

Supreme Court, U.S.

FILED

OCT 8 1970

R. ROBERT SEAVER, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 281

JAMES E. SWANN, *et al.*,

Petitioners,

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Respondents.

No. 349

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Cross-Petitioners,

v.

JAMES E. SWANN, *et al.*,

Cross-Respondents.

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

**REPLY BRIEF FOR
PETITIONERS AND CROSS-RESPONDENTS**

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
10 Columbus Circle
New York, New York 10019

J. LEVONNE CHAMBERS
ADAM STEIN
CHAMBERS, STEIN, FERGUSON & LANNING
216 West Tenth Street
Charlotte, North Carolina 28202

C. O. PEARSON
203½ East Chapel Hill Street
Durham, North Carolina 27702

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

*Attorneys for Petitioners and
Cross-Respondents*

INDEX

	PAGE
Preliminary Statement	1
 ARGUMENT:	
I. The Charlotte-Mecklenburg County Schools Were Segregated by Unconstitutional Governmental Action	3
II. The Assignment Plan Now in Effect Is Workable and Desegregates the Schools	17
III. The School Board Proposes No Viable Rule of Law to Define the Goal of a Unitary System	24
IV. The District Court Was Correct in Not Attempting to Declare a General Rule of Law to Govern the Multitude of Varied Circumstances of School Segregation in Other Cities and Other Parts of the United States	28
V. The Civil Rights Act of 1964 Does Not in Any Way Limit the Power of the Courts to Fashion Remedies for Unconstitutional Racial Segregation in Public Schools or Prohibit the Courts from Requiring Busing of Pupils to Disestablish Dual Segregated School Systems	32

TABLE OF AUTHORITIES

Cases:

Brewer v. School Board of the City of Norfolk, 397 F.2d 37 (4th Cir. 1968).....	14
Brown v. Board of Education, 347 U.S. 483 (1954)....	3, 4, 8, 14, 24, 29, 30, 37
Brown v. Board of Education, 349 U.S. 294 (1955).....	3
Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)	3
Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).....	27
Commonwealth of Pennsylvania v. City of Philadel- phia, 353 U.S. 230 (1957).....	17
Cooper v. Aaron, 358 U.S. 1 (1958).....	3
Coppedge v. Franklin County Board of Education, 394 F.2d 410 (4th Cir. 1968), <i>affirming</i> 273 F. Supp. 289 (E.D. N.C. 1967).....	17
Davis v. Board of School Commissioners of Mobile County, O.T. 1970, No. 436	25, 27
Dowell v. Board of Education of the Oklahoma Public Schools, 396 U.S. 269 (1969).....	24
Dowell v. School Board of Oklahoma City, 244 F. Supp. 971 (W.D. Okla. 1965) <i>affirmed</i> 375 F.2d 158 (10th Cir. 1967), <i>cert. den.</i> , 387 U.S. 931 (1967).....	16
Eason v. Buffaloe, 198 N.C. 520, 152 S.E. 496 (1930)....	13
Gaston County v. United States, 395 U.S. 285 (1969), <i>affirming</i> 338 F. Supp. 678 (D. D.C. 1968).....	17
Gomillion v. Lightfoot, 364 U.S. 339 (1960).....	17

	PAGE
Green v. County School Board of New Kent County, 391 U.S. 430 (1968).....	24
Henry v. Clarksdale Municipal Separate School Dis- trict, 409 F.2d 682 (5th Cir. 1969) <i>cert. den.</i> , 396 U.S. 940 (1969)	16, 25
Kemp v. Beasley, 423 F.2d 851 (8th Cir. 1970).....	16
Keyes v. School District Number One, Denver, 303 F. Supp. 279 (D. Colo. 1969).....	16
Lane v. Wilson, 307 U.S. 268 (1939).....	17, 31
Local 189, Papermakers & Paperworkers v. United States, 416 F.2d 980 (5th Cir. 1969).....	17
Louisiana v. United States, 380 U.S. 145 (1965).....	17
Manning v. Board of Public Instruction of Hillsbor- ough County, — F.2d — (5th Cir., No. 28643, May 11, 1970)	16, 25
Monroe v. Board of Commissioners, 391 U.S. 450 (1968)	24, 30
Northercross v. Board of Education, 397 U.S. 232 (1970)	24
Phillips v. Wearn, 226 N.C. 290, 37 S.E.2d 895 (1946)	13
Raney v. Board of Education, 391 U.S. 443 (1968).....	24
Ross v. Eckels, — F.2d — (5th Cir., No. 30080, August 25, 1970).....	16, 25
Shelley v. Kraemer, 334 U.S. 1 (1948).....	13
Singleton v. Jackson Municipal Separate School Dis- trict, 419 F.2d 1211 (5th Cir. 1969), <i>reversed sub</i> <i>nom.</i> Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).....	37

	PAGE
United States v. Board of Education of Baldwin County, 423 F.2d 1013 (5th Cir. 1970).....	16
United States v. Board of Education School District No. 1, Tulsa, Okla., — F.2d — (10th Cir. 1970)....	25
United States v. Greenwood Municipal Separate School District, 406 F.2d 1086 (5th Cir. 1969), <i>cert. den.</i> , 395 U.S. 907 (1969).....	16
United States v. Indianola Municipal Separate School District, 410 F.2d 626 (5th Cir., 1969), <i>cert. den.</i> , 396 U.S. 1011 (1970)	16
United States v. Montgomery County Board of Education, 395 U.S. 225 (1969).....	24
United States v. School District, 151 of Cook County, Illinois, 286 F. Supp. 786 (N.D. Ill. 1968), <i>affirmed</i> , 404 F.2d 1125 (7th Cir. 1968).....	16, 25
Valley v. Rapides Parish School Board, 423 F.2d 1132 (5th Cir. 1970)	16
Vernon v. R. J. Reynolds Realty Co., 226 N.C. 58, 36 S.E.2d 710 (1946)	13
 <i>Statutes:</i>	
28 U.S.C. §1343	35
42 U.S.C. §1983	35
42 U.S.C. §2000c, Civil Rights Act of 1964, §401	2, 32, 33, 34, 35, 39, 40
42 U.S.C. §2000c-6(a), Civil Rights Act of 1964, §407(a)	2, 32
42 U.S.C. §2000c-8, Civil Rights Act of 1964, §409	35
42 U.S.C. §§3601 et seq., Civil Rights Act of 1968	14
N. C. Gen. Stat. §115-176	6

	PAGE
<i>Other Authorities:</i>	
<i>Charlotte Observer</i> , Sept. 5, 1970	14
110 Cong. Rec. 1598	39
110 Cong. Rec. 2280	39, 40

IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 281

JAMES E. SWANN, *et al.*,

Petitioners,

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Respondents.

No. 349

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Cross-Petitioners,

v.

JAMES E. SWANN, *et al.*,

Cross-Respondents.

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

**REPLY BRIEF FOR
PETITIONERS AND CROSS-RESPONDENTS**

Preliminary Statement

The respondents and cross-petitioners (hereinafter school board) seek to pose the issue in this case of whether a school board may continue to operate one or more pre-

dominantly black schools. We feel that the issue is more properly posed in the decision of the district court below, namely, whether in the context of the facts developed in this case, the pervasive role of the state and its agencies in creating and perpetuating a racially segregated system, a school board may continue to deny equal educational opportunities to black children on the pretext of preserving "neighborhood schools" or avoiding transportation of students when a feasible alternative is available for complete desegregation. This reply is addressed to the activities and practices of the state, particularly those of the school board, which produced the segregated system which the district court sought to eliminate; the feasibility and practicability of the plan directed by the court; and the fact that the school board and the various amici who have submitted briefs in this matter suggest no viable alternative rule of law to that adopted by the district court and advocated by the petitioners herein. We also discuss the possible applicability of the decision of the Court in this case to other jurisdictions and the applicability of §§401(b) and 407(a) of the Civil Rights Act of 1964, 42 U.S.C. §2000c(b) and 42 U.S.C. §2000c-6(a).

For the Court's information we are attaching as an appendix to this reply a copy of the interim report filed by the school board showing the results of desegregation for the present school term under the plan directed by the district court. As the report demonstrates the plan eliminates all racially identifiable schools in the system with the exception of 3 elementary schools and as to these 3 schools some steps are now being taken in order to alleviate the overcrowded conditions and to prevent resegregation.

ARGUMENT

I.

The Charlotte-Mecklenburg County Schools Were Segregated by Unconstitutional Governmental Action.

The School Board and several amici¹ challenge for the first time the district court's findings of state created and perpetuated racially segregated housing and public schools.² They contend that the admitted segregation is merely adventitious. The record, however, clearly demonstrates the contrary. As the district court stated in its Memorandum Opinion of November 7, 1969, segregation of the races in the Charlotte-Mecklenburg system is not "constitutionally benign."

In previous opinions the facts respecting [the location of schools] . . . their controlled size and their popu-

¹ See, e.g., Amicus Curiae Brief for the Classroom Teachers Association of the Charlotte-Mecklenburg School System, Incorporated, pp. 20-21.

² The Commonwealth of Virginia suggests that such inquiry is irrelevant. See, e.g., Brief for the Commonwealth of Virginia, Amicus Curiae, pp. 8-10. The district court found, however, that the varied actions of the state, including the School Board, had resulted in racially segregated schools as condemned in *Brown v. Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955); that inquiry into the forces of the state creating or perpetuating racial discrimination were indeed appropriate and required by decisions of this Court; see, e.g., *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), for the Fourteenth Amendment prohibits "State support of segregated schools through any arrangement, management, funds, or property." *Cooper v. Aaron*, 358 U.S. 1, 19 (1958). This Court further stated in *Cooper*, supra at 17: "In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly . . . nor nullified indirectly . . . through evasive schemes for segregation whether attempted 'ingeniously' or 'ingenuously.'" Finding state imposed segregation and a feasible means to correct it, the district court was obligated by the Constitution to enforce the constitutional rights of the black children of this school system.

lation have already been found. Briefly summarized, these facts are that the present location of white schools in white areas and of black schools in black areas is the result of a varied group of elements of public and private action, all deriving their basic strength originally from public law or state or local governmental action. These elements include among others the legal separation of the races in schools, school buses, public accommodations and housing; racial restrictions in deeds to land; zoning ordinances; city planning; urban renewal; location of public low rent housing; and the actions of the present School Board and others, before and since 1954, in locating and controlling the capacity of schools so that there would usually be black schools handy to black neighborhoods and white schools for white neighborhoods. There is so much state action embedded in and shaping these events that the resulting segregation is not innocent or "de facto," and the resulting schools are not "unitary" or desegregated.³ (657a, 661a-662a).

³ Contrary to the board's assertion (see Briefs of Respondents and Cross-Petitioners, p. 46), this finding did not constitute a reversal of the previous findings of the court; rather it was at this point that the court was pointedly advised by the board, that the board had no intention of complying with the directives of the court. The district court has described its painstaking, patient, but unsuccessful efforts to encourage the board to discharge its affirmative duty to desegregate. (See Supplemental Memorandum 1221a-1238a). It was the board's recalcitrance which led Judge Sobeloff to note in dissent that "this Board, through a majority of its members, far from making 'every reasonable effort' to fulfill its constitutional obligation, has resisted and delayed desegregation at every turn." (No. 9, 1291a-1293a) Moreover, the record clearly demonstrates that the constitutional violations which the district court sought to remedy resulted not just from practices of other governmental agencies but to a large extent from the board's conduct and action in locating and controlling schools, school sites, capacities, attendance districts, etc., all taken in conjunction with and in furtherance of the developing racial housing patterns, both before and after this Court's decision in *Brown*.

We discuss below some of the record evidence supporting these findings.

In the district court's findings of April 23, 1969 (285a, 296a), the court described Charlotte and Mecklenburg County as follows:

The central city may be likened to an automobile hubcap, the perimeter area to a wheel, and the county area to the rubber tire. Tryon Street and Southern Railroad run generally through the county and the city from the northeast to the southwest. Trade Street runs generally northwest to southeast and crosses Tryon Street at the center of town at Independence Square. Charlotte originally grew along the Southern Railroad tracks. Textile mills with mill villages, once almost entirely white, were built. Business and other industry followed the highways and the railroad. The railroad and parallel highways and business and industrial development formed something of a barrier between east and west.

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

Today, the degree of segregation in housing is even more pronounced. Some of the factors which have contributed to the school segregation follow:

1. *Location and control of schools.* Prior to 1954 all public schools in the City of Charlotte and Mecklenburg County were segregated pursuant to the state law and Constitution.⁴ The district court attached as an Exhibit to its Memorandum of Decision and Order of August 3, 1970 a collection of segregation codes of the state which, as indicated by the Memorandum Decision (Br. A4), remained in the state statutes as late as 1969. Schools were located and students and staff personnel were assigned to the various schools on the basis of race. Subsequent to the *Brown* decision and prior to the institution of this proceeding no affirmative steps were taken by the board to disestablish the racially segregated system. Some token integration did take place under the North Carolina Pupil Assignment Act, N. C. Gen. Stat. §115-176, pursuant to which a few black students requested transfer to previously all-white schools. The school board, however, continued to locate and control the various capacities of schools in order to maintain racial segregation.^{4a} These practices have continued even through the present day.

In conjunction with the racially developing residential patterns, the school board built or made additions to the following schools subsequent to 1954 solely to accommodate black students.

⁴ Separate boards governed the city and county schools until 1961, at which time the two school units were merged.

^{4a} The board controlled grade structures to maintain segregation. In 1965 the system had a basically 6-3-3 grade structure, except that some black schools had different patterns to facilitate racial segregation such as grades: 1-4, 1-7, and 5-9, for example. (See Appellants' Appendix in 1966 appeal to the 4th Circuit, No. 10207, pp. 25-29).

Schools	Year of Construction	Years of Additions
Burns	1968	
Marie Davis	1951	1953 1957 1959
Double Oaks	1952	1955 1965
Druid Hills	1960	1964
First Ward	1912	1950) 1961) 1968) practically complete new facilities.
Lincoln Heights	1956	1958
Oaklawn	1964	
University Park	1957	1958 1964

(Plaintiff's Exhibit 1 in original record; 124a-132a)⁵

Several white schools were built in white areas and predictably enrolled only white students:

Schools	Year of Construction
Devonshire	1964
Albemarle Road	1968
Beverly Woods	1969

These examples are not meant to be exclusive but only exemplary of the practices followed by the board prior

⁵ "Q. Dr. Self, when you built schools since 1954, what efforts did you make, other than what you testified to yesterday, to locate the schools in an area that would effect the greatest maximum integration of students in the system? A. The schools were located in such a way as to house the youngsters, Mr. Chambers, not to effect a maximum amount of integration.

"Q. You did not attempt to do it? A. We made an attempt to house the youngsters in the neighborhood." (132a)

* * *

"Q. And I think that on your drawing board right now are plans to build more schools that are going to be all white and some that will be all black. A. I'm sure that the enrollment in the schools will be affected by the neighborhood served." (129a)

to and since *Brown*. (Plaintiffs' Ex. 1 in original record; 127a-129a). Even at the time of the March 1969 hearing the board was proceeding with construction of a new junior high school (Carmel Road) which under the board's most recent attendance zone plan would have been 100 per cent white (512a (designated "Project 600"), 747a).

Additionally, the board has added mobile units in order to accommodate any influx of black or white students in the segregated schools rather than redraw attendance districts and assign either black or white students to schools of the opposite race (Pls'. Ex. 1 in original record). Defendants have controlled school districts in order to limit the race of students assigned to the various schools (Compare Pls'. Exs. 1, 4, 24). As the court noted in its Opinion and Order of June 20, 1969:

"[I]t may be timely to observe and the court finds as a fact that no zones have apparently been created or maintained for the purpose of promoting desegregation; that the whole plan of 'building schools where the pupils are' without further control promotes segregation; and that certain schools, for example Billingsville, Second Ward, Bruns Avenue and Amay James obviously serve school zones which were either created or which have been controlled so as to surround pockets of black students and that the result of these actions is discriminatory. These are not named as an exclusive list of such situations, but as illustrations of a long standing policy of control over the makeup of school population which scarcely fits any true 'neighborhood school' philosophy." (455a-456a) (see also note 5, supra; 132a).

Transportation has been arranged for students in order to perpetuate segregation. Even through the 1964-65 school year, the board continued racially overlapping bus routes.

For students in the city and its immediate environs, black schools have been located within convenient walking distance of black residential areas. White schools have generally been located in outlying white residential areas necessitating bus transportation. Thus of the 23,384 students provided transportation during the 1969-70 school year only 541 of such students were transported to black schools (1014a-1032a, 1203a-1204a). Coupled with these practices the school board continued freedom of choice to permit those students enclosed within school districts of the opposite race to transfer to other schools where their race would be in the majority.

2. *Urban Renewal.* Urban renewal has contributed to the residential segregation by relocating black families from urban renewal areas to black residential areas or areas rapidly changing to black. Principally, all of the black families relocated by the city urban renewal programs, principally all of which have taken place since 1960, have been relocated in black residential areas and the few white families who have been relocated have been relocated in white residential areas. A similar practice has prevailed in the relocation of families uprooted by new streets and highways (209a-214a, 282a-283a; Plaintiffs' Exhibit 42). The court characterized this practice as follows:

Under the urban renewal program thousands of Negroes were moved out of their shotgun houses in the center of town and have relocated in low rent areas to the west. This relocation of course involved many ad hoc decisions by individuals and by city, county, state and federal governments. Federal agencies (which hold the strings to large federal purses) reportedly disclaim any responsibility for the direction of the migration; they reportedly say that the selection of urban renewal sites and the relocation of dis-

placed persons are matters of decision (“freedom of choice”?) by local individuals and governments. This may be correct; the clear fact however is that the displacement occurred with heavy federal financing and with active participation by local governments, and it has further concentrated Negroes until 95% or so of the city’s Negroes live west of the Tryon-railroad area, or on its immediate eastern fringe (297a-298a).

The record demonstrates, however, that even this relocation did not afford the affected families a “free” choice for, as indicated below, homes in other areas were simply not available to black families (Plf. Exhs. 14, 19, 42 in the original record; 28a-64a, 208a-215a, 282a-283a). Moreover, with the overcrowding of schools which resulted from the relocations, the school board simply added additional rooms to existing black schools to accommodate the black students.

3. *Public Housing.* Consistent with the city’s zoning practices of locating multi-family and low income housing in black residential areas, all public housing, built principally since 1960 and now generally occupied by blacks, has been located in black residential areas. Even projected public housing has been designated for black residential areas (Plf. Exhs. 14, 19, 29 and 42 in original record; 215a-217a). The effects of such practices in perpetuating segregated housing is seen even in the most recent plan directed by the district court where three of the elementary schools and one of the junior high schools, projected to be predominantly white, have since the beginning of this school year become predominantly black because of the relocation of additional black families in federally financed, low-income housing in black residential areas of the four school districts (Reply Brief App. 10a-15a).

4. *City Zoning.* City zoning has influenced separation of the races by marking out and designating by land usage those areas of the city occupied by blacks and those occupied by whites. Beginning in 1947, the city enacted its first zoning ordinance and in effect delineated the black and white residential areas. All white residential areas were zoned residential with restricted land usage. All black residential areas, with the exception of two small pockets adjacent to white residential areas, were zoned industrial for multi-land usage, including heavy industry, multi-family homes and high density areas. Even the two excepted black areas were zoned for higher density use than the white residential areas (174a, 202a-207a, 251a, 268a, 272a-283a). This difference in zoning practices for black and white residential areas has been carried forward to the present day in the major revisions of the zoning ordinance in 1962.

Industrial zones have continued to be restricted to black residential areas. Additionally, the residential zoning authorized for the black areas in the 1962 zoning ordinance has been limited to high density zones, R-6 and R-9 requiring 6,000 square feet and 9,000 square feet, respectively, for a single family home. No black residential area in the City today has a higher density zoning than R-9 while principally all white residential areas have restricted zoning of R-12, R-15 or above (206a-208a; Plf. Exh. 10 in original record (maps showing present zoning for city of Charlotte)). As testified by plaintiffs' witness during the March 1969 hearing, the effect of such zoning makes the land in the black residential areas accessible to other uses; permits the rapid deterioration of the quality of the land—"and this is clearly evident from the amount of industrial development which has taken place in areas of Negro residences;" reduces the housing value; and introduces blighted and noxious usages into the area (204a).

It delineates for governmental and private developers, school officials and home buyers and renters those areas of the city for blacks and those for whites.

5. *City Planning.* City planning has further enforced segregation in housing. In a comprehensive proposal in 1960 entitled "The Next Twenty Years" (Plf. Exh. 12 in the original record), the City Planning Commission proposed the continuation of basically the same racially discriminatory zoning practices with high density and multi-land usage in black residential areas and restricted zoning in the white residential areas. While the proposal itself, absent approval by the City Council, should have no controlling effect, it nevertheless provided the blueprint for developers of what land usage would be permitted in the future. As plaintiffs' witness testified:

The only elements of the plan which develop any compelling force are those elements which relate to facilities or land uses which are normally provided by government, things such as roads, or public buildings. Quite naturally, the development of residential or industrial land is subject to the decision-making of private developers within, of course, whatever the legal constraints are which the city imposes. But the plan very definitely sets a direction in the recommendations which it develops and it's those recommendations which are particularly significant in this case (188a).

* * *

This planning document ["The Next Twenty Years"] was developed in 1960 so that this is the major impact. The secondary effect of this document is the proposed interstate highway system and the major arterial streets in the Charlotte area. And again one can see that the major north-south route—I-77—tends to reinforce this north-south division by running adjacent

to and parallel to the industrial band which runs through the city [separating the black residential area on the west from the white residential area on the east] (195a, 196a).

The Planning Commission's proposal was largely enacted by the City Council in the revised zoning code of 1962 (202a, 220a).

6. *Streets and Public Highways.* Streets and public highways have perpetuated barriers between the races. Streets have been designed to provide ease of communication only within the separate white or black residential areas with little means of communication between them. Additionally, one of the major federally financed interstate routes now being constructed through the city, the North-South Expressway (I-77), further marks, along with the Tryon Street-Southern Railroad, the division between the racially separate areas (195a, 216a-217a; Plf. Exh. 13 in original record).

7. *Private Discrimination.* Private discrimination has been pervasive in establishing and perpetuating the racially segregated housing that exists in the city. Blacks simply have been denied access or the right to purchase or rent in white residential areas. Construction firms and real estate agents and banking institutions, including the federal government, have planned and developed racially segregated areas. As the court below noted (1264a), such developments were perpetuated by racially restrictive covenants which were enforced by the North Carolina Supreme Court until this Court's decision in *Shelley v. Kraemer*, 334 U.S. 1 (1948). See, e.g., *Phillip v. Wearn*, 226 N.C. 290, 37 S.E. 2d 895 (1946); *Eason v Buffalo*, 198 N.C. 520, 152 S.E. 496 (1930); *Vernon v. R. J. Reynolds Realty Co.*, 226 N.C. 58, 36 S.E. 2d 710 (1946). Such developments have been followed by the school board with con-

struction of new schools "to house the youngsters in the neighborhood." (132a) Black areas or developments have been purposely located west of the Tryon Street-Southern Railroad dividing line and white developments on the east side of the dividing line. Prior to the 1968 Civil Rights Act, 42 U.S.C. §§3601 et seq., real estate agents were bound by their code of ethics to perpetuate this policy of discrimination (Plf. Exhs. 33, 34, 35, 36 in original record; 28a-57a, 282a-283a). Limitations on the ability and freedom of blacks to purchase and rent homes in other areas of the city continue today.⁶

The school board now proposes to engraft on this segregated system, district and housing pattern zones which would leave the majority of the black and white students in racially segregated schools (See projected enrollment under board's plan of February 2, 1970, 744a-748a). The pervasiveness of the state practices in creating and perpetuating the housing patterns and segregated schools is no different than the former constitutional provisions compelling racial separation in public schools. It is clearly illusory to contend otherwise for the black students in the all black and predominantly black schools would be locked into those schools just as effectively and with as much state control as they were under the former compulsory system rejected in *Brown*. Cf. *Brewer v. School Board of City of Norfolk*, 397 F.2d 37, 41-42 (4th Cir. 1968). The district court addressed this problem in its Memorandum Decision and Order of August 3, 1970.

"The principle difference between New Kent County, Virginia, and Mecklenburg County, North Carolina, is

⁶ A black family which moved into a home in a white residential area of the city on September 4, 1970 was intimidated and threatened repeatedly and nightriders fired shotgun blasts into their home while the family was asleep. *Charlotte Observer*, Sept. 5, 1970, at 1A.

that in New Kent County the number of children being denied access to equal education was only 740, whereas in Mecklenburg that number exceeds 16,000. If *Brown* and *New Kent County* and *Griffin v. Prince Edward County* and *Alexander v. Holmes County* are confined to small counties and to "easy" situations, the constitutional right is indeed an illusory one. A black child in urban Charlotte whose education is being crippled by unlawful segregation is just as much entitled to relief as his contemporary on a Virginia farm." (Br. A10)

Additionally, the court noted that the issue involved here is not the validity of a "system" but the *rights* of individual people:

If the rights of citizens are infringed by the system, the infringement is not excused because in the abstract the system may appear valid. "Separate but equal" for a long time was thought to be a valid system but when it was finally admitted that individual rights were denied by the valid system, the system gave way to the rights of individuals." (Br. A13)

The court again noted that "the essence of the *Brown* decision is that segregation implies inferiority, reduces incentive, reduces morale, reduces opportunity for association and breadth of experience, and that segregated education itself is inherently unequal." (Br. A15)

Testing results which the court had noted in previous orders (see Order of August 15, 1969, 579a, 586a-590a; Opinion and Order of December 1, 1969, 698a, 702a-706a; Supplemental Findings of Fact of March 21, 1970, 1198a, 1206a) further substantiated the adverse effect that racially segregated schools have on black children in the Charlotte-Mecklenburg school system.

It was this record of state imposed segregation which led the court to reject any finding of de facto or constitutionally benign racially segregated schools and housing in the Charlotte-Mecklenberg system. The Fourth Circuit held these findings to be "supported by the evidence" and accepted "them under familiar principles of appellate review." (264a).

It is these facts and findings which required that appropriate steps be taken by the school board to disestablish the state imposed segregated system.

Several lower court decision have held that school officials under these circumstances may not perpetuate segregated schools under the guise of a neighborhood system. *Henry v. Clarksdale Municipal Separate School District*, 409 F.2d 682 (5th Cir. 1969) *cert. den.* 396 U.S. 940 (1969); *United States v. Greenwood Municipal Separate School District*, 406 F.2d 1086 (5th Cir. 1969) *cert. den.* 395 U.S. 907 (1969); *United States v. Indianola Municipal Separate School District*, 410 F.2d 626 (5th Cir. 1969), *cert. den.* 396 U.S. 1011 (1970); *Valley v. Rapides Parish School Board*, 423 F.2d 1132 (5th Cir. 1970); *United States v. Board of Education of Baldwin County*, 423 F.2d 1013 (5th Cir. 1970); *Mannings v. Board of Public Instruction of Hillsborough County*, 427 F.2d 874 (5th Cir., No. 28643, May 11, 1970); *Ross v. Eckels*, — F.2d — (5th Cir. No. 30080, Aug. 25, 1970); *Kemp v. Beasley*, 423 F.2d 851 (8th Cir. 1970); *United States v. School District, 151 of Cook County, Illinois*, 286 F Supp. 786 (N.D. Ill. 1968), *affirmed* 404 F.2d 1125 (7th Cir. 1968); *Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 (W.D. Okla. 1965) *affirmed* 375 F.2d 158 (10th Cir. 1967), *cert. den.*, 387 U.S. 931 (1967); *Keyes v. School District No. 1, Denver*, 303 F. Supp. 79 (D. Colo. 1969).

Such holdings are based on the long established principle that a state may not evade the prohibition of the Fourteenth Amendment by engrafting neutral, or otherwise unobjectionable practices upon constitutionally objectionable ones, where the effects would perpetuate constitutional deprivations. See, e.g., *Lane v. Wilson*, 307 U.S. 268 (1939); *Commonwealth of Pennsylvania v. City of Philadelphia*, 353 U.S. 230 (1957); *Louisiana v. United States*, 380 U.S. 145 (1965); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); cf. *Gaston County v. United States*, 395 U.S. 285 (1969), affirming 288 F. Supp. 678 (D.D.C. 1968). See also *Coppedge v. Franklin County Board of Educ.*, 394 F.2d 410 (4th Cir. 1968), affirming 273 F. Supp. 289 (E.D.N.C. 1967); *Local 189, Papermakers & Paperworkers v. United States*, 416 F.2d 980 (5th Cir. 1969); pp. 32-34 Brief Amicus Curiae for the National Education Association.

II.

The Assignment Plan Now in Effect Is Workable and Desegregates the Schools.

The school board urges here that the pupil assignment plan it offered to the district court on February 2, 1970, which has been rejected in every respect by both courts below, should have been approved. We have discussed at some length in our brief on the merits the court directed plan which is now in effect and the majority board plan.⁷

⁷ The board plan is actually the plan of five of the nine members of the board. Four members of the board offered an alternative plan for the complete desegregation of the system at the July, 1970 hearing. Judge McMillan found that plan acceptable, but the board chose to implement the plan which had been directed on February 5, 1970 (BR. Al et seq.).

We respond here only to respondents' discussion in support of their plans for junior and senior high schools, matters not directly addressed by our brief on the merits.

The Junior High School Plan. The board's principal attack on the present assignment plan as ordered by the court is that it employs the technique of satellite zones while under the board plan all students would be assigned to a school within a zone which surrounds their school. The board therefore says that its plan maintains the "neighborhood school" concept. The court-ordered plan, it says, does not. We have previously demonstrated that the neighborhood school theory cannot be supported in history and tradition as a justification for continued segregation because it was widely and invariably disregarded in order to promote segregation.⁸ Moreover, a comparison of the two plans shows that the board's arguments are entirely spurious.

At the junior high school level the court ordered plan draws zones around the twenty-one schools. In addition some smaller zones (satellites) are made in the black inner-city area which do not surround any schools. The black children in these zones are assigned to nine of the 21 junior high schools;⁹ 12 of the schools have no satellites.¹⁰ (See Respondents-Cross Petitioners' Brief Appendix, Map 7.) The board's plan includes no satellites. (See Respon-

⁸ See Brief for Petitioners, pp. 80-83. See also, Opinion and Order, April 23, 1969, 305a-306a.

⁹ There are satellites for Eastway, Cochrane, Wilson, McClintock, Albemarle Road, Carmel (sometimes referred to as P-600), Smith, Quail Hollow and Alexander Graham (sometimes referred to as "A.G.").

¹⁰ The schools without satellites are: Alexander, Coulwood, Ranson, Northeast (sometimes referred to as J. H. Gunn, Wilgrove or P-601), Williams, Northwest, Spaugh, Kennedy, Sedgfield, Piedmont, Hawthorne and Randolph.

dents'-Cross-Petitioners' Brief Appendix, Map 6.) However, the board would leave 842 black children in Piedmont Junior High, a racially identifiable school (830a). This would nearly double the number of black students at Piedmont from the 1969-70 school year (Ibid). The board's justification for leaving a segregated black junior high school is its adherence to what it calls the neighborhood school concept. We suppose a neighborhood school means that the children who attend the same school are "neighbors." A close examination of the board's maps shows that the white and black children attending the junior high schools are as much "neighbors" under one plan as under the other.

The board zones are drawn so that there are corridors which lead into and include portions of the black community in order to integrate the formerly white schools.¹¹ Four of the five predominantly black schools were dealt with by extending the zones to include white areas. (Id. Map. No. 6)^{11a} Five of the predominantly white schools under the board's plan would remain nearly all-white (830a).¹²

The court ordered plan, on the other hand, eliminates the board's corridors leading from black neighborhoods to white schools and simply assigns the black students to the outlying white schools. In fact, some of the same students residing within satellites of five of the schools would be assigned to the same school under the board plan.¹³ Other black children were assigned from satellite

¹¹ See, e.g., Coulwood, Ranson, Cochrane, Eastway, Wilson, Sedgefield, Smith and Randolph.

^{11a} See, e.g., Hawthorne, Kennedy, Northwest, and Williams.

¹² Albemarle Road, McClintock, Quail Hollow and the two schools opened for the 1970-71 year, Carmel (P-600) and Northeast (referred to variously as J. H. Gunn, Wilgrove and P-601).

¹³ Smith, Eastway, Cochrane, Wilson, and Alexander Graham (A.G.).

zones in the central city to predominantly white schools not desegregated by the board's plan. Under both plans black children are assigned to outlying schools and white children are assigned to formerly black inner-city schools. The principal difference in technique therefore between the plans is that the court ordered plan does not have connecting corridors between the white schools and the black areas. The principal difference in result is that court's plan is effective, complete and stable while the board's plan is limited, incomplete and is subject to the problems of resegregation.¹⁴ We offer the following additional commitments about the board's connecting corridors and the administrative workability of the plans.

The board's connecting corridors bear no relationship to any conceivable neighborhood concept nor any relationship to any natural landmarks such as major thoroughfares. Therefore, the transportation system would be considerably more complex under the board's plan than under the plan adopted by the court. Judge McMillan emphasized this point in the Supplemental Findings of Fact of March 21, 1970:

“Two schools may be used to illustrate this point. Smith Junior High under the board plan would have a contiguous district six miles in length extending 4½ miles north from the school itself. The district throughout the greater portion of its length is one-

¹⁴ This is emphasized by the board's Interim Report on Desegregation, of September 23, 1970 (printed as an appendix herein, 10a-15a), which describes a developing problem of resegregation at Spaugh caused by new public housing projects. The board's limiting requirement that all students must reside within a zone surrounding a school would make it impossible to deal effectively with this situation caused by the policies and actions of governmental officials. By using the techniques of the court-ordered plan, the board can control the population at Spaugh so that it does not become a racially identifiable black school.

half mile wide and all roads in its one-half mile width are diagonal to its borders. Eastway Junior High presents a shape somewhat like a large wooden pistol with a fat handle surrounding the school off Central Avenue in East Charlotte and with a corridor extending three miles north and then extending at right angles four miles west to draw students from the Double Oaks area in northwest Charlotte. Obviously picking up students in narrow corridors along which no major road runs presents a considerable transportation problem.

The Finger plan makes no unnecessary effort to maintain contiguous districts, but simply provides for the sending of busses from compact inner city attendance zones, non-stop, to the outlying white junior high schools, thereby minimizing transportation tie-ups and making the pick-up and delivery of children efficient and time-saving. (1210a-1211a).

The district judge's finding was supported by the testimony of the court consultant¹⁵ and the superintendent of schools:¹⁶

Dr. Self, the school superintendent, and Dr. Finger, the court appointed expert, both testified that the transportation required to implement the plan for junior highs would be less expensive and easier to arrange than the transportation proposed under the board plan. The court finds this to be a fact. (1210a).

He concluded his analysis of the plan in the following way:

In summary, as to junior high schools, the court finds that the plan chosen by the board and approved by the

¹⁵ 957a-958a.

¹⁶ 803a-804a.

court places no greater logistic or personal burden upon students or administrators than the plan proposed by the school board; that the transportation called for by the approved plan is not substantially greater than the transportation called for by the board plan, that the approved plan will be more economical, efficient and cohesive and easier to administer and will fit in more nearly with the transportation problems involved in desegregating elementary and senior high schools, and that the board made a correct administrative and educational choice in choosing this plan instead of one of the other three methods (1211a-1210a).

The Senior High School Plan. The board also complains about the approval by the courts below of the satellite zone for Independence High School from which 300 black children are assigned to a school which would have had only 23 blacks enrolled under the board plan. Judge Butzner in approving this portion of the plan observed that:

The transportation of 300 high school students from the black residential area to suburban Independence School will tend to stabilize the system by eliminating an almost totally white school in a zone to which other whites might move with consequent "tipping" or re-segregation of other schools (1273a).

He also noted that the non-stop bus trips for these students compares favorably in terms of distance with the transportation of other students assigned to Independence "and is substantially shorter than the systems average one-way trip of 17 miles" (1273a, n. 6).

The distance involved is also substantially equivalent to the distance to be traveled under the board's high school

plan by inner-city black students assigned to South Mecklenburg, East Mecklenburg, and West Mecklenburg and by which students are assigned to the formerly all-black West Charlotte School. (See Respondents-Cross-Petitioners' Brief Appendix, Map No. 8.)

Moreover, the children living within the Independence satellite zone would, under the board's plan, be assigned to Harding and West Mecklenburg high schools serving the area which the board reports is experiencing greater black enrollment than expected at the elementary and junior high school levels because of recently completed public housing.¹⁷ If the 300 black children now going to Independence were, instead, going to Harding and West Mecklenburg, we would expect that the board would be reporting the anticipated resegregation at the high school level which they now expect at Spaugh Junior High School. Spaugh now has a 38.4% black enrollment. Under the board plan the combined enrollment at Harding and West Mecklenburg High Schools would be 39% black.¹⁸ The combined enrollment is now only 31% black. Presumably the forces which the board expects to create resegregation at Spaugh Junior High School, if not corrected, including the anticipated early occupancy of 240 additional public housing units at Little Rock Homes would also have had the same effect upon Harding and West Mecklenburg High School if the district court had not required the assignments to Independence.

¹⁷ See appendix to this brief, 10a-15a.

¹⁸ This figure is computed by adding 300 black students to the September 23, 1970 enrollments reported at Harding and West Mecklenburg.

III.

The School Board Proposes No Viable Rule of Law to Define the Goal of a Unitary System.

The board asks this Court to “give instruction and guidance to school boards” as to the requirements of a unitary school system. (Brief of Respondents p. 32; hereinafter referred to as “Brief”) They offer, however, no standard or rule which would clarify the law.

The school board’s position, as we understand it, is that the legal conclusions drawn by the Fourth Circuit are correct (*Id.* p. 36). The board supports the court’s rule of reasonableness (*Ibid.*) which was stated as follows:

“[S]chool boards must use all reasonable means to integrate the schools in their jurisdictions.” (1267a)

The board does not seem to deny that it has some affirmative duty to desegregate.¹⁹ Indeed, it quotes with approval

¹⁹ Respondents are not clear as to what they view as their minimal obligations to desegregate. They claim that “In formulating its plan, the Board to a very significant degree has elected to exceed Constitutional requirements” (Brief, p. 80). However, we do not understand them to adopt the position of several of the *amici* that a unitary system is created by engrafting upon a dual school system an ostensibly neutral geographic assignment plan, which leaves racial segregation intact. *Amicus Curiae* Brief for the Classroom Teachers Association of the Charlotte-Mecklenburg School System, Incorporated; *Amicus Curiae* Brief of the State of Florida; cf. *Amicus Curiae* Brief of William C. Cramer, *et al.* Such a position clearly conflicts, we think, with the decisions of this Court in *Brown v. Board of Education*, *supra*; *Green v. Country School Board of New Kent County*, 391 U.S. 430 (1968); *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968); *Raney v. Board of Education*, 391 U.S. 443 (1968); *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969); *Dowell v. Board of Education of the Oklahoma City Public Schools*, 396 U.S. 269 (1969) and *Northercross v. Board of Education*, 397 U.S. 232 (1970). The other circuits are in agreement with the court below that a dual school

the conclusion of the court that smaller school districts are required to desegregate completely: "All schools in towns, small cities, and rural areas generally can be integrated by pairing, zoning, clustering or consolidating schools and transporting pupils." (1267a quoted at p. 36, Brief for Respondents).

In our brief on the merits we have criticized the "reasonable means" test (pp. 58-65) on the ground that it is a subjective standard which portends a new era of litigation and which sanctions a great deal of continuing segregation. The board's position underscores what we have said. They would have this Court adopt the rule of the Court of Appeals, but reject its application to the facts of this case. The board thus argues that its affirmative duty to eliminate the vestiges of segregation would be satisfied by its desegregation plan of February 2 (726a-748a) even though more than one-half of the black children would still be attending racially identifiable black schools because it says its plan employs all reasonable means. In concluding their brief, the board asserts that the means they have chosen are reasonable because their choices represent the "value judgments of the elected school board and the educators or its administrative staff" (*Id.*, at 100).

At bottom, the board is arguing that locally elected school boards must be vested with the discretion to determine not only the means but also the extent of desegrega-

system is not dismantled by simply drawing zone lines which leave racial segregation in the schools undisturbed. See, e.g., *Henry v. Clarksdale Municipal Separate School District supra*; *Mannings v. Board of Public Instruction of Hillsborough County, supra*; *Ross v. Eckels, supra*; see analysis of Fifth Circuit's "Neighborhood School" concept in Brief for Petitioners *Davis v. Board of School Commissioners of Mobile County*, O.T. 1970, No. 436; *United States v. School District, 151 of Cook County, Illinois, supra*; *United States v. Board of Education, School District No. 1, Tulsa, Okla.*, — F.2d — (10th Cir. 1970). We therefore do not address further the arguments of the above *amici*.

tion which is to occur within their jurisdictions. This plea for school board discretion is echoed in several *amicus curiae* briefs filed in this case. Brief for the Commonwealth of Virginia, *Amicus Curiae*, p. 27; Brief of the City of Chattanooga, Tenn., *Amicus Curiae*, p. 28; *Amicus Curiae* Brief of David E. Allgood, An Infant etc., *et al.*, p. 13.²⁰

If the constitutional rights of black children to a desegregated school are to be left to the best judgments of local school boards, then, of course, many of the legal problems will be solved. A unitary school system would be whatever a local school board determines it to be. It would also, almost inevitably, be a segregated school system. Judge Sobeloff spoke to the matter of school board discretion in his dissent below:

In making policy decisions that are not constitutionally dictated, state authorities are free to decide in their discretion that a proposed measure is worth the cost involved or that the cost is unreasonable, and accordingly they may adopt or reject the proposal. This is not such a case. Vindication of the plaintiffs' constitutional rights does not rest in the school board's discretion as the Supreme Court authoritatively decided sixteen years ago and has repeated with increasing emphasis (1288a).

The board offers no rule which would resolve the questions which it claims need answers,²¹ other than its request that

²⁰ Some of these amici seem also to argue for a "colorblind" test of the variety described in the preceding footnote.

²¹ The State of Florida, Governor Claude R. Kirk, Jr., The Commonwealth of Virginia, The Chattanooga Board of Education, the Concerned Citizens of Norfolk, Virginia and the Classroom Teachers Association of the Charlotte Mecklenburg School System, Inc., as *amici curiae*, join in respondents insistence that there are important questions to be answered. We perceive no viable answers in their

the discretionary decision of school boards be honored by the courts. We cannot believe that these crucial constitutional rights are to be left to a majority vote.

The school board offers no viable definition of a unitary school system. The Fourth Circuit's reasonable means test is "inherently ambiguous" (1289a) and is "a new litigable issue" which, as the board's brief makes clear would be "exploit[ed] . . . to the hilt." (1290a). Petitioners urge this Court to reject the reasonableness test either as announced in the court below or as would be further limited by the school board. The only thing certain about "reasonableness" as a standard in this context is that it sanctions a significant amount of continued segregation in the public schools.

Petitioners find no warrant in *Brown* or its progeny for any standard or test which at the outset assumes that segregation will remain. We submit that a dual school system must be required to reorganize so that *every* black child is to be free from assignment to a racially identifiable "black" school, at every grade of his education. The only exception to this general rule would be where eliminating all black schools is absolutely unworkable.²² The plan or-

submissions. They would either have the Court adopt a "color blind" standard which would leave segregation intact (see note, 20, supra, and accompanying text) or a rule placing great emphasis on school board discretion (see note 19, supra, and accompanying text.)

²² See the concurring opinion of Mr. Justice Harlan in *Carter v. West Feliciana Parish School Board*, 396 U.S. 290, 292 (1970).

See also the dissenting opinion of Judge Sobeloff below :

Of course it goes without saying that school boards are not obligated to do the impossible. Federal courts do not joust at windmills. Thus it is proper to ask whether a plan is feasible, whether it can be accomplished (1284a).

dered by the district court in this case accomplishes the goal²³ which we urge. And it works.²⁴

IV.

The District Court Was Correct in Not Attempting to Declare a General Rule of Law to Govern the Multitude of Varied Circumstances of School Segregation in Other Cities and Other Parts of the United States.

The school board's brief suggests that Judge McMillan relied upon grounds to support his desegregation order which would apply to Chicago (or other large northern cities) as well as to Charlotte-Mecklenburg. The board thereby attempts to precipitate this Court into consideration of the enormously complicated problem that is sometimes termed "de facto" school segregation.²⁵ The Court is neither required nor able to consider that problem in this case.

Judge McMillan did not base his order on general principles applicable out of the context of classical school segregation under state segregation laws and practices—de jure segregation—nor, indeed, upon broad principles of

²³ See Brief for Petitioner, *Davis v. Board of School Commissioners of Mobile County*, O. T. 1970, No. 436, pp. 63-49, for a full discussion of the general principle we ask this Court to announce.

²⁴ See Report, etc., which is printed as an Appendix to this Brief, 4a-9a (showing enrollment in the schools as of September 21, 1970).

²⁵ We think the labels "de facto" and "de jure" are somewhat unhelpful and confusing because the terminology tends to beg the question at issue, i.e., whether the government is responsible for the segregation to a sufficient extent that the Fourteenth Amendment prohibits its continuance. The terminology tends to assume that there is a distinction between the causes of segregated schools in the North as opposed to the South. That is a question which must in the final analysis be decided in the concrete circumstances of cases which present the issues.

any sort applied out of the context of the particular school system of Charlotte. What Judge McMillan did, as he was legally and realistically obliged to do was to consider all of the factors in the Charlotte situation that were relevant to determining whether the school board had fulfilled its obligations under *Brown v. Board of Education*, 347 U.S. 483 (1954), and, if not, what steps were necessary to require it to fulfill those obligations.

That is also the only question before this Court. Nothing in this case obliges the Court to consider questions of so-called *de facto* segregation, for in this case we deal with an archetype of *de jure* segregation and a question of the proper remedies for it.

Prior to 1954, public schools in Charlotte-Mecklenburg were segregated pursuant to the state constitution and laws of North Carolina. Judge McMillan's opinion of August 3, 1970, attaches as an appendix the elaborate code of segregation laws adopted in North Carolina, including about sixty-five sections of the General Statutes and two sections of the Constitution. (This exhibit of the segregation laws has not been printed in the appendices, but is contained in the original record attached to the opinion of August 3, 1970.) Under this segregation code racial segregation of pupils and faculties and all aspects of the system was complete. A dual system of schools for whites and Negroes was maintained throughout the state under the compulsion of these laws. As Judge McMillan has noted many of these laws were still on the books in North Carolina when his April 23, 1969, opinion was written, although many were repealed thereafter by the 1969 General Assembly.

Although segregation in schools was unconstitutional from 1954 to 1970, as a practical and a legal matter, racial segregation has continued in the Charlotte-Mecklenburg

schools through the 1969-1970 school year. The board maintained until June 1969 a pupil assignment system based on geographic zones and freedom of transfer which was substantially the same as that held unconstitutional by this Court in *Monroe v. Board of Commissioners of Jackson, Tenn.*, 391 U.S. 450 (1968). Thus Judge McMillan found last year that the 9,216 pupils "in 100% black situations are considerably more than the number of black students in Charlotte in 1954 at the time of the first *Brown* decision" (661a). Judge McMillan has been addressing a problem of how to desegregate all-black schools in Charlotte which remained in the pre-1954 pattern.

In determining whether the promise of *Brown I* that such segregation would be eliminated "root and branch" is applicable, Judge McMillan and this Court should properly give weight to the impact of all factors which operate within the school system of Charlotte-Mecklenburg to bring about its present condition or enable its change. It was for this reason that Judge McMillan considered—and we invite this Court to consider—such matters as housing demographic patterns effected by public housing, urban renewal, city zoning, racial restrictive covenants enforced by state laws, and by school planning decisions (school location, school size, grade structure, school attendance areas, etc.). All of these factors are related in determining the school system that Charlotte has today, and in appraising whether it meets the requirements of a desegregated system. Judge McMillan recognized, as this Court must, that the present system is the result of many factors. For example, decisions about whether to build schools, where to build schools, and the capacity of the schools to be built, shape neighborhood and demographic patterns over many years. Now that the schools have shaped the neighborhood, Judge McMillan reasonably took the view that a school system was not meeting its obligation to desegregate if it

now permitted the neighborhoods to shape the schools. The neighborhoods to which respondents advert as the basis of the "neighborhood school principle" are themselves the product of state planning and state action of many sorts, by the board of education and other state organs over many years. One can no more say that a neighborhood school principle in this setting achieves desegregation because it is "color blind" than one could sustain the operation of "color blind" Grandfather Clauses used by many states to perpetuate voting discrimination after this Court voided more obvious forms of denying black citizens the franchise. *Lane v. Wilson*, 307 U.S. 268 (1939).

But this does not mean that any of the factors considered by Judge McMillan here urged on this Court would have the same significance in another context, particularly with relation to a different question: for example, the question whether the City of Chicago has an unconstitutionally segregated school system in the first instance. This Court should be exceedingly cautious in indulging the assumption suggested by respondents that Chicago does pose the same—or indeed a different—problem than does Charlotte. We simply do not know, respondents do not know, and the Court does not know what problems Chicago may pose. One thing that the Court does know is that school desegregation problems are very complex, and arise against the full, complicated factual situations in different localities. What appears to be "de facto" in one context may be "de jure" in another. It is wholly inappropriate for the Court to decide this case in light of fears or concerns as to how problems in Chicago might be resolved, when there is not now a record before the Court suggesting either what the issues in Chicago might be or what the full set of complicated factual circumstances in Chicago, relevant to those issues, are.

V.

The Civil Rights Act of 1964 Does Not in Any Way Limit the Power of the Courts to Fashion Remedies for Unconstitutional Racial Segregation in Public Schools or Prohibit the Courts from Requiring Busing of Pupils to Disestablish Dual Segregated School Systems.

The school board and some of the *amicus curiae* have argued that two provisions of the Civil Rights Act of 1964—sections 401(b) and 407(a), codified as 42 U.S.C. §§2000c(b)²⁶ and 2000c-6(a)²⁷—justify reversal of the dis-

²⁶ §2000c. *Definitions*

As used in this subchapter—

* * *

(b) “Desegregation” means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Pub.L. 88-352, Title IV, §401, July 2, 1964, 78 Stat. 246.

²⁷ §2000c-6. *Civil actions by the Attorney General—Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants*

(a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are

trict court's desegregation plan. The board's brief argues that the Civil Rights Act of 1964 "expressly prohibits a United States Court to order transportation to achieve racial balance in schools" (School Board brief herein, Argument I.-E-4). This audacious effort to convert the Civil Rights Act into a sword against school desegregation has been rejected by every court of appeals which has been confronted with the argument, including the decision below by Judge Butzner (A. 1274a). See petitioners' brief herein at pp. 65-66 and cases cited. Judge Butzner concluded for the court below:

Those provisions are not limitations on the power of school boards or courts to remedy unconstitutional segregation. They were designed to remove any implication that the Civil Rights Act conferred new jurisdiction on courts to deal with the question of whether

unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

* * *

Pub.L. 88-352, Title IV, §407, July 2, 1964, 78 Stat. 248.

school boards were obligated to overcome *de facto* segregation (1274a).

The board's argument is entirely untenable because it is in conflict with the plain language of the Civil Rights Act and with the legislative purpose of the Congress.

The language of section 407(a) makes it clear that the relevant proviso was added merely to insure that the law was not interpreted to enlarge the powers of the federal courts. There is no language in the section which *prohibits* the courts from doing anything. Section 407 authorizes the attorney general to institute school segregation cases in the name of the United States in the federal courts upon receiving complaints of aggrieved citizens that they were "deprived by a school board of the equal protection of the laws." The section provides that the United States may sue "for such relief as may be appropriate" and that the appropriate district courts "shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section." Immediately after this grant of jurisdiction over suits brought by the attorney general, section 402 states the proviso that the board relies on, which says that nothing therein empowers any official or court of the United States "to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one such school district to another in order to achieve such racial balance, *or otherwise enlarge* the existing power of the court to insure compliance with constitutional standards" (emphasis added).

There is simply nothing in this language that prohibits the federal courts from doing anything. It certainly does not forbid anything the courts find necessary to "insure compliance with constitutional standards" (section 407).

The whole purpose of §407 is to enable the federal government to institute suits to "further the orderly achievement of desegregation in public education" by enforcing the Equal Protection Clause through suits in the federal courts.

The proviso applies only to suits instituted pursuant to the section—that is, where the federal courts exercise the jurisdiction conferred to entertain school desegregation cases instituted by the attorney general. The provision has no application whatsoever to this Charlotte school case which was not instituted by the attorney general but was filed by petitioners who invoked the district court's jurisdiction under 28 U.S.C. §1343 to enforce their rights under 42 U.S.C. §1983 and the Fourteenth Amendment. The United States is not even a party to this case. Section 409 of the Act (42 U.S.C. §2000c-8) provides that "Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or in any facility covered by this title." Thus, the Congress made plain that any limitation placed on suits brought by the attorney general would not "adversely affect" suits brought by private litigants.

But even assuming *arguendo* that the section does apply to suits initiated by private citizens seeking desegregation, there is nothing in the language or in the legislative history which suggests that it was the purpose of the Congress to restrict the power of the federal courts in deciding constitutional issues in school desegregation controversies. On the contrary, Senator Humphrey, the manager of the bill in the Senate (where the provision originated), explained its purpose quite clearly. His statement dispels any possibility of ambiguity about the purposes of the proponents of the provision:

MR. HUMPHREY. Mr. President, this matter requires a statement. Therefore, I take this time to state, for

the proponents of the bill, that the language of title IV which provides that nothing in the title shall empower any Federal court or official to issue an order requiring the transportation of school children to correct racial imbalance in the schools has been the subject of considerable discussion. This provision of title IV recognizes that the problems of racial imbalance and school transportation are presently the subjects of considerable court consideration and local administrative action, as well as a great deal of discussion, often heated, among parents and educators. In some instances, courts have decided that racial imbalances may constitute a denial of equal protection of the laws. *Balaban v. Rubin*, 32 U.S. L.W. 2465; *Blocker v. Board of Education*, 32 U.S. L.W. 2465; *Jackson v. Pasadena School Board*, 382 F.2d 878. On the other hand, relief has been denied on the grounds that school racial imbalance resulting from de facto segregation is not per se unconstitutional. *Bell v. City of Gary*, 324 F.2d 309, certiorari denied, 32 U.S. L.W. 3384. Some communities are attempting to correct racial imbalances by the transporting of children; others refuse to do so. The purpose of the pending Dirksen-Mansfield-Humphrey-Kuchel substitute is to make clear that the resolution of these problems is to be left where it is now, namely, in the hands of local school officials and the courts. This bill is made neutral on the resolution of these problems by the language of title IV. It is to be used as the vehicle to require transportation to correct racial imbalances; it is not to be used as an excuse for local officials to refuse to carry out their obligations. Obviously this provision could not affect a court's determination concerning racial imbalance and possible corrective measures; this is dependent upon the court's interpretation of the 14th amendment.

As floor manager of this legislation, I wish to note the intention of those who sought to deal with the vexing problem of de facto segregation through the language contained in Dirksen substitute amendment.

Thus it is entirely clear that the Congress intended to be neutral on the question whether racial imbalances violated the Fourteenth Amendment and to leave that and related questions about transportation for the courts to decide in interpreting the Constitution. We have studied the entire legislative history of the provision, including all the matters cited by the board and the amici curiae, and we find that quite simply there is nothing which indicates that the Congress sought to limit the power of the federal courts to interpret the Constitution and apply the doctrine of *Brown v. Board of Education*, 347 U.S. 483 (1954). The Department of Justice reached the same conclusion in a detailed memorandum filed in November 1969 in fourteen school cases submitted before the Fifth Circuit sitting *en banc*. We quote at length from the Justice Department study of the legislative history in the margin below.²⁸

²⁸ See Memorandum of the United States filed in *Singleton v. Jackson Municipal Separate School District*, 5th Cir., No. 26285 (and other *en banc* school cases), 419 F.2d 1211 (5th Cir. 1969), reversed as to desegregation delay *sub nom. Carter v. West Feliciana Parish School Board*, 396 U.S. 290 (1970). The following summary appears at pp. 5-8 of that Memorandum:

"Summary

"The meaning of the proviso in section 407(a) regarding transportation and of the qualifying language in section 401(b) depends upon the phrase 'racial imbalance.' The latter phrase was used, in a different context, in the original version of H.R. 7152, the bill which became the Civil Rights Act of 1964. The bill as introduced provided that the Commissioner of Education could award grants and render technical assistance to (1) school districts undergoing desegregation and (2) districts faced with problems of racial imbalance. The authority of the

Lengthy discussions in some of the amicus briefs about what Congress meant by the statutory term “racial balance” are essentially beside the point because—whatever that phrase may mean—Congress has not *prohibited* the courts from doing anything with respect to “racial balance.”

There is even less reason to think that section 401(b) has anything to do with this case. The definition of “de-

Attorney General to initiate lawsuits was limited to actions to achieve desegregation.

“During hearings on the bill before a House subcommittee, the term ‘racial imbalance’ was equated with de facto segregation, the situation existing in a city where, solely because of residential patterns, certain schools were attended largely by members of one race. Some members of the subcommittee expressed opposition to Federal action with regard to de facto segregation. The bill as reported by the House Judiciary Committee deleted the references to ‘racial imbalance.’ Thus, both the authority of Commissioner of Education to render assistance and the authority of the Attorney General to bring suit were limited to desegregation.

“Despite the removal of references to ‘racial imbalance,’ Congressman Cramer offered and the House adopted an amendment adding to the definition of ‘desegregation’ in section 401(b) the statement that “‘desegregation’ shall not mean the assignment of students . . . in order to overcome racial imbalance.’” Congressman Cramer wished to make clear that Title IV was not to apply to de facto segregation. The purpose of Title IV was to implement the Fourteenth Amendment.

“In the Senate, as in the House, the proponents of the bill stated that Title IV was intended to reach unconstitutional state action and that it would not affect racial imbalance in schools which resulted exclusively from housing patterns. The compromise bill offered in the Senate, which was ultimately enacted, added to section 407(a) the proviso concerning ‘racial balance.’ The purpose of the change was to reemphasize that the Congress was not authorizing Federal intervention, e.g., requiring busing, with respect to school systems which were in compliance with the Fourteenth Amendment.

“Senator Humphrey, the floor manager for the bill, and other members of Congress expressly recognized that the provisions of Title IV would not affect judicial construction of the Fourteenth Amendment.

segregation” in section 401(b) provides a meaning for the term “as used in this title”—or in the code: “as used in this subchapter.” The reference is to Title IV of the Act which, in addition to authorizing suits by the attorney general (as indicated above in the discussion of section 407), does nothing else except authorizing activities of the Commissioner of Education: to conduct a survey and make a report on the lack of educational opportunities (section 402), to grant technical assistance to school boards and other units implementing “desegregation” of public schools (section 403), to conduct training institutes (section 404), and to make financial grants to school boards for dealing with desegregation problems (section 405). Thus the definition of desegregation in Title IV has only to do with suits by the attorney general (and he is authorized to enforce the equal protection guarantee) and the activities of the Commissioner of Education. None of this has anything to do with this lawsuit by private citizens—pupils and parents—filed in a district court pursuant to the civil rights jurisdiction of the district courts to enforce their rights under the Fourteenth Amendment. There was no effort by the Congress to define the meaning of the Equal Protection Clause in section 401(b), and nothing in the Act indicates that any such thing was intended.²⁹

²⁹ Congressman Cramer, who sponsored an amendment adding the last clause in section 401(b), proposed the idea on the House floor on February 1, 1964 (110 Cong. Rec. 1598), stating he favored putting “something specific in it [the bill] saying that it is not the intention of Congress to include racial imbalance or de facto segregation. I think we should consider an amendment to that effect.” The amendment was offered and agreed to February 6, 1964 (110 Cong. Rec. 2280), following Mr. Cramer’s assertion that its purpose was merely “to strike ‘racial imbalance’ from the bill and from this title which I otherwise, in its present form, believe is still in the bill as I have said before many times.” He said:

“The purpose is to prevent any semblance of congressional acceptance or approval of the concept of ‘de facto’ segregation or to include in the definition of ‘desegregation’ any balancing of school attendance by moving students across school district

In addition, of course, there is no prohibitory language of any kind in section 401. It defines desegregation but does not attempt to limit—or even refer—the federal courts to that definition. There is nothing in Title IV (or elsewhere in the Act) indicating that the definition is to have any force at all in the courts. Nor is there any legislative history suggesting that the definition related to the courts' powers.

Respectfully submitted,

JACK GREENBERG
 JAMES M. NABRIT, III
 NORMAN J. CHACHKIN
 10 Columbus Circle
 New York, New York 10019

J. LEVONNE CHAMBERS
 ADAM STEIN
 CHAMBERS, STEIN, FERGUSON & LANNING
 216 West Tenth Street
 Charlotte, North Carolina 28202

C. O. PEARSON
 203½ East Chapel Hill Street
 Durham, North Carolina 27702

ANTHONY G. AMSTERDAM
 Stanford University Law School
 Stanford, California 94305

*Attorneys for Petitioners and
 Cross-Respondents*

lines to level off percentages where one race outweighs another”
 (110 Cong. Rec. 2280) (emphasis added).

Mr. Cramer's brief in this Court distorts this simple history by editing the above quoted remarks to delete—with ellipses—the matter which we have italicized in the last quoted speech. Amicus Curiae Brief of William C. Cramer, in this case, p. 13. Mr. Cramer's brief now asserts that his amendment was not concerned with the problem of racial balance in de facto areas but with his own constituency. Brief of Mr. Cramer, p. 22. It would seem that Mr. Cramer's style of argument is rather disingenuous, both on the House floor and in his brief in this Court.

APPENDIX

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

JAMES E. SWANN, *et al.*,

Plaintiffs,

vs.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Defendants.

**Interim Report on Desegregation,
September 23, 1970**

In accordance with the prior filing by the defendants herein, the Charlotte-Mecklenburg Board of Education furnishes the following information to the Court:

1. Transportation has posed the greatest impediment to opening of schools on a full day schedule. The system has received from the State of North Carolina 185 buses, of which 35 have been renovated and now permit the system to operate a total of 398 school buses. In addition, 39 city transit and nine Trailways buses are operating so that 71 schools may operate on a full-day basis by staggering opening and closings and 32 schools are operating on a part-day schedule, two hours in the afternoon. School openings range from 7:30 a.m. to 1:00 p.m. The condition of the buses loaned through the offices of the State Board of Education are not in as good condition as represented, thereby impeding the ability of the system to put them into service.

Interim Report on Desegregation, September 23, 1970

Arrangements have been made for 17 buses to be repaired by other school districts.

By the end of this week, it is expected that 82 of the 103 schools will be on full-day schedules, though their opening and closing hours will be staggered. An additional 21 schools will await satisfactory transportation arrangements. Efforts are being made to involve parents in car pools so that these schools may open on a full-time basis.

2. The attachment designated Exhibit 1 reflects the anticipated membership, actual membership or enrollment and actual attendance by race on September 21, 1970, for junior and senior high schools.

3. The attachment designated Exhibit 2 reflects the anticipated membership, actual membership or enrollment and actual attendance by race on September 21, 1970, for elementary schools.

4. Attached marked Exhibit 3 is a report on the distribution of professional staff by school and race as of September 21, 1970.

5. With respect to elementary schools, it is noted that as a result of movement of residents, three elementary schools, Barringer, Berryhill and Amay James, now house a predominantly black student body. The Board of Education instructed the staff to review the racial condition of these schools and make recommendations. Attached marked Exhibit 4 is a copy of the report of the staff to the Board of Education. No action has been taken with reference to this report.

6. Attached marked Exhibit 5 the court will find an elementary attendance map on which the new housing developments have been located within the various attendance districts.

Interim Report on Desegregation, September 23, 1970

7. The change of the residential neighborhood gives rise to possible problems in the Spaugh Junior High School attendance district because of rapid changes occurring within the district. At the direction of the Board, the staff studied this condition and presented its report, a copy of which is attached, marked Exhibit 6. No action has been taken with reference to this report.

Respectfully submitted this 23rd day of September, 1970.

/s/ WILLIAM J. WAGGONER
William J. Waggoner
WEINSTEIN, WAGGONER, STURGES,
ODOM AND BIGGER
1100 Barringer Office Tower
Charlotte, North Carolina

/s/ BENJAMIN S. HORACK
Benjamin S. Horack
ERVIN, HORACK AND McCARTHA
806 East Trade Street
Charlotte, North Carolina
Attorneys for Defendants

Exhibit 1 Attached to Interim Report

(See Opposite) 

CHARLOTTE - MECKLENBURG SECONDARY SCHOOLS

REPORT OF MEMBERSHIP AND ATTENDANCE

JUNIOR HIGH SCHOOLS

SCHOOL	ANTICIPATED MEMBERSHIP		ACTUAL MEMBERSHIP		ACTUAL ATTENDANCE	
	B	T	B	T	B	T
		%		%		%
Albemarle Rd.	1134	1092	330	762	289	1016
Alexander	1041	1037	317	720	290	961
Carmel	634	650	186	464	158	439
Cochrane	1291	1281	336	945	300	1215
Coulwood	783	788	233	555	225	915
Eastway	1168	1154	361	793	327	764
Alexander-Graham	1076	979	272	707	241	1091
Hawthorne	988	902	339	563	312	921
Kennedy	842	751	206	545	199	810
McClintock	1326	1280	316	964	287	680
Northeast	612	613	51	562	50	1227
Northwest	1161	954	433	521	408	574
Piedmont	693	671	153	518	130	882
Quail Hollow	1481	1521	383	1138	343	576
Randolph	1023	984	253	731	242	1101
Ranson	810	841	273	568	266	700
Sedgefield	1031	1022	304	718	265	942
Smith	1304	1315	422	893	385	798
Spaugh	1110	1155	440	715	404	933
Williams	1038	948	307	641	294	1247
Wilson	854	931	320	611	281	1006
TOTAL	21,400	20,869	6,235	14,634	5,696	19,443
SENIOR HIGH SCHOOLS						
East Mecklenburg	2097	2108	505	1603	469	1981
Garinger	2344	2364	648	1716	588	2173
Harding	1107	1053	343	710	298	929
Independence	1672	1618	345	1273	265	1484
Myers Park	2303	2277	495	1782	448	2153
North Mecklenburg	1461	1353	417	936	378	1245
Olympic	1283	1305	284	1021	251	1210
South Mecklenburg	2200	2078	493	1585	434	1931
West Charlotte	1769	1451	606	845	588	1341
West Mecklenburg	1529	1542	467	1075	423	1407
TOTAL	17,764	17,149	4,603	12,546	4,142	15,854

5a

6a

Exhibit 2 Attached to Interim Report

(See Opposite) 

Report of Membership and Attendance

9-21-70

9-21-70

9-21-70

School	Antic. Mem.	Actual Membership			Actual Attendance						
		B	W	T	%	B	W	T	%		
Albemarle Road	486	154	358	512	105.3	30.1	135	323	458	94.2	29.5
Allenbrook	519	142	355	497	95.8	28.6	130	346	476	91.7	27.3
Ashley Park	571	228	359	587	102.8	38.8	221	358	579	101.4	38.2
Bain	780	22	733	755	96.8	2.9	22	699	721	92.4	3.05
Barringer	527	290	235	525	100.4	55.2	286	220	506	96.0	56.5
Berryhill	866	688	386	1074	80.6	64.1	640	352	992	14.5	64.5
Beverly Woods	605	172	413	585	96.7	29.4	151	400	551	91.1	27.4
Billingsville	383	125	289	414	108.1	30.2	123	268	391	102.1	31.5
Briarwood	670	219	450	669	99.9	32.7	202	426	628	93.7	32.2
Bruns Avenue	762	251	413	664	87.1	37.8	236	383	619	81.2	38.1
Chantilly	445	122	334	456	102.5	26.8	116	319	435	97.8	26.7
Clear Creek	306	66	269	335	109.5	19.7	64	255	319	104.2	20.1
Collinswood	717	321	421	742	103.5	43.3	312	407	719	100.3	43.4
Cornelius	442	154	304	458	103.6	33.6	149	291	440	99.5	33.9
Cotswold	522	124	417	541	103.6	22.9	123	404	527	100.9	23.3
Davidson	247	112	147	259	104.9	43.2	108	144	252	102.0	42.9
Marie Davis	668	189	422	611	91.5	30.9	177	403	580	86.8	30.5
Derita	813	157	640	797	98.0	19.7	150	612	762	93.7	19.7
Devonshire	853	259	607	866	101.5	29.9	247	571	818	95.9	30.2
Dilworth	447	160	369	529	118.3	30.2	153	347	500	11.8	30.6
Double Oaks	705	194	372	566	80.3	34.3	188	357	545	77.3	34.5
Druid Hills	444	150	265	415	93.5	36.1	146	257	403	90.8	36.2
Eastover	514	120	371	491	95.5	24.4	107	367	474	92.2	22.6
Elizabeth	627	181	394	575	91.7	31.4	173	374	547	87.2	31.6
Enderly Park	451	256	276	532	117.9	48.1	229	251	480	106.4	47.7

Charlotte-Mecklenburg Elementary Schools

Report of Membership and Attendance

9-21-70 9-21-70

School	Antic. Mem.	Actual Membership			Actual Attendance						
		B	W	T	%	B	W	T	%		
First Ward	778	226	435	661	84.9	34.1	187	402	589	75.7	31.7
Hickory Grove	560	203	356	559	99.8	36.3	191	337	528	94.3	36.2
Hidden Valley	928	271	617	888	95.6	30.5	258	603	861	106.4	29.96
Highland	426	138	291	429	100.7	32.1	127	278	405	95.1	31.4
Hoskins	263	113	165	278	105.7	40.6	108	160	268	96.5	40.3
Huntersville	687	150	521	671	97.6	22.3	147	501	648	94.3	22.7
Huntingtowne Farms	574	191	380	571	99.4	33.4	183	371	554	96.5	33.0
Idlewild	671	167	455	622	92.6	26.8	149	439	588	87.6	25.3
Amey James	320	449	99	548	171.2	81.9	416	80	496	155.0	83.9
Lakeview	400	114	253	367	91.7	31.0	103	238	341	85.3	30.2
Lansdowne	669	274	468	742	110.9	36.9	229	443	672	100.4	34.1
Lincoln Heights	727	189	402	591	81.2	31.9	183	382	565	77.7	32.4
Long Creek	821	325	505	830	101.0	39.1	320	481	801	97.6	39.95
Matthews	878	92	837	929	105.8	9.9	86	808	894	101.8	9.6
Merry Oaks	445	116	316	432	97.0	26.8	112	305	417	93.7	26.9
Midwood	558	103	431	534	95.6	19.2	98	399	497	89.0	19.7
Montclair	603	164	421	585	97.0	28.0	164	421	585	97.0	28.0
Myers Park Elem.	538	144	378	522	97.0	27.5	128	367	495	92.0	25.6
Nations Ford	889	212	725	937	105.3	22.6	200	673	873	98.2	22.9
Newell	608	62	544	606	99.6	10.2	57	515	572	94.1	10.0
Oakdale	680	171	505	676	99.4	25.2	170	477	647	95.1	26.3
Oakhurst	698	253	537	790	113.1	32.0	194	516	710	101.7	27.3
Oaklawn	595	180	296	476	80.0	37.8	175	290	465	78.2	37.6

Report of Membership and Attendance

School	9-21-70		9-21-70		9-21-70		9-21-70		9-21-70		
	Antic. Mem.	R	W	T	%	B	W	T	%	%B	
Paw Creek	578	104	362	466	80.6	22.3	95	352	447	77.3	21.2
Paw Creek Annex	345	97	220	317	91.8	30.5	95	216	311	90.1	30.5
Pineville	527	136	365	501	95.0	27.1	136	365	501	95.1	27.1
Pinewood	837	243	525	768	91.7	31.6	233	504	737	88.1	31.6
Plaza Road	521	142	359	501	96.1	28.3	136	329	465	89.3	29.2
Rama Road	746	277	490	767	102.8	36.1	277	483	760	101.9	36.4
Sedgefield Elem.	637	205	406	611	95.9	33.5	192	390	582	91.4	32.9
Selwyn	505	182	340	522	103.3	34.8	173	338	511	101.2	33.8
Shamrock Gardens	485	98	390	488	100.6	20.0	93	376	469	96.7	19.8
Sharon	295	96	186	282	95.5	34.0	91	180	271	91.9	33.5
Starmount	659	207	446	653	99.0	31.6	181	430	611	92.7	29.6
Statesville Road	691	180	496	676	97.8	26.6	176	473	649	93.9	21.7
Steele Creek	607	244	396	640	105.4	38.1	226	383	609	100.3	37.1
Thomasboro	664	176	478	654	98.4	26.9	163	466	629	94.7	25.9
Tryon Hills	510	244	286	530	103.9	46.0	226	268	494	96.9	45.7
Tuckaseegee	594	181	376	557	93.7	32.4	177	361	538	90.6	32.8
University Park	759	259	355	614	80.8	42.1	251	331	582	76.7	43.1
Villa Heights	751	234	476	710	94.5	32.9	196	444	640	85.2	30.6
Westerly Hills	644	235	401	636	98.7	36.9	220	389	609	94.6	36.1
Wilmore	398	197	213	410	103.0	48.0	186	198	384	96.5	48.4
Windsor Park	733	188	517	705	96.1	26.6	176	503	679	92.6	25.9
Winterfield	695	239	482	721	103.7	33.1	208	459	667	95.9	31.1
Total	42,937	13,576	28,823	42,399	98.7	32.0	12,710	27,541	40,251	93.7	31.8

7a

8a

Exhibit 3 Attached to Interim Report

(See Opposite) 

DISTRIBUTION OF PROFESSIONAL STAFF
September 21, 1970

	Black	White	Total	Per Cent Black
Elementary Schools	482	1318	1800	26.7
Junior High Schools	229	707	936	24.4
Senior High Schools	190	684	874	21.7
TOTAL STAFFING FULLY ASSIGNED TO SCHOOLS GRADES 1-12	901	2709	3610	24.9

DISTRIBUTION OF PROFESSIONAL STAFF
September 21, 1970

Elementary School	Black	White	Total	Per Cent Black
Albemarle Road	5	16	21	23.8
Allenbrook	6	16	22	27.2
Ashley Park	5	19	24	20.8
Bain	8	24	32	25.0
Barringer	7	15	22	31.8
Berryhill	9	27	36	25.0
Beverly Woods	6	18	24	25.0
Billingsville	6	16	22	27.2
Briarwood	7	20	27	25.9
Bruns Avenue	10	20	30	33.3
Chantilly	5	15	20	25.0
Clear Creek	4	13	17	23.5
Collinswood	6	21	27	22.2
Cornelius	5	13	18	27.7
Cotswold	5	16	21	23.8
Davidson	3	9	12	25.0
Marie Davis	11	20	31	35.4
Derita	8	26	34	23.5
Devonshire	10	24	34	29.4
Dilworth	6	21	27	22.2
Double Oaks	8	17	25	32.0
Druid Hills	5	13	18	27.7
Eastover	7	18	25	28.0
Elizabeth	8	17	25	32.0

Elementary School	Black	White	Total	Per Cent Black
Enderly Park	5	15	20	25.0
First Ward	10	20	30	33.3
Hickory Grove	6	17	23	26.0
Hidden Valley	10	28	38	26.3
Highland	4	14	18	22.2
Hoskins	3	10	13	23.0
Huntersville	7	19	26	26.9
Huntingtowne Farms	5	18	23	21.7
Idlewild	7	22	29	24.1
Amay James	6	15	21	28.5
Lakeview	6	14	20	30.0
Lansdowne	7	22	29	24.1
Lincoln Heights	7	19	26	26.9
Long Creek	8	23	31	25.8
Matthews	10	28	38	26.3
Merry Oaks	5	13	18	27.7
Midwood	6	18	24	25.0
Montclair	7	19	26	26.9
Myers Park	6	19	25	24.0
Nations Ford	8	25	33	24.2
Newell	6	20	26	23.0
Oakdale	7	20	27	25.9
Oakhurst	6	20	26	23.0
Oaklawn	8	17	25	32.0
Olde Providence	6	18	24	25.0

Elementary School	Black	White	Total	Per Cent Black
Park Road	6	18	24	25.0
Paw Creek	6	17	23	26.0
Paw Creek Annex	3	9	12	25.0
Pineville	6	17	23	26.0
Pinewood	10	23	33	30.3
Plaza Road	6	17	23	26.0
Rama Road	6	22	28	21.4
Sedgefield	7	20	27	25.9
Selwyn	5	17	22	22.7
Shamrock Gardens	5	14	19	26.3
Sharon	5	10	15	33.3
Starmount	7	20	27	25.9
Statesville Road	9	18	27	33.3
Steele Creek	6	19	25	24.0
Thomasboro	7	20	27	25.9
Tryon Hills	6	16	22	27.2
Tuckaseegee	6	19	25	24.0
University Park	10	16	26	38.4
Villa Heights	12	20	32	37.5
Westerly Hills	7	19	26	26.9
Wilmore	5	14	19	26.3
Windsor Park	9	23	32	28.1
Winterfield	7	23	30	23.3
Total	482	1318	1800	26.7

DISTRIBUTION OF PROFESSIONAL STAFF
September 21, 1970

Junior High School	Black	White	Total	Per Cent Black
Albemarle Road	12	41	53	22.6
Alexander	8	35	43	18.6
Carmel	8	20	28	28.5
Cochrane	14	43	57	24.5
Coulwood	7	28	35	20.0
Eastway	13	40	53	24.5
Alexander Graham	12	34	46	26.0
Hawthorne	12	30	42	28.5
Kennedy	9	29	38	23.6
McClintock	14	42	56	25.0
Northeast	7	22	29	24.1
Northwest	13	35	48	27.0
Piedmont	9	24	33	27.2
Quail Hollow	14	50	64	21.8
Randolph	11	35	46	23.9
Ranson	10	26	36	27.7
Sedgefield	11	33	44	25.0
Smith	13	41	54	24.0
Spaugh	11	36	47	23.4
Williams	12	33	45	26.6
Wilson	9	30	39	23.0
Total	229	707	936	24.4

DISTRIBUTION OF PROFESSIONAL STAFF
September 21, 1970

Senior High School	Black	White	Total	Per Cent Black
East Mecklenburg	20	82	102	19.6
Garinger	26	87	113	23.0
Harding	13	50.5	63.5	20.4
Independence	22	63	85	25.8
Myers Park	23	83	106	21.6
North Mecklenburg	15	56	71	21.1
Olympic	15	49.5	64.5	23.2
South Mecklenburg	20	81	101	19.8
West Charlotte	22	66	88	25.0
West Mecklenburg	14	66	80	17.5
Total	190	684	874	21.7

9a

10a

Exhibit 4 Attached to Interim Report

(See Opposite) 

AN ANALYSIS OF ENROLLMENT AND HOUSING PROBLEMS

September 21, 1970

The Problem:

The enrollments of three elementary schools in the western section of the county are turning out to be majority black. There is a strong possibility that the schools will become totally black unless some preventive measures are taken. The anticipated enrollment for the three schools in question are as follows:

	<u>Black</u>	<u>White</u>	<u>Total</u>	<u>Capacity</u>	<u>% Black</u>
Barringer	296	262	558	513	53
Berryhill	640	441	1081	810	59
Amay James	458	133	591	405	77

The Cause:

Majority black enrollment in these three schools is the result of changing neighborhoods and the location of three public housing projects in the area. The projects are:

Dalton Village	1 Bedroom	40 Units
	2 Bedrooms	75 "
	3 "	93 "
	4 "	72 "
	5 "	20 "
		<u>300 Units</u>
Boulevard Homes	1 Bedroom	40 Units
	2 Bedrooms	74 "
	3 "	98 "
	4 "	68 "
	5 "	20 "
		<u>300 Units</u>
Little Rock Homes	1 Bedroom	15 Units
	2 Bedrooms	90 "
	3 "	95 "
	4 "	20 "
	5 "	20 "
		<u>240 Units</u>

Both Dalton Village and Boulevard Homes are completed. Both are 75% occupied now. One hundred percent occupancy is anticipated by November 1, 1970.

Ninety units of Little Rock Homes are scheduled to be completed by December 31, 1970. Completion date for the remaining 150 units is scheduled for February 1, 1971.

Dalton Village is located in the Amay James attendance area. As of September 16, 1970, 329 children had been enrolled at Amay James from the project. Enrollment by grade was: Grade 1 - 57, Grade 2 - 61, Grade 3 - 63, Grade 4 - 50, Grade 5 - 53, and Grade 6 - 45.

Boulevard Homes and Little Rock Homes are both located in the Berryhill district. As of September 16, 1970, 358 children had enrolled at Berryhill School from Boulevard Homes. None have been registered from Little Rock Homes. Enrollment by grades from Boulevard Homes was: Grade 1 - 74, Grade 2 - 72, Grade 3 - 53, Grade 4 - 59, Grade 5 - 56, and Grade 6 - 44.

In addition to the three public housing projects, a large private housing project is located in the area in the Steele Creek district. This development, named Roseland 1 and 2, contains 504 units, all of which are completed. The sizes of the 504 units are as follows: one bedroom - 176 units, two bedrooms - 224 units, three bedrooms - 104 units. A representative of the owner indicated that 50% of the units were occupied at this time. As of September 16, 1970, 81 had enrolled at Steele Creek from Roseland 1 and 2.

Several small private housing projects are located in the Barringer district. One such project, Keyway, located on Maiden Street, has just been completed. The project contains 56 units. One hundred and three pupils from this project have enrolled at Barringer.

The Parker Heights housing project off Remount Road is located in the Ashley Park attendance area. Parker Heights contains 100 units. Thirty pupils from this project attend Ashley Park.

Information on Housing Projects
September 17, 1970

<u>Project</u>	<u>School Attendance Area</u>	<u>No. Units</u>	<u>No. Completed 9-15-70</u>	<u>Completion Date</u>	<u>Per Cent Occupancy</u>	<u>No. Pupils</u>
Dalton Village	Amay James	300	300		75	* 329
Boulevard Homes	Berryhill	300	300		75	* 358
Little Rock Homes	Berryhill	240	-0-	90-12/31/70 150-2/1/71	-0-	-0-
Roseland (1 & 2)	Steele Creek	504	504		50	81
Keyway	Barringer	56	56		100	*103
Parker Heights	Ashley Park	100	100		100	30

* Reports from school principals indicate by September 21 the almost totally occupied count of number of pupils:

Dalton Village	340
Boulevard Homes	419
Keyway	123

The Alternatives

If it is determined that preventive measures need to be taken in order to relieve the situation, several alternatives should be considered.

1a To relieve overcrowding at Berryhill, reassign elementary

students as follows:

- (a) 140 pupils from Thomasboro's downtown satellite district to Clear Creek.
- (b) 240 pupils from Berryhill's Boulevard Homes district to Thomasboro.
- (c) Another 179 pupils: 47 each to Allenbrook 1-5 and Tuckaseegee 1-5; 60 to Paw Creek (1-4) and 25 to Druid Hills (Gr 6).

As a result of these moves the following enrollment pattern would be established:

	W	B	T	%B
Clear Creek	246	203	449	45
Thomasboro	525	259	784	33
Allenbrook	379	206	584	35
Druid Hills	301	177	478	37
Paw Creek	434	194	628	31
Tuckaseegee	428	238	666	36
Berryhill	441	244	685	36

1b To relieve overcrowding at Amay James redraw the Nations Ford attendance line so as to include 280 of Dalton Village; and, satellite 60 pupils to Shamrock Gardens from the remainder of Dalton Village.

As a result of this move the following enrollment pattern would be established:

	W	B	T	%B
Shamrock Gardens	381	164	525	31
Nations Ford	674	495	1169	42
Amay James	133	118	251	47

This move would transfer an additional 280 pupils to Nations Ford. These pupils would be accommodated by using mobile units at Nations Ford or by using portions of Sterling Child Development Center. (8 rooms).

- 1c To relieve conditions at Barringer, send the 123 pupils from Keyway Apts:
- (a) 140 pupils from Oakhurst's downtown satellite district to Bain.
 - (b) 123 pupils from Keyway to Oakhurst.

As a result of these moves the enrollment would be:

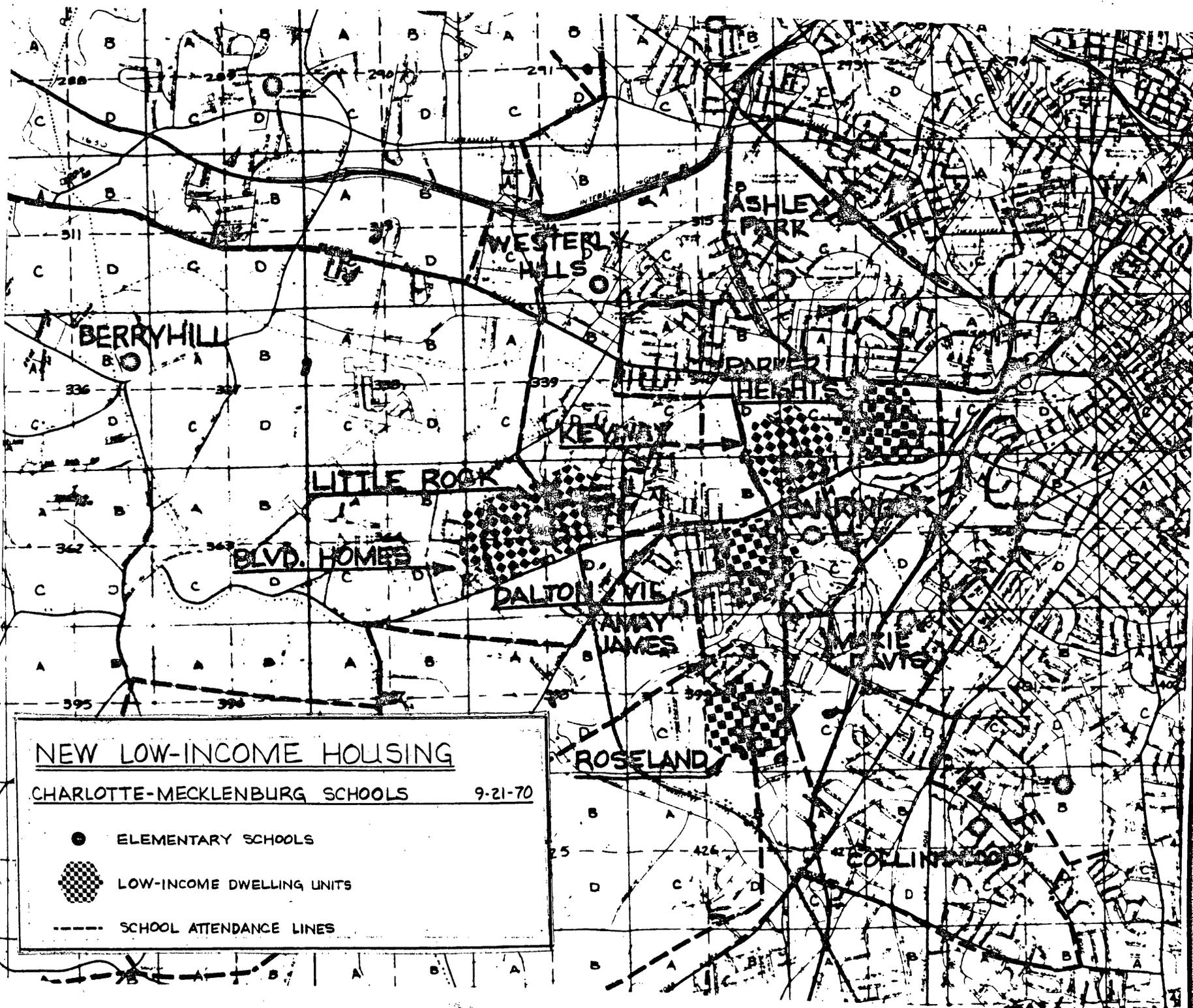
	W	B	T	%B
Bain	752	163	915	18
Barringer	262	173	435	40
Oakhurst	565	195	760	26

11a

12a

Exhibit 5 Attached to Interim Report

(See Opposite) 



NEW LOW-INCOME HOUSING

CHARLOTTE-MECKLENBURG SCHOOLS 9-21-70

- ELEMENTARY SCHOOLS
- ▣ LOW-INCOME DWELLING UNITS
- SCHOOL ATTENDANCE LINES

Exhibit 6 Attached to Interim Report

(See Opposite) 

ENROLLMENT PROBLEMS

September 22, 1970

1. The Problem:

The major enrollment problem in the secondary schools is in the Spaulgh area. This problem is a result of the large number of public and private low rent housing in the western area. These projects are now distributed among the junior high school attendance areas as follows:

Quail Hollow-----Roseland
 Smith-----Keyway
 Wilson-----Dalton Village
 Carmel-----Parker Heights
 Spaulgh-----Boulevard Homes and
 Little Rock Homes

The school in the greatest potential difficulty is Spaulgh. The present racial ratio at Spaulgh is 38.4% black. Little Rock Homes is not yet occupied. When this is occupied, together with other changes in the Spaulgh area, Spaulgh Junior High could become, before the end of this school year, a predominately black school.

2. Suggested Remedy#1

a. The Independence High School satellite area is now served, primarily, by Wilson and Spaulgh Junior High Schools. It would be desirable to relate this area to the junior high schools which serve Independence.

b. Northeast Junior High School, with a black ratio of 8.4% is an obvious imbalance. Elementary and senior high students are now being transported the same distance that would be necessary if a satellite area were created for Northeast.

c. It is suggested that the Wilson satellite (which serves the Independence area) in the Johnson C. Smith University area be transferred to McClintock and Albemarle Road Junior High School.

d. It is suggested that the part of the Spaulgh attendance area which serves the Independence satellite be transferred to Northeast and Albemarle Road Junior High Schools.

e. It is suggested that the Little Rock Homes development be assigned to the Wilson Junior High School attendance area.

The following chart shows the present data for these junior high schools and the anticipated data should these changes be adopted:

PRESENT MEMBERSHIP

<u>School</u>	<u>Cap.</u>	<u>Anticipated Enrollment</u>	<u>Actual Membership 9/18/70</u>	
			<u>B</u>	<u>T</u>
McClintock	1100	1526	515	1271
Albemarle Rd.	1158	1154	506	1055
Northeast	670	612	51	603
Wilson	1255	854	526	912
Spaugh	1091	1110	440	1144
				<u>%B</u>
				24.7
				29.0
				8.4
				35.7
				38.4

PROPOSED ADJUSTMENTS - Sept. 1970

<u>School</u>	<u>Cap.</u>	<u>Anticipated Enrollment</u>	<u>Proposed Membership</u>	
			<u>B</u>	<u>T</u>
McClintock	1100	1526	593	1349
Albemarle Rd.	1158	1158	350	1099
Northeast	670	612	129	681
Wilson	1255	854	248	834
Spaugh	1091	1110	518	1022
				<u>%B</u>
				29.1
				31.8
				18.9
				29.7
				31.1

PROPOSED ADJUSTMENT - February 1971
(with full occupancy of Little Rock Homes)

<u>School</u>	<u>Cap.</u>	<u>Anticipated Enrollment</u>	<u>Proposed Membership</u>	
			<u>B</u>	<u>T</u>
Wilson	1255	854	333	919
				<u>%B</u>
				36.2

Suggested Remedy #2

Assign the Little Rock Homes project (not now occupied) to Northeast Junior High School as a satellite. This would create a black population of approximately 19.5%. It would leave Spaugh Junior High at the 38.4 ratio. It has the advantage of not requiring any pupils to be moved at this time. It has the disadvantage of causing bussing of a greater distance than remedy #1. It does not relate junior high and senior high areas to the degree that plan #1 does. It does not offer a very permanent solution to the problem at Spaugh.

The following chart shows the effect of this plan on the schools involved:

<u>PRESENT MEMBERSHIP</u>						
<u>School</u>	<u>Cap</u>	<u>Anticipated Enrollment</u>	<u>Actual Membership</u>	<u>9/18/70 %E</u>		
			<u>B</u>	<u>T</u>		
Northeast	670	612	51	552	603	8.4
<u>PROPOSED ADJUSTMENT</u>						
Northeast	670	612	136	552	688	19.8

15a

