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**CASE FILES**

ALABAMA

LEE V. MACON COUNTY  
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TRANSCRIPTS

1966  
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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,  
Plaintiff-Intervenor  
and Amicus Curiae,

No. 604-E.

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,  
Plaintiff  
and Amicus Curiae,

No. 2457-N.

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. Robert H. Grooms, 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 2, 1966)

Glynn Henderson,  
Official Court  
Reporter.

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

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 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.:

McQueen, 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.

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(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 2, 1966:)

JUDGE RIVES: Be seated, gentlemen.

COURT CRIER: Be seated, please.

JUDGE RIVES: Mr. Satterfield?

MR. SATTERFIELD: May it please the court, we call  
as our first witness today Senator Lister Hill.

JUDGE RIVES: Senator Hill.

MR. SATTERFIELD: This witness has not been sworn.

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 LISTER HILL: I do.

THE CLERK: Please be seated.

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LISTER HILL, witness for Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. SATTERFIELD:

Q Senator Lister Hill?

A (Nodded to indicate affirmative reply) Mr. Satterfield.

Q What is your present capacity in relation to the Congress of the United States?

A Well, sir, I happen to be a member of the United States Senate from the State of Alabama, and as such, I am Chairman of the Senate Committee on Labor and Public Welfare, which Committee handles legislation dealing with the Department of Health, Education, and Welfare, all education legislation, health legislation, other such legislation, and I am also a member of the Senate Committee on Appropriations, which Committee appropriates the funds for the different Departments of Government and for the operation of the Government.

Q Do you hold any capacity as Chairman of a subcommittee of that

Appropriations Committee?

- A I do, sir; I am Chairman of the Subcommittee that handles all the appropriations for the Department of Health, Education, and Welfare, which means the funds for your schools and for your health.
- Q Were you a member of the United States Senate, and did you hold these capacities during the period that the Congress of the United States, and particularly the Senate, had under consideration the legislation now known as the Civil Rights Act of 1964?
- A I did hold these positions, and I was a member of the Senate at that time; I engaged in the debates, the discussions on that bill, and I was present during the debates and discussions on that bill, which, incidentally, occupied a period of some ninety-two days, from February into June.
- Q Senator, would you give the court the benefit of your opinion and knowledge concerning the legislative history of this bill, and particularly in relation to Title Six thereof, and Titles Four and Seven, or any other titles containing provisions which relate to education and the matters included within Title Six in that connection?

MR. BARRETT: If the court please --

JUDGE RIVES: Mr. Barrett.

MR. BARRETT: -- the Government will object to the question on the grounds that it is irrelevant and incompetent. The legislative history of these statutes is shown by the records of the

Appropriations Committee?

- A I do, sir; I am Chairman of the Subcommittee that handles all the appropriations for the Department of Health, Education, and Welfare, which means the funds for your schools and for your health.
- Q Were you a member of the United States Senate, and did you hold these capacities during the period that the Congress of the United States, and particularly the Senate, had under consideration the legislation now known as the Civil Rights Act of 1964?
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MR. BARRETT: If the court please --

JUDGE RIVES: Mr. Barrett.

MR. BARRETT: -- the Government will object to the question on the grounds that it is irrelevant and incompetent. The legislative history of these statutes is shown by the records of the

Congress that it was enacted; it is neither -- it is not proper under the rules of evidence to seek to elicit from a witness, a member of the Congress, what his view is as to the legislative history. To do so, it seems to me, would result in a parade of witnesses, perhaps congressmen who had been against, congressmen -- and who had been in favor of the particular piece of legislation, and that this court can look only to the record as shown by the record in Congress.

MR. SATTERFIELD: May I respond?

JUDGE RIVES: Yes, sir.

MR. SATTERFIELD: May it please the court, this witness is offered under authority of United States versus Missouri Railroad Company, decided by the Supreme Court of the United States, appearing at 278 U.S., page 278, and in 73 L.Ed. 377, and I will briefly read the holding of the Court which renders this testimony competent: "Where doubts exist and construction is permissible, reports of the committees of Congress and statements by those in charge of the measure and other like extraneous matter may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed." Citing

of the Interstate Commerce Commission, the place at which our friend's statement is made not being shown by the Supreme Court of the United States in that case. And then the only other authority that I want to take the time of the court is that of 50 Am.Jur., under Statutes, Section 223; "Legislative intent as controlling factor. In the interpretation of statutes, the legislative will is the all important or controlling factor. Indeed, it is frequently stated in effect that the intention of the legislature constitutes the law. The legislative intent has been designated the vital part, the heart, the soul, and essence of the law, and the guiding star in the interpretation thereof. Accordingly, the primary rule of construction of statutes is to ascertain and declare the intention of the legislature, and carry such intention out to the fullest degree." Citing very numerous cases. I believe, may it please the court, that while there is a definite rule that a member of a legislative body may not impeach the record as to the enactment of that statute as to whether or not it reflects the true facts concerning enrollment, adoption, and so forth, that the question of the statements made of history, of the nature of the evidence, like other extraneous matter, as the Supreme Court of the United States says, is a matter having to do with the weight of the evidence, and this court, I feel, without question has certainly the discretion to receive this evidence, and with due respect, I believe it is proper evidence, even without regard to discretion; I have no question whatever it is within the discretion of the court to receive this

evidence.

JUDGE RIVES: It is my view that we will probably take a very brief recess before we rule upon this question.

MR. SATTERFIELD: Surely.

JUDGE RIVES: Want to ask you one or two questions, when you get through, before we take this recess.

MR. SATTERFIELD: Surely, may it please the court; the additional reason is that under the rules of evidence, when parties to the suit have introduced evidence of a certain nature, it opens evidence of similar nature to be presented by the opposing parties. There have been introduced the depositions of a Mr. Lock and a Mr. Fite, and on page ten of the deposition of Mr. Fite and on page sixteen of the deposition of Mr. Lock, and other pages thereof, similar questions were asked by counsel for opposing parties, and similar testimony was elicited with reference to H.446 of the Alabama Legislature. One was a former Speaker of the House and Speaker Pro Tem at the time of adoption. The other was a member of the House Holdings Committee. Depositions of those have been introduced by opposing parties and adopted by other opposing parties, and even if there were any doubt of the use of this testimony, under the rules of evidence, this has been opened by the opposing parties, they are now in evidence, and similar questions were asked, similar testimony was elicited and has been introduced in this case and is before the court.

JUDGE RIVES: Let me ask, Mr. Satterfield, one or two

questions before we respond. Is Senator Hill offered to give his individual opinion or simply to give his opinion as an expert from having sat through the hearings and being in the Senate through the time and knowing what the history of the piece of legislation is?

MR. SATTERFIELD: May it please the court, he is offered as an expert having personal knowledge of the legislative history and demonstrating the intent as resulting from the legislative history, and he is offered in that capacity.

JUDGE RIVES: He is not offered, then, to give simply his individual opinions?

MR. SATTERFIELD: That is correct, because I don't think that individual personal opinions of a member of the legislature would be that which is appropriate --

JUDGE RIVES: All right, sir.

MR. SATTERFIELD: -- except to the extent that they were asked and have been introduced by opposing parties; I think even that rule has been relaxed in the depositions, but otherwise that, I think, would not be admissible if it were not for that fact.

JUDGE RIVES: Anything further you gentlemen wish? Make it as brief as you can.

MR. ARONSON: Yes, your honor. I would like to adopt the objection of Mr. Barrett's and add to that an objection with respect to the reference of the depositions of Mr. Lock and another person whose name I do not recall.

MR. BILLINGSLEY: Mr. Fite.

MR. ARONSON: Mr. Fite. Certainly one wrong does not permit a second wrong, but beyond that, anything within the objections -- anything within the depositions are subject to objections, as I understand it. Secondly, with respect to Alabama, it is our understanding there is no printed legislative history, and it raises the best evidence rule. And lastly, with respect to the opinion, which I am not familiar with, other than what Mr. Satterfield has read from, it seems that that opinion indeed would support the objection rather than the position he is reading it for. This is not a report, this is not a hearing, this is not testimony on the floor. Indicia of legislative intent which was suggested in the opinion of the Supreme Court of the United States went to printed records and that which is commonly known to all of us as legislative history. I think that is not this case. Thank you -- one -- . And counsel reminds me that the opinion cited or read from referred to the status of the person's evidence, and that was the leader of the bill, and again I think from a committed -- from a printed committee report. Thank you, your honor.

MR. BILLINGSLEY: If your honor please, we do not have an objection to Senator Hill's testifying, and we could -- we concede that he is an expert as relates to the various committees that he serves on.

JUDGE RIVES: You do not have any objection?

MR. BILLINGSLEY: No, sir.

MR. SATTERFIELD: I intended to call the court's

attention to the case of Lightfoot versus Gmillion, which, in our opinion, is an authority of this testimony; also, no objection has been interposed by us to these depositions which have been introduced. They are before the court and in the evidence; and it is not the question of two wrongs making a right; it is a rule of evidence recognized by all the courts that if one party opens a line of testimony, the other party has a right to introduce similar testimony.

JUDGE RIVES: You all want to ask before we take a short recess? Court will take --

(Judge Johnson conferred with Judge Rives)

JUDGE RIVES: The court would like to know before recessing whether Senator Hill expressed his opinion on this legislation in the Senate and it was reported as part of the legislative history?

MR. SATTERFIELD: I believe, and subject to correction, that Senator Hill addressed remarks to certain portions of the bill.

WITNESS: That is correct.

MR. SATTERFIELD: I think insofar as the entire bill is concerned he is familiar with the entire history.

JUDGE RIVES: The court, then, will take a very short recess.

(At which time, 9:21 a.m., a recess was had until 9:33 a.m., at which time the trial continued)

JUDGE RIVES: Mr. Satterfield, is this testimony offered in one case or in both cases; and if it is offered in both

cases, can you give us why it is relevant in both cases?

MR. SATTERFIELD: May it please the court, this present offer is an offer made in both cases for the reason that in both cases there is directly involved the validity, under the Civil Rights Act, of the 1966 guidelines; briefly, in 27--- 2457-N, if the guidelines are void, then H.446 is valid. If the guidelines are valid, then there is a further debatable question, but in that particular proceeding, if the guidelines are void under the provisions of the 1964 Civil Rights Act, then H.446 would certainly be valid without question. Of course, in the other proceeding, there is involved the question of whether or not there has been any interference by the Governor or the Superintendent of Education of this State and others with the enforcement of the Civil Rights Act of 1964. The evidence shows very clearly that the only actions taken by them had to do with the 1966 guidelines, not with the Act, but the guidelines. Also, in this other case, H.446 does not provide any action to be taken or any money to be available, nor make any declaration as to the Civil Rights Act of 1964, or even the regulations thereunder, but only the '66 guidelines. So, may it please the court, under those circumstances, our present offer is in both cases.

JUDGE RIVES: I see.

MR. SATTERFIELD: May it please -- may I address the court?

JUDGE RIVES: Yes, sir.

JUDGE RIVES: Gentlemen, the court is somewhat divided on the admissibility of this evidence. In case number 2457-N, the majority of the court thinks that the testimony is not admissible for any purpose, and objection is sustained in case number 2457-N. In case number 604-E, a majority of the court thinks that the testimony is probably admissible as expert testimony and as evidence on legislative history not disclosed by the record, but not for his individual opinion, but as expert testimony on the legislative history and as testimony on the legislative history not disclosed by the record, and under the equity rule which has been mentioned by Mr. Satterfield that we take the testimony and consider such part as is relevant and competent. The court will prefer to err on the admissibility side rather than on the exclusion side, because we will have the opportunity to study the authorities and study the testimony and consider only that part which we think, upon thorough and mature thought, is admissible and competent. So the Senator -- .

(Court conferred)

JUDGE RIVES: I would say this, also; that if -- if the -- if any party desires to take depositions of other Senators or congressmen on the legislative history, we would permit the post-hearing taking of those depositions. We will not reassemble to hear them in person, but we will permit the post-hearing taking of depositions, say, within -- within thirty days from -- from today, on other congressmen or Senators.

MR. SATTERFIELD: May it please the court, I assume that if depositions should be taken by opposing parties, that ruling would apply to all parties.

JUDGE RIVES: That is correct. That is correct.

MR. SATTERFIELD: May it please the court --

JUDGE RIVES: Subject to those comments, we will be happy to hear the Senator's testimony.

MR. GRAY: May it please the court, so that I am sure I understand the court's ruling, the ruling is that in Lee versus Macon, it is admissible.

JUDGE RIVES: That's right.

MR. GRAY: And in the subsequent case it is not.

JUDGE RIVES: You understand these cases are not actually consolidated; they are simply being heard jointly, but there are different three-Judge courts hearing each. One three-Judge court is hearing one case, and one three-Judge court is hearing the other case; and a majority of the court in the Lee against Macon County holds the testimony admissible, and majority of the court in the other case holds the testimony inadmissible.

MR. SATTERFIELD: All right, sir.

JUDGE RIVES: The testimony is admissible subject to the limitations which I have mentioned.

MR. SATTERFIELD: May it please the court, I assume under the general rule of evidence it would be permissible for the Senator to refer to a portion of the Congressional Record to refresh

his memory.

JUDGE RIVES: Absolutely, because that is largely what he is testifying about. It would be entirely permissible. You may proceed.

Q (by Mr. Satterfield) Senator, you may proceed?

MR. GRAY: Excuse me, your honor; I was wondering -- Mr. Satterfield, did you indicate at the beginning of this hearing that you was representing the other defendants and not the defendants in Lee versus Macon?

MR. SATTERFIELD: At the beginning --

MR. GRAY: At the beginning?

MR. SATTERFIELD: -- I stated to the court that any actions taken by the three of us in the consolidated trial would be considered to be, and before the court, for the benefit of all.

MR. GRAY: I just wanted to --

MR. SATTERFIELD: Insofar as the official representation, if there had been separate trials, then I would not be participating, but that insofar as these were consolidated, the action of any of us, objections made or questions asked, to be for the benefit of all.

JUDGE RIVES: Are you conducting this examination as one of the counsel appearing in Lee against Macon County case?

MR. SATTERFIELD: May it please the court, at this time I have permission to and will thus appear.

JUDGE RIVES: All right.

Q (by Mr. Satterfield) Senator, you may proceed?

A May it please the court.

JUDGE RIVES: Yes.

A The following is extracted from Senate Report 1361, Eighty-ninth Congress, Second Session, of the Senate Appropriations Committee, report on H.R. 14745, making appropriations for the Department of Labor, the Department of -- the Department of Health, Education, and Welfare and related agencies. The material appears on page seventy-one -- seventy-two and seventy-three of this report. I may say that this report was first made by the Subcommittee of the Senate Committee on Appropriations, and that Subcommittee has sixteen members of the Senate; in order for the Committee to make a report, there must, of course, be a quorum of, at least, the sixteen. And I may say the excerpt which I shall read from was prepared and submitted to the Senate Subcommittee on Appropriations on the appropriation for the Health, Education, and Welfare Department by the distinguished Senator from West Virginia, Senator Robert Byrd. And I now quote from that report: "The Committee questions the legality of the revised guidelines as promulgated by the Department of Health, Education, and Welfare pertaining to desegregation in schools and hospitals which receive federal assistance. The Committee believes that the revised education guidelines contravene and violate the legislative intent of Congress in the enactment of the Civil Rights Act of 1964." Then the report goes

on to say, "Questioned during the Senate hearings on the fiscal year 1967 appropriations request regarding the legal basis for such revised edition guidelines -- revised education guidelines, the Office of Education informed the Committee that the authority for the guidelines was contained in Title Six of the 1964 Civil Rights Act."

MR. GRAY: May it please the court; your honors, I am at a loss. Is Senator Hill reading a portion of the legislative history of the 1964 Civil Rights Act? That was my understanding.

WITNESS: I am reading -- I am reading from a report of the Subcommittee of the Senate Committee on Appropriations which had to make the appropriations for the Department of Health, Education, and Welfare for the carrying out of the Civil Rights Act of 1964.

Q Senator, what was your connection with that Subcommittee?

A I was the Chairman of that Subcommittee, but, as I said, the language I am reading from, which was in the report, was prepared by the Senator from West Virginia, Senator Robert Byrd.

Q Senator, would you state to the court whether or not that which you are utilizing to refresh your memory expresses your judgment and opinion and knowledge of the legislative history of the Civil Rights Act?

A What I am reading expresses my personal views, my opinion, as well as the opinion and the views of that Subcommittee of the Senate Committee on Appropriations.

Q Yours is what is particularly important here, but you may proceed?

MR. GRAY: Your honor, as I understand it, now -- what was the date of that, Senator?

WITNESS: The date of this report is September 22, 1966.

MR. GRAY: We don't think that has any relevance to --

MR. SATTERFIELD: May it please the court, the Senator is --

JUDGE RIVES: Is that a part of the legislative history of the Act with which we are concerned?

MR. SATTERFIELD: May it please the court, the Senator is testifying of his opinion and knowledge of the legislative history as reflected and is refreshing his memory from a report prepared by the Subcommittee of which he is Chairman; it is refreshing his memory in order to express it fully and clearly to the court.

JUDGE RIVES: I understood this was concerned with the '64 or -- '64 Act.

WITNESS: Yes.

MR. SATTERFIELD: This actually is concerned with the 1964 Civil Rights Act; the report, itself, has to do with action of the Appropriations Committee in '66, but it -- that with which the Senator is refreshing his memory is the statements made by his Committee of which he was Chairman concerning the '64 Act.

JUDGE RIVES: Now, gentlemen, of course all of the -- all of the printed material is going to be available to us --

MR. SATTERFIELD: Correct.

JUDGE RIVES: -- and we will have to study it very carefully.

MR. SATTERFIELD: Of course, and this is simply to present to the court the opinion and knowledge of Senator Hill, having participated in the debates and reflected by refreshing his memory; yes, sir.

JUDGE RIVES: All right.

WITNESS: May I state to the court --

JUDGE RIVES: Just one moment.

WITNESS: Yes, sir.

JUDGE RIVES: If we -- if we will, just read as little as possible of what is available to us, and take the Senator's oral testimony.

Q Senator, you might proceed to give the court the benefit of your knowledge and opinion of the legislative history, but you do have, as I understand the court's ruling, the right to refer to this to refresh your memory, but the testimony, your testimony, should be of your opinion and knowledge of the legislative history as refreshed, I believe?

A Well, if it please the court, may I say that during the Senate hearings on the appropriations, appropriations to carry out the Civil Rights Act of 1964, appropriations for the Department of HEW, the question was raised as to the legal basis for the education guidelines. And at those hearings, the Office of Education informed the Committee that the authority for the

guidelines was contained in Title Six of the 1964 Act. Yet, a review of the debate in the Senate -- I was present during those days when we were having the debate, and a review of the debate in the Senate on Title Six reveals that the Senate Floor Manager, who was Senator -- then Senator Hubert H. Humphrey of Minnesota, now the Vice President of the United States, and the statements of other sponsors of the 1964 Act interpreted the language and purpose of Title Six in no such manner as interpreted now by the Department of HEW. As a matter of fact, a review of the floor colloquy establishing the legislative history and enunciating the legislative intent between Senators favoring the bill and Senators opposing the bill clearly reveals the legislative intent entirely contradictory to the interpretation cited by the Office of Education as authority for the controversial education guidelines.

MR. GRAY: Your honor, we are going to object to the Senator reading this material.

JUDGE RIVES: Counselor, we are taking this testimony under the equity rules, and we will consider such part as we consider relevant. Go ahead, Senator.

A Well, I might say the excerpts from the floor debate, as it appeared in the Congressional Record, and to be found in the record of June 4, 1964, is as follows: Mr. Byrd of West Virginia arose; he asked this question: "Can the Senator from Minnesota" -- that is Senator Humphrey, the Floor Manager of the bill, the

man responsible for the passage of the bill in the Senate -- "Can the Senator from Minnesota assure the Senator from West Virginia that under Title Six school children may not be bussed from one end of the community to another end of the community at the taxpayers' expense to relieve so called racial imbalance in the schools?" Mr. Humphrey's answer was, "I do." Then Mr. Byrd of West Virginia said, "Will the Senator from Minnesota cite the language in Title Six which would give the Senator from West Virginia such assurance?" Then Mr. Humphrey answered, "That language is to be found in another Title of the bill in addition to the assurances to be gained from a careful reading of Title Six, itself." Mr. Byrd of West Virginia said, "You mean Title Four?" Mr. Humphrey said, "Yes, in Title Four of the bill." And I now read to the court the exact language of Title Four.

JUDGE RIVES: We have that, Senator.

WITNESS: Do you have that?

JUDGE RIVES: Yes, sir; we have that.

WITNESS: You don't need that, then?

JUDGE RIVES: No, sir; we don't need it.

WITNESS: All right; it is very clear and distinct,

I think the court will agree.

A Then Mr. Byrd went on to say, "But did the Senator from Minnesota also indicate whether the words in Title Four would preclude the Office of Education under Section 602 of Title Six from establishing a requirement that School Boards and School Districts shall take

action to relieve imbalance wherever it may be deemed to exist?" Humphrey, "Yes. I do not believe in duplicity. I believe that if we include the language in Title Four, it must apply throughout the Act." Then Mr. Javits took the floor of the Senate, and I quote from his -- his statement, Mr. Javits of New York, one of the strongest proponents of this bill, perhaps the strongest proponent on the minority or the Republican side, and I quote now verbatim from Mr. Javits; "Taking the case of the schools to which the Senator, Mr. Byrd of West Virginia, is referring, and the danger of envisioning the rule or regulation relating to imbalance, it is negated expressly in the bill. Therefore, there is no case in which the thrust of the statute under which the money would be given would be directed towards restoring or bringing about racial balance in the schools." And I might say that in addition to that statement, Mr. Javits on the floor of the Senate in this debate made this statement: "If such a rule were adopted or promulgated by a bureaucrat and approved by the President, the Senator's state would have an open and shut case under Section 203. That is why we have provided for judicial review. The Senator knows as a lawyer that we never can stop anyone from suing, nor stop any Government official from making a fool of himself, or from trying to do something that he has no right to do, except by remedies provided by law." And Mr. Byrd went on to say, "Mr. Byrd of West Virginia: I thank the Senator from New York for his

interpretation of the language. I trust it will help to clarify the intent of the title." Then if I may quote further from the report of the Senate Appropriations Committee, "The Committee strongly recommends that these guidelines be carefully re-examined by the Secretary of the Department of Health, Education, and Welfare, looking to conformity with intent of the law, and that that report be made to this Committee." Then the report went on to say, "Individual Committee members cite numerous complaints received from hospitals concerning the manner in which Health, Education, and Welfare field investigators have performed their duties. Inasmuch as these investigators are paid out of funds appropriated by this Committee, the complaints are naturally and properly concern to the -- this Committee. The qualifications of many of the field representatives have been subject to challenge. The complaints have indicated attitude of harassment rather than helpfulness. It has never been intended by this Committee that funds appropriated by it be used by the Department of Health, Education, and Welfare to go about the country harassing people who have shown every indication of abiding by the letter and intent of the Civil Rights Act of 1964. Field investigators should be carefully selected, thoroughly indoctrinated, and rigidly supervised in order to achieve the image of ambassadors rather than inquisitiveness, nor is it the function of the Department to promulgate onerous education guidelines which contravene the legislative intent of Congress

in enacting Title Four and Title Six of the 1964 Civil Rights Act." Now, as I have said, there were sixteen members on this Subcommittee, and under the rules of the Senate, at least a majority had to be present when this was acted upon, and then the report of the Subcommittee went to the full Committee, of which there are twenty-seven members of the Senate, and at least a majority of the twenty-seven had to be present, and the action and report of the Subcommittee was adopted by the full Senate Committee on Appropriations; the action was adopted by the Senate of the United States. Mr. Chairman, I believe that the other provisions that I might cite, such as the employment exemption in Section 702, which expressly exempts from the Civil Rights Act employment in educational institutions, the fact -- in Section 604 it exempts all the employment except where the primary objective to provide employment --

JUDGE RIVES: You are getting rather into a legal argument as to what the Section --

WITNESS: All right, I am just taking the language on its face value, I just -- all right, Mr. Satterfield.

Q May I ask as to whether or not the testimony you have given, whether it was read from a report or from a Congressional Record or otherwise, expresses your knowledge and opinion as a member of the Senate in the capacity which has been stated concerning the legislative history and intent of the bill; does it or not?

A It does, indeed, express my knowledge of the -- of the history of

this bill, that knowledge gained by my presence on the floor of the Senate during these long days of debate and discussion, of colloquy, of consideration of this bill, and also by testimony that we had before our Appropriations Committee asking for the funds to implement the Civil Rights Act of 1964.

MR. SATTERFIELD: Thank you, Senator. If you will indulge me just a moment. May it please the court, we have no further questions.

JUDGE RIVES: Any cross examination of the Senator? I presume there are no further questions from any of the plaintiffs?

MR. SMITH: No, sir.

JUDGE RIVES: Any questions from the defendants?

CROSS EXAMINATION:

BY MR. GRAY:

- Q Senator, I believe you said during your testimony that an appropriation was made to HEW under the 1964 Civil Rights Act?
- A Appropriation was made with this -- this statement included which I have quoted from here today, and with the direction to the -- to the HEW that they make a report on their actions, and also this statement, which I emphasize --
- Q I understand.
- A -- "Nor is it the function of the Department" -- that is, the Department of HEW --
- Q That is -- you have already read --
- A -- "to promulgate onerous education guidelines which contravene

the legislative intent of Congress in enacting Title Four and Title Six of the 1964 Civil Rights Act."

Q How long have you been in the Senate, sir, representing Alabama?

A I have been in the Senate since January, 1938.

Q During this period of time --

A I may say there sits my campaign manager, Mr. Gordon Madison. Is that relevant, sir?

Q During -- during this period of time, approximately how many Civil Rights bills have been introduced in Congress?

A Well, I couldn't tell you how many have been introduced; I could tell you they have been considered back in -- I remember in the old days the first so called Civil Rights bill was the anti-lynching bill, then they had the --

Q I am just asking approximately how many?

A Introduced?

Q Yes, sir?

A Well, Lord, I tell you, how many introduced -- I would have to check the record on that, because you might find --

Q I withdraw the question.

A -- you might find that -- particularly in the House, that a number of members had introduced the same bill.

Q Did you, Senator, vote in favor of the Civil Rights Act of 1957?

A I did not, sir.

Q Did you vote in favor of the Civil Rights Act of 1960?

A I did not, sir.

- Q Did you vote in favor of the 19 -- of the Civil Rights Act of 1964?
- A I did not, sir.
- Q Did you vote in favor of the 19 -- Civil Rights Act -- the Civil Rights Act of 1965?
- A I did not, sir.
- Q Did you -- did you vote in favor of the bill introduced -- the Civil Rights bill in 1966?
- A No -- well, we didn't -- we didn't get to any final vote on that bill; I may say it was a question of imposing cloture --
- Q Have you --
- A -- and the motion for cloture was defeated. I voted against the motion for cloture, and the bill never came to a final vote. There was no final vote on the bill.
- Q You read a report, Senator; will you tell us which Congress that report was made, the number of the Congress?
- A Yes; this Congress was the Eighty-ninth, the report I read from was the Eighty-ninth Congress; the report was made, as I said, on September 22, 1966, this last September, just --
- Q And which Congress passed the Civil Rights Act of 1964?
- A Well, that would be the -- that would be the Eighty-eighth Congress.
- Q Have you ever voted in favor of a Civil Rights bill?
- A I have not, sir.

MR. GRAY: No further questions.

JUDGE RIVES: Any other questions of the Senator?

MR. BARRETT: The Government has no questions of Senator Hill.

JUDGE RIVES: Senator, the court appreciates your giving us the benefit of your views; you may be excused.

WITNESS: Thank you, sir; thank you very much.

MR. MADISON: Your honor, I would like to ask the Senator one question, if I may.

JUDGE RIVES: All right.

WITNESS: That is my campaign manager, if I may say it, if it please the court.

REDIRECT EXAMINATION:

BY MR. MADISON:

Q On that basis, Senator, I will ask you in your expert opinion whether there was anything of a political nature in that first report that you referred to?

A No, I think not; I think not; I think that -- frankly, I think that, as I said, you -- the language here was drafted and submitted by the Senator from West Virginia, Senator Robert Byrd; I think that there have been so many harassments there in the State of West Virginia that he care -- felt compelled to raise this very question, which he did, that the action of the Department of HEW contravened and was in violation of the provisions of the Civil Rights Act of 1964.

MR. MADISON: Thank you, sir.

MR. SATTERFIELD: No further questions.

JUDGE RIVES: No further questions; you may be excused,  
Senator.

MR. SATTERFIELD: Thank you, sir.

WITNESS: Thank you, sir.

MR. SATTERFIELD: Thank you.

JUDGE RIVES: Call your next witness. Gentlemen,  
let's move along.

MR. SMITH: If the court please, we offer at this  
time Defendants' Exhibit number 70, which is an official bulletin  
from the State Department of Education, Annual Report for the year  
1965, and contains statistical and financial data for the years '64  
and '65; we think this would be of material aid to the court. This  
is the same Exhibit, A and B.

THE CLERK: Defendants' Exhibit 71-A and B marked  
for identification.

MR. SMITH: If it please the court, we offer Defendants'  
Exhibits 71-A and B in accordance with our announcement to the court  
yesterday, which we feel would be of considerable time saving to the  
court and the parties, in the matter of offering additional  
Superintendents of Education. These Exhibits contain the official  
records of each local Board of Education, primarily concerning  
themselves with voluntary desegregation plans, assurances of  
compliance, executing form 441 and 441-B, where they are a part of  
the records; additionally, official communications from the U. S.

Office of Education, Department of Health, Education, and Welfare. Now, in fairness, in the offering of these Exhibits, I do state this to the court; that my office endeavored, starting immediately after adjournment yesterday, to compile these Exhibits in some orderly manner that would be of aid to the court. As result of the time involved, I was unable to present these Exhibits to any of the other parties prior to eight thirty this morning. They have only had these Exhibits, the opportunity to see them, since eight thirty this morning; and the reason, I state to the court, is because of the impossibility in the accumulation of the documents. But we do offer and state to the court that these records contain generally what I have stated, in the effort to save the calling of these additional Superintendents of Education, save, I believe, only two, which would have evidence not contained in these Exhibits and would be very short witnesses. I also call to the court's attention that we have not included in these Exhibits any of the records which have been introduced from the Superintendents that have testified orally in the cause.

JUDGE RIVES: Very well, sir.

MR. SATTERFIELD: May it please the court, in connection with the presentation, we would like to assume that the court would desire -- it would be entirely agreeable with us, it would be on the same basis of the introduction of the one hundred and seventy-four Exhibits by opposing parties, one of which has forty-nine parts. Also, I would like to call the court's attention to the fact

that in both the Defendants' Exhibits 1 and 2, the Plaintiffs' Exhibits 1 and 2, and in these Exhibits, there are contained certain memoranda of a narrative nature, to which objections may be made either by us or by them, and that any matter of that kind, of course, is necessarily subject to proper objection.

JUDGE RIVES: What limit did we put on the time of filing those objections?

MR. SMITH: Three days.

MR. SATTERFIELD: I believe three days.

MR. SMITH: Yes, sir.

MR. SATTERFIELD: After adjournment; whatever the court would prefer, why, we would be glad to acquiesce.

JUDGE RIVES: It is understood, then, that this testimony -- this -- this Exhibit that has just been offered is subject to objections which may be filed within three days after closing of the case.

MR. SATTERFIELD: Yes, sir.

MR. ARONSON: Your honor, on behalf of the plaintiffs in Lee versus Macon County, we would like to object, or, in the alternative, make certain of our understanding with respect to these two most recent Exhibits that have been introduced. The nature of these Exhibits and the circumstances under which they have been introduced are somewhat different from the former Exhibits that have come into this case. Yesterday at four p.m. we were advised, as was the court, for the first time that defendants were reconsidering

who they were going to put on and what form of evidence they were going to put on, and they suggested to the court that perhaps considerable time might be saved if they were to put in the Superintendents' records rather than putting the Superintendents on the stand. At that time we met with counsel and asked if we could see these records before this morning. And we wanted to see them for two purposes; one was to ascertain the nature of the record, and two, and more importantly, was we wanted to see whether or not we might want to call some of these Superintendents to interrogate them about some of these records. We were told at four p.m. to come back at five p.m., and we would have an opportunity to see the records. At five p.m. we were informed, pointing to a large box, "You can go through all of them." We asked if they intended to put all those records in through Superintendents if we didn't go through them, and there was no answer. We then said, "We would like to see them sometime this evening," and we were told that was impossible, but we could see them this morning at eight p.m. in this courtroom -- eight a.m.; pardon me. We were here at eight a.m., and at twenty to nine we first saw counsel opposite who brought these records in. We are not objecting and certainly are sensitive to the problems of counsel opposite in calling these records, and we share with defendants the interest in expediting this trial, but we wish to point out to the court the dilemma that we are in at this time. These records --

JUDGE RIVES: Mr. Aronson, let me ask you; as I

understand it, those -- the introduction of those records may mean that you might want to further examine some of the Superintendents in connection with some of their records?

MR. ARONSON: No, your honor; we would put it differently. We don't want to prolong this trial or the record; we want it just clearly understood that these records may be less than all of the records of any Superintendent, and we were more than willing to stipulate as to their authenticity in terms of these records did exist within the file of any given Superintendent; but we want to make it clear that we object to their au--- to the truth or falsity of what is set out in them, and that they are coming in only to show that they did exist in a given Superintendent's file. As to whether or not there were more records countermanding what those showed or any additional information, certainly these records cannot speak, and that is the only point that we want to make, your honor. Thank you.

MISS FRANKLIN: Your honor, one other point; there is, also -- obviously the records are not complete. There are instances when references are made of a letter having been written by someone in HEW to a particular Superintendent, and that letter is not included; and that there is also a memorandum contained in one of the records which was written by -- was written to Mr. Maddox, and contains all sort of conclusory statements about HEW personnel, and this is objectionable, and I don't understand why that should be included, in the record at all; it shouldn't be

considered an official record.

MR. SATTERFIELD: May it please the court, in that connection I stayed up here one night until twelve fifteen and dictated a memorandum on Defendants' Exhibit number 2 having to do with county Boards. I have not had the opportunity, because of other pressing matters, to stay up that late and dictate a memorandum or even review number 1, having to do with all the cities. We find in connection with the memoranda such as she has suggested there, that in this series only there is a memorandum concerning a telephone conversation in the file on Calhoun County, a memorandum simply of a narrative nature. We will find that, in the memorandum on Escambia County, a similar -- I mean the file, a similar memorandum, simply dictated by some individual of a narrative nature, and that is true of one, two, three, four, five other counties. Of course, within the three-day period, we may object to those; within the period assigned, attorneys may object to the others.

JUDGE RIVES: Mr. Barrett.

MR. BARRETT: If the court please, on behalf of the Government, I would ask that the same three-days period that is allowed for objections, that we be permitted, on examination of these records, which we haven't had an opportunity to do yet, within that time ask the court for leave, if we find it necessary after examining the records, to supplement the offer of documents by perhaps responding letters or other documents that we might wish to produce to complete the picture presented by these.

MR. SMITH: Your honor, just one brief remark: I want to call to the court's attention, with reference to including all of the correspondence; now, frankly, the ladies in my office and I tried to assemble these Exhibits. I have a miscellaneous tab in the Exhibit which contains a -- a copy of correspondence that we find went to all of the Boards of Education; but, in the hope that we wouldn't duplicate the records, we have put this under the miscellaneous heading, which is a very thick brochure of official communications from the U. S. Office of Education. Now, we certainly haven't intentionally tried to leave out records that should be in any particular county, but they are offered primarily from our standpoint to show that these local Boards, with very few exceptions, have in fact filed voluntary desegregation plans and have executed compliance forms and filed it with HEW.

JUDGE RIVES: Let me confer with you all briefly.

(Court conferred)

JUDGE RIVES: Gentlemen, the court is of the opinion that the three-day time limit which we have posed for objections is too short, especially with Saturday a football game and Sunday intervening. We think that there should be at least a week in which objections to any of these depositions or Exhibits might be filed, and that as to these particular Exhibits which have just been filed, I believe 71-A and B they are, that in addition to objections, any party should have a right to supplement those Exhibits by further documents --

MR. GRAY: Your honor, will the defendants --

JUDGE RIVES: -- within a week.

MR. GRAY: Will the defendants make available to us without subpoenaing these individual Superintendents the additional records that their files would disclose to make it complete?

JUDGE RIVES: I presume they will.

MR. SMITH: All -- all -- certainly all of the records that we have copied -- may I state to the court that they are not in real orderly manner -- I am not trying to mislead counsel, but we did -- and presented a Rule 34 motion, and the court permitted us to copy considerable records in the office of HEW, and certainly all of these records will be available.

THE COURT: All right, sir.

MR. SMITH: And we will work with them in every way possible to show them our files.

MR. GRAY: Your honor, my question really goes to the records that the individual Superintendents -- see, the defendants were able, for example, by telephone or telegram to these Superintendents ask them to come and bring their records, and they come.

JUDGE RIVES: You talking about the records of the county Superintendents that you all have?

MR. SATTERFIELD: May it please the court, we had available and still have available records from the county Superintendents which have been compiled. There is what, a hundred and

seventeen systems, city and county?

MR. SMITH: Right.

MR. SATTERFIELD: And to the extent -- we would be delighted to make those available to counsel, the ones that we have available and have used for use in court.

JUDGE RIVES: I understand -- it is my understanding that was a pretty unlimited offer; is that limited in any way? Not only what is in the file, but what they did bring, there might be something that you --

MR. SATTERFIELD: May it please the court, I am not too familiar with these records, and may be -- I think there may be some work --

MR. SMITH: Part of it are our work products.

MR. SATTERFIELD: In the file.

JUDGE RIVES: Part of your work products?

MR. SMITH: Yes, sir.

JUDGE RIVES: But I mean stuff from the Superintendents' files.

MR. SMITH: Any official -- well, actually, we have obtained from the Superintendents matters that go into our files, and the file, for example, on Autauga County contains additionally to the -- to the -- to the matters that the Superintendent from Autauga supplied us all of our work product, memoranda, and so forth, in regard to it.

JUDGE RIVES: Don't include your work product, of

course --

MR. SMITH: Yes, sir.

JUDGE RIVES: -- but anything from the Superintendents, we understand, would be made available for counsel on the other side.

MR. SMITH: That is correct, sir.

JUDGE RIVES: Whether it has been furnished to you or not.

MR. SMITH: Well, Judge, I don't know how I can make available something that hasn't been furnished to me.

JUDGE RIVES: Anything in your control you will make available.

MR. SMITH: Does that -- if I understand the court now, does that mean that any record that the Autauga County Board of Education has that they may request of me that we request it of the Autauga Board and give it to --

JUDGE RIVES: Yes, sir; I think that is what it means.

JUDGE JOHNSON: (Nodded to indicate affirmative reply)

MR. SMITH: Insofar as I possibly can.

JUDGE RIVES: All right. All right, gentlemen, any further witnesses?

MR. SATTERFIELD: May it please the court, as I understand it, we will make available copies of all -- of all records furnished to us by the Superintendents which we have control and possession of it?

JUDGE RIVES: Any other -- if any other records --

MR. SMITH: I understand what the court said.

JUDGE RIVES: Let Judge Johnson clarify it.

JUDGE JOHNSON: It is the court's understanding in admitting 71-A and 71-B, it is the unanimous consensus of the members of the court, that they are admitted upon the condition that counsel for the defendants that made the offer will, upon request of any counsel of the plaintiffs, make available any of the records in any of the schools' custody that counsel for the plaintiffs request, whether they have been heretofore furnished counsel for defendants or not.

MR. SMITH: May we make a similar request of the United States in regard to their offer of documents?

JUDGE JOHNSON: Well, now, this ruling was made condition to the admission of 71-A and 71-B. If it gets appropriate on the admission of some other documents that that be done, then the court will consider that; but the only thing that is presented to the court at this time is the admissibility of 71-A and 71-B, and the ruling of admission is with the condition that I just stated.

MR. SMITH: Then if we, in reviewing the Government's Exhibits, find documents that are missing, it would be proper for us to file a motion before the court in regard to their supplying additional --

JUDGE RIVES: Yes, sir; you may file a motion before the court if you find anything omitted.

MR. SMITH: All right, sir.

JUDGE RIVES: All right, sir.

MR. SATTERFIELD: May it please the court, there are two -- three Superintendents who will testify as to matters not shown in writing and of record, and it will be necessary to call them very shortly. Like to call Mr. Elvin Hill.

JUDGE RIVES: Mr. Barrett.

MR. BARRETT: If the court please, at the last recess the court had asked the parties to prepare a list of persons whose depositions were being tendered to the court --

JUDGE RIVES: The defendants, the defendants --

MR. BARRETT: -- and I will furnish that now.

MR. ADAMS: Your honor, we prepared a list of ours, and we will furnish that to the court.

THE CLERK: Have you been sworn?

WITNESS ELVIN HILL: No, sir.

THE CLERK: Please stand and 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 ELVIN HILL: I do.

THE CLERK: Please be seated.

MR. SATTERFIELD: May it please the court --

JUDGE RIVES: Just a minute; I believe they both gave us -- do we have all these lists that you intended to furnish?

JUDGE JOHNSON: We don't have Satterfield's; we have the Government's list.

JUDGE RIVES: We have Satterfield's and the Government's.

JUDGE JOHNSON: Yes, here they are.

JUDGE RIVES: Mr. Satterfield, before you examine this witness, the court will take a very short recess; court will take a recess for five minutes.

(At which time, 10:23 a.m., a recess was had until 10:30 a.m., at which time the trial continued)

JUDGE RIVES: Mr. Satterfield, I don't believe I caught the name of this witness?

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ELVIN HILL, witness for Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. SATTERFIELD:

Q Elvin Hill; that was your name, sir?

A Elvin, E-L-V-I-N.

Q And what capacity do you hold in the connection with schools?

A Superintendent of Education of Shelby County.

Q We have introduced in this cause as Exhibit 66 copies of various records from your office -- not necessary to review the entire amount, but let me see just a minute -- I am sorry, those from your office of Shelby County are Exhibit 68.

A Yes, I have looked at these.

Q Exhibit 68; after receipt of the letter appearing in that Exhibit dated June 24, '66, advising of expected deferral or actual deferral of funds, did you and the Board in your presence have any conference in Washington, and if so, in what office and with whom?

A The Chairman, the Vice Chairman, Board attorney, and myself went to Washington.

Q I see.

A And met with Mr. Fairley, Mr. Davis, and a lady; I can't recall her name at this time.

Q In the offices of what department or --

A Department of Health, Education, and Welfare.

Q Would you tell the court what requirement or requirements, if any, were then made by those officials of the Department of Health, Education, and Welfare which -- upon which they would condition a withdrawal of the deferral of funds?

JUDGE RIVES: Mr. Hill, let me ask Mr. Satterfield; I notice Mr. Hill's deposition was taken; was this information contained in his deposition?

MR. SMITH: No, sir; it was not.

MR. SATTERFIELD: It was not; it would simply be supplemental.

Q All right?

A They informed us that it would be necessary for us to employ

twenty-six Negro teachers in the white schools and to integrate -- get more integration in our students -- with our students.

Q Uh, huh; then after that, did you and all the Board or its officers have further conference with a representative or representatives of HEW?

A Yes.

Q And with whom and where?

A The Board members, two attorneys, and myself met with Mr. Bankhead and Mr. Crowder in the Superintendent's office.

Q At that time, what requirements, if any, were made as a condition precedent to withdrawing the deferral of funds and not filing a compliance procedure? To terminate funds?

A They said it would require twelve Negro teachers in the white schools and another thirty-day choice period for the Negro students.

Q What is the -- generally the present status -- I may lead the witness, if I may, a moment -- at the present time, is there pending a compliance procedure and a hearing set before a hearing examiner?

A Yes.

Q In -- in Washington, and it has been called by HEW?

A Yes.

Q In that connection, have you received from HEW or its attorneys a document designated as -- excuse me.

MR. SATTERFIELD: If the court will indulge me just for

a moment.

Q May I see this?

A Yes, I believe it is right there.

JUDGE PITTMAN: Has there been an actual deferral or just notice of deferral?

Q The -- Mr. Hill, has there been an actual deferral of funds?

A The notice of deferral.

JUDGE PITTMAN: I mean have any monies actually yet been withheld?

WITNESS: It is hard to say; we are not getting the full Title One because of --

JUDGE PITTMAN: That is the new program or not?

WITNESS: Well, the Public Law 89-10, Elementary, Secondary Education Act; the fact, because we are deferred, we cannot do any building or buy any equipment with Title One --

JUDGE PITTMAN: I mean under existing programs, have any monies been deferred under those?

WITNESS: No, sir.

JUDGE PITTMAN: All right.

Q But to clarify it, as -- what are the facts as to whether or not you have been permitted to file an application -- application process for receipt of Title One funds under the Elementary and Secondary School Act of 1965; have you received anything under that?

A Yes.

Q And -- and is that now being received?

A Yes.

Q Have you been permitted to ask for additional funds under any of the programs?

A No.

Q Of the federal Government?

MR. SATTERFIELD: If the court will indulge me one moment. I had a document here; I want to ask two questions, but I must have misplaced it.

Q In order not to delay the court, I believe I can ask the question correctly; Mr. Hill, a moment ago I exhibited to you a document entitled, "General Demands for Admissions," upon the letterhead of HEW, which has been filed in this case, and I will supply to the reporter the Exhibit in which it appears, and ask you if you examined that document and whether or not you received a similar document in your compliance procedure?

A Yes, I have received one.

Q I direct your attention to items eighteen, nineteen, twenty, and twenty-one, and item forty-three thereof, the first items having to do with athletic teams, the last item having to do with extra-curricular activities, and I would ask whether or not similar provisions appeared in the similar documents you received?

A Yes.

MR. SATTERFIELD: Thank you. We have no further questions.

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

MR. ARONSON: If I may, your honor; I will be very brief.

CROSS EXAMINATION:

BY MR. ARONSON:

Q Mr. Hill, how long have you been Superintendent of the Shelby County School District?

A A little over eight years.

Q Now, am I correct in understanding, sir, you have twenty-six schools?

A Yes.

Q Under your jurisdiction? How many of those are Negro schools?

A Six.

Q And how many are white schools? The remainder?

A Twenty; yes, sir.

Q And am I further correct in understanding that you had a plan for the desegregation of your schools for the year 1965-66?

A Yes.

Q And that your plan was submitted pursuant to HEW regulations, and most particularly, did you submit a 441, form 441?

A Yes.

Q Was it approved?

A Yes.

Q How many children exercised their freedom of choice in 1965, sir?

A I -- we didn't count the returns; a great per cent of them did, I am sure.

Q Let me ask you this; in your opinion, how is desegregation proceeding in Shelby County?

A Rather slowly.

Q Would you -- would it be your testimony that you have made good progress?

MR. SATTERFIELD: Object, may it please the court; that is not competent.

JUDGE RIVES: He said rather slowly.

MR. ARONSON: Fine, your honor.

Q Did you send letters to each student or parent in your district in 1965?

A Yes.

Q Did any Negro children in fact enroll in formerly white schools?

A No.

Q Did you send letters to each of your parents in 19--- each of the parents or children in your district for the year 1966-67, the current school year?

A Yes.

Q Did any children exercise freedom of choice, Negro children, to attend formerly white schools?

A Well, they -- three, I believe it was, selected white schools.

Q And are any --

A Well, they all -- I mean, great percentage of them sent the

letters back, freedom of choice letters.

Q Let me ask you, are there any Negro children enrolled this year, the second year of your plan, in the formerly white schools?

A No.

Q Are there any Negro teachers presently teaching in any capacity in any of your white schools?

A No.

Q Are there any white teachers teaching in your Negro schools?

A Not in the class rooms, I mean regular class room teachers.

Q That is what I am asking. Mr. Hill, after operating under your plan for two years, and having a plan for two years, have any changes in fact occurred in your system due to the operation of this plan in terms of the education or where the children teach, where the busses go, athletics, teaching, any respect?

A Well, right off, I can't -- things you mentioned, I can't think of any changes; no.

Q Have you constructed any buildings within the last two years --

A Yes.

Q -- sir? And what is the most recent building that you have constructed?

A Well, we had a final inspection on three buildings last week, I believe.

Q That was by the State Department of Education?

A Well, State Department of Education and the local Board of Education.

Q And what is the most recent school which you have commissioned in which students are presently attending?

A Commissioned?

Q Well, what is the most recent opening date of a school which students are now attending? Did you open --

A All of our schools opened the same date.

Q I understand that, sir; did you open any new schools for the first time this past September?

A No.

Q Did you open any schools for the first time in September, '65?

A I do not remember; '64 and '65 we moved into six or seven new schools.

Q And these new schools which you have moved into in either 1964 or '65, they are all either all white or all Negro?

A Well, that is -- either Negroes or white are attending them; yes.

Q I see. Mr. Hill, in light of the fact that you have had a freedom of choice plan for the past two years, and you are maintaining what essentially is still a totally segregated system, what, in your estimation, would it take to end the racial characterization of your schools?

A I do not know.

MR. SATTERFIELD: If it please the court, we object to the form of the question; matter of legal conclusion.

JUDGE RIVES: Sustain the objection.

MR. ARONSON: No further questions of this witness at

this time, your honor.

JUDGE RIVES: Any further questions of Mr. Hill?

MISS FRANKLIN: I have a few questions.

BY MISS FRANKLIN:

Q At -- at what point was -- were your -- did you receive a notice of your funds being deferred? From HEW?

A As I recall, it was June 24, 1966.

Q Uh, huh. Precisely why were these funds deferred; what were the reasons given?

A According to the letter, they made the statement that I had stated we had no intention of complying, which was a false statement.

Q You had sent in a compliance form?

A We had not; we were working with various people, attending meetings and so on, trying to agree on something we could comply with.

Q You had intentions of hiring Negro teachers?

A Beg your pardon?

Q You had intentions of hiring Negro teachers to teach in white schools or assigning them to teach in white schools?

A Not except -- well, we were just working on all phases, trying to understand the guidelines to the extent we could determine whether we could comply or not, as a Board of Education; now, I am speaking of we as our local Board and myself.

Q So actually, you had not determined that you could comply?

A No.

Q At this point, would you now be in position to -- have you made a determination subsequent to the deferral of funds that you could now comply with the revised guidelines?

A State your question again, please?

Q Could -- could your Board of Education, or has your Board of Education, made a determination that it would comply with the revised guidelines?

A No.

MISS FRANKLIN: No questions.

MR. ARONSON: Your honor, may I ask just one further question?

JUDGE RIVES: Yes; Mr. Aronson.

MR. ARONSON: I am sorry.

BY MR. ARONSON:

Q Superintendent Hill, I show you a document which is marked United States Exhibit number 6, which was attached to your deposition, and which is already in evidence in this case; briefly describing the document, it is a telegram from Mr. Meadows to Commissioner Howe which protests certain activities of the Department of Health, Education, and Welfare; sir, how did you get a copy of this telegram which you produced for the Government in response to a subpoena?

A I presume it was mailed; I could not say positively.

Q Most probably from Superintendent Meadows?

A Yes.

MR. ARONSON: No further questions.

JUDGE RIVES: Any further questions of Mr. Hill? If not, you may come down, Mr. Hill; you may be excused.

WITNESS: Thank you, sir.

JUDGE JOHNSON: The Government?

WITNESS: Pardon?

JUDGE RIVES: Did the Government wish to ask Mr. Hill any questions?

MR. BARRETT: Yes, if I may ask one or two.

JUDGE RIVES: I beg your pardon; I asked if there were any further questions; I didn't see you stand.

MR. BARRETT: I hesitated.

BY MR. BARRETT:

Q Mr. Hill, does your Board insure the schools in the system?

A Yes.

Q Are all the schools insured?

A Yes.

Q White and Negro?

A Yes.

Q You have approximately three times as many white students as Negro students --

A Yes.

Q -- would you say?

A (Nodded to indicate affirmative reply)

Q Would it be a fair estimate that the insured valuation of the schools attended by Negroes, as compared to those attended by whites, is about one to ten, about ten times the value in the white schools as those attended by Negroes?

A No.

Q That would not be your judgment?

A No.

Q Mr. Hill, I would like to show you a copy of a letter that was attached to your deposition addressed to Governor Wallace and apparently from A. R. Meadows, Superintendent of Education; I will ask you to look at that and tell the court whether this year the W. A. Jones School Center at Vincent was approved upon the basis that it was far removed from all other school centers in the County?

A No, I wouldn't think so.

Q You wouldn't think so?

A It was for that reason alone; no.

Q Was that one of the reasons?

A Well, I don't know that it was. I -- our reasons for trying to get it approved was due to the fact that the enrollment had grown in that particular school, and a new school building had been constructed previously as an elementary school.

Q Is the Jones School attended by white children?

A No.

Q Is it attended by Negro children?

A Yes.

Q Is there a school in Vincent attended by white children?

A Yes.

MR. BARRETT: I have no further questions.

JUDGE RIVES: Any other questions for the -- from the defendants? Any further questions from the plaintiffs?

MR. SATTERFIELD: No further questions.

JUDGE RIVES: Mr. Hill, you may be excused.

WITNESS: Thank you, sir.

MR. MADDOX: Mr. Marshall; Mr. Marshall.

THE CLERK: Have you been sworn?

WITNESS FRANCIS J. MARSHALL: No, 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 FRANCIS J. MARSHALL: I do.

THE CLERK: Please be seated.

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FRANCIS J. MARSHALL, witness for Defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. MADDOX:

Q Will you please state your name?

A Francis J. Marshall.

Q And what is your position?

A The HEW approved the plan.

Q They approved the plan?

A The first one; yes, sir.

Q All right, sir. Did you operate under that plan for the school year '65-66?

A Yes, sir; we -- they approved -- we operated under the plan that they approved.

Q All right, sir; what grades were covered?

A May I look at my -- I will have to read it and go in --

MR. MADDOX: Maybe I can shorten it, if the court please.

Q Did you -- did your students exercise choices in the grades covered by your plan of that year?

A In four grades at the time; yes, sir.

Q All right, sir. Were any choices made by any students rejected--

A No, sir.

Q -- by your Board?

A No, sir.

Q What further communication, if any, did you have or contact did your Board have with the Department of Health, Education, and Welfare, or any representative thereof?

A During the first year plan you are talking -- speaking of now?

Q Yes, sir?

A I don't recall any; that plan went into effect, now, in September after I went into office in July, and no special -- any issue of

anything; no, sir; we didn't have any.

Q What further contact, then, was made after the September opening of school, if any, by agents of the Department of Health, Education, and Welfare?

A In the following spring, that was to be by April, to send out the second year freedom of choice for more grades was the next direct contact we had.

Q All right, sir. What was the -- discussed in those contacts?

A Well, we just -- the forms that HEW sent us, we administered the freedom of choice by those forms.

Q Did you follow the wording of the forms that were sent exactly?

A Yes, sir.

Q And in every detail?

A Well, they made one exception; they said we left out one paragraph, and we said we did not, and the people who inspected us said we did an excellent job on the form they sent us.

Q All right, sir. Did you print it in the paper?

A Yes, sir.

Q Did you follow that plan for the school year -- this school year, '66-67?

A We accepted every single child who chose to change schools; yes, sir.

Q All right, sir. I want my question answered, though; in every detail, did you follow specifically the plan; in other words, sending the notices, receipt of the notices, and assignment of

the students?

A Yes, sir.

Q Has the Department of Justice given you notice that it has received any complaint --

A No, sir.

Q -- from your school system with regard to discrimination based on race --

MR. BILLINGSLEY: Just a moment.

Q -- color, creed, or national origin?

JUDGE RIVES: All right?

MR. BILLINGSLEY: Your honor, we object to Mr. Maddox leading the witness; he is continuing to do this; he could ask him direct questions.

JUDGE RIVES: I think that is just in the interest of expediting the hearing --

MR. BILLINGSLEY: All right, sir.

JUDGE RIVES: -- I think we will overrule that objection.

A State the question again, please.

Q Has -- has your Board, insofar as you know, received any complaint or notice from the Department of Justice that any person has been discriminated against on the ground of race, color, creed, or national origin?

A There has been no complaint in my system from any person within it, and HEW so stated to us that that was true; they had not

received any complaints.

- Q HEW officials stated this to you?
- A When we were inspected in the summer, they told us there had not been a single complaint against the Lee County Board of Education.
- Q All right, sir. What further contact, if any, did you have; you mentioned an inspection; how many agents from HEW came down to inspect you?
- A Four.
- Q How many?
- A Four.
- Q Do you recall approximately what date this was?
- A It was in June, the best of my knowledge.
- Q Of '66?
- A Yes, sir; this past June.
- Q How long did they conduct this inspection, if you know?
- A They came at just before noon one day, and we set up the next day to get any information they wanted, and stayed with us a day and a half.
- Q Did this team or any members of this team meet with your Board of Education?
- A All the members of the team met with the Board of Education.
- Q What recommendations were -- first -- strike that. Did you explain to the agents that you had followed your plan and cooperate with them in showing all records?
- A Yes, sir; and they -- they inspected all of the forms and said

we complied completely with getting all the forms back they inspected.

MR. BILLINGSLEY: Your honor, we are going to object to this type of answer as purely hearsay.

JUDGE RIVES: What is the ground of your objection?

MR. BILLINGSLEY: Sir?

JUDGE RIVES: What is the ground of your objection?

MR. BILLINGSLEY: Hearsay; he is stating what the --

JUDGE RIVES: He said they inspected all the forms; he was there; I presume he is speaking from his knowledge. --

MR. BILLINGSLEY: Yes, sir.

MR. MADDOX: Yes, sir; that is the way I gather --

Q Are you speaking from your own knowledge?

A I am speaking from sitting in my office at my desk with the counting forms -- the people counting the forms.

Q Are these conversations that were had with you or in your hearing and presence?

A They were with me.

Q With you?

A Yes, sir.

Q All right; proceed?

MR. BILLINGSLEY: Your honor, we are going to object again, that proper predicate has not been laid for this witness to testify as to what conversations he had with someone from HEW; it is not shown who was from HEW.

JUDGE RIVES: Said four agents from HEW; he hasn't given the names, but the agents from HEW; objections are overruled.

Q All right, sir; you may answer?

A I don't know, you will have to give me another -- I don't -- I thought I had given all you asked me; you have to state your question again?

Q I was asking you of the conversations that you had with regard to your plan, and did you have any conversations with regard to how you had carried out your plan?

A We simply gave them access to any information they wanted from our minutes; they took our -- during the entire time; they took our forms that we sent out and counted them by schools, checked with the enrollment of the school, and they were pleased, or --

MR. BILLINGSLEY: Your honor -- object, your honor.

JUDGE RIVES: If they were pleased would be a conclusion; sustain objection.

MR. MADDOX: Yes, sir.

Q What did they say about forms?

A Simply that they were all there; everybody had had a chance to make a choice.

MR. BILLINGSLEY: Your honor, we are going to object to this type of testimony, this last --

JUDGE RIVES: Overrule, Counsel.

MR. BILLINGSLEY: -- ask it be stricken.

Q What recommendations, if any, were made to your Board or to you

JUDGE RIVES: Said four agents from HEW; he hasn't given the names, but the agents from HEW; objections are overruled.

Q All right, sir; you may answer?

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MR. BILLINGSLEY: Your honor -- object, your honor.

JUDGE RIVES: If they were pleased would be a conclusion; sustain objection.

MR. MADDOX: Yes, sir.

Q What did they say about forms?

A Simply that they were all there; everybody had had a chance to make a choice.

MR. BILLINGSLEY: Your honor, we are going to object to this type of testimony, this last --

JUDGE RIVES: Overrule, Counsel.

MR. BILLINGSLEY: -- ask it be stricken.

Q What recommendations, if any, were made to your Board or to you

by these agents?

A In the Board session with the agents, they requested that ten per cent of Negro children be sent to white schools, and that one teacher on either basis be put in each school, a white teacher in a Negro school or a Negro teacher in a white school.

Q Were any further recommendations made at that time?

A Not at this -- not at this meeting, sir.

MR. MADDOX: If the court will indulge me; Exhibit number 72.

Q Now, first, Mr. Marshall, to refresh your recollection, I will ask you to examine what purports to be a report made from the office of Health, Education, and Welfare, from their files, indicating a meeting with the Board of Education of Lee County, Alabama, on August 9, 1966; Superintendent Marshall, Chairman, and two Board members were present; MacBain and Conahan represented O. E.; and ask you if you will read what purports to be "Suggestions we made to the Board," and see if that refreshes your recollection of what happened at that time?

A You want me to read the entire thing, sir?

Q Just read it without reading it out loud at the present time.

A Excuse me.

Q (Pointed)

A Right here?

Q Does that refresh your recollection?

A This is the recommendation that was made there.

- Q You say this is the recommendation; would you read that?
- A That is the ten per cent of our -- "We told the Board that three hundred Negro children in white schools would probably be a satisfactory indication that the dual school system was being dismantled in Lee County."
- Q Was any recommendation made with regard to pairing?
- A That came -- that was in a later letter.
- Q Are you referring to a letter dated August 30, 1966, to you from Mr. Richard L. Fairley?
- A Yes, sir.
- Q What recommendations or suggestions were made at that time?
- A You want me to read that recommendation, sir?
- MR. MADDOX: Would it help the court?
- JUDGE RIVES: Yes, sir; if you want it read. I expect that is the quickest way to get it in. It is in evidence, anyhow. It is going to be impossible for us to carry -- you all are going to have ample opportunity to brief and argue this case; it will be impossible for us to carry all that in mind.
- MR. MADDOX: All right, sir.
- Q Go ahead?
- A "One. The pairing of Wacocochee High, Negro, grades one through twelve, with Smith's Station High, white, grades one through twelve. Children in the first six grades at both schools would attend the former Negro school, Wacocochee, and children in grades six through twelve would attend the former white school. Such

an arrangement would allow the upper six grades to make use of the superior facilities that Smith's Station now has at the high school level. Second. The pairing of the two Lochapoka elementary schools. The first two grades from both schools would go to now what is an all white school, and grades four through six would attend what is now the all Negro school. This will allow for, first, full utilization of space which is now empty at the white school, second, the alleviation of crowded conditions at the Negro school, third, at least a single teacher for each grade; now there are three for six grades at the white school."

Q Those are three --

A Those are the ones pairing.

Q Paragraph one -- three, and that is all?

A Paragraph three, "Halting class room construction work on the Lochapoka Negro school, and other Negro schools, unless there are parallel plans to pair or consolidate this school with another school. Otherwise, such construction will tend to perpetuate the dual school -- dual school system."

MR. MADDOX: We offer Exhibit 72.

JUDGE RIVES: Any further questions from Mr. Marshall?

MR. SATTERFIELD: No, sir.

MR. ARONSON: None.

MR. SATTERFIELD: No further questions.

JUDGE RIVES: You can be excused, Mr. Marshall -- do

the plaintiffs have any questions for Mr. Marshall?

MR. ADAMS: Yes, sir.

CROSS EXAMINATION:

BY MR. ADAMS:

Q Mr. Hill, could you tell us the --

A My name is Marshall, sir.

Q Marshall; I am sorry, sir. Mr. Marshall, can you tell us what the percentage of Negroes are in the population of your County?

A Roughly, the percentage is fifty, fifty; there are some thirty or forty more white children than there are Negro children, out of a total number of approximately four thousand, a few over four thousand.

Q And how many Negroes do you have in previously all white schools?

A I have three Negro children in previously all white schools at the present time.

Q And was there any desegregation of the school system in Lee County before the passage of the 1964 Civil Rights Act?

A There was none to my knowledge.

Q How -- how long have you been with the Board of Education?

A Since July, last July one year, I have been Superintendent.

Q Was this when you came to this system?

A I was in the Auburn System previously, coming to the Lee County System as Superintendent.

MR. ADAMS: I don't think I have any other questions.

JUDGE RIVES: Any other questions by the plaintiffs?

Mr. Barrett.

BY MR. BARRETT:

Q Mr. Marshall, during the 1965-66 school year, how many Negro children attended schools with white children in your district?

A None.

Q For the current or just past, for the 1966-67 school year, how many Negro students elected to attend schools with white children?

A In the first answer, I mean the answer to all the requests, six chose to attend white schools.

Q And did three thereafter withdraw?

A Three withdrew with the consent of HEW, by a written letter from the students to HEW telling them the reasons they wanted to withdraw.

Q Did the students write to HEW?

A Yes, sir.

Q Mr. Marshall, your Board signed a form 441-B assurance without attaching any conditions at first, did it not?

A Yes, sir.

Q Later that action was rescinded, and conditions were stated by the Board to its assurance; is that not correct?

A State that question again, please?

Q After first signing an unconditional form 441-B, the Board later rescinded that action and attached conditions to its signing --

A Yes, sir; that is correct.

Q -- is that right?

- A That is correct.
- Q What did you understand to be the change in the Board's obligation by attaching the conditions?
- A The Board changed and attached these conditions when it was so advised by the Governor, the Legislature, and the congressional delegation and the State Superintendent of Education in Alabama.
- Q All right, sir; and what did you understand that to mean in terms of what the Board had to do or didn't have to do with reference to desegregating its schools?
- A We in -- state that question again, please?
- Q In practical terms of desegregating your schools, what did you understand the change in the language of the assurance to mean?
- A Until the anti-guidelines were tested in court. I --
- Q What --
- A I mean -- I mean the guidelines; excuse me; the guidelines were tested in court.
- Q I am afraid I am not making myself clear, Mr. Marshall; what I would like to know is what you understood the difference in what you had to do under those two different forms of assurance; what more would you have had to do under the first assurance than you were required to do under the second, as you understood it?
- A We understood that we would go strictly by the freedom of choice.
- Q What about faculty desegregation?
- A We were so advised that that was illegal by our State Department of Education.

Q So that under the second form of assurance, with the condition, you would not desegregate faculty; is that correct?

A Correct.

Q And to do so would violate the State law; is that correct?

A Correct.

Q And when you are referring -- when -- when you say State law, what State law are you referring to?

A I am referring to the advice that I mentioned, about the Governor, the Legislature, and the entire congressional delegation.

Q Mr. Marshall, were you aware of the enactment of Act 252, which has also been referred to here as House Bill 446, of the Alabama Legislature?

A I am not --

Q Enacted on September 2, if my memory --

JUDGE PITTMAN: Talking about the anti-guidelines.

Q The anti-guidelines Act?

A The anti-guidelines law was passed after we had taken this action, sir.

JUDGE PITTMAN: I don't believe he follows your question.

Q Were you aware of the enactment of that statute?

A It had not been enacted at the time; I was not aware of it; I couldn't --

Q At the time of its enactment, though, did you become aware of it?

A Well --

JUDGE PITTMAN: Did you know about it?

WITNESS: Yes, sir; I knew about it.

Q Now, did you understand that that statute applied to -- particularly to school districts that were receiving federal financial assistance?

A Tell you the truth --

MR. SATTERFIELD: Object to whether he understood any law that happened after the transaction.

JUDGE RIVES: Well, we have been pretty liberal on what they understood by various laws, and technically I expect it is objectionable, but we will overrule it.

A State the question again, please?

Q Was it your understanding that that statute applied particularly to districts that were receiving federal assistance?

A I did not know anything about, when we made this decision, or when my Board of Education made this decision, any anti-guideline bills.

Q I understand that, Mr. Marshall, but I am asking you about your understanding of the anti-guidelines Act at the time it was enacted; did it apply to your district, as you understood it?

A I assume by the Legislature it applied to the entire State of Alabama, and my district is a part of the State of Alabama.

Q And you -- your district at that time was receiving federal financial assistance?

A We were approved and are now; we -- I don't think we had -- at the

time had received any money on the new year, but we are receiving eighty-one per cent of our quota now.

Q What did you understand to be the -- the effect of that statute on your district?

MR. SMITH: We object.

JUDGE RIVES: What is the relevancy of that, Mr.

Barrett?

MR. MADDOX: May it please the court --

JUDGE RIVES: What he understood?

MR. BARRETT: I withdraw the question.

JUDGE RIVES: All right.

Q Mr. Marshall, you testified about the students who withdrew from -- the Negro students who withdrew from the white school --

A Yes, sir.

Q -- and returned to the Negro school; isn't it a fact that the parents of those students wrote to you, and then you sent the letters in to HEW?

A Those three children came to my office and sat down across my desk and talked over the problem that they had, and asked to withdraw, and I informed them that they would have to get permission of HEW, and they wrote a letter and mailed it to HEW, and HEW wrote them back and sent me a copy, and says, "We will leave this up to the discretion of the Superintendent of Education of whether it is best for you to return or not return."

MR. BARRETT: I have no further questions.

JUDGE RIVES: Any further questions?

MR. MADDOX: Yes, sir.

REDIRECT EXAMINATION:

BY MR. MADDOX:

Q Mr. Marshall, do you have the actual 441-B which you submitted?  
Do you have a copy of the 441-B which you actually submitted?

A Sir, I -- I don't believe I do, sir.

JUDGE PITMAN: Said he did not.

Q Did not?

A I don't think I do.

Q Does Mrs. Jagger work in your office?

A Mrs. Jagger.

Q Jagger?

A She is our bookkeeper and paymaster; yes, sir.

Q I show you Defendants' Exhibit number 71-A, and ask you to  
examine what purports to be a copy of a 441-B; was that submitted  
by you to HEW?

A My Board of Education signed 441-B before the deadline on April  
-- on May 6, and submitted it to HEW.

Q All right, sir; was this writing here, "Received, OE/EEOP, see  
amendment added by -- on by letter dated June 10, '66,  
amendment is unacceptable," was that put on there by you?

A No, sir; I did not -- I didn't know anything about that.

JUDGE RIVES: Is that all?

MR. MADDOX: That's all.

JUDGE RIVES: Any further questions by anyone of this

witness? If not, Mr. Marshall, you may come down; you may be excused.

WITNESS: Am I excused, sir?

JUDGE RIVES: Yes, you are excused.

WITNESS: Thank you, sir.

JUDGE RIVES: Call your next witness.

MR. SMITH: If the court please, as Defendants' Exhibit 73 we offer an official document from the files of U. S. Office of Education, Department of Health, Education, and Welfare, which is relevant in part to show that in the State of Alabama, according to their records, ninety-two local school systems have executed freedom of choice plans after adoption by their various Boards of Education, that fourteen local school systems in Alabama are under orders of United States District Courts; and in examining the Exhibits which we have offered as 71-B and A, we find that three school systems, in addition to those listed in answers to interrogatories and as shown in this Exhibit, have executed freedom of choice plans, and these counties being the County of Hale, the County of Perry, and the County of Greene, which would make a total of ninety-five school systems which have executed free choice plans. We offer Defendants' Exhibit 73.

MR. BARRETT: If the court please, comments of counsel, I believe, went beyond what appears on the document, itself, and I would like to inquire if counsel meant to suggest that these plans had been accepted?

MR. SMITH: I did not; I certainly didn't mean to say, if I did say to the court, or implied or inferred, that they had. In regard to Alabama, I wanted to state to the court that ninety-two systems, according to the Exhibit, had executed freedom of choice plans; I did not mean to infer that any one or all had been accepted or approved by the U. S. Office.

JUDGE RIVES: We understand.

JUDGE PITTMAN: Mr. Smith, for the court's information -- that makes a total of a hundred and nine school systems; does that include all the school systems?

MR. SMITH: There -- in my best judgment, there are a hundred and seventeen.

JUDGE PITTMAN: I thought that was the testimony; one hundred -- that leaves eight --

MR. SMITH: Yes, sir; that leaves eight that are unaccounted for. In the preparation of the Exhibits which we offered as 71-A and B -- let me make this statement to the court; that as one of the counsel of record in these cases, I requested that the local Superintendents of Education furnish to us their records pertaining to communications between their office and the U. S. Office of Education. Most of these Superintendents responded; some did not respond. And one thing, if I may add, in regard to our position as counsel, and as I understand Judge Johnson's explanation of the court's ruling, I do not have the power, and certainly this court would understand, to compel each and every local

Board of Education to produce any record that they may have in their office. Everything that I have certainly will be available to opposing counsel; but, as I understood the court's ruling, it is that if demand is made upon me or one of the other counsel of record for any record -- and I am not trying to -- to exaggerate -- but as I understood it, any record in the office of any Superintendent or local Board, that I was to furnish it.

JUDGE JOHNSON: Whose records are included in 71-A and B that you did get from those Superintendents.

MR. SMITH: That is what I wanted to clear up; yes, sir.

JUDGE JOHNSON: All right; then you must secure for the counsel making the request the additional records from those Superintendents whose records are contained in 71-A and 71-B.

MR. SMITH: Yes, sir.

JUDGE RIVES: Anything further about Defendants' Exhibit 73?

MR. GRAY: I want to inquire about that; there is no date on this document; is this the '66-67 or '66 -- is this '65-66?

MR. SATTERFIELD: May it please the court, this document was a supplement to the deposition of Mr. Howe; it was furnished to us by letter from Mr. St. John Barrett, who represented the Department at the taking of the deposition, which letter is dated November 7, 1966. And I might ask if Mr. Barrett -- is this the present 1966 figures, Mr. Barrett, so the record can show?

MR. BARRETT: I would like to refer to my letter, I think. If the court please, in response to the inquiry of counsel, it is my understanding that this tabulation which was furnished me by the Department of Health, Education, and Welfare, sets forth the number of voluntary desegregation plans in the aggregate over the -- over both years, and whether or not accepted or rejected by the Commissioner of Education, in each state; similarly, the number of geographic zone plans, number of court orders, by states.

JUDGE RIVES: It will be admitted, Exhibit 73. Anything further, gentlemen?

MR. SATTERFIELD: May it please the court, we introduce at this time, already a part of the file, but not of -- not heretofore offered in evidence, the interrogatories which were propounded by the defendant to the United States of America, and the original and amended answers thereto, as interrogatories and answers by a party to this suit.

JUDGE RIVES: Very well; they are so admitted.

MR. SATTERFIELD: We also introduce the interrogatories propounded to the N. double A.C.P. and the original answers and amended answers thereto, the same being answers of a party to this suit.

JUDGE RIVES: So admitted.

MR. SATTERFIELD: Would the court indulge us just one moment, if we may confer?

JUDGE RIVES: (Nodded to indicate affirmative reply)

MR. SATTERFIELD: May it please the court, we have certain extracts from the Congressional Record we could make available to the court in connection with our briefs or present them at this time and file them for the convenience of the court; may I inquire if the court would prefer them to be put in or should we simply --

JUDGE RIVES: You can attach them to your briefs; the court will take, I think, judicial notice of them, anyhow; you can refer to any you so see fit in your briefs.

MR. SATTERFIELD: Thank you. Just one moment.

JUDGE GROOMS: Do any of these concern the history of this employment practice, legislative history of the employment practice?

MR. SATTERFIELD: Yes, sir; they will; yes, sir. Just one moment. Give me just one moment, will you, please. May it please the court, we have and offer in evidence -- and I will not delay the court, I will pass it to the court, and my other counsel has observed it -- certified copies of the complaint, the amended complaint, the answer to the amended complaint, pretrial conference, several proceedings in a suit filed before Judge Grooms in the District Court at Birmingham; at this time we were not able to find a copy of the answer to the original complaint, but we do have one to the amended complaint; these have been certified to be correct by the Clerk of the Court, of that court; they are marked, and we introduce them as Exhibits, Defendants' Exhibit 69, the

purpose of this being to show that this declaratory judgment proceeding asking that there be a judicial declaration of the validity or invalidity of the guidelines was filed on March 11, 1965, applicable to the 1965 guidelines, and was amended in July 5, 1966, applicable to the 1966 guidelines, and to state for the record that I was employed by Governor George C. Wallace to represent the State of Alabama and did so, am a counsel in that case, and have been from the first. This case has not been determined, there being now pending four consolidated cases before the Fifth Circuit in which questions have been asked and concerning guidelines, and this -- a decree has not been finally obtained or entered in this because of those.

JUDGE RIVES: You don't mean the decree hasn't been obtained in the District Court, but you mean --

MR. SATTERFIELD: No, no; the decree has not been obtained in this cause in the District Court; it is pending in that court.

JUDGE RIVES: It is awaiting a decision of the Fifth Circuit on certain cases that are pending on appeal?

MR. SATTERFIELD: That is my understanding; we, of course, did not request the delay, but we felt in deference to the court it was entirely appropriate the matter should not be determined until the Fifth Circuit had reached a decision in the pending cases. The delay was not in our -- .

JUDGE RIVES: All right.

MR. ADAMS: Judge, I am going to object to the admission of that; I don't see what the relevance of a complaint filed in another court has in these proceedings.

JUDGE RIVES: Well, it simply shows that they are seeking a declaration of the guidelines, concerning the guidelines; for whatever it is worth, we will admit it; objections will be overruled. Anything further?

MR. SATTERFIELD: May it please the court, may I state further it is my understanding that this H. -- the resolution that has been introduced here from the Legislature referred to the pendency of this suit in an attempt to have a judicial determination of the validity of the guidelines.

JUDGE RIVES: All right; anything further, gentlemen?

MR. MADDOX: If it please the court, I have conferred with Mr. Barrett, and he has agreed, subject to the court's acceptance, to furnish us with a list of the school systems in which a complaint has been filed with the Justice Department under Title Four, and notice has been given to the school systems that persons had complained of discrimination on the ground of race, color, creed, or national origin, and no suit had been filed on such complaint; and when that is available, we would like to offer it as evidence in this case.

MR. BARRETT: We will furnish counsel with a list of those districts to which we -- I say the Department of Justice has sent a letter advising them of the receipt of a complaint by the

Department under Title Four and requesting that they correct the practices complained of.

JUDGE RIVES: That may be filed as an additional Exhibit in this case. Anything further, gentlemen?

MR. SATTERFIELD: May it please the court, we rest.

JUDGE RIVES: Mr. Ray?

MR. RAY: If it please the court, sir, the United States has introduced a number of depositions; two of those depositions involve defendants whom I represent, and I would like, if it be possible, that the court -- that I either reintroduce them directly or call the court's attention to them, being the deposition of Dr. Woodrow Elliott, from Tuscaloosa County, which appears upon the list of depositions as being the second from the bottom, in the county system deposition list, and the deposition of Dr. Harvey Nelson, which is the last deposition in the list for city systems that was furnished by the Justice Department.

JUDGE RIVES: And you wish to reintroduce those on behalf of which party?

MR. RAY: On behalf of the Tuscaloosa City Board of Education, the Tuscaloosa County Board of Education, and the two named defendants, Dr. Elliott and Dr. Nelson; and that introduction would be for case number 2457-N.

JUDGE RIVES: They may be so introduced.

MR. RAY: I then rest.

JUDGE RIVES: Any further evidence from the plaintiffs?

MR. GRAY: No, sir; your honor.

MR. ADAMS: Plaintiffs in the N. double A.C.P. versus Wallace case also rest, your honor.

JUDGE RIVES: All right; any further from the Government?

MR. BARRETT: The Government has no further evidence, your honor. I do have corrections to make on five of the pages of our Exhibit list. If it is agreeable with the court, we will prepare a corrected list that combines our supplemental list with the original list and furnish it to the court and to counsel.

JUDGE RIVES: Very well, gentlemen. Gentlemen, I will ask counsel to pay attention to the request of the court, which the court thinks may be of aid in disposition of this case. The court would request that each party file a summary of any depositions that have been introduced by that party within twenty days from this date, furnishing the opposite party, parties or party, copy of that deposition and that any other -- copy of their summary, and that any other party may file objections, criticisms, or supplements to that summary within ten days after the receipt of the copy of that summary. That is the first request. Now, the testimony has been so voluminous that it would aid the court if the parties will follow that same procedure as to the testimony of witnesses whom they have introduced, furnishing -- and the testimony has been heard orally, furnishing that summary of their testimony, with that summary to be subject to criticism, objections, or supplement by the

opposing parties within ten days after the receipt of the summary. Now, this case, we understand and appreciate, is a case of considerable importance, and we don't think that oral argument at this time would be helpful, but we would ask that the plaintiffs file either separate briefs for each plaintiff or joint brief for all the plaintiffs, as they may elect, within twenty days from this date, furnishing opposing counsel copies, and that these briefs be separated as to each case. You understand there are two cases, and the two cases are simply being heard together rather than being consolidated, so that the briefs -- there should be separate briefs filed in each case, by the plaintiffs, within twenty days from this date. And that the defendants may file their briefs within twenty days after the receipt of the plaintiffs' briefs. The plaintiffs may then file a reply brief within ten days after the receipt of the defendants' brief. As a maximum, that will consume about fifty days. After those briefs have all been filed, the court does desire to reconvene and hear full oral argument on this case, and we will set the date of that oral argument as Friday, February 3, at nine thirty, a.m. I think with that schedule, gentlemen --

(Court conferred)

MR. MADISON: Your honor, may I --

JUDGE RIVES: Yes, Mr. Madison?

MR. MADISON: Originally, the Attorney General's office represented the Macon County Board of Education and the individual members of that Board. That case was pretty well thrashed

out, and now the case has broadened into many different issues in which the Macon County Board is not concerned with. I don't know of anything that has been said during this trial that affects the Macon County Board one way or the other; yet we are included in the designation, defendants, or parties defendant.

JUDGE RIVES: You want to be relieved of the duty of filing a brief?

MR. MADISON: Of filing briefs; yes, sir.

JUDGE RIVES: Unless you -- unless you think you could file something that would be helpful to the court, we will certainly relieve you.

MR. MADISON: Thank you, sir.

MR. SATTERFIELD: May it please the court, we had prepared a very brief trial summary of the deposition of Mr. Howe, and I wondered if we might pass it to the court; we will later prepare a more complete and full summary for the convenience of the court.

MR. ADAMS: I object to that, your honor.

JUDGE RIVES: I don't believe, Mr. Satterfield -- I don't think we would take up one separately.

MR. SATTERFIELD: I didn't mean to present it; I meant to file it, if I may, with the Clerk.

JUDGE RIVES: We would rather have all the summaries together, and you may include this with the other summaries. It will be difficult for us to take one separate.

MR. ARONSON: Your honor, the one problem we envision is preparing our brief without the transcripts and summaries of the depositions; I wondered if at least the twenty days for filing briefs for plaintiffs might be from the date that we receive the transcript; we will order one today.

JUDGE RIVES: No, sir; I think that you all ought to know about what has been testified here; we have all been sitting here hearing it, and you have got pretty complete notes of it. It may be a good while before the court reporter can transcribe all this testimony, and it is going to be necessary to get a decree entered in this case early in the spring if it is going to make any radical changes in the operation of the school systems for the coming year. I think we would have to hold you to the schedule we set.

MR. ARONSON: Thank you, your honor.

MR. MADISON: Your honor, I would like to also call the court's attention to this, that in 1964 the City Board of Education of Tuscaloosa requested the services of the Attorney General's office, and Attorney General's office said they would assist the City Board of Education, and we appear for the City Board of Education along with Mr. Ray in the case.

JUDGE RIVES: All right, sir. Well, now, of course, if any counsel in any of these cases thinks their brief will not be helpful to the court, we are not making it mandatory that they file a brief; we only want something counsel thinks will be of help to us.

(Court conferred)

JUDGE RIVES: Any counsel wish to ask any further questions about the court's wishes and desires on briefs and the setting of oral argument? I don't think we fixed any time limit on the oral arguments, but we will -- we will if necessary fix a time limit; we don't expect them to consume more than a day, I will say that; if necessary, why, we will fix a time limit at that time. If not, I presume there is nothing further to be --

MR. GRAY: Your honor, may I --

JUDGE RIVES: Mr. Gray?

MR. GRAY: -- inquire, and I recognize the court has already ruled on this; we are not asking the court to give us time until we get the transcript back, but plaintiffs are in a position where we must summarize depositions, summarize the witnesses, and prepare our briefs, all in twenty days, and we would like a little more time to do one of the three.

JUDGE RIVES: That may -- you may have a valid point on that. Would twenty-five days be enough?

MR. GRAY: That would help us; if we could get thirty, we could do it all with no problem. I know we go first, and it is just a little hard for us to do all these.

JUDGE RIVES: Let's see if thirty would run you within the -- up to February 3; today is the 2nd of December, twenty-nine more days in December, and thirty-one in January; yes, that is sixty days. We could give you thirty days; it will run us right up to the

deadline, almost, to give you that much.

MR. GRAY: Thank you, your honor.

JUDGE RIVES: We will give the plaintiffs thirty days instead of twenty, because both sides are having to prepare these summaries within the twenty-day period.

MR. SATTERFIELD: May it please the court, to be clear, is the thirty-day period -- what does that apply to, just that we might be sure, what does the thirty-day period apply to?

JUDGE RIVES: The thirty-day period applies simply to the briefs; the thirty-day period does not apply to the summaries of the depositions. You all understand the -- you are to file your summaries of the depositions and testimony within twenty days --

MR. GRAY: Yes, sir.

JUDGE RIVES: -- your briefs within thirty days.

MR. GRAY: Yes, sir.

JUDGE RIVES: All right, gentlemen, if there is no further questions, then the court will stand adjourned subject to the further orders of the court.

MR. SATTERFIELD: On behalf of all counsel, may we thank the court for the courtesy during the trial.

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

I, Glynn Henderson, Official Court Reporter of the United States  
District Court for the Middle District of Alabama, do hereby

certify that the foregoing 87 pages contain a true and correct transcript of proceedings had before the said Court held in the City of Montgomery, Alabama, December 2, 1966, in the matters therein stated.

In testimony whereof I hereunto set my hand on this the 15th day of December, 1966.

*Glynn Henderson*  
Official Court Reporter.