reread the report, there were available

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criteria. I was looking through, for example, the reviews, copies of the school review, and you will find for example in 1960 a special edition dealing with school boundaries and the criteria, so I am a little surprised [1945] that the report said that there was no previous publication. We did have a policy manual that related to boundaries and such, but I referred specifically to the review as one instance. And there were others, but I can't recall specifically.

Q. Was this policy book that you referred to limited solely to boundary matters? A. No, this was a compilation of a large number of policies by the Board of Education, rules by the Superintendent which had the effect of policy by sanction of the Board authority. It was a combination of such and a rather thick document—if I may show you with my fingers—about so thick. (Indicating.)

Q. Now, were optional zones in use throughout the district when you arrived in 1947? A. There were optional zones in various parts of the city, both for secondary and elementary schools when I arrived in Denver.

Q. Were they in use in both predominantly Anglo areas as well as predominantly Negro areas? A. Yes.

Q. And these continued until 1964, as I understand it? A. Yes, rescinded in 1964 in part as a result of one of the recommendations of the study committee.

[1946] Q. To your knowledge during the period they were in use, were they used for racial segregation purposes? A. They were not so used.

Q. Dr. Oberholtzer, do you have any specific recollection to the 1961 boundary changes involving Boulevard, Brown and Ashland? Can you add any light to those changes? A. I have heard the testimony and I am sorry, I can't add any specific light to that situation.

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Q. Can you tell me if during the period at about 1961 or '62 there were any discussions in staff with respect to the phasing out of the old portion of Boulevard or even of Ashland itself? A. Yes, I remember those discussions. I heard the testimony this morning. The Boulevard School was made up really of two parts; one distinctly older than the other. And there was sort of a passageway between the two buildings.

Q. Was the new part contained so far as heating and—
A. It was not a new building. Let's call it a more recent part. It was also an older building. It was not a new building. In other words, construction—I don't remember the precise date, but long before I came to Denver. The other part of the building was one of the very old buildings in the city and the nature of it was such that we deemed it inadvisable to continue to have school in the building. And so we razed the building.

【1947】 Q. And that was following the 1961 lowering of the capacity at Boulevard? A. That did result in the lowering of capacity. Now I do remember that aspect of it. But, as to the other discussions, I don't recall.

Q. Now, with respect to the 1961-1962 boundary change study, which among other elementary schools involved Stedman and Hallett, do you recall that particular study that was made, Exhibit 52? Are you familiar with that?
A. Do you have anything that would help me recall it? I remember the general situation.

Q. Will you look at Exhibit 52, please, Dr. Oberholtzer.
Do you recall this particular document at all? A. This is one of the many such documents where we were considering in staff possible school boundary changes. It was not the sort of document which would have been presented to a board meeting or to the board in regular meeting. It's possible that some board member or staff member—I am

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sure the staff members had copies. But, this is not a report. It was for study only, and among many proposals that I made over a period of years.

Q. And this related only to elementary schools? A. It apparently does, yes.

Q. The title on the first page I believe refers— A. Yes, it does.

【1948】 Q. At that time who made the determination with respect to boundary changes at the elementary school level? A. By the bylaws of the Board, that was the responsibility of the Superintendent and his staff, with the additional responsibility of informing the Board from time to time. This was done by letter and by various means. But, they were informed.

Q. Dr. Oberholtzer, at about this time do you recall a situation existing at Smith, the pupil membership at Smith where it had a temporary but rather drastic drop that was developing? A. There was a period in—now I am trying to relate it to the particular years. Let me describe it in general; when we built Smith School, we tried our best as usual to predict what the peak enrollment would be. But, it increased more than we had expected and there was an addition necessary. Then there was the construction in that vicinity of a parochial school, as I recall, which resulted in a decided drop in the membership of the Smith School for a short while. But that I mean a period of possibly a year or two.

Then there was another rapid increase in pupil population, and this is typical of some areas. You get varying population trends, down and up. And in the case of Smith School I suppose we have one of the most drastic instances of rapid change, both ways, down and up.

【1949】 Q. Was this drastic change predictable before it

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happened? A. As we looked forward, we could not see it. If you used 20-20 hindsight, I suppose it is predictable, but we did our best to ascertain what was going to happen and things happened that we didn't expect.

Q. With respect to Exhibit 52, would you please look at pages 16 and 17? A. 16 and 17.

Q. Yes, sir. On page 16, you will notice two references for proposed boundary changes on Stedman, the first three items referring to Maps Nos. 10, 11 and 12. A. Yes.

Q. And the last column there, "Effective Date, 1962." Would you then refer to page 17 and refer to Stedman, showing actual membership in 1961, and then estimated membership for subsequent years. Do you now recall the reason for the variance between the 1962 shown on page 16 and the fact that there is no drop in estimated membership for Stedman on page 17 until 1964? A. I am sorry, I am trying my best to remember what specifically happened there. I don't recall at the moment.

Q. Do you recall whether you made no changes in 1962 with respect to Stedman boundaries by reason of any racial or ethnic factors in the area, in the subdistrict? **[1950]**
A. There would not have been any changes at that date with respect to racial or ethnic factors. As I recall, the initiation of that factor in our consideration began in 1964, not in 1962.

Q. Well, was there any inaction in 1962 with respect to Stedman boundary lines related to racial or ethnic factors? A. Well, the obverse would be so, too.

Q. With respect to the busing out from Stedman in 1966, do you recall how the pupils were chosen who were to be bused out at that time? Was it optional? Was it mandatory? A. I am trying to reflect on your question. There were several considerations. Yes, with respect to options,

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yes, it was optional with the parents concerned. That is, with the parents I am talking about now. There were considerations as to what grades, as I recall, should be in the picture for relieving the overcrowding, and once those were decided upon then the option was with, as I recall, the parents.

Q. Was there any selection by achievement level of the individual students? A. I do not recall any selection on that basis, no, sir.

Q. Do you know whether all children whose parents elected to have them bused out were accommodated? A. I think so. The best I can recollect, they were.

Q. Did you have occasion to establish a new department [1951] in connection with community relations in the 1960's? A. Yes, I did. In connection with the trip that I referred to, to Philadelphia, New York, Detroit, and Chicago. One of the matters of interest to me was the staff resources available to the Superintendent and the Board especially, to make studies of the situations, particularly with respect to racial-ethnic matters, and as I recall in each instance there was a special staff member appointed, sometimes an assistant superintendent, sometimes some other title, whose responsibility was to work, usually directly with the Superintendent on such matters, and one of my recommendations after I returned was the establishment of the Office of School-Community Relations. This came in connection with also my recommendation that there be a special study committee established for equality of opportunity.

We felt it highly desirable to have a qualified staff member who would be available to the study committee for its studies, and this was one of the reasons for the establishment of that office, not the only reason.

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Q. And who was the first one to be appointed as director of that department? A. Miss Mildred Biddick was the first director.

Q. And how long did she hold that position, do you know? A. Well, let's see, it must have been about four years. [1952] I judge from '62 to about '65 or '66.

Q. Then who took over? A. Mr. Gilbert Kruder succeeded her as the director.

Q. Now, with regard to teacher recruitment, employment, assignment and transfer, we have evidence that early in the game and during your tenure, why, there weren't too many minority teachers and they were limited to a relatively small number of schools. Can you give us what the situation was when you arrived and what happened chronologically after that? A. Well, this is substantially correct, what I have heard in the testimony, minorities here I suppose referring to Negro-Hispano-Asian.

At the time that I arrived, most of the minority teachers were in the central part of the city in the schools, the central part of the city.

Q. Was there any educational theory at that time, generally accepted in the profession, with respect to assignment of minority teachers to predominantly minority schools?

A. Yes, there was. The thought was that the minority teachers, as you have called them, in this instance mainly Negro teachers, could best be assigned to those schools where there were some concentrations of Negro pupils and where in a sense there would be an immediate empathy, understanding, role-model playing. This was currently acceptable [1953] theory at that time.

Q. What is meant by role-model? A. Well, as I would say it, it is an adult of in this instance the same race to whom the children could look up to as a model. They have

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attained status and achievement in their profession or their occupation and as a person.

Q. Did this have some relationship to the motivation of the child? A. A very intimate relationship, yes, sir.

Q. Now, with respect to the identity of applicants by race or ethnic origin, what was the practice and why during the early years before '64, particularly? A. I am not sure that I understand. Each applicant was—a teacher applicant, now, we are talking about?

Q. Yes, sir. A. We had different procedures for different employees. The teacher applicants, usually by letter, sometimes otherwise, made inquiry and for an application blank. The first process would be to file that, and the accompanying materials, which included a transcript and a college record, references and such. When that was completed, the usual procedure was for the person to come in for an interview with one of our staff and then an appraisal was made by the particular staff person whether this person was qualified and should be recommended for appointment. This is in general the procedure.

【1954】 Q. Well, with respect to any designation of race or ethnic background, was that asked on the application? A. That was not on the application, no, sir.

Q. Was a photograph required? A. There was a photograph required at that time.

Q. And was that continued during your tenure? A. That was continued up until a certain time when we were asked to discontinue it.

Q. By whom? A. And this was done by Mr. Reynolds, who is the director of the Colorado Anti-Discrimination Commission, the state commission.

Q. State agency? A. A state agency. He came over to look—I don't recall how it came about, but he was appar-

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ently aware or had looked at our application blanks, and in his judgment this was a discriminatory practice, and in light of his judgment we discontinued it.

Q. At what period did actual recruiting begin to attempt to get more minority teachers, Negroes or Hispano? A. Well, there were efforts all throughout my tenure to hire the best qualified persons that we could for teachers, and there were applicants from among Negroes as well as Anglos, Hispanos—as between Negroes and Hispanos, relatively few Hispanos, more Negro applicants. We did make some [1955] appointments. I don't think there was any great increase for quite a period of time there. In fact, there weren't large numbers of applicants. We did make intensive efforts to increase the numbers, especially with the advent of the special studies committee and thereafter, its report.

Q. As of 1964? A. As of 1964.

Q. Now, before 1964, was race or color either a positive factor or a negative factor? A. Now, here again, we were not operating on a basis of trying to make a distinction as to racial or ethnic factors. We were endeavoring to hire the best qualified persons that we could find for the schools.

Q. Regardless of race or color? A. Regardless of race or ethnic factors.

Q. Then the Voorhees report made some affirmative recommendations pertaining to both recruiting and the distribution of minority teachers? A. This was one of the aspects of that report to which we gave careful attention, yes.

Q. Did you take action according to that direction? A. We did take action, affirmative action, to endeavor to increase the numbers.

Q. Now, respect to the assignment of teachers or transfers, was there anything else you could add to the [1956]

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testimony you heard here in the last couple of days? I don't want to just repeat it, but anything— A. No, sir, not in substance. Let me just make one comment. Some emphasis was made several times on the seniority rights, and as was pointed out, the administration did have the power to appoint—I mean, to transfer—initial appointment, too, placement, and if in our judgment there was a serious deficiency, then we did make some transfers, and we did. We would talk to teachers.

Now, I didn't hear this in the course of the testimony that I have heard, because I personally did some of this talking with some of the teachers. There were different conditions under which we were operating. Let me give I hope just a brief description of this, because one of the first things that occurred when I came to Denver in 1947, there was a disagreement among the certified employees as to how they were to be represented in their views with the superintendent and the Board.

I will simply state that after a long period of consideration, beginning in 1947, shortly after I came, in 1948, there was established what was known as the Employees Council of the Denver Public Schools. This was an organization of both certified and classified employees on a proportional basis to the number of employees in a classification. This was the group that recommended policies to the superintendent [1957] and the board in a variety of ways, among the personnel, and so there were policies in the policy book to which I refer that held for quite a while, and there was more discretion on the part of the superintendent and staff at that time as to transfers than there is at present, apparently.

In 1962, we entered into the first formal agreement with, for example, the Denver Classroom Teachers, and there-

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after there have been subsequent agreements with changes, and I think there is more emphasis now than there used to be on the matter of seniority and tenure.

Q. Were these agreements beginning in 1962 the result of what's commonly called collective bargaining between the administration and the organization representatives?

A. These collective bargaining, professional associations, that sort of terminology, yes, and the process.

Q. Mr. Lorenzo Taylor testified that in the years 1952 to 1956—approximately four years—he said there were 150 applicants to the school district seeking appointment and somewhere between 30 and 40 were so employed. A. What period?

Q. 1952 to 1956. A. '52—

Q. To '56. Now, 30 or 40 employees employed out of 150 applicants, how would that compare with the number of teachers who were employed during the comparable period, [1958] compared with the total number of applicants in that period? Could you give us an estimate? A. Well, my estimate would be that that would be a higher proportion than we hired among the Anglo applicants, because we were hiring at that period—it must have been ranging all the way from 300 to 600 new teachers each year. It varied. We had some years where there were 2500 increase in school population. I remember one year where we had about 5500 increase, so it varied, but there would be each year anywhere from 3,000 to 5,000 applicants total, most of whom would be Anglo applicants. So I would say that if this figure is correct—I am taking his figure, I don't remember it—but if that is the figure, it would be a relatively high proportion of the group.

[1959] Q. All right, now, another witness, Dr. Oberholtzer, was Ethel Rollins, social worker, who testified

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that she was informed that shortly after she was employed, assigned, that it was the policy of the school district to have white certificated personnel within a school vote as to whether to accept a Negro teacher or other certificated personnel who was assigned to that school. Was there any such policy? A. There was no such policy.

Q. Was there any such practice? A. I'm not aware of any such practice.

Q. Dr. Oberholtzer, you made several references in your testimony concerning pupils in reference to their achievement and in some reference to their socioeconomic environment. Do you have an opinion from your experience, your education and your experience both before you came to Denver and in Denver as to what factors go into an individual's achievement, whether they achieve highly or whether they achieve poorly?

Mr. Greiner: Your Honor, I would object on the basis the witness isn't qualified. I don't think there has been any foundation laid to show that he has studied this question.

The Court: You might ask him some preliminary questions on it.

【1960】 Mr. Ris: Well, I think his entire background is shown in the exhibit.

The Court: I'm inclined to agree.

Mr. Ris: It gives his educational and professional experience plus—

The Witness: If I may just add, my graduate studies were related directly to some of these questions, if he wants to look into it.

Q. Go ahead and tell us some of what your background is in this field in this regard. A. Well, from my Master's

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degree—through my Master's degree through my doctorate, there was work in psychology, in education, in sociology, in statistics and in measurement, all of which are related, I think, to the subject at hand. I hesitate to say in this highly-controversial field that anybody is an expert, that knows all of the answers. Certainly I do not. This is an extremely difficult field. Witness the current controversy as to the importance of native intelligence and what it is. But I think most psychologists would agree as most persons with a degree that there are differences among people as to their native capacity. I'm talking about individuals now.

So, there are such things as—let's call it native ability, to do school work, for example. And this [1961] was the original definition related to the intelligence quotient. It was an attempt to try to assess the capacity frankly to do school work. Now, through the years, ideas about this have changed. But there is a native capacity I think without doubt. It's very difficult to measure precisely and to take into account. But there are differences. This is the most important factor.

Secondly, related to it, is the whole—if I may use the term—environment, in which this child was reared, grows up, becomes a person. There are, within this environment, the home, the community, the school. And I don't want to be pedantic in recital, but these are all important, very important factors. There is also, importantly, the determination and the motivation of the pupil himself. After all, he is the one that learns. Nobody else but he can learn for himself. We have to be reminded of this. There are indicators within the environment.

Now, I want to get back to the specific question as I

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remember your question; some factors in the community, was it?

Q. What factors that create differences in achievements. A. In achievement, yes.

Q. Right. **[1962]** A. I mentioned the individual. And the individual is all-important. But there are things that affect the individual, situations, people, and these have a bearing on every boy and girl.

I think perhaps—and I'm giving you my opinion—realize there are studies of this and, over a long period of time, I have concluded that probably the most important factor affecting the individual himself, aside from his native intelligence, is his home environment; his mother and dad; his sisters and brothers; the neighborhood in which he grows up and becomes a person. These are all very important as they affect his achievement.

Q. Can you be more specific as to what differences there are in the home that has made a substantial difference to the child? A. Well, for example, the educational level of the parent has much to do with it. With his own understanding of what a school is; of what a school can do; his own experience in school affects his relationship to the child. If that relationship has not been satisfactory, the tendency, for example, would be to reflect that in the child; not always. But when you come to studies—and there have been studies in professional literature of the influence of achievement insofar as the home is concerned, the educational level of the parent is one thing. The **[1963]** occupation of the father and the income level.

Now, these are all indicators which have been objectively studied in various instances and this is usually what is referred to generally as socioeconomic factors. These three indicators.

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And where those three indicators, if I may put on a continuum, are relatively low, the chances are the achievement of the pupils will be relatively low. Now, there are individual exceptions to this. No doubt about it. But study after study will show you this relationship. These are the principal factors. There are other factors. Now I'm referring here not only to the community. Let me talk about the individual pupil.

There are two major factors that we see in schools and one is his attendance at school. If he does not attend school, the chances are he is not going to learn what is offered at the school in the way of opportunities. I am talking about most individuals. If this child is obliged to move from school to school as many as three, four, five times within a given school year, his work is affected.

Q. Is this a situation that is common? A. This is a situation in Denver and in most large cities. It unfortunately is a factor that is not atypical in low-income families that do move from time to [1964] time from one place to another. We have schools of very high mobility. This is the term we use; pupil mobility.

Q. By that you mean turnover in the school population? A. Where they move. A child moves from one school to another, or where there is an in-and-out at schools.

Q. Can you give use an illustration of a specific school in Denver in percentages? A. Yes. Two schools come to mind. Downtown Emerson Elementary School, why, there is—

Q. Where is it located? A. There is one of the highest. And Morey School is located—

The Court: He asked where Emerson is located.

The Witness: Oh, it's on 14th and—

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The Court: And Emerson?

The Witness: No, it's not Emerson, Judge. That's Ralph Waldo Emerson was the origin of the school name. It's about Ogden somewhere, I believe, in that neighborhood.

The Court: Also the origin of the street name, I think.

The Witness: Was it? Yes. But I don't think the school was located there.

The Court: I've been here longer than you.

The Witness: Okay, Judge. You're probably right.

[1965] The Court: But not that long either.

A. But the Emerson School and the Morey Junior High School, are within a short distance of each other. Those two school probably—I know they are among the highest in terms of mobility. I do recall—and I can't name the years—but in talking with principals of Emerson School, the mobility or turnover of the Emerson School was more than 100 percent in a given—

Q. A single school year? A. In a school year. That means you had a complete changeover of the student body within a year. Now, there—this is not typical, but it is not atypical altogether either. There are other school of high mobility.

The Court: Well, through the years that was—well, I would say it was above average economics—

The Witness: It was until recently.

The Court: Until, I suppose, the late '50s.

The Witness: That's right.

The Court: Fairly solid economically fixed area,

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I would say, at that time.

Mr. Ris: Originally, yes.

Q. When was the changeover in that school from a static school population to high mobility? A. The Judge has indicated, as he recalled, it was in the '50s. And, as I recall, most markedly in the '60s.

【1966】 Q. What other substantial factors are there which you relate to achievement in your opinion, Dr. Oberholtzer? How about language? A. Well, I can give you variations of the home environment. Where there is a home environment with a low income, there are usually fewer books, magazines, reading materials in the home, which has an effect on a child.

The matter of language—that is, the use of oral language one of the best indicators of whether a child can do the usual work. And if one were seeking a single factor as an indicator of capability of doing school work, you could just ask for the vocabulary, the range of vocabulary, the oral vocabulary.

Now, these are not exact. These are general indicators. But, the language of the child has much to do with his capabilities and it is especially important what happens to that child in his early years before he gets to school.

The largest education program that Denver has had—it was here when I came and I think it continues—is a speech correction program. And this results from difficulties that children have with the language when they come to school. And when a child comes with a limited oral language, he has difficulty in learning to read. Reading is based on an oral language base.

【1967】 The Court: Of course, his exposure is probably the most important element in changing

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this, isn't it? Exposure to persons who have vocabulary; who enunciate?

The Witness: I would agree.

The Court: We will call a halt now until 9:15 tomorrow morning.

(Whereupon, the trial recessed at 4:59 p.m.)

[1970] * * *

Direct Examination by Mr. Ris (Cont'd):

Q. Dr. Oberholtzer, when we recessed last night I believe we were still on the general subject of achievement with particular reference to low achievers and some of the basic background reasons therefor. One of the last things we were discussing was the background of some of the youngsters, the low achievers, with particular reference to their home environment and so forth. Now, I think one of your last statements concerned the matter of communications; communication in the home, parents, depending on their extent—the extent of their educational level. And, the occupation and income of the family.

Now, I would like to pursue this one step further **[1971]** if we may, please. And this pertains to the age at which you believe these children become disadvantaged culturally, so to speak. When it begins, and when the most important years are that they create this gap between an underprivileged child and a child coming from an average middle-class home in a socio-economic level. Would you pursue that, please? Tell us your opinion. A. Well, there are no differences as between low income or high income with respect to the timing of influence. Life is a continuing stream, and a person is influenced throughout, of course. But, what are known currently as cognitive psychologists

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contend generally, and I believe with them, that there are very important influences at early ages that affect what a child is capable of doing in school.

Q. Specifically what ages are you referring to? A. I am referring— Again, life is in continuing stream. I don't think there is any one mark to stage. But, most of the psychologists will say at least beginning at age 3, 4 and 5, some say earlier. As a matter of fact it begins with the first verbal oral attempts at language, and from there on, to a marked degree. The language capability of a child, his potential, when he comes to school affects markedly what is done about reading and his capability of learning to read. So, where there is, let's say, a relatively low degree of capability or of communication as you have expressed it in [1972] language, that child has a marked handicap when he comes to school. He comes with that to school.

And, if I may add, if I had the power as a person to allocate the dollars for education as I would like to do them, I would put proportionately a larger—much larger proportion for those early years that are sometimes called early childhood education years, probably three and four and five years old. The five-year-old now is kindergarten.

Q. Is that the age level of what we know now as the Head Start program? A. Head Starts programs vary. Most of them I think are four or five-year-olds, rarely three-year-olds. But, this is the early childhood area which has come into prominence in recent years and largely because of the findings of the cognitive psychologist.

Q. Now, Dr. Oberholtzer, in your discussion of the various factors and differences in background which reflect

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on a child's achievement level, you have made no reference to race or color as an element? A. I have not.

Q. Is that a factor in your opinion? A. I do not think that race as such is as I think the factors that I have mentioned are.

Q. Dr. Oberholtzer, there has been some question raised at this trial concerning the facilities and equipment between [1973] the various schools. Could you tell us during the period of your administration, twenty years that you were Superintendent, what was done and what was accomplished with respect to any attempt at making the physical facilities and equipment as equal as possible? A. Well, throughout the twenty years there were substantial amounts of funds allocated to the maintenance of buildings. I well remember my first experience when I came in August in visiting buildings.

Q. August, 1947? A. 1947. To my amazement I found in many of the classrooms, one single drop cord light in the middle of the room. That was the lighting. They were already under way with a program to change that situation. Mention was made in the testimony that I earlier heard of the fluorescent lighting program, which was true, and we were able to step up that program so that every classroom in the district had good lighting. That took a period, as I recall, of two or three years to complete. In other ways we changed the situation from fixed seating that was in some of the rooms to tables and chairs. We generally supplied equipment comparable to the new schools. In other words, tables and chairs and such.

We made an endeavor, for example, to include central libraries, lunchrooms, and in other ways to make the buildings equal insofar as types of facilities were concerned.

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So, [1974] there was a continuing and a very large program of maintenance throughout the twenty years.

Q. Was the maintenance budget increased substantially during that period? A. I can't remember specific figures at the moment, but there were increases, yes. It varied some from year to year but as between the beginning and closing, yes, there were increases, dependent on the kind of program.

Q. Now, with respect to the educational organization in the various schools, both at elementary and at the secondary level, would you inform the Court as to whether there were equal offerings on the basic three R's, for example, various classical subjects, reading, writing arithmetic, or were there differences in curriculum offerings at any of the various schools? A. There were the same basic offerings. For example, reading was taught in all schools, arithmetic and such. The subjects, the basic subjects, the so-called three R's, were taught in all of the schools. There were differences in the curriculum within specific subject areas, to be sure, depending upon the needs of the pupils, their interests, and such.

Q. What was the reason for that? A. As I indicated, differences based on needs, on interests, on their background, and such.

Q. Did that have any relationship to attempts to offer [1975] everything on an equal educational opportunity? A. This was related directly to that in an attempt to provide equality of opportunity.

One of the things, if I may add another word, related directly to this, is the matter of pupil-teacher ratio that was referred to yesterday in testimony. One of the typical arrangements or changes made where there were no achieving pupils was to provide a lower pupil-teacher

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ratio; in other words, to make possible teacher-pupil contacts more frequently individually than might otherwise be the case.

Another type of arrangement, which we instituted and practiced in many of the lower achieving schools, especially, was team teaching. In this instance, instead of perhaps two teachers there would be three teachers working with groups, sometimes a group of thirty or sixty different pupils, but they were divided up into smaller groups, and where you had, for example, three teachers with sixty children, you would have a pupil-teacher ratio, of teacher to pupil, 1 to 20. The normal in many schools was 1 to 30. So this was one of the typical changes made.

Q. Were there also varying assignments with respect to non-teacher personnel, social workers, so forth? A. There were changes made with respect to that. We instituted the employment of teacher aides, for example. These were frequently people who assisted with the clerical [1976] tasks of the teacher so that more attention could be given to the professional aspects by the teacher herself or himself.

Q. There has been some evidence here concerning compensatory educational programs. Were those also initiated during your regime? A. What I have indicated were some aspects of compensatory programs. There were introduced some newer types of curriculum materials, for example. In some instances there were, for example, more community trips to enable children to see first hand some of the community environment that they had not seen before, and that was used as a basis of discussion and of reading and of writing. There perhaps were more materials developed by the teacher herself in addition to the standard materials of textbooks and such. These are illustrations.

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There were also provided special teachers of reading where there were marked deficiencies, and this came in before the federal program, but also it was enhanced or expanded after the federal programs were introduced. As a matter of fact, in the so-called target areas, as they were designated, which were under the criteria of the federal government, certain so-called low income areas, there were mobile units moved in on school grounds, and teachers would take groups of pupils to help them with reading.

Q. When these federal programs were offered on a [1977] national scale, did the Denver School District take advantage of those programs, apply for them? A. We did apply for funds, for approval, and we did participate in the programs, yes.

Q. In substantial amounts? A. In substantial amounts, yes.

Q. Now, specifically with regard to the Head Start program, can you tell us what was done under the federal programs in that regard? A. The Head Start program in Denver was made up of a number of different agencies participating, one of them being the Denver Public Schools, and in our instance we made a beginning, I am trying to recall, one summer. Then we had programs in the regular school year and in the summers, both, that is, it was a continuing program. These programs were offered in housing centers. We leased space in the housing centers. These were low income centers, and we provided the opportunities basically in those centers. As I recall, there were some twenty centers.

Q. Dr. Oberholtzer, it was during the sixties that the open enrollment program was first initiated, is that correct? A. An open enrollment program was initiated fol-

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lowing the report of the special study committee on equality of opportunity. The recommendations were made, I believe, in May, 1964, and this was instituted in the fall of 1964.

【1978】 Q. On your trip east, Philadelphia, New York, Detroit, Chicago, did you investigate their plans of open enrollment in 1962? A. We did, and we found them utilizing such programs.

Q. When the limited open enrollment was established in Denver, was that based primarily upon the experience of these other districts that you investigated? A. We did base it pretty largely upon their experience, not precisely the same, but very similar.

Q. Was there any one district to which it was more closely related than other cities? A. Our plan was patterned more especially after New York and Detroit.

Q. What was the objective of the open enrollment plan? A. The objective of the open enrollment plan was to make it possible for boys and girls who might be attending a given school to attend some other school outside of their subdistrict where they were supposed to attend and where, in their judgment, they might get perhaps a different educational opportunity if they wanted it.

【1979】 Q. Dr. Oberholtzer, in 1964 is when the optional areas were abandoned throughout the entire District, is that correct? A. They were rescinded or abandoned again as the result of the recommendations of this study committee report in 1964.

Q. Now, do you remember what month in 1964 the boundary changes were considered by the Board of Education at a formal meeting? A. I believe it was May.

Q. Was it at that same meeting that you announced the changes that you were making in the elementary school

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boundaries? A. Well, that was a pretty long meeting as I recall, and I think that was one of the features, yes. There were actions by the Board on my recommendations for a number of policies. One of the major policies was with respect to school boundaries, subdistricts. For the first time we took into account racial and ethnic factors as a policy of the Board of Education. And that was in May 1964.

Q. Was it at that meeting that he made the recommendation which led to the adoption at that meeting of policy 5100? A. That was one of about three or four different policies, as I recall. That was one. There was one on boundaries, one on pupil transfers, one on pupil transportation. That's four. There might have been another one.

The Court: I'd like to ask a question here. I may [1980] forget it if I don't right now. You indicated yesterday that you were reticent or hesitant about taking any positive action involving classifications based upon race. Was it your view that the Colorado Constitution prohibited you from taking any action that would have a tendency to desegregate prior to 1964?

The Witness: Judge, it was our view— In substance, yes. To express it differently and use the language of the Constitution, it said you shall not make a distinction or classification based on race or color. And it was the interpretation of our attorney and our interpretation that this would in a sense prohibit what you have said, yes.

The Court: Thus, then you avoided any possible policies that would have a tendency to relieve the concentrations of Negroes at Negro schools, for example?

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The Witness: As I have indicated, yes, Judge.

The Court: Okay. Well, I gathered that impression from what you said, and I wanted to clarify it.

The Witness: I tried to indicate throughout that our boundary lines and our actions were based without distinction as to race and color. That was our effort.

Q. Either in a positive manner or a negative manner?
A. —or a negative manner.

Mr. Ris: May I pursue this one since you brought it up?

【1981】 The Court: Well, I would encourage you to do so.

Q. In 1962 was there a request made to Mr. S. Arthur Henry to make a thorough study of the decisions, the court decisions that had come down since the Brown decision in 1954? A. There was such a request made for written opinions, and it was made by me. It was also made by the special study committee on equality of opportunity.

The Court: That was in 1954 when Brown No. 1 was decided, is that right? 1954? Is that what you asked?

Mr. Ris: Yes, Volume I, Exhibit 4.

And then this request was made in 1962, however, Your Honor.

The Witness: Let me remind us that we did make requests of the attorney as to the meaning of the Brown decision. I did. Oral opinions were given me that it applied to de jure segregation, where they had equal and separate school systems.

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Q. A dual system? A. Dual systems.

Q. But in 1962 it was when you asked Mr. Henry to review the matter at that point in time and to prepare a written opinion for you and for the Voorhees Committee?

A. I am not sure whether it was in 1962 or 1963. It seems to me it might have been 1963. It was during the course of the deliberations of the special study committee that that [1982] was requested. I requested it and they requested it, a written opinion. And, he did render a summary of opinions.

Q. And was that furnished to the special study committee? A. It was.

Q. Was that reflected in the study committee's report.

A. I believe it was, yes.

Q. Also, let me ask you this, Dr. Oberholtzer, along the same line. When the 1964 Civil Rights Act was passed were you concerned with it? A. Yes, we were. The Civil Rights Act occurred—of 1964 you're referring to?

Q. Yes. A. And the special study committee report came out in the spring of 1964, as I recall it. We were much concerned with the provisions of these Civil Rights Acts and apparently here again there was not to be an assignment—I can't recall the precise language, but the import of it was that there would be no assignment of pupils on the basis of color or race. That was as I recall the wording.

Q. Well, in any event whatever the wording was, that act was studied by you and attempted to be worked into the overall planning of the District? A. That's right.

Q. Now, after the Voorhees report came in then and the action that was proposed at the May 1964 meeting, after [1983] that time did you report to the Board then with

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respect to various elementary school boundary changes and particularly with reference to northeast Denver? A. I did.

Q. And I would direct your attention to Exhibit 70 and an overlay, Exhibit 71, which purport to show the specific changes with reference to Stedman, Hallett, Philips, Ashley, Montclair and I presume Park Hill down in here. Yes, Park Hill here. Could you tell us the basic background and reasons for these specific changes and with particular reference to whether they had any objective of segregatory intent or objectives? A. I can answer the latter. There was no such objective. The objectives were primarily again changes of boundaries resulting from the rapid moving of population in this area and changes in population. I don't recall any. Now, I have to say that because it was at this juncture, one way or the other where we were officially and actively considering the matter of racial and ethnic factors. I do recall that in the case of the secondary school boundaries we did. May I add that the boundaries in this instance as in many instances in the elementary schools involve such a relatively few numbers of pupils, however, in terms of the total school population, that conceivably any one change could have not made a significant change in the racial or ethnic composition of **1984** the student body.

Q. Was that true with respect to these immediate changes in the northeast Denver area? A. I would think it would be so. I have no recollection of any changes—any specific numbers with regard to race or ethnic factors.

Q. Now, at this same meeting I believe you recommended changes at the junior high and high school levels, did you not, which were adopted? A. Yes, the elementary schools were by way of information for the Board in case there were questions about it. In the case of the secondary schools it was my obligation to recommend changes, yes.

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Q. Now, I am referring to Exhibit AM which purports to be junior high, 1964, showing old boundaries, the dotted lines—dotted black lines, and the new boundaries with the orange lines. You recognize that exhibit? This being Gove? And this Smiley? A. Lots of arrows and lines there.

Q. Yes. A. Do you have an earlier junior high?

Q. Yes, I do.

1963 or 1964? Either one. A. This one is good.

Q. Okay. That's Exhibit AL. [1985] A. I'm asking for this, because with the opening of the new senior high schools, George Washington and others, in this instance George Washington.

Q. And that was in 1960? A. In 1960 we had determined certain boundary lines, and at the same time, as I recall, we had certain related boundaries in the junior high schools which this refers to. This is—although this is 1963, it reflects the changes that were made about—oh, in '59 or '60, with the opening of the new high schools. I call your attention particularly in this instance, Gove Junior High School boundary, which goes east out along Colfax—quite a long boundary. It's an unusual boundary. Based largely upon available transportation, moving east and west to the school. And also on the fact that you had Hill Junior High School located down here not very far. To the west is Morey. To the immediate north of Gove and a little east is Smiley. Over here is—the big circle and then Gove farther to the west. At this time you will note that there were still optional areas.

“A” here, largely, as I recall, between Cole and Smiley. And “B” as between Gove, I believe Gove and Morey. That was the situation in 1960 and up until 1964, as I recall.

Now, if you will look at 1964.

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Q. All right.

(Referring to Exhibit AM.) **[1986]** A. The new boundaries established here were established with an application of the racial and ethnic factors in mind. No specific pupils in mind, but areas of the city, of the School District. For example, and—in an effort to achieve a higher degree of integration the area north of City Park, that area which was previously, I believe, in an optional zone as between Cole and Smiley, became in a sense a mandatory zone to Gove.

Q. Was this area north of City Park predominantly black? A. I believe it was, largely so. Again, an area from—

Q. And that's basically a major portion of the Barrett subdistrict, is it not? A. Yes, sir.

Q. Then the area just immediately north of Barrett I believe that's Harrington— A. Yes, that's Harrington. The Harrington School which was formerly again in, I believe, within the optional zone largely became a part of the Smiley District. The optional zones, if you will notice, are done away with in this instance, and we have established boundaries. But, for the first time in the case of the junior high schools we endeavored here in 1964 to take into account the racial-ethnic factors.

The Court: The Harrington optional zone was abolished?

The Witness: Yes, sir, the whole junior high school **[1987]** optional zone was abolished and this became mandatory to Smiley in this instance.

Q. And was this adopted by the Board, also, at the May 1964 meeting? A. Yes.

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Q. Which is the same meeting that you announced these changes? A. The elementary school boundary changes, yes.

Q. Now, at the same meeting, then, in '64, was there also a high school boundary change recommended and adopted?

A. May we have again the two maps?

Q. All right, we have a '62 senior high map, which I will show you first. A. In this case, again I would refer you to the presence of optional zones, and this represents the boundaries following the establishment of the new senior high schools, in this instance the George Washington High School, which affected markedly the boundaries, particularly of East High School which is contiguous to it.

Q. What other high schools were open at the same time, Lincoln? A. Abraham Lincoln—I am trying to think—and Thomas Jefferson, the senior high schools. There were in this instance three major ABC optional areas relating to East, C relating only to East and to George Washington.

[1988] Now, if we may see the '64 boundary map.

Again, at the meeting of the Board in May of 1964 the optional zones were rescinded or abandoned, and this had its effect upon the boundaries of the high schools, so that for one effect there were no longer any optional zones and substituted therefor were the more or less mandatory zones.

If I may call your attention here especially to the action of the Board, I think it would be useful to start with what was formerly Optional Zone A just north of City Park. Do you want me to point that out?

Q. Yes, would you please. A. This is the former optional zone, Optional Zone A, which was optional as between East High School and Manual High School. As the result of the Board action, if you will notice the red outline, this part of the area which was the largest part of the area, was assigned to the East High School. This part

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of the area which was contiguous or closest to the Manual High School was assigned to the Manual High School. There was formerly a small optional area here which had been optional between East and Manual; this was assigned to East High School.

In the case of George Washington High School and East High School, this dotted line area was the former optional zone. As the result of the Board action, this was no longer optional, but in addition they took this territory [1989] in the red line and assigned the whole area to George Washington High School, and this was because of our studies showing some moving of Negro pupils generally eastward, and to some extent southward, and this was in anticipation, also, of some possible further moves in an effort to change, again, the racial-ethnic composition.

Q. Dr. Oberholtzer, there has been some evidence there were not too many black students living in this area at the northern part of this new change at the time. May I ask you to expand just a little bit, were you projecting ahead that there would be a further movement of Negroes into this area? A. It seemed to us logical. There had been moves generally in this direction, and it seemed to us this would be a logical future change, yes, and then you go either way and you have to take into account some reasonableness as to the distance. This is quite a distance from this point to George Washington High School. It is also quite a distance from up in here to East High School. But those factors were taken into account, and we held hearings. I remember one hearing at East High School that was attended by a large number of people with respect to the boundaries. And we would generally hold hearings or people would attend Board meetings and express their views as to what should be done. In this instance there was considerable interest.

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Q. Then this was done with an intention of change?
【1990】 A. This was done with an intention of changing the racial-ethnic factors to the extent feasible there.

Q. Thank you. Dr. Oberholtzer, in the May 1964 meeting of the Board where these various boundary changes were made and optional zones abolished, you mentioned it was at that meeting that Policy 5100 was adopted? A. Yes, sir.

Q. Was it at that meeting that the limited open enrollment policy was also adopted? A. Yes, sir.

Q. And you also mentioned that a major policy change was made with respect to transportation. What was it? A. That included a provision making it possible to—I can't recall the precise wording of it, I don't have it before me, but it made it possible to transport children where there was overcrowding, to relieve them, the schools, so affected, and to move them, the children, into other schools where there might be an improvement in the educational program for the children, in other words, because there would be less crowding, and so on.

Q. Again, such transportation away from the child's own neighborhood school, that is contrary to the neighborhood school concept in its purest form, is it not? A. Yes, it is to some extent, yes.

Q. This overcrowding situation that you referred to, 【1991】 and busing to relieve it, was that intended as a permanent thing? A. No, it was again intended to be somewhat temporary until perhaps more permanent arrangements could be made to relieve the overcrowding.

Q. And what were the permanent arrangements dependent upon? A. Primarily money funds to construct.

Q. Now, yesterday you referred to Exhibit HN which was a worksheet entitled "Recommendations of the Special Study Committee." A. Correct.

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Q. Which summarized the 155 recommendations made by the special study committee, is that correct? A. Correct.

Q. Now, was continuing action taken then thereafter with respect to those recommendations? A. The document to which you refer was simply a listing—I don't happen to have it before me.

(Document handed to the witness.)

A. This is a matter which I developed. It states all of the recommendations, the 155 recommendations, of the special study committee in order from 1 to 155, refers to the pages in the document, the report itself, and indicates my assignment for study to the various staff members. This **[1992]** was one of the initial steps that we took.

We developed a statement of all of the recommendations which were printed and distributed to all school employees of the District, to every faculty, for study, with the suggestion that they make a study of it and report their views and findings with respect to this.

I also assigned it to various other groups, one of them being the Central Committee on Instruction, which made quite an extended report. This is typical of the beginning aspects of attention to the study.

Q. Was that done? I mean, did these people get these reports back to you? A. They did. They rendered reports to me and many of them—most of them were rendered directly to the Board of Education as well.

Q. And was action taken? A. Action was taken on a large number of these recommendations.

Q. We will get back to the action in just a moment. Subsequent to the receipt of the Voorhees report in 1964, there was then appointed a second committee called the Advisory Council on Equality of Educational Opportunity? A. Yes, sir.

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Q. What was the objective of this—

The Court: When was that?

[1993] Mr. Ris: I beg your pardon?

The Court: When was the appointment of that committee?

Mr. Ris: Do you remember?

The Witness: I believe in January 1966.

The Court: Go ahead, Mr. Ris.

Q. What was the objective of this council as compared to the former study committee? A. The precise wording—I have the report, just a minute.

This was a continuation, to some extent, of the earlier report, but the advisory council was given a specific charge that I think is of pertinence to our interests here. May I read some of this? I think I can answer your question more quickly.

Q. All right, sir. A. The Advisory Council on Equality of Educational Opportunity in the Denver Public Schools—I was in error—was appointed on March 17, 1966.

The advisory council was given, on March 21, 1966, the following charge:

“Against this background (of increasing school population leading to concentrations of minority group children in certain areas, as alleviated by certain procedures instituted by the Board of Education in conformity with recommendations **[1994]** of the special study committee in 1964), the Board of Education requests your study and advice on the following matters, with your report to be submitted at the earliest possible date. Your recommendations will be most helpful if they can be reasonably specific

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and can meet the tests of educational validity and financial feasibility.

“A. Should the present policies and procedures of the Denver Public Schools, particularly Policy No. 1222C be applied to the location of new schools or additions to schools in northeast Denver?”

“B. If not, what changes should be made in present policies and procedures? What new policies and procedures, if any, should be adopted?”

That was the specific charge to the council.

Q. All right, sir. So there were two basic things they were to answer. And then they submit their report in February 1967, Exhibit 21. A. I was reading from your Exhibit 21, yes, the plaintiffs' exhibit.

Q. Would you refer to page 84 of that exhibit, sir, and what was their answer to the charge with respect to continuation of Policy 1222C as to new schools in northeast Denver? A. “The present policies of the Denver Public Schools, in particular, Paragraph 1(b)(6) of Policy No. 1222C and Paragraph 4 of Policy No. 5100 answer Question A of the charge [1995] and therefore no schools should be built in northeast Denver until plans are developed to implement Paragraph 1(b)(6) of Policy 1222C and Paragraph 4 of Policy No. 5100.”

Thereafter they recite the particular paragraphs.

Q. All right, sir. Now, did you, first as to the Voorhees report, have occasion to report to the Board of Education approximately one year after the report and approximately two years after the report as to the progress that had been made with respect to the recommendations? A. I did.

Q. Did your two-year report summarize the entire two years so that it included the one-year period as well? A. Yes, sir, it did.

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Q. Yesterday you already identified Exhibits HO and HP as being your written reports, first for the one-year period, then secondly for the two-year period, correct?

A. Yes, sir.

Q. With respect to the two-year report, Dr. Oberholtzer, would you hit the highlights for us as to what—not the studies that were made but what actual progress had been made with respect to the recommendations? A. I will endeavor to do it, because this was a summary in itself, and I will have to cite some—

Q. Hit the highlights for us. A. I will try to. First of all, it includes the [1996] General Policy Statement 5100. With respect—

Q. Dr. Oberholtzer, 5100 was really the first policy statement by the Board which added racial heterogeneity to boundary considerations? A. It was.

Q. Go ahead. A. In May of 1964, as to what was done, the recommendations of the special study committee were divided into several categories, one of them being on administration and organization, and I'd like to cite just a few things that happened.

As I have already indicated, the optional areas were discontinued as of September 1964, referred to in these charts.

Secondly, to the usual criteria for setting boundaries, there was added the factor of ethnic and racial characteristics of the school population, making, to the extent possible a heterogeneous school community and the mobility and levels of educational attainments of the pupils.

They also adopted the limited open enrollment for the school year 1964-65, and that was continued in 1965-66. There were quite a few recommendations relating to build-

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ings, equipment, libraries and supplies, and I will cite just a few of many changes that were made.

An addition under construction at McMeen Elementary School, it says "to provide for pupils who have had to be bused to other schools."

[1997] An addition to the Hallett Elementary School was authorized to provide permanent classroom space. Under special assistance from the School Lunch Division of the Colorado Department of Education, experimental lunch programs were set up in areas of low income using increased amounts of surplus commodities to enable pupils to buy lunches at 15 cents.

An addition was made to Smiley High School in the form of an industrial arts facility, recommendations on curriculum, guidance and instructions, to cite a few things.

For example, a revision of the social studies program was in process, including certain specific objectives, and I will cite only two to illustrate.

Grade 1, to help pupils appreciate and understand cultural backgrounds of other families.

In grade 11, understanding that all persons should be considered as individuals and judged on their merits, their differences should be respected and their rights safeguarded.

The subcommittee of the K-12—that is kindergarten through 12—human relations committee initiated and is conducting a 10-week seminar for teachers for the purpose of exploring ways of supplementing the social studies guide with specific suggestions for dealing with human relations concepts and learnings related to the various grade levels.

[1998] Library services were given special attention, selection of books dealing with human and intergroup relations for the purchase of professional library and for

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examination and contribution to school libraries at each level.

Title Two of the ESEA, which is the education—the Federal Education Act—made possible the ordering of \$171,000 worth of library books approximately 60,000 volumes to be owned by the Denver Public Schools but to be available for use in public and private schools in Denver. During the summer of 1965 Head Start programs under the Office of Economic Opportunity were conducted for eight weeks in ten centers. Head Start programs were funded under the same Office of Opportunity, varying from six to ten weeks in twenty centers located in the housing projects that I referred to. Team teaching programs of improving language and reading skills, recommended strongly by special study committee, has been expanded to include arithmetic and has been extended into Grades 1, 2 and 3, especially in the eighteen elementary schools in the target area of the greatest need. Under Title One of the ESEA a project has been funded to help educationally disadvantaged pupils progress through a planned reading improvement program for one-half day for eight weeks for pupils of 4, 5 and 6.

The Metropolitan Youth Education Center set up jointly with Jefferson County has provided counseling, basic [1999] education training, and assistance in securing employment for 450 out of school and unemployed youth from the two districts. In each instance we have cited and I have not taken the time to read the specific recommendations referred— For example, there are eight related recommendations on this one act of ours. The second center for the Metropolitan Youth Education Center is being added in Denver with assistance of the Title One funds. Well, there are many others. Under personnel,

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pupils, orientation rooms have been provided in eleven elementary schools for pupils who change school frequently and are lacking in skills needed for progress in the larger group class. Neighborhood aids are provided through OEO funds to assist the teacher and help make contacts with the home.

In the secondary schools of the target area the counseling load of teachers has been reduced and time for counseling has been doubled to permit counselors to have time to give to those students as individuals and to give them special attention.

Also, under ESEA opportunities for substitute tutoring in areas of special academic needs by teachers is provided and an after school library program to give access to reference materials and to encourage reading. A program under ESEA will bring counselors in target area high schools back to work in August to do intensive counseling with dropouts and potential dropouts; to encourage them to return to [2000] school and to plan a program to meet their needs. As to the personnel of the District, recruitment visits were made during the year 1964-65 to forty-three college and universities located in fourteen states.

In addition recruiting materials were sent to eighty-five other colleges and universities. An analysis shows that 403 new teachers were hired for the 1965 calendar year. The number of Negro applicants has enabled the Division of Personnel Services to increase the number of well-qualified Negro teachers. Recruitment visits in 1965-66 have included more intensive and extensive visits to Arizona and New Mexico institutions of higher learning as the number of qualified Spanish-named applicants to the Denver Public Schools is limited.

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As of October 15, 1965, all junior and senior high schools and 67 of the 89 elementary schools had at least one teacher with a minority background. The high percentage of minority teachers in schools with the concentration of minority pupils has been reduced somewhat so that no faculty now includes more than 50 percent minority teachers. Letters were written to 55 teacher training institutions throughout the country, emphasizing the importance of preparing teachers to teach all children. Those of different racial and ethnic backgrounds, and those disadvantaged in educational terms. Replies were received from 31 of the institutions. A report [2001] on the improvement of human relations was presented to the Board of Education on November 18, 1965, and to all committees on instruction later. Included was a report of the work of the K-12 committee on human relations and a review of the participation of the Denver Public Schools personnel, a variety of human relations activities during the summer of 1965. A five-day institute designed to develop an understanding of the unique culture of the Spanish-named Americans of the Denver area has been funded with ESEA. The emphasis will be on classroom practices which will build upon the pride of the heritage and the—and improve the motivation and skills needed for the educational achievements.

Approximately 247 teacher aids, non-certified persons, usually from the area near the school, have been hired to relieve teachers of some lunchroom and playground duties. Then there is a section relating to school community relations. I will cite just a few of the many actions taken.

Carefully planned tours of the community with commentary by persons most able to interpret the development and interrelationships of the agencies and opportu-

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nities to meet parents and businessmen of the area have proved valuable for new and experienced teachers. A three-day tour is planned for those schools in the target areas before the opening of school.

In northeast Denver the lack of recreational programs [2002] for the growing youth population led to the planning of a coordinated program for recreation involving the city recreation department, the public schools, a number of churches, and concerned individuals. A community study hall association has been providing volunteer staff for 20 study halls located in the community centers, churches, or school buildings. The encouragement and the assistance with learning has proved important to pupils and volunteers. In many cases added enrichment programs have opened new experiences to the young people. Under OEO a coordinator has been paid to help coordinate and help expand the program. A project of youth motivation was funded to assist high school young people, particularly Spanish-named, in four high schools, to have an opportunity to work at a club with adults who can help and see that they can succeed in school and can plan for a satisfying vocation.

A part-time coordinator and neighborhood aids have been appointed to expand and improve the program initiated four years ago under voluntary leadership. This spring the Latin American student clubs held a very successful all-day workshop with the support of interested Spanish-named adults.

Just two more to conclude—

The Court: Just a second. There is no need for putting this verbatim in the record, is there?

Mr. Ris: I just wanted him to highlight—

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[2003] The Court: I mean, you wish to have the reporter transcribe all this?

Mr. Ris: He's not reading the entire report.

The Court: Well, if that's what you wish, that's the way we'll do it. In other words, I believe we could refer to the exhibit and the pages. But, if you say you wish to have it done that way, why—

If you think it would be better to have it all in the transcript, that's fine.

Mr. Ris: Actually, he hasn't been reading. He has been skipping through, and hitting the highlights.

The Court: I realize that.

Mr. Ris: I think we have to have it in our record, yes, sir.

The Court: Okay.

A. Through the cooperation of Opportunity School with neighborhood organizations and the Denver Housing Authority staff, a number of basic education classes enrolling 180 adults has been set up in the neighborhoods where the people live. The purpose is to enable mothers and fathers uprate their own skills and to help their children make better use of school opportunities. The Denver Public Schools is again providing work experience for 200 high school youths, age 16 to 21, in clerical, maintenance and custodial programs under a neighborhood youth corps project. In addition to supervision **[2004]** work experience there will be educational occupation and personal counseling and a physical examination. I was simply trying to give you a few of the many highlights in this report.

Q. Thank you. Now, after the Berge committee reported and submitted their recommendations which are reflected in Exhibit 21, what was done with respect to considering

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and implementing any of the recommendations in that report? A. I did make an oral report to the Board of Education about it, and we did proceed to implement various aspects of that report as well.

Q. That report came out in February of 1967? A. Yes.

Q. And you left your position in August of 1967? A. Right.

Q. Before you left then did you give an oral report to the Board which you previously identified as Exhibit HQ? Correct? A. Yes, sir.

Q. I don't want to cut you off, Dr. Oberholtzer, but I also want to cut down the volume. Can you highlight and summarize that even more succinctly than the last one? A. I'll try to do it more succinctly.

Q. If you will, please. A. In this instance the advisory council came up with four aspects of equality that are somewhat different from the [2005] aspects that I have referred to here in my comments. And in light of our discussions yesterday of school capacity, I think this is especially pertinent, because the first of their recommendations—major recommendations related to the term school capacity, and they wanted us to make a special study highlighting some of the various conditions that would affect the capacity and in essence highlighting what I suggested yesterday, that you had to take into account mobility, attendance, achievement and a variety of factors, and we did institute a study, as I recall, in two elementary schools while I was still in office. And one was Stedman and the other, I believe, was Greenlee. I will not take time to indicate that. There is in this report when you read it considerable discussion of that.

A second and most interesting report—or recommendation—related to what was variously called the cultural arts

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center, cultural arts program, or the academy of arts for children. In essence what they recommended was a means of enabling children of different cultures, and this related to elementary schools, to become acquainted with those cultures more directly than they ever had before, and to become acquainted with not only children but particularly with adults of the community of different ethnic groups.

And so we set up a center in the Gilpin School. And for example children were transported for part of the school [2006] day from Moore to Gilpin and they participated in classes together with those children, and they also participated in unique and special cultural programs. One of them I remember was by a lady of Japanese ancestry playing a rather unique musical instrument and explaining it to the children. There were dances. There were art programs, various aspects of native culture for the children.

Q. It wasn't limited to learning how to play the auto harp, was it, Dr. Oberholtzer? A. It was not essentially an attempt to teach a skill. But rather to become acquainted with various cultural aspects of different ethnic groups. Again in the general realm of what is called a human relations program.

A third aspect of the program was entitled the Superior School Program. And this was related especially—it was an attempt, I suppose you would call it now in some aspects, a compensatory program. It was an endeavor to suggest ways—ways unusual, unique where superior programs might be instituted in the schools where there were some concentrations of minority groups. For example, in the Negro or in the Spanish—and I remember, for example, that we as a result instituted some Spanish programs at Baker Junior High School.

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Q. Was this basically for low achievers or high achievers? A. This was basically for low-achieving pupils.

【2007】 The fourth aspect of the advisory council report was related to what they called educational centers in elementary and secondary schools. And this was one where I know there was considerable investigation of the possibility of what was then called educational parks, centers, and some effort was made to acquire sites and some federal land near Lowry as I recall it.

We made an extensive study of centers, but there was no other specific action taken at that time. However, there were applications of this idea subsequent to my time, and I simply refer to it in the bond issue—that was offered in the fall of 1967, I believe it was, after I had retired.

Q. The basic planning for that bond issue having been done by you and your staff? A. The basic planning having been done, but we did try to incorporate some of their ideas in the center in that bond issue proposal.

Q. Dr. Oberholtzer, just two small matters. Now, going back—I want to clarify something.

The May 6th, 1964 board meeting was a meeting where the various major policy decisions were made and referred to, and 5100 adopted; the boundary changes made at the secondary level and so forth. Was action of the Board on those various policy changes and boundary changes—was it a unanimous decision of the Board in each instance?

【2008】 A. My recollection is it was a unanimous vote.

Q. With regard to guidance—vocational guidance I am referring to specifically—there has been considerable testimony here concerning vocational matters at Cole and Manual. Were similar—were vocational guidance offerings made at all other secondary schools as well? A. There were offerings at all high schools. There were vari-

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ations among the high schools. Since you have referred to the vocational guidance I heard some comments yesterday in testimony. I would like to amplify a little bit. There was some concern expressed because of—I believe certain unique offerings—now, pre-law, was it? Pre-med and so on in the twelfth grade. And I think you could easily infer that this was all that was offered or it was deferred until the twelfth grade. As a matter of fact, for many years we have had in the Denver high schools a course in vocations which is required of pupils. And this is an attempt to give them an idea of the fields of endeavor or improvement, descriptions of them, and as I recall given at about the tenth grade.

Furthermore, we had at least for many years when I was Superintendent, with the cooperation of the State Employment Service, vocational aptitude—or preference tests. Interest tests, rather. Not aptitude. Interest tests which were provided in all of the junior high schools with the [2009] purpose of calling to their attention again various fields of endeavor for which they might prepare for and which they might be interested.

So I will give—I will cite only these two other instances to show that we have been concerned for many years in the matter of vocational preparation and of attempting to give young people some view of this.

I'd like to mention one other thing, that is, and that is referred to only casually in this report, in vocational education, we instituted before I left office in the high schools certain other experimental courses in vocations that I think are continuing. For example, our concern in the high schools, in vocational education, is to find the kind of preparation—to offer the kind of preparation that young people can use to get jobs.

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So many times vocational educational is given, and then there is a gap between the education and the actual time of entering upon a job. That kind of vocational education is virtually useless. We tried to avoid that mistake, and so we offered, for example, in the electrical trade—we had courses in preparation for entry occupations in the electrical trades. We had another type in the basic metals trade. We had another in the business occupations. These are still operating in the high schools. But they have been limited because again we had to provide special facilities for them [2010] and we were not able to expand them in all instances.

Mr. Bis: Thank you. You may examine.

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[2011] * * *

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Cross-Examination by Mr. Greiner:

Q. Dr. Oberholtzer, when you arrived in Denver as Superintendent of Schools in 1947, I believe you mentioned that there were fifteen schools that had Negro teachers, is that correct? A. I don't recall I mentioned that particular number, but there was a small number.

Q. Can you identify some of those schools for us? A. Some of them—most of them would have been in the central part of the city, such as Whittier.

Q. And you can think of more than just Whittier, can't you? Was Greenlee one? A. I don't recall that Greenlee was at that time, it might have been. Whittier, Wyatt, Wyman.

Q. How about Wyatt? A. Wyatt I did mention, I believe.

Q. How about Crofton? A. Probably Crofton, yes.

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Q. How about Gilpin? A. Yes.

Q. How about Mitchell? A. Probably, yes.

[2012] Q. Garden Place? A. It might have been, yes.

Q. Bryant-Webster? A. I am not so certain about Bryant-Webster.

Q. Elmwood? A. Elmwood, probably, yes.

Q. Emerson? A. Doubtful at that time.

Q. Was Emerson predominantly Anglo in '47? A. I think it probably was.

Q. So I take it, then, you found—first of all, do you recall how many Negro teachers there were in 1947? A. It was a relatively small number, I think probably less than fifty.

Q. Less than how many? A. Fifty.

Q. And do you recall when the first Negro teacher was placed outside of the core city schools in a predominantly Anglo school? A. I don't recall precisely, no.

Q. It was about 1955 or 1956, was it not? A. It probably was in the 50's somewhere.

Q. Didn't that happen at Mrs. Biddick's school at that time where she was principal? A. I don't happen to recall that instance.

[2013] Q. You don't recall the circumstances? A. I do not.

Q. I take it that you don't deny, do you, Doctor, that when you came to Denver you found that minority teachers had consciously been assigned to minority schools on the basis of their race? A. They had been assigned to minority schools.

Q. Because they were minority? A. In large part because they were minority teachers, yes.

Q. And when would you say that changed, that policy? A. Well, you have already indicated one change.

Q. 1955? A. From there on.

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Q. All right. Now, one of the reasons that you felt there was some validity, as I understand it, in this racial assignment of minority teachers, was because they were to act as role models in the minority schools, is that correct?

A. This is one function, yes.

Q. Now, did you have an opinion at the time, Doctor, as to what proportion of teachers in a minority school had to be minority teachers in order for this Negro role modeling function to be fulfilled? A. There was no specific number, no.

Q. Might one black teacher have done the job? **[2014]**

A. Not necessarily, no.

Q. Would eight black teachers have done the job? A. I have no specific number.

Q. You said there was literature at the time, as I understand it, that in effect said that this was a good thing to do? A. "This" being what?

Q. The placement of minority teachers in minority schools. A. Yes.

Q. That literature also said, did it not, that Anglo students might benefit from Negro role models? A. Possibly, yes.

Q. Possibly? A. Yes.

Q. You believe that to be the case, don't you? A. I do believe it, yes.

Q. And yet some seven years passed before a Negro teacher was placed in an Anglo school? A. That's correct.

Q. Now, I take it there must have been some resistance, then, Doctor, in the white community concerning the placement of black teachers in white schools, is that right? A. I don't know of any specific resistance.

Q. You recall the findings of the 1964 Voorhees **[2015]**

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Committee, do you not? A. Some of them, yes, in general.

Q. One of those findings was, was it not, that black teachers have not been assigned to white schools because there was a resistance in the Anglo community? A. At a later date, yes. I don't know that it referred to any specific date.

Q. Well, the report spoke as of 1964, did it not? A. Yes.

Q. Then the report found that there were still the concentrations of minority teachers in the minority schools, did it not? A. I believe it was referring to the current time in that statement.

Q. And I believe the report also referred to the resistance of the principals of the Anglo schools about placement of Negro teachers, do you recall that? A. I recall the reference, yes.

Q. Now, what was done during this time period between 1947 and 1955 or 1956 regarding the placement, for example, of minority principals, where were they placed, Doctor? A. As I recall, the first Negro was appointed, I believe, at Whittier School.

Q. And that was a predominantly minority school? A. Minority school, yes.

【2016】 Q. What year was that, do you recall? A. I can't recall the specific year. It was in the 50's.

Q. Can you tell us, Doctor, when the first Negro principal was assigned to a primarily Anglo school? A. In the 1960's.

Q. Do you recall the incident? A. What?

Q. Do you recall the particular appointment? A. As I remember, I think you are referring to the University Park Elementary School—no, not University Park, Washington Park.

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Q. Washington Park? A. Washington Park.

Q. What was the situation with regard to the assignment of assistant principals, do you recall when the first minority assistant principal was placed in the School District?

A. I am sorry, I don't.

Q. Do you agree that he was placed in a minority school?

A. I would agree that would have been the case.

Q. And do you recall the first instance of when a minority assistant principal was assigned to an Anglo school?

A. No, I do not.

Q. Would it also have been sometime in the 1960's? A. Yes, it might have been in—it would have probably **[2017]** been in the 60's.

Q. Now, as I understand it, shortly after you arrived on the scene you said that a staff member had pointed out to you a provision in the Colorado Constitution. A. Yes.

Q. Do you recall that? A. Yes, I do.

Q. Who was that staff member? A. Mr. Guy Fox.

Q. Mr. Guy Fox? A. Guy Fox, F-o-x.

Q. Was he a lawyer? A. No, sir.

Q. What was his position? A. He was director, as I recall, then, of Pupil Personnel Services.

Q. Now, as I understand it—correct me if I am wrong—from the early 1920's the School District had until your arrival conducted an annual racial census of the schools, had it not? A. I found that to be the case after my attention was called to this, yes.

Q. And the racial census was published in the Superintendent's Circular for each teacher, was it not? A. Yes, there was an annual Superintendent's and **[2018]** Secretary's report. I think that was a public report.

Q. Now, do you know what use was being made of that racial report during that time period? A. I do not.

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Q. Do you know why it was being compiled? A. I do not.

Q. Now, as I understand it, you gave some orders in 1947 that that census stop, is that right? A. I did.

Q. And yet it took nine years to eradicate it, is that right? A. It was going on without my knowledge, that is, some reporting, but it never came to my attention, as there are many reports that do not come directly to my attention or to the staff.

Q. But do you know whether or not there was any difference of the routing of these reports between 1947 and 1956 when you finally got them cut off and the routing that had previously occurred? A. There must have been some difference, and I have been thinking in my own mind to find what happened. I do not know. And there was before I came a department of research, and I was told that there were some reports from that department. Now, that department did not exist after my coming for more than one or two years, but there was a Department of Budgetary Services, and the normal routing of such material [2019] would probably be to that office, but that office never, in the time that I was in office, made a report to me of such statistics.

Q. Now, I recall that you said that you had a conference, then, with Mr. Henry, who was then counsel for the School District? A. I did.

Q. What was the subject of that conference, can you tell us? A. The subject was the one that I have indicated, what are the indications of the constitutional provisions, and especially with respect to the collecting and the publishing of such data.

Q. And did Mr. Henry's firm render a written opinion? A. He did not render a written opinion. He rendered an oral opinion.

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The Court: Just a moment. I don't think we have fixed the time of this conference with Mr. Henry.

The Witness: It was in the fall, Judge, of 1947, and I can't name a specific date, shortly after I came.

The Court: And then you had another conference following the decision of the Supreme Court in the Brown case?

The Witness: We did, yes, and there were many other conferences, but these were—

The Court: I mean one relevant.

[2020] The Witness: Relevant to this.

Q. Calling your attention, then, to the fall of 1947, Doctor, do you recall how long it took for this opinion to be rendered, did this consideration carry over some period of time? A. I don't remember the length of time, but there was within a reasonable time a response.

Q. You said yesterday in your testimony that Mr. Henry said that he felt it would be desirable to stop the racial census. Did he say it would be necessary, or did he say it would be desirable? A. I can't recall the specific word, but the intent of his reply was that we should not continue.

Q. Now, at this time you were aware of the District's policy, were you not, of assigning teachers on the basis of race? A. They were assigned to minority areas for reasons I have indicated before.

Q. Did you inquire of Mr. Henry whether or not the Colorado Constitution might apply to that kind of assignment policy? A. No, I did not.

Q. Did you have occasion to discuss that relationship? A. That particular relationship, no.

Q. Now, seven years later the United States Supreme **[2021]** Court decided Brown against Board of Education. Have you read that opinion? A. I have read it.

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Q. And you discussed that opinion with Mr. Henry? A. I did.

Q. Was there a written opinion rendered on that occasion? A. At that time, no. There was an oral opinion.

Q. And you were aware at the time that Brown was decided, were you not, Doctor, that there were then existing in School District No. 1 schools at all levels of education that were predominantly in minority in racial composition? A. I was aware of their general composition, yes, in that there were so-called minority schools.

Q. Do you recall offhand, Doctor, how many such minority schools there were in Denver in 1954? A. Not a specific number, no. I made no particular count on such basis.

Q. Well, in considering the possible impact of the Brown decision, didn't you consider what it might then take, if Brown required desegregation in Denver, wasn't that one of the things you considered? A. No, the opinion given was that the Brown decision did not apply to us.

Q. So you never got that far in the process of trying [2022] to determine what it might have taken at that time, is that right? A. We were not then concerned because of that opinion.

Q. Now, you were familiar, were you not, Doctor, with the findings in Brown of the educational and psychological damage caused minority children by their concentration in minority schools? A. I was aware—

Mr. Brega: Just a minute, if I may. I object to that question. The decision in Brown was rendered upon a dual system, and that opinion states that by legally segregating those people it does create those problems, but this is not the situation as it existed in Denver, nor has it ever existed by law in Denver. Since 1893 we have had an open school policy.

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The Court: I think the question was whether he read the language in *Brown* and was aware of it, that's all, and I think it is a permissible question. Isn't that the thrust of your inquiry?

Mr. Greiner: That is correct, Your Honor.

I am not sure the question has been answered.

The Witness: Will you repeat the question? I did not think that was the thrust of your question, the last one.

【2023】 Q. Now, did you read the *Brown* decision A. I did.

Q. And you were familiar with the findings in that case? A. I was.

Q. And one of those findings was of the psychological and the educational damage done to children in those southern systems, is that right? A. Wherever they had separate school systems, yes.

Q. And was the basis of that decision or did you consider whether or not the basis of that decision at the time was the concentrations of these minority students in all minority schools? A. Not in that light, no, sir.

Q. Well, now, you have testified as an expert. You have a background of psychology, is that right? A. To some extent, yes.

Q. Did you see any basis for distinguishing the type of damage found in *Brown* and the type of damage which might occur in a northern so-called *de facto* setting? A. There are possible bases, yes.

Q. What are they? A. So far as I know, there is not in evidence—to the best of my knowledge, evidence to show that in all instances, including the Coleman report, that there is 【2024】 necessarily damage.

Q. But—well, the Supreme Court found damage. That's

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a constitutional fact in the South, is it not? A. Again, let me refer to the fact that they were talking about the separate school systems where there were concentrations.

The Court: I think his answer is that he didn't feel it was pertinent in relationship to the system in Denver; that he didn't regard the isolation per se as the important factor. Isolation as a matter of law he says, is the thing he felt might be damaging.

Q. Is that the purport of your answer? A. That was the purport of my answer, yes.

Q. Now, there was a great deal of discussion, I assume, among educators when the Brown decision was made, is that right? A. There was.

Q. And I believe you said yesterday that the consensus was that Brown would only be applied in the South, is that right? A. At that time, yes.

Q. Were there any differing views expressed at that time? A. Yes. Never unanimous, on subjects.

Q. Some people thought that Brown might apply in the [2025] North as well? A. I think so, yes.

Q. Even to the so-called de facto situations? A. Some people did, yes.

Q. Was that one of the questions that Mr. Henry rendered an opinion on? A. Well, may I say again, as I have said before, his opinion was that this applied to the de jure segregation; separate schools.

Q. Now, did you become aware at a point in time, Doctor, and I take it that during the late '40s, throughout the '50s until perhaps the dispute in 1962 about the building of the proposed junior high school—throughout that time period, if I could capsulize your policy, it was to

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build schools where the children were, isn't that right?

A. In essence, yes.

Q. Did there come a time, Doctor, when you realized that this policy was leading to more and more predominantly minority schools? A. It was apparent in the late '50s that there was a movement of population into areas, for example, where we had already built schools.

Q. Well, now, for example, since 1950—between the period 1950 and 1962, it is also true, is it not, Doctor, that many schools received additions to their [2026] facilities? A. That's correct.

Q. And many of the schools which received those additions were at the time they received them minority schools, were they not? A. Some of them were.

Q. Now, I'd like to draw your attention next, Doctor, to the controversy that surrounded the 1956 boundary changes.

The Court: Well, as a matter of fact, when they reach a certain percentage of concentration, Doctor, why, they just—I think your experience probably shows that they just—if you let nature take its course, they just go Negro. That's all. Pretty soon they are predominantly Negro. Do you think that that is a justifiable conclusion? When they get over, say, 40 percent Negro, why—and whether it's from neighborhood movement or what—it's only a matter of time?

I mean, it's very definitely predictable that they will be predominantly Negro?

The Witness: No, I don't think that is definitely predictable, Judge.

The Court: They don't stabilize, do they?

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The Witness: Some do. Some don't. What you have said frequently happens, but I don't think it happens [2027] in every case.

The Court: Not invariably?

The Witness: It happens frequently, yes.

The Court: You think that East High, for example, is predictably going to become a predominantly Negro school in a very short time?

The Witness: Do I think so? No, I do not think so.

The Court: If it's permitted to go just the way it is—

The Witness: No, sir, not necessarily.

By Mr. Greiner:

Q. It's true, is it not, that East is getting more Negro each year? A. I think there is some increase, yes.

Q. And the Anglo enrollment this year is just barely 50 percent Anglo? A. I'm not acquainted with that figure.

Q. Now, first of all, with respect to the building of new Manual, it's true, is it not, Doctor, that Manual High School today is the smallest high school in the district? A. It is the smallest senior high school, yes.

Q. And it was at the time it was built, also, was it not? A. I believe it was, yes.

[2028] Why was Manual built so small, Doctor? A. Are you talking about new Manual or old? A. New Manual. A. The new Manual was built in the same general location as the old Manual and substantially the same attendance area. That was the reason.

Q. It was built to serve a particular community? A. The community in that area, yes.

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Q. What was the composition of that community, Doctor? A. Negro and Anglo, largely; some Hispano.

Q. Well, you recall, do you not, Doctor, that as early as, I believe it's 1950—1951, that Manual was already a predominantly minority school, do you not, about 40 percent black, 35 percent Hispano, 25 percent Anglo? A. Somewhere in that neighborhood.

Q. And I assume that that neighborhood that new Manual was to serve wasn't getting any whiter between, say, 1951 and '53 when new Manual was opened? A. No.

Q. It was becoming blacker, was it not? A. There was some tendency, yes, to that.

Q. Well, it's true, isn't it, that when new Manual opened, Doctor, it only had 77 Anglos in it?

Mr. Brega: Your Honor, I object to this line of testimony. In 1953—that was prior to Brown and at [2029] that time the law in the country was separate but equal. That was all right. If that were the case in Denver, that would not have been unconstitutional at that time. I think it's moot and not relevant to the issues.

The Court: Well, I think that we have been permitting inquiry into the history of this for various purposes. So we will not draw the line at this point.

The Witness: Would you repeat the question, please?

Mr. Greiner: Would the reporter read it, please?

(Question read by the reporter.)

A. I do not recall that figure.

Q. Do you recall what its Anglo composition was when it opened? A. No, I do not.

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Q. Was there any doubt in your mind that, when new Manual opened, Doctor, it would be predominantly minority in its composition? A. It appeared to be so at that time, yes.

Q. So you knew that as a fact, did you not? A. I have answered your question. I said it appeared to be so.

Q. Now, did you consider what might happen to the racial composition of new Manual in the event you had built it larger, for example, during the planning stages for new [2030] Manual? A. Racial factors and ethnic factors were not a part of our consideration in the construction or location of schools.

Q. And I take it your answer is the same with regard to a possible change in the boundary between what has been that for old Manual and that for new Manual? A. I would give you the same answer.

Q. Well, you're not telling me, are you, Doctor, that you were in fact, when you built Manual, building a separate but equal school, are you? A. I don't know the import of this question.

The Court: What he's asking you is, just so I think you will be aware, is whether this was built to be a Negro school and planned as such, although you were determined, undoubtedly, to give it equal facilities. That's the essence of what he's asking you.

Mr. Greiner: That's correct.

A. We were again building a school to house the children of that particular area, and there was, as you have said, a high percentage of Negro pupils in that area, yes.

Q. Well, for example, the whole curriculum at Manual was tailored, was it not, for these minority students? A.

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It was tailored to the students who were attending [2031] that school, yes.

Q. And those were minority students. You don't deny that, do you? A. No, I'm not denying it.

Q. Now, at the time that Manual was being planned—and I'm still talking about new Manual—East was considerably older capacity, was it not? A. It was—I don't recall specifically. I think it might have been some over-capacity.

Q. And was a projection— A. In the sense you have determined capacity, I want to come back to that and amplify the answer.

Q. Well, can you give me a number, Doctor, at which the enrollment at East would have had to reach at which point you would agree with me that it was overcapacity? A. I cannot give you a specific number. As I indicated to you yesterday, there was no specific number. The programs were different at East and at Manual and the achievement levels of the pupils were different and we had a lower pupil-teacher ratio at Manual than we did at East.

Q. My question goes to East and not to Manual. A. I'm talking about East. It has a higher level pupil-teacher ratio because the achievement level was higher and consequently it was able to house a larger number of [2032] pupils. That's the basic reason.

Q. And I take it the gist of your testimony yesterday, Doctor, was that in an Anglo school such as East, its rated capacity comes very close to its utilization figure, does it not? A. It may or it may exceed it. Not all Anglo schools. I'm sorry. You generalized. Not all. Some.

Q. Well, let's talk about East. A. All right.

Q. Are you telling me then that East could afford to

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house more than its rated capacity? A. It could at that time.

Q. And that would require a pupil-teacher ratio of about thirty, is that right? A. I didn't say that. That does not go with the utilization above 100 percent.

Q. Well, rated capacity is based on thirty pupils per room, is it not? A. That's class size. And pupil-teacher ratio is a different matter from class size.

Q. Well, did you have team teaching at East in 1953? A. Not necessarily. We had a lesser number of teachers for the number of pupils, proportionately.

Q. In other words, you disagree that in 1953 East [2033] was being overutilized? A. I didn't say that. I said it was capable of rendering or offering a suitable achievement educational program and the pupils could achieve well with a higher pupil-teacher ratio and they were. I didn't comment on the utilization.

Q. Well, I'm not trying to argue with you, Doctor; I'm trying to find out whether—I mean, the school district does use the terms overcapacity and undercapacity, does it not, in describing enrollments at schools? A. It does on occasion, yes. And I indicated my reservations yesterday about that and tried to explain.

Q. Well, is there some term that you would prefer that I use to describe those two phenomena? A. No, I don't think you could use any other term.

Q. Well, do you have a term that you would prefer? A. When we were talking with people about capacity of buildings, we tried to go into the programs, as I explained yesterday, and this was a matter that we usually had to discuss with respect to a particular school. And you cannot use a formula such as that and apply it to a program.

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This was a figure from which you worked. That's all it was.

Q. Now, I take it, then, that in 1953 you had some [2034] projections in existence, did you not, as to what the projected enrollment at East would be in the future; what the projected enrollment at Manual would be in the future? A. Are you referring to a specific year, Mr. Greiner? 1953, did you say?

Q. Yes. A. It would have been normal to have projections. We had annual projections for the following year and at stated periods we did have projections for as much as five or more years.

Q. And you recall, do you not, Doctor, that those projections showed, one, that East would continue to expand its enrollment year after year after year? A. This was because— Yes, let me qualify it, also. —because Denver was expanding to the east and southeast. And the East High School was housing those pupils.

Q. Then you also projected that Manual would stay at the very same pupil population, is that right? A. Somewhere in that, I think, relatively level population.

Q. Would you agree with me, Doctor, that with respect to those projections at East, that at some point those projected figures reached a number where you might agree that East would have been overcapacity? A. Yes. We had to make judgments of that sort. But [2035] there was no specific number at which that occurred.

Q. So there were no standards, is that right? A. I did not say that.

Q. No precise standards? A. I said there was no specific number at which you made that decision, and it varied with schools. And it did—in other words, there was no cutoff point. You're trying to imply that there

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was a specific cutoff point with each school and there was none.

Q. But there was in fact a cutoff point for each school?

A. A decision was made in that case as it is in each individual school. But there is no point that can be applied to all schools as I'm trying to say.

Q. Now, new Manual when it opened had a capacity of what? About 1,600 students? A. As I recall, fifteen to sixteen hundred; in that neighborhood.

Q. 1,525 or— A. Something of that sort.

Q. And its enrollment when it opened was about 1,200 students? A. Here again, you're getting into the question of time of program and the application of the thirty pupils per room. And using that application, the capacity was **[2036]** 1,525.

Q. Yes. And the enrollment was about 1,200. A. The enrollment actually was, I think, lower.

Q. And it was clear, was it not, from your projection that it was East that was going to be under the most pressure in terms of continued increases in enrollment?

A. Yes, because of the area from which the children were coming, the pupils.

Q. But you made no attempt at all, I believe you will agree with me, to relieve East by using Manual, isn't that right? A. We did not.

Q. The Court asked the question as to what I would refer to as a tipping point in a school, Dr. Oberholtzer, a point at which the minority population gets at a certain point and then just continues on until it is a predominantly minority school. Now, are you aware of any instance in Denver, for example, where a school had reached, say, 40 or 50 percent minority and then had a reverse, so that the Anglo population increased from that point on?

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A. It was my impression that the Park Hill area—that there were concerted efforts to create what was called an integrated community, and I believe that there was a change in that instance. I can't recall specific figures but that is my general impression.

【2037】 Q. That was the result of some affirmative action by the community? A. By the citizens of the community, yes.

Q. And without that affirmative action, do you think that same result would have obtained? A. It would be doubtful, yes.

Q. Because there is no other experience in our current recent history in Denver, is there? A. I know what you have said is the general trend, but I know of no specific turning point that you have referred to. I really don't.

Q. Now, when you were planning new Manual, there was a great deal of consultation with the school's community, is that right? A. There was a study made and consultation with the community, yes.

Q. And in that community I believe you will agree it was black and Hispano, was it not? A. A large part of it.

Q. Now, were you aware—and I take it that there were a few Anglos, were there not, in new Manual when it opened? A. I have made some reference to it previously. I know there was some there. I can't recall how many.

Q. Do you know where they lived? 【2038】 A. No, I do not.

Q. Did you have any idea in 1950, '51, '52, and '53 where the edge of the Negro population was at that time? You did, didn't you? A. I was aware of certain general moves of the population, but as to a specific street, no, I cannot indicate that.

Q. You did not know whether or not there were few,

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if any, Negroes living east of York or even east of Williams at that time? A. What time?

Q. 1953. A. I don't recall any specifics of that sort of that date. No, I do not.

Q. Now, did you have a consultation with the principal of new Manual concerning the establishment of boundaries for new Manual? A. There must have been such a conference. I cannot now say definitely when. Yes, we did have that in practically all instances.

Q. Was the subject of the eastward movement of the new Manual boundary discussed at that conference? A. In general, the boundaries would have been discussed, in all directions. I don't recall specifically eastward. All boundaries would have been discussed.

【2039】 Q. Do you recall whether the principal pointed out to you at the time that the Anglo enrollment of Manual could be increased by moving the boundary eastward? A. I do not.

Q. You don't know whether that was—A. I do not recall any such comment.

Q. Now, the boundary for new Manual was placed—the eastern boundary was placed what? About a half a block from the school, mandatory to the attendance area? A. There were two types of boundaries; one mandatory, one optional.

Q. Was there any other senior high school in the district at that time, Doctor, that had its building right up against its boundary line that way? A. That's a relative term, right up against. But, I don't recall any as close as that.

Q. Now, turning your attention to the 1956 boundary changes, you mentioned that there were meetings that you attended in the black community; for example, at a meet-

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ing at Manual High School. Do you recall that meeting?

A. I think I did attend a meeting, yes.

Q. And there were also appearances before the school board in its public meetings, is that correct? A. Right.

Q. And the school board and you personally were made [2040] aware at that time, were you not, Dr. Oberholtzer, of the racial considerations, the racial results of the boundary changes which you were then proposing? A. There were some statements made about that, yes.

Q. Did you disagree with those statements? A. I didn't express either agreement or disagreement. My response then was, I think, as well as I recall, that we were not then taking into account the racial or ethnic factors in establishing the boundaries of the schools.

[2041] Q. It was clearly pointed out to you, was it not, what the effect of those boundaries would be, the racial effect would be? A. There were some statements to that effect, yes.

Q. Could you verify those statements as to whether or not they were accurate? A. We did not have any counts at that time of racial or ethnic population, and we did not attempt to verify or to comment on them.

Q. Did you have any doubt of their veracity? A. I simply received their statements for consideration.

Q. Is it my understanding, Dr. Oberholtzer, that you felt that your hands were tied, that you simply couldn't consider that kind of information? A. The policy of the District at that time was not to take into account the matter of racial and ethnic factors.

Q. Did you get an opinion from counsel in 1956 concerning that? A. That specific issue, no, I did not, that I recall.

Q. Were you aware at that time of any of the desegre-

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gation moves that were made in the South in the Brown decision? A. I was aware in general of some moves.

Q. You were aware of the fact that in order to desegregate you had to take into consideration the race of the pupils involved? **[2042]** A. Yes.

Q. But again you didn't think that that would apply in Denver? A. That was not the policy of the District at that time.

Q. Well, I take it that the policy of the District was mandated in your view by the Colorado Constitution, is that right? A. This was certainly one aspect of it, yes. My duties, as chief executive, were to administer the policy of the District.

Q. Was another reason, Dr. Oberholtzer, the fact that in order to integrate or desegregate Denver Public Schools at that time you would in essence have had to abandon the neighborhood school policy? A. We were not then considering, may I say again, any policy of what you call desegregation or integration, because the policy of the District was not to take into account racial or ethnic factors.

Q. I take it that during this period of time, at least, you felt that there was no educational premise to desegregation or integration, is that right? A. This was not then a factor in the determination of our policies or in the application of our policies.

Q. Now, as I understand it, the factors that were used **[2043]** with respect to boundary changes were such factors as capacity utilization, distance, safety, convenience of pupils. Do you think of any others offhand? A. Natural features.

Q. Natural hazards? A. Hazards and such, and the type of program in the building.

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Q. Now, when you were present at those meetings in 1956, didn't you find that you were being presented with proposals which talked about alternatives to the boundary changes which you had proposed, in terms of your own criteria that you have just mentioned to me? A. There were some, a few proposals, yes.

Q. For example, you recall the fact, don't you with respect to distance, I believe the whole area east of Colorado Boulevard, north of 28th, was in fact closer to Manual than to East, is that right? A. I am sorry, would you repeat that again?

Q. East of Colorado Boulevard, the entire area north of 28th Avenue or Street, whichever it is. A. North of 28th I think it would be.

Q. Would be closer to Manual? A. Probably closer, yes.

Q. And it was pointed out to you that the transportation from that area of the city was basically east-west; in [2044] other words, that the public transportation available to such schools as Manual and Cole was better than it was to East and Smiley, is that right? A. These were some factors, but not all factors taken into consideration, yes.

Q. Now, was there a natural hazard that made you hesitant about expanding Manual's boundary to the east? A. I don't recall any, no.

Q. All right.

Is there any other facet of pupil convenience other than distance that you can think of? A. Principally that.

Q. Pardon? A. Principally that.

Q. Distance and accessibility of public transportation? A. Right.

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Q. Well, then, what was it, Doctor, in the terms of the criteria which you have described for me? A. A program of the school and the utilization of that school, its capacity, that was the main reason. We felt there was not the capacity at that school for additional pupils.

Q. Now, you knew at that time, did you not, that eventually you would either have to add on to East or build a new high school, is that right? A. That was one thing in prospect, because the growth [2045] of the area was to the east and to the south, nearest to East High School.

Q. You just told me, though, Doctor, that north of 28th it wasn't closest to East High School.

The Court: He said that in another context. He said the reason he knew he had to build a new high school was that the largest growth was nearest to East High School, to the east and south. He wasn't quibbling with you on that point.

A. I don't intend to quibble on that point. I know that, yes.

Q. So the basic question, then, is the question of capacity utilization, is that right? A. You had a high school which was then offering a program to the pupils and the capacity and utilization of that school appropriate to the achievement level and the pupils in the school, yes, that was the basic and it usually is the most important consideration.

Q. Because the School District, I take it, throughout this whole period was strapped for money, was it not? A. Generally to construct buildings.

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Q. So your natural inclination would have been to use all the available capacity that there was at East?

The Court: He said it was a good school. It had a national reputation, did it not?

【2046】 The Witness: They did have a national reputation. But again, refer to the achievement levels of the school—

The Court: You said you wanted to make full utilization of that facility. Wouldn't that have been a factor?

The Witness: This was not the primary factor. It was because this school had a high achievement level relatively, and they could accommodate, without affecting that achievement level, more pupils. This was the basic consideration. And this, in the reverse, was the case in Manual.

The Court: Its averages were higher than any other school, I would imagine. I expect you wanted to use it as a show place, too, didn't you?

The Witness: There was no particular intent on our part to use it at that time as a show place.

The Court: Well, to set a standard.

The Witness: It was one of the best high schools.

The Court: It was a yardstick school?

The Witness: Well, again, our policy then, as I have indicated, I think, I am not sure, we were not trying to compare high schools and to indicate necessarily one better than another.

The Court: This was a fact, though, wasn't it?

The Witness: It was a fact that the achievement level at East High School was high and a good school, yes.

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By Mr. Greiner:

Q. I take it, then, with respect to [2047] the children in Manual that you felt it would be better to keep those children in Manual where they could get the benefit of this lower pupil-teacher ratio? A. The policy of the District was to offer a school to children living in different areas and to make adjustments and to endeavor to offer the best program we could for those children. There are great variations in children all over the District.

Q. Now, for example, when you send a black child into a predominantly white school, Doctor, you generally send them from an environment in the sending school that had a low pupil-teacher ratio into an environment where its class size is going to be larger and the pupil-teacher ratio is going to be greater, do you not? A. When we send?

Q. Yes. A. That would be a fairly typical situation but not always the case.

Q. Well, for example, the busing out at Stedman that finally took place in 1966, that was the occasion there, wasn't it, that's what happened? A. This was at the request of the parents and at their option.

Q. Are you saying that those parents were making a bad educational decision? [2048] A. I am saying that they made the decision in response to the question that you have asked me. I did not make that decision. It is a matter of individuals, and I cannot give you a general class or group answer, and by and large, the children who I think opted, I would expect them, although I can't recall, to be the ones who were achieving better than others. This would be the natural inclination for them.

Q. Why do you say that? A. I say this is the natural inclination for them to do it, because I know at that

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time I heard some parents express doubt as to the wisdom of doing this, they were apprehensive about what their children would achieve in the new schools. I heard this expressed at the Stedman School. Not all parents were favorable to the idea. Some of them did want to do it. I don't think you can generalize, as you have indicated.

Q. Well, for example, the busing out at Stedman in 1966, there were approximately how many children bused out of Stedman? A. In 1966? My recollection is about a hundred or so.

Q. Not all of those children were black, is that right? A. I frankly don't know the composition, but probably a majority were.

Q. But also some Anglos were bused out of Stedman? A. Let me remind you again there was no requirement of black or Anglo to be transported.

【2049】 Q. So both blacks and whites left Stedman in that busing program? A. The option was with the parent without regard to race.

Q. Were there many whites left in Stedman after that busing program was instituted? A. I do not recall the composition of the school.

Q. Now, with regard to the Negroes, then, who were bused out of Stedman into predominantly Anglo receiving schools, that was a fact, was it not? A. They were, yes, that was the request.

Q. Now, did you make an effort, Doctor, in the receiving schools to lower the pupil-teacher ratio into classes which were to receive those black children? A. No, there was no effort to lower the pupil-teacher ratio generally, as I recall, but there was an effort made to receive them well in the school and to try to offer them the best educational

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program. I don't recall any general lowering of pupil-teacher ratio, no.

Q. Now, you also mentioned with respect to the boundary proposals in 1956 in East, Manual, Smiley, Cole proposals, that you had private meetings where you called in representatives of the community, is that right? A. I did.

Q. About how many such meetings were there, Doctor? **[2050]** Let me remind you this was under consideration for about six months. A. Yes, over a period of several months, and there must have been at least ten different meetings.

Q. Now, were these meetings—first of all, were there any of these meetings that were attended by both blacks and Anglos at the same time? A. As I recall, in each instance.

Q. In each instance? A. Yes. I am talking now about the meetings in the Board room where I met with people.

Q. Right. Now, during the course of those meetings were there expressions from Negroes? A. There were.

Q. Were there Negroes who didn't want Anglos to go to Manual? A. I don't recall that specific question or answer.

Q. Were there Negroes who didn't want their children to be forced to go to East? A. I don't recall in that context of being forced. I do know that there were many who said they were pleased and wanted to remain at Manual and didn't want any changes.

Q. Now, were there Anglos who didn't want their children to be forced to go to Manual? A. I don't recall any such instances.

[2051] Q. Then I take it there was no community sentiment on this boundary proposal? A. There was commu-

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nity sentiment, a divided sentiment, some wanting changes, some not wanting changes.

Q. Well, did I miss some alternatives, Doctor? Whites being forced to go to black schools, blacks being forced to stay in the black schools, blacks being forced to go to the white schools, the whites being forced to stay in the white school? A. Perhaps I am confused by your emphasis upon forced. There was no discussion of force.

Q. I am sorry. A. The question was basically your comments about the boundary lines and should they be changed. There was no question of forcing people, that I recall, that ever came up in those discussions.

Q. Well, now, did some of the people that you talked to live in the area north of City Park? A. There was a random selection of people, as far as I recall, over the general area affected.

Q. Between York and Colorado Boulevard, is that right? A. There were some from that area.

Q. Did you find many black representatives from that area, Doctor? A. I don't recall the specific locations of people, [2052] Negro or whites, but they were from the general area.

Q. Do you recall that the people in that area, the racial composition in that area—it was still predominantly Anglo, was it not, in 1956 between York and Colorado Boulevard? A. As well as I recall it, it would have been, yes.

Q. So that if you had moved the boundary of Manual to the east, say, to Colorado Boulevard, you would have picked up a lot of Anglo children, is that right? A. If we had done that, probably we would have, but there were other factors; we were not considering racial factors at that time.

Q. Weren't there Anglo parents in that area who were concerned about the fact that if you made such a change

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their children would have to go to Manual? A. There were some expressions by Anglo and black, concerned both ways, yes.

Q. Now, that area between York and Colorado Boulevard after 1956 remained optional, did it not, between Manual and East? A. A part of it did, as I recall.

Q. Now at that time there were still a great many optional zones scattered throughout the city at all levels of education, is that right? A. There were several, yes.

Q. Now, as I understand it, every once in awhile you [2053] would make a change or a revision in an optional zone, for example, the 1956 boundary proposal was just such a change, was it not? A. This was one, yes.

Q. Do you recall, Doctor, the fact that you would every once in awhile make an analysis of who was going where out of optional zones? A. An analysis not on racial or ethnic factors but simply numbers of pupils.

Q. Yes. And you could locate those pupils geographically, could you not? I mean the principals, for example, of the two schools that might be the subject of an optional zone, they would know what students were— A. There would be generally what we called a spot map made by the principal showing the location of the pupils affected.

Q. I take it that when an area which had previously been optional, when you find that the experience was that no one was exercising the option, then you would stop the optional zones? A. This was a general practice, and this was the principal reason for moving a boundary, yes, from optional to mandatory. This would be the principal reason, yes.

Q. Because the primary rationale of these optional zones was to accommodate parent sentiment, was it not? [2054] A. It was basically to do that. In the case of high schools and junior high schools primarily.

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Q. To give them a choice? A. Give them a choice, because we found whenever we tried to set school boundaries you usually found people on either side of that boundary in disagreement as to which way it should be, and one way of determining a decision was to make option areas, then they could make their choice between the two schools.

Q. Now, in 1962—well, let's look at Barrett, I guess, next. Planning for Barrett began when, in April of 1958, is that right? A. It was about 1958, as I recall.

Q. Do you recall at what point in time the School District became irrevocably committed to the building of Barrett? What is that event? A. I am sorry.

Q. What is the event that makes you irrevocably committed to a school building? A. That would be—the awarding of a contract to the construction would be the last time, but we have several steps preceding that which commits you to a school.

Q. Do you recall when the contract on Barrett was let? A. I am sorry, I do not. I think I recall that I made a recommendation to the Board in December of '58 with regard [2055] to Barrett School. That would be where I entered into the situation.

Q. All right. Do you recall when you first began getting expressions of concern from the local community about the location of Barrett? A. About the location of Barrett?

Q. Yes, sir. A. I can't recall a specific date. It would have been probably somewhere in that general area, '58, '59.

Q. In other words, at the time that you were receiving these expressions of concern it wasn't too late to stop the building of Barrett? A. There were some expressions, but not many expressions of concern.

Q. Well, it was pointed out to you, was it not, Doctor, that when Barrett opened it would be predominantly

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minority? A. There were some people who did so, yes, not very many.

Q. You didn't have any doubt but what that was true? A. There was a trend, a movement of population into that area, yes.

Q. There was a movement of black population, was there not? A. To a large degree.

Q. For example, you knew that Columbine was predominantly black by that time, didn't you? [2056] A. It must have been, yes.

Q. And that Harrington was predominantly black? A. Would have been changing rapidly. Harrington and Columbine were contiguous north and west, I believe, at that time.

Q. Yes. And you knew that there were a great many black children being bused out of the Harrington area down to Park Hill Elementary School? A. There were some, yes.

Q. There were about 200 of them, were there not? A. I think that was the number, yes.

Q. Now, who did you consult with with respect, first to the size of Barrett? A. Well, here again we were dealing with a specific area of land, so to speak, of the city. We consulted—are you talking now about personnel, persons we consulted with? The staff would have made studies of the area and of overcrowding, the population particularly of the contiguous school areas.

Q. Now, is it true that the planning of Barrett contemplated that children would be diverted from Harrington to Barrett, A. As I recall, this school was built primarily because of overcrowding occurring at Columbine and Harrington.

Q. Was it then contemplated that some Harrington children would be sent to Barrett? [2057] A. Yes.

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Q. And it was also contemplated that some Columbine children would be sent to Barrett? A. This was the main reason for building the school.

Q. And it was also contemplated that the optional zone between Harrington and Park Hill would be terminated, was it not? A. I believe that was part of the consideration.

Q. So the busing from that area into Park Hill of these 200 children was to stop? A. We were endeavoring, yes, to eliminate that and to find a more permanent home for the children.

Q. Were you aware of the eastern edge of the Negro population movement in 1958? A. I could not define any edge, no, we had no racial counts at that time, or ethnic.

Q. Do you have a general idea? A. A general idea of where people were located, but no specifics.

Q. You knew, didn't you, that there were very few blacks living east of Colorado Boulevard at that time? A. In 1956?

Q. '58. A. '58. I would judge there would be relatively few.

Q. And the same condition obtained in 1959? **[2058]** A. I'm not sure about that because there were some rapid changes occurring in the late 50's and I can't pinpoint where or when.

Q. What was the school immediately east of Colorado Boulevard? A. There were lots of schools immediately east of Colorado Boulevard. If you are talking about where Barrett is located, yes, Stedman.

Q. Stedman didn't have many blacks in it, did it, in 1959? A. You are asking me about figures in specific schools. I cannot recall, I don't know, but I am just going to assume that there would not be very many.

Q. The condition at Stedman didn't change very radically

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in 1960, did it? A. Well, here again you are asking me about a specific school. I was aware of some rapid changes approximately from 1958 on, and whether it affected Stedman I don't recall at the moment.

Q. So with regard to the building of Barrett you were told that when it opened it would be predominantly minority, is that right? A. As I recall, it was predominantly minority.

Q. Do you recall that very shortly after it opened it was practically 99 percent black? [2059] A. I am sorry, I can only give you the general impression. I did not have a count.

Q. So with that knowledge you went ahead and built Barrett, the knowledge of what the results would be? A. We did not know what the final results would be. We were aware of conditions and changing conditions.

[2060] Q. Now, by 1962 Barrett was on a very large site, was it not? A. It was on a site intended originally as a junior high school site.

Q. And Barrett only took up a very small portion of that site? A. A small part of it at the southwest part, I believe.

Q. So in 1962 you made a proposal to build a junior high school at 32nd? A. That's right.

Q. On what? At the area just north of where Barrett was located? A. It would have been located at the northern edge of that site, yes.

Q. And do you recall when that proposal was first made? A. For the junior high school?

Q. Yes, sir. A. That was in 1962.

Q. Was it in January? Or was it midyear or late year?

Would it help you to put it in relationship to the—
A. There was a report issued at that time, a building

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【2061】 report. I think you have it in your records somewhere.

Q. Is that Exhibit 405? A. Would you mind my seeing that?

Q. That's dated February 1962. A. It would have been a part of that report.

Q. A part of this report? A. Yes.

Q. That's Exhibit 405? A. I couldn't recall whether it was January or February. But February.

Q. Now, I take it that with respect to the building of the junior high school that you were told eventually the same things about it that you had been told about Barrett, is that true? A. We were told, yes. That was several years later.

Q. Two years later? A. After the opening of Barrett. But not after we planned Barrett.

Q. What had happened, Doctor? A. Well, as I told you—

Q. What had happened in the interim that made your response to the community reaction to the junior high school differently than what your response had been to the building of Barrett? A. Well, there was a genuine community response in 【2062】 this instance. A concern that there would be segregation if a junior high school were built in that area. I must say when we were considering Barrett there was not such a community response. There were some individuals, but there was certainly a divided opinion in the community at that time about Barrett.

Q. Well, in other words, in 1962, because of a larger community response, you felt that it was constitutionally acceptable to take race into consideration? A. I felt that

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it was advisable to give heed to their views and to reconsider the matter at that time.

Q. Did you get a further opinion from Mr. Henry at that time? A. It was at about that time or a little later when— This occurred at about the time a special study committee was set up, too.

Q. Not quite, I believe. That was set up in June. A. It was a little later. But the study committee was set up partly as a result of differing views that were expressed.

Q. I believe I asked you if you got a legal opinion from Mr. Henry at that time. Would you answer that question? A. I don't recall a specific legal opinion at that particular juncture, no.

Q. Now, when was the field trip reflected in **[2063]** Exhibit HM taken? Do you recall that? Do you have that exhibit in front of you, Doctor? A. Let's see. I must have it. HM.

Q. Yes. That's the transcript of notes taken. A. I don't seem to have the exhibit.

Q. Here we go. I'm handing you Exhibit HM, Doctor. Does that refresh your recollection as to when the trip was taken? A. Yes.

Q. How long was that trip? A. As I recall, we were away about two weeks.

Q. Where did you go first? A. Philadelphia.

Q. What was the situation in Philadelphia with respect to the racial composition of the school district there? A. I don't recall a special composition. But they were much concerned because there were apparently—there were large numbers in Philadelphia, and large numbers of Negro pupils.

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Q. Was it predominantly black by that time? A. I don't recall. By that you mean majority or more?

Q. Yes. A. I don't recall the specific compositions of any of those cities but I know there was enough to be of great [2064] concern and they were making studies.

Q. Now, had there been any previous studies of the problems of Philadelphia in this respect? A. By then?

Q. Yes. A. Well, they had in Philadelphia what was called a fellowship commission that is referred to in this report that had been apparently studying this matter over a period of years. I don't know how long. But for some years.

Q. Did you talk with some representatives of that commission? A. Yes. There were some in attendance I met at meetings in the superintendent's office where there were a variety of people present. I don't recall specifically who all was there.

Q. Had that commission issued any kind of an interim report? A. There were some reports at that time. I don't recall whether they were annual reports or what.

Q. Were you given copies of those reports? A. We did look at some, yes.

Q. Did you bring some back to Denver with you? A. No, I did not, not that I recall now.

Q. Do you recall—what was the subject of that report? [2065] A. The subject of the reports were primarily in the general field of human relations; what to do with respect to a better understanding particularly among the different ethnic groups of the city.

Q. This was to try to break down the attitudes of discrimination or prejudice? A. I think primarily so.

Q. Would you say that that was its primary emphasis rather than improving educational opportunity in Phila-

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delphia? A. Well, it was related to that. It was an attempt to improve the school community relationships, frankly, with respect to racial and ethnic matters.

Q. Now, in 1962, Doctor, was Philadelphia assigning black teachers in white schools? A. I do not recall the answer to that specific question.

Q. Do you recall asking that question at the time? A. I don't remember now specific questions that were asked. We were in extended periods of discussion. I'm sure personnel was one of the matters, yes.

Q. Did you also discuss the assignment of administrative personnel who were in minority and white schools? A. We generally discussed the areas of personnel, curriculum, buildings, human relations, a variety of subjects.

Q. All right. Anything else you recall, Doctor, about [2066] what you learned in Philadelphia? A. Not at this moment, no.

Q. Then where did you go? A. To New York City.

Q. Now, New York had been the subject—its school district in Manhattan and boroughs—those school districts have been the subject of many reports, have they not? And studies? A. Yes.

Q. Had you, before going to New York, reviewed any of those reports which were already in existence? A. I had been aware of some reports and New York probably had issued more reports than any other school system up to that time. But I can't recall the title of a specific report. They did have a commission on integration that did some publications. I'm sure I must have read or more of their reports before I went but I don't have a specific recollection at this moment.

Q. I take it from the resume contained in Exhibit HM

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that the scope or the direction of the New York program was broader than just community relations, is that right?

A. It was much broader than in Philadelphia.

Q. It was broader than the Philadelphia program?

A. Yes.

Q. And it included concern with educational opportunity [2067] in these minority schools? A. Yes. There were a variety of subjects and the basic interest was an equality of educational opportunity.

Q. And they also were considering the problem of assignment of minority teachers in white schools, were they not? A. That's right.

Q. And also the assignment of minority administrative personnel in white schools, is that right? A. They were giving much more active consideration than Philadelphia at that time.

Q. Well, were they giving it more active consideration than Denver was at that time? A. Consideration of the assignment now of people?

Q. Yes. A. Yes.

Q. Now, did you get any current reports from the New York commission to study? A. My recollection is that we did have some reports. But again, I can't at this stage remember the title.

Q. Do you know whether or not one of the subjects of those reports of the commission on integration in New York was whether or not there was a relationship between concentrations of minority students and equality of educational opportunity? [2068] A. I do not recall a specific on that, no.

Q. You do recall that that was under consideration? A. It was one of the considerations, but I do not recall anything specific on that.

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Q. And you don't recall that they had reached any conclusions in New York? A. At that time?

Q. Yes, sir. A. I don't remember any, no.

Q. Anything else that you learned in New York in talking with these people? A. Well, of major importance to us was, as we looked at our situation, was their procedure of having citizens' advisory committees to help them assess the situation, to make a study. Also, their employment of a specialist in this area, in the staff, and these were two major recommendations. We were looking essentially for procedural ways of looking at our situation; how they looked at their situations, what they had done. And these were two major things we brought back from New York.

Q. New York, relatively, has a high population of Puerto Ricans, does it not? A. It does, yes. Manhattan does. I think Manhattan does.

Q. Did this interest you? Did you see any parallel [2069] between the Puerto Rican problems in New York and the Hispano problems of Denver? A. The question again was, did I see any relationship or what?

Q. Yes. A. There were discussions, as I recall, during our visit there and I was aware of—yes, of Hispanos in Denver, and in New York the Puerto Ricans there. They're not in Denver, however. I think you have quite different situations in New York than you have in Denver.

Q. So you didn't see that you could learn anything that might have utility in Denver with respect to New York City experience? A. Here again, I want to reemphasize what I said just a moment ago. We were trying to find procedures and ways of studying the situation and what we ought to do; not primarily substantive matters that you're referring to.

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Q. But substantive matters were not ignored? They must have come up in these conversations. A. That's right. And we took that into account. But my comments, if you will note, with respect to the board, were related only to the procedural matters, and that is what this report is.

Q. Yes. I noted that. Now, then, did you go to Detroit? **【2070】** A. We did.

Q. And how long did you spend in Detroit? A. I don't recall, several days.

We spent several days in each case.

Q. You don't recall what the racial composition of the Detroit school district was in 1962? A. I do know there was a substantial number. I can't recall the composition.

Q. You don't know whether it had sprung over the 50-percent minority at that time? A. I could not testify as to that, no.

Q. Detroit was also studying its problems? A. It was.

Q. And had there been any interim or final reports by its study group? A. Well, there were two reports referred to in my statement; one was the general citizens advisory committee on school needs and out of that was set up a study committee on equality of opportunity.

Q. Pardon me. Which one was the Romney Committee? A. That was the first one set up in 1957. The citizens advisory committee of the school, chaired by Mr. Romney, and this was to take a look at the school needs of the city generally. They had five subject committees and, in a large way, we finally fashioned our so-called study **【2071】** committee after the Detroit experience. They had, growing out of this so-called Romney Committee, appointed another committee which did a special study with respect to

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equality of opportunity, and that was the one that we were mainly interested in because it related to our question.

Q. Was the subject committee operating at the same time with the base committee that was operating? Is that right? A. You're talking about the five subject committees referred to in this report?

Q. Yes. A. This came at a later date. You see, the first committee was appointed in 1957. The second committee was appointed in 1960. And this is the one appointed on equal educational opportunity. It is the one that had the five subject committees, if you're looking at the report. It shows at the bottom of Page 3. And then continues over to Page 4.

Q. Now, had that committee that was studying equality of educational opportunity in 1962 issued any kind of a report? A. As I recall, there were several reports which we looked at in the assistant superintendent's office.

Q. Did that report find a relationship between inequality of educational opportunity and concentrations **[2072]** of minority students?

Mr. Brega: Object to the question. It calls for a hearsay answer.

The Court: Overruled.

* * * * *

[2073] * * *

Cross-Examination by Mr. Greiner (Cont'd):

Q. Dr. Oberholtzer, this morning we were discussing the standards that the School District was employing, namely, that in certain of the schools of the District it was felt that because of the programs being carried on in those schools a lower teacher-pupil ratio was required. Do you recall,

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Doctor, when you first lowered the pupil-teacher ratio at Manual, was it done for old Manual? A. There was no particular stage at which you said there will be lower. As I recall, there was a gradual lowering of the pupil-teacher ratio.

Q. Was the lowering process of the pupil-teacher ratio at Manual still in progress when you left as Superintendent? A. Yes. The most recent principal, Mr. Ward, had requested further lowering.

Q. Do you recall when the lowering began? A. I can't remember any specific date, no.

Q. Do you recall when the District formulated the policy, [2074] when it made the determination that it would be advisable to lower the pupil-teacher ratio in these low-achieving schools? A. This was one of the early determinations when I came to Denver, and I think there had been some recognition of that prior to my coming, but not as much as subsequently.

Q. Now, were there schools at the time of your departure, Doctor, which had achieved what you believed to be the appropriate pupil-teacher ratio? I am talking still about the low achievement schools. A. Appropriate to particular schools. Again, there was no formula. It was an individual matter.

Q. Can you identify some of those schools for us? A. Well, we were working toward that—certainly one of the most recent studies that I recall was at Stedman School.

Q. Do you recall what the ratio had been at Stedman before this policy began to be implemented? A. I can't recall a precise figure, but it must have been between 25 and 30, and we were endeavoring to get it below 25.

Q. That was over a relatively short period of time, was it not, since Stedman, say, in 1960 was still a predominantly

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Anglo school? A. Are you making an observation or a question?

Q. Well, did the program begin sometime after Stedman became a predominantly minority school? **[2075]** A. The particular program I am talking about came as the result of the recommendations of the advisory council.

[2076] Q. So that would have been sometime after the spring of 1964? A. After 1967.

Q. Oh, after '67? A. After '67 I'm talking about. This particular marked reduction.

Q. All right. Can you identify any other schools where at the time of your departure you felt that the pupil-teacher ratio had been reduced sufficiently? A. Well, we were in the process of doing this at the Greenlee School, as I recall, and the pupil-teacher ratios were approximately the same.

Q. Now, as I understand it, is it fair to say, Doctor, that your overall objective in these low achieving schools was to get the ratio down at least as low as twenty-five to one? A. Twenty-five or below, preferably.

Q. Now, as I recall the statistics published by the school district in 1968, and I have reference to an exhibit in evidence, Exhibit 83, some of the schools in the district had pupil-teacher ratios significantly below twenty-five to one. Is that correct? A. Some did.

Q. Some were as low as sixteen to one? A. Sixteen, seventeen; in there, yes.

[2077] Q. And the ratios for example at Moore and Morey and Cole were quite low, were they not? A. They were relatively low. And the situation at Morey is unique in that it was also a special education center for junior high schools.

Q. Well, as I understand it, special education teachers

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and pupils were not included in those ratios, were they, generally?

Mr. Ris: If the Court please, I think it's only fair to the witness—if he's referring to—if counsel is referring to a specific exhibit, that the witness be given an opportunity to see the exhibit.

Mr. Greiner: I'm asking in general whether special education was considered.

Mr. Ris: May I finish my objection? To see whether the matter that he is referring to is as stated in that exhibit.

The Court: Well, if there is some particular information that you have at hand, you might call it to his attention. It would save time that way, I think.

The Witness: Let me answer your question to this extent, that the attempt at Morey—I know was to reduce significantly the pupil-teacher ratio.

Q. I'm handing you what's in evidence for example as Exhibit 83 and at the back that represents pupil-teacher **[2078]** ratio data in rank order. I am showing you the page that lists the junior high schools. Do you know whether or not that statistic as it appears in Exhibit 83 includes special education pupils and teachers? A. I do not, no. This was in 1968.

Q. What was the practice while you were superintendent? A. I think generally that it was not the practice to include it.

Q. Now, I take it, Doctor, that some of the schools which were the subject of this lower pupil-teacher ratio have been low achieving schools for a number of years. I'm talking

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principally now about the core city schools. A. Relatively speaking, yes.

Q. What do you mean, relatively speaking? A. Relatively low.

Q. Well, they were the lowest in the city, were they not? A. Some of them—One has to be the lowest.

Q. That's a good point, Doctor; but, on the average, they were all below the city average, were they not? A. Most of them were.

Q. In the core area? A. Yes.

Q. And you started the triennial testing program in 1950, is that right? 【2079】 A. We started it in 1950, yes.

Q. And you had been testing—I suppose you were testing for achievement after your very first year here as superintendent, is that right? A. The triennial program was introduced in 1950, but individual schools had their own testing programs aside from that.

Q. When did you first become aware of the identity of some of these lower achieving schools, Doctor? A. Notably in 1950, with the first triennial survey.

Q. Now Doctor, I take it that you reviewed the results of this triennial program every three years, is that correct? A. We did.

Q. Did you find, Doctor, that this lowering of the pupil-teacher ratio had any significant impact on raising achievement in the schools? A. It did have an impact and through the years there was some improvement in the schools.

Q. Would you say, Doctor, that the achievement was up to grade level in those schools? A. In terms of the standardization achievement tests generally, no.

Q. Well, I take it the situation at Manual was similar, was it not, when we compare the achievement, for example, of 【2080】 old Manual with the achievement of new Manual?

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A. Well, the achievement of old Manual I don't recall. We began as I said the triennial survey in 1950. That would be the first results.

Q. I guess that would have been the only result that you would have been familiar with of old Manual? A. The only one, yes, and it was relatively low.

Q. And then it was still low when you left the school district, was it not? A. It was still low but there was improvement in the achievement of the pupils.

Q. Was it up to grade level? A. No.

Q. Now, I'd like to call your attention to the boundary changes which were proposed in 1962 for the Park Hill area elementary schools. Do you recall that, at least initially, there was a proposal made to relieve overcrowding at Stedman Elementary School as one of those changes? A. You're talking now, I think, about the matter that was brought up yesterday in testimony in which, I believe, there was some question as to whether there were proposals anticipated in 1962 or 1964.

Q. That's right. And the thrust of my question, Doctor, is whether there was an initial proposal and for some reason it was changed, or whether there never was such [2081] a proposal? A. No, the intent—I think the intent was to make the proposal for 1964, not for 1962.

Q. Now, do you recall whether or not it's true, Doctor, that in 1962 Stedman was the most over-utilized of those Park Hill schools? A. I do not recall that point.

Q. Would you accept the fact that there is evidence in this record of that fact? A. Of what schools now are we talking?

Q. Talking about Smith, Park Hill, Philips, Hallett and Stedman.

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Mr. Ris: If the Court please, I think, if there is evidence to this effect, whatever the exhibit is, the witness should be furnished with it.

The Witness: I would like to see the evidence, if there is such.

The Court: Well, he may if you have it.

The Witness: I don't recall that.

Q. I'll try to find that for you in just a moment, Doctor.

The Court: You're talking about overcapacity—or population in excess of rated capacity?

Mr. Greiner: Yes, and my question goes to—

The Court: At Stedman, more than the other **[2082]** schools?

Mr. Greiner. It's Exhibit 51.

Q. This is Exhibit 51, which is in evidence, which is a bar graph purporting to show the capacity utilization in 1961 at Stedman, Smith, Hallett and Park Hill. Now, at least according to that exhibit, which is in evidence, Stedman was the most overcapacity, is that correct? A. This exhibit shows that, yes.

Q. And do you know, also, Doctor, whether or not Stedman also had the highest Negro population at that time of those schools shown on that exhibit? A. I could not testify to that effect, but it was probably so because of its location.

Q. Now, if I understand what you have been telling us, Doctor, a school which is over-utilized and has minority population—significant minority population, it in effect gets over-utilized faster than a school that doesn't have minority population. Isn't that true? A. It would be generally so, yes.

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Q. Well, can you explain then why the decision was made not to—why Stedman wasn't proposed for immediate relief in 1962, if that's what the fact was? A. I'm trying to recall, but I think there was some reduction in Stedman contemplated later. And we contemplated some changes in 1964.

[2083] Q. That is correct, but my question is, why wait two years?

The Court: If you remember.

A. I don't recall the reasons, frankly, at this time.

Q. Now, I believe you recall the subject of the actions taken at Harrington, Columbine and Stedman Elementary Schools? A. When?

Q. I believe that was in 1951, the school year beginning 1952. A. We have talked about several situations. I am not sure.

Q. Do you have any recollection of what the reasons for those changes in the boundaries was? A. In '51-'52?

Q. Yes. A. I am sorry, I don't recall.

Q. But you do recall telling me, do you not, Doctor, that optional zones were not one of the devices used by the District to relieve overcrowding? A. That's a general policy, yes.

Q. You mentioned the opening of a parochial school near Smith, and I don't believe that the record shows when that school was opened. Do you recall? A. It was opened, I believe, in the early 1960's. I can't give you a precise date.

[2084] Q. And do you recall that Smith was built in 1955? A. Yes.

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Q. And the addition that you had reference to in your testimony was built in 1957, was it not? A. That's right.

Q. So by the time 1964 rolled around, both of those events that you have described had already taken place?

A. I believe that is correct, yes.

Q. Now, handing you what has been marked for identification Exhibit 245, which is a newspaper clipping, I wonder if that refreshes your recollection, Doctor, as to whether the school District, and this speaks as of 1952, owned any other School sites east of Colorado Boulevard that might have been used for the Park Hill area? A. Are you referring now to an elementary school site?

Q. You built Barrett on the junior high school site so I guess no, I don't limit my question to that. Any school site. A. There were some in existence at that time, yes, east.

Q. And where were they? A. This map doesn't show any street designations.

Q. It shows— A. I am sorry, it does indicate 35th and Dahlia, 36th and Jasmine.

[2085] Q. 36th and Jasmine is where you ultimately built Smith, did you not? A. That would be the Smith School, yes.

Q. Now, you also mentioned, I believe, Doctor, that in the May 6, 1964 Board meeting quite a few important policies were passed by the School Board in response to the 1964 study committee report; do you recall that? A. I do, yes.

Q. Now, one of the recommendations of the study committee report—or can you tell me whether one of the recommendations concerned the use of transportation to relieve overcrowding? A. There was such a recommendation and a policy recommended.

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Q. Now, you have reference, do you not, to Policy 1226A, which I will show to you? It is identified as Plaintiffs' Exhibit 34. I believe it is over on the second page, is it not, designated multiple pupil transfers? A. Yes.

Q. Just so the record is clear, Doctor, I'd like to point out to you that that particular provision was not passed until February 2nd, 1966, was it? If you will note the reference on the first page of the exhibit. A. This policy is effective February 3, yes.

Q. 1966? A. '66, correct.

[2086] Q. So you agree we do have the May 4, 1964, Board minutes identified as Plaintiffs' Exhibit 32, and I think that if you would look there you would find there is no reference in the 1964 meeting to this provision. A. I will take your word for it. I didn't think so.

Q. Now, if that policy had been recommended, Doctor, in March of 1964, why did it take some two years before the Board adopted it as policy, do you recall? A. I do not recall any specific reason for that, no.

Q. Now, you have on your desk in front of you two of the defendants' exhibits, I believe, that deal with compensatory education expenditures. I have reference to Exhibits EM and EN. Do you have those? A. Yes, I do. I have EN and EO.

Q. All right, we will take those, then. EN purports to show the expenditure of federal funds in junior high schools, is that correct? A. From '68 to '69. That was after my date.

Q. Were there any federal funds being spent in junior high schools during your tenure on such programs? A. My recollection is that there were some, yes. The Education Act was made effective at an earlier date, during the period when I was Superintendent.

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Q. That was what, about 1965? A. I was thinking it was a little earlier. Might have **【2087】** been '65, '64, in that neighborhood.

Q. We are talking about the elementary and secondary schools? A. ESEA, right.

Q. What were the criteria for receiving federal funds, Doctor? First of all, did the District have to put up matching funds to qualify for this assistance? A. I don't recall that there were matching funds there. I think there were two basic requirements. First of all, you could not apply for funding unless the school was within the designated target, so-called target area, which was essentially an area of low income families.

Q. What did you use, the 1960 census data to determine that? A. My recollection is they were using the '60 census figures at that time, and the other was that you could not use funds in lieu of or in substitution for any programs that you had. They had to be either in addition to or new programs. Those were the essential criteria.

Q. In order to continue the funding for a given program in a school, would you have to submit any kind of an evaluative report on the program to the federal government? A. There were some requirements in connection with the application. You did have to have a plan of evaluation, yes, sir, testing and such.

【2088】 Q. How often did you have to send in these evaluations? A. My recollection is that that was an annual matter.

Q. I take it that some of these programs were abandoned because the evaluation did not show the improvements which had been anticipated? A. There was no abandonment that I recall during my tenure.

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Q. Well, did these federal programs work in raising achievement? A. There was some increase in achievement, but generally not significant changes in achievement.

Q. Now, in addition— A. Let me qualify, please.

Q. I am sorry. A. For some of the programs. Because I want to point out that there were some programs where there were significant differences. May I add that?

Q. Certainly. A. One of the most significant programs was one that we instituted in the way of summer school opportunities for elementary school children in the low-achieving areas, and my recollection is that they were run about six weeks and we had those centers in various parts of the city, and we concentrated on the reading program at first and we'd spend the entire morning, for example, simply on reading, which meant we were [2089] spending from two to three hours on reading only, and the results of those programs were significant. We did have achievement levels raised during a six-week period, as I remember, all the way from one to two and more years reading level. It demonstrated to us the necessity of concentrated programs, particularly in the basic subjects, and thereafter we did make some adjustments in time in the regular program. And where we were able to do that we did get some differences, significant differences.

Q. Now, do you recall how many students participated in that summer reading program? A. I can't recall because it started with a relatively small number of centers, as I remember, five or six centers, and expanded, and there would be, I think, two or three rooms at a center, and the general practice was to have groups of, my recollection is, 15 to 20 children, a relatively small group, and concentrated time available for study. We later instituted programs in arithmetic. The first programs were in reading.

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Q. That was a District Y program, was it not? A. This was in various parts of the city, wherever there were low-achieving groups in schools, and we were trying to put them in centers where it would be relatively convenient for them to come to it from their homes.

Q. Did you find that it was possible to re-create the [2090] summer school situation in the regular classroom?

A. It was feasible to create it in some instances, and we did endeavor to reduce the class sizes, more especially in the lower elementary school grades.

Q. Did you find that the children retained, Doctor, their increased achievement levels in reading? A. Unfortunately, there is a rate of forgetting as well as a rate of learning, and there was, in many instances, a rapid rate of forgetting as between the close of that period and the opening of school. So we did institute, as the result of that, some changes, with more concentrated efforts on the part of the teachers and the schools in the beginning of the school year to overcome the deficiencies.

Q. Do you recall during your last year in office, Doctor, approximately how much in the way of these federal ESEA funds were received by the District? A. I am sorry, there was a substantial sum, but I can't recall the amount.

[2091] Q. Well, for example, EM shows that in 1968-69 some \$601,000 was spent on secondary schools—pardon me, the elementary schools. Do you recall whether during your tenure similar amounts of money were being spent? A. In elementary schools?

Q. Yes. A. My recollection is that there was a lesser amount. I'm not positive about that. The figure of six hundred thousand sticks in my mind as a recommendation and I can't put it in point of time.

Q. Now, did you ever make any determination of the

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cost per student of this type of program? A. There were some determinations—now, this type of program? Are we talking about the regular program in the school year?

Q. I'm sorry. I'm talking about compensatory programs that were undertaken in the schools. A. During the school year?

Q. Yes. A. There were some cost figures but I don't have them in my mind, frankly. If you were going to ask me about them, I can't recall. They were substantially larger. But generally speaking, those programs would run in the neighborhood of 51 percent or more per pupil above the normal average cost.

[2092] Q. What is the normal average cost? A. When?

Q. Well, let's take your last year in office. A. It varied as between elementary, junior and senior high schools.

Q. Well, if you recall, why don't you give it to us for each level? A. Well, it would have been on the order of, I suspect, around five hundred dollars for elementary, six hundred for junior and seven hundred for senior high schools. Something of that order. That would be the relative order of it.

Q. How much was it at the elementary level? A. I thought around five hundred. It might be—might have been less.

Q. Then you're saying that the federal programs infused another \$250 per student? A. That would be generally the case in those programs.

Q. Do you know whether or not there was a great decrease in per-pupil expenditure after you left from the federal program? A. No, sir, I do not know.

Q. For example, EM, which you now have in front of you, shows that in the selected 20 minority schools there

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was a little over a half million dollars spent, is that right?

[2093] A. Well, for the year 1968-69, yes.

Q. And there were approximately 13,000 students in those schools which would come out to be about forty dollars per student, according to my arithmetic? A. Well, let me just remind you that the program was not applied equally to all students. There were selected programs within those schools. This isn't a grand total for the school. You had programs within the schools.

Q. I see. So far any given program you might only have a selected number of students participating, is that correct? A. That's correct. You would have those that were deficient in achievement, would be the general rule. It didn't apply equally to all pupils.

Q. Now, I wasn't sure what your response meant, Doctor, and I'd like to clarify it with respect to the busing out at Stedman to relieve overcrowding there. Did you say that there was no integrating purpose behind that busing out? A. There was at that time some idea of that purpose, yes. We're talking about 1964 now?

Q. 1960—

The Court: 1966.

Q. 1966, I believe. A. Yes. That was one of the elements in it.

[2094] Q. Then why were Anglo students allowed to be bused out? A. Because at that time we were not making a distinction in any school in the matter of transportation as to whether he was Negro or white. And we gave them the option of going. This was then a voluntary matter on the part of the parent.

Q. During your tenure, was it always voluntary? A. It was always voluntary.

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Q. Had you set some sort of a goal for the number of students that you wanted to get out of Stedman? A. We had not at that time set goals of that nature, no.

Q. Subsequently, did you? A. No.

Q. Now, at the time of the junior high school proposal in Northeast Denver, that was in 1962, there was also then under consideration a series of changes in the attendance areas between Morey, Cole and Byers, were there not? A. I believe there were, yes.

Q. And do you recall that there was opposition to those changes on the basis of the racial results which might be achieved by them? A. I think there were such comments, yes.

Q. Now, was this about the same time that you were [2095] considering the junior high school in Northeast Denver? A. In the relatively same period of time, I believe.

Q. Was there as much opposition to those junior high school boundary changes as there was to the proposal to build a new junior high school? A. I do not recall. I can't state a proportion.

Q. But the same factors were being mentioned? A. Similar, yes.

Q. And can you recall why you decided, Doctor, not to build the junior high school on the one hand but that you did decide to go ahead and make the boundary changes on the other? A. We were faced with the situation in the one instance of an immediate action, and the other of a long period. The construction of a new high school is different—quite a different matter than changing a boundary line, and we were confronted then with the matter of the relative capacity of the schools and the programs of

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the schools. This was a matter of concern then. And we were not concerned with the racial or ethnic factors.

Q. Well, you were concerned with those factors up at that 32nd location. A. We were not initially concerned. May I remind you, it became a part of our concern in subsequent time.

Q. Yesterday you mentioned as the most important [2096] factor affecting achievement, Doctor, something you called native ability. What is native ability? A. I'm talking here of what is generally reflected as the ability, the intellectual ability in this instance, to do school work; the capability of a child. You call it brightness; intelligence and such. This is a general term.

The Court: I think he wants to know what the source of it is according to your belief.

A. Well, I'll be glad to—

The Court: Is it inherited? Is it a product of the exposure to educated parents? I think you indicated that.

A. Well, I have indicated, I think, that I felt that there were some innate capacities in terms of intelligence, but I do not confine it to that. I think there are many important environmental influences, though it's a combination— What a child is able to do is a combination of these factors.

The Court: Does that answer your question?

Mr. Greiner: Not quite, Your Honor. I'd like to pursue it just briefly if I might.

Q. I take it then that native ability is something you're born with, is that right? A. That's the intent of that

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statement, yes. You [2097] are born with certain genes with respect to the color of your hair and your eyes and your physical makeup and you are also with your intelligence.

Q. Now, are you familiar—I think you said it's called, I think the Jensen Report? A. I am in general familiar with it.

Q. Is that what you have reference to? A. No, I do not agree with the Jensen Report.

Mr. Greiner: I have no further questions, Your Honor.

Cross-Examination by Mr. Brega:

Q. Doctor, I'd like to ask you a few questions about the 1956 boundary changes at the time that you had Hill Junior High opened and then the contiguous areas changed.

The Court: The series of junior high boundary changes? Is that what you're referring to?

Mr. Brega: Yes.

Q. I think we have had an inference here that the only change that was of any concern was the Cole-Morey-Byers change. And I'd like to know if, during this period of time, in 1956 at the time these changes were being considered, whether all of these areas were involved. In other words, did they all come out of Hill? Is that where they started? A. The reason for the considerations at that particular [2098] arose from the opening of the new Hill Junior High School. That was the beginning. When you make a change in one situation, you also affect other represented situations that are contiguous. But it also afforded the opportunity for considering other situations.

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Q. Well, I gather then that, had Hill not have been opened at that time, there probably would not have been any other boundary changes in Cole and Morey and Byers? A. That's probably so, yes.

Q. In other words, the Hill construction was what caused you to think about these other boundary changes? A. Right.

Q. And at the time these changes came up I presume that you published these for the general populace of Denver to see what you intended to do? A. As I recall, they were rather widely reported, yes.

Q. You weren't trying to hide the fact that you were going to make any changes? A. No. All such proposals are made at a public meeting of the Board of Education at the regular or special meetings, and they are subsequent to press comment and other kinds of public comment and information.

Q. Now, regarding the type of information that was presented to you about how the Cole-Morey changes would affect the racial balances of the schools, did anyone present [2099] figures to you of the percentage of blacks or whites being taken out of any one of the areas, for instance, in the Cole-Morey change? Did anyone come up and say, "You're going to take 75 percent of the black students out" or— A. I don't recall any such figures. We had no studies with respect to that, I'm certain of. But whether we were presented with them, I don't recall specific figures, no.

Q. To the best of your recollection, then, is that people were just talking about generalities of what would happen? A. That's my present recollection, I would guess.

Q. And there were several different groups that were

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advocating different positions, I presume, at those meetings? A. Are we now talking about 1956?

Q. Yes. A. It is my recollection that there were several viewpoints yes, as to that.

Q. And, if I am correct, you mentioned that there were blacks who were in favor of the changes and blacks who were opposed to the changes at the Cole-Morey site? A. Well, if you are now referring to the series of meetings that I held in the Administration Building, yes. This was so.

Q. And these people really represented their own [2100] interests? In other words, rather than as a community interest to you? A. We were endeavoring to get a random sampling of people in various geographical parts of the area affected, though they were not representative of any groups so far as I know; only of themselves.

Q. Now, you mentioned in this regard that at this time you were not considering the racial factor in your changing of boundaries, and I just would like to touch on that a moment.

Does that mean that you were treating all of the races and ethnic groups equally in your determination of these boundary changes? A. I simply meant that this was not a factor in our considerations.

Q. In other words, you were dealing with pupils regardless of what their background was? A. Simply dealing with numbers of pupils, not with respect to their racial or ethnic factors.

Q. And at the time of these 1956 boundary changes, did you have any studies that indicated proposed mobility of the black community in this part of Denver? A. Studies of such?

Q. Yes. A. I do not recall any such studies. We had no [2101] studies based on race or ethnic factors.

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Q. Did anybody present any studies to you at the time?

A. I don't recall any.

Q. I would like for you to consider in this light—in light of what you thought or knew at that time, rather than what we have now to us—the facts that we now have—in considering the Barrett site, did anyone present a study to you indicating what the percentage of black and white students was on the east side of Colorado Boulevard? A. I don't remember any such studies, no.

Q. And did you have any of your own? A. I did not have.

Q. Did you have any idea that the black population on the east side of Colorado Boulevard would increase from 1960 to 1966 at the annual rate of 67 percent a year? A. We had no statistics or no predictions of such.

Q. In the exhibits before the Court it indicates between 1963 and 1968 that the population of the black students in the Denver Public Schools increased 45 percent. Did you have any idea that that was going to happen? A. We had some idea of a probable increase but not of a percentage. And this again was a general figure.

Q. Now, at the same time that you were dealing with these problems in 1966, Stedman, Smith and that area, the [2102] school situation in Denver was such that most of your schools were overcrowded at that time, were they not? A. (No answer.)

Q. Let me refresh you. The 1967 report—it indicates that in 1966 fifty-three percent of all schools in Denver were overcrowded during that year. A. If you are using this formula—and they did use that formula—I don't have a specific recollection of figures.

Q. Well, what I'm getting at—is the only problem you were facing in the Denver area—was it just Northeast

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Denver? A. Well, there were relative degrees of overcrowding. When you take this figure now—I think you're probably taking the so-called rated capacity and anything above that rated capacity would be considered overcrowding. Is that what you're talking about?

Q. Yes. Would that same condition have existed in Southwest Denver and Southeast Denver and other parts of the city? A. It was rather general over the city. It was not confined to any one. But there were certain areas where it was more marked than others. At that time the Northeast area was one of the most crowded.

Q. Now, you mentioned that there were several steps [2103] before the letting of the contract in Barrett that actually committed you to the site. Would you tell us what you mean by that? A. Well, as a general rule, the steps are the superintendent or some member of his staff recommends that plans be made for a new school at a particular location. And the first step is to draw up some preliminary plans. Ahead of all this recommendation are some other steps. But insofar as the specific board actions, these are the steps. Then the preliminary plans are presented for consideration before the Board of Education. It either approves or rejects or it defers. Then there is an authoriaztion at that time to proceed to working drawings and the final plans.

The next step upon completion of those is to receive bids for the construction of the approved final plans. There is a time when those final plans are approved. The final step is to receive the bids for the construction of the school and to act upon them. Then you are committed to the school.

[2104] Q. And when you were involved in the consideration of Barrett did the staff investigate the traffic count

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on Colorado Boulevard as one of its important aspects?

A. This would be in general one of the aspects of our consideration in the environment, streets and such.

Q. And did it— A. I would have to answer yes, it must have been a part of it. I have no specific recollection of count as such.

Q. And you also, I presume, then, were studying the new construction that was taking place or going to take place on Colorado Boulevard? A. Yes.

Q. I believe the 1967 report indicates—excuse me.

The Court: Advisory?

Mr. Brega: No, I had the wrong one.

Q. In your consideration of the 1964 report, the Voorhees report, and you made those assignments out to the staff, the staff, as I understand it, filed a report with the Board of Education that “The busing of large numbers of students back and forth across the city to achieve racial balance would maximize to a serious extent the school’s strangenesses and emotional strains of those students.”

A. May I see that?

Q. Yes (handing document to the witness).

Mr. Greiner: Is that an exhibit?

[2105] Q. Does this refresh your recollection?

Mr. Greiner: Pardon me. Is that an exhibit?

Mr. Brega: No.

Mr. Greiner: I would object to counsel reading from something that is not an exhibit.

Mr. Brega: I am asking him to refresh his recollection. I will make it an exhibit if you want. It is just another—

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The Court: We will let him look at it. I don't see how that could do any harm.

The Witness: It might help.

By Mr. Brega:

Q. This was prepared by your staff? A. Well, no, this was prepared by the executive board of the committee on instruction. This is not a part of my staff. This is another group. It is a professional staff, so to speak, a representative group from different schools in the city. But there were instruction committees and there was an executive board, and that I believe is what—let me see. Yes, this is the executive committee of the committee on instruction. I did request them to make a study of the recommendations of the committee, and this is a part of that response. It is not my assignment to the staff that we were referring to earlier.

Q. Right. And they were requested to make a study partially on the advisability and feasibility of busing students? [2106] A. They were to make a study of all of the recommendations of that committee.

Q. And does this refresh your recollection on what their response to that was? A. Yes, in this particular instance.

Q. Would you tell us what that response was? A. You want me to read it?

Q. That would probably be the easiest.

Mr. Greiner: Well, I object, Your Honor. If he is going to read it, I would ask that it be marked as an exhibit, that it be identified.

The Court: This is a report of a committee to evaluate the advisory committee's report, as I get it, is that right?

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Mr. Greiner: I am not sure it has been established that he ever received it.

The Court: It hasn't been.

The Witness: I would be glad to indicate that I did receive such a report.

Mr. Greiner: You did? All right, then, we would have no objection to his reading it.

The Court: We can always Xerox that page and make it a part of the record.

Mr. Brega: The whole report, Your Honor, is a response to this, to the advisory committee's recommendations. [2107] I don't have any hesitancy about putting it in. It is just another huge volume of recommendations.

The Court: We wouldn't necessarily need the whole thing. Just take the page.

The Witness: I am sorry, we are now talking about the study committee, not the advisory committee.

Mr. Brega: That's right.

The Witness: The 1964. We are not talking about 1967.

The Court: You are not saying the Berge committee recommended compulsory busing?

Mr. Brega: No, the Voorhees committee.

The Witness: This is the first committee.

Mr. Brega: If we did, we would be in real trouble; this is the '64 committee.

The Court: I see.

By Mr. Brega:

Q. Would you read that section we are referring to? Let's start again. A. The paragraph is headed "Bounda-

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ries, Busing and Emotional Security.” Incidentally, the choice of subjects and the arrangement was the committee’s choice. I don’t know why they have this particular one.

“Busing large numbers of pupils back and forth across the city to achieve racial balance would maximize to a serious extent the school’s strangenesses and emotional [2108] strains which already undermine learning for so many youngsters. The recommendation that this not be done (that was recommendation 6) seems sound.

Q. Stop right there. Recommendation 6 refers to the Voorhees report? A. Of the Voorhees report or the study committee report.

Q. All right. I wanted to ask you if you agree that this transportation of students did have an adverse effect upon their ability to achieve. A. This transportation, what are we talking about now?

Q. As we mentioned here, the mass busing of students back and forth the city, I want to know what the strangenesses and the emotional strains we are referring to are. A. Let me point out that this was an opinion expressed about a contemplated situation. That’s all that is.

Q. We are facing that in this lawsuit.

The Court: He says he can’t evaluate it until it is an accomplished fact. I take it that is what he said.

The Witness: We are talking simply about an opinion here.

Q. Do you have an opinion as to what it would do? A. I do not have a general opinion. I think it is possible that there could be such an effect, but I would not want to generalize.

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Q. Now, I would like to call your attention to Exhibit [2109] 83, which is the triennial test scores of 1968, and I am going to give you an example, if I may, of two schools, Knight Elementary and Gilpin Elementary, and for Grade Level 5, the word meaning test score for Gilpin was 4.7 and for Knight was 6.7. And that indicates two grade differences, I presume, then, between the students and the word meaning. In the report it also reflects that the Gilpin median family income in that subdistrict area is \$3,680 and that the median income for the Knight subdistrict is \$10,000 plus, and I want to ask you if in your opinion the income level does have or can have any effect on the achievement level of those students.

Mr. Greiner: Your Honor, I would object. The income data which counsel has reference to is 1960 data. The test results which counsel has reference to are the 1968 tests. I don't think there is any proof—it is an apple and an orange. He has come up with a peach.

The Court: Can you answer the question? Do you understand?

The Witness: I am not familiar with the report, Judge. This is a 1968 report. I can only answer in general terms as to his question.

I have previously indicated to you that there have been studies which pretty well establish that the income of a family is one of the good indicators, only one, that has some bearing upon the achievement of pupils, but I would not [2110] rest on any one indicator.

Q. And also in this study in 1968 the average daily at-

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tendance of Gilpin was 88.7 percent, and at Knight it was 94.5 percent. I will ask you if in your opinion—

The Court: Are you talking about different years now?

Mr. Brega: No, no, same year, under the triennial testing report, two schools, one of which has a high achievement level and one of which has a low achievement level. I am asking now if in the Doctor's opinion the difference in the attendance percentage at these schools in his opinion has any effect on the achievement level of these schools.

A. I would have to answer only in general terms that there is an effect, and in general the better the attendance the more probability of higher achievement. It again is one factor that has to be considered, and you are talking about generalities. This varies tremendously among individual pupils.

Q. Let's carry this on.

The Court: I think we can all agree that good attendance is desirable in this problem, and then we can get on to the next point. I don't want to hurry you, though.

Mr. Brega: I don't want to hurry on this, either, if I don't have to.

The Court: No, not necessarily. I just think that **[2111]** is fairly obvious, that attendance affects the results.

Mr. Brega: Your Honor, I believe the whole tenor of the plaintiffs' case is that the reason that we have low-achievement schools and the reason we have high-achieving schools is because one is minority and

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the other is Anglo, and I want to bring out that there are as many other reasons as there are—

The Court: You go right ahead.

By Mr. Brega:

Q. Now, Doctor, in consideration of these factors of achievement, is it your opinion that race has anything to do with the achievement level of students? A. I have answered that question, I think, several times, that I do not think so, not race per se, no.

The Court: I don't think the plaintiffs have maintained that, have they?

Mr. Brega: Well, every one of their schools that they have presented to you—

The Court: I hadn't understood that they maintained that there is anything constitutionally inferior about a person of a minority race. I have not heard anything like that.

Mr. Brega: We don't maintain that, either.

The Court: You are not suggesting that they are suggesting it?

Mr. Brega: No, except that they are suggesting if you take minority students and put them in a school that is [2112] predominantly Anglo, there achievement record is going to suddenly change.

The Court: You go ahead. As I say, don't mind me.

Mr. Brega: I won't. It is an academic exercise.

By Mr. Brega:

Q. While you were Superintendent did you have various grouping levels within a grade in your classes? A. There was no plan for grouping which was applied generally

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throughout the school system. This was at the option of a school or a teacher. There was some grouping particularly in the elementary schools, in reading, I think you would customarily find within any given grade, and I am talking particularly where they had the so-called home room or self-contained classroom with one teacher in charge throughout the day, and if that teacher were teaching reading the chances are there might be two or three groups within that class.

Q. And in your opinion is that a sound educational system? A. Well, this is a means for the teachers to work effectively with groups of children where there are less individual differences in a particular group.

Mr. Brega: No further questions.

Redirect Examination by Mr. Ris:

[2113] Q. Dr. Oberholtzer, do you still have Exhibit 34 there? A. 34?

Q. Yes. A. Can you tell me what it is about?

Q. 1226A. A. I'm not sure. I have got a lot of papers here.

Q. Here it is. I believe this was referred to you by Mr. Greiner, in particular, reference to page 2 and a date shown on page 2 being February 3, 1966, is that correct? A. Correct.

Q. What does that February 3, 1966, refer to? A. It says the effective date of the policy.

Q. All right, sir. Will you look on page 1 at the very top, second paragraph, entitled "References"? A. Yes.

Q. What is the first reference? A. Minutes of the Board of Education, May 6th, 1964.

Q. What does that mean? A. Well, it means that one

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of the references in the development of this particular policy were the minutes of that meeting.

Q. Do you recall that the initial draft of this policy was prepared and enacted at the May 6, 1964 meeting? A. Well, that was my recollection, and I was wondering when this matter was presented to me. I couldn't recall a [2114] deferral for two years, and I thought all of those proposals were acted upon that night.

Q. Would you like to take a look at the minutes of that meeting?

The Court: I think this arose, if I may make a suggestion—

Mr. Ris: Yes, sir.

The Court: —in connection with the testimony that the Stedman meeting was in 1966 to formulate a policy to relieve overcrowding. He said, “why did you wait two years after the announcement of Policy 1226A was put in effect?”

Mr. Ris: The original one was in effect in '64 and the original enactment was in '64. That's all I am trying to establish. Counsel left the impression it was in '66, which was impeaching—

The Court: You mean started busing them out of Stedman?

Mr. Ris: Which was impeaching testimony with respect to his testimony on cross.

If you will agree the original enactment was in '64, that takes care of it.

Mr. Greiner: No, I will not. I have the '64 minutes here. It is not in them.

Pardon us, Your Honor. I am talking about multiple pupil transfer.

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[2115] Mr. Ris: You are talking about an amendment, then, to the basic document?

Mr. Greiner: That was not passed until 1966, and that is what the busing out to relieve overcrowding was all about.

The Court: I think you brought out yesterday, Mr. Ris—

Mr. Ris: We may be talking about two different things.

The Court: I think that's probably right.

Mr. Ris: Rather than belabor it, we will compare a little later and we may call Dr. Oberholtzer back.

Mr. Greiner: If you are right, I will so stipulate.

Mr. Ris: All right. We may be talking about two different portions.

The Court: Here was the testimony yesterday, that Dr. Henderman went to Smith, Dr. Oberholtzer went to Stedman. There were citizens interested in the overcrowding problems at both schools. This was in January 1966. Then I suggested to you that you pursue the Stedman meeting. Do you remember that?

Mr. Ris: Yes, sir.

The Court: And you did it.

Mr. Ris: Yes.

The Court: He said they solved the problem at **[2116]** Stedman differently than they had at Smith, remember?

Mr. Ris: Yes.

The Court: They decided to use busing to relieve overcrowding at Stedman?

Mr. Ris: Right.

The Court: But not Smith.

Mr. Ris: That is right. What I was getting at

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here was some testimony this morning concerning the May '64 meeting at which various policies were adopted, and I thought Mr. Greiner was attempting to impeach him that some of those policies were not adopted at that time. If he was getting off on another point, I was drawing a different point of inference. That is our point of difference.

The Court: I think the dispute is whether the School Board authorized busing to relieve overcrowding at Stedman in 1964.

Mr. Greiner: Or anywhere else. Our position is that they didn't, they didn't do that until this February '66 meeting.

Mr. Ris: I misunderstood. So I will go on to my next point.

The Court: All right. I think I'm about ready to take the afternoon recess anyway; then perhaps you can solve the problem.

Mr. Ris: I will take care of it during the recess.

【2117】 The Court: All right. You may step down.

(Whereupon, the trial was recessed at 3:25 p.m.)

(Following the recess, the trial resumed at 3:41 p.m.)

Mr. Ris: If the Court please, with respect to Exhibit 34, we have resolved the matter. Apparently the items on Page 1, A, B and C, were a result of the 1964 action, and Paragraph D—Part D, Page 2, 1966 action of the board. So we're in agreement on that.

By Mr. Ris:

Q. Dr. Oberholtzer, prior to 1963 when new Manual was being planned, with all of the various aspects, site size and

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so forth—at that time was there any projection of any substantial increase in the general population in the Manual area? A. There was not at that time.

Q. Now, with respect to the increase at East, that transpired and you were asked specifically on that, I believe, with respect to the 1953 period. Were there projections at that time with respect to potential population increase in the east with respect to specific school sites for secondary schools out there? A. Yes, we had anticipated some increase generally in that direction some years before that, as a matter of fact.

Q. Had the district acquired a site further east for [2118] a potential high school? A. We had acquired a site at the eastern edge of the city, I believe, or pretty well toward it at that time, at 6th and Monroe, somewhere.

The Court: Monaco.

A. Monaco. I'm sorry. Yes. Monaco.

Q. What year was that site acquired? A. 1948.

Q. What happened to that site? A. That site was sold but we did acquire another site which became the George Washington High School which was further south and we were obliged to make this change as we did in some other sites because of the rapidly changing situation and annexations and development of the city in the eastern part.

Q. Increasing population in that area? A. Yes.

Q. At the time of the George Washington site—at the time it was purchased, where was it with respect to the city limits? A. As a matter of fact, the site itself was outside the city limits and we were obliged to get action of the City Council to bring it in the city limits. It was contiguous to the city limits.

Q. What year was that site acquired? [2119] A. Let's

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see, that must have been about—it was in the '50s, around 1956, I would guess.

Q. And then George Washington was built on that site in 1960, as I understand? A. The school was opened in 1960 on that site.

The Court: Well, you took that site in preference to 6th and Monaco because of the movement to the south and to the southeast? Is that it?

The Witness: It was primarily because that particular site was too far north, Judge, in relation to the developing population. You see, the eastern boundaries of the city was Aurora and the population moved south and the annexations were all southeast. So this was an attempt to meet the crowded condition at East High School and also to accommodate the rapidly developing annexed areas to the southeast that were expected.

Q. To the immediate east of 6th and Monaco, you have, of course, Lowry Air Force Base and beyond that you had Aurora? A. Well, there were boundaries—fixed boundaries to the east. The expansion was to the southeast.

Q. In view of the city limits of Aurora, that was your ultimate boundary in that direction at that time? A. Right.

Q. Dr. Oberholtzer, in the '50s, particularly when [2120] you were planning Barrett in 1958, did you have any general knowledge or any general information available to you from which you could reasonably predict or project what historically may now show happened to that north-east area and Park Hill as to the numbers of Negroes that moved into that area, the speed with which they moved in and the geographical area that resulted because of it? A.

Dan Dodson—for Plaintiffs—Direct

Well, let me answer that in two parts: In the first place, again, we had no racial statistics or data. We were aware, as I think I have previously testified, of some movement of population. But we certainly were not aware of the rapidity or the extent to which this took place, as you look back on it now. We were not aware of that.

Mr. Ris: I have no further questions.

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[2183] * * *

Mr. Greiner: Your Honor, the plaintiffs' only rebuttal witness will be Dr. Dan Dodson, whom we now call.

DAN DODSON, a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

The Court: Give us your name and address, please.

The Witness: Dan Dodson, 4 Washington Square Village, New York City.

Mr. Greiner: Your Honor will recall that Dr. Dodson was qualified at the summer hearing, and we are offering Dr. Dodson as an expert witness. And I wish to inquire of counsel as to whether they question the foundation or the adequacy of it.

Mr. Ris: No. He was so qualified in July, and that qualification still stands. We would ask that his testimony be limited to rebuttal and not a repetition of what went on in—

Mr. Greiner: We will try not to be repetitious.

By Mr. Greiner:

Q. Dr. Dodson, with respect to the evidence which has been adduced by the plaintiffs in this case, with respect to

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certain characteristics of the schools which the plaintiffs [2184] have designated as predominantly minority schools in this School District, we have evidence, for example, that these schools experience a higher rate of teacher turnover than the normal schools of the District; that these schools have more brand new teachers than the average in the District; that these schools have more probationary teachers than the average school in the District; that these schools have fewer teachers with ten or more years' experience, and that the median years' experience of the teachers in these schools is lower than that of the average for the School District.

We have also had in evidence that there are in these minority schools concentrations of compensatory educational programs; that these are in fact the schools which received such programs; especially those federally funded under the Elementary and Secondary Schools Act. We also have evidence that at the secondary level these schools contain greater numbers of sections of the so-called modified sections of courses which were the courses designed for slow learners. There has also been some evidence that in comparison with a group of Anglo schools, that these differences which I have just described to you between the so-called minority schools and the so-called predominantly Anglo schools—that these differences are even greater when we compare the minority and the Anglo schools than when we compare the minority schools with the averages for the District.

[2185] Now, I'd like you to comment, Doctor, if you can—Plus, we have had the fact that the achievement in the minority schools has for a number of years been significantly lower than the achievement for example in these predominantly Anglo schools. There is also evidence that

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the minority schools have by and large older physical plants, smaller site sizes.

Now, Doctor, taking these factors which I have related to you into consideration, can you relate to the Court how if at all the combination of these factors affects the minority child's ability to learn school?

Mr. Brega: I object to the question. It's improper rebuttal. He has predicated it on a hypothesis basis on facts entered at the plaintiffs' case and not anything introduced by the defendants or the intervenors. The hypothetical question is one which is based upon certain facts which have not been disclosed by the evidence and which has been contradicted by the evidence. We don't believe it's—

Mr. Ris: The defendants also object for the same reasons stated by counsel and also for the reason that there is wholly an insufficient foundation. Merely conclusions as to broad summaries of what counsel says the evidence is.

Mr. Greiner: Your Honor, the point of the question is that we heard the day before yesterday for most of the afternoon, and part of the morning yesterday, that these [2186] minority students come to the school clothed and cloaked with so many disabilities, that the implication is that the school is helpless to educate them. We would like to point out through the witness that these disabilities can in fact be overcome and that it is the school itself, the minority school which ultimately causes the minority student this unequal educational opportunity.

The Court: Well, I think we ought to ascertain first whether he has an opinion on the subject. I assume he has.

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Mr. Greiner: I believe he does, Your Honor.

Mr. Ris: We will stipulate that he has.

The Court: Ordinarily, though, we do ask an expert whether he feels he can give an opinion.

Is that right?

The Witness: Yes, I would have an opinion.

The Court: Do you have an opinion as to causation in terms of ability of the response of the child to this, whether it stems from his having grown up in a home that is economically and culturally deprived, or whether the substantial factor is the school itself? I think that's really our issue. I mean, as a cause factor?

The Witness: Yes, I would have an opinion on that.

The Court: I don't see why he can't discuss that. It's been the big issue in the case. The evidence on the [2187] part of the plaintiff has been presented, which prima facie tended to establish that the schools themselves were deficient. The defendant has offered evidence showing that they have put forth special effort, that the facilities are actually superior at a school like Manual; that the extent of their effort is greater at these institutions because of the fact that the subjects are handicapped in many ways. Dr. Oberholtzer said that the real problem is that they haven't had the start that the child has who comes from a home where the parents are pretty well educated and he sees the only remedy as being a Head Start program that starts at the—that commences at age three, to bring them into line with these other students by the time that they commence the first grade. So I think that this is an important issue in

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the case. So we will let him comment on it. And the objections will be overruled for the reasons stated.

By Mr. Greiner:

Q. Do you have the question in mind now, Doctor? A. I think so. I hardly know where to begin with it. But I think that the point of takeoff would be that the school itself is reflective of the broader society or the dominant power arrangement of the community, and that when it comes to dealing with the children of minority, it has a problem of adjusting its programs that are designed for a majority to serve minority children for very definite reasons. Usually [2188] it is a teacher who is less experienced; usually it is a school that is older and so on. Usually it is a school by the time it becomes segregated that is looked upon by the whole community as being inferior. And when it is looked upon as being inferior this does make it indeed so, because you can't keep up the morale of the teachers nor the children, nor you can't keep up the expectations for performance and achievement in the schools. Teachers feel less privileged when they are sent there to teach and escape as quickly as they can. More than this, they come to look at these children as being less worthy and of whom less is expected. Consequently there has developed what's called the self-fulfilling prophesies; that because nothing is expected, no standards are held. And consequently the person comes to fulfill the prophesy that you had of him in the beginning. Some evidence of this is that the differences are not this great between children when they first come to school between the majority and the minority, and that with each succeeding year these children of the minority tend to fall further behind. The

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alternative that I would pose to the position that the trauma resides—or the limitation reside in the pre-school experience, is that all this combines to teach these children of the minority that they are powerless people and consequently as all people tend to do when they feel powerless, they resign in apathy and that the limitations to learning is not in [2189] their cognitive apparatus nor abilities nor in the lack of pre-school stimulation, but resides instead in the apathy that stems from a pervasive powerlessness and impotence in the community.

Q. Now, Doctor, I believe that you were in court yesterday when Dr. Oberholtzer was testifying regarding the summer school reading program at which minority students had participated. Do you recall that? A. Yes.

Q. Do you recall the fact that he said that the results of that program were that in some instances reading levels were advanced by between one, two and three grade levels? A. Yes.

Q. And you also recall that he testified that the children also had a rate of forgetting just as they had a rate of learning so that they didn't retain that? A. Yes.

Q. Now, could you comment on the fact that these children were able to improve their reading ability? What does that demonstrate to you? A. I think what Dr. Oberholtzer suggests is that these kids are not dumb; that they are not incapable of learning; that they can learn these skills. But they learn for keeps what is required of them to cope with the life of which they are a part, and reading skills in a school that teaches them [2190] that they are powerless is not one of those skills that is needed to cope with the world of which they are a part.

Q. Well, is there an effect then on minority—on a minority child's motivation brought about in these minority

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schools? A. This is the problem of motivation. I worked with the—I studied the unrest in the White Plains High School recently in New York—a suburb of New York. And I was impressed there that when these children got a dose of this black militant etiology, when there was something they could invest their lives in that they thought had significance for them, that their teachers reported they were carrying around “Senones Wretched of the Earth” (first word phonetically spelled) which is the bible of the new Left, and many of them were carrying around the Kerner Commission Report. A lot of these non-readers I’m talking about now were carrying around reports of this sort, that they read when there was something that motivated them to read. And it was not a limitation of innate skill at learning or ability. The school teaches them fundamentally to be dumb.

Q. Now, Dr. Oberholtzer testified as to a number of factors which in his opinion affected the achievement of these minority children. And I might relate some of them to you. One was the question of native intelligence. Secondly was the home environment, the educational level of the parent, [2191] the presence of reading materials in the home, the attitude demonstrated in the home towards the school. I wondered if you could relate in your opinion how these factors which Dr. Oberholtzer felt had to be corrected at a preschool age; how these factors relate to these causative factors that you have described that are present in the minority school. A. The question I would have on this is whether poor folks’ and black folks’ children get stimulation or don’t get stimulation and this kind of thing. And I think that in our attempt to discover why children don’t learn, we tend to look for the limitations in the potential of children rather than to look for the limitations of the establish-

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ment itself. And that consequently we find what we tend to look for. The minority has always looked to the school to be an instrument of social change which would produce for its children an entree into the broad life of the community. Robert Lind's study of "Middletown" a midwest urban community—

Mr. Brega: Just a moment. I am going to object to any editorializing on someone else's study.

The Court: Overruled. This is not offered, I am sure, to establish the truth of the matter that he is citing. He is simply citing it to illustrate his conclusions, as I understand it. So, I will permit him to do it.

A. Lind quoted the taxi driver who said he realized he would never make it, but "By George, his kids would." He [2192] would pay the price and education would take them out of the status of life which they had and make them into people who participated in the main stream. This has been traditional in American life; that the minority looks at the school as an instrument that would provide the gateway through which its youth would move into the main stream. But, the black population has never been encouraged to believe that it could make the main stream up to very recent times; so very recent that it's very hard for them. They now look to the school to be the instrument of change. You can't tell me that the black parent doesn't have aspirations for his child. Unless and until, as so often happens, he too finds that the school is not going to provide this kind of service, then he either does one of two things; he becomes extremely militant and becomes a pressure to the reform of the school, or else, he just resigns in apathy and says "What's the use of trying to do anything?"

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I think it's this kind of thing that we're dealing with that revolves around the expectations of the school that I think is involved with parent attitudes and with whether or not there is a motivation from the home and so forth for black children.

Q. Now, Doctor, with respect to these problems of educating a minority child in a minority school, first of all with regard to the question of efficacy of compensatory [2193] education programs that are undertaken in these schools, are you familiar with the question of whether or not these compensatory programs have proven to be effective in raising the achievement levels of minority students in these minority schools? A. There is a considerable body of evidence on this—data on this, I should say.

Q. Can you relate some of this evidence to us, please?

Mr. Ris: May we have some background from the doctor as to what his experience has been on this; whether he has done any studies or just what his background is?

The Court: I think he ought to describe the basis of his knowledge and his ability to make or offer the opinion.

Q. Can you describe for us, Doctor, your acquaintance with this problem? A. Well, I have been director for the Center for Human Relations and Community Studies of New York University for the past ten years, up to a year ago, and I have been pretty well related to all of this material. Now, I have not evaluated compensatory education programs, except I have been involved with the literature and helped in the literature of the researches that have accrued on it.

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Q. So you personally have conducted no studies, is that right? [2194] A. To evaluate compensatory programs, that's right.

Q. But you are familiar with the literature in this field?
A. Relatively so, yes.

Q. And you work with it and apply it, is that correct?
A. Yes.

Q. Can you describe or identify for us some of the literature which you have reference to?

Mr. Brega: Well, Your Honor, I'm going to enter an objection to this testimony. There isn't any evidence that shows that there's a proper foundation for him to testify as to the literature on that basis.

The Court: All he's going to do now is describe the literature in the field. I can't see anything wrong with that. Now, the next question may be objectionable when he tried to summarize it. So, we will look forward to hearing from you then.

Mr. Brega: I guess I'll be back.

A. There are four or five studies that I would consider crucial in this. One was the High Horizons program of New York in which they spent first around a hundred dollars per child extra, trying to raise the aspiration levels of children in junior high by taking them to concerts, by trying to enrich a background, raise their horizons. Two hundred and fifty dollars extra per child at the high school level. They [2195] thought they had found considerable results in the first—

Mr. Ris: Just a moment. I am going to object to his testimony as to the results.

The Court: Let's just describe the literature first.

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Q. Now, was there a report on that High Horizons program? A. It is included in "Racial Isolation in the Public Schools" produced by the United States Commission on Civil Rights.

Q. And what is another study that you have familiarity with? A. If I could just say—this data we were encouraging to them—

Mr. Ris: I am going to object and move that that part be stricken.

Q. Well, we will get to that. Let's just describe the project in general. A. When they tried to put it in operation on any large scale with any large state with \$80 per child compensation they found no significant—

Mr. Ris: Just a moment. Could the witness just tell what his studies have been?

The Court: Just tell us what studies.

The Witness: This is the first. The second is **[2196]** called The All Day Neighborhood Schools of New York City, and here there was the attempt to put people into extra counseling and work with the children, kept them after school and so on. And this ran for several years in the New York City community.

Q. Was there a program in Rochester or Syracuse, New York, that you have familiarity with? A. A program in Rochester in which they tried to use reduced class size and they very carefully had a comparison between the class size of twenty of the desegregated programs that they compared them with. But, that was the Rochester study.

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The Court: Well, these programs—these presumptions or suspicions wouldn't apply only to minority children, would they? I mean they would apply to anybody who is economically handicapped, I expect, white or black? It doesn't make any difference?

The Witness: It so happened all these were minority situations.

The Court: Well, there is no basis for distinction here, is there?

The Witness: No.

The Court: In other words, this handicap that exists in certain areas is perhaps common to whites as well as to blacks, isn't it?

The Witness: Except, Your Honor, that color stands [2197] as a badge of identity that doesn't allow the black child to escape into the main stream. If as when he does something for himself and— If he can be absorbed into the main stream, there is no problem. The black child doesn't have this prerogative.

The Court: I mean the problem of getting over this initial hump in terms of being able to speak acceptably and in terms of being able to read and do certain other fundamentals on a competitive basis—that doesn't exist as much for the—

The Witness: I would say these are not racial problems altogether at that level.

The Court: Right.

Q. Doctor, was there also a program in St. Louis, Missouri? A. Yes, the Banniker District program led by Sam Shepherd gained national attention in an attempt to take compensatory education and raise the aspiration levels, to raise the achievement scores.

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Q. Now, you have in front of you what's been marked for identification as Plaintiffs' Exhibit 27, entitled "Racial Isolation in the Public Schools." You have mentioned the St. Louis program. Are the results of that program reported in Exhibit 27? A. Yes.

【2198】 Q. And what about the New York program which you described? A. Yes.

Q. And was there also a program in Berkeley, California, on compensatory education? A. Yes.

Q. And are the results of that program described in Exhibit 27? A. That's right.

Q. Now, was there also a program in Rochester, New York? Have you described that for us? A. Yes, the Rochester program I have made reference to already, and it—I believe it is not described in here. It is described in a study done by the Board of Regents of the University of the State of New York called "Racial and Social Class Isolation in the Schools."

Q. Now, Doctor, we have had evidence in this case—

The Court: I'd like to find out first the extent of your personal exposure to any of these studies. How you come to know them.

A. I have had an intimate relationship with the High Horizons, the All Day Neighborhood Schools, and a considerably contact with Shepherd in the Banniker District.

Q. And you are familiar with how those programs were established, how they functioned? 【2199】 A. Yes.

Q. And how they were evaluated? A. Yes.

Q. And you are also then familiar, are you not, with the results of those evaluations? A. That's right.

Q. Now, Doctor, we have had evidence in this case that various types of compensatory education programs have

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been conducted in the minority schools of Denver; that there have been efforts, for example, to reduce the pupil-teacher ratio, to reduce the class size, to provide remedial reading and arithmetic teaching to the minority child. And yet, we have also had evidence, Doctor, that these compensatory efforts have not been able to bring these children up to grade level with respect to achievement. And I would ask you if this is an experience unique to Denver?

Mr. Ris: If the Court please, I am going to object to that. There is an insufficient foundation again.

The Court: Overruled.

A. There is no evidence in any of this that the compensatory education has ever made up for these deficits. The evidence from the data seems to be that you cannot by compensation overcome these limitations.

Q. Now, the— A. Let me say—so much that the Board of Regents after [2200] having this study to which I have referred—

Q. That's the Rochester study? A. That's the one which included the Rochester material. But, it was a review of the whole material. It arrived at the conclusion that—

Mr. Brega: Just a moment. Now, I am going to object to conclusions arrived at by the Board.

The Court: Overruled.

A. —that the compensatory education is—that they are not against compensatory education but that compensatory education by itself has not produced results that the aims of the programs have set out to accomplish.

Q. And this is a report published by whom? A. It is a study done by the State Department of Education, its Divi-

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sion of Evaluation, of New York State, looking at national data and drawing up recommendations which the Board of Regents of the State of New York adopted as their own.

Q. Now, you're not of the opinion that has no value, this compensatory effort?

The Witness: They would say that the compensatory education has not produced the kinds of results that the aims set out to accomplish.

The Court: Well, they are nevertheless using it wisely. As a matter of fact, Harvard started with a Head [2201] Start program for law students a few years ago, and it's been very successful. Now, most law schools in the country run a summer program to bring these college graduates into a place where they can compete with entering law students, isn't that right? And the same is true with Hispano. They're doing this in Denver. You don't think this kind of program has any value?

The Witness: Ordinarily they have done some other things, haven't they, like taking them out of an environment, out of a melieu into some—

The Court: Well, at that level I suppose they are living on the university campus.

The Witness: Exactly.

The Court: But I think Harvard brought these students out of southern Negro schools.

The Witness: But they took them out of a melieu and out of a segregated pattern into something that they thought would offer wider—a wider world for them.

The Court: You think then that under those conditions that compensatory education can have a real value?

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The Witness: Their position was that as between compensatory education and desegregation, they had many evidences that desegregated education did achieve results where they had careful measurements as between students who were left behind, and they produced compensatory educations, [2202] and students who were desegregated without the compensatory education. And they said we need the compensatory education but that this by itself is not enough; that it has to be paralleled with a rearrangement of the encounters of children in the school system.

Q. In other words, I take it, Doctor, that compensatory education would still have some value but that it would be most valuable in an integrated setting? Is that the conclusion?

Mr. Ris: I'm going to move to strike that. I object to the question. It's a leading question. Anything that he wants to ask the doctor—

The Court: Well, it's a summing up. He has already said that.

Do you have anything else to say on that?

The Witness: The thing that compensatory education does not deal with is the inherent inequality that stems from segregation.

The Court: From isolation?

The Witness: From isolation.

The Court: Is this a factor—is this a result of the fact that young people seem to go in groups and they think in groups and whatever the normal group is, why, they seem to go—

The Witness: The Coleman report—

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[2203] Mr. Brega: Just a minute. I hate to do this but I have to object. He's editorializing on other reports and things like that that aren't in evidence.

The Court: Look, this is a sociological issue to a degree and I don't see how you can close your eyes to all of the literature and study that has been done on the subject. I mean, we can't bring it all into court and read it. If I have a witness who wants to put an interpretation—

Mr. Brega: I appreciate that.

The Court: —on it, then— If you have got an interpretation different than this, why, you're free, of course, to put it in. But I must overrule your objection because I don't see how I can try to find some answers here if you close the doors to some of these sources. So I'm going to permit him to answer.

The Witness: The Coleman report, done for the Department of Health, Education and Welfare, a national study, concluded as one part of it that the greatest impetus to learning was to be in groups of wide ranges of ability as against the narrowed range of ability that isolation produces. That's where they had the contacts with youngsters who were further ahead of them or whatever, that they did better than in the isolation kind of thing. This, of course, went for whites as well as blacks, but as **[2204]** a general educational principle. The other problem of compensatory education tends to leave the impression that the limitations are in the children and consequently they must be compensated for and not in these things that I have described that are the limitations of the school system itself.

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So that by the time you have set up compensatory education and set children off apart to be compensated, you have already created the psychological climate at that point and it makes it impossible to compensate for even the psychological damage of being set apart. And it keeps the attention focused on the limitation of the person which further traumatizes him.

The Court: I might add, in commenting on this evidence, I don't know that it's all relevant to a decision in this case, because some of it is material that would be properly submitted to the legislature. It may not hit the constitutional law target that we are shooting for here, you know. So I'm not here ruling, and I want the record to be clear on it, that this is all necessarily relevant to the decision that we will ultimately have to make.

Mr. Greiner: Yes, Your Honor. What we're simply trying to do, I think, is to fill out the picture of the inequality that exists in these minority schools.

The Court: I understand.

[2205] *By Mr. Greiner:*

Q. The evidence from the defendants, Doctor, has also discussed the factor of pupil mobility as having an effect upon the achievements of children. First of all, with respect to mobility, is that generally expressed as a percentage; turnover? A. The most common reference to it would be, what percent of people would you need to enroll during a year to keep your register to the level at which you started at the beginning of the year.

Q. Now, for example, a school that has—that had a turnover rate of even as high as 100 percent—does that mean

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that the entire school population has turned over? A. Not necessarily. I had a doctoral candidate who was principal of a school where the turnover was one hundred and some percent, something over a hundred. But when he analyzed it he found that 80 percent were there the whole year and the rest was just a revolving door of 20 percent who did the turnover, that added to the 100-percent-turnover figure.

Q. Now, we have also had evidence, Doctor, that schools—particularly schools in Northeast Denver, have undergone transitions from once being predominantly Anglo schools to the point where they are now predominantly minority schools. And I wondered if you had had occasion to study any of the after effects of such a transition on the achievement [2206] in those schools.

Mr. Ris: Excuse me. May I ask—are you referring to Denver? Or generally?

Mr. Greiner: In general. In particular, I'm referring to a study that was undertaken in Newark.

A. Traditionally the standards have tended to—that is, the norms for reading or other achievement indicia of achievement, have fallen when these changes have taken place, particularly if it is a rapid movement, because this is a mass movement of people rather than a slow, gradual long-range change. And I'm working now in Newark, New Jersey, and the pattern seems to be there that when the community starts changing the norms of reading started going down and went down until the school had changed its composition. Then it leveled off for a bit and then it plummeted again and it is at this point, it seems to me as I examine that data and look at it, that at this point the school lost any legitimacy in the community, the re-

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jection by the whites of the blacks, leaving it segregated, and so on, created a loss of any confidence that the school was their school or that it was a legitimate institution in their community. And it's about at the bottom of that drop that Newark burned and it seems to me the frustration that comes from this sense of segregation and isolation, creating the despair that has attended, has come in the wake of that [2207] thing in the Negro community, and has created schools that are really custodial institutions. They are not really—when a school loses its legitimacy, when it is not—when the authority is not by consent of the governed in the school, it becomes a custodial institution. At that point its growth and development tends to stop because no custodial institution has produced growth and development of the people.

Q. Now, the effects of the Head Start program have also been discussed and evidence presented, and I wondered if you were familiar with any studies regarding the effects of this Head Start program. A. The New York study to which I have referred already concludes as the result of its evidence that Head Start has produced no discernible achievement.

Q. Is there generally any sort of a followup program for Head Start children? A. You mean—

Q. Was there? A. They move from Head Start usually into public schools.

Q. Now, we have also heard some evidence, Doctor, that in schools that are undergoing transition, that, for example, schools which may be 50 or 60 percent minority, those schools would then begin receiving these compensatory [2208] education programs. I wonder, from your experience, if you can tell us how the Anglo community views or what holding effect upon the white majority these compensatory education programs of the schools have.

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Mr. Ris: If the Court please, I don't think that the facts stated by counsel are in evidence in this case. I object to it for that reason.

The Court: I don't know what he hoped to get from the witness. I suppose—Mr. Brega asked a witness the effect of the majority community on compulsory busing; whether that has an effect on it. But I take it that this is in that area, is it not?

Mr. Greiner: It's the question, Your Honor, of how the whites who remain or who are left behind in the school in transition—how they view that school and the effects that it has on their decision of whether or not to depart from that school.

The Court: Well, we have had some evidence to the effect that they leave pretty fast, once it becomes committed. I don't know that this has any real value. I think it's pretty obvious what happens.

Have you got another question?

Mr. Greiner: We have no further questions, Your Honor.

Mr. Ris: If the Court please, could we have about [2209] fifteen minutes recess at this time to confer with Dr. Oberholtzer, primarily, before cross-examination of Dr. Dodson?

The Court: Yes, indeed.

Is there a point where the concentration of minorities accelerates? Is there a percentage point where it reaches a particular level and then the process of concentration accelerates? I mean, have you conducted any studies that reveal—

The Witness: There is a concept called "tipping point," and I have written on that a little from the observations and work that I have done. And we

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have always been curious about what is a tipping point if one indeed exists. There are so many other factors that have to be taken into account that it makes it very difficult and dangerous to take a figure out of a hat and say this constitutes a tipping point. Many of the high schools in New York, when they reached about 25 percent, you begin to get a polarization of black and white. When you get about 35 percent you begin to get the withdrawal of the whites. But this does not take into account so frequently the kind of quality of program that makes a climate conducive to people staying there. In the New Rochelle community, I did study that and—

The Court: Now, at what point do you think a [2210] stabilization must occur in order to prevent changing the entire character of the school?

The Witness: This again depends much more on what the size of the black community is and what its proximity is to the particular school that is in question. In other words, in communities that have completely desegregated, so that all schools have some blacks and no schools are all black, there seems to be—

The Court: Where are these?

The Witness: —there seems to be no problem with this.

The Court: Where are these communities?

The Witness: New Rochelle, White Plains, Coatesville, Pennsylvania. Well, these come from my mind offhand. And where they have just completely desegregated the school system, this has taken the pressure off any schools reaching a tipping point and it has provided a stability of those communities that

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has been outstanding. New Rochelle, particularly—which particularly has the longest experience, I think, stands out in that regard. And they have a school—the Mayflower School that was 44 percent black when I studied it before the Kaufman decision on New Rochelle, and the year before last, when I studied it again, it had still held 44 percent black over eight years' time. But they had desegregated the [2211] whole school system in the interim. But it had remained a desegregated school with that high proportional—the elementary school at that high proportion of black over that period of time. But, if a school is at the edge of the ghetto and there is a greater fear and anxiety about what's going to happen, and so on, then the tipping point is much lower, and you begin to get mass withdrawal at a much lower proportion.

The Court: All right. We will be in recess. You let us know when you're ready.

(Whereupon, the trial recessed at 10:30 a.m. and resumed at 10:52 a.m.)

The Court: Before you start, I have a question I wanted to ask. Do your studies reveal that the segregation of Hispanos or the Spanish-speaking or Spanish-surnamed presents identically the same problem as the Negroes?

The Witness: Mine has been with Puerto Ricans. But I would say identically the same problems.

The Court: In other words, that these produce the same isolation that you speak of and the same restrictive influences?

The Witness: The same sense of impotence, of apathy, withdrawal. Yes.

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The Court: And in this community I think there is some evidence to indicate that the Spanish-surnamed have [2212] populated the areas that the Negroes have abandoned. And as Negroes have moved eastward, why, I think there has been a tendency on the part of—I expect, first, the Irish lived there.

The Witness: Probably.

The Court: You know, of course, that they put the Irish in the same category as the Anglos; an astonishing conclusion. They have never before in history been called Anglos, prior to this trial.

The Witness: Each group has come through the same process, seems to me, of being washed, in a sense, of being alienated—the bright ones, at least—and made over ultimately and absorbed into the main stream. The difference with the black, even more than the Hispano, is that the color stands as a badge of identity when they're ready to join the establishment. And, consequently, it keeps them set off in a way that is very difficult for them to gain acceptance and this makes race a factor in it that was not there for the others. When the others learned the language, the manners and the dress, they could escape identity. The blacks couldn't do that.

The Court: Well, in that respect, then, the Spanish-surnamed people are not subject to the same problems?

The Witness: Not the same. There is a difference. There is much more escaping or passing, as the blacks would [2213] call it, or being transmuted from identity with the ghetto Spanish-background people into

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mainstream with the Spanish than there would with the black in our area, by far.

The Court: Go ahead.

Cross-Examination by Mr. Ris:

Q. Dr. Dodson, when you were in Denver you testified, and you testified last July—you indicated you made no studies at all of the Denver situation. A. That's right.

Q. Have you made any since then? A. No.

Q. Have you ever been a member of a school board? A. No, sir.

Q. Have you ever been a superintendent of schools? A. No, sir.

Q. Have you been on the administrative staff of a school district? A. No, sir.

Q. You stated that you have studied or made some studies of the Puerto Ricans. Would that have been in the Harlem area of New York? A. Principally, yes.

Q. Where else? A. There was some Puerto Rican element in the [2214] Mt. Vernon community, a suburb of New York City.

Q. It was all in the New York City metropolitan area? A. That's right.

Q. Were most of those people individuals who had come either originally or were just one generation removed from Puerto Rico? A. That's right.

Q. And speaking a Spanish language? A. That's right. And a few Cubans.

Q. Have you made any studies of the so-called Hispano group in the Denver area? A. No sir.

Q. Or anywhere in the West? A. No, sir.

Q. So you really have no knowledge of the Hispano

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group so you could make comparisons with the Puerto Ricans, is that correct? A. No, sir.

Q. Is that correct? A. That's correct. I have not.

Q. I think we understood each other but sometimes it looks peculiar on the record. A. Yes.

Q. At the very beginning of your questioning by Mr. Greiner, he mentioned various facts in evidence. For [2215] example, the age of a school building. Does that have anything to do with equality of educational opportunity in your opinion? A. I think it does. If the tendency is that the majority of the black population tends to be relegated to these outworn, overused, old buildings, it stands as a symbol of their impotence in the community, that they don't have facilities comparable to the others. And it lends to the aura produced in the community that this is a place of less choice, and you go there only because you're not able to require that you be allowed to go someplace else.

Q. It's a psychological thing then? A. That's right.

Q. But insofar as the age of a building itself, if it has been properly maintained and modernized and—it would be just as good physically as a new building, would it not? A. I have had a doctoral thesis on this problem and it tends to say that the new building, at least in a short run, didn't make that much difference; that there was not a great amount of difference.

Q. A doctoral thesis by one of your students? A. That's right. But it is the psychological effect of it that is involved.

Q. That is tied in directly, the fact that in many [2216] instances families of a lower socioeconomic status move into the older areas of the city, is that not true? A. That's right.

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Q. So that's a matter of normal population movement rather than anything the school district has done at that point? A. I would say it's the typical pattern.

Q. Now, with respect to the experience of a teacher, are younger teachers today, as compared to five, ten years ago, better trained in human relations? Do they have any different social outlooks with respect to racial and ethnic relations, do you think? A. We would hope that maybe they are better trained. But I would doubt it.

The Court: They probably have more spirit and drive and idealism at the outset, don't they? Doesn't that make up for something?

The Witness: You don't escape the problem. Hunter College recruited 100 young people, trained them specifically to work in the ghetto, helped them to develop all the understanding they could about this great challenge of working in the ghetto, and fifty of them resigned their appointments when they understood they were going to Central Harlem. You just can't escape the pervasive, do what you will, the pervasive feeling; the less privileged, when you're [2217] assigned to the ghetto community.

Q. Well, you're a professor of education, aren't you?
A. Yes, sir.

Q. And you are educating people to be teachers? A. I am alleged to be, yes, sir.

Q. Isn't that what you're hired for? A. That's what I'm getting paid for.

Q. Well, isn't that one of the things you're attempting to do? A. Yes, sir.

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Q. Train these teachers to accept this situation and work with it? A. Well, I hope I'm not training them to accept the situation. I hope I'm—

Q. I mean, to recognize the situation and to— A. To correct the situation, yes.

Q. To correct it? A. Yes. But I do not believe to train them to just accept and go to work in that situation—

Q. Well, to correct it. A. —does them service either way. My students are trained to try to understand these conditions and situations but I would hope that they would understand also the context I have tried to describe here; that this can't [2218] be a substitute for a creation of community schools that bring all the community together in a common encounter.

Q. Well, then, one of the problems is that people who come to you to be educated as teachers, come with fixed ideas, whether from whatever source? A. Yes, they come with—well, a normal range of attitudes, I would guess.

Q. And you think that they're leaving your school now with no different attitudes than as of ten years ago when teachers graduated? A. Well, I would hope so but I don't think, by and large, teacher education has made that much difference in ten years.

Q. What are you doing about it? A. Well, I'm attempting to train a different teacher, one who works also to change the structure through which people relate to each other. At the same time, that she has to begin with the kinds of conditions into which she is going to go.

Q. You're still trying? A. Beg pardon?

Q. You are still trying? A. Still trying.

Q. Then you haven't achieved your aim in that regard either, have you? [2219] A. I certainly have not. In all humility, I confess.

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Q. Now, you have referred time and again to the powerlessness of minority pupils. Can you expand on what you mean by powerlessness in that context? A. Wherever there are social orders, there is a status arrangement for ordering of people. And the consensus on dominant values and so on makes some people then able to have their interest taken into account in the communal decision making and others do not have that capacity when decisions are made affecting their destiny. Consequently, there is a power arrangement in the community in which people who are relatively speaking powerful, and others who are, relatively speaking, powerless, and the issue that we are dealing with, all out of proportion, in my judgment is this of power relations and that the people who are powerless tend to resign in apathy in the face of pervasiveness, powerlessness, and that this is the fundamental phenomenon we're dealing with.

Q. Well, you have the same breakdown as in decision making in all—in any group, do you not? A. You have sub-subgroups in which there would be a power arrangement within the group.

Q. Right. A. But when the groups come up against each other, then there are the powerful and powerless.

【2220】 Q. You are taking the two different groups again here? But in each group you have the very same thing, down to the small—

The Witness: There is an element of power.

Q. —you have the so-called pecking order in every group, don't you? A. There tends to be some.

Q. Now, with regard to programs in the Denver Public

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School system, in the so-called predominantly minority schools, there has been substantial evidence here concerning such programs. You didn't hear that evidence and I don't presume you have read the transcript, have you? A. No.

Q. You have made no study of the programs so you don't know how the Denver programs particularly at Manual and Cole Junior High School compare to any of the programs in any of the cities you studied? A. No.

Q. So you're expressing no opinion as to the specific Denver programs? A. That's right.

Q. Now, with regard to the handicap a child coming from a family in a neighborhood and a lower socioeconomic status, you wouldn't deny that those children are handicapped as compared to me, would you, before they ever get into [2221] school? A. I would deny that the experience that they have brought with them, the experience through which they have come by the time they are of school age, has so impaired their sensory mechanisms that they do not have the capacity to acquire and organize, experience in ways comparable to what you or I might have done at a comparable stage of our lives. I would be planting corn in East Texas today if teachers had seen the low socioeconomic status kid and the limitations of him and his inability to learn because he didn't have all these things and had believed them.

Q. You aren't alone in the courtroom in that regard. But you will concede that they do come handicapped as to a child coming from a middle-class neighborhood, middle-class family, and with the opportunities that have been offered that child at three, four, or five years old, would you not? A. A scholar named Hune—J. McVey Hunt best described

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my position on this. He said that the computer was devised with the mind—the way the mind works in view as a model, but once the computer was developed it then was something that could be compared with the mind and the way the mind works. He said the computer is a marvelous instrument but it works on only that which it is programmed to work on. And I would say that is a comparable kind of [2222] thing; that each of us out of the heritage from which we come have that computer between our ears, programmed to work on what was required for us to do in order to cope with our environment. If you doubt that, take a well sandpapered middle-class child and put him in a slum environment and see how he copes and who is the dumb one and who is the bright one, because the slum child learns to cope with the environment out of which he comes.

Now, because that program—because that computer between his ears is not designed to work on a lot of education doesn't mean he is not capable of learning; doesn't mean he's not capable of being re-programmed. It does mean some different context in dealing with it, but it doesn't mean by any means he is dumb or incapable of acquiring experience and so on.

Q. I don't feel—you still haven't answered my question.
A. All right. I think that if the school is going to present these children with a standardized body of middle-class mythology, values and rituals and knowledge, and measure his work by the extent to which he comes up to—acquires this material, that he is at a disadvantage. Consequently, it is the limitation of the school in not beginning with the child where he is in expanding his world of environment from where he is, to take him through a [2223] process that brings him into growth and development. He is handi-

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capped only because the school presents him with this kind of a standardized pattern that teaches him he is different and apart. And that's the sort of disadvantage rather than the limitation in the potential of the child.

Q. And so, by putting a man into a middle-class integrated school—isn't that exactly what you're doing? A. If the school is simply going to put him there and then say "There, you're dumb because we're not going to make any allowance for the fact you're here," it may create some problems. Although the data tends to say that, put into these situations, under these circumstances, they learn better than with compensatory education segregated.

Q. Well, you don't deny that compensatory education has a valid function in the educational system, do you, Doctor? A. If compensatory education is not used for continued segregation, which it often is, and— The British learned a long time ago that the way to control tensions in the colonies was to squirt a little more welfare on them and that would keep them sufficiently tranquilized in Egypt that they wouldn't dissent to the Promised Land. Consequently, their use of welfare as a tranquilizing function is well developed in this country and compensatory education [2224] in large measure is squirting welfare to keep down tension and to control, to make people acceptable to segregated patterns rather than to help produce a desegregated society.

Q. You don't know that that is done in Denvor, do you? A. I would be surprised if it were not.

Q. I say, you don't know, do you? A. No, I don't know.

Q. Getting back to this power relationship, do you think it's the function of the school to change this power relationship among citizens? A. The school—

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Q. Is that one of the duties of the school system? A. The school system seems to be the handmaiden of the power arrangement, and consequently, its local program is geared to support the power arrangement that is. Consequently, its aim and objective is what is called socialization, that is, to socialize everybody into the values and the mythologies of the dominant society. If the black is really socialized into this, the Kerner Commission report says it's a racism society. It means that he is socialized into that which teaches him that he is a second-class citizen. He has to become socialized to the fact that he is a second-class citizen. The result is that the minority community presses for the school to [2225] be an instrument of social change rather than simply socialistic and this is the big conflict in education today.

Q. And there is a conflict in that, is there not? A. Yes, exactly. There is a big issue between the black community and the dominant society.

Q. The question as to whether the school is to educate it and go beyond it or be an instrument of social— A. Whether it is to be socialistic or whether it's going to be an instrument of change that is going to provide school experience where all children can be educated comfortably together.

Q. Now, Doctor, what happens to a first grader if he is sent to a middle-class integrated school and every night he goes back to his home, which is again in the ghetto area, and his ghetto community and ghetto neighborhood and so forth? Does the fact that he is still a resident of this community and of this family environment have any effect, in your opinion? A. This would depend on how his family interpreted it and it would depend on the—and I'm assuming you are assuming that he got a good experience at the

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integrated school. I would say that would be a window that would open his vision to the vistas on the horizons and give him something to aspire toward, even though he came back to squalor or to a segregated, poor environment.

【2226】 Q. But would that make the difference, you think, then, between the law students who are taken into completely new environments where they live and spend their leisure time? A. I think this would be part of it. That depends in part on what is the readiness of a person and sometimes depends on many other kinds of things. But I would not say that you would relegate a child, even in his schooling, to a second-class citizenship thing if you could help it. That would be an opportunity for him to see the world beyond.

The Court: You mentioned that you were talking about aims of education. Do you think that integration indeed does have a tendency to increase polarization of the races, consistent with what you have said here before?

The Witness: This depends on how it is handled, Judge. The mixing of bodies doesn't guarantee that people are going to love each other. Getting to know you may mean, "I don't like you as well as if I didn't know you so well," in spite of a beautiful little lyric. But that depends on the kind of climate that is produced when they are brought together in the encounter. It depends on the climate of the encounter.

Q. There is no guarantee then? A. There is no guarantee. But it is a certainty that, if they are not brought together, that these problems are 【2227】 not healed.

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The Court: But, surely, this is an objective, I assume, from a sociological standpoint, to decrease polarization?

The Witness: It is hoped that, wherever these encounters are arranged through education, that there would be a cutting down of the polarization, the growing differences of goals and objectives. And in most desegregated situations, if it is handled at all well, this is what tends to happen.

The Court: So then the object of the educational process even the one you're talking about, is not to develop a militant black segment?

The Witness: No.

The Court: I think that that inference was left by one of your questions, Mr. Ris.

The Witness: On the contrary, I would say that the alternative to militancy, as to the—as in New York and other large cities, they are now pressing for the local school—to break up the school construction and make for local control. The alternative to it is a desegregation program that would arrange so that everybody has a stake in every school and that there wouldn't be this polarization, and I think it's bound to come until we do make these common schools mean that they serve everybody rather than these-schools-are-ours-and-those-schools-are-theirs kind of [2228] thing, that come through segregation.

The Court: So then, concentration—the result of it is going to be a complete polarization, a militancy that goes with it, I suppose?

The Witness: I think a parallel could be drawn—Well, yes. The increased concentration with the in-

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creased difficulty of segregation, I think, undoubtedly makes for increased polarization.

Q. But it sometimes has some very adverse results, does it not? A. The polarization?

Q. Yes. A. Oh, yes.

Q. Washington, D.C., is an illustration of that, is it not?

A. Not particularly, I would say. The whites didn't stay. They fled to the suburbs.

The Court: That's what he means.

Q. That's exactly what I mean.

The Court: He says, if you have integration, why, it will result in concentration because, he says, all of the whites will leave. They won't submit to it.

A. There are two points I would make on Washington, D.C. The first is, while I helped to draw up the plans for the desegregation of the schools of the district, if I were [2229] to do it again I would do it differently in light of the experience that we had.

But the second is that I would doubt seriously that the public schools of Washington, D.C., that the core city of Washington, D.C., is any more segregated than is the core city of Chicago, where they fought desegregation to the very bitter end; that it was a phenomenon of blacks taking over the entire city and suburbs being lily-white to where a black could not get in, so there was not the opportunity of the blacks spreading out and the Capitol district being so restricted as an inner-core city area. I doubt seriously that the schools' desegregation made a great contribution to that living arrangement that is the Capitol district now.

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Q. Well, Dr. Dodson, is it true then that it depends a great deal on the local situation as to the population overall, the percentage of minorities to the overall population?

A. I think the size of numbers is a factor. I would also say that policies of schools become a factor, too. I was in a case in Little Rock, Arkansas, in the federal court on desegregation and here the board's policy of ringing off their school and the next one to it as the neighborhood expanded as being black schools and so on, meant that the housing arrangement—the schools' policies created [2230] segregated patterns within the city itself and was the major contribution to the segregation within the residential patterns of living.

Q. Well, let's get back to my question. It makes a substantial difference as to the local variables, does it not, as to the size of the city itself? A. Each city is different, yes.

Q. You have constantly referred to New Rochelle and White Plains. Those are the cities where you have done most of your studies, is that correct? A. Where I have done two of my studies.

Q. Have you done any others? A. Yes.

Q. Where? A. Mt. Vernon; Orange, New Jersey; Englewood, New Jersey—

Q. And you found substantial—

Mr. Greiner: Could the witness be allowed to finish his response?

Mr. Ris: Yes.

The Witness: This is sufficient.

Q. And there were substantial variations in those communities with respect to the geographical size of the city?

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A. Yes. All these happened to be suburban-type **[2231]** communities. New York City, where I have served as consultant at various times—I was consultant at the time of the boycott and the severe turbulence there—and that would be a different kind of problem to the suburban community.

Q. You really can't compare White Plains with Manhattan, can you? A. No, that's right.

Q. So that the various generalizations you have made here are just broad generalizations and not applicable specifically to any one city in every respect? A. They would be generalizations based on the impression of experience with whatever data I have to back them, yes.

Mr. Ris: That's all. Thank you, Dr. Dodson.

Cross-Examination by Mr. Brega:

Q. Doctor, in relation to Denver, have you had occasion to visit any of the Denver Public Schools? A. No, sir.

Q. Have you seen the older schools or the new schools? A. No, sir.

Q. Have you analyzed any of the maintenance programs on in these schools? A. No, sir.

[2232] Q. In other words, the opinion that you gave on the school buildings having effect was just a general overall opinion of yours? A. That's right.

Q. Have you had occasion to study in Denver the Hispano and Negro groups? A. No, sir.

Q. Have you studied the mobility of the Negro and Hispano groups anywhere? A. Yes.

Q. In regard to those studies, have you found that generally they tend to live in clusters? A. They tend to be segregated in urban communities, yes.

Q. In other words, they moved in with like race or ethnic

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groups? A. There may be reasons for that but that is the fact, yes.

Q. Now, in looking at the situation in Denver, have you studied the mobility of the blacks or Hispanos in this city?

A. No, sir.

Q. Have you given any study to the historical background and their origin in Denver? A. No, sir.

[2233] Q. In regard to Denver, have you— And when you discussed the schools that you mentioned that were black, were you referring to schools that were all black or all white? A. Predominantly so. What I would refer to here, that by the time the imbalance occurs in either direction, to the point where the community begins to say— where one part of the community begins to say, “These are our goals,” and the others begin to say, “These are ours,” why, then, you have lost the content of the community school and these have become schools that are then identified with whatever type group it is.

Q. I see. And that’s where you reach this tipping point? You mean then it goes predominantly black? A. That’s right.

Q. Do you have any explanation why Manual High School in 1969 in Denver was 60 percent Negro and in 1968 was 76 percent Negro? A. I don’t.

Q. And it reversed in this case to the—

Mr. Greiner: Your Honor, I object to that because the question doesn’t reflect what was happening to the Hispano enrollment in Manual. I think it is quite unfair and misleading.

The Court: Overruled.

[2234] A. I know nothing of the problems of any of your schools in Denver.

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Q. And you don't know or do you know that Denver does not have an all-white or all-black school in its entire system?

A. This I do not know.

Q. Now, you mentioned the Coleman report and Mr. Ris questioned you about the preschool factors of environment, home life, and you mentioned that you didn't think that was something that would be a permanent block, I presume.

A. Yes.

Q. Are you familiar with the portion of the Coleman report which states that the school brings little influence to bear on a child's achievement; that that is independent of his background and general social context? Are you familiar with that part of the Coleman report? A. That's part of the findings of the study. But because there is a correlation doesn't mean necessarily that there is causation.

Q. Well, there is some correlation, is there not? A. There is correlation but it doesn't mean there is causation.

Q. Now, isn't it also true that in your study you found that race is not causally related to the achievement level in these minority schools? [2235] A. That's right.

Q. It is causally related probably because of socioeconomic stature of many of these areas racially oriented?

A. And because the dominant society defines race and behaves with reference to race in the way that it does.

Q. But now, in considering these achievement factors, the socioeconomic class is one very significant factor, is it not? A. It is highly correlated with—

Q. Achievement? A. —achievement.

Q. And also correlated with achievement is a motivation of the parents of the child? A. This I know of no solid data on.

Q. Well, certainly, your opinion would be that that would be a correlating factor? A. I think, where parents en-

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courage the children, it would be better. The issue here though is whether poor folks encourage their kids or not. And I think you're grabbing at a stereotype when you conclude that, because they are poor, they don't encourage their children.

Q. No, I haven't said that. A. You didn't say it but I'm adding it as a qualification to what you're asking.

Q. Well, the educational background of the parent [2236] is significant, isn't it? A. Not necessarily. If it were, a lot of us would be condemned now because we came from backgrounds where our parents were not educated.

Q. Well, I suppose that's right. Isn't it also significant that it is important in some cases? Do you think it's totally unrelated to achievement? A. I think it does not present insuperable barriers to a school that wants to do a job.

Q. We're not talking about insuperable barriers. We're talking about whether it has effect on the achievement. A. If you mean by this that this in some way limits his capacity to learn, I would say no. If you mean by this that the school then begins to look at him as a person who comes from this kind of background and begins to behave toward him this way, sets standards for him that are not relevant to his heritage, then he faces increasingly mounting problems that are of the school's making, not his.

Q. In other words, you think, then, that it's the school's problem? A. I certainly do.

Q. And so your opinion is that the school has an obligation for a social change? A. That's right.

Q. For the entire community? [2237] A. That's right.

Q. Not for just the—not for the achievement or academic aspect of the school? A. That's right.

Q. I presume you include in that housing patterns in the various communities? A. I would say there is a—I was

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just saying a few minutes ago that there is a very definite relationship between policies of boards of education in many of these places and the housing patterns that are there. As I tried to say in my testimony last time when I was questioned on this point, the housing patterns cannot—community housing patterns cannot stand in the way of a child having his chance; that the school has an obligation to intervene in his behalf to the end that the circumstance of his birth and where his parents were forced to live shall not deprive him of his chance, and the school has this as a definite obligation.

Q. Is it your opinion then that the school system or the school board has the obligation to create housing patterns to integrate the races? A. It doesn't have the obligation to create the housing patterns but it has an obligation to overcome the limitations that are set by housing patterns.

Q. In other words then, you mean that the board must [2238] cure any racial imbalance created by housing patterns in their school system? A. I think that's right.

Q. Now, merely by bringing people together is not going to achieve integration, isn't that right? A. But it's certainly—you're not going to achieve it unless they are brought together.

Q. But if you forcibly bring them together, isn't it a fact that they have more militancy than before? In other words, than if they had voluntarily come together? A. Not necessarily. There is not a high correlation between the resistance that the whites put up at the time of the desegregation. Desegregation—once it is instituted—

Q. Didn't you do a study in two schools, one of which there was resistance to the integration and the other went along smoothly and they found, in the resistance school, that they had trouble all along? A. There is no guarantee

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—Well, you find differences in the acceptance of desegregation. Mt. Vernon district on Long Island fought to the Supreme Court against desegregation; fighting the Commissioner of Education's order that they desegregate. Once it was clear that the pattern was changed and that this was going to be the way it was, they turned right around and very quickly passed appropriate measures to develop a school that would be an educational [2239] park in the middle of the district and the whole thing was forgotten within a year's time.

Q. You are also familiar with Atlanta, are you not, that forcibly integrated eight years ago and is now virtually and totally segregated because of the resistance? Are you familiar with that? A. I don't think that you can say it was because of the desegregation. But I'm aware of the problem that Atlanta has faced, yes.

Q. What I'm getting to, really, is the point that if the people are brought in on a voluntary program such as New York had and that Dr. Fox—or Mr. Fox studied, whom I'm sure you know— A. Yes.

Q. And this was a voluntary open enrollment program, was it not? A. That's right.

Q. And wasn't it thought that this voluntary program would have more benefit or could be more beneficial than a forced program? A. No. It was a stopgap measure, because there were other things that the community would not go along with at the time. The voluntary program or whatever, is a very limited method of dealing with the problem. It places the whole onus on the parent who wants to see desegregated [2240] education for his child. It siphons off his leadership from the community that would press for more education if he stayed to fight for education for everybody. It relieves the board of education of any

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responsibility for doing what is its obligation, which is to arrange the encounter between children to the ends that they learn the skill of the citizenship with the era of which they are a part.

The Court: Are you talking now about unconditional free choice? Or in this reciprocal kind that they have put into effect here? That is, whereby you have to get a corresponding white person to exchange? Do you think there is any difference between the two?

The Witness: No, sir. I would take the position that, as long as you leave it to the parents to seek his civil rights, the board of education is reneging on its responsibility; that it's the function of the school system to arrange these encounters for everybody and not for the few.

Q. Well, I presume then it's your opinion that all of the schools in the district must be racially balanced? A. That would be my hope.

Q. And you consider that, then, the obligation of the school board? A. That is correct.

Q. Now, I'm sure you are familiar with the studies **【2241】** in New York where the enrollment programs show that there was no basic difference in achievement level after those children were bused and put in a new school for integration purposes? A. I would say that this experience with open enrollment, and I did a comparable study of six schools and found almost comparably what they found on it, that this kind of experience did not show a dramatic difference in results. But this does not preclude the need for— It doesn't take into account the citizenship values. It

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doesn't take into account the length of the operation of the program, and it doesn't take into account many other factors that I could relate to. It does say fundamentally that the open enrollment did not accomplish miracles.

Q. And New York started in 1962? They have been working now seven or eight or nine years on it? A. That's right.

Mr. Brega: No further questions.

Mr. Greiner: No further questions.

Mr. Ris: Nothing further.

The Court: Very well. You may be excused.

(Witness excused.)

Mr. Greiner: Your Honor, at this point the plaintiffs rest.

Mr. Ris: We have no rebuttal.

1514a

Memorandum Opinion and Order of District Court

(March 21, 1970)

Reprinted in Appendix to Petition
for Certiorari, pp. 44a-98a

See 313 F. Supp. 61

