

DEPARTMENT

CASE FILES

ALABAMA

LEE V. MACON COUNTY
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TRANSCRIPTS

1966
1 DEC.

00408

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

Anthony T. Lee and Henry A. Lee, etc., et al.	:	
Plaintiffs,	:	Civil Action
United States of America,	:	No. 604-E.
Plaintiff-intervenor and Amicus Curiae,	:	
vs	:	
Macon County Board of Education, etc., et al.,	:	
Defendants.	:	

Alabama NAACP State Conference of Branches, etc., et al.	:	
Plaintiffs,	:	Civil Action
United States of America,	:	No. 2457-N.
Plaintiff and Amicus Curiae,	:	
vs	:	
George C. Wallace, Governor of the State of Alabama, et al.,	:	
Defendants,	:	
John W. Gardner, as Secretary, etc., et al.,	:	
Impleaded defendants.	:	

Heard Jointly Before:

Hon. Richard T. Rives, United States Circuit Judge;
 Hon. Hobart H. Croome, United States District Judge;
 Hon. Frank M. Johnson, Jr., United States District
 Judge; and
 Hon. Virgil Pittman, United States District Judge.

At: Montgomery, Alabama, November 30, December 1-2, 1966.

(NOTE: This is transcript of proceedings had December 1, 1966)

Lynn Henderson,
 Official Court
 Reporter.

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Dir. Crs. Red. Rec. Red. Rec.

Plaintiffs' Witnesses

Edgar D. Nixon ^(Montgomery)
- ~~Rock~~, ^{me} 63

Defendants' Witnesses

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At: Montgomery, Alabama, November 30, December 1-2, 1966.

A p p e a r a n c e s:

Civil Action No. 604-E:

For the Plaintiffs: Fred D. Gray,
Melvyn Zarr, and
Henry M. Aronson.

For the United States: Ben Hardeman,
St. John Barrett, and
Brian K. Landsberg.

For Macon County Board of Education, and individual
members thereof:

Gordon Madison.

For George C. Wallace, in his capacity as Governor of the
State of Alabama, and as President of Alabama State
Board of Education, and individual members thereof:

Goodwyn, Smith & Bowman
(Maury D. Smith).

For George C. Wallace, in his capacity as Governor:

Goodwyn, Smith & Bowman
(Maury D. Smith),
John C. Satterfield, and
Hugh Maddox.

Civil Action No. 2457-N.

For the Plaintiffs: Orzell Billingsley, Jr.,
Oscar W. Adams, Jr.,
Frank D. Reeves,
Miss Joan Franklin.

For the United States: Ben Hardeman,
St. John Barrett,
Brian K. Landsberg.

For Governor Wallace, Governor's Commission, Austin R.
Meadows, State Board of Education, Mary Texas Hurt Garner:

Hugh Maddox.

For Seymore Trammell and John Graves:

James Taylor Hardin.

For all defendants except Tuscaloosa City and County Boards
of Education:

John C. Satterfield.

For Governor Wallace and Governor's Commission:

Hugh Maddox,
James Taylor Hardin,
John C. Satterfield, and
Goodwyn, Smith & Bowman
(Maury D. Smith).

For Tuscaloosa City and County Boards, etc.:

McQuisen, Flowers & Ray
(Martin Ray).

For Tuscaloosa City Board of Education:

Gordon Madison.

For Impleaded defendants:

Ben Hardeman,
St. John Barrett,
Brian K. Landsberg, and
Albert T. Hamlin.

(The above cases being heard jointly at Montgomery,
Alabama, the trial having commenced November 30, 1966, the following
proceedings were had beginning at 9:00 a.m., December 1, 1966:)

JUDGE RIVES: Be seated, gentlemen.

COURT CRIER: Be seated, please.

JUDGE JOHNSON: Gentlemen, as announced informally in
conference in my chambers earlier this morning, this court, upon
examination of the answers filed late yesterday afternoon by the N.

double A.C.P. to the interrogatories in question, is of the opinion that the answers are sufficient within the meaning of Rule 33, that there is no prejudice to the defendants that propounded the interrogatories in the case, and for that reason the N. double A.C.P. has purged itself of the contempt of this court and will be, from this point on, allowed to participate in the trial of this case. And a formal order has been drawn and executed by the Judges sitting in Civil Action 2457-N to that effect; it is being filed with the Clerk of the Court. —

MR. BILLINGSLEY: Your honor, at this time I would like to renew the motion that I made yesterday with reference to Mr. Reeves and Miss Franklin for admission to practice before this court.

JUDGE RIVES: They have been admitted as to all the parties except the N. double A.C.P., and we are happy now to have them appear for the N. double A.C.P., also.

MR. BILLINGSLEY: Thank you very much.

JUDGE RIVES: Gentlemen, I believe the plaintiffs had rested, and for the defendants, I say I hope you will finish today and tomorrow, and if you gentlemen decide we can't, you had better dispose of your tickets for the football game Saturday; we are going right on through.

MR. REEVES: Your honor, with respect to representation the plaintiffs had rested, we would have, now that the N. double A.C.P. is back in the case, one witness; however, we are embarrassed by the fact that, not knowing we were going to be back in, he had to

come from Tuskegee down here this morning; and if the defendants would not object, his testimony is only three or four formal, technical matters, we would appreciate it if we might proceed, and at a time that would be convenient put him on for his testimony.

JUDGE RIVES: Unless there is some objection, we will --

MR. SATTERFIELD: If it please the court, I don't -- I do not believe the United States had rested. I think it would be necessary for us to see what is done before --

JUDGE RIVES: I don't know the Government has rested.

MR. REEVES: Oh, it probably --

JUDGE RIVES: I think you were probably mistaken in saying that the plaintiffs had rested. Had the United States rested?

MR. BARRETT: No; we had not rested as of yesterday, your honor. We do not have any further witnesses to call, however. We have marked some additional Exhibits for identification; I have furnished counsel and the Clerk with a supplemental Exhibit list for the Government. I will ask that all Exhibits marked for identification for the Government be admitted into evidence. I will also ask that the depositions taken by the Government be considered by the court as evidence in this case, together with the Exhibits to those depositions, that have not separately -- I should say in addition to those that have separately been marked for identification.

JUDGE RIVES: Have you made it clear what depositions you introduce? You introduce all the depositions that have been

taken by the Government?

MR. BARRETT: All depositions taken by the Government; that is correct, your honor.

JUDGE RIVES: With the Exhibits to them.

MR. BARRETT: And the Government does rest.

MR. SATTERFIELD: May it please the court, I assume the introduction of these depositions is on the same basis that is shown of record yesterday concerning the other depositions and the other Exhibits.

JUDGE RIVES: Subject to any objections that may be presented before this hearing --

MR. SATTERFIELD: Is completed?

JUDGE RIVES: Yes. All right.

MR. SATTERFIELD: We are attempting -- we were here until about one o'clock this morning, came back at six thirty; we are attempting to have them prepared as soon as possible.

JUDGE RIVES: All right. Very well, then; the Government then rests?

MR. BARRETT: Yes, your honor.

JUDGE RIVES: Very well, gentlemen.

MR. SATTERFIELD: May I inquire of counsel, do I understand that there have been offered for introduction and introduced upon the basis stated the Exhibits listed from 127 through 164 on the list tendered to us?

MR. BARRETT: Well, all Exhibits on both the original

list and the supplemental list have been offered by the Government.

MR. SATTERFIELD: The answer, then, is yes, you have included from 1 through 164?

MR. BARRETT: That is correct, and now it is through 172; yes, sir.

MR. SATTERFIELD: I do not have a supplemental list; do you have one you can furnish?

MR. BARRETT: I placed it on the table; I am sorry.

JUDGE JOHNSON: The court doesn't have a supplemental list, either.

MR. SATTERFIELD: If the court will indulge me one moment.

JUDGE RIVES: I don't think the court has the supplemental list, either.

MR. BARRETT: I am sorry, your honor; I had given a copy to the Clerk, and I believe I had failed to give extra copies for the members of the court. (presented copies)

MR. REEVES: Your honor, a question arose yesterday with regard to two depositions that we had taken that had not -- we did not know whether they had been transcribed and filed; I am advised by the Clerk that they have been filed, the depositions of Mr. Hugh Lock and Mr. Rankin Fite, and therefore, we would offer those depositions in behalf of the plaintiffs.

JUDGE RIVES: I believe they were already accepted in evidence yesterday subject to being filed, the defendants

objecting to the points --

MR. REEVES: I think so, your honor.

JUDGE RIVES: The Judges have been informed that they are filed now.

MR. REEVES: Under the circumstances, we would excuse Mr. Fite --

MR. ADAMS: Lock.

MR. REEVES: Lock, I am sorry, who was here as a witness.

JUDGE RIVES: You mean you rest completely?

MR. REEVES: No, sir; we are waiting still for the one witness.

JUDGE RIVES: Beg your pardon?

MR. REEVES: Waiting for one --

JUDGE RIVES: You have one more witness --

MR. REEVES: Which is on his way.

JUDGE RIVES: -- you want to introduce out of order?

MR. REEVES: I would like to introduce or offer in evidence the answers to interrogatories filed on behalf of plaintiff, Alabama N.A.A.C.P. Conference of Branches.

JUDGE RIVES: All right. Mr. Smith.

MR. SMITH: If the court please, all of the plaintiffs resting their case places each of the defendants in the position in regard to filing objections to the offer of Exhibits, and we would respectfully ask leave of the court, with this understanding, that

the court is proceeding in equity and will consider only the relevant, competent evidence, but we would ask the court, if possible, to extend us some time in the matter of filing written objections to the Exhibits. We are not trying --

JUDGE RIVES: I think that is reasonable. We realize we are working you gentlemen under pressure, and we regret that we had to keep you up a good part of the night. Of course, these objections will be considered by the court, and, as you say, the court is operating under -- in equity and will consider only the relevant, competent evidence.

MR. SMITH: Yes, sir.

JUDGE RIVES: You might file those objections -- how much time do you want, two or three days?

MR. SMITH: Yes, sir; that would certainly be sufficient.

JUDGE RIVES: You might file your objections, say, within three days after the hearing --

MR. SMITH: Thank you, sir.

JUDGE RIVES: -- is completed.

MR. SATTERFIELD: May it please the court, may we inquire of counsel, so we may be able to proceed, the name of the witness to be presented and the nature of the testimony, as otherwise we may not be able to properly present our defense?

JUDGE RIVES: Before that, Mr. -- I saw Mr. Barrett rise; maybe he objects to our granting time here.

MR. BARRETT: No, not at all, your honor; however, I wanted the record to show what I believe was the understanding, that objections would not be made on the grounds that a sufficient basis -- as to the authenticity of particular documents would not be made; however, I have -- certainly objections to competency on any other basis or relevancy we understand can be saved.

MR. SATTERFIELD: May it please the court --

JUDGE RIVES: Counsel nod their heads that is so.

MR. SATTERFIELD: May it please the court, the understanding is that as to the copies of documents which they have obtained from the files of the State of Alabama or any of its officers or others or copies of documents which we have obtained from the files of HEW in Washington, there is no objection to the authenticity; however, as to the one hundred and sixty-four, now a hundred and seventy-two, Exhibits, one of which has eighty-nine parts, which include memoranda, unauthenticated, which they have introduced from their files, our agreement does not extend to that type of testimony; it does extend to any documents of which they have taken copies from the files of the defendants or which we have taken copies from their files.

JUDGE RIVES: We would ask, then, that if you have any objections to the authenticity, that it be filed before the hearing is completed.

MR. SATTERFIELD: May it please the court, may I clear that up? It is not --

JUDGE RIVES: Judge Johnson tells me, however, that there was a pretrial conference on that; I will ask -- you might go ahead.

JUDGE JOHNSON: During the course of the pretrial conference, the attorneys were put on notice that if there were any objections to authenticity of any documents, without restriction, that the opposing counsel would have to be notified before the hearing as to what documents those were and the basis for that objection on authenticity; that stipulation and agreement was entered into, according to my understanding, by all counsel, without regard to where the documents were obtained. It was not restricted, according to my understanding, to documents obtained from HEW by the State attorneys or documents obtained by the Government attorneys from the State files.

MR. SATTERFIELD: May it please the court, perhaps I didn't make it clear. It is my understanding that as to a correct copying of records, authenticity as such, there is no objection, but as to admissibility of matters which were not presented to us before the trial of the case, but only yesterday, or any other matters, we reserve our objections and may file them. We do -- we are not raising a question as to whether a photostatic copy of a document is correct or not; we are and do reserve -- and have reserved the right to object to the admissibility of copies of documents we didn't get until yesterday afternoon.

JUDGE RIVES: Admissibility on other grounds than the

authenticity of the documents.

MR. SATTERFIELD: Or the grounds of the authenticity of the copy of the document, we do not object to the use of a copy in lieu of the original; I think that is what we understand.

JUDGE RIVES: All right; we don't want any quibbling or any other thing about copies or authenticity if any ground of authenticity is not objectionable.

MR. SATTERFIELD: May it please the court, that is certainly correct.

JUDGE RIVES: All right, gentlemen, defendants may proceed.

MR. SATTERFIELD: May it please the court, we had requested counsel to advise the name of the witness and the nature of the testimony so we might be prepared to -- in the presentation of the case.

JUDGE RIVES: Very well.

MR. REEVES: It would be either one of two persons, whichever gets here first; either Reverend E. D. Nixon, Mr. E. D. Nixon, of Montgomery, or Mr. H. K. Buford from Tuskegee.

JUDGE RIVES: What is the nature of their testimony?

MR. REEVES: They will testify with regard -- in support of certain of the allegations in paragraph four of plaintiff's complaint with regard to the identity or at least the number of the members of the class and their interest and relationship in connection with this cause of action. It may well be they denied this is an

issue, that was denied in the answer, and unless, of course, they are prepared to stipulate at this time, we would be prepared to put on testimony by such witness.

MR. SATTERFIELD: If the court will indulge us just one moment.

JUDGE RIVES: I don't think there is any issue on that.

JUDGE JOHNSON: The allegations of paragraph four?

JUDGE RIVES: The allegations of paragraph four; there may be, however.

MR. SATTERFIELD: May it please the court, there is no issue with reference to members of a class within a local school system; there is no issue with reference to the finding of the Court of Appeals of the Fifth Circuit in the Lee versus Macon with reference to right of relief concerning State officials within a limited area; however, there is an issue as to whether or not, under the Rules of Civil Procedure, that there is a common issue of fact and law applicable to varied different and numerous school systems, I believe about a hundred and seventeen, within the State of Alabama.

JUDGE RIVES: Very well; we will let them go on and put their witness on the stand when he comes.

MR. REEVES: Thank you.

MR. SATTERFIELD: May it please the court, I would like to present to counsel a list of Exhibits which we have prepared.

(Mr. Satterfield presented papers to various counsel.)

MR. ARONSON: Thank you.

JUDGE RIVES: Do you have extra copies that the court could have? If not, why, it is not necessary.

(Mr. Satterfield presented papers to court)

JUDGE RIVES: You are keeping one for yourself, now, aren't you?

MR. SATTERFIELD: May it please the court, we are now having duplicated the Exhibits 1 through 37, and they will be here in just a moment. In the meanwhile, if we may, we would like to offer certain depositions as Exhibits 38 and 39, with the understanding we will offer Exhibits 1 through 37 within a few minutes. We offer as Exhibit 38 the deposition of Honorable Harold Howe, II, the United States Commissioner of Education, taken in Washington, D. C., on November 2, 1966, with the Exhibits thereto, as the testimony of an adverse party and adverse witness, such deposition consisting of two volumes which have been filed to the Clerk, and which we now hand to the Clerk.

JUDGE RIVES: It may be received in evidence.

MR. SATTERFIELD: May it please the court, during the progress of the case, we would like to submit to the court for the court's convenience the preliminary summary of the matters set forth therein.

JUDGE RIVES: Happy to have them.

MR. SATTERFIELD: We offer as Exhibit 39 the deposition of Honorable Lawrence E. Crowder --

JUDGE RIVES: Lawrence E. what?

MR. SATTERFIELD: Crowder, C-R-O-W-D-E-R, who is the Alabama Director for the Department of Health, Education, and Welfare, in the office of the United States Commissioner of Education, which deposition was taken in Washington, D. C., on November 2, 1966, and which has been filed with the Clerk of this court. We also, if we may, would like to file with the court a summary in connection with this deposition.

JUDGE RIVES: Be happy to have the summary and that Exhibit, as well as each of the others; unless objected to, it may be received in evidence. That is not the summary, that is a deposition. Are these summaries that you are -- you are not offering the summaries in evidence?

MR. SATTERFIELD: Not in evidence.

JUDGE RIVES: You are furnishing those for the convenience of the court, as I understand it.

MR. SATTERFIELD: May it please -- the records show that the summaries will not be offered as a part of the evidence, but will be filed with the Clerk and the court for the court's convenience only.

JUDGE RIVES: Yes, sir.

MR. GRAY: I assume opposing counsel will be supplied copies of the summaries.

MR. SATTERFIELD: Of course. We now offer in evidence the Exhibits listed in the defense Exhibit list as Exhibits 1 through

37, being copies of letters written by Mr. Howe, or, in a few instances, by a member of his staff to numerous Superintendents of City and County Boards of Education in Alabama.

JUDGE CROOKS: Substantially the same, Mr. Satterfield?

MR. SATTERFIELD: There are, may it please the court, three or -- there are four different types of letters which are included. The first type of letter, which includes approximately eight of these, is illustrated by Exhibit number 1, which in effect recommends or requires as a condition for the continuance of federal financial assistance that there be attained in the school system to which this is directed a racial balance in both the faculty and the study body, the words used, however, not being, quote, "Racial balance," but being, quote, "Substantial desegregation of faculty in order to remove the identification of schools as either white or Negro," as to the faculty, and the words used as to the student body not being, quote, "Racial balance," but being, quote, "If your district further -- undertakes further action to insure that its free choice system is operated freely and fairly, and that the racial identification of the various schools is being removed, then action will not be taken to remove federal financial assistance." That is one classification, in response to the question of the court. That -- another classification, of which there are, of the thirty-seven, some twelve or fifteen letters, are illustrated by Exhibit number 3, and the others which will be before the court,

which are to the effect that unless sufficient -- unless there is attained an integration of the student body in all schools satisfactory to the U. S. Commissioner of Education, the free choice system must be abandoned, the words used being, quote, in each of these letters, "If reasonable progress in student desegregation is not achieved under the free choice plan, an alternative plan would have to be adopted," unquote, followed by the recitation indicating withdrawal of federal assistance unless that is done. The third classification is letters of which -- notifications, of which there are some four, to the effect that the Commissioner, although he approves the present status and the present submission, may change his approval at any time and may at any time make further requirements in his discretion. The fourth -- the last classification, of which there are two, are notifications that unless certain actions are taken, there will be action resulting in a denial of the continuance of or consideration of further financial assistance by using the word, quote, "Defer," unquote, as I assume, since that word is not used in the statute. Thank you, sir.

MR. SMITH: 1 through 37.

MR. SATTERFIELD: 1 through 37 introduced in evidence.

Did I give you a copy?

MR. SMITH: Tim, we offered other Exhibits that go 1 through 8. This list would have to be -- first Exhibit in this group would have to be Exhibit 9.

MR. SATTERFIELD: May it please the court, for the

information of counsel and for the record, in preparing this list we had overlooked that we had offered yesterday Exhibits 1 through 8; therefore, I believe it will be necessary that the first Exhibit on this list should be number 9, and that all Exhibits following should have nine added to them, and also that the depositions which we offered as Exhibits 38 and 39 should be Exhibits 47 and 48.

JUDGE RIVES: All right.

MR. REEVES: May I ask if counsel for the plaintiffs is going to get an opportunity to examine these Exhibits before they are received?

JUDGE RIVES: These Exhibits are offered under the same understanding that you may file objections to them, any part of them, if you like.

MR. REEVES: Thank you, sir.

JUDGE RIVES: You will have ample opportunity to examine them. Of course, you may borrow any of them now as the case goes along and be examining them; I hesitate to delay the case to examine them. Move ahead, gentlemen.

MR. SMITH: Call Mr. Robert Cunningham. If the court please, I am not sure that all of these witnesses were sworn; some of them were here.

JUDGE RIVES: Well, suppose you ask them before you put them on the stand --

MR. SMITH: Yes, sir.

JUDGE RIVES: -- if any of them haven't been.

MR. SMITH: Mr. Cunningham, were you sworn?

WITNESS ROBERT EDWARD CUNNINGHAM: No, sir.

MR. SMITH: Were you here yesterday? All right, sir.

THE CLERK: Please raise your right hand. Do you solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God?

WITNESS ROBERT EDWARD CUNNINGHAM: Yes, sir.

THE CLERK: Please be seated.

ROBERT EDWARD CUNNINGHAM, witness for Defendants, having been
duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. SMITH:

Q Will you state your name to the court, please, sir?

A Robert Edward Cunningham.

Q Where do you live, Mr. Cunningham?

A Jasper, Alabama.

Q What is your occupation?

A County Superintendent of Education, Walker County.

Q How long have you been County Superintendent of Walker County?

A This is my fourth year.

Q Fourth year?

A Yes, sir.

Q Now, within Walker County, do you also have a separate City
system?

A Yes, sir; we have two City systems in Walker County.

Q You have two systems within the County system?

A We have three, counting the County system; we have Carbon Hill
City system and Jasper City system and Walker County School System.

Q All right, sir; how long has there been a Jasper City system
within the county?

A Since 1901.

Q And the Carbon Hill system has been in existence approximately
how long?

- A Approximately twenty years.
- Q Did the Walker County Board of Education adopt a freedom of choice plan in the matter of desegregation of its school system?
- A Yes, sir.
- Q Will you state to the court the approximate date that you adopted this plan?
- A This was in April, 1965.
- Q All right, sir. Very briefly, what does the plan call for?
- A It calls for a student to select to attend any school in the system that they would like to attend.
- Q What grades have been affected by it?
- A We have, I believe, first, third, fourth, fifth, sixth, seventh, eighth, and ninth, all the way up to the twelfth grade.
- Q All grades --
- A Yes, sir.
- Q -- then are affected under the plan?
- A Yes, sir.
- Q Now, under this plan, how many Negro pupils are attending previous all white schools within your system?
- A Eighty-two.
- Q Eighty-two?
- A Yes, sir.
- Q Did you attend meetings here in Montgomery in the month of September, 1965, March and June of 1966?
- A I attended them all except the last one, the one in June; I did

not attend the one in June.

Q You didn't attend the meeting in June of this year?

A No, sir.

Q But you did attend the other two meetings?

A Right, sir.

Q Was Governor Wallace present at these meetings?

A Yes, sir.

Q Will you state to the court what Governor Wallace said, and I will start and direct your attention to the first meeting in September of 1965, if you recall, and I am not asking verbatim, but in substance what he said?

A Yes, sir. Well, the best I recall, the purpose of the meeting was to discuss the guidelines, the 441-B -- maybe this was before then -- September?

Q Well, actually, what I am asking, Mr. Cunningham, is your recollection of what the Governor said at either or both of these meetings?

A Well, he -- he discussed with us, and the fact that he felt like the guidelines, themselves, went beyond the law, but he did tell us that he was not trying to defy the law or the courts in any way, but he wanted us to re-examine and really study the plans in desegregation of our schools.

Q At this meeting did persons other than the Governor address the group, Mr. Cunningham?

A Dr. Meadows addressed us.

- Q Do you recall specifically whether or not at either of these meetings Mr. Satterfield, a lawyer, talked to the group?
- A Yes, sir; in one meeting he -- he talked to us briefly, but I don't recall which meeting it was; it was one of the meetings.
- Q All right, sir; do you recall the substance of what Mr. Satterfield said?
- A He expressed in his opinion that he felt like that the guidelines were illegal.
- Q Now, did you receive a letter on August 17, I believe, of last year from the U. S. Office of Education in regard to the transportation of pupils within your system?
- A That was this year.
- Q This year?
- A Yes, sir.
- Q Do you have that letter with you?
- A Yes, sir; I have it back -- I didn't bring it in the courtroom.
- Q You have it back in the witness room?
- A Yes, sir.
- JUDGE RIVES: Want him to go get it?
- MR. SMITH: Yes, sir; I think it would be --
- JUDGE RIVES: All right, you may go get it.
(Witness left courtroom and returned)
- Q You have the letter now --
- A Yes, sir.
- Q -- Mr. Cunningham?

- A Yes, sir.
- Q All right, sir. Before I go into the letter, did you, as Superintendent, sign the compliance form requested by the U. S. Office of Education?
- A No, sir; the Chairman of the Board of Education signed it.
- Q The Chairman of the Board did sign it?
- A Yes, sir.
- Q Was this by you, as Secretary of the Board, forwarded to U. S. Office in Washington?
- A Yes, sir.
- Q All right, sir. Now --
- JUDGE JOHNSON: Was that 441 or 441-B?
- WITNESS: Both, sir.
- JUDGE JOHNSON: You signed both?
- WITNESS: Yes, sir.
- Q Can you give the court your opinion as to when these were signed; first, 441?
- A It was, I believe, April -- well, I know it was in April of '65, but I think that it was prior to the deadline of the 15th, the best I can remember.
- Q All right, sir.
- A I know it was prior to the deadline that they established at that time.
- Q And then when the guidelines were revised, do I understand your

testimony that the Chairman of your Board of Education signed 441-B?

A Right, sir.

Q Right, sir.

MR. SMITH: Now, would you please mark this as an Exhibit, Tim?

THE CLERK: Defendants' Exhibit 46.

Q Mr. Cunningham, I hand you Defendants' Exhibit 46 --

MR. SMITH: You all want --

MR. REEVES: It should be 48. Oh.

Q Do you identify Defendants' Exhibit 46?

A Yes, sir; this is the letter.

Q Is the letter addressed to you?

A Yes, sir.

Q And who is it from, sir?

A It is from Richard L. Fairley, Acting Area Director, Area Three, Equal Educational Opportunities Program.

Q From the United States Office of Education in Washington?

A Right, sir.

Q What is the date of the letter?

A August 15, 1966.

Q Does the letter consist of three pages?

A Yes, sir.

Q Will you tell very briefly your understanding of what this letter says?

MR. SMITH: We offer Defendants' Exhibit 46.

Q What does the letter call for in -- the Board of Education in Walker County to do?

A Well, they felt like in this letter that we were not in complete compliance --

JUDGE RIVES: I understand the letter to speak for itself, but for the convenience of the court it might be well to let him tell what it is about.

MR. BARRETT: I would like to see a copy of the letter before the witness testifies.

JUDGE RIVES: Beg your pardon, Mr. Barrett?

JUDGE JOHNSON: Wants to see it.

JUDGE RIVES: You want a copy of the letter?

MR. BARRETT: Yes, sir.

JUDGE RIVES: Let opposing counsel see the letter, Mr. Smith.

MR. SMITH: Yes, sir; I am sorry.

MR. BARRETT: Thank you.

MR. ZARR: If your honor please, my records show the defendants have introduced Exhibit 46 already as Mr. Howe's deposition; could we get that cleared up, please?

JUDGE RIVES: Introduced what?

MR. ZARR: My records show that the Howe deposition is Exhibit 46 for the defendant; I am a bit confused; can we get that cleared up?

JUDGE RIVES: Mr. Satterfield said add nine, but actually I think he should have said add only eight, so --

JUDGE JOHNSON: That's right.

THE CLERK: Yes, sir.

JUDGE RIVES: -- 46 is right.

JUDGE JOHNSON: Right.

JUDGE RIVES: He is a little wrong on adding nine.

THE CLERK: Wait, I may be mistaken on this.

(Clerk conferred with Court at bench)

JUDGE RIVES: There is some little confusion about the numbers.

JUDGE JOHNSON: Why don't you just give this letter 47; that will eliminate any confusion.

JUDGE RIVES: Some little confusion about these numbers; suppose we just number this letter 47; if we skip one, why, we will mark it one skipped.

MR. SMITH: It can be that the defendants, Tuscaloosa County Board of Education, offered two Exhibits.

MR. RAY: 5 and 6.

MR. SMITH: No, it is the same, you have already marked it; excuse me.

Q Now, Mr. Cunningham, referring you, I believe, to Exhibit 47 --

MR. SMITH: Is this correct, Tim?

THE CLERK: Yes, sir.

Q -- what -- what did this letter request of you as County

Superintendent of Education in Walker County?

A Well, they wanted us to cancel all arrangements for the one hundred fifty white students from Walker County to continue to attend school in Jasper City School System, and to make provisions for them to attend the Walker County School System. What that means, we have students riding busses into the City system; they asked us to stop transporting them into the City system, since they were not in compliance. End the granting of permission to attend Walker County schools to students in the first through ninth grades who reside in Jasper City. Close grades ten through twelve at Walker County Training School, which is a previously all Negro school, and transfer the hundred and forty-five -- hundred and forty-nine Negro students anticipated in those grades to Walker County High School. Close grades ten through twelve at Terrel S. Boyd School in Dora, which is a senior high school, previously an all Negro school, and assign the eighty-nine Negro students who have been expected to attend that school to the Dora High School, which is in the town of Dora. The closing of these two small high schools and the closing of the Frisco and Walker County Training School, that is Negro schools, would educate Jasper City residents -- which educate Jasper City residents, will result in substantial progress in the number of Negro students attending schools on desegregated basis. And assign the teachers who were to teach grades ten through twelve

at Walker County Training School and Terrel S. Boyd Schools to teach at high schools to which their former students are assigned. In addition, it would be necessary to arrange for approximately nineteen additional faculty assignments to be made on desegregated basis. We would expect that in your thirty-three school system at least the equivalent of one assignment per school could be made on desegregated basis. Then they mention that the -- they felt like that the two school systems in Walker County should be consolidated. Basically, that is all that it was, they -- they recommend that we do.

Q Now, this letter was dated August 17, 1966?

A Yes, sir.

Q Well, prior to the receipt of this letter, had you had personal visits from representatives of the U. S. Office of Education in your office as County Superintendent?

A No, sir; he met with Mr. Songer, the City Board Board of Education office, and they called me to come to his office for the meeting.

Q Who did you meet with?

A Mr. -- with Mr. Gene Crowder.

Q Did Mr. Crowder make certain demands on you as County Superintendent?

A Well, it appeared to me that he was trying to -- I don't know whether you call it pressure or what, apply pressure to the City

Board of Education to get them in compliance. In doing so, he recommended and strongly urged some things from us that to me seemed ridiculous.

Q Did he talk about federal funds being deferred or terminated if you didn't do them?

A Yes, sir.

Q Did he specifically mention this?

A Yes, sir.

MR. SMITH: We offer Defendants' Exhibit 47, if it hasn't been offered.

A He said that they would be cut off. What he -- what he wanted with me over there primarily was to -- for the both Boards of Education to enter into reciprocal agreement to receive any transfer from the -- each system, like if --

Q In your presence, did Mr. Crowder make the same or similar demands on Mr. Songer as Superintendent of the Jasper City System?

A Yes, sir.

MR. ARONSON: Object to the form of the question.

JUDGE RIVES: I beg your pardon?

MR. ARONSON: Object to the form of the question, in terms of leading his witness.

JUDGE RIVES: Yes; sustained.

A Repeat your question, or whatever --

JUDGE RIVES: Sustained.

Q Were any requests or demands by Mr. Crowder made of Mr. Songer

in the same conference that you attended?

A Well, he just said that if he -- if they didn't, he had -- of course, he had the guidelines before him, and he would point out to him, it says in the guidelines, which is the law, he referred to this as being the law, "If you don't do these things, you are not going to receive any federal money," if that is what you mean.

Q All right, sir. Now, Mr. Cunningham, had the Walker County freedom of choice plan been approved by the U. S. Office of Education?

A Yes, sir.

Q Have your funds been deferred?

A No, sir.

Q Have you received any notice in regard to deferral?

A No, sir.

Q Have you received any communication whatsoever, verbal or written, from any State official, Dr. Meadows or anybody in the State Department of Education, in regard to the assignment or transfer of pupils, Negro or white, or the transfer or assignment of teachers, Negro or white?

A No, sir; not as a directive. About the only correspondence I remember was mentioning the section of -- I don't know, I don't even recall the section of guidelines, mentioning assignment of pupils and teacher personnel, that was spelled out in some correspondence, but I don't remember too much about it.

- Q Did it come from the State Department of Education?
- A It came from Dr. Meadows; yes, sir.
- Q And this was citing to you certain sections of the guidelines?
- A Right.
- Q Or was the communication to urge your compliance with the guidelines or your violations of them?
- A I don't think it either -- it was either; I think it was just spelling -- trying to interpret for us the true meaning of that section.
- Q Have you changed any assignment of pupils at the request of any State official?
- A No, sir.
- Q Have you changed any assignment of teachers at the request of State officials?
- A No, sir.

MR. SMITH: I believe that's all; thank you. They may have some questions.

JUDGE RIVES: No further questions from any of the defendants?

MR. SMITH: No, sir.

JUDGE RIVES: All right; the plaintiffs may cross examine.

CROSS EXAMINATION:

BY MR. ARONSON:

- Q Mr. Cunningham, until 1965 was your system admittedly run on a

totally segregated basis?

A Yes, sir.

Q And you had totally segregated faculties, totally segregated bus routes, and totally segregated athletic facilities; everything was segregated, wasn't it?

A Right, sir.

Q And 1965 was the first year in which you purported to make a change; isn't that right?

A Yes, sir.

Q September of '65?

A Yes, sir.

Q Now, prior to 1965, which or upon what basis were the approximately one hundred fifty whites that you transported, as I understand it, to Jasper City selected?

A This had been practiced for about twenty years in Walker County. Of course, I had only been Superintendent for -- this is my fourth term -- year. But Jasper City School System does not have a transportation system. As a matter of courtesy, Walker County Board of Education to transport these children into the city; actually, some of them live closer to the City schools than they did the County schools.

Q Let me -- let me clarify myself -- my question; is there a clearly delineated line which separates the Jasper City School System, or that area of Walker County which encompasses -- which encompasses the Jasper City School System, is there a geographic

area, is there a portion on the -- a map that you can look at and see whether or not a child lives in the Jasper City School System or in the Walker County School System?

A Yes, sir.

Q There is?

A Yes, sir.

Q Now, is it my understanding that you educate approximately one hundred fifty white children who live in the County School System area in Jasper City School System?

A That's right.

Q So this is not an accommodation to Jasper City; this is a matter of educating whites in the County, isn't it?

A Well, yes, sir --

Q All right.

A -- but they --

Q Now, let me ask you another question; how are those one hundred fifty whites selected?

A On request by the parents. You mean -- they were just -- they just wanted to ride the bus; the City System; and the bus routes had been established for years.

Q I am not talking about the transportation, but absent some agreement, why is it that County children are being educated by the City?

A I don't know, sir.

Q If every child in the County asked to be educated in the City,

then would you send all of them into the City and have them educated there?

A No, sir.

Q All right, how do you distinguish --

JUDGE RIVES: He said some of them live nearer the City schools.

MR. ARONSON: Your honor, what I am trying to establish is what basis.

JUDGE RIVES: That's right.

Q Is it geographic; is it choice?

A It is geographic more than anything else, because they live close to the City schools than they do the County schools, although they are not in the City Limits of Jasper.

Q I see, and it is based upon the location of the -- these children?

A Proximity; right.

Q Proximity?

A (Nodded to indicate affirmative reply)

Q What do you do with the Negro children that live in the same area?

A We don't have any Negro children living in the same area.

Q It is an all white area?

A Yes, sir.

Q Not one --

A Not one; no, sir.

Q Not one Negro child lives in that whole area?

A No, sir; no, sir; not a one.

Q How many people -- how many students do you educate?

A Around eleven thousand, five hundred.

Q And of these eleven thousand, five hundred, how many of them live within the Walker County System area?

A Sir, I don't know that right off hand; I mean, I --

Q How many people do you educate from other systems?

A From other systems?

Q From Jasper City, from Carbon Hill, or from any other adjoining system?

A I don't know that, either.

Q Of your eleven thousand, five hundred, you have testified that eight -- what -- excuse me, strike that, please. Of the eleven thousand, five hundred, approximately what is the racial breakdown, white to Negro?

A About ten to one.

Q Ten what?

A Ten whites to one Negro.

Q So you have got approximately a thousand Negroes, roughly?

A I think it is fourteen hundred.

Q Fourteen hundred Negroes and approximately ten thousand whites?

A Right.

JUDGE PITTMAN: Is the eleven thousand, five hundred, all systems or just the County System?

WITNESS: Just the County System.

JUDGE PITTMAN: Just the County System?

WITNESS: Yes, sir.

Q And of that one thousand, five hundred Negro students figure, you say approximately eighty-two Negroes exercised freedom of choice?

A Right, sir.

Q Now, you referred to a couple of schools and some suggestions which came from the Government.

MR. ARONSON: I would like to see Exhibit 46, I believe.

JUDGE PITTMAN: We have it here.

MR. ARONSON: 7, I am sorry, your honor; one -- do you have another copy, Counsel? Mr. Satterfield, do you have another copy?

JUDGE PITTMAN: The Clerk has it.

MR. ARONSON: Thank you.

Q Let me ask you this; did you have in the Walker County System grades one through twelve for both Negroes and whites?

A Yes, sir.

Q I mean, you have within your County --

A Right.

Q -- twelve grades --

A Right.

Q Schools, or elementary, junior high, and high schools, for both element--- for both Negroes and whites?

A Right.

JUDGE PITTMAN: Let me ask you a question; in the City System, are there any Negro schools, or are all the Negro schools in the City in the County System?

WITNESS: All the Negro schools in the City were operated by the County Board of Education, sir.

JUDGE PITTMAN: All right.

WITNESS: Which were two; we had two.

JUDGE PITTMAN: In other words, there are no Negroes in the City School System except those that have been transferred?

WITNESS: Six; that's right, those that --

JUDGE PITTMAN: Was that true of the other City System, also?

WITNESS: No, sir.

JUDGE PITTMAN: You mentioned Jasper.

WITNESS: Carbon Hill has a Negro school.

JUDGE PITTMAN: In their City System?

WITNESS: In their system; right.

JUDGE PITTMAN: All right.

Q Grades one to twelve?

A Yes, sir.

Q And does it have a white school, grades one to twelve, also?

A Yes, sir.

- Q Does Carbon Hill educate all the children that live within Carbon Hill within their own schools?
- A Right, sir.
- Q How many schools do you have in the County?
- A Thirty-three, sir.
- Q Now, the two schools that have been mentioned here which the Government suggested you close, what were those, the names of those schools?
- A Well, they suggested that they close Walker County Training School, which was a Negro school, grades nine through twelve.
- Q How many grades does the Walker County Training School accommodate?
- A One through twelve.
- Q All right; and what did they suggest you close?
- A Grades nine through twelve, and transfer them to Walker County High School.
- Q How many children did that involve?
- A A hundred and eighty-nine.
- Q And what was the second suggestion they made?
- A Transfer the faculty of the former students along with the students to the new school.
- Q And what was the second school to which they referred?
- A Terrel S. Boyd High School.
- Q And what did they suggest with respect to that?
- A Same thing, except to go to Dora High School.

Q How many students were involved there, sir?

A Seemed like it was eighty-nine, or I don't recall the number.

Q Eighty-nine in grades --

MR. REEVES: Excuse me; I would like to interrupt.

I understand that one of the witnesses for whom we were waiting -- I would like to ask him if he would step outside, consistent with the ruling. Reverend Nixon; Mr. Nixon.

WITNESS EDGAR D. NIXON: I am here.

MR. REEVES: Would you step outside and remain until we call you. Thank you.

Q How many students is that, sir; how many -- you said eighty-nine in grades nine through twelve?

A Yes, sir.

Q I take it that is a rather small school?

A Well, I have seen them smaller and seen them bigger.

Q The State Department of Education ever made any recommendation with respect to that school?

A No, sir; it is a new building; it is only -- this is the third year it has been in operation, and we are trying to get it accredited, State accredited, now.

Q You mentioned previously Negro schools; do you have any whites attending any of the Negro schools in your County?

A No, sir; we don't.

Q That was -- the last school we referred to was a Negro school, sir?

- A Right, sir.
- Q And do you have any whites, again, in any of the Negro schools within the County?
- A No, sir.
- Q None?
- A No, sir.
- Q And you have only eighty-nine Negroes in all of the white schools in the County?
- A Eighty-two, sir.
- Q Eighty-two?
- A Yes, sir.
- Q With respect to your transportation, did you reroute your busses in 1965, did you revamp your bus systems, or are they the same as they were the previous year?
- A We closed an all Negro school last year.
- Q How many students attended that?
- A I think it was twenty-one.
- Q What happened to those students; did you assign them?
- A No, sir; we gave them freedom of choice; they all went to this Terrel S. Boyd School in Dora.
- Q Another Negro school?
- A Yes, sir.
- Q All right; now, again, were -- putting aside the -- the elimination of the need to transport children to a school which became closed, did you change your bus routes?

A No, sir.

Q You didn't change them this year, either, did you?

A No, sir.

Q Do the white schools in your systems play only white teams in their athletic competitions?

A Yes, sir.

Q You have all white teachers in all of your all white schools?

A Yes, sir.

Q Do you have all Negro teachers in all of your Negro schools?

A Yes, sir.

Q Is the staff of your office entirely white?

A No, sir.

Q What Negroes do you have employed in your office?

A We have one Negro supervisor.

Q Does she have a desk in your office?

A No, sir.

Q Where is her desk?

A She preferred -- I asked her to come up to our office, but her office is over at the Training School; she wants to be over there.

Q So -- are your other supervisors' office in your office?

A One is, and one is not; one is located over at another building away from the office.

Q In the same compound --

A Right.

Q -- or area, so in other words, all of your employees are located

in the approximate area of your office except for your one Negro supervisor, and her office is in a Negro school?

A She has been asked to be there, but she didn't want to be.

Q I see; what is her name?

A Rito Folman Tate.

Q Is that Miss or Mrs.?

A Mrs.

Q Do you -- what percentage of the money required for the -- which you use, of your annual budget for the operation of the Walker County schools, apart from federal funds, but looking at State funds, under the minimum program and any other programs they might have --

A (Nodded to indicate affirmative reply)

Q -- local funds, either from the State, the City, or the County, within your district, what percentage of that local or State moneys comes through the minimum program? Could you give us an approximation?

A I say seventy-five per cent, just roughly, and that is a rough guess. I don't know off hand.

Q Now, you testified earlier that when Mr. Crowder had a conference with you and the Superintendent from the City schools -- I must apologize, I forget his name?

A Mr. Songer, sir.

Q Mr. Songer; he pointed to certain sections of the guidelines. I show you the revised guidelines for 1966, and the revised

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guidelines, or the original guidelines, for 1965, and I ask you to point out for the court what sections of the guidelines Mr. Crowder reportedly pointed to?

- A Sir, he went over the entire thing pretty well; we sat there for about two hours and a half.
- Q Any sections that he did --
- A One in particular, I don't remember, I don't recall the section, but he mentioned about the transporting of students into a system that was non -- in non-compliance.
- Q Is the City system in non -- not in compliance?
- A Right.
- Q Oh; so you are sending a hundred and fifty students into a system that is not in compliance?
- A Right.
- Q Focusing again on that City system for a minute, and tell me only if you know; does the County run the schools within the City for Negroes?
- A Yes, sir.
- Q Those are County schools?
- A Yes, sir.
- Q So the City, itself, has no need -- no schools for Negroes?
- A Right, sir.
- Q They only maintain schools for whites?
- A Right, sir.
- Q And they could only do this because you permit the City Negroes

to attend your schools; isn't that right?

A No, sir; that is not my -- in my opinion; no, sir.

Q Let me ask you this; are there presently any schools within the City -- we are talking about Jasper City now --

A (Nodded to indicate affirmative reply)

Q -- which Negroes could go to if you used the County schools only for students living within the County, Walker County, school attendance area?

A They are still go -- they are going -- Negroes are going to Jasper City schools.

Q How does that work?

A Freedom of -- well, on their own; they just -- they have six.

Q How many Negroes are we talking about?

A I don't know how many -- about four hundred fifty.

Q Six out of four hundred are going to the formerly white schools --

A Right.

Q -- within the City?

A Right.

Q And taking your figure of four hundred, three hundred and ninety-six are being educated by the County?

A Of course, this is one thing that keep in mind, the City doesn't operate a high school, and they only have grades one through nine in operation, and the -- there is a Negro high school in the City operated by the County.

JUDGE PITTMAN: Let me ask a question.

WITNESS: Yes, sir.

JUDGE PITTMAN: You mean the City doesn't operate a City high school?

WITNESS: No, sir.

JUDGE PITTMAN: The County operates all high schools, Negro and white?

WITNESS: Right.

Q How many freedom of choice forms were given to a child in the -- that lived in the County who was in grades one -- any grade between one and nine?

A They just had a -- you -- I have my plan back there that shows the --

Q Did you list all the schools in the City and -- in the City or the County?

A No, sir; I just listed the ones in the County.

Q How did your hundred and fifty children that live in the County attend City schools?

A They were already attending them.

Q And you didn't require them to make a choice?

A No, sir; because they were going to City schools. We only gave them to our own students.

Q But when you refer to your own students, you are really referring to students going to a County school?

A That's right; yes, sir.

Q Did you give them to all the City children?

- A No, sir.
- Q Well, did the three hundred and ninety-six Negro children within the City who are going to your schools have a freedom of choice to attend any County school?
- A Yes, sir.
- Q Any school within the County?
- A Right, sir.
- Q And did you offer them transportation?
- A Well, it was spelled out in their letter transportation would be provided.
- Q To any school?
- A Yes, sir.
- Q How many of those children -- but you said that six of those children chose the City schools?
- A Right, sir.
- Q So who did they get their freedom of choice letter from, the City or the County?
- A They didn't get one, sir.
- Q Pardon?
- A They didn't get a letter.
- Q You just said they got a -- excuse me.
- A They just -- they just showed up and registered for these City schools, without a letter.
- Q I see; so those children, those six at least, would have had two

freedoms of choice?

A Right, sir.

Q They would have had a choice within the City and one within the County?

A Right.

Q But the one within the City, they just went up; they never received a letter?

A Right.

Q They just went to the school.

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

JUDGE RIVES: (Nodded to indicate affirmative reply)

Q Now, there has been a lot of testimony, and I know you haven't been allowed to be in the room, but there has been a lot of testimony about the minimum fund program -- I think we can assume that the court understands how the minimum fund program works, I don't want to go into the intricacies of it again, that has been gone through -- but I would like to ask you with respect to the minimum fund program as applied in Walker County, do you allocate to each school within your system the total teacher units which that school was entitled to?

A Yes, sir.

Q So that pupil-teacher ratio in each school within your County is approximately the same?

A We have two high schools, one Negro and one white, that are

Southern Association accredited. In order to be Southern Association accredited, the pupil-teacher ratio must be smaller than the rest of them; that is the only two exceptions.

Q How did those pupil-teacher ratios get smaller than the other schools; did you allocate a few teachers over there so you could get accounted --

A Right, sir.

Q -- accredited?

A Right, sir.

Q And in allocating them over from another school so that you might get them accredited, the pupil-teacher ratio at the other school went up?

A No, sir.

Q No?

A We didn't allocate them from another school; we just added them above the State allocation.

Q How were they --

A We took money from maintenance or transportation or something else for that purpose.

Q The pupil-teacher ratio at these two high schools are smaller?

A Than the other schools.

Q Than the other schools?

A Right, sir.

Q How many -- in your elementary schools, would you say it is the same throughout the County; we needn't go through it school by

school, because we have the records from your County here --

A Yes, sir; I would say --

Q -- would you say that the Negro pupil-teacher ratio in your County is the same as the white?

A No, sir; instances it is less.

Q It is less?

A Yes, sir.

Q How does it get that way?

A Well, for example, one -- you have as a matter of record, we have one junior high school in Cordova that is a Negro school, and due to integration, the number became less, we couldn't operate a junior high school with less than four teachers, so we left the four teachers there, with sixty something students.

Q What did you do, close the school?

A No, sir.

Q You got sixty students, and you haven't closed the school?

A Right.

Q Approximately fifteen in a grade; what is it, three year grade school?

A Nine grade school.

Q You got sixty children in a nine grade school?

A Well, it is about sixty-five, I believe it is.

Q That is a Negro school?

A Right, sir.

Q Was that one of the schools the Government asked -- suggested be

closed?

A No, sir; but it is a new building.

Q I see.

JUDGE RIVES: I didn't quite get that.

MR. ARONSON: "No, sir; but it is a new building,"
was his response.

JUDGE RIVES: New building.

Q And to make the record clear, as I understand it, your transportation routes have not changed in the -- demonstrably in the last few years; you still have the same transportation routes you always had?

A It is basically the same; yes, sir.

Q And you have any plans at this time for faculty desegregation?

A Not -- not today, we don't have.

Q Have you made any strides at all toward starting the desegregation of faculty?

A We have discussed it at Board meetings, and we had tentative plans this year, but after we got this letter August 17, we decided not to do anything about it this year, because we didn't feel like we could.

Q And two more questions; within your experience, I take it that you would not expect any white children to choose, under your freedom of choice plan, a Negro school, would you?

A I wouldn't expect it; no, sir.

Q Have you made any plans for setting the groundwork for destroying

the all Negro school or abolishing it; have you given any thought to that?

A We operated a Head Start program last summer with integrated faculty, integrated students; we felt like that it might be a start in that direction, in the event that it was necessary.

Q And what would you consider to make it necessary, sir?

A Court order, sir.

MR. ARONSON: No further questions.

JUDGE PITMAN: You referred to the letter of August; one from HEW?

WITNESS: Yes, sir.

BY MR. REEVES:

Q Mr. Cunningham, I think you say that --

JUDGE RIVES: Mr. Reeves, speak just a little louder, if you will.

MR. REEVES: I am sorry; right.

Q I think you said that the first step that was made in your system toward desegregation was in 1965?

A Yes, sir.

Q Why was that step taken, sir?

A Well, that is when the first -- Civil Rights Act of 1964, this was result of that.

Q Was not related to your request for federal funds?

A No, sir; we didn't have any federal funds at that time.

Q Well, did you make -- had you made application for federal funds?

A No, sir.

Q When you made application for federal funds, did you sign the compliance forms?

A Yes, sir.

Q And in connection with your signing the compliance forms, were there any requests or suggestions made of you as to what steps you should take in order to comply?

A Yes, sir; there -- let me see, now, if I get your question; if you don't mind, rephrase the question.

Q When you did make application for federal funds --

A Restate it.

Q -- and signed form 441 or 441-B --

A Yes, sir.

Q -- were any suggestions made as to steps that your system should take toward desegregation?

A No, sir.

Q Did you submit a plan?

A Yes, sir.

Q And was that plan approved without modification?

A Right.

Q And were you following that plan, or have you followed that plan up until now?

A Yes, sir.

Q You have made no modification in the plan?

A No, sir.

- Q Now, are you familiar with H.446?
- A I don't know whether I am or not; if I see it, I might be.
- Q Well, that is the so called anti-guidelines law that was passed on September -- or signed by the Governor on September 2, 1966.
- A I have read it; yes, sir.
- Q Do you understand -- do you believe that you understand it?
- A Yes, sir.
- Q Under the anti-guidelines law, do you recognize that this would in any wise affect desegregation in your schools?
- A No, sir; not in our schools.
- Q Why not?
- A Well, I feel like that they already have freedom of choice; they are going where they want to go, there is no problems involved, and I don't think this would affect it any.
- Q Well, do you recognize that under the law, that under H.446, you would not have the right to sign H. -- 441-B in its present form?
- A Yes, sir; I recognize that.
- Q And under those circumstances, would you feel obliged to follow the law?
- A Whatever the law is; yes, sir.
- Q I am talking about H.446?
- A Yes, sir; we -- we feel obliged to follow the law of the State.

MR. REEVES: Thank you.

JUDGE RIVES: Any other questions by the plaintiffs?

MR. BARRETT: A few, your honor.

BY MR. BARRETT:

- Q Mr. Cunningham, you have testified that the County busses white children into Jasper City to attend what has been a traditional white school in the City; is that correct?
- A Yes, sir.
- Q From how far into the County does that bussing extend?
- A I would say a maximum of three miles, in any direction.
- Q In either direction?
- A Right, sir.
- Q Are there schools in that area?
- A No, sir.
- Q There are no schools in that area?
- A No, sir.
- Q What is the closest County school to that area?
- A Well, we all -- in some instances, it is about half way; I would say about three or four miles.
- Q Three or four miles in the other direction?
- A Yes, sir.
- Q And is that a school attended by white children or Negro children?
- A White children.
- Q Are there any schools in that area attended by Negro children?
- A No, sir.
- Q When -- pardon me; has there been a State survey of your school system?

- A Yes, sir.
- Q When was the last survey?
- A '64, sir; 1964.
- Q At that time how many Negro schools were there in the system?
- A There is -- I believe there is fourteen, sir.
- Q Fourteen; can you recall whether the State survey team recommended that some of these schools be abandoned?
- A Yes, sir; the one that we abandoned this -- this year or last year was recommended that it be abandoned, the Empire School.
- Q Was that the only school they recommended be abandoned?
- A Negro school? Or any school?
- Q Negro school?
- A Yes, sir; to my knowledge, my recollection; it is.
- Q Mr. Cunningham, I would like to show you Government Exhibit 144, Volume F of that Exhibit, and call your attention to the first page, which is titled State of Alabama, Department of Education, Montgomery, Report of a Partial Survey of the Walker County School System, School Year 1963-1964, issued by authority of the State Board of Education, 1964; now, just glancing at that and at the succeeding pages, does that appear to be a copy of a survey report on your County?
- A Yes, sir.
- Q Now, calling your attention particularly to page fourteen in the report, you will note that it says, "Buildings," and then, "Sites," and there are certain school names listed under each heading; then

on the next page, there is -- page fifteen, again there appears tabulation of buildings and sites?

A (Nodded to indicate affirmative reply)

Q I would like to ask you if the schools listed on page sixteen were at that time Negro schools?

A Yes, sir; they were, and I was in error, this degree; we have closed more than one Negro school; we have closed three.

Q All right; now, at the time of the survey, how many build -- buildings were recommended by the State Department of Education for abandonment?

A Ones on page fifteen?

Q No, you --

A Oh, these right here; one, two, three -- seven.

Q How many were recommended for temporary use?

A One.

Q How many were termed, "Suitable for permanent use"?

A Four, sir.

Q How many for temporary use?

A None.

Q How many were noted as being schools that -- or sites that should be abandoned?

A Ten, sir.

Q How many of those sites have been abandoned since that time?

A Seven, sir. I know what you are going to ask; it has contradicted what I said before, but some of these schools have burned, and

the students were transferred to another school, and which I had forgotten awhile ago.

Q Now, of the buildings that are noted for abandonment, how many have been abandoned?

A That is what I said then, buildings.

Q Oh, I am sorry; I had intended to refer to the sites before. Well, let's start again.

A All right.

Q As to the buildings of which at the time of the survey there were seven that the State Board said should be abandoned, how many have been abandoned of those seven?

A Three, sir.

Q All right.

A Wait a minute; wait a minute; hold it.

Q Surely.

A We have built -- two of these have been new buildings; the sites were the same; that is what is confusing me, right here.

Q How many?

A Let's see; one, two, three, four, five have been abandoned; the buildings have been abandoned.

Q Five of the buildings?

A Right, sir.

Q With respect to the sites, of which I believe you said there were ten noted as that should be abandoned, how many of those sites have been abandoned?

- A Seven, sir.
- Q Have you -- pardon me. Mr. Cunningham, in recent years have you recommended a construction proposal which was rejected?
- A Which was --
- Q A proposal?
- A Which was rejected by whom?
- Q By the State?
- A By the State -- by the State; no, sir.
- Q Was it -- was a school that you proposed on highway 7 on property known as the Gravely property when first proposed rejected by the State?
- A Talking about highway 78?
- Q 78; I beg your pardon.
- A Yes, sir; at first it was.
- Q And that --
- A That was -- we had them to look at three sites for -- for building a school. We haven't built the school yet. It is a new school we plan to build; and at first, this site was rejected.
- Q Well, what --
- A But we didn't actually recommend that the school be built there; we just asked them to look at three sites that we had future plans to build a school on.
- Q What effect did that initial rejection have on your plans?
- A None.
- Q What -- what did you -- what did you do after the rejection; did

you have any further contact with the State Department of Education?

A Yes, sir; we asked them to look at two other sites that -- in that vicinity; they approved the other two, and the Board selected one of them, of the three.

Q Then you proceeded on an approved site --

A Right, sir.

Q -- is that correct? Mr. Cunningham, you have been shown a letter which is Defendants' Exhibit number 47, written by Mr. Fairley to you?

A Yes, sir.

Q I would like to ask you whether that letter misstated any of the facts relating to your school system?

A Yes, sir; I think in one instance it did.

Q All right, sir?

A That it was just two school systems in Walker County; there are three.

Q I see. Mr. Cunningham, have you ever had occasion to have any dispute or controversy with a respect to matters, official matters of your school system resolved by the State Board of Education or by the Superintendent's office?

A Not to my knowledge; no, sir.

Q Well, I will -- I would like to call your attention to a dispute regarding certain lunch money; do you recall that?

A Yes, sir.

- Q And the State Board determined what the facts were and what disposition should be made of the matter; is that correct?
- A Is that -- are you referring to the nine hundred and something dollars?
- Q That's right; that's right?
- A Yes, sir. I didn't consider that a dispute, myself; I just considered it an advice from them as to what disposition to make of it.
- Q Well, they --
- A You got --
- Q -- they resolved the matter, didn't they?
- A Yes, sir. They certainly did.
- Q And that was under their general authority to supervise the school systems in the State?
- MR. SMITH: We object to this, if the court please.
- Q Is that right?
- JUDGE RIVES: I believe that calls for a conclusion.
- MR. BARRETT: I believe it does, your honor.
- JUDGE RIVES: Yes, sir.
- MR. BARRETT: I have no further questions.
- MR. SMITH: Just one further --
- JUDGE RIVES: Any further questions for the plaintiffs?
- I don't presume so.
- MR. ADAMS: No further questions.
- JUDGE RIVES: All right, the defendants may --

REDIRECT EXAMINATION:

BY MR. SMITH:

Q Mr. Cunningham, have you, as County Superintendent of Education, received any notice from the Attorney General of the United States or any member of the Department of Justice as to any complaint against your system for discrimination in the operation of your schools?

A No, sir.

MR. SMITH: Thank you, sir.

JUDGE RIVES: No further questions from the defendants?

You may come down, Mr. Cunningham. Professor Reeves may call Mr. Nixon at this time.

MR. ADAMS: He stepped out to get him. I will go.

THE CLERK: Have you been sworn?

WITNESS EDGAR D. NIXON: No, I haven't.

THE CLERK: Please raise your right hand. Do you solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God?

WITNESS EDGAR D. NIXON: I do.

THE CLERK: Please be seated.

WITNESS EDGAR D. NIXON: Thank you.

N.A.A.C.P. Conference of Branches?

A Yes, it is.

Q And do you or have you ever held any office in the Alabama N.A.A.C.P. State Conference of Branches?

A I have.

Q What office was that, sir?

A State President.

Q When was that, sir?

A Oh, back in '48 or '49, sir.

Q And did there come a time -- strike that. Have you attended the conferences or conventions of the Alabama N.A.A.C.P. State Conference of Branches?

A I have.

Q And when did you attend the last one, sir?

A 27th, 28th, and 29th of last -- of October.

Q Of this year?

A Yes, sir; 1966.

Q 1966; and did you have any special role in connection with that conference?

A Only I was host to it.

Q You were host; do you know approximately how many members the N. double A.C.P. has in the State of Alabama?

A Not exactly the total amount, but around twenty-five thousand.

Q And do you know whether among that membership there are people who are parents of children attending public schools in the State

N.A.A.C.P. Conference of Branches?

A Yes, it is.

Q And do you or have you ever held any office in the Alabama
N.A.A.C.P. State Conference of Branches?

A I have.

Q What office was that, sir?

A State President.

Q When was that, sir?

A Oh, back in '48 or '49, sir.

Q And did there come a time -- strike that. Have you attended the
conferences or conventions of the Alabama N.A.A.C.P. State
Conference of Branches?

A I have.

Q And when did you attend the last one, sir?

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Q Of this year?

A Yes, sir; 1966.

Q 1966; and did you have any special role in connection with that
conference?

A Only I was host to it.

Q You were host; do you know approximately how many members the
N. double A.C.P. has in the State of Alabama?

A Not exactly the total amount, but around twenty-five thousand.

Q And do you know whether among that membership there are people
who are parents of children attending public schools in the State

of Alabama?

A You mean do -- among -- you mean our organization group?

Q The number among those twenty-five thousand members?

A Yes, sir; you mean do our members; is that what you mean?

Q Among your members --

A Yes.

Q -- the twenty-five thousand members, do they include, to your knowledge, parents of children attending public schools --

A Yes, sir.

Q -- in the State of Alabama?

A Yes, it does; yes, it does.

Q And would that be a substantial number?

A Oh, yes.

Q More than a thousand?

A Oh, more than that.

Q Do you know whether, among your members in the State of Alabama, are persons employed as teachers in public schools in the State of Alabama?

A Yes, they have members who are employed as teachers.

Q And would that be a substantial number?

A I -- I should say so.

Q More than a thousand?

A Yes, more than a thousand.

Q Do you know whether the program and objectives of the Alabama State Conference of Branches of N.A.A.C.P. includes any plank

with regard to segregation in public schools in the State of Alabama?

A Yes, sir; that is one of the objectives of -- of N.A.A.C.P., to eliminate the segregation in the public school system.

MR. REEVES: I have no further questions.

MR. GRAY: We have no questions of this witness.

JUDGE RIVES: Any further questions from the plaintiffs of Mr. Nixon? You may cross examine him.

MR. SMITH: We have no questions.

JUDGE RIVES: No cross examination?

MR. SMITH: No questions.

JUDGE RIVES: You may -- you may be -- Mr. Nixon, a good part of this time you were a resident of the City you were traveling on the Pullman?

WITNESS: That's right, Judge.

JUDGE RIVES: You may be excused.

WITNESS: Thank you.

MR. REEVES: May I now say that with that testimony and the introduction of the Exhibits which we have previously identified and the adoption of the testimony and Exhibits that have been introduced by the other plaintiffs and by the Government, the plaintiffs in 2457-N rest.

JUDGE RIVES: All right, sir; plaintiffs rest completely. Defendants may call their next witness.

MR. SMITH: Mr. Robert Songer.

JUDGE RIVES: I believe before the defendants call their next witness we will take a ten minute recess.

(At which time, 10:35 a.m., a recess was had until 10:45 a.m., at which time the trial continued)

JUDGE RIVES: Gentlemen, the defendants may call their next witness.

MR. SMITH: This witness has not been sworn; were you sworn, Mr. --

WITNESS ROBERT SONGER: No.

THE CLERK: Please raise your right hand. Do you solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God?

WITNESS ROBERT SONGER: I -- yes.

THE CLERK: Please be seated.

ROBERT SONGER, witness for Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. SMITH:

Q This Mr. Robert Songer; do I spell your name correctly

S-O-N-G-E-R?

A That is correct.

Q You live in the City of Jasper?

A Yes, sir.

- Q And you hold the position as Superintendent of the Jasper City Schools?
- A That is correct.
- Q Is this correct?
- A Yes, sir.
- Q How long have you held this position, Mr. Songer?
- A Two years.
- Q Two years?
- A Yes.
- Q Is this an elected or an appointed position?
- A Appointed.
- Q Appointed by the City Board of Education?
- A Yes, sir.
- Q Are the Board members elected?
- A No, they are appointed.
- Q And by whom are they appointed?
- A City Commission.
- Q By the City Commission. Does the City system over which you are Superintendent have Negro pupils attending previous white schools?
- A Yes.
- Q How many?
- A Six.
- Q For the court, am I correct in understanding that there are six schools within your system?
- A That is correct.

- Q Five of these schools are elementary schools?
- A That is correct.
- Q Grades one through six?
- A Yes.
- Q One such school is a junior high school?
- A That is correct.
- Q And they are located in various parts of the City of Jasper?
- A That's right.
- Q Approximately what is the population -- population of Jasper?
- A Roughly twelve thousand.
- Q Twelve thousand people. Now, Mr. Songer, has the City Board of Education adopted a desegregation plan?
- A Yes.
- Q Will you tell the court the approximate date that it was adopted?
- A It was in May of 1965.
- Q Was it filed with the United States Office of Education in Washington?
- A Yes.
- Q What -- very briefly, what type plan is it; is it a freedom of choice or a geographic plan?
- A Well, basically, it consists of a geographic type thing; since we do not have any colored schools, it would not be wise to have a freedom of choice, and our schools were built in the community -- in the communities where the children were; therefore, we expected the children who lived in that community to

attend that school.

Q How long have -- have you had the geographic attendance zones?

A Oh, as far back as I can remember, and I have been there seventeen years.

Q As long as you can remember?

A Yes.

Q Does this mean that a white pupil living in one part of the City of Jasper would attend the school nearest his home?

A That is correct.

Q Now, did you sign the compliance form requested by the U. S. Office of Education; I believe it is form 441 originally?

A That is correct.

Q Was this signed by you as Superintendent?

A Yes.

Q Was it forwarded to the U. S. Office?

A Yes.

Q Did you, together with the form, submit a plan of desegregation?

A Yes.

Q Was this forwarded to the U. S. Office?

A Yes.

Q Has your plan been accepted?

A No.

Q What objections have they called to your attention in regard to the plan?

A Because in the plan there was no provisions whereby the colored

students residing in the City would be sent notices; in other words, the colored schools are under another administration; therefore, I could not mail notices from my school system into another school system inviting children out of one school system into another.

- Q Let me ask you whether or not -- not trying to lead or make a suggestive answer -- but were any objections made in regard to the attendance areas?
- A I didn't hear the question.
- Q Were any objections made in regard to the attendance --
- A No.
- Q -- areas?
- A No; no changes were made in the attendance areas.
- Q Did they request any change?
- A No.
- Q Did they make any request in regard to permitting Negro pupils to attend any school within your system?
- A Yes; on one occasion at a meeting in which I attended at Auburn back a year ago, one of the attorneys suggested that I might give the colored student who lives -- who attends the colored school a choice to attend white -- either the white -- any of the white schools and yet me give only the white child a choice to attend the school which he resides closest to or the colored school.
- Q Have representatives of the U. S. Office of Education called on you?

- A Yes.
- Q Been in your office?
- A Yes.
- Q Have they telephoned you?
- A Yes.
- Q Have you been in more or less constant communication with them?
- A Not recently; in the past, yes, but not recently.
- Q Have they made demands on you as Superintendent?
- A Well, yes, under certain circumstances.
- Q Did you on one occasion meet with Mr. Eugene Crowder, the Alabama Director of that Office?
- A Yes; yes.
- Q At this meeting, did Mr. Crowder make demands?
- A Yes.
- Q What demands did he make?
- A Well, of course, the first thing that was -- he indicated was that the plan that we had submitted would not be accepted, and a so called model plan in which he brought with him was to be suggested that we complete and approve so he could get on to Washington, back with it. That was my intention, or that was the idea I got for his visit; that we were to complete the so called model plan that he brought with him, and then, of course, he could return to Washington.
- Q Is your system under a court order?
- A No, sir.

Q And the actions you have taken in regard to desegregation of the system have been voluntary?

A That is correct.

Q Now, Mr. Songer, has any State official made any demands or requests of you or any member of your Board that you know of --

A No.

Q -- in regard to the assignment of pupils?

A No.

Q In regard to the assignment or transfer of teachers?

A No.

Q Did you attend any of the meetings held in Montgomery where the Governor of Alabama, I believe, addressed the meeting and the Superintendent, Dr. Meadows --

A Yes.

Q -- maybe other persons?

A Yes.

Q Do you recall any statements that the Governor made on any of these meetings -- and first, what meetings did you attend?

A Well, it was two different meetings in which the Governor was present. I don't recall the exact date; I believe one was last April, the last one in which I attended; I am not sure if that is the date, but I was present.

Q And you have attended two meetings --

A Yes.

Q -- that the Governor attended?

A Yes.

Q Would you state to the court what he said on these occasions?
The substance of it; I know it would be difficult --

A Well, I -- I think in which -- if I recall correctly, his emphasis was that the -- that the guidelines were illegal and that they were not according to the intent of the law that Congress had passed.

Q Did he in any manner advocate violating federal court orders or violating the 1964 Civil Rights Act?

A No.

MR. SMITH: I believe that's all.

JUDGE RIVES: Further questions from any of the other defendants? If not, the plaintiffs may cross examine.

MR. ARONSON: Thank you, your honor.

CROSS EXAMINATION:

BY MR. ARONSON:

Q Mr. Songer, what was your position prior to the time that you became Superintendent? I note that you testified as to the last seventeen years with respect to one fact?

A Yes.

Q Have you been with the system that long?

A Yes.

Q What was your capacity before you became Superintendent?

A I was Assistant Superintendent.

Q For what period of time, sir?

- A For about three years.
- Q And before that?
- A Principal of a school.
- Q And how long have you, in one capacity or another, been affiliated with the Jasper City system?
- A Well, I -- as I stated, this is my home; I have been teaching there seventeen years.
- Q You testified that there are six schools maintained by the City?
- A Yes.
- Q Five of which are elementary, one of which is a junior high school?
- A That is correct.
- Q When was the most recent of these schools constructed?
- A The T. R. Simmons School was constructed in 1961 or 2, early '60's.
- Q What is the school age population, approximately, within the Jasper School District?
- A You mean that which I am responsible for?
- Q If there is a distinction between that which you are responsible for and the school age population, I would like you to make it?
- A Well, of course, there are some students who are in -- who are school age who are not in school for various reasons.
- Q Well --

JUDGE PITTMAN: Let me ask him a question.

MR. ARONSON: Yes, sir.

JUDGE PITTMAN: What is the school population of the City system?

WITNESS: Eighteen hundred.

JUDGE PITTMAN: Eighteen hundred in the City system?

WITNESS: Yes, sir.

JUDGE PITTMAN: Go ahead.

MR. ARONSON: Thank you, your honor.

- Q There are eighteen hundred students --
- A Yes.
- Q -- presently attending within the City system?
- A That is correct.
- Q How many people living within the geographic limits of the Jasper City system are attending school in some other system?
- A Oh, approximately -- that are served by the grades in which I -- I have, probably two hundred, two fifty.
- Q And you say sixteen hundred --
- A Eighteen hundred.
- Q I am sorry, eighteen hundred, what is the race of those eighteen hundred, sir?
- A Well, they are predominantly white; there are some colored.
- Q And how many colored?
- A Six.
- Q In the materials that you brought with you, do you by any chance have a map of the City of Jasper?
- A Yes.

Q I wonder if we might see that, please?

A I should have -- here it is.

Q Is that an extra one?

A Yes.

Q Do you have any other extras I might hand to the court?

A I just have the one.

Q Could you spare that?

A Yes; uh, huh.

THE CLERK: Plaintiffs' Exhibit number 15.

MR. ARONSON: Just the one that might be handed to the bench if it is convenient.

JUDGE GROOMS: Does the eighteen hundred include schools from without the City?

WITNESS: No, sir; those are just the schools within the City.

JUDGE GROOMS: Those from without the City, do they pay tuition?

WITNESS: No, sir.

Q I show you Plaintiffs' Exhibit number 15, which is a map you have provided of the City of Jasper, Alabama?

A (Nodded to indicate affirmative reply)

Q Are the limits, geographic limits, of the Jasper School District coterminous with the corporate limits of the City of Jasper?

A Primarily they are, but there are some cases in which children who live outside the City attend City schools.

- Q Now, I understand that, and we will get to that in a moment --
- A Yes.
- Q -- but with respect to the geographic limits of the Jasper City School System, would those be exactly the same as the boundaries of the City of Jasper, Alabama?
- A Not necessarily.
- Q Well --
- A We have an agreement with the County that the child may attend the school in which he lives the closest to.
- Q Would you expand on that, sir?
- A Well, a child who lives closer to one of the schools in the City and he lives outside the City school -- outside the City Limits of the City, we give him the choice; if he wants to come to our school, fine. The only requirement is that he attend the school in which we have the space provided. In other words, if he wanted to attend a school, the fifth grade, if that grade level is crowded in that particular school, and we have a vacancy or room in another school across town, we would offer him that opportunity; if he didn't want that, he would have to go back to the County school.
- Q How long has this agreement been in effect?
- A Oh, as far as I can remember.
- Q Has the agreement been changed in the past two years?
- A No.
- Q Now, it would be more accurate to say any white child, wouldn't

it, sir?

A Not necessarily; no.

Q Do you have any, prior to this year -- strike that, please. You said -- you testified that out of your approximately eighteen hundred students attending the Jasper City schools, six were Negroes?

A Correct.

Q When did those six Negroes first become enrolled?

A This year, five -- one enrolled -- we had one the year before, and five additional this year.

Q And how did those students happen to become enrolled in your schools?

A They came and applied for admission.

Q Pursuant to any plan or form that you had sent out --

A Yes.

Q -- or published?

A That is correct.

Q What were the components of your plan?

A That we would accept all children residing in the Jasper City School District regardless of race, creed, or color.

Q And again we must get back to this, and I am sorry, Mr. Songer, to harp on it, but inasmuch as you said you would accept any child that lived within the Jasper City School District, what was that District, or is that District, if it is not the City line, where does it stop, and how would a child know if he lives

in your District or not?

A Well, primarily it would be City Limits, but on certain occasions it would not be; this would be a very small number of children.

Q Now, you do take children by agreement from the County, but that doesn't expand the limits of your District?

A Oh, no.

Q That is a separate agreement?

A That is correct.

Q The fact is that the Jasper City School District line is the same as the City Limits, isn't it?

A Primarily; yes, sir.

Q Now, I notice on Plaintiffs' Exhibit 15 that you have a box marked there that says, "Negro school"?

A That's right.

Q What is that, sir?

A Well, that is a location of a Negro school.

Q And do you have any -- why is that the only school located?

A That map was probably used with one of the officials from HEW, and I just pointed out where the particular school was.

Q Would you be kind enough, approximately, to locate your other six schools on there?

A Here is one.

Q And if you would, just draw a little line out and indicate the name and the grades. What does that say, sir?

A That is an ungraded school; that is a school for handicapped

children.

- Q I see; one, two, three, four, five -- two, four, five now you have indicated?
- A All right; here, there is two buildings located here, one through six and one through nine, I mean seven through nine.
- Q Why don't you say -- indicate so that it will be clear on the map?
- A Well, see, there is two little dots right there.
- Q All right, sir. Does -- first, with respect to the ungraded school children, handicapped children --
- A Yes.
- Q -- is there a -- is that grades one through twelve?
- A No, they have -- the limit, age limit, is fifteen.
- Q Age limit fifteen?
- A Yes.
- Q Any Negro students?
- A No.
- Q To your knowledge, are there any handicapped Negro children in your District?
- A Not to my knowledge.
- Q How would you find out?
- A Well --
- Q How did you -- how do the students get in your handicapped or ungraded school at the present time, sir?
- A They apply for admission.
- Q They applied for admission?

A Yes.

Q All right; referring to the map, now; generally, where -- if you would, just draw an X or a circle -- in terms of the population centers are the Negroes -- do the Negroes live essentially in one section of town?

A Yes.

Q Where would that be?

A In this area right here.

Q Draw us -- draw a circle, if you might, which would encompass the area that the Negro population lives?

A It would be one here, and this would be the other here.

MR. ARONSON: Let the record show that two circles on Plaintiffs' Exhibit 15, which this witness has indicated the two primary population centers for Negroes.

Q Are there whites -- some whites living down in these areas?

A None; not in that particular area; no.

Q All right; let me mark one X and one Y so that we can become more specific. All right, X and Y; and the circle which is designated X, are there any Negroes or any white families living --

A No; huh, uh.

Q Are there any white families living in the circle designated Y, a few sprinkled in?

A Yes, behind these -- this community here on the Parrish highway, is a highway that runs through here.

Q All right; I wonder if we might -- where would they live, sir?

- A They would live in this area on beyond this area here --
- Q All right; let me again make a designation.
- A -- just on the highway there.
- Q On the highway?
- A Yes.
- Q We will put "White," and that indicates a population, a small population center of whites?
- A That is correct.
- Q Are there Negroes living outside of these centers --
- A No.
- Q -- although sprinkled --
- A No.
- Q -- in up in the northern part of the town?
- A No.
- Q None. With reference to your plan, now, sir, you testified that your plan is sort of a geographic plan --
- A Basically.
- Q -- or basically a geographic plan?
- A (Nodded to indicate affirmative reply)
- Q Now, specifically, what does it provide; does it set out specified geographic limits --
- A (Shook head to indicate negative reply)
- Q -- for each school?
- A No.
- Q All right; and how does it work?

A Well, it just -- it is a carry over from what we have done in the past; we just -- these districts are all previously known, where the child lives, the parents know and the community knows this; the only thing we specify in our plan, we would accept children who live in our school district, all children, those that apply, just like the whites.

Q Do you assign them?

A Yes.

Q And you assign them to the school they live nearest?

A That is correct. On certain conditions we assign them to another -- other places, and that will depend on the room which is available.

MR. SMITH: Speak up just a little, Mr. Songer.

Q I take it your testimony is you assign children to the school which they live nearest to, and the only deviation from that would be if the school which they live nearest to is overcrowded?

A (Nodded to indicate affirmative reply)

Q And then I take it they would be assigned to the nearest school with room?

A That's right.

Q And it doesn't require any act on the part of the student, because that is something that you as Superintendent and your employees do; you assign these students?

A Well, the child makes an application for attendance to a certain school; in other words, this is previously worked, the set up,

prior to the opening of school, that once school is opened, all those that come afterwards, transfers, original entries, then are assigned on that basis.

Q What basis might that be?

A Well, the basis on the room that is available in the school in which they wish to attend.

Q Let's take entering students, a student going into the first grade, and let's, for the purpose of this Exhibit, assume that he lives -- a white child, and let's assume that he lives at the bottom left hand corner of this map, which I take it is southwest, he lives in the southwest corner?

A Right.

Q All right; and let's say that that mother enrolls that child in the school which is in the northwest quadrant, considerably further from where he lives than a school which is located right here, indicated as A, with grades one through --

A Six.

Q -- six; and he chooses a school which is considerably farther from him.

A (Nodded to indicate affirmative reply)

Q All right?

A The child would be reassigned to the closest school, closest to him.

Q So in other words, you do assign children not with respect to what his parents chooses, but rather to the school he lives nearest?

- A That is correct; provided in other words she asked for a school which was out of her attendance area.
- Q Oh; each school in fact has an attendance area?
- A That is correct.
- Q Now, I notice that you have a white pocket or population marked on this map at the south City Limit line, just a little bit to the west of an imaginary line which would divide the map in half--
- A (Nodded to indicate affirmative reply)
- Q -- from north to south --
- A (Nodded to indicate affirmative reply)
- Q -- and which is marked, "White," and that these students live along a road which is marked, "Highway 18 south"?
- A That's right.
- Q Now, these students, I take it, because they live closest to this school which is marked grades one to nine, the two school centers --
- A Right.
- Q -- would be assigned to that school?
- A They are assigned to these two schools here, because this -- we only have one section of grades one through six here, and we have, of course, several sections of one through six here.
- JUDGE PITTMAN: Mr. Witness, will you talk louder; you are talking to the attorney; everybody else can't hear you.
- MR. ARONSON: I would most appreciate if you would speak to the Judges. If I might move --

JUDGE RIVES: Counsel on the other side wants to hear this testimony, also; let him speak loud enough.

MR. ARONSON: Yes, sir.

Q All right, marking -- pointing again to Plaintiffs' Exhibit 15, and to a population, a pocket of white people that live in this section on the southern corporate limit line, you say that they have been assigned to two schools?

A Right.

Q And you pointed to one which is on the western -- on the eastern-most portion of the map, grades one to six, and another one which is directly north of where they live, which is marked grades one to nine?

A That's right.

Q And the School Board assigns these children to these two schools?

A Well, not necessarily assigns; the transportation would be the determining factor where they attended one of the schools, which school they attended.

Q And you provide transportation?

A No; no.

Q How does transportation become a factor, sir?

A Well, the parents provide their own transportation, and the County runs a bus by this -- on this street here, this highway, attending the Walker County High School site in this area, and it has been -- they pick up some few students and drop off at this school, as they attend this one, so if a child rides the bus, he attends this

school --

Q Yes.

A -- if he furnishes his own transportation, he attends this school.

JUDGE RIVES: Mr. Aronson, go into such detail as you consider necessary, but the case must be concluded some day.

MR. ARONSON: I am going to tie this up very shortly.

JUDGE JOHNSON: May I ask him a question at this time?

MR. ARONSON: Yes, sir.

JUDGE JOHNSON: What he is trying to get at, Mr. Songer, is where do you assign the white students that live closer to the Cordova Negro school; that is what he is trying to get at --

WITNESS: Those children --

JUDGE JOHNSON: -- to that Negro school or to the white school?

WITNESS: No, sir; they ride the bus; and all the elementary bus pupils attend the T. R. Simmons School, which is this school here.

Q Which is that, the Negro school marked as a Negro school?

A No, the white school.

JUDGE JOHNSON: Do you assign the white students that live closer to your T. R. Simmons Negro school to that school, or do you assign them to white schools; that is what he is asking you?

WITNESS: Well, they are assigned to white schools; I have nothing to do with the colored schools.

MR. ARONSON: All right, may I ask this, if I might

ask two more questions on this line, and I will terminate it.

JUDGE RIVES: I am not trying to terminate you.

MR. ARONSON: I understand, Judge Rives, but I want to expedite this as fast as I can.

Q Now, these two Negro communities that you have marked X and Y are both closer to this school marked grades one to six than this white community?

A That is correct.

Q Do any of the children living in these two areas get automatically assigned to this school?

A The white children who ride the bus are assigned to that school.

Q I am not asking you about the white children that ride the bus; I am asking you about the Negro children that live in those communities?

A There are four children, Negro children, living in this area closer to this Negro school attending this school.

Q Again I ask you, Mr. Songer, to ask my -- answer my question; do you assign as a matter of course the Negro children living in those two population pockets, X and Y, to the nearest school under your control?

A I assign only the Negro child who makes application with me, because he is the only one I am responsible for; I assign him to that school.

Q So I take it, then, that your responsibility as City Superintendent of Schools is only for the white children?

- A Well, that is what it has been in the past, but we have this plan, which we accept all children.
- Q Well, but you have just testified a minute ago that you only assign those children for which you have responsibility for?
- A Well, that will be the Negro children; if he applies for admission to that school, naturally I would assign him to that school, as has been --
- Q Must he apply?
- A Yes, but how would I know he was coming if he didn't apply?
- Q Does every white child apply? --
- A Yes, if he is an original student.
- Q If he is an original student?
- A An original entry, first time to attend that school.

JUDGE RIVES: He testified from the beginning that the City doesn't run any Negro schools, is my understanding.

WITNESS: Correct.

MR. ARONSON: Yes, your honor; but what I am trying -- and I don't -- it is not any secret, what I am trying to establish is obviously a different disposition is being made of Negro children than white children.

JUDGE RIVES: Yes.

- Q And if you would -- a different treatment is given Negro children than white children that live in the City; isn't that true, sir?
- A Not a difference; if the Negro child applies for admission to attend a white school in the City, he is admitted; if a white

child applies for admission to attend a white school in the City, he is admitted.

Q How do the -- you testified -- there has been a difference in testimony; the witness before you from Walker County, Mr. Cunningham, testified there were approximately four hundred Negroes from the City, you approximately -- you have testified approximately two hundred to two hundred fifty; I will accept your figures for the purpose of this examination.

A Well, he has the children; I don't. I am just approximating.

Q But how did the two hundred and fifty or four hundred, whatever the figure might be, Negro children in grades one through nine --

A (Nodded to indicate affirmative reply)

Q -- living within the Jasper City System get within the control of Mr. Cunningham?

A Well, I don't know. It has been that way since 1901.

Q Are they presently within his control, sir?

A Yes, sir; yes.

Q They are presently controlled --

A Yes.

Q -- presently within his control?

A Yes.

Q And the only way a Negro child in grades one through nine gets out from underneath Mr. Cunningham's control is to make application to you to go to one of your schools?

A That's right.

MR. ARONSON: I would like to offer as Plaintiffs' Exhibit 15 into evidence.

Q Do you have any Negro teachers teaching in your system, sir?

A No, sir.

Q And just a couple of other questions with respect to your students in grades ten through twelve; I take it that those students go out of the District -- excuse me, strike that. I take it that the students in grades ten through twelve are in Mr. Cunningham's jurisdiction?

A That is correct.

Q White and Negro?

A Right.

Q And whatever disposition is made of students in grades ten through twelve is up to Mr. Cunningham?

A That is correct.

Q You have no control over it?

A That is correct.

MR. ARONSON: I have no further questions of this witness at this time.

JUDGE RIVES: Any questions by any of the plaintiffs?

MR. BARRETT: Yes, sir; some -- I am sorry.

MR. ADAMS: Yes, sir.

BY MR. ADAMS:

Q Mr. Songer, how long did you say you have been Superintendent of the Jasper schools?