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JUDGE RIVES: Let's have order, gentlemen. Go ahead,  
Mr. Barrett.

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GEORGE LESLIE LAYTON, witness for the United States, having been  
duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. BARRETT:

Q What is your full name, sir?

A George Leslie Layton.

Q Where do you live?

A Montgomery, Alabama.

Q What is your occupation?

A I work with the State Department of Education.

Q In what capacity?

A I am Director of the Division of Administration and Finance.

Q How long have you been with that -- the Department?

A Since June, 1963.

Q What are your duties?

A Well, my duties as Director of the Division is to administer the  
State minimum program and to render general supervision over a  
staff of people who work in the Division.

Q Does the State Department of Education conduct school surveys?

A Yes, sir.

Q Is that within your Division?

A That section is assigned to my Division; yes, sir.

- Q How many people work in that section?
- A At the present time, we have two staff people.
- Q Who are they?
- A Mr. Horton and Mr. Johnson.
- Q Dr. Layton, would you tell us what the purpose of school surveys is?
- A Well, the purpose that we -- of the survey section is to, upon requests of Superintendents and to Boards of Education, to inspect sites and school centers for approval for the construction of buildings upon the sites or in the center as -- according to the rules and regulations of the State Board and the State Department of Education.
- Q Approximately how many surveys have been conducted since you have been in the Department, if you can --
- A Well, I am not sure of the exact number, but I would say, since I have been in the Department, probably -- systemwide surveys, now, for the various city and county systems -- twenty-five or thirty, but this is, of course -- I am not sure of the exact number.
- Q Would you say that substantially every school system in the State at one time or another has had some sort of a survey conducted regarding the educational system there?
- A Yes, sir; I believe that would be right.
- Q Are records kept in your office of those surveys?
- A Records are kept in the Division in the section which does the

survey, which is assigned to the Division; yes, sir.

Q Would you describe what a survey consists of, what -- what do the people working on it do, what do they look for, what do they do, how do they report, everything you can tell us about the process of conducting a survey?

A Well, when we get a request to do a survey, the survey team goes out to the system. They collect data that they need pertaining to the students, the composition of the students, and within the system. -- The -- they make a survey of the existing buildings that are there and other information that they will need to come back and write up a survey and make recommendations to the Superintendent and Board upon completion of this survey. For example, they -- on the enrollment of the students in the various grades within the system over a period of years, they collect this data, where they live, township and range or streets, and within the system; this is brought back, it is plotted on a map by dots according to where they live. Then they make a -- write a report on the status of the school buildings, the type construction, by clusters, and all this is put together, and the recommendations are made upon these findings as to whether the sites should be a permanent site or the building should be a permanent building or temporary building or abandoned or no longer fit for school use. In general, this is the type survey we -- we -- we make, except on a, say a one or two day survey to inspect a site for approval at that particular time, so you

have two types there.

Q Is the transportation system one among the things you -- you consider?

A Yes, to some -- to some extent, but we have a -- people that work -- that work with transportation that deal with this more specifically than the survey section.

Q Do you consider the school population as well as the school structures and buildings?

A Yes, sir.

Q And population trends?

A Yes, sir; school population trends; yes, sir.

Q Doctor, I would like you to look at, if you would, a rather bulky Exhibit that has been marked for identification as United States Exhibit 144, it is a group Exhibit consisting of eight volumes of photographs of a series of documents, each of which, if I am not mistaken, is titled school survey series of one number or another, and then the succeeding pages contain the text of a report of the survey. There appears to be a -- at least one survey for a considerable number of county and city school systems, the names of which appear on tabs to these various volumes. Would you mind looking at, with the court's permission --

JUDGE RIVES: Have you never seen that before?

MR. BARRETT: I am not sure, your honor, he has seen it in quite this form. It may be that if there is no objection, we



could just stipulate --

JUDGE RIVES: It is a voluminous thing that I would think would take a long, considerable time for him to look at.

MR. BARRETT: I certainly don't intend it that he look through all these volumes, but I would like his identification of what they are, generally, as I intend to go ahead and ask him some questions about it.

JUDGE RIVES: Doctor, you may look at it, and give us some idea of how much time you would like to examine it. If he is going to be examined about them, perhaps we will have to give him time to look them over, and then call him back.

MR. BARRETT: It may be, right now, if the court please, all I want to know is if they appear to be copies of surveys conducted by the office of the witness.

JUDGE RIVES: All right, suppose you look at them and give them your idea. The court might take a ten minute recess while you are examining those.

(At which time, 3:41 p.m., a recess was had until 3:51 p.m., at which time the trial continued)

JUDGE RIVES: Mr. Barrett.

Q Dr. Layton, during the recess, did you have an opportunity to look briefly at United States Exhibit number 144?

A Yes, I did.

Q Do they appear to be copies of survey reports from your files?

A Well, I did find one that was not from our files.

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- Q What one was that?
- A From Jefferson County.
- Q Who conducted that survey?
- A I believe the University of Alabama did.
- Q Is it a part of the records of your office, however; or do you know?
- A It may be on file there, but we did not do it.
- Q Doctor, I would like to call your attention to the survey for Escambia County, which is one of the surveys in United States Exhibit 144; when was that survey conducted?
- A During the school year 1964-65.
- Q Was it conducted by your office?
- A It was conducted by Mr. Horton, Mr. Boockholdt, in the survey section.
- Q Did that survey consist of -- generally of the things that you have already told us a survey ordinarily covers?
- A Yes, sir.
- Q How many schools are in that system? Can you tell us from the survey, or else from your own recollection?
- A No, I would have to look in here to tell you the exact number.
- Q Well, I will retract the question at this time, Doctor; I am sure the number will develop. I would like to call your attention to page two of the survey, at least it is numbered two, and there is a table one at the top of it; do you see that?
- A Is that Roman numeral number II or --

Q No.

A -- chapter one or what?

Q It is table one on page two.

A I can't find the numbers on this thing.

JUDGE RIVES: See if you can point it out to him, Mr. Barrett.

Q Do you see that?

A Yes, I see it; I see the table, chapter one, page two.

MR. BARRETT: I have handed some extra copies of the survey to the Clerk if the -- any of the members of the court wish to follow it.

JUDGE RIVES: All right, sir.

Q You will note that four different years are tabulated there, and I should say it is titled, "Census of school children, ages six to twenty, inclusive, in Escambia County over a twelve-year period," and then four different years during a twelve-year period are noted with certain figures after them; am I correct that the figures to the right of the years indicate numbers of children in that age band?

A The total --

Q Well, those figures just represent --

A Yes.

Q -- school children in that age band; is that correct?

A Yes; ages six to twenty, inclusive.

Q What -- what distinguishes the children noted in column one from

the children noted -- noted in what is headed, "Column two"?

A Well, from this report I am not sure, but I believe that one would be white and one would be non-white, but they are not identified on this table.

Q But that would be the usual -- you would take that to be the usual meaning in a report such as this?

A Yes, sir; and we usually identify it, but evidently we didn't here, but we are doing it now.

Q Turning the page to table two; would the same distinctions apply to those students that are noted as enrollees in the left hand portion of the table and those on the right?

A Yes, sir.

Q Do you know which would be Negro and which white, to the left or --

A Well, I am not sure, but I believe the ones on the left would be white, and the one on -- the ones on the right would be non-white.

Q They -- the ones on the left outnumber the ones on the right; isn't that correct? Generally?

A Generally; yes.

Q Does that agree with your understanding, if you have any, of the general racial composition of that school district?

A Well, I am not sure of the racial composition of that school system.

Q Now, Doctor, turning, now, to page thirteen; you will note a section titled, "Buildings," and then there are three categories,

one, "Suitable for permanent use," another, "Suitable for temporary use," and the third titled -- titled, "Should be abandoned"?

A Yes, sir.

Q Now, would you tell us very briefly what -- what distinguishes between those classifications?

A Well, the group that is listed under "Suitable for permanent use" are permanent type construction, they are on a suitable site, and it is an adequate situation.

Q And "Suitable for temporary use"?

A Well, this is a -- a way of classifying the schools in the various systems, and we recommend that as soon as possible that something be done to place these buildings on a permanent situation, permanent basis.

Q And "Should be abandoned"?

A Well, that would -- should be abandoned as soon as possible.

Q Now, those classifications are used both with a respect to buildings and sites; is that correct?

A Yes, sir.

Q One is the physical structure, and the other the real estate on which the structure stands; is that right?

A Yes, in most cases; you would have some vacant sites, of course.

Q Now, you will note that on page fourteen there is another heading, "Buildings," again with the same two categories, but different named schools appearing; I will ask you if the same

distinctions that you have already made between white and Negro would apply to these, to this division among the schools?

A Yes, at the time this report was made; yes.

Q During the course of a survey, is a map ordinarily made?

A Yes, a dot map is made.

Q Is -- are there maps attached to the Escambia County survey? Would you tell us, just if you would take a look, please?

A Yes.

Q What is the first map?

A High school map.

Q The next one?

A Elementary school map.

Q The next one?

A High school map.

Q What distinguishes the second high school map from the first high school map?

A Well, it is hard for me to tell here, but I think it would be the same as we have talked about before on the buildings and the pupils.

Q In other words, one is for whites, and the other for Negroes?

A White and --

Q Is that correct?

A White or non-white.

Q White or non-white; and the same applies to elementary schools; there are two maps?

A Yes, sir.

Q What information is placed on the map in one of these surveys, Doctor?

A I am not sure if I understand what you mean.

Q Well, what do you put on the map when you make it up?

A Dots.

Q What do the dots represent?

A They represent students, and where they live.

Q The residence of the students?

A Yes, sir.

Q You put dots representing the residence of Negro students on one map and whites on the other; is that correct?

A We did on this one; yes, sir.

Q Well, was that your general practice?

A At this particular time, it was; yes, sir.

Q Has it changed?

A Yes, sir.

Q When did it change?

A Well, a little over a year ago, I believe. I am not sure of the exact date, but it has been changed.

Q Is any other information placed on the maps other than the residences of the students?

A Well, we have a legend, of course, and the name of the county, which is printed on the map when it is printed, and then we have location of the school, location of the pupils, the location of

the school, and this is small, I can't read it, I am sorry.

MR. BARRETT: If the court will permit me, we have prepared a larger map from the one in the Exhibit, and if I may, I will have the witness view it --

JUDGE RIVES: Very well, Mr. Barrett.

MR. BARRETT: -- to determine its accuracy.

Q Dr. Layton, referring, if you will, to the map --

MR. BARRETT: -- which perhaps I should ask be marked for identification just to keep the record clear.

JUDGE RIVES: Mr. Barrett, is this just for the purpose of showing a dual school system was operated?

MR. BARRETT: That is correct, your honor; it is for the purpose not only of showing the dual school system, but the way particular -- one particular way in which the dual school system has been maintained up until at least very recently, and we think that it has a bearing on how the dual school system appropriately can be remedied.

(Court conferred)

JUDGE RIVES: I think we have already made a finding of that effect in our previous order that the dual school system was operated; I don't think there is much dispute about that.

MR. BARRETT: I believe I -- I would hope there isn't; at this time, your honor, I do, if I understand the position of the parties correctly, believe that there is an issue as to the



extent of participation at the State level by officials in maintaining and preserving the dual school system, and indeed in resisting any change in that system.

JUDGE RIVES: All right, sir.

MR. BARRETT: And what I am seeking to develop is evidence relating to the conduct, purpose, and policy of the defendants in this case who are not local school officials, but are State officials.

JUDGE RIVES: I see; you want to prove the connection of the State Board with the dual school system?

MR. BARRETT: That is correct, your honor.

JUDGE RIVES: All right, sir; go right ahead.

Q Dr. Layton, are you able by referring to the map that is in United States Exhibit 144 to tell us if this enlarged map --

MR. BARRETT: -- has it been marked for identification?

THE CLERK: No, sir.

MR. BARRETT: If it may be marked for identification.

THE CLERK: 144-A.

Q Which has been marked for identification as Government Exhibit 144-A is roughly a correct reproduction of the smaller map in the main Exhibit?

A Well, you have a difference in this map, on this map here.

Q Do we?

A Yes, sir. In other words, predominantly white schools and predominantly Negro schools, that is not on this, they are

separate here.

Q Well, you are entirely right, and I should --

MR. SATTERFIELD: May it please the court, may we ask the witness to talk a little louder; we can't hear you when you testify.

WITNESS: Okay.

MR. SATTERFIELD: Pardon me.

Q Dr. Layton, I should say that what we intended to do was on this single map, which is 144-A, reproduce the information that is on both or really all of the spot maps attached to the survey report; in other words, all of the schools, although not the dots for the pupils, appear on this map, and I would like to know if it is roughly correct in representing the location of those schools as they appear in the survey report?

JUDGE RIVES: You are not asking him whether the legend down there is correct?

MR. BARRETT: No, indeed; no, indeed.

Q But I -- I do mean to ask whether these green and red dots correctly indicate the location of schools as indicated on the survey maps?

A Yes, as far as location; yes, sir; that would be correct.

Q All right; and -- and can you tell us from the survey which of the schools appear to you to be Negro attendance centers and which white attendance centers?

A From this map here?

Q Yes, consulting the survey --

A Oh.

Q -- that on page -- I don't believe the page is numbered, the first map, high school map?

MR. SMITH: Your honor, we object to the answer unless he can say with some degree of certainty, not what it appears to him to be, but what he knows based on the survey.

JUDGE RIVES: Very well; I assume Dr. Layton knows, but I don't know.

WITNESS: I am not sure if I understand his question, your honor.

JUDGE RIVES: Do you know which ones of them are schools attended primarily -- principally by Negroes and which ones are schools attended principally by whites?

WITNESS: If I saw a list; yes, sir; I would.

JUDGE RIVES: You would.

Q Would you look at the list in the survey?

A I can't read the list on the survey, that was my point, from the map I can't, no way for me -- my glasses are not strong enough.

JUDGE RIVES: Gentlemen, it looks like to me we are wasting a good bit of time on this, because we all know that rough composition of Escambia County and which ones on this list are probably white schools and which ones are probably Negro schools; is there any dispute about it?

MR. SMITH: Judge, to be real honest with you, I am

not familiar with that particular system; I don't think there would be any material dispute.

JUDGE RIVES: I wouldn't think so.

MR. SMITH: I do call the court's attention to this fact, that possibly in the records there is a freedom of choice plan which has been offered which would have some bearing on this, and our figures also indicate -- and I want to say this to the court -- that in Escambia County, which Dr. Layton refers to non-white, the files indicate there are a considerable number of Indians within this county.

JUDGE RIVES: All right. Go right ahead, Mr. Barrett.

Q Doctor, can you tell us whether County Training School, which is referred to on page fourteen of the survey, is a Negro or a white attendance center?

A According to the way this report is made, I would assume that this would be a non-white or predominantly all non-white school.

Q And would the same be true of the other schools named under the same heading of "Buildings" on that page?

A I assume so; yes, sir.

Q And the named schools that precede that would be white attendance centers; is that correct?

A Well, I don't see that page number.

Q Page fourteen?

A I mean --

Q Of the report?

- A Which particular school did you have reference to?
- Q Well, all of the schools that are listed above --
- A Yes, sir.
- Q -- the ones you have identified as being --
- A Yes, sir.
- Q -- Negro schools. Now, calling your attention to the square green area on the map, does that sort of a designation in the survey report indicate a proposed attendance center?
- A A recommended school site.
- Q Yes, sir; is that correct?
- A Yes, sir; this --
- Q All right; now, would you turn to the section on recommendations, and more specifically, the portion titled, "Boykin attendance center," on page twenty-one. And over to the next page where it says, "Recommendations"; does that identify the proposed school that we have already referred to?
- A Which one?
- Q That I directed --
- A Oh, I am not sure about that, now.
- Q Well, could you -- could you refer to the map in the -- attached to the survey, and see if that is where a school is proposed?
- A Well, there again, I am having difficulty; I have four maps, and I am having difficulty determining, commingling these maps with this map, because they are different.
- Q Well, could we look at the -- at the maps, and can you from the

maps in 144 determine the location of the proposed school centers?

A (Pointed)

Q All right; now, is there a school proposed at approximately the location that is indicated on Exhibit 144-A?

A Yes, sir.

Q And turning back to page twenty-two, I will ask you if recommendation number two describes that proposed center?

A It could, if that is the location of it.

Q Well, would you look at the map and tell us, what is the location described in recommendation two?

A It is the Boykin School, a twelve-grade high school.

Q And where is it to be located?

A In or near Brewton or East Brewton if there are enough students to support it.

Q Well, calling your attention to this map, 144-A, where it says, "East Brewton," about where my finger is --

A Yes, sir.

Q -- would the location of that school be approximately where that green square appears?

A Yes, sir.

Q What students were to be accommodated in that school according to your recommendation?

A We have two maps here, one a school buildings and sites, two maps --

Q Well, would you look --

A -- and we have --

Q -- at your recommendation?

A -- and we have two recommended school centers on both maps here.

Q Well, if I could call your attention back to your recommendation number two on page twenty-two --

A Yes.

Q -- would you tell us what students from what schools were to be accommodated in the new center that we have been talking about?

A The students --

Q Would you turn back to page twenty-two?

A The students that were -- that were -- that were attending the Boykin School, I believe, but I want to be sure.

JUDGE RIVES: The recommendation here on page twenty-two is, "This would accommodate students from Piney Grove, Oak Grove, some from Boykin and some from Pollard, and all junior and senior high pupils. Otherwise, an effort should be made to get these students into Booker T. Washington."

WITNESS: Yes, sir; that is what --

JUDGE RIVES: Well, we all know Booker T. Washington is referring to a school primarily for Negroes, and I think we are really wasting time, if that is all your purpose is, to prove that is to accommodate students from schools --

MR. BARRETT: Well, if I may --

JUDGE RIVES: -- Negro schools.

MR. BARRETT: -- if I may ask two or three more questions --

JUDGE RIVES: All right.

MR. BARRETT: -- I will conclude.

JUDGE RIVES: I think the court has got common sense enough to know what that means; go ahead.

MR. BARRETT: Yes, your honor.

Q Mr. -- Dr. Layton, let me ask you this; in proposing a school at the location that we have been talking about for the accommodation of students from an area that is indicated on this map, 144-A, as Boykin School, another school, Piney Grove, another school, Oak Grove, and another school, Pollard Junior High, would your survey team in your office ordinarily consider the existence of capacity or the availability of a school site that could be expanded at the location that I -- that is indicated on this map as North Brewton where that red dot is?

A Well, in making their recommendation, sir, they certainly would take into consideration the density of population and the available -- the availability of other existing schools within the area; yes, sir.

Q And would that -- I withdraw that. Excuse me. Dr. -- Dr. Layton, you mentioned the population density; do you get that from the spot map?

A This would determine, yes, the cluster of the popul--- the school population; yes, sir.



Q And the spot maps relating to these schools were recorded separately according to race; is that correct?

A Yes, sir.

MR. BARRETT: I have no further questions.

JUDGE RIVES: Any further questions from Dr. Layton?

MR. SMITH: We have some, your honor.

JUDGE RIVES: You may come down.

MR. SMITH: Yes, we -- excuse me.

JUDGE RIVES: You all want to ask him some questions?

All right, go right ahead.

MR. SMITH: Do you have some?

MR. ARONSON: Yes, sir.

JUDGE RIVES: All right, let the plaintiffs get through with their questions.

MR. ARONSON: Thank you, your honor.

BY MR. ARONSON:

Q Dr. Layton, with reference to Mr. Barrett's inquiry about the approach of your survey team, and more particularly, his most recent questions, would it be the general practice of the survey team to consider the capacity or unused capacity of a predominantly white school when considering the need of the non-white population in that community?

A Well, the -- in the past, before we have made our changes here, we did make them separate; of course, I think we -- you can understand that we did not do that, but now our reports are made

together, and we take into consideration the total population in the area.

Q When did that change take place, Doctor?

A I believe I answered that question earlier, but I am not sure of the exact time, but a little over a year ago, probably, sir.

Q And at a year ago, then, it is your testimony that race was no longer a consideration with respect to A, the population clusters, or B, the predominant race of schools within the community? Is that your testimony, Doctor?

A No, there was -- I said we take into consideration the total population in making the recommendations; of course, the recommendations are entirely up to local Boards to follow, not necessarily -- they do not have to follow these recommendations.

Q But isn't it a fact that when you consider the capacity of the schools available for children within any given system that you are surveying, that you think of only those schools that are predominantly Negro schools for Negro children and predominantly white children -- white schools for white children?

A This has been our practice in the past; yes.

Q And it is your practice at this time, isn't it, Doctor?

A This practice is phasing out.

Q You say it is phasing out?

A Yes, sir; in our -- in making our reports.

Q Well --

A It is not entirely phased out, but it is in the process of being

phased out.

Q Doctor, do you or do you not at this time consider race?

A In doing what?

Q For instance, in determining what the needs are for a given community -- let me put a situation to you; let me put to you the situation of a county school system which has a freedom of choice plan which reassigns children to the school they have always been assigned to by race unless they choose out of that school; do you follow that?

A Yes, sir.

Q Now, in assaying the needs of that community, are you telling this court that you would look at all the children in a given community and be entirely color-blind and look at all of the schoolrooms in that community and be entirely color-blind and not take race into consideration; is that your testimony, Doctor?

A No, sir; that -- I didn't say that.

Q What is your testimony with respect at this time in the operation of your survey department; what is the relevance of race?

A In other words, we -- when we do a survey, we take into consideration the existing situation within the county or city system, whatever the case may be, and, of course, we know that they have schools that are predominantly white and predominantly non-white, and we have started listing the pupils for information purposes only according to race, or white or non-white, in our survey reports, I believe, as is indicated, and, of course, the same way

with sites and buildings. And these recommendations are made entirely for the local Board and for the Superintendent to follow if they so desire.

Q So if I understand your testimony, then, at this time you still make your surveys on the basis of race?

A We make it according to the situation that we find within the system and make our recommendations to them to follow if they so desire.

Q Doctor, do you know of any system within the State of Alabama that does not have predominantly white and predominantly Negro schools?

A I was trying to recall; I think we have some that have all one race, or all white; I am not sure of the exact one.

Q And in that instance, Doctor, do they shift the Negroes to another community to be educated? Transport them?

A You talking about living there now or attending school there or what?

Q Do you know of any school system in the State of Alabama that does not have one eligible Negro living in -- Negro child between the ages of six and twenty living within that district?

A I am not sure; I -- I suppose we do have that situation, I mean where they -- what I am saying is that I am sure that we have non-whites living in all communities.

Q All right, proceeding upon your testimony that you have non-whites living in all communities, and I assume that testimony is

correct --

A I am not sure; I am assuming that is right.

Q -- let's proceed upon that assumption; let me ask you again, do you know of any school system within the State that doesn't have -- that has a breakdown of schools other than predominantly white and predominantly Negro?

A Not to my knowledge.

Q All right. And if there is no system in the State other than those with predominantly white and predominantly Negro schools, and you survey -- as your testimony earlier was, if you make these surveys based upon the situation that exists within the county, then I take it in any county which has predominantly white and predominantly Negro schools, you still make two dot maps, one for Negroes and one for whites, and two capacity computations for predominantly white schools and predominantly Negro schools, and that would be true at this time, wouldn't it, Doctor?

A When we -- we make one map now and have different colored dots.

Q I see, so you have one map now with one colored dot for the white children and another colored dot for the Negro children?

A For identification purposes.

Q For identification purposes; so what you have done in your phasing position, really, is to overlay and make one map, rather than two maps; is that correct?

A That would be for high school and elementary.

Q I see; so instead of the four maps such as in Escambia County earlier, you have two maps now, one for elementary, one for high school?

A I believe that is correct; I -- I believe that is correct.

Q And then --

A As far as the number is concerned; yes, sir.

Q And that each map at this time would show the number of Negro children by clusters, densities, and the number of white children by densities, and the distinguishing factor with respect to Negro and white children would be the color of the dot?

A Yes, sir.

Q What kind of recommendations do you make, Doctor, in a situation such as --

MR. ARONSON: Let me see Plaintiffs' Exhibits 12 and 13, our last two.

Q -- in Cleburne County, where they have no Negro schools for grades seven through twelve? The fact is, in Cleburne County -- are you familiar with the situation in Cleburne County, sir?

A Well, what particular situation are you referring to?

Q Well, is my understanding, to your knowledge, correct that all -- that there are no predominantly Negro schools in grades seven, eight, nine, ten, eleven, twelve in Cleburne County; in other words, there are no schools within the County system for children in grades seven through twelve of the Negro race, but that they are educated within another system?

A I didn't say that.

MR. ARONSON: If the court will indulge me for one short moment.

Q Dr. Layton, do you have occasion to conduct surveys of schools in conjunction with the Accreditation Department of the State Board of Education --

A No, sir.

Q -- State Department of Education?

A No, sir.

Q And do you have any continuing obligation with respect to surveying or making reports as to a building which is being constructed; in other words, you testified that you do go into the issue, or the --

A The site; in other words, we approve the site before the building --

Q Right; you approve the site.

A -- is constructed.

Q From that step forward, once the site is approved, do you have occasion to have involvement with the construction of the school?

A Well, I don't, myself, but --

Q Your Department, sir?

A -- but certain people within the Department would be involved in that to some -- to some degree; yes, sir.

Q What would their responsibilities be?

A Well, the school architect would work with the -- the architect

that has been employed by the local school people; he would inspect the plans and make suggestions there.

Q And must he also give final approval to that building before the last ten per cent of the contract price is paid out?

A Yes, he makes a final inspection with the architect and the contractor.

Q And that inspection to insure that the performance of the contractor is -- the performance of the contractor has been consistent with the specifications set out in the contract --

A Yes, sir.

Q -- for the construction?

A Yes, sir.

Q And if such performance is not consistent with the terms of the contract, he is -- he makes recommendations, doesn't he?

A Yes, sir; that's right; to the owner.

Q And he must give a final approval, must he not, before the final ten per cent of the contract price can be paid out?

A Well, he makes -- he makes a recommendation, of course; then this is, of course, up to the local Board to decide on the other.

Q Dr. Layton, have you ever received any memoranda, notice, or other type of written communication from Dr. Meadows with respect to discrimination or the ending of discrimination or the abolition of the dual system, or integration, with respect to the operation of your Department?

A Yes, sir; I have, through conferences with the State Superinten-



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dent of Education, we have through a process -- we have eliminated certain phases of the race situation, and we -- and we are in the process of doing this now.

Q Would you describe to the court what you are doing, sir?

A Well, for example, on the survey reports, we are gradually phasing that out, and also on --

Q Let's stop there.

A -- on the minimum aid program.

Q With respect to the survey program, what you have done, you have quit putting Negro and white, you just have columns one and two; is that right?

A In that particular case, yes; but --

Q The other improvements you made --

MR. SATTERFIELD: I object, may it please the court; this witness has been interrupted three times in the middle of a sentence; I believe he should have the --

JUDGE RIVES: Cross examination is proper; overrule the objection. You may proceed.

Q The second change which you have made is you no longer have four maps, you only have two, as you described earlier?

A That would be one; yes, sir.

Q What other changes have you made in this line, sir?

A You referring to the survey now, or some other --

Q Or any other -- any other operation within your Department?

A Well, in the calculation, in compiling of the information

necessary to -- for the minimum program fund, under the direction of the State Superintendent of Education, we have made certain changes there, also.

Q What -- would you be so kind as to describe those changes for the court, sir?

A Well, for example, in reporting the teacher units, as calculated by schools, as they have always been calculated, we report to the Superintendent one calculation rather than two separate calculations by race, which is a base for determining the calculation of the former under the minimum program.

Q Let's break this down. Now, did I understand your testimony at the time your deposition was taken with respect to the I.B.M. coding of teachers that you have four codes; you have one -- you have at this time with respect -- let me go back a bit further; you have with respect to the payment of teachers the name of every teacher within your I.B.M. program, don't you?

A Yes, sir.

Q And it is a fact, isn't it, the name of each teacher is preceded by an I.B.M. code at this time; I believe it is zero one, zero two, zero three, and zero four, or one, two, three, and four, and those designations refer to -- two of them to sex, and within each sex one for the white race and one for the non-white race; isn't that true?

A Yes, this is for information purposes --

Q I understand.

- A -- not for the calculation of the minimum program.
- Q I understand as much. So that you at any point in time, through your I.B.M. computations, could identify any teacher by race, because he is so coded within your program; isn't that true?
- A Yes, those that are on record, on file, we could.
- Q And in fact, every teacher getting paid in the State of Alabama is on file, isn't he?
- A They are supposed to be; yes.
- Q So the only people that wouldn't be on file would be volunteers?
- A They are -- they are all supposed to be on file.
- Q Yes, sir; do you have any responsibility with respect to the statistics, where the number of graduates of the different schools within the system -- and to refresh your recollection, I show you Plaintiffs' Exhibit number 14, which states this was -- and I read the heading, "Comparison of total number of high school graduates, '64-65 and '65-66, George L. Layton, Division Director, Administration and Finance"; do you recognize that document, sir?
- A Yes, sir.
- Q And am I correct in understanding that there are two pages, one for city systems and one for county systems?
- A Yes, sir.
- Q Am I further correct in understanding that there is a breakdown, and this relates to just high school graduates, white 1965, white 1966, number increase or decrease, non-white '65, non-white '66,

number increase or decrease, and then the totals for each year?

A Yes, sir.

Q So this -- these figures which came out in the form of a release from Dr. Meadows, dated August 5, 1966, would indicate the experience for the last year, June of 1966; is that not true, Dr. Layton?

A Would it indicate what?

Q The experience within the State of Alabama for the figures or the -- the events being described on this chart for the most recent reporting unit, June, 1966, wouldn't it?

A Yes, this is for the --

Q Last June?

A -- last two school years.

Q And the most recent school ending, last June, year ending last June, wouldn't it, sir?

A 1966; yes, sir.

Q Can you please tell the court how you are able to tabulate this information by race?

A This information was furnished to us on the annual attendance and transportation report, which is filed annually by the City and County Superintendents.

Q And that report or form, if my understanding is correct, is prescribed by your Department; is that not true, sir?

A It is prescribed by the State Department of Education, and we carry out the -- we -- we work up the report; yes, sir.

Q So I take it, then, that that form provides for the indication of race for each student within the system of each reporting unit?

A It provides for them to report according to white and non-white.

MR. ARONSON: Thank you. If the court will indulge me for one moment, sir. I would like to offer Plaintiffs' Exhibit number 14 into evidence.

MR. SMITH: No objection.

Q Now, Dr. Layton, you -- you testified that you were making some changes, and that you had had some conferences with Dr. Meadows. Now, I interrupted a sentence of yours; you had talked about your surveys, and we have indicated that -- the changes, and you indicated what changes you have now made with respect to surveys; where else have you made changes with respect to the issue of race, desegregation, integration, or the abolition of the dual system of schools, sir?

A Well, in reports that we handle in our Department, or in our Division, we -- we still ask for information on the students according to white or non-white, but not by schools, not for a white school or a non-white school. This pertains to all reports that we have that come in; the annual report on attendance and transportation, and, of course, this is the main one.

Q But the factor in every report that is submitted to your office, the phenomenon being described, be it children being transported or teachers or attendance, all describe race of the people being reported on?

- A Yes, sir; we were in the process of phasing that out, then we were requested to -- had so many requests from different sources on these particular things, we felt like we should keep it, and the Office of Education and other sources, so we would have to go out in the field and get it if we didn't, so we decided to keep that by students.
- Q Now, am I correct -- and I just want to tie one small piece back with respect to surveys, and we move on -- am I correct that a site must be approved by the State Board of Education before a building can be constructed under the State building program?
- A Well, I don't believe that is necessarily true; in other words, we -- we suggest that they do contact us for our services. However, I believe that we -- if we investigated, we would find that in some cases, that maybe if they did build a building on a site that was maybe not approved, I am not sure, but -- I am not sure if it is a mandatory thing.
- Q Well, Doctor, let me put --
- A We make a recommendation to them.
- Q Let me put it to you differently; in your experience in school survey work, and furthermore, in your experience in issuing final approvals for each building that goes up, and that your Department does do -- I take it you do issue a final approval for each school building that is constructed within the State public schools, don't you?
- A We make a final inspection of that building; yes, sir.

Q For each school?

A As nearly as possible, as far as our services go; in some cases maybe another agency would do this for or in lieu of the State Department.

Q Are you aware of any school that has been built in the State of Alabama, public elementary, junior, or senior high school, which your Department has not issued a final approval for in the last five years?

A There may -- there may have been; I would not say that it has not been.

Q Do you know of any?

A I don't know of -- right off hand, I don't; no, sir.

Q Furthermore, do you know of any school within the last five years that has been built on a site which had not previously been approved by your Department?

A I am not aware of this; no, sir.

Q All right. So it is fair to say, at least, that predominantly all sites for new school construction are approved by your Department?

A Yes, sir; in general they are; we -- we hope they are.

Q And that these sites are based upon the kind of data which have been described in these survey reports; is that right, sir? In other words, you don't engage in site selection work until you know something about what area the schools are going to be drawing from, the number of children it will be drawing, and

what other capacity there is, do you?

A Well, that is true there; yes.

Q All right. And therefore, drawing upon another piece of your former testimony, and that is that you draw up your survey in response to the existing situation, so that you -- you have predominantly white and predominantly Negro schools within any given system, your survey is responsive to that system; isn't that right? In other words, you are not going to count all children within a given neighborhood, white and Negro, you testified you wouldn't, with respect to one school, if that is not the way in which the school system is operating; isn't that true?

A Well, I am not sure if I follow your questioning.

Q Let me state it differently; has there ever been a survey, to your knowledge, up to the current day, which has not included clusters or dots showing densities of children by race?

A Not to my knowledge; I wouldn't think so.

Q Thank you. Now, what other areas are you making progress in? You indicated the survey area.

A Well, I mentioned all areas where the reports came to us from the systems.

Q They all indicate race?

A No, I didn't say -- I say we are making progress in -- in eliminating the -- this particular situation; however, we are still calling for the identification of pupils for white or non-



white.

Q Would you describe that progress for us, sir? You testified that you are making progress.

JUDGE RIVES: I am not sure I am following you; you mean progress in phasing out the consideration of race?

MR. ARONSON: Yes, sir; well, more -- more specifically in the way that I have gotten into the point of inquiry, and perhaps it would be useful to restate; I asked the witness if Dr. Meadows had issued any memoranda, correspondence, or other written material dealing with the issue of desegregation, integration, or the abolition of dual system.

Q Let me stop at that point and ask; has any such memoranda come to your attention for use within your Department or for guides within your Department?

A Not stating specifically what you just asked, in other words, but he has -- we have had conferences to phase out collecting data from reports.

Q We will get to conferences in a minute, Dr. Layton, first the memoranda?

MR. SATTERFIELD: If it please the court, I object to interrupting the witness; he has been interrupted --

JUDGE RIVES: Let him answer.

A No, sir; he's not given me any written memorandum specifying what was contained in your question.

Q Has he given you any memoranda which relate to these issues,

desegregation, integration, discrimination, the abolition of the dual school system?

- A You mean a personal memorandum from Dr. Meadows to me or information that he has received from some other source; I am not --
- Q Let me start with a personal memorandum from Dr. Meadows to you, or a memo from Dr. Meadows to everyone within the State Department of Education?
- A Referring to now what; I would like for you to state?
- Q The elimination of discrimination, the dual school system, promoting integration, or in any way relating to these topics or the topic of race?
- A I don't recall any written memorandum.
- Q All right; now, let's get to conferences; have you had any conferences with Dr. Meadows in which he has called you alone or other members of the staff, including you, wherein he has discussed the abolition of the dual school system, the abolition of discrimination, integration, or desegregation?
- A Oh, yes; we have had conferences and discussed these situations.
- Q All right.
- A And, of course, on these particular items that I had reference to earlier, on the reports that come to our office; for example, I remember one case where we were calling for a race of school where we eliminated this, and this, of course, was done through a conference with the Superintendent.

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- Q You have eliminated race of school, which you asked for on --
- A I am just using an example, now, of what you are asking for now, sir.
- Q Now, did this come about in a conference with Dr. Meadows where he told you to stop calling for the race of schools?
- A Yes, sir.
- Q And in what position were you asking for -- how were you asking for the race of schools, and from what was it stricken?
- A Well, for example, on the attendance report, they used to report them to us, it was headed up, "White schools" and "Negro schools," and they would list the schools, and this was the -- the way they reported to us; the form was made this way.
- Q You no -- you no longer ask for white schools and Negro schools?
- A No, sir.
- Q But you still reflect the racial -- the race of each student within a system in your reporting?
- A We ask for the number of students within the school -- within the system by race.
- Q Within the school and within the system?
- A Well, the schools within the system.
- Q All right. Now, what else, what other areas, has Dr. Meadows discussed with you on these topics?
- A Well, these have been general -- in the area of responsibility that I have; of course, what he has discussed with other people, I am not sure of.

Q No, I am only interested in what --

A I mean these are the ones referring to our Division; yes, sir.

Q And that is, to your knowledge, the only --

A Well, I mean not -- in other words -- in other words -- in other words he has told us to eliminate this in all our reports, not a specific one, but it was up to us to evaluate these reports and rework them, and this is what we have done, or are in the process of doing.

MR. ARONSON: If the court will indulge me for just one short moment.

Q Your office or Department is responsible for the administration of the minimum fund program; is that not correct?

A Yes, sir. Well, for the -- we -- let me come back on that; we calculate it according to the formula, and then, of course, the administration of the -- of course, in the hands of Dr. Meadows; we do the work, and he does the other.

Q All right, let me ask you a couple of computation questions, and I don't want to get deeply into it; Dr. Meadows has testified at length about it, but there is one just aspect of the minimum fund program that I would like for you to clarify for the court. In minimum fund computations, the first thing that you do is apply the divisor -- the divisor which is applicable to each school within the system based upon the A.D.A. or average daily attendance of children within that school; right?

A Well, of course, I suppose you are asking this a general question,

because it is not the first thing we do, now, I mean --

Q All right, you get to that point.

A Okay.

Q And in building up the number of teacher allocations or teacher units allocated to any given system, you do this by finding out how many teachers are -- how many teachers each school is entitled to; is that not correct, sir?

A It is based on the size school, and size school is determined on its A.D.A. for the year.

Q Right.

A And then the divisor is, of course, determined by the size of -- I mean we have a set divisor for size schools up to a maximum, and then, of course, when this is done, this determines the number of earned teacher units by each school within the system; yes, sir.

Q Fine; so that the earned teacher units is a function of the number of students, average daily attendance, in each school within the system?

A Yes, sir.

Q And what you do is you take up the earned teacher units allocated to each school within the system, and then you add them up; is that not correct?

A Yes, sir; by elementary and high school.

Q Right?

A (Nodded to indicate affirmative reply)

- Q And once you have added them up, that is the basis upon which your payments for teacher salaries are made to the local districts; is that not correct?
- A Well, not entirely; no, sir. This is one -- one part of it, but not the entire payment.
- Q Let me ask you this, because I don't want to get -- there are many sophisticated problems here I don't want to get into, but there is one thing I want to clarify; you have determined the teacher units earned on the basis of the teachers that each school within the system is entitled to; right?
- A Yes, sir.
- Q By your formula?
- A Yes, sir.
- Q But those units are paid out regardless of how the teacher units are split up back at the school -- local school system level once the monies are received?
- A This is a matter for -- this is for the local Board to determine -- to the entire system as a whole.
- Q All right, one last question on this; if you had a high school with three hundred children in it, an approved high school within a system -- strike that. Let me -- suppose you have two high schools within the system, each of them having three hundred students, and each of them being exactly the same type of building in terms of brick and approved, et cetera, and accreditation, they are both accredited by the Southern

Association; each of those schools would have the same number of teacher units, wouldn't they?

A If they had three hundred A.D.A., average daily attendance --

Q Three hundred A.D.A. in each school?

A -- they would have the same number of earned teacher units, as far as our calculations are concerned.

Q All right; and let's just assume for the purposes of this examination that each school, according to your formula, got ten teacher units; all right?

A Yes, sir.

Q Now, if the school system saw fit to give one school fifteen teachers and the other school five teachers -- in other words, if they took their ten for each school, added them up to twenty, but then re-allocated them at the district level, giving one school fifteen and another five, you would continue to pay out for twenty units throughout the year; is that not correct?

A As long as the system employed the total number earned and paid them --

Q Yes.

A -- on the allocation schedule, we would; yes, sir; we do not exercise control over the distribution of the teachers into the various schools.

Q But your records do reflect how the teachers are deployed, do they not?

A Our -- our -- yes, sir; we calculate from this, because this is

the beginning; we have to do this; this is necessary; there is no other way to do it.

Q But during the year, you would know at any given point in time, from records sent in to you by the local system, the numbers of teachers and, indeed, the exact identity of each teacher within each school, wouldn't you?

A Yes, sir; employed within that school.

MR. ARONSON: Yes, sir. If the court will indulge me for one moment. We have no further questions of this witness.

JUDGE RIVES: Any further questions from any of the other plaintiffs?

MR. REEVES: We have no questions.

JUDGE RIVES: No further questions?

MR. REEVES: No.

JUDGE RIVES: Any further questions from the defendants?

MR. SMITH: Yes, sir.

CROSS EXAMINATION:

BY MR. SMITH:

Q Dr. Layton, did I understand correctly in describing the position that you hold with the State Department of Education that you are the Director of the Division of Administration and Finance, within this Department?

A Yes, sir.

Q How long have you held this position?



A Since June, 1963.

Q What educational background do you possess; secondly, is this background a prerequisite to the position that you hold?

A Well, yes; my training and experience were taken into consideration in being considered for appointment to this position.

Q Do you hold a B.S. degree?

A Yes, sir.

Q Do you hold a Master's degree, M.S. degree, in school administration?

A Yes, sir.

Q Do you hold a Ph.D. degree in school administration?

A Yes, sir.

Q Would you explain to the court, as briefly and as concisely as possible, generally the duties of your office?

A Well, in general, of course, I work with -- in the main with the minimum program, the State minimum program, in calculating the distribution of the funds from this program, upon approval of the State Superintendent, and in general supervise the staff of people in other areas of school administration that are assigned to the Division.

Q What, generally, are the areas of school administration assigned to your Division -- let me ask, if I may, and I realize I will be leading somewhat, but in the hopes that --

JUDGE RIVES: All right, sir.

Q -- I can shorten it -- do you prepare budget requests for the

State Department of Education that are presented to the Alabama Legislature?

A Yes, we do.

Q Do you administer the school lunch program?

A This program is assigned to this Division and is administered by a staff of people within the Division, and I render general supervision, and, of course, we are all under the State Superintendent.

Q Do you conduct school surveys on bus transportation?

A Yes, the survey section on transportation does; yes, sir.

Q The survey division is one division within your Division, so to speak?

A Well, it is a section within the Division; yes, sir.

Q Does your Division administer Title One funds under Public Law 89-10, that is, the Elementary-Secondary Education Act?

A Yes, sir; this particular section of the Elementary-Secondary Act of 1965 is assigned to the Division of Administration and Finance.

Q Now, Dr. Layton, approximately how many people work within your Division?

A Oh, between fifty and sixty people are employed within this Division.

Q In all of these areas which I have mentioned, have you ever expressed an official opinion in regard to the validity of the guidelines?

- A An official; no.
- Q Have you in your capacity ever expressed an opinion, official or otherwise, in advising with or working with any local Superintendent of Education?
- A About --
- Q About the validity of the guidelines?
- A Well, in general, I probably have; I have talked with them about the guidelines; yes, sir; we have talked about them.
- Q Is Mr. Boockholdt managing Title One funds?
- A He is a coordinator.
- Q Within your Division?
- A He is the coordinator of that particular program.
- Q Is he a subordinate to your position?
- A Well --
- Q Does he work under you is what I am asking?
- A Well, I -- he is assigned to the Division; yes, sir; and he is -- and I am Director, and he is coordinator of this program, which is assigned to the Division.
- Q All right. Does he, under your direction, or at least with your permission or sanction, does he correlate information requested by the U. S. Office of Education and give it to the local Boards of Education in regard to Title One funds?
- A On approval of the State Superintendent of Education; yes, sir.
- Q All right, sir. This is one of the functions of his office, though?

- A Yes, sir.
- Q Now, questions have been directed to you by Mr. Barrett in regard to the Escambia County School System.
- A Yes, sir.
- Q Within your Division, and I know you have a lot of records, but I want to direct your attention to Defendants' Exhibit number 7, which are the official records from the State Department of Education and within your Division; can you, in looking at these records, first of all, identify them generally as being official records within the Division?
- A Well, they would be official records within the State Department of Education.
- Q All right. Within this Exhibit, do you find a 441 form signed by the Escambia Superintendent of Education?
- A I find one signed by the Superintendent of the Escambia County.
- Q Escambia -- Escambia County Board of Education?
- A Board of Education.
- Q Does this Exhibit show that this 441 form was sent to the U. S. Office of Education?
- A It shows that it was sent to Dr. A. R. Meadows here.
- Q Does it show a copy to Dr. Meadows?
- A Let me be sure of that now.
- Q I realize I have not apprised the witness of the Exhibit; he has never seen it previously.
- A That doesn't say it was sent to --

MR. SMITH: In the essence of time I offer Defendants' Exhibit 7, which has been shown to counsel for all of the parties, and are the official records from the Department.

MR. ARONSON: I object, your honor; there has been no showing that these were the official records from the Department.

MR. SMITH: Your honor, the witness did identify them as official records within the State Department of Education.

MR. ARONSON: Your honor, I withdraw my objection, sir.

JUDGE RIVES: All right; I think the witness testified; all right.

Q One further --

MISS FRANKLIN: Excuse me; can I see that? I don't think I have seen that.

MR. SMITH: I am sorry.

MISS FRANKLIN: Thank you.

MR. SMITH: I am sorry.

MISS FRANKLIN: Thank you.

Q Dr. Layton, contained within Defendants' Exhibit 7, do you find a freedom of choice plan?

A Yes, sir.

MR. SMITH: I believe the Exhibit has been offered.

Q Now, with relation to the freedom of choice plan and the survey Exhibits offered by the United States, do you continue the practice of recognizing certain schools as attended predominantly by members of one or the other races?

- A Well, yes, we report in our reporting that -- the composition by race; of course, this would indicate that either predominantly all white or predominantly non-white, I mean we -- we have this information; yes, sir.
- Q Now, you mentioned that one of the primary duties of your Division is administering the minimum program funds; is this correct?
- A Yes, sir.
- Q Do you, as Chief of this Division, have any discretion in the allocation or disbursement of these funds?
- A No, sir.
- Q What is the basis of the disbursement and allocation of minimum program funds?
- A Well, of course, we have four factors in calculating the minimum program; one would be for teacher salaries, transportation, capital outlay, and other current expenses. And all this is based on the number of earned teacher units, based on the average daily attendance of the schools within the systems in the -- within the State.
- Q Now, Dr. Layton, if a particular local Board of Education did something that the State Superintendent or you, as Chief of this Division, might not have particularly approved, would you have any discretion in deferring disbursement of these funds?
- A Well, you might have a situation where a system did not employ all the number that they earned, I mean, this could happen,

and/or did not pay the full amount for salaries, which they must do according to the -- to the rules and regulations and according to the minimum program law, then, of course, this money would be re-allocated to all the systems within the formula.

Q Do I understand you correctly to say that if Montgomery County, for example, had two hundred teacher units and employed only a hundred and fifty teachers, based on average daily attendance, that the remaining fifty teacher units that would be allocated to Montgomery would be allocated generally to the other counties?

A No, sir; no, sir; that is not right.

Q What did you -- what did you say?

A In other words, they could pay all the salary money to the hundred and fifty and get all of their money; it is not based on the number, necessarily.

Q Could this -- could this result in a raise in teachers' salary?

A It could; in other words, they take their money locally and work out a salary schedule; we could not prescribe a salary schedule from the State level; it is an allotment schedule based on rank of certificate, and, of course, the local systems take this money and then work out a salary schedule; they may pay some less than the allotment schedule and some more, and which is the case throughout the State in most systems.

Q What is the purpose of the school center surveys, Doctor?

A Well, the -- one purpose there would be to encourage consolida-

tion of smaller schools within the system --

Q Well, in regards --

A -- that exist, and, of course, you would have other situations where the population is growing.

Q In some of your accounting or form procedures, you have "Survey-approved" or "Non-survey-approved"; what does this mean?

A Of course, survey-approved means that they -- depending on the size of the school, as to the divisor they will use in calculating teacher units; if it is survey-approved for the operation of the minimum program, this is what we use it for; of course, non-survey-approved means that they would automatically use the larger divisor until they are approved, if they are certain size.

Q Now, do I understand correctly that minimum program funds have certain minimal amounts of capital outlay funds within them?

A Yes, sir; this is a set amount that is -- that is set each year before we calculate the other teacher salaries and other current expense money; it comes off of the top, so to speak; it is a set amount each year by the State Board of Education.

Q Do you exercise, or the Superintendent, to your knowledge, any discretion over the allocation of these capital outlay funds within the minimum program fund?

A This is done on the formula, of course, and if the system earns a hundred teacher units, and their capital -- the amount per teacher unit for capital outlay purposes is fifty dollars per



unit, this is how much they get, so -- I mean I exercise a control of multiplying it out, but that is all, and, of course, expenses.

Q Let me ask you this, Doctor; do you, within your Division, or the Superintendent, to your knowledge, exercise any control over the actual location of a school building?

A Not -- not actually control over the location of it; in other words, the local school system would determine the location of it; we would approve it or not approve it for building a school on it; of course, we have some that are non-approved.

Q Well, if you didn't approve it, could the local Board construct it?

A Yes, sir.

Q Well, then, what is the significance of your Division or the State Superintendent approving or disapproving such a construction project?

A Well, of course, for our purposes used for calculation of teacher units, and it would fall into the proper category; that is the main purpose we use it for; of course, other purposes is for a good site, safe conditions for the children, and -- and things of this sort.

Q To your knowledge, and since you have held this position, have you or anyone else in the State Department of Education refused to approve the construction of a school at any particular location?

- A Not to my knowledge; no, sir.
- Q What are the functions of the State School Architect, generally; is he within your Division?
- A Yes, sir; he is a section -- he is assigned to the Division; yes, sir.
- Q What does he do?
- A Well, he's a certified architect, and he works with the local Superintendents and the architects employed by the Superintendents in drawing up plans and specifications for school buildings, and he does check the plans that are presented to him by the architects that are employed by the Superintendents; he makes recommendations.
- Q Could the State School Architect, working under you, reject plans of a local architect employed by a local Board of Education?
- A He just makes recommendations.
- Q How do you limit this, Dr. Layton, when you say, "Makes recommendations"?
- A Well, for --
- Q Does the local architect and the local Board of Education have to adhere to his recommendation?
- A Not necessarily; no, sir; in other words, his recommendations would be in line with a good functional building for a good educational program, and, of course, he might want to change a door from opening inside to out where they overlooked it or something of this sort, but as far as exercising control over

the local Board and the architect; no, sir.

Q Now, did you attend the three meetings that were held statewide and attended by the local Superintendents of Education?

A Which meetings, Mr. Smith, are you referring to; I am not --

Q All right, sir; I will give you the dates; did you attend the meeting on September 7, 1965, or the meeting on March 31 or the meeting on June 6, March 31 of '66 and June 6 of '66? Now, let me start over, I may have confused you; there were three meetings, as I understand it; one on September 7, '65; did you attend this meeting?

A Well, I want to be sure what kind of meetings you are talking about; I have attended several meetings.

Q The meeting in which the Governor, Superintendent Meadows, and the local Superintendents met together?

A Yes, I have attended several meetings, and I have attended three -- three meetings of -- that you refer to there of that type; yes, sir.

Q Did you hear Governor Wallace make any statements at any of these meetings?

A Well, yes, sir; I heard him talk at those meetings.

Q Did he say something -- did he make statements or address the group on each of these occasions?

A Yes, sir; he made remarks at each -- each of the three meetings, I believe, I am sure; yes, sir.

Q Will you state to the court the substance of what he said?

A Oh, well --

Q Now, you want me to restrict it as to meetings; can you recall as to particular meetings?

A Well, what -- well, in general, he talked about the guidelines, at the three meetings you have reference to, form 441, 441-B, or whatever the number happens to be; I mean, he talked about this particular thing at the -- each meeting, as I recall.

Q Did you ever, on any of these occasions, hear Governor Wallace advocate interference with any Federal Court order involving desegregation of a school?

A No, sir. Not court order; no, sir.

Q Did you ever, on any one of these occasions, hear Governor Wallace advocate violating the 1964 Civil Rights Act?

A No, sir.

MR. ARONSON: Object to the form of these questions; at this point I think it is improper for him to be leading the witness, your honor.

MR. SMITH: Well, Judge, I wasn't -- maybe I was leading; I apologize.

JUDGE RIVES: Go ahead without leading him.

Q Let me see if I can ask this question, Dr. Layton; in the remarks that you overheard Governor Wallace make, did they convey any meaning otherwise than with relation to the guidelines? That may not be a clear question, either.

A Well, to me they only conveyed this type thing; I mean, I am only

speaking for myself.

Q What was the Governor's position in regard to the guidelines as he expressed it at these meetings?

A As I recall, the guidelines went beyond the law.

Q Questions were also directed to you, Dr. Layton, in regard to Cleburne County; I ask, first of all, if you are familiar with the survey or reporting forms requested by the U. S. Office of Education; have you seen them previously?

A Not recently; I have seen some forms sometime ago that requested certain information from the Superintendents from the Office of Education, but not the last month or so.

Q Well, let me hand you Defendants' Exhibit 8.

MR. SMITH: I believe Mr. Gray has already seen it, if you would like to --

(Counsel for plaintiffs examined Exhibit)

Q Referring you, now, to Defendants' Exhibit 8, I want to call your attention to the survey reporting form which has the heading, "Department of Health, Education, and Welfare, Office of Education, Washington, D. C."; does this survey form resemble in many respects your survey form?

A Well, in some cases it might, but not entirely; I see some similarity in some places.

Q Does it call for the population of schools and school centers and the number of pupils attending particular schools and the designation of whether they are white or Negro?

A It calls for pupils enrolled by race, white, Negro, from grades one through -- kindergarten through twelve.

MR. SMITH: We offer Defendants' Exhibit 8.

JUDGE RIVES: It may be received in evidence and so marked.

MR. SMITH: All we have, if it please the court.

JUDGE RIVES: Anything further from any of the defendants from Dr. Layton? Defendants first.

MR. ARONSON: Excuse me, your honor; I am sorry.

MR. SMITH: I believe that's all.

MR. SATTERFIELD: If it please the court, we have nothing at this time.

JUDGE RIVES: All right; anything further from the plaintiffs to Dr. Layton?

MR. ARONSON: One brief question or two brief questions, if I might, your honor.

REDIRECT EXAMINATION:

BY MR. ARONSON:

Q You testified in response to a question to Mr. Smith that one of the primary functions of surveys, as I understood your response, was to encourage consolidation of small schools; is that true?

A I believe that was on recommending a center.

Q Excuse me. Do you -- but do you view one of the functions in surveying the schools, particularly in some of the rural counties,

to encourage them to consolidate their smaller schools?

A Yes, sir; we would recommend these particular things; yes, sir.

Q Have you ever encouraged that a small Negro center be consolidated with a small white center, with a resulting mixing of the two school populations?

A Not to my knowledge.

MR. ARONSON: No further questions, your honor.

JUDGE RIVES: You may come down, Dr. Layton. And the N.A.A.C.P. has made a motion to vacate the order of the court entered earlier in the day that excluded it from participating in this case until it answered certain interrogatories. We will hear -- Judge Johnson will consider your motion here; we will hear your motion and hear any objections to your motion at this time. At this time, however, I don't think we will take up any more witnesses this afternoon, and you might excuse the witnesses until nine o'clock tomorrow morning. We will reconvene at nine o'clock tomorrow morning.

MR. GRAY: Your honor, if there are still any witnesses for the plaintiffs, as far as we are concerned, they may be excused, period.

JUDGE RIVES: All right, sir; you may go excuse your witnesses if you like.

MR. SATTERFIELD: May it please the court, we had the understanding before Judge Johnson that those witnesses had been subpoenaed by the plaintiff would not be excused except with the

consent of the defendants.

JUDGE RIVES: Yes, sir.

MR. SATTERFIELD: Therefore, I believe it would be necessary for them to be excused by both to prevent us having to have additional subpoenas.

JUDGE RIVES: That is correct.

MR. SATTERFIELD: May it please the court, I ask permission of the court for this. We were presented this list of a hundred and sixty-four Exhibits this morning about a quarter of nine; we have not seen many of them. I understand that a hundred and twenty-six have been introduced subject to the agreement stated in the record, and the other remainder, to 164, will be introduced. In order that we may expedite this matter, I wonder if we can make the proper arrangements with the Clerk or the Marshal, if we might have permission in this courtroom or in the proper office this evening to review these materials in the presence of either a Deputy Marshal or a Deputy Clerk so as to expedite our consideration and possible objection or admission of those matters?

JUDGE RIVES: You may examine them in the lawyers' conference room, and opposing counsel may be present if they see fit. I don't think -- you are officers of the court, both of you; it will not be necessary for any of the -- any of the court personnel to be present. Opposing counsel may be present or have some of their parties present if they like. You don't object to opposing counsel being there?



MR. SATTERFIELD: No, of course not; they and we would have ample opportunity to examine them at the same time.

JUDGE RIVES: In a private conference, it would not be necessary for the Clerk to be there.

MR. SMITH: Not meaning to interrupt Mr. Satterfield, but Mr. Quaintance wanted to review some of the same records, and we somewhat agreed that we could do it together, and both will be present.

JUDGE RIVES: The Clerk will make them available to counsel and sign them out to the counsel. You may review them this afternoon.

MR. SATTERFIELD: Thank you.

JUDGE RIVES: All right, Mr. Reeves, you may proceed with your motion, if you like.

MR. REEVES: It appears --

JUDGE RIVES: I will ask Judge Johnson to preside at this, because I am not too familiar with just what the pretrial hearing has been, what the rule has been.

MR. REEVES: As appears from the motion, your honor, when we filed our objections originally to the -- certain of the eighty-five interrogatories, there were a group of those interrogatories, including numbers twenty-eight, forty-three, forty-four, forty-five, fifty-two, fifty-nine, and sixty-nine, to which we objected on the ground that the information necessary to answer those interrogatories was not in our possession and knowledge, and if the

court overruled our objection, it would be necessary for us to obtain that information from one of the parties, namely, in this case, the United States Department of Justice.

JUDGE JOHNSON: The court didn't designate where you obtained the information --

MR. REEVES: I appreciate that.

JUDGE JOHNSON: -- it just said that, in effect, by reason of the allegations in paragraph seven of your complaint, which interrogatories directed to the N. double A.C.P. virtually track your allegations in paragraph seven --

MR. REEVES: Right.

JUDGE JOHNSON: -- that you would be required, the N. double A.C.P. would be required to furnish opposing parties the basis for your allegations by responding to those interrogatories --

MR. REEVES: Right.

JUDGE JOHNSON: -- and the court didn't specify where you were to obtain the information; it was assumed that it was available to you, since you made those allegations in your complaint that was originally filed.

MR. REEVES: I agree.

JUDGE JOHNSON: All right.

MR. REEVES: But in terms of the specifics as set forth in the written interrogatories, we had access to the information, but did not have the actual details that the interrogatories called for. We therefore requested the attorney for the

Department of Health, Education, and Welfare, where that information was, to furnish it to us. And when we responded to your honor's --

JUDGE JOHNSON: And in turn, you requested an extension of time from the court so that you might obtain and make a proper response to these interrogatories --

MR. REEVES: Correct.

JUDGE JOHNSON: -- which request for extension was granted --

MR. REEVES: Correct.

JUDGE JOHNSON: -- until November 22.

MR. REEVES: That is correct.

JUDGE JOHNSON: All right.

MR. REEVES: Your honor will observe, when we filed on November 18 our answers, we attached a copy of the letter that we had written to the Department of Justice asking for the information. On November 18 we received a reply from the Department of Justice, a copy of which we attached to the present motion.

JUDGE JOHNSON: Which was filed today --

MR. REEVES: That is correct.

JUDGE JOHNSON: -- written by Mr. --

MR. REEVES: Mr. Barrett.

JUDGE JOHNSON: -- St. John Barrett.

MR. REEVES: That is correct. Which, if your honor will -- will read it, they did not furnish the information.

JUDGE JOHNSON: We have studied it. The effect of it

was to, as far as the Department of Justice was concerned, tell you that information was available to lawyers for the defendants in their files, and they didn't see any reason for you to respond.

MR. REEVES: In effect that is what they told us, at least --

JUDGE JOHNSON: Mr. St. John Barrett didn't have the authority to relieve you of the responsibility of answering these interrogatories.

MR. REEVES: I agree with you entirely, sir. However, your honor will note that our answers to the interrogatories on November 17 was specifically that we did not have the information with which to answer the interrogatories. Now, I submit that under the circumstances, our being placed in the position where we don't have the information, we have requested it of the party who does have it, that party refuses to furnish it to us, what we can do beyond saying that we don't have it, I -- I am unable to -- unable to say to the court.

JUDGE JOHNSON: Mr. Barrett didn't tell you that it was not available to you; to the contrary, he said in his letter that it was available to you, if you wanted it.

MR. REEVES: May I say to your honor that until today, then, and incidentally without notice of the motion that had been filed citing us for contempt, without prior knowledge of the order until your honor announced it this morning, we served a subpoena on Mr. Barrett for the purpose of getting the information, the fact

being that until then we were not aware that the court, nor the defendants, were not satisfied with the answers which we did file on November 6 -- 17 to the effect that we did not have the information, and we had not obtained it from the source that we had sought to obtain it, namely, the Department of Justice.

JUDGE JOHNSON: You didn't -- you didn't file --

MR. REEVES: Certainly our --

JUDGE JOHNSON: -- you didn't file any further answer after November 18 advising the court or opposing counsel that it wasn't available to you or you did not intend to pursue the matter further; you just let it hang.

MR. REEVES: I beg your pardon, sir; a copy of Mr. Barrett's letter was sent to all of opposing counsel, including counsel for defendants.

JUDGE JOHNSON: That was attached to your November 18 responses?

MR. REEVES: No, sir; no, no; subsequent to our November 18 response, we had a response from Mr. Barrett.

JUDGE JOHNSON: And that is the one you filed with the court today?

MR. REEVES: We filed it with the court today, but copies of it were sent to all of the attorneys for all of the parties, including those who sought to depose --

JUDGE JOHNSON: By Mr. Barrett?

MR. REEVES: By Mr. Barrett, as of the time he sent

the original to us.

JUDGE JOHNSON: All right.

MR. REEVES: So that we were aware they had it in their possession; we were not aware until we were informed of the court's order this morning that they were not satisfied with that response.

JUDGE JOHNSON: Well, of course, that motion was just filed about two thirty yesterday; that motion was just filed, I believe, yesterday afternoon.

MR. REEVES: That is correct, sir; we had no notice of it, although all of counsel for plaintiff, Alabama N.A.A.C.P., were here in Montgomery; I assume that the copies were mailed to respective addresses, so we didn't know about it.

JUDGE JOHNSON: Did the defendants not serve counsel for N. double A.C.P. with notices of their Rule 37 motion?

MR. REEVES: No, sir.

MR. MADDOX: Your honor, we sent them through the mail.

MR. REEVES: To Washington, Birmingham --

JUDGE JOHNSON: The day before, you sent them to Washington?

MR. MADDOX: They were mailed yesterday afternoon.

JUDGE JOHNSON: To Washington?

MR. MADDOX: Yes, sir.

MR. REEVES: Washington, Birmingham, and New York.

MR. MADDOX: And Oscar Adams, of Birmingham, and I called Mr. Adams Tuesday, on the 22nd, and requested of him if we were going to get any further answers to our interrogatories than we had received to that date, and he stated no.

MR. REEVES: But you did not inform them that you intended to file a motion.

JUDGE JOHNSON: When did you get the information that you -- from Mr. Adams you were not going to get any further answers to the interrogatories?

MR. MADDOX: The 22nd.

JUDGE JOHNSON: The 22nd?

MR. MADDOX: Yes, sir.

JUDGE JOHNSON: When did you file your Rule 37 motion?

MR. REEVES: 29th.

MR. MADDOX: Yesterday.

JUDGE JOHNSON: All right; go ahead.

MR. ADAMS: Your honor, I would like to say in answer to that that I told Mr. Maddox when he talked to me on the phone that the answer that we filed, which was filed on Friday, the 18th of November, that we considered that an answer to the questions, the answer being that we did not have the information, and that we were seeking to get the information; we filed the answer to those interrogatories before the deadline that your honor gave us for the 22nd of November, so we took it that we had answered to the best of our knowledge and ability, and we had tried to go to some length to

get the information, and we did do so, and the information was not forthcoming from the sources we tried to get it, so we have tried everything we can to answer these interrogatories, and we feel that, on the basis of that, we have discharged our responsibility to the court.

MR. REEVES: I submit to your honor, in addition, although I certainly see your honor's position, that even though the information may be otherwise available, that does not excuse our responsibility for answering, but under the circumstances, where even though the information is otherwise available, was available to the defendants who asked us for it, second, it is available to another party, but it was only available to us if they gave it to us, in other words, without as happens now our filing a subpoena, we would not yet have the information from the United States, and certainly without any notice, I would certainly like to clear the record that our failure to answer certainly was in no way contumacious, certainly was in no wise intended on our part not to comply with this court's order. We were placed in a position wherein, so far as we knew, we had complied with the order, until, as I said, we received notice this morning that a motion was filed yesterday in which we were said not to have complied.

JUDGE JOHNSON: Are you advising the court, Mr. Reeves, that the Justice Department or the HEW would not permit you to get this information from their records?

MR. REEVES: I am saying to your honor exactly what



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we said, what was said in the correspondence from Mr. Barrett, that he was not furnishing us with the information, although we requested it.

JUDGE JOHNSON: And is that the only basis for your statement that they would not permit you to see it?

MR. REEVES: Well, off the record, I will go beyond that, and I will say that we had directly requested the information from HEW, and in response to our request to HEW, we were informed that they had been informed or advised by their attorney, the Department of Justice, that it was not necessary for them to furnish the information to us.

JUDGE JOHNSON: Because it wasn't necessary for you to answer the interrogatories?

MR. REEVES: Well, I don't know what they told Mr. Sealey as to why it shouldn't be furnished to us, but at least the end result was that we didn't get it.

MR. MADDOX: May it please the court, I think the court will recall that Monday afternoon or Monday morning, while we were in your chambers, I at that time expressed the point that we probably would file a Rule 37 --

JUDGE JOHNSON: I don't recall that counsel for the N. double A.C.P. were there.

MR. MADDOX: No, sir; they weren't.

MR. REEVES: I might say that the motion on which -- at least the notice of motion we had was one for the shortening of

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deposition, did not indicate that pretrial conference would take place, and so we were not represented at that hearing, sir.

JUDGE JOHNSON: It is the opinion of the court that the contempt order that was made and entered in this case earlier today as to the N. double A.C.P. should and will continue to stand until the N. double A.C.P. complies with the order of this court that was made and entered in this 2457-N on November 14, 1966, by fairly and fully responding to defendants' interrogatories twenty-eight, forty-three, forty-four, forty-five, fifty-two, fifty-nine, and sixty-nine, that the answers as given are, in view of the allegations in paragraph seven of the complaint of the N. double A.C.P. plaintiff in this case, completely and totally inadequate. The finding of civil contempt, with the stipulation that it is necessary that the N. double A.C.P. respond to these interrogatories by answering them in order to purge themselves of this contempt, will continue to stand. In this connection, the court notes that in Mr. St. John Barrett's letter, he advises Professor Reeves as one of the attorneys for the N. double A.C.P. that they will be glad to help you in this effort to get this information to you or make it available to you if the court insists upon your answering. The fact that it may have otherwise been available to counsel for defendants does not generally, and it cannot in this case, relieve the N. double A.C.P. of the responsibility of responding to these interrogatories. All I have to say.

JUDGE RIVES: Of course, that does not delay the trial

of this case; we will proceed right on.

MR. REEVES: May I say, your honor, that on the basis of, or on a response to a subpoena issued today, we are now in position to answer, I believe we are, the interrogatories; I would like to file them with the court at this time, sir.

JUDGE RIVES: Let them be filed.

MR. SATTERFIELD: May it please the court, may we now give notice to counsel for N. double A.C.P. that if, upon examination of these answers, we find they are not completely and fully responsive, in accordance with the rules, we will in the morning renew our motion under Rule 37.

JUDGE JOHNSON: Do it prior to the time court starts.

MR. SATTERFIELD: Sure, will be delighted to. What will be the convenient time for the court?

JUDGE JOHNSON: From seven thirty to eight o'clock.

MR. SATTERFIELD: I started this morning at six; I will be delighted to.

JUDGE RIVES: Court will stand in recess until tomorrow morning at nine o'clock.

(At which time, 5:37 p.m., a recess was had until 9:00 a.m., December 1, 1966)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

I, Glynn Henderson, Official Court Reporter of the United States

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District Court for the Middle District of Alabama, do hereby certify that the foregoing 246 pages contain a true and correct transcript of proceedings had before the said Court held in the City of Montgomery, Alabama, November 30, 1966, in the matters therein stated.

In testimony whereof I hereunto set my hand on this the 31st day of December, 1966.

  
Official Court Reporter.