IN THE

Supreme Court of the United States

October Term, ~~1969~~ 1970

No. ——

JAMES E. SWANN, et al.,

Petitioners and Cross Respondents

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,

Respondents and Cross Petitioners

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

WILLIAM J. WAGGONER
Weinstein, Waggoner, Sturges, Odom and Bigger
1100 Barringer Office Tower
Charlotte, North Carolina

BENJAMIN S. HORACK
Ervin, Horack and McCartha
806 East Trade Street
Charlotte, North Carolina

Attorneys for Respondents and Cross Petitioners

INDEX

Table of Cases:

IN THE

Supreme Court of the United States

October Term, 1969

No. ———

JAMES E. SWANN, et al.,

Petitioners and Cross Respondents

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,

Respondents and Cross Petitioners

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Cross petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on May 26, 1970.

OPINIONS BELOW

The opinions of the courts below directly preceding this petition culminating in the judgment of the Court of Appeals dated May 26, 1970, (226a) are set forth in petitioners' petition for writ of certiorari filed on June 19, 1970.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on May 26, 1970, (226a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Did the Court of Appeals join in the error of the trial court in rejecting the desegregation plan offered by the Board of Education where 68% of the black students would attend schools in which their race was in the minority and where the remaining 32% of the black students would attend schools having white ratios of 17% to 1% and these black students would be taught by a predominantly white faculty and further where such black students were offered more generous freedom of transfer than that offered by the customary majority to minority transfers?

2. Did the Court of Appeals join in the error of the trial court in rejecting the plan for desegregation of the 76 elementary schools prepared and offered by the Board of Education, where the plan left no all-black schools, though nine of 76 schools had white ratios of 1% to 17% and black students attending those schools would have an untrammeled right to transfer to any one of the 67 remaining elementary schools, and upon departure from elementary schools would be assured of a desegregated education during the remainder of their schooling?

3. Did the Court of Appeals join in the error of the trial court in rejecting (by the trial court's offering the Board a "Hobson's choice") the Board plan for desegregation of junior high schools where only one of 21 junior high schools would have more than a 39% black student ratio and the remaining predominantly black school would house 758 black and 84 white students and have a predominantly white faculty by imposing a requirement on the Board to create nine black satellite districts containing approximately 2700 black students and assigning them to predominantly white suburban junior high schools?

4. Did the Court of Appeals join in error of the trial court in rejecting the Board plan for desegregation of senior

high schools where the plan provided that no school would have more than a 36% black ratio and a predominantly white faculty by imposing a further requirement upon the Board that 300 black students residing in four designated grids would be bused a substantial distance from the northwestern part of the city to a high school serving the extreme southeastern portion of the county?

5. Did the Court of Appeals join in the error of the trial court in imposing racial balances in junior and senior high schools in contravention of Title 42 U.S.C. 2000c(b) and 6(a)(2) (Sections 401(b) and 407(a)(2)) of the Civil Rights Act of 1964 and North Carolina General Statute 115-176.1?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, Section 401(b) and 407(a)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b) and 6(a)(2)); (230a) and Title 28 U.S.C. 2281 et seq. (1964) (233a).

STATEMENT

This school desegregation action was instituted in 1965 and, after hearing, the District Court held this school system to be in compliance with the Constitution. *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F. Supp. 667 (1965), which holding was affirmed by the Court of Appeals for the Fourth Circuit in *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F. 2d 29 (1966).

Following the Supreme Court decision in *Green v. New Kent County*, 391 U.S. 430, 88 S. Ct. 1689 (1968), and companion cases, the plaintiffs filed a motion for further relief alleging discrimination in teacher salaries, school

plants, facilities and numerous other areas, and in addition, sought further desegregation. Following hearing on April 23, 1969, the United States District Court for the Western District of North Carolina found:

"Some Board actions found not to be discriminatory.

No racial discrimination or inequality is found in the following disputed matters:

. . . The use of federal funds for special aid to the disadvantaged. . . . Use of mobile classrooms. . . . the quality of school buildings and equipment. . . . Coaching of athletics. . . . Parent-Teacher association contributions and activities. . . . School fees. . . . School lunches. . . . Library books. . . . Elective courses. . . . Individual evaluation of students. . . . Gerrymandering. . . ." (14a-18a)

". . . Location of schools in Charlotte has followed the local pattern of residential development, including its *de facto* patterns of segregation. . . ." (21a)

"The percentage racial mix. Counsel for plaintiffs say that since the ratio of white to black students is about 70/30, the School Board should assign the children on a basis of 70% white and 30% black and bus them to all the schools. *The Court does not feel that it has the power to make such a specific order.*" (Emphasis supplied) (26a)

The District Court found with respect to the motives and judgment of the School Board as follows:

"A word about the School Board—The observations in this opinion are not intended to reflect upon the motives or the judgment of the School Board members. They have operated for four years under a court order which reflected the general understanding of 1965 about the

law regarding desegregation. *They have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and have exceeded the performance of any school board whose actions have been reviewed in the appellate court decisions.* The Charlotte-Mecklenburg schools in many respects are *models for others* . . . The difference between 1965 and 1969 is simply the difference between *Brown* of 1965 and *Green v. New Kent County* of 1968. The rules of the game have changed and the *methods and philosophies which in good faith the Board has followed are no longer adequate* to complete the job which the courts now say must be done 'now.' " (Emphasis supplied) (27a)

Concluding additional affirmative action was required of the Board, the Court then ordered the Board of Education to submit a plan for the complete desegregation of teachers to be effective for the 1969-1970 school year and to submit a plan and time table for the desegration of pupils to be predominantly effective in the fall of 1969 and completed by the fall of 1970. (30a and 31a)

In order that the Court may be advertent to the arduous problem facing the Board of Education, the following information is offered. The Charlotte-Mecklenburg School System is the largest school system in the Carolinas, ranking 43rd largest in the United States and serving 84,500 students, 29% of which are black and 71% of which are white. The present transportation system carries approximately 23,000 students daily on buses. Each bus averages 1.8 trips each way, each day. The City of Charlotte comprises 64 square miles, making it larger than the District of Columbia, and the total county comprises 550 square miles, having an east-west span of 22 miles and a north-south span of 36 miles. (9a). Ninety-

five percent (95%) of the 24,000 black students, or 23,000, reside in the northwestern inner-city quadrant of the City or on the fringes thereof. (14a).

Following submission of the Board's first plan for further desegregation, the Court entered its order of June 20, 1969, (46a) which found the plan inadequate with reference to pupil and faculty desegregation. The Board was directed to submit a plan by August 4, 1969, in accordance with the April 23, 1969, order.

During the interim, *United States v. Montgomery*, 395 U. S. 225, 89 S. Ct. 1670 (1969) was decided which for the first time indicated that racial ratios in facutly be imposed. In accordance with *Montgomery, supra.*, the Board of Education proposed a plan for desegregation which would produce substantial faculty and student desegregation for the school year 1969-70 and proposed a comprehensive computer-assisted study for the purpose of restructuring attendance lines for the school years 1970-1971. It was estimated that the study would require approximately six months to complete and would be available for presentation on or about February 1, 1970.

On August 15, 1969, the Court entered an order (58a) approving the policy statement of the Board, the faculty desegregation program, the closing of seven all-black inner-city schools, the re-assignment of students from overcrowded black schools and local assignment of students between two schools. In addition, the Court approved in principle the proposed restructuring of attendance lines and other factors, but rejected them for lack of specific detail and time table. The Board was accordingly directed to present by November 17, 1969, a plan for complete faculty desegregation and student desegregation for the school year 1970-1971 (70a). In view of the fact that it was im-

possible to complete the computer-assisted restructuring of attendance lines within the time limited, which would attain maximum desegregation possible by rezoning, motion was made by the Board for additional time in which to present its plan for desegegation, which was denied. (81a). The District Court gratuitously and without benefit of further evidentiary hearings reversed his previous findings that segregation in Charlotte was *de facto* as follows:

> ". . . There is so much state action imbedded in and shaping these events that the resulting segregation is not innocent or *'de facto'* and the resulting schools are not 'unitary' or 'desegregated.' " (87a)

In view of the rejection of the motion for the extension of time, the Board was compelled to present an admittedly incomplete plan for desegregation on November 17, 1969, and sought direction from the Court with respect to the meaning of a "unitary system" and related terms. Thereafter, on December 1, 1969, the District Court disapproved the Board's plan for further desegregation and directed the desegregation of faculties on a three-to-one ratio effective not later than September 1, 1970, and indicated that a Court consultant would be appointed. (109a). On December 2, 1969, the Court appointed Dr. John Finger, who had formerly testified as an expert witness on behalf of plaintiffs as consultant. In the December 1 order, the Board was invited to continue working on its plan by the District Court.

On February 2, 1970, the Board of Education submitted a plan utilizing computers to achieve a maximum racial mix of 71% white and 29% black in each school where possible by restructuring attendance lines. One hundred (100) of the 103 schools would have a racial mix, leaving

only three all-white schools. Sixty-eight percent (68%) of the black students would attend schools having less than 40% black population. Thirty-two percent (32%) of the black students would attend nine elementary and one junior high schools which would have black ratios of 83% to 99% black under the Board plan. (123a, 124a, 126a-128a).

The plan for desegregation submitted by the School Board on February 2, 1970, included imposition of faculty ratios of approximately three to one, white predominating, in each school and proposed implementation of its plan for the school year 1970-1971 in accordance with the various court orders. The Board plan would require the in-district transportation to approximately 5,000 additional students, who would qualify for such transportation under state law.

The Court consultant's plan was submitted contemporaneously with that of the Board on February 2, 1970, which effectively adopted in many respects the Board's geographic zoning plan and engrafted upon it the features of pairing of distant elementary schools and creation of satellite districts in predominantly black inner-city areas who were assigned to distant predominantly white outlying secondary schools.

On February 2, 1970, the Court conducted a hearing limited to the question of the time required for implementation and refused to hear any evidence with reference to the merits of the two plans before the Court. On February 4, 1970, the Board made a motion for hearing on its plan and for the opportunity to examine the Court consultant who resides in Rhode Island and beyond the process available to the Board. In response thereto, the Court permitted a short hearing severely limited as to time on the following day and did not direct the consultant to be present for examination.

On the same day, February 5, 1970, the Court entered its order in which the Court found in part as follows:

> "The Board plan, prepared by the school staff, relies almost entirely on geographic attendance zones, and is tailored to the Board's limiting specifications. It leaves many schools segregated. The Finger plan incorporates most of those parts of the Board plan which achieve desegregation in particular districts by rezoning; however, the Finger plan goes further and produces desegregation of all the schools in the system.
>
> Taken together, the plans provide adequate supplements to a final desegregation order." (113a)

Although the Court stated, "The order which follows is not based upon any requirement of 'racial balance' . . ." (115a), the Court then adopted the entire plan of the Court consultant and thereby directed racial balancing with reference to the various schools:

A. The Board's pupil assignment plan for senior high schools was approved with the condition that the 300 black students residing in four grids suggested by the Court consultant would attend Independence High School. Therefore, the Court consultant's sole recommendation with reference to high schools was approved although no high school under the Board plan would house more than a 36% black ratio.

B. With respect to junior high schools, the Board plan was approved upon condition that the only junior high school out of 21 which would remain predominantly black would be desegregated by giving the Board a "Hobson's choice" of furnishing transportation and increasing blacks in attendance at several outlying schools and in default of rezoning (which had been fully explored), two-way transportation of students (which is cross-busing to which the

Board is opposed) or closing the junior high school (whose classrooms are desperately needed to minimize the already serious overcrowding which exists at the junior high level), the Board was directed to implement the Court consultant's plan, which provided for establishing nine satellite attendance districts (containing 2,760 students) in inner-city black areas for attendance at nine distant predominantly white suburban schools.

C. With respect to elementary schools, the Court adopted the Court consultant's plan which utilized the Board's rezoning and engrafted upon it the feature of cross-assignment with resulting cross-busing of inner-city blacks in attendance at nine schools with distant suburban whites attending 24 schools. Approximately 10,200 students would be involved in the elementary cross-assignment.

The Board plan contemplated furnishing transportation only to those students eligible for transportation under state law and would result in furnishing additional transportation to approximately 5,000 students. The order of desegregation imposed substantial additional transportation requirements upon the school system which were compiled by the transportation office of the school system as follows:

FINGER PLAN

Additional Students	*Number of Buses*	*First-Year Cost*
23,000	526	$4,199,439.00

BOARD PLAN

Additional Students	*Number of Buses*	*First-Year Cost*
4,935	104	$ 864,767.00

Upon the amendment of the February 5 order, dated March 3, the Board submitted estimates that additional

transportation required by the amended order was as follows:

Additional Students	*Number of Buses*	*First-Year Cost*
19,285	422	$3,406,687.00

Supplementary findings of the Court dated March 21, 1970, (155a and 157a) reflect a finding that transportation would be required as follows:

Additional Students	*Number of Buses*	*First-Year Cost*
13,300	138	$1,011,200.00

Extensive objections and exceptions were filed by the Board with reference to the findings of the Court dated March 21, 1970, and the Court of Appeals noted that it was difficult to furnish reliable predictions with respect to transportation estimates. (193a and 194a)

The Board filed notice of appeal to the Court of Appeals for the Fourth Circuit on February 25, 1970.

On March 5, 1970, the Court of Appeals stayed implementation of that portion of the order directing cross-busing of students and on application to the Supreme Court of the United States by the petitioners, this Court declined to disturb the stay order of the Court of Appeals.

The Court of Appeals directed the District Court to conduct evidentiary hearings with reference to the general issue of busing and related considerations which resulted in the supplemental findings of fact dated March 21, 1970 (136a) to which, as noted above, the respondents filed numerous exceptions.

The District Court stayed implementation of the remaining portions of its February 5 order until September 1, 1970.

Thereafter, on May 26, 1970, the Court of Appeals for the Fourth Circuit approved the provisions of the order of the District Court with reference to assignment of faculty and assignment of students to secondary schools and reversed and remanded for further consideration the assignment of pupils attending elementary schools. (184a).

From this holding, the petitioners and respondents have applied for writs of certiorari.

REASONS FOR GRANTING WRIT

Introduction

This Court should accept this case for review. It involves fundamental issues which confront not only Charlotte-Mecklenburg, but school systems throughout the nation in their efforts to establish and maintain the unitary system that the Constitution requires. A review of this case will bring clearly into focus the practical problems which in *Northcross v. Board of Education*, 397 U. S. 232 (1970), the Chief Justice said ought to be resolved by this Court.

Charlotte-Mecklenburg is typical of school systems, particularly those involving complex densely populated urban areas that have been seeking conscientiously to acquit their affirmative duty to eradicate the vestiges of previously established dual systems.

For sixteen years, school boards, plaintiffs and the courts have struggled with the elusive question, "What constitutes a unitary system?" School boards have been roundly, and often unjustifiably, condemned for not solving the demands of *Brown II*, 349 U. S. 294 (1955). It has been a difficult struggle. A companion case to *Brown II*, *Briggs v. Elliott*, 132 F. Supp. 776 (E.D.S.C. 1955), held that although there was a duty on school boards not to discriminate, there was no duty to integrate. Although numerous opportunities were presented, this dictum was never repudiated by

the appellate courts until the late 1960's by the Fifth Circuit and finally by the Fourth Circuit in *Nesbitt v. Statesville*, 418 F. 2d. 1040 (4th Cir. 1969).[1] *Brown II*, supra., was, therefore, for a long time believed to stand for the proposition that all schools should be opened to minority groups and that the overlapping dual zoning be eliminated.

In *Cooper v. Aaron*, 358 U. S. 1 (1958), interference by state authorities was put to rest.

After some lethargy, school districts began eliminating the dual attendance zones which generally resulted in moderate desegregation by reason of segregated residential patterns. Desegregation efforts were thwarted by minority to majority transfers which permitted the races to resegregate. This device was held unconstitutional in *Goss v. Knoxville*, 373 U. S. 683 (1963). There, the Supreme Court gave a new indication of the means to accomplishing a unitary system by expressing the view that although minority to majority transfers were condemned, a completely open freedom of choice might satisfy constitutional demands. The Department of Health, Education and Welfare under the *Civil Rights Act of 1964* and the Fifth Circuit in its famous Jefferson decree, *United States v. Jefferson County*, 380 F. 2d. 385 (1967), embraced freedom of choice as their answer to the elusive unitary system question.

In 1968, this Court in *Green, supra,* dealing with a small two-school rural system, held freedom of choice was not constitutionally prohibited but it was not the answer to the unitary school system question. The scope of *Green*, has been limited to Southern school systems without regard

[1]Although it may now be recognized that *Green v. New Kent County*, 391 U. S. 430 (1968) nullified this dictum, it was not expressly repudiated so as to be clearly understood.

to whether or not desegregation exceeds that of other areas of the country. Since *Green*, the desegregation progress of an enlightened community has been of no concern to the courts, where the school systems are located in states formerly imposing a dual system by law. The destruction of state-enforced dual systems by *Brown II* has not in sixteen years resulted in substantial mixing of the races in schools, North or South, East or West. It has not resulted in substantial mixing of the races in New York in a span of 32 years after repeal of its dual school laws or in many other states where such laws have been repealed for many more years. Segregation in public schools rests more strongly on factors other than state laws. It is time for the courts to give recognition to this incontrovertible fact and apply uniform national standards based upon a rule of reason containing clearly understood parameters embracing solid eduction values. After all, the foundation of all successful desegregation rests upon improvements of education for minority groups.

Recent pronouncements of the court, *Alexander v. Holmes*, 396 U. S. 19 (1969) and *Carter v. West Feliciana*, 396 U. S. 290 (1970) have been generally addressed to the question of time. The term "effectively excluded" has received various interpretations by the courts and requires immediate clarification.

In its February 2, 1970 plan, the School Board declared the major thrust of its policy as follows:

> "* * * (The) Board of Education firmly believes further desegregation of students and professional staff will contribute to the education and social development of all children."

This was *not a new policy*—but a reaffirmation of the School Board's long standing commitment to the proposi-

tion that every child in the system—black, white, rich or poor—is entitled in full measure to a quality education unimpaired by any restraints or restrictions upon his constitutional rights or upon his opportunity to develop to the full extent of his capabilities.

Charlotte-Mecklenburg has a pretty good "track record" in connection with its desegregation efforts. Under the plan in operation last year (1969-1970), the Charlotte-Mecklenburg system achieved a degree of desegregation which exceeds that attained by most other major systems.[2]

The plan for desegregation offered by the Board and rejected by the District Court and the Court of Appeals provided for attendance of 68% of the blacks at predominantly white schools, which far surpasses the desegregation offered by any major school system in this nation. We are confident that this statement can be made without fear of contradiction. It therefore appears punitive for a court to impose a racial balance upon a system which has produced such an exemplary plan that far exceeds the performance of the school systems noted above.

In *Swann v. Charlotte-Mecklenburg*, 369 F. 2d 29 (4th Cir. 1966), the Court of Appeals approved the new attendance zones adopted by the School Board. In its April 23,

---

[2]In Charlotte-Mecklenburg, 65% of the blacks during the school year 1969-70, attended predominantly black schools (165a). Comparable information derived from HEW figures reflects the following percentage of the black students at predominantly black schools: New York City, 86%; Los Angeles, 96%; Detroit, 91%; Philadelphia, 90%; Milwaukee, 88%; San Francisco, 54%; Boston, 77%; and Cincinnati, 78%.

The percentage of black students attending schools housing 95% to 100% black students in other cities is as follows: Baltimore, 76%; Cleveland, 80%; Washington, 89%; St. Louis, 86%; Newark, 75%; Buffalo, 61%; Gary, Indiana, 80%. In Chicago, 76% of the blacks attend schools less than 2% white. Source, United Press International Release, May 17, 1970.

1970 order, the District Court acknowledged that Charlotte-Mecklenburg had been a leader in facing up to the responsibility of providing quality education on a desegregated basis for all children—white and black—but advised the Board that since *Green*, "the rules of the game have changed, and the methods and philosophies which in good faith the Board has followed are no longer adequate." (27a and 28a).[3]

As this case progressed in the District Court during the intervening months between April, 1969, and February, 1970, it become increasingly evident that there were some fundamental conceptual differences between the plaintiffs and the trial court on the one hand and the School Board on the other with respect to the identity and definition of the necessary ingredients of the "unitary school system" that the mandate of the Constitution requires.

The School Board earnestly was seeking to know and understand what was required of it. In its plan submitted November 17, 1969, the Board sought clear-cut directions from the trial court by asking it to answer various basic practical questions that were perplexing the Board regarding the nature and composition of a "unitary school system" and the necessary or permissible ingredients of an acceptable plan.

The School Board was not alone in its quandry; other courts expressed their concern regarding the resolution of the practical problems involved in evaluating the efficacy of desegregation plans and the need for standards that define the steps required of local school districts in order to acquit their affirmative duty to establish unitary sys-

---

[3]A pertinent historical observation: In 1958, the Charlotte City School Board on its own initiative was the first in the South to pioneer integration — albeit on a token basis.

tems.[4] Our own trial court did not share the doubts or uncertainties expressed by these other courts. Boiled down to its simplest terms, it was the trial court's view that a school system is not a unitary one if it has a single black or predominantly black school. Local conditions, practical problems, cost, educational considerations, natural boundaries or the size and complexity of the system were regarded as irrelevant by the trial court.

On appeal, the Court of Appeals, contrary to the trial court, has held in this case that not every school in a unitary system must be integrated and adopted "a test of reasonableness—instead of one that calls for absolutes." (189a).

On review, this case will present a clear-cut opportunity for this Court to determine whether the Constitutional mandate regarding the abolition of dual school systems and the establishment of unitary ones permits the application of a "Rule of Reason" or whether the Constitution requires the shifting of children "by the numbers" irrespective of the size and complexity of the system, costs, disruptions, educational considerations, and the host of other practical matters with which the school boards and administrators must cope in fashioning an effective school system and the day-to-day operations of their schools.

On June 24, 1970, the cross petitioners filed with this Court a response to the petitioners "Motion to Advance", in which the cross petitioners joined in a request that this Court grant certiorari and render its decision prior to the

---

[4]For example, see *Bivins v. Bibb County*, — F. Supp. — (N. D. Ga. Jan. 21, 1970); *United States v. State of Georgia*, — F. Supp. — (N. D. Ga. Dec. 17, 1969); *Beckett v. School Board of the City of Norfolk*, 308 F. Supp. 1274 (E. D. Va. Dec. 20, 1969); *Thornie v. Houston County*, — F. Supp. — (M. D. Ga. Jan. 21. 1970); *Hilson v. Washington County*, — F. Supp. — (M. D. Ga. Jan. 28, 1970); *Northcross v. Board of Education of Memphis*, — F. 2d — (6th Cir. Jan. 12, 1970).

opening of schools next fall.[5] We sincerely hope that this can be accomplished. Prompt resolution of the issues presented by this case will greatly assist not only Charlotte-Mecklenburg, but other courts and school systems everywhere to conform their desegregation plans to the standards established by this Court in this case and to minimize the costly disruptions that will be the result of continued uncertainties or misconceptions regarding the necessary ingredients of a unitary system and the means of establishing and maintaining one.

In the portions of this cross petition which follow, the cross petitioners set forth a discussion of the questions presented for review.

I.

The Board Plan Based on Geographic Attendance Zones Gerrymandered to Achieve Maximum Racial Mix Established a Unitary System and the Court of Appeals Joined in the Error of the Trial Court by Disapproving that Plan.

One of the basic issues involved in this case is whether a desegregation plan based on comprehensively restructured geographic attendance zones satisfies the Constitutional requirement of a unitary system, in a situation where these zones are established to promote the maximum amount of desegregation possible by the employment of this technique. This issue also involves a consideration of the extent to which a School Board may employ this technique as a means of preserving some semblance of the

---

[5]Cross petitioners are advised that the Norfolk, Virginia and Little Rock, Arkansas schools are seeking review of their cases in this Court which will offer a broad spectrum in which to resolve this national problem.

neighborhood school concept which it believes to be beneficial.

A. *The Geographic Attendance Zones.*

To achieve maximum desegregation of the 103 schools in the Charlotte-Mecklenburg System, the February 2, 1970, School Board plan is based exclusively on geographic attendance areas which ignore natural boundaries. Maps comprising a part of the Board plan (Exhibits A, C and G attached to February 5, 1970 Order) show attendance zones of the schools at each of the three instructional levels.[6] These attendance zones were grotesquely gerrymandered by extending finger-like corridors into and out of the densely populated, predominantly black inner-city areas to obtain sufficient black and white children to create a favorable racial composition at the schools involved.

Under the Board plan, 100 of the 103 schools in the Charlotte-Mecklenburg System would have some degree of racial mix, leaving only three all-white schools. Sixty-eight percent (68%) of the black students would attend 93 schools with less than 40% black student bodies—leaving the remaining 32% of the black pupils in the 10 remaining schools having white ratios of 17% to 1%.[7] These 10 predominantly black schools remained in spite of the Board's best efforts to achieve a more satisfactory racial mix in them by means of the drastically gerry-

---

[6]The Court is reminded that these maps, plans, appendix and a book containing supporting data were furnished to the Court in connection with petitioners' application for stay which was denied on March 16, 1970.

[7]See appendix attached to this petition for statistical data pertaining to the Board plan.

mandered attendance lines. Of these 10 schools 9 are elementary[8] and 1 is a junior high school.[9]

In addition, the Board plan specifically provides that the faculty of each school shall be assigned so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio in the entire system (i.e., a ratio of about 1 to 3). The racial composition of its faculty is educationally beneficial and will contribute substantially to thorough integration of the 103 schools of the system.

The remaining predominantly black schools are located in the inner-city core which is populated for the most part by blacks, many of whom due to shifting housing patterns had moved into previously white areas. In its Findings of Fact (146a), the trial court acknowledged:

> "Both Dr. Finger and the school board staff appear to have agreed, and the *court finds as a fact*, that for the present at least, there is *no way to desegregate* the all-black schools in Northwest Charlotte *without providing* (or continuing to provide) *bus or other transportation for thousands of children.* All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion." (Emphasis supplied)

Brown II, 349 U. S. 294 (1955) recognized that an acceptable desegregation plan may employ geographic re-

---

[8]Under the Board plan, these 9 elementary schools have the following black-white ratios: Bruns Ave. (90-10); Marie Davis (88-12); Double Oaks (99-1); Druid Hills (96-4); First Ward (99-1); Lincoln Heights (99-1); Oaklawn (99-1); University Park (85-15); and Villa Heights (83-17). (A Plan for Student Desegregation — Systems Associates, Inc., page 31.)

[9]Under the Board plan, Piedmont Junior High has a black-white ratio of 90% (B)-10% (W). (A Plan for Student Desegregation —Systems Associates, Inc., Page 31.)

zoning if done fairly and in good faith to effect "a revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis."[10] See also *Green, supra.*

A consideration of the pro-desegregation gerrymandered geographic zones of the Board plan excludes any inference that they were formulated for any purpose other than a conscious one to promote maximum desegregation of the Charlotte-Mecklenburg schools.

The desegregation achieved by the geographic zones of the Board plan is supplemented in another very material respect: A majority to minority transfer provision which allows any black child in a school having more than 30% of his race to attend one that is less than 30% black, but permits a white child to transfer only if the school he is attending has more than 70% of his race and the one to which he seeks assignment is less than 70% white. The Court of Appeals correctly inferred that these transfer provisions were purposely designed by the Board to promote stable desegregation in the schools by preventing "tipping" or resegregation (199a). The Court of Appeals'

---

[10]A pertinent historical note is made by Alexander M. Bickell in his recent book, *The Supreme Court and the Idea of Progress*:

> "At the first argument of *Brown v. Board of Education* in 1952, Justice Frankfurter asked the future Justice Thurgood Marshall, then counsel for the Negro children, whether a decision in his favor would 'entitle every mother to have her child go to a non-segregated school?' Mr. Marshall replied in the negative. 'What will it do?' Justice Frankfurther pursued. Mr. Marshall replied: 'The School Board, I assume would find some other method of distributing the children by drawing district lines.' The only requirement would be, Mr. Marshall added, that the lines be drawn 'on a natural basis,' and not be gerrymandered so as to enclose or exclude Negro neighborhoods." Bickell, *The Supreme Court and the Idea of Progress*, p. 117 (1970). See also 1 U.S.L.W. 3164 (1952).

determination that these transfer provisions are unduly restrictive is unwise and unwarranted. The restrictions imposed are an effective method of preserving the stable desegregation achieved by the Board's geographic zones at all three instructional levels and will allow more blacks the opportunity to transfer than the usual majority to minority transfer.

The Court of Appeals misconceived the beneficial purpose sought to be achieved by the 70-30 transfer provision as well as the 60-40 ratio of white to black utilized initially in designing attendance zones. These limitations were imposed for the sole purpose of assuring stability of the desegregation effort. In *Beckett v. Norfolk, supra,* the District Court quoted with approval the views of Dr. Thomas F. Pettigrew, a member of the Advisory Committee to the Coleman Report:

> "In sum, Pettigrew assigns five reasons why the ratio of 70% white to 30% Negro, with a maximum of 60% white and 40% Negro, points to long-range success. His testimony is quoted:
>
> '(1) That I believe it will minimize the middle class flight, if you want to call it that. I don't think it excludes it completely, that's why I use 'minimize.'
>
> (2) That I think it gives you a good chance for integration, not just desegregation, therefore maximizes black achievement.
>
> (3) Maximizes or should maximize white achievement.
>
> (4) It should maximize other positive benefits, non-achievement benefits, like college aspirations, occupations aspirations, interracial—better interracial attitudes and behavior on the part of blacks.

(5) The same non-achievement benefits on the part of whites.' "

In disapproving the geographic plan of the School Board, the Court of Appeals admonished the Board "to explore every method of desegregation, including rezoning with or without satellites, pairing, grouping, and school consolidation." (199a). The Board had previously considered the feasibility of such techniques and concluded that a plan based solely on non-discriminatory geographic attendance zones would best serve the Charlotte-Mecklenburg System, the cause of education and the promotion of stable desegregation.

We applaud the Rule of Reason espoused by the Court of Appeals in desegregation cases, but question whether the application of that Rule may properly veto a geographic plan such as the one presented by the School Board. A review of this case will afford this Court an opportunity to resolve this as yet unresolved problem for the guidance of not only Charlotte-Mecklenburg, but other school systems who await an authoritative declaration of the scope and limits of techniques to be employed in fulfilling the mandate of the Constitution that no child is to be "effectively excluded" from any school on account of his race or color.

B. *The Neighborhood School Under the Board Plan.*

The neighborhood school concept is one that the Board considers to be beneficial to the children and enhances the support that comes when children and parents identify themselves with a particular school and its programs. Fragmentation of this type of association is not in the best interest of our schools.

In its April 23, 1969, Order, the District Court volunteered its own educational philosophy in opposition to the neighborhood school concept (22a):

> "Today people drive as much as forty or fifty miles to work; five or ten miles to church; several hours to football games; all over the country for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood. * * * If this court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships. * * *"

To the contrary, all too many of our present day relationships have become institutionalized and depersonalized. We believe this trend to be unwholesome. Close relationships among teachers, parents and children should to the maximum extent be encouraged and undergirded. The neighborhood school plays an important part in fostering such relationships—particularly at the elementary level where the ties between home, school and after-class activities are an important part of the educational process of children in their early formative years. In a metropolitan system such as ours the ideal may not always be achieved. This should not be a reason for dismantling and abandoning the neighborhood school.

From the beginning there has been this marked contrast between the views of the trial court and those of the Board regarding the pertinence of the neighborhood school.[11] The School Board responded to the pressure of

---

[11]Geographical zoning is the common method of determining school attendance and the neighborhood school is the predominant attendance unit. Racial Isolation in the Public Schools — Summary of a Report by the Commission on Civil Rights, page 3, (March 1967).

the trial court when it submitted its February 2, 1970 plan—a plan which retained, but severely strained, the principle of the neighborhood school.

The Fifth Circuit has approved a neighborhood school plan as satisfying the constitutional mandate for the establishment of a "unitary system." *Ellis v. Orange County, Florida*, —— F. 2d —— (5th Cir. 1970); *Deal v. Cincinnati Board of Education*, 324 F. 2d 209 (7th Cir. 1966) succinctly stated the case for the neighborhood school:

> "Appellants, however, pose the question of whether the neighborhood system of pupil placement, fairly administered without racial bias, comports with the requirements of equal opportunity if it nevertheless results in the creation of schools with predominantly or even exclusively Negro pupils. The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such a minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral, easily determined standards, and better home-school communication."

In his policy statement of March 24, 1970, entitled *SCHOOL DESEGREGATION: A Free and Open Society* (116 Cong. Rec. S4351, Daily Ed., March 24, 1970), the President of the United States addressed himself at length and in depth to the important role that the neighborhood school plays in the education of our public school children. He said in part:

> "In devising local compliance plans, primary weight should be given to the considered judgment of the local

school boards—provided they act in good faith, and within Constitutional limits.

The neighborhood school will be deemed the most appropriate base for such a system.

Transportation of pupils beyond normal geographical school zones for the purpose of achieving racial balance will not be required."

As previously noted, the trial court quite obviously disagreed with the import of the President's policy statement. The Court of Appeals, although not addressing itself *per se* to the neighborhood school concept, nevertheless disapproved the geographic zones at all three instructional levels which the Board in its considered judgment had proposed to achieve a unitary system while retaining the basic benefits of the neighborhood school.

On review, this Court should clearly address itself to the extent that the neighborhood school may be retained and employed as part of a fairly administered non-discriminatory plan for the establishment of a unitary system.

II.

The Constitution Does Not Require Racial Balancing in Schools or Busing of Children Outside Geographic Attendance Zones to Effect Such Balancing. The Court of Appeals Joined in the Error of the Trial Court by Requiring Such Balancing and Busing.

As previously noted, we approve the test of reasonableness adopted by the Court of Appeals—instead of one that calls for absolutes. Such a test is consistent with the equitable principles elucidated in *Brown II*, which made

it clear that desegregation plans and the means of implementing them should take into account a variety of local problems and conditions—including by implication those specifically itemized by the Court of Appeals (age of pupils, board resources, cost, effect of busing on traffic and the distance and time for transportation).

We agree with the Court of Appeals that the application of the Rule of Reason requires that school boards must use all reasonable means to integrate their schools and that, if these efforts prove unavailing, a system may nevertheless be unitary even though an "intractible remnant of segregation" and some predominantly black schools remain.

Further, we agree that transportation may be employed on a "reasonable" basis as a legitimate tool to effectively desegregate an otherwise dual system. However, this still leaves open to question the circumstances under which and the purposes for which busing may be or should be imposed upon a school system.

The net effect of the trial court order of February 5, 1970, was to require racial balancing at all three instructional levels and the busing necessary to implement it—regardless of cost or disruptions. The net effect of the Court of Appeals decision was to require racial balancing at the junior and senior high levels and to authorize it at elementary level—tempered only by its test of reasonableness with reference to the amount of busing involved.

We do not believe that the mandate of the Constitution requires racial balancing nor compulsory busing outside of normal attendance zones to achieve such balancing, assuming, of course, that the attendance areas are fairly drawn so as to maximize desegregation.

The circumstances of this case and the decisions of the trial court and Court of Appeals regarding the extent to which racial balancing and compulsory busing may or must be required are basic unresolved problems that are plaguing not only Charlotte-Mecklenburg, but courts and school systems everywhere. The sooner these problems are resolved, the sooner the costly uncertainties and disruptions in the field of school desegregation will be minimized or dispelled and school boards and administrators can get on with their primary task of providing quality education for all children, black and white. We urge this Court to take the opportunity afforded by this case to cope with these issues.

A. *Analysis of Racial Balancing and Busing Imposed Upon Charlotte-Mecklenburg Schools.*

At the heart of the controversy involved in this case is the lawfulness of the trial court's February 5, 1970, order requiring long distance busing in the senior high, junior high and elementary schools. In order to highlight the implications of the decisions of the trial court and the Court of Appeals with respect to balancing and busing, we discuss the problems and issues involved at each of the three instructional levels.

Senior High Schools

The Board's pupil assignment plan for senior high schools effectively desegregated each of the ten high schools; nine of them would have black ratios of 17%-36%. The student body of the remaining school, Independence High, would be 2% black. This plan was adopted by the court consultant and the trial court with one exception: A requirement was engrafted upon the Board plan that 300 black students residing in the inner core of the

City must be bused from the area of their residence through the center city traffic a distance of about 12 or 13 miles to Independence High School located in white suburbia. This arrangement in turn was approved by the Court of Appeals as a "reasonable" means of eliminating Independence as an almost totally white school. The Court of Appeals observed that the bus mileage involved for the black youngsters was about the same as the average one-way bus route of others attending that school —but neglected to take into account the fact that the existing bus routes were primarily in rural and suburban areas rather than in the congested inner-city areas which would be traversed by the 300 black students.

Under the plan as proposed by the Board, these 300 children would have attended a thoroughly desegregated high school having a racial composition of 36% black and 64% white. The only purpose served by the court directed shifting of these 300 was to make a white school less white.

We do not think that the Constitution requires this racial balancing nor the busing necessary to implement it. Neither do we feel these requirements fall within the purview of the Rule of Reason.

Junior High Schools

The Board plan proposed to restructure the attendance lines of the 22 junior high schools so that all but one of them would have not more than 38% black students. In spite of the Board's best efforts, the one remaining school (Piedmont Junior High) housing about 840 pupils was left 90% black and 10% white. In order to reduce the percentage of blacks in this one school from 90% (758 pupils) to 32% (243 pupils) the court consultant re-

shuffled the Board's proposed attendance zones for the junior high schools and provided for satellite busing of 1,372 additional (total of 2,760) inner-city black youngsters to nine predominantly white suburban schools. This proposal of Dr. Finger was approved by the trial court and the Court of Appeals.

By way of summary, the restructuring the Board's attendance lines and the busing of 1,372 additional black children were directed in order that the black student body at Piedmont would be reduced by 515 students. We do not think that this dislocation of 1,372 additional black pupils, nor the cost of busing required to accomplish this racial balancing, can stand up under the test of reasonableness or the requirements of the Constitution.

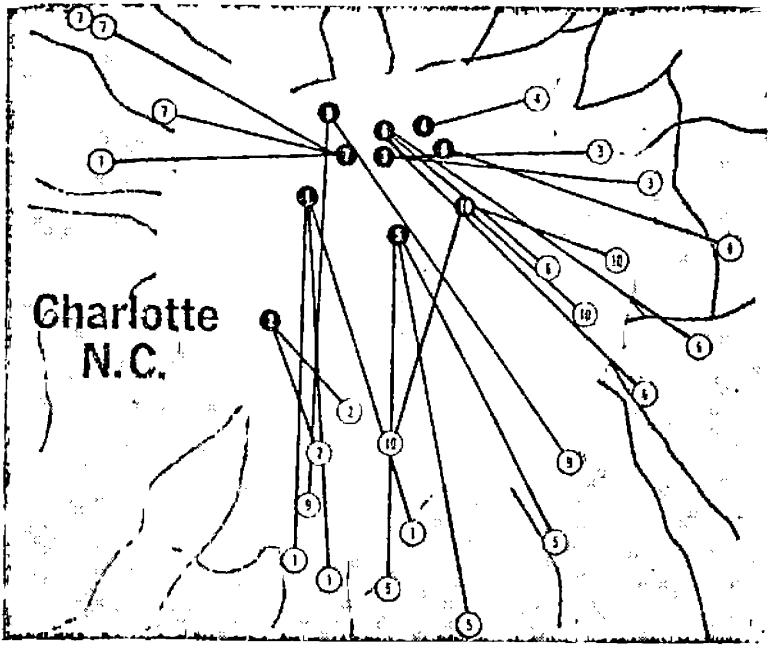
Elementary Schools[13]

The most burdensome part of the trial court's order was the long distance cross-busing of about 10,200 elementary children to eliminate the nine predominantly black inner-city schools by clustering them with 24 predominantly white suburban schools—requiring the busing of 5,100 black first, second, third and fourth graders to the white schools and 5,100 white fifth and six graders to the black schools. A schematic portrayal of the clustering and cross-busing ordered by the trial court follows on the next page. The particulars regarding the number and cost of the buses required to effectuate this arrangement are set forth in the opinion of the Court of Appeals (191a, 192a) and will not be repeated here.[14]

[13]The 76 elementary schools referred to by the Court of Appeals (191a) includes four child development centers and learning academy. The remaining 72 schools are conventional elementaries.

[14]There is a marked disparity between transportation cost estimates of the school staff and those set forth in the trial court's

A Maze of Bus Routes to Integrate Charlotte Schools



Under its test of reasonableness, the Court of Appeals properly held that, based on the trial court's estimate, the resulting increase of 39% in the number of elementary children bused and 32% in the present bus fleet was too extensive and too onerous. The Court of Appeals reversed the trial court's order with reference to this phase of the plan and remanded with instructions that the Board con-

---

Supplementary Findings of Fact (152a-157a), which drastically discounted those of the administrators and minimized the relevance of the cost increases for administration, bus parking, maintenance, driver education and similar items. In this opinion, the Court of Appeals set forth both sets of figures and observed that the findings of the district court and the evidence submitted by the Board rest on many variables (193a).

sult with HEW and consider methods other than geographic attendance areas, including rezoning with or without satellites, pairing, grouping and school consolidation.

In its remand, the Court of Appeals directed that any new elementary plan approved by the trial court be put into effect next September. We reiterate our fervent hope that this Court will give appropriate directions before the Board is faced with the disruptions and expenditures that may ultimately prove to be unnecessary.

B. *Racial Balancing as Basis for Decision of Trial Court and Court of Appeals.*

The trial court's February 5, 1970, order begins with the assertion: "The order which follows is *not* based on any requirement of 'racial balance.'" (Emphasis supplied) (115a). That it was the obvious purpose of the trial court, not only to eliminate each black school, but also to eliminate all-white schools by requiring a racial mix to make them less white is readily apparent from the following excerpt from Paragraph 12 of its December 1, 1969, Order (105a):

> "* * * (T)he Court will start with the thought, originally advanced in the Order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from the norm may be unavoidable."

Further, Paragraph 13 of the trial court's February 5, 1970, order (118a) not only requires an initial establishment of racial ratios in the various schools but also implementation of a continuing program "computerized or

otherwise" of assigning pupils throughout the school year "for the conscious purpose of maintaining each school * * * in a condition of desegregation."[15]

This requirement that children be reshuffled periodically to maintain prescribed ratios makes of our children unwitting pawns in a colossal numbers game.

Although the majority of the Court of Appeals did not expressly confirm or deny that it was engaging in racial balancing (albeit tempering the absolutism of the trial court with its own rule of reasonableness), Bryan, Circuit Judge, in his dissent made his own appraisal of the main thrust of the majority's decision (215a-217a):[16]

> "The Court commands the Charlotte-Mecklenburg Board of Education to provide busing of pupils to its public schools for 'achieving *integration*'. (Accent added) '(A)chieving *integration*' is the phraseology used, but actually, achieving racial *balance* is the objective. Busing to prevent racial imbalance is not as yet a Con-

---

[15]The likely results of such a program were described in *Beckett v. School Board of City of Norfolk, supra.*:

> "If such a mandate requires the *mixing of racial bodies* in each and every school building, irrespective of any local problems confronting the School Board, the answer is obvious. Under such circumstances racial balancing, or some system approximating same, must be ordered, and it would be a waste of time and effort to file plans which may be educationally beneficial to the children. The Civil Rights Division conceded, in argument, that any approach to racial balancing would annually require a *constant shuffling and reshuffling of children throughout the school system.* It is agreed by all that such a shuffling process is most *detrimental to children.*" (Emphasis supplied)

[16]See also President Nixon's policy statement of March 24, 1970, entitled *SCHOOL DESEGREGATION: A Free and Open Society, supra.*

stitutional obligation. Therefore, no matter the prior or present utilization of busing for this or other reasons, and regardless of the cost considerations or duplication of the bus routes, I think the injunction cannot stand.

Without Constitutional origin, no power exists in the Federal courts to order the Board to do or not to do anything. I read no authority in the Constitution, or in the implications of Brown v. Board of Education, 237 U. S. 483 (1954), and its derivatives, requiring the authorities to endeavor to apportion the school bodies in the racial ratio of the whole school system.

The majority opinion presupposes this racial balance, and also busing to achieve it, as Constitutional imperatives, but the Chief Justice of the United States has recently suggested inquiry on whether 'any particular racial balance must be achieved in the school; . . . (and) to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court.' * * *

I would not, as the majority does, lay upon Charlotte-Mecklenburg this so doubtfully Constitutional ukase." (Emphasis by Judge Bryan).

The concerns and dissent of Judge Bryan find expression in earlier cases. For example, in *Carr v. Montgomery County Board of Education,* — F. Supp. — (M.D. Ala. 1970):

"Plaintiffs' objections * * * appear to be based on a theory that racial balance and/or student ratios as opposed to the complete disestablishment of a dual system is required by the law. Such is not this Court's concept of what the law requires. *Complete disestablishment of the dual school system to the extent that it is based*

on race is required. While pairing of schools may sometimes be required to disestablish a dual system, the pairing of schools or *the busing of students to achieve a racial balance,* or to achieve a certain ratio of black and white students in a school is *not required by law.* * * *" (Emphasis supplied)

And even more succinctly in the dissent of Judge Gewin (Bell, J., concurring) in *U. S. v. Jefferson County Board of Education,* 380 F. 2d. 385, 403 (5th Cir. 1967):

"* * * No consideration is given to any distinction in any of the numerous school systems involved. Urban schools, rural ones, small schools, large ones, areas where racial imbalance is large or small, the relative number of Negro and white children in any particular area, or any of the other myriad problems which are known to every school administrator, are taken into account. All things must yield to speed, uniformity, percentages and proportional representation. There are no limitations and there are no excuses. This philosophy does not comport with the philosophy which has guided and been inherent in the segregation problem since Brown II. As the Court there stated:

'Because these cases arose under *different local conditions* and their disposition will involve a variety *of local problems,* we required further *argument* on the question of relief.' (349 U. S. p. 298, 75 S. Ct. p. 755)" (Emphasis added).

As suggested by Circuit Judge Bryan, it would be in order for this Court to address itself to this as yet unresolved problem.

C. *Role of School Boards and Administrators in Controlling the Destiny of Public Education.*

> "In devising local compliance plans, primary weight should be given to the considered judgment of local school boards—provided they act in good faith, and within Constitutional limits." President Nixon's March 24, 1970, policy statement entitled *SCHOOL DESEGREGATION: A Free and Open Society, supra.*

If it were otherwise, the admonition of Judge Coleman in his dissenting opinion in *Bivins v. Bibb County Board of Education*, 419 F. 2d. 1211 (5th Cir. 1970), is pertinent:

> "Some of these days, the Courts are going to have * * * to free themselves of their tragic failures in the role of school administrators and get back to their primary functions."

As expressed in its February 2, 1970, plan, it was the considered judgment of the Charlotte-Mecklenburg School Board that the benefits to be obtained from the use of extensive transportation to eliminate the 10 remaining black schools previously referred to would be far outweighed by the resulting burdens, inconvenience and cost:

> "* * * Bussing in a school system as large as the Charlotte-Mecklenburg System is at best an expensive and complex operation. It is acknowledged that a large number of children are already being bussed to and from school. However, the burden, expense, hardship, inconvenience, hazards, expenditures of unproductive time and added administrative problems occasioned by any bussing program should be minimized. * * * The Board cannot justify on any reasonable basis the very substantial additional cost and burden of the compulsory bussing that would be required for the sole purpose of effecting a desired racial mix in the remaining 10 black schools. Under the best arrangement, the Board could envision to eliminate these black schools, massive

cross-bussing would require the transportation of about 10,300 black and white children, 5,150 into and 5,150 out of the inner-city at the elementary level and 590 into and 590 out of the inner-city at the secondary level. This involuntary bussing would involve an approximate 15-mile trip each way (30 miles round trip)[17] for each student moved through the heart of the business and residential sections of the City. * * * A plan that generates unnecessary transportation costs and occasions unnecessary burdens and inconveniences for parents and children alike would jeopardize the public support which provides the tax and bond money upon which our schools are totally dependent for financing the already high cost of education. * * * The burden of extra bussing that would be required to desegregate each of the 10 remaining predominantly black schools would fall primarily on elementary children. The major impact of this burden would be imposed upon children who, because of their tender years, are the most illogical candidates to bear this burden."

The Charlotte-Mecklenburg School Board is an elective body and, as such, is charged with the responsibility of exercising its own judgment regarding the needs of the System and the best interest of its children.

It is the School Board's duty to determine whether the dollars allocated to it by other elective officials (the Board of County Commissioners for Mecklenburg County) for the education of our children shall be spent for *books or buses*. It is for the Board to determine whether the existing transportation system shall be expanded or contracted, whether it is educationally good or bad to stagger the

---

[17]Compare findings of trial court; 8,000 students cross bussed, 7 miles one way and 14 miles round trip. (155a).

opening and closing of schools at any particular grade level, whether after school activities will suffer, whether inconvenience and disruptions to children and parents are justifiable, whether overloaded buses are acceptable or safe, whether the time of children in transit is justifiable and how the host of other value judgments and policies shall be made to administer effectively a large complex metropolitan school system charged with awesome responsibility of providing 84,500 school children in 103 schools with a quality education.

Books, bricks and buses (and all that they imply) are part of the tools to be used in the educational process. How and when these tools are used must be left to the good faith decision of local school boards or the boards should be disestablished and the administration of school systems should be turned over to the courts.

The fact that now the Charlotte-Mecklenburg school system transports 23,000 children with 280 buses, the opening and closing of some of its schools are staggered, in some schools after-school activities are impaired, some school buses travel over congested traffic arteries, some elementary children wait for the school bus by the side of the road at 6:30 in the morning and others get home at 5:00 in the afternoon, some buses are overloaded and some children must stand up, some buses are unsound and should be replaced—*is no answer* to the administrative and educational problem of how much of this is desirable, tolerable or necessary in a system as large and complex as Charlotte-Mecklenburg. A court mandate that edicts racial balancing and forced busing supplants the value judgments of the elected school board and the educators on its administrative staff. An overdose of judicial paternalism and control will ultimately sign the death warrant for public education.

We hope this Court will evolve standards and guidelines for desegregation plans sufficiently clear and definite that courts will not be tempted or required to rely on their personal educational and social philosophies.

D. *Racial Balancing and Compulsory Busing Infringe on the Personal Rights and Freedom of the Children Involved.*

In its February 2, 1970, plan, the School Board concluded with a statement of its conviction that its duty is to protect the rights of all children:

> "* * * The Board understandably is prone to *exercise caution lest, in protecting the rights of some of its citizens, it tramples on the rights of others* in the absence of a clear mandate from the Supreme Court." (Emphasis supplied)

The caution of the Board was well-founded. We believe that the busing requirements of the trial court and the Court of Appeals will violate the individual rights guaranteed by the Fourteenth Amendment of those blacks and whites caught up in the forced mass movement of children away from their neighborhoods and out of their normal attendance zones for the sole purpose of achieving racial balancing.

It is obvious that a School Board must necessarily have wide latitude in the establishment of attendance zones for orderly administration of the various schools in its system and that, if these zones are fairly conceived on a nondiscriminatory basis, the children may be compelled to attend the school to which they are assigned under the applicable compulsory attendance laws. (See N.C.G.S. Secs. 115-116 *et seq.*) Absent an unlimited freedom of choice arrangement (which the Charlotte-Mecklenburg Board has not proposed), the right of a child to go to a

particular school is, of course, not absolute, but circumscribed by the inherent power of a School Board to make reasonable attendance assignments to conform to the needs of the school system and the community it serves.

Whether or not the Board itself could lawfully have required cross and satellite busing to effect the compulsory mass movement of children is an open question. But the resolution of that question is not before this Court—for the reason that the Board did not choose to go to this extreme. The point now at issue is whether the orders of the trial court and Court of Appeals infringe on the individual constitutional rights of the children and their parents—black and white—who do not want to be bused. These orders effectively exclude a child from attending the school in his attendance zone solely on account of the child's race.

From time immemorial, the public school has been a focal point of community and family life. The location of a particular school is a major consideration for parental decisions regarding the location of their homes and the neighborhood in which they choose to live. Obviously, affluent whites and blacks are normally better able to make this choice than poor whites and blacks. Nevertheless, some poor people prefer that their children attend the school serving the areas of their residence. To afford disadvantaged parents the flexibility of greater options for the education of their children than their existing economic or social status may permit and to bring these available options more in line with those enjoyed by the more affluent citizens are worthwhile objectives of any desegretion plan. But it is quite a different matter for a judicial decree to compel busing to a distant school outside the normal attendance zones—whether the parents like it or not. A court mandate that requires this coercion to achieve what it conceives to be a worthy social purpose (i. e. racial balance) is judicial paternalism.

The dissenting opinion of Judge Bell (concurred in by Judge Gewin) in *United States v. Jefferson County Board of Education*, 380 F. 2d. 385 (5th Cir. 1967) at p. 411, involving the desegregation of numerous deep south schools, speaks to the matter at hand:

> "Then there is the matter of personal liberty. *Under our system of government, it is not to be restricted except where necessary, in balance, to give others their liberty, and to attain order so that all may enjoy liberty.* History records that sumptuary laws have been largely unobserved because they failed to recognize or were needlessly restrictive of personal liberty. * * * They (the majority opinion) *cast a long shadow over personal liberty as it embraces freedom of association and a free society.* They do little for the cause of education." (Emphasis supplied)

In *Jefferson County, supra,* Judge Gewin in his own dissent (concurred in by Judge Bell) expressed similar views (at pp. 404-406):

> "* * * There must be a mixing of the races according to majority philosophy *even if such mixing can only be achieved under the lash of compulsion.* * * * Accordingly, *while professing to vouchsafe freedom and liberty to Negro children, they have destroyed the freedom and liberty of all students, Negro and white alike.* There must be a mixing of the races, or integration at all costs, or the plan does not work according to the opinion. Such has not been and is not now the spirit or the letter of the law. * * * *When our concepts as to proportions and percentages are imposed on school systems,* notwithstanding free choices actually made, *we have destroyed freedom and liberty by judicial fiat; and even worse, we have done so in the very name of that liberty and freedom we so avidly embrace.*" (Emphasis supplied)

The majority in *Jefferson, supra*, and other courts have sought to justify infringement on the rights of students in the majority where segregation is said to rest upon *de jure* action.

We respectfully suggest that the distinction between *de facto* and *de jure* is not a valid test by which to measure the constitutional rights of either black children or white children and that there is no valid reason for applying a more exacting standard to a *de jure* child than a *de facto* child in a consideration of his individual rights. We think it a fair assumption that both the black and white elementary (junior and senior high) child are blissfully unaware of the differences between *de facto* and *de jure* and suggest that the subtle difference between *de facto* and *de jure* has no pertinence when it comes to appraising the personal rights and liberties of a child.

This case presents for review the important question of whether court decreed compulsory racial balancing and busing unlawfully inroad upon the constitutional rights and freedoms of the children and parents involved.

E. *The Compulsory Busing Approved by the Court of Appeals is Violative of the Provisions of Section 401(b) and 407(a)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b) and 6(a)(2)) which Expressly Prohibits a United States Court to Order Transportation to Achieve Racial Balance in Schools.*

The Court of Appeals has read into the Civil Rights Act of 1964 interpretations which are not fairly warranted by the plain and intelligible language of the Act or supported by its legislative history. In doing so, it has joined the error committed by the Court of Appeals for the Fifth Circuit in *Jefferson, supra*, which reached its conclusion by a strained illogical analysis of this Act and the legislative history.

The clear language of the Act makes no distinction between *de facto* and *de jure* segregation and the legislative history expressly disclaims any sectional or tenuous distinctions adopted by the Court of Appeals and the cases on which it relies. If it were otherwise, Congress would have expressly so stated and the proponents of the bill would have made it so known.

The courts have been unwilling to give any definitive statement with respect to the term "desegregation" and, therefore, it became incumbent upon Congress to supply answer in this void. 42 U.S.C. 2000c(b) provides as follows:

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

It is therefore apparent that Congress in expressing a definition of "desegregation" in a positive manner stated that no student would be *excluded* from his school on account of race, color, religion or national origin. This is the language of *Alexander v. Holmes*, 396 U. S. 19 (1969). Congress also negatively stated "desegregation" does not mean assignment to overcome racial imbalance.

In order to give further meaning to its definition, Congress by 42 U.S.C. 2000c-6(a) provides in part as follows:

> "* * * (P)rovided 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 other-

wise enlarge the existing power of the court to insure compliance with Constitutional standards.***"

The term "desegregation" has taken on such national concern and importance that a definition may properly be regarded as a statement of public policy. Although the courts may take action with reference to establishing public policy, it primarily rests with the lawmakers to determine public policy. In *Building Service Employees International Union v. Gazzam*, 339 U. S. 991, 70 S. Ct. 1019 (1950), the Supreme Court held:

> "The public policy of any state is to be found in its Constitution, acts of the legislature, and decisions of its courts. *Primarily, it is for the lawmakers to determine the public policy of the state.* (p. 787) *Twin City Pipeline Company v. Harding Glass Co.*, 283 U. S. 353, 357, 51 S. Ct. 476, 478, 75 L. Ed. 1112, 83 A.L.R. 1168."

Having primary responsibility, and acting to fill a void left by the courts, the public policy as expressed by the Congress of the United States is binding upon the judiciary.

Obviously, the opinion and order of the Court of Appeals approving the order of the trial court, when measured with the attempt to achieve precise balances or ratios of students in the secondary level, clearly indicates that the effect of the order was directed unerringly to the premise of racial balance. If not, why would the court disturb desegregation on the senior high level where no school was more than 36% black. The answer is supplied by the Court of Appeals:

> "The transportation of 300 high school students from the black residential areas to suburban Independence School will tend to stabilize the system by eliminating an almost totally white school in a zone to which other whites might move with consequent "tipping" or resegregation of other schools." (195a)

It is clear that the district court and the Court of Appeals were of the opinion that all high schools in the system should contain the same racial ratio or racial balances.

Similarly, the establishment of nine satellite zones in black areas for assignment to distant suburban white schools was devised for the purpose of achieving maximum racial balance. Of the 21 junior high schools, 16 of them would have black ratios of 27% to 33%, four a ratio of 21% to 25% and one at 9%. It is obvious that a system of this size having such ratios imposed has been "racially balanced" under the plain meaning of the Civil Rights Act of 1964.

Judge Bryan in his dissent clearly reveals congressional hostility to the principle of "racial balance:"

> "Even construed as only incidental to the 1964 Civil Rights Act, this legislation in 42 United States Code §2000c-6 is necessarily revealing of Congress' hostile attitude toward the concept of achieving racial balance by bussing. It unequivocally decried in this enactment "any order [of a Federal Court] seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another . . . to achieve racial baalnce. . .' "

Similarly, the North Carolina Legislature in North Carolina General Statute 115-176.1 adopted a state law expressing the public policy of this state to be such that involuntary transportation of students for the purpose of creating a balance or ratio of races is prohibited. The constitutionality of this statute is on appeal to the Supreme Court from the opinion of a three-judge court which held this statute to be unconstitutional on April 29, 1970. To have separate treatment herein is deemed unnecessary.

The *de jure-de facto* distinction adopted by certain courts of appeal (216a) defies all reason in applying

different standards to school systems solely because of their geographical location. The United States Commission on Civil Rights study concerning causes of segregation has found substantial similarity without regard to state laws. It is now time for the Supreme Court to address itself to this question, which unanswered, threatens to further divide this nation.

CONCLUSION

Therefore, the cross petitioners respectfully request that this Court grant this cross petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

/s/ WILLIAM J. WAGGONER

Weinstein, Waggoner, Sturges, Odom and Bigger
1100 Barringer Office Tower
Charlotte, North Carolina

/s/ BENJAMIN S. HORACK

Ervin, Horack and McCartha
806 East Trade Street
Charlotte, North Carolina

Attorneys for Respondents and Cross Petitioners

APPENDIX

STATISTICAL DATA RELATING TO THE CHARLOTTE-MECKLENBURG SCHOOLS AND THE BOARD PLAN

SUMMARY OF RESULTS
FROM RESTRUCTURED SCHOOL ATTENDANCE LINES

	% Black	1969-1970 No. of Students	1969-1970 No. of Schools	1970-1971 No. of Students	1970-1971 No. of Schools
Elementary Schools	All White	6,607	9	6,437	8
	1- 5	9,519	17	2,477	4
	6-10	7,349	11	5,603	8
	11-15	3,595	6	5,311	10
	16-41	6,516	12	17,626	33
	42-100	11,312	17	7,242	9
	Error			202	
	Totals	44,898	73	44,898	72
Junior High Schools	All White	-0-	-0-	557	1
	1- 5	4,539	3	1,875	2
	6-10	6,372	5	524	1
	11-15	876	1	1,282	1
	16-41	5,049	5	16,227	15
	42-100	4,563	5	842	1
	Error			92	
	Totals	21,399	19	21,399	21
High Schools	All White	-0-	-0-	-0-	-0-
	1- 5	2,133	1	1,264	1
	6-10	1,592	1	-0-	-0-
	11-15	5,398	3	-0-	-0-
	16-41	4,287	2	15,895	9
	42-100	3,902	3	-0-	-0-
	Error			153	
	Totals	17,312	10	17,312	10
Total All Schools	All White	6,607	9	6,994	9
	1- 5	16,191	21	5,616	7
	6-10	15,313	17	6,127	9
	11-15	9,869	10	6,593	11
	16-41	15,852	19	49,748	57
	42-100	19,777	26	8,084	11
	Error			447	
	Totals	83,609	102	83,609	104

*Figures presume present inner-city bussing remains in effect.

A-2

POPULATION CHARACTERISTICS OF THE SYSTEM

	Number of Students			
	Black	White	Total	% Black
Elementary	13,162	31,534	44,696	30
Junior High	5,931	15,376	21,307	28
High School	4,139	13,020	17,159	26
(Error)			447	0.5
	23,232	59,930	83,609	28

BLACK STUDENT POPULATION DISTRIBUTION

Black Students in Predominantly Black Schools

Elementary Schools	6,739
Junior High Schools	758
Senior High Schools	-0-
	7,497
% of Black Students in Black Schools	32%

BLACK STUDENT DISTRIBUTION BASED ON RESTRUCTURED ATTENDANCE LINES

% of Black Students	Number of Black Students	% Black Students by Integration %
0- 5%	121	.5
6- 10%	436	2.0
11- 15%	855	3.8
16- 41%	14,246	61.4
42-100%	7,497	32.3
	23,155	100.0

ELEMENTARY SCHOOLS

Results of Attendance Line Restructing Projected for 1970-71*

School	1969-70 Enrollment	69-70 % Black	Black Students	White Students	Total Students	Rated Capacity	Over (Under) Capacity	% Black
Albemarle Road	514	1	4	469	473	432	41	1
Allenbrook	513	12	59	496	555	540	15	11
Ashley Park	601	4	155	421	576	621	(45)	27
Bain	768	4	25	706	731	702	29	3
Barringer	875	98	203	320	523	486	37	39
Berryhill	789	14	247	574	821	836	(15)	30
Beverly Woods	752	9	8	648	656	540	124	1
Billingsville	610	100	113	325	438	594	(156)	26
Briarwood	686	1	2	663	665	540	225	0
Bruns Avenue	784	99	624	73	697	675	22	90
Chantilly	492	1	142	303	445	432	13	32
Clear Creek	295	17	43	266	309	297	12	14
Collinswood	554	20	224	448	672	621	51	33
Cornelius	432	45	182	265	447	459	(12)	41
Cotswold	560	4	128	449	577	540	37	24
Davidson	290	36	102	174	276	324	(48)	32
Marie Davis	691	100	666	82	748	756	(8)	88
Derita	851	19	152	595	747	783	(36)	20
Devonshire	903	0	0	925	925	648	277	0
Dilworth	449	25	241	376	617	567	50	39
Double Oaks	836	100	825	3	828	675	153	99
Druid Hills	475	99	465	20	485	486	(1)	96
Eastover	601	7	157	478	*635*	*648*	*(13)*	*25*

School	1969-70 Enrollment	69-70 % Black	Black Students	White Students	Total Students	Rated Capacity	Over (Under) Capacity	% Black
Elizabeth	517	71	112	294	406	405	1	28
Enderly Park	374	1	119	238	357	297	60	33
First Ward	820	100	770	7	777	702	75	99
Hickory Grove	603	12	74	556	630	459	171	12
Hidden Valley	1,100	0	1	1,077	1,078	648	438	0
Highland	374	18	76	237	313	297	16	24
Hoskins	241	5	124	219	343	297	46	36
Huntersville	689	22	130	554	684	675	9	19
Huntingtowne Farms	610	1	3	614	617	594	23	1
Idlewild	653	9	59	549	608	594	14	10
Irwin Avenue	315	100	277	7	284	837	(553)	98
Amy James	476	99	90	169	259	243	16	35
Lakeview	364	78	119	285	404	378	26	29
Lansdowne	877	9	79	719	798	756	42	10
Lincoln Heights	711	100	903	6	909	648	261	99
Long Creek	735	36	259	523	782	837	55	33
Matthews	888	10	81	837	918	945	(27)	9
Merry Oaks	442	0	0	557	557	486	71	0
Midwood	488	2	116	401	517	459	58	23
Montclaire	718	0	1	781	782	675	107	0
Myers Park	478	5	150	314	464	432	32	32
Nations Ford	728	6	177	548	725	621	104	24
Newell	512	14	64	436	500	594	(94)	13
Oakdale	586	12	202	460	662	540	122	31
Oakhurst	621	1	92	504	596	594	2	15
Oaklawn	613	100	597	3	600	594	6	99
Olde Providence	592	14	83	461	544	486	58	15

School	1969-70 Enrollment	69-70 % Black	Black Students	White Students	Total Students	Rated Capacity	Over (Under) Capacity	% Black
Park Road	592	7	41	570	611	540	71	7
Paw Creek	636	4	83	602	685	774	(89)	12
Paw Creek Annex	301	10						
Pineville	521	28	123	379	502	486	16	25
Pinewood	674	0	0	900	900	648	242	0
Plaza Road	450	20	181	350	531	459	72	34
Rama Road	816	0	3	744	747	648	99	0
Sedgefield	551	1	223	364	587	540	47	38
Selwyn	648	5	32	459	491	486	5	7
Shamrock Gardens	515	0	84	496	580	486	94	15
Sharon	453	20	91	421	512	459	53	18
Starmount	737	3	67	838	905	648	257	7
Statesville Road	855	39	160	553	713	549	164	23
Steele Creek	514	1	195	475	670	378	292	29
Thomasboro	690	0	135	777	912	729	183	15
Tryon Hills	488	66	200	342	542	513	29	37
Tuckaseegee	636	9	57	510	567	540	27	10
University Park	825	100	735	132	867	648	219	85
Villa Heights	1,017	91	877	170	1,047	810	237	83
Westerly Hills	585	8	144	332	476	405	71	30
Wilmore	463	49	153	250	403	378	25	38
Windsor Park	749	0	1	782	783	648	135	0
Winterfield	736	7	52	653	705	648	57	7
TOTALS	44,898		13,162	31,534	44,696			

*These projections are based on 1969-70 enrollment by map location code or "grid". This population data contains an error of approximately 0.5% and therefore, projected enrollment does not exactly equal actual enrollment.

POPULATIONS OF PREDOMINANTLY BLACK ELEMENTARY SCHOOLS

School	Projected Number of Students				% Black
	Capacity	White	Black	Total	
Bruns Avenue	675	73	624	697	90
Marie Davis	756	82	666	748	90
Double Oaks	675	3	825	828	99
Druid Hills	486	20	465	485	96
First Ward	702	7	770	777	99
Irwin Avenue	837	7	277	284	97
Lincoln Heights	648	6	903	909	99
Oaklawn	594	3	597	600	99
University Park	648	132	735	867	85
Villa Heights	810	170	877	1,047	84
Totals	6,831	503	6,739	7,242	

ELEMENTARY SCHOOLS

With Predominately Black Student Populations

1969-1970		Projected for 1970-1971*	
1. Barringer	98%		
2. Billingsville	100%		
3. Bruns Avenue	99%	Bruns Avenue	90%
4. Marie Davis	100%	Marie Davis	90%
5. Double Oaks	100%	Double Oaks	99%
6. Druid Hills	99%	Druid Hills	96%
7. Elizabeth	71%		
8. First Ward	100%	First Ward	99%
9. Irwin Avenue	100%	Irwin Avenue	97%
10. Amy James	99%		
11. Lakeview	78%		
12. Lincoln Heights	100%	Lincoln Heights	99%
13. Oaklawn	100%	Oaklawn	99%
14. Tryon Hills	66%		
15. University Park	100%	University Park	85%
16. Villa Heights	91%	Villa Heights	84%

ELEMENTARY SCHOOLS

With 99 or 100% White Populations*

School	% Black	School	% Black
Albemarle Road	1	Albemarle Road	1
Beverly Woods		Beverly Woods	1
Briarwood	1	Briarwood	0
Chantilly	1		
Devonshire	0	Devonshire	0
Enderly Park	1		
Hidden Valley	0	Hidden Valley	0
Huntingtowne Farms	1	Huntingtowne Farms	1
Merry Oaks	0	Merry Oaks	0
Montclaire	0	Montclaire	0
Oakhurst	1		
Pinewood	0	Pinewood	0
Rama Road	0	Rama Road	0
Sedgefield	1		
Shamrock Gardens	0		
Steele Creek	1		
Thomasboro	0		
Windsor Park	0	Windsor Park	0

*If present inner-city bussing is discontinued, Lansdowne, Park Road, and Sharon Schools will be 100% white as they would also have been in 1969-70.

JUNIOR HIGH SCHOOLS
Results of Restructured Attendance Lines

School	69/70 Enrollment	69/70 % Black	Number of Students Black	White	Total*	Rated Capacity	Over (Under) Capacity	% Black
Albemarle Road	1,058	6	19	783	802	948	(146)	2
Alexander	1,140	32	309	699	1,008	874	127	30
Cochrane	1,631	5	571	1,150	1,721	1,190	531	33
Coulwood	876	12	313	551	864	704	160	36
Eastway	1,417	4	375	971	1,346	1,093	253	28
Alexander Graham	1,141	10	261	888	1,149	996	153	23
Hawthorne	1,068	56	276	704	980	850	130	28
Kennedy	863	94	325	540	865	801	64	38
McClintock	1,381	7	25	1,048	1,073	923	150	2
Northwest	1,053	100	296	685	981	1,068	(87)	30
Piedmont	498	89	758	84	842	631	211	90
Quail Hollow	1,576	10	138	1,144	1,282	1,238	44	11
Randolph	999	29	327	703	1,030	672	58	31
Ranson	808	32	295	558	853	851	2	35
Sedgefield	976	17	234	612	846	777	69	28
Smith	1,491	4	330	957	1,287	1,093	194	26
Spaugh	1,126	25	346	752	1,098	826	272	32
Williams	1,081	100	336	722	1,058	801	257	32
Wilson	1,216	6	346	795	1,141	1,044	97	30
Carmel	—	—	2	555	557	558	(1)	0
J. H. Gunn	—	—	49	475	524	558	(34)	9
	21,399		5,931	15,376	21,307	18,796	2,389	

*These projections are based on 1969-70 enrollment by map location code or "grid". This population data contains an error of approximately 0.5% and therefore, projected enrollment does not exactly equal actual enrollment.

SENIOR HIGH SCHOOLS

Results of Restructured Attendance Lines

School	69/70 Enrollment	69/70 % Black	Number of Students Black	White	Total*	Expt. Growth	Rated Capacity	Over (Under) Incl. Growth	Max. Capacity	Over (Under) Max. Capacity	% Black
West	1,592	9	494	998	1,492	75	1,374	193	1,660	(93)	33
Olympic	888	42	201	687	888	50	807	131	1,100	(162)	23
Harding	1,356	47	395	692	1,087	25	1,202	(90)	1,300	(188)	36
West Charlotte	1,658	100	597	1,045	1,642	50	1,593	99	1,800	(108)	36
South	2,133	5	482	1,846	2,328	150	1,523	955	2,200	278	21
Myers Park	2,000	12	426	1,883	2,309	-50	1,679	580	2,200	59	18
Garinger	2,640	19	721	1,914	2,635	50	1,874	811	2,450	235	27
East	2,152	11	360	1,716	2,076	150	1,700	526	2,200	26	17
Independence	1,246	11	23	1,241	1,264	100	1,047	317	1,400	(36)	2
North	1,647	28	440	998	1,438	0	1,158	280	1,650	(212)	31
	17,312		4,139	13,020	17,159	600	13,957	3,802	17,960	(201)	

*These projections are based on 1969-70 enrollment by map location code or "grid". This population data contains an error of approximately 0.5% and therefore, projected enrollment does not exactly equal actual enrollment.

IN THE

Supreme Court of the United States

October Term, 1969

No. ———

JAMES E. SWANN, et al.,
Petitioners and Cross Respondents,

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,
Respondents and Cross Petitioners.

CERTIFICATE OF SERVICE

This is to certify that copies of cross petitioners' petition for a writ of certiorari to the United States Court of of Appeals for the Fourth Circuit were served upon counsel listed below by United States mail, first class or airmail as required by the rules of this Court as follows:

James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

J. LeVonne Chambers
Chambers, Stein, Ferguson
& Lanning
216 West Tenth Street
Charlotte, North Carolina
28202

Honorable Erwin N. Griswold
Solicitor General of
United States
Department of Justice
Washington, D. C. 20530

Honorable Robert Morgan
Attorney General
State of North Carolina
Department of Justice
Raleigh, North Carolina

This 27th day of June, 1970.

/s/ BENJAMIN S. HORACK

Benjamin S. Horack

Attorney for Cross Petitioners