



10953467

Supreme Court, U. S.

FILED

APR 1 1972

APPENDIX

Volume 1—Pages 1a to 480a

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-507

WILFRED KEYES, ET AL.,

PETITIONERS,

TELETYPE UNIT
OCT 11 1971
SEP 26 1973

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

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

CERTIORARI GRANTED JANUARY 17, 1972

PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 8, 1971

INDEX TO APPENDIX

Volume 1

	PAGE
Docket Entries	1a
Complaint for Permanent Injunction and Declaratory Judgment	2a
Exhibits annexed to Complaint:	
Plaintiffs' Exhibit 3—Resolution 1520	42a
Plaintiffs' Exhibit 4—Resolution 1524	49a
Plaintiffs' Exhibit 5—Resolution 1531	60a
Motion for Preliminary Injunction	71a
Answer of Defendants Amesse, Noel and Voorhees, Jr.	73a
Hearing on Preliminary Injunction July 16-22, 1969	85a

TESTIMONY

(MINUTES OF HEARING ON PRELIMINARY INJUNCTION JULY 16-22, 1969)

Plaintiffs' Witnesses:

Rachel B. Noel—	
Direct	85a
Redirect	104a
A. Edgar Benton—	
Direct	108a
Cross	121a
Redirect	123a

	PAGE
Paul O. Klite—	
Direct	126a, 133a
Voir Dire	132a
Cross	139a
Redirect	142a
James D. Voorhees, Jr.—	
Direct	143a
George E. Bardwell—	
Direct	151a, 191a
Voir Dire	185a
Cross	193a
Robert D. Gilberts—	
Direct	227a
Cross	252a
Redirect	255a
 <i>Defendants' Witnesses:</i>	
Gilbert Cruter—	
Direct	208a, 214a
Voir Dire	213a
Cross	216a
Howard L. Johnson—	
Direct	256a
Cross	302a
Recross	369a
Robert Gilberts—	
Direct	376a
Cross	393a
Redirect	408a
Recross	414a

	PAGE
Richard Koeppe—	
Direct	419a, 437a
Voir Dire	436a
Cross	438a
Preliminary Injunction	452a
Memorandum Opinion and Order of District Court	454a
Opinion of Court of Appeals dated August 5, 1969	455a
Supplemental Findings, Conclusions and Temporary Injunction by District Court	458a
Opinion of Court of Appeals dated August 27, 1969	459a
Order	463a
Opinion by Brennan, J. on Application for Vacating of Stay	464a
Opinion of Court of Appeals dated September 15, 1969	467a
Answer	470a
Memorandum Opinion and Order	475a

Volume 2

(MINUTES OF TRIAL ON MERITS,
FEBRUARY 2-20, 1970)

	PAGE
Minutes of Trial on Merits, February 2-20, 1970	481a
<i>Plaintiffs' Witnesses:</i>	
Paul Klite—	
Direct	481a, 493a, 502a, 523a, 530a, 533a, 537a
Voir Dire	491a, 502a, 522a, 528a, 532a, 536a
Cross	564a
Redirect	621a
Lorenzo Traylor—	
Direct	579a
Cross	607a
Redirect	621a
Gerald P. Cavanaugh—	
Direct	626a
Cross	646a
Redirect	652a
Recross	655a
Mary Morton—	
Direct	656a
Cross	660a
Marlene Chambers—	
Direct	665a, 671a
Voir Dire	670a
Cross	676a
Redirect	681a
Recross	682a

	PAGE
Palicia Lewis—	
Direct	684a
Cross	693a
Redirect	696a
Recross	696a
Mildred Biddick—	
Direct	697a
George E. Bardwell—	
Direct	700a, 703a, 707a, 716a, 727a, 757a, 769a, 790a, 798a
Voir Dire	702a, 707a, 715a, 726a, 755a, 767a, 786a, 791a
Cross	800a
Redirect	818a
George L. Brown, Jr.—	
Direct	857a
Dr. Dan Dodson—	
Direct	1469a
Cross	1493a
<i>Defendants' Witnesses:</i>	
Robert L. Hedley—	
Direct	820a, 834a
Voir Dire	833a
Lois Heath Johnson—	
Direct	893a
Cross	922a
Redirect	955a
Recross	956a

	PAGE
Palmer L. Burch—	
Direct	963a
Cross	978a
Redirect	1023a, 1030a
Recross	1025a

Volume 3

William Berge—	
Direct	1033a
Cross	1051a
James C. Perrill—	
Direct	1076a
Cross	1083a
Redirect	1100a
Recross	1101a
John E. Temple—	
Direct	1101a, 1115a, 1129a
Voir Dire	1112a, 1128a
Cross	1131a
Jean McLaughlin—	
Direct	1131a
Cross	1146a
Redirect	1150a
Dr. Harold A. Stetzler—	
Direct	1150a
Cross	1189a
Redirect	1210a
Lidell M. Thomas—	
Direct	1214a
Cross	1239a
Redirect	1252a
Recross	1253a

	PAGE
Charles Armstrong—	
Direct	1254a
Cross	1289a
Kenneth Oberholtzer—	
Direct	1299a
Cross	1393a
Redirect	1463a
Memorandum Opinion and Order of District Court ..	1514a

Volume 4

(MINUTES OF HEARING ON RELIEF, MAY 11-14, 1970)

Hearing on Relief, May 11-19, 1970	1515a
--	-------

Plaintiffs' Witnesses:

James Coleman—	
Direct	1516a, 1526a
Voir Dire	1520a
Cross	1552a
Redirect	1561a
Neal Sullivan—	
Direct	1562a
Cross	1588a
Redirect	1598a
George Bardwell—	
Direct	1602a
Cross	1664a
Redirect	1683a
William Smith—	
Direct	1688a
Cross	1698a

	PAGE
Robert O'Reilly—	
Direct	1910a, 1925a
Voir Dire	1920a
Cross	1942a
Redirect	1968a
<i>Defendants' Witnesses:</i>	
Robert D. Gilberts—	
Direct	1706a
Cross	1763a
Redirect	1834a
Recross	1842a
James D. Ward—	
Direct	1844a
Cross	1868a
George Morrison, Jr.—	
Direct	1874a
Cross	1892a
Redirect	1896a
Albert C. Reamer—	
Direct	1897a
Cross	1905a
Decision Re Plan or Remedy by District Court	1969a
Final Decree and Judgment	1970a
Defendants' Notice of Appeal	1978a
Plaintiffs' Notice of Appeal	1979a
Decision by Court of Appeals on Motion for Stay, etc.	1981a

	PAGE
Decision by U. S. Supreme Court on Stay, etc.	1984a
Opinion of Court of Appeals dated June 11, 1971	1985a
Judgment of Court of Appeals dated June 11, 1971 ..	1985a
Decision by Court of Appeals for "Clarification of Opinion"	1986a
Order Granting Certiorari	1988a

INDEX TO EXHIBITS APPEARS IN EXHIBIT VOLUME

CIVIL DOCKET

UNION STATES DISTRICT COURT

APPEAL

appeal from

Jury demand date:

D. C. Form No. 105 Rev.

JSS 6-19-69 ATTORNEYS J. S. 6 6/8/70 ✓

TITLE OF CASE

WILFRED KEES, individually and on behalf of CHRISTI KEES, a minor; CHRISTINE A. COLLEY, individually and on behalf of KRIS M. COLLEY and MARK A. WILLIAMS, minors; IRMA J. JENNINGS, individually and on behalf of PRONDA O. JENNINGS, a minor, ROBERTA R. WADE, individually and on behalf of GREGORY L. WADE, a minor; EDWARD J. STARKS, JR., individually and on behalf of DENISE MICHELLE STARKS, a minor; JOSEPHINE PEREZ, individually and on behalf of CARLOS A. PEREZ, SHEILA R. PEREZ and TERRY J. PEREZ, minors; MAXINE N. BECKER individually and on behalf of DINAH L. BECKER, a minor; EUGENE R. WEINER, individually and on behalf of SARAH S. WEINER, a minor,

vs

SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO; THE BOARD OF EDUCATION, SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO; 3. WILLIAM C. BERGE, individually and as President, Board of Education, School District Number One, Denver, Colorado; 4. STEPHEN J. KNIGHT, JR., individually and as Vice President, Board of Education, School District Number One, Denver, Colorado; 5. JAMES C. PERRILL, 6. FRANK K. SOUTHWORTH, JOHN H. AYESSE, 8. JAMES D. VOORHEES, JR., and EUGENE B. NOEL, individually and as members, Board of Education, School District Number One, Denver, Colorado; 10. ROBERT D. GILBERTS, individually and as Superintendent of Schools, School District Number One, Denver, Colorado,

Alleged violation of civil rights. Action for declaratory judgments on whether the school board is denying some children equal educational opportunities.

For plaintiff:

BARNES & JENSEN
Craig S. Barnes ✓
2430-South-University Blvd., 1800
Denver, Colorado 80210
Tel: 744-6455 823 4200

Gordon G. Greiner X
500 Equitable Building
Denver, Colorado 80202
Tel: 292-9200

Jack Greenberg & James M. Nabrittt, III
Conrad K. Harper
10 Columbus Circle,
New York, New York 10019

(cont. on next page)

For defendant:

ALL DEPTS. FACERT VOORHEES, AYESSE & NOEL
FERRILL GILBERTS
Dvr Club Bldg.
Denver, Color, 244-5475 292-4060

ALL DEPTS. FACERT VOORHEES, AYESSE & NOEL
FERRILL GILBERTS
Dvr Club Bldg.
Denver, Color, 244-5475 292-4060

Attys. for Intervening Defts. *See page 5/74*
Charles F. Brega and Robert E. Tennor
2361 First National Bank Building
Denver, Colorado 80202 292-9000

STATISTICAL RECORD	COSTS	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk	768073	15.00	15.00
J.S. 6 mailed	Marshal	9/8/1-123	5.00	5.00
Basis of Action:	Docket fee	11/1-12	5.00	5.00
Action arose at:	Witness fees	11/1-12	5.00	5.00
	Depositions	11/1-12	5.00	5.00

DATE	Plaintiffs Attorneys OF COUNSEL:	Date Order or Judgment Note
	PROCEEDINGS	
	Susan G. Barnes, Esq. ✓ 7000 West 14th Avenue Denver, Colorado 80215 237-1342	Robert Bruce Miller, Esq. ✓ 3216 Arapahoe Avenue Pouder, Colorado 80302 443-6620
	Robert T. Connerly, Esq. ✓ 500 Equitable Building Denver, Colorado 80202	Gail E. Oppenheer, Esq. ✓ Western Federal Savings Building Denver, Colorado 80202 825-5111
	Harold A. Haddon, Esq. ✓ American National Bank Building Denver, Colorado 80202 255-5775	James W. Schroeder, Esq. ✓ 1700 Broadway Denver, Colorado 80202 244-8116
	William H. Lewis, Esq. ✓ 1839 York Street Denver, Colorado 80206 377-6220	Lawrence W. Treece, Esq. 500 Equitable Building Denver, Colorado 80202
	Richard E. Young, Esq. ✓ 1700 Broadway Denver, Colorado 80202 244-8116	
	Defts. Pro se:	
	7. John H. Amesse, M.D. 2035 E. 18th Ave. Denver, Colorado 80206	
	8. James D. Voorhees, Jr. 818 Patterson Bldg. Denver, Colorado 80202	
	9. Rachael B. Noel 2661 Adams St. Denver, Colorado 80205	

D.F.

6/27/69
F

VS
School District Number One, et al

Date Order or Judgment Noted

PROCEEDINGS

COMPLAINT

DATE
969
-19

Summons issued

Motion for Preliminary Injunction

Hearing (WED) Preliminary Injunction... Ordered: Both Sides to submit list of Exhibits & witnesses within 10 days from this date... Clerk to set hearing date in July. eod 6/30/69

P

MOTION of Pltfs. for Temporary Restraining Order

Hearing (WED) Re Temporary Restraining Order... Arguments of Counsel... Ordered:

Matter continued to later time. Recess. eod 7/8/69

7/11 Pltfs. Preliminary List of Exhibits

Reporter's Transcript of proceedings held on 6/27/69

7/14 Marshal's return on Service by serving W. C. Berge President, Board of Education,

School Dist #1 & Personally, Stephen J. Knight, Jr., James C. Parrill, Frank K.

Southworth, John H. Amesse, James D. Voorhies, Jr., Rachel B. Noelon, Robert

D. Gilberts, Duke W. Dunbar, Atty. General for State of Colo on 6/20/69

7/9**** MOTION of Defts. for Enlargement of Time

Hearing (WED) Ordered: Defts. Motion for Enlargement of time within which to file answers is Granted...

Signed (WED) Order for Enlargement of time... Defts. have until 7/25/69 to file

answers or otherwise plead. eod 7/14/69

Pltfs. Preliminary List of Witnesses

7/15 Pltfs. Preliminary Memo. of Law

Cert. of Service.

7/16 ANSWER OF DEFTS. JOHN H. AMESSE, RACHEL B. NOEL & JAMES D. VOORHIES, JR. Cert.

of Service.

Pltfs. Proposed Findings of Fact

Trial to Court (WED)... 1st Day... Witnesses... Exhibits. recess. eod 7/17/69

7-17 Defendants' Preliminary List of Exhibits

Defendants' Preliminary List of Witnesses

7/18 Signed (WED) Order for Production of Documents. eod 7/18/69

Trial to Court (WED)... 2nd Day... Witnesses... Exhibits. recess to 7/18/69

7/21 Trial to Court (WED)... 3rd Day... Witnesses... Exhibits. recess to 7/21/69

7/22 Trial to Court (WED)... 4th Day... Witnesses... Exhibits... matter stands submitted & taken under advisement. eod 7/23/69

7/21** Defts. Preliminary Memo. of Law

Defts. Proposed Conclusions of Law

Defts. Amendments to Preliminary Findings of Fact & Supplemental Proposed Findings of Fact

7/22 Stipulation of Facts as to Parties as to the Case

Trial to Court (WED)... 5th Day... Findings of Fact & conclusions of Law, Pltfs.

Motion for Preliminary Injunction should be & hereby is GRANTED... Ordered:

Pltfs. counsel to prepare an order... Ordered: Defts. Motion for a stay is

7/25 GRANTED (10 Day Stay)... Recess. eod 7/23/69

Copy of Official Transcript Volume V of proceedings held on 7/22/69

Objections to Form of Preliminary Injunction

Stipulation for extension of time for defts. to file pleadings, to & including 8/14/69.

Signed (WED) Order for Enlargement of Time, granting next above stipulation. eod 7/28/69.

7/28 Pltfs. Supplementary List of Exhibits and Witnesses

Defts. Supplementary List of Exhibits

7/29 Signed (WED) Preliminary Injunction, that temporary injunction is granted & to continue during the pendency of this suit & until action is tried on its merits

Defts. granted 10 days from & after 7/23/69 for appeal or review. eod 7/29/69
NOTICE OF APPEAL

Cost Bond in the amount of \$250.00

(CONTINUED)

DATE	PROCEEDINGS	Date Order Judgment No
7/31	Application for Stay of Preliminary Injunction filed by all Defts. except James D. Voorhees, Jr., John H. Amesse, and Rachel B. Noel. Hearing (WED) Application for Stay...Ordered: Application is DENIED...Temporary stay is GRANTED...Written order to follow, eod 7/31/69	
8/1,	Signed (WED) Memorandum Opinion & Order, that the Motion for preliminary injunction is Granted, eod 8/4/69	
8/6	Plaintiffs MOTION for Hearing on Remand and Request for Immediate Hearing and for Temporary Restraining Order.	
8/7	MANDATE...10th Circuit...Remanding case to Judge Doyle.	
8/6	Hearing WED on Motion for Hearing on Remand and for Temporary Restraining order. Matter continued to 8/7	
8/7	Hearing (WED) Motion on Remand for Temporary Restraining Order GRANTED until 8:00 a.m. 8/15/69 or further order of Court. Matter on Remand taken under advisement.	
8-13	Signed (WED) Temporary Restraining Order. Signed 12:20 p.m. Motion of defts to dismiss...Cert of Mailing	
-11	Defendants' Brief on Remand	
8-14	Copy reporter's transcript...proceedings on 8-7-69 Signed (WED) Supplemental Findings, Conclusions and Temporary Injunction and Opinion as to Applicability of Section 407(a) of the Civil Rights Act of 1964 eod 8-14-69	
-18	NOTICE OF APPEAL	
	Appearance Bond on Appeal	
	Application of defts. for Stay of Preliminary Injunction	
8-19	Hearing (WED) Motion for Stay...Ordered Motion for Stay is denied Receipt from U. S. Court of Appeals for record on appeal	
8/25	Reporter's Transcript of proceedings held on 8/7/69 Memo. in Support of Motion to Dismiss filed by Defts.	
8/26	Depositor of Robert Dubois Gilberts. Exhibits on next above deposition	112A
9/5	Pltfs. Memo. Opposing Defts. Motion to Dismiss...Cert. of Service.	
9/10	Reporter's Transcript of proceedings held on 8/6/69	
9/11	Reply Memo. in Support of Motion to Dismiss...Cert. of Service. Hearing (WED) Motion to Dismiss...Ordered: Motion is Denied, Pltf counsel to prepare an Order...Ordered: Discovery to be completed in 60 days. eod 9/15/69	F
9/26	Order setting Pre Trial Conference for 11/4/69	
9-29	Stipulation for extension of time.	
	Signed (WED) Ordered that defendants have until 10-6-69 to file an answer herein	P
10/3	Entry of Appearance of Kenneth H. Hornwood for defendants. Reporter's Transcript, Defts Motion to Dismiss, of proceedings held on 9/11/69	
10/6	REPORTER'S TRANSCRIPT OF PROCEEDINGS HELD ON 9/11/69 ANSWER of all defts. except Defts. 7, 8 & 9...Cert. of Mailing	
*9/15	Cert. copy from Court of Appeals that the Motion is Denied & further proceedings on the appeal are held in abeyance until further order of Court. End	✓
10/17	Written Interrogs. by Certain Defts to be Answered by Pltfs.	
10/17	Signed (WED) Memorandum Opinion and Order that motions to dismiss for failure to State a Claim are Denied...Def. have 15 Days from 9/11/69 to file Answer. Signed 10/16/69. eod 10/20/69	
10/17	Pltfs. First Set of Interrogs....Cert. of Service.	
10/20	Pltfs. First Motion for Production of Documents...Cert. of Service. MOTION to Intervene as Defts.	
	TENDERED ANSWER AND CROSS CLAIM OF INTERVENORS	
10/21	Confession of All Defts. except Defts. 7, 8 & 9 of Motion to Intervene...Cert. Mail.	
10/24	Cert. of Mailing Motion to Intervene & Tendered Answer.	10/24-27

VS.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, ET AL.,

PROCEEDINGS

Date Order Judgment

DATE	DESCRIPTION	Date Order Judgment
10/27	MOTIONS of All Defts. Except 7, 8 & 9 for Orders Protecting Defts. in the Production of Documents...Cert. of Service.	
10/29	Defts. of all Defts. Except 7, 8 & 9 to Interrogatories...Cert. of Service. Pltfs. Preliminary List of Witnesses & Exhibits Pltfs. Objections to "Written Interrogs. by Certain Defts. to be Answered by Pltfs." ...Cert. of Service.	
10/30	Pltfs. Second MOTION for Production of Documents. Pltfs. Second Set of Interrogatories to Defts....Cert. of Service MOTION of Defts. except 7, 8 & 9 to Vacate Pre Trial & Trial Settings...Cert. of Service.	
11/3	Pltfs. Third Motion for Production of Documents...Cert. of Service. Pltfs. Answers to Interrogs....Cert. of Service. Pltfs. Interrogs. to Intervenor Defts....Cert. of Service. Pltfs. Revised List of Exhibits ..Cert. of Service	
11/4	Stipulation that Pltfs. will not object to Intervention	
11/3***	Memo. in Support of Objections to Interrogs.	
11/4	Defts except Voorhees, Jr., Amesse & Noel, Answers to Interrogs....Cert. Mailing	
11/3	MOTION of Defts. except Amesse, Noel & Voorhees, Jr. for Cost Bond . Cert. Service Pltfs. Pre Trial Memo	
11/5	Joint Report on Status of Objections to Discovery Pre Trial Conference (WED)...Ordered: Motion of Deft. to intervene is Granted Ordered: Counsel to prepare an order...Defts. Motion for a cost bond Ordered to be heard at a later time...Ordered:Defts. Motion for continuance of pre-trial conference is GRANTED & will be held on 11/25/69...Ordered:Further hearing to be heard 11/13/69. eod 11/6/69	
11/13	Deft. Memo. Brief in Support of Motion for Cost Bond, all defts. except Amesse, Noel & Voorhees, Jr.	
	Supplemental Joint Report on Status of Discovery	
	Hearing (WED) Discovery Status...Discovery problems resolved & written order will be prepared by counsel...Ordered: Motion for Cost bond held in abeyance. ordered: Pre Trial to be held 11/25/69 & set for Trial to Court at 1/5/70. eod 11/14/69	
11/13	Signed (WED) Order Motion to Intervene as Defts. is Granted. eod 11/14/69	
11/14	Reporters Transcript of proceedings held on 11/5/69	
11/17	ANSWER OF DEFTS. EXCEPT Noel, Amesse & Voorhees, Jr. to Cross Claim of Intervenor's ...Cert. of Mailing	
11/18	Memo. of Defts. in Reply to Pltfs. Preliminary Memo. of Law	
11/20	Pltfs. Conclusions of Law	
11/21	Intervening Defts. 1st Set of Interrogs. MOTION of Intervening Defts. to Dissolve Preliminary Injunction MOTION of Intervening Deft. for Production of Documents...Cert. of Mailing Intervening Defts. Interrogs. to the Defts.	
11/25	Supplemental Answers to Pltfs. 1st Set of Interrogs. Supplemental Answers to Pltfs. Second set of Interrogs. Pre Trial Conference (WED)...Trial to Court...10 to 15 Days...Filed Instanter 1. Signed WED Order Authorizing Production & copying 2. Defts. pretrial Memo. 3. Intervening Defts. Pre Trial Memo. 4. Pltfs. Second Revised list of Exhibits...Ordered: Attys have 15 days to file resumes of their witnesses...Ordered: Pltfs. to prepare a notice to be published re: additional intervenors...Ordered: Additional witnesses & Exhibits to be submitted by 12/24/69.../Further hearing set for 12/1/69. 11/26/69 Cert. of Mailing for Intervening Defts. Pre Trial Memo. filed 11/25/69 Defts. Objections to Evidence & Exhibits Introduced at the Preliminary Injunction Hearing...Cert. of Service.	

P1

✓

11/26

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judged
1969		
7/31	Application for Stay of Preliminary Injunction filed by all Defts. except James D. Voorhees, Jr., John H. Amesse, and Rachel B. Noel.	
8/1,	Hearing (WED) Application for Stay... Ordered: Application is DENIED... Temporary stay is GRANTED... Written order to follow. eod 7/31/69	
8/6	Signed (WED) Memorandum Opinion & Order, that the Motion for preliminary injunction is Granted, eod 8/4/69	
*** 8/7	Plaintiffs MOTION for Hearing on Remand and Request for Immediate Hearing and for Temporary Restraining Order.	
*** 8/6	MANDATE... 10th Circuit... Remanding case to Judge Doyle. Hearing WED on Motion for Hearing on Remand and for Temporary Restraining order. Matter continued to 8/7	
8/7	Hearing (WED) Motion on Remand for Temporary Restraining Order GRANTED until 8:00 a.m. 8/15/69 or further order of Court. Matter on Remand taken under advisement.	
8-13	Signed (WED) Temporary Restraining Order. Signed 12:20 p.m. Motion of defts to dismiss... Cert of Mailing	
*8-11	Defendants' Brief on Remand	
8-14	Copy reporter's transcript.. proceedings on 8-7-69	
	Signed (WED) Supplemental Findings, Conclusions and Temporary Injunction and Opinion as to Applicability of Section 407(a) of the Civil Rights Act of 1964 eod 8-14-69	
8-18	NOTICE OF APPEAL	
	Appearance Bond on Appeal	
	Application of defts. for Stay of Preliminary Injunction	
8-19	Hearing (WED) Motion for Stay... Ordered Motion for Stay is Denied Receipt from U. S. Court of Appeals for record on appeal	
8/25	Reporter's Transcript of proceedings held on 3/7/69	
8/25	Memo. in Support of Motion to Dismiss filed by Defts.	
	Depositor of Robert Dubois Gilberts.	
	Exhibits on next above deposition	
9/5	Pltfs. Memo. Opposing Defts. Motion to Dismiss... Cert. of Service.	
9/10	Reporter's Transcript of proceedings held on 8/6/69	
9/11	Reply Memo. in Support of Motion to Dismiss... Cert. of Service. Hearing (WED) Motion to Dismiss... Ordered: Motion is Denied, Pltf counsel to prepare an Order... Ordered: Discovery to be completed in 60 days. eod 9/15/69	
9/26	Order Setting Pre Trial Conference for 11/4/69	
9-29	Stipulation for extension of time.	
	Signed (WED) Ordered that defendants have until 10-6-69 to file an answer herein	
10/3	Entry of Appearance of Kenneth H. Worwood for defendants.	
	Reporter's Transcript, Defts Motion to Dismiss, of proceedings held on 9/11/69	
10/6	ANSWER of all Defts. except Defts. 7, 8 & 9... Cert. of Mailing	
***9/15	ANSWER of all Defts. except Defts. 7, 8 & 9... Cert. of Mailing	
10/17	Cert. copy from Court of Appeals that the Motion is Denied & further proceedings on the appeal are held in abeyance until further order of Court. Eod	
10/17	Written Interrogs. by Certain Defts. to be Answered by Pltfs.	
	Signed (WED) Memorandum Opinion and Order that motions to dismiss for failure to State a Claim are Denied... Deft. have 15 Days from 9/11/69 to file Answer. Signed 10/16/69. eod 10/20/69	
10/17	Pltfs. First Set of Interrogs.... Cert. of Service.	
10/20	Pltfs. First Motion for Production of Documents... Cert. of Service. MOTION to Intervene as Defts.	
	TENDERED ANSWER AND CROSS CLAIM OF INTERVENORS	
10/21	Confession of All Defts. except Defts. 7, 8 & 9 of Motion to Intervene... Cert. Na. 1.	
10/24	Cert. of Mailing Motion to Intervene & Tended Answer.	

DATE	PROCEEDINGS	Date of Judgment
1969		
11/28	Pltfs. Response to Motion to Dissolve Preliminary Injunction filed by Intervenor's Cert. of Service.	
12/1	Cert. of Mailing Supplemental Answers to Pltfs. First set of Interrogs. Hearing (WED) Ordered: Upon oral motion of Intervenor, this matter is continued. eod 12/2/69	
12/2	Intervening Defts. Answers to Interrogs. Propounded by Pltf...Cert of Mailing	
12/3	Pltfs. Partial Answers & Objections to Intervening Defts. First Set of Interrogs, to the Pltfs...Cert of Service	
12/4	Further Pre Trial Conference (WED)...Intervenor's Exhibits A,B,C,D & E marked Filed Instanter	
12/5	Signed (WED) Order Re Class Action and Notice of Pending of Class Action eod 12/4/69	
12/5	Answers of all Defts. except Voorhees, Jr., Amesse & Noel to Certain Intervenor's Interrogs.	
12/8	Objections to Interrogs. by Intervenor's to Defts....Cert. of Service.	
12/8	Pltfs Additional Response to Intervenor's Interrogs...Resume of Expected Testimony of Pltfs. Witnesses...Cert. of Service.	7C
12/10	Signed (WED) Order Re Class Action, that pltfs. may maintain this action as a class action...that a Notice in the form attached be published in The Rocky Mt. News & in the Denver Post, for 3 consecutive days. eod 12/11/69	
12/11	Pltfs. Requests for Admissions of Original Defts....Cert. of Service.	
12/12	Reporters Partial Transcript of proceedings held on 12/11/69	
12/12	Reporters Transcript (Pre Trial Conference) held on 11/25/69	
12/15	Interrogs. to Deft. Rachel B. Noel...Cert. of Mailing	
	Interrogs. to Deft. John H. Amesse...Cert. of Mailing	
	Interrogs. to Deft. James D. Voorhees, Jr....Cert. of Mailing	
12/17	Resume of Expected Testimony of Possible Intervenor's Witnesses ..Cert. of Mail.	
12/23	All Defts. Except Voorhees, Jr., Amesse & Noel Additional Answers to Pltfs. 2nd set of Interrogs....Cert. of Service.	
	All Defts. Except Voorhees, Jr., Amesse & Noel Additional Answers to Intervenor's Interrogs....Cert. of Service.	
	All Defts. except Voorhees, Jr., Amesse & Noel Answers to Pltfs. 1st set of interrogs ...Cert. of Service.	
	All Defts. Except Voorhees, Jr., Amesse & Noel Response to Pltfs. Requests for Admissions of Defts....Cert. of Service.	
	Deposition of George E. Bardwell	
12/30	MOTION of Intervening Defts. for leave to check out & copy Pltfs. Exhibit #83 Signed (WED) Granting Motion next above.	
	Signed Receipt for Pltfs. Exhibit 83	
12/30	Pre Trial Conference (WED) Ordered: Trial date of 1/5/69 is vacated & reset to 1/12/70...written order to follow. eod 12/30/69	
	Pltfs. Complete Pre Trial List of Exhibits & Witnesses ..Cert. of Service.	
	Defts. MOTION for Order Postponing Date of Commencement of Trial	
12/31	Deposition of Theodore R. White, Jr.	
	Defts. Second Set of Additional Answers to Pltfs 2nd set of Interrogs....Cert. of Service.	
	Defts. Additional Answers to Intervenor's Interrogs.	
1/2/70	Answer of Deft. John H. Amesse to Interrogs. to Intervening Defts. Cert. of Service	
	Answer of Deft. James D. Voorhees, Jr. to Interrogs. of Intervening Defts. Cert. Service	
	Answers of Deft. Rachel B. Noel to Interrogs. of Intervening Defts. Cert. Service	
1/6	Hearing (WED) Pltfs. Motion for Continuance of Trial Date...Ordered: William Ris Granted leave to enter his appearance as Defts. Counsel...Ordered: Trial Date of 1/12/70 is vacated & will be set a later time. eod 1/7/70	
1/9	Signed (WED) Order that Trial should commence on 2/2/70. eod 1/12/70	
1/12	Defts. Summaries of Expected Testimony of Defts. Witnesses...Cert. of Service.	

VS.
SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, ET AL.,

Date Order or
Judgment Noted

PROCEEDINGS

DATE	PROCEEDINGS	Date Order or Judgment Noted
1/70		
1/15	Deposition of Paul D. Klite	
1/15	Defts. Additional Answers to Intervenor's Interrogatories... Cert. of Service. Defts. Additional Answers to Intervenor's Interrogatories... Cert. of Service.	
1/22	Defts. Additional Answers to Pltfs. Interrogatories... Cert. of Service.	
1/26	Stipulation Relating to Authenticity of Pltfs. Exhibits....	
1/28	Intervening Defts. List of Witnesses & List of Exhibits... Cert. of Mailing	
1/30	Defts. Complete Pretrial List of Exhibits & Witnesses... Cert. of Service.	
2/2	Intervenor's Objections to Proposed Order of 12/11/69 hearing... Cert. of Mailing	
2/2	Depositions of Kenneth E. Oberholtzer, Alberta M. Jesser & Mary W. Morton Signed (WED) Pre Trial Order... Trial to Court... 20 to 25 Days. eod 2/3/70	
	Signed (WED) Supplemental Pretrial Order. eod 2/3/70	
	Pltfs. Trial Brief	
	Trial to Court (WED)... 1st Day... Witnesses... Exhibits... Recess. eod 2/3/70	
2/3	Deposition of A. Edgar Banton	
2/4	Trial to Court (WED)... 2nd Day... Witnesses... Exhibits... Recess. eod 2/4/70	
2/4	Trial to Court (WED)... 3rd Day... Witnesses... Exhibits... Recess. eod 2/5/70	
2/5	Trial to Court (WED)... 4th Day... Witnesses... Exhibits... Recess. eod 2/6/70	
2/3	Reporter's Transcript of proceedings held on 12/30/69	
2/6	Signed (WED) Order Authorizing Production & Copying of Certain Records... signed 2/3/70. eod 2/6/70	
	Trial to Court (WED)... 5th Day... Witnesses... Exhibits... Recess. eod 2/9/70	
2/11	Marshal's return on Civil Subpoena to Produce Document or Object (12)	
2/9***	Trial to Court (WED)... 6th Day... Witnesses... Exhibits... Recess. eod 2/11/70	
2/10	Trial to Court (WED)... 7th Day... Witnesses... Exhibits... Recess. eod 2/12/70	
2/11	Trial to Court (WED)... 8th Day... Witnesses... Exhibits... Recess. eod 2/12/70	
2/13	Marshal's return on Civil Subpoena to Produce Document or Object	
2/16	Trial to Court (WED)... 9th day... Witnesses... Exhibits... Recess. eod 2/17/70	
2/24	Defts. Memorandum Brief	
2/20***	Trial to Court (WED)... 10th Day... Witnesses... Exhibits... Recess. eod 2/25/70	
2/17***	Trial to Court (WED)... 11th Day... Witnesses... Exhibits... Recess. eod 2/25/70	
2/18	Trial to Court (WED)... 10th Day... Witnesses... Exhibits... Recess. eod 2/25/70	
2/19	Trial to Court (WED)... 11th Day... Witnesses... Exhibits... Recess. eod 2/25/70	
2/20	Trial to Court (WED)... 12th Day... Witnesses... Exhibits... Recess. eod 2/25/70	
2/20	Trial to Court (WED)... 13th Day... Witness... Recess. eod 2/25/70	
2/24	Return on Civil Subpoena	
2/24	Trial to Court (WED)... 14th Day... Closing Arguments... Ordered: Counsel have 10 days to file additional Briefs... Matter stands submitted & is taken under advise- ment. eod 2/25/70	ADVISE
3/5	Signed (WED) Order that Defts. be granted an extension of time to 3/9/70 to file with Court their Reply Brief & also their Proposed Findings of Fact & Con- clusions of Law. eod 3/6/70	
3/6	Intervening Defts. Proposed Findings of Fact... Cert. of Mailing	
3/10	ANSWER to Pltfs. Supplemental Brief	
	Defts. Proposed Findings of Fact... Cert. of Service.	
3/11	Cert. of Service of next above.	
3/21	Signed (WED) Memorandum Opinion & Order... Final Judgment will be entered after a meeting with counsel within the next 30 days. eod 3/24/70	AV
4/16	Meeting of Counsel Re: Injunction... Filed Instantly: Defts. Proposed Judgment... Ordered: Further hearing on 5/11/70, allow 2 days. eod 4/17/70	
4/27	Hearing (WED) Informal Hearing Re: Proposed Resolutions. eod 4/28/70	
4/1	Copy of Resolution	
4/1	Pltfs. Reply Brief and Supplemental Brief	
4/1	Intervening Defts. Memorandum Brief.	
4/1	MOTION of Intervening attorney's to withdraw... Cert. of Service.	
4/1	Defts. Proposed plan... Cert. of Service.	
4/1	Pltfs. Memo for the hearing on Relief... Cert. of Service.	

vs.
SCHOOL DISTRICT NO. 1, etc. et al

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date of Judgment
1970		
5/11	TRIAL TO COURT (WED) 15th day...Witnesses...Exhibits.	
5/12	TRIAL TO COURT (WED) 16th Day...Witnesses,...Exhibits. eod 5/14/70	
5/13	TRIAL TO COURT (WED) 17th day...Witnesses...Exhibits...eod 5/14/70	
5/14	Signed (WED) Order allowing Charles F. Brega and Robert E. Temmer to w/draw as counsel for Intervening Defts...eod 5/14/70	
	TRIAL TO COURT (WED) 18th Day...Witnesses...Exhibits...Ordered: Matter taken under advisement...eod 5/15/70	
	Plaintiff's Conference Memorandum...Cert. of Service.	
5/15	MOTION of The Building Committee of the Faculty of Manual High School for leave to File Amicus Curiae Brief.	
	Signed (WED) Order Allowing above motion...eod 5/15/70	
5/21	Signed (WED) Decision Re Plan or Remedy...eod 5/22/70 (25 pgs)	
**5/14	Marshal's return on Subpoenz	
6/4	Pltfs. Motion to Amend the Complaint for Permanent Injunction & Declaratory Judg. in this Action...Cert. of Service.	
6/8	Signed (WED) Final Decree & Judgment, with this order The Orders & documents contained in the opinion of 5/21/70 & 3/21/70 are incorporated herein, this shall constitute a Final Judgment, there being no further substantive matter to decide there is not just cause for delay & the entire matter can now be appealed. eod 6/11/70	
6/16	MOTION of Defts., except James D. Voorhees, Jr., John H. Amarse & Rachel E. Neal for Temporary Stay of Final Decree & Judgment...Cert. of Service.	
6/16	NOTICE OF APPEAL for all defts. except defts. 7, 8, 9.	
6/17	Cy Notice mailed to Wm. Whittaker and all counsel.	
6/19	Hearing (WED) Motion to Stay...Ordered: Defts. Motion is Denied...Written Order to follow. eod 6/22/70	
	Pltfs. MOTION for Reduction of Time for Transmission of Record	
6/24	NOTICE OF APPEAL (CROSS-APPEAL)	
6/25	Cy Notice mailed to Wm. Whittaker, Clerk, U.S. Court of Appeals and opposing counsel.	
	Signed (WED) Order Granting Ptfs Motion for Reduction of Time for Transmission of Record on Appeal. Record to be transmitted July 17, 1970.	
	Signed (WED) order Denying Defendants' Motion for Stay.	
6/26	Receipt from Court of Appeals for Record on Appeal.	
7/20	Motion for Extension of Time for Transmission of Record.	
7/24	Signed (WED) Order Granting extension of time to July 24, 1970.	
	Reporter's Transcript of proceedings held on 6/15/70	
7/24	Reporter's Transcript of proceedings held 5/11/70 (Volume I only)	
7/27	Receipt from Court of Appeals for Supplemental Record on Appeal.	
	Reporter's Transcript of proceeding s held 5/13/70 (Volume II)	
9/11	Stipulation to Amend Final Decree & Judgment entered on 7/8/70	
	Signed (WED) Order Amending Final Decree & Judgment see filed. eod 9/14/70	
10/22	MOTION of Ptfs. to Amend or Supplement Judgment...Cert. of Service.	
	MOTION of Defts. to Strike Ptfs. Motion to Amend or Supplement Judgment...Cert. of Mailing	
10/27	Hearing on Motions (WED)...Ordered: Motion of Ptfs. to be filed in Circuit Court of Appeals. eod 10/28/70	
12/28 1971	Pltfs. MOTION for Supplemental Orders...Cert. of Service.	
1/4	MOTION of Defts. to Strike Ptfs. Motion for Supplemental Orders...Cert. of Service.	
	ANSWER to Ptfs. Motion for Supplemental Orders...Cert. of Service.	
1/14	Hearing (WED) Supplemental Ordered...Witness...Ordered: Defts. to report to the Court in 30 days as to its plans. Pltf counsel to prepare an order. recess eod 1/14/71	
1/20	Signed (WED) Order, same as hearing on 1/14/71. eod 1/21/71	

PROCEEDINGS

Date Order or Judgment Note

DATE
1971

2/16	Interim Report...Cert. of Service.	
2/24	Pltfs. Consolidated MOTIONS for Further Supplemental Order & for Hearing... Cert. of Service.	✓
3/4	Response to Pltfs. Consolidated Motions for (1) Further Supplemental Orders (2) Hearing...Cert. of Service.	✓
3/17	Hearing (WED) Judge Doyle & counsel discussing miscellaneous matters pertaining to this case. eod 3/17/71	
3/18	Report containing alternative Plans for Implementation of Court Order...Cert. of Service.	
3/22	Hearing (WED) Exhibits...Ordered: Set for further hearing on 5/14/71...Recess... eod 3/24/71.	
3/29	Copy of Order from U. S. Court of Appeals granting defts. motion for a stay of the final decree and judgment	
4/28	Hearing (WED) Ordered: the May 14 hearing to stand...Recess...eod 4/28/71.	
5/14	Hearing (WED) Proposed Plans...Exhibits...Witnesses...Ordered: Matter continued to 5/19/71. eod 5/17/71	
5/19	Pltfs. Memo. for 5/14/71 Hearing to Select the Plans to be Implemented in Sept., 71. Hearing (WED) Re: Proposed Plans...Exhibits...Witnesses...Recess to 5/24/71... eod 5/20/71.	
5/21	Filed by Norma Mae Hessler, Alternate School Integration Plan	
5/24	Hearing (WED) Re: Plans...Witnesses...Exhibits...Judge Doyle concludes & directs that Plan C be adopted by the School Board & put into action as soon as possible, recess. eod 5/25/71	
5/25	Withdrawal of Appearance of Atty. Craig S. Barnes for Pltf. ... Cert. of Service.	
6/23	MOTION of Pltfs. for Desegregation Plan ... Cert. of Service.	
6/29	Stipulation that Preliminary Injunction & Final Judgment and Decree be modified	
6/29	Response to Motion for Desegregation Plan...Cert. of Service.	
7/7	Mandate received from U. S. Court of Appeals...The Trial court is directed to retain jurisdiction of the case for the purpose of supervising the implementation of the plan, with full power to change, alter or amend the plan in the interest of justice & to carry out the objective of the litigation as reflected by this opinion.	
7/19	Reporter's Partial Transcript of proceedings held on 5/14/71	
7/28	Signed (WED) Order Re Motion for Desegregation Plan...Ordered: Motion denied without prejudice to pltfs. rights to refile it...eod 7/29/71.	MPG
8/10	Signed (WED) Order on Bottom of Stipulation filed 6/29/71 that the Stipulation is Approved & an Order is hereby entered directing that the terms & conditions of the Stipulation be carried out. eod 8/10/71	
8/30	Reporter's Partial Transcript commencing 3/22/71	
9/8	Hearing (WED)...Witnesses...Ordered: Plan "A" is to be put into effect by 11/1/71 ...Pltfs. counsel to prepare an order. eod 9/9/71	
9/27	Signed (WED) Order Re Desegregation of Hallett & Stedman Elementary Schools, to be accomplished no later than 11/8/71...on or before 10/8/71 defts. shall present to the Court details of the plan to be implemented on 11/8/71...racial & ethnic census of students in the geographic areas under plan A, including Montbello & to be completed prior to presentation of the plan on 10/8/71. eod 9/28/71	
10/7	MOTION of Defts. for Stay...Cert. of Service. NOTICE OF APPEAL by Defts.	
10/8	Hallett-Stedman Desegregation Plan...Cert. of Service.	
10/15	Stipulation Re Hallett-Stedman Plan	
	Signed (WED) Order that previous Order Re: Desegregation of Hallett and Stedman Elementary Schools is modified...the specific details of "Plan A" as modified in the Hallett-Stedman Plan shall be developed no later than 12/1/71...eod 10/19/71.	
11/8	Stipulation for Dismissal of Appeal pursuant to Rule-42(a)	

DATE	PROCEEDINGS	Date of Judgment
11/8	Signed (WED) Order Dismissing Appeal. eod 11/10/71	
11/10	MOTION of Applicants for Intervention for Limited Intervention Memo. in Support of next above Motion Pleading in Intervention Request for Immediate Conference or Hearing MOTION of Applicants for Intervention for Limited Admission Cert. of Service.	
11/18	Copy of letter on file that this case has been reassigned to Judge Finesilver.	
11/23	Signed (SGF) Order Regarding Motion to Intervene... Ordered: that counsel of record are directed to file any statements of position and memo. in opposition or support of motion to intervene on or before 12/8/71... Intervenor applicants are directed to respond to all memoranda on or before 12/13/71... the matter will be set for hearing after receipt of all memoranda if it is deemed necessary... eod 11/26/71.	
12/6	Signed (SGF) Order Directing Filing of Status Report... Ordered: that counsel are directed to submit within 20 days a status report on this case... eod 11/26/71.	
12/8	Pltfs. Memo. in Opposition to Intervention ... Cert. of Service. Agreement for Extension of Time that applicants for Intervention may have thru 12/17/71 to file reply	
12/10	Signed (SGF) Order on bottom of next above, granting same. eod 12/8/71	
12/14	Defts. Memo. in Opposition to Motion to Intervene ... Cert. of Service. Reporter's Transcript of proceedings commencing 5/14/71. MOTION of Defts. for Extension of Time for filing the Status Report to & including 12/21/71.	
	Signed (SGF) Order that the time for filing the status report is extended to & including 12/21/71. eod 12/16/71	
12/16	Reply Brief of Applicants for Intervention ... Cert. of Service.	
12/21	Status Report	
12/22	Signed (SGF) Order that motion to intervene is denied... eod 12/22/71. Reporter's Transcript of proceedings commencing 5/14/71	P
1/27	Pltfs. MOTION for order Releasing the Record	
	Signed (SGF) Order the Clerk of Court is authorized to release the record in the action to Gordon G. Greiner for a period of 10 days starting 1/27/72. eod 1/31/72 Receipt for Action	
2/1	Letter on file from U. S. Court of appeals that Supreme Court granted certiorari	
2/9	JOINT CONSOLIDATED MOTIONS Relating to the Record	
2/18	Signed (SGF) Order Regarding Record copies of exhibits of Defts. Numbered 1 through 12	

1a

Docket Entries

**Complaint for Permanent Injunction and Declaratory
Judgment**

(Filed June 19, 1969)

IN THE
UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, individually and on behalf of CHRISTI KEYES, a minor; CHRISTINE A. COLLEY, individually and on behalf of KRIS M. COLLEY and MARK A. WILLIAMS, minors; IRMA J. JENNINGS, individually and on behalf of RHONDA O. JENNINGS, a minor; ROBERTA R. WADE, individually and on behalf of GREGORY L. WADE, a minor; EDWARD J. STARKS, JR., individually and on behalf of DENISE MICHELLE STARKS, a minor; JOSEPHINE PEREZ, individually and on behalf of CARLOS A. PEREZ, SHEILA R. PEREZ and TERRY J. PEREZ, minors; MAXINE N. BECKER, individually and on behalf of DINAH L. BECKER, a minor; EUGENE R. WEINER, individually and on behalf of SARAH S. WEINER, a minor,

Plaintiffs,

vs.

SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO; THE BOARD OF EDUCATION, SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO; WILLIAM C. BERGE, individually and as President, Board of Education, School District Number One, Denver, Colorado; STEPHEN J. KNIGHT, JR., individually and as Vice President, Board of Education, School District Number One, Denver, Colorado; JAMES C. PERRILL, FRANK K. SOUTHWORTH, JOHN H.

*Complaint for Permanent Injunction and
Declaratory Judgment*

AMESSE, JAMES D. VOORHEES, JR., and RACHEL B. NOEL,
individually and as members, Board of Education,
School District Number One, Denver, Colorado; ROBERT
D. GILBERTS, individually and as Superintendent of
Schools, School District Number One, Denver, Colorado,
Defendants.

I. JURISDICTION

A. Plaintiffs seek to enjoin the defendants from maintaining, requiring, continuing, encouraging, and facilitating separation of children and faculty, on the basis of race, and further, from unequal allocation of resources, services, facilities, equipment, and plant on the basis of race. Plaintiffs also request specific injunctive relief pertaining to certain resolutions passed and enacted by defendant Board of Education, especially Resolutions No. 1520, 1524, and 1531. Copies of said Resolutions are attached to this complaint.

B. Plaintiffs also seek a declaratory judgment under Title 28, Section 2201 for the purpose of determining questions of actual controversy between the parties, to wit:

1. The question of whether the rules, regulations, resolutions, policies, directives, customs, practices, and usages of the defendants and each of them in denying, on account of race, color, or ethnicity, to the minor Negro and Hispano plaintiffs and other Negro and Hispano children residing in the school district, educational opportunities, advantages, and facilities afforded and available to Anglo children of public school age similarly situated in the school district, are unconstitutional and void, as depriving said

*Complaint for Permanent Injunction and
Declaratory Judgment*

plaintiffs of equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The question of whether the rules, regulations, resolutions, policies, directives, customs, practices, and usages of the defendants and each of them in denying to the plaintiffs who attend schools substantially segregated on the basis of race or ethnicity and other children residing in the school district the advantages, educational benefits, intellectual stimulation and practical preparation for a multi-racial world afforded by providing an integrated education to other children of public school age similarly situated in the school district are unconstitutional and void as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

C. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sections 1343(3) and (4). This is a civil action authorized by law and arising under Title 42, Section 1983 and the Fourteenth Amendment of the Constitution of the United States.

D. All individual defendants reside within the District of Colorado; defendant School District is a body corporate organized and existing under the laws of the State of Colorado, CRS §123-30-1 (1964). Venue is therefore proper in this District under Title 28 U.S.C. Section 1391(b) and (c).

*Complaint for Permanent Injunction and
Declaratory Judgment*

II. PARTIES

A. *Plaintiffs:*

1. Plaintiffs Wilfred Keyes, Christine A. Colley, Irma J. Jennings, Roberta R. Wade, Edward J. Starks, Jr., Josephine Perez, Maxine N. Becker, and Eugene R. Weiner, are adults, citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

2. Plaintiff children who sue by their parents and next friends, are minor children, citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

a. Plaintiff Christi Keyes, a minor, sues by her parent and next friend, Wilfred Keyes; she will attend Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano) beginning in September, 1969. They are Negro.

b. Plaintiff Kris M. Colley, a minor, sues by his parent and next friend, Christine A. Colley, and is a resident of an attendance area detached from the attendance area of East High School by provision of Resolution No. 1520 described hereinafter. If action is taken to implement the rescission of said resolution, he will attend East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano) in September, 1969. They are Negro.

c. Plaintiff Mark A. Williams, a minor, sues by his guardian and next friend, Christine A. Colley, and is a resident of an attendance area detached from the attendance area of Smiley Junior High School by Resolutions

*Complaint for Permanent Injunction and
Declaratory Judgment*

No. 1520 and 1524 described hereinafter. If action is taken to implement the rescision of said resolutions, he will attend Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano) in September, 1969. They are Negro.

d. Plaintiff Rhonda O. Jennings, a minor, sues by her parent and next friend, Irma J. Jennings, and is a resident of an attendance area detached from the attendance area of Cole Junior High School by Resolution No. 1524. If the rescision of said resolution is implemented, she will attend Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano) beginning in September, 1969. They are Negro.

e. Plaintiff Gregory L. Wade, a minor, sues by his parent and next friend, Roberta R. Wade, and is a resident of an attendance area detached from Barrett Elementary School by Resolution No. 1531 described hereinafter. If action is taken to implement the rescision of said resolution, he will attend Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano) in September, 1969. They are Negro.

f. Plaintiff Denise Michelle Starks, a minor, sues by her parent and next friend, Edward J. Starks, Jr., and is a resident of an attendance area detached from Philips Elementary School by Resolution No. 1531. If action is taken to implement the rescision of said resolution she will attend Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano) in September, 1969. They are Negro.

*Complaint for Permanent Injunction and
Declaratory Judgment*

g. Plaintiff Carlos A. Perez, a minor, sues by his parent and next friend, Josephine Perez, and will attend West High School (54.7% Anglo, 4.6% Negro, 39.8% Hispano) beginning in September, 1969. They are Hispano.

h. Plaintiff Sheila R. Perez, a minor, sues by her parent and next friend, Josephine Perez, and will attend Baker Junior High School (15.4% Anglo, 10.0% Negro, 73.1% Hispano) beginning in September, 1969. They are Hispano.

i. Plaintiff Terry J. Perez, a minor, sues by his parent and next friend, Josephine Perez, and is a student at Greenlee Elementary School (19.1% Anglo, 25.0% Negro, 54.5% Hispano). They are Hispano.

j. Plaintiff Dinah L. Becker, a minor, sues by her parent and next friend, Maxine N. Becker, and is a student at Merrill Junior High School (98.2% Anglo, 0.3% Negro, 0.8% Hispano). They are Anglo.

k. Plaintiff Sarah S. Weiner, a minor, sues by her parent and next friend, Eugene R. Weiner. From January through June, 1969, she was a participant in a voluntary enrollment plan and was a student at Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano). She has been informed by defendants that there may or may not be space available at said school in September, 1969, and therefore does not know what school she can attend. They are Anglo.

3. Plaintiffs bring this action in their own behalf and in behalf of others pursuant to Rule 23(b)(1)(B), 23(b)(2) and 23(b)(3), Federal Rules of Civil Procedure:

*Complaint for Permanent Injunction and
Declaratory Judgment*

- (a) The class which the plaintiffs represent is so numerous that joinder of all members thereof is impractical; said class consists of:
 - (i) All those school children, who by virtue of the actions of the Board complained of in the First Cause of Action will be attending segregated or substantially segregated schools and who will be forced to receive an unequal educational opportunity beginning in September, 1969;
 - (ii) All those school children, who by virtue of the actions or omissions of the Board complained of in the Second Cause of Action will be and have been attending segregated schools or substantially segregated schools, and who will be and have been receiving an unequal educational opportunity.
- (b) There are questions of fact and law common to all members of the class represented by plaintiffs, namely:
 - (i) Whether in fact the members of said class, by virtue of the actions of the Board complained of in the First Cause of Action will be attending segregated or substantially segregated schools, and will be forced to receive an unequal educational opportunity, and, further, whether in law such actions of the Board are unconstitutional and void;
 - (ii) Whether in fact the members of said class, by virtue of the actions or omissions of the

*Complaint for Permanent Injunction and
Declaratory Judgment*

Board complained of in the Second Cause of Action will be and have been attending segregated or substantially segregated schools and will be and have been receiving an unequal educational opportunity, and further, whether in law such actions and omissions of the Board are unconstitutional and void.

- (c) The claims of the individual minor plaintiffs are representative and typical of the class, in that each such plaintiff reflects and illustrates either or both of the types of deprivation complained of in the First and Second Cause of Action.
- (d) Said individual minor plaintiffs will fairly and adequately represent and protect the interests of the class, in that said plaintiffs and the class share common objectives and purposes in presenting the issues framed herein, and in seeking a declaration of their constitutional rights.
- (e) The prosecution of separate actions by individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications, and would substantially impair their ability to protect their interests.
- (f) The parties opposing the class, *i.e.*, the defendants herein have acted and have also refused to act on grounds generally applicable to the class, as more fully appears herein in the First and Second Cause of Action, and the final injunctive relief and declaratory relief sought herein will apply to the class as a whole.

*Complaint for Permanent Injunction and
Declaratory Judgment*

- (g) The questions of law or fact common to the members of the class predominate over any questions affecting or relating only to individual members of the class, and proceeding by way of this class action is superior to any other alternate means available, if any, for the fair and efficient adjudication of the controversy and the granting of adequate relief; thus the only alternative would be the prosecution of separate suits relating to each school within the District, but no adequate relief could be formulated for the constitutional defects of the school system as a whole under such a piecemeal approach, nor would the differences between schools be significant enough to justify such a multitude of suits.

B. Defendants:

All defendants are sued individually and in their official capacities:

1. Defendant School District Number One, Denver, Colorado, (hereinafter "School District") is organized and exists under the laws of the State of Colorado. (Colorado Revised Statutes, §§ 123-30-1 *et seq.*) (1964).

2. Defendant Board of Education of School District Number One, Denver, Colorado (hereinafter referred to as "Board" or "Board of Education") is organized and exists under the laws of the State of Colorado, CRS § 123-30-3 (1964); the Board is composed of seven school district directors, elected to such office by electors residing within the boundaries of the School District; said Board is vested

*Complaint for Permanent Injunction and
Declaratory Judgment*

with all powers delegated to a board of education or to a school district by law, and is required to perform all duties required by law; CRS § 123-30-3 (1964).

3. Defendant William C. Berge is President of the said Board of Education; defendant Stephen J. Knight, Jr., is Vice President of said Board of Education; defendants James C. Perrill, Frank K. Southworth, John H. Amesse, James D. Voorhees, Jr., and Rachel B. Noel are school directors and members of said Board of Education.

4. Defendant Robert D. Gilberts is Superintendent of Schools of School District Number One, Denver, Colorado (hereinafter "Superintendent"). He is the executive officer of the Board of Education and is charged with the responsibility of maintaining, managing, and governing the public schools in the School District, in accordance with the rules, regulations, resolutions, policies, directives, customs, practices, and usages established by defendant Board of Education.

III. FIRST CAUSE OF ACTION

GENERAL FACTUAL ALLEGATIONS

A. Defendant Board of Education on or about January 30, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1520, making certain changes in the attendance areas of certain secondary schools in the School District. Said Board of Education stated in said Resolution that such changes were designed to improve educational opportunity in the public schools by revising and thereafter stabilizing the racial and ethnic composition of pupil memberships in such schools. Schools

*Complaint for Permanent Injunction and
Declaratory Judgment*

affected by said Resolution and racial composition of such Schools in September, 1968, were: East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano); South High School (87.3% Anglo, 0.2% Negro, 12.2% Hispano); George Washington High School (96.0% Anglo, 2.9% Negro, 0.8% Hispano); Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano); Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano).

B. Plaintiff Kris M. Colley, the son of plaintiff Christine A. Colley, is a resident of an attendance area which was detached from the attendance area of East High School (53.7% Anglo, 39.6% Negro, 5.8% Hispano) and assigned to George Washington High School (96.0% Anglo, 2.9% Negro, 0.8% Hispano) under Resolution No. 1520; if action is taken to implement the rescision of said Resolution, he will attend East High School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution 1520 is implemented the racial composition of these schools will be: East High School 68.0% Anglo, 25.0% Negro, 7.0% Hispano, George Washington High School 87.0% Anglo, 12.0% Negro, 1.0% Hispano.

C. Defendant Board of Education on or about March 20, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1524, making additional changes in the attendance areas of certain secondary schools in the School District in order to further implement the aforesaid Resolution No. 1520. Schools affected by said Resolution and racial composition of such schools in September, 1968, were: Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano); Merrill Junior High

*Complaint for Permanent Injunction and
Declaratory Judgment*

School (98.2% Anglo, 0.3% Negro, 0.8% Hispano); Grant Junior High School (85.4% Anglo, 4.5% Negro, 9.3% Hispano); Kunsmiller Junior High School (90.3% Anglo, 0.3% Negro, 8.8% Hispano); Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano); Thomas Jefferson Junior-Senior High School (99.2% Anglo, 0.3% Negro, 0.2% Hispano); Hamilton Junior High School (no figures available at this time); Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano); Byers Junior High School (92.5% Anglo, 0.6% Negro, 5.7% Hispano); Rishel Junior High School (75.0% Anglo, 0.3% Negro, 24.4% Hispano); Kepner Junior High School (70.7% Anglo, 1.7% Negro, 27.5% Hispano).

D. Plaintiff Mark A. Williams, the ward of plaintiff Christine A. Colley, is a resident of an attendance area which was detached from the attendance area of Smiley Junior High School (23.6% Anglo, 71.6% Negro, 3.7% Hispano) and assigned to Hill Junior High School (96.1% Anglo, 1.5% Negro, 1.3% Hispano) under Resolution No. 1524; if action is taken to implement the rescision of said Resolution, he will attend Smiley Junior High School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolutions No. 1520 and 1524 are implemented the racial composition of these schools will be: Smiley Junior High School 72.0% Anglo, 20.0% Negro, 8.0% Hispano; Hill Junior High School 81.0% Anglo, 17.0% Negro, 2.0% Hispano.

E. Plaintiff Rhonda O. Jennings, the daughter of plaintiff Irma J. Jennings, is a resident of an attendance area which was detached from the attendance area of Cole Junior High School (3.8% Anglo, 72.5% Negro, 22.2% Hispano)

*Complaint for Permanent Injunction and
Declaratory Judgment*

and assigned to Kepner Junior High School (70.7% Anglo, 1.7% Negro, 27.5% Hispano) under Resolution No. 1524; if action is taken to implement the rescision of said Resolution, she will attend Cole Junior High School beginning in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1524 is implemented the racial composition of these schools will be: Kepner Junior High School 69.0% Anglo, 4.0% Negro, 27.0% Hispano, and Cole Junior High School 6.0% Anglo, 64.0% Negro, 30.0% Hispano.

F. Plaintiff Dinah L. Becker, the daughter of plaintiff Maxine N. Becker, is a resident of an attendance area assigned to Merrill Junior High School, (98.2% Anglo, 0.3% Negro, 0.8% Hispano) and will attend said school in September, 1969.

G. Defendant Board of Education on or about April 25, 1969, upon recommendation of the Superintendent, passed and enacted Resolution No. 1531 making changes in the attendance areas of certain elementary schools in the School District. Said Board of Education stated in said Resolution that such changes were designed to stabilize the racial and ethnic composition of pupil memberships in these schools and further the integration of the Denver Public Schools and improve educational opportunity in such schools. Said Resolution No. 1531 also contained provisions for removal of mobile classroom units from Stedman Elementary School, and provided transportation for pupils previously therein to Denison, Force and Schenck Elementary Schools. The schools for which attendance areas were changed and their racial composition as of September, 1968, were: Montclair Elementary School (92.7% Anglo,

*Complaint for Permanent Injunction and
Declaratory Judgment*

2.5% Negro, 3.2% Hispano); Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano); Ashley Elementary School (85.8% Anglo, 6.4% Negro, 5.8% Hispano); Palmer Elementary School (91.7% Anglo, 4.9% Negro, 1.7% Hispano); Park Hill Elementary School (71.0% Anglo, 23.2% Negro, 3.9% Hispano); Steck Elementary School (86.1% Anglo, 10.7% Negro, 1.0% Hispano); Steele Elementary School (85.0% Anglo, 6.6% Negro, 7.6% Hispano); Whiteman Elementary School (88.1% Anglo, 8.0% Negro, 2.6% Hispano); Moore Elementary School (79.3% Anglo, 8.3% Negro, 8.9% Hispano); Montclair Annex Elementary School (98.1% Anglo, 1.9% Negro, 0.0% Hispano); Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano); Carson Elementary School (90.3% Anglo, 6.7% Negro, 0.8% Hispano); Asbury Elementary School (88.9% Anglo, 5.7% Negro, 3.9% Hispano).

H. Plaintiffs Christi Keyes and Mark Keyes, the children of plaintiff Wilfred Keyes, are residents of an unchanged attendance area assigned to the Hallett Elementary School (10.1% Anglo, 84.4% Negro, 3.7% Hispano) and will attend said school in September, 1969.

I. Plaintiff Gregory L. Wade, the son of Roberta R. Wade, is a resident of an attendance area detached from Barrett Elementary School (0.3% Anglo, 96.9% Negro, 1.9% Hispano) and assigned to Carson Elementary School (90.3% Anglo, 6.7% Negro, 0.8% Hispano) under Resolution No. 1531; if action is taken to implement the rescission of said Resolution, he will attend Barrett Elementary School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1531 is implemented the racial composition of these

*Complaint for Permanent Injunction and
Declaratory Judgment*

schools will be: Barrett Elementary School, 73.0% Anglo, 24.0% Negro, 3.0% Hispano, Carson Elementary School, 78.0% Anglo, 20.0% Negro, 2.0% Hispano.

J. Plaintiff Denise Michelle Starks, the daughter of Edward J. Starks, Jr., is a resident of an attendance area of Philips Elementary School (55.3% Anglo, 36.6% Negro, 5.2% Hispano) which was altered to become a part of the attendance area for Palmer Elementary School (91.7% Anglo, 4.9% Negro, 1.7% Hispano) under Resolution No. 1531; if action is taken to implement the rescision of said Resolution, she will attend Philips Elementary School in September, 1969, and the racial composition of both schools will remain substantially as quoted. If Resolution No. 1531 is implemented the racial composition of these schools will be: Philips Elementary School, 70.0% Anglo, 22.0% Negro, 8.0% Hispano, Palmer Elementary School 81.0% Anglo, 15.0% Negro, 4.0% Hispano.

K. To implement the aforesaid Resolutions No. 1520, 1524, and 1531 defendant Board of Education has required defendant Superintendent to initiate a purchase of twenty-seven (27) school buses. In addition the defendant Superintendent substantially completed steps designed to implement such Resolutions in September, 1969, including initiation of in-service training for over eight hundred (800) faculty and staff, preparation of class schedules, schedules of course availability, pupil assignments, space assignments, transportation utilization and other actions.

L. On May 20, 1969, pursuant to regular statutory requirements two new members were elected to seats on the defendant Board of Education, these being defendants

*Complaint for Permanent Injunction and
Declaratory Judgment*

James C. Perrill and Frank K. Southworth. Defeated in the same election were two incumbent members of the Board of Education who had voted for passage of the aforesaid Resolutions No. 1520, 1524 and 1531. The victorious candidates, defendants Perrill and Southworth, had campaigned on slogans such as "Against Forced Busing!" "For Neighborhood Schools!" and promised, if elected, to vote for rescission of the aforesaid Resolutions No. 1520, 1524 and 1531. Said slogans and promises intensified racial polarization within the School District.

M. Having seated its two newly elected members, defendant Board of Education on June 9, 1969, passed by a vote of 4-3, three motions rescinding each of the three Resolutions No. 1520, 1524 and 1531.

N. If defendants are permitted to implement the motions to rescind Resolutions No. 1520, 1524 and 1531, as by implementing substitute resolutions now or hereafter passed by the Board, such implementation will or may entail modification or cancellation of said presently-existing purchase order for twenty-seven school buses; modification or rescission and destruction of all work already accomplished with regard to prior implementation of the now-rescinded Resolutions No. 1520, 1524 and 1531; *e.g.*, class assignments, pupil assignments, space assignments, schedules for utilization of transportation facilities, which if destroyed will irreparably injure the minor plaintiffs and others similarly situated, as follows: In the event that this Court should ultimately decide to grant to plaintiffs the permanent relief prayed for herein, such relief will not be possible for the school year beginning September, 1969, unless during the pendency of this action the *status*

*Complaint for Permanent Injunction and
Declaratory Judgment*

quo is maintained; *i.e.*, unless the contracts, schedules and assignments already prepared to implement the now-re-scinded Resolutions are retained. If the *status quo* is not maintained, the minor plaintiffs and their classes will be segregated and forced to receive an unequal educational opportunity during the school year beginning September, 1969, as is more fully detailed herein in paragraphs A through M.

O. If Resolutions No. 1520, 1524 and 1531 are not reinstated and implemented, and if the motions for rescision and any substitute resolutions or motions are not declared unconstitutional and void as depriving said minor plaintiffs and those similarly situated of equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States, said plaintiffs and those similarly situated will be irreparably harmed and injured because they will be segregated on the basis of race and ethnicity, and forced to attend schools which will be segregated, and which would not be segregated if Resolutions No. 1520, 1524 and 1531 were reinstated and implemented, resulting in their being forced to receive an unequal educational opportunity during the school year beginning September, 1969, and for subsequent years thereafter, as is more fully stated in paragraphs A through P herein.

P. Plaintiffs have no plain, speedy, adequate or complete remedy to redress the wrongs and illegal acts complained of herein, other than this suit for injunctive relief. Any other remedy to which plaintiffs and those similarly situated could be entitled would be attended by such uncertainties and delays as to deny substantial relief,

*Complaint for Permanent Injunction and
Declaratory Judgment*

would involve a multiplicity of suits, cause further irreparable injury, and occasion damage, vexation and inconvenience, not only to plaintiffs, and those similarly situated, but to defendants as well.

FIRST COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. The rescission of Resolutions No. 1520, 1524 and 1531 will have the effect of encouraging private acts of racial discrimination and is therefore a derogation of the minor plaintiffs' rights to equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States.

SECOND COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. In rescinding Resolutions No. 1520, 1524 and 1531 defendant Board members were motivated by racial and ethnic considerations.

C. Negro and Hispano plaintiffs, and the classes which they represent, view the actions of said defendants in rescinding these Resolutions as a significant defeat of their attempt to obtain equal educational opportunity and the equal protection of the laws for all Negro and Hispano students in the School District.

*Complaint for Permanent Injunction and
Declaratory Judgment*

THIRD COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531, the pupil population of the schools affected thereby were substantially segregated on the basis of race or ethnicity.

C. If Resolutions No. 1520, 1524 and 1531 had been implemented the effect would have been to substantially relieve the actual segregation of the pupil populations of the schools affected thereby.

D. In rescinding these resolutions the defendant Board members voting in favor of rescision, and, therefore, the defendant Board itself, were motivated by a desire to maintain, require, and facilitate the racial and ethnic separation which existed in the schools affected prior to the passage of Resolutions No. 1520, 1524 and 1531, and which would have been significantly alleviated by the Resolutions rescinded.

FOURTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. By the rescision of Resolutions No. 1520, 1524 and 1531 defendants Board and Board members knowingly

*Complaint for Permanent Injunction and
Declaratory Judgment*

reassigned children whom it had previously designated to receive an integrated education to schools which will as a result of the Board's action be substantially segregated, and thus resegregated such children on the basis of race and ethnic origin.

FIFTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531, the pupil populations of the schools affected were substantially segregated on the basis of race and ethnicity, and those schools with predominantly Negro or Hispano populations were providing unequal educational opportunity due to the fact that such schools were (on the average for all Denver schools) assigned less-experienced faculty, had higher drop-out rates, were assigned and allocated a disproportionately large number of Negro or Hispano faculty, had a disproportionately large number of mobile units, and had pupil memberships derived from generally lower economic status.

C. Implementation of the aforesaid Resolutions No. 1520, 1524 and 1531 would have resulted in substantial alleviation of the racial and ethnic segregation in such schools.

D. The benefits which would have accrued from integration under Resolutions No. 1520, 1524 and 1531 would have

*Complaint for Permanent Injunction and
Declaratory Judgment*

significantly eliminated the existing inequalities in educational opportunity as set forth in paragraph B above, and the rescision of those resolutions therefore operates to deny minor plaintiffs an educational opportunity equal to that accorded students in schools the pupil population of which are not predominantly Negro or Hispano.

SIXTH COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in the General Factual Allegations of this First Cause of Action.

B. Prior to the passage of Resolutions No. 1520, 1524 and 1531 the pupil populations of the schools affected thereby were substantially segregated on the basis of race or ethnicity.

C. If Resolutions No. 1520, 1524 and 1531 had been implemented the effect would have been to substantially relieve the actual segregation of the pupil populations of the schools thereby affected.

D. By reinstating the racial and ethnic separation existing in the affected schools prior to the passage of Resolutions 1520, 1524 and 1531, and by assigning plaintiffs and the class they represent to those segregated schools to which they would have gone had Resolutions No. 1520, 1524 and 1531 never been passed, defendants have acted to deny plaintiffs an equal educational opportunity by implementing and effectuating a policy the effect of which is to confine plaintiffs to schools which because of the

*Complaint for Permanent Injunction and
Declaratory Judgment*

recision will be actually segregated on the basis of race or ethnicity.

PRAYER FOR FIRST CAUSE OF ACTION

A. Wherefore, plaintiffs, in behalf of themselves and those similarly situated, pray as follows:

1. That defendants, and each and every of defendant School District's officers, agents, servants, employees and each of them, and all other persons in active concert or participation with them be, preliminarily during the pendency of this action and permanently thereafter, restrained and enjoined
 - (a) from in any way interfering with, modifying, cancelling or rescinding the purchase order for said twenty-seven school buses;
 - (b) from destroying, changing or otherwise modifying, in any manner whatsoever, or relocating all those documents, contracts, schedules, or other writings and memoranda relating or pertaining to the implementation of Resolutions No. 1520, 1524 and 1531.
 - (c) from taking any action or making any communication to faculty, staff, parents or students during the pendency of this action or before permanent orders are issued by this Court which would make it impossible or substantially more difficult, to proceed with the implementation of Resolutions No. 1520, 1524

*Complaint for Permanent Injunction and
Declaratory Judgment*

and 1531 at the start of the school year in September, 1969, with the exception that defendants shall not otherwise during such time be prevented from simultaneously preparing for the implementation of alternate or additional plans concerning the matters described herein as they so desire.

2. That those motions passed by defendant Board rescinding Resolutions No. 1520, 1524 and 1531, and resolutions, policies, directives, plans and actions passed, enacted or implemented by defendants or any of them attempting to further the purposes of said rescinding motions or to prevent the full and complete implementation of Resolutions No. 1520, 1524 and 1531 be declared null and void and of no force and effect whatsoever as a denial of equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.
3. That defendants be required to implement fully and completely the provisions, plans and actions outlined in Resolutions No. 1520, 1524 and 1531 beginning in September, 1969, and further that defendants be forever enjoined from acting to nullify, modify, delay, or deny to plaintiffs or others similarly situated the equal educational opportunity guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.
4. That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that:

*Complaint for Permanent Injunction and
Declaratory Judgment*

- (a) The actions of defendant Board in rescinding Resolutions No. 1520, 1524 and 1531, have denied to the minor plaintiffs who are Negro or Hispano and other persons similarly situated, educational opportunities, advantages and facilities equal to those afforded and available to Anglo children in schools unaffected by such rescision, and that said actions are unconstitutional and void, as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States;
- (b) The actions of defendant Board in rescinding Resolutions No. 1520, 1524 and 1531, have denied to the minor plaintiffs who are Anglo, and other persons similarly situated, the advantages, educational benefits, intellectual stimulation and practical preparation for a multiracial world afforded and available to those Anglo children attending racially balanced and integrated schools within the school District, and that such actions are unconstitutional and void, as depriving said plaintiffs of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

B. That plaintiffs recover their costs, and for such other and further relief as may to the Court appear proper.

*Complaint for Permanent Injunction and
Declaratory Judgment*

IV. SECOND CAUSE OF ACTION

FIRST COUNT

A. Plaintiffs incorporate herein by reference each and every allegation of the First Cause of Action herein.

B. By the following described acts, among others, defendants and/or their predecessors have over the years and are at present deliberately and purposefully attempting to create, foster and maintain racial and ethnic segregation within the School District:

- (1) With full knowledge of the existence of racially and ethnically segregated residential patterns, and with full knowledge that the superimposition thereupon of a so-called "neighborhood school" policy would result in significant racial and ethnic segregation in the School District reflective of said segregated residential patterns, said defendants adopted and continue to maintain such a neighborhood school policy with the intent, purpose and effect of creating, fostering and maintaining racially and ethnically segregated schools.
- (2) Over a period of years and on repeated occasions said defendants have created, altered and enforced certain school attendance area boundaries with the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segregation within the School District.
- (3) With the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segregation

*Complaint for Permanent Injunction and
Declaratory Judgment*

gation of the Denver public schools, said defendants during certain years have allowed certain Anglo children optional transfer outside of established school attendance areas, in contravention of said defendants' existing published policies and resolutions, with no apparent purpose other than that of encouraging, promoting and continuing the segregation of the Anglo students from Negro and/or Hispano students.

- (4) With the purpose, intent and effect of creating, fostering and maintaining racial and ethnic segregation in the School District, said defendants have assigned Negro and Hispano faculty and staff to those schools having predominantly Negro and Hispano pupil populations, thereby furthering, confirming and solidifying the racially and ethnically segregated character of those schools.
- (5) As certain schools within the School District have undergone transition to gradually increasing proportions of Negro and/or Hispano pupil populations, said defendants have created optional attendance areas which were consciously and intentionally designed to promote and allow transfer of Anglo pupils to predominantly Anglo schools and thereby to retain and confine Negro and/or Hispano pupils to schools of predominantly Negro and/or Hispano pupil populations.

C. These various actions of said defendants have effected in the School District a significant segregation of pupils by race and ethnicity, as evidenced by the following facts:

*Complaint for Permanent Injunction and
Declaratory Judgment*

- (1) In September, 1968, of the 63,385 Anglo students in the public schools in the School District, 37,539, or 59%, were in 43 schools the pupil population of which were over 85% Anglo.
- (2) In September, 1968, of the 13,639 Negro students in the public schools in the School District, 8,451, or 62%, were in 15 schools the pupil populations of which were over 85% Negro and/or Hispano.
- (3) In September, 1968, of the 18,611 Hispano students in the public schools in the School District, 9,360 Hispanos, or 50.2%, were in 35 schools the pupil populations of which were over 50% Negro and/or Hispano.

SECOND COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in their First Cause of Action and subparagraphs C(1), C(2), and C(3) of the First Count of this Second Cause of Action in so far as those subparagraphs allege the existence in the School District of actual segregation on the basis of race and ethnicity.

B. By the following described acts, among others, defendants or their predecessors have allocated to those schools in the School District whose populations are predominantly Negro and/or Hispano resources substantially inferior to those allocated to schools with predominantly Anglo pupil populations:

- (1) Defendants and/or their predecessors have provided predominantly Negro and Hispano schools

*Complaint for Permanent Injunction and
Declaratory Judgment*

with physical plants, equipment, materials, supplies and curricula inferior to that provided to schools with predominantly Anglo student pupil populations.

- (2) Defendants and/or their predecessors have allocated and assigned a disproportionately large number of less-experienced faculty to those schools in the School District with predominantly Negro or Hispano pupil populations, while at the same time allocating and assigning a disproportionately large number of more-experienced faculty to schools with predominantly Anglo pupil populations.

C. By providing those schools having predominantly Negro and Hispano student populations with resources inferior to those allocated to predominantly Anglo schools, defendants and/or their predecessors have in the past and are at present denying students attending those schools, including plaintiff Sarah S. Weiner and those similarly situated the equal protection of the laws by providing them with an educational opportunity unequal to that provided by other schools in the School District.

THIRD COUNT

A. Plaintiffs hereby incorporate by reference each and every allegation contained in their First Cause of Action, except in so far as they may be construed to allege an *intent* on the part of defendants and/or their predecessors to segregate the School District's pupil population on the basis of race and ethnicity.

*Complaint for Permanent Injunction and
Declaratory Judgment*

B. Plaintiffs hereby incorporate by reference each and every allegation contained in subparagraphs C(1), C(2) and C(3) of the First Count of this Second Cause of Action, in so far as those subparagraphs allege the existence in the School District of actual segregation on the basis of race and ethnicity.

C. Defendants and/or their predecessors have adopted and continue to maintain a "neighborhood school" policy which effects the assignment of students to schools according to a geographic limitation, and results in the racial and ethnic segregation of students as is shown by the facts incorporated in paragraph B above.

D. By the creation and maintenance of a school system segregated on the basis of race and ethnicity, defendants and/or their predecessors have and will continue to deny an equal educational opportunity to those students assigned to schools which are predominantly Negro and/or Hispano, and to deny equal protection of the laws to such students and to plaintiffs and other members of the classes which they represent.

FOURTH COUNT

A. Plaintiffs incorporate herein by reference each and every allegation of their First Cause of Action.

B. Defendants and/or their predecessors originated and defendants continue to administer throughout the School District various systems of pupil ability grouping referred to hereinafter as the "track systems".

*Complaint for Permanent Injunction and
Declaratory Judgment*

C. Under these systems students are purportedly classified according to ability to learn and then assigned either to a regular or accelerated educational program and curriculum.

D. The effect of the application and administration of these track systems has been the segregation and separation of students on the basis of race and ethnicity and the denial to the minor Negro and Hispano plaintiffs, and those similarly situated, an educational opportunity equal to that offered Anglo students of comparable ability and qualifications.

PRAYER FOR SECOND CAUSE OF ACTION

A. Wherefore, plaintiffs, in behalf of themselves and in behalf of those persons similarly situated, pray as follows:

1. Under the First Count of this Second Cause of Action,

- (a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintainig, requiring, promoting or encouraging, through their rules, regulations, resolutions, policies, directives, customs, practices and usages, the segregation and separation by race and ethnicity of the pupils of the schools within the School District.
- (b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient

*Complaint for Permanent Injunction and
Declaratory Judgment*

time for implementation of such program for the beginning of the school year commencing on or about September 1, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

- (i) Remove the segregation and separation of school children by race and ethnicity within and among such schools;
 - (ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal educational opportunity;
- (c) That defendants, and each of them, be permanently enjoined and restrained:
- (i) From any further creation, alteration or enforcement of any boundaries for any school attendance area that is intended to or does in fact discriminate on the basis of race or ethnicity as between school children within the District.
 - (ii) From any further creation or enforcement of optional areas or zones or permissive policies which are intended to or do in fact discriminate on the basis of race or ethnicity as between school children within the District as to the right of optional transfer outside of established school attendance areas;
 - (iii) From any further utilization or adoption of policies regarding the assignment of faculty

*Complaint for Permanent Injunction and
Declaratory Judgment*

or staff which are intended to or do in fact assign faculty and staff to schools on the basis of race or ethnicity, thereby furthering and solidifying the racial and ethnic character of such schools.

- (d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of defendants in purposefully and knowingly creating and maintaining the segregation and separation by race and ethnicity of the school children within the District are unconstitutional and void, as depriving plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. Under the Second Count of this Second Cause of Action,

- (a) That defendants and each of them be permanently enjoined and restrained from directly or indirectly continuing, maintaining, requiring, promoting or encouraging through their rules, regulations, resolutions, policies, directives, customs, practices and usages the unequal allocation of resources which is intended to or does in fact discriminate on the basis of race and ethnicity as between school children within the District.
- (b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time

*Complaint for Permanent Injunction and
Declaratory Judgment*

for implementation of such plan by the beginning of the school year commencing in September, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such conditions exist, which will effectively:

- (i) Remove any existing disparity in the resources allocated to such schools; and
 - (ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal opportunity to attend schools which from the standpoint of facilities, faculty and staff, are in fact equal or as nearly so as is practical and feasible under the circumstances.
- (c) That defendants and each of them be permanently enjoined and restrained:
- (i) From adopting or continuing any policy which is intended to or in fact does result in an unequal allocation of such resources as physical plant equipment, materials, supplies and curricula among and between schools on the basis of race or ethnicity, or which discriminates on the basis of race or ethnicity as between school children within the District.
 - (ii) From any further policy regarding the assignment of faculty or staff which is intended to or does in fact assign less-experienced or

*Complaint for Permanent Injunction and
Declaratory Judgment*

less-qualified faculty or staff to schools which are predominately Negro and/or Hispano in their racial and ethnic composition.

- (d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of the defendants in allocating resources among and between schools within the District with the effect of allocating inferior resources to those schools which are predominately Negro and/or Hispano in their racial or ethnic composition, are unconstitutional and void as depriving plaintiffs and those persons similarly situated of equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States.

3. Under the Third Count of this Second Cause of Action,

- (a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintaining, requiring, promoting or encouraging, through their rules, regulations, resolutions, policies, directives, customs, practices and usages, the segregation and separation by race and ethnicity of the pupils of the schools within the School District.
- (b) That defendants be required to submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time for implementation of such program for the begin-

*Complaint for Permanent Injunction and
Declaratory Judgment*

ning of the school year commencing on or about September 1, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

- (i) Remove the segregation and separation of school children by race and ethnicity within and among such schools;
 - (ii) Afford and ensure to every school child, regardless of race or ethnicity, and regardless of the school which such child attends, an equal educational opportunity;
- (c) That defendants, and each of them, be permanently enjoined and restrained from any further creation, alteration or enforcement of any boundaries for any school attendance area that is intended to or does in fact discriminate on the basis of race or ethnicity as between school children within the District.
- (d) That the Court, pursuant to 28 U.S.C. § 2201, adjudge and decree that the actions of defendants which resulted in the actual segregation and separation by race and ethnicity of the school children within the District are unconstitutional and void, as depriving said plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. In the alternative, under the Third Count of this Second Cause of Action, that defendants be required to

*Complaint for Permanent Injunction and
Declaratory Judgment*

submit to this Court, within a time which is both reasonable and certain, and which would allow sufficient time for implementation by the beginning of the school year commencing in September, 1970, a comprehensive plan for the School District as a whole, and for each school therein where such condition exists, which will effectively:

- (a) Mitigate, to the greatest extent possible and feasible under the circumstances, the segregation and separation of school children by race and ethnicity within and among said schools;
- (b) Minimize, to the greatest extent possible and feasible under the circumstances, the adverse effects upon equal educational opportunity caused by the segregation which remains.

5. Under the Fourth Count of this Second Cause of Action,

- (a) That defendants, and each of them, be permanently enjoined and restrained from directly or indirectly continuing, maintaining or applying the existing track system or any other ability grouping, test or device which is either intended to or does in fact discriminate between pupils on the basis of race or ethnicity or which is either intended to or does in fact accord Negro and Hispano students an educational opportunity unequal to that accorded Anglo students of comparable abilities and qualifications.
- (b) That the Court, pursuant to 28 U.S.C. § 2201 adjudge and decree that the actions of defendants in creating, applying and administering the exist-

*Complaint for Permanent Injunction and
Declaratory Judgment*

ing "track systems" which both in fact discriminates against Negro and Hispano students and denies said students an educational opportunity equal to that accorded Anglo students of comparable abilities and qualifications are unconstitutional and void, as depriving plaintiffs, and those similarly situated, of equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

B. That plaintiffs recover their costs and for such other and further relief as may to the Court appear proper.

BARNES & JENSEN

By /s/ CRAIG S. BARNES
Craig S. Barnes

2430 South University Blvd.,
Denver, Colorado 80210
Tel.: 744-6455

/s/ GORDON G. GREINER
Gordon G. Greiner

500 Equitable Building,
Denver, Colorado 80202
Tel.: 292-9200

JACK GREENBERG,
JAMES M. NABRIT, III,
CONRAD K. HARPER,
10 Columbus Circle,
New York, New York 10019

Attorneys for Plaintiffs

*Complaint for Permanent Injunction and
Declaratory Judgment*

Address of Plaintiffs:

Wilfred Keyes
2651 Ivanhoe St.,
Denver, Colorado

Christine A. Colley
3052 Krameria St.,
Denver, Colorado

Irma J. Jennings
c/o Craig S. Barnes
2430 S. University Blvd.,
Denver, Colorado

Roberta R. Wade
2719 Cook St.,
Denver, Colorado

Edward J. Starks, Jr.
2322 Monaco Parkway,
Denver, Colorado

Josephine Perez
1154 Kalamath St.,
Denver, Colorado

Maxine N. Becker
1356 South Elm St.,
Denver, Colorado

Eugene R. Weiner
1484 South Eudora St.,
Denver, Colorado.

*Complaint for Permanent Injunction and
Declaratory Judgment*

Of Counsel:

Susan G. Barnes, Esq.,
7000 West 14th Avenue,
Denver, Colorado 80215

Robert T. Connery, Esq.,
500 Equitable Building,
Denver, Colorado 80202

Harold A. Haddon, Esq.,
American National Bank Building,
Denver, Colorado 80202

William H. Lewis, Esq.,
1839 York Street
Denver, Colorado 80206

Robert Bruce Miller, Esq.,
3216 Arapahoe Avenue,
Boulder, Colorado 80302

Gail E. Oppenneer, Esq.,
Western Federal Savings Building,
Denver, Colorado 80202

James W. Schroeder, Esq.,
1700 Broadway,
Denver, Colorado 80202

Lawrence W. Treece, Esq.,
500 Equitable Building,
Denver, Colorado 80202

*Complaint for Permanent Injunction and
Declaratory Judgment*

Richard E. Young, Esq.,
1700 Broadway,
Denver, Colorado 80202

STATE OF COLORADO,
CITY AND COUNTY OF DENVER, ss.

EUGENE R. WEINER, being duly sworn, deposes and says that he is one of the plaintiffs in the within action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those, he believes them to be true.

/s/ EUGENE R. WEINER

Subscribed and sworn to before me this 19th day of June, 1969.

Witness my hand and official seal.

/s/ MARGARET P. APPERSON
Notary Public

My commission expires:
May 22, 1972

(SEAL)

Exhibit Annexed to Complaint
(Resolution 1520)

Approved by the Board of Education
on January 30, 1969

WHEREAS, pursuant to the Resolution of this Board of Education passed on May 16, 1968, and numbered 1490, in response to the subsequent specific direction of this Board of Education, and in accordance with Article VIII, Section 2 of the By Laws of this Board, the Superintendent of this School District has proposed certain changes in the boundaries of the attendance areas of certain secondary schools of this School District, which changes are one of the steps designed to improve educational opportunity in the public schools of this District by revising and thereafter stabilizing the racial and ethnic composition of pupil memberships in such schools;

WHEREAS, this Board of Education did receive said proposals of the Superintendent for study and action and did order that the citizens of this School District be given an opportunity to express their views on said proposals at a public hearing; and

WHEREAS, this Board of Education, having heard the views of the citizens of this School District on the proposed changes in attendance areas and boundaries; having considered traffic patterns, distances, housing patterns, school building capacities, optimum pupil memberships for the schools concerned, pupil achievement data, the need for providing transportation to pupils and the cost thereof,

Exhibit Annexed to Complaint

and current policies of the Board of Education regarding the provision of transportation for pupils; and having otherwise informed itself on the questions presented by the said proposals, FINDS that, because of the housing patterns in the City and County of Denver, East High School and Smiley Junior High School contain growing numbers of pupils of racial and ethnic minorities; that a reduction of such numbers is desirable as one of the steps to improve educational opportunity in such schools; and that the changes in the attendance areas as proposed by the superintendent are consistent with the foregoing and as hereinafter set forth herein, will reasonably accomplish such reduction and thereafter stabilize the racial and ethnic composition of pupil memberships in these schools; and that such changes are in the public interest.

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that, effective as of the opening of school in September of 1969, the boundaries of the attendance areas of the following secondary schools in this School District be, and they are hereby, changed as follows:

1. The following described area shall be detached from the EAST HIGH SCHOOL attendance area and shall become a part of the SOUTH HIGH SCHOOL attendance area.

Beginning at the intersection of the Union Pacific Railroad tracks and Clayton Street, thence: Easterly along the railroad tracks to Colorado Boulevard, South on Colorado Boulevard to East 32nd Avenue,

Exhibit Annexed to Complaint

West on East 32nd Avenue to Fillmore Street, North of Fillmore Street to East 40th Avenue, West on East 40th Avenue to Clayton Street, and North on Clayton Street to the point of beginning.

2. The following described area shall be detached from the SOUTH HIGH SCHOOL attendance area and shall become a part of the EAST HIGH SCHOOL attendance area.

Beginning at the intersection of Logan Street and the centerline of Cherry Creek, thence: Southeasterly along the centerline of Cherry Creek to Alameda Avenue, West along Alameda Avenue to South Logan Street, and North on Logan Street to the point of beginning.

3. The following described area shall be detached from the GEORGE WASHINGTON HIGH SCHOOL attendance area and shall become a part of the SOUTH HIGH SCHOOL attendance area.

Beginning at the intersection of South Colorado Boulevard and East Arizona Avenue, thence: East on Arizona Avenue to South Dahlia Street, South on South Dahlia Street to the City Limits, Northwest along the City Limits to the Colorado and Southern Railroad tracks, Westerly along the Colorado and Southern Railroad tracks to South Colorado Boulevard, and North on South Colorado Boulevard to the point of beginning.

4. The following described area shall be detached from the EAST HIGH SCHOOL attendance area and shall

Exhibit Annexed to Complaint

become a part of the GEORGE WASHINGTON HIGH SCHOOL attendance area.

Beginning at the intersection of Ivanhoe Street extended and Interstate Highway 70, thence: East-erly on Interstate Highway 70 to Syracuse Street extended, South on Syracuse Street extended and Syracuse Street to East 32nd Avenue, West on East 32nd Avenue to Monaco Boulevard, South on Monaco Boulevard to Montview Boulevard, West on Montview Boulevard to Jasmine Street, South on Jasmine Street to East Colfax Avenue, West on East Colfax Avenue to Ivanhoe Street, and North on Ivanhoe Street to the point of beginning.

5. The following described area shall be detached from the GEORGE WASHINGTON HIGH SCHOOL attendance area and shall become a part of the EAST HIGH SCHOOL attendance area.

Beginning at the intersection of East Colfax Avenue and Ivanhoe Street, thence: East on East Colfax Avenue to Jasmine Street, South on Jasmine Street to East 6th Avenue, West on East 6th Avenue to Colorado Boulevard, South on Colorado Boulevard to East Alameda Avenue, West on East Alameda Avenue to the centerline of Cherry Creek, North-westerly along the centerline of Cherry Creek to Steele Street, North on Steele Street to East 7th Avenue, East on East 7th Avenue to Colorado Boulevard, North on Colorado Boulevard to East 8th Avenue, East on East 8th Avenue to Grape Street, North on Grape Street to East 14th Avenue, East on East 14th Avenue to Holly Street, North

Exhibit Annexed to Complaint

on Holly Street to East Colfax Avenue, and East on East Colfax Avenue to the point of beginning.

6. The following described area shall be detached from the HILL JUNIOR HIGH SCHOOL attendance area and shall become a part of the SMILEY JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East Colfax Avenue and Kearney Street, thence: East on East Colfax Avenue to Yosemite Street, South on Yosemite Street and Yosemite Street extended to East 1st Avenue extended, West on East 1st Avenue extended and East 1st Avenue to the west boundary the United States Air Force Reservation, North on the west boundary of the United States Air Force Reservation to the north boundary of the United States Air Force Reservation, East on the north boundary of the United States Air Force Reservation to Quebec Street, North on Quebec Street to East 6th Avenue, West on East 6th Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

7. The area known as Montbello which was annexed to the City and County of Denver by Ordinance No. 262, Series of 1965, of the Ordinances of the City and County of Denver and State of Colorado, shall remain in the EAST HIGH SCHOOL subdistrict and in the SMILEY JUNIOR HIGH SCHOOL subdistrict.

Unless otherwise specified, references to city streets and avenues as boundaries shall be taken as referring to the centerlines of such streets and avenues.

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that, consistent with the foregoing, the Superintendent is hereby directed to make the following recommendations by March 10, 1969, for consideration and action by this Board at its regular March meeting:

1. To recommend further changes in the boundaries of the Smiley Junior High School attendance area which will detach therefrom attendance areas sufficient in size to include approximately 850 pupils who would otherwise attend Smiley Junior High School and designate such detached areas as attendance areas for other junior high schools within this School District, all effective with the beginning of school in September, 1969.

2. To recommend whether or not each area so detached from the Smiley Junior High School attendance area shall continue as part of its present senior high school attendance area or be designated as part of the attendance area for another senior high school within this School District.

3. To make such other recommendations as he shall deem necessary or desirable in order to carry out the intent of this resolution.

IT IS FURTHER RESOLVED that the present policies of this School District regarding provision of transportation for secondary school pupils to and from school remain in full force and effect, except, that from and after September, 1969, those senior high school pupils residing in the area bounded by Clayton Street, the Union Pacific Railroad tracks, Colorado Boulevard and East 32nd Avenue and herein assigned to South High School effective September,

Exhibit Annexed to Complaint

1969, shall be provided with transportation to and from South High School without charge to them.

IT IS FURTHER RESOLVED that those pupils entering their senior year of high school in September of 1969, and who reside in the senior high school attendance areas changed by this resolution shall have the option of attending the senior high school of the attendance area in which they continue to reside or the senior high school which they attended at the close of the 1968-1969 school year, which option shall be exercised in accordance with procedures prescribed by the Superintendent of this School District.

Exhibit Annexed to Complaint
(Resolution No. 1524)

Approved by the Board of
Education March 20, 1969

WHEREAS, this Board of Education by its Resolution Numbered 1520 and passed on January 30, 1969, directed the Superintendent of this School District to make certain recommendations for consideration and action by this Board;

WHEREAS, in accordance with said Resolution 1520 and Article VIII, Section 2, of the By Laws of this Board, the Superintendent has recommended changes in the boundaries of the attendance areas of Certain of the secondary schools of this School District; and

WHEREAS, this Board of Education has considered the recommendations of the Superintendent, finds them in accord with the purposes and intent of said Resolution No. 1520, and finds that such changes are in the public interest;

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that the boundaries of the attendance areas of the following junior high schools in this School District be, and they are hereby, changed as hereinafter specifically provided; that on and after the opening of school in September of 1969 all 7th, 8th and 9th grade pupils from time to time residing in such changed attendance areas are hereby assigned to the junior high school of such changed attendance areas as follows:

1. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of MERRILL JUNIOR HIGH SCHOOL attendance area.

Exhibit Annexed to Complaint

Beginning at the intersection of the Union Pacific Railroad tracks and Clayton Street, thence: Easterly along the Railroad tracks to Dahlia Street, South on Dahlia Street to East 35th Avenue, West on East 35th Avenue to Cherry Street; South on Cherry Street to East 30th Avenue, West on East 30th Avenue to Colorado Boulevard, North on Colorado Boulevard to East 32nd Avenue, West on East 32nd Avenue to Fillmore Street, North on Fillmore Street to East 40th Avenue, West on East 40th Avenue to Clayton Street, and North on Clayton Street to the point of beginning.

2. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of GRANT JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of the Union Pacific Railroad tracks and Dahlia Street, thence: Easterly along the Railroad tracks to Forest Street, South on Forest Street to Thrill Place, West on Thrill Place to Dahlia Street, and North on Dahlia Street to the point of beginning.

3. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of BYERS JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 35th Avenue and Cherry Street, thence: East on East 35th Avenue to Dahlia Street, South on Dahlia Street to Thrill Place, East on Thrill Place to Forest Street, South on Forest Street to East 28th Avenue, West on 28th Avenue to Dexter Street, North on Dexter Street to East 30th

Exhibit Annexed to Complaint

Avenue, West on East 30th Avenue to Cherry Street, and North on Cherry Street to the point of beginning.

4. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of KUNSMILLER JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of the Union Pacific Railroad tracks and Forest Street, thence: Southeasterly along the railroad tracks to Ivanhoe Street extended, South on Ivanhoe Street extended and Ivanhoe Street to East 29th Avenue, West on East 29th Avenue to Forest Street, and North on Forest Street to the point of beginning.

5. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of HILL JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of Interstate Highway 70 and Ivanhoe Street extended, thence: East along Interstate Highway 70 to Locust Street extended, South on Locust Street extended and Locust Street to East 29th Avenue, West on East 29th Avenue to Ivanhoe Street, and North on Ivanhoe Street and Ivanhoe Street extended to the point of beginning.

6. The following described area shall be detached from SMILEY JUNIOR HIGH SCHOOL attendance area and as hereinabove provided shall become a part of HAMILTON JUNIOR HIGH SCHOOL for 7th and 8th grade pupils and THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL for 9th grade pupils residing therein from time to time.

Exhibit Annexed to Complaint

Beginning at the intersection of Interstate Highway 70 and Locust Street extended, thence: Easterly along Interstate Highway 70 to Syracuse Street extended, South along Syracuse Street extended and Syracuse Street to East 26th Avenue, West along East 26th Avenue to Locust Street, and North on Locust Street and Locust Street extended to the point of beginning.

7. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of SMILEY JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 54th Avenue and the Burlington Railroad tracks, thence: East on East 54th Avenue to Colorado Boulevard, South on Colorado Boulevard to Vasquez Boulevard, Southwest on Vasquez Boulevard to East 46th Avenue, West on East 46th Avenue to the Burlington Railroad tracks, and Northeast along the Burlington Railroad tracks to the point of beginning.

8. The following described area shall be detached from HILL JUNIOR HIGH SCHOOL attendance area and shall become a part of the attendance areas of HAMILTON JUNIOR HIGH SCHOOL and THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL effective as of the opening of school in September of 1969, and thereafter all 7th and 8th grade pupils from time to time residing therein shall attend HAMILTON JUNIOR HIGH SCHOOL: all 9th grade pupils from time to time residing therein shall attend THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL.

Beginning at the intersection of East Kentucky Avenue and the centerline of Cherry Creek, thence: Easterly along East Kentucky Avenue and East Kentucky Ave-

Exhibit Annexed to Complaint

nue extended to the east side of South Dayton Street, North on South Dayton Street to East Alameda Avenue, Northeasterly on East Alameda Avenue to South Havana Street, South on South Havana Street to the Highline Canal, Southeasterly along the Highline Canal to South Fulton Street, South along South Fulton Street to the boundary line of the City and County of Denver as it now exists, East along said boundary line to South Geneva Street, North along South Geneva Street to the said boundary line of the City and County of Denver, East along said boundary line to South Havana Street, South on South Havana Street to East Mississippi Avenue, West on East Mississippi Avenue (not including the Cunningham School Site) to the Parker Road, Westerly along the said boundary line of the City and County of Denver to South Quebec Street, South on South Quebec Street to South Quebec Way, Southeasterly on South Quebec Way to East Louisiana Avenue, West on East Louisiana Avenue to South Quebec Street, South on South Quebec Street to East Florida Avenue, West on East Florida Avenue to the centerline of Cherry Creek, and Northwest along the centerline of Cherry Creek to the point of beginning.

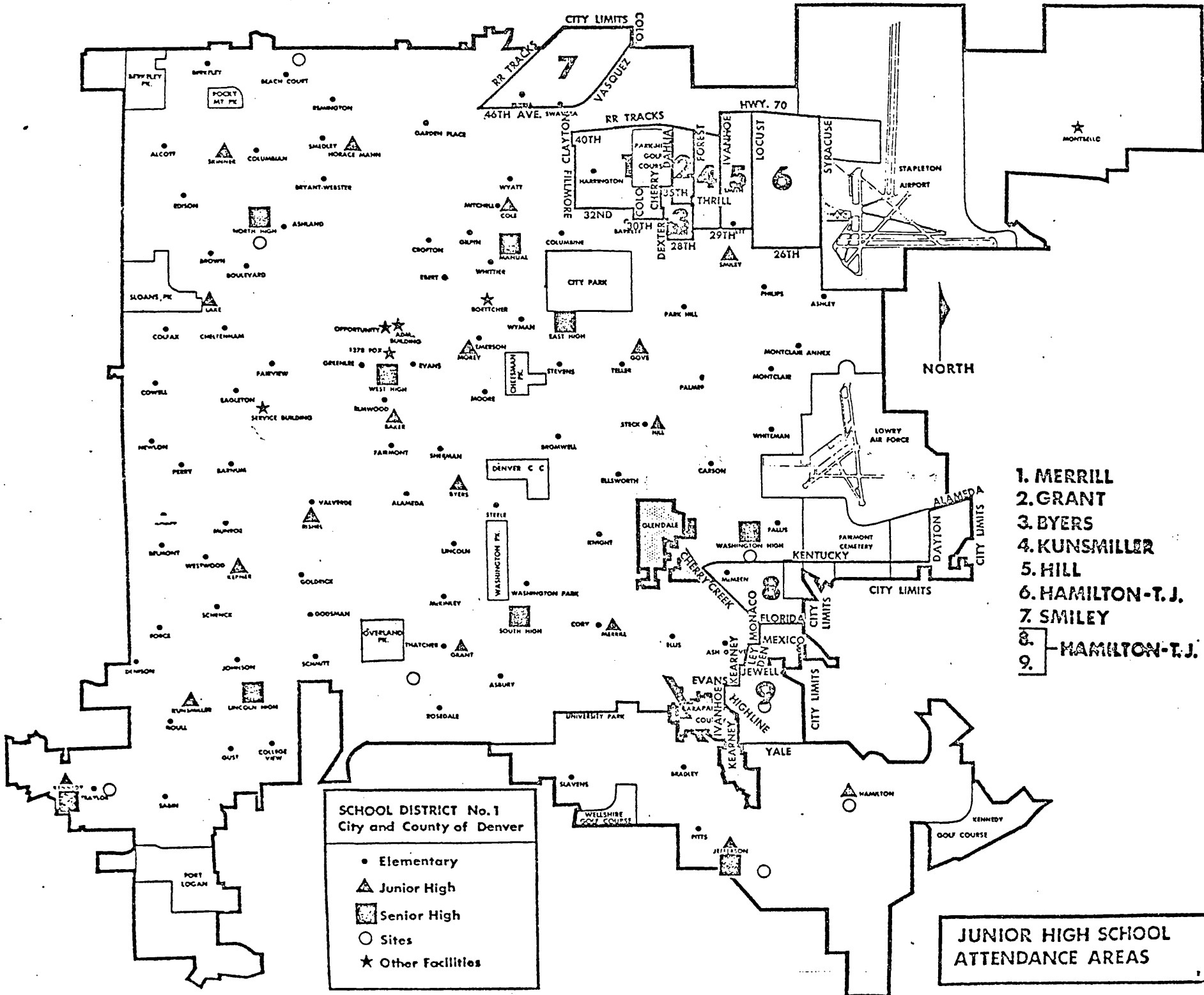
9. The following described area shall be detached from MERRILL JUNIOR HIGH SCHOOL attendance area and shall become a part of the attendance areas of HAMILTON JUNIOR HIGH SCHOOL and THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL effective as of the opening of school in September 1969, and thereafter all 7th and 8th grade pupils residing therein shall attend HAMILTON JUNIOR HIGH SCHOOL; all 9th grade pupils residing therein shall attend THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL.

Exhibit Annexed to Complaint

Beginning at the intersection of East Florida Avenue and South Monaco Boulevard, thence: East along East Florida Avenue to South Quebec Street, South on South Quebec Street along the City Limits to East Yale Avenue, West on East Yale Avenue to South Kearney Street, North on South Kearney Street to the centerline of the Highline Canal, Northwesterly along the centerline of the Highline Canal to the intersection of East Cliff Avenue and South Ivanhoe Street extended, North along South Ivanhoe Street extended and Ivanhoe Street to East Evans Avenue, East along East Evans Avenue to South Kearney Street extended, North along South Kearney Street extended and South Kearney Way to East Jewell Avenue, East along East Jewell Avenue to South Leyden Street, North along South Leyden Street to East Mexico Avenue, East along East Mexico Avenue to South Monaco Boulevard, and North along South Monaco Boulevard to the point of beginning.

IT IS FURTHER RESOLVED that, the attendance area of HAMILTON JUNIOR HIGH SCHOOL for all 7th and 8th grade pupils shall be the attendance area of THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL as of September 1968, and those attendance areas described in the foregoing Sections Numbered 6, 8, and 9.

IT IS FURTHER RESOLVED that the attendance area of THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL for all 9th grade pupils shall consist of the attendance area of the THOMAS JEFFERSON JUNIOR-SENIOR HIGH SCHOOL as of September 1968, and those attendance areas described in the foregoing Sections Numbered 6, 8, and 9.



55a

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that, on and after the opening of school in September 1969 the boundaries of the attendance areas for the following junior high schools in this School District be, and they are hereby, changed as follows:

A. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of BYERS JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 35th Avenue and York Street, thence: South on York Street to East 33rd Avenue, West on East 33rd Avenue to the alley between High Street and Williams Street, North along the alley between High Street and Williams Street to East 35th Avenue, and East along East 35th Avenue to the point of beginning.

B. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of KUNSMILLER JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 34th Avenue and York Street, thence: East along East 34th Avenue to Elizabeth Street, South on Elizabeth Street to East 28th Avenue, East on East 28th Avenue to Steele Street, South on Steele Street to East 26th Avenue, West on East 26th Avenue to York Street, and North on York Street to the point of beginning.

C. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of RISHEL JUNIOR HIGH SCHOOL attendance area.


Exhibit Annexed to Complaint

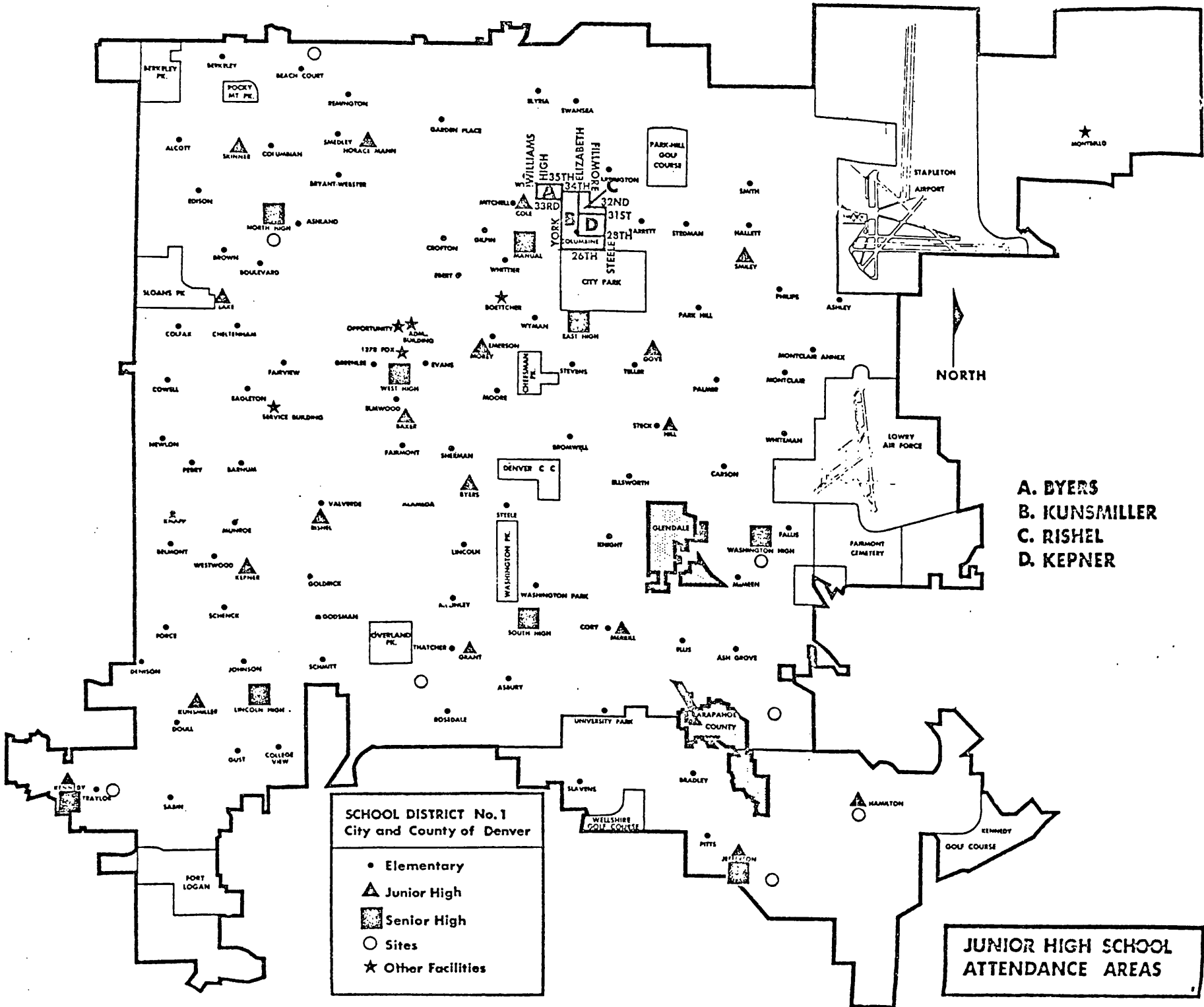
Beginning at the intersection of East 34th Avenue and Elizabeth Street, thence: East on East 34th Avenue to Fillmore Street, South on Fillmore Street to East 32nd Avenue, East on East 32nd Avenue to Steele Street, South on Steele Street to East 31st Avenue, West on East 31st Avenue to Elizabeth Street, and North on Elizabeth Street to the point of beginning.

D. The following described area shall be detached from COLE JUNIOR HIGH SCHOOL attendance area and shall become a part of KEPNER JUNIOR HIGH SCHOOL attendance area.

Beginning at the intersection of East 31st Avenue and Elizabeth Street, thence: East on East 31st Avenue to Steele Street South on Steele Street to East 28th Avenue West on East 28th Avenue to Elizabeth Street, and North on Elizabeth Street to the point of beginning.

58a

(See Opposite) 



BERKELEY PK.

POCKY MT. PK.

BEACH COURT

BEAMINGTON

ALCOTT

SKINNER

COLUMBIAN

SHEDLEY

HORACE MANN

GARDEN PLACE

ELYSEA

EWANSEA

WILLIAMS HIGH

35TH

ELIZABETH

FILMORE

PARK HILL GOLF COURSE

EDISON

NORTH HIGH

ASHLAND

SLOANS PK.

COJALE

CHILTERNHAM

FARYVIEW

OPPORTUNITY

1378 FOX

BARNHILL

EVANS

WEST HIGH

ELMWOOD

EMERSON

MONTCLAIR ANNEX

MONTCLAIR

EDWELL

SAULETON

SERVICE BUILDING

ELMWOOD

FAIRMONT

SHEPHERD

STEELE

DENVER C. C.

BROOKVIEW

STOCK HILL

PALMER

MONTCLAIR

WHITEHALL

LOWEY AIR FORCE

NEWTON

PERCY

BARNUM

VALVERDE

ALAMOGA

STEELE

WASHINGTON PK.

ELLSWORTH

CARSON

GLENDALE

WASHINGTON HIGH

FALLS

FAIRMONT CEMETERY

STAFF

MUNROE

BISHOP

ALAMOGA

LINCOLN

STEELE

WASHINGTON PK.

ELLSWORTH

EMBURY

GLENDALE

WASHINGTON HIGH

FALLS

FAIRMONT CEMETERY

BELMONT

WESTWOOD

ELPHINE

GOLDRICE

LINCOLN

STEELE

WASHINGTON PK.

ELLSWORTH

EMBURY

GLENDALE

WASHINGTON HIGH

FALLS

FAIRMONT CEMETERY

POWELL

SCHINCE

DODDMAN

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

DENISON

JOHNSON

SCHWITT

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

EUNSMILLER

DOAL

LINCOLN HIGH

JOHNSON

SCHWITT

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

DOAL

GUST

COLLEGE VIEW

JOHNSON

SCHWITT

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

SABIN

TRAYLOR

JOHNSON

SCHWITT

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

PORT LOGAN

JOHNSON

SCHWITT

OVERLAND PK.

THATCHER

GAJANT

WASHINGTON PK.

SOUTH HIGH

CORY

MARSHALL

ELLS

ASH GROVE

HAMMILL

KENNEDY GOLF COURSE

JUNIOR HIGH SCHOOL ATTENDANCE AREAS

Exhibit Annexed to Complaint**(Resolution No. 1531)**

WHEREAS, pursuant to the Resolution of this Board of Education passed on May 16, 1969, and numbered 1490, in response to the subsequent specific direction of this Board of Education, and in accordance with Article VIII, Section 2 of the By Laws of this Board, the Superintendent of this School District has made a proposal for stabilization of memberships of elementary schools in Northeast Denver and for further integration of the Denver Public Schools which proposal suggests, among other things, certain changes in the boundaries of the attendance areas of certain elementary schools of this School District as one of the steps designed to improve educational opportunity in the public schools of this District;

WHEREAS, this Board of Education did receive said proposal of the Superintendent for study and action and did order that the citizens of this School District be given an opportunity to express their views on said proposal at public hearings set for that purpose; and

WHEREAS, this Board of Education, having heard the views of the citizens of this School District on the said proposal of the Superintendent; having considered racial and ethnic composition of pupil memberships in the elementary schools of this District, traffic patterns, distances, housing patterns, school building capacities, optimum pupil memberships for the schools concerned, pupil achievement data, potential quality of the instructional program, the need for providing transportation to pupils and the cost thereof; availability of time and staff to develop programs, communicate with parents and children, and to orient the personnel involved; and having otherwise informed itself on

Exhibit Annexed to Complaint

the questions presented by the said proposal, FINDS that, because of the housing patterns in the City and County of Denver, certain elementary schools in Northeast Denver contain growing numbers of pupils of racial and ethnic minorities; that a reduction of such numbers is desirable as one of the steps to improve educational opportunity in such schools; and that the proposal of the Superintendent is consistent with the foregoing and, as hereinafter set forth, will reasonably accomplish such reduction and thereafter stabilize the racial and ethnic composition of pupil memberships in these schools and further the integration of the Denver Public Schools; and that the adoption of the said proposal is in the public interest;

NOW THEREFORE, IT IS RESOLVED by the Board of Education of School District No. 1 in the City and County of Denver and State of Colorado that the Superintendent is directed to develop plans in accordance with the concept of the Elementary School Complex as generally outlined in his report heretofore received by this Board of Education and entitled "Planning Quality Education," and to initiate implementation of such plans commencing with the opening of school in September of 1969, for the following two groupings of elementary schools of this District to be known as Complex 1 and Complex 2 respectively:

Complex 1

Ashley
Carson
Hallett
Montclair
Montclair Annex
Palmer

Complex 2

Ashland
Barnum
Boulevard
Brown
Cheltenham
Colfax

Exhibit Annexed to Complaint

<i>Complex 1</i>	<i>Complex 2</i>
Park Hill	Cowell
Philips	Eagleton
Steck	Edison
Teller	Fairview
Whiteman	Newlon
	Perry

IT IS FURTHER RESOLVED that, effective as of the opening of school in September 1969, the boundaries of the attendance areas of the following elementary schools in this School District be, and they are hereby, changed as follows:

The following described area shall be detached from the MONTCLAIR ELEMENTARY SCHOOL area and shall become a part of the PHILIPS ELEMENTARY SCHOOL area:

Beginning at the intersection of East 16th Avenue and Kearney Street, thence; East along East 16th Avenue to Monaco Parkway, North on Monaco Parkway to Batavia Place, East on Batavia Place to Oneida Street, South on Oneida Street to East Colfax Avenue, West on East Colfax Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

The following described area shall be detached from the PHILIPS ELEMENTARY SCHOOL area and shall become a part of the ASHLEY ELEMENTARY SCHOOL area:

Beginning at the intersection of East 29th Avenue and Oneida Street, thence; East on East 29th Avenue to the alley between Olive and Pontiac Streets, South along the alley between Olive and Pontiac Streets to East 26th Avenue, West along East 26th Avenue to Oneida Street, and North along Oneida Street to the point of beginning.

Exhibit Annexed to Complaint

The following described area shall be detached from the PHILIPS ELEMENTARY SCHOOL attendance area and shall become a part of the PALMER ELEMENTARY SCHOOL attendance area:

Beginning at the intersection of East 26th Avenue and Kearney Street, thence; East along East 26th Avenue to Niagara Street, South on Niagara Street to East 23rd Avenue, West on East 23rd Avenue to Leyden Street, North on Leyden Street to East 25th Avenue, West on East 25th Avenue to Kearney Street, and North on Kearney Street to the point of beginning.

The following described area shall be detached from the PARK HILL ELEMENTARY SCHOOL area and shall become a part of the STECK ELEMENTARY SCHOOL area:

Beginning at the intersection of East 26th Avenue and Clermont Street, thence; East on East 26th Avenue to Dexter Street, South on Dexter Street to East 25th Avenue, West on East 25th Avenue to Clermont Street, and North on Clermont Street to the point of beginning.

The following described area shall be detached from the PARK HILL ELEMENTARY SCHOOL area and shall become a part of the STEELE ELEMENTARY SCHOOL area:

Beginning at the intersection of East 26th Avenue and Colorado Boulevard, thence; East on East 26th Avenue to Clermont Street, South on Clermont Street to East 25th Avenue, West on East 25th Avenue to Colorado Boulevard, and North on Colorado Boulevard to the point of beginning.

Exhibit Annexed to Complaint

The following described area shall be detached from the PALMER ELEMENTARY SCHOOL attendance area and shall become a part of the PHILLIPS ELEMENTARY SCHOOL attendance area:

Beginning at the intersection of East Louisiana Avenue and South Oneida Street, thence; East on East Louisiana Avenue to South Quebec Street, South on South Quebec Street to East Florida Avenue, West on East Florida Avenue to South Oneida Street, and North on South Oneida Street to the point of beginning.

The following described area shall be detached from the WHITEMAN, MOORE, MONTCLAIR, AND MONTCLAIR ANNEX ELEMENTARY SCHOOLS attendance areas and shall become a part of the BARRETT ELEMENTARY SCHOOL attendance area.

All of Lowry Air Force Base, east of Quebec Street, within the limits of the City and County of Denver.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the MONTCLAIR ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 32nd Avenue and Steele Street, thence; East along East 32nd Avenue to Jackson Street, South on Jackson Street to East 31st Avenue, West on East 31st Avenue to Garfield Street, South on Garfield Street to East 30th Avenue, West on East 30th Avenue to Monroe Street, South on Monroe Street to East 29th Avenue, East on East 29th Avenue to Garfield Street, South on Garfield Street to East 28th Avenue, West on East 28th Avenue to Cook Street, North on Cook Street to East 29th

Exhibit Annexed to Complaint

Avenue, West on East 29th Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the WHITEMAN ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 34th Avenue and Steele Street, thence; East on East 34th Avenue to Monroe Street, South on Monroe Street to East 32nd Avenue, West on East 32nd Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the MOORE ELEMENTARY SCHOOL attendance area.

Beginning at the intersection of East 36th Avenue and Jackson Street, thence; East on East 36th Avenue to Colorado Boulevard, South on Colorado Boulevard to the north boundary of the Clayton College property, West on the north boundary of the Clayton College property to Jackson Street, and North on Jackson Street to the point of beginning.

The following described area shall be detached from the BARRETT ELEMENTARY SCHOOL attendance area and shall become a part of the CARSON ELEMENTARY SCHOOL attendance area.

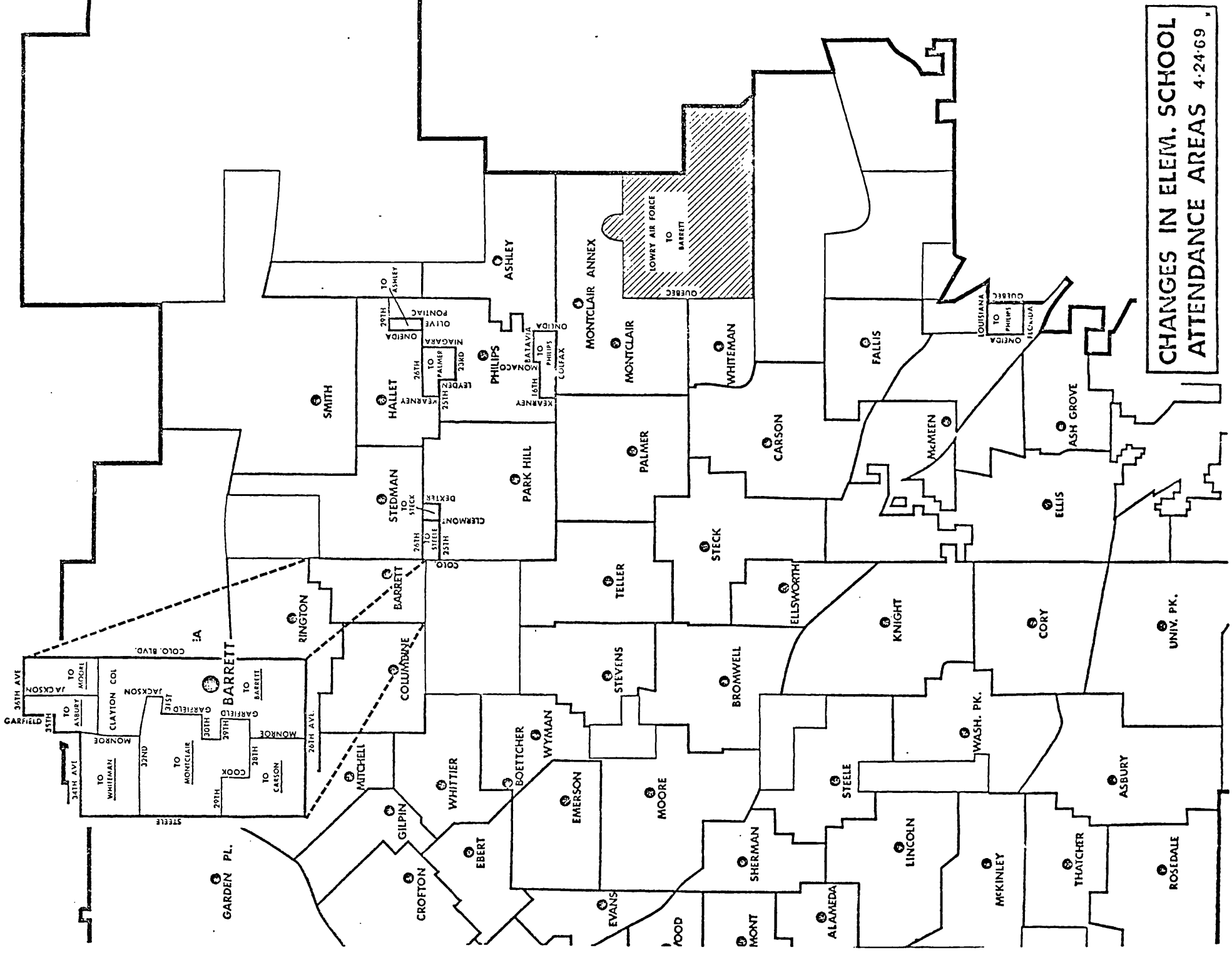
Beginning at the intersection of East 29th Avenue and Steele Street, thence; East on East 29th Avenue to Cook Street, South on Cook Street to East 28th

Exhibit Annexed to Complaint

Avenue, East on East 28th Avenue to Monroe Street, South on Monroe Street to East 26th Avenue, West on East 26th Avenue to Steele Street, and North on Steele Street to the point of beginning.

The following described area shall be detached from the **BARRETT ELEMENTARY SCHOOL** attendance area and shall become a part of the **ASBURY ELEMENTARY SCHOOL** attendance area.

Beginning at the intersection of East 36th Avenue and Garfield Street, thence; East on East 36th Avenue to Jackson Street, South on Jackson Street to the north boundary of the Clayton College property, West on the north boundary of the Clayton College property to Monroe Street, North on Monroe Street to East 35th Avenue, East on East 35th Avenue to Garfield Street, and North on Garfield Street to the point of beginning.



CHANGES IN ELEM. SCHOOL
ATTENDANCE AREAS 4-24-69

67a

Exhibit Annexed to Complaint

IT IS FURTHER RESOLVED that the Superintendent is directed to take steps to establish pre-primary educational programs in the schools of the North-Central portion of the District in September 1969, as proposed in his said report "Planning Quality Education."

IT IS FURTHER RESOLVED that the Superintendent is directed to develop and institute plans and programs to make Hallett Elementary School a demonstration integrated school as of September 1969, by use of voluntary transfer of pupils with transportation provided by the District.

IT IS FURTHER RESOLVED that the Superintendent is directed to continue the present practices of transporting pupils from Stedman Elementary School to relieve overcrowding at that school, and to obtain the reduction of a number of pupils attending the Stedman Elementary School necessary to permit removal of mobile classroom units from that school by providing transportation for such pupils to Denison, Force, and Schenck Elementary Schools.

IT IS FURTHER RESOLVED that the present practice of transporting pupils from Smith Elementary School to Alcott, Asbury, Doull, Force, McKinley, Moore, Slavens, and Steele Elementary Schools be continued.

IT IS FURTHER RESOLVED that, for the purpose of improving education and furthering of integration the schools included in Elementary School Complex 5 as described in the report "Planning Quality Education" that such schools be grouped for cooperative planning with the elementary schools of other elementary school complexes as follow, or with such other or different schools as the Superintendent

Exhibit Annexed to Complaint

may designate from time to time, utilizing the criteria of ratio of school and group memberships, racial composition of memberships, potential for educational and social improvement, and school facilities; that such cooperative planning shall be accomplished by the local schools included within such groupings through planning committees composed of school staff members, P.T.A. representatives and other citizens in the community; that such planning committees shall be selected and shall operate under rules and regulations prescribed by the Superintendent; that any cooperative plans so developed shall be mutually agreed upon by such committees prior to implementation thereof; and that implementation of such cooperative plans may be undertaken by the Superintendent within the limitations of law and the policies of this Board of Education.

<i>Schools in Complex 5</i>	<i>Schools Grouped With Complex 5 Schools</i>
Crofton	Bradley
Harrington	Pitts
	Slavens
	University Park
Wyatt	Bromwell
	Moore
	Stevens
Columbine	Godsman
Gilpin	Goldrick
	Gust
	Sabin
	Schmitt
	Traylor

Exhibit Annexed to Complaint

<i>Schools in Complex 5</i>	<i>Schools Grouped With Complex 5 Schools</i>
Whittier	Asbury Lincoln Rosedale Thatcher Washington Park
Mitchell Stedman	Denison Doull Force Johnson Schenck
Smith	Ash Grove Cory Ellis Fallis Knight McMeen

Motion for Preliminary Injunction

(Filed June 19, 1969)

COME NOW the Plaintiffs, by their attorneys, and move the Court for a preliminary injunction enjoining the defendants, and each and every of the defendant School District's officers, agents, servants, employees and each of them, and all other persons in active concert or participation with them be, preliminarily during the pendency of this action and permanently thereafter, restrained and enjoined

- (a) from in any way interfering with, modifying, cancelling or rescinding the purchase order for said twenty-seven school buses;
- (b) from destroying, changing or otherwise modifying in any manner whatsoever, or relocating those documents, contracts, schedules, or other writings and memoranda relating or pertaining to the implementation of Resolutions No. 1520, 1524 and 1531.
- (c) from taking any action or making any communication to faculty, staff, parents or students during the pendency of this action or before permanent orders are issued by this Court which would make it impossible or substantially more difficult to proceed with the implementation of Resolutions No. 1520, 1524, and 1531 at the start of the school year in September, 1969, with the exception that defendants shall not otherwise during such time be prevented from simultaneously preparing for the implementation of alternate or additional plans concerning the matters described herein as they so desire.

Motion for Preliminary Injunction

As grounds therefor plaintiffs incorporate herein by reference the allegations contained in their Complaint and further allege that certain of the defendants have been directed to and are in fact implementing the rescision of Resolutions No. 1520, 1524 and 1531, and the substitute Resolutions therefor, and in addition have been directed to review the school bus purchase contract; that unless plaintiffs are granted preliminary relief, said implementation and review by the defendants may destroy, alter, modify, revoke or otherwise irreparably injure or prevent reinstatement and implementation of Resolutions No. 1520, 1524 and 1531. Plaintiffs will thereby sustain immediate and irreparable injury and damage for which they have no adequate remedy at law. This motion will be made and based upon the pleadings, records and proceeding herein.

BARNES & JENSEN

By /s/ CRAIG S. BARNES

Craig S. Barnes

Denver, Colorado 80210

2430 South University Blvd.,

Tel.: 744-6455

/s/ GORDON G. GREINER

Gordon G. Greiner

500 Equitable Building,

Denver, Colorado 80202

Tel.: 292-9200

Attorneys For Plaintiffs

**Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.**

(Filed July 16, 1969)

COME NOW defendants John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr., individually and as members, Board of Education, School District Number One, Denver, Colorado, and for answer to plaintiff's Complaint admit, deny and state:

I

Admit the allegations of Article I. Jurisdiction.

II

Admit the allegations of Article II. Parties.

III

For answer to the First Cause of Action:

1. Admit the General Factual allegations of the First Cause of Action.

2. Admit the allegations of the First Count.

3. As to the Second Count:

A. Admit the allegations referred to in paragraph A.

B. Answering paragraph B, deny that these answering defendant Board members participated in the rescission of Resolutions No. 1520, 1524 and 1531 and state that their acts in voting against rescission were motivated by the educational needs of the children of Denver. Further answering, these answering defendants are not advised as to the motivation of those defendant Board members voting to

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

rescind Resolutions No. 1520, 1524 and 1531 in so acting but that said Board members have stated repeatedly to these defendants that they so acted because of a mandate from the people of the City of Denver requiring said defendants so to act, and in order to restore the confidence of the people of Denver in the Board of Education so that a bond issue may be passed.

C. Admit the allegations of paragraph C.

4. As to the Third Count:

A. Admit the allegations referred to in paragraph A and the allegations of paragraphs B and C, except that these answering defendants allege that the pupil populations of East High School, Phillips Elementary School and Park Hill Elementary School were not, prior to the passage of Resolutions No. 1520, 1524 and 1531, substantially segregated on the basis of race and ethnicity, but that the pupil populations of said schools, without the passage and implementation of said resolutions, would inevitably and predictably have become segregated on the basis of race and ethnicity.

B. Answering paragraph D of the Third Count, these answering defendants are not advised as to the motivation of those defendant Board members voting in favor of rescission except as reflected in their statements quoted herein in answer to paragraph B of the Second Count. Further answering, admit that racial and ethnic separation existing in the schools affected prior to the passage of Resolutions No. 1520, 1524 and 1531 would have been significantly alleviated by the implementation of such resolutions.

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

5. Admit the allegations of the Fourth Count, except that these answering defendants deny that they acted as alleged in paragraph B.

6. As to the Fifth Count:

A. Admit the allegations referred to in paragraph A and the allegations of paragraphs C and D.

B. Answering paragraph B, admit that the pupil population of the schools affected by Resolutions No. 1520, 1524 and 1531 were, or were inevitably becoming, segregated on the basis of race and ethnicity and admit the remaining allegations of paragraph B, except that these answering defendants deny that assignment of large numbers of Negro or Hispano faculty is in and of itself a necessary cause of unequal educational opportunity where such teachers are qualified and experienced, unless the presence of concentrations of such teachers is viewed by the students as a confirmation and reinforcement of the separate and segregated racial or ethnic character of such schools.

7. As to the Sixth Count, admit the allegations thereof, except that these answering defendants deny that they acted as alleged in paragraph D and allege that the pupil populations of East High School, Phillips Elementary School and Park Hill Elementary School were not, prior to the passage of Resolutions No. 1520, 1524 and 1531, substantially segregated on the basis of race or ethnicity but that the pupil populations of such schools without the passage and implementation of said resolutions would inevitably and predictably have become segregated on the basis of race and ethnicity.

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

8. For further affirmative answer to the First Cause of Action, these answering defendants state:

(A) The increasing urbanization of American society has produced educational problems for big city public school systems (including Denver) unique to this time and place and not subject to solution by traditional educational patterns of staffing, of attendance, of curriculum, and of facility needs. These inadequacies in urban public education are generally not recognized, or if recognized, are not accepted by the majority population.

(B) Unmet, these new urban educational problems result in inevitable and substantially irreversible educational inequality for a large and increasing number of American urban children, a high proportion of whom are from racial or ethnic minorities and/or are the products of the subculture of urban poverty. In Denver the fact of such inequality is demonstrated by differences between and among schools in standard achievement scores, the incidence of dropouts, differences as to individual course offerings, the quality of teaching and numbers of faculty transfers, school discipline, the degree of motivation and achievement in students, and other observable factors.

(C) The presence of large numbers of children affected by educational and learning disabilities caused by race, ethnicity and/or poverty in any school reduces, and may substantially eliminate, the effect in such school of any known remedial or compensatory programs which are economically feasible.

(D) Against this background and upon the professional recommendation of its Superintendent of Schools as being

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

educationally valid, defendant Board of Education enacted Resolutions No. 1520, 1524 and 1531. Its intent, in so acting, was to begin to meet and to overcome the conditions stated herein which had resulted and are now resulting in grossly unequal educational opportunity for many children.

(E) Resolutions No. 1520, 1524 and 1531 were adopted after citywide publicity, public hearings (including television presentations), neighborhood meetings and widespread opportunity for interested and concerned citizens to comment. Comments communicated to defendant Board of Education in public meetings and to these defendants both publicly, and privately, were in general favorable to the educational purpose and intent of said resolutions, but were critical of them for non-educational reasons, among which were:

- (a) On one hand, that the resolutions represented only a token approach to the problems of the School District, and on the other, that some alleged constitutionally protected right of parents to select the school their children should attend was threatened.
- (b) That in individual cases the resolutions might result in inconvenience to individual citizens.
- (c) That the resolutions did not reflect the will of the majority of the people of the School District and were being imposed upon the majority by a vocal and dangerous minority as a sociological experiment.
- (d) That the resolutions represented an interference on the part of the School District with the right of

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

citizens to purchase and reside in residences of their choosing.

- (e) That the resolutions would require Anglo children to attend school with minority children and would subject such Anglo children to an inadequate educational opportunity and/or the possibility of physical harm. Certain parents of minority children affected by the resolutions also expressed fears for their children in primarily Anglo schools.
- (f) That the resolutions and their implementation would require expenditure of School District funds for transportation, which expenditure was stated to be unnecessary and uncalled for.

(F) Few, if any, objections asserted that the educational purpose of the resolutions was improper.

(G) The decision of defendant Board of Education to adopt and thereafter to implement Resolutions No. 1520, 1524 and 1531 was made after the most careful balancing of the objections presented, against the known existence of the conditions requiring change, in order to begin to equalize the educational opportunities of those many children not now receiving equal opportunity. The programs established by said resolutions were and are deemed educationally sound, economically feasible and conceptually valid for the alleviation of educational inequalities in this School District, and were recommended for such purpose by the Superintendent of Schools and his staff. They represent a beginning, at various levels and with various approaches, of the development of programs designed to meet the peculiar learning problems of children disabled from achieve-

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

ment by the fact of minority racial or ethnic isolation and/or isolation by the culture of poverty.

(H) No viable alternative to said resolutions has been proposed by those defendant members of the Board of Education who voted to rescind said resolutions, except to propose certain minimal voluntary programs. Such a proposal appears to constitute on the one hand recognition by the present majority of this Board that educational inequality exists in the public schools of this District, and at the same time limits solutions designed to establish equality of opportunity to those approved by a majority of the electors of this District, such majority comprising, in general, persons not affected by the problems which require solution.

(I) The apparent assumption on the part of many citizens and of the majority Board members voting to rescind said resolutions that the resolutions represent the first step toward a program of total racial and ethnic balance throughout the School District is not justified by any past Board action; said resolutions represent an attempt to ascertain on a broad pilot basis whether and to what extent integration of pupil populations does result in equalization of educational opportunity and are designed to develop and prove the validity (or invalidity) of various programs and approaches to the unmet needs of modern urban education.

(J) These answering defendants submit that failure to implement Resolutions No. 1520, 1524 and 1531 in September of 1969 will, in addition to the consequences alleged in plaintiffs' First Cause of Action, effectively terminate any possibility of material improvement in the unequal educa-

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

tional opportunity now offered to a large number of minority racial and ethnic children in the Denver public schools and will, therefore, in a real sense, condemn very many children of this School District to continuing inequality in the education available to them.

WHEREFORE, these answering defendants, having fully answered plaintiffs' First Cause of Action, pray that the Court grant the relief prayed for in plaintiffs' Prayer for First Cause of Action, except that no recovery of costs be adjudicated against these defendants.

For answer to the Second Cause of Action:

1. As to the First Count:

A. Incorporate herein by reference their answer to the First Cause of Action.

B. Answering paragraph B, admit that the acts described in paragraph B have resulted in and have maintained racial and ethnic segregation within the School District but deny that said acts were taken deliberately and purposely by these answering defendants to create, foster or maintain racial and ethnic segregation.

Further answering the allegations of paragraph B of the First Count, these answering defendants:

1. Admit that the use of a so-called "neighborhood school" attendance policy results, and has resulted, in significant racial and ethnic segregation in the School District, reflective of segregated residential patterns but deny that they acted with respect to any "neighborhood school" policy with the intent and purpose to create, foster and maintain racially and ethnically segregated schools.

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

2. Admit that school attendance area boundaries have been created, altered and enforced with the effect of establishing and maintaining racial and ethnic segregation within the School District but deny that they acted with respect to said boundaries with the purpose and intent of creating, fostering and maintaining racial and ethnic segregation within the School District.
3. Admit that historically from time to time optional attendance areas have been established for various schools within the School District but deny that said optional attendance areas are or at any time were in contravention of the defendant Board of Education's existing published policies and resolutions; deny that these answering defendants participated in the establishment of any optional attendance area; and deny that any optional attendance areas were applicable only to Anglo children.
4. Admit that historically a disproportionate number of Negro and Hispano faculty and staff have on occasion been assigned to those schools having predominantly Negro and Hispano pupil populations; admit that such assignments may have further confirmed and solidified the racially and ethnically segregated character of such schools; but deny that these answering defendants acted with respect to such assignment of Negro and Hispano faculty and staff with the purpose and intent to create, foster and maintain racial and ethnic segregation in the School District.
5. Admit that historically optional attendance areas have from time to time been created for certain

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

schools undergoing transition to gradually increasing proportions of Negro and/or Hispano pupil population; deny that these answering defendants participated in the establishment of any optional area; and admit that optional areas may have had the result alleged, that is, the retention and confinement of Negro and/or Hispano pupils to schools of predominantly Negro and/or Hispano pupil populations.

C. Admit the allegations of paragraph C of the First Count.

2. As to the Second Count:

A. Incorporate by reference their answer to the First Cause of Action and their answer to paragraph C of the First Count of the Second Cause of Action.

B. Answering paragraph B:

1. Admit that certain schools in predominantly Negro and Hispano attendance areas may have physical plants, equipment and curricula inferior to some schools with predominantly Anglo student pupil populations but deny that all predominantly Negro and Hispano schools have physical plants and equipment inferior to that provided to schools with predominantly Anglo student pupil populations and deny that to their knowledge inferior materials and supplies have been furnished to predominantly Negro and Hispano schools.
2. Admit that in certain schools with predominantly Negro or Hispano pupil populations there has been

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

a disproportionately large number of less experienced faculty assigned and at the same time, as to certain schools with predominantly Anglo pupil populations, that there has been a disproportionately large number of more experienced faculty assigned.

C. Answering paragraph C, admit that schools provided with resources inferior to other schools do provide for the students assigned to such schools an educational opportunity unequal and inferior to that provided by other schools in the School District.

3. As to the Third Count:

A. Incorporate by reference their answer to the First Cause of Action.

B. Incorporate by reference their answer to paragraph C of the First Count of this Second Cause of Action.

C. Admit the allegations of paragraph C.

D. Admit the allegations of paragraph D.

4. As to the Fourth Count:

A. Incorporate by reference their answer to the First Cause of Action.

B. Answering paragraph B, admit the existence in certain schools of the School District of various systems of pupil ability grouping.

C. Answering paragraph C, admit that among other criteria used in ability grouping is the ability to learn, and admit that classification as alleged may result in assignment to regular or accelerated educational programs in individual courses.

*Answer of Defendants John H. Amesse, Rachel B. Noel
and James D. Voorhees, Jr.*

D. Answering paragraph D, admit that under certain circumstances the application and administration of systems of ability grouping may result in the denial to students subject thereto of an educational opportunity equal to that offered to other students but deny that such ability grouping will always afford an unequal educational opportunity as between the minor Negro and Hispano plaintiffs and Anglo students of comparable ability and qualification.

WHEREFORE, having fully answered the Second Cause of Action these defendants pray that the relief prayed for in plaintiffs' Prayer for Second Cause of Action be granted, except that should the Court order that any comprehensive plan be submitted as prayed in paragraph A 1.(b) and/or paragraph A 3.(b) thereof, these defendants suggest that any such plan should be educationally sound and should be implemented within a time schedule fixed by the Court, and except that no recovery of costs be adjudicated against these answering defendants.

Respectfully submitted,

/s/ RACHEL B. NOEL
Rachel B. Noel

/s/ JOHN H. AMESSE
John H. Amesse

/s/ JAMES D. VOORHEES, JR.
James D. Voorhees, Jr.

(Addresses of the Answering Defendants omitted)

* * * * *

(Certificate of Service omitted)

Hearing on Preliminary Injunction July 16-22, 1969

[25] * * *

RACHEL B. NOEL, a witness called by and on behalf of Plaintiffs, having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Greiner:

The Court: Give us your name and address, please.

The Witness: Rachel B. Noel, 2601 Adams.

By Mr. Greiner:

Q. Mrs. Noel, you are one of the Defendants in this case?

A. Yes.

Q. You're a member of the Board of Education of School District Number 1? A. Yes.

Q. And how long have you been a member of the Board [26] of Education? A. I was elected to the Board in May 1965.

Q. What was your current address? A. 2601 Adams.

Q. How long have you lived at that address, Mrs. Noel? A. About ten years.

Q. So you moved there in approximately 1958? A. Right.

Q. In 1958, Mrs. Noel, did you have any children going to the elementary schools of the Denver School District?

A. Yes, I did. I had two children attending Park Hill School.

Q. Now during the course of your residence or during the course of their progress through elementary school was there any change made in the school of their attendance? A. My daughter was in second grade when

Rachel B. Noel—for Plaintiffs—Direct

she went to Park Hill and she attended second, third and fourth grades, but when she went to fifth grade Barrett School had been built and she completed her elementary education at Barrett.

Q. Barrett opened in 1960? A. 1960.

Q. Do you recall approximately what the racial composition of Park Hill Elementary School was back in 1958 and 1959? A. Predominantly white.

【27】 Q. And when Barrett opened, do you recall whether or not it was predominantly Anglo or predominantly Black? A. Predominantly Black.

Q. So then your child was sent from an integrated school to a segregated school? A. That's right.

Q. How if at all, Mrs. Noel, did that event affect your awareness of school board policy? A. Well, it was very clear that when she started to Park Hill School in the second grade and she was being transported to Park Hill School by a bus, at that time the bus was just taking—was taking at least half and half if not more white kids to Park Hill School, and in the course of the time she was attending, and I would say as I can recollect, a year or year and a half, more Black kids were riding that bus to Park Hill School, and it seemed very clear to me and to many other parents that Barrett School was built—Discussions began about it being needed because so many Black kids were coming into Park Hill School, the bus was practically carrying Black kids to Park Hill School and Barrett School was built at that time. It just seemed so clear to us that this was the reason.

Q. Now, Mrs. Noel, with respect to your daughter's change in school, from Park Hill School, which was integrated to the Barrett School, which was segregated, did that event 【28】 lead you to any sort of an appraisal or

Rachel B. Noel—for Plaintiffs—Direct

an awareness of differences in the educational programs at those two schools? A. Well, my daughter told me—she was in the fifth grade at Barret School when she entered, when Barrett opened; that she was having the same thing in the fifth grade that she had had in the fourth grade at Park Hill during several conversations with her about not having much homework or not seemingly having much interest. And I went to school and I talked to the teachers—to her teacher and I talked to the principal and—as a parent, trying to find out what it was. I sat in on the classes. And I wanted to see what it was. And to the best of my judgment and certainly my great concern based on her statements to me—it seemed that she was not getting what she should have gotten and what she would have gotten at Park Hill since she was having the same thing over in the fifth grade as she had had in the fourth.

Q. Now that event occurred sometime in 1960 with the opening of Barrett School? A. Right.

Q. Within the next two years, Mrs. Noel, did any other event occur that again raised the issue of whether additional new schools be built in northeast Denver? A. I'm sorry. I didn't get the first part of your question.

[29] Q. Between 1960 and 1962 was there any proposal of the School Board which again, as had Barrett, brought into focus the question of whether new schools should be constructed in northeast Denver? A. It was at that time—the then superintendent of schools recommended the building of a junior high school at 32nd and Colorado which is the Barrett side, actually.

Q. Was there any community concern over that proposal? A. There was great community concern, not only in

Rachel B. Noel—for Plaintiffs—Direct

the Black community but throughout the city that the day that school opened it would be a segregated school.

Q. Mrs. Noel, did that concern lead to any affirmative action by the Board in 1962? A. The Board of Education appointed a special committee on equality of educational opportunity in November I believe of 1962.

Q. Is it not a fact, Mrs. Noel, that you served on that committee? A. I was a member of that committee?

Q. Now how long approximately did the committee deliberate? A. Let's see, the report was presented in 1964. So, it's about 18 months.

Q. What sort of responsibilities were given to this special committee? **[30]** A. The committee was asked to look throughout the school system concerning equality of educational opportunity with special reference to racial and ethnic factors.

Q. During the course of its deliberation, Mrs. Noel, while the committee was deliberating, did the Board of Education formulate any new policy with respect to the racial characteristics of the schools? A. This policy 5100 was formulated by the Board after the recommendations to the Board of Education from our committee had been made.

Q. Does policy 5100 set forth in Plaintiffs' Exhibit 1 which you now have in front of you— A. Yes.

Q. Was policy 5100 passed by the Board at the request of this special committee? A. Yes.

Q. Was that one of the recommendations of the committee? A. Yes.

Mr. Greiner: Your Honor, we would move the introduction of Plaintiffs' Exhibit 1.

The Court: Do you have any objection?

Rachel B. Noel—for Plaintiffs—Direct

Mr. Craig: Your Honor, we have already stipulated to the admission of that exhibit.

The Court. Very well. It's received.

(Whereupon, Plaintiffs' Exhibit 1 received in evidence.)

[31] The Court: It hasn't been before. Those stipulated exhibits I think the order should provide they are all received and you can draw up a list when you have an opportunity for both sides, Mr. Kerr.

The Clerk: Yes, Your Honor.

By Mr. Greiner:

Q. Mrs. Noel, the next exhibit is Plaintiffs' Exhibit 20G which is also, Your Honor, one of the stipulated exhibits.

Calling your attention, Mrs. Noel, to Plaintiffs' Exhibit 20, during the course of its deliberations did the committee come to any kind of conclusion as to whether or not it made any difference whether the segregated schools were segregated by force of law or simply by intent?

Mr. Craig: Your Honor, I'm going to object to that question. I think the exhibit speaks for itself and the result of a deliberation of that committee.

The Court: True. Sustained.

Mr. Greiner: Your Honor, I might point out—

The Court: I'll read the report.

Mr. Greiner: Well, it's a hundred some pages long and I was trying to point out the particular aspects of the report upon which we will rely, Your Honor.

Rachel B. Noel—for Plaintiffs—Direct

The Court: Well, that's different. You go ahead. Are you going to have her sum it up?

Mr. Greiner: Yes, Your Honor.

【32】 The Court: Do you object to this?

Mr. Craig: I do object, Your Honor. I object to the witness just reading back what the report says.

The Court: May I take a look at it?

Mr. Craig: Your Honor, I think counsel can point to the sections in which he relies in his summary of this case.

The Court: That's better, I think. Why don't you just call her attention to the recommendations and the conclusions that you wish to bring forward?

Mr. Greiner: That was my intention, Your Honor.

Q. Mrs. Noel, directing your attention to Page 6 of the report did the committee reach any conclusion whether there was a possibility of unequal educational opportunity existing due to the fact of segregation in the schools? A. Yes, it did.

Q. In summary, Mrs. Noel, what was the committee's conclusion? A. That there was in Denver real possibility of unequal educational opportunity because of the existence of clusters of minorities, racial and ethnic groups within the city.

Q. Now during the course of its deliberations, Mrs. Noel, did the committee consider the Board's—the School Board's boundary policies? 【33】 A. Yes, it did.

Q. Were those policies then in writing? A. They were not in writing at the time the committee was investigated.

Q. Did the committee make any recommendation to the Board as to whether or not those policies should be reduced to writing? A. Yes, it did.

Rachel B. Noel—for Plaintiffs—Direct

Q. Was that recommendation followed? A. This recommendation was followed.

Q. Again, Mrs. Noel, calling your attention to Page A-5 of the exhibit, did the committee reach any conclusions as to whether because of segregation, whether the cause of segregation had any effect upon the detrimental effect of that segregation?

Mr. Craig: I'm going to make the same objection. I think Page A-5 speaks for itself.

The Court: True, but he is just calling attention to the fact that it did make a recommendation. I don't think we're in any trouble yet. Overruled.

Mr. Craig: My point is, if the testimony paraphrases what the report says then we could have some conflict, and I think we ought to stick to what the report does say.

The Court: Well, we will see what it's leading to.

Q. Do you have the question in mind, Mrs. Noel? **[34]**
A. I think as I look at this that the statement in 1954, the United States Supreme Court stated that segregated education is inherently unequal education. And that there was ample authority for such a statement. While the Court in that instance was concerned with segregation established by law—

The Court: Is she reading from the report now?

Mr. Greiner: Yes.

A. —the committee is persuaded that the statement can correctly be made where de facto segregation and minority races occur because the factors which—the most obvious of which is a pattern of housing restriction.

Rachel B. Noel—for Plaintiffs—Direct

Q. So then the commission's conclusion was that the cause of the segregation didn't make any difference? A. That's right.

Q. Calling your attention to Page D-12 of this report, Mrs. Noel, in the course of its duties, did the commission have occasion to examine the Board's policy regarding the assignment of minority teachers? A. Yes, it did.

Q. What conclusions did the committee reach regarding these policies of the Board? A. The committee felt because of the great and high proportion of minority teachers and in minority schools that there was a policy of assigning them to schools that had high [35] percentages of minority population. And there is a table—or there should be—that shows this very definite—

Q. That's at Page 36 in the appendix of the exhibit? A. Yes, I think it is.

Q. And that shows the concentration of minority teachers in minority schools? A. Right.

Q. Mrs. Noel, in view of that conclusion of the committee, did it make any recommendations to the Board? A. Yes, it did. The committee recommended that the Board of Education should establish—this is the first recommendation in this group—and enforce a policy that requested teachers of minority background, that they will be assigned throughout the system.

Q. Was that recommendation accepted by the Board? A. I don't believe that that is a part of the policy in regard to teachers—teacher assignments today. However, this was a recommendation.

Q. Mrs. Noel, I'd like to call your attention to Plaintiffs' Exhibit 26. This I don't believe has been stipulated to, Your Honor. And, I would ask you if you can identify

Rachel B. Noel—for Plaintiffs—Direct

Plaintiffs' Exhibit 26? A. This is Denver School policy employees' change of assignment, 1617(a).

Q. That's a policy 1617(a). Now, can you tell from [36] the exhibit, Mrs. Noel, when that policy was adopted by the Board?

Mr. Craig: Your Honor, at this point I just want to interrupt to state that this is a policy—this policy is incorporated in Exhibit 20 which we believe we have agreed to the admission of.

Mr. Greiner: Fine.

A. The date is April 1st, 1963.

Q. So then this was the policy on teacher assignment that was in existence when your committee made this conclusion about the assignment of minority teachers? A. Yes, because this report was issued in 1964.

Q. And there has been no change in policy 1617(a) since the issuance of your report? A. Not to my knowledge.

Mr. Greiner: I take it then, Your Honor, that Exhibit 26 will be received?

The Court: Well, it's part of Exhibit 20 he says and stipulated to.

Mr. Craig: Yes, Your Honor, we didn't think it necessary to stipulate to these individually if they're part of another exhibit.

The Court: We will receive 26 anyway.

(Whereupon, Plaintiffs' Exhibit 26 was received in evidence.)

[37] Q. Mrs. Noel, can you tell us then after the report of this special committee, what actions the Board took

Rachel B. Noel—for Plaintiffs—Direct

which again brought up for the community's consideration the issue of whether schools in northeast Denver—whether there should be built new school? A. Well, to the next concern of the Board of Education in regard to building new schools, as I remember, was the building of the addition to Hallett School.

Q. That's an elementary school? A. That's an elementary school. And discussions concerning this began soon after I became a member of the Board.

Q. And that was in— A. In 1965.

Q. In May? A. I think it began in June.

Q. Now again, what was the concern about building an addition to Hallett School? A. The Superintendent had recommended that eight classrooms should be added to Hallett because of its overcrowdedness and I felt that this would be adding more classrooms—would be really making more space for segregation and opposed it on those grounds.

Q. Now at that time in 1965 was Hallett a predominantly a Negro school? 【38】 A. Hallett was becoming—growing more predominantly Negro every day.

Q. Now did that community concern, Mrs. Noel, about those additions to Hallett—and by the way those additions were built were they not? A. Yes.

Q. Did that concern lead to the formation of another study committee? A. The concern about Hallett—there was also a request for additions to Stedman. There was a realization of overcrowdedness at both Hallett and Stedman, and in addition, Smith Schools. And the fact that they were predominantly segregated and all of this I think in the discussions about what to do led to the appointment by the Board of another committee called the Advisory Council.

Rachel B. Noel—for Plaintiffs—Direct

Q. Do you recall approximately when that committee was appointed? A. Let's see. In 1966, I think.

Q. Handing you what's been received into evidence as Plaintiffs' Exhibit 21, Mrs. Noel, that is the report of this committee which you have been describing? A. Yes.

Q. The Advisory Council? A. The Advisory Council on equality of educational opportunities.

[39] Q. Now was any particular charge given or any set of responsibilities defined by the Board of Education with respect to the responsibilities of this Advisory Council? A. In the charge the Advisory Council was asked to advise the Board—recommend to the Board about location of new schools and additions in northeast Denver. And about changes in policies the Board had in this regard.

Q. Mrs. Noel, through that report, Exhibit 21, how did the Council answer those questions which were put to them by the Board?

Mrs. Craig: Your Honor, I'm going to object to that question again. It isn't clear that Mrs. Noel was a member of that Council, and again the report speaks for itself.

The Court: True. But, am I going to have to read all these? Eventually I suppose I am, but as I understand it she's just going to call attention to the recommendations of the Council, is that correct?

The Witness: That's correct, as I understand it.

The Court: On the opening of new schools? I'll permit her to do that.

The Witness: In the answer to the charge on Page 84, the Committee came to the conclusion that no schools should be built in northeast Denver until plans are developed to implement Paragraph 1(b)

Rachel B. Noel—for Plaintiffs—Direct

of Policy 21-C and Policy 4, 5100, and this calls attention to consideration of [40] the ethnic and racial characteristics of the school population making it to the extent of a heterogenous school community in the consideration of the building of new schools and the fact that the continuation of the neighborhood schools has resulted in the concentration and reduction of this concentration, should be considered in the location of new schools.

Q. Now, Mrs. Noel, during the period of 19—

The Court: Well, what happened? What happened to Hallett?

The Witness: The additions were built to Hallett. And, I voted against it.

The Court: Go ahead.

Q. During the period 1960, Mrs. Noel, through today, what in general has been the trend of racial composition in northeast Denver? A. The schools are becoming more segregated.

Q. Can you think of some example, and I'm referring you now to Page 7 of the report where there is detailed some of the rather dramatic changes that occurred at such schools as Stedman, Hallett and Barrett? A. This refers to the rapid change in the student population, rapid racial change composition of the student population at Stedman and at Stedman, in 1960, there were four percent Negroes in the total student population.

[41] Q. At Stedman? A. Yes. In 1966 the pupil population was then 89 percent Black.

Q. What is it today, Mrs. Noel? A. My guess is 99

Rachel B. Noel—for Plaintiffs—Direct

percent Black and 44/100. And there is another statement also I'd like to call attention to, in October in 1960 at Hallett there was less than one percent and in October, 1966 the pupil population at Hallett was about 75 percent Black. Today I would judge that that is in the 90 percent category.

Q. So then this trend has continued over this whole period and still continues today? A. Yes.

Q. Now the 1967 report, did it make any recommendations as to possible method by which the Board could alleviate the segregated—the segregation which it found to exist? A. It made a recommendation of a study of an educational park as I recall and there was some other recommendations in regard to cultural and arts programs.

Q. Now about this time was the Board considering proposing a bond issue to the electorate in Denver? A. Yes.

Q. With respect to that bond issue was there a proposal for a program which might have served to relieve some of the segregation in the schools? [42] A. Yes as a part of the bond proposal there was presented to the electorate in 1967—in the fall of 1967, in the middle of the school concept as envisioned in the proposal would have alleviated some of the segregation in the schools in northeast Denver.

Q. Those middle schools would have drawn their students from a wider geographic area? A. Yes, from a wider area and transportation was to be involved.

Q. What happened to that bond issue proposal? A. Well, the bond proposal was defeated.

Q. Was it close? A. No, not really.

Mr. Greiner: Your Honor, at this time I would like to call the Court's attention to Plaintiffs' Exhibit 24 which has already been received.

Rachel B. Noel—for Plaintiffs—Direct

The Court: Very well.

Q. Now from the time that the bond issue was defeated, Mrs. Noel, was that in the fall of 1967? A. Yes, 1967.

Q. Was there any other affirmative step between the fall of 1967 and the spring of 1968 taken by the Board to relieve this problem of segregation? A. There was continued pressure from parents in northeast Denver particularly Smiley about the need for [43] relief for that school and the growing segregation at that school and there was a proposal in the consideration of Hamilton Junior High that students from Smiley could be bused for an addition at Hamilton, as I recall.

Q. That was busing out from Smiley to Hamilton? A. Right.

Q. And was that going to do anything to help integrate Smiley? A. No, this was one-way busing into the new junior high school. It would have relieved the overcrowding at Smiley but the school would have remained segregated.

Q. So as late as 1967 and 1968 the Board had still not built a new junior high school to serve northeast Denver? A. No.

Q. During the course of that period did the Board receive proposals from the Division of Planning and Engineering Services with respect to the location of such new schools? A. Yes.

Q. Are Exhibits 22 and 23 examples of such proposals? A. Yes.

Mr. Greiner: Your Honor, these exhibits have also been stipulated into evidence.

The Court: Very well.

Rachel B. Noel—for Plaintiffs—Direct

Q. Mrs. Noel, was there any one event that occurred in April of 1968 which had an impact upon the future actions [44] of the Board with respect to this problem? A. I would have to say there were two events: one was the death of Martin Luther King and the second was the introduction of the resolution in regard to a plan for integrating the schools of Denver, and the reason I say two events is because the death of Martin Luther King and the meaning of that event to me as a member of the School Board, I think is of great importance because I felt that as a Black person in a policy making position, as well as Black people throughout this country, needed to see that equality of opportunities was available in this country. My role as a School Board member—I felt affected or should affect those Black children in these schools and I felt integration was important and because of that I introduced the resolution.

Q. Mrs. Noel, the resolution you refer to was Number 1490? A. Yes.

Q. And that's Plaintiffs' Exhibit 2. Well, Mrs. Noel, what did 1490 do with respect to School Board policy? A. I felt that it would implement a policy really that we already had, 5100, that had to do with equality of educational opportunity and that it really would make it real, would make it meaningful. And this direction to the Superintendent to draw up a plan for integrating the schools was then directed in order to bring about this. There are [45] two parts to this resolution. Part two is clarified in regard to certain points. That had to do with the plan.

Q. With regard to those points, Mrs. Noel, did 1490 recognize the effect of the continuance of the neighborhood school policy? A. Yes.

Rachel B. Noel—for Plaintiffs—Direct

Q. What would that effect have been? A. It would have been more concentration, more segregation.

Q. Now also with respect to Policy 1490, Mrs. Noel, was there any indication in that policy regarding the desirability of integration? A. You mean 5100? Yes.

Q. Now with respect to 1490, your own resolution, was there an equation of integration with equality of educational opportunity? A. This was a part of the understanding of what it meant.

Q. So 1490 was introduced. Was it later passed by the Board? A. It was passed by the Board in May of 1968.

Q. And were there public hearings or meetings with respect to 1490? A. There was.

Q. Prior to its passage? [46] A. Yes, and great public interest and comment.

Q. So then under that it became the Board's official policy that the integration of the schools was one of the objectives of the Board? A. In the acceptance of the resolution in this regard, by a vote of five to two. Then the Board did in my view set then on a course toward integration.

Q. That was in May of 1968? A. Right.

Q. Now between May 1968 and the fall of 1968 that was the period during which Dr. Gilberts was developing the plan which he had been directed to propose? A. Right, the resolution stipulated that the plan was to be presented to the Board—submitted to the Board no later than September 30.

Q. Now calling your attention, Mrs. Noel, to November of 1968, going back in time for a moment, in October of 1968, the Superintendent presented his report? A. Yes, October 10, 1968.

Rachel B. Noel—for Plaintiffs—Direct

Q. Now that was merely a report of an overall proposal for the integration of Denver schools? A. It was his plan in response to the direction of 1490.

Q. Now by the simple presentation of that report were there any affirmative steps taken to integrate any particular [47] school? A. There was a beginning implementation of the proposals from the Superintendent based on his plan.

Q. So that then in November of 1968 the Superintendent was directed by the Board to come up with a more specific proposal? A. I was not present at that November meeting, but as I recall the minutes, the Superintendent was asked—and it was in regard to what was going to happen in February that would need to be approved by the Board. As part of his plan only some parts of it were to take effect in the second semester and it was in this regard that he was asked to bring in these more specifics.

Q. Mrs. Noel, with respect to the minutes of the meeting of the Board of Education, are minutes taken at those meetings? A. Yes.

Q. And are they then prepared and in written form? A. Yes.

Q. I'm handing you what has been marked for identification as Exhibits 28, 29 and 32 and ask you if you can identify these.

The Court: Are those minutes?

Mr. Greiner: These are the official minutes. I really don't understand why the Defendants can't authenticate [48] their own minutes, Your Honor, but—

Mr. Creighton: Well those were the ones we got at 9:30 last night. We haven't looked at them but

Rachel B. Noel—for Plaintiffs—Direct

certainly they may go in as authentic. We consider it admissible here.

The Court: Very well. Exhibits 28, 29 and 30 are received.

Mr. Greiner: The other one I believe was 32, Your Honor.

The Court: And 32.

(Whereupon, Plaintiffs' Exhibits 28, 29, 30 and 32 were received in evidence.)

Q. Mrs. Noel, was the policy of the school board with respect to school attendance area boundaries reduced to writing? A. Yes.

Q. And is that policy reflected in Plaintiffs' Exhibit 23? A. Yes, in 33.

Q. 33. Pardon me.

Mr. Greiner: Your Honor, again we would introduce Exhibit 33 which is in effect the neighborhood school policy of the district.

Mr. Creighton: That, Your Honor, is part of Exhibit 23 previously agreed to. That may go in.

The Court: We will receive it.

(Whereupon, Plaintiffs' Exhibit 33 was received in evidence.)

[49] Q. Then finally, Mrs. Noel, with the giving of those instructions to the Superintendent is that the event then which began the process which ultimately led to resolutions 1520, 1524 and 1531? A. That's correct.

Mr. Greiner: Thank you, Mrs. Noel. Your witness.

* * * * *

Rachel B. Noel—for Plaintiffs—Cross

[49] * * *

Cross-Examination by Mr. Craig:

Q. Mrs. Noel, during your direct examination you testified as to your daughter's educational experience in both Park Hill and Barrett Elementary Schools. A. Right.

Q. Where did she later go to junior high school? A. To Smiley.

Q. Where did she later go? A. To East.

Q. East Senior High School? A. Yes.

Q. And has she graduated from East? A. Yes.

Q. Has she been admitted to college? **[50]** A. Right.

Q. Which college is she— A. She attends Smith College.

Q. Has she graduated from Smith? A. No, she was a freshman last year.

Q. Could you give us your general impression of her academic achievements there at Smith? A. Well—

Q. Was it good, bad or poor or— A. It was good. I wished it had been better.

* * * * *

[51] * * *

Q. Mrs. Noel, you testified as to the proposal of the administration I believe to build a junior high school at East 32nd and Colorado Boulevard. To your knowledge, has that school been built? A. No.

Q. Have any other junior high schools been built since 1962 in this city? A. Well, Jesse Hamilton has been built.

Q. And where is Jesse Hamilton located? **[52]** A. I don't know the exact address; East Dartmouth and something.

Rachel B. Noel—for Plaintiffs—Redirect

The Court: I beg your pardon? Where?

The Witness: East Dartmouth. I don't know what the crossing street is. It's way out in southeast Denver.

Q. Has the Board approved plans and is it in the process of building or planning another new junior high school in southeast Denver? A. Also in southeast Denver, yes.

Q. Do you know if the Board has any present plans to build any new Junior high schools in northeast Denver?

A. Present plans?

Q. Yes. A. Not to my knowledge.

Q. Do you know if there are present plans to utilize excess capacity in these new junior high schools to relieve some of the junior high schools in northeast Denver?

A. Yes.

* * * * *

[54] * * *

Q. Mrs. Noel, you testified that in your opinion there was a trend in northeast Denver toward more segregation in the schools and Hallett Elementary School in particular. Can you tell us whether or not it was true that at the same time there was a parallel change in the racial composition of the residential area of that part of the city? A. Right.

* * * * *

[56] * * *

Redirect Examination by Mr. Greiner:

Q. Mrs. Noel, you mentioned in answer to the question, what is a segregated school. Some of the indicia of a

Rachel B. Noel—for Plaintiffs—Redirect

segregated school. What are some other indicia? Do segregated schools have for example higher drop out rates? A. I neglected to mention that. That's one of the—

Q. They do? A. That's one of the measurable—

Q. They tend here in Denver to have less experienced teachers?

Mr. Craig: Your Honor, I'm going to object to the form of the question that counsel is using. I believe they're leading and he has called Mrs. Noel as his witness.

The Court: Overruled.

Q. You may answer the questions, Mrs. Noel. Do they **[57]** have less experienced teachers? A. By and large this is true.

Q. Do they have fewer teachers with say more than ten years experience? A. I think this is correct.

Q. Do they have fewer children going on to college, Mrs. Noel? A. This is correct.

Q. So I take it that your daughter's example is not typical of what happens to minority children in this country? A. I would say the percentages are different.

Q. That's all reflected in the drop out rate for minority children, is it not? A. The percentages are higher in the drop out rate for minority children.

Q. Mrs. Noel, the 1964 report was unanimous, was it not? A. Yes.

Q. Now in reaching that unanimity was it necessary to reach any compromises on language? A. Yes, in the discussions of the committee as a whole, and this is what

Rachel B. Noel—for Plaintiffs—Redirect

this report is, a result of these discussions of the committee as a whole. The discussions were free and complete and so that all points of view were considered. And in the acceptance of the wording, in many cases there was a feeling by some that it should be stronger wording or [58] weaker and a more acceptable word than was used.

Q. Now, Mrs. Noel, with regard to the addition of Hallett, I believe you said that your quarrel with that decision was it kept those children in a segregated school.

A. Yes, and it made more space for segregation.

Q. Does the same effect, the same confinement effect obtain when mobile units are brought into a segregated school? A. Yes.

Q. Also with respect to new additions that are being constructing in the Park Hill area, is there not now the building of a new addition to the new Park Hill Elementary School? A. Yes.

Q. So that is another case, another instance where there has been some additional construction? A. Yes.

Q. With respect to the mobile units in northeast Denver school, is it fair to say, Mrs. Noel, that there are more mobile units in that area than in any other area of the city? A. Yes.

Q. Do you have any idea approximately how many are being used there? A. Not really. I think there are twelve now at Stedman. Not Stedman, I mean Smith.

[59] Q. Smith is predominantly Black? A. About 99 percent Black. I believe there are four still at Stedman. I'm not positive.

Q. Are you aware of any mobile units at Anglo schools in northeast Denver, such as Ashley, for example? A. I'm not aware of them.

Rachel B. Noel—for Plaintiffs—Redirect

Q. Now, counsel inquired about the trend in the racial composition of the neighborhood. Mrs. Noel, when did the direction of that trend become apparent? A. At the building of Manual High School.

Q. Approximately when was that? A. That began in 1950; in the 50's. Now, I'm not certain of that date.

Q. Now, when you came on the school board in 1965, was the school board aware of this trend? A. Yes.

Q. Did the school board make any changes in its policies in view of its awareness of this trend? A. Well, the consideration of racial and ethnic factors was a part of the policy and this is policy 1222-C, I think is the number.

Q. Mrs. Noel, since you have been on the Board, do you recall any school attendance area boundary changes in northeast Denver which have had the effect of improving the racial composition of the school affected? **[60]** A. Boundary changes?

Q. Up until the time of the passing of these resolutions. A. I don't recall any.

Mr. Greiner: No further questions.

The Court: What is a mobile unit?

The Witness: It's a separate unit that holds one classroom and teacher and I think up to thirty students can be in there. It's located close to the school building.

The Court: They have some at Gove? Are those mobile units?

The Witness: Those were I think supposed to be when they were first put in. You were talking about the things still there. But, these I'm talking about can be really moved.

The Court: I see.

A. Edgar Benton—for Plaintiffs—Direct

[61] * * *

A. EDGAR BENTON, a witness, called by and on behalf of plaintiffs, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnes:

The Court: Please state your name and address.

The Witness: My name is A. Edgar Benton, 901 Race Street, Denver, Colorado.

By Mr. Barnes:

Q. Mr. Benton, were you ever a member of the Board of Education of School District No. 1, a defendant in this action? A. I was.

Q. Will you give the dates during which you were a member? A. I was elected in May, 1961 and served until May, 1969.

Q. You were on the Board then during the period described by Mrs. Noel in the previous testimony? A. I was.

Q. And you were on the Board in the Fall of 1968 [62] when Dr. Gilberts, the superintendent, presented his plans in response to 1490? A. Yes.

Q. The date of that presentation was approximately October 10, 1968? A. That's correct.

Q. What was the response of the Board following that presentation?

The Court: What do you mean? Did they approve it or what—

Q. Did they approve and enforce the plan in its entirety? A. Dr. Gilberts presented his plan not for enforcement or for approval at that time, but for considera-

A. Edgar Benton—for Plaintiffs—Direct

tion and study by the Board of Education and by the community so the Board not officially at that time, but I think informally received Dr. Gilberts' report for consideration and for evaluation, and this led to a series of conferences with the superintendent and other meetings for purposes of the consideration and evaluation of the report.

Q. Did this lead to action by you at the meeting of the Board, November 21st, 1968? A. Oh, the meeting indicated the question which had been presented to the Board for its consideration stemming primarily from interested parents in the Park Hill area and [63] particularly the Smiley Junior High School area, was what steps could be taken effective in the Spring semester of 1969 to alleviate not only the overcrowding but also the intensified segregation at Smiley Junior High School. In response to that request and concern of the citizenry of that area, I suggested not in the form of a motion but in the form of a suggestion to the superintendent for his consideration that there might be a possibility of alleviating the problem at Smiley by removing some of the Black children from Smiley and putting those children in non-segregated schools and replacing them with children already riding buses then being transported to Hill Junior High School, Merrill Junior High School and perhaps some others. So the effect of my suggestion would have been to reduce the population at Smiley and to improve the racial balance at Smiley. Dr. Gilberts indicated he would consider this suggestion and report to the Board.

Q. During that period of time, Mr. Benton, that you were on the Board, had there been prior discussion of the problems at Smiley? A. The problem at Smiley came forcibly to the attention of the Board of Education in 1962 when Dr. Oberholtzer, the then superintendent, made his sugges-

A. Edgar Benton—for Plaintiffs—Direct

tion for consideration by the Board that a new Junior High School be built at 32nd and Colorado and the Smiley problem, as it were, was a [64] matter of constant concern, consideration and attention by the Board from that time through the present period, really.

Q. Have there been expressions—was there evidence of citizenry concern throughout this period? A. Yes, there was constant evidence of concern on the part of the citizens in the community with the need for the Board of Education to take action to deal with intensifying segregation at Smiley Junior High School and the overcrowding that was present there.

Q. You say there was constant concern by the Board about this problem since 1962? What do you mean by that?

A. By that I mean that the matter was constantly before the Board for its consideration. It represented a difficult question for the Board which the Board of Education had not previously had to consider and the debate which occurred I would say was a constant debate. That isn't to say it occurred on every occasion when the Board of Education was either in formal or informal session, but it continued to be one of the dominant elements of the Board's activity during that period to debate. The debate was not only constant; it was of an interesting characteristic in that it ranged all the way from fairly mild dialog to very vigorous confrontation of viewpoints among members of the Board.

Q. Were the educational disadvantages of segregation discussed in those meetings? [65] A. The educational disadvantage of segregated education were always urged by members—certain members of the Board as a basis for modifying Board policy with respect to the school and the

A. Edgar Benton—for Plaintiffs—Direct

schools generally, and therefore the debate often involved a consideration of the disadvantages of segregated schools.

Q. Now, throughout this period, what had been the racial composition of Smiley Junior High School? A. I can't recall of course the precise percentages but it's my recollection that at the outset of this consideration Smiley was predominantly Anglo in its pupil composition. But it was changing at a progressive rate by significant percentages each year to the point where it has now achieved which I understand to be perhaps 70 percent Black in its composition. So that this was a progressive rate of change from predominantly Anglo to predominantly minority school.

Q. And throughout this period was there not only consideration by the Board of the problem, but were there expressions of interest from the citizenry? A. Yes. I think it would be fair to say that a common presentation at meetings of the Board of Education would be delegations of citizens and organizations from the Park Hill area calling the Board's attention to the unresolved problems of declining educational opportunities in the Park [66] Hill and particularly Smiley area.

Q. During this period in your judgment, had any effective acts or were there any effective steps taken to prevent the gradual segregation of Smiley Junior High School? A. There were steps taken and I suppose if one tried to look at the seven year period in its totality, one could see the significance of steps which at the time seemed perhaps very minor. I would say that one of the first steps that was important was the creation by the Board of the special study committee appointed by the Board I believe in 1962. The deliberations of that committee, the involvement of the citizenry, the recommendations made by it was an important step to sharpen the focus of the understand-

A. Edgar Benton—for Plaintiffs—Direct

ing of the school district of the problem. Following upon that, and certain limited steps taken by the Board in response to that report, I think the creation of the advisory council was a continuing effort to improve the quality of insight which the Board of Education had with respect to these questions. Now specifically in my view, one of the most significant steps that the Board took as a result of this important study that it was engaged in was the policy which had been previously testified by Mrs. Noel which precluded additional school construction in northeast Denver. This was important because it stated as a matter of public policy of this community that we would not create additional capacity in that [67] area with the increasing racial segregation of the neighborhood for increased segregated education.

Q. In Smiley Junior High School itself, by November 21st, 1968, state if you recall the approximate racial composition. A. I would think it would have been approximately 70 percent Black and perhaps four or five percent Hispano. The balance would have been Anglo.

Q. So that in spite of the continuing concern of the Board and the citizenry over the years described, Smiley had still become substantially segregated? A. That's correct. The Boards had really been as I have indicated in the form of continuing study, continuing education, continuing information rather than specific concrete tangible steps that would lead to an alleviation of the condition.

Q. And your suggestion of November 21st was a specific tangible step to alleviate that condition? A. That's correct.

Q. Following the receipt of your suggestion by the superintendent, what were the next steps taken by the district and the superintendent concerning Smiley Junior High School? A. It was my understanding that Dr. Gilberts

A. Edgar Benton—for Plaintiffs—Direct

and his staff were engaged in a careful evaluation; not just of the suggestion I had made for his consideration, but of other [68] alternatives that would achieve substantially the same result; namely, the reduction of the pupil population at Smiley and the alleviation of the adverse racial balance in the school. And that during the period from November 21 through the month of December, Dr. Gilberts and his staff were engaged in this investigation and this study.

Q. And did this study result in recommendations to the Board? A. Yes.

Q. Mr. Benton, I hand you what have been marked as Plaintiff's Exhibits 3, 4-A, 4, 5, and 5-A and ask you if you can identify those.

The Court: He doesn't have to if they're already identified and admitted.

Mr. Barnes: They are admitted.

The Court: We don't have to do it again. That's the whole purpose of this preliminary identification; the agreement as to authenticity. If you want him to refer to any of them or testify from them, you may do that.

Do you have a question concerning those?

Mr. Barnes: Yes, Your Honor. I'm just formulating my question.

Q. Mr. Benton, what was the first of these resolutions or—or these recommendations which was offered by the superintendent? [69] A. I believe resolution 1520, Plaintiff's Exhibit 3, would have been the first recommendation that the superintendent presented to the Board.

Q. And to what did that pertain? A. This pertained to certain secondary schools, notably East High School and

A. Edgar Benton—for Plaintiffs—Direct

Smiley as a point of focus with incidental relationships to other schools.

Q. What was the action of the Board upon receipt of that recommendation? A. As was typical of the Board of Education during my tenure, the Board received these resolutions for consideration and evaluation and in connection with that the valuation I believe there were conferences held among members of the Board and the superintendent and the administrative staff in which the details of this resolution were considered and evaluated and my recollection is also that there were at least one—perhaps more—public meetings where the public had an opportunity to present its views with respect to these matters.

Q. Following the presentation that is contained in 1520, were there further presentations made to the Board concerning junior high schools and elementary schools? A. Yes, there were two other resolutions of importance here; one was resolution 1524 which I believe represented a further implementation of resolution 1520, and resolution [70] 1531 which related to certain elementary schools.

Q. Resolution 1524 was with regard to implementation in the junior high schools? A. That's correct.

Q. So that a discussion began beginning in January of 1969 concerning the contents of these resolutions presented by the superintendent. Can you tell the Court whether there were also public hearings concerning resolutions 1524 and 1531? A. There were public hearings relating to both of those as I recall. And I might add that I believe there was also consideration of perhaps of a highly general nature given to these matters during the month of December, 1968.

Q. Does 1524 contain a plan pertaining to Smiley Junior High School? A. It does.

A. Edgar Benton—for Plaintiffs—Direct

Q. And does 1531 contain a plan pertaining to Barrett Elementary School? A. It does.

Q. In your judgment were these two schools the focus of these resolutions? A. Well, Smiley I think was the focal point at the secondary level because of the fact that Smiley had been a school of concern to the district and to the community for a number of years. The difficulties of maintaining and even [71] creating equality of educational opportunity there had not been resolved satisfactorily. Smiley, because of its profound impact upon the Park Hill area, which it serves, was important. It was important because it's one of the major contributing schools to East High School, which of course is important to the whole community so that Smiley because of its historical importance and its then importance in terms of its relationship to the high schools and to the residential areas of Park Hill, was the matter of principal concern in resolution 1524. This produces of course the junior high schools' problems; whether they are resolved or not, has an impact on the elementary schools. And in order to maintain the beneficial changes at Smiley Junior High School contemplated by resolution 1524, it was necessary to make certain adjustments at the elementary level so that schools—the elementary schools and Park Hill feeding into Smiley would bear an appropriate educational relationship to Smiley.

Q. One of these elementary schools was Barrett Elementary School? A. One of the schools was Barrett. And Barrett I believe was selected for inclusion, I think not originally recommended by Dr. Gilberts but subsequently included in his recommendation, the concern being that the profound impact of segregated schools in Denver was not only in Park Hill but also in the residential areas to the west of Park Hill and [72] that as a means within the

A. Edgar Benton—for Plaintiffs—Direct

limits of physical and personal capability of drawing those schools into the comprehensive solution of segregated schooling in Denver, Barrett was included because it was geographically contiguous to the Park Hill area which was a matter of principal focus and it was a small school which did not pose the more serious problems of money and personnel that would have been perhaps involved if other larger schools had been included.

Q. Were Barrett and Smiley the only segregated schools in the system? A. No.

Q. So that this was not a plan involving all the segregated schools in the school district? A. Clearly not.

Q. Was it a drastic step forward in your judgment? A. It was not a drastic step forward. It was in the discussion relating to resolution 1531 that I urged that Gilpin School, which is located substantially further to the west of Barrett, in near the so-called Five Points Area of Denver—that that school be included because of its location in the heart of the ghetto, as it were. I felt that Dr. Gilberts' recommendation was not only not drastic but was not fully adequate to cope with the problem as it existed in the community.

Q. Now, were there supporting documents that the [73] superintendent presented which implemented or described the implementation of resolutions 1520, 1524 and 1531? A. My recollection is that there were such documents.

Q. And those are contained in Plaintiff's Exhibit 4-A and 5-A? A. That's correct.

Q. And the resolutions themselves are Plaintiff's Exhibits 3, 4 and 5? A. Correct.

Q. You have stated that there were public hearings. Can you give an idea of the scope of the contribution of the public to the Board's consideration? A. The public hear-

A. Edgar Benton—for Plaintiffs—Direct

ings were held as has been customary in the school district each time a secondary school boundary is changed. This I understand to be the traditional practice of the district, going back many many years. And these hearings were ordered for that purpose to give the public an opportunity to respond so that there was an opportunity for any interested citizen to appear before the Board and present his views with respect to the wisdom or lack of wisdom involved in the adoption of the proposed boundary changes. It had not been customary in the school district as I understand it to have public hearings when elementary schools are bounds changed. These are ordinarily changed by [74] the superintendent as an administrative matter and do not require Board action and therefore the Board customarily has not had hearings. But, because of the particular public interest in this question and the notoriety that it had achieved in the community, it was determined that it would be appropriate to have a public hearing with respect to 1531 even though traditionally it would not have been indicated.

Q. Were such things as educational and psychological and economic factors considered and offered for consideration by the public? A. There was a broad variety of testimony as it were presented to the Board in these proceedings. Individual citizens spoke in their own behalf about the educational and the other significance of the Board's proposed action. There were representatives of groups including professional groups of doctors, psychiatrists, psychologists, social workers; the clergy was there and representatives of the Chamber of Commerce and all these groups were in strong support of the proposed action of the Board on the three items indicated.

A. Edgar Benton—for Plaintiffs—Direct

Q. Were the resolutions eventually passed? A. The resolutions were eventually passed. I might say I did not create the impression in my testimony that there was no opposing testimony at these hearings. There were individuals who opposed the resolutions and there were also representatives for the most part of neighborhood organizations [75] from southeast and southwest Denver. But, the resolutions were adopted by the Board of Education in all three cases I believe by a vote of five to two.

Q. And were you voting with the majority? A. I was a member of the majority?

Q. What general objective was behind these resolutions with regard to Smiley and Barrett? A. The objective was the creation and maintenance of equal educational opportunity for the children involved. They were founded upon the superintendent's recommendations. They were based upon his professional judgment that they were reasonable. They were within the physical and administrative personnel capabilities of the district and they were designed to reduce the concentration of minority children in those schools so that the program could be improved and the quality of education could be raised.

Q. Would the racial composition of those schools have been changed? A. The racial composition of Barrett School would have been changed from approximately 100 percent Black to approximately 80 percent Anglo effective September, 1969, and at Smiley—I believe these figures are approximately correct—the racial balance would have changed from about 70 to 75 percent minority to approximately 70 to 75 percent Anglo, in September, 1969.

[76] Q. What was the general objective behind these resolutions with regard to East High School and Philips Elementary School and Park Hill School? A. Let me

A. Edgar Benton—for Plaintiffs—Direct

speak first to Philips and Park Hill. Both of those schools were integrated schools. However, there were disturbing trends to the principals, to the faculty, to the citizenry that unless aggressive and thoughtful action was taken by the school district that they would become perhaps at a slower rate but nevertheless they would become segregated schools. So the purpose of the resolution with respect to those two schools was to insure the maintenance of the integrated education where it existed, this being consistent with one of the principal elements of Dr. Gilberts' plan to be presented to the Board, that is to say, the stabilization of neighborhoods through the maintenance of integrated education where it existed. Now, East High School came to be a critical point of focus for the Board of Education because of its realization that East was becoming Black in its pupil composition by significant percentages each year and that unless some intervention was made through Board policy and administrative practice, East High School reasonably could be predicted to become another Black high school in Denver. The Board concluded—the superintendent I believe concurred—that it was in the best educational interest of the students at East High School as well [77] as in the best interests of this community to not permit East High School to become a Black high school. Therefore, resolution 1520 as it related to East High School was proposed and adopted.

Q. Was the racial composition of these schools affected by these resolutions? A. Yes, I don't have the percentages in mind with respect to Park Hill and Philips, but the effect of the resolution would have been to reduce the number of Black children in both schools and to increase the number of Anglo. At East High School, which I believe presently is approximately 40 percent Black, there

A. Edgar Benton—for Plaintiffs—Direct

would have been in September, 1969, a reduction of the Black population by significant amounts and then a progressive reduction of the Black population in succeeding years.

Q. What was the objective of the Board with regard to Stedman Elementary School? A. Stedman Elementary School I believe would have been affected by the resolution primarily through the elimination of certain mobile units and the transportation of children from Stedman to certain Anglo schools I believe primarily in southwest Denver. So the effect of the resolution I believe that Stedman would not have been to improve the racial balance particularly but to reduce the population at Stedman and I might say as I indicated earlier in my testimony [78] the schools directly affected by the resolutions were those that had been indicated. The incidental effect of this resolution if it were to be implemented would have been to have integrated a substantial number of additional schools in other parts of the city which are presently near 100 percent Anglo. In other words the schools would have had a significant minority population had the resolutions been carried out.

Q. What methods were employed by the Board to obtain these objectives? A. Primarily the modification of attendance area boundaries and the use of transportation, both long established administrative practices of the school district.

Q. Now, Mr. Benton, I direct your attention to Plaintiff's Exhibit C-3 and ask you to state whether the Board specifies their considerations and the conclusions with regard to educational purposes that were to be achieved by these resolutions? A. Yes, I would say this is reflected in the resolution. These resolutions were all based as I

A. Edgar Benton—for Plaintiffs—Cross

understood it upon a careful and extensive professional evaluation of the educational problem and the educational solutions represented here and by a policy determination by the Board of Education that that professional judgment was competent. I think those considerations are reflected in the language of the resolution.

* * * * *

[79] * * *

Cross-Examination by Mr. Craig:

* * * * *

[81] Q. I believe you testified that there was a trend in some of these schools at least toward increasing segregation as you used the term? A. Yes.

Q. Was there also a parallel change in the racial composition of the neighborhoods of these schools at the same time? A. Yes, there was. There was a change in the neighborhood.

Q. So could we say that the result of the—or the [82] cause of the change in the composition of the schools was the result of the change in the neighborhood? A. Well it was a result of more than that. It was a result of rigid adherence to the so-called neighborhood school policy which precluded the policy of alleviating in the schools the impact of increasing segregation in the neighborhood. It wasn't just the increase of the neighborhood segregation that produced the results; it was the inability until resolutions 1520, -24 and -31 of the Board of Education to make a judgment that it would intervene in that process and cause it not to be inevitable but cause it to be amenable to education decisionmaking.

Q. Do you see as one of the purposes of these resolutions to the role of schools as an instrument in creating social change in the community? [83] A. I was momentarily distracted, Mr. Craig. Could you repeat the question?

A. Edgar Benton—for Plaintiffs—Cross

Q. Do you see as one of the purposes of the resolution as it relates to the role of the school, as using the school as an instrument for social change in the community? A. Well, this question raises I think a very fundamental issue and that is what is the purpose of education. I take it that one of the essential purposes of education, public and private, is to have an impact upon humanity in the form of the individual who is involved in the formal process of education. So that what he learns or does not learn in school ought to have a significant bearing on what he does or does not do; what he thinks or does not think; what he believes or does not believe, as a citizen and as an adult. So that to create and maintain an effective program of education in the schools, so that true equality of educational opportunity exists for the development of the potential of all people who are subjected to the process of education, ought to have—must have a beneficial impact on the community; on society. If it doesn't have, then the game isn't worth the candle. And that we are engaged in a massive and irresponsible expenditure of public resources that perhaps could be better put elsewhere. So there is a distinct relationship between what you are able to do in the schools and what ultimately you are able to do with mankind. Now, I'm not sure that's responsive to your [84] question.

The Court: I'm not either.

The Witness: If not, I apologize.

The Court: Does that answer your question?

Mr. Craig: I'm not sure it is either, Your Honor, but I think it is—it has touched on it.

The Court: I gather from your question that you wanted him to say whether he views using schools as an instrument or weapon to bring about social change, generally. Is that what you asked him?

A. Edgar Benton—for Plaintiffs—Redirect

Mr. Craig: That's essentially what I asked him.

The Court: In other words, it is just part of an overall plan to change the system? Is that what you wanted him to answer?

Mr. Craig: Yes, Your Honor, that's essentially what I wanted to ask.

The Court: Did he answer that?

Did you answer that?

The Witness: I believe I did, Your Honor, but if additional comments are indicated, I'd be glad to—

The Court: I don't care.

The Witness: I'd be glad to accommodate the Court or counsel.

The Court: Maybe he wishes to ask another question.

Mr. Craig: I believe the witness' philosophy on that [85] was covered in the answer.

No further questions, Your Honor.

Redirect Examination by Mr. Barnes:

Q. Mr. Benton, is there any statement within the resolutions that we have been discussing, 1520, 1524 and 1531, which requires racial balance in the schools in the school district? A. I don't recall any such statements.

Q. Mr. Benton, you spoke in response to a question by Mr. Craig of the deterioration of the schools in northeast Denver. Was the Board aware of this deterioration? A. Yes, I think the Board was aware during this entire period from 1962 on, the fact that academic achievement was declining in some schools; was chronically low in others. I suppose it wasn't made as dramatically clear to the Board as perhaps—in the past as it was when Dr. Gilberts, upon assuming the superintendency, released the standard test scores on a school by school basis and this enabled not only the board but I think the community for the first time to

A. Edgar Benton—for Plaintiffs—Redirect

make a very clear judgment as to the deteriorating and chronically deteriorated quality of education in segregated schools.

Q. Is the neighborhood school policy the only method of assignment which can be used by a board of its students?

【86】 A. You mean in general terms?

Q. Yes. A. No, there have been many other policies that have been adopted by the School Board and implemented by them in other communities.

Q. Keeping in mind the awareness of the Board of the deterioration of the school we have been considering, what was the effect of the choice of their policy for the assignment of students? A. Well, this policy as I understood from Dr. Gilberts' recommendation was among alternatives perhaps that might have been selected.

Q. Let me clarify my question. What was the effect of the choice of the neighborhood school policy by the Board on the deterioration that you described? A. I'm sorry. Well, my view was that—and I think this was the view shared by the majority of the Board, by the members of the Board—that the adherence to the neighborhood school policy without modification and without any attempt to intervene in this process of changing neighborhood, therefore, impact upon the schools was to maintain and perpetuate the decline in education and the absence of true educational opportunity—equality of opportunities.

Q. Is there any statute requiring the Board to adopt the neighborhood school policy? 【87】 A. I'm aware of none.

Mr. Barnes: I have no further questions.

Mr. Craig: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: We will take our noon recess now and resume at two o'clock.

A. Edgar Benton—for Plaintiffs—Redirect

(Whereupon, the trial recessed at 12:25 p.m. and resumed at 2:10 p.m.)

The Court: One of the spectators complained that nobody can hear. I think probably the public does have some interest in hearing what the witnesses say. We have never had any trouble with acoustics in this courtroom before. It's built as a soundproof room and I don't see why we should have this difficulty here today. I think the lawyers ought to speak up and the witnesses. Now, if you have to get further back, why, do so. But, encourage them to raise their voices just a little bit. They don't have to yell but they can speak up, you know. Make themselves heard. Now, somebody filed a special motion to be heard. I think it ought to be made clear that this is no legislative body. It's not an administrative tribunal. We don't allow the citizenry to be lobbyists. We will not receive any petitions or letters. I would like to make that absolutely clear right here in the outset. We are seeking out the truth on the merits of this case and it's an [88] ordinary lawsuit in which we do it by adversary method. We don't allow the public to participate, nor the newspapers. We will do our very best to find the merits and then decide the case upon those merits. But, we're not going to hear from the public and I'm not going to receive any letters from anybody. My wife will intercept them at home and my secretary will intercept them here. They will not be read. If they contain any threats, of course, to the interference of the administration of justice, we will deal with them when the case is over.

Very well. Proceed.

Mr. Greiner: Before proceeding with calling our next witness which is Dr. Paul Klite, you will recall

Paul D. Klite—for Plaintiffs—Direct

that at the hearing on June 27 the Court asked counsel to submit proposed findings of facts and conclusions of law. We have prepared on behalf of Plaintiffs certain proposed findings of fact and I would like to submit them to the Court and opposing counsel at this time.

The Court: Very good.

Mr. Greiner: Our next witness will be Dr. Paul Klite.

PAUL D. KLITE, a witness called by and on behalf of Plaintiffs, having been first duly sworn was examined and testified as follows:

Direct Examination [89] by Mr. Greiner:

The Court: Give us your name and address, please.

The Witness: Paul D. Klite. My address is 1434 Birch Street.

The Court: How do you spell your last name?

The Witness: K-l-i-t-e.

By Mr. Greiner:

Q. Dr. Klite in order to assist Plaintiffs' counsel have you prepared certain exhibits for presentation in this case? A. Yes, I have.

Q. I'd like to first direct your attention to what's been marked as Plaintiffs' Exhibit 7. This is one of the exhibits, the authenticity of which is admitted. And I wonder if you would just briefly describe for us what Plaintiffs' Exhibit 7 and the overlays attached thereto illustrate with respect to the effect of these resolutions upon first of all the senior high schools. A. May I leave the witness box to show that?

Q. Yes.

Paul D. Klite—for Plaintiffs—Direct

The Court: Are the qualifications of the witness Klite admitted?

Mr. Greiner: Your Honor, he is not here as an expert witness and he is not going to render any expert testimony. He is simply going to state what the objective data, the numbers of students to be moved and the racial [90] compositions, and so forth.

A. This map which is a 1966 boundary map of the senior high schools shows three high schools affected by Resolution 1520; East, South and George Washington. The present boundaries and those which obtained until the time of the resolutions, are depicted in black on the map. The overlay, Exhibit 7A, shows the effective resolution 1520 on these three senior high schools. In red are depicted areas that had been within the East High district. This area would be moved to South. This area to the east would be moved to George Washington. In green, are two areas that had been part of the George Washington district. This would be moved to East and this to South. And in yellow is an area from South High School that would be moved to East High.

Q. Pardon me, Dr. Klite. With respect to the areas of red which were detached from as I understand it, East High School, can you tell us anything about the racial composition of those areas? A. Well, the predominant racial composition of both these areas is Negro. The predominant racial composition of the remaining three areas, that is, those detached from George Washington and South, are Anglo.

Q. So then the Blacks were being bused away from East and to predominantly Anglo schools? A. That's correct.

Paul D. Klite—for Plaintiffs—Direct

[91] Q. And certain Anglos at those schools were being bused back to East High? Is that correct? A. That's correct.

Q. Are the numbers of students involved reflected on the overlay? A. Yes, they are. In this area there are 141 students, and in this area 249. And in effect removing from East, approximately 390 students. To East, would come 195 students from George Washington and 172 students from South, a total of approximately 367 pupils. And then 100 switched to South from George Washington.

Q. Now while I still have you on your feet, Doctor, why don't we consider Exhibit 8 which I believe pertains to the junior high schools.

Dr. Klite calling your attention first to Exhibit 8, would you identify what is depicted on that exhibit? A. This is a 1967 boundary map of the junior high boundaries. In blue are listed the names of the schools affected by Resolution 1520 and 1524. Ten of the junior high schools are so affected. It looks like this is 11 of the junior high schools so affected. The first overlay shows the main thrust of Resolutions 1520 and 1524 as they pertain to junior high schools.

Q. That's Exhibit 8A? A. Yes, that's correct. In green are depicted areas **[92]** that will be detached from the Smiley Junior High School boundary and changed to be part of the boundaries of other junior high schools across the city. These are color coded on this overlay in green, indicating the schools to which these children will be transported. The numbers in each of these areas are indicated and a code letter for the receiving school. For example, in this area 200 children from Smiley will now be switched to Merrill. The other junior high schools also affected by this movement with the numbers of stu-

Paul D. Klite—for Plaintiffs—Direct

dents to be transported are listed. In yellow, is listed an area south of the present boundaries of Smiley Junior High School which is Colfax Avenue which will not become part of the Smiley Junior High School area. In red are depicted areas from Cole Junior High School that will be detached to other schools across the city. These are color coded in red. These students for example would go to Smiley. Thirty-three students to Byers and 110 students to Kunsmiller, 46 students to Kepner and 36 students to Rishel. There is one other aspect to the movement of students among the junior high schools and this is shown in the next overlay, Exhibit 8B. This shows the adjustment of population in two of the southeast Denver schools; 100 children presently assigned to Hill will now be switched to Hamilton and Thomas Jefferson. Similarly, 200 students from the Merrill area will be switched to Thomas Jefferson and Hamilton.

[93] Q. Those are provisions that pertain only to the sending of Anglo students to Anglo schools? A. That is correct.

Q. Then is there a similar exhibit prepared with respect to the effective Resolution 1531 on the elementary schools? A. Yes. This is Exhibit 9. Exhibit 9 is a 1967 boundary map of the elementary schools of Denver, Colorado and coded in yellow are the 17 elementary schools affected by Resolution 1531. The first overlay, Exhibit 9A, depicts the changes that were made at Barrett School. The area in green was in the Barrett boundary, was detached from the Barrett area and sent to five other predominantly Anglo schools across the city. This is depicted by the arrows showing students to Moore, 42; students to Montclair, 100; to Whiteman, to Carson, and to Ashley; a total of slightly more than 300 students than detached from

Paul D. Klite—for Plaintiffs—Direct

the Barrett area. Brought to the Barrett area was an area containing 225 students in the Lowry Air Force Base area who had been going to Montclair and Whiteman. They would now be assigned to the Barrett area and 42 students from Moore to Barrett, to balance the 42 from Barrett to Moore.

Q. So then there would have been two Anglos sending schools and the Anglos sent to Barrett would have been balanced by Negroes sent from Barrett into those other receiving schools? [94] A. Well, two sending areas; one, the Moore School area and the other, the Lowry Air Force Base area. Exhibit 9B shows a second aspect of Resolution 1531. This is the busing of students from Stedman Elementary School to three schools in southwest Denver, Force, Denison, and Schenck. They would receive 60, 30 and 30 pupils respectively.

Q. This is strictly one-way busing, is that correct? A. That's correct.

Q. No whites are being bused back instead? A. That's correct.

Q. Do you recall what the racial composition of Stedman was prior to these resolutions? A. Stedman is greater than 95 percent Negro.

Q. And after the resolutions the Negro racial composition changed? A. Not appreciably, no.

Q. So this was to relieve overcrowding? A. This was what the purpose of removing the four mobile units from Stedman. There are approximately 235 I believe or somewhere in that neighborhood students presently being bused from Stedman because of overcrowding. This is an additional busing of 120 students from Stedman.

The next exhibit overlay 9C, shows additional aspects of Resolution 1531 pertaining to elementary schools. This

Paul D. Klite—for Plaintiffs—Direct

exhibit depicts the steps that are being taken to [95] stabilize the membership in the Park Hill and Philips Elementary School district. In Park Hill School for example, as depicted in yellow, 70 students will be detached from Park Hill area and put in the Steele attendance area. Thirty in this small yellow, spots to the Steck area.

Q. Those are Negro students? A. We don't know the exact racial or ethnic makeup of the students to be bused. For assumption purposes, however, these students have been considered to be Negro. A block by block census is not available to know the exact racial and ethnic membership of these students. In the Philips area depicted in red is an area to be detached to Palmer containing 50 students. In red here is an area detached to Ashley containing 30 students. Two other changes are in the Philips area, an area north of Colfax from Montclair is detached to Philips and an area in southeast Denver that had had children transported to Palmer is now moved to the Philips area to equalize the 50 students detached to Palmer.

Q. Thank you, Doctor. I think you can return to the witness box.

Dr. Klite, turning your attention first to the effect of these resolutions upon the senior high school schools which were depicted in Exhibit C, as I understood your testimony the principal high school to be affected was East High School? [96] A. East High School is the focus of the resolutions.

Q. Calling your attention to Plaintiffs' Exhibit 7C, does that exhibit reflect what the racial composition at East High School would be under Resolution 1520? A. That is correct. It shows that East High School would have approximately 25 percent Negro population under Resolution 1520.

Paul D. Klite—for Plaintiffs—Direct—Voir Dire

Q. Now turning your attention to what's been marked for identification as Plaintiffs' Exhibit 7D does that exhibit purport to reflect what the racial composition of East High will be under the rescision of 1520? A. Yes, it does.

Mr. Greiner: Your Honor, this was one of the exhibits I believe which counsel had some question concerning.

Would you wish to examine on voir dire or I can establish a foundation for it.

Mr. Creighton: I think if you will let me ask a couple of questions, you will understand our problem with this.

Mr. Greiner: I know what your problem is.

Voir Dire Examination by Mr. Creighton:

Q. Mr. Klite, what figures do you—how do you arrive at your figures on what you call post rescision proportion?

A. Since there would be no boundary changes we have assumed that the racial and ethnic composition of those three [97] high schools would be what it was in 1968.

Q. So that when you say post rescision or after rescision, you're using last year's figures? A. That's correct.

Q. Are you taking into account the alternative planning the School District made under Resolution 1533? A. We have not until a few days ago had the figures of the numbers of students who had volunteered to be transported. Therefore those figures are not taken into account in these figures.

Mr. Creighton: Your Honor, so long as it's understood by the Court that post rescision data here really represents last year's racial figures and proportions, this may go in.

Paul D. Klite—for Plaintiffs—Direct

Mr. Greiner: I think I might also—it might also save time, Your Honor, to note that this same factual premise is present with regard to Plaintiffs' exhibit 8D and 9E. And these then would be introduced with the same understanding.

Mr. Creighton: With that understanding they may be introduced, Your Honor.

The Court: Very well. What's the number of that one?

Mr. Greiner: 7D.

And then, there is 7C and then there is 8D and 9E, Your Honor.

[98] The Court: Very well. All of those three will be received.

(Whereupon, Plaintiffs' Exhibits 7C, 7D, 8D, and 9E were received in evidence.)

Direct Examination by Mr. Greiner (Continued):

Q. Calling your attention, Dr. Klite, to Plaintiffs' Exhibit 7D, that exhibit does purport to show what the racial composition of East High School will be is Resolution 1520 is rescinded? A. Yes.

Q. What is shown there? A. It shows that East High School will be 54 percent Anglo and 40 percent Negro with 7 percent Hispano.

Q. Do we have a large graph that depicts this change? A. Yes, we do. We prepared Exhibit 7E which demonstrates with a two color code the percent Negro and Hispano population of the three subject high schools. In red under Resolution 1520; in yellow after rescission of that resolution. It shows that the Negro population, Negro and Hispano population of East High School is above 40 per-

Paul D. Klite—for Plaintiffs—Direct

cent if the resolution is rescinded and it is close to 30 percent in 1969 with implementation of the resolution. I might add that the school district projects that by 1971 the percent of Negro and Hispano of East High School will be about 25 percent.

【99】 Dr. Klite, this then was one of the stabilizing moves as described by Mr. Benton in his testimony this morning? A. Yes, it was and I think that can best be demonstrated with Table Exhibit 7F which shows the percent Anglo enrollment at the three subject senior high schools from 1963 to 1968. In 1963 East High School was 83 percent Anglo. It was in 1968 54 percent Anglo, showing a marked decrease in the number of Anglo students at that school. The racial and ethnic composition of the other two subject high schools was more stable.

Q. This then demonstrates that East High School is a school in transition?

Mr. Creighton: Objection, Your Honor. That's leading.

The Court: Sustained. I think we can draw that inference, anyway, from the facts.

Q. Calling your attention next, Dr. Klite, to the effect upon the junior high schools, as I recall Mr. Benton's testimony the primary focus here was on Smiley Junior High School? A. That is correct. Exhibit 8C shows the ten subject high schools estimated of ethnic and racial composition under Resolutions 1520 and 1524.

Q. What does it show then for Smiley Junior High School **【100】** under the resolutions? A. It shows Smiley to be 72 percent Anglo.

The Court: You're referring to 8C?

The Witness: 8C, yes, sir.

Paul D. Klite—for Plaintiffs—Direct

Q. At 72 percent Anglo and what percent Negro? A. Twenty-three percent Negro and five percent Hispano.

Q. Have you also prepared an exhibit Dr. Klite, that purports to project what the racial composition of Smiley Junior High School will be should these resolutions be rescinded? A. Exhibit 8D shows that without implementation of the Resolution 1520 and 24 as projected from the 1968 attendance, Smiley would be 24 percent Anglo and 72 percent Negro.

Q. So then the effect of the resolution in the recision would be just to completely reverse the racial composition that's at Smiley, is that correct? A. That's correct.

Q. Have you also prepared a bar chart, Doctor, that illustrates that change? A. Yes, Exhibit 8E, which again depicts the percent Negro and Hispano enrollment at the ten subject junior high schools. In red under implementation of Resolutions 1520 and 24 and in yellow without implementation of these resolutions. One can see that the declining order is the red bars. Cole [101] is affected in terms—essentially unaffected in terms of its percent Negro and Hispano by the resolutions. Smiley is the school with the most dramatic effect decreasing, as has been pointed out, the Negro population from 72 to approximately 25 percent. The other subject high schools—junior high schools of the city would increase their Negro and Hispano population under these resolutions by the busing from Smiley and Cole.

Q. Doctor, have you also prepared an exhibit that shows the changes in racial composition of the subject junior high schools over the years? A. Yes, Exhibit 8H for the ten subject junior high schools shows the percentage Anglo enrollment from 1963 to 1968. It shows that Smiley was 46 percent Anglo in 1963. By 1968 it was 24 percent Anglo.

Paul D. Klite—for Plaintiffs—Direct

Cole Junior High was ten percent Anglo in 1963 and four percent Anglo in 1968. The other junior high schools have shown quite stable percentage of Anglo over the period of six years from which data is available.

Q. Doctor, turning your attention next to the impact of Resolution 1531 upon the subject elementary schools, have you prepared any exhibits that depict the racial composition of those elementary schools under Resolution 1531?

A. Exhibit 9D lists the number and percent Anglo and Negro and Hispano enrollment for the 17 subject junior high [102] schools. And it shows that under Resolution—

Q. Pardon me. Did you say junior high? A. —subject elementary schools. Excuse me. Under the Resolution 1531 each of these schools with the exception of Stedman would have between 70 and 85 percent Anglo enrollment. Stedman would have five percent Anglo enrollment. Stedman, you recall, is the school from which Negro schools were bused from—

Q. That's one-way busing for overcrowding? A. Yes.

Q. Doctor, as I recall Mr. Benton's testimony, it was the primary focus of 1531—that was up on Barrett. Could you tell us what the racial composition of Barrett would be under Resolution 1531? A. Barrett would be 73 percent Anglo, 24 percent Negro, and three percent Hispano.

Q. Now Mr. Benton also testified that there was to be some stabilization at two of the other elementary schools. Could you identify those for us? A. Park Hill and Stedman in turn under the resolutions—Park Hill would be 79 percent Anglo and Philips 70 percent Anglo.

Q. Doctor, you also prepared an exhibit which purports to depict the effect of the resolutions upon the racial composition of the subject elementary schools? [103] A. Yes, Exhibit 9E which shows that Barrett would

Paul D. Klite—for Plaintiffs—Direct

have zero percent Anglo and 97 percent Negro population; that Philips would have 55 percent Anglo enrollment instead of the 70 percent under the resolution; that Park Hill would have 71 percent Anglo instead of 79 as under the resolutions, and that the—among the other subject schools, there would be either ten or 11 that would have greater than 85 percent Anglo enrollment.

Q. Now, Doctor, have you also similarly prepared an exhibit depicting the differences before and after the resolutions at the subject schools? A. Yes, Exhibit 9F which shows the percent Negro and Hispano enrollment at the subject elementary schools under Resolution 1531 and after rescission. Stedman not being appreciably affected by these facts, the major effect being at Barrett School which would change from a 70 percent Anglo school to a zero percent Anglo school and Philips which would change from a 30 percent Anglo school—correction—30 percent minority school to a 45 percent minority school. Park Hill would change from approximately 20 percent Negro and Hispano to a little more than 30 percent Negro and Hispano. The other schools averages are listed in the last column.

Q. Then finally, Doctor, calling your attention to Plaintiffs' Exhibits 97 and 98, have you also had occasion [104] to prepare a composite table showing certain data for all of the schools of the school district? A. Yes.

Q. Of what was the source of the data? A. Are you referring to these two exhibits?

Q. Yes. A. These are copies of the estimated ethnic distribution of pupils for all of the schools in the school system that has been issued each year by the school system since 1963.

Q. So these then are tables that have been prepared by the school district? A. That is correct.

Paul D. Klite—for Plaintiffs—Direct

Mr. Greiner: Do you have any objection?

Mr. Creighton: No objection.

The Court: What are the exhibit numbers?

Mr. Greiner: That's 97 and 98, Your Honor.

The Court: They will be received.

(Whereupon, Plaintiffs' Exhibits 97 and 98 were received in evidence.)

Q. And then, finally, Dr. Klite, have you also prepared a table that shows the change of the ethnic composition of the subject elementary schools over the years with respect to their racial composition? A. Exhibit 9I depicts the racial and ethnic composition [105] of the 17 subject elementary schools from 1963 to 1968. It shows that Barrett School was two percent Anglo in 1963 and in 1968 it was zero percent Anglo. Under Resolution 1531 it would be 73 percent Anglo. It also shows that Stedman was a predominantly Negro and Hispano school in 1963 and has remained so. It also shows that the Anglo population of Park Hill and Philips, which was 98 and 97 percent, respectively, in 1963, has decreased to 71 percent for Park Hill and 55 percent for Philips by 1968. The other schools are relatively stable on this chart.

Mr. Greiner: We have no further questions of the witness, Your Honor.

And for the record, we do offer each of these exhibits, which I understand have been received.

The Court: They are all received.

Mr. Creighton: I wonder, Mr. Greiner, if you could just list the exhibits you have just offered for the record and for my notes.

Paul D. Klite—for Plaintiffs—Cross

Mr. Greiner: Yes. The exhibits are the following: 7, 7A, C, D, E, and F; 8, 8A, B, C, D, E and H; 9, A, B, C, D, E, F and I; and 97 and 98.

(Whereupon, Plaintiffs' Exhibits 7, 7A, 7C, 7D, 7E, 7F, 8, 8A, 8B, 8C, 8D, 8E, 8H, 9, 9A, 9B, 9C, 9D, 9E, 9F, 9I, 97 and 98 were received in evidence.)

[106] *Cross-Examination by Mr. Creighton:*

Q. Dr. Klite, when you were testifying as to racial composition from time to time, were your statements based exclusively on school district figures? A. That's correct.

Q. And as of what date were these school district figures when you were speaking to the racial compositions in the various schools at the time 1520, 24 and 31 were passed? A. The source data for the 1520, 24 and 31 comes from the resolutions themselves and from the review volume, XLIX, of April 1969 and the review volume which is called XLX, I think it should be fifty, for May of 1969, and supplemented by a special report with Assistant Superintendent Armstrong.

[107] Q. Do you know when you received that verbal report? A. That report was given to Dr. George Bardwell by Dr. Armstrong sometime within the last month.

Q. And you got it from Dr. Bardwell? A. Correct.

Q. Have you made any inquiry as to the certainty of these figures, or to put it another way, as to whether these were estimates and if so within what ranges they were estimates? A. I have used the school administration's figures. I have not inquired at length as to how they obtained the estimates.

Paul D. Klite—for Plaintiffs—Cross

Q. Are there mileage scales on your map, Dr. Clyde?

A. That map has a scale of 2.7 inches equals 1 mile.

Q. You're looking at 9-C, are you not? A. That's right.

Q. Do all of the larger maps have that same scale?

A. The three maps that have been introduced as Exhibits 7, 8 and 9 do, yes.

Q. Have you measured off—It could be done by anyone with a little patience, I think—but have you measured off mileages or distances in terms of miles as between any of the schools where you're drawing arrows here? **[108]**

A. No, I have not.

Q. But it would be possible with a measuring device and a scale given to determine that from that document, would it not? A. An estimate of it, yes.

Q. Dr. Clyde, not only in the three specific exhibits we discussed with reference to the post-rescission ethnic data in which you said you recall that, that really was synonymous with last year's ethnic data, not only with respect to those three exhibits; but is it fair to say, Doctor, that whenever you have spoken this afternoon of post-rescission racial and ethnic data you're speaking of last school year's figures? A. That is correct. The changes that might occur within a given school year from population changes reflect the 1969 attendance. We have no way of knowing—I have no way of knowing at the present time.

Q. Did you make any inquiry into the school district's methodology in making its projections and determinations of these ethnic figures? A. Well, we assumed, for example, if I may give you an example—

Q. All right. What did you assume, Doctor? A. That every student detached from the Smiley area was Negro and that every student brought to the Smiley area **[109]** was Anglo. By making that assumption we came to the

Paul D. Klite—for Plaintiffs—Cross

same percentage figure that the school administration had figured and published in the review.

Q. And referring to your high school exhibit, and I won't unveil it for this colloquy, but you understand, Dr. Clyde, that it's only in the case of the high school students in the Harrington Elementary district area that busing is provided? A. Well, the review of May 1969 lists 875 pupils will be transported at the Senior high level. Now, 875 turned out to be the total number moved among those boundary changes.

Q. East High School boundary changes? A. Yes, sir. High school boundary changes. And, they're listed in the official publication of the Denver Public Schools as being transported. I believe we have a copy of that.

Mr. Greiner: We do have Exhibits 10 and 11, which are what he is referring to.

Mr. Creighton: Yes, let's put them in at this point, Mr. Greiner.

The Court: All right. They are received.

(Whereupon, Plaintiffs' Exhibits 10 and 11 were recived in evidence.)

Q. I call your attention to the gate-fold, I suppose [110] it's called, in Exhibit 10, under Senior High. It speaks of 141 pupils from areas which I earlier called the Harrington area busing to South. Is there any other busing mentioned in that explanation? A. Not in that explanation, but in the following months' explanation all of the students were listed as being transported.

Q. What is your understanding, Mr. Clyde, of the amount of busing provided in connection with the East High School aspect of 1520? A. Well, there are these two figures and I don't know which one is correct.

Paul D. Klite—for Plaintiffs—Redirect

Mr. Creighton: You may examine.

Mr. Greiner: Your Honor, at this time we would go ahead and offer Plaintiffs' Exhibits 10 and 11 which have been authenticated by the defendant.

The Court: Do you have any objection to 10 and 11?

Mr. Creighton: No, as I indicated before, they may be admitted.

The Court: They will be received.

Redirect Examination by Mr. Greiner:

Q. Did you state, Doctor, that under a projection by the School District as to what the expected racial [111] composition of Smiley would be? A. Yes, I did.

Q. And that was for what year? A. It's published in the review. I don't recall whether it was 1969 or '71 or both. If I could see a copy of that exhibit I could tell you.

The estimate for 19—for September 1969 is 72 percent Anglo; 23 percent Negro; and 5 percent Hispano.

Q. Now, you have also I think referred to a projection by the School District with respect to East High School that is not reflected in these exhibits. A. Yes.

Q. What was the result of that projection? A. Their estimate for East in the Exhibit 10 is 68 percent Anglo in 1969 and 88 percent Anglo in 1971. This later figure was in error and is corrected in Plaintiffs' Exhibit 11 which shows the 1971 racial composition at East to be estimated at 73 percent Anglo.

Q. Now in reference to the question raised on cross-examination, Doctor, about the post-rescission figures, with respect to the trend in the racial compositions at these neighborhoods which have been reflected in the exhibits, what is the trend in these areas?

James D. Voorhees, Jr.—for Plaintiffs—Direct

Mr. Creighton: Objection, Your Honor. There has been no trend reflected in the exhibits or other testimony.

[112] Mr. Greiner: I beg to differ. We have got three exhibits, Your Honor, that show from 1963 to 1968 exactly what that trend was.

The Court: Well, he may testify—

Mr. Creighton: That was in schools. I thought your question was residential.

Mr. Greiner: I'll change my question to schools.

Q. What is the trend in the schools, Doctor? A. The trend at East High School, Smiley Junior High School, Philips Elementary, Park Hill Elementary, has been towards increasing Negro population. Barrett Elementary is already a zero percent Anglo and can't get any lower.

Q. Now taking into consideration that trend, Doctor, was that trend reflected in the post-rescission figures that are reflected in these exhibits? A. No, they were not.

Q. And in fact we have gone back to September of 1968? A. That is correct.

Q. Considering the trend in those schools, Doctor, does the September 1968 data tend to understate the Negro compensation in these schools after rescission? A. It very well might.

[113] * * *

JAMES D. VOORHEES, JR., a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

James D. Voorhees, Jr.—for Plaintiffs—Direct

Direct Examination by Mr. Barnes:

The Court: Give us your name and address.

The Witness: James D. Voorhees, Jr, 170 Downing Street, Denver, Colorado.

By Mr. Barnes:

Q. Mr. Voorhees, are you presently a member of the Board of Education and a defendant in this case? A. I am.

Q. When did you first come on the Board of Education? A. After the election in May of 1965.

Q. Prior to that time did you serve in any capacity for the Board of Education? A. I was on and for a time was chairman of a special study committee investigating quality of education opportunity in public schools.

Q. And that's the report of that special study [114] Committee—that's what has been identified as Plaintiffs' Exhibit 20 in this cause, I think. Is that this report? A. Yes, it is.

Q. Mr. Voorhees, have you had a change in position with regard to the question of equal education opportunity in segregated schools? A. Yes, I believe I have had such a change.

Q. And has this evolution occurred during the time you were on the Board? A. Yes, it has.

Q. Were you one of the members on the Board who voted in favor of the integration resolutions which are the subject of this discussion? A. I was.

Q. And does your position represent where you changed to in this evolution? Does your vote represent where you changed to in this evolution? A. Yes, I think that would be a fair statement.

James D. Voorhees, Jr.—for Plaintiffs—Direct

Q. What is your position with regard to the availability of equal educational opportunity in segregated schools?

A. I think that based upon what I have observed and found out the probabilities of equal opportunity are reduced and may be entirely eliminated in racially or ethnically segregated schools.

[115] Q. What were the factors that led to your coming to that conclusion? A. Well, at some point, and I couldn't pinpoint it exactly, it became apparent to me that something was wrong in the manner in which the educational establishment was treating, and the result that it was getting from this group of children that we are now talking about, and I would include as well the children who might be considered as the product of a subculture of poverty, as you know there is an incidence of, between poor and minority children.

At some point it became quite apparent to me that the results that were available in terms of achievement and pure education, I suppose, to these children were not the same results that were available to the children of the Anglo—primarily Anglo and middle class which makes up the great majority, of course, of the students in the school.

I suppose what crystallized this change more than anything was the release by the Superintendent sometime last fall, I believe, of some test scores—comparative test scores which indicated to me a direct correlation between concentration of poor children, minority children, and low achievement as compared to other schools where these conditions were not present.

Q. Mr. Voorhees, I hand to you Plaintiffs' Exhibit **[116]** 83, which I believe has already been stipulated to as to its authenticity and admitted, and ask you if that is a sample of the kind of compilation concerning achievement test scores to which you refer? A. It is.

James D. Voorhees, Jr.—for Plaintiffs—Direct

Q. Mr. Voorhees, is the composition of the School Board the same today as it was at the time the integration resolutions were passed? A. No, it is not.

Q. What brought about that change? A. An election held on May 22nd of this year which resulted in two new members, Mr. Southworth and Mr. Perrill, being elected to the Board.

Q. Might that have been May 20? A. May 20. Excuse me.

Q. In your judgment what were the focal subjects at issue in the campaign?

The Court: Oh, brother.

Do you object to that question?

Mr. Craig: Yes, I do, Your Honor. I don't think this is a proper question to ask of a lay witness.

The Court: Sustained.

Q. Following the election, did the School Board hold conferences with regard to actions on these resolutions?

A. It held at least one at which I was present and [117] I think it may have held another one in which I was present. My calendar shows two such conferences. And then there was a third conference which—at which I was not present.

Q. Was there any in-depth discussion of the educational benefits of these resolutions at the conferences you attended? A. No, there was not.

Q. Was there any in-depth discussion of the educational benefits that would accrue from the rescission of these resolutions? A. No, there was not.

Q. Did the Superintendent take a stand with regard to the rescission of these resolutions? A. It is my recollection that he indicated that he would not be in favor of

James D. Voorhees, Jr.—for Plaintiffs—Direct

such rescission; that he did feel they were sound and educationally—that the resolution were sound and were educationally viable and were a step forward in solving some of the needs of this district.

Q. What was the reason that was given for the rescission of these resolution? A. As I remember, the then majority, the new majority of the Board indicated that they had received a mandate from the voters of the people of the City and County of the school district, to rescind. They also indicated that rescission was necessary in order to restore [118] the confidence of the people of Denver in the School Board so that the bond issue could be passed.

Q. Did the Board then meet on June 9, 1969, and take action with regard to the integration resolution? A. Yes, it did.

Q. What did it do? A. It rescinded the three resolutions, 1520, 1524 and 1531.

Q. Did it do that by motion or by resolution? A. It did that by motion and resolution on each separate resolution.

Q. Was a subsequent resolution then offered? A. Yes. I think there were several that won a substitute resolution identified as 1533 was offered. And then it seems to me there were two or three others having to do with voluntary programs and individual schools.

Q. I hand you what has been marked as Plaintiffs' Exhibit 6A and ask you if that is the Resolution 1533? A. It appears to be it.

Mr. Barnes: This has also been stipulated to as to its authenticity, Your Honor.

The Court: Very well.

James D. Voorhees, Jr.—for Plaintiffs—Direct

(Whereupon, Plaintiffs' Exhibit 6A was received in evidence.)

Q. Were you one of the ones who voted against the [119] passage of Resolution 1533? A. Yes.

Q. What was the vote on that resolution? A. It was four in favor and three against.

Q. The Court has heard previous testimony concerning the passage of 1490, Mr. Voorhees, I think, before you were here. Are you familiar with that resolution? A. Yes.

Q. How did you vote on that resolution? A. I voted for that resolution.

Q. Does Resolution 1533 act, in your judgment, to accomplish the educational objectives of Resolution 1490? A. I can't see how it does, no.

Q. Mr. Voorhees, have you filed an answer to this cause? A. Well, yes, Mrs. Noel and Dr. Amesse and I filed an answer today.

Q. For the purpose simply of identifying to the Court the position taken to that answer, can you state what your prayer is? A. Our prayer as to the first count is that the relief requested be granted. Our prayer as to the second count—

Q. Just as to the first count is all. That will do.

[120] Mr. Barnes: Your Honor, Plaintiffs' Exhibit 6 is on the—is the official publication of the Board and the minutes of the meeting of June 9, 1969, and it has been admitted as to its authenticity. We would like to offer it at this time.

The Court: Do you have any objection?

Mr. Craig: May I examine that exhibit?

James D. Voorhees, Jr.—for Plaintiffs—Direct

The Court: Surely.

Mr. Craig: No objection, Your Honor.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 6 was received in evidence.)

Q. Mr. Voorhees, was the content of Resolution 1533 discussed in conferences prior to June 9, 1969? A. Not at any conference at which I was present.

Q. When was the first occasion that you saw Resolution 1533? A. It was at our places in the form in which it was enacted when the meeting opened.

Q. Were there subsequently public hearings to discuss the content of that resolution? A. No, except at Board meetings. It was a public meeting.

Q. Were there statements at the Board meeting concerning the resolution? [121] A. By Board members. I have a recollection which the minutes would perhaps confirm that a request was made that persons present be permitted to discuss it before it was voted on, and it's my recollection that that was not permitted.

Q. Approximately how many people testified at that time concerning this resolution? A. From the public? I don't believe any public presentation was made before the motion was called for a vote.

Mr. Barnes: No further question of this witness, Your Honor.

Mr. Craig: Your Honor, may I suggest we have about ten minutes' recess at this time to check our cross-examination?

The Court: Very well. Let me know when you're ready, Mr. Craig.

James D. Voorhees, Jr.—for Plaintiffs—Direct

(Whereupon, the trial recessed at 3:10 p.m. and resumed at 3:27 p.m.)

Mr. Craig: Your Honor, we have no questions of the witness.

Mr. Barnes: I would like to direct one more question to the witness, if I may.

The Court: You may.

By Mr. Barnes:

Q. Mr. Voorhees, I believe you [122] testified earlier about your opinion as to the effectiveness of Resolution 1533 to achieve the intended results of Resolution 1490. Would you state, please, why you think Resolution 1533 is inadequate to achieve the goals of 1490? A. Well, basically because it is a voluntary proposal, and it seemed to me that the possibilities of achieving any kind of stabilization, particularly in a school that is as troubled as Smiley, for example, or maybe East, maybe Barrett, or maybe any of those resegregated elementary schools of Park Hill on a voluntary basis was nil. I thought of that resolution as a sort of a sop to the community and I didn't think it would be effective even in that category.

Mr. Barnes: Thank you. I have no further questions of this witness, Your Honor.

The Court: Well, the thrust of it was to seek voluntary exchanges all the way along the line?

The Witness: Yes, Your Honor, that's about what it says.

The Court: But it said aside all of these boundary changes that had been adopted.

The Witness: They had already been set aside. This 1533, as I remember it, was in lieu of the

George E. Bardwell—for Plaintiffs—Direct

specific provisions of the three resolutions that are here in question.

The Court: I take it that it would depend upon [123] the ability of the administration to persuade students in these other elementary and junior high schools to transfer the minority—to the so-called minority schools?

The Witness: Yes, Your Honor. It would depend on that, which I think is an absolute impossibility, and I don't think people are going to volunteer individually to transfer their children—Anglo parents—to a school that is not going to be an integrated school when their child arrives. It would also, of course, have required the making of room in those schools by the transfer of minority children out of those schools, which is equally different on a voluntary basis.

The Court: Very well.

Mr. Barnes: We have no further questions.

* * * * *

[124] * * *

GEORGE E. BARDWELL, a witness called on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Barnes:

The Court: Please state your name and address so the reporter can hear it.

The Witness: George Bardwell, 2201 South Harrison, Denver, Colorado.

The Court: What is your occupation?

The Witness: I am a mathematician and statistician.

George E. Bardwell—for Plaintiffs—Direct

The Court: Where do you work?

The Witness: University of Denver, sir.

By Mr. Barnes:

Q. Dr. Bardwell, have you had **[125]** occasion to make a study of population movement and property values in the Park Hill area of Denver? A. Yes, I have.

Q. I show you what has been identified as Plaintiffs' Exhibit 38, and I don't think that's one of the ones to which the stipulation went.

Mr. Creighton: No, it was not. It was in your series submitted to us last night, but we have had a chance to look at this, Your Honor, and we have no objection to its going in.

The Court: May I see it, please.

This was prepared by the Community Relations Committee of the City and County of Denver?

The Witness: Yes, that's right, sir. I served as a consultant to the Commission on Community Relations.

The Court: You prepared it for that agency?

The Witness: I did.

The Court: And it's dated April 1966?

The Witness: That's right, sir.

Mr. Barnes: I am not going to ask him questions from this, Your Honor, but it indicates a study in the background—

The Court: You just want me to read it, is that right?

Mr. Barnes: It indicates a background knowledge **[126]** to which Dr. Bardwell will testify.

George E. Bardwell—for Plaintiffs—Direct

The Court: Maybe his testimony will spare me the burden of reading the whole thing, or, point up the highlights.

By Mr. Barnes:

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 92 and ask you if you have had occasion to prepare a table which purports to show the assignment of probationary teachers and teachers with no previous Denver Public School experience, and teachers with ten or more years' Denver Public School experience as they relate to the subject elementary schools.

Mr. Creighton: What number was that, please?

Mr. Barnes: 92.

The Witness: Excuse me. It's of senior high schools.

The Court: This is the assignment of teachers with reference to their previous experience? Is that what you are talking about?

Mr. Barnes: Yes, Your Honor.

Q. What is the source of the information contained in this table? A. This table was compiled from a set of IBM printouts that were supplied to us by the Division of Personnel Services of the Denver Public Schools.

Q. What does the table purport to show? **[127]** A. Plaintiffs' Exhibit 92 shows the three senior high schools subject to Resolution 1520, East, George Washington, and South. It shows the percentage of the total teachers at those schools who have probationary status, no previous Denver Public Schools school experience, and the propor-

George E. Bardwell—for Plaintiffs—Direct

tion of teachers with ten or more years of Denver Public School experience.

* * * * *

【130】 * * *

By Mr. Barnes:

Q. Dr. Bardwell, what does Exhibit 92 show with regard to the percent of probationary teachers at East High School, George Washington, and South? A. It shows in the year 1968 that the percentage of probationary teachers at East of 34 percent, which was double that at George Washington and also at South.

Q. Does it show with regard to the percent of those **【131】** teachers with no previous Denver Public Schools experience in those three schools? A. It shows a pattern very similar to that indicated for probationary teachers by which 17 percent of the 128 teachers at East had no previous Denver Public School experience, and that percentage is almost double that at George Washington and more than double that at South.

Q. Mr. Bardwell, I hand you what's been identified as Plaintiffs' Exhibit 93 and ask you what that purports to show. A. This exhibit is similar to the preceding exhibit showing probationary teachers as a percent of teachers with no previous Denver Public School experience—as a percent, and teachers with ten or more years' Denver Public School experience for the Junior High Schools under Resolutions 1520 and 1524.

Q. What is the source of the information of that data?

A. The source for this is identical to that of the previous exhibit, a series of IBM tables, printouts, entitled, *The Study of Years of Experience in Denver Public Schools, Contract Teachers, by School, Division of Personnel Services.*

George E. Bardwell—for Plaintiffs—Direct

Mr. Barnes: I would like to offer Plaintiffs' Exhibit 93 into evidence.

Mr. Creighton: Same objection as to Number 92.

[132] The Court: The same ruling.

Q. Dr. Bardwell, what is the percent of probationary teachers that are at Cole Junior High School shown on your table? A. The percentage of probationary teachers is 66 percent.

Q. How does that compare with Hill Junior High School? A. Hill Junior High School has 34 percent probationary teachers. Therefore, by simple calculation, Cole has double the percentage of probationary teachers as does Hill.

Q. Nearly double? A. (No answer.)

Q. Turning your attention to Smiley Junior High School, what is the percent of probationary teachers shown there? A. Here, the figure is very similar to that at Cole in which 63 percent of the 98 teachers at Smiley are on probationary status, and that again is nearly double that at Hill.

Q. And are these disproportionate percentages consistent for those same schools for the columns you have listed for the previous teachers experience and teachers with ten years or more experience? **[133]** A. Yes, they are.

Q. For example, what does the table show with regard to the teachers of ten or more years experience at Hill and at Smiley Junior High School? A. Here, the comparison is even more dramatic. In the case of Smiley we have 7 percent of the teachers having 10 or more years of Denver Public School experience, while at Hill there are 36 percent. This means that there are about five times the percentage of experienced teachers at Hill than at Smiley.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 94 and ask you what that purports to show. A. This is a—is similar to the preceding two ex-

George E. Bardwell—for Plaintiffs—Direct

hibits, 92 and 93, showing the probationary teachers with no previous Denver Public School experience and teachers with ten or more years of Denver Public School experience; the experience expressed as a percent for those elementary schools that are affected by Resolution 1531 for 1968.

Q. What is the source of that exhibit? A. The source is identical to that of the preceding two exhibits, the IBM printouts which are a study of the years of experience of Denver Public School teachers.

Mr. Barnes: I offer Plaintiffs' Exhibit 94, Your Honor.

[134] Mr. Creighton: Same objection.

The Court: Overruled.

(Whereupon, Plaintiffs' Exhibits 92, 93 and 94 were received in evidence.)

Q. Dr. Bardwell, would you take that through the comparison by way of example of two schools on that table, Palmer and Philips, all the way through. A. Turning our attention first to Palmer, we have a total number of teachers of 16. The proportion or percentage of probationary teachers at Palmer is 13 percent. At Philips, we have 26 teachers. The proportion of probationary teachers at Philips is 58 percent. This means that at Palmer, compared to Philips, we have roughly four times the percentage of probationary teachers at Philips than we do at Palmer. For those teachers that have no previous Denver Public School experience, Palmer has 6 percent. Philips, on the other hand, has 27 percent, which means again that we have about 4 times the percentage of teachers at Philips that have no previous DPS experience as compared to that at Palmer.

Similarly, for those teachers who have ten or more years of experience at Palmer we have 75 percent of those teach-

George E. Bardwell—for Plaintiffs—Direct

ers in the so-called experienced group. On the other hand, at Philips we have 15 percent of those teachers of 10 or more years of Denver Public School experience. **[135]** Here, the comparison of the two percentages is 15 for Philips, and Palmer 75. Six times the percentage—excuse me, five times the percentage.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 96 and ask you what that purports to show. A. Exhibit 96 is a distribution by race and ethnicity of classroom teachers expressed as a percent for the elementary schools, junior high schools and senior high schools on September 23, 1968.

Q. What is the source of the information contained in that—what's the source of that table? A. The source of that table is a mimeographed handout given by the Division of Personnel Services of the Denver Public Schools.

* * * * *

[136] * * *

Q. Dr. Bardwell, turning your attention to the third page of Plaintiffs' Exhibit 96, what does that show with regard to the percent of Negro teachers in the school district in elementary schools? A. It shows that about 8.5 percent of elementary teachers are Negro.

Q. Turning your attention to Barrett School, what is the—what does the exhibit show to be the Negro percent of teachers in that school? A. At Barrett, 52.6 percent of the teachers are **[137]** Negro.

Q. As compared to an average distribution of 8.5 percent? A. As compared to an average distribution for all elementary schools in the district of 8.5 percent.

Q. What does the exhibit show with regard to Stedman School? A. With regard to Stedman, 21.1 percent of the teachers are Negro compared to 8.5 percent for the district as a whole.

George E. Bardwell—for Plaintiffs—Direct

Q. Dr. Bardwell, Plaintiffs' Exhibit No. 26 has already been offered and received, and I would like to show it to you, Dr. Bardwell. Will you look at it to refresh your memory as to what Plaintiffs' Exhibit 26 is. A. It's Denver Public Schools Policy, 1,617A, dealing with the change of assignment for employees. And the policies thereof.

Q. What does it show with regard to the control by the School District of Denver of teacher assignments? A. It shows here that a request for change of assignment cannot always be granted because the employee is not qualified for the existing vacancy nor the transfer from the present school or department would not serve the best interests of the program or district.

Q. What does it show with regard to the relevancy of [138] seniority in the assignment of teachers?

Mr. Creighton: Your Honor, if this witness is going to interpret policy, I will object. If he is going to read certain portions to highlight them, I suppose it is all right. Is this what you are doing?

Mr. Barnes: I'm not even going to ask him to read that; just state in general what the policy—

The Court: Well, he may answer.

Mr. Creighton: I object.

A. The policy of seniority with regard to this exhibit here is that seniority is a factor in transfer of a teacher and that that transfer should be taken—should take cognizance of the probationary status of a teacher in considering transfer.

Q. Dr. Bardwell, what does the policy 1617A show as to the possibility for changes in teacher assignment on the enrollment—when the enrollment of a school is changing?

A. It permits a consideration of transfer of teachers, when

George E. Bardwell—for Plaintiffs—Direct

the enrollment — when there is a change of enrollment; where there may be a transition perhaps in the school itself.

Q. Dr. Bardwell, I direct your attention again to Plaintiffs' Exhibit 20 and ask you to look at page D13 and state what the finding reflected there is of the special [139] committee—what it was about, on the assignment of Negro teachers. A. The conclusion of the committee was that a large proportion of Negro teachers were assigned to schools that had a high proportion of Negro students.

Q. What did the study committee say with regard to the relevance of race in the assignment of teachers? A. They recommended to the Board of Education that—

Q. Before getting to the recommendation, Dr. Bardwell, if we could interrupt and direct your attention to page D13, next to the last paragraph, what was the finding concerning the relevance of race in the assignment of teachers?

Mr. Creighton: I'll object unless he reads the designated part.

The Court: All right.

Q. Would you read that paragraph? A. "As a result of its interviews the committee is convinced that race has been relevant in the assignment of teachers. It appears that the administration has been extremely reluctant to place Negro and Spanish American teachers in predominantly white schools because of concern with possible lack of acceptance on the part of a white neighborhood and a realistic assessment of the possible lack of support by some principals and faculties."

[140] Q. Dr. Bardwell, directing your attention to page D14—

The Court: I have received this material upon the theory that it supports your contention some-

George E. Bardwell—for Plaintiffs—Direct

what that the alleged segregated schools do not come up to standards and are inferior. We are not, I take it, in this suit concerned with the rights of teachers, are we?

Mr. Barnes: We are concerned with the acts of the School Board, Your Honor, which tend to—

The Court: We're not going to review every sin that they have committed, you know. I mean, we are concerned with a limited number of these alleged wrongs. That's all. And only as they pertain to your suit. I just don't think they should be used as an occasion to air every grievance that you have got. So, you are going to have to justify this teacher evidence somewhat, I think.

As I say, this is the question running through my mind, and—Is there some presumption or inference that standards of teachers are not up to standards, do you think? Do you maintain that?

Mr. Barnes: Not at all, Your Honor.

The Court: Why do you make such a point of that?

Mr. Barnes: It is our contention that the assignment of teachers is a conscious act taken by the School Board which in this case has resulted in concentration of teachers [141] by race and ethnicity which could not have been done accidentally and that this last exhibit that I have on this point—we can show that this condition existed.

The Court: Does it violate the rights of the plaintiff, you think?

Mr. Barnes: The intentional confirmation and solidifying of segregation in the schools, does, Your Honor.

George E. Bardwell—for Plaintiffs—Direct

The Court: That isn't what I asked you.

Mr. Barnes: If there is evidence that the School Board has acted and is acting to confirm the segregated character of a school by assigning Negro teachers to Negro schools, that is evidence of an intent which can give rise to an inference concerning their other action.

The Court: Very well.

Q. Dr. Bardwell, I hand you what has been identified as Plaintiffs' Exhibit 8G and ask you to state what that purports to show. A. This is a chart showing the concentration of Negro and Hispano teachers in the junior high schools subject to Resolution 1520 and 1524 in 1968.

Q. What is the source of the information contained in that table? A. The source of the information in this table is again the ethnic and racial distribution of classroom teachers from a handout by the Division of Personnel Services of the [142] Denver Public Schools.

Mr. Barnes: I offer the Exhibit 8G into evidence.

The Court: Do you have a copy of it?

Mr. Creighton: Yes, we were supplied copies last Saturday, and we spot checked these numbers and they appear to be in conformity with ours. I will have some comment on the form, but I have no objection to its admission.

The Court: The exhibit is received.

(Whereupon, Plaintiffs' Exhibit 8G was received in evidence.)

[143] Q. What does this table—what does this bar chart show with regard to the concentration of teachers at

George E. Bardwell—for Plaintiffs—Direct

Smiley Junior High School? A. It shows that in the case of Smiley and from reading the chart itself, it would appear that this is a bar of a height of 23 teachers while in the case of Cole there is 37 teachers. The remaining schools under the resolutions that are affected, Kepner, Kunsmiller, Hill, Grant, Merrill, Byers and Rishel, the corresponding numbers for these schools, Kepner, about 4; Kunsmiller, about 3; Hill, about 3; Grant, perhaps 2; Merrill, one; Byers, zero; Rishel, zero.

Q. What is the predominant racial concentration of Byers, Rishel, Merrill, Grant, Kunsmiller and Kepner?

A. These are predominantly Anglo schools.

Mr. Barnes: Your Honor, I see that counsel for the defendants has a copy of Exhibit 8-G which was supplied to him on Saturday and which we found an error on. So I think he'd better see the original. It has a different figure with regard to the number of students in Smiley than the one we supplied him on Saturday.

Mr. Creighton: What is that figure?

Mr. Barnes: Dr. Bardwell testified it was about 23 teachers, I think.

The Witness: Yes, about 23.

Q. Dr. Bardwell, I hand you what's been identified as [144] Plaintiffs' Exhibit 8-F and ask you to state what that purports to show? A. This is a tabular distribution comparing the concentration of Negro and Hispano teachers in the junior high schools that are subject to Resolutions 1520 and 1524. It shows for each of the junior high schools, Byers, Cole, Grant, Hill and the rest, the percentage—the percent of Negro and Hispano students and simi-

George E. Bardwell—for Plaintiffs—Direct

larly the number of Negro and Hispano teachers. The percent of Negro and Hispano students is shown before and after the rescission of Resolutions 1520 and 1524 and those figures are similar to the ones that were introduced in evidence before by Dr. Klite.

Q. What does it show with regard to the number of Negro and Hispano teachers in Smiley Junior High School?

A. It shows that there are 23 of the total of 80 teachers for all these junior high schools are at Smiley, and 37—

Q. That's 80 Negro and Hispano teachers? A. Yes. Eighty Negro and Hispano teachers in these junior high schools that are subject to these resolutions. Twenty-three of these teachers are at Smiley. Thirty-seven at Cole. Which means that the proportion of Negro and Hispano teachers at Smiley and at Cole is about three-fourths or three out of four of the Negro and Hispano teachers in those ten junior high schools are located in Smith and Cole.

[145] Excuse me. Smiley and Cole. I'm sorry.

The Court: This is a total of how many?

The Witness: A total of Negro and Hispanos. A total of 80 Negro and Hispano teachers, and I might add to that, if I may, that—

The Court: Sixty of them are at these two schools? Right?

The Witness: Excuse me, sir?

The Court: Sixty of the 80 are at Smiley and Cole?

The Witness: That's right.

Mr. Barnes: I'd like to offer Plaintiffs' Exhibit 8-F into evidence.

Mr. Creighton: May I look at it?

The Court: That's what he has been testifying from?

George E. Bardwell—for Plaintiffs—Direct

Mr. Barnes: Your Honor, I forgot to offer it.

The Court: It becomes academic at this point.

Mr. Creighton: I want to record an objection to this exhibit and the explanation of it on the grounds of relevancy.

The Court: Where did these figures originate?

The Witness: Excuse me, sir?

The Court: Where did these figures originate?

The Witness: These originated from the Denver Public Schools, sir; from their published material from the Division of Personnel Services.

【146】 The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit 8-F was received in evidence.)

Q. Dr. Bardwell, I hand you Plaintiffs' Exhibit 94 and ask you to state what that purports to show?

The Court: Are you familiar with this one?

Mr. Creighton: I'm asking for it. This is one we were handed last night, probably.

The Witness: Excuse me, Mr. Barnes. It's 9-H.

Mr. Barnes: I beg your pardon. 9-H.

Mr. Creighton: We have had this one since Saturday. And, Your Honor, I want to make the same comment which we made as to the parallel one in the secondary schools—and my comment was that I recall it may be admitted.

The Court: Very well. It will be received.

(Whereupon, Plaintiffs' Exhibit 9-H was received in evidence.)

Q. Dr. Bardwell, what does this Exhibit 9-H show with regard to the concentration of Negro and Hispano teachers

George E. Bardwell—for Plaintiffs—Direct

in Stedman and Barrett Schools? A. This is a bar chart showing the concentration of Negro and Hispano teachers in the elementary schools subject to Resolution 1531 and for Stedman it shows by height on that particular bar of about 11 teachers at Stedman who are Negro and Hispano and about 10 teachers at Barrett who are Negro [147] and Hispano.

Q. What is the general racial composition of those two schools? A. These two schools are predominantly Negro.

Q. Dr. Bardwell, I offer you Plaintiffs' Exhibit 9-G and ask you to state what that purports to show? A. 9-G is a distribution—a tabular distribution of the number of Negro and Hispano teachers and students in the elementary schools that are affected by Resolution 1531. It shows a comparison of the number of Negro and Hispano teachers in each of those elementary schools as well as the percentage of Negro and Hispano students before and after the rescision of Resolution 1531.

Q. What's the source of that information in that exhibit? A. Again, the source of the information for teachers is the estimated ethnic distribution of classroom teachers from the Division of Personnel Services in 1968.

Mr. Barnes: I offer Exhibit 9-G into evidence.

Mr. Creighton: Objection on the grounds of relevancy.

The Court: May I see it, please?

It will be received.

You are free to study it and cross-examine later, even, if you're not prepared. If you wish to attack these figures, I mean.

[148] Mr. Creighton: Thank you, Your Honor. I understand.

George E. Bardwell—for Plaintiffs—Direct

(Whereupon, Plaintiffs' Exhibit 9G was received in evidence.)

Q. Dr. Bardwell, what does this exhibit show with regard to the number of Negro and Hispano teachers in Barrett Elementary School? A. At Barrett there are 10 Negro and Hispano teachers.

Q. What does it show in regard to the Negro and Hispano teachers at Stedman Elementary School? A. In Stedman, there are 11.

Q. What is the total number of Negro and Hispano teachers in the subject schools? A. In the 16 subject schools, Montclair, and Montclair Annex have been combined in this table, there are 39 Negro and Hispano teachers. In Stedman and Barrett, 21 of these are concentrated, or over half of the Negro and Hispano teachers are located in the two schools, Stedman and Barrett, out of the total of 16 schools.

Q. What is the racial composition—what would be the racial composition of Barrett Elementary School if the recision were implemented? A. Barrett Elementary is 99.7 percent Negro and Hispano.

Q. What would it be under Resolution 1531? A. Twenty-seven percent.

[149] The Court: What kind of a grouping of elementary schools are you talking about here in Exhibit 9G?

The Witness: 9G?

The Court: Yes.

The Witness: Yes, in the case of Montclair and Montclair Annex, Montclair is a much larger school than the annex; around 660. In the case of Montclair Annex, it's about one hundred eighty.

George E. Bardwell—for Plaintiffs—Direct

The Court: But these are schools all of which are located in the northeast area or—

Mr. Barnes: They are the schools, Your Honor, which are affected by Resolution 1531.

The Court: They're all over town; southeast?

Mr. Barnes: That's correct.

The Court: And south central and north central? Very well.

Q. Dr. Bardwell, turning your attention now to Barrett Elementary School, when did that school open? A. Barrett Elementary School opened in 1960.

Q. Have you prepared a map which shows Barrett Elementary School? A. May I leave the stand?

Q. Yes. Would you leave the stand and show the Court the map? That is identified as Plaintiffs' Exhibit 40? A. Yes, this is Plaintiffs' Exhibit 40.

[150] Q. What is the source of the map? A. The source of the map is the 1960 boundary map of the elementary schools given to us by the Denver Public Schools.

Q. Now, have you drawn any extra lines on the map? A. Yes, we have. We have identified here two schools, the importance of which will come out in just a moment; Teller and Steck. This is City Park here. This is 26th Avenue. This is Colorado Boulevard in which there is a fairly heavy black line drawn through here.

Q. All of those lines are superimposed on the map, the source of which was what? A. The 1960 boundary map of the Denver Public Schools; elementary boundaries.

* * * * *

[153] * * *

Q. Dr. Bardwell, where is the location of Barrett School on that map? A. Barrett School is located on the over-

George E. Bardwell—for Plaintiffs—Direct

lay which—in which this has been pasted to plastic and this is the location of Barrett School here. It abuts Colorado Boulevard. At least the playground abuts Colorado Boulevard, and this is 36th Avenue here.

Q. What is the boundary of Barrett School as shown?

A. The Barrett School District?

The Court: The school was completed and opened in 1960?

The Witness: In 1960.

Mr. Barnes: The boundaries are shown on this—on this original map and we will have to offer that overlay in evidence.

【154】 The Court: We will receive that, too.

Q. All right. You can use the overlay. You can take it out again.

What is the location of the school itself corresponding to the boundary drawn around the school as shown on that exhibit? A. The boundary of the school itself is indicated in red here. The boundary of the school district is indicated as the outline of the yellow portion and one will note here that the school's location reaches to the elementary boundaries themselves to the extreme eastern portion of that particular district. This being Colorado Boulevard right here.

Q. What is the underlying residential composition of that neighborhood as shown by the census tract information? A. In 1960, the year in which Barrett opened its doors to the children, the census tract, 36C, was shown to be 73 percent Negro. In census tract 36B, which contains the northern portion of Barrett Elementary School, the racial composition was 51 percent Negro. On the other

George E. Bardwell—for Plaintiffs—Direct

hand, across Colorado Boulevard, which is the dividing line here between these two portions, we see that, by taking the census material, the census statistics from the enumeration district, that the area shown in white was 6 percent Negro, just across from Colorado Boulevard. It might be worthwhile to point out here that Colorado Boulevard itself also extends [155] down through Teller and Steck. However, Colorado Boulevard goes down through the middle of Teller and it also goes down through—not quite the middle, but at least down through the middle portion of Steck itself.

Q. But Colorado Boulevard serves as a boundary between Barrett School and what other school located to the east? A. Stedman School would be located in this area here.

Q. And those are 1960 census tract figures? A. 1960 census tract figures. That's right, sir.

Mr. Barnes: This is Plaintiffs' Exhibit 40, Your Honor. If you want to look at it or I'll just give it to Mr. Kerr—

The Court: Very well.

Q. What was the capacity of Barrett School when it opened, Dr. Bardwell? A. The capacity of Barrett when it opened was 480, but this provided for two special education rooms of about 30 spaces. So this would make an effective capacity less special education of about 450.

Q. Is that a comparatively large or small school? A. It's a comparatively small school.

Q. What is the general size of land upon which the school—the school land upon which this school is built, if you know? A. I'd have to check out the size or the site for [156] this particular—

George E. Bardwell—for Plaintiffs—Direct

Q. Let me restate my question.

Does the smallness of site dictate the smallness of the school in this case? A. I wouldn't think so here because this site looks to be reasonably large.

Q. I'm talking about the actual site upon which the school is built; the playground site? A. Oh, the playground itself—I'm not certain whether or not this is compatible with the site size.

Q. Dr. Bardwell, turning your attention to Plaintiffs' Exhibit 42 which you have there and which we have another copy here, will you state what that purports to show? A. Yes. At the time that Barrett opened its doors in 1960, the percentage enrollment in Barrett was about 89.6 percent black or Negro. Stedman Elementary School, located on the eastern portion here of Colorado Boulevard in the white area, had a capacity of around 660 and it was over capacity by about 18 percent, having about 742 students in that year.

Q. Is that shown on the bar graph? A. And that information is depicted on the bar graph here in which we have indicated that Barrett School opened at 100 percent capacity. Stedman, however, was operating at about 118—120 percent over capacity.

* * * * *

[158] * * *

Q. Do you have another comment, Dr. Bardwell? A. Yes, I would. I think it might be pointed out here, Your Honor, that in the case of Stedman School, which is located primarily in this area that is predominantly white, in comparison to the area over here which Barrett served, that Stedman in 1960 at the time Barrett opened its composition of enrollment was about 85 percent Anglo and

George E. Bardwell—for Plaintiffs—Direct

if one keeps in mind here that Barrett itself opened up at 90 percent or 89.6 percent black.

The Court: You already pointed that out, hadn't you?

Hasn't he already testified to this?

Mr. Barnes: We won't ask him to do it again, Your Honor.

The Court: Good.

By Mr. Barnes:

Q. Dr. Bardwell, turning your attention to Plaintiffs' Exhibit 50, I ask you to state what that purports to show? A. Yes, this exhibit has been prepared from the source maps of the Denver Public Schools representing this part of the City of Denver. This is the part of the so-called Park Hill section. This is Park Hill Elementary School boundary in 1961. This is Stedman Elementary School in 1961. This is Hallett. This is Smith. This is Ashley, Philips, Montclair and Montclair Annex, and Montclair being located [159] here. The annex is located over here. The shaded areas are optional areas as of 1961, and optional between Stedman and Park Hill. This shaded area here is located between Hallett and Philips—this was optional between Hallett and Philips, this shaded area here, which was an optional area between Montclair and the annex and—

Q. What is the source of that exhibit? A. The source of the exhibit except for the names which have been put on over here by ourselves is the 1961 boundary map of the Denver Public Schools.

* * * * *

[162] * * *

Q. Mr. Bardwell, I direct your attention to Plaintiffs'

George E. Bardwell—for Plaintiffs—Direct

Exhibit 51, a bar graph, and ask you to state what that purports to show? A. This shows that for the schools, Stedman—and Stedman is located here—Smith, and Smith is located here, serving these boundaries; Hallett is here and corresponds to this right here; and Park Hill corresponds to this particular area. It shows that in 1961 Stedman was over capacity—or was over capacity by the following amount. Its capacity was 630 and the total enrollment at that time was 742 and computation shows that it was about 20 percent over capacity. Smith, on the other hand, in 1961 was under capacity. It had, for example, capacity of 960 with three special education units, and its enrollment however, was 909. In Hallett, it is almost at capacity. It has a capacity of 510 and an enrollment of 495, and this is about 99 percent capacity. On the other hand, in Park Hill we have here an enrollment of 709, a capacity of 660. It is in excess capacity of about 10 percent.

Q. What is the source of the information in that exhibit?

A. The source of the information in this exhibit—**[163]** I'm sure I have it here—is the report, a study of pupil population, school boundaries, February 1962—excuse me—also pupil transportation, school buildings, Denver Public Schools, February, 1962.

Q. Published by— A. Published by the Denver Public Schools.

Mr. Barnes: I offer Plaintiffs' Exhibit 51 into evidence.

The Court: Do you object?

Mr. Creighton: That standing objection.

The Court: The objection will be overruled. It will be received.

(Whereupon, Plaintiffs' Exhibit 51 was received in evidence.)

George E. Bardwell—for Plaintiffs—Direct

Q. Dr. Bardwell, were there changes in boundaries proposed in 1961? A. Yes, there were. There were a number of boundary changes proposed in 1961 and this overlay—

Q. That is Plaintiffs' Exhibit 53? A. Plaintiffs' Exhibit 53. The boundary changes that were proposed by the Superintendent at that time and the source of the information that we have on this is the study report submitted to the Board at that time, indicated that the Superintendent proposed that this area here that is located just east of Park Hill Golf Course be removed from **[164]** Stedman and placed in Smith, that the area that is just west of Hallett shown here, which is now a part in 1961 of Stedman, be removed from Stedman and placed in Hallett. The optional area between Stedman and Park Hill, the Superintendent proposed that that be placed in Park Hill. The optional area between Hallett and Philips, it was suggested that that be placed in Philips.

The optional area here between Whiteman and Montclair was proposed—it was proposed that that be placed in Montclair. Similarly, the area just south of Park Hill which was in Park Hill at that time, it was proposed to put that into Palmer and the Albion School, which is a small school discontinued about 1962, it was proposed—that was phased out. But that that be attached to Park Hill.

Q. What's the source of that information? A. The source of that information comes about in two ways, the examination of the study report to the Board in 1962—

Q. Is that study report Plaintiffs' Exhibit 52? A. Yes, it is.

* * * * *

[175] * * *

Mr. Barnes: We would like to recall to the stand Dr. George Bardwell.

George E. Bardwell—for Plaintiffs—Direct

DR. GEORGE BARDWELL, called as a witness by the plaintiffs, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination by Mr. Barnes:

Q. Dr. Bardwell, you are going to need to testify from the chart. Doctor, have you prepared Exhibits 52, 53, 54, 51 and 56 and 55, 57 and 58? A. Yes, I have.

Q. Would you identify those exhibits and state the source of the information on each? A. Exhibit 50 is a 1961 boundary map of the Denver Public Schools for the areas shown. Exhibit 53 are the proposed boundary changes, February, 1962. These boundary changes are shown in yellow. Exhibit 51 is a capacity utilization bar chart. Exhibit 54 is a boundary map in 1962.

[176] The Court: What was 51 again? What did you call 51?

Q. What did you call 51? A. 51 is a bar chart showing capacity utilization of the four schools, Stedman, Smith, Hallett and Park Hill.

The Court: Derived from what source, he asked you?

The Witness: Yes, this capacity utilization chart has been derived from the source indicated here, "Report—A Study of Pupil Population, School Boundaries, Pupil Transportation, School Buildings, Denver Public Schools, February, 1962."

The Court: Go ahead.

The Witness: All right, you have 53, sir?

The Court: Yes.

George E. Bardwell—for Plaintiffs—Direct

Q. Exhibit 54 is a boundary map? A. Exhibit 54 is a boundary map of the 1962 boundaries of the same schools shown in the preceding exhibit, showing the effect of the boundary changes in 1962. Exhibit 56 is a capacity utilization bar chart showing the effect of the boundary changes in 1962, and Exhibit 58 is a graph showing the estimated Anglo enrollment.

The Court: Hold up, just a minute. I have to identify these in my notes or they don't mean a thing to me, so just slow down a little bit.

The Witness: Right, sir.

【177】 The Court: 56 is a capacity utilization chart, showing the effect of 1962 boundary changes, right?

The Witness: Yes.

The Court: Is that correct?

The Witness: That's right, sir.

The Court: All right, let's go to the next one.

The Witness: And the source on 56 is again the report and recommendations to the Board of Education, School District No. 1, Denver, Colorado, by a special study committee on equal educational opportunity, and this is dated—this is an appendix to that report. Exhibit 58 is the estimated Anglo enrollment, 1962. It is a graph.

Q. The source for that? A. Yes.

Q. What is the source? A. And the source of this is reports of racial and ethnic distribution of students for the years 1963, 64, 65, and division of personnel services, Denver Public Schools, information for 1960 derived from U.S. Bureau of Census.

George E. Bardwell—for Plaintiffs—Direct

Q. Do you have 55? Have you identified that? A. There is no 55. Excuse me, 55 shows an overlay of the boundaries not changed in September, 1962. Exhibit 57 shows the Negro population in the Stedman school district by enumeration district in 1960.

Q. And enumeration district is a category of the U.S. [178] Census information? A. Yes, enumeration district is a small geographical area that the Bureau of the Census uses to control the census enumeration.

Mr. Barnes: I would like to offer Exhibits 53, 54, 51, 56, 55 and 57 and 58 into evidence.

Mr. Creighton: I think the Court knows our objection. The basis is remoteness and irrelevancy to all of these.

The Court: I take it your purpose in offering these is to show that in 1962 there was presented to the Board of Education a plan which would have to some degree reversed the trends which have been going on and that this plan was rejected? Is this what you are saying?

Mr. Barnes: That is it in part, Your Honor. We intend to show that the only portions of that plan which were not accepted were those which would have transferred black children into predominantly white schools, and those with regard to the Stedman school district, which was at that time the black school in that area.

The Court: What's your overall object? That's what I asked you. I think I understand what the graphs were seeking to illustrate. In relationship to the issues that we are trying, just so the record will be clear, what's your goal in offering these?

George E. Bardwell—for Plaintiffs—Direct

[179] Mr. Barnes: Your Honor, we are interested in showing a pattern of historic acts which lends meaning and substance to the rescission itself which are consistent with it and which will go circumstantially to show two things: One, intent on the part of the Board in rescission, and second, a net effect over the years intensifying and isolating segregation of schools in this part of town.

The Court: Well, Exhibits 50 through 58, noting the objection, will nevertheless be received, and this may prolong the trial, and if you have to respond to this material, why, if you hadn't anticipated it, why, this is a risk we will have to take, I guess.

(Whereupon, Plaintiffs' Exhibits 50 through 58 were received in evidence.)

Q. Doctor, would you comment on what those exhibits show, beginning chronologically? A. Yes, Exhibit 50, showing the original boundaries of the school district in 1961, the hatched area showing the optional areas between Stedman and Park Hill, between Hallett and Philips, between Montclair Annex and Whiteman. In 1962, Superintendent Oberholtzer made certain proposals before the School Board, which I indicated in yellow. It is interest to note that in each case of the proposed boundary change, these areas tended to be detached and indicated the direction in which they would become detached, all of these changes going **[180]** south and west in this direction.

Q. East, I think. A. What?

Q. South and east? A. South and east. At the time, in 1961, Stedman was overcrowded to the extent of 18 percent. Smith was undercrowded. It was below capacity.

George E. Bardwell—for Plaintiffs—Direct

Hallett was slightly below capacity and Park Hill was slightly over capacity. The Board adopted each of those changes except two in number—three in number. Those three that were not adopted bounded the elementary school district of Stedman, which at the time we had estimated on the basis of Exhibit 58 was between 35 and 50 Anglo. The effect of the Board's actions in making those boundary changes with respect to capacity are shown in Plaintiffs' Exhibit 56, in which we note that Stedman was still at the same—to the same extent over capacity before and after the boundary changes. Smith declined somewhat in actual utilization of its capacity, considerably below capacity at that point. Hallett was brought up to capacity and Park Hill enrollment then exceeded the capacity of the school.

To illustrate the distribution of the Negro population in Stedman, which is the school on which attention is focused, we see that by enumeration district, this being Stedman Elementary School District here, that there was a tendency by these boundary changes, or the lack of making [181] these boundary changes to aggravate and intensify the containment of the Negro population in Stedman at that time.

Here, by enumeration district, we find that the Black area is between 16 and 20 percent Negro. The surrounding areas that are hatched are between four and five percent Negro. The remaining part of this exhibit, the remaining school districts being clear, were less than three percent Negro in 1960.

Q. And the boundary changes which were effected pertain to those areas which were less than three percent.

A. Yes, they do, sir.

George E. Bardwell—for Plaintiffs—Direct

Q. I believe you related yesterday the number of Negro students in Stedman in 1961. A. There is an estimate here in Stedman in 1961, an estimate here of between, oh, around 60 percent Anglo, which would make it about 40 percent Negro.

Q. Doctor, I hand you—I guess we will point out on the board—we need another board. Doctor, have you prepared Exhibits 70, 71, 72, 73, 76, 75 and—well, stopping at 75. A. Yes, I have.

Q. Would you identify those exhibits and the sources from which they are taken? A. Yes, Exhibit 70 is a map of the Park Hill schools being considered in 1963. This is an official boundary map [182] of the Denver Public Schools.

The Court: The year 1963, you say?

The Witness: Yes, sir.

The Court: Very well.

A. (Continued) Exhibit 71 is an overlay showing the boundary changes for those schools in 1964. Exhibit 72—the source on that, sir, is the 1964 boundary map of the Denver Public Schools. Exhibit 72 is an official boundary map of the schools in 1964 of the Denver Public Schools.

The Court: Hold up. Any members of the press have to sit outside of the rail. We reserve this space in here for the lawyers and for the principal witnesses. I don't know whether there is anybody here or not, but if there is, why, I will have to ask you to retire. Go ahead.

A. (Continued) Exhibit 72 is a portion of the official boundary map of the Denver Public Schools in 1964.

George E. Bardwell—for Plaintiffs—Direct

Exhibit 73 is an overlay which portrays by school year date the location of mobile units in the elementary schools. Exhibit 75 is a graph showing the Anglo enrollment in 1963 and 1964 on a percentage basis for the seven schools being considered. Exhibit 76 is an illustration of the 1964 changes and the corresponding estimates of the percentage Negro in those boundary changes, as well as the percentage Negro population in the elementary school district.

Q. What is the source of the census information on [183] Exhibit 76? A. The source of the census information on 76 is the 1966 census study that I prepared and by subtracting from the 1966 census figure information on length of residency, between two years and under, the figures were derived in each of the yellow areas as so indicated.

Q. Is there any other information on any of these exhibits which was not issued by the Denver Public Schools? A. All of the remaining information are official records of the Denver Public Schools.

Q. Doctor, I hand you Exhibit 101 and ask you to identify that. A. Yes, this is a tabulation entitled "Mobile Classrooms Costs", which indicates the date of purchase and location of the mobile units located in the Denver Public School district.

Q. Where did you obtain that document? A. This document was obtained from Dr. Armstrong's files several days ago. I personally took this out of his files and had it duplicated.

Mr. Barnes: We would like to offer Plaintiffs' Exhibits 70, 71, 72, 73, 75, 76 and 101.

Mr. Creighton: We make the objections to all of these on the grounds of relevancy, Your Honor, and

George E. Bardwell—for Plaintiffs—Direct

in addition, as to Plaintiffs' Exhibit 76, we object on the grounds [184] there has been no foundation laid to show the admissibility of the estimates and figures shown thereon.

The Court: Well, what do you propose to illustrate with this?

Mr. Barnes: Your Honor, this evidence is offered to show the concentration of Negro students as they increased in 1964 and 65 in mobile units in Stedman and Smith, Hallett, and to a lesser degree in Park Hill and Philips, and offer to show that the boundary changes intensified the segregation in Hallett and schools which became segregated in that year.

It also tends to show the general movement of boundaries continuous from the last series to the south and east in advance of the inward movement of the Negro population.

The Court: Well, there are no boundary changes depicted here, are there, in these exhibits?

Mr. Barnes: Yes, Your Honor, these are a series of boundary changes which occurred in 1964.

The Court: Oh, 71 show that?

Mr. Barnes: That's correct.

The Court: When did you see these?

Mr. Creighton: Excuse me, Your Honor?

The Court: When did you see them?

Mr. Creighton: When did I see these exhibits? We finally got them the night before this hearing commenced, [185] about 9:30.

Mr. Barnes: I think these were supplied to counsel Saturday, Your Honor.

George E. Bardwell—for Plaintiffs—Direct

Mr. Creighton: I beg your pardon. These were supplied last Saturday, and these were part of the series it had been suggested might not be used, but the fact is we have had them during that time and we object to them as to whether they fairly relate to the figures the school district possesses, and on that ground these are properly based on our figures, except for 76.

The Court: Are they going to prejudice you in the defense of your case?

Mr. Creighton: Your Honor, it simply expands the scope of this hearing back to actions taken by other boards in 1964 and 65 in this instance. I think I've explained we feel the narrow issue is what this School Board did this spring. No, I don't think it is going to prejudice us. It just means we have got perhaps more to deal with in this hearing.

The Court: Very well, they will be received.

(Whereupon, Plaintiffs' Exhibits 70, 71, 72, 73, 75, 76 and 101 were received in evidence.)

The Court: I think, though, we ought to make an inquiry about where we are going here. Have you changed your plans? Have you now decided to throw everything but the [186] kitchen sink into this hearing, or including the sink?

Mr. Barnes: No, Your Honor, there are 116 schools in the district and this evidence relates only to those schools which were involved in these resolutions and in the rescission and which the resegregation of which will be accomplished if the rescission is implemented.

George E. Bardwell—for Plaintiffs—Direct

There are examples of optional transfers and boundary changes and examples also of schools which are far more segregated than these, which we intend to offer in the main hearing. There is a great deal more, but in a hearing of this kind, when we need to prove intent circumstantially, it seems to us to be relevant to offer all that relates to these schools.

The Court: Then, you will complete your presentation as to the Park Hill School in this hearing, really?

Mr. Barnes: That's correct, Your Honor. We do not anticipate any substantial more degree of evidence about Park Hill. We have investigated that as well as we can with the possible exception of optional transfers, discriminatory transfers, from the Park Hill area, the evidence of which we haven't got complete at this time.

The Court: Very well.

Mr. Barnes: There may also be, I am reminded by counsel, some curriculum differences, but we don't know of those at this time.

[187] Q. Doctor, will you explain what the exhibits that you have on the board show? A. Yes, a number of observations flow from these exhibits. Beginning with the 1963 boundaries as they exist, we notice—

Mr. Creighton: Excuse me, Your Honor, the witness was asked what they show and not to make observations, and I believe he ought to understand that.

The Court: Well, I don't know whether he is responding or not so far. I can't tell. We will just have to test him out. Go ahead.

George E. Bardwell—for Plaintiffs—Direct

A. (Continued) These exhibits show, beginning with Plaintiffs' Exhibit 70, the original 1963 boundaries of the school district. In 1964, these boundary changes were proposed. It is noted here that in each instance each boundary change have a general direction of being detached in a school in a more northern part, the more westerly part, so that the general direction of the detachment is in a southeasterly direction.

If one compares the percentage Negro in Stedman, Hallett, Philips and Park Hill, it is noted that in each of the instances of the detachment that the percentage Negro is smaller than the actual area to which the boundary change was originally states in 1963. This is true for Stedman, in which Stedman is 43 percent. The area detached to Hallett is five [188] percent. And Hallett, the area is 25 percent as an entire area. It is 20 percent in population, the area that is detached. Similarly, for the optional area of Stedman, four percent to two percent and the same pattern reveals itself when we examine the collection of the boundary changes that were suggested in 1964. This was in response to the very massive movement of the Negro population into the Park Hill area from the period 1960-1966. The net consequence of this was that in each instance, Stedman, Smith, Hallett, Philips, Park Hill actually, and Montclair, the percentage Anglo enrollment declined from 1963 to 1964, and in fact in the case of Hallett dropped from 65 percent Anglo enrollment to around 40 percent by 1964.

The response then for this movement into the Park Hill area was the building of a substantial number—in fact, 28 of the mobile units out of the 29 in the school district at that time, were located in the Park Hill area, as shown in Exhibit 73. Here, we find that twelve units were placed in Smith, four units in Hallett, four in Park Hill, in 1965. In

George E. Bardwell—for Plaintiffs—Voir Dire

the preceding year, four units were placed in Philips and four units were placed in Stedman, suggesting that the response here was—the response to this Negro movement in population was the concentration of the school population, further concentrated by the use of mobile units.

Q. Dr. Bardwell, I hand you what have been identified **[189]** as Plaintiffs' Exhibits 7-G, 9-J and 8-I, and ask you to identify those. A. 7-G is the graph of a segregation index for the senior high schools from 1963 to 1968, showing the effect of the rescission of Resolution 1520 on those senior high schools. Attached to that exhibit is an explanation of a mathematical foundation for the construction of this index. Exhibit 8-I is a similar graph for the junior high schools subjected to Resolutions 1520 and 1524, and 9-J is a similar photograph applicable to the elementary schools subject to Resolution 1531.

Q. What is the source of the figures or the information that went into the making of those graphs? A. The basic statistical information has been derived from the distribution of students by race and ethnicity, from the division of personnel services, in 1963 to 1968.

Mr. Barnes: I would like to offer Plaintiffs' Exhibit 7-G, 8-I and 9-J.

Mr. Creighton: If I may voir dire, it is just possible we will want these admitted ourselves, Your Honor.

Voir Dire Examination by Mr. Creighton:

Q. Dr. Bardwell, your explanation of your methodology is a two-page explanation, is it not, in mathematical terminology? **[190]** A. It is.

George E. Bardwell—for Plaintiffs—Voir Dire

Q. As a non-mathematician I'm trying to understand this. Do I understand, Dr. Bardwell, what you have done here is show in a graphic form the extent to which a school population departs in its ethnic proportions from an ideal school, or I should say a hypothetical school, which represents the ethnic proportions of the school district as a whole? Is that what it does? A. That's right, sir.

Q. What are those ethnic proportions of the school district as a whole which you used? A. Abstractly, and these are at each end of the spectrum in which a totally segregated school then would have an index of 100, a totally desegregated school would have an index of zero.

Q. Yes, but my question was, what was the hypothetical sub-district that this compared? A. In the case of a subgroup of schools that would have a segregation index of 100, let's say, this would mean that all of the students that were Anglo would be confined to a certain set of schools and all of the students that were minority, namely Negro and Hispano, would be confined to another set of schools.

Q. Dr. Bardwell, do I understand that you—you have [191] got to know your methodology and decide about this—did you start off with a hypothetical city-wide sub-district which—I'm using figures from my recollection—which would be something on the order of eight or ten percent Negro, ten or twelve percent Hispano, and the balance Anglo? Is that what you started with? A. Well, no, if we start here then with a segregation index of zero—

Q. What would that kind of school have? A. Then, this would constitute that abstract situation in which in each of the schools in a sub-district there would be the same proportion in those schools as would be reflected in the district as a whole. I might add that this is much like a cost of living index, in which one establishes the base, let's say, 1957

George E. Bardwell—for Plaintiffs—Voir Dire

to 1959 prices. This is equal to 100, and one would like to know what departure from that particular index—whether or not prices decreased or increased. You have an objective way of comparing a very large mass of data, bringing it down into a single index, which provides a very convenience and very meaningful way of analyzing a very complicated concept like segregation.

Q. This may prove to be that kind of approach, but it is just not clear to me, Doctor. You speak of sub-schools, and I will take Exhibit 7-G, the one first mentioned. By sub-schools, you mean which? Senior high schools? [192] A. We mean in this case East, George Washington and South.

Q. Now, you have lumped them all together. A. As a group.

Q. And compared it with the School District No. 1 as a whole. A. That's right, sir.

Q. Do I understand you to say that these three schools lumped together depart from what you called the abstract sub-district on the order of 40 to 50 during the period involved? A. I will trust your reading of the graph on that. I assume, yes, that's right.

Q. And if the three school districts, sub-districts, lumped together, had exactly mirrored the ethnic ratios of the city as a whole, it would have been zero? A. That's right.

The Court: I don't think you ought to go into the merits of these on a voir dire examination. You are ascertaining method or testing, I suppose, the accuracy of the exhibit.

Mr. Creighton: Well, if we understand—

The Court: I mean, I do not think it is proper to cross-examine him on them on whether they are—

George E. Bardwell—for Plaintiffs—Voir Dire

Mr. Creighton: Well, these have been offered, Your Honor, and—

【193】 The Court: —at this time. Eventually, I suppose you will have a full opportunity to cross-examine every aspect of them, but this is preliminary examination to determine whether they are authentic, sufficiently so to justify their being received.

Mr. Creighton: Well, I'm going to object to the office of the exhibit on the grounds that it is not relevant to the issues in this hearing.

The Court: You think that further questioning will have brought about the results that you more or less held out to us that you agreed to their being received if you have some opportunity to question?

Mr. Creighton: Well, Your Honor—

The Court: Were you disappointed in his answers? It seems to me you agreed with everything he said.

Mr. Creighton: Well, if I may go a little bit further?

The Court: I just don't know what you had in mind.

Mr. Creighton: Well, I hope I can discover that the methodology here is such that we can agree that it shows fairly what is in issue in this hearing, and I am still inquiring about his methodology in producing this exhibit.

The Court: Well, go ahead then.

Q. Now, this relates only to school populations? 【194】 A. That's right. Populations, that's right.

Q. And the terminal here on each of these exhibits is 1968? A. That's right.

George E. Bardwell—for Plaintiffs—Voir Dire

Q. What school year do you mean by that? A. That would be the school year 1968-69.

Q. This past year? A. That's right, sir.

Q. And 67 would be the year before that? A. That's right.

Q. And the data— A. Now these are the only data, of course, that are available on the school district, as you know, that gives a breakdown by race and ethnicity. In fact, the only figures available from the school district extend from 1963 to 1968, in which the year shown at the bottom refers to the school year beginning in September of that year. Presumably, it begins in September.

Q. I think I have only one more question. You have shown one part of your diagram here, rescission of resolution—I think it refers to 1520 in the case of Exhibit 7-G for 1968, which you tell us is last school year—Have you again assumed that next fall is going to have last year's racial composition under rescission of the resolution? A. I'm making the assumption here from the School [195] Board figures and the review of the composition and our own calculations from that.

Q. Well, you understand, Dr. Bardwell, that the school district has not projected the effects of the new plans? A. And the racial composition of each of these schools, the assumption being made had that plan been in effect in 1968-69 school year, this could be the effect on the segregation index for those sub-schools.

Q. Oh, you— A. Otherwise, it wouldn't—

Q. If 1520 had been in effect during the last school year, it would have produced the Black line, is that what you are saying? A. That's right.

Q. But, that's not what the school district's figures say. A. These are derived from directly those—

George E. Bardwell—for Plaintiffs—Voir Dire

Q. Don't the school district's figures say that implementation of 1520 would result next year in certain estimated ethnic patterns? A. That's right.

Q. And I am just trying to establish what rescission of resolution is based upon, what assumptions? A. The rescission of the resolution is based upon the [196] ethnic and racial distribution of those students of each of the sub-schools under the resolution and the Black line which departs and shows the index of around 25 would be based on the assumption that in order to have a means of comparison the year 1968 was shown, what the effect of that resolution would be upon pupil membership.

Q. For last year or next year? A. For 1968-69. In other words, had the resolution itself been in effect.

Q. Last year? A. That's right.

Q. It would have produced the Black line? A. That's right. In other words, if we are to have a meaningful comparison on a time basis, instead of projecting the racial composition under the rescission of the resolution, the information is much more accurately reflected if we use the racial composition had those racial compositions been in effect during 1968-69, and what we are attempting to show here by this graph is a depiction of the magnitude of the effect of the rescission on comparable periods of school populations at a single point in time.

Q. What I'm trying to get you to admit, I think, Dr. Bardwell, is that you have applied 1520 to last year's school year rather than next year. A. Absolutely.

[197] Q. And when you say rescission of resolution, that's your way of showing last year's figures. A. That's right, last year's figures.

Mr. Creighton: All right. We have no objection.

George E. Bardwell—for Plaintiffs—Direct

The Court: Well, they will be received, 7-G, 8-I and 9-J.

(Whereupon, Plaintiffs' Exhibits 7-G, 8-I and 9-J were received in evidence.)

Direct Examination by Mr. Barnes (Continued):

Q. Would you explain what graph 7-G shows? A. What graph 7-G shows is a segregation index for the senior high schools which is fairly flat over the period 1963 to 1967, lying between about 45 and 50 percent, and in 1967 where we make the comparison for the resolution before and after rescission, that we show that we—on the basis of 1968 enrollment figures that the segregation index would be about 50, that the effect of the resolution on the segregation index is to decrease that index to a value of around 28.

Q. What does the exhibit show with regard to the changes which occurred in the segregation index in the years 1963 and following? A. Would you repeat the question?

[198] Q. What changes occurred, if any, in the years 1963 and following in the segregation index up to the point of implementation of the integration resolution? A. I think it is clear from the graph, Mr. Barnes, that this index shows that the degree of segregation for these particular schools remains fairly constant for the period 1963 to 1967, between a value of about 45 to 50.

Q. Handing you Exhibit 8-I, what does that show? A. This is a corresponding graph of the segregation index for the junior high schools that are affected by these two resolutions, and again in 1963 an approximate value for this index is around 63, and again it remains between the

George E. Bardwell—for Plaintiffs—Direct

value of around 63 to 70 over the period 1963 to 1967. Based upon the 1968 school enrollment figures and the distribution by race and ethnicity, we would have then a segregation index on that basis of around 63 to 64. The effect of the resolution is to decrease that index on the basis of that same year comparison to a value of around 35, so the degree of segregation compared to what we would have under the rescission of the resolutions around 65 would be decreased to about 35 under the resolution.

Q. Handing you Exhibit 9-J, what does that show?
A. 9-J is a similar graph for the elementary schools, in which there have been, starting in 1963, a gradual trend from about 82 down to about 65 in 1967 of the segregation [199] index. In 1968, comparing the two values for the elementary schools under the resolutions, we would find that the 1968 enrollment would show an index of around 60. The effect of the resolutions would decrease this index to a value of about 43, so there have been a decline in that sense of about 17 percentage points in the segregation index under the resolutions, and this would give an approximate effect of desegregating, the desegregating effect of the resolutions for the elementary schools.

Q. Referring back to Exhibit 7-G, 8-I and 9-J together, do they reflect any other substantial desegregation of the impact equivalent to that achieved under the resolutions?
A. No, they do not.

Q. Do these Exhibits 7-G, 8-I and 9-J pertain simply to the sub-schools under the resolutions? A. They do.

* * * * *

George E. Bardwell—for Plaintiffs—Cross

【200】 * * *

Cross-Examination by Mr. Creighton:

Q. Dr. Bardwell, I plan to go through several exhibits that you introduced more or less in the order that you introduced them. I would like first to discuss Exhibit 8-F with you. I hand you the exhibit. This shows, does it not, and I might cite for the Court's benefit this exhibit is labeled as showing relationship between ethnic compositions of certain junior high schools and the number of Negro and Hispano teachers in those schools—Dr. Bardwell, the first column after the school name shows what the school district projects as the percentage of Negro and Hispano students in those schools next fall if 1520 and 1524 have been implemented. A. Yes, sir.

Q. And the next column which you call "After Rescission" is in fact what those schools have in the way of ethnic proportions last school year, according to the school district's figures? A. That is correct.

Q. And, finally, in the third column, you have put not a percentage but the absolute number of teachers, have 【201】 you not? A. That is right.

Q. Taking Smiley, for example, you have noted that there are 23 Negro and Hispano teachers there, according to school district figures last year. A. That's right.

Q. Do you know what that would be as the percentage of total number of teachers there? A. I have that in another exhibit. This amounts to—I will have to—

Q. Do you know at the moment? A. No, I do not.

Q. If I suggested to you that the same information you have been using shows that last year there were 96 teachers at Smiley, would you accept that as probably the figure? A. If I am not held to it.

George E. Bardwell—for Plaintiffs—Cross

Q. And as a mathematician, it would be about what percent? A. It would look to be about 25 percent.

Q. As a matter of fact, isn't it at best a misnomer to label this "concentration of Negro and Hispano teachers"? Wouldn't a percentage have shown that better? A. Well, not necessarily, sir, because what we are talking about here, and I think this is a fair depiction of the information, we are talking about the number of Negro [202] and Hispano teachers located in those subject schools. Now, since there are 80 of these teachers altogether, then it seems to be a fair representation of the information to show in which schools those particular teachers are in fact concentrated, and I can't think of a better word for it. This would mean that 37—

Q. By concentration, then you are not talking about concentration at a particular school, but these particular schools? A. Yes, that's all we are comparing in this exhibit are the subject schools under the two resolutions.

Q. All right, I'm going to hand you next Exhibit 8-G, which again shows as you have labeled it "concentration" and here again you have used and these are in the same junior high schools, are they not? In fact, Dr. Bardwell, isn't what you have done in 8-G is simply make a bar graph out of those absolute numbers on the right hand column? A. That's exactly what was done, that's right.

Q. You are calling it there again concentration of teachers? A. That's right.

Q. Do you happen to know the total number of teachers, say, at Kunsmiller or Hill? A. I have those in my records and I—if you would like me to—

[203] Q. Well, from your present knowledge of all of these figures, Dr. Bardwell, would it be fair to say if this bar graph were shown as percentages rather than absolute

George E. Bardwell—for Plaintiffs—Cross

numbers, the percentage of Negro and Hispano teachers at, say, Kunsmiller and Hill would be higher relatively to Smiley and Cole than here shown? A. If we take the number of teachers, and they tend to be fairly uniform among the subject junior high schools, then whether one uses numbers or percentages it's really immaterial, but it is true, as I recall the figures generally, that Cole and Smiley do have more teachers generally than some of the other junior high schools shown here, so the percentages would decrease these bars somewhat. The extent to which this decrease occurs, I am not willing or able to testify.

* * * * *

【204】 * * *

Q. Let's start with 40, the base exhibit, where you have shown percentages which you say are taken from census tract data for 1960. A. I might say here—

Q. No, let me frame a question, please. Did you further refine the two census tracts to the west of Colorado Boulevard by enumeration districts? A. This information here—

Q. Did you or did you not, please. 【205】 A. No, I do not believe we did.

Q. How many enumeration districts are in those areas marked 51 percent and 73 percent? A. In this case, if my recollection is correct, there are two enumeration districts from the census tract 36-C and there are—

Q. Let me interrupt. 36-C is the one shown as 73 percent? A. As 73 percent.

Q. And the one marked 51-C is census tract number what? A. And census tract 36-B is 51 percent.

Q. Now, those census tracts are broken down into enumeration tracts, aren't they? A. That's right.

Q. And you are telling me there are how many in each of those? A. It is my recollection, so I can't be held to that.

George E. Bardwell—for Plaintiffs—Cross

Q. Yes. A. It is my recollection that there are two here.

Q. You are indicating 36-C? A. 36-C. I think there are two here, and there are two here, but I can't—

Q. You are indicating for that answer 36-B, are you not? **[206]** A. Yes, that's right.

Q. Do you recall what the enumeration tract showed as far as percentage? A. I will have to go back to my notes. I don't know that I have them here. They are in large bound books that are just simply too bulky to carry around, but I would be more than happy to furnish the information.

Q. Were these two enumeration tracts studied intensively in the preparation of your report on Park Hill? A. No. Well, yes, the information that was extracted from the census reports of the 1960 census tract of Park Hill is the 36-C and 36-B. This is the so-called Clayton Park area of the city, in which there was a large area of movement of Negroes toward Colorado Boulevard.

Q. You considered these two in your Park Hill survey? A. No, I considered more than that.

Q. But you did consider these? A. That's right.

Q. Isn't it possible, Dr. Bardwell, that if you had broken these two census tracts down by enumeration district you would have found differing percentages in the several enumeration districts? A. Oh, this is quite true.

Q. And isn't it possible basing this question really on your report that the westward, the westerly enumeration **[207]** tracts, in each of these, would have higher Negro percentages than the easterly? **[208]** A. I think this is generally true, but I caution you when you deal with a smaller area, smaller subjects, on enumeration districts, like this, that one can be fooled in the sense that certain of these enumeration districts will show, for instance, a higher percentage of Negro than census tract as a whole

George E. Bardwell—for Plaintiffs—Cross

and not necessarily in the path of the migration of the Negro families during that period.

This is particularly true in the northern part of this area.

Q. But, there would be differences? A. Oh, yes, there would be differences.

Q. Dr. Bardwell, I don't mean to keep you on your feet any longer than necessary, but I must move to your next series which involves some displays. May we have the 50 series?

Let me call your attention, Dr. Dardwell, to Exhibit 57, which is an overlay, is it not? Here, you did use enumeration districts, did you not? Here, you did use enumeration districts, did you not? A. Yes, we—

Q. That's all, that was my question. Do I understand that the green portion of the Stedman—the two green portions, the dog leg and the rectangle, in the Stedman district — A. These three here, this one and this one and this one?

【209】 Q. Well, they are—the one on the south is contiguous, is it not? A. Yes.

Q. Those two green portions, overly, do they not, largely areas in which there is generally speaking a low percentage of Negro population by enumeration district in 1960? A. That's true, only part of the—

Q. Then, Dr. Bardwell—

Mr. Greiner: Your Honor, might the witness be allowed to finish his answer?

The Court: Yes.

A. I might point out, Mr. Creighton, that unfortunately enumeration district population in 1960 is the smallest subunit of population we could possibly get and, there-

George E. Bardwell—for Plaintiffs—Cross

fore, to apply that population directly to the green areas we have used those enumeration districts which were our most appropriate, most applicable, because those are the enumeration districts that are coextensive, as best we can, with the green areas that we have; that's right.

Q. But if I heard the first part of your response, you agreed that the green areas overlie largely white areas.
A. That's right.

Q. And, therefore, to have moved them to Smith and Hallett would have been to take substantial largely white [210] pupils according to your methodology out of Hallett or out of Stedman and into Smith and Hallett? A. I am not certain I can say that. At least, it would be part of this area here. You see, I do not know exactly what blocks are assigned to this particular green area. What this is is a general depiction showing that the entire Park Hill area, the area that was coextensive with Stedman, was by far more or higher percentage Negro than any other part of Park Hill. What would have happened in particular with these particular green areas going out into Smith or from Stedman to Hallett from here to Park Hill is largely an unknown factor. One would have to estimate this in some way. It could well be, and in fact from my census I can assert that the area in which many of the Negro families moved first into Park Hill in the early stages or early parts of 1960 was precisely in this area here with respect to the green area right here.

Q. You are indicating the northerly green area in the Stedman district? A. Yes, but, nevertheless, in terms of time this area here was essentially the first area in which Negro concentration became higher than other parts of Park Hill.

Q. Dr. Bardwell, I am not sure I understand to what

George E. Bardwell—for Plaintiffs—Cross

extent you are willing to interpret this, but I will ask this question once more. Isn't it true from that exhibit that [211] if the green areas had in fact been moved from Smith and Hallett it would have subtracted largely white circles from the Stedman school? A. I cannot say that. I cannot say that, no.

Q. Would you admit that is a possibility, one of the possibilities? A. Obviously, yes.

Q. Now, Dr. Bardwell, let me direct your attention to your Exhibit 58. I believe you told us that the point on the upward axis—what's that called? A. This is called the ordinate, "Y" axis.

Q. "Y" axis? The points on the "Y" axis for 1960 are taken from the census? A. Yes.

Q. And the points on that axis for 1963, '64 and '65 are taken from school district data? A. That's right.

Q. What you are trying to show here, as I understand, is what might have been the case in 1962, for which you don't have that kind of data. A. Yes.

Q. And you put some rectangles there opposite the "Y" axis for the several schools? How did you determine those rectangles? A. From a mathematician's point of view, a [212] mathematician would simply draw one single line through the points.

Q. That would be called interpolation? A. Yes. Here, we wanted to give our analysis the widest latitude that we possibly could, and, here, for example, in the case of Stedman, even though Stedman at that particular time in 1962, according to our estimates, was between 30 and 45 percent Anglo, that the analysis still stands. In other words, the analysis itself is firm enough, even allowing a wide latitude of error in the estimates of the Anglo population for each of those schools.

George E. Bardwell—for Plaintiffs—Cross

Q. You have determined for yourself the latitude of error that you want to admit to by the rectangular bars?

A. Well, some common good sense goes into this, from my knowledge of population movements.

Q. And this in turn is based on your study of Park Hill? A. Well, a number of other studies, as well, that there is something inherent in the fundamental nature of sociological populations that one does not have when you have evidence as compelling as this to have the intermediate years between '63 and '60 to go all over the chart. Things just don't happen that way. They don't happen in natural sciences or sociology, either.

Q. Even assuming the lower limits of your margin [213] of error, is it fair to say that the decline in Anglo enrollment peaked out in 1962, and that thereafter the decline rate modified consistently? A. Well, I am not quite sure I know what you mean by peaked out.

Q. Bottomed out, I should have said. A. Well, it is still, of course, declining.

Q. Yes, but at a lesser degree. A. It would have to, sir, because you can't have less than zero percent Anglo.

Q. I suppose not. A. No. In other words, you would be going off the graph here, of course, if you were to have a continuing series of—if the interpolation were extended in a straight-line manner as you are perhaps implying, then you would go below zero percent Anglo, and that, of course, is impossible.

Q. Now, you do not have to extrapolate after '63 because you have data. A. That's right.

Q. May we have your 70 series? And where is 76, Dr. Bardwell? A. Right here.

Q. In the lower left of that display? A. Lower left.

George E. Bardwell—for Plaintiffs—Cross

Q. Now, the arrows, will you tell us again, the [214] arrows represent what? A. Want me to illustrate? The arrow here, for example?

Q. You are referring to Hallett and Phillips. A. Referring to Hallett school district and the boundary change in the southeast part of Hallett, in which the figure on it is 20 percent.

Q. Yes, what does that mean? A. This 20 percent means that our estimate here of the proportion of the Negroes in that particular area—

Q. That's your professional estimate? A. That's right.

Q. Excuse me, go ahead. A. That the proportion of Negroes that were transferred out of Hallett because of that boundary change into Philips was 20 percent.

Q. 20 of the previous Hallett percentage? A. No. No, sir. 20 percent Negro.

Q. You mean of those moves, 20 percent was Negro? A. That's right, sir.

Q. What is the largest figure in the Hallett subdistrict, 25 percent? A. 25 percent refers again to estimates as best we can determine.

Q. From what, Dr. Bardwell? [215] A. Well—

Q. From what dates? A. Well, this 25 percent again is from the 1966 census, or, I mean census of Park Hill.

Q. That is your census? A. That's right.

Q. Your census indicates to you that Hallett subdistrict had 25 percent Negro in 1964? A. That's right.

Q. After the move or before? A. No, this was before the change. In other words, the entire district, subdistrict of Hallett, before this boundary change was actually made, is 25 percent.

Q. All right. A. Similarly, for the other subdistricts as well.

George E. Bardwell—for Plaintiffs—Cross

Q. All right, then, taking your example, the Hallett to Philips arrow, you figure that 20 percent of those moved were Negro? A. That's right, sir.

Q. Doesn't your '66 report show that there are higher concentrations of Negro residential patterns in the northern part of the Hallett district at that time than in the southern part? A. In this part up in here, yes, that's true, as far as the area is concerned, that's right. It may not [216] extend over to this area here. It is only in this part in here that we are talking about, but in general the northern tier of the areas that were in that 1966 study do show a higher proportion of the Negro residents.

Q. So, if something off the southern tier of Hallett would be moved to Philips, it would I suppose on that data involve a lesser percentage of black children than the district as a whole? A. Well, we are depicting in this information as accurately as is conceivable from the only possible source I know, and that is from my 1966 census, and those data indicate with the smallest sub-district that I have in that information that this is the 20 percent out and this is 25 percent corresponding to the entire district.

Now, in terms of the precise location, we could go back to the individual blocks and determine that precisely, but this is an enormous task.

Q. Doesn't your 1966 data indicate, for example, the south and east part of Philips district was almost totally white at that time residentially? A. That's right.

Q. Therefore, movements to the contiguous areas of Montclair and Ashley would necessarily on that methodology move only white children? A. You mean actually here?

George E. Bardwell—for Plaintiffs—Cross

[217] Q. From Philips to Ashley. A. Yes, that's right.

Q. Moving from that part of the Philips district? A. That's right.

Q. And no other part of the Philips district was contiguous to Ashley, was it? A. Well, yes, this part in here, northerly, the northern part of the boundary changes.

* * * * *

[218] * * *

By Mr. Creighton:

Q. Dr. Bardwell, still with reference to the 70 series and particularly to Exhibit 71, that shows changes in the school district in fact made in the elementary schools for the school year 1964 and 1965, does it not? A. Yes, sir.

Q. And that was after the receipt by that Board of the March 1st, 1964, special study committee report, was it not? A. That's right.

[219] Q. Are you familiar with that report? A. I am.

Q. Would it be fair to say that that report says, with respect to mobile units—

The Court: By the way, what's the exhibit number?

Mr. Creighton: This is Exhibit 20, Your Honor.

Q. —that the committee approves the use of mobile units temporarily to relieve overcrowding. However, care should be taken that these facilities should not become permanent. Is that your recollection of the recommendation? A. Something to that effect. I don't know the exact wording and perhaps I ought to see it.

Q. Certainly. I'm showing the witness Page B10 of Exhibit 20.

George E. Bardwell—for Plaintiffs—Cross

Is that a satisfactory statement of the study committee's recommendation? A. Yes.

Q. And in your 1966 study, Dr. Bardwell, and that for the Court's reference is Exhibit 38, wasn't one of your observations from your data that there had been, during the period you substituted up to 1966, and particularly in the years immediately preceding 1966, in the area we're talking about, there had been a rapid immigration particularly to the northern part of this area of Negro families; that these Negro families had on the average more school children per [220] family than the white families they apparently replaced? A. (Nods affirmatively.)

Q. And this happened very rapidly? A. Yes, this points up the variation in the percentages here shown in population statements here of 43 percent while, for example, 43 percent of the population in 1964 was Negro at Stedman, yet, on the other hand, the proportion of Negro students at Stedman was 85 percent and the difference in that percentage reflects that.

Q. That rapid change? A. The difference between percentage of Negro families and the percentage of students.

Q. There was a rapid change not only of racial composition but of family size? A. There was.

Q. Do you think the use of mobile units—

The Court: Was this a trend that was apparently at some earlier times?

A. A trend?

The Court: Yes.

The Witness: The trend had been manifested starting in 1960, in which one finds—and we're talking about Park Hill as a whole—that the population may remain stable for that entire period of time,

George E. Bardwell—for Plaintiffs—Cross

the same number of people in Park Hill over the six-year period, but the number of Negro **[221]** persons increased from 520 to 12,200 in the span of six years.

Q. Do you have any knowledge as to the deployment of mobile units in the elementary schools involved in this 70 series today? A. Yes.

Q. Are there mobile units at Ashley, for example? A. Yes. I have forgotten how many units at Ashley, and if my recollection is correct there are two. But at Smith we still have and even after this long period of time, after 1964, which is a period of over five years, we still have mobile units at Smith, four at Stedman, and four at Hallett. Park Hill only within the past few months—only in the past few months have the mobile units been removed from Park Hill. Still, the same four mobile units at Philips and so, since the 1964 report indicated the mobile units ought to be temporary in nature, here we have the same mobile units extending still today.

Q. Have there been any permanent facilities built in this area during this period; this time? A. The most recent one is the—yes, there have been some additions at Park Hill. This is as Mr. Armstrong informs me in the past year, the Park Hill addition has been made of around 300.

Q. Three hundred what? **[222]** A. Three hundred spaces; so, increased capacity.

Q. Do you know whether those are classrooms? A. Yes, classrooms.

Q. Finally, Dr. Bardwell, referring to your segregation indices, which are Exhibits 7G, 9I and 8I, I believe you can resume the witness stand—let me take the one that pertains to the most schools first, and that is **Exhibit 9J**.

George E. Bardwell—for Plaintiffs—Cross

Would you like to have it in front of you? A. Yes, please.

Mr. Creighton: Perhaps, Your Honor, those three exhibits I just mentioned, if I could have them.

Q. I hand you, Dr. Bardwell, Exhibit 9J. On voir dire I didn't discuss this with you, Dr. Bardwell, so I must ask you what pool of schools, what group of schools did you use to construct this exhibit? That is to say, what segregation index as shown for what schools? A. These are the 17 elementary schools that we have used as coming under the effect of the Resolution 1531. They include such schools, for example, as Stedman, Ashley, and the numbers of schools we have indicated in previous exhibits. I could list you—give you a precise list of those, if you like.

Q. Well, it's 17 elementary schools? A. That's right.

Q. And I suppose, if you narrowed your focus to one [223] school at a time, an all-white school would have a segregation index of 100, would it not? A. That's right.

Q. And an all-black school would have a segregation index of 100? A. That's right.

Q. So that when you start lumping schools together, all-white schools tend to raise the average, and all-black schools tend to raise your index? A. That's right. If the index is applied, for example, to a school like Stedman, then it's a segregation index.

Q. Just to Stedman. Let's apply the index to Stedman. A. If the resolution itself were rescinded, then the segregation index for Stedman would climb to 100. That means from the current status of Stedman, assuming the resolutions are in effect, would be a segregation index applied to Stedman very close to zero. Yet, if the resolutions were rescinded, then this segregation index for Stedman would be. I think, fairly close to 100.

George E. Bardwell—for Plaintiffs—Cross

Q. It would remain 100. When you say rescinded, you mean remain the same as last year? A. If you want to put it that way, sir.

Q. But with respect to 17 schools as a whole, is it fair to say that this shows a steady—that 9J shows a steady [224] decline in the segregation index during the years you have shown, even— A. That's right, except for the period 1966 to 1967.

Q. That would be the school years of what? A. This would be the school year 1966 to 1967; 1967 to 1968; and 1968 to 1969; the school year beginning in September indicated by the year at the bottom of the chart.

Q. I see. A. But—

The Court: Did you finish your answer?

The Witness: No, sir.

The Court: Go right ahead.

A. I was about to indicate that while there was a substantial decline in the segregation index from 1963 to 1965, that that segregation index is leveled out appreciably so that for the period 1966 to '68, it has remained almost constant.

Q. A little bit down, is it not? A. Well, that is random variation.

Q. Your exhibit shows a little bit down. A. It's random variations for the most part.

Mr. Creighton: I believe that's all I have, Dr. Bardwell. Thank you.

* * * * *

Gilbert Cruter—for Defendants—Direct

[228] * * *

GILBERT CRUTER, a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

[229] *Direct Examination by Mr. Quinn:*

The Court: Give us your name and address and occupation.

The Witness: My name is Gilbert Cruter. I'm a teacher—I mean, an administrator with the Denver Public Schools, and my address is 2875 Monaco Parkway.

Q. Mr. Cruter, can you give your job title with the Denver Public Schools currently? A. Executive Director for School Community Relations.

Q. Could you explain to the Court briefly the function of that office? A. Basically, my particular responsibility is directly to the Superintendent and I advise the Superintendent on human relations and integration issues and help to design and implement programs to meet school system requirements.

Q. How long have you held your present position, Mr. Cruter? A. Since 1964.

Q. When was that particular office created? A. The office was created in 1964 as a result of a recommendation from the study committee that was set up in 1962 and did a two-year study on recommendations of the Board which was the creation of this advisory committee and the office was set up as a result of their recommendations.

[230] Q. Do other school districts in Colorado currently have similar offices within their administrative structure?

Gilbert Cruter—for Defendants—Direct

A. To my knowledge, there is only one and that is the Littleton School District, which has an office or a person who serves in a capacity similar to mine but doesn't necessarily function the same way.

Q. Could you briefly relate to the Court your personal background, particularly your professional background, Mr. Cruter? A. Well, academically, I have a Master's degree in education. I have been associated with the Department of State as a cultural affairs officer from 1961 to 1963. I have taught at Southern University in Baton Rouge, Louisiana, as director of health and education, and I have served as congressional liaison officer for the agency for international development in Washington, D.C. And I have worked with the public schools since 1946 with a brief two-year leave of absence—well, actually, I have had three leaves of absence from the Denver Public Schools, to work in foreign service.

Q. Is one of your formal duties—does it have to do with teacher recruitment? A. Yes.

Q. Would you explain that to the Court? A. Well, as I indicated before, it's my responsibility to advise the Superintendent on these particular matters [231] because we were trying to secure some Negro teachers and I took it upon myself, with the advisement of the Personnel Director at that time, who was Howard Johnson, who is now the Deputy Superintendent, to visit Negro colleges which I had had some familiarity with in view of the fact that I had taught at Southern University and so, starting two or three years ago, this is the third year, I recruited at approximately 17 schools which were primarily Negro colleges throughout the South.

This is the reason—the reason we did this is because this was a fertile field for educators that had been un-

Gilbert Cruter—for Defendants—Direct

tapped by the Denver schools. Now, we do recruit from white institutions and we pick up what Negro recruits in education we can from those particular areas, as well.

Q. How do you conduct this recruitment, just briefly? What is your method of recruiting? A. Well, many of the people who have currently been working in the departments I either knew or have known previously. And so many of my contacts have been made directly with them. I also work primarily through the placement department, but also have side contacts, too. And then they tend to provide me with the names of individuals whom they think would fit into the Denver school system.

As you know, there is a great deal of recruitment of Negro graduates at the present time because of—well, [232] recruitment, I should say, by industry, business and government and so on, and so, consequently, the students you get is rather small because, consequently, you can't compete on the salary level that—with that of business and industry.

Q. Have your efforts, however, been successful to some degree? A. Yes, they have been. The first year was a primary—primarily a year of contact in which we were trying to lay the groundwork, so I think we probably got—I would estimate around 15 teachers that particular year. The second year I went down—and I was more or less more knowledgeable about the recruiting thing—the first year, incidentally, we didn't take any contracts with us; merely a letter of commitment. The second year I took the contracts with me. I issued 50 contracts and we wound up with, I think, around 39 or 40 teachers. This last year we again took out contracts with us as well as letters of intent for those who couldn't make up their mind, and

Gilbert Cruter—for Defendants—Direct

I had them sign the contracts that particular time, and I think we have, according to the latest information I have from Personnel Department, roughly 36 teachers out of some 40 that I had given contracts to.

Q. Those would be teachers who would be beginning employment in the fall of this year? A. That's right.

Q. Do other school districts carry on this type of [233] recruitment? A. This I couldn't say except that we have worked closely with Jefferson County and we have had one person who accompanied me this year to recruit teachers for the Jefferson County school system.

Q. Mr. Cruter, are you familiar with the plan which has been referred to as the Hallett Plan or sometimes the Hallett Demonstration Integrated School Plan? A. Yes.

Q. Could you explain to the Court what that is and what its origin was? A. Basically, the origin of the Hallett Plan was that a group of people from University Park School wanted to give their children an integrated experience and they selected Hallett as a school that had comparable socioeconomic levels with their particular school. So, as a result, there were some 45—50 youngsters who volunteered to go into Hallett and some 45 youngsters left Hallett in order to go into University Park and other schools.

Q. Is that a continuing program? A. Yes. It has top priority right now in view of the recent action of the Board and we are concentrating all our efforts in this area in order to try to—

The Court: Would you keep your voice up a little bit more.

Gilbert Cruter—for Defendants—Direct

[234] A. We're concentrating all our efforts in this area at the present time to provide an integrated experience for the people who work to avail themselves of the Hallett program, both from the Hallett area and also from—some 35 schools that are located within the south, southeast and southwest area of the city.

Q. Could you explain some of the means that have been utilized to implement this plan? A. Yes. We have met with the principals of the 35 schools involved. They, in turn, have sent out letters to parents, indicating that the volunteer open enrollment was available for the Hallett School. They have, for the purpose of efficiency, I guess—well, I won't say I guess—but I will say for the purpose of efficiency we have divided the 35 schools into clusters based upon geographic proximity to one another and have set up recruitment committees within those particular clusters. We have done the same thing in the Hallett area in which we have divided the area into blocks with the map indicating the number of youngsters in each block and have set up block committees made up primarily of people or parents whose children were bused out the first part of January at the time that the University Park and Hallett projects were started.

Q. Have there been any other means of publicizing this plan? **[235]** A. Yes, we are putting out another publication which will be out the 21st which is called the Volunteer Open Enrollment Dialogue, which is a summary or summation of all of the things that have taken place since the closing of school. We also had some radio announcements about the volunteer education. Mr. Lyons' office in Public Education is designing some advertisements to go into newspapers at a later date to try and see if we

Gilbert Cruter—for Defendants—Direct

can't get more people interested in volunteer enrollment.

Q. Can you identify Mr. Lyons? A. Mr. Lyons is the director of the office of public information for the schools.

Q. Mr. Cruter, I hand you a document which has been marked Defendants' Exhibit C and plaintiffs' counsel has been furnished a copy of that. Can you identify that document? A. Yes, this is a copy of the material which will go into the first publication sheet which is at the printers at the present time.

Q. When will that be sent? A. It will be mailed out Monday.

Q. And to whom will that be sent? A. This will go to the parents involved and currently involved in open enrollment programs as well as interested [236] parents within the seven clusters that we have set up.

Mr. Quinn: I'd like to offer Defendants' Exhibit C in evidence.

Mr. Greiner: May we have a brief voir dire examination, Your Honor?

The Court: Yes.

Voir Dire Examination by Mr. Greiner:

Q. Mr. Cruter, did you personally prepare Defendants' Exhibit C? A. The staff and myself, yes.

Q. What about the statistics that are reflected in Defendants' Exhibit C? Where did this come from? A. These are the latest publications on at least—our latest insofar as up to date, July 15, of the request to Hallett by the people in the seven clusters, that is, by the parents in the seven clusters that we have set up and also, the request to leave Hallett and it gives you

Gilbert Cruter—for Defendants—Direct

those who were involved prior to the close of schools, that is, those who were involved in January to June project, and the additional ones that we have acquired since that time.

Q. Approximately when was Defendants' Exhibit C prepared, Mr. Cruter? A. That has been in preparation for the last week.

Mr. Greiner: We have no objections, Your Honor.
[237] The Court: It will be received.

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

The Witness: May I finish?

This has been in preparation since the last week but it has been an accumulation of information that we have prepared ever since the close of school.

Direct Examination by Mr. Quinn (Continued):

Q. Mr. Cruter, I now—

The Court: When did you start planning to send out such a document?

The Witness: Beg pardon, sir?

The Court: When did you start your planning to send out such a document? When did you decide that such a document would be—

The Witness: At the time that the Superintendent directed us as a result of Board action since Hallett was given top priority then we started our planning in this particular respect to see about trying to enlist as many volunteers as possible to

Gilbert Cruter—for Defendants—Direct

make this a pilot demonstration of an integrated school.

The Court: When did you first decide to send out a communication?

The Witness: This was done just before the close [238] of school. This is part of the planning process.

The Court: But the preparation was not completed or not started until a week ago?

The Witness: No, the final documentation was not done until a week ago.

The Court: Very well. Go ahead.

By Mr. Quinn:

Q. Mr. Cruter, I hand you another document which has been marked Defendants' Exhibit B and ask you if you can identify that document? A. This is a letter that was sent by Mr. Berge, President of the Board, to the Ellis parents to request—to solicit their participation involved in open enrollment plan.

Q. Do you know to whom that letter was sent? A. This went to all the parents in the Ellis School District—sub-district.

Q. Can you give the location of the Ellis School, approximately? A. This is a—I can't give you the exact address but is a school in the southeast area of the city.

Q. And was this letter a part of the Hallett Plan which is being implemented through your office? A. Yes, because the Ellis parents, as well as the other parents in the cluster, wanted a statement from the Board President indicating what their particular response [239] would be

Gilbert Cruter—for Defendants—Cross

for this particular plan. So this was the reason for the letter.

Mr. Greiner: I don't mean to interrupt but we have no objection to the introduction of that exhibit.

The Court: It will be received.

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

Mr. Quinn: I have no further questions of this witness, Your Honor.

Cross-Examination by Mr. Greiner:

Q. Since 1964, Mr. Cruter, you have served in the capacity of Director of Community Relations for the school district? A. No.

Q. Since what date? A. 1966.

Q. This position was created in 1964, is that correct? A. That's right.

Q. Now, is it fair to say, Mr. Cruter, that certainly one of the functions of your job is to communicate with the Negro community? A. No, my job is to represent the entire school district and this just happens to be one element of it.

Q. Let me put it another way. In the course of your [240] job, do you in fact communicate with the Negro community? A. Yes, I do.

Q. Now, does that communication include listening as well as talking? A. That's right.

Q. Well, since you have been Director since 1966, can you tell me whether or not there has been a growing concern in the Negro community over the continuance of segregated schools for Negroes? A. Yes, there has been.

Gilbert Cruter—for Defendants—Cross

Q. Now, as I understand your efforts with respect to the Hallett program, it is to—what is the ultimate objective at Hallett? It is to change a black school into a white school, is it not, predominantly? A. No, it's not to change a black school into a white school. It's to provide an integrated school setting in which you would have approximately a fifty-fifty ratio.

Q. Are you familiar with Resolution 1533, Mr. Cruter? A. Yes, I am.

Q. 1533 has some figures in it, does it not, as to what the hope is at Hallett? A. Yes.

The Court: What's the exhibit number, please?

Mr. Greiner: Plaintiffs' Exhibit 6A, Your Honor.

Q. Mr. Cruter, doesn't Plaintiffs' Exhibit 6A indicate [241] that the ultimate objective at Hallett is an exchange of some 500 students? A. Yes.

Q. Now, as I understand the statistics on Defendants' Exhibit B, to date you have received 158 essentially Anglo requests to go into Hallett and 100 Negro requests to leave Hallett, is that correct? A. That's right.

Q. So you are a little short on the objectives set out in 1533? A. That's right.

Q. I notice that—do you, by the way, have Defendants' Exhibit B in front of you, Mr. Cruter? A. No.

Mr. Greiner: I meant C. Pardon me.

Q. At the bottom of Page 2 of Exhibit C, it states that there are 33 Anglos who were going to continue in the program at Hallett. Did you speak personally with each of those Anglos, Mr. Cruter? A. No, I haven't.

Gilbert Cruter—for Defendants—Cross

Q. How did you arrive at this conclusion? A. Well, they had indicated—there were cards that were sent out prior to the close of school for those who wanted to—requesting those who had been attending Hallett whether they wanted to continue.

【242】 Q. Mr. Cruter, exactly when were those cards sent out? A. Well, I couldn't give you the exact date on it.

Q. When did school close, Mr. Cruter? A. The 6th of June.

Q. 6th of June? A. Yes.

Q. So that those cards then were sent out before the Board rescinded these resolutions, is that correct? A. Well, I can't say that because I had nothing to do with the sending out of the cards.

Q. But you do know that the cards were sent out before school closed? A. Yes.

Q. Now, what is the fact with respect to your statistics showing the Negroes who are to continue in a program at Hallett? A. This was the same process.

Q. So, in other words, based on data that took place before the Board rescinded these resolutions you are continuing to assume a continuing 46 participation at Hallett? A. So far as we know, this will be the status of those who want to continue to go.

Q. Now, Mr. Cruter, are you generally familiar with what I will describe as the two basic purposes of the resolutions which were rescinded? Would you agree that the 【243】 first purpose was the stabilization of schools in transition such as Phillips, Park Hill, and East High School?

Mr. Quinn: Your Honor, I think we're getting

Gilbert Cruter—for Defendants—Cross

outside the scope of direct examination.

The Court: True.

Mr. Greiner: Well, I think what Mr. Cruter's testimony relates to, Your Honor, is essentially the issue of whether the substitution—of the effect of the substitution of 1533, and I don't think we can properly judge the effectiveness of 1533 unless we consider what was going to be done under the rescinded resolutions.

The Court: To my mind he was called only to testify concerning this one program, as their witness. But when you get beyond that, I think you're calling him as your witness.

Do you wish to do that?

Mr. Greiner: I have no objection to doing it, Your Honor. I might say, though, that Hallett was just one of the voluntary programs under 1533 and I would like to inquire to see whether Hallett is not in fact the one that has so far demonstrated the most, in quotes, "success."

The Court: All right. Go ahead.

Q. Now, there is also a voluntary aspect under 1533, is there not, Mr. Cruter, with respect to voluntary open enrollment at some of these other Park Hill elementary schools? **[244]** Yes, there is.

Q. Such as Stedman, Smith, Park Hill, Hill, Phillips and so forth? A. Yes, sir.

Q. What's been the response for voluntary open enrollment from the Anglo community, Mr. Cruter, in a school such as Phillips, for example? A. This I couldn't answer because the person who has that information is Dave McWilliams who has that particular responsibility. So

Gilbert Cruter—for Defendants—Cross

I couldn't give you any information as to what the response has been from those particular schools.

Q. You have been working solely on the Hallett program? A. That's correct.

Q. Now, you mentioned a recruitment, Mr. Cruter, of Negro teachers, did you not? A. Yes.

Q. And I understand that at least your involvement in that program of recruitment began some three years ago? A. That's correct.

Q. So that the figures for Negro teachers in the school district for 1968-1969—that would reflect how many of the three years of that recruitment? A. Would you restate that question? When you say reflect, are you talking about the number of people I have interviewed or are you talking about the number of people who [245] were employed.

Q. Who were employed. A. I would say roughly about 18 percent of the total number employed at both secondary and elementary level. In other words, this averages out about 39—36 to 39 per year.

Q. I think I can ask the question more directly Mr. Cruter. Plaintiffs' Exhibit 95 shows, for example, a total of 191½ Negro teachers in the elementary schools in Denver, does it not? A. Yes, that's right.

Q. And that's for the school year 1968? A. That's right.

Q. Now, that's 191½ out of 2,260 total for the elementary schools? A. (Nods affirmatively.)

Q. Now, out of that 191½, Mr. Cruter, how many of those were some of your new recruits you described? A. I don't have that breakdown. I couldn't give you that. The only thing I can say is that I know how many were employed each year that I went out to on the recruiting. The

Gilbert Cruter—for Defendants—Cross

year of 1968-1969, there were 39 employed, according to the information I received from the personnel office. And of the 1969-1970, there were 36 employed.

Q. I am sorry. I misspoke. When I said Exhibit 95—**[246]** it is in fact Plaintiff' Exhibit 97. If you will just examine that. Is Plaintiffs' Exhibit 97—does that indicate that there are still some Anglo schools that have no Negro teachers? A. That's right.

Q. Now, how many Negro teachers are you trying to recruit, Mr. Cruter? A. Well, I think you put me in a situation where I can't answer because I'm really not directly associated with personnel. We're just trying to recruit teachers.

Q. Well, I take it from your description that your function is to recruit Negro teachers, is it not? A. No, I took it upon my—I felt that one of the functions of my particular office was to at least try and bring back some integration so this is how I happened to get involved in recruiting teachers. I'm not a person who works in personnel.

Q. Now I believe you indicated that part of your job was to talk with and listen to Negroes in the community, is that correct? A. That's right.

Q. Can you report to us on the basis of your recruitment experience in the Hallett program, Mr. Cruter, how the Negro community reacted to the rescission of these resolutions? A. I'd like to put it on a much broader basis than that if I may.

[247] Q. That's fine. A. Because I think that the impact in the communities that we have had to deal with or have been dealing with has been one of defeat, rejection, insofar as the volunteer open enrollment plan is

Gilbert Cruter—for Defendants—Cross

concerned. We have just started our process of trying to go block by block to recruit people out of the Hallett area and we have mixed reactions on this.

Q. Now, that intense recruiting as I understand it—have you been participating in that? A. Part of it, yes.

Q. I take it since you're going to Africa next week that you will not be participating any further? A. We have a staff that will still continue that.

Q. When is that recruitment program going to end? A. We hope to have a pretty good report on it by the 15th of August.

Q. Now, last year in Hallett, under the exchange program there which was voluntary, there was a mutual exchange of approximately 50 students? A. Yes.

Q. Now, did the Black students in your opinion, Mr. Cruter, who remained at Hallett—did they receive the benefits of an integrated education there at Hallett? A. That is something I can't answer because I haven't been that closely connected with the school. I would say that [248] there were those who feel—I think we have in the community those who feel that a predominantly integrated school is beneficial and those who still feel a segregated school is beneficial. I think you've got two factions you have to consider.

Q. Now, Mr. Cruter, let me ask the question another way. Under the voluntary program last year, did Hallett become an integrated school? A. It depends on how you define integration.

Q. Let me ask you—before the program began, Mr. Cruter, approximately what was the percentage of Negro composition at Hallett? A. I would say it was about 85 percent.

Gilbert Cruter—for Defendants—Cross

Q. And at the height of the voluntary open enrollment program last year, Mr. Cruter, approximately what was the Negro percentage at Hallett? A. Well, it was reduced. The reduction was very small. So, if you're going to base it on a 50/50 or a racial balance, I would say it was not an integrated school.

Q. Well, would you say it went from about 85 percent Negro to say 80 percent Negro? A. Something like that, yes.

Q. In your communications with Anglo parents, Mr. Cruter, with regard to the Hallett program, have any Anglo parents indicated to you that they might be willing to send their children to Hallett if it was going to be a predominantly Anglo [249] school, but that they would not be willing to send their children to Hallett if it remained under this program a predominantly Negro school? A. No, I haven't heard that.

Q. Have you in fact talked with some Anglo parents? A. Yes.

Q. And you have not run into that kind of a condition? A. No.

Q. Do you recall whether or not that kind of a condition existed with respect to the voluntary open enrollment program in the second semester of 1969? A. It's hard for me to even answer that because at this particular time I was not as deeply involved in that process as I am at the present time.

Q. Mr. Cruter, I hand you what's been marked for identification Plaintiffs' Exhibits 37-A through G and ask you if you can identify those. A. Yes, I have seen these before.

* * * * *

Gilbert Cruter—for Defendants—Cross

[250] * * *

Q. With respect to 37-B, which is the second page, Mr. Cruter, of that series of exhibits, is that not a request for voluntary open enrollment at Hallett school? A. Right.

Q. Is there not a condition stated there with respect to that participation? A. That's right.

Q. What is the condition, Mr. Cruter? A. Provided that Hallett becomes 60 to 65 percent Anglo as of 1/27/69, and that insofar as possible minority race children replace charges of University Park. We further do not believe volunteer open enrollment to be a realistic solution. Open enrollment is merely a farce. I might add this information does not come to my office.

The Court: What document is this?

[251] Mr. Greiner: 37-B.

The Witness: This goes to Mr. McWilliam's office and therefore I would not be aware of or be apprized of that particular statement.

Mr. Greiner: Your Honor, we would offer that series of exhibits at this time.

Mr. Quinn: We would object to the offer insofar as it relates to comments that are based on these—without some indication of who put them there or what the purpose was. This is purely hearsay. If there's to be any question of those comments themselves—

The Court: I don't believe Mr. Cruter has testified to the source of these documents.

Q. Mr. Cruter, do you know whether or not these exhibits come from the files of the school district? A. Yes, they come from the files of the school district.

Gilbert Cruter—for Defendants—Cross

The Court: And these are responses to this effort?

The Witness: Yes.

Mr. Greiner: This was the earlier efforts.

The Witness: This is prior to the close of school.

The Court: Are you offering them on some kind of a testimonial basis; that is, for the truth of the statements that are contained in them?

Mr. Greiner: No, Your Honor, I'm offering them only to show that certain parents did place certain conditions of [252] racial composition upon their willingness to participate in voluntary open enrollment. I'm not offering for example 37-B for the truth of the proposition that open enrollment is merely a farce.

Mr. Quinn: Your Honor, I don't see the materiality of them on that basis; somebody's personal opinion.

The Court: I suppose we can receive them circumstantially to show that there has been reaction to this effort.

Mr. Quinn: In a very indirect way.

The Court: But I don't believe that we can accept these statements on any testimonial basis; but that they are purely hearsay. Is that all right?

Mr. Greiner: Thank you, Your Honor.

Q. Mr. Cruter, with respect to the Hallett school do you have any information or opinion how the Negro community views such a segregated school? A. The Hallett area as well—and I think we need to say that this is about the Black area in general, the Negro area in general; they wanted integrated education and they wanted quality education.

Gilbert Cruter—for Defendants—Cross

Q. Pardon me, Mr. Cruter, but do they tend to equate those two things? A. I think they do. And the idea is that they don't want to be placed in a situation in which they're not going to be received by the particular community in which their child [253] will be or in other words there is a feeling of comfortableness and security that any parent feels for his school, just as a white parent feels about his child going into a Black community, the Black community feels the same thing about his child going into a white community. There are those who feel that there are certain benefits that will occur because of the opportunities to be associated with other children; to be able to live in a multi-racial society. I have had remarks made on both the black side as well as the white side indicating the necessity for a racial mixing. And because they recognize the fact that with the world getting smaller and with our recent exploits with the moon, that our youngsters are going to have to learn to live in a multi-racial society. There are also those who I think we have to look at it on the other side too—there are those who feel also that probably their child is getting a good education in a segregated school simply because their previous experience has been one of a segregated school so therefore they feel that they got something out of it and that he wants to continue it.

Q. You're talking about the parent's education? A. I'm talking about the parent's education. So I think this has some bearing on it too. But, by and large, children I think tend to profit from the experiences that they gain from their peers, and if they are in a racially mixed situation I think they materially profit from it both academically [254] as well as socially.

* * * * *

Robert D. Gilberts—for Plaintiffs—Direct

[263] ROBERT D. GILBERTS, called as a witness by the plaintiffs, being first duly sworn, on his oath testified as follows:

The Court: For the record, give us your name and address and occupation.

The Witness: My name is Robert D. Gilberts. I live at 6495 Happy Canyon Road.

Direct Examination by Mr. Greiner:

Q. Dr. Gilberts, you are one of the defendants in this action? A. Yes.

Q. And you are the Superintendent of Schools of School District Number 1? A. Yes.

Q. You have been such, serving as Superintendent in this district, since approximately August 1, 1967? A. Yes.

Q. Dr. Gilberts, I would like to take you back in time to the passage of the Noel resolution. Do you recall when this was passed? A. This is Resolution 1490?

Q. That's correct. A. May 1968.

Q. So you were here then when that was passed? **[264]** A. Yes.

Q. Upon the passage of the Noel resolution, were you directed by the Board to prepare a comprehensive plan for the integration of the Denver schools? A. Yes.

Q. And you did prepare such a plan, did you not? A. Yes, I did.

Q. Does that plan have a title that we might use conveniently for reference? A. We have a copy of it here, "Planning Quality Education, Proposal for Integrating the Denver Public Schools."

Robert D. Gilberts—for Plaintiffs—Direct

Q. How many months was that plan under development?
A. We had approximately sixty days, working days.

Q. And you, as I understand it, obtained the services of outside consultants to help you? A. Yes, we did.

Q. And that was Jack Dempsey and Associates? A. Together with a firm from California, that's Davis, McConnell and Rosson, who worked with him.

Q. I understand that during this development period you and your administration made a determined effort or definite effort to get inputs of ideas from various sources throughout the community, did you not? A. Yes, in that limitation of time we did the best [265] we could.

Q. And are some of those inputs reflected in the final product? A. Yes, they are.

Q. Now, that plan, "Planning Quality Education," that was introduced to the electorate here in Denver approximately when, Dr. Gilberts? A. First part of May—or, excuse me—first part of October of last fall.

Q. Was that the televised presentation that you have reference to? A. Yes, it was.

Q. Now, shortly after your televised presentation, you received a further direction from the School Board with respect to implementation.

Q. Well, the plan which we presented in October was a conceptual approach to dealing with the problem. It outlined in fairly broad terms various approaches we thought could be used to approach these problems here in Denver. It was not the kind of plan that would give the finite details of solutions in each of these areas. Therefore, it was necessary for us to begin planning in terms of specific elements of this book. The element that we began planning on initially was the one which related to the stabilization of schools in Northeast Denver.

Robert D. Gilberts—for Plaintiffs—Direct

【266】 Now, that was a normal part of the planning process. I don't recall that there was any specific direction or that there may have been an identification on the Board's part that this was the first area they wanted to work in.

Q. Did that identification then take place sometime in November of 1968, to your recollection? A. Yes, I would estimate that would be about the time.

Q. Dr. Gilberts, so there is no confusion, as I understand it, you used the general term "stabilization" to include both the program of improving the percentage composition of such schools as Philips, Park Hill, and East, you include that act as well as the complete reversal of the racial compositions at Barrett and Smiley Junior High Schools? A. Yes, in this peripheral area around the Park Hill area, those two were included.

Q. Now, then, did you then during the course of the development of this plan for stabilization receive more inputs, so to speak? A. Yes.

Q. And you met with the School Board on this point? A. We began having a series of conferences working out the elements of this plan shortly after this presentation. I can't say exactly when, but within a week or two, 【267】 I believe. In addition to that, we had some public hearings where people had a chance to comment. We also set up some idea centers around the city where people had a chance to visit with us about the proposals and make additional suggestions.

Q. As I recall a statement in your deposition, it was that you considered some fourteen different alternatives during this process. A. Actually, there were 14 plans sufficiently finite so that they could be presented as options. I am sure there were many more ideas.

Robert D. Gilberts—for Plaintiffs—Direct

Q. All right, then, as I understand it, the first finite recommendation to the School Board which you and your staff presented was reflected in Resolution 1520, is that correct? A. Yes.

Q. And that pertained primarily, did it not, to a senior high school and a junior high school, namely East and Smiley? A. Yes.

Q. Now, there is a feeder relationship, is there not, from Smiley into East? A. Yes.

Q. Was this why those two schools were selected? A. Yes.

【268】 Q. They were all—at least, with respect to East High School, this had been identified as a school in transition? A. Yes.

Q. And by that you meant that there had been over the years a gradual decline in its Anglo population, is that correct? A. That's true.

Q. Now, Smiley, as I understand it, at this point in time was already approximately 75 percent Negro, is that correct? A. I recall that as being approximately true.

Q. So you felt that you had to do something about the racial composition at Smiley if the improvement of the racial composition at East was going to have any longevity, is that correct? A. This was one of the factors, yes, sir.

Q. So that the first proposal then was 1520. Do you recall approximately when 1520 was formally presented to the Board of Education? A. January, I believe, 1969. I am sorry, I can't recall the precise date on it.

Q. Well, the Board didn't pass 1520 at the meeting at which it was first presented; is that correct? A. That's right.

【269】 Q. What happened then, Doctor? A. There was a

Robert D. Gilberts—for Plaintiffs—Direct

public hearing on the presentation and it was acted upon at the subsequent board meeting.

Q. And approximately how long did that take? A. I can't be absolutely certain, but it seems to me it was in the vicinity of a two-week period.

Q. Plaintiffs' Exhibit 3, Dr. Gilberts, would indicate that 1520 was passed on January 30; is that correct? A. Yes.

Q. All right, now, after the passage of 1520, Dr. Gilberts, was some further detail necessary in order to implement the general proposal reflected in 1520? A. Yes, it was.

Q. And did that then lead to the development of Resolution No. 1524? A. Yes.

Q. And that's Plaintiffs' Exhibit 4? A. Right.

Q. Now, how long was it then between the passage of 1520 and the presentation to the Board of 1524, do you recall? A. Again, I can't be absolutely certain, but I would estimate within about a two-week period, the presentation of this, because this, too, is presented at one meeting and acted upon at another, I believe.

[270] Q. And there was also a public hearing which was with respect to 1524, was there not? A. Yes, I believe there was.

Q. Now, in general, 1520 and 1524 treated the secondary schools which have been focused upon, is that correct? A. That's correct.

Q. Now, was it also necessary because of the feeder relationship between these schools to do something about the elementary schools, in your judgment? A. That was our judgment.

Q. Now, in order to effect that objective, did that lead then to the development of Resolution 1531? A. Yes.

Q. And that's Plaintiffs' Exhibit 5? A. Yes.

Q. Now, how long—just a moment. I take it that in the

Robert D. Gilberts—for Plaintiffs—Direct

development of your overall plan, "Planning Quality Education", that you considered the elementary schools as well as the junior high schools and senior high schools, did you not? A. In terms of this element of that plan?

Q. Yes. A. Well, in the basic document we merely indicated that certain steps would be necessary in order to attempt to [271] stabilize those schools in Northeast Denver. It was not spelled out in detail. We did not have the time to qualify what kind of steps we thought would be necessary at the time the plan was presented.

Q. But I take it your plan did look at one of the alternate types of action which might be taken, and one of the items was the stabilization of schools, was it not? A. Yes.

Q. Now, Doctor, was 1531 passed by the Board when it was on the day of its first formal presentation to the Board? A. No, it was not.

Q. Again, was there a special public meeting with respect to 1531? A. Yes, there was.

Q. Now, with respect to these public meetings, I take it that one of the purposes of those meetings, Doctor, was to accept, to receive, rather, the comments of the community with respect to these proposals, was it not? A. Yes, the hearings were primarily to receive from members of the community their feeling about the plan as it had been presented before.

Q. And you attended each one of those hearings or meetings? A. Yes, I did.

[272] Q. I take it there must have been some people that spoke out against each of these resolutions in the meetings? A. There were.

Q. And were also proponents of these resolutions? A. Yes.

Robert D. Gilberts—for Plaintiffs—Direct

Q. Did you make any judgment in your mind as to what the balance of the “fors” and “againsts” were?

Mr. Jackson: Objection, it calls for a conclusion in an area I don't think is truly relevant in this particular area, Your Honor.

The Court: I am inclined to agree with it. I don't see where that makes any difference.

Mr. Greiner: Well, let me approach it another way.

Q. Dr. Gilberts, with respect to the statements by members of the community that took place—I am focusing now only on these three public meetings—did you feel from participating in those meetings that the community was against these resolutions?

Mr. Jackson: I make the same objection, Your Honor.

The Court: What's the purpose of this?

Mr. Greiner: I think I can show it in another way, Your Honor.

[273] Q. Did they level out—

The Court: Well, if I knew what you were trying to establish, I would be in a better position to rule.

Mr. Greiner: I am just trying to find out from the witness, Your Honor, what he felt the level of community acceptance was for these plans.

The Court: For what purpose?

Mr. Geiner: My next inquiry is going to be—

The Court: Where is it germane to anything we

Robert D. Gilberts—for Plaintiffs—Direct

are hearing here? Let's suppose he formed an opinion one way or the other.

Mr. Greiner: My next question, Your Honor, would be whether it made any difference to him as to whether or not there was a level of community acceptance for these plans.

The Court: Are you seeking to show something in the nature of bias of the witness?

Mr. Greiner: Not a bit; not at all.

The Court: Well, then, I don't see where it would affect us at all.

Mr. Greiner: Well, I think, Your Honor, that the witness will agree with us that the matter of community acceptance—

The Court: Are you trying to show that his viewpoint was wholly unbiased and even so, why is that [274] important, unless it would affect his credibility as a witness?

Mr. Greiner: Your Honor, what I am trying to show from this witness is that community acceptance was one of the facts which he felt was relevant and material in the development of these plans. That's all.

The Court: Well, you can ask him that.

Q. Is that right, Dr. Gilberts? A. Certainly, general community acceptance was a major factor in our considering what we would recommend. I would hesitate to say that we drew those conclusions completely from any one source of communications, hearings being only one of those.

Q. I recall that one of the resolutions has a statement, does it not, something about the level of community acceptance? Perhaps I am wrong. I guess I am wrong. I am sorry.

Robert D. Gilberts—for Plaintiffs—Direct

Then, Dr. Gilberts, I take it that after these public meetings that the Board went ahead and passed each of these three resolutions; is that correct? A. That's correct.

Q. The passage of those resolutions was not unanimous by the Board? A. That's correct.

Q. Keeping in mind the various inputs that went into [275] the development of these plans, Dr. Gilberts, is it fair to say that you supported each one of these resolutions? A. Yes, I did.

Q. As a matter of professional judgment, you felt that they would achieve their intended purposes? A. We had hoped so. They were our best judgment as to how we might approach the solution to attempting to stabilize the enrollment in these schools.

Q. I take it that there were the—that you must have concluded as a matter of professional judgment that the stabilization of these schools was important? A. Yes, we did.

Q. Now, that was from an educational viewpoint? A. I think it was very heavily from the point of view of the communities themselves and the kind of composition of population within those communities. We had hoped as a side benefit to this kind of stabilization we would provide ourselves with a broader base upon which we could test some of the hypotheses that are related to the question of whether or not an integrated education in effect does provide a better level of education for children.

Q. Now, I take it, Dr. Gilberts, that you recognized that there may be some relationship between the fact that a school which is segregated predominantly minority, some relationship between that fact and the quality of education [276] at that school, in terms of, for example, achievement? A. I would be a great deal more sure about the relationship

Robert D. Gilberts—for Plaintiffs—Direct

of socioeconomic cloth and academic level at a school rather than the racial relationship to that factor.

Q. Of course, in Denver, there is a closer relationship between race and socioeconomic levels? A. I don't believe I have data that would allow me to accept that.

Q. You don't accept that as a proposition? A. I don't believe I could state that with absolute knowledge it is true or to what degree it is true.

Q. After these resolutions were passed, did you and your staff take further measures looking toward the implementation of the steps? A. Yes, immediately.

Q. Could you relate some of the things that were done? A. Well, at the senior high school level it became necessary for us to identify youngsters who were going to be affected by changes in boundary and by transportation to provide preparing for them in the new schools they would be attending. This involved a registration of these youngsters for classes next year and the building of a program to accommodate those elections. That, of course, related to the need of differing numbers of staff members with different [277] kinds of academic qualifications or specialties in these schools, so it was necessary to reassign teachers, because we did affect numbers of pupils in these schools as well as just changing pupils.

It was also necessary for us to begin planning in the general area of a program the kind of changes in educational programs that we might implement in the schools to hopefully increase the quality of education within all of them.

Transportation began to be examined, although the details in this obviously could not be done until later in the summer, because this would be a part of the overall program which included voluntary open enrollment, with trans-

Robert D. Gilberts—for Plaintiffs—Direct

portation provided as well, and there is a possibility of interrelating these transportation systems, and until that was done we could not get into that in great detail.

We began talking about what we could do in terms of school-community relations, perhaps as a result of this to improve the climate in the communities of receiving schools, preparation of pupils and so forth. At the elementary level, the problem was not as complex because of the self-contained nature of the classroom. There it was pretty much a matter of identifying the number of pupils to be moved, notifying them of the movement, the school to [278] which they would be moved, and looking at the teacher requirements.

Q. Dr. Gilberts, Plaintiffs' Exhibit 18, I believe it is, is here before you. It is in evidence. Plaintiffs' Exhibit 18 reflects some of the teacher assignments in the secondary schools, does it not? A. It appears to.

Q. Now, was there not also in connection with 1520 and 1524—for implementation, was it not also necessary to purchase some additional school buses for the district? A. It was.

Q. And Plaintiffs' Exhibit 12 is a reflection of that bus purchase contract? A. Yes.

Q. Now, I take it that after the rescision of these three resolutions that the administration then began taking steps for the implementation of 1533, is that correct? A. Well, a good portion of Resolution 1533 was embodied in the other resolutions, and, therefore, some of the planning which was related to those elements just continued. We didn't change Hallett School, as an example of the one you discussed this morning. It was a plan which began under the original resolution and was a continuing part of this one, so they continued. There was a need, obviously, to

Robert D. Gilberts—for Plaintiffs—Direct

reschedule the youngsters in the schools to [279] which they would be assigned in the fall and to reexamine the teacher staffing in these schools.

Q. Now, for example, around Barrett School, the attendance area for Barrett School had been redrawn, had it not, under 1531? A. We had identified some elements in the Barrett School area which would be reassigned to other schools in the district.

Q. So that was a matter of geographic carving up of the attendance area? A. It was a geographical identification by block.

Q. What happened upon the rescision of 1531? A. Those youngsters that had been scheduled for assignment to other schools were reassigned to the Barrett School.

Q. And the place of their residence once more became a part of the Barrett attendance area, is that correct? A. Correct.

Q. Now, I understand, Dr. Gilberts, that there is a relationship between transportation of the pupils affected and the ability of some of these receiving schools to receive the students, is that correct, who were detached from these other schools? A. Will you state that question again? I'm not sure I understand it.

Q. I take it, for example, that in order to get a [280] child that had been in the Barrett area down to Steele, as is indicated here—this happens to be Stedman—from Stedman to Steele, that's quite a distance, is it not? Some sort of transportation had to be provided? A. Yes.

Q. Now, did that corollary between transportation and the implementation of 1531 exist in every instance? A. 1531?

Q. That's the elementary school. A. No, there were

Robert D. Gilberts—for Plaintiffs—Direct

some boundary changes that affected the school of residence as well. They were fairly minor.

Q. Now, can you give us an example of what you have reference to? A. Well, as I recall, in the Park Hill area, there were several little pieces reassigned there. I again will have to look at—I guess I have a map here.

Q. You have reference to Exhibit 11? A. I'm looking at Exhibit 11, yes. This indicates some boundary changes around the Philips School, Hallett School and the Park Hill School.

Q. Was there then through those boundary changes an exchange or reassignment of the children in those schools between those schools? A. Well, they were assigned from, say, the Park Hill District to another district, yes.

【281】 Q. Now, in order to implement that reassignment, was it necessary to bus the child? A. No, it was not.

Q. And yet, even that aspect of 1531 got rescinded, is that correct? A. The entire resolution was rescinded; in the sense that those were changed, yes.

Q. Now, you will recall, I am sure, Dr. Gilberts, that there was a School Board election in May of this year. A. Yes.

Q. Did the question of these resolutions—was it one of the issues in this School Board election?

Mr. Jackson: I am going to object to that, Your Honor. I don't think this witness has been qualified to testify as to issues in the election and I fail to see how it has any relevancy to the hearing on the preliminary injunction.

The Court: Well, if it does, we can take judicial notice of it.

Q. My only point was, Dr. Gilberts, that shortly after the results of that election were known, did you then learn

Robert D. Gilberts—for Plaintiffs—Direct

that the Board was going to consider the rescision of 1520, 1524 and 1531? A. After the new board had been installed there were several sessions during which time we discussed these [282] resolutions and looked at several alternatives that might be used.

Q. I take it the answer to my question is yes? A. Yes, after the new Board was installed.

Q. And was the educational value of the then existing resolutions discussed during those sessions? A. Yes, I believe it was.

Q. Was the educational value of what might happen if there was a rescision discussed? A. Yes, I believe that was discussed.

Q. During the course of these discussions, Dr. Gilberts, was the actual language of 1533 before the group? A. No, it was not.

The elements that eventually appeared in this resolution I believe were discussed from time to time within these conferences.

Q. To the best of your recollection, Dr. Gilberts, when was the first time that there was a document which we can say was 1533? A. At the first regular meeting of the new Board of Education.

Q. That would be on June 9, 1969? A. The date of the passage of that resolution. I am sorry, I can't recall the date just exactly.

Q. I think that I can assure you that it was June 9th, [283] 1969. Now, so that was the first time that the Board had before it the actual language of 1533, is that correct?

A. In that form, yes.

Q. Now, the school election took place on approximately May 20th? A. Yes.

Q. And the Board meeting at which rescision took place

Robert D. Gilberts—for Plaintiffs—Direct

was on June 9, is that correct? A. You indicated the date. I accept this, if you have the date there.

Q. So, there was about a three-week period, is that correct? A. Approximately, yes.

Q. How many meetings were held at which you attended during this three-week period? A. I believe that we had three Board conferences.

Q. Do you recall the duration of each of those conferences? A. I would say they ranged from an hour and a half to two and a half hours.

Q. Do you recall whether each of those conferences was attended by all seven members of the Board? A. No, there were some members missing at these meetings.

Q. Now, is it a fair characterization of our position [284] in these conferences, Dr. Gilberts, that you were opposed to the rescision of these resolutions? A. I felt the recommendations that had been made were ones that I could recommend, and, therefore, I maintained my position.

Q. Dr. Gilberts, are you familiar with the concept of the common school? A. The which?

Q. The common school? A. Well, I can think of several characterizations of a common school.

Q. Is it fair to say that when public education was being formulated in this country that the common school was the basic concept of our public education? A. Yes, that was at least the theoretical concept of what the school was or was supposed to have been.

Q. School was a mixing pot? A. This is what the literature describes as being the philosophical objective of it. I'm not sure the evidence will sustain that particular position.

Q. Now, as the concept of the common school was applied to growing metropolitan areas, it no longer became possible, did it, to have just one school for a community? A. Well,

Robert D. Gilberts—for Plaintiffs—Direct

that was a problem initially in many of the urban centers, such as New York, and some of the larger eastern [285] cities. There was never one school in those cities.

Q. But perhaps there might have been one high school, for example—in not New York City? A. Yes, this, of course, was a highly selected educational institution at that time which very few people attended.

Q. Do you see any relationship, Dr. Gilberts, between what I believe the school district refers to as the neighborhood school policy and the concept of the common school?

A. Well, I think that there is similarity between many of the schools at that point in history which was—were at that time classified as common schools and some of the same problems we have presently in the large cities of the nation. There have always been socioeconomic stratifications within the large cities and schools that were established within those cities did not reflect the total spectrum of socioeconomic class. Therefore, I suppose from their point of view schools in large cities today are probably more similar than dissimilar.

Q. I take it, Dr. Gilberts, if I understand your testimony correctly, that you felt that the stabilizing measures inherent in these three resolutions were important in order to improve communications between the various racial and ethnic groups of this city? A. That certainly was one of the aspects that I felt [286] was important and is important.

Q. And I take it that you felt that you had to begin somewhere in improving these communications, is that correct? A. Well, the reason for selecting the northeast area of the city was because it was quite apparent that it was an area in transition and that there was possibility that by taking these steps that we recommended that we

Robert D. Gilberts—for Plaintiffs—Direct

may have been able to contribute in some way to the continuing resegregation in that area. Now, there is a body of research available that indicates that once a school reaches a certain point in composition—one figure that's used is 30 percent—there tends to be a rapidly increasing curve of segregation. There is a question of whether or not that is cause or effect, of course, whether it merely reflects the occurrence of change within the communities or whether or not it causes or interrelates, both causing and reflecting.

Q. You were in court this morning when we were discussing the racial composition of Stedman School, were you not, in connection with the 1964 boundary changes?

A. Yes.

Q. You will recall that the neighborhood of the Stedman District was represented to be some 45 percent Negro, is that right? A. At that point in time, I believe this is the figure [287] they used.

Q. And yet the school population of Stedman School was about 85 percent Negro, is that right? A. These were the figures I believe presented, but I have no personal knowledge of them.

Mr. Jackson: I am going to object, if the Court please, to this line of questioning. The witness testified he came to this city in 1967. Counsel is attempting to inquire as to matters in 1964. If he is attempting to go through the testimony of the previous witness, I believe the exhibits are in and we can look at those.

The Court: Overruled.

Q. Dr. Gilberts, that's merely an example of statistics I just cited to you. That's merely an example of how the

Robert D. Gilberts—for Plaintiffs—Direct

neighborhood changes when it is within transition. Let me— A. Be specific, will you, please?

Q. Let me be more specific. As Negroes move into the neighborhood, is it not true, Dr. Gilberts, that the first Anglos to leave generally are those with school-age children?

Mr. Jackson: Objection. It calls for a conclusion.

The Court: If he knows, he can answer. Overruled.

A. I'm not sure I do know. I don't believe I know as a matter of fact that this is true.

Q. You would also know then that the last Anglos to leave are the older whites with no children in school?

[288] A. This would follow if the first assumption is correct.

Q. Might that not explain why the racial composition of the school would run ahead of the racial composition of the neighborhood? A. Could very well.

Q. You will recall, Dr. Gilberts, a discussion we had during your deposition concerning certain characteristics of these segregated schools, certain objective indicia which they seem to share in common? A. I recall in general.

Q. Did we discuss such things as a higher dropout rate generally in a segregated school? A. Yes, and I believe I kept inserting into that testimony this is true of lower socioeconomic areas and whether we do identify it as strictly a racial characteristic or socioeconomic characteristic is questionable.

Q. There also tended to be lower teacher experience at the segregated school? A. I indicated I thought there might be exceptions to that but that generally that was true.

Robert D. Gilberts—for Plaintiffs—Direct

Q. That there generally tended to be more new teachers at the segregated schools?

The Court: Are you asking him what he said before? Or what his testimony is now?

【289】 Mr. Greiner: What his testimony is now.

The Court: If you know.

A. I thought he was making a statement. I am sorry.

Q. The question is, does there tend to be more new teachers, Dr. Gilberts, at these segregated schools?

The Court: You mean in Denver?

Mr. Greiner: Yes, sir, these segregated schools, Stedman, Smith, Hallett, Barrett.

The Court: Well, you heard the testimony.

A. There are. However, I have some question about those data. They include the years of experience in Denver and we do hire a good many teachers with experience outside of the school system and they are placed, many of them, in those areas. I'm not sure just to what degree, counting total experience, there are more beginning teachers in that area with lesser experience than other parts of the city.

Q. I take it from your earlier comments, Dr. Gilberts, that you do not feel that there is a direct relationship between the integration of the school population and improvement of the achievement of the minority group in that integrated environment, is that correct? A. What kind of improvement in the minority group? Academic improvement, is that what you are talking about?

Q. Yes, sir. A. I have seen no evidence that would lead

Robert D. Gilberts—for Plaintiffs—Direct

me to believe [290] there is an absolute relationship between the two.

The Court: You are familiar with it? Are you thinking of standards, achievement standards are equal in the segregated schools?

The Witness: No, what I am saying, Your Honor, is that in the research that I have read where they have tried to control on one hand for socioeconomic class and then to make comparisons for achievement and do the same thing based on race, there is no correlation that is of any substantial nature where race is related to achievement. There is some substantial determination in terms of the socioeconomic class in terms of achievement.

Q. Have you read a publication—

The Court: You don't think then that segregation per se produces a lower level or standard?

The Witness: Well, sir, I believe that there are—

The Court: Or that integration makes a contribution to—

The Witness: I believe integration is important, but I believe it is important from the point of view of opening and breaking down some of the barriers of communication we have in our society. I think that can be reasonably well established. When one begins talking about the relationships between that process and the academic achievement, we have an extremely difficult area in which to research and the [291] materials that I have read over the years and recently reviewed show clear indication that

Robert D. Gilberts—for Plaintiffs—Direct

there is such a relationship. I would hope that there is and one of the reasons why we have increased the base of integration through plans that we have proposed would be to give us a broader base upon which to continue to test that hypothesis.

Q. Dr. Gilberts, does part of the literature which you have read in this area include a report of the United States Commission on Civil Rights issued in 1967? A. Yes.

Q. Entitled "Racial Isolation in the Public Schools"? A. Yes.

Q. Now, Dr. Gilberts, isn't there rather conclusive proof that segregation in fact retards the learning processes of the minority child?

Mr. Jackson: Your Honor, I don't know if they have intended to call this witness as an expert witness, but, certainly, we are getting into a field that appears to call for expert testimony and I don't see that it is particularly relevant in this fashion at this particular hearing from this witness.

The Court: Overruled. As I understand it, he is seeking to refresh his recollection or discredit him, I'm not sure which, but he is referring to some official report, I take it, and asking him if he is familiar with it [292] and if it states a particular thing.

Are you able to answer the question?

The Witness: Only in a general way, Your Honor. I would have to look at the document to be sure, but my recollection is—I don't think I can look at 300 pages or whatever it is in a short period

Robert D. Gilberts—for Plaintiffs—Direct

of time here—that in this document there was an assertion that there was—

The Court: Mr. Greiner is always giving somebody a book to read during the course of the trial.

Mr. Greiner: Part of the educational process, Your Honor.

The Witness: I am afraid it is not possible for me—would you identify the place for me in there?

The Court: You want him to search it out, too?

The Witness: I believe that the document indicates that, or, asserts that there is definitely a relationship between the segregation and lower achievement or lower achievement in the schools, but I don't recall that it specifically sorted out all of the other independent variables that could have a part of this and then establish racial isolation in and of itself as an absolute factor in the lack of achievement.

Q. One of the other items referred to in this report was the psychological damage imposed on the minority child in the segregated school.

[293] Is your opinion of that conclusion of the report similar? A. I don't consider myself a sufficient expert to judge that absolutely. I do have a feeling that certainly this may be an extremely important factor in terms of the youngster's own concept of himself and his feelings of importance and his ability to be motivated and to succeed. I think it is a factor, yes.

Q. Now, you are aware, I know, Dr. Gilberts, that in *Browne against Board of Education*, the United States Supreme Court recognized that psychological damage, did it not?

Robert D. Gilberts—for Plaintiffs—Direct

Mr. Jackson: I'm going to object to the counsel asking the witness what the Supreme Court has said on a case.

The Court: There is no assurance that it is gospel. Overruled, that particular facet. In other words, supposing he has read that? Are you aware of it?

The Witness: Yes, sir, I am.

Mr. Greiner: What I am getting at—

The Court: Well, we take judicial notice, though, of what the Supreme Court has said.

Mr. Greiner: What I am trying to get, Your Honor, is superintendent notice of it.

Q. Now, that finding of the Supreme Court was in a [294] so-called de jure case, is that correct? A. That's correct.

Q. That's where the state had by law maintained a dual school system, one for whites and one for blacks? A. Yes.

Q. Is there something that you read, Dr. Gilberts, that indicates to you that the psychological damage is different in the two situations, de jure on the one hand, de facto on the other? A. I can't say there is anything that I have read that might lead me to believe that, but I might add to that the court has refused to draw the same conclusion in the case of de facto.

Q. I won't take you into the area of the law, Dr. Gilberts. I will leave you there. I take it from your comments that you have no particular training in sociology or psychology, is that correct? A. I have a minor in social psychology for my Ph.D.

Q. When did you receive that? A. '61.

Robert D. Gilberts—for Plaintiffs—Direct

Q. Now, under 1533, Dr. Gilberts, I believe there is, as you mentioned, to be a continuation of certain of the programs that were included in, for example, Resolution 1531, is that correct? A. Yes, sir.

【295】 Q. Isn't the essential difference between the rescinded resolutions and 1533—can't you state those to fall into about three areas? The rescinded resolutions made the transportation aspect mandatory, isn't that correct? A. In 1533?

Q. In 1531. A. Yes.

Q. Now, there were also some voluntary programs under 1531, for example, as I recall, Hallett School? A. This was one of them, together with voluntary open enrollment and the idea of grouping some of the schools in North Central Denver and Northeast Denver with schools in Southeast and Southwest and so on.

Q. But that's a point in common between the two? A. Yes.

Q. And what we are focusing on now are the differences. A. I'm sorry.

Q. So mandatory transportation is one of the differences, is that correct? A. Yes, sir.

Q. And another difference is in the actual attendance areas for particular schools, is that not also correct? A. Yes.

Q. Are there any other major differences in your opinion?

【296】 A. I believe those cover the major differences.

Q. What about the difference of the effectiveness, Dr. Gilberts, with respect to the objective of stabilization here in Northeast Denver? Is 1533 in your opinion going to be as effective as 1520, 1524 and 1531? A. Well, I suppose that's a matter that might be debated. One can look at short term and long term—

Robert D. Gilberts—for Plaintiffs—Direct

Q. Well— A. —accomplishment.

Q. Let's start looking at, first, short term. September 2, 1969, Dr. Gilberts— A. I don't believe that we will be able to accomplish everything that we have indicated in that short a term under the new resolution.

Q. The school district has had a program, has it not, of voluntary open enrollment? A. Yes, as a matter of totally free choice on the part of the parents.

Q. Has voluntary open enrollment in Denver ever integrated a school? A. I don't believe it has ever had a good chance and, since it has been promoted and designed, had programs that would attract people into it. It has only been in operation actually since last January, and, therefore, I don't believe the test is adequate yet.

[297] Q. Our objective at Hallett, as I recall, is to get 500 children involved in the exchange program. A. This was in the original resolution, I believe. Five hundred— yes, you had that document out this morning. I think you verified that.

Q. Yes, it was Exhibit 5A. It was your report to the Board on implementation of 1531. A. Yes.

Q. Now, has the target at Hallett changed? Is it no longer a mutual exchange of 500 children? Is that what you indicated? A. We would certainly like to achieve that, if possible.

Q. Mr. Cruter indicated that you had between 100 and 150 at this point, is that right? A. Yes, after one week of the campaign that we have just initiated.

Q. Didn't the initiation of that program start on July 7, Dr. Gilberts? A. Yes, it did.

Mr. Greiner: No further questions.

*Robert D. Gilberts—for Plaintiffs—Cross**Cross-Examination by Mr. Jackson:*

Q. Dr. Gilberts, the goal of 500 in the exchange on the Hallett program is composed, is it not, of 250 Negroes [298] moving out of the school and 250 whites coming into the school? A. Yes, I believe that's true.

Q. So, we are not talking about a wholesale shift of 500 students out of the school and 500 back into the school? A. I don't believe so.

Q. And under the present status report as Mr. Cruter advised us this morning, we are somewhere over the 200 figure then? A. In both directions, yes.

Q. Dr. Gilberts, much mention was made of the public hearings which were held following the introduction of Resolution 1520, Resolution 1524 and Resolution 1531, and the question was asked as to whether they were discussed at these public meetings.

Were they the only matters that were discussed at these meetings in terms of their specifics? A. Well, the discussion was not controlled absolutely. There were a number of other items that were brought into it, but these were the primary items.

Q. The programming and the steps taken by the school district to implement the Resolutions 1520, 24 and 31, you testified as to certain of the work that had been done in that area. Is there any carryover value to other programs [299] of the work which has already been done in this area? A. Yes, in those areas that were consistent between the two resolutions, certainly, there is a lot of carry-over value.

Q. And there were—oh, excuse me. A. And there are

Robert D. Gilberts—for Plaintiffs—Cross

some other programs which will be implementing it. I think there will be some carryover, too.

Q. And there was a great deal in common between the 1520, 24 and 31 programs and the program under 1533?

A. Yes, other than those items we mentioned were eliminated.

Q. You were asked on direct examination whether or not the boundary changes had been approved by the Board in the Northeast Denver area, the ones which did not involve any great distance of travel on the part of students that involved going into Phillips and from Phillips out to—or from the Stedman area into Ashley and around in that area. That boundary change had been agreed upon, is that correct, by the Board in their resolutions? A. Yes.

Q. Had these children actually changed their schools? Had they actually gone to the new schools? A. No, sir.

Q. There had been no movement at all? 【300】 A. No, sir.

Q. There was just a planning move which had taken place at that time? A. Yes.

Q. Now, referring to the teachers that might on occasion be found in schools where there is some concentration of minority children and the fact that on occasion there are teachers present who have less experience than others and are classified as beginning teachers, I didn't understand your testimony to be that the beginning teachers were any less qualified than other teachers?

Mr. Greiner: Your Honor, could we establish which of us can lead this witness? I object.

The Court: He may.

Robert D. Gilberts—for Plaintiffs—Cross

Mr. Greiner: Pardon?

The Court: The rules are clear.

Mr. Jackson: The rules are clear—excuse me?

The Court: Yes, just keep your remarks this way. I think he can ask him any questions, cross-examination, really, even though it may be a friendly witness.

Mr. Greiner: Thank you, Your Honor.

The Court: Go ahead.

A. There is no total relationship, I do not believe between the experience and ability of the teachers, although certainly, experience is a factor.

【301】 Q. But it doesn't necessarily follow that a beginning teacher would have to be then less qualified? A. Not necessarily, no.

Q. Dr. Gilberts, I believe you testified that Resolution 1533 in its present form first appeared at the Board meeting on June 9, 1969, is that correct? Assuming that's the date the resolution was passed? A. Yes, assuming that, yes.

Q. But the programs contained in 1533 have in fact been before the Board on a number of other previous occasions had they not? A. Yes, they were a part of the other resolutions.

Mr. Jackson: I have no further questions, Your Honor.

The Court: Do you have anything further?

* * * * *

Robert D. Gilberts—for Plaintiffs—Redirect

[301] * * *

Redirect Examination by Mr. Greiner:

Q. Dr. Gilberts, I am handing you what is in evidence as Defendants' Exhibit C. The second page thereof depicts the total number of students who have volunteered for the Hallett program. A. Yes.

Q. What's the total? A. 258.

Q. And that's how many are going to Hallett? **[302]** A. 158 are indicated here.

Q. How many are coming from Hallett? A. 100 are indicated here.

Q. Well, is that possible, Dr. Gilberts? A. Well, this is not the point at which this will be applied and this is merely a progress report and there is no indication of whether or not these are the figures that will be used finally.

Q. But I think you would agree, would you not, that until 50 more children transfer out of Hallett there is only going to be 100 Anglo children going in, would you not? A. I'm not sure that I could agree to that. There may be some additional space at Hallett that could provide for a few additional whites. I am not sure.

Q. Dr. Gilberts, would you agree with the general concept that I have just stated? A. In general, yes.

Q. Now, so that there is no confusion, Plaintiffs' Exhibit 5A, that was prepared by you or your staff? A. This is one of those that we had at the deposition?

Q. Yes. A. It appears to be, yes.

Q. On Page 10 of Exhibit 5A, there is described the Hallett program on 1531, is that correct? A. Yes.

[303] Q. And does it not provide for 500 Anglos going in and 500 Negroes going out? A. You are right.

Q. Now, has that goal changed? A. As I indicated before, we hope to attain that.

* * * * *

Howard L. Johnson—for Defendants—Direct

[360] * * *

HOWARD L. JOHNSON, a witness called by and on behalf of defendants, having first been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Creighton:

The Court: Give us your full name and address and occupation, please.

The Witness: Howard L. Johnson, 1130 South Franklin Street, Denver, Colorado. Deputy Superintendent of Schools.

* * * * *

[361] * * *

Q. (By Mr. Creighton) Mr. Johnson, what is your present employment? A. I am Deputy Superintendent of the Denver Public Schools.

Q. How long have you been employed by Denver Public Schools? A. I have been employed for the Denver Public Schools since September 1930.

Q. And is that a common name for School District Number 1, the City and County of Denver? A. Yes, sir.

* * * * *

[365] * * *

Q. And under these noninstructional, nonbusiness administrative duties, what are some of the duties you had there? A. They are pretty largely in the form of certain directives having to do with the schools, maybe in regard to certain bulletins, approval of certain noninstructional activities within the schools, the general interpretation of policies established by the Board of Education and the administrative staff.

Howard L. Johnson—for Defendants—Direct

Q. Did these noninstructional administrative duties include matters relating to the transfer of pupils? A. Yes, this part came under the pupil personnel services.

Q. And did those noninstructional administrative [366] duties include matters pertaining to school subdistrict boundaries? A. Yes, until such time as the planning and engineering services were established, and roughly it was included in my responsibility until approximately two and a half to three years ago, at which time there was a cooperative effort as this duty became more of planning and engineering.

However, I had the responsibility during the period from approximately 1960 until, I would say, 1965, 1966.

Q. And during your occupancy of that office from 1965 or '66, as you have testified, until you left that particular office last year in '68, school subdistrict boundary matters were handled largely by whom again? A. Largely by me, and even during that period of time until our recent reorganization of a year ago I worked very closely with that office in regard to certain aspects.

Q. With what office? A. With the office of the assistant superintendent for planning and engineering.

* * * * *

[367] * * *

Q. Has there been, then, a difference in the function of the deputy superintendent under the new organization as compared with the organization that obtained between 1960 and '68? A. Yes. The difference is pretty largely this: the deputy superintendent position prior to 1968 was identified as one of the assistant superintendents who assumed the authority of the Superintendent during his [368] absence and then assumed certain top level adminis-

Howard L. Johnson—for Defendants—Direct

trative authority as delegated by the Superintendent; whereas, under this arrangement there is a specific job description in regard to the responsibilities of the deputy in coordinating the activities day to day in these six departments or divisions.

Q. And when in this time span we have been covering did the present superintendent, Dr. Gilberts, take up his duties? A. Dr. Gilberts assumed his duties on August 1, 1967.

Q. Mr. Johnson, you indicated that prior to last year when you were superintendent of personnel services, among your duties were those relating to the recruitment of teachers, is that right? A. That is correct.

Q. In this connection, are you familiar with the policies, if any, of the school district relating to teachers? A. Yes, I am acquainted with it.

[368A] Q. Mr. Johnson, there is in evidence in this case an exhibit, Plaintiffs' Exhibit 26, which is Policy 1617A. Would you tell us the effective date of that policy? A. This policy became effective in April 1, 1963.

Q. Now, since the effective date of that policy, has there been any change in the policy or its equivalent as it affects teachers? A. Yes, there has been this change, in this respect; that this policy on the basis of classified personnel—

Q. Now, you might explain to the Court what you mean by classified personnel. A. Classified personnel would be the so-called non-teaching or non-certificated personnel. It would include such as bus drivers, custodians, lunch-room workers, clerical help, those individuals who are not licensed by the school as certificated teachers.

Now, as a result of an agreement that was signed between the School District No. 1 or through its Board of

Howard L. Johnson—for Defendants—Direct

Education and the Denver Classroom Teachers Association who had gained recognition of the city as the official representative of teachers, on April 8th, 1967, this agreement was put into effect and adopted by the Board of Education and it includes this policy.

Q. Excuse me, Mr. Johnson. I have handed you Exhibit—an exhibit marked Defendants' Exhibit E. Is that the [369] agreement you are referring to, that you're speaking of? A. That is the agreement.

* * * * *

[370] * * *

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

The Court: It will be received. What's the number of that?

Mr. Creighton: Defendants' Exhibit E.

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

Direct Examination by Mr. Creighton (Continued):

Q. Now, Mr. Johnson, you said that nonclassified teachers were not affected by Exhibit E. A. Non-certificated, or as we call them, classified employees. They are termed non-certificated. We use the classified, and the other group of certificated people being called certificated personnel.

Q. But the teachers' agreement, did it affect the previously existing policy, 1617A? A. Yes, it had this effect, that there were some items in this agreement which, of course, supersede Policy 1617A that probably are a little bit—probably clarified to a greater degree in teachers' rights in cases of transfer, assignments and so forth, and consequently I would say it is [371] defined more clearly as it relates to employee relationships.

Howard L. Johnson—for Defendants—Direct

Q. Are you familiar with this agreement? A. Yes, sir.

Q. Can you direct our attention to the section of it having to do with teacher transfers? A. Yes, on Page 25 of the agreement, Article 14, and under the heading of "Transfer," would include the matters as it relates to teachers—to transfers of teachers in this case, not all certificated personnel, only classroom teachers; those individuals of this—that this group would represent in negotiations with the Board of Education.

Q. Are there any portion of Policy 1617A which now control the teacher transfer arrangement? A. No, on the basis of the signed agreement between the Board of Education and Denver Classroom Teachers Association, any articles in this agreement supersede those of policies stated elsewhere.

Q. Now, Mr. Johnson, do transfers apply to teachers presently hired—presently employed by the district? A. Yes, it is.

Q. Now, do they apply—does this transfer policy then apply to teachers who have not yet commenced employment with this district? A. No, the agreement such as it relates to transfer—this relates only to the teachers presently hired—presently employed by the district? A. Yes, it is.

Q. Now, do they apply—does this transfer policy then apply to teachers who have not yet commenced employment with this district? A. No, the agreement such as it relates to transfer—this relates only to the teachers presently employed. As of **[372]** September 1, 1969, at the beginning of the work for teachers, a contract year, this agreement will apply to them immediately as of that date.

Howard L. Johnson—for Defendants—Direct

Q. Could you outline for the Court the way in which the present transfer policy under the Exhibit E operates?

A. Yes, if you are referring to Article 14 on the basis of transfer, I think there are about four or five items that need particular attention and one is the principal criterion for consideration of a request for transfer—is whether or not the request will result in the best educational program for the school district. A request for transfer will not be granted if a teacher does not qualify for the existing vacancy. That is one section.

Another section is 14-2-2, that the best educational program results from the selection of a school faculty which is well balanced in terms of teachers' experience, general background, and competency, and careful consideration will be given to each of the above when filling vacancies.

Q. Now, Mr. Johnson, are those general principles incorporated in the previous policy, 1617A? A. That is correct, and this would be the general criteria on principle we work under on this particular basis with the understanding that we would discuss with personnel regarding that important part.

Q. And what is the next important factor that you [373] have identified under transfer policy? A. There are about three important factors as we think of transfer: a request by a teacher for transfer, and it is outlined here, but rather than reading from here I can define it a little bit more clearly.

Mr. Greiner: Your Honor, we would object to the witness interpreting the exhibit. I think the exhibit states what the policy is.

The Court: Very well, Let him read it.

Howard L. Johnson—for Defendants—Direct

A. And in reading from Article 14, "That not later than April 20 of each school year . . ." Now, these are transfers requested by the teacher. "Not later than April 20 of each school year, the superintendent shall have posted in the office of each school a list of the known vacancies which will occur during the following school year.

"14-3-2, Teachers who desire a transfer to another building shall file a request on the appropriate form with the superintendent not later than May 1 of each year. Requests on file prior to the posting of vacancies will also be considered. If a transfer is to be made the teacher and the administrators concerned will be notified in writing of the new assignment. Except in unusual cases teachers who are to be transferred will be notified before May 20.

"14-3-3, Not later than May 20 of each school year the superintendent shall have posted in the office of each [374] school a supplemental list of known vacancies which will occur during the following school year.

"14-3-4, Not later than June 1 of each school year teachers may file applications for transfers to positions listed on the supplemental list of vacancies. Requests on file previous to the posting of vacancies will also be considered. If transfer is to be made the teacher and the administrators concerned will be notified in writing of the new assignment. Except in unusual cases, teachers who are to be transferred will be notified in writing before the close of the school year.

"14-3-5, No assignments of new teachers in the school system shall be made until all pending requests for transfers have been processed. If a teacher does not wish to be considered for vacancies which occur in the summer, the teacher must cancel his request for transfer in writing.

Howard L. Johnson—for Defendants—Direct

“14-3-6, In considering a request for transfer the convenience and wishes of the individual teacher will be honored to the extent they do not conflict with the instructional requirements and best interests of the school district.

“14-3-7, If more than one teacher has applied for the same position, the teacher best qualified for that position shall be appointed. Qualifications being substantially equal, seniority in the school district shall control.

[375] A. (Continued) “14-3-8. All requests for transfer on call in the Superintendent’s office shall be destroyed on October 31 of each year. All renewals or new requests for transfer must be filed on or after November 1 of each school year.

“14-3-9. Nothing in this article shall prevent a teacher from requesting a transfer at any time.

“14-3-10. On or about June 15, the Superintendent shall make available to the Association a system-wide schedule showing names of all persons who have been transferred and the nature of such transfers. A supplemental listing of transfers and their nature shall be made available to the Association by the end of August.”

Q. Now, Mr. Johnson, you have covered the part of this agreement relating to transfers requested by teachers, have you not? A. That is correct.

Q. Now, then, isn’t there a section covering transfers that the administration wishes to effect? A. Yes, sir, and this refers to Article 14, Section 4, following immediately after that, my previous statement, and this is, “Transfer Requested by Administration.”

The Court: I think I will let him summarize this.

[376] Mr. Greiner: I don’t think I would even object to that, Your Honor.

Howard L. Johnson—for Defendants—Direct

Q. If you would, then, please summarize how administration-initiated transfers work. A. Yes, we have some situations where the administration may request a transfer. A good example of this would be that the enrollment or the membership in a school should be less than our anticipated membership for that school and it is necessary to transfer from a school to another school because we have overstaffed a particular school. There may be other reasons, but this is the one that is most common, and in this respect, if this is to be for the following school year, then this should be done prior to June 1st. However, a provision is given that if we find the emergency situation in September we still reserve the right to request transfer of the teacher. Then the transfer will be made only after a meeting between the teacher involved and the Superintendent's designee, and at this time the teacher must be notified regarding the reason that we requested his transfer.

In the event that the teacher objects to the transfer, then he can immediately notify the Association, and then the Superintendent or his designee will then meet with the teacher and the Association's representative to discuss this matter, and, of course, this discussion is [377] necessary or it could become a grievance filed by the teacher and the Association.

Now, at the time then, after it is discussed with the teacher, if it is agreeable, then a list of all open positions at that time must be available to the teacher, and then the teacher may indicate in the order of his preference the school that he wishes to be transferred to. So, really, it provides that this teacher cannot be taken from one school and said that the teacher is now in School A. He is convinced that there is a legitimate reason for his trans-

Howard L. Johnson—for Defendants—Direct

fer. So, he acknowledges that. But we cannot take him from School A and move him directly to School B without giving him the other possible schools where we have vacancies for which he is qualified.

If there are three schools requesting the same qualifications, there are three vacancies, we must give him the opportunity to go to School B, C or D, as the case may be, and he then is entitled to make his choice.

Q. Turning back to the transfers initiated by the teacher himself or herself, does that impose any limitations or qualifications on the administration's ability to make a determination of where the teacher goes? A. You will note in the wording that it indicates the qualifications of a teacher. You will also recall that [378] earlier I stated for the best interests of the school district. To the extent that we do give a feasible answer to that teacher regarding the transferring of one teacher over another and explain that we think it is for the best interests of the program, we do have or are empowered to do this, but not without answering to the teacher or if necessary to the Association, if they object that we are dealing with the teacher unfairly, but it does give us the privilege of transferring—of indicating to the teacher to go to a certain school.

Now, of course, if the request is made by the teacher, then, of course, that first section does not apply, because this is only where the teacher requests.

Then, of course, he requests for a specific position.

Q. Then, are teacher preferences a factor in determining who gets transferred where? A. It is a very important factor.

Q. Is teacher seniority a factor? A. Yes, that is written in the agreement, that seniority shall prevail, assuming that all other qualifications are similar.

Howard L. Johnson—for Defendants—Direct

Q. Was that seniority feature in the previous policy, 1617-A? A. It referred to it, but it is not as direct in [379] the statement. It is referred to that seniority shall prevail, and that has been the practice and procedure for years.

Q. Now, Mr. Johnson, when you finish up this transfer process, the dates you have indicated it happens, is there a time during the school year when there are unfilled openings that need to be filled with teacher personnel? A. Yes, if you will note that we attempt to fill these vacancies upon request of teachers prior to June 1st, so there is a period, really, that extends from June 1st to about September 1st, and in unfortunate years may even extend to the first day of school. But we have been fortunate in this respect, and during this period of time we had these vacancies that are a result of retirement and resignations and some unusual situations where we may have vacancies during the summer, and, then, of course, these are the vacancies that have not been requested for filling by the staff who were there during the previous year.

Q. Are projected enrollment changes a factor? A. It is not only overall projected enrollment changes, it could be projected enrollment changes in each of our 116 schools, because very often the mobility of population can affect a school as much as 50 to 60 pupils [380] just through the movement and the transiency even within the city.

Q. Now, how do you go about filling these vacancies? A. These vacancies must be filled by new applicants and teachers who are hired. Some of them are hired in the spring of the year because we anticipate from year to year so many vacancies. Some of them must be hired during the summer months, if we have failed to fill these positions or the estimated positions.

Howard L. Johnson—for Defendants—Direct

Q. During the last several years, Mr. Johnson, what has been the size of this new teacher assignment matter? How many teachers? A. It is necessary for us to hire from 500 to 700 new teachers each year. We have roughly a turnover in our staff for an average of from 12 to 14 percent a year, which is quite consistent with other large cities in the United States.

Q. Do you know anything about the extent of experience of these new teachers you must bring into the system each year? A. Yes.

Q. All right. A. As far as experience is concerned, and I will have to give the approximate number, although I am within [381] one or two percent, on the basis of our elementary teachers. Approximately 42 percent of those teachers have had previous teaching experience, one or more years. In the secondary schools, we find that the experience—we do have a higher percentage that runs approximately 39 percent of our new teachers have had previous teaching experience.

Q. Would these be classified in some of your classifications as teachers without previous Denver Public School experience? A. That is correct. As far as listing these teachers on the basis of experience, we usually list them as having previous Denver Public School experience. The experience gained outside, we do not count this in our normal format of indicating experienced or inexperienced teachers, and these individuals are given benefit on the salary schedule for a portion of their outside experience, but they are not listed as experienced Denver Public School teachers.

Q. Do you know anything about the extent of the non-Denver experience of these 39 to 43 percent that come to you having had experience? A. I personally do not have,

Howard L. Johnson—for Defendants—Direct

but in the personnel services staff there is a very close examination of this previous experience in regard to recommendations made by [382] previous administrators as well as the subject matter area, extracurricular activities, sponsorship, and all of this type of evidence does come to members of the personnel services staff.

Q. In regard to these new teachers, what is the School District looking for in the way of new teachers today?

A. We are looking primarily for individuals who are sympathetic with children, understanding of children's problems, their ability to be able to discipline with reason, have the necessary control over the individual, be able to work within the community and to work—and their ability to work with parents. And, then, of course, in addition to this, and we have to recognize the necessity of the most modern teaching methods and also their knowledge of subject matter in a particular area.

At this particular time, however, we have come to the conclusion that probably the knowledge of subject matter and this type of skill is important, but it is not as important as the sensitivity of a teacher in working with children.

Q. How do you seek out teachers with sensitivity or training in sensitivity? A. Well, of course, we have quite an extensive recruiting program, starting about the first of December of [383] the previous year, in hiring teachers for September, and this continues with a great deal of vigor and force until about the first of May, and very often we are able to hire the bulk of these people by April or May, and, of course, in attempting to gain these, these are all personal interviews.

Contrary to what is done in some areas of employment, we do not consider a teacher an applicant until such time as he has been personally interviewed by a member of our

Howard L. Johnson—for Defendants—Direct

staff, has submitted even prior to that interview his transcript of record, his recommendations from his previous employer, and all of the data submitted to our office.

Then the personal interview takes place and at that time he is considered an applicant, and then it is pretty largely a comparative matter of determining upon the basis of the personal interview as well as the materials—it is a comparative matter of selecting these roughly five to six hundred teachers—it may vary from year to year—out of somewhere in the neighborhood of about 3,000 of these formal applicants.

[384] Q. Has the school district done anything through the source of these newly-trained teachers, the teaching colleges, to improve what you're seeking? A. Yes. In fact, this, I think—I think this is brought pretty definitely to our attention on the basis that there are certain things we are looking for in teachers today that were not requirements for an education degree.

Many of us who have been in education over a period of years, we receive quite a heavy dose of methodology, should we say, and subject matter. And I think the institutions of higher learning went on for years overlooking some of the important things, sociology and many of these things. And we made it a point a few years ago to contact 55 institutions of higher learning with whom we had had our greatest contact requesting certain types of courses to be put into colleges. We also requested that we needed to do more from the standpoint of practice teaching or student teaching in having these individuals work with a lower socioeconomic group, the culturally deprived. And I am happy to say that—and we haven't gotten 100 percent on this—but we have found very close cooperation. For instance, the student assigned by the Denver Public School

Howard L. Johnson—for Defendants—Direct

System by institutions of higher learning in this state—the majority of them are now doing their student teaching in so-called target area schools.

* * * * *

[391] Q. Specifically in the area that we have just been discussing of teachers Mr. Johnson, I refer you to Page D8 of this Exhibit 20, at the top of the page. Would you read that—or let me ask you, is the recommendation there, No. 2, one that fell within your responsibility? A. That's D8, No. 2. "A minority background should be considered as an asset in the recruitment of teachers in the Denver Public School System in that larger number of well-qualified teachers of Negro, Spanish-American and Asian backgrounds; standards of training, personalities, and abilities shall never be lowered or raised because of a minority background."

Now, Mr. Johnson, has the school district and specifically your office responded to that recommendation? A. Yes. We have responded to this recommendation. I think it is evident in this respect. The increase in the number of minority teachers that we now have in the Denver Public Schools. Number two, the emphasis that is placed upon recruitment of teachers in minority background and this particularly is making certain that we have a very close coverage of those institutions in the United States which have a large Hispano group in the college or university.

Number three, we moved further than just making contacts with the institutions of higher learning where we knew there were a large percentage of Negro and Hispano **[392]** students. But we moved deliberately into about 12 of the large Negro universities and colleges in the South. And then, also, utilized members of our own staff—our staff who were Negro or Hispano to make these contacts.

Howard L. Johnson—for Defendants—Direct

Q. Was Mr. Cruter involved in this? A. Yes, Mr. Cruter was primarily involved in recruiting with the southern universities and colleges.

Q. When did this response commence with respect to the 1964 recommendation? A. It really commenced in 1965 for the September recruiting because, as we went through these 155 recommendations, we put—we began implementing immediately those that we felt could be handled in this respect and we substituted in our recruiting plans, we substituted other people to make these recruiting trips. We also substituted other—certain other schools and eliminated some that we had not been quite as well successful with in our recruitment in order to achieve all of these 155 recommendations.

Q. Since 1965, do you have any evidence or measure of results in that regard? A. Yes. We have evidence in this respect, that at the present time we have in the Denver Public Schools approximately 400 certificated employees, that is, teachers who are of the Negro group. We have approximately 100 who are of the Hispano group. Roughly 50 to 75 orientals, and [393] so this would total altogether somewhere in the neighborhood of 575 to 600 individuals of these ethnic groups.

Q. That's as of now? A. As of this last September.

Q. How does that compare historically since 1965? A. In 1965 we had approximately 275 to 300 Negroes. The Hispano group was approximately 50, and oriental group was about the same. So I would say there has been an appreciable increase in those numbers.

Q. Mr. Johnson, would you read the next recommendation on Page D8? It's No. 3. [394] A. Accredited colleges and universities throughout the country, not merely those close to Colorado, should be objects of a more aggressive recruitment effort.

Howard L. Johnson—for Defendants—Direct

Q. Is your previous testimony a fair description of what you did to respond to that? A. Let us say in this respect it was fair, that we did try to move in the areas, thinking of the recruitment of the minority group. We did extend our boundaries for recruitments slightly, but not extensively. We extended slightly in the East going into Indiana, Ohio, Illinois, and then we did move in the direction of making more contacts with eastern universities and colleges, and this was tied in with professional meetings of our group.

Then as far as the South is concerned, I have explained that. We have previously recruited in the Midwest to a great degree, and we did go into New Mexico, Arizona and Utah and recruited there. We have studied very closely the matter of recruitment in California, Oregon, Washington, and also the far East. This matter—

Q. By that, you mean the eastern states? A. Eastern states, yes, sir. Now, in this particular business, this school business is very similar to private industry. It is a law of supply and demand, and I think we must be careful that we are not wasting a great deal of recruiting money going into places where we know we may be [395] outbid already on the basis of a thousand to two thousand dollars on the beginning salary. However, as the reports will show, we do hire many teachers, quite a number of teachers, from California. We do hire some from New York State, and so on, but we have been concentrating upon more in the Midwest, the Rocky Mountain area, and the South and our Central states.

Q. Do you have any other data or indication that this recruitment has produced a more geographical diversity in your input? A. Yes, it has that, and I think part of it is due to the recruitment. However, I think a great deal

Howard L. Johnson—for Defendants—Direct

is due to the fact that we send out a great amount of literature. Every institution in the United States gets our literature, even though our recruiters aren't there. Last year, as I recall, in the teachers we recruited last year they gave us their home addresses, that is their place of residence, and we recognized some of this may have been the parents and they moved on to teach for the year, but 46 states were represented and Canada was represented; so we have teachers who indicate that their homes are in 46 out of the 50 states.

Q. Mr. Johnson, would you read the next recommendation of the study committees, number 4? A. Yes. "The administration group in charge of recruiting teachers should include representatives of minority [396] groups in Denver," and this—

Q. Let me ask you a question, Mr. Johnson. You have mentioned, of course, Mr. Cruter alluded to his activities. In addition to that, has the administration taken steps in '65 to respond to that? A. Yes. we have, by using both Negro and Hispano recruiters.

Q. And in terms of comparative numbers between now and '65, has there been a change in the numbers of minority persons involved? A. In recruiting?

Q. What? A. You mean in recruiting?

Q. In recruiting, yes. A. Well, it has increased definitely on the basis of total number. Unfortunately, we have not used—we have not used the minority group prior to that particular time. There were one or two reasons for it, and pretty largely that we didn't have the manpower and we hesitated a great deal in using individuals who were assigned to the other jobs. We were using specifically the personnel people.

Howard L. Johnson—for Defendants—Direct

Q. Have minority recruiting personnel proved effective?

A. Yes, I think they are effective. I don't think [397] that we need to look at it particularly from the standpoint of numerical value on the basis of numbers as much as it is the fact that I think the image is going out that we are interested in top-flight minority group teachers, and I think that this is paying dividends. I think that as Mr. Cruter told me he found that his trips into the South are more valuable—

Q. That would be hearsay. A. That would be hearsay.

The Court: Well, he told us that.

The Witness: That's right.

Q. Would you turn to page D-10 of Exhibit 20 and read the recommendation that appears at the bottom of that page. A. "The Board of Education and administration should work actively in concert with other school systems throughout the country to impress upon teacher training colleges the importance of preparing teachers to teach all children, including children of different ethnic and racial background, and the type of child we are characterizing here as disadvantaged culturally. It should be made clear that such training should be a plus factor in selection in the Denver system."

Q. Was this recommendation part of your responsibilities? A. Part of it. A dual responsibility along with [398] the Assistant Superintendent for Instructional Services, Dr. Hinderman.

Q. Do you know what response the administration of the district made to this? A. Yes, in this respect, that Dr. Hinderman and his associates contacted these institutions of higher learning and discussed the background in regard

Howard L. Johnson—for Defendants—Direct

to the offerings of colleges and universities for prospective teachers. We likewise, as we sent our people on recruiting trips, met with deans of colleges as well as the placement directors to discuss this matter of the necessary training of teachers to be better fitted to work with the culturally deprived.

Q. Do you see any evidence of results of this program?

A. Yes, I see evidence. Again, you may indicate this as hearsay, because this is difficult to measure from the standpoint of any valid tests or measurements, except this, that we do get the report from our principals and we also are receiving from the community generally, parents and others, the quality and understanding of many of new teachers—

Mr. Greiner: Pardon me, Your Honor, I think I will object to this question on the basis of hearsay, what reports he has received from other people.

[399] The Court: Overruled.

Q. You may proceed. A. I think I have advanced my point, and that is on that basis.

The Court: Reports have been good. Go ahead.

Q. Mr. Johnson, you indicated that your—or, let me ask you this, have your duties involved any responsibilities with respect to the use of mobile units in the school district?

A. In this respect, that is, the department of personnel services has the responsibility of working with budgetary services on increasing enrollment and so forth. To that degree, why, we did have the responsibility of recommending to the Superintendent the need for some means of al-

Howard L. Johnson—for Defendants—Direct

leviating the crowded conditions in certain schools and there to that extent. However, the bulk of the responsibility of purchasing and so on is in the division of planning and engineering, and in these cases the result of a recommendation of the Superintendent and the other staff members regarding the needs.

Q. Do you know when the district first started using mobile units? A. I would say about 1962, as I recall, the first year of the mobile unit. '62 or right about that time. I am inclined to believe—I would say '64, because I think [400] that Dr. Armstrong had a part in the purchase of those, so I think it was later, and he took office in '62.

Q. Mr. Johnson, I will hand you Plaintiff's Exhibit 101, which has been received in evidence. A. That's right.

Q. Do you happen to be familiar with that display? A. Yes, I am, and I note that my date was correct, 1962. Yes, I am acquainted with this.

Q. Are you familiar with the study committee's recommendation with respect to mobile units, which came two years later, obviously? A. Yes.

Q. What was the recommendation? A. Their recommendation largely was that they indicated that mobile units were a possibility and that we should—we should move in the direction of utilizing any means to relieve what they considered to be crowded situations in certain schools.

Q. Now, this Exhibit 101 indicates that mobile units were in the first year of employment sent where? A. The first year they were sent to the following elementary schools: Doull, Wyatt, Wyman, and Greenlee.

Q. That was 1962? A. That was in 1962.

Q. What was the next year they were installed? [401]
A. Then in 1964 then there was a movement of some of

Howard L. Johnson—for Defendants—Direct

these because they were not necessary, and there was also a purchase of some additional units, and sent to Philips, '64, and in 1965 to Smith School, and then also in late '65 to Park Hill School, and also Hallett School.

Then, we found that the decrease in enrollment in certain areas made it possible to move some of these. For instance, Doull School that had received the first mobile unit, we were able to move that to Eagleton to offset an increase there, and also in 1967 it was possible because of a lower membership at Hallett Elementary School to move two of those units to Ashley Elementary School.

Q. Has the use of mobile units given you any additional flexibility? A. Well, yes, it does. I think probably taking the first school on the page, Doull School was a very good example, and we had a heavy membership at Doull School. It was predicted that Doull School membership would be reduced, and our predictions proved to be correct, and so consequently on this particular basis we did not go to the expense of an extra classroom and so on, and we were able to utilize that mobile unit in other schools, and so there is this flexibility, and it may not only be on the basis of membership. It could be on a special program flexibility.

The Court: These units are single classrooms?

[402] The Witness: Pardon, sir?

The Court: Are these units single classrooms?

The Witness: Yes, they are single classrooms.

The Court: What are they, prefabricated?

The Witness: Yes, prefabricated.

The Court: They can be disassembled and moved somewhere else?

The Witness: Yes. It is not quite as simple as that because there is the matter of electricity, the

Howard L. Johnson—for Defendants—Direct

various utilities, and so on. So it is not quite as mobile as we normally think of a house trailer.

* * * * *

[403] * * *

By Mr. Creighton:

Q. Mr. Johnson, as a matter of fact, I was about to ask you about these mobile units and to describe them. Are these classroom facilities? A. They are classroom facilities built purposely for this particular use.

Q. Do you know how satisfactory they are for this purpose of classroom units? A. We are in the impression that they serve very satisfactorily; at least, the reports that we get from teachers that use them, that generally they are well satisfied with them.

The Court: I take it that they are an interim facility that you utilize until your plans materialize to build new schools; is that right? Until the population becomes set in an area so that you know what your needs are going to be?

The Witness: That's correct, Your Honor. They are a temporary facility and for flexibility purposes.

Q. Do in fact these units have any advantages over other types of classrooms? A. I think probably teachers and pupils that wish to be isolated from the run of the regular school, the hallways and so on, that this would be an advantage.

[404] Q. Do they impose any limitation in class size? A. Only to this extent: that they are set for the normal class size, and normally the pupils—the number of pupils in these particular facilities usually number 25 to 30 pupils

Howard L. Johnson—for Defendants—Direct

and they handle that particular number very well. They do have air conditioning. They have the necessary public utilities that are necessary in close proximity.

* * * * *

【408】 * * *

Q. Please refer to Exhibit 20 at page D-14, Dog-14. Please read Recommendation 1 that appears on that page.

A. "The Board of Education should establish and enforce a policy that qualified teachers of minority backgrounds will be assigned throughout the system."

Q. Now, was that recommendation assigned to you? A. That would have been assigned to me as Assistant Superintendent for Personnel Services.

Q. Do you know what the School District has done 【409】 since '64 to respond to that recommendation? A. The Superintendent, the previous Superintendent as well as the present Superintendent, has indicated that we should move in this particular direction, and we have to the best of our ability, assigning teachers of minority backgrounds throughout the system, and as of last fall we had a minority teacher in every secondary school and minority teacher in 77 out of the 91 elementary schools.

Q. So the interaction of your policy and the teachers' agreement impose any limitations on what you would otherwise do here? A. It would impose this limitation on an individual basis, but I don't think that it would impose it from the standpoint of the overall mass movement of any type. It can be realized that the agreement does indicate that if the administration requests the transfer of a teacher, the teacher is in position to question the transfer, so it places that limitation on it.

Q. Since 1964, has there been measurable—

Howard L. Johnson—for Defendants—Direct

The Court: Well, other than this, you just assign them without regard to whether they are minority people or not in the various parts of the town?

The Witness: Yes, we do. However, in the case of transfers it is necessary that the teacher request the transfer. That is, unless we go to the teacher and—

[410] The Court: Well, I think we ought to focus on the evidence. We have evidence here that these people are unduly concentrated in some of the North-east Denver elementary schools particularly.

The Witness: Your Honor—

The Court: I mean, we had a good deal of evidence here the other day. I don't know if you were here or not. Is there a tendency of this kind?

The Witness: Yes, Your Honor, this is correct in this respect, that there are many of these North-east Denver schools that have a greater number of Negro teachers in these schools than we do elsewhere in the city, and then as far as the distribution of these teachers, as I spoke, in 77 of 91, this is a matter of one or two teachers being in those situations.

Now, the point I am making is that we are stressing a greater distribution of these teachers throughout the city, but it is necessary that any teacher who wishes to be transferred to any other part of the city, of course, must do this pretty largely on the basis of this agreement and request such transfers. We had not had a large number of requests in this direction.

The Court: Well, my question is, why, if you pay no attention to whether these teachers are mi-

Howard L. Johnson—for Defendants—Direct

nority, they end up concentrated in Barrett and Stedman and these [411] other Northeast Denver schools?

The Witness: I think part of this is due to we have a greater turnover of teachers in those particular areas, and then as far as the reassignment of teachers are concerned we do discuss with teachers regarding assignments and we find that sometimes there is a reluctance on the part of the Negro teachers to want to go into other schools. However, we are having a better success in this respect than formerly.

* * * * *

Q. Please read Recommendation No. 4 on page 214.

[413] * * *

Q. Please read the next recommendation, No. 5 on that page. A. "After a transitional period, during which the other recommendations of this committee are implemented, particularly with respect to training in human relations, no teacher, probationary or permanent, should be assigned to teach in a school containing substantial numbers of culturally-disadvantaged children unless his preparation, experience and/or personal qualifications demonstrate the probability that he will be successful in teaching culturally-disadvantaged children."

Q. Do you know what the district has done in response [414] to that since 1964? A. I would say that the district has attempted to meet this. Although, again, I think it's—the statement is so worded that no teacher should be assigned to teach in a school containing substantial numbers of culturally-disadvantaged children, I think it would stand to reason that I would have to indicate that on the

Howard L. Johnson—for Defendants—Direct

basis of assignment, there may have been some misassignments or—remember, that we have so many new teachers, and consequently it may be that when we make a statement that the individual, his preparation, experience and personal qualifications—now, it's entirely possible that his personal qualifications would thus demonstrate this but on the basis of preparation, experience and so on that this teacher may have had—

Q. When you speak of assignment, you're speaking of this input each year? A. That's correct. So, as I say, I don't think you could say that all teachers assigned here have all three of these qualities anymore than they would have in assignment in other parts of the city. I would say that it's the attempt to look very closely at these people who are assigned in a culturally-disadvantaged area or in any other area of the city.

Q. Do you make this same effort of screening, I suppose in the case of transfers—in negotiating and discussing [415] transfers? A. I would say a greater effort is made at the time of the placement of the teacher when he is new than on the basis of transfer. But an attempt is made in both cases.

Q. Would you please read No. 6 on D15? A. "A systematic program should be established by the administration to encourage teachers in schools attended by culturally-disadvantaged children and to emphasize affirmatively the personal rewards and satisfactions gained by teachers who work in such schools."

Do you know if any response has been made by the district to that recommendation? A. I would say that a response has been made but a great deal more needs to be made. I think the greatest response in answer to that

Howard L. Johnson—for Defendants—Direct

recommendation has been made through our workshops and school community relation programs of various types and where contacts have been made with some four or five hundred teachers during the year through our school community—our Department of School Community Relations. I frankly think this must be a concerted job of all teachers as well as administrators. We did meet with teachers in this particular area, the city, a matter of two years ago, working with Mr. Cruter in school community relations to see what we could do to build up the advantages in working with these children.

【416】 Q. Please read the next one. A. No. 7, "In policy statements adopted by the Board and by the administration, it would be made clear that teacher preference as to assignment is subordinate to other criteria and that each qualified teacher in the system is expected to be able to teach and to be prepared to teach in any school where the administration thinks he can be most effective."

Now, Mr. Johnson, that speaks of the word assignment, which I believe in your context means the new teacher to the district. A. That is right.

Q. Where you don't have a transfer situation and teacher preference involved. A. Uh-huh.

Q. Were new teachers who are strictly speaking assigned—has the district responded to this suggestion? A. Responded in this manner. That probably the assignment of teachers is probably more a personal matter working with the individual teachers and discussing their assignment as they move than it is to just bluntly assign them in a particular area. For instance, at the time that we recruit teachers we do not give the teacher any indication of a specific assignment. We are assuming that we are recruiting teachers—

Howard L. Johnson—for Defendants—Direct

[417] The Court: I think what was asked is whether the Board has abided by this recommendation, that is, in respect to laying down policy. Isn't that all the question is?

Mr. Creighton: Yes.

Q. Has this been made a part of a policy—a formal policy? A. There is no formal policy in this respect, as we speak of a formal policy. But it is a practice, and the Board of course is very interested in this type of assignment as is the administration.

Q. Please read No. 8. A. "Teachers should be assigned or transferred to the elementary or secondary schools with major consideration given to their qualifications for teaching at a certain level."

Q. Now, did this require any change in practice? A. I think that it required a change in this respect; that there was a closer examination—probably on major and minor subjects. It is very interesting—we have some cross-overs between elementary schools and particularly on the basis of homemaking teachers who have had a major particularly in childhood education and so on. And I think it has made the Personnel Services watch more closely the qualifications and credentials of these people. When **[418]** teachers apply, they do this very often—they realize that there is a greater turnover in elementary education. The teacher may be primarily qualified in a subject area in secondary schools but may make known, where we ask the question in what particular level do you wish to teach, they make the statement, elementary. Then I think there was a tendency, that as we looked at the credentials, we found out they were qualified for elementary, that greater care should have been given in this respect, and I think the fact that this was

Howard L. Johnson—for Defendants—Direct

brought to our attention, I think this—I think there has been a closer scrutiny from the standpoint of those credentials of individuals who may have had some background who were qualified in elementary but had not necessarily taken their undergraduate work in this respect.

Q. Please read No. 9. A. “So that it will not be used as an excuse for careless placement or perpetuation of assignment, contrary to these recommendations, the residence of a teacher should have nothing to do with assignment except in unusual cases.”

Q. Has there been any response to that recommendation? A. I think, so far as assignment of teachers are concerned in the Denver Public Schools, that is, the original assignment of teachers, I don't think there was too much violation of this and probably when teachers had indicated a preference, and where they seemed well qualified, I think [419] the teacher was given a little bit the benefit of the doubt. However, there have been very few instances. However, there have been some unusual cases where a teacher may be assigned close to a home situation. But this is not our practice. In fact, if this comes up as a reason for a request for transfer, it is usually not granted.

Q. The next recommendation deals with teacher aids. Had you been using teacher aids prior to the recommendation? A. Very few teacher aids were used prior to this recommendation. This is partly due to two things, one was—it was pretty largely a matter of finance, and I don't think at that particular time that we were sophisticated enough to use teacher aids. However, I do think that as a result of the inroads that were made by the use of federal funds, in which we were able to get certain types of aids in working with the teachers themselves in community work, we did set up certain criteria for the use of teacher

Howard L. Johnson—for Defendants—Direct

aids. So, whereas, about 1964, we had practically no teacher aids, we have right in the neighborhood of 400 now. These are used in direct aids to the individual teachers, are used in the playgrounds, lunchrooms, hall duties various types of assignments; audiovisual aids. So in this respect this is being implemented and we believe that it needs greater study because not only— We are utilizing teacher aids to the best of our ability through no fault of the [420] teachers or the principals—but I do think it does need additional work. But the administration and the Board both concur that this is a direction we should move. But it is comparatively new, not only in Denver but in many school districts in the cities—or, the United States. Excuse me.

Q. Please turn to Page D18. Please read the first recommendation there. A. These are your recommendations to principals?

Q. Yes. A. “Principals should become familiar with the community resources, cultural background and socioeconomic conditions of the community in which their schools are located.”

Q. Has the district taken any steps to respond to that recommendation? A. Yes, they have taken steps and I think this has been the move in the right direction. It was formerly assumed that principals of course would become familiar, but I think now the basis of again much of the work that has been done in our workshops for principals and others, that we are making strides forward in this respect, particularly in community visitation and so on. But there was one that not only appears here but appears elsewhere in this report, but this is one that—that we are striving very [421] diligently to make the principal recognize that this is an important responsibility for him.

Howard L. Johnson—for Defendants—Direct

Q. Please read the next recommendation. A. "In addition to human relations training, principals as a prerequisite to assignment should have demonstrated a capacity to respect, to understand and to communicate with children and parents in more than one type of neighborhood."

Q. Now, what did that mean and what, if anything, did the district do? A. I think that probably what is meant on this,—as you know of the committee report, it was pretty largely this, that very often principals were assigned to a greater degree on the seniority basis, and I don't think they were as concerned about the children and the parents in any more than one type of community. I think there was a tendency prior to the assignment of principals of various ethnic groups, that is, a greater number of them that here were principals who had served primarily in a white community, with administrators, but were assigned to communities where other ethnic groups were the major groups, and they didn't prove to be successful. And this is an emphasis upon that very thing; that they should have this background and that we should take particular care in respect to these assignments, and we have attempted to do that, and it's been done in a number of ways. We have a greater number of minority group [422] principals, administrators and so on, who do understand these problems much better and likewise I think, as a result of the answer to the previous statement in the service training workshops and so on, I think we are developing a greater supply of people. But, this was a very emphatic thing on the part of the study committee and we are certainly looking at this.

Q. Please read recommendation No. 3 at the bottom of that page. A. "The job responsibility of principals in elementary schools particularly in schools where substan-

Howard L. Johnson—for Defendants—Direct

tial numbers of culturally-disadvantaged children attend, should be analyzed and assistant principals with qualifications similar to those recommended for principals should be assigned in order to permit the principals to give ample supervision and assistance to teachers.”

Q. Did the district implement that recommendation?

A. Implemented it in this respect; that the job descriptions for all administrative personnel was received after this particular report and it is not only a matter of review and job descriptions at that time, but upon the advent of a new superintendent a matter of two years ago, it has been reemphasized that this entire matter of job descriptions, the entire responsibility of staffing the individual school now is being looked at again.

【423】 Q. Please turn to D21 and read Recommendation 2 and then please tell us briefly, because I think you have touched on it before, what the district is doing there. A. “As rapidly as possible all administrative personnel should participate in training in human relations. Such training should be an important consideration in all future appointments to administrative positions.”

And, as you indicated, I did touch upon this before. And it has really been given very serious consideration as we appoint new administrators in the Denver Public Schools.

Q. What techniques or devices do you use for this? A. You are speaking now of the evaluation or are you speaking of the training?

Q. Of the training. A. The training is handled pretty largely through the Department of School Community Relations, working with a committee of teachers who are very interested in this area and we are requiring that principals and administrators attend such types of programs. In fact—and this is not only at the administrative

Howard L. Johnson—for Defendants—Direct

level of the principal; this is from the superintendent on down. The superintendent and his immediate staff participated in such type of workshops last—this last school year.

Q. What was that workshop called? **[424]** A. Mr. Cruter now prefers to call it more in the field of human relations, although it originally had the name of Sensitivity Training.

Q. Would you turn to Page E12 and note Recommendation No. 3. Was that under your responsibility? A. "Teacher should be encouraged to make more home visits with time allowed in order to work more effectively with parents and in motivating pupil learning."

So far as this specific recommendation is concerned, this really came through the Division of the Instructional Services because it pertained to the involvement of programs right within the school. But I do know that at least this was investigated a great deal.

[425] Q. And has it been stressed since 1964? A. It is constantly being stressed. In fact, this is a very important factor.

Q. This discussion of community involvement reminds me, Mr. Johnson, I neglected to ask you in connection with the mobile units, in determining whether to use mobile units did the administration consult with the parents in the area affected? A. In most instances, in fact, let us say this, the mobile unit was usually the means that was used to relieve overcrowding in a particular school and it usually resulted after a series of meetings with the school administrators, teachers and parents within a community, because the mobile unit became very closely related to the change in boundary lines, transportation or mobile unit or double sessions.

Howard L. Johnson—for Defendants—Direct

That is, it usually originated on that particular basis with the result that the mobile unit began to gain favor.

Q. Among whom? A. Among parents, administrators and others, in order to eliminate the double sessions particularly. That is, they did not wish the double sessions. And, of course, we were in position from the standpoint of the financing—this appeared to take care of some unusual situations. Some parents were aware of this and in nearly all instances [426] the mobile unit was then decided to be the most feasible, but usually with this one provision, we don't want them forever and be sure they are mobile and not permanent.

Q. Do you recall the limitation in the guideline that you read from the board motion guideline you mentioned? Do you recall a suggestion there about transportation? Was the use of mobile units considered as an alternative to transportation? A. Yes, normally these were lumped together. Very often it was transportation or double sessions, recognizing the mobile units are—that is, they are costly, and so, consequently, this extra class in this respect in the early days of the mobile unit, it finally came into the picture where it became another matter, and with the result that we found that the mobile unit in most instances appeared to be a better solution, that is at least in the eyes of the parents, than transferring the pupils from the school or going on the double sessions, so the mobile units I think became the lesser of what they considered to be certain evils.

Q. In your office, do you have occasion to know about individual school or building capacities and the ratings thereof? A. Let me say that in my office, in my office as assistant superintendent, I was acquainted with them, and as [427] deputy superintendent I also am acquainted.

Howard L. Johnson—for Defendants—Direct

This normally is handled through the planning and engineering, but I am generally acquainted with some features of this. But we must recognize that when we speak of building capacities we are going into detail other than just to say that a building is "X"—will handle "X" number of students.

Q. Well, do you know whether the district had rating capacities for its buildings? A. Yes.

Q. Do you know how these are arrived at? A. Yes.

Q. How? A. The rating capacities—and this is characteristic over the country in trying to establish a formula that is used, and that is on the basis of 30 pupils per classroom, and this is a formula that is used as a beginning to determine this, and as we use the so-called rated capacities, a building is listed on this particular basis, and normally arrived at on the 30-pupils-per-classroom basis.

Q. You mean that a building's capacity is as simple as this, that you count—its rated capacity— A. That's right.

Q. And you count the number of classrooms and multiply by 30? [428] A. Yes. We want to recognize here we are talking about two things. You are talking about normal capacity, in which you arrive at 30 pupils per classroom, and when I made the statement I was acquainted with it, this is the case. I am acquainted with it.

Now, whenever you determine the capacity of any building in this city, there are many other things to be taken into consideration, and, consequently, these are taken into consideration knowing that no school building will probably ever have the exact normal capacity; however, it is something to start with on the basis of indicating this is the normal capacity when we speak of a building generally.

Q. Let me ask you this, Mr. Johnson. The data that is available about our buildings as to capacity, is that the

Howard L. Johnson—for Defendants—Direct

rated capacity? A. That's what we call the normal capacity or rated capacity.

Q. That's the multiple— A. This is the figure 30 times the number of classrooms.

Q. It is nothing more than that? A. It is nothing more than that, because from that particular point it means that planning and engineering, the division of education, and others have to look very [429] closely at this building. It stands to reason that a building that was built in 1912 has certain peculiarities to that particular age than the building built in 1968. There are many things to be taken into consideration, and these are taken into consideration, and, consequently, we have the normal stated capacity which is very important for all of us to know, the formula type; but we must look very closely at this and it is possible that a building may have a stated normal capacity and, frankly, because of certain conditions and not only the conditions of the facility but the conditions of the educational program, that building cannot handle its normal capacity.

Q. Its rated capacity? A. That's right, and there are other buildings because of the type of programs and because of the structure of the building it is entirely possible that that building can handle quite favorably 8 to 10 percent more than that.

* * * * *

[430] * * *

Q. Mr. Johnson, I am going to get before you again Exhibits 33 and 34, which are subdistrict boundaries policies and pupil assignment policies, respectively, that have been introduced in evidence by the plaintiffs, and which bear on the general matter of subdistrict boundaries, and then I would like to have you pick up that '64 committee report, Exhibit 20.

Howard L. Johnson—for Defendants—Direct

Let me ask you preliminarily, to clarify this, did your office as assistant superintendent of personnel matters from 1960 until the revamping last year include matters relating to those two resolutions which I just handed you and the general matters of subdistrict boundaries? A. Generally, this Policy 1222-C relating to school district boundaries, we have looked at the various things we mentioned in the type, size and facility of this school, the pupil capacity of the school, school-age groups, [431] and so on. This policy emphasizes to a greater extent and brought in there at this particular time the ethnic and racial characteristics of the school population, making to the extent possible a heterogeneous school community. And then there is more stress upon the mobility and levels of educational attainment.

Q. More in respect to when? A. That is, this policy emphasizes this to a much greater degree.

Q. Why I asked— A. Than just the working guidelines we had formerly before this policy was adopted. However, the type and size of facilities at the building, the pupil population, natural features and the urban features and so on, were taken into consideration when we designed boundary lines in order to establish the membership within a given school to as great a degree as possible. However, it wasn't always possible to follow exactly on this and as a result sometimes we would have to forego some of the criteria in this respect.

Q. Well, Mr. Johnson, you have mentioned 1222-C. A. Yes.

Q. Now, as to 1226-B, when did that become effective? A. Policy 1226-B was effective on February 3, 1966, and this also came—these two policies—

Q. Is that A or B? [432] A. This is A.

Howard L. Johnson—for Defendants—Direct

Q. 1226-A? A. A.

Q. That became effective when? A. That became effective on February 3, 1966.

Q. And that related to what? A. These were out-growths—

Q. No, the resolution or the policy relates to what matter? A. The assignment and transfer of pupils.

Q. Now, that policy and the other one were policies that your particular assignment as a superintendent required you to follow; is that right? A. That is correct.

Q. Now, please get out Exhibit 20 and turn to page A-6.

* * * * *

[433] * * *

Q. Now, Mr. Johnson, please read that Number 1 recommendation on page A-6 of Exhibit 20. A. "The Board of Education should formally adopt the statement of policies which shall govern the establishment of school boundaries and the location of newly constructed schools and additions to existing schools. Two, the Board of Education should establish school boundaries in accordance with the neighborhood principle as herein described (subject to the exceptions stated in the committee's recommendation as to pupil transfer hereafter set forth.)"

[434] Q. Please, let's take these separately. Recommendation No. 1, was that in your bailiwick? A. That was in my bailiwick along with Recommendations to the Superintendent and other administrative staff members. They were done largely as the result of Superintendent's counsel working together.

Q. What did you do about Recommendation No. 1? A. There was a presentation to the Board on the basis of the policy that that's before us here, the establishment of school boundaries.

Howard L. Johnson—for Defendants—Direct

Q. And you read Recommendation No. 2. Did the Board respond with a policy statement? A. That is correct, that the Board responded that this policy statement as such establishes school boundaries in accordance with neighborhood principles as herein described and then with the exceptions that come a little bit later.

Q. Now, then, I am going to No. 3. Will you read that? A. "In addition to the unwritten rules which have heretofore controlled the establishment of boundaries and the location of schools, the adopted policy of the Board of Education in these matters should include acceptance of responsibility to minimize the effects of de facto segregation and the recognition that wherever possible and as a [435] matter to be considered of equal weight with guidelines presently used, boundaries shall be set so that the neighborhoods thereby established will represent to the extent possible a heterogeneous school policy."

[436] Q. Now, then, taking those three recommendations as a group, can you tell us what the school district has done to respond to those? A. In this respect the school district has established this policy and took it—as it refers here to the unwritten rules, which I have indicated were in existence before and established the ethnic and racial characteristics of school population, making to the extent possible—

Q. You're reading from what? A. I'm reading now from 1222-C, so the Board of Education in taking these unwritten rules that we had formerly operated under had moved in fulfilling the request of the committee, and inserting this particular statement upon the ethnic and racial characteristics.

Q. Now, then, Recommendation 4 on page A-7 of Exhibit 20, I think I can fairly say recommends that the

Howard L. Johnson—for Defendants—Direct

Board having adopted officially the written policy should review the validity of existing school area boundaries in terms of that policy. Was that done? A. You must remember that this policy now became effective on February 3. It was done on the basis of the last boundary changes that were made at that time—at that particular time. These particularly included George Washington boundary changes and so on. So far as a formal review of this policy, and being brought before the Board, [437] it has not been changed since that particular time. However, on the basis of changes in boundaries, likewise we have had no boundary changes as such.

Q. You tell us the boundary policy was adopted February 3, 1966? A. That is correct.

Q. Now, was there any interim policy statement to guide you in relation to boundaries between the receipt of Exhibit 20, this report, and the formal adoption of Policy 1226? A. You're speaking now of the 1226, Assignment of and Transfer of Pupils? Or, 1222?

Q. Well, Mr. Johnson, to refresh your memory, please look at what we have said is Exhibit 102, the policy statement.

Appearing at page 104 of Exhibit 21. What is that? A. This was the progress report to the Board of Education by the Superintendent, and on May 6, 1964, and this was a statement relating to the progress of recommendations of the committee, and in here various items were brought to the attention of the Board of Education for things that had to be done in this respect. Among those—

Q. What we're calling Exhibit 102, and what you have described as a progress report, does that contain a [438] general policy statement? A. No, in this particular exhibit it's a statement in regard to a summary of what's been

Howard L. Johnson—for Defendants—Direct

done about the recommendations relating to the administration and organization in which the optional areas were discontinued.

Q. But on the first page of that, Mr. Johnson, it starts out, "General Policy Statement." I'm referring to Exhibit 102. It refers essentially to the first page of that exhibit. Are you familiar with that? A. Yes, I am familiar with this. This is a statement made by the then superintendent of schools, Dr. Oberholtzer, to the Board of Education as it conformed—

Q. What date? A. This was prepared on May 6, 1964. And the Board had accepted this statement.

Q. What does it relate to? A. This relates pretty largely to the attitude of the Board of Education and the Superintendent of Schools and his staff as it relates to the equality of educational opportunities and so on.

Q. Do you relate it to boundary lines? A. It relates to boundary lines in this respect; that it refers to the continuation of the neighborhood schools, has resulted in concentration of some minority, racial and ethnic groups in some schools; reduction of some [439] concentrations, and establishment of a heterogeneous and diverse group in schools desirable to achieve equality of educational opportunity. This does not mean the abandonment of the neighborhood school principle but rather the incorporation of changes or adaptations which result in a more diverse or heterogeneous racial and ethnic school population, both for pupils and for school employees.

Q. Now were you guided by this in your activities relating to the boundary changes in the adoption of Policy 1226-A? A. Yes. In fact, the superintendent and his staff brought this to the staff's attention constantly, that these were some of the things that we must consider in changing

Howard L. Johnson—for Defendants—Direct

boundary lines as it related to the neighborhood school principle. But, also, the necessity of a more heterogeneous population within these various schools.

The Court: Well, what tangible steps were taken to implement this number 3, this recommendation that there should be minimization to the effect of segregation? Did this just pass resolutions? Did they do anything about it? I mean, what have you got? What tangible thing can you point to?

The Witness: Your Honor, in this respect, to the boundary line changes—that came up after that, and relating to both the neighborhood school principle and in an [440] attempt to get more heterogeneous school population I think probably a good example of this would be the extension of the George Washington High School boundary lines further north. This happens to be one that came in, and whenever boundary line changes were essential, consideration was given to the two ideas, the one of more heterogeneous school population, and the second one on the basis of the neighborhood school principle which would appear to be in conflict, but it is one that had to be judged both ways. So it was utilized in the change of boundary lines.

The Court: Well, did you achieve any reduction in the segregation?

The Witness: Yes, using as a good example the George Washington change. This did bring more Negro students into George Washington. It did not bring a tremendous change in numbers but there were some slight changes made, Your Honor. But, not a tremendous change.

Howard L. Johnson—for Defendants—Direct

By Mr. Creighton:

Q. Referring to Exhibit 20 and the recommendations on A-7, Recommendation No. 4, I think I can paraphrase that it urged you to consider—I beg your pardon—speaking now of 5, which is on page A-10. This one suggest—well, I'll let you read it because it is a little detailed. A. You're speaking at the botton of the page, now?

Q. Yes. [441] A. "The Board of Education should supplement its present transfer policy by the adoption of a plan of limited open enrollment generally in accordance with the procedures discussed above. The plan adopted by the school system in Detroit is suggested as a model."

Q. Did the district in fact create an open enrollment policy? A. Yes, such policy was created and adopted by the Board of Education.

Q. Is that particular policy still being implemented? A. Let's say that this is a carryover of the result of the limited open enrollment—this is still being implemented. For instance, individuals who had taken advantage of the limited open enrollment policy will continue in the schools in which they are registered if they so desire. So, to that extent. But, there are no new pupils in the limited open enrollment policy.

Q. Has this policy been supplanted by another? A. This policy would more or less be supplanted in this respect, that the new policy provides transportation for these pupils in certain schools.

[442] Q. What is the new policy called? A. The new policy is the open enrollment, rather than limited; whereas, the other was a limited open enrollment. This is an open enrollment with a transportation policy.

The Court: What does it mean?

Howard L. Johnson—for Defendants—Direct

The Witness: It means this; that wherever there is a space in any school in the city a pupil may request enrollment in that school with transportation provided by the school district if the ethnic—if the ethnic or integrated factor in that school is improved through the transfer; meaning that a child attending a predominantly white school may be transported to available space in a school that is predominantly Negro.

Q. Provided that school child is what race? A. Is of the white race; into the Negro school, or vice versa. So, whereas the limited open enrollment policy did not have the limitation of improving integration, the purpose has two new features in that it improves and must improve integration and secondly there is transportation.

Q. Now, is the mechanics of that—either of those enrollment policies—is that in your specific department? A. No, this would be in the Division of Education and under Pupil Services.

Q. Please turn to A13.

The Court: Well, as a practical matter, there [443] would be no openings unless students in these other schools desire to go to minority schools, is that correct? I mean, in the present crowded conditions of the facilities, as a realistic matter?

The Witness: Your Honor, in most instances, now with the overcrowding in the minority schools, it would be necessary for this transfer to be from the minority schools to the primarily Anglo schools unless we get sufficient number out of those schools

Howard L. Johnson—for Defendants—Direct

to provide vacancies for the white students to move in.

The Court: How about the Anglo schools? Are there openings in those schools, should minority people wish to go there?

The Witness: Yes, there are some available spaces in there. I'm not in a position to give you the exact number at the moment, because, as I say, this is in pupil services. But they have issued to the principals the number of spaces that are available in these schools and consequently the parents of those pupils may bid for those spaces and be transported and enter the schools. But, as you stated, the greatest problem we have now is a large pupil population in Northeast Denver where we do have predominantly Negro students. And this is one of the points that we have been working on. I think that Mr. Cruter did indicate the Hallett situation which is the only one we were able to work on until [444] such time as we have a settlement.

The Court: You're not going to finish with him, anyway, today, are you?

Mr. Creighton: I may be nearer the end than I think.

The Court: With that assurance, we will bear with you; that guarantee.

Q. I was about to ask you about that recommendation on Page A13. Would you just read that and tell us— A. "Optional areas should be fully eliminated at the earliest possible date."

And that was accomplished by resolution of the Board of Education shortly after this report.

Howard L. Johnson—for Defendants—Cross

Q. On Page B10, Recommendation No. 1. Please read it.
 A. "The principal policy of providing classroom facilities where they are needed because of increased population should be continued."

Q. Has that been followed as a matter of policy? A. Well, to this extent, to the extent that we have been able to provide the classroom space in those areas. Then, of course, we must refer back to a resolution which did affect the building of any new facilities in Northeast Denver. And so, consequently, that would have effect on this, although in some other instances, this policy has been [445] followed on the basis of population.

* * * * *

[450] * * *

Cross-Examination by Mr. Greiner:

Q. Mr. Johnson, as I understand it, on July 1, 1950, you became the Assistant Superintendent for Personnel Services. A. That is correct.

Q. At that time, who was your immediate superior? A. Dr. Kenneth C. Oberholtzer, Superintendent of [451] Schools.

Q. And there was a direct communication between you and Dr. Oberholtzer then? A. That is true.

Q. Now, what departments or divisions were under your supervision as the Assistant Superintendent for Personnel Services? A. Only the Department of Personnel Services as such.

Q. Now, as I understand it, that included employee personnel? A. Correct.

Q. And that includes teachers, does it not? A. Yes.

Q. Pupil personnel? A. Yes.

Howard L. Johnson—for Defendants—Cross

Q. And as I understand it, your responsibilities included the assignment of pupils and teachers to various schools?

A. Yes, sir.

Q. And it also included the transfer of pupils and teachers from one school to another? A. Yes, sir.

Q. And it also included the establishment of school attendance area boundaries? A. Let me amplify that in this respect, that this [452] particular assignment was given to me in my office. However, the recommendation of school boundaries is made by the Superintendent and all staff members participated in recommendations to the Superintendent.

Q. Now, would that same comment hold true with respect to the establishment of optional zones of attendance? A. Yes, sir.

Q. So, you would work on that, in that area, along with Dr. Oberholtzer, is that correct? A. Well, Dr. Oberholtzer and any other members of the staff that he would assign to this, and it included other assistant superintendents as well as other staff members.

Q. Now, did your duties as superintendent with respect to personnel also include keeping track of school population? A. Only in this respect, that the Department of Budgetary Services made the necessary surveys and also kept the data concerning attendance and those were then referred to the Division of Personnel Services.

[453] Q. I take it then that when a school became overcrowded or became underutilized, that you acquired knowledge of that fact, is that correct? A. That is correct.

Q. Now, did your duties include the working of new schools into the existing system, the assignment of pupils to these schools? A. Yes, sir, this would be true.

Howard L. Johnson—for Defendants—Cross

Q. Did it also include the utilization of vacancies created when a new school was built and opened? A. That is correct. In consultation with other members of the staff.

Q. And it also included the placing of these mobile units, is that correct? A. This would be correct.

Q. And as I understand it, you also supervised the limited open enrollment program that was instituted in— When was that instituted? A. That was instituted in 1964.

Q. In September? A. In September of 1964.

Q. And that program also came under your department? A. Correct.

Q. Now, did you also administer the voluntary open enrollment program that was instituted in January of this year? [454] A. I assisted in this respect, as Deputy Superintendent at calls of meetings. However, this particular program now is under the Department of Pupil Services; that is, it's in the Department of Education. However, again, matters of this type are usually considered to be staff matters and there are many of us who were included. However, it is specifically in that department now.

Q. Now, you will recall Policy 1222C regarding school subdistrict boundaries? A. Yes.

Q. I take it the administration or the implementation of that policy was also under your jurisdiction? A. Only to the extent that the assignment of preliminary reports to the superintendent's office after consultation with other assistant superintendents would be submitted to the superintendent's office and he, in turn, would submit it to the Board of Education.

Q. Now, you also recall Exhibit 34 of Policy 1226A relating to the assignment and transfer of pupils? A. Yes, sir.

Howard L. Johnson—for Defendants—Cross

Q. I take it that that policy was also under your jurisdiction, is that correct? A. In the same manner as I stated for the other policy.

Q. Now, as to such matters,—well, take for example when a new school opened. How were the details of what students [455] were to go to that new school—how were those details developed? A. A new school being opened—there would be consultation with other assistant superintendents regarding the usability of that school. Immediately we would assume two things: one, the school is being opened in that area probably because it's a newly annexed area and has no schools. So, consequently, we would investigate the pupil population in that area.

If the school built in the city, beyond the annexations, then it undoubtedly was built because of overcrowding of other schools and then a survey would be made of the students living in the immediate area—geographic area who were attending other schools.

Q. Then I take it your staff would create a certain proposal for the filling of the new school, is that correct? A. That's correct.

Q. And that proposal then would be sent upward to Dr. Oberholtzer? A. That is correct.

Q. And except for boundary changes, was this same development of programs and proposals—was it always under your supervision by your staff? A. Yes, mine was more or less of a coordinating arrangement and I was held responsible to see that the materials [456] were pulled together and submitted to the superintendent.

Q. Now, as I understand it, you became the Deputy Superintendent of Schools when? A. In June, 1968.

Q. So then you were in your present capacity when the preparation of 1520, 1524 and 1531 was under way? A. I was Deputy Superintendent of Schools.

Howard L. Johnson—for Defendants—Cross

Q. And did you participate in the development of those resolutions? A. To the extent that the superintendent requested this. But most of these—the general work of the superintendent's preliminary report of a year ago of quality education fell pretty largely in the area of two other departments: one was the division of planning and engineering, and the department of research. And the director and assistant superintendent—or the assistant superintendent and director, respectively, of those two divisions and departments were held responsible for the coordination, and I participated as a staff member.

Q. I take it then you wouldn't characterize your participation in the development of these resolutions as being extensive? A. Only to the extent that other staff members who were called upon for assistance.

Q. Now, I also understand that until you became the Deputy Superintendent of Schools you were in charge of the [457] transfer of pupils and teachers from school to school, is that correct? A. Members of my staff were. I was the administrative head of the department. I personally did not make those transfers, but members of my staff did, and administratively, I was responsible.

Q. Did your duties include keeping track of the quality level at various schools; quality of the educational program? A. No, this—prior to this September, or really this September general reorganization, this came under the Division of Instructional Services, the quality of education; anything to do with the actual instructional programs in the school. Mine was pretty largely of an administrative nature and personnel.

Q. Do you ever consult with that division, oh, for example, relating to the question of teacher transfers as it might affect the quality of a particular school? A. Yes.

Howard L. Johnson—for Defendants—Cross

Q. I noted in the 1964 committee report which is Exhibit 20— Perhaps you would like to have that handy. There was a finding in that report, was there not, Mr.

【458】 Q. (Continued) There was a finding in that report, was there not, Mr. Johnson, concerning the assignment of teachers? A. Yes. sir.

Q. And did not that report also conclude that perhaps one of the reasons why there apparently were predominantly minority teachers in minority schools is the fact that some principals were hesitant in accepting minority teachers in their schools? A. I do not recall that statement being in the report.

The Court: What is that? Exhibit 20?

The Witness: Yes, Your Honor.

Q. I call your attention to Page D-13 in Exhibit 20, the last full paragraph at the bottom of that page— A. You are speaking of the next to last paragraph?

Q. Yes. A. It reads, “As a result of its interviews, the committee is convinced that race has been relevant in the assignment of teachers.” Then it goes on to say, “It appears that the administration has been extremely reluctant to put Negro and Spanish-American teachers in predominantly white schools because of concern with the possible lack of acceptance on the part of a white neighborhood. In a realistic assessment of a possible lack of support by some principals and faculties—” and my point was that it 【459】 indicates that “it appears that the administration—” I thought that you had indicated this was the specific statement or recommendation.

Q. Well, now, I take it you are familiar with some of the problems that cropped up during this time period of assigning Negro teachers in Anglo schools, are you not?

Howard L. Johnson—for Defendants—Cross

A. That's correct, and I have recognized that problem ever since I became—since the period of time I became Assistant Superintendent for Personnel Services until leaving that assignment a little over a year ago.

Q. Do I mean to infer from your answer, Mr. Johnson, that you in the course of those assignments never ran across a lack of support by some principals? A. I never had a direct statement from a principal that he would refuse a teacher of a minority group. I do think that there have been—that it has been necessary for us to push to the extent that we could to get minority teachers or attempt to have at least one minority teacher in each school. We have also run into situations where the question of the number of minority teachers in a school was brought to our attention.

Q. In what respect? Too many or too few? A. In both instances. There are principals who have asked for minority teachers and because of transfer policies, availability and so on, we have not been able to place [460] minority teachers in those schools. There have been some problems existing that principals were aware that probably there were too many minority teachers in a school and attempts have been made to solve that, and we are still moving in the implementation of that.

Q. Well, let's look at the teacher transfer policies then, Mr. Johnson. As I understand it, from your testimony on Friday, Exhibit E, which is the Denver Teachers Association Contract, primarily now controls the question of teacher transfers. A. Yes, this is the policy adopted by the Board of Education in agreement with the Denver Classroom Teachers Association regarding transfers, so that, therefore, it is Board of Education policy relating to teacher transfers.

Howard L. Johnson—for Defendants—Cross

Q. Now, as I understood your testimony, Exhibit E expired some time in April of this year? A. Let us say this, that the agreement was signed on April 6, as I recall, 1967, with the provision that there would be an election to determine whether that association would continue as the recognized representatives of the teachers and in an election they were elected. However, now, as refers to the agreement, that there is a matter of negotiations that went on, and as a result of those negotiations this agreement was drawn up and ratified by the Board of Education, and upon that ratification it became [461] policy and that still continues for the time being until such time as the Board of Education makes any changes, and as a result of this summer's negotiations there probably will go before the Board of Education sometime in September or October for ratification, because the salary schedule is an important feature of the agreement.

Q. Am I correct in assuming that the teacher transfer portions of that contract are not being renegotiated? A. At the present time I cannot say whether there is any negotiation for a change in this policy or not. I am not in the negotiating session and, consequently, we have not come up with any specific tentative agreements, so in the meantime this policy prevails.

Q. Referring, if you will, to Exhibit E, Page 25, 14-2-1, on that page it talks about transfers which will result in the best educational program for the school district, is that correct? A. Yes, you are referring now to 14-2-1, did I understand you?

Q. That's correct. A. Yes.

Q. Now, I take it you have been administering the transfer of teachers under this contract, which is Exhibit E? A. The administration—however, this authority has

Howard L. Johnson—for Defendants—Cross

[462] been delegated to directors in division of personnel services and to the Executive Director of personnel services as of last September.

Q. Well, now, that would be a year approximately after this contract went into existence? A. That is correct.

Q. So, you have administered it for at least one year? A. Yes, at least one year, that is correct.

Q. Now, in your administration of this policy, have you considered it consistent with the best educational program for the District to transfer Black teachers from Black schools to Anglo schools? A. As it refers to this first statement, 14-2-1, remember this refers specifically to requests for transfers, and in this particular case it is a question of whether or not these requests will be granted.

Q. Pardon me, I believe you are in error, Mr. Johnson. These are general principals. A. Yes.

Q. That control transfer, are they not? A. They control transfers, that's correct.

Q. And transfers requested by a teacher are covered by subsection (3). A. That is correct.

Q. So these are general principals, is that correct? **[463]** A. That's correct.

Q. Now, what about the transferring of Black teachers from Anglo to Black schools? Do you have any policy about that? A. Black teachers from Anglo to Black schools? I don't think that the matter of the ethnic group enters in except in our desire to get a greater distribution of Negro teachers into the white schools. However, I think it would be consistent and certainly not fair to a Black teacher who happened to be in an Anglo school if he had sufficient reasons and so on that he should not be hurt. However, we would discourage this if at all possible and we have—I can think of only one instance at the present

Howard L. Johnson—for Defendants—Cross

time where a Black teacher was transferred from a Anglo school to a Black school. There may be others, but I am aware of one.

Q. And I assume that certainly one of the reasons for that policy is that there are in fact so few Black teachers in the Anglo schools, is that correct? A. Proportionately, this is true, and we are constantly endeavoring to get more Black teachers into Anglo schools.

Q. Now, Mr. Johnson, what about the transfer of Anglo schools to black schools? A. The same would prevail, but unfortunately we do not have many requests in this respect.

【464】 Q. We are still talking about general principals, are we not, Mr. Johnson? A. We are.

Q. Now, then, if you would refer to Subsection (2) 14-2-2, I take it that—and, again, this is a general principal, is it not? A. That is correct.

Q. One of your general principals is to achieve a faculty which is well balanced, is that correct? A. That's correct.

Q. And the criteria are in terms of experience, general background and competence, is that correct? A. That is correct, and we are—

Q. Now, is a balanced racial composition in a school's faculty—is that an objective of your administration? A. It is one of the objectives, along with all the other criteria.

Q. It just didn't happen to be mentioned in 14-2? A. That is correct.

Q. Is distribution of minority teachers throughout the District also an objective? A. A distribution to the extent that it does assist in a better educational program. I could amplify it in this respect, that we recognize the fact that in schools that are predominantly Black we believe that we need a greater number 【465】 of Black teachers because

Howard L. Johnson—for Defendants—Cross

I think there's a better understanding in this respect. Now, the exact proportion is very difficult to arrive at and again I think this is very important. Likewise, in the Anglo schools I think it is exceedingly important that there be a minority teacher, not as much from the standpoint of direct contact with the students as the assistance that such teacher would give to other members of the faculty and better understanding of the philosophy of the Denver Public Schools as it works toward a better ethnic relationship.

【466】 Q. Now, it also says the fact that it should be well balanced in terms of expense, does it not, Mr. Johnson? A. Yes, sir.

Q. Then why are there so many inexperienced or less experienced teachers in such black schools as Smiley and Cole, Barrett and Stedman? A. I think you are taking this on the basis of these general principles, and we agree on these general principles, but I think it is necessary to go into the entire Article 14 as it relates to transfer, and one of the reasons it is pretty largely this—

Q. Pardon me, Mr. Johnson, but my time is somewhat limited. You'll have an opportunity to be reexamined by your counsel. I believe you have answered my question.

Mr. Creighton: Your Honor, I think the witness should be permitted to fully answer.

The Court: Very well. Do you have something you wish to add?

The Witness: Yes, I would, Your Honor. I would like to add this: that we must recognize this agreement as a total agreement and consequently when vacancies occur in the Denver Public Schools through resignation or through retirement, all of

Howard L. Johnson—for Defendants—Cross

those known vacancies must be posted twice, in the spring of the year, in May and June. And any teacher in the Denver Public Schools has a privilege of making a [467] request to fill that vacancy and this is in accordance with the agreement, and it also states in this agreement, referring to Article 14-3-5, no assignment of new teachers in the school system shall be made until all pending requests for transfer have been processed. So consequently these teachers are not requesting transfer to certain schools in the district.

Q. The black schools, is that correct? A. That's right. I wouldn't say necessarily the black schools. I think probably there is a greater number in lower socioeconomic areas so I would not specify black schools as such. But I think they get established in a particular community and when these schools are listed, there is not a request for transfer. Now, consequently, after this first go-around of vacancies occurs, then we have additional vacancies and we have vacancies that are set up on the basis of the previous request for transfer. Now, again, the experienced teachers in the school system have an opportunity to request those vacancies which leaves us then with the only vacancies in the school system at the time we go into the summer months, which are many of these vacancies that have not been bid for by teachers. Now it is necessary to have manpower in those schools so, consequently, we do proceed then in filling those vacancies to the best of our ability.

Very often during this period of time we counsel with some teachers and ask them to fill certain spots so that we can [468] get this well-balanced staff. And sometimes we

Howard L. Johnson—for Defendants—Cross

are successful. Now, with these vacancies in the summer-time it is necessary that we fill them with new teachers of the Denver Public Schools and in our attempt to equalize educational opportunities we do attempt to assign older teachers who have had experience in the outside—outside the city in the schools, but again, we are not as successful as we would like to be because we suffer the same in Denver as other large cities where roughly—under this there is turnover of teaching staff each year and this means we are handicapped in this respect.

So I thank you for being able to add this, but I think it is very important, that we assume that this article is taken in total rather than a portion.

Q. Now, I take it you did have my question in mind, didn't you, Mr. Johnson, and that was why such schools in particular, Smiley and Cole, Barrett and Stedman, have such a high proportion of black teachers. Now, I thought that the gist of your answer was that there were two points to it, the first, that there is a greater transfer out from those schools, is that correct? A. I would say there is a greater request for transfer from those schools and we attempt to control it to the best of our ability, but with this agreement it stands to reason unless we counsel the teachers—unless the teachers are counseled to remain—we do have an agreement with the [469] Teachers Association.

Q. You're not telling me you counsel the black teachers and ask them to remain? A. That we counsel with the black teachers to ask them to remain?

Q. Right. A. I wouldn't say we never do. I think there are some black teachers in certain of these schools that are almost indispensable to those schools because of their knowledge of the situation and the community and so on.

Howard L. Johnson—for Defendants—Cross

But we do counsel with some of them to transfer to Anglo schools where we are of the opinion they can be of assistance there.

Q. You also counsel them, as I understand it, with the experienced teachers in those schools and ask them to stay, is that correct? A. It may be the experienced teacher—let us say that we take all things into consideration—experience is very important in the teaching profession, but not always a most important factor for a specific teaching position.

Q. Well, for example, Mr. Johnson, isn't an experienced teacher better able to handle disciplinary problems that might arise in these schools? A. I wish that I could say yes to that. I don't think it's always true. I think we have some experienced teachers who do not do as well as first-year teachers in this respect. [470] I think it is generally known that experience would assist the teacher in this respect, having had certain situations before. But I would not make a blanket statement that experienced teachers are better disciplinarians than first-year teachers.

Q. Mr. Johnson, as I understand it, then, you try to get the experienced teachers in the black schools to stay, but you are not always successful? A. That is correct.

Q. And that is one of the reasons why we have lower teacher experience in the black schools, is that correct? A. I think this would be correct.

Q. And the other reason, as I understand it, is you do have these transfers out and you don't have as many transfer-in requests? A. That is correct.

Q. So you end up with vacancies in those black schools? A. (Nods affirmatively.)

Q. And the only personnel left to fill those vacancies just happens to be the brand-new teachers, is that right?

Howard L. Johnson—for Defendants—Cross

A. That is correct. Excuse me, if I may, but not only the transfer-outs, it's also the resignations from the teaching staff that I mentioned before, that adds to this particular problem.

Q. Now, I seem to recall your mentioning a statistic that [471] in the elementary schools the teachers with no previous DPS experience may be a misleading characterization, is that correct? A. I didn't say that it was misleading. I merely indicated that a first-year teacher in the Denver Public Schools is not necessarily an inexperienced teacher in the profession because, as we speak of probationary teachers, this refers strictly to Denver Public School experience. It would not include experience in other districts.

Q. Now, this experience could have been gained in any place, couldn't it; urban or rural, in other school districts?

A. That is correct.

Q. And is there any reason to believe that the experienced portion of no previous DPS experience teachers in the black schools is any higher than it is in the white schools? A. I'm sorry. Will you repeat that, please?

Q. Well, as I understand it, some of these new school-teachers are experienced. A. Yes.

Q. Is there any effort made to place these experienced new teachers in the black schools? A. Yes. There is the effort on the part of my position as an individual indicating to the executive director of Personnel Services that we should take a look at this background and experience and also the age element where it has [472] an opportunity to offset other qualifications. Also, in these schools, our Personnel Services people consult very closely with principals in those particular areas in there and assist to build a better staff in those areas, and I would say they are given greater opportunities probably in the selection of teachers than

Howard L. Johnson—for Defendants—Cross

other principals in the city. However, we are trying to strengthen even this. I think the principal should have more voice in the assignment of teachers in his school.

Q. Now, I take it you would have records which would reflect the fact that some of these new teachers coming into these black schools are in fact experienced? A. Yes, there would be evidence in their application blank and the recommendations and the certification of previous experience. We would have that.

Q. And you would have that for each of these individual schools we're talking about, wouldn't you; Barrett, Smiley— A. So far as teacher background, yes, we would have that.

Q. Now, as I understand it, teachers with seniority get preference as to transfer, is that correct, under Exhibit E? A. Let us say again, in accordance with this, teachers with seniority are given the preference. However, there are these other items in Article 14 that are taken into consideration. However, a teacher who has seniority has a perfect right to ask our Director of Personnel Services why they are not [473] given a transfer because of seniority and it is essential in accordance with that agreement that the teacher be given an explanation, and it may be for any number of reasons that the teacher is not transferred even though he may have seniority.

Q. Now, the seniority aspect—could that be another factor which leads to the result of less experienced teachers in black schools? A. Yes, I think the seniority factor would lead to this.

Q. Calling your attention then to Page 26 of Exhibit E, Mr. Johnson, Section 14-3-6, it speaks there in terms of considering the conveniences and wishes of the individual teacher, does it not? A. Yes.

Howard L. Johnson—for Defendants—Cross

Q. I take it that that doesn't reflect what might be called a neighborhood teacher policy, does it? A. Let us say this, that the statement here indicates that they will be honored to the extent they do not conflict with the instructional requirements and best interests of the school program. Let us say this, that a teacher who requests such transfer indicates to our Personnel Services that there may be some reason that they want to be in a specific school, then what we are really saying here, that certainly on the basis of good personnel relationship with [474] employees—Certainly, a contented employee and a happy employee is very, very important. So, consequently, if this can be done on the basis of not being in conflict with the instructional program of the Denver Public Schools, I think it has been done.

In other words, good personnel policy indicates that it is the responsibility of those people in charge of personnel or the administration of schools to have a happy staff to the greatest degree, and if an individual is forced absolutely contrary to some legitimate reason and it's not in conflict, certainly, I think this is consistent with good relationships.

Q. Well, now, this convenience of teacher aspect, that would apply to even a brand-new teacher once he was hired, would it not? A. It doesn't apply in accordance with this agreement from the standpoint of the agreement. The agreement does not cover the new teacher. However, it does not alter good personnel relationships.

Q. Well, now, is my understanding right then that Exhibit E doesn't cover probationary teachers? A. This Exhibit E covers the matters pertaining to teachers of the Denver Public Schools unless otherwise stated from the standpoint of recruitment and so on, and there are no points in here that refer to a teacher before he [475] is employed in the Denver Public Schools.

Howard L. Johnson—for Defendants—Cross

Q. Well, isn't a probationary teacher an employee of the school district? A. A probationary teacher is, after he has begun his service with the Denver Public Schools.

Q. That's what I'm talking about. A. I thought you were talking about newly-recruited teachers.

Q. I'm talking about those in the course of his three-year probationary period? A. He is represented by this agreement, yes.

Q. Now, this convenience factor, would it be something that would be taken into consideration in considering the request of an Anglo teacher to transfer out of a black school? A. Normally we would not transfer these individuals out of a black school if we refer to the principles of this particular case, depending, of course, upon other matters of competency.

Q. Well, Mr. Johnson, I'm talking now about a situation where that is the fact; where you're considering the transfer application of an Anglo teacher out of a black school.

Mr. Creighton: Your Honor, I want to make note of an objection to this form of questioning. We don't know what counsel means by black school or white school. I think this has got to be with somewhat more precision.

[476] Q. Mr. Johnson, do you know what I mean by black school, sir? A. I think you're referring to a school that has a large number of Negro students. However, I don't know whether you're basing this upon percentages or not. We normally speak of these schools, where we have a large number of culturally-deprived pupils or target area schools, because the points you're referring to do not necessarily refer to schools that are entirely or largely populated by

Howard L. Johnson—for Defendants—Cross

Negro pupils. It could be Spanish-American pupils or it could be Anglo pupils. And I'm assuming that you're referring pretty largely to schools where we have culturally-deprived pupils.

Q. I'm talking about black schools, Mr. Johnson, because it's the black schools that we're focusing on in this particular hearing.

Now, I believe I have a question pending and the question is, when you are considering a transfer request from an Anglo teacher in a black school who wants to transfer out of that black school, is 14-3-6 one of the criteria that are employed in judging that Anglo teacher's transfer? A. It would be employed there, and also your previous—

【477】 Q. The answer to my question is yes? A. The answer is that they be given the same consideration as any other teacher with seniority prevailing.

Q. If you would refer then to Exhibit 26, over on Page 2, Paragraph 8, Exhibit 26 is Policy 1617-A, is it not, Mr. Johnson? A. That is correct.

Q. And 1617-A is supposedly the School Board's policy on teacher transfer, is it not? A. No, the School Board policy on teacher transfer is this agreement which supersedes all policies regarding teacher transfer.

Q. All right, now, look at Page 2, Paragraph 8, Exhibit 26, if you would. That Policy 1617-A provided, did it not, that certificated teachers were to wait three years before applying for a transfer? A. That is correct.

Q. Well, is it still the policy of the district, Mr. Johnson? A. It is not the policy of the district. They may apply in accordance with this agreement. However, again, seniority would normally prevail in this respect.

Q. Three years is the period of probation, is it not, Mr. Johnson? A. Yes.

Howard L. Johnson—for Defendants—Cross

[478] Q. Now, is there anything in Exhibit E, the teacher's contract, about how long a certificated teacher is to remain in a particular school before he transfers or requests a transfer? A. It indicates in here that seniority shall prevail and the interpretation of that, of course, is that on the basis of the transfer we do feel that a teacher probably should continue serving in the same school for a period of at least two to three years and that was the intent of the previous policy of the Board of Education.

Q. Well, Mr. Johnson, I'm a little confused. Take a teacher who has been at a school for one year, who is certificated. Is the fact that he has only been at that school for one year still one of the factors that you consider in passing upon his application for transfer? A. Yes, I think it would be considered, and I think in the case of that teacher of one year I think the recommendation of our personnel services would be that this teacher should not be transferred at that particular time unless there be some other circumstances for the best interests of the educational program.

Q. But I take it under 1617-A when that was in full bloom, that it would take a rather exceptional circumstance, would it not, for a certificated teacher to be able to transfer out of a school in less than three years? **[479]** A. Yes, it would, and I think this is also the case under the present—the existing agreement with DCTA.

Q. Do you think the teachers agree with you on that, Mr. Johnson? A. Well, let us again refer to the fact that it is—that we do have some other things in here, and even if this teacher—whether this teacher had one year experience or nine years experience, this agreement is so written that we can bring to the attention of the teacher

Howard L. Johnson—for Defendants—Cross

the fact that this policy was written for the best interests of the educational program as it related to all teacher transfers, and I am certain that the—that this point could be brought up through the Denver Classroom Teachers Association by the teacher if they objected, but I am likewise certain that in our anxiety to attempt to hold a staff in a particular school then probably they would recognize this.

Q. All right, let's then turn to 14-4 on Page 27 of Exhibit E. These then are the general criteria for transfer requests initiated by the administration, are they not?

A. Yes. Yes, sir.

Q. As I understand your testimony on Friday, such administration initiated requests under Exhibit E have impressed in them certain options to the subject teacher, is that correct? A. That is correct.

【480】 Q. For example, when you ask a teacher to transfer out of a school into another school, you also have to give him an available—a list of available other options, is that correct? A. That is correct.

Q. And then what happens if he opts for one of those other options, rather than the one you had selected him for? A. I think we would again have to give him a definite reason why we wanted him in a specific situation and he would certainly have the recourse of a grievance if he did not feel that we had been fair.

Q. So, I take it this then is one of the—one of the factors that sort of ties your hands, for example, in transferring out some of these concentrations of Black teachers in the Black schools, is that correct? A. I don't think this would necessarily tie our hands in this respect, because if these teachers had seniority and requested transfers—

Howard L. Johnson—for Defendants—Cross

Q. Pardon me, we are talking about administration initiated requests, Mr. Johnson. A. Oh, in this particular—in this particular request, if we were to transfer a teacher out of these schools, any of these schools that you are mentioning, then it would be necessary for us to give them a list of the vacancies throughout the city.

【481】 Q. And you expect that they would ask—well, what do you expect to happen in such circumstances? A. Well, I think you are asking me a question here—we would have to know the individual. Who is the individual? If you could specify the background of the individual that requested this, what his ideas may be, I could give you the answer probably on a guess as to the type of school that he would want and so on, but to just ask me point blank on any individual I couldn't begin to realize what he may request.

Q. Mr. Johnson, has your administration ever used 14-4 to even attempt to transfer a Black teacher out of a Black school? A. Yes, sir.

Q. How often? A. I'm not in a position to tell you that number for this reason, as I related earlier these are handled by the Director of Personnel Services, but I do know of at least two cases of this type.

Q. When did that take place, Mr. Johnson? A. We had one within the period of the last year, year and a half. We had another one a matter of about four or five years ago before this agreement came into being.

Q. Well, that one four or five years ago isn't even relevant to my question. A. That is correct. It would be relevant to the old 【482】 policy.

Q. So, you have had one attempt by this administration? A. I stated that I know of one. However, we must remember that the Directors of Personnel Services, ele-

Howard L. Johnson—for Defendants—Cross

mentary and secondary, handle these transfers, and they do not report to the Deputy Superintendent or to the Superintendent regarding these. These are handled at that level.

Q. Well, a year and a half ago you weren't the Deputy Superintendent, were you, Mr. Johnson? A. That is correct and at that time they were not referred to the Assistant Superintendent unless there was some conflict.

Q. Well, let's turn then, Mr. Johnson, to the hiring of new teachers. As I understand Mr. Cruter's testimony, in 1968 there were approximately 686 new teachers hired by the District. Does that sound about correct to you? A. Yes, it would be approximately that number.

Q. And about 39 of these were Negroes, is that right? A. I don't know the exact number at the moment, but I would imagine on the basis of new teachers hired this would not be too far from being correct.

Q. You don't mean you have some sort of quota, do you, Mr. Johnson? A. No, sir, but I know what experience has brought us over a period of years.

[483] Q. You could tell us from your records, could you not, Mr. Johnson, just how many of these new Negro teachers just happened to end up in Black schools? A. Yes, our personnel services would have such records in the assignment of all new teachers.

Q. As I understand your testimony, each new teacher applicant is given an in-depth interview, is that correct? A. That's correct.

Q. How long does this interview last? A. This interview—I think when we speak of in-depth, I think there are two parts of it. One is a close examination of the application of the teacher, the references, the gathering of references, the transcripts and other pertinent informa-

Howard L. Johnson—for Defendants—Cross

tion. The interview vary in length of time—I am speaking now of the actual face to face contact—and probably would run 15 minutes to a half an hour.

Q. Would you say that most of your applicants—well, you tell me, out of your applications received, approximately what percentage of applicants get to the point where they have a personal interview? A. Well, as far as the applicants are concerned, any individual who has submitted his complete folder—that's the application blank, transcript of credits, names of references—and our gathering of those references and this data must be on hand first. On this basis, all individuals [484] who have submitted that information are entitled to an interview.

Q. Now, you mentioned on Friday some of the characteristics of the teachers which you are looking for with respect to the teaching of the urban culturally deprived child. Do you recall that testimony, Mr. Johnson? A. Yes, sir.

Q. Now, is this personal interview—is this one of the devices that you used for making this determination? A. It is one of them, along with the others.

Q. Well, what others do you use in this particular regard? A. The general background, previous experience, recommendations of other people and statements by the teacher at the time that—written statements that he may include in his folder or with his folder.

Q. Now, I believe you also stated on Friday, Mr. Johnson, that last year the School District had some 3,000 applications from new teachers. A. Approximately that number.

Q. About how many of those received one of these in-depth interviews? A. I would say that all of those that answered the schedule for interviewing. When we speak of

Howard L. Johnson—for Defendants—Cross

this 3,000, these are individuals who have been interviewed. They have [485] all their complete files and have been interviewed, because we do not consider an individual an applicant until such time as he submits such file and has been interviewed, so I would say 100—approximately 100 of these.

Q. All right. Three thousand of them. How many of those interviews took place on college campuses, for example? A. I would imagine that on college campuses that there were probably 35 to 40 of the colleges that were visited.

Q. And your recruiting year runs from what month to what month? A. Usually starts about the middle of November and—November, December, usually in the Colorado colleges, and then during the months of January, February and March and April.

Q. So, November through April? A. It's really about the middle of November or first of December. It varies, depending upon the schedules being arranged through the colleges and universities.

Q. Now, how many people are employed in the personnel department who participate in this interviewing process? A. In the personnel department, we have about five—five individuals in Personnel Services per se who participate in this. In addition to this, principals, directors and others are called upon to assist in interviewing, and I would [486] imagine last year as I recall Personnel Services submitted a list of about 20 principals and directors who were included some way or other in recruiting.

Q. Is my understanding correct, Mr. Johnson, that presently the personnel department employs no Negroes? A. That is not entirely correct. As of this last spring, we made a transfer of a Negro to that department in re-

Howard L. Johnson—for Defendants—Cross

gard to certain activities of Personnel Services. However, he is not listed at the present time under personnel, budget-wise, but the transfer is to be made the new budget year, and in the meantime the Division of Education is carrying this individual, but he is now under the direction of the Director of Personnel Services.

Q. How many Negro recruiters are there? A. The Negro recruiters that are listed for last year, as I recall there were three, four, that were listed.

Q. Is Mr. Cruter one? A. Mr. Cruter is one.

Q. Mr. Ward another? A. Mr. Ward is another.

Q. Who are the other two? A. Mr. Oliver, as I recall, is on the list, and I was under the impression that Mr. Small was called upon. I would not vouch for that, so let us say these three.

Q. All right, now, you mentioned the fact that you [487] recruited in 12 southern teacher colleges, is that correct? A. I did not mention that, but I think that is correct. I said we did recruit in southern colleges and universities. I don't recall the exact number. I may have, but I am not certain—

The Court: I think Mr. Cruter stated that.

Mr. Greiner: I am sorry.

Q. But that is a fact, Mr. Johnson? A. That's approximately the number, yes.

Q. Do you know what the background of teacher graduates from those schools is, Mr. Johnson? Let me be more specific. For example, do they come from an urban or a rural environment? A. I think probably the composition of such colleges and universities would be very similar to other private colleges in the United States, a combination

Howard L. Johnson—for Defendants—Cross

of both. I would presume that probably in the southern universities, as is true of—or, the southern colleges, as well as is true of the northern, I imagine there are quite a large number of rural students. This seems to be the case in most colleges of this nature.

Q. Now, when we are talking about these southern teachers colleges, Mr. Johnson, am I right in assuming that we're talking about Negro teacher colleges? A. That is correct.

Q. Now, how many of the graduates from those colleges, [488] Mr. Johnson, come from an integrated educational background? A. I don't know. I am speaking, of course, in the case of secondary school experience. I presume this is what you are referring to.

Q. Their prior public school experience. A. That I would not know.

Q. And these teacher colleges are primarily all Black, are they not? A. Yes, that is the ones that you are referring to, although we have many institutions where they are both.

Q. Now, I believe that you stated that in 19—well, as of September, 1968, you had increased the number of Negro teachers to approximately 400 in the school system, is that correct? A. That would be certificated people in the school system. As I recall, the latest figure I have is just short of that, about 394, the figure that I recollect, roughly 400.

Q. The figure that I have is 322. A. Have you included the administrators in this particular group, because we are referring to certificated employees?

Q. Oh, I see, I believe your testimony concerned only teachers? A. Yes, I was speaking of certificated people.

Q. So you have got 322 Black teachers, is that correct? [489] A. I don't know the exact number. I only know the total number of certificated employees.

Howard L. Johnson—for Defendants—Cross

Q. In September of '67 you had about 311 Black teachers?

A. That sounds to be approximately right.

Q. And in 1965 you had 273 and a half Black teachers?

A. That would be correct. Let me explain the half. One half, maybe it would be a half teacher in a school but may have one half other assignment.

Q. He works half days, is that right? A. Would work half days or half in another division.

Q. Now, in 1965 do you know approximately what percent of all teachers were Negro in Denver? A. I would imagine approximately 7, 8 percent.

Q. And as of September, 1968, do you know whether that percentage has gone up or gone down? A. I would say it is approximately the same because of the increase in the number of teachers.

Q. Now, there has been an increase in the number of Black teachers, is that right? A. That's correct.

Q. From 273 and a half to 322, and there has also been a similar increase, has there not, overall in the number of teachers hired by the schools? A. That is true.

[490] Q. So, today you don't have percentage-wise more Black teachers than you had back in '65? A. I would imagine it is approximately the same.

Q. Now, again, I believe you have Exhibit 20 in front of you. Would you turn please to Page D-13. Now, this committee was formed in 1962, is that correct, the committee that issued this report? A. Yes, that is correct.

Q. Now, during the course of their studies and deliberations, did that committee or members thereof meet with you, Mr. Johnson? A. Members of the committee met with me. I did not meet with the committee as a whole.

Q. Now, this committee says here that it is convinced

Howard L. Johnson—for Defendants—Cross

that race has been relevant in the assignment of teachers, is that correct? A. Yes, that is correct.

Q. Now, did that—and this was your department? A. That's correct.

Q. Now, who was actually doing the assignment of new teachers, say, back in 1963 and '64? A. The direct assignments of those new teachers would have been made by the directors of elementary personnel, director of secondary school personnel services, in consultation with other staff members, principals, as well as [491] instructional staff.

Q. When did they leave? A. When did they leave?

Q. Yes, are they still assigning teachers? A. They are still assigning teachers, that is correct.

Q. Now, there has been an improvement, has there not, Mr. Johnson, in the distribution of Black teachers throughout the school district? A. Yes, there is apparent improvement on the basis of Black teachers being assigned to other schools and we are moving in the direction of attempting improvement in certain schools.

[492] Q. From the standpoint of the administrator of this system, and of this redistribution, if you will, what is your objective in that redistribution? What are you doing? A. We see the necessity for teachers of various ethnic groups working very closely together and the fact that a school is the closest unit that we have, we believe that a majority group teacher, being in the midst of that particular faculty, can assist a great deal as the faculty is working on projects relating to minority. And we think it is also well worthwhile for pupils in the school to have an opportunity to associate with the teacher minority group if they happen to be of the Anglo ethnic group.

Howard L. Johnson—for Defendants—Cross

Q. So there are two purposes, one is to give, say, the Anglo teachers a little more knowledge about the Black teacher and the other is to give the Anglo students a little more knowledge about the Black teacher? A. To the extent we can. We must recognize, however, that unless they are in a special assignment that probably it would be pretty difficult for a teacher to have contact with very many Anglo students because of class size and so on.

The Court: Nevertheless, I assume you feel it's important. That was the question.

The Witness: Yes, we feel that it is important. We're working in that direction.

[493] Q. Well, Mr. Johnson, do you feel, having say one Negro teacher in an Anglo school satisfies that objective? A. No, sir. I do not feel that it satisfies it. And we're working as diligently as we can in the direction of getting more minority group teachers, and we have worked very diligently in this respect. But, unfortunately, we do need qualified applicants and we're trying desperately to get them.

Q. Now, Exhibit 20 was issued on March 1, 1964? A. Yes.

Q. That was some five years ago? A. Yes.

Q. And there is still 27 elementary schools with no black teachers, is that correct? A. Yes, that's approximately correct. You're speaking now of black teachers and not minority teachers?

Q. That's right. A. Yes.

Q. If you use all minority rather than just black, then it goes down to what? About 22 with all minority teachers? A. It would be less than that. I think the most recent counts we have would be roughly about 15.

Howard L. Johnson—for Defendants—Cross

Q. Would you please turn then to Page D15 in Exhibit 20 and I have particular reference to Paragraph 7 on that page.

Have you found that?

【494】 A. Yes, sir.

Q. That's one of the recommendations of the committee, is it not? A. Yes, sir.

Q. And it says that in policy statements adopted by the board and the administration it should be made clear that teacher preference as to assignment is subordinate to other criteria? It says that? A. That is correct.

Q. And it also says that each qualified teacher in the system is expected to be able to teach and to be prepared to teach in any school where the administration thinks he can be most effective, is that correct? A. That's the statement.

Q. Now, is there somewhere in the written policies of the district where this recommendation has been adopted? A. Not exactly as stated here, no. This is not correct. However, when we say expected to be able to teach and to be prepared to teach in any other school, I would say the criteria used in recruiting would bear this out; that an individual— For instance, when teachers are hired by the Denver Public Schools they are hired to teach in *the* Denver Public Schools and not for a specific school. And, consequently, in the interviewing, in the background of those individuals, we assume that the individual is able to teach 【495】 and prepared to teach in any school.

Q. So I take it you have—you feel you have adopted this policy, this recommendation? A. I would say that to the extent that this is one of the criteria for the selection of teachers from the standpoint of his willingness to do this, this is correct.

Howard L. Johnson—for Defendants—Cross

Q. And I then can assume that, for example, when you're having one of these interviews with a prospective Negro teacher, that you discuss with him whether or not he would be willing to teach in an Anglo school? A. That is correct.

Q. And the same would hold true with respect to a prospective Anglo teacher as to his willingness to teach in a black school? A. Yes. However, let me amplify it in this respect. This is the thought of the question. However, it's easy to answer yes or no. I think that a good interviewer must look deeper into this rather than ask the question pointblank because you will get the answer definitely in the direction you want.

Q. You will get the right answer? A. You'll get the right answer, that's right. So, consequently, let me say this is one of the purposes of the interviews, to find this out. But it is not asked the direct question, whether he would be willing to teach in an [496] Anglo school or whether they would be willing to teach in the other. I think it's important that this information be gained because, frankly, we do not want teachers in the Denver Public Schools, whether it's an Anglo teacher teaching in an Anglo school or whether it be a black teacher in a black school, who does not have the sincere objective in the direction of good relationship—good racial relationship. I think this is detrimental—just as detrimental to have an Anglo teacher in an Anglo school who has a dislike for other ethnic groups. I think he could do as much harm there as he would do even if he were assigned in a minority school.

Q. I don't think that anyone would disagree with you, Mr. Johnson. But I thought you told me you actually asked these questions in the course of your interviews and I take it you do not? A. That's the reason I amplified this.

Howard L. Johnson—for Defendants—Cross

I said this is information that we want. I purposely amplified it to say that you wouldn't get the answer you want by just asking the question directly.

Q. How do you go about obliquely getting this information if you don't get it directly? A. Pretty largely on the basis of asking about the background experience that they have had; finding out their relationships with various organizations within the community, their college activities, whether or not these are groups [497] in which we consider the human relations is of the highest order and so on. There are many leading questions that would vary with the particular applicant and the leads he gave you.

Q. What kind of background would, for example, lead your interviewer to conclude that the Anglo—that an Anglo would be willing to teach in a black school, for example? A. Well, we have many requests of many Anglos for teaching in black schools.

Q. But not quite enough? A. Not quite enough. But we have these. I think probably, on the basis of the background as recorded from a college or university regarding the sociology courses they may have, the type of student activities they participated in, whether they are graduates of a school that may have a reputation as being a well-oriented school from the standpoint of racial relations, and particularly an integrated college or university, and these are some of the things. Although we can find the quality teacher we want probably in strictly the Negro school or strictly the Anglo school, but we must do it with care.

Q. Sociology is generally a required course, isn't it, Mr. Johnson? A. We are thankful that recently this is getting to be [498] required. However, this was not neces-

Howard L. Johnson—for Defendants—Cross

sarily a requirement of education graduates a few years back. We find that the colleges and universities are moving in this direction and it's one of the reasons I think that the academic background of our newer teachers in the school system or any school system is of a better nature.

Q. I believe you indicated earlier that these black schools, Smith, Stedman, Barrett, Hallett—

Mr. Creighton: I object to that characterization, Your Honor.

The Court: Well—

Mr. Creighton: He can call them by name.

The Court: I don't think it's practical. I think he ought to have some way to refer to these schools in a group. Do you have any suggestions?

Mr. Creighton: Yes, majority black; majority white.

The Court: Well, if that would make you feel better. Be assured that we are not going to be influenced by any characterizations here. We're seeking out the true facts.

Mr. Creighton: I am mindful we are making a record, too, Your Honor.

The Court: Beg pardon?

Mr. Creighton: I'm mindful that we're making a record, too.

[499] The Court: Well, I will leave it to you, Mr. Greiner, to work this out.

Mr. Greiner: I'll do my best, Your Honor.

Q. Mr. Johnson, these majority black schools, they have a greater turnover of teachers, I believe you indicated, is that right? A. Yes. I would say that the schools that you

Howard L. Johnson—for Defendants—Cross

mentioned probably have a greater turnover of teachers, but not necessarily so. I can think of two of those schools that probably does not have a greater turnover.

Q. Which ones? A. I think that you included Hallett there, for instance, and I think Hallett—I think Hallett probably has less turnover than the average in the city, although I would want to check my records on that particular point.

The Court: You told us earlier that there were more vacancies on the faculty in those schools than in other schools.

The Witness: Your Honor—

The Court: That you have a problem of filling vacancies all the time in these schools.

The Witness: Yes, Your Honor, but I brought out the point that vacancies exist in the summer, filling them with these new teachers. We have vacancies throughout the city, but they are filled during the months of May and June— [500] or April and May by our experienced teachers who have requested transfers. That's the reason we have a greater number of vacancies in this particular area. That is correct.

By Mr. Greiner:

Q. Now, the 1964 report focused on a concentration of black teachers in the black schools, is that correct, Mr. Johnson? Or, pardon me. In the majority black schools?

A. Well, in some instances, it so happens there are schools that show a majority of black teachers but I believe, if my recollection is correct, I think Phillips is a school—and I

Howard L. Johnson—for Defendants—Cross

don't believe this is one we have attempted to get a Negro or Spanish-American teacher in—I believe that's a good example.

Q. Phillips is an integrated school, is it not? A. Well, I think on the basis of percentage-wise, it depends on what you call an integrated school.

Q. It's predominantly Anglo? A. Well, then, we might move to Hallett. Hallett, I think, has—I think that out of that faculty they have, I think, three teachers. So I would say that it doesn't hold true. Although I would concur with you generally, I would concur with you generally that we do have a concentration in a number of those schools. That's correct.

Q. I think you would be working to reducing the concentrations of black teachers in these majority black or **[501]** predominantly black schools. A. I would say that we are attempting to do this. That is correct.

Q. Now, you mentioned Hallett. I see that in 1965 Hallett had one black teacher and that in 1968 it had three. A. That is correct. And I think probably on the basis of proportion, and I'm not certain of the proportion that we should have for the best interests of the school—but we do know that this has helped the faculty.

Q. Barrett in 1965 had eight black teachers and today it has 10, is that correct? A. And the proportion would be about the same. I think they are roughly—I think about fifty percent.

Q. Well, according to my figures in 1965 Barrett had 20 teachers and today it has 19, Mr. Johnson. A. That is right.

Q. And Smiley is another example, isn't it? Ten black teachers in 1965, 23 today, is that right? A. That is correct.

Howard L. Johnson—for Defendants—Cross

Q. Cole is another one. Twenty-seven in 1965 and 31 today. A. I would say all the figures that you are stating I think generally are correct. I do not have the figures before me and I am assuming that you have those from a reliable source.

[502] Q. Then I take it your efforts to reduce the concentration of Negro teachers in predominantly black schools hasn't been very effective, has it, Mr. Johnson? A. Not as effective as we would like to have it. But we have been effective in incorporating a greater number of black teachers in the Anglo schools.

Q. We touched briefly on—It was discussed briefly in your testimony on Friday concerning building capacity. Do you recall that testimony? A. I think the question was asked of me regarding the formula of the 30 pupils per classroom.

Q. And that is what's known as rated capacity, is that right? A. Yes, sir, it could be called a rated capacity or normal capacity.

Q. And it is the rated capacities which are published by the school district, is that right? A. They are published in this respect; that this is the figure that is used by Planning and Engineering for the reports that go to the Board of Education.

Q. Well, it goes to the public, too, doesn't it? A. The public—it has access to these records. But it is of a consistent manner in setting the normal capacity of a school.

Q. Well, now, then, I take it that there is also another **[503]** kind of capacity and this is arrived at by more subjective criteria, is that correct? A. This is not necessarily numerical or published capacity. There are many things taken into consideration at the time that a building—when this building is used. For instance, we do know that there

Howard L. Johnson—for Defendants—Cross

are some older buildings that probably have 30 or maybe to a greater capacity. We know there are many situations where 30 is probably a lower figure than we have. But in addition to this particular thing the physical structure, the special programs in the building, the types of things that our division of education wishes to utilize the building for, would be all taken into consideration.

Q. But now I take it that wasn't the gist of your testimony on Friday, that a school, for example, such as, oh, Barrett School or Smith School, with 12 mobile units or Stedman School with 4 mobile units—I take it you agree those schools are currently overcrowded, is that right? Over capacity? A. No, I don't think that I would concur entirely with this, for this reason: that we have made attempts to relieve those schools through various means such as transportation out of those communities. You have already indicated the mobile units. And I think we are maintaining educational programs in many of those schools probably that would have [504] fewer pupils per classroom than the others; double sessions are sometimes used, and the extended school day.

Q. Would you agree, Mr. Johnson, that when you are dealing with these predominantly minority schools that rated capacity generally overstates their actual capacity? A. I think that could be a generalization, yes.

Q. And a good example of that is Smiley, isn't it? Smiley has a rated capacity of 1,635 students. Last year it had 1,553 students. Is that correct? A. That is correct.

[505] Q. Yet, it was on double sessions? A. It was on double sessions upon the request for certain special programs, additional personnel and so on, so this is correct. Smiley is one good example.

Q. I believe you mentioned limited open enrollment.

Howard L. Johnson—for Defendants—Cross

This was a program that began in September of 1964? A. That is correct.

Q. And this was begun, was it not, at about the same time that the optional attendance zones were expanded?

A. Yes, at the same time, as I recall.

Q. Now, it is true, isn't it, that limited open enrollment had no racial balancing conditions attached to it? A. That is correct.

Q. And under limited open enrollment the student had to supply his own transportation? A. That is correct.

Q. And this was the policy then of the district until what? November of 1968, is that correct? A. Yes.

Q. So that was the policy for some four years? A. That is correct.

Q. Would you agree, Mr. Johnson, that limited open enrollment with no transportation provided by the school district made it somewhat easier for Angles to participate in the program than it did Blacks? [506] A. No, I would not agree on that. Largely for this reason, that there is no stipulation regarding the ethnic factor. There is no transportation, but for reasons stated there was an opportunity for the Black students to request the open enrollment to schools not too far away and many of them did. It also enabled those white students who wished to go to the schools in the northeast Denver area an opportunity for them to take advantage of it, so I don't think that it would indicate one way or the other from the standpoint of their ability to take advantage of this. In fact, this was the purpose of the limited open enrollment in 1962, because we had many requests for parents to transfer their children to certain schools.

Q. Well, now, you would agree, would you not, Mr. Johnson, that limited open enrollment really didn't serve

Howard L. Johnson—for Defendants—Cross

to integrate any particular schools, did it? A. Yes, I think it served to integrate. I don't have the exact figures before me, but I do know that it did serve to integrate certain schools. I think probably a good example of this, because I had referred it to George Washington extension of boundary line, George Washington at the same time that the boundary line was changed, there was an integration, and I believe at the present time there is somewhere between 85 and 100 Negro students in George Washington as compared with roughly ten pupils at the time [507] prior to this open enrollment. I use this only as one example and—but, there are others, so I think that the point is that it serves the purpose both ways, but I think it would be a mistake to say that it had no effect.

Q. Mr. Johnson, limited open enrollment could be used, could it not, by an Anglo student in a transitional school, one that was going from Anglo to majority Blacks, could be used by that student to get out of that school and go to a predominantly Anglo school, could it not? A. Yes, the limited open enrollment would provide this. There is no stipulation regarding the ethnic factor.

Q. And, in fact, some Anglos used the limited open enrollment for just that purpose, did they not? A. There was evidence that many of them used it to go from a predominantly Anglo school to another predominantly Anglo school. Likewise, we found there was a great deal of transfer in the northeast Denver area on schools that had similar proportions of Blacks by Black students, merely requesting transfer from school to school there, so it was working both ways. There seemed to be no exact pattern in this respect.

Q. Do you have any question in mind, Mr. Johnson?
A. Do I have your question in mind? As it refers to the

Howard L. Johnson—for Defendants—Cross

opportunity for an Anglo to move to another Anglo and a Black to another Black?

【508】 Q. That's the one. Now, what's the answer to that question? A. Anglo to Anglo?

Q. An Anglo in a predominantly Black school transferring to a predominantly Anglo school. A. It would be possible under that arrangement.

Q. I asked you if it was not in fact done, Mr. Johnson. A. I don't know that—not to any great degree that I can recall, because I think that in an limited open enrollment we found that more people usually stayed pretty well within the confines. The numbers involved citywide would indicate that there was no great number, and as I recall a proportionate number of Negro pupils who requested it was almost as many as Anglos, although they constituted only about 15 percent of the population of the city, so I—

Q. Well, Mr. Johnson, I am handing you what has been marked as Plaintiffs' Exhibit 99, and on Page 4 that exhibit reflects, does it not, the number of transfers received by Montclair School. A. That is correct.

Q. Yes, sir. How many came from Stedman, Mr. Johnson? A. Five from Stedman.

Q. How many came from Montclair Annex?

Mr. Creighton: I object, Your Honor, until this exhibit is offered and admitted.

【509】 The Court: Hasn't it been received yet?

Mr. Greiner: It hasn't been received?

Mr. Creighton: No.

The Court: What number is it?

Mr. Greiner: Number 99, Your Honor.

Howard L. Johnson—for Defendants—Cross

The Court: I have no record of it having been received.

Q. Can you identify Exhibit 99 for us from the front page? Exhibit 99 was prepared by the Division of Personnel Services, is that correct, Mr. Johnson? A. Yes, this evidently—September 16, 1966—

Q. So this was prepared by your Department, is that correct? A. Evidently was.

The Court: Do you consider it authentic?

Mr. Creighton: This is one we—

The Court: He says his department prepared it.

Mr. Creighton: Yes, if I may, let me look at it.

It is authentic, I am sure.

Mr. Greiner: Your Honor, we offer 99.

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon Plaintiffs' Exhibit No. 99 was received in evidence.)

Q. Now, where were we? We were with five transfers [510] from Stedman and one from Montclair Annex, is that correct? A. That is correct.

Q. Now, handing you what has been marked for identification as Plaintiffs' Exhibit 100, I ask you if you can identify that? A. Yes, I imagine this would be released at the same time.

Q. Exhibit 100 was also prepared by your department? A. Yes, I would think so.

Mr. Greiner: Your Honor, we would offer Exhibit 100.

Howard L. Johnson—for Defendants—Cross

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon Plaintiffs' Exhibit 100 was received in evidence.)

Q. Now, I believe that Exhibit 100 shows the racial and ethnic characteristics of students participating in the limited open enrollment program, does it not, Mr. Johnson? A. Yes, sir.

Q. Now, if you will refer to the Montclair I believe it is, how many of those six students transferring into to Montclair were Anglos, Mr. Johnson? A. To Montclair would be four.

Q. Four out of six, right? [511] A. Four out of six.

Q. Now, did you have anything to do with the voluntary enrollment program that began in the second semester of this past school year? A. In consultation with other members of the staff, yes, sir.

Q. That was passed by the Board in November of 1968? A. That is correct.

Q. Now, when the Board passed that, was it your understanding that the administration was to encourage participation in voluntary open enrollment? A. It was to encourage in the voluntary, that is correct.

Q. Was the administration to offer any assistance in the establishment of voluntary open enrollment program? A. That is correct.

Q. Well, what did the administration do, Mr. Johnson, in those regards? A. The administration members of the staff moved forward in trying to implement that at a very late time in the school year, at a school semester, trying to achieve this for the date I believe of the second

Howard L. Johnson—for Defendants—Cross

semester of January 25th, with the Christmas intermission included at that particular time.

Q. Were letters sent out to parents telling them **[512]** about voluntary open enrollment? A. As I recall, those were prepared by the school-community relations, and they were contacted, yes, and the Division of Education also had contacted principals regarding letters.

Q. Is Plaintiffs' Exhibit 36 the form letter that was used by the administration? A. This came out of the Division of Education, but I have seen this particular letter, yes.

Mr. Greiner: Is 36 in evidence?

The Court: No.

Mr. Greiner: Your Honor, we would offer Exhibit.

Mr. Creighton: No objection.

The Court: It will be received.

(Whereupon, Plaintiffs' Exhibit No. 36 was received in evidence.)

Q. Now, other than the mailing of Exhibit 36, Mr. Johnson, what did the administration do? A. Well, the report that I had on this, contacts were made with—to the administrative directors of elementary education and secondary education with the principals that they move forward as fully as they could toward the implementation of this particular plan.

Q. Did your department, Mr. Johnson, receive any **[513]** requests for assistance from parents trying to establish VOE programs? A. They weren't directly by my department but I know one situation where I discussed the matter with a group of parents.

Howard L. Johnson—for Defendants—Cross

Q. What school was involved? A. As I recall, I am not certain of the exact school. These parents indicated they represented a number of schools in southeast Denver and Hallett School.

Q. These were Anglo parents? A. Yes, sir.

Q. And they wanted to get together some Anglo students and voluntarily open enroll them in Hallett School, is that correct? A. That's correct.

Q. And what did they ask you to do, Mr. Johnson? A. They asked us to move forward on the basis of assisting them to get as I recall about 300 or 400 parents and they wanted to send a letter out right after the principal had sent out a letter indicating that they were interested in gaining these parents, but they had a couple of stipulations in the letter and one on the basis that there would be these transfers if Hallett could be predominantly an Anglo school. That is, it would be more than 50 percent.

Q. Well, now, Mr. Johnson, this letter that this [514] group of Anglo parents wanted the administration to send out, that was going to Black parents, was it not? A. No, I think there was a letter that went out to Black parents. I don't recall that the letter they had—although I think that they were working with a group from Hallett School in addition, but the letter they discussed with me was one to go to white parents encouraging them to sign up to go to Hallett School.

Q. Now, did you get a similar request from a group of Hallett parents for administrative assistance? A. I think that there was a—you are now asking questions that were directly related to the Division of Education and the Division of School-Community Relations. I was not involved in that except as I would be as Deputy Superintendent and knowing about it. Now, I can tell you gen-

Howard L. Johnson—for Defendants—Cross

erally in this respect, but I did not work directly with them. The only direct involvement I had was that at the time that the parents in southeast Denver came into the administration building to see the Executive Director for Elementary Education. He asked me if they could meet with me and I met with them and discussed that letter. Now, I know that there are many other letters. I know there was a great deal of involvement, but this did not come directly through me.

Q. You personally received no communications from [515] Black parents at Hallett? A. I'm not aware of direct communications you mean. I am aware, however, that the Black—that the parents in Hallett were working through the Executive Director of Elementary Education and School-Community Relations to establish this program. Now, I do not recall a direct request to me on this, but I was aware of this situation and, frankly, this was a part of our attempt to gain integration between the schools of southeast Denver and Hallett.

Q. Now, what the Hallett parents wanted, was it not, was to find one Anglo school where under VOE all of those Black children transfer to? A. I don't know the particular details. I understand that the Hallett parents who were interested in this wanted to transfer in order to relieve and make room for the Anglo parents.

Q. Well, it was just the other side of the coin of the University Park program was it not? A. That's correct.

Q. Now, what help did they receive, Mr. Johnson? A. They received the help of the principal. They received the help of the Department of Elementary Education and also the school-community relations to the extent it was possible at that late date and would not confuse the entire issue. The concern that our administrators had at that

Howard L. Johnson—for Defendants—Cross

[516] particular moment was not with the plan. They were heartily in favor of the plan but it was the confusion that was existing, particularly when one of the stipulations was that there be sufficient number of white parents who accept this and a sufficient number to exchange and this happening really during the early part of December, in fact, I am not—the Board of Education at its regular meeting on November 21—I see no date on this communication from elementary education, but we know that this was an attempt to get this entire thing done within a—prior to January 27 opening of school, so, consequently, there was a time element here that was almost impossible to meet, particularly with the stipulation that there had to be this balance and the number involved was almost impossible and our staff members had some indication and I think it was stipulated that there should be about 300 Anglo parents and 300 Negro parents, and as far as an exchange was concerned, to the extent that it be possible, I think our staff cooperated, but they couldn't cooperate on the basis of saying, "We will go right up until a week or so before the second semester and if we don't get them, then the whole thing is off." You can't operate and program children in a school on that basis, so I think it was a matter of how far this should go. There was no question regarding the importance of this. The question was is it administratively feasible at that late date to do it?

[517] Q. When did you get this request from the Anglo parents? A. As I stated to you, I did not have the request. The request was—

The Court: When did it come in?

I think we will take a recess.

Howard L. Johnson—for Defendants—Cross

(The Court recessed at 3:11 o'clock p. m.)

[518] (Following a recess, the hearing resumed at 3:31 p.m.)

The Court: I think, if you could just listen to the thrust of his question and try to respond directly. I mean, to the essence of the question, it would be easier for you and easier for us, too, you know.

The Witness: Yes, Your Honor.

The Court: Just listen to what he is seeking to obtain. You have to concentrate on that rather than pick the outer fringes of the question and respond to that, you know. Go right to the center of it, if you can.

The Witness: Yes, Your Honor.

The Court: Good.

Q. (By Mr. Greiner) You will recall, Mr. Johnson, that we were discussing a request by white parents to make Hallett a sort of a target school for voluntary open enrollment, were we not? A. Yes.

Q. And you have in front of you Exhibit 36. And do you recall when Exhibit 36 was mailed to the parents? A. No, sir.

Q. It was mailed, I assume, prior to the Christmas vacation, was it not? A. I'm not certain. It did not come under my direction.

Q. Now, as I recall, you said you had a meeting with **[519]** some of these University Park parents, is that correct? A. Yes, sir.

Q. And approximately when did that meeting take place? Was it in early January? A. I don't recall the date on that. I'm inclined to believe that it was earlier than that;

Howard L. Johnson—for Defendants—Cross

that it was probably prior to the Christmas or the winter intermission.

Q. Now, I take it that these white parents were asking the administration to help them in publicizing the fact that Hallett was to be a target school, isn't that correct?

A. That is correct.

Q. Now, was there any discussion during that conversation regarding what you believe to be your responsibility as to whether or not you were to encourage voluntary open enrollment? A. Yes, there was, and we indicated that we had this responsibility.

Q. Do you recall that Mr. Barnes was present at that meeting? A. I'm sorry. I don't recall who was at the meeting, but there were two gentlemen and it's entirely possible it may have been Mr. Barnes. As I recall, the group consisted of three or four ladies and two gentlemen, as I recall. And I don't think I could give you the names right at the moment although I'm inclined to believe—now that I see Mr. Barnes—【520】 that he was at the meeting.

The Witness: Were you?

Mr. Barnes: (Nods affirmatively.)

A. I think I recognize Mr. Barnes as being one of the gentlemen and there were two of the ladies that I knew, but I can't place them by name right at the moment, but I have had discussions with them on previous occasions.

Q. You didn't state at that meeting that your only responsibility was simply to announce the program and that you had no authorization to encourage it? A. I did not make such statement; that we did not have responsibility. Because this was definitely a matter that we should push forward, but I did question the particular communication

Howard L. Johnson—for Defendants—Cross

they wished to send in conflict with other communications that were going out and the matter of timing.

Q. Now, the general policy of voluntary open enrollment, Mr. Johnson, was to achieve some sort of racial balance, was it not? A. Let us say this, that the purpose was to achieve integration in the Denver Public Schools at that particular time. That was our intent; to move as far as we could toward integration and, if racial balance could be achieved, that was it. But it was our understanding we were working for integration.

Q. Well, maybe I don't understand. What do you mean [521] by integration as you use that term? In Hallett, for example? A. Well, Hallett—

Q. How would you integrate Hallett? A. As far as integration is concerned, this must be—there must be, of course, some integration of white pupils into Hallett and likewise some of the Negro pupils out of Hallett. Now, I think that, in addition, as we speak of integration, I think there are many factors and that is a complete understanding as we—of the various ethnic groups and so on. A great deal of integration can be done in other ways other than actual contact. And I think that the integration of Hallett would be the result of having probably that proportion of various ethnic groups, that particular type of curriculum; that type of program that would bring about the thing we're all striving for.

Q. Hallett was 95 percent black at the time, is that right? A. I believe that figure is—It is high. I don't remember the exact percentage.

Q. In fact, as I recall, there was one Anglo child in Hallett at the time, is that right? A. I can't testify to that, but I know there were very few.

Q. Well, again, returning to my original question, Mr.

Howard L. Johnson—for Defendants—Cross

Johnson, how many Anglos would you have had to put into [522] Hallett in order, as you use the term, to integrate Hallett? A. I think this is pretty largely the matter of the advisory committee of Hallett parents working with the principal staff generally to determine what they would consider to be a good composite figure to get this particular job done from the standpoint of teaching through integration.

Q. How many letters did this committee want you to send out, Mr. Johnson? A. As I recall, it was a single communication that I remembered; just one communication, and that being from the parents in the southeast, to the southeast parents.

Q. To how many parents was that letter to be sent? A. I think they were under the opinion that—they were hoping that the principal would send them out and I took it that they wanted them to all parents in that particular area. But it would be a number of those schools in that area; four or five schools involved.

Q. Well, did the principal send them to you to get authority for that mailing? A. No, sir.

Q. Did the principal make the mailing? A. I'm not aware of it.

Q. In Exhibit 36, in fact, is it not—its' the only one—the only written communication sent out to the parents on a voluntary open enrollment at that time? [523] A. I cannot testify to that because, again, this is sent by the Executive Director and remember, we are now in the field of Division of Education and it was handled in that particular area and not through the Deputy Superintendent's office. I was aware of it in my position as Deputy Superintendent in generalities.

Q. Well, let's talk about mobile units, shall we, Mr. Johnson? A. Fine.

Howard L. Johnson—for Defendants—Cross

Q. As I understand it, you said that when the mobile units were placed in Northeast Denver they were placed there with the concurrence of the parents, is that right? A. Let us say they were placed there on the basis of having consulted with the parents.

【524】 Q. Well, were the parents in favor of the placement of those mobile units? A. I think that the provision under which the mobile units were placed there were a number of possibilities and these possibilities would be such as this: would you prefer double sessions? Would you prefer extended school day? Would you prefer our attempting to go on this basis? Transportation out or mobile units? So, it was more or less of an alternate plan rather than specifically asking them about mobile units as such.

Q. How did you describe this alternate of busing out, Mr. Johnson? That was one of the alternatives discussed? A. It was, and in these particular meetings that—at that time I attended as the Assistant Superintendent in charge of instruction to that meeting, who had discussed this with the parents. There was two of us in attendance and only at one school was I in attendance and that was at Smith Elementary School.

Q. Smith, is that the one with 12 mobile units? A. That is the one with 12 mobile units.

Q. When did that meeting take place? A. I cannot give you the exact date. However, it was—let's see, I was there approximately three years ago. I would say during 1966.

【525】 Q. You have Plaintiffs' Exhibit 101 in front of you? A. Yes, sir.

Q. When does it show on Page 2 the first mobile unit going into Smith? A. 1965.

Q. Now, does this mean that you are talking about—was that before there were any mobile units in Smith?

Howard L. Johnson—for Defendants—Cross

A. As I recall, the meeting that we are talking about I think was after the first group of mobile units in the school.

Q. After you had put in six in '65? A. Yes.

Q. Then you put in six more in '67? A. Yes.

Q. Pardon me, '66. A. '66. I am inclined to believe that the meeting that I am talking about—I'm inclined to believe that they had mobile units at Smith at that particular time and it has been the result of the principal having worked with the parents and others in the community. It was before we put in the large number.

Q. Now, did you tell me that the parents preferred mobile units over double sessions, is that right? A. In attending the meeting I attended I would say, number one, the parents did not appear as though they [526] wished to be transported out of the area. They preferred the neighborhood schools.

Q. Mr. Johnson, you heard my question. Do you have it in mind? A. I do not.

Q. The parents expressed a preference for mobile units over double sessions? A. As I recall, they did.

Q. And the parents expressed a preference for mobile units over extending class days, did they not? A. As I recall, they did.

Q. All right, now, we will get down to the transportation, Mr. Johnson. Now, what did you tell them about transportation? A. Well, this was presented by the principal prior to our particular meeting and the meeting was to have the parents there to discuss this matter of transporting out. The statement that was made was that if they were interested in transportation we would designate certain schools in the city where they would be trans-

Howard L. Johnson—for Defendants—Cross

ported and those schools—we had a general list, but no specific schools in mind at that particular time. What we were interested in finding out was whether or not they wished to be transported.

Q. Well, now, how many schools were on that list, Mr. Johnson? [527] A. There were approximately 12 schools in—primarily in south and southeast Denver.

Q. And what we were talking about then was the prospect of transporting approximately 180 students? A. Depending on if they wanted to eliminate the—it would have been more than 180, because in addition to mobile units they were overcrowded. I don't think an exact number was—but, later, as we moved into it, we had asked for somewhere in the neighborhood of 250 students.

Q. Well, now, as I understand it, Mr. Johnson, this meeting took place at a time when Smith already had six mobile units? A. As I recall.

Q. And when the administration was considering putting in six more, isn't that right? A. That is right.

Q. So, your conversation was, "You want six more mobile units or do you want transportation out?" That was the subject, was it? A. This was generally the subject. That is, which would you prefer, because they were overcrowded.

Q. So we are talking about at least 180 and perhaps more? A. That is correct.

Q. Now, of the 180 children minimum that were to be [528] transported, did you offer to transport them to only one or two or three schools? A. No, they were—the schools available were listed. We had a certain number. We did not have that much space in one or two schools. It had to involve at least eight or ten schools.

Howard L. Johnson—for Defendants—Cross

Q. So you had to split them up? A. We had to split them up because of lack of space in any single school.

Q. You had no schools down in here that were being underutilized? A. Not to that extent that we could take that many pupils.

Q. Some schools became underutilized in 1967, did they not? A. Underutilized to this extent, that they could take possibly 20 to 30 to 40 pupils, but not to the extent that we had, that number, until such time as the building program was completed in south and west Denver, and then there was two schools, namely University Park and Asbury Schools, where these pupils had been attending, and when the Frank Traylor Elementary School was opened this did give us space in those schools but probably more space in Corey than any one other school.

Q. Now, back in '66 when you attended this meeting, [529] Mr. Johnson, were those Negro parents told that the receiving schools under the transportation which was being offered, did they ask were there going to be any reception programs in those receiving schools? A. Yes, they were told this because our department of school-community relations had been working on similar programs.

Q. And they were told that there would be some sensitivity training at those receiving schools? A. That is correct.

Q. Were they told, Mr. Johnson, how bad the achievement was at Smith? A. I don't recall any statement being made to that effect.

Q. That wasn't released publicly until October of '68, isn't that correct? A. The test scores were released in 1968.

Howard L. Johnson—for Defendants—Cross

Q. Now, even in 1964, and I call your attention to Exhibit 20, which I believe you cited for the proposition of the committee approved use of mobile units, there were some conditions, weren't there, attached to the committee's approval of mobile units? A. The only conditions that I can recall that were attached were the conditions that these were not to become permanent, a permanent part of the education plans. They [530] were to facilitate it at the time of emergencies.

Q. Yet, according to Exhibit 101, some of the mobile units placed in northeast Denver in 1964 are still there, aren't they? A. Well, of course, it is then a matter of what constitutes permanency on this and they are still continued there because there is a need for two things. One is the fact that we have an excessive number of pupils in certain schools there. The other one is that particularly at Smith School they were left there because—even though we had relieved the membership as related to the capacity—that there are not special programs going on in those mobile units, and that is the reason, and I think probably the mobile unit is very worthwhile for a special type of program.

Q. Well, Mr. Johnson, didn't you tell me just a moment ago that Smith is still overcrowded? A. Not if we were to take normal capacity and include the mobile units.

Q. Was there any provision under the resolutions which have now been rescinded for increasing the transportation out of Smith? A. Only to the extent that we do promote to a great degree the voluntary open enrollment plan and make some other provisions.

Q. Excuse me, Mr. Johnson, I am talking about 1531. [531] Do you know what 1531 is? A. Yes, that's a previous resolution that was rescinded, is that—

Howard L. Johnson—for Defendants—Cross

Q. That's correct. A. Yes.

Q. Didn't 1531 contemplate the elimination of some of the mobile units at Smith? A. 1531 from the standpoint of reduction in membership, yes, that is correct.

Q. So, if you reduced the membership further you could get along without those mobile units? A. Depending upon the special programs.

Q. Oh, you couldn't have the special programs? A. The programs at Smith School are of such a nature at the present time that they probably need normal capacity of over the 30 to one room, so it would necessitate a movement of a greater number of pupils in this respect.

Q. Now, there are 12 mobile units there today? A. There are—yes, that is correct, there are 12.

Q. Well, even 1533 talks about removing part of those. A. That is correct.

Q. And there isn't going to be any increase in the special programs, is there, Mr. Johnson? A. We hope that we can accomplish both and that would be to relieve the membership and continue the special programs.

[532] Q. Now, this conditional acceptance of mobile units in the committee report—at the time that report issued, there were only eight mobile units in all the City and County of Denver, is that right, Mr. Johnson, referring to Exhibit 101? A. Well, the mobile units, according to this report—there were—

Q. Eight? A. A total of eight in this area, yes.

Q. And none of them were in northeast Denver, were they, Mr. Johnson? Read off the schools. A. Dowell, Wyatt—

Q. Now, Dowell is down here? Wyatt is up here? A. Wyman.

Howard L. Johnson—for Defendants—Cross

Q. That's over in here somewhere. A. That's right, and, excuse me, Wyatt had three and Greenlee three.

Q. Where is Greenlee? A. In West Denver.

Q. So, there were none in northeast Denver? A. That is right.

Q. And then shortly after this report was issued northeast Denver got quite a batch of mobile units didn't they? A. That is right.

[533] Q. How many? A. Well, Philips received four, Smith the original six, Park Hill three, Hallett two, and then Smith's additional six, from the period of September, 1964 and on.

Q. So, by the time we got to September, 1968, the total mobile units in Denver had gone from eight to 28 or 29? A. Twenty-nine.

Q. How many of those 28 or 29 were then in northeast Denver? A. Out of the northeast Denver group, there would have been 21 of these as I count them.

Q. Maybe you'd better count again, Mr. Johnson. A. I have 21.

Q. All right, so 21 out of 28 were in northeast Denver? A. That is the figure I have.

Q. As of September of '68? A. Yes.

Q. Now, I believe you mentioned that there were some units at Hallett? A. Yes, sir.

Q. How many? A. Hallett had two of these, two of these units.

Q. They got two in November of '65? A. November of '65.

Q. I believe you mentioned on Friday that the units **[534]** were removed at Hallett because Hallett student membership had declined? A. Well, then, there was some additions there, that is correct.

Howard L. Johnson—for Defendants—Cross

[535] Q. There were eight new classrooms built at Hallett, were there not, Mr. Johnson? A. That is right.

Q. And that is when the mobile units got moved? A. As I recall, that is correct.

Q. Now, would you say that today the attitude of the residents up in Northeast Denver are a little less favorable to the use of mobile units?

Mr. Creighton: Objection. No indication he knows what the attitude might be.

The Court: He may. We will find out.

A. No, sir, my answer would be I don't know the attitudes, specifically.

Q. You knew them back in 1965 and 1966? A. At that time there was contact with the parents and they had indicated the desire to use them.

Q. You knew them back in 1965 and 1966? A. At that time there was contact with the parents and they had indicated the desire to use them.

Q. And you have no indication that they are less desirable now than they were then? A. I have no indication.

Q. Now, even as early as 1967, weren't there requests for busing out of certain of these Northeast Denver schools to relieve overcrowding? A. I think the Stedman School—we had some requests at Stedman School.

Q. That's the only one? **[536]** A. That was the only one that indicated a specific request for busing at that time.

Q. How about Phillips? A. Phillips School was a school that became overcrowded in—I don't recall the year—two years ago, and we had taken some pupils out of Hallett to relieve Hallett and then we did consult with the principal

Howard L. Johnson—for Defendants—Cross

and the parents and those pupils in that area were transported to Southeast Denver.

Q. How about Smith? A. And the same thing happened at Smith. There was quite a concerted effort on the part of our school community relations department working with parents and many of the parents in that particular area did work and we transported out of Smith.

Q. Now, actually, ever since February 2, 1966, the district has had a policy, namely, 1223, has it not, concerning the busing of students out to relieve overcrowding? A. Yes, that's been a policy and the practice—we also had the practice prior to that time.

Q. Now, at Stedman today, as I understand it, there are about 286 students being bused out? A. That's approximately the number.

Q. But there is still four mobile units at Stedman? A. That is correct.

Q. And at Smith there are 214 students being bused out, [537] is that correct? A. That is correct.

Q. But there are still 12 mobile units at Smith? A. That's correct.

Q. And at Phillips, you have some busing out? A. Yes.

Q. Thirty, as I understand it, students to Ashley, and 50 to Palmer? A. I believe that's the number, although I don't remember the exact schools.

Q. Is Phillips School overcrowded, Mr. Johnson? A. Phillips at the present time is beginning to get back to capacity that they can handle with mobile units.

Q. You're busing 100 students out of Park Hill School? A. That is correct.

Q. Is Park Hill School overcrowded, Mr. Johnson? A. Park Hill, I think, with the 100 being transported, I think the program at Park Hill is a very efficient program.

Howard L. Johnson—for Defendants—Cross

Q. Now, you mentioned in your testimony the Doull School was a good example of how mobile units are used. Do you recall that testimony? A. Yes, sir.

Q. Doull is down here, is it not? A. Yes, in that area.

Q. And I believe you said that Doull—that it was [538] expected that Doull student enrollment would decline? A. That is correct.

Q. And that's why the mobile units were brought in to cover this temporary situation? A. That was our attempt.

Q. Well, I take it that is not your meaning, Mr. Johnson, that it is expected that the student population in Northeast Denver is going to decline? A. We doubt very much that it will decline.

Q. So there is really not much of a corollary between what happened at Doull and what's happening in Northeast Denver, is there? A. Not from the standpoint of expectation.

Q. Now, do you consider the presence of mobile units to be an indication of overcrowded schools? A. Mobile units are a facility to be used in the case of an overcrowded school.

Q. Are these schools then schools which have an excess number of students? A. That is correct.

Q. Now, you recall, do you not, that guideline that the Board of Education passed in June of 1967 regarding the construction in Northeast Denver? A. Yes.

Q. And you recall that there was another facet of that [539] guideline, was there not, that concerned transportation? A. The guideline centered around the—no additional building in that particular area. But, on the basis of getting relief, and, of course, transportation, transporta-

Howard L. Johnson—for Defendants—Cross

tion or double sessions would be the only provision that we could have.

Q. I'm handing you Plaintiffs' Exhibit 29—

Mr. Greiner: Is 29 in evidence?

The Clerk: Yes, it is.

Q. —which is in evidence, Mr. Johnson. Page 15 thereof contains the exact language, does it not, of this guideline?

A. Yes. You're referring to the specific statement that "follow existing Denver Public Schools Policy 1222C and 1226A with the additional guidelines, no new building or additions in Northeast Denver, transportation of excess students to other instructional schools in the district"? Those voting yes were—

Q. It passed, is that right? A. Yes.

Q. Now, that was in June of 1967? A. That was June 29th.

Q. And by that time we had 12 mobile units at Smith? A. They were there at that time.

Q. And we had 4 mobile units at Stedman? **[540]** A. That is correct.

Q. And I think we had some mobile units at Phillips, too, didn't we, then? A. At Phillips we had two, as I recall.

Q. And those schools had excess students? A. That is correct.

Q. And it was the policy of the Board to bus out those excess students, is that correct? A. That is right.

Q. Now, you didn't take it though that that policy guideline—that that guideline had anything to do with the removal of those mobile units? A. It was not stated, however, I think it was referred to that we were to transport

Howard L. Johnson—for Defendants—Cross

and try to equalize—to lower the membership in that particular area and transport elsewhere if possible.

Q. That objective wasn't achieved, was it, Mr. Johnson?

A. No, sir, it was not achieved.

Q. You mentioned the opening of Traylor School. A. Yes.

Q. That's a school in Southwest Denver? A. The very southwest part of the city.

Q. It opened in January of 1968? A. Yes, sir.

Q. With a capacity of approximately 750 students? [541] A. Yes, sir.

Q. Before Traylor was opened—and Traylor is right here, is that right? (Indicating on Exhibit 7.) A. That is correct.

Q. Now, before Traylor was opened, where did all of the students down in this area go to school—elementary school? A. Those pupils were transported to University Park.

Q. Now, just a minute. Let me find University Park. A. I think it's directly below South High School.

Q. All the way from here over to here. All right. How many of them were at University Park? A. I imagine University Park had around 350 or 400 of those.

Q. Were they also at Cory? A. University Park and Asbury, those groups particularly, although we had some from that general area to Cory as well. They were all involved in the Southwest Denver transportation. Cory was involved in Asbury.

Q. So you had Asbury, University Park and Cory? A. Yes.

Q. And altogether about how many students did those three schools have, Mr. Johnson? A. I would imagine in the final—

Howard L. Johnson—for Defendants—Cross

Q. From Southwest Denver? A. From Southwest Denver, there were approximately [542] 800—roughly 800 pupils; 750 to 800.

Q. Okay. Now, up here in Smith, you had 12 mobile units? A. Yes, sir.

Q. About 360 children? A. Yes.

Q. And at Stedman you had 4 mobile units? A. Yes, sir.

Q. About 120 children? A. About that.

Q. When Traylor opened, all of these students that you have described at Asbury, Cory and University Park, they were—they went to Traylor, is that right? A. Yes.

Q. Didn't that open up a few vacancies, Mr. Johnson, at a school like University Park? A. Yes, sir, it did.

Q. About 350 vacancies? A. Yes, approximately that, although those schools, as a result of the Southwest Denver, were slightly overcrowded. But I would say roughly 350.

Q. You had about 40 vacancies at Cory? A. Forty, about, at Cory.

Q. And about how many at Asbury? A. Probably about—roughly 100 on the basis of [543] capacity.

Q. So that is nearly 400—nearly 500 vacancies down there? A. I would say approximately 500 as a result of that.

Q. Now, it's also true, isn't it, that you had some slight overcrowding at some predominantly Anglo elementary schools in this area? A. We had some there.

Q. And you relieved some of this overcrowding in these predominantly Anglo schools by transferring Anglos—a few to Asbury, some to University Park and some to Cory, is that right? A. That is right.

Q. Now, this was also the time when you started busing

Howard L. Johnson—for Defendants—Cross

36 black children from Phillips, isn't it? A. Yes, 36 would be the approximate number.

Q. And they were all sent to University Park? A. That is correct.

Q. Now, even after you adjusted the balancing here, the over capacity and underutilization of those Southeast Denver schools, Cory, University Park and Asbury, how many spaces did you still have left, Mr. Johnson? A. In addition to this, we had an excess number on the basis of new annexations in the Southeast—in Southeast Denver and part of those spaces were utilized in these schools [544] on transportation again across the city. I think at the present time we do have available space in University Park. We hope some in Asbury and some in Cory and these are some of the schools that we are hoping to use on the basis of voluntary enrollment.

Q. But you had about 350 predominantly black children up here in Northeast Denver? A. That is correct.

Q. In overcrowded schools? A. That is right.

Q. And you had an opening down here of about 500 spaces, is that right? A. I think that's a little high when we consider—but let's say—

Q. About 500? A. About.

Q. And you got 36 of those black children down here to University Park, is that right? A. That is correct.

Q. And a few more, I think—about 40 more from Phillips into another one of these schools? A. Into University Park, Cory School, Smith School. That is correct.

Q. And all the other black children were left up there, is that right, Mr. Johnson? [545] A. That is right, and—

Q. All right. Now, you mentioned in your testimony on Friday—you will recall that the policy that the Board passed about improving the ethnic distribution at schools

Howard L. Johnson—for Defendants—Cross

by means of boundary changes. A. Yes, sir.

Q. That is Policy 1222C, isn't it? A. That is correct.

Q. And that is in evidence as Exhibit 33.

Now, 1222C says the policy of making, to the extent possible, a heterogeneous school community— A. That's one of the items in the policy.

Q. Now, I believe you cited as an example of that a boundary change between East and George Washington High School? A. That is correct.

Q. That boundary change involved, did it not, what had previously been an optional area between East and George Washington? A. As I recall, a portion of it was, and then a small portion of it was formerly in East District.

Q. Now, the area that we're talking about—this is the area right up here, isn't it? A. Yes, sir.

The Court: Right where? I mean, what's the street?

[546] Q. Do you recall what street it is? A. I don't have it before me but it went up to 32nd, the official boundary line, as I recall.

Q. That is correct. Did it go down as far as Colfax? Is it from Colfax to 32nd? A. Approximately Colfax.

Q. And this area had been predominantly an optional transfer area between East and GW?

Mr. Creighton: Excuse me, Your Honor. Would counsel indicate with a little more precision both for the record and for me over here when he indicates.

Q. This area that you have described between Colfax Avenue and 32nd, shown here on Plaintiffs' Exhibit 7, that

Howard L. Johnson—for Defendants—Cross

was an optional area between East and George Washington High Schools? A. Yes, the majority of it was. However, it also encompassed some area that was formerly East.

Q. All right. Now, the boundary change you're talking about was that the northern boundary of George Washington was moved from Colfax up to 32nd? A. Yes.

Q. And you stated that that was a change, as I recall, that contributed to a heterogeneous school community, is that correct? A. I indicated this was a move in that direction. And, [547] if I may amplify this particular point—

Q. Well, I'll give you a chance to answer the questions.
A. Very good.

Q. Now, the elementary schools in this area that got picked up in the George Washington boundary—what elementary schools served that area, Ashley? A. Ashley would have been one.

Q. Montclair? A. And Montclair—part of Montclair.

Q. Ashley and Montclair are predominantly Anglo schools? A. Yes, sir.

Q. They were then, weren't they? A. They were at that time.

Q. This boundary change was effective in September of 1964? A. In 1964 it went into effect.

Q. Now, is it fair to characterize that neighborhood that got brought into George Washington in 1964 as being a predominantly Anglo neighborhood, Mr. Johnson? A. At that time.

Q. Do you recall how many Negroes there were in George Washington High School before that boundary change? A. Before that boundary change, as I recollect, we had about 10 Negroes in George Washington in about 1963.

Howard L. Johnson—for Defendants—Recross

【548】 Q. Your recollection is pretty good. You had 9, Mr. Johnson.

Now, after that boundary change, do you have any recollection of how many Negroes there were in George Washington? A. I don't know immediately after the boundary change.

【549】 Q. 1964? A. 1964, I would imagine probably around 20 or 25, and now about 85.

Q. Your recollection is very good. It went from nine to 20 and this was a boundary change that you believe contributed to the heterogenous school community, is that right? A. Yes, sir.

Mr. Greiner: No further questions.

* * * * *

【585】 * * *

Recross-Examination by Mr. Greiner:

Q. Mr. Johnson, with respect to that boundary change at George Washington and East— A. Yes, sir.

Q. We covered the fact yesterday, I believe, that that boundary change added eleven Negroes to George Washington. A. I don't recall the exact number but it was somewhere in the neighborhood of ten to twenty.

Q. I think we failed to cover the fact, didn't we, that it added 205 Anglos to George Washington? 【586】 A. There was an increase. I don't recall the exact number.

Q. And George Washington today is still about 96 percent Anglo, is that correct? A. Yes, approximately 96 percent.

Q. Now, I believe with respect to the junior high schools, on redirect examination you testified, Mr. Johnson, that the purpose of the Cole-Smiley boundary changes was

Howard L. Johnson—for Defendants—Recross

again to add to the heterogeneity of the populations in those two schools, is that correct? A. I had included one other school and that was Gove. That was a combination of Gove, Smiley and Cole, three schools involved.

Q. Let's focus on Smiley. It is my understanding in 1963 Smiley was 46 percent Anglo, is that correct? A. I believe that is correct.

Q. And in 1964 it was 40 percent Anglo? A. About 40 percent.

Q. And in 1963 Cole was 10 percent Anglo? A. Approximately.

Q. And after the boundary change it became 9 percent Anglo? A. It would have remained about the same.

Q. So those boundary changes made those schools blacker, did they not? [587] A. Let's say there is no reason they should be blacker because we did take quite a number of the Negro students into Gove. However, during this period of time there was certainly an increase in the population in those areas and Negro population. It was not the result necessarily of boundary change; it was the result of mobility into those areas that caused it, because we did take—we did take a percentage of those black students from that particular area and put them in Gove and increased it, so I would say proportionately that because of the increased population, the black population, this would be true, and the main effort at that particular time, as has been since that time, is to relieve the membership of Smiley Junior High School, as well as Cole.

Q. Well, Mr. Johnson, you don't mean to tell me, do you, that it was even thought that as a result of the boundary change there would be more Anglos in Smiley or more Anglos in Gove? A. As I indicated in my statement that the real—the primary purpose of the boundary changes

Howard L. Johnson—for Defendants—Recross

in 1964 was a resolution passed by the Board. At the same time that the boundary lines were changed, this resolution, stating that we should eliminate all optional areas, this was the primary purpose of the boundary change in 1964, to eliminate the optional areas.

【588】 Q. You testified, Mr. Johnson, that when Traylor opened up, it created some 500 spaces in the Southeast Denver schools, is that correct? A. I indicated that there were approximately that number that were transferred from the South Denver schools back to Frank A. Traylor, yes.

Q. Now, you had some other students in annexed areas that you had to accommodate, is that correct? A. That is correct.

Q. So you put them all in the Southeast Denver schools, is that right? A. In the schools named, South and Southeast Denver.

Q. Well, now, I—and those schools are overcrowded today? A. You are speaking of the schools generally in that area or are you specifying these three schools?

Q. Well, Exhibit R shows that University Park is somewhat overcrowded, is that right? A. Yes, on the basis of normal capacity, slightly.

Q. Even today, is University Park overcrowded to the degree that Stedman is overcrowded? A. No, sir.

Q. There aren't any mobile units at University Park, are there? A. Not at the present time.

【589】 Q. How about Cory, Mr. Johnson? A. No mobile units.

Q. And it's not nearly half as overcrowded as Stedman, is it? A. That's correct.

Q. What about Asbury, Mr. Johnson? A. That is correct.

Howard L. Johnson—for Defendants—Recross

Q. Any mobile units at Asbury? A. No mobile units at Asbury.

Q. I direct your attention to what's been marked for identification as Defendants' Exhibit 89. Can you identify that exhibit for us?

Mr. Creighton: 89?

Mr. Greiner: 89.

Mr. Creighton: That's plaintiffs' exhibit.

Mr. Greiner: Pardon me, Your Honor. Force of habit.

A. I can't identify this as an exhibit as such. It appears as though this is a plaintiffs' statement and taken from sources of three sources. So I don't recognize the exhibit as such, but I assume that the data included came from those sources. This is the first time I have seen this particular statement.

Q. Do you recognize the sources? A. (No answer.)

【590】 Q. They are all from the public schools system, aren't they? A. Yes, I recognize the sources. Evidently there is a typographical error on one of these, if the source is stated correctly, and that is that there is no office of the Assistant Superintendent for Personnel Services as of May 1, 1969.

Q. That's right. That should probably be 1968. A. Well, I don't know whether the date is incorrect or whether the title is incorrect. That is, it would be the Executive Director for Personnel Services. So either the date is incorrect or the title of the office is incorrect. I'm not sure which.

Q. What does that Exhibit 89 purport to show, Mr. Johnson? A. 89 purports to show the L.O.E., which would be Limited Open Enrollment.

Howard L. Johnson—for Defendants—Recross

Mr. Creighton: Your Honor, now that we know what this exhibit is about, it seems to me it goes beyond the scope of redirect. This is limited open enrollment. This has been covered earlier.

The Court: Well, true, but—

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 89 for the purpose of showing that in September of 1968 according to this exhibit there were 482 extra seats in [591] Anglo schools, even after the absorption of all of these annexed areas, and we offer it for that purpose.

The Court: I think it's relevant in view of the way the examination has gone. I mean—

Mr. Creighton: It wasn't apparent.

The Court: On redirect you introduced some fresh facts today, I take it, that had not been referred to at all.

So it will be received.

(Whereupon, Plaintiffs' Exhibit 89 was received in evidence.)

By Mr. Greiner:

Q. With reference then to Plaintiffs' Exhibit 89, Mr. Johnson, how much under capacity is there stated there for the listed schools? A. It is listed here 482.

Q. What is the average percent of Anglo enrollment in those schools, Mr. Johnson? A. This exhibit shows 93.

Q. And how many Anglos are being bused into those schools? A. 1,071.

Q. And how many Negroes are being bused into those schools? A. 121.

Q. Now, I call your attention, Mr. Johnson, to what's been marked for identification as Plaintiffs' Exhibit 90,

Howard L. Johnson—for Defendants—Recross

[592] purporting to show the limited open enrollment space in predominantly Negro or Hispano elementary schools in 1968. Can you identify that exhibit for us? A. Not the exhibit as such, and I have the same comment as I had on the other—regarding the other one.

Q. And Exhibit 90 shows the spaces in the minority schools whereas Exhibit 89 showed the spaces in the Anglo schools, is that correct? A. That's correct.

Mr. Greiner: Your Honor, we offer Exhibit 90.

The Court: Has Mr. Creighton seen this?

Mr. Greiner: Yes.

Mr. Creighton: Well, let me look at it. I don't seem to have it.

No objection.

The Court: 90 will be received.

(Whereupon, Plaintiffs' Exhibit 90 was received in evidence.)

Q. Now, Mr. Johnson, Plaintiffs' Exhibit 90 shows, does it not, that in September of 1968 there were 270 spaces available in the minority schools. A. It shows this, yes, sir.

Q. How many of the Anglo children from the annexed areas, Mr. Johnson, were placed in those vacancies? A. (No answer.)

[593] Q. None. Isn't that right, Mr. Johnson? A. I do not recall that we have any annexations—Normally, annexations have been in the Southwest and Southeast Denver area, as I recall.

Q. Well, isn't it true, Mr. Johnson, that when you were trying to accommodate the children from annexed areas, these are Anglo children, are they not, Mr. Johnson, basically? A. Basically.

Howard L. Johnson—for Defendants—Recross

Q. Now, when you were trying to accommodate those children, how far did you bus them? A. We attempted to bus them to the nearest elementary school that had vacant spaces.

Q. Some of those bus rides were as long as ten miles, weren't they, Mr. Johnson? A. I think the longest one was from Southwest Denver to the Asbury, University Park, Steele and Cory.

Q. In response to a question from the Court, Mr. Johnson, you indicated, as I understood it, that some of the elementary schools in Southeast Denver were on double sessions, is that correct? A. Had extended days.

Q. Pardon me? A. Extended days, and double sessions; an overcrowding.

Q. What is the difference between an extended day and a double session? 【594】 A. An extended day is very often accomplished by starting the school day slightly earlier in the day and extending longer, as in contrast with actually two groups of students coming at a particular time.

Q. Now, how many of those Southeast Denver Anglo elementary schools were on extended days in— What is the appropriate time to look at this? In January, 1968, as opposed to September of 1968? A. I would say that the appropriate time would be to—I imagine that the height of this would probably be in about 1966-1967, from the standpoint of the greater number.

Q. Well, I thought you told the Court, Mr. Johnson, that when Traylor opened up and that was in January of 1968, is that right? A. That's correct.

Q. That you had Southeast Denver schools on double sessions. Now, is that or is that not the fact? A. That is an incorrect statement on my part. They were overcapacity. There were no double sessions.

Robert Gilberts—Recalled—for Defendants—Direct

Q. And there were not even any extended sessions, were there, in January of 1968? A. There were some in the kindergarten group.

Q. Where, Mr. Johnson? A. I can't state right at the moment.

Q. You said that Steele was overcrowded. **[595]** A. It was necessary to relieve Steele of further crowding because we had reached the capacity.

Q. How overcrowded was Steele, Mr. Johnson, in September of 1968? A. I don't have the figures before me but I know it was necessary to eliminate transportation into Steele, and we were able to take some of those pupils and keep them in the Southwest Denver schools.

Q. How many mobile units did you put in at Steele to relieve that overcrowding? A. There were no mobile units in that area.

Mr. Greiner: No further question, Your Honor.

Mr. Creighton: No questions.

* * * * *

Mr. Jackson: Call Dr. Robert Gilberts.

ROBERT GILBERTS, **[596]** recalled as a witness by and on behalf of defendants, having previously been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Jackson:

The Court: You have already been sworn, Doctor. Just take the witness stand.

By Mr. Jackson:

Q. Dr. Gilberts, what is your present position with the Denver Public Schools? A. I'm the Superintendent of Schools.

Robert Gilberts—Recalled—for Defendants—Direct

Q. And would you describe briefly for the Court, please, your responsibility in that position? A. My responsibility is to administer the Denver Public Schools within the general guidelines of the Board of Education's policy and within that context, to provide the best possible quality of education to all the students in the school district.

Q. How long have you been superintendent in the Denver Public Schools? A. From August 1st, 1967.

Q. And what was your employment prior to that? A. I was Superintendent of Schools in Madison, Wisconsin.

* * * * *

[597] * * *

By Mr. Jackson:

Q. Dr. Gilberts, as you heard, there is one comment on this that I placed thereon that reflects current membership in a national committee, FAASA. Would you explain to the Court and counsel what that means? A. This is a national commission from the American Association of School Administrators to look at the state of preparation of school superintendents throughout the United States and to make recommendations for changes in programs.

[598] Q. And you are presently a member of that commission? A. Yes.

Q. And what is the number of members on that commission? A. I believe there are nine members on that commission.

Q. Dr. Gilberts, how do you personally view the position of the Superintendent of Schools in Denver today? A. Well, I think that the Superintendent of Schools in any urban center today is faced with a rather major problem of looking at how one might reconstitute the entire processes of education for children in order to improve its effectiveness

Robert Gilberts—Recalled—for Defendants—Direct

and certainly a major element is that—of that is dealing with the problems of underachievement in those schools that have been referred to in this trial.

【599】 Q. I think it is important for you to advise the Court as to how you would define the word “integration” as we have heard it. A. I would accept Dr. Dodson’s definition that integration is a psychological willingness of people to accept people of all races without prejudice.

Q. Does this then form a part of your general overall view of restructuring the educational process? A. Yes, it does. I think this is extremely important in dealing with the problems in our entire society.

Q. Do you identify any particular problems in this area? A. Yes, there are many problems in this area, the problems of how one best goes about accomplishing this in a city the size of Denver or any city, for that matter. There is tremendous diversity of opinion as to how one can accomplish this end. There are those who believe the only way it can be done is through racially balancing the schools. There are others who feel that other kinds of systems and techniques can be used to provide vehicles for modifying the values and attitudes of people within the school system.

Q. Would you describe briefly some of these other systems? A. Well, I believe that within the entire process of 【600】 education there are many possibilities for doing this. We have within our school system presently several programs that are under operation as the result of the advisory committees, one being the cultural arts program, the cultural understanding being the second one, wherein youngsters are given the opportunity to look at arts and various kinds of cultural contributions of people from different backgrounds and to understand their origins and

Robert Gilberts—Recalled—for Defendants—Direct

the meaning of them and to relate one to another in some physical proximity.

I believe Dr. Dodson indicated that he felt, also, that it was necessary for a youngster—

Mr. Greiner: Your Honor, I do object to this witness summarizing what Dr. Dodson has said.

Mr. Jackson: If the Court please, I believe the witness is merely attempting to answer the question in relation to the facts of this case.

The Court: Overruled. We may proceed.

The Witness: I lost my track. I forgot where I was going at the time.

Q. You were discussing other systems for achieving this.

A. I talked about the cultural arts program and cultural understanding programs, which are examples of ways in which this can be accomplished.

Oh, and I certainly accept the fact that some kind [601] of physical proximity of youngsters in this process is extremely important as a vehicle for accomplishing these changes in attitudes and values that are so necessary in our society.

Q. You mentioned racial balance, Dr. Gilberts. How does this fit into your view of the problem? A. I do not believe that racial balance as such is necessarily the only answer or the only approach to achieving integration as I have defined it. I think there are many other ways and I think that certainly the schools are not the only institution in our society that have responsibility of achieving that end, though we do have a major role, I believe, to play in that process.

Q. Is there, in your opinion, any one approach that must

Robert Gilberts—Recalled—for Defendants—Direct

of necessity be successful? A. No, I don't believe that there is any one approach that can be successful. I think conditions are so varied in these United States that there must be a number of ways in which the solution to this problem can be undertaken. If one assumes that there is only one approach, for instance, racial balance as such, then many of our major cities are already lost. There is no possibility of changing them. And I personally or professionally am not willing to accept that as an end.

Q. After your arrival in Denver in 1967, Dr. Gilberts, [602] Resolution No. 1490 was subsequently passed by the Board of Education, was it not? A. Yes.

Q. And what was your specific responsibility under that resolution? A. Well, this resolution called upon me to present a comprehensive plan for the integration of the Denver Public Schools by September 30th, I believe it was, and there were a number of other kinds of considerations within that resolution, which were added to provide some kind of guidance in developing that plan.

Q. Subsequent to that resolution, did you prepare such a plan? A. Yes, I did.

Q. You have before you what has been marked for identification purposes as Defendants' Exhibit D. Can you identify that? A. This is the copy of the plan which was presented to the Board of Education and to the community in the early part of October.

Q. And this is the plan which you submitted to the Board in response to the Resolution 1490? A. Yes, it is.

Mr. Jackson: At this time, we would offer Defendant's Exhibit D, Your Honor.

[603] Mr. Greiner: We have no objection, Your Honor.

Robert Gilberts—Recalled—for Defendants—Direct

The Court: D is received.

(Defendants' Exhibit D was received in evidence.)

Q. Dr. Gilberts, would you describe generally the concept of your plan now received as Defendants' Exhibit D?

A. Well, in devising this plan, we looked at the overall problems of an urban center and all the kinds of systems that we thought we could identify that might contribute to the improvement of the general quality of education throughout the school system, and the major portion of this, as I indicated before, was providing for experiences that would be integrating in nature and provide for integration in the Denver Public Schools.

Basically, we took a look at the format of education in an urban center. One of the major problems, I believe, in the restructuring of education in urban centers is taking a look at the way in which the schools relate to the publics that they serve. One of the major difficulties in large school systems, it is my opinion, is the remoteness with which the school functions in the community, so we began taking a look at a way in which we could restructure the organization of our schools to enhance opportunities for integration, ways of involving the community in the operation of their schools, and at the same time restructuring the [604] physical school organization to provide better educational kinds of experiences for children. We had felt that the proximity of the school and the relationship of the school as one of the basic institutions in the community to those people it serves is an extremely important one.

There is a very interesting article that came out after

Robert Gilberts—Recalled—for Defendants—Direct

this plan had been developed, written by Dr. Dioxydis, who is an internationally-known and renowned city planner, in the mid-December, 1968, issue of the Saturday Evening Review. The basic thesis of this article was that, since the beginning of time, man has up until recently enhanced the opportunities of man to relate to additional institutions and to additional individuals, but only recently have we begun removing some of the more immediate kind of institutional relationships which are important in an urban setting and life for all of us. Therefore, we looked at ways in which we could devise an organizational structure, not as the result of this article, but using the same general concept, which would provide for expanding opportunities for children to relate in different ways to the education institution and at the same time, as indicated, provide for integrating experiences within our school system.

Within this kind of structure, we provided for the reorganization of schools to press out the decision making responsibility further from the superintendent's office, to [605] allow the teachers, principals and community members more effectively to influence the kinds of decisions that were made in determining educational programs, and hopefully through that to provide a closer sense of relationship between community and staff and students with the school itself. This restructuring also involved the reorganization of kinds of services that might be provided through the school.

We felt, for example, that many of the community agencies presently operating independently might very well be coordinated through this kind of an organizational structure and that many of the services that presently are operating quite independently and sometimes causing many

Robert Gilberts—Recalled—for Defendants—Direct

gaps in services that are necessary to people and sometimes overlap, that through this organizational structure we might effect that.

We also provided within that organizational structure, keeping consistent with what we felt was important in the reorganization, such as proximity, geography, number of schools, size, et cetera provided opportunities for planning new kinds of educational opportunities within these structures which would enhance general education as well as trying to get at the integrational opportunities that I know are important.

Q. When you speak of the integrational opportunities, are you referring now to the opportunities as consistent with [606] the definition which you have just given this morning? A. Yes, I am.

Q. So the plan then is really a proposal for quality education as opposed to any finite, refined plan for specific movement? A. Yes, the entire plan was a conceptual type of plan and in the period of time in which we had to produce this, which I believe I indicated was about sixty working days during the summer months when a good many staff members were not available to us, and this is always a difficult time to put something like this together, we did not spell out all of the details, all of the concepts that are included within it, and there is a great deal of work, for instance, in refining the concept of the complex as a functional unit within the school system, as well as many other elements within the plan.

Q. Directing your attention, Dr. Gilberts, to Page 32 of Exhibit D, what general heading is contained on this particular section? A. "The Elementary Model School Complex."

Q. And would you explain, please, generally, what that

Robert Gilberts—Recalled—for Defendants—Direct

concept is? A. Well, I think that if one would refer to the schematic just after Page 35, that it would describe this. It really is a grouping of schools or a consortium or [607] whatever you would like to call it within which we would provide a special supporting educational center for special educational opportunities. In addition to this, these schools would become a part of administrative units so that educational programs could be planned both within the schools and between the schools and could be coordinated at the local level with a complex structure. We had expected within this complex to develop many kinds of supporting and exemplary educational programs that we felt could lend support to all the concepts we were talking about, integration certainly being one of them, but also the general improvement of educational experience for the youngsters within these complexes.

We saw the opportunity here within the organizational structure to begin involving in an advisory way, more effectively in an advisory way, I should say, the members of the community that are affected within these complexes and to leave the complex director a good deal of latitude in terms of decision making as it related to programs within these schools. Obviously, the superintendent's office and supporting staff would make a contribution to both planning and supervision and evaluation. Within this center we have identified a number of items that we thought might be relevant. Now, as we get into our specific planning, we may find others more important. We may find that we want [608] to change the configuration of this as we look at it. I assume there will be some differences between complexes around the city in terms of needs of those areas.

Robert Gilberts—Recalled—for Defendants—Direct

Q. Did you in your planning tentatively divide the elementary schools of the city into various groupings or complexes? A. Yes, we did.

Q. Directing your attention to the map which appears between Pages 107 and 108 of Exhibit D, Dr. Gilberts, can you identify that portion of the exhibit for us? A. Yes, these were the tentative identifications of complexes throughout the city, grouping schools in the best way we felt we could to accomplish all of the purposes that we had set forth as being important.

The Court: What exhibit is this?

Mr. Jackson: Exhibit D, Your Honor.

The Court: Still Exhibit D?

Mr. Jackson: Yes.

Q. Now, Dr. Gilberts, directing your attention to Plaintiffs' Exhibit 6, and in particular to Resolution No. 1533, which appears at the back of that exhibit, would you please read for the Court, Point 1 of that resolution? A. "Superintendent is directed to continue the development of plans in accordance with the concept of the elementary school complex as outlined in his report entitled [609] 'Planning Quality Education' heretofore received by this Board of Education and to initiate voluntary implementation of such plans commencing with the opening of schools in September of 1969 for the following groups of elementary schools of this district to be known as Complex 1 and 2."

Under Complex 1 is a list of schools that were included in it and under Complex 2 the same.

[610] Q. Are those groupings of schools as contained in Resolution 1533 the same as are shown on the maps which we have previously alluded to in the Exhibit D occurring between Pages 107 and 108? A. Yes.

Robert Gilberts—Recalled—for Defendants—Direct

Q. What is the specific purpose of this particular complex arrangement as shown here in Point 1, Dr. Gilberts?

A. Well, the purpose is to begin the more detailed planning of the organization and operation of these complexes. It is a concept that needs a great deal of development and we felt that these two complexes would provide us a basis for organization and planning and testing.

Q. Is the Point 1 in Resolution 1533 consistent with your overall planning of quality education? A. Yes, it is.

Q. And will this involve the community in any way? A. Yes, it will.

Q. Generally, in what respect will the community itself become involved in this—in these complexes? A. We intend to involve the community in all the organizational elements, that being a part of all—first of all, in the planning process. One of the parts of the planning process is to identify an effective way of involving the community in a continuing basis in the terms of general operations of these complexes and the schools within them.

[611] Q. Directing your attention, Dr. Gilberts, to Point 4 of Resolution 1533, would you read that for us, please? A. “For the purpose of improving education and furthering the integration of schools included in elementary school complex 5, as described in the report ‘Planning Quality Education,’ such schools shall be grouped for cooperative planning with the elementary schools of other elementary school complexes as follows, or with such other or different schools as the superintendent may designate from time to time, utilizing the criteria of ratio of school and group memberships, racial composition of memberships, potential for promoting educational understanding, and utilization of school facilities; that such cooperative planning shall be accomplished by the local schools included within such

Robert Gilberts—Recalled—for Defendants—Direct

groupings through planning committees composed of school staff members, P-TA representatives, parents and other citizens in the school community; that such planning committees shall be selected and shall operate under rules and regulations prescribed by the superintendent; that any cooperative plans so developed shall be mutually agreed upon by such committees prior to the implementation thereof; that implementation of such cooperative plans may be undertaken by the superintendent within the limitations of law and the policies of this Board of Education; and that participation by individual families shall be optional.”

【612】 And then it lists the schools in Complex 5 and those that they are grouped with.

Q. And the listing of schools in Complex 5—it’s the same as that shown on our map, again, in Exhibit D? A. I believe so. I’m not—yes, I believe it is.

Q. Now, was this matter of pairing specifically proposed in your overall plan for quality education? A. No, it was not. This particular proposal came out of the discussions that were held with the members of the community and Board of Education. It was something that we could embark upon immediately. In my plan I had recommended that the schools in Area 5 be operated at the pre-school, kindergarten, and primary levels with the students in the fourth, fifth, sixth, seventh, eighth and ninth grades transported out to other schools within the city. Manual High School in that area at the same time being developed as a special magna type school, which we are proceeding with at the present moment. But this was not something that could be accomplished immediately. It would require some additional facilities rather than waiting until we had

Robert Gilberts—Recalled—for Defendants—Direct

money through a bond issue to accomplish it, this was something that we could do right now.

Q. Is the objective under this pairing concept the same as under the complex concept as contained in Point I of this resolution? **[613]** A. No, not exactly. The planning here will be done jointly with the schools involved in this. However, it will be on a school-to-school basis rather than on an organized intermediate kind of administrative unit.

Q. Is the pairing concept as contained in Item 4 here consistent with your overall plan? A. Yes.

Q. Dr. Gilberts, generally speaking, are there any other educational programs within your plan, Exhibit D, which provide for enhanced educational opportunities in inter-racial communication? A. Yes, there are quite a number. We have talked in this plan about the need for changing curriculum to provide for general application of knowledge and information with respect to minorities in our culture. We have had proposed in this a ballerette outdoor education center which we hope to have space for approximately a thousand pupils at a time which will be, we hope, in the very near future; a live-in kind of educational setting. We are now in the process of working on that. We have the land and are working in the development of it, both program and facilities. We have proposed an expansion of cultural arts kind of program within the context of this plan. At the junior high school level we talked also about a complex arrangement very much like we have at the elementary level. The senior high school level **[614]**—we have made a recommendation that there be a secondary school complex dealing with specialized educational offerings both general and vocational and technical to which students from all the senior high schools throughout the entire city—to which the students from all the senior

Robert Gilberts—Recalled—for Defendants—Direct

high schools throughout the city could go. I think there are probably a number of other minor elements in there, too. There are many, many ideas.

Q. Now, Dr. Gilberts, directing your attention once again to Resolution 1533, I'd like to direct your attention to Paragraph No. 5 in that resolution and ask you if you would read that to the Court, please. A. "The present practices of transporting pupils from the attendance areas of schools of this district deemed to be overcrowded in other schools of this district, whenever necessary to relieve such overcrowding, be continued."

Q. Would you explain the purpose of this to the Court, please? A. Well, the purpose of this is to allow us the latitude to move youngsters from facilities that are overcrowded to other facilities where we have space. And it is our intention to pursue this particular policy throughout the city. I might throw in here an example as Mr. Johnson was talking about the readjustment of space throughout the central part of the city. Before this plan was put out, [615] another reason was to provide spaces in more schools to be utilized for both voluntary and for the relief of overcrowded schools. However, the Resolution 1490 intervened before any such plan could be undertaken.

Q. The determination as to when a school is overcrowded within the context of this paragraph, is that based on the strict formula approach that we have heard? A. No, I believe it's been discussed also as a matter of looking at the kind of program that we feel is necessary for that school and then judging the amount of space, classroom space that is necessary for pupils to implement that program.

Q. Now, Dr. Gilberts, directing your attention for a moment to Defendants' Exhibit P, which is before you,

Robert Gilberts—Recalled—for Defendants—Direct

can you identify that document? A. Yes, it's the Board minutes of April 25, 1968.

Mr. Jackson: At this time, Your Honor, we'd like to move the admission of Defendants' Exhibit P.

Mr. Greiner: No objection, Your Honor.

The Court: P will be received.

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

Q. Dr. Gilberts, directing your attention to Page 5 of those minutes at the bottom of the page, would you read what appears there to the Court, please? A. The last paragraph?

【616】 Q. Yes. A. "Superintendent Gilberts referred to Resolution No. 1486, adopted on January 18, 1968, by the Board which authorized funds for the purpose of providing accommodations for the junior high school pupils of the district and for relieving crowded conditions at Smiley Junior High School. He read from the resolution as follows:

'Now, therefore, be it resolved by this Board of Education that upon the payment of all amounts and obligations incurred or to be incurred by this school district in connection with site acquisition, construction and equipping of Jessie M. Hamilton Junior High School, not less than 80 percent of the capital reserve fund of this school district and such amounts as may be recorded therein from time to time shall next be expended for the provision of necessary facilities for the specific purpose of providing relief from the excessive pupil population of Smiley Junior High School and for the general purpose of assisting in the accommodation of junior high school pupils of the school

Robert Gilberts—Recalled—for Defendants—Direct

district. Such facilities will be located in a manner so as not to contribute to the further increase of de facto segregation.' ”

Q. Did you make specific recommendations to the Board based upon that resolution? A. Yes, I did.

Q. Would you explain to us what those were, please? **[617]** A. Well, I recommended that there be an initial twelve classrooms added to Jessie M. Hamilton immediately to provide relief for Smiley in the second semester; also to provide some relief for Hill Junior High School. I also recommended that a new high school be built at East Florida and South Quebec after which is now named Place Junior High School, which would provide further space for the relief of junior high schools in the area and the opening of spaces for the further relief of Smiley as a junior high school and also possibly Cole.

Q. Now, were those recommendations acted upon by the Board? A. Yes, they were.

Q. And what were the results? A. It was approved.

Q. Now, was any actual busing of students from Smiley accomplished when Hamilton opened? A. Yes, it was.

Q. And do you recall the number? A. I believe that all told from the Smiley area there was somewhere between 250 and 300 pupils transported to both Jessie M. Hamilton and Thomas Jefferson High Schools.

Q. The Place Junior High School, I believe you referred to as the other high school at Florida and Quebec? A. Yes.

[618] Q. That is in the construction process, is that right? A. It's in the bidding process right now. We hope to have it opened during the 1970 school year sometime.

Q. Will that provide any additional space for busing further students from Smiley? A. Yes.

Q. Dr. Gilberts, referring you back once again to Para-

Robert Gilberts—Recalled—for Defendants—Direct

graph 5 of Resolution 1533, is there any other additional busing taking place at this time for the purposes of relieving the overcrowded conditions of the schools? A. We're moving students from Stedman Elementary School, I believe—that's been mentioned. We are moving students from Phillips Elementary School. Students are being moved on a voluntary basis from the Smiley Elementary School.

Q. And where are these students being transported to? Which area of the city? A. To the south, general south. And south central area.

Q. Dr. Gilberts, directing your attention to Paragraph 6 of Resolution 1533, would you read that for us, please? A. "The superintendent is directed to proceed with plans to reduce the pupil population of Stedman Elementary School to the extent that the four mobile units now located at that school may be used where needed in other schools of this district by soliciting approximately 120 voluntary pupil transfers from Stedman School to other elementary [619] schools of this district having space available and with transportation provided by the district."

Q. Can that same process be utilized to relieve other schools where there are mobile units? A. Yes, it can.

Q. Is it your intent to proceed in that direction? A. Certainly, as we can and as space is available and as one considers the overall space requirement needs for the entire city. Before a great deal can be done in this area it is going to be necessary that we have funds for additional facilities.

Q. Referring again to Exhibit D, your plan for planning quality education, do you have figures within that plan relating to the capital construction cost to fully implement that plan? A. We had an estimate. We tried to quantify

Robert Gilberts—Recalled—for Defendants—Cross

it as best we could within that particular frame of what fiscal dollar requirements would be necessary to implement this plan so that people would have some measurement of that.

Q. Can you find those figures? A. They're in the back here. I believe the total is on Page 99—where we have all of the phases included and throughout the entire plan we estimated at that time approximately \$126,900—excuse me. \$126,910,000. And this was an estimate.

【620】 Q. Generally speaking, Dr. Gilberts, is Resolution 1533 consistent with your overall plan of achieving quality education? A. Yes.

Mr. Jackson: No further questions.

Cross-Examination by Mr. Greiner:

Q. Dr. Gilberts, under 1520, 1524 and 1531, did you as superintendent prepare some statistics as to how many children would receive an integrated education under those resolutions? A. Yes, we did.

Q. Do you recall the total number—what the total number was? A. I'm sorry, I don't without looking at the record.

Q. These were published in the reviews, were they not? A. I believe so.

Q. I am handing you what's been marked for identification as Plaintiffs' Exhibit 10 and 11 and ask you, first, with respect to 10 if you can identify that for the Court, please? A. Yes, this is a publication of the school system summarizing the secondary elements of the plan.

Q. And then Exhibit 11, as I understand it, summarizes the elements of the plan in the elementary schools, is that correct? 【621】 A. Yes.

Robert Gilberts—Recalled—for Defendants—Cross

Q. And these exhibits were prepared by the school district? A. Yes.

Q. And the review is designated the official publication of the Denver Public Schools? A. Yes.

Mr. Greiner: Your Honor, we offer Plaintiffs' Exhibit 10 and 11.

Mr. Jackson: Your Honor, according to my records, they have already been received.

【622】 Mr. Greiner: Now, which exhibit—pardon me, is that correct?

The Court: That is correct.

The Clerk: Yes.

Mr. Greiner: Excuse me.

Q. Which exhibit has the data to which I referred on the total number of students who would be integrated under these resolutions? A. I thought that Exhibit 11 had it, but I don't—

The Court: Which one was that?

A. (Continuing) Oh, yes, here it is on the front page.

Q. Which exhibit do you have reference to? A. Exhibit 11.

Q. And what is stated there, please? A. It says, "This plan will provide integration for 10,102 elementary pupils in 22 schools by the reassignment of 2,001 additional pupils."

Q. Now, have you developed a similar statistic, Dr. Gilberts, for Resolution 1533? A. No, I have not.

Q. Do you have any idea what that statistic would look like? A. It would be impossible to even estimate that at this time until we have these programs in operation.

Robert Gilberts—Recalled—for Defendants—Cross

【623】 Q. Is it safe to assume, Dr. Gilberts, that it's going to be substantially less in September of '69? A. Yes, I think—

Q. Than it would have been under these resolutions? A. On a short term basis I think it will be less. On the long term, it is another question.

Q. You discussed your view of what integration means, Dr. Gilberts. At what point in your mind does a school become segregated? A. Well, I don't believe that I have any particular figure in which it becomes segregated. I have defined integration as a social or psychological process. Integration—or segregation, I suppose, might be the opposite of that. I am not sure. That is, a psychological feeling of the opposite of an integrated feeling, but I don't have any particular number at which I would attach a segregated school.

Q. Well, let's take a look at some of the target schools under the rescinded resolutions. Is Barrett a segregated school? A. Barrett has about 90 some percent black youngsters in it, I believe.

Q. That would just about meet anybody's definition of a segregated school, wouldn't it, Dr. Gilberts? A. I would think so.

Q. What about Smiley? It is what? Seventy-five percent **【624】** black? A. I believe that is correct.

Q. What percent Hispano, do you recall? A. About 12 is my recollection; I could be wrong.

Q. About what percent Anglo is Smiley? A. Seven or eight percent.

Q. Pardon? A. Seven or eight percent. This is an estimate on my part. I am not sure. I would have to see the figures.

Q. It has over a 90-percent minority population? A. True.

Robert Gilberts—Recalled—for Defendants—Cross

Q. Is that a segregated school? A. I assume it would be by most people's definition.

Q. Now, as I understand the complex program as illustrated in Defendants' Exhibit D, which is the Gilberts plan, isn't it true that one of the defined complexes would have a predominantly minority composition?

Do you have that in front of you? Please refer to Page 108 of Exhibit D. I have specific reference to Area 5. A. Would it have a predominantly minority population?

Q. Yes, Dr. Gilberts. A. My recommendation for Area 5 was the transportation of pupils from that area, as I indicated, in the intermediate and junior high school grades, the development of a magnet school at Manual, and then I had also planned to make [625] attractive the pre-school—primary program, so I would assume that, if I could have accomplished those ends, it would not have been a segregated area. It would have been an integrated area.

Q. Well, look at the two extreme right-hand columns on Page 108. Doesn't that purport to show the proposed complex population, the percent minority and percent Anglo?

A. As it stands, without having made the modifications I have talked about, because this would not be the percentage if we could do those.

Q. Now, without modification, the racial composition of Area 5 would be 97 percent minority and approximately two percent Anglo? A. I believe that's correct.

The Court: Wait a minute, when you speak of the transportation, you mean that contemplated in these resolutions, 1520, 24 and 31?

The Witness: No, sir, in the plan. In the plan I proposed that Area 5 would have all students in the intermediate and junior high school grades trans-

Robert Gilberts—Recalled—for Defendants—Cross

ported out of Area 5 into other schools, Southeast and Southwest Denver primarily.

Mr. Greiner: Further along that regard, Your Honor, there is an asterisk of some type, isn't there, next to the two-percent Anglo for Area 5, Dr. Gilberts?

[626] The Court: Yes.

The Witness: Yes.

Q. And if you will refer down, what does that asterisk designate? A. "Transportation will be required to maintain integration."

Q. So, you're going to have some mandatory busing? A. This is what I proposed, yes.

Q. Not voluntary busing? A. No.

The Court: This comports with 1533?

The Witness: No, sir, it does not. The element for Area 5 because of necessity here of having additional space to implement this was the pairing of schools in Area 5 with groups of schools southeast and southwest, and that's something we can begin on next fall, but in the long range, if the Board will approve this plan that I have, it will provide for the movement of those youngsters in this area out of those schools to other schools where we have space.

The Court: Essentially 1531 disapproves the use of busing to bring about segregation, doesn't it?

The Witness: To bring about integration?

The Court: Integration.

The Witness: It requires that those programs that are identified with it be voluntary, yes.

[627] The Court: So, this would require changing policy?

Robert Gilberts—Recalled—for Defendants—Cross

The Witness: Yes, it would, if this were to be implemented.

The Court: If you were to carry out this particular plan, I take it?

The Witness: Yes, it would.

Q. Dr. Gilberts, do you have Plaintiffs' Exhibit 6A in front of you? That's Resolution 1533. A. Yes, sir.

Q. Would you refer to Paragraph 5 on Page 4 of that exhibit, please? A. Paragraph 5? Yes.

Q. That paragraph talks about transportation out to relieve overcrowding? A. Yes.

Q. And I take it that, under Paragraph 5, the transportation out of Phillips would be continued? A. Yes.

Q. Is that today or in September was that Phillips busing out voluntary or mandatory? A. It is mandatory.

Q. And is there some busing out at Park Hill? A. I don't believe there is. I think that was a misstatement yesterday.

Q. I am sorry. Is there any busing out at Barrett? [628] A. Not on a compulsory basis.

Q. There is some busing out at Stedman, is there not? A. Yes.

Q. And that's also on a mandatory basis? A. Yes.

Q. There is no busing out at Smith—or, is there? A. There is, but that's on a voluntary basis.

Q. Well, now, Paragraph 5 that I drew your attention to, that talks about mandatory busing out to relieve overcrowding, doesn't it? A. Yes.

Q. Isn't that the purpose of that? A. Right.

Q. How does that square with Paragraph 6 on the next page? Why is the further busing out to relieve overcrowding at Stedman going to be voluntary rather than manda-

Robert Gilberts—Recalled—for Defendants—Cross

tory? A. I imagine that it was stated that way as a matter of Board policy and in their wisdom they felt this is what should be done, and my job is to implement it.

Q. Doesn't the Board have a policy, 1222C, I believe it is—or, pardon me, 1226A—a policy that's been in existence since 1966, I believe,— A. In terms of the transportation to relieve overcrowding?

Q. Yes. **[629]** A. I believe so.

Q. And that policy calls for mandatory busing, does it not, Dr. Gilberts, not voluntary? A. I do not believe it is stated in quite those terms, but it allows for the identification of youngsters to relieve overcrowding for transportation.

Q. Now, under the complexes proposed in the Gilberts Plan, Defendants' Exhibit D, at what point in a child's school life does he begin to participate in the complex program? Isn't it at grade four? A. Not necessarily. This has not been identified as yet and will be part of the final process.

[630] Q. You're telling me it's going to be earlier? A. It might be.

Q. You don't know yet? A. No, the planning has not been done so I don't know.

Q. Well, weren't these two complexes the subject of Resolution 1531, Dr. Gilbert? A. Yes.

Q. And that was passed in April of this year? A. Yes.

Q. And your planning hasn't progressed very far since then? A. No. Educational planning is rather complex and involves a lot of people and a lot of time.

Q. Now this pairing concept that you had reference to that is contained in 1533, what sort of opportunities for integration, Dr. Gilbert, are implicit or inherent in that pairing plan? A. Here again there are many kinds of

Robert Gilberts—Recalled—for Defendants—Cross

programs, I believe, that can be developed within these schools. We are here involved on the—with the type involved; the teachers and principals and parents of various school areas to identify programs that are educationally sound and are acceptable within these communities so we can get maximum participation in them. Again, these are in the process of [631] being considered by schools; some of them have already done some planning. I couldn't enumerate what all their ideas have been up to this particular point but I am sure there will be many kinds of approaches taken.

Q. So, again, the plans under the pairing are today not very well defined? A. Well, I couldn't say for sure. They may be very well defined in some schools but I couldn't tell you what they are in each of the schools.

Q. Well, now, does pairing include the concept of, say, fourth graders from School A going to fourth grade in School B? A. It could conceivably.

Q. Does it? A. It could, I say.

Q. Are any plans such as that on the drawing board? A. As indicated, I don't know what the specific plans are in each of these schools; therefore I couldn't answer that.

Q. Now that would require some transportation? A. Yes.

Q. And yet participation in the pairing is made optional; is that right? A. Yes, sir. This is the same way in which it is handled in the cultural program, yet, we have about a 99.9 [632] percent participation in it.

Q. Pardon? A. In the cultural arts program where it is left to be optional with parents, here, we have an extremely high percentage of participation in those offered the opportunity. My figure of 99.9 percent is a personal

Robert Gilberts—Recalled—for Defendants—Cross

estimate. I don't have the exact figures on that but I know it should be very high.

Q. It is very clear, though, that, for example, if there is to be a mixing of a particular class, say the fourth grade, it shall be optional? That's the same way 1533 reads, isn't it? A. That's right.

Q. Well, now, when you testified earlier in this case, Dr. Gilbert, you told me what the concept was behind Resolutions 1520, 1524 and 1531. As I understood it it was to achieve some stability in the schools of northeast Denver beginning in the elementary schools and culminating in East High School which is now a transitional school. A. Yes, this was our major objective.

Q. And very clearly I think you recognized, did you not, that it wouldn't do much good to change the racial composition at East High if you didn't also stabilize the composition at Smiley? A. Well, these were all interrelated and any effect [633] in one would have a continuing effect in the higher grades.

Q. And likewise it wouldn't do much good to change the racial composition at Smiley unless you stabilized the racial composition of the elementary schools that were feeding into Smiley, is that correct? A. Yes; as I say, they are all interrelated.

Q. Well, Dr. Gilberts, do you honestly believe that 1533 is going to be—going to accomplish that objective? A. I think I also indicated in the testimony that it's a little early to tell whether or not this kind of an approach will really attract the kind of participation that we feel will be necessary to do this. I believe that in the overall context of the approach that we indicated in this general plan, that the involvement of people who are going to be a part of these plans is extremely important and—that is, as a part of

Robert Gilberts—Recalled—for Defendants—Cross

changing attitudes of the community, a certain amount here of involvement and salesmanship in terms of the schools' part is going to be necessary.

I believe the participation of people who do this willingly will be a lot more productive in terms of definition of integration than those who are put into situations who feel personally they are not acceptable to them.

【634】 Q. Dr. Gilberts, you are telling me that mandatory integration is bad? A. No, I'm not saying that. I am saying that the other approach, I think, has some real merits and something that needs to be tested, and we are in that process.

Q. That's the only thing you are testing currently, isn't it? As between mandatory and voluntary? A. Well, actually a good number of ideas in this plan are not being tested currently because we have not proceeded with planning far enough to do that; have not gotten full approval from the Board for the entire plan.

Q. That you're not telling me, are you, Dr. Gilberts, that mandatory integration achieved by boundary changes, achieved by cross-busing—you're not telling me that that doesn't achieve the purpose that you set out to achieve in the three rescinded resolutions, are you? A. I did indicate in my testimony that we have some indication that those kinds of changes would stabilize the community. But, whether they will or not, is something yet to be determined.

The Court: Well, this is a secondary approach to mandatory busing, anyhow, isn't it?

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

The Court: I suppose that these resolutions, the ones in suit here, were the primary policy provisions **【635】** with respect to attempted integration of these

Robert Gilberts—Recalled—for Defendants—Cross

northeast Denver area schools?

The Witness: In that particular area, yes, sir.

The Court: Now, when those are wiped out, why, you have a second approach. But, it also involves mandatory busing.

The Witness: Some of it does, yes.

The Court: And it couldn't succeed, I don't suppose, without it?

The Witness: Well, sir, I think that still remains to be seen. I have the feeling that if we can develop the kind of program that I think we can, develop the kind of community system of communication that will be necessary, I believe that we can promote a good deal of integration.

The Court: There will be no interracial relationships, will there?

The Witness: Yes, there will be.

The Court: Where will they come from?

The Witness: Because I think in the programs we are talking about, the example given by the attorney here is one that could occur, where schools, grades, may exchange within these schools for differing periods of time. There may be other kinds of educational experiences, [636] field trips, et cetera, that may provide that kind of basis as well. It will take a shorter-term kind of experience.

The Court: But this is all on a voluntary basis.

The Witness: Yes, so far as—

The Court: This would be another variation of this regional approach of yours; on a voluntary basis, communication.

The Witness: I suppose in some sense—although, this is a quite different kind of concept in terms of

Robert Gilberts—Recalled—for Defendants—Cross

the operation of the complexes in this pairing of area 5 in the southeast and southwest schools.

The Court: We will take a short recess.

(Whereupon, the hearing recessed at 10:52 a.m.)

[637] (The court reconvened at 11:10 o'clock a.m.)

Mr. Greiner: If it please the Court.

By Mr. Greiner:

Q. Dr. Gilberts, as I understand Resolution 1533, does it provide for the desegregation of any school? A. If the voluntary enrollment plans work as we hope, it could provide for that. There is more specific provision for the special demonstration program at the Hallett School, which we hope to have a major effect upon the members of minority youngsters in that particular school.

Q. But the VOE is voluntary, is it not? A. Yes.

Q. And the Hallett program is to be voluntary? A. Yes, it is.

Q. So, there is no mandatory desegregation under 1533?

A. Except—

Q. You understand what I mean by desegregation? A. Now, will you define it for me?

Q. Under 1533, is there any mandatory program whereby any of these schools in northeast Denver which are now predominantly minority are going to change to predominantly Anglo schools? A. No, there is no such mandatory requirement.

Q. Well, aside from the busing out aspect for the **[638]** purpose of relieving overcrowding, under 1520, 1524 and 1531, approximately how many students were to be mandatorily bused? You might refer to Plaintiffs' Exhibits 10 and 11.

Robert Gilberts—Recalled—for Defendants—Cross

The Court: He said 2,000 more than are presently being bused at one time.

Mr. Greiner: Yes, I would like to also leave the busing out for overcrowding from that figure, Your Honor, is my purpose, if it's possible.

A. I don't believe that is possible, but the number, as I recall, was additionally approximately 2,000 pupils being bused.

The Court: About 12,000 altogether.

The Witness: Being bused in the total school system, approximately.

Q. That's 12,000 out of what 95,000? A. Approximately.

Q. Now, as I understand it, under Resolutions 1520, 1524 and 1531, the new—

The Court: Do you have 1533 before you there, Dr. Gilberts?

The Witness: Yes. Would you like it?

The Court: If you please.

The Witness: It is in the back of that.

Mr. Greiner: I think we have it as a separate exhibit.

【639】 The Court: I am sure you have. I think it is one of the earlier numbered exhibits, and I undoubtedly have it noted.

Mr. Greiner: Yes, it is Exhibit 6A. Did the Court have a question?

The Court: No, not right now. Thank you.

Q. Dr. Gilberts, as I understand it, under 1520, 1524 and 1531, the object or the subject of this mandatory bus-

Robert Gilberts—Recalled—for Defendants—Cross

ing program would have been both Anglos and Negroes, is that not correct? A. That would have been both Anglos and Negroes transported, yes.

Q. This is what is known colloquially as a cross-busing program? A. I am sorry, I do not believe I have seen a good definition of cross-busing. I wouldn't classify it as that.

Q. Pardon? A. I wouldn't classify it necessarily as cross-busing.

Q. Let's not get hung up on a term. I take it there were white students sent into black schools. A. Yes, schools that were formerly black, predominantly Anglo when the transition was made.

Q. That's how they got predominantly Anglo, because [640] you were busing Black into them? A. Right.

Q. At the same time busing blacks out of them? A. True, but not to the same schools.

Q. In other words, it wasn't a totally mutual exchange from school to school. A. Right.

Q. Now, on your 1531, as I understand it, Dr. Gilberts, aside again from busing to relieve overcrowding, there is no mandatory busing, is there? A. No.

Q. There are no Anglos being bused into white schools. Anglos being bused into black schools? A. On a mandatory basis?

Q. Right. A. No.

Q. So, if there is to be any reduction, for example, if Barrett is to go from a predominantly black school to a predominantly Anglo school as was contemplated under 1531, that's all going to be done voluntarily? A. Yes.

Q. And is it also true, Dr. Gilberts, calling your attention now to the busing to relieve overcrowding, the busing to relieve overcrowding under 1533, is that essentially the

Robert Gilberts—Recalled—for Defendants—Cross

same as it was under 1531? **[641]** A. Yes, I believe so.

Q. And that's what I would call one-way busing. Just black out; is that correct? A. We have that kind of busing, of course, in other parts of the city, where we have to transport youngsters for other requirements, too.

Q. That doesn't have anything to do with 1533? A. Yes, it does, because that's a general provision that we will still utilize that policy, not just in that area but other areas of the city, too, I assume.

Q. You mentioned the cultural arts program, Dr. Gilberts. A. Yes.

Q. Now, as I understand it, would you tell the Court please how many days a week a student participates in the cultural arts program? A. I am sorry, I can't recall just exactly what the schedule is on that.

Q. Well, I hand you what has been marked as Defendants' Exhibit F. That is the description, is it not, of the cultural arts program? A. Yes.

Q. Does it say for how many days a week a student is to participate? A. Yes.

[642] Q. How many days a week is it? A. Two one-half days a week for one term.

Q. One term? A. One semester.

Q. And is transportation provided by the District? A. Yes.

Q. Where do they hold these cultural arts programs? A. We are presently holding them at two locations. The Gilpin Elementary School is one.

Q. That's up here in the core area, is it? A. It is on the west side slightly there.

Q. Right here? A. Yes.

Q. So it is north central in the core area. All right. One at Gilpin. Where is the other one? A. I am sorry,

Robert Gilberts—Recalled—for Defendants—Redirect

it has slipped my mind. I can't recall. I don't see it on these.

Q. This program lasts for a semester, is that correct?

A. Yes.

Q. And it involves only students in the sixth grade, that's also correct, is it not? A. Yes, so far.

Q. And it is on a voluntary basis? A. Yes.

【643】 Q. And you have got a 99 percent participation in that program, is that right? A. Off the top of my head, estimate.

Q. Well, approximately? A. Approximately.

Q. And you think that is similar to what I was talking about in mixing grades under pairing? A. No, I said that it was a program that can contribute to the definition of the integration that Dr. Dodson used and I used.

Mr. Greiner: I have no further questions.

【643-A】 *Redirect Examination by Mr. Jackson:*

Q. Dr. Gilberts, there was a question as to the racial composition at Smiley which was raised. I'd like to direct your attention once again to Plaintiffs' Exhibit 10, the bottom of Page 2—

The Court: I read that. I think the numbers are less than indicated. Is that what you're going to bring out?

Mr. Jackson: No, Your Honor. As I understood it there was some question as to whether it was 90 percent Negro or—

The Court: Seventy-five was the testimony. But it's seventy-one, I think, or sixty-eight.

Mr. Jackson: Sixty-seven; 27 percent Anglo and—

Robert Gilberts—Recalled—for Defendants—Redirect

Well, so long as the Court understands, there is no need to—

The Court: I think I got that from the document here.

Mr. Jackson: Yes, I was referring specifically, Your Honor to Dr. Gilberts' testimony here.

The Court: All right.

Mr. Jackson: I have nothing further.

The Court: I get the feeling from what you have said that you're not convinced that integration is essential to quality education or alleviating any kind of a problem?

【644】 The Witness: No, I have not said that, Your Honor.

The Court: You think there are substitute measures that are just as good.

The Witness: I think there are many ways of going about what I have defined and what Dr. Dodson defined as integration. I think, certainly, this matter of physical presence, as he indicated, and as I have talked about, too, can be an extremely important part of that, but I don't believe there is any particular form in which that kind of presence has to exist.

The Court: Now you're talking about community integration?

The Witness: No, I'm talking about school integration.

The Court: Well, I thought that you endorsed a program which would not call for any pupil integration except as it can be accomplished on some voluntary basis.

The Witness: No, sir. My program that I en-

Robert Gilberts—Recalled—for Defendants—Redirect

dorsed involved, of course, the subject at hand here today, together with a number of other kinds of systems that I wanted to test to see whether or not we could accomplish those ends.

The Court: I had thought you approved, if necessary, a voluntary busing program even in connection with this regional matter as a part of it?

The Witness: Yes, sir, we did—

[645] Q. So you don't think then pupil integration is really an important and essential aspect?

The Witness: I'm not sure that it is absolutely an essential. At least, as one looks at it from the point of view of racial balance. I indicated in my earlier testimony that there is no evidence that integration per se has an effect, let's say, upon the achievements of youngsters. I believe that integration is important in the process of changing the attitudes and values of these kinds of things which are essential today in our society, but I do not believe that that particular change or that objection has to be accomplished, let's say, through racial balance, which has been substituted here extensively. I think there are other ways of doing it. I think other ways of modifying attitudes—there has always been this very heated debate across the entire country. In addition to that, I think some rather substantive changes are necessary in the change of process of education. Dr. Dodson referred to this as well. I don't agree with the factors he wrote out as cliches are unimportant in the process of education. They are important. I do tend to agree that we have used them as excuses

Robert Gilberts—Recalled—for Defendants—Redirect

more than we should. And that we get into the whole area of modifying the processes of education there is some extremely important substantive changes that are necessary that relate both to the children and the community.

[646] And unfortunately we in education have a great deal to learn along these lines and I don't believe we can put all our eggs in one basket for solutions. We have got to try as many different approaches to this problem as we can and this is why we have such a range in this particular proposal of approaches to this.

The Court: Well, you do not predict that there will be anything in the nature of racial violence as a result of voluntary busing?

The Witness: No, sir, not in the definition that was given in the earlier parts of the trial, the approximation of percentages throughout all the schools—

The Court: I get the impression also that the community won't accept this voluntary busing unless it is in an atmosphere of a balanced school.

The Witness: I think, sir, that that is definitely a factor at the present time. I think there are a great number of attitudes that need to be changed and I think that the schools in their particular domain have a great deal of responsibility in formulating approaches that will begin helping modify those.

The Court: So this is an obstacle right at the outset, I suppose.

The Witness: Yes, sir, I think it is.

The Court: The white community won't send a **[647]** minority of white students into a Negro school, of which the population is—

Robert Gilberts—Recalled—for Defendants—Redirect

The Witness: I think that's true. However, I wonder if, for example in this area of pairing schools in the north central with southwestern and south-eastern schools, if we can get the involvement of parents and youngsters in the process of considering mutual problems; whether or not some of those attitudes can't be changed. I believe that they can be and I believe that we can develop some kinds of techniques that will reassure individuals both through the development of programs that make sense to parents as well as getting them more acquainted with some of the problems. And this is the question which can only be determined by a trial.

The Court: What is your program for accomplishing this?

The Witness: Well, as I indicated, I think there are many kinds of—the basic problem is one of communication, understanding of the difficulties. This is the basic problem, I think, between communities. We believe that there are ways that we can identify, or means that we can identify where we can get members of each of these communities together, to look at these problems, to discuss them, to learn to understand one another's viewpoints and, through this process, to begin to identify elements of programs which [648] could involve the interchange of pupils on many different bases. This really is the foundation it seems to me of that kind of approach. And it's an opportunity to begin approaching people on the basis of understanding problems through contacts.

Now, maybe this is an overambitious objective. I think not. If it can be done this way I think the

Robert Gilberts—Recalled—for Defendants—Redirect

results in terms of the definition of integration that I have used and that Dr. Dodson used is probably going to be more successful than any other kinds.

The Court: It's too late to accomplish any substantial integration by changing school boundaries, I take it? Have you approached it in that manner?

The Witness: Yes, sir. It is very difficult because of the concentration of these youngsters both Hispano and black in those areas of the city and the overlapping of these areas. There are not enough adjacent areas into which these youngsters can be changed in order to accomplish what we would like to do. It has to go beyond that and has to involve a broader population base than those that are contiguous enough to do what you're discussing.

The Court: Now this is going to intensify, as time goes on, if the trend is not reversed?

The Witness: Yes, sir. It is likely to intensify. And the question is, how does one intervene in that process. [649] And so far as I'm aware, there has been no system which has been identified at this point that has intervened effectively. Now, there are those who feel they have identified things that could do this but I think they're all open to question. We feel that the things that we have identified and in the process of this plan and I'm sure there are other ways, too, will have as much of a chance of doing that as any approach. But, obviously, there are people who feel differently about it.

The Court: Do you have anything further?

Mr. Greiner: Yes, just a few more questions, Your Honor.

*Robert Gilberts—Recalled—for Defendants—Recross**Recross-Examination by Mr. Greiner:*

Q. Dr. Gilberts, you mentioned some of these pilot programs that are going on in the minority schools. A. I don't recall that I did.

Q. You said that there was special programs being conducted at certain schools. A. I was talking about cultural arts and cultural understanding.

Q. Well, there are compulsory educational programs, are there not? A. Yes.

Q. Would you identify for us, please, Plaintiffs' [650] Exhibit 35? A. This is a report to the Board of Education, Extension of Pilot Programs in Elementary and Secondary Schools.

Q. By whom was this prepared, Dr. Gilberts? A. It was prepared in 1963 and 1964, I assume, by the staff of the school system.

Q. What does it purport to discuss, do you know? A. Would you like me to go through it item by item and talk about them?

Q. No, I just want to identify it for the record. A. Well, it appears here that there are four major categories in curriculum and instruction, vocational-technical education; cultural and human relations education; in-service programs for personnel; and extension of pilot programs in schools.

Then they go on and list documents and talk about some of those programs in the elementary and secondary schools. I notice an item in here as being one of those items you're talking about.

Q. Dr. Gilberts, Exhibit 35 has been a report on progress and results in one of these pilot compensatory programs, is that correct? A. I'd have to read it to be sure. I'm not personally familiar with this document.

Robert Gilberts—Recalled—for Defendants—Recross

【651】 Q. Take your time.

Mr. Jackson: If the Court please, I think that at this point I will interpose an objection. This is a matter that we did not discuss on direct examination. The exhibit itself talks in terms of a period of time prior to Dr. Gilberts' arrival in the city. He has indicated to counsel he is not familiar with the document and has not had an opportunity to read it, and I would object to any further questioning along this line at this time.

The Court: Do you think he should have an opportunity to read it first? We will give him that opportunity.

The Witness: Sir, there is a good deal of technical material in here in terms of the evaluation and so on which I don't believe I can read very quickly.

The Court: Okay. Well, then, we will sustain the objection for the time being. Maybe at a later time you would want to call him back. I don't think that he should be called upon to spend a lot of time—

Mr. Greiner: I think, Your Honor, we can approach it in a different way.

Q. Dr. Gilberts, you described to the Court some of the programs I believe that are contemplated or in the planning stage, the objective of which, as I understand it, was to overcome the low levels of achievement that exist in some of these predominantly minority schools, is that correct? **【652】** A. Yes, in several different ways. I have talked about this general complex approach with some changes that are necessary there. I have not talked about specific plans.

Robert Gilberts—Recalled—for Defendants—Recross

Q. Well, I take it that there are so-called compensatory educational aspects that—are there not, of the Gilberts Plan. Exhibit D? A. There certainly will be as it develops. There are not as yet.

Q. Does 1533 provide for any particular compensatory educational programs, Dr. Gilberts? A. Well, in the context of the complex, I assume that there is an assumption that these kinds of plans will be developed by the Board, I'm sure, just as it has been by you.

Q. Now, as I understand 1533, these complexes—there is going to be no desegregation in the schools, is that right? A. I don't believe that you can make that assumption. The complexes have been designed in such a way as to get the best kind of composition within these complexes that we possibly could. And I assume that, within the development of these programs there will be elements that will provide for integration.

[653] Q. Well, is that going to require mandatory transportation, Dr. Gilberts? A. Until those programs are developed and designed, I don't believe I can answer that question.

Q. We just don't have the details yet, do we? A. That's right.

Q. Now, Dr. Gilberts, with regard to these compensatory educational programs, you keep referring to Dr. Dodson's definition of integration. Didn't he say that the first step is first you mix them up and then you start the integration process? A. That was his statement, yes, I believe.

Q. First, you have got to have the mixing of the bodies? A. That was his opinion; yes.

Q. Now, there is evidence, is there not, Dr. Gilberts, as far as the educational benefits that can be derived through

Robert Gilberts—Recalled—for Defendants—Recross

integration? A. Such as what benefits are you referring to?

Q. Well, I have reference to what I believe has been marked as Plaintiff's Exhibit 27, a report by the United States Commission on Civil Rights, published in 1967, "Racial Isolation in the Public Schools." A. Yes.

Q. Does this report treat the subject of [654] compensatory education programs versus integration?

Mr. Jackson: If the Court please, I am going to object to questions regarding this particular exhibit. My records do not show this exhibit as in evidence, and if it were tendered I would object to it.

The Court: He is not seeking to introduce it. He is cross-examining with respect to it, going to the credibility on the question of necessity for physical integration. I think it is proper. It may be that Dr. Gilberts will say that he is not familiar with the passage involved or that he hasn't read the report. If he does, that's the end of it.

A. I have read the report and I am generally familiar with what's in it, but I would have to look it over to talk about any specific points.

Q. Well, do you recall four programs that are described in the report, one at Syracuse, New York, one at Berkeley, California, one at Seattle, Washington, and one at Philadelphia, Pennsylvania? A. I am familiar with the Syracuse, the Berkeley—I am not absolutely certain about the Philadelphia or the Seattle one.

Q. Now, those programs generally did what, Dr. Gilberts? They had a segregated school to begin with, isn't that right? [655] A. Well, let's take them one by one.

Robert Gilberts—Recalled—for Defendants—Recross

Let's talk about Syracuse first. Syracuse began developing plans for attacking some of the problems of the core city back about six or seven years ago. Dr. Barry, with whom I am personally familiar, in Cincinnati, developed a plan of satellite complexes of elementary schools in order to begin replacing some of the older schools in the city. These complexes were on the periphery of the school system. This was a proposal.

I believe that the first one of those complexes is just now in the process of construction.

Q. I do not believe you are talking about what I have reference to, Dr. Gilberts. A. Well, refresh my memory.

Q. I am talking about the Madison area project. A. That was the transportation of black students from core area schools out to two or three—

Q. Anglo? A. —Anglo schools on the periphery of the city.

Q. What did they do? And then the segregated school from which those students came remained, did it not? They didn't close that? A. They didn't close that school, no. There were small numbers of youngsters involved, as I recall.

Q. They tested those youngsters left behind and [656] they tested the youngsters bused out into white schools, didn't they, Dr. Gilbert? A. Yes, they did.

Q. What did they find? Oh, pardon me, and the children that were left remaining in the black school, they were made the object of intensive compensatory educational programs, were they not? A. I am sorry, I just don't recall the actual details of that particular case, but if you say so I will accept that. I just don't remember.

* * * * *

Richard Koeppe—for Defendants—Direct

【658】 RICHARD KOEPPE, called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

The Court: Give your name and address for the record.

The Witness: My name is Richard Koeppe. I live at 8679 East Kenyon Avenue, Denver, Colorado.

The Court: How do you spell your last name?

The Witness: K-o-e-p-p-e.

The Court: You live where?

The Witness: 8679 East Kenyon Avenue.

The Court: All right.

Direct Examination by Mr. Craig:

Q. Please state your occupation, Dr. Koeppe. A. Currently the Assistant Superintendent in Charge of the Division of Education for the Denver Public Schools.

Mr. Craig: Your Honor, we have identified as exhibits Dr. Koeppe's background information and vital statistics, which counsel for the plaintiff has seen.

Mr. Greiner: It has been submitted, Your Honor, and we have no objection to it.

The Court: All right, have it marked and it will be received.

【659】 Mr. Craig: Defendants' Exhibit U.

The Court: All right.

(Defendants' Exhibit U was received in evidence.)

Q. Dr. Koeppe, have you ever been a teacher in any

Richard Koeppe—for Defendants—Direct

public school system? A. Yes, I taught in the Milwaukee Public Schools from 1956 to 1958.

Q. At what level? A. Junior high school, grades 7, 8 and 9.

Q. At any other level? A. I served as a counsellor on a part-time basis in senior high school, grades 10 through 12, for approximately 12 years.

Q. Would you briefly describe your responsibilities as Assistant Superintendent for the Division of Education. A. I am basically responsible for maintaining and enhancing the instructional program of the Denver Public Schools and in that capacity have within the division six departments, the Department of Elementary Education, the Department of Secondary Education, the Department of Adult and Vocational Education, and Department of Instructional Services, Department of Radio and Television, and Department of Pupil Services.

Q. Dr. Koeppe, were you in the courtroom at the time [660] Dr. Gilberts testified this morning? A. Yes, I was.

Q. Did you hear him allude to certain existing educational programs within the Denver Public Schools which provided and enhanced opportunity for interracial communication and understanding? A. Yes, he alluded to a number of them.

Q. Would you please describe the programs. A. Well, one that he alluded to was the early childhood education program primarily as it relates to a dimension in Planning for Quality Education and also as it relates to Complex Area Five. In one way, this is a new program starting this fall. In another way, it is not new. The preschool program has primarily been under the Head Start, which is OEO money under the Denver Opportunity.

Richard Koeppe—for Defendants—Direct

There also were follow-through programs, some of which are a full-day program through OESA, Title I. This fall we are going to completely fund by DPS three childhood education centers. Basically at this time we will work on either half-day or full-day involvement with four-year-olds. There shall be an attempt to involve the parents of these youngsters. We are deliberately selecting children where parents both don't work or at least one parent is available to become involved in the program. We also under this arrangement will have the teachers in the centers under [661] objective administrative supervision of the honorary schools in the area, which means they will attend faculty meetings with the other teachers, which is not true under Head Start.

The Court: Will you keep your voice up?

A. (Continued) We will have the teachers under the Early Childhood Education Centers under the administration of the schools in the area, which means they will in turn attend faculty meetings and be considered part of that faculty. It will give our teachers or kindergarten teachers an opportunity to observe the early childhood education centers in operation.

Q. Do these programs offer any opportunity for inter-racial communication? A. Well, at this time we are starting on a small scale because we are really going to work out our curriculum and procedures especially with the parents and so forth. We are going to be working primarily, and I would say exclusively, with minority youngsters, but our intention is, based on our experience with the programs, to expand them possibly to the point where they would be of such a nature as to attract youngsters

Richard Koeppe—for Defendants—Direct

from the Anglo and possibly Hispano areas of town, but not for the 1969-70 school year.

Q. Do you know if the Board of Education has placed **[662]** any special emphasis on these programs? A. Well, it was the—as I mentioned, it was in the report, “Planning Quality Education,” and I believe it is also in one of the recent resolutions passed by the Board.

The Court: The Head Start programs are filled to capacity with minority youngsters, aren't they?

The Witness: Yes, they are.

The Court: So, there are no openings for even other minorities?

The Witness: This is right. This is really an expansion of that.

Q. Dr. Koeppe, I hand you Plaintiffs' Exhibit 6, which is admitted in evidence, and direct your attention to Resolution 1533 contained therein, and ask you whether you can identify in that resolution any special emphasis on these programs. A. Yes, Item 3 of the resolution states that the Superintendent is directed to take steps to establish preliminary educational programs in the schools in the north central portion of the district in September 1969, as proposed in the said report, “Planning Quality Education.”

[653] Q. Dr. Koeppe, we won't go over the same ground that Dr. Gilberts has covered, except where we might add something.

Mr. Craig: Dr. Gilberts has identified Defendants' Exhibit F, a brochure on the cultural arts program, and we would offer that in evidence at this time.

Mr. Greiner: No objection, Your Honor.

The Court: F is received.

Richard Koeppe—for Defendants—Direct

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

Q. Can you add anything to Dr. Gilberts' description of that program? A. I think a point of correction—the office for the cultural arts program is located at Gilpin School. The actual arts programs are located at Fairview School. We have four teachers at Fairview School and four teachers at Ebert.

Due to the additional program planning that is going on for Fairview School, we in all likelihood will have to move that center to another school for this fall. The staff is currently looking at that. So we will have the office—the office will stay at Gilpin. One of the centers will stay at Ebert and one at Fairview will have to be moved to another elementary school.

I might mention in terms of expansion, we do have hopes for expansion of this program even without additional facilities. For example, since its inception the staff [664] taught youngsters for four days a week. And the fifth day was used to work with the consultants and the artists that were brought in to do planning and so forth and the staff now feels they have been at this sufficiently long that they can actually run the program five days rather than four, and whether we can begin this September or not, we don't know, but somewhere in the near future we will be running it five days a week rather than four.

Also, we do have in the 1970 budget four additional teachers for the cultural arts program. This is based strictly on the assumption that we're going to find additional facilities somewhere in the district, but I'm hopeful that when a bond proposal is put together for submission to the Board, one of the components included therein will

Richard Koeppe—for Defendants—Direct

be a true, full-blown cultural arts program which will be a separate facility specifically for this program and that at that time we can involve, of course, many more youngsters than we do at the present time.

Q. What youngsters are eligible to participate A. I think the superintendent mentioned this program is in the—is in operation at Grade 6.

There is another correction I would like to make. I believe the 98 percent that he referred to was—the program is optional. It's offered to parents in selected schools and approximately 98 percent of those who have the opportunity [665] sign up for it. I think the percentage of youngsters actually involved in the program is considerably less. I think, because of our limited facilities and so on we fully only involve something like 60 or 70 percent of the current sixth-graders. But it's basically at the sixth-grade level. The groups that are brought together—he was correct—we brought together two half days a week, I think it's for a quarter, however, and not a semester. I think they rotate four different groups through the centers. And each group is composed of one-third Negro, one-third Hispano, and one-third Anglo youngsters. The media of art, drama and music is used in the presentations and also some of the artists in the community are brought in as instructors.

Q. I believe Dr. Gilberts mentioned a program of teaching about minorities. Can you expand on that a little bit? A. Well, Denver, like most urban centers a number of years ago received requests from minority populations that they be included more accurately in the teaching of the history of this country. And Denver, like most urban areas, adopted two basic strategies in trying to reply to this request: one was to develop specialized elective courses that dealt with the history of the minorities; for example, the history of the Afro-American or the Negro, for example,

Richard Koeppe—for Defendants—Direct

in this country. This program, to my knowledge, was developed [666] during last summer and, I think, started for the first time the second semester of this year, in the summer high schools and exactly how many it will be next fall and where, I don't know.

The other basic strategy that we followed like other urban centers was to give increased prominence or give some prominence is probably more accurate, but hopefully significant appropriate prominence to the contributions in minorities within the required courses as—such as American History, Grade 8, and U.S. History at Grade 9. Of course, the development of materials has been a slow process and we're moving ahead on this, and along with this we have carried out in-service work with teachers either our own or in concert with local universities and colleges.

Q. Dr. Koeppe, are you acquainted with the Hallett Elementary School voluntary exchange program? A. Yes, somewhat.

Q. What is the purpose of that program? A. Well, the purpose of the program, I think, is somewhat indicated in the title that is used in the resolution to make Hallett a demonstration integrated school and the purpose is, of course, to integrate Hallett, and in the process integrate a number of other elementary schools in the district.

Q. Are you acquainted with the administrative goals [667] set up for the beginning of school year in September, 1969? A. Yes, in a general sort of way. My recollection of this is that when the goal was first proposed to the Board of Education for their consideration the number 500 was used and I think it was used in terms of an ultimate goal that would have to be arrived at to make Hallett an integrated school. The number, goalwise, was never included in either Resolution 1531 or 1533, and the use of the term

Richard Koeppe—for Defendants—Direct

“administrative goal” is a correct one. The major responsibility for carrying out the integration of Hallett Elementary School resides with the office of School Community Relations, and right at the very outset it was Mr. Cruter’s feeling that in terms of this fall, 300 might be a more appropriate number. And now that we have gotten into it a bit we feel that perhaps 250 or maybe 200 is more realistic for this fall, but we’re working on it throughout next year and, based upon our experience this year, we hope to have the 500 in by the fall of 1970. That’s my understanding of the goals.

Q. Are you advised as to the progress in obtaining volunteers for that program? A. Yes. I consulted with Mr. Cruter—members of his staff and my staff—that we know where we stand numberwise because there are implications for possible staff shifts.

Q. I hand you what’s been marked as Defendants’ Exhibit G for identification. 【668】 A. This is an interdepartmental memorandum dated July 18th from Mrs. Archuletta, who is the supervisor in the office of School Community Relations, to me, which gives me a status report of the number of volunteers into Hallett and out of Hallett as of July 18th.

Q. Would you read the total from that exhibit of the volunteers?

Mr. Greiner: Pardon me, Your Honor. I don’t believe the exhibit has been offered.

Mr. Craig: We will offer it now.

Mr. Greiner: May I see it?

Mr. Craig: I think I provided you with a copy.

Mr. Greiner: I have no objection.

The Court: Exhibit G is received.

Richard Koeppe—for Defendants—Direct

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

The Witness: Your question again, Mr. Craig?

Q. Would you read the total to Hallett? A. 163.

Q. And the total from Hallett? A. 104.

Q. Would you consider that an encouraging report in view of your goals? A. I would to the extent that in terms of the recruiting in the Hallett area, this was just really begun, to my knowledge, [669] on Monday, I think, two weeks ago. And we—I think the intention of the office of School Community Relations is to run about a five or six-week block-to-block, door-to-door campaign, and Mrs. Lewis, who has been very instrumental in getting a number of volunteers out of the Smith Elementary School, has been employed, again, as of two weeks ago, to head up this project, and it is her estimate that we can reach the 200 to 250 mark by August sometime.

Q. Now, Dr. Koeppe, when will the persons who have applied for this program be notified whether or not their requests will be accepted? A. As I recall, the persons who were on voluntary open enrollment last fall, those who have requested a continuation, are to be notified on or about August 1st and those who are new requests will be notified on or about August 11.

Q. Are these notifications prepared by persons under your supervision? A. Yes, they are prepared by the office of Attendance of Pupil Records, which is part of the Pupil Services Department.

Q. Dr. Koeppe, I hand you what's been marked as Defendants' Exhibit H and ask you if you can identify it? A. Yes. This is a request for a continuation of Sara Wenger at Hallett, Grade 3. She was at Hallett, Grade 2, last year.

Richard Koeppe—for Defendants—Direct

And the second attachment is an approval to [670] continue on voluntary open enrollment to improve integration, a standard form, again dated August 1st, and this is ready for mailing.

Q. It has not yet been mailed? A. No, it has not.

Mr. Craig: We offer Defendants' Exhibit H.

Mr. Greiner: No objection, Your Honor.

The Court: H is received.

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

By Mr. Craig:

Q. Dr. Koeppe, are you also acquainted with the so-called voluntary open enrollment program other than the Hallett program? A. Yes. It's the application of that to the Hallett situation, actually.

Q. How does that plan operate? A. Well, it basically allows individuals who are interested in transferring from one school to another to do so provided certain conditions are met; one, that there is room in the school to which the youngster desires to go, and, secondly, his presence will both improve the racial balance of the sending and receiving schools, and if these conditions are met, the request is granted and transportation is provided.

Q. When did this program first go into effect? [671]

A. The Board adopted this at its November meeting this year and the first time it really went operational was the second semester of 1968-1969.

Q. Do you know how many pupils took advantage of this program in the second semester of 1969? A. As I recall, approximately 850 students were transferred at the semester under this policy.

Richard Koeppe—for Defendants—Direct

Q. Dr. Koeppe, I hand you Defendants' Exhibit I and ask you if you can identify that? A. Yes. This is an interdepartmental communication from myself to Mr. McWilliams, who is director of the office of Attendance and Pupil Records, also dated July 18th, and it gives me a status report on voluntary open enrollment—really, two aspects of it: one, the number of continuing requests and the number of new requests, and the total of July 18th, and also a report on the number of spaces that appear available for this fall for this program.

Mr. Craig: We would offer Defendants' Exhibit I.

Mr. Greiner: No objection, Your Honor.

The Court: It's received.

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

The Court: Are you going to have him testify from it?

Mr. Craig: Yes, Your Honor.

【672】 The Court: What's he going to say about it?

Mr. Craig: He's going to testify as to what it says in terms of numbers of spaces open for open enrollment.

The Court: Okay. Proceed.

Q. Calling your attention to the spaces provided for open enrollment in the senior high schools, how many available spaces are there in the senior high schools? A. There are 505 available.

Q. How many are available in the junior high schools? A. 725.

Richard Koeppe—for Defendants—Direct

Q. And, according to this exhibit, how many are available in elementary schools? A. Actually there are two parts to that report: one is dated in Mr. McWilliams' handwriting, May, 1969, which shows 1,081, and in the cover to the attachments he indicated that the available—the total spaces available at the elementary level are approximately 1,300.

Q. And does that exhibit give the total number of voluntary open enrollment applications received as of the date of the exhibit? A. Yes, it does. It indicates that, as of this date there are 836 new applications.

Q. Does it also include those continuing voluntary open enrollment? A. Yes, 541.

[673] Q. Has the administration actively solicited volunteers for this program? A. No. The only exception is the Hallett program and we have not, pending the decision in this hearing.

Q. Dr. Koeppe, I hand you—

The Court: May I see that, please?

Q. —Defendants' Exhibit J and ask you if you can identify that? A. Yes. This is a copy of a form letter which will go out to students who would have been affected by 1520, encouraging them to consider taking advantage of the voluntary open enrollment plan.

Q. Doesn't this letter also apply to those who were involved in Resolutions 1524 and 1531? A. Yes, there are actually quite a few variations of this letter because it had to be modified depending upon what school area he was going to.

[674] Q. Now, were these letters prepared by persons under your supervision? A. Yes, signed by David R.

Richard Koeppe—for Defendants—Direct

McWilliams. Again, it was under his direction and supervision.

Mr. Craig: We offer Defendant's Exhibit I.

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

Q. Now, Dr. Koeppe, are these letters ready to be mailed whenever you are permitted to do so? A. Yes, to my knowledge there are approximately 4,000 of these ready to be mailed.

Q. Now directing your attention to Defendants' Exhibit I again, I will hand you a copy. Can you tell us how many of those spaces in the senior high schools are open for or would improve integration if a Negro were to transfer. A. Well, the senior high schools listed, you would have to subtract the spaces at East and at Manual High School, that's 50 and 75, is 125—approximately 475 or 480 spaces would be available for Negro transfers.

Q. And the same question as to junior high schools. A. At the junior high school level I believe all 725 would be available spaces to Negro pupils.

Q. How many spaces would be available at the elementary school level? [675] A. Of the 1300, approximately 900 would be available.

Q. So, have you kept a total on the total number of spaces at all levels? A. 900 and 725, 16, 25 and—about 2,000 spaces.

Q. Then, would you have to subtract the number of spaces for which you already have voluntary open enrollment applications? A. Yes, you would only have to subtract the new voluntary open enrollment inasmuch as the continuing in most cases are already counted as staying at

Richard Koeppe—for Defendants—Direct

that school, so you would have to subtract 836 from 2,000, and that would give you the spaces still available as of today, or as of Friday.

Q. So, assuming all these spaces were filled by voluntary transfers from Negro and other minority pupils, would this free up a similar number of spaces for transfers by Anglos— A. Well, that—not completely, because as I think has been mentioned on previous occasions, the schools from which the Negro youngsters would be coming are ones in which we are intending to either maintain a lower enrollment or actually reduce it further, so if we were to get 2,000 Negro youngsters out of these schools it wouldn't in turn open 2,000. It would be 1,000 or 1200, I don't know what [676] the number would be but it wouldn't be a one-for-one exchange.

Q. But, assuming all these spaces were filled by transferring Anglo pupils, would that free up a similar number for additional minority pupils? A. Right, you would get a snowballing effect, because you would again have spaces elsewhere. This is one reason for the late date of notifying parents of the acceptance of the request because if we made the decision in June we might have to say no. On the other hand, if we have a child coming out of that school we could say yes, so we have to wait until all the data is in and take a look at it. But, yes, we free the space and the numbers would continue to snowball.

Q. Carrying this on to a theoretical conclusion, would this process repeat itself until there would no longer be any pupils in the Denver School System eligible for transfer? A. In theory, yes.

Q. And what would you call this plane? A. Oh, racial balance, I suppose, in the schools. Integration. Racial balance.

Richard Koeppe—for Defendants—Direct

Q. Dr. Koeppe, I call your attention to Plaintiffs' Exhibit 6, the minutes of the meeting of the Board of Education of June 9, 1969, and ask you to read the part **[677]** starting with "B" on page 10. A. On voluntary open enrollment, it says, "It was moved by Mr. Southworth that in addition to the existing voluntary open enrollment policies with transportation provided that—" Is that the place?

Q. Yes. A. "which includes all schools in the district, superintendent and staff be directed to develop and initiate concentrated and effective plans and programs designed to achieve the voluntary exchange of pupils now residing in the Smiley Junior High School and East High School attendance areas with pupils now residing in the attendance areas of South, Thomas Jefferson, and George Washington High Schools, provided that such exchanges in school assignment result in improved understanding and integration both in the sending school and in the receiving school, that such plans and programs be made effective as soon as feasible and by the opening of school in September of 1969, if possible, and if not by the commencement of the second semester of 1969-70 school year, and all such exchange programs shall be with transportation provided by the District."

The motion was—then it has a roll call.

Q. Passed? A. Was seconded by Mr. Perrill and then there was a roll call.

[678] Q. Do you know the purpose of this motion? A. The purpose, of course, I think is also stated in the motion itself, and I think it is an attempt to do voluntarily what 1520 and 24 had done, to stabilize the schools at East and at Smiley and to bring about integration and understanding.

Richard Koeppe—for Defendants—Direct

Q. Now, Dr. Koeppe, have you received any information as to the implementation of this motion? A. Yes, one communication from the superintendent.

Q. I hand you what has been marked as Defendants' Exhibit K and ask you if you can identify it. A. All right, this is the memorandum from the superintendent to a number of persons in the central office and it is dated June 12, and the subject is staff meetings on Tuesday, June 10, regarding modification of plans as a result of Board of Education meeting on June 9, and it deals with a number of things.

Mr. Craig: We offer Defendants' Exhibit K.

Mr. Greiner: No objection, Your Honor.

The Court: Exhibit K is received.

(Whereupon, Exhibit K was received in evidence.)

Q. Dr. Koeppe, would you read paragraph 4 on page 2 of that exhibit? A. "Regarding the resolution which calls upon us to [679] devise special intensive programs for the voluntary transfer of pupils in the East and Smiley areas together with South, George Washington and Thomas Jefferson junior and senior high school areas, we will spend the summer in laying out a plan which will involve such organizations as the student council and P-T.A. that have volunteered to help. Our objective will be to have this plan completely laid out so that in the fall of this year we can involve the principals, teachers and other people in this program during the first semester with our target being the implementation of it the second semester. This in no way implies that we will not encourage or consider voluntary enrollment by pupils in these schools un-

Richard Koeppe—for Defendants—Direct

der the existing open enrollment with transportation provided policy. It is felt to be quite important that this program be well designed and well planned so that we are successful in its implementation. It was thought that too great a risk would be run in trying to implement this program in the first semester, that failure in our efforts here might have serious effects on our future ability to promote these programs. It was indicated we ought to have this program sufficiently completed by November 1st so that we know how many people will be participating.”

Q. Dr. Koeppe, are you now working on the implementation of the planning directed in that communication?

A. We haven't specifically started on this, but we [680] intend to early next month. Mr. Liddell Thomas, who is currently principal at South High School, as of August 1st will become the Assistant Executive Director of Secondary Education, and he has already been notified that one of his first priorities upon assuming this position will be to follow up on this directive from the superintendent.

We have also alerted other staff members such as Mr. Room, who work with our student councils and others, that we will be doing this during the month of August, so that we are ready to put it in operation during September and October to do our intensive recruiting.

Q. Dr. Koeppe, do you have any opinion as to the possibility of success of such a plan? A. Well it is really very difficult to say. Out of the 850 that volunteered for the second semester this past year, I think something like 250 or 300 were at the secondary level. I don't think we got really very much requests at the junior and senior high school level for this fall simply because 1520 has sort of precluded that. These schools were not eligible then for voluntary open enrollment. We have some indication

Richard Koeppe—for Defendants—Voir dire

that among the student bodies some of the most concerned and interested in bringing about integration are the senior high school students and they all seem to have a bit more influence over their parents than certainly elementary children. I think with a [681] properly executed program with involvement of the students themselves it could be successful, but I just really don't know. We have to wait and see.

Q. Dr. Koeppe, Dr. Gilberts has already mentioned the Balarat proposal, the Balarat Outdoor Education Center, and I hand you what has been marked as Plaintiffs' Exhibit L and ask you if you can identify it. A. Yes, this is a—as stated, “a Proposal to the Board of Education, the Balarat Site, Development of an Outdoor Education Center for the Denver Public Schools,” and prepared in this form for September 1968.

Mr. Craig: We will offer Exhibit L.

Mr. Greiner: May I ask just one or two questions?

The Court: That's Exhibit M?

Mr. Greiner: This is L, Your Honor.

Voir Dire Examination by Mr. Greiner:

Q. Dr. Koeppe, the Balarat Site, when is that to be put in effect? A. Of course, in stages. We actually have a group of 30 youngsters on site there this summer, living in tents, preparing trails, preparing campsites and so forth. We have budgeted for 125 day trips to this site and back during 1969-70 and we are in the process now of working with the [682] Division of Planning and Engineering to decide exactly where permanent facilities will be constructed as Balarat, but I assume it will be several years

Richard Koeppe—for Defendants—Direct

before it becomes fully operational, but we are really just beginning the planning stage.

Mr. Greiner: Well, Your Honor, I object on the basis of relevancy. I don't see how the presence of what is being described in Defendants' Exhibit L is going to have any effect on the fact of the rescission of these resolutions and the immediate impact in September of '69, so we would object.

The Court: May I see it, please?

Mr. Craig: Your Honor, the purpose of offering this exhibit is the same as the other programs that we have mentioned, that one of the purposes of this program is to offer opportunities for interracial communication, and I just wanted to bring that point out.

The Court: The exhibit will be received.

(Defendants' Exhibit L was received in evidence.)

The Court: Do you wish to see it? Do you need it?

Mr. Craig: No, Your Honor. I believe Dr. Koeppe has a copy.

[683] *Direct Examination by Mr. Craig (Continued):*

Q. Dr. Koeppe, directing your attention to page 4, would you just list by heading the various purposes of this outdoor educational center? A. Educational, scientific, cultural and socio-economic, recreational.

Q. Then, would you come back to page 5 and read paragraph 1 under "Cultural and Socioeconomic." A. "To provide a site in which pupils from throughout the metropoli-

Richard Koeppe—for Defendants—Cross

tan area can congregate away from the atmosphere in which prejudice breeds, one in which children of all races and economic backgrounds can meet in an atmosphere conducive to the development of understanding and respect for each other."

Q. Has this program been given any top priority in terms of implementation? A. Yes, it is definitely a very high priority item, but as I said, our basic characterization of what we are going to be doing at Balarat during 1969-70 is planning, with some programs going operational. I mentioned the group up there this summer, plus the 125 trips being planned during the year, and that's what we will be doing during '69-'70.

Mr. Craig: I have no further questions of [684]
Dr. Koeppe at this time.

* * * * *

[685] * * *

Cross-Examination by Mr. Barnes:

Q. Dr. Koeppe, I believe you testified to the early childhood education centers which are maintained and operated by the Denver Public Schools. A. That will be.

Q. That will be? A. Right.

Q. Have any of these programs gone into effect as of this time? A. Not those that are fully funded by DPS, no.

Q. How many children do you expect will be involved when they do go into effect? A. I would guess in the neighborhood of 75 to a hundred.

Q. When do you first expect those programs to go into effect? A. September of this year.

Richard Koeppe—for Defendants—Cross

Q. And as of this date you have no results from any such program undertaken in the past? A. Not that I'm aware of.

Q. Turning your attention to the cultural arts [686] program which you described, do you recall from what recommendation that proposal arose? A. I believe a program similar to what finally became the cultural arts was suggested in an advisory committee report to the Board.

Q. That would be the report of the advisory council on the equality of equal educational opportunities in Denver Public Schools? A. I believe so.

Q. Plaintiffs' Exhibit 21? A. (Nods affirmatively.)

Q. Directing your attention to page 53, to the last paragraph, does it state there what the objectives of the cultural arts program are? A. Yes, it does.

Q. And the concept of that committee.

Would you read the first sentence. A. It says, "The objective would be to develop in each child the fullest potential for creativity and appreciation while striving to stimulate general enthusiasm for education in those who are not now being fully motivated or receptive to the present standard curriculum being offered by the Denver Public Schools. Moreover, it was hoped there would be enhancement of broader understanding, a greater degree of cultural integration, and participation in meaningful activities involving intergroup [687] relationships among pupils. . ."

Do you want me to go on?

Q. No, you can stop there.

The Court: What's he referring to? Exhibit 21?

Mr. Barnes: Yes, this was Exhibit 21.

Richard Koeppe—for Defendants—Cross

Q. The cultural arts program which you describe is at least in part in response to the recommendation that is contained in this Exhibit 21? A. Apparently.

Q. What are the offerings of the cultural arts program? A. As I understand it, they present instructions through four basic media: the art, drama, music and dance. These are either presented at the centers at Fairview and Ebert or youngsters are taken to various places in the community to take part in these programs.

Q. I show you Defendants' Exhibit F and ask you to look at the paragraph there which is entitled, "What do we do?"

Do you see that paragraph? A. Yes, I do.

Q. Does that list among other things that the contents of the cultural arts program will be to watch a play? [688]

A. Yes.

Q. Dance with Russian scarves? A. Right.

Q. Joust with poles? A. (Nods affirmatively)

Q. Now, is that program—do you think that's going to be effective in establishing motivation with regard to the standard curriculum pursuant to the advisory council recommendation? A. It might actually be too early to determine that. I don't think the cultural arts program—It went into effect in 1967 and one of our problems with the program due to limited facilities has been relating the experience in the cultural arts center to the regular curriculum. One of the real problems has been that the regular teachers have not been really aware of what the cultural arts program has done and they really haven't been able to participate in it.

Our intention is, once we get a cultural arts center, the regular classroom teacher will actually attend the center with the youngsters and observe what they are doing so

Richard Koeppe—for Defendants—Cross

that there can be a greater relationship between the two. This is one problem we have right now.

[689] Q. Is there any serious thought that the courses and the offerings that are described there will result in higher achievement test scores in the predominantly black schools? A. I think the word that was used in the advisory council spoke of motivation and I think went beyond motivation to assume that this in turn might then bring about better achievement, yes.

Q. Turning your attention to the Hallett Elementary School project which you described, as I understand it their project was to be entirely voluntary, is that correct? A. Yes, it is.

Q. And as originally initiated it was to include a total of a thousand students, 500 in and 500 out? A. Right.

Q. You testified that estimate is now down to a hoped-for 100 or 200. A. Well, you would have to double that, too.

Q. Right, 400. A. Right, possibly 500.

Q. Is there any relationship between the drop in your expectation of the participation in this program and the effect of the rescission of the integration resolutions? **[690]** A. First of all, let me state that I never made the expectation of 500. That number was put into the proposal when it went to the Board of Education. To my knowledge that was put in there by the division of planning and engineering as an estimate of what it would take to racially balance the school. Our division was not consulted as to that number nor was the office of school and community relations, and I think for that reason no number was put in either resolution. And I think the first expectation that either that office or our division had of what

Richard Koeppe—for Defendants—Cross

we could accomplish by this fall, we would not have said 500 ourselves.

Q. But that was a recommendation of the superintendent at that time? A. Yes, it was, and the second part of your question? I am sorry, I have forgotten.

Q. The second part was whether you saw any relationship between the drop in your estimate of the participation in that program and the effect of the rescission of the resolutions. A. I don't think so. I think Mr. Cruter and members of our staff would have felt if we could have accomplished 250 to 300 given the time we have and the time of the year, the fact that the school was not going to be in session during July and August, I still think we would have set [691] that goal.

Q. As I understand it, all white parents who participate, who volunteer, are notified their children will be sent to Hallett. A. No, no one has been notified, no, because in order to make this plan operational it is contingent on getting a like number out of Hallett to vacate the seats.

Q. The school to which the children will be sent is identified? A. Yes.

Q. Is the same identification given to the black parent who is going to send his child out for the other part of the Hallett program? A. Not to the same extent. We are, as I recall, trying to recruit through approximately 30 elementary schools in southwest, south central and southeast Denver, and in turn we are trying to vacate significant numbers of spaces in approximately 8 of these schools, so we are trying to pick what Mr. Cruter has called focal schools so that we can tell the parents at Hallett that it is very likely that they could have the option of going into one of these eight schools rather than have them consider 30.

Richard Koeppe—for Defendants—Cross

Q. But at the present time they are being told it may be one of somewhere between eight and thirty schools? A. I think our strategy is to talk at this time [692] about the eight and not thirty, and we are quite hopeful to concentrate on the eight because we know this is what is of concern to the Negro parent sending out his child.

Q. It affects the way it works? A. Yes.

Q. Part of the program depends upon the ability of parents to conceive the school their child will be going to attend? A. That is correct.

Q. One of the difficulties at the present time is that the black parent cannot actually see the school his child might attend? A. That is correct.

Q. Have you received requests from white parents that a single white school, predominantly Anglo school, be identified as a target school to which Hallett children could go? A. Yes, I can't recall whether we have gotten it from Anglo or Negro, but I know we have gotten them.

Q. One of these suggestions was, was it not, that white children presently being transported to University Park be diverted to other southeast Denver schools, that University Park be made a target school for Hallett children? A. You say that was suggested?

[693] Q. Yes. A. Yes, I believe it was.

Q. According to Plaintiffs' Exhibit 89, which I believe is in evidence, there are 482 spaces in Montclair Annex, Pitts, Cory, Ellis, Denison, Traylor, Asbury, Slavens, Carson and Goldrick, is that correct? A. I am not familiar with the document.

(Counsel handed document to witness.)

Of course, now, this is data as of 1968, and the data I reported on this morning was data as of the present.

Richard Koeppe—for Defendants—Cross

Q. Is there some way in which that data should be modified? A. Which data?

Q. This data. A. Well, I think the memorandum that I got from Mr. McWilliams indeed supersedes this one. That's the data which we have to work with now.

Q. How many spaces do your data say you have got in southeast Denver schools? A. The memorandum that I have from Mr. McWilliams gave only totals, and it I think listed the schools but did not break down spaces by schools.

Q. That would be Defendants' Exhibit I? A. Yes.

【694】 Q. Taking that exhibit, then, Mr. Koeppe, that exhibit states, does it not, the figures for spaces available under voluntary open enrollment? A. Right.

Q. In various high school areas? A. Right.

Q. Does that exhibit show that there are 34 elementary spaces in George Washington High School area? A. No, it doesn't. It really has two parts to it. Are you referring to this 35?

Q. Yes. A. Of course, the totals for this particular document total to the 1,081, and Mr. McWilliams indicates that in redoing this we have actually got 1,300 and he doesn't—and these are the schools in which the 1,300 exist, but he doesn't have any numbers attached to them, so I don't know for a fact how many exist.

Q. But there is a breakdown by schools, is there not? A. As of May, and I assume there is now, but it is not itemized here.

Q. As of May, how many spaces were there available in George Washington High School area? A. 34.

Q. How many were there in the South High School 【695】 area? A. 73.

Q. And how many in the Thomas Jefferson School area? A. 103.

Richard Koeppe—for Defendants—Cross

Q. By quick arithmetic I get about 210 total for those spaces. Does that seem about right? A. Right.

Q. So that by the School District's own figures, there were at least 210 spaces available in southeast Denver schools in the elementary schools, were there not? A. In early May, yes.

Q. Right. Now, according to Defendants' Exhibit R, there were or there are 501 students being bused into University Park, is that correct? A. Yes.

Q. And 210 of those students could have been reassigned to spaces which you show are available under voluntary open enrollment, could they not? A. That's possible.

Q. So the parents have suggested to you that these spaces be made in a single target school made a fairly reasonable suggestion, did they not? A. Well, a couple of things have to be taken into account. One is the fact that spaces, the data that Mr. [696] McWilliams had, is broken down by grade and the totals on Exhibit R are exactly that, so that we might have youngsters who would come through University Park in theory to the South High area, yet, for example, if there are many that are third graders we have only four spaces for third graders and seven spaces for sixth graders, so it would have to be broken up in detail.

Another problem is simply the matter of transportation out, transportation out of the geographic areas. We might do this in one or two buses going from a given school to a given area, but if we transport from a given area to a larger number of schools it compounds the setting up of the transportation; but the total number of spaces you alluded to is accurate, but by grade level it may not be.

Q. Do I understand correctly that prior to January 1968 children were transported all the way from south-

Richard Koeppe—for Defendants—Cross

west Denver in the Traylor School all the way across to University Park? A. Yes, I understand you.

Q. So that the distance involved in transportation would be hard to extend would it not? A. Right.

【697】 Q. And we're talking about spaces available now in Southeast Denver to which children from the Southeast Denver annexed areas might be diverted, are we not? A. (Nods affirmatively.)

Q. So the transportation is not really the crux of that redistribution problem, is it? A. I really am not competent to comment on that. That's in Mr. Olander's area and I don't know what complication this would have caused.

Q. Based on your reflections just now on the requests of these parents to have these children rediverted and create this target school at University Park where Hallett parents could send their children, do you have any more detailed explanation of why those parents were turned down? A. No, I don't.

Q. As I understand it, the Hallett Elementary School is the only school area—the only area where the intensive recruiting is being done for participation in the voluntary program? A. That's correct.

Q. It's not being done in any other elementary school? A. Oh, it's being done in elementary schools of South, Central and Southeastern. You're talking about predominantly black elementary?

Q. Yes, but those are children who are being recruited 【698】 to go to Hallett? A. Right.

Q. It's not being done with regard to any other target school like Hallett? A. That's correct.

Q. Is it being done in any junior high school? A. Not at this time.

Q. Any senior high school? A. Not at this time.

Richard Koeppe—for Defendants—Cross

Q. So that intensive recruiting effort which was described earlier is an effort confined to a single elementary school, is that correct? A. That's correct.

Q. Turning your attention to voluntary open enrollment programs in general, Dr. Koeppe, I believe that the Defendants' Exhibit I shows that there were 1,081 spaces in the senior high school areas when that exhibit was prepared? A. That 1,081 is the elementary spaces.

Q. Elementary spaces. You're right.

And, as I understand it, that cover letter now says that there are something like 1,300 such spaces? A. That's correct.

Q. How many children, Dr. Koeppe, are located in the mobile units at Smith Stedman and Phillips? Do you recall how many mobile units there are? [699] A. No.

Q. Would 22 sound about right? A. Recalling from yesterday's testimony, yes, I guess it would.

Q. There would be about 30 children in each mobil unit? A. Probably not that high. Probably more like 25.

Q. Or something less than 660 children in those mobile units, then, is that correct? A. That's close, I'm sure.

Q. And you have got something like 1,300 voluntary open enrollment spaces by your own figures in Southeast Denver? A. Some of these, of course, have been requested—we have requests at this time for 397 of those under the new voluntary open enrollment.

Q. Why don't you transfer the children who are in the mobile units and confined in this area of town to those spaces, Dr. Koeppe? A. To do this would—I really don't know. I hadn't thought of that strategy, first of all, and it would preclude, of course, any use of voluntary open enrollment. It would literally take the space. It could knock out Hallett's plan.

Richard Koeppe—for Defendants—Cross

Q. Do you regard the mobile units in Northeast Denver as permanent? A. I personally don't, no.

Q. You have been made aware, have you not, by parents [700] in that area of their desire to have the mobile units closed? A. Some parents, yes.

Q. And it is the policy, is it not, of the Board to transport children for the purposes of relieving overcrowding? That's stated in 1533, is it not? A. Right, it is.

Q. Now, turning to the effects of voluntary open enrollment on the problems in Northeast Denver, one of the problems to which the integration resolutions addressed themselves is the problem of stabilization of schools in that area, isn't that correct? A. That's correct.

Q. Isn't it true that the voluntary open enrollment program has a random effect? A. In that it is voluntary.

Q. Right. A. Yes.

Q. In that each of the parents makes his own decision about to which school his child will be sent? A. That's true to an extent. It depends upon the recruiting procedure that is used. For example, if we intensively recruit door-to-door we might limit that to a given geographical area of a subdistrict which is in terms to our advantage in picking up children for busing.

Q. Now, on the policy it is stated children can be [701] moved to any school where it will improve the racial balance, isn't that correct? A. That's correct.

Q. So a parent may decide to go to Traylor, as well as Phillips, might he not? A. That's right.

Q. So as a result of the random choices of all the parents involved, there may be no concentrated effect in Northeast Denver, isn't that correct? A. That could happen.

Q. What does that do to your expectation to Northeast Denver to be stabilized? A. I don't see—

Richard Koeppe—for Defendants—Cross

Q. Well, under the resolutions there was an attempt to stabilize the concentration in the Northeast Denver area. Will this have any predictable effect on that? A. You're talking about getting youngsters out of Northeast Denver; not getting youngsters into Northeast Denver.

Q. That effect is random, too, is it not? A. Right, but both have to occur for stabilization to take place.

Q. Right. Now, as I understand it, the voluntary open enrollment program has been made known to students through letters to the parents issued by principals, is that right? A. That was true at the beginning of the second [702] of that last year, yes.

Q. And program counselors have told the students about it? A. It's possible. I don't know that they have been.

Q. Have you not made any effort to counsel the students on the advantages or disadvantages of voluntary open enrollment? A. We haven't at the secondary level as I mentioned in my testimony this morning because of the existence of 1520. I also testified this morning that we have every intention of doing that exact thing during September and October in the secondary schools of Northeast Denver and teachers and so forth.

Q. Voluntary open enrollment was in effect, wasn't it, in the spring of this year? A. It was.

Q. And it was enacted last November? A. That's right.

Q. So there was plenty of opportunity to tell the counselors that the program was in effect and that children could take advantage of it. A. Right, but 1520 was passed in January, which made that effort unnecessary.

Q. As to those schools? A. That's right.

[703] Q. Did it make it unnecessary as to the rest of the school district, Dr. Koeppe? A. No.

Richard Koeppe—for Defendants—Cross

Q. Well, has any thought been given to the problem of gearing up voluntary open enrollment programs each year? A. Well, I think there is—in essence, we're going to have to take a step at a time in our efforts and our efforts at this time are geared for doing what we can at Hallett this fall and doing what we can at the secondary schools for the second semester of 1969-70 and learning from these experiences.

Q. Would you not have to do the same each year—the same thing each year in order to get full participation?

A. It's possible but, of course, it's our hope that as we get persons involved in these types of programs, if they prove to be beneficial and successful, that these persons will indeed join with us and help us sell the program rather than relying solely on ourselves. And we have gotten considerable assistance from the few that have volunteered up to this point. So it's a matter of selling in many ways.

I can recall a group of students from East, for example, putting on an assembly program, to another high school to encourage youngsters to come to East and this sort of thing. So when you talk about recruiting and selling, this has to be done in many, many ways and I think perhaps [704] Mr. Cruter outlined for you on Thursday, I think it was when he testified, that to use radio, television, and newspapers, and the youngsters and P-TA, and whatnot, and we simply haven't had time and we haven't had the right time of year to involve that number of people.

Q. Well, you did have all spring. A. For what?

Q. To recruit people for voluntary open enrollment. A. Right.

Q. What's the purpose, Dr. Koeppe, of voluntary open enrollment? A. I think it's indicated in the policy itself; to bring about integration in Denver Public Schools and better understanding between the races.

Richard Koeppe—for Defendants—Cross

Q. Is there any educational purpose? A. I think this would be one of the objects of education, also. I don't see that these things are incompatible.

Q. Not necessarily incompatible, but they are consistent with the purposes of the school district, are they not? A. Yes, they are.

Q. Does not voluntary open enrollment transfer from the school district to the parents this educational decision? A. Perhaps that particular aspect of it does, but there are other programs that can supplement voluntary open [705] enrollment, such as the cultural arts and Balarat and secondary center.

Q. Is there any educational advantage to integration, that decision must be made entirely by the parents, is that correct? A. Under voluntary open enrollment, yes.

Q. So that you have abdicated any authority on that possibility? A. I have?

Q. The school district. A. It could be interpreted that way, I guess.

Q. Now, would it be fair to say that one of the problems in predominantly black schools is the problem of educational motive? A. Yes.

Q. Do those who lack motive to achieve in school have the motive to participate in voluntary open enrollment? A. I don't know. I would tend to think not.

Q. There's sort of a logical inconsistency there, isn't there, Dr. Koeppe? A. I didn't understand.

Q. Asking those who suffer from the problem to recognize it and perceive how to solve it. A. This could be.

Mr. Barnes: No further questions.

Preliminary Injunction

(Filed July 29, 1969)

This matter having come on for hearing on the motion of plaintiffs for a preliminary injunction, and the Court having heard the testimony of the witnesses, having reviewed and considered the exhibits in evidence herein, and having heard the statements of counsel:

The Court finds that:

1. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. Sections 1343(3) and 1343(4). This is a civil action authorized by law and arising under Title 42 U.S.C. Section 1983 and the Fourteenth Amendment of the Constitution of the United States;

2. The Court has jurisdiction over the parties herein;

3. Plaintiffs and the classes which they represent have no adequate remedy at law;

4. Unless this preliminary injunction issues, plaintiffs and the classes which they represent will suffer irreparable injury;

5. Plaintiffs and their classes have demonstrated a reasonable probability that they will ultimately prevail upon the merits on a full trial herein.

Based on the Court's oral findings and conclusions of July 23, 1969, it is

ORDERED, ADJUDGED AND DECREED that the motion for a temporary injunction should be and the same is hereby granted. The defendants, their agents and servants are

Preliminary Injunction

enjoined and restrained, during the pendency of this action, from any conduct which would modify the status quo as it existed prior to June 9, 1969, in respect to acquisition of equipment, destruction or relocating of documents, writings and memoranda, and from any action which would seek to implement Resolution 1533 insofar as the said Resolution would rescind integration policies which existed on June 9, 1969, and prior thereto, and insofar as it would adopt policies which would have the effect of restoring the segregation which existed prior to the enactment of Resolutions 1520, 1524 and 1531.

This temporary injunction shall continue during the pendency of this suit and until the action is tried on its merits.

Defendants are granted ten days from and after July 23, 1969, for the purposes of seeking an appeal or review of this ruling.

DATED at Denver, Colorado, this 29th day of July, A.D. 1969.

BY THE COURT:

/s/ WILLIAM E. DOYLE
WILLIAM E. DOYLE, Judge
United States District Court

Memorandum Opinion and Order of District Court

(Dated July 31, 1969)

Reprinted in Appendix to Petition
for Certiorari, pp. 1a-19a

See 303 F. Supp. 279

Opinion of Court of Appeals

(August 5, 1969)

JULY TERM, AUGUST 5TH, 1969

Before the Honorable Alfred P. Murrah, Chief Judge and
Honorable Jean S. Breitenstein and Honorable John J.
Hickey, Circuit Judges

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*,

Appellants,

404-69

vs.

WILFRED KEYES, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Colorado.

This case is before the court on the motion of the appellants for a stay of a preliminary injunction. That injunction after ordering the Board of Education to refrain from conduct "in respect to acquisition of equipment, destruction or relocating of documents, writings and memoranda" prohibits any action

"which would seek to implement Resolution 1533 insofar as the said Resolution would rescind integration policies which existed on June 9, 1969, and prior thereto, and insofar as it would adopt policies which would have the effect of restoring the segregation which

Opinion of Court of Appeals

existed prior to the enactment of Resolutions 1520, 1524 and 1531.”

We doubt that the order is sufficient to satisfy the requirements of Rule 65(c), F.R. Civ. P., that every injunctive order “shall be specific in terms.” The reference to “policies” would seem to require definition.

We interpret the intent of the order to be that the Board of Education must comply with, and operate under, the policies expressed in Resolutions 1520, 1524 and 1531. This interpretation conforms to that of the counsel who have briefed and argued the matter. If this interpretation is correct, we are presented with a problem that was neither presented to nor considered by the district court. If the interpretation is not correct, the injunctive order lacks the required specificity.

The problem is that Resolutions 1520, 1524 and 1531, as we understand them and as counsel present them, seeks to achieve racial balance by requiring the transportation of pupils or students from one school to another. Title IV, §407(a), 42 U.S.C. §2000c(6)(a), of the 1964 Civil Rights Act, contains the following proviso:

“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 quoted language is on its face a limitation on the power of a federal court to achieve racial balance by trans-

Opinion of Court of Appeals

portation of children from one school to another. Nothing to which our attention has been called in the record shows that this statute was either called to the attention of, or considered by, the trial court.

The question of the applicability and effect of the statute should be considered, in the first instance, by the trial court. We express no opinion in regard thereto. We decline to consider and determine a question of such importance on this application for a stay and on the basis of the record presented to us.

The procedural aspects of the case concern us. We credit all parties with a good faith desire to reach a wise solution of the problem posed by the desirability of achieving the requisite racial balance in the schools. A simple grant of the stay would prolong the litigation because then we would have to consider the appeal on its merits. The remand of the case at this time will enable the trial court to consider and act on the problem which is presented by the record before us.

Accordingly, the order granting the preliminary injunction is vacated and held for naught. The case is remanded to the district court for further proceedings.

WILLIAM L. WHITTAKER, Clerk

By: /s/ ANNE M. CAHST
Deputy Clerk

458a

**Supplemental Findings, Conclusions
and Temporary Injunction by District Court**

(August 14, 1969)

Reprinted in Appendix to Petition
for Certiorari, pp. 20a-43a

See 303 F. Supp. 289

Opinion of Court of Appeals

(August 27, 1969)

Before Honorable Alfred P. Murrah, Chief Judge and
Honorable Jean S. Breitenstein and Honorable John J.
Hickey, Circuit Judges

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*,

Appellants,

No. 432-69

v.

WILFRED KEYES, *et al.*,

Appellees.

This matter is before the court on the motion of the defendants-appellants for a stay of the preliminary injunction issued by the district court on August 14, 1969. The injunction changes the attendance areas of various Denver schools to alleviate the racial segregation which the district court found to exist. It will require, indirectly if not directly, the transportation of students over greatly varying distances to and from contiguous and non-contiguous attendance districts.

The district court conducted an extensive hearing and entered carefully prepared findings of fact and conclusions of law. Although the findings of fact are contested by the appellants, we accept them for the purpose of our consideration of the case at this time. They represent a painstaking analysis of the evidence presented. They establish a racial imbalance in certain named schools. From the facts found, the district court either made a conclusion or drew

Opinion of Court of Appeals

an inference, that the jure segregation exists in named schools. Its grant of the temporary injunction is grounded on the premise that there is de jure segregation. In the time permitted, we are unable to make an examination of the record and the law to determine whether the inference is reasonable or the conclusion legally justifiable.

The case presents the questions of (1) whether the neighborhood school concept shall yield to compulsory integration which will be achieved by the transportation of students to and from contiguous and non-contiguous attendance districts, and (2) whether such transportation may be ordered by a federal court in the light of the provisions of § 407(6)(a) of the Civil Rights Act of 1964, 11 U.S.C. § 2000c-6(a). The same questions are presented in Nos. 433-69, 434-69, and 435-69. An opinion in those cases is filed concurrently with this opinion.

The questions are important and difficult of resolution. This was recognized by the trial court. Its decision may be correct. We are in doubt. The parties impress upon us the need for prompt action. The Denver schools are scheduled to open on September 2. In the time permitted, we are unable to come to a conclusion whether the plaintiffs-appellees will prevail on the merits or are likely to prevail on the merits.

We are oath to disturb a preliminary action taken by an experienced trial judge. We must decide whether the public interest is best served by the maintenance of the status quo or by the acceptance of the injunctive order.

We note that the hearing did not encompass all of the issues tendered by the complaint; that the defendants-appellants have not answered but have a motion to dismiss pending; and that the trial court specifically reserved certain matters "pending consideration of this action at the

Opinion of Court of Appeals

trial on the merits." We are impressed with the idea that the important and difficult questions presented should not be determined on an application for a preliminary injunction or in a manner which affects some but not all of the Denver schools. We question the piece-meal consideration of a city-wide problem. See the opinion filed today in *Dowell v. Board of Education*.

The United States Supreme Court has forbidden racial segregation in the schools and has demanded that desegregation be accomplished with all convenient speed. This mandate must be followed. In a metropolitan area like Denver, the attainment of the objective is closely allied to sociological and economic problems which do not lend themselves to judicial solution. Any plan of desegregation or integration which is devised either by a court or by an administrative agency must depend for its success on the understanding cooperation of the people of the area. Such understanding and cooperation is perhaps more likely to result from actions taken after a full trial on the merits than on action which of necessity is hurried because taken on an application for a preliminary injunction.

On balance we believe that the public interest is best served by a maintenance of the conditions existing before the action was brought until the trial of the case on the merits and the entry by the district court of such final judgment as it deems appropriate. In recognition of the seriousness of the problem and the desirability of prompt action, we assure the parties that an appeal from a final judgment herein will be expedited and will be heard by the full court. See also *Dowell v. Board of Education*, *supra*.

The maintenance of the status quo requires the continuation of that portion of the preliminary injunction

Opinion of Court of Appeals

which restrains the defendants-appellants from actions with respect to "acquisition of equipment, destruction or relocation of documents, writings and memoranda" related to the School Board Resolutions mentioned therein. Otherwise, the preliminary injunction issued by the United States District Court in its cause No. C-1499 entitled Wilfred Keyes, et al., v. School District Number One, Denver, Colorado, et al., is stayed and shall be of no force and effect until the further order of this court.

A true copy

Teste

William L. Whittaker
Clerk, U. S. Court of Appeals,
Tenth Circuit

By: /s/ ? ?
Deputy Clerk

Dated: August 27, 1969

Order

SUPREME COURT OF THE UNITED STATES

No., October Term, 1969

WILFRED KEYES, *et al.*,

Applicants,

vs.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*

UPON CONSIDERATION of a motion submitted by the applicants to vacate an order of the United States Court of Appeals for the Tenth Circuit issued in this case on August 29, and to reinstate the order of the United States District Court for the District of Colorado issued on August 14,

IT IS HEREBY ORDERED that the motion is granted, the order of the Court of Appeals is vacated and the order of the United States District Court is reinstated.

/s/ WILLIAM J. BRENNAN
Acting Circuit Justice

Dated this 29th day of August, 1969.

**Opinion by Brennan, J. on Application for
Vacation of Stay**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

WILFRED KEYES, *et al.*,

Applicants,

v.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*

[August 29, 1969]

MR. JUSTICE BRENNAN, Acting Circuit Justice.

In this school desegregation case I am asked to vacate a stay by the Court of Appeals for the Tenth Circuit of a preliminary injunction entered by the District Court for the District of Colorado. The preliminary injunction has the effect of requiring partial implementation of a school desegregation plan prepared by School District No. 1, Denver, Colorado and then rescinded by that Board after changes in membership followed a school board election.

The Court of Appeals issued the stay pending decision of an appeal taken by the School Board from the preliminary injunction. I have concluded that the stay was improvidently granted and must be vacated. An order of a District Court granting or denying a preliminary injunction should not be disturbed by a reviewing court unless it appears that the grant of the injunction was an abuse of discretion. *Alabama v. United States*, 279 U. S.

Opinion by Brennan, J. on Application for Vacation of Stay

229 (1929). Where a preliminary injunction has issued to vindicate constitutional rights, the presumption in favor of the District Court's action applies with particular force. The Court of Appeals did not suggest that the District Court abused its discretion. On the contrary, the Court of Appeals expressly stated that the District Court's finding of fact "represent a painstaking analysis of the evidence presented. They establish a racial imbalance in certain named schools. From the facts found, the District Court either made a conclusion or drew an inference, that de jure segregation exists in named schools. Its grant of the temporary injunction is grounded on the premise that there is de jure segregation."

The Court of Appeals nevertheless stated that it "must decide whether the public interest is best served by the maintenance of the status quo or by the acceptance of the injunctive order," since the time before the Denver schools open on September 2 was insufficient to permit an examination of the record to determine whether the District Court correctly held that this was a case of *de jure* segregation. It may be that this inquiry was appropriate notwithstanding the presumption in favor of continuing the preliminary injunction in force. But the reasons given by the Court of Appeals for striking the balance in favor of the stay clearly supplied no support in law for its action. It was not correct to justify the stay on the ground that constitutional principles demanded only "that desegregation be accomplished with all convenient speed." "The time for mere 'deliberate speed' has run out. . . ." *Griffin v. County School Board*, 377 U. S. 218, 234 (1964). "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." *Green v. County School Board*, 391 U. S.

Opinion by Brennan, J. on Application for Vacation of Stay

430, 439 (1968). The obligations of the District Court was to assess the effectiveness of the School Board's plans in light of that standard. *Id.*, at 439. Since the Court of Appeals not only was unable to say that the District Court's assessment was an abuse of discretion, but agreed that it "may be correct," the stay of the preliminary injunction was improvident.

The Court of Appeals also seems to have based its action on the premise that public support for the plan might be developed if any order awaited final hearing; the Court of Appeals stated that a plan of desegregation "must depend for its success on the understanding cooperation of the people of the area." But the desirability of developing public support for a plan designed to redress *de jure* segregation cannot be justification for delay in the implementation of the plan. *Cooper v. Aaron*, 358 U. S. 1 (1958).

I therefore grant the application, vacate the Order of the Court of Appeals, and direct the reinstatement of the Order of the District Court.

Opinion of Court of Appeals

(September 15, 1969)

Before Honorable Alfred P. Murrah, Chief Judge, and
Honorable Jean S. Breitenstein and Honorable John J.
Hickey, Circuit Judges

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, *et al.*,

Appellants,

No. 432-69

v.

WILFRED KEYES, *et al.*,

Appellees.

This matter is before the court on the motion of the defendants-appellants that the court amend its August 27, 1969, order by specifically holding that the district court abused its discretion in the grant of its August 14, 1969, preliminary injunction.

The record before us at the time of our order showed that Colorado has not, and never has had, any state imposed school or residential segregation. No discrimination in school transfers was either shown or claimed. No gerrymandering was shown or claimed. The district court's findings of de jure segregation, or a dual system, were confined to a small number of schools and were based on the failure or refusal of the School Board to anticipate population migration and to adjust school attendance districts to alleviate the imbalance resulting from such pop-

Opinion of Court of Appeals

ulation shifts.) We believed that in the circumstances public policy favored a maintenance of the status quo until the problem could be considered and determined on a city-wide basis.

The situation has now changed. Our stay was vacated and the preliminary injunction restored. The schools have opened in compliance, so far as we know, with the requirements of the preliminary injunction. Any change now ordered would have a disruptive effect on the students, the teachers, and the general school administration. Again looking at the problem from the standpoint of public policy, we are convinced that, for the present, we should not disturb the preliminary injunction.

The resolution of the issues is of great public importance. All persons in interest are entitled to be heard. We direct the attention of the district court and of counsel to the fact that in the litigation concerning the Oklahoma City schools we permitted the intervention of persons having a litigible interest. During the argument of the motion under consideration, we were told that the case in the district court is going forward expeditiously and that a trial date in November of this year has been set tentatively. In the circumstances we believe that further proceedings on this appeal should await the disposition of the case on its merits. We hope that the case may be promptly tried on the merits and decided. We renew the statement that the court of appeals will expedite any appeal. Nothing contained herein, or in the August 27, 1969, order, shall be taken as an expression of opinion by this court on any issue that may be presented in the trial and determination of the merits of the case.

469a

Opinion of Court of Appeals

The motion is denied and further proceedings on the appeal are held in abeyance until the further order of the court.

Dated: September 15, 1969

A true copy

Teste

William L. Whittaker
Clerk, U. S. Court of Appeals,
Tenth Circuit

By: /s/ JOYCE R. STUCK
Deputy Clerk

Answer

(Filed October 6, 1969)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

Now COME all Defendants herein, except Rachel B. Noel, John H. Amesse and James D. Voorhees, Jr., by their attorneys, Henry, Cockrell, Quinn & Creighton, and Kenneth Wormwood, and for their answer to the complaint allege:

FIRST DEFENSE

The complaint fails to state a claim against said Defendants upon which relief can be granted.

SECOND DEFENSE

Defendants expressly deny any allegation of the complaint which charges or implies that they discriminate against Plaintiffs or any other child within Defendants' jurisdiction on the basis of race, color or ethnicity; Defendants expressly deny any allegation of the complaint which charges or implies that educational opportunity afforded to the children within Defendants' jurisdiction is based upon race, color or ethnicity; Defendants expressly and categorically deny that any of their actions referred to in the complaint have deprived Plaintiffs or any other person within Defendants' jurisdiction of equal protection of the law.

Answer

THIRD DEFENSE

Defendants deny each and every allegation contained in the complaint except as follows:

I. *Jurisdiction*

As to those allegations hereunder which describe what is sought by Plaintiffs by their complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth thereof; and Defendants expressly deny that this Court has jurisdiction over the Defendants and the subject matter of this action.

II. *Parties*

1. Defendants admit, based upon the records of Defendant School District: that the minor Plaintiffs are citizens of the United States of America and are, except for Plaintiff Gregory L. Wade, as to whom Defendants have no current information indicating that said Plaintiff is presently enrolled in school in this school district, citizens of the State of Colorado and residents within School District No. 1; that, except for Plaintiffs Gregory L. Wade and Rhonda O. Jennings, the places of residence of the minor Plaintiffs are at the addresses of their respective parents and aunt stated at the foot of the complaint; and that the minor Plaintiffs, except Plaintiff Gregory L. Wade, are now (October, 1969) attending schools as follows:

Christi Keyes	Hallett Elementary
Kris M. Colley	Hill Junior High
Mark A. Williams	East High
Rhonda O. Jennings	Kepner Junior High
Denise Michelle Starks	Palmer Elementary

Answer

Carlos A. Perez	West High
Sheila R. Perez	Baker Junior High
Terry J. Perez	Greenlee Elementary
Dinah L. Becker	Merrill Junior High
Sarah S. Weiner	Hallett Elementary

Defendants admit the allegations contained in paragraphs 2, 3 and 4 of Part B under this heading. As to Defendant School District, its full corporate title is School District No. 1 in the City and County of Denver and State of Colorado, it is created pursuant to Article XX, §7, of the Colorado Constitution and operates pursuant thereto and to the general school laws of the State of Colorado.

2. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of those allegations in paragraphs 1 and 2 of Part A under this heading, except those admitted in the preceding paragraph, and therefore deny the same.

III. *First Cause of Action*

Defendants admit that Defendant Board of Education passed and enacted Resolutions Nos. 1520, 1524 and 1531 on the dates alleged; that the minor Plaintiffs, on the date of the commencement of this action, resided within the attendance areas alleged; that Defendant Board of Education has, prior to the commencement of this action, initiated the purchase of 27 school buses; and Defendants admit the allegations contained in the first two sentences of Part L and all of Part M under this heading.

*Answer*IV. *Second Cause of Action*

1. As to the allegations contained in the complaint under the Second Cause of Action, to the extent that such allegations incorporate by reference allegations of the First Cause of Action, Defendants incorporate herein by reference their answer to such allegations hereinabove set forth.

2. As to the other allegations in the complaint under said Second Cause of Action, Defendants allege that Defendant School District has established school attendance area boundaries on the basis of nonracial criteria which result in the assignment of pupils to schools generally nearest their places of residence, but expressly deny that any attendance boundaries have ever been created or altered with the intent of segregating pupils because of race or with that effect.

3. Defendants admit that in some schools in the School District pupils are grouped, in some courses, according to ability in those courses and irrespective of race or ethnicity, but Defendants deny that any such ability grouping segregates or separates pupils on the basis of race or ethnicity or denies to any pupil an equal educational opportunity, and deny that such grouping constitutes a "track system" as alleged.

WHEREFORE, Defendants pray that the complaint be dismissed, that the preliminary injunction heretofore entered herein be dissolved, that judgment be entered herein in favor of Defendants and against the Plaintiffs, that De-

Answer

defendants recover their costs herein, and for such other and further relief as may to the Court appear proper.

HENRY, COCKRELL, QUINN & CREIGHTON

By /s/ VICTOR QUINN
1415 Security Life Building
Denver, Colorado 80202
Telephone: 244-6075

/s/ KENNETH M. WORMWOOD
Kenneth M. Wormwood
810 Symes Building
Denver, Colorado 80202
Telephone: 244-5475

Attorneys for all Defendants except John H. Amesse, Rachel B. Noel and James D. Voorhees, Jr., in their individual capacities.

[CERTIFICATE OF MAILING OMITTED]

Memorandum Opinion and Order

(Filed October 17, 1969)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

THIS MATTER having come on to be heard on September 11, 1969, upon the motions of certain of the defendants herein, and the Court, having considered the briefs filed herein, and having heard the statements of counsel, hereby finds and orders as follows:

Nature of the Action

This is a civil action brought under 42 U.S.C. § 1983 wherein jurisdiction of the subject matter is founded upon 28 U.S.C. § 1343(3). Plaintiffs bring this suit as a class action to redress the alleged deprivation of their rights under the equal protection clause of the Fourteenth Amendment, maintaining that defendants have unlawfully segregated minority Negro and Hispano children in the public schools of the Defendant District. The relief sought is solely equitable in nature, being an injunction against the continuation of the allegedly segregated schools through the requirement of a plan for desegregation of said schools.

Moving Defendants

The moving defendants are:

School District No. One, Denver, Colorado;

The Board of Education of School District No. One,
Denver, Colorado;

Memorandum Opinion and Order

William C. Berge, Stephen J. Knight, Jr., James C. Perrill, Frank K. Southworth, John H. Amesse, James D. Voorhees, Jr., and Rachel B. Noel, in their official representative capacities as members of The Board of Education of School District No. One, Denver, Colorado; William C. Berge, Stephen J. Knight, Jr., James C. Perrill and Frank K. Southworth, in their individual capacities; and

Robert D. Gilberts, individually and as Superintendent of Schools of the District.

Motions Presented

The movants premised their motion upon two major points: (1) that § 1983 does not create a cause of action against either (a) the District, because it is a “municipality” and under the holding of *Monroe v. Pape*, 365 U.S. 167 (1961) not a “person” as that term is used in § 1983;¹ (b) the individual defendants in their official representative capacities, because such a claim would be the equivalent to a suit against the School District itself,² and (c) the defendants as individuals, because, as such they are powerless to grant the relief requested. Secondly, defendants asserted that since there was no cause of action there was no subject matter jurisdiction under 28 U.S.C.

¹ 42 U.S.C. § 1983 provides:

“Every *person*, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” (Emphasis added).

² See *Harkless v. Sweeny*, 38 Law Week 2007 (S.D. Tex. 1969) discussed *infra*.

Memorandum Opinion and Order

§ 1343(3). However, defendants have abandoned this latter point, and properly so.¹

For the reasons set forth below, this Court concludes that the contentions are without merit and that the motions should be denied.

School District No. One was created by Article XX, § 7 of the Colorado Constitution, and is governed by the general school laws of the State as to its operation, the election of members of its Board of Education, etc. However, the District has cited no authority for the proposition that it is a "municipality"; it is simply a governmental agency of the State.

In *Monroe v. Pape*, *supra*, relied upon by defendants, the Court had before it a claim for *damages* under § 1983 against the City of Chicago for the actions of city police officers which abridged plaintiffs' constitutional rights. The Court, after carefully reviewing the legislative history of the Act of 1871 concluded that Congress did not intend to bring municipal corporations within the ambit of § 1983.

Several factors lead this Court to the conclusion that the holding of *Monroe* should not be extended to exclude the School District or the defendants in their official capacity from § 1983. Since the *Monroe* decision the Supreme Court has considered numerous cases under § 1983 which involved governmental agencies and officers, without questioning whether there was a cause of action: *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964); *WMCA v. Lomenzo*, 377 U.S. 633 (1964); *Tinker v. Des Moines Indep. Community School District*, 393 U.S. 503 (1969); *Lucas v. 44th General Assembly*, 377 U.S. 713 (1964); *Raney v.*

¹ *Bell v. Hood*, 327 U.S. 678 (1946).

Memorandum Opinion and Order

Board of Education of Gould School District, 391 U.S. 443 (1968).

Secondly the legislative history relied upon by the Court in *Monroe* shows that the concern of Congress was about the imposition of vicarious liability for *damages* upon a city, county or parish. There is nothing in that history which supports the contention that every other type of state or local governmental agency was also to be excluded. In fact such an exclusion would practically render § 1983 meaningless as a means to afford affirmative relief, particularly equitable relief, for the deprivation of Constitutional rights. In *Monroe* it was recognized that the creation of such affirmative relief was one of the objectives of the Act. *Id.* at 196-98, concurring opinion of Justices Harlan and Stewart.

Thirdly at least two Courts of Appeals which have considered this question have held that *Monroe* does not apply except where damages are being sought against a defendant such as a city, county or other municipal corporation. In *Schnell v. City of Chicago*, 407 F. 2d 1084 (7th Cir. 1969) newsmen brought suit under §1983 for injunctive relief against the City, the superintendent of police and unidentified police officers to prevent interference with the plaintiffs' rights to gather and report news. Relying on *Monroe* the trial court dismissed the suit for failure to state a claim. The Court of Appeals reversed, holding that since the suit only sought equitable relief, *Monroe* did not apply. See also *Adams v. City of Park Ridge*, 293 F. 2d 585 (7th Cir. 1961). The Fifth Circuit reached the same result in *United States v. City of Jackson, Miss.*, 318 F. 2d 1 (5th Cir. 1963), as did the District Court for the Southern District of Alabama in *United States v. Clark*, 249 F. Supp. 720 (S.D. Ala. 1965).

Memorandum Opinion and Order

Harkless v. Sweeny, supra, involved a suit for damages and reinstatement brought by Negro school teachers under § 1983 against the school district, the superintendent of schools and the members of the school board, both individually and in their official capacities. The trial court dismissed the suit for failure to state a claim as to the district and the individual defendants in their official capacities relying primarily upon the *Monroe* case and several trial court opinions.¹ This Court has considered the *Harkless* case and the cases therein relied upon, and has concluded that insofar as it pertained to equitable relief, that case gave too broad an application to *Monroe*. We believe the better authority to be such cases as *Adams v. City of Park Ridge*, and *United States v. City of Jackson, Miss., supra*.

Since we have held *Monroe* inapplicable to an entity such as the School District, there is similarly no compulsion to exclude these defendants either in their official or individual capacities from the meaning of "persons" under § 1983. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that the motions to dismiss for failure to state a claim upon which relief can be granted be and hereby are denied.

Defendants shall have 15 days from September 11, 1969, to file an answer herein.

¹ *Johnson v. Hackett*, 284 F. Supp. 933 (E.D. Pa. 1968); *Baxter v. Parker*, 281 F. Supp. 115 (N.D. Fla. 1968); *Glaney v. Parole Board*, 287 F. Supp. 34 (W.D. Mich. 1968).

480a

Memorandum Opinion and Order

Dated this 16 day of October, 1969.

BY THE COURT

/s/

William E. Doyle
United States District Judge

APPROVED AS TO FORM :

/s/

Gordon G. Greiner
Attorneys for Plaintiffs

HENRY, COCKRELL, QUINN & CREIGHTON

By

Attorneys for Defendants