

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

UNITED STATES OF AMERICA, by  
NICHOLAS deB. KATZENBACH,  
Attorney General,

Plaintiff,

vs.

WILCOX COUNTY BOARD OF EDUCATION;  
J. O. DEVAN; R. E. LAMBERT, JR.;  
EDWARD B. HALE; L. Y. SADLER, JR.;  
HARRY A. MASON, members of the  
Wilcox County Board of Education;  
GUY S. KELLY, Superintendent of  
Education for Wilcox County;  
A. R. MEADOWS, State Superintendent  
of Education and THE STATE BOARD OF  
EDUCATION OF ALABAMA,

Defendants,

WILLIAM P. THOMPSON, et al.,  
ALBERT JAMES GORDON, et al.,  
PATSI PRimm, et al.,

Intervenor-Plaintiffs.

CIVIL ACTION  
NO. 3934-65

PLAINTIFF'S  
TRIAL BRIEF

VERNOL R. JANSEN  
United States Attorney

JOHN DOAR  
Assistant Attorney General

FRANK M. DUNBAUGH  
ALEXANDER C. ROSS  
CHARLES QUAINANCE  
Attorneys,  
Department of Justice

## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| I. NATURE OF THE ACTION  | 2           |
| II. THE PARTIES  | 4           |
| III. THE DEFENDANTS MAINTAIN A DUAL<br>SCHOOL SYSTEM BASED ON RACE   | 5           |
| A. <u>Schools in Wilcox County Are Either<br/>        Exclusively White or Exclusively Negro</u>   | 5           |
| B. <u>The Defendants Actively Maintain the<br/>        Racial Identity of the Wilcox County<br/>        Schools</u>  | 6           |
| IV. THE DEFENDANTS' SCHOOLS FOR NEGROES<br>ARE INFERIOR TO THEIR SCHOOLS FOR<br>WHITE STUDENTS   | 12          |
| A. <u>The Defendants Have Invested Less<br/>        Than Half as Much Per Pupil in<br/>        The Education of Negro Children<br/>        As They Have in the Education of<br/>        White Children</u> | 12          |
| B. <u>Educational Facilities and Opportunities<br/>        Available to Negro Children Are<br/>        Inferior to Those Available to White<br/>        Children</u>                                       | 14          |
| 1. Inferior School Buildings<br>for Negroes  | 14          |
| 2. Teachers - Fewer, With<br>Less Training   | 18          |
| 3. Fewer Books   | 22          |
| a. Library books   | 22          |
| b. Textbooks   | 23          |
| 4. Poorer Curriculum   | 24          |
| 5. Lower Accreditation   | 26          |
| 6. Older, Crowded Buses  | 27          |

|   | <u>Page</u> |
|---|-------------|
| C. <u>The Defendants Continue to Discriminate Against Negroes</u>   | 29          |
| 1. Defendant Kelly Has Acted to Keep the Wilcox County School System Segregated                             | 29          |
| 2. The Defendants Continue to Spend Less Per Negro Student Than Per White Student                           | 30          |
| 3. The Defendants Provided Fewer Textbooks in 1965-66 to Each Negro Child Than to Each White Child          | 31          |
| 4. The Defendants Continue to Provide Proportionally Fewer Teachers, with Less Training, for Negro Students | 31          |
| 5. The Defendants Discriminate Against Negro Employees  | 32          |
| V. RELIEF   | 33          |
| A. <u>Plan of Desegregation</u>   | 34          |
| 1. Students   | 34          |
| a. Speed of desegregation   | 37          |
| b. Detailed choice program  | 39          |
| c. Limited desegregation in grades not covered by the first year's plan of desegregation                    | 39          |
| d. Services, facilities, activities, and programs   | 40          |
| 2. Faculty and Staff  | 41          |
| a. Employment   | 41          |
| b. Dismissals   | 41          |
| B. <u>Equalization of Schools</u>   | 42          |
| 1. Inferior Schools   | 42          |
| 2. Unequal Facilities and Opportunities   | 53          |
| 3. Remedial Programs  | 54          |
| C. <u>Reports to the Court</u>  | 55          |

|                     |             |
|---------------------|-------------|
|                     | <u>Page</u> |
| VI. PROPOSED DECREE | 56          |
| VII. CONCLUSION     | 71          |

## APPENDICES

### APPENDIX A

|   |     |
|---|-----|
| Introduction and Index to Witness Summaries | A-1 |
| Selected Witness Summaries                  | A-3 |

### APPENDIX B

|   |      |
|---|------|
| Introduction to Description of Exhibits     | B-1  |
| A. Description of Plaintiff's Exhibits      | B-1  |
| B. Plaintiff-Intervenor Thompson's Exhibits | B-12 |
| C. Plaintiff-Intervenor Gordon's Exhibits   | B-12 |
| D. Plaintiff-Intervenor Primm's Exhibits    | B-12 |
| E. Defendant's Exhibits                     | B-13 |

### APPENDIX C

|   |      |
|---|------|
| Introduction to Tables  | C-1  |
| Table I Enrollment By Grade, By Race,<br>By School October 31, 1965                           | C-10 |
| Table II Number of Pupils Per Teacher<br>By Race, By School                                   | C-12 |
| Table III Books Per Pupil By Race   |      |
| A. Number of Library Books Per Pupil<br>By Race, By School, By Grade                          | C-13 |
| B. Number of Textbooks Per Pupil<br>June 1966 By Race, By Grade                               | C-14 |
| C. Number of Science Texts and<br>Readers Per Pupil By Race, For<br>Selected Grades June 1966 | C-15 |

|  | <u>Page</u> |
|--|-------------|
| Table IV Per Pupil Expenditures<br>By Race 1955-1964                                       | C-16        |
| Table V Per Pupil Expenditures<br>1965-66 By Race and By<br>School                         |             |
| A. Summary of Expenditures<br>Listed By Race   | C-26        |
| B. Summary of Expenditures<br>Not Listed By Race   | C-26        |
| C. Per Pupil Expenditures<br>Listed By School  | C-27        |
| Table VI Comparison of Physical Facilities,<br>By Race, By School                          | C-28        |
| Table VII Insurance Value of Buildings and<br>Contents Per Pupil, By Race and<br>By School | C-29        |
| Table VIII Transportation  |             |
| A. White Buses Transferred to Negro Schools  | C-30        |
| B. Summary of Transportation Reports, 1964-65  | C-30        |

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

UNITED STATES OF AMERICA, by  
NICHOLAS deB. KATZENBACH,  
Attorney General,

Plaintiff,

vs.

WILCOX COUNTY BOARD OF EDUCATION;  
J. O. DEVAN; R. E. LAMBERT, JR.;  
EDWARD B. HALE; L. Y. SADLER, JR.;  
HARRY A. MASON, members of the  
Wilcox County Board of Education;  
GUY S. KELLY, Superintendent of  
Education for Wilcox County;  
A. R. MEADOWS, State Superintendent  
of Education and THE STATE BOARD  
OF EDUCATION OF ALABAMA,

Defendants,

WILLIAM P. THOMPSON, et al.,  
ALBERT JAMES GORDON, et al.,  
PATSY PRimm, et al.,

Intervenor Plaintiffs.

CIVIL ACTION  
NO. 3934-65

PLAINTIFF'S  
TRIAL BRIEF

# I

## NATURE OF THE ACTION

The United States commenced this action, pursuant to Section 407(a) of the Civil Rights Act of 1964, 1/ on November 22, 1965. 1a/ The complaint alleged that the defendants operate segregated schools and that they provide to Negro students educational facilities and opportunities inferior to those they provide to white students. In its prayer for relief, the plaintiff sought an order enjoining the defendants from operating a dual school system based on race and from providing an inferior education to Negro students.

On April 14, 1966, the government filed a notice of motion and motion for a preliminary injunction, seeking an order requiring the defendants to submit a plan for desegregation.

---

1/ 42 U.S.C. §2000c-6.

1a/ The defendants claim this Court lacks jurisdiction of the action because the United States failed to notify them of the receipt of a complaint, as required by Section 407(a) of the Civil Rights Act of 1964. In three paragraphs of their answer, I, II, and XII defendants urge this defense, claiming that "in fact these Defendants have no notice or knowledge of any complaint having been filed with the Attorney General of the United States." Pl. Ex. 15 is a letter defendant Kelly testified he received from Assistant Attorney General John Doar, notifying the Board of Education of complaints the Attorney General had received from Negro parents in Wilcox County. See also Pl. Int. Primm Ex. 6, p. 26, in which the Board of Education's minutes reflect that Kelly read the letter to the Board on August 31, 1965.

Three sets of plaintiff-intervenors also filed complaints in this action. The United Presbyterian Church sought relief identical to that which the United States requested, and four Negro parents sought similar relief. Four Negro former teachers sought reinstatement as teachers, as well as desegregation of faculties.

The Court heard the case on the merits and on the motion for preliminary injunction for three days, June 23, 24, and 27, 1966. Fifteen witnesses testified; the parties introduced 64 exhibits. At the hearing's conclusion, the Court granted the parties until July 25, 1966, to file briefs or findings of fact and conclusions of law. The Court also invited the parties to file proposed plans for the desegregation of the Wilcox County public schools.



## II

### THE PARTIES

The Attorney General, Nicholas deB. Katzenbach, filed the complaint on behalf of the United States of America.

The defendants are the Wilcox County Board of Education, its members, the superintendents of education for Wilcox County and for the State of Alabama, and the State Board of Education. On June 23, 1966, the Court granted the motions of the State Board and the State Superintendent to be dismissed as parties, subject to the condition that they be reinstated as parties if they become necessary for purposes of relief.

There are three sets of plaintiff-intervenors. William P. Thompson and other officers of the United Presbyterian Church have an interest in the operation of three of the Negro schools in Wilcox County. Patsie Primm and three other Negroes intervened on behalf of their school-aged children. Albert Gordon and three other Negro former teachers had been fired by the Wilcox County Board of Education.

### III

#### THE DEFENDANTS MAINTAIN A DUAL SCHOOL SYSTEM BASED ON RACE

The evidence shows that the defendants maintain two sets of schools, one for white children and one for Negro children. Students, teachers, transportation, and activities are either all-Negro or all-white. The defendants directly and actively maintain the racial identity of the schools.

A. Schools in Wilcox County Are Either Exclusively White or Exclusively Negro

There are no Negro and white students attending school together in Wilcox County, and I do not know of any who will attend class together next year . . . . Athletics in the county are run on a segregated basis. There are no activities for which the school is responsible where whites and Negroes participate together.<sup>2/</sup>

The defendants maintain two sets of often parallel bus routes, one serving Negro schools and one serving white schools.<sup>3/</sup> The defendants commonly refer to the schools they operate as "white" schools or "Negro" schools.<sup>4/</sup>

---

<sup>2/</sup>Testimony of Guy Kelly. See also the testimony of Jean Mason. Appendix A to Plaintiff's Trial Brief consists of summaries of the testimony of certain witnesses. Hereinafter, all references to testimony will be to those summaries unless otherwise noted.

<sup>3/</sup>Pl. Exs. 26 and 27. See Part IV B. 6, *infra*, for a discussion of the unequal buses defendants provide Negro children.

<sup>4/</sup>For example, Mr. Kelly testified that he had written "White Schools" and "Negro Schools" on the attendance summaries in Pl. Ex. 11.

Faculties in Wilcox County are also segregated.

Superintendent Kelly testified:

There are no white persons working in Negro schools on a permanent basis. We have consultants that go into these schools and work. There are Negro teachers in Negro schools and white teachers in white schools. I believe there are some Negro janitors in white schools . . . .<sup>5/</sup>

B. The Defendants Actively Maintain the Racial Identity of the Wilcox County Schools

The evidence refutes the defendants' allegation that students in Wilcox County attend school under a "Freedom of Choice" doctrine.<sup>6/</sup> Instead, the defendants act directly to segregate students, as well as teachers.

Regulations of the defendants <sup>7/</sup> provide:

2. No child shall be entitled to be enrolled or entered in a public school in Wilcox County, Alabama, until he has been assigned thereto by the Superintendent or his authorized representative. All school assignments shall continue without change until or unless transfers are directed or approved by the Superintendent or his duly authorized representative.

---

<sup>5/</sup> The defendants prepare two teacher directories, one for the Negro teachers and one for white teachers. Pl. Ex. 12.

<sup>6/</sup> Answer of the defendants, paragraph IX. Even if the assertion were accurate, the United States would be entitled to relief. A school system is no less segregated when the total separation of the races that the defendants herein admit is the result of custom and practice than when it is the result of direct orders of the school authorities. Armstrong v. Board of Education of the City of Birmingham, 220 F. Supp. 217, 219 (N.D. Ala. 1963).

<sup>7/</sup> Pl. Ex. 10.

Between May and September of 1965, the defendants received applications filed on behalf of ten white children from Dallas County and ten Negro children from Wilcox County to attend white schools in Wilcox County.<sup>7a/</sup> The defendants granted the transfer applications of the white children and denied the Negroes' applications.<sup>7b/</sup>

When the parents of five Negro children made for each an "Application for enrollment at Camden High School", defendant Kelly refused even to consider those applications because, in his words, there is "no such school."<sup>8/</sup> It is true that the white school in Camden is formally called Wilcox County High School, but the builders inscribed the words "Camden School" above its entrance, and the records of the defendants contain repeated references to "Camden School" or "Camden High School."<sup>9/</sup>

---

<sup>7a/</sup> Pl. Ex. 13 contains copies of the applications; see also, Testimony of Guy Kelly.

<sup>7b/</sup> Testimony of Guy Kelly and Testimony of Freddie Charley.

<sup>8/</sup> Testimony of Guy Kelly. The applications, in Pl. Ex. 13, are those of Samuel Charley, Alberta Charley, Addie Smiley, Bobbie Knight, and Mack Arthur Knight.

<sup>9/</sup> Mr. Kelly testified he considered three more applications of Negroes invalid because they appeared to be requests for transfer from Coy Public School to Coy Public School. Two of the three applications of this type, however, show on their face, that the applicants wish to attend a "mixed" school. Mr. Kelly made no effort to determine what the applicants actually desired. Testimony of Guy Kelly. The applications, in Pl. Ex. 13, of Larry Nicholson and Jessie Brooks show the desire to attend a "mixed" school.

Page 1 of Pl. Ex. 7 shows the words "Camden School" above the entrance to Wilcox County High School. See Pl. Ex. 16 (insurance schedule) and Pl. Ex. 1C (transportation reports) for examples of defendants' records that refer to Camden School or Camden High School.

By way of contrast, when the parents of four white children from Dallas County made for each an "Application for enrollment at Pineapple School," defendant Kelly granted the applications and assigned the children to the white school in Pine Apple, which is formally called Moore Academy. 10/

There were two Negro applications for assignment to white schools that Mr. Kelly considered valid, but still rejected. He "temporarily assigned" one to the Negro school from which he requested transfer, and the other, a first grader, to another Negro school. 11/

Mr. Kelly has testified that he is not receiving applications from Negroes to transfer to white schools for 1966-67.

In the spring of 1966 there were Negro students who came to my office and requested transfer to white schools. I told them we were not accepting applications for the coming year at that time. I did not tell them when we would be accepting applications. We haven't set any date for receiving applications.

---

10/ Testimony of Guy Kelly. The four applications, in Pl. Ex. 13, are for William Casey, Charles Casey, David Casey, and Theodore McCracken.

11/ Pl. Int. Thompson Ex. 1, letters from Kelly assigning the children of Frank Smith to Negro schools, dated August 31, 1965. The applications for Smith's children appear in Pl. Ex. 13.

Neither has Mr. Kelly made the first move toward bringing about faculty desegregation.

No, I have never held joint meetings of Negro and white teachers. . . . I have never inquired of any white teacher if he would be willing to teach in a school with a predominance of Negro students. I have never inquired whether any Negro teacher would be willing to teach in a school with a predominance of white students . . . . I believe we have filled six of our vacancies [for 1966-1967]. None of the teachers were of a different race than the school to which they have been assigned. I have not tried to determine whether persons who applied would be willing to teach in a school of a different race.<sup>12/</sup>

Not only have the defendants acted to maintain segregated schools, but they have sent a letter to the parents Negro children in Wilcox County which attempts to minimize the effect of any order to desegregate the school system which this Court might enter. The letter, Pl. Ex. 9, appears on the following page.

---

<sup>12/</sup> Testimony of Guy Kelly.



OFFICE OF  
SUPERINTENDENT OF EDUCATION  
WILCOX COUNTY

Camden, Alabama  
March 24, 1966

TO: Parents and Guardians

FROM: Wilcox County Board of Education

The Justice Department has filed suit against the Wilcox County Board of Education in Federal Court, the purpose of which is to prohibit the Board from operating a dual school system in the County as it has done in the past.

In an effort to prevent the destruction of the school system of Wilcox County as we know it and realizing what is best, we are asking that you promote and encourage your children to continue in the schools in which they are now attending. In our honest opinion, integration or desegregation is not good for education; it is against sound educational principles and works to the disadvantage and to the detriment of both races. It is our further opinion that in all this controversy the person who has invariably suffered is the child.

The Wilcox County Board of Education intends to do all in its power to continue to work towards complete equality of educational opportunity for every child in the County regardless of race, color or creed.

The people of this County will, in all probability, have to continue to live here in this County together after the influences from without have ceased. It is best for all if they can do so in a mutual spirit of good will. We all need the good will and support of our fellow citizens.

Thank you for your understanding and assistance in all our mutual school problems.

Pl. Ex. 9

Letter sent to all Negro Parents

Even though the defendants purport to allow "free choice" they have refused hundreds of thousands of dollars in federal financial assistance in order to avoid the free choice requirements of the Department of Health, Education and Welfare under Title VI of the Civil Rights Act of 1964.<sup>13/</sup>

---

<sup>13/</sup> Testimony of Guy Kelly. Title I of the Elementary and Secondary Education Act of 1965 entitled Wilcox County to approximately \$375,000 for 1965-1966. Other, substantial amounts of federal aid money were available for teacher education, adult education, and literacy programs under the Economic Opportunities Act, as well as for such other programs as library services, vocational education, and supplementary education. In 1965-1966, the maximum amount of Title I money available to Wilcox County was 30 percent of the school district's budget. 20 U.S.C. § 241c(a)(3). The 1965-1966 budget in Wilcox County was \$1,251,984. Pl. Int. Primm Ex. 6, p. 33. Thirty percent of that figure would be \$375,595. See, for the Economic Opportunities Act, 42 U.S.C. §§ 2806a, 2805, and 2803. See also Pl. Int. Primm Ex. 4, which contains a "Schoolman's Guide to Federal Aid." For the other programs listed, see Library Services and Construction Act, 20 U.S.C. §§ 351-358, and Title II of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 11-34; and Title III, Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 841-848.



#### IV

##### THE DEFENDANTS' SCHOOLS FOR NEGROES ARE INFERIOR TO THEIR SCHOOLS FOR WHITE STUDENTS

A. The Defendants Have Invested Less Than Half as  
Much Per Pupil in the Education of Negro Children  
As They Have in the Education of White Children

In virtually every field of school finance, the defendants spend less per pupil for Negroes than for white students. This is true both of capital outlays, for buildings and equipment, and of recurrent expenditures, as for teachers' salaries, plant maintenance, and transportation.

The total value per pupil of the Negro schools in Wilcox County is less than one third the per pupil value of the white schools, the figure being \$767 for white students and \$222 for Negroes.<sup>14/</sup>

In the school year 1955-1956, the defendants spent \$286 per white student and \$117 per Negro student.<sup>15/</sup> In 1963-1964, the last year during which defendants kept financial records by race, they spent

---

<sup>14/</sup> See Appendix C, Table VII, Insurance Value of Buildings and Contents, Per Pupil, By Race and By School. The figure is slightly low for the Negro schools, as at three of them the Presbyterian Church owns wood frame buildings the defendants do not insure. Omitting the insurance valuations and enrollments for these schools from the calculations would raise the per pupil value of Negro schools to \$239.

<sup>15/</sup> See Appendix C, Table IV, Per Pupil Expenditures, By Race, 1955-1964. A few minor types of expenditures (e.g., superintendent's salary) were not recorded by race, so the figures are a few dollars per pupil low, equally for both races. See the Introduction to Appendix C.

\$351 per white pupil and \$196 per Negro pupil. In each intervening year, the per pupil expenditure for white students was at least 120 dollars greater than for Negro students. A white child had more than twice as much spent on him as a Negro child in five of the nine years: 1955-56, 1956-57, 1957-58, 1960-61, and 1961-62. The per pupil expenditure for Negroes never reached \$200 in a year; for white students it never fell below \$255. The average amount defendants spent per pupil per year, from 1955 through 1964, was \$286 for white children and \$141 for Negro children.

That disproportion - over twice as much spent per white pupil as per Negro pupil - only begins to tell the story. Exclusive of expenditures for instruction, for which the state is largely responsible, the average amount the defendants spent per white child per year was more than five times greater than the average expenditure per Negro child - \$94 for white students and \$17 for Negroes.<sup>16</sup>/

---

<sup>16</sup> / Table IV.

Table IV, in Appendix C, contains a per pupil tabulation of the expenditures the defendants recorded by race, as well as per pupil averages for the nine years the records cover. Suffice it here to note five of the per pupil averages:

| <u>TYPE OF EXPENDITURE</u>             | <u>WHITE</u> | <u>NEGRO</u> |
|--|--------------|--------------|
| total instruction                      | \$192        | \$123        |
| maintenance <sup>17/</sup>             | 18.07        | .56          |
| transportation                         | 40           | 10           |
| new buildings and sites <sup>18/</sup> | 18           | 3            |
| total capital outlay                   | 26           | 6            |

B. Educational Facilities and Opportunities Available to Negro Children Are Inferior to Those Available to White Children

1. Inferior School Buildings for Negroes

As a result of the defendants failure to spend even one third as much money on school buildings for a Negro child as for a white child, <sup>19/</sup> it is usually possible to tell whether a school is white or Negro even when no children or teachers are present.

---

<sup>17/</sup> At three of the fifteen Negro schools which in 1965-66 accounted for 18.7% of the Negro enrollment, the Presbyterian Church maintains the buildings it owns, while the county is responsible for maintaining its buildings. Testimony of W. J. Jones.

<sup>18/</sup> The figures for new buildings and sites are somewhat low for both races, apparently because large payments are deferred through warrants. A more nearly accurate picture may be obtained by referring to the value of the buildings constructed since 1955. The total value of white schools buildings constructed since then is \$260,000, of Negro school buildings \$569,400. Pl. Ex. 16, insurance schedule. Based on the enrollment of white and Negro students for 1965-66 (Pl. Ex. 20), this amounts to a per pupil investment of \$248 for white students and \$129 for Negro students.

<sup>19/</sup> See page 12, supra.

Symbols in Wilcox County of a Negro school are pot-bellied stoves, broken windows, outdoor toilets, grassless play areas, bare-bulb lighting, and wood frame or concrete block classroom buildings - in need of paint.<sup>20/</sup>

Every Negro school has "space coal heaters" (pot-bellied stoves) in at least one classroom building; ten Negro schools have no central heating at all. No white school has a coal stove; Pine Hill School is centrally heated throughout, while the other two have gas heaters in their vocational buildings and central heating in all other buildings.<sup>21/</sup>

Mrs. Mu Song Li testified that when she visited the Boykin School (Negro) in November 1965, "About 30 percent of the windows were broken. I visited the school again in February and saw that those windows

---

<sup>20/</sup> The records, testimony, and photographs in evidence show all of these conditions to exist at Negro schools. Not one is present in any record or photograph concerning a white school, to the knowledge of the plaintiff, although it is certain windows are sometimes broken (and promptly replaced) at white schools. See Appendix C, Table VI, Comparison of Physical Facilities By Race, By School. See also Pl. Exs. 6, 7, and 8, Pl. Int. Primm Ex. 3, and Def. Exs. 3 and 4, photographs of schools, and the Testimony of Annie Johnson, Guy Kelly, and Mu Song Li. Some of the photographs are reproduced in Part VB., infra.

<sup>21/</sup> Pl. Ex. 17, Insurance Inspection Reports, 1965-66.

were still not replaced." Annie Johnson testified that broken windows were not promptly repaired at Lower Peach Tree High School. Photographs in evidence show broken windows at Annie Manie, Coy, Yellow Bluff, Burson, Camden Academy, Boykin, Snow Hill, and Lower Peach Tree, all Negro schools.<sup>22/</sup>

All but four of the fifteen Negro schools have outdoor restrooms; eight Negro schools have no indoor plumbing; no white schools have outdoor toilets.<sup>23/</sup> Five of the Negro schools have only wood frame classroom buildings; five others have at least one; no white school has a wood frame classroom building.<sup>24/</sup>

Similarly, the white schools bear identifying characteristics - landscaped grounds, brick veneer buildings, gymnasiums, fluorescent lighting, student lockers - that appear at all the white schools, but few of the Negro schools.<sup>25/</sup>

---

<sup>22/</sup> Pl. Exs. 8 and 6, pages 1, 2, 5, 9, 21, 22, 30, 43, 45, 46 and 49, and Def. Ex. 3, pages 2, 6, and 7, photographs of Negro schools.

<sup>23/</sup> See Appendix C, Table VI, Comparison of Physical Facilities.

<sup>24/</sup> Pl. Ex. 17, insurance reports.

<sup>25/</sup> See Appendix C, Table VI, as well as Pl. Ex. 7 and Def. Ex. 4.

Every classroom building at each white school, for example, has a brick veneer finish, while Alberta Junior High School is the only Negro school without at least one wood frame or unpainted concrete block classroom. Only four other Negro schools have any buildings with a brick veneer finish. <sup>26/</sup>

Each white school has a gymnasium and a separate auditorium. Only one Negro school, Annie Manie, has separate facilities. The gymnasiums at Snow Hill, and at Wilcox County Training School both Negro schools, have ceilings low enough to block an arching shot at the basket. <sup>27/</sup> Boykin, Lower Peach Tree, and Camden Academy - the largest school in the county - <sup>28/</sup> have no gym at all.

At Lower Peach Tree, we play basketball on a cement platform, and baseball on the playground. There's no gym. We change clothes in the restrooms or on a bus or in the storage room. The restrooms are outside. There aren't any showers. <sup>29/</sup>

---

<sup>26/</sup> See Pl. Exs. 16 and 17, insurance records, and Pl. Ex. 6, 7, and 8, and Def. Exs. 3 and 4, photographs of schools. Pl. Ex. 7 and Def. Ex. 4 contain photographs of the white schools.

<sup>27/</sup> Pl. Ex. 6, page 37; and Def. Ex. 4, page 10.

<sup>28/</sup> See Appendix C, Table VI, Comparison of Facilities.

<sup>29/</sup> Testimony of Annie Johnson.

## 2. Teachers - Fewer, With Less Training

The chief form of state aid to education in Alabama takes the form of teachers' salaries. Under the Minimum Program Fund,<sup>30/</sup> the State pays to each school system an amount sufficient to support a certain number of teachers. The number is determined by a formula that considers the grade level of each school, the average daily attendance at each school, and whether each school is located at a site the State Department of Education approves. According to the formula, the State Department of Education allots to each school system the number of teacher units the State will support. Until 1965, the State allotted Negro teacher units and white teacher units separately.<sup>31/</sup>

Ex-superintendent Jones testified that during each year of his last years in office Wilcox County did not use all the money the state offered for Negro teachers. In fact, he stated, the county returned as much as \$20,000 a year during a number of years. For no better reason than a lack of space,<sup>32/</sup> the county returned the funds it could have used to hire four Negro teachers.

---

<sup>30/</sup> Pl. Ex. 5 is the regulations of the Minimum Program Fund.

<sup>31/</sup> Testimony of William J. Jones.

<sup>32/</sup> Ibid.

At the same time, the defendants not only used all the money the State offered in support of white teachers, but they even hired extra white teachers. Eight extra white teachers received their pay not from State, but from County funds.<sup>33/</sup> It was necessary to hire these extra white teachers, according to Mr. Jones, in order for all the white schools to be accredited.<sup>34/</sup>

In 1964-65, the average daily attendance in Wilcox County was 288 lower than it had been in 1963-64,<sup>35/</sup> which brought about a reduction of approximately ten in the number of teacher units available to Wilcox County.<sup>36/</sup> The reduction was compensated for by firing nine Negro teachers,<sup>37/</sup> even though the county had been carrying eight extra white teachers and at least four fewer Negro teachers than the State would support. The net result is that there are still fewer Negro teachers in Wilcox County than the Negro schools earn ("earn" through average daily attendance) and more white teachers than the white schools earn. Lack of space can no longer be used as the excuse for the disparity, as there must have been space in the past for the nine fired Negro teachers.

---

<sup>33/</sup> Ibid.

<sup>34/</sup> See Part IV B. 5, infra, for discussion of accreditation differences between white and Negro schools.

<sup>35/</sup> Pl. Ex. 1A, Attendance Reports.

<sup>36/</sup> Pl. Ex. 5, the regulations of the Minimum Program Fund, shows the complicated formula for determining teacher units. The average daily attendance (ADA) figure normally needed to earn one teacher unit ranges from 20 to 31. Although the figure varies from school to school, in Wilcox County it takes an approximate ADA of 28 to earn a teacher unit.

<sup>37/</sup> Testimony of Guy Kelly. Kelly testified that no white teachers were fired.



Mr. Jones' testimony concerning eight extra white teachers and four unhired Negro teachers indicates it would take approximately twelve additional teachers at the Negro schools to equalize the pupil-teacher ratio. In fact, it would take 48. In 1965-66 there were 47 white teachers for 1048 white students, and 150 Negro teachers for 4422 Negro students.<sup>38/</sup> There would have to be 198 teachers at the Negro schools to bring their pupil-teacher ratio from the present 29.5:1 to the white ratio of 22.3:1.<sup>39/</sup>

While the Government does not contend it is necessary to have a pupil-teacher ratio of 22.3:1 in the Negro schools, it does contend there are not enough teachers for Negro children, particularly in the elementary grades at the larger schools. At Millers' Ferry, two ladies each teach three grades and an average of 47 children.<sup>40/</sup> At Camden Academy, Mrs. Cassie Colston teaches 83 Negro students in the fourth grade.<sup>41/</sup> Defendant Kelly testified,

---

<sup>38/</sup> Pl. Exs. 12 and 20, teacher directories and attendance reports, respectively.

<sup>39/</sup> See Table II, Number of Pupils Per Teacher, By Race, By School. The possible reasons for this disparity include: 1. The county actually returned more than the \$20,000 a year for Negro teacher units of which Mr. Jones spoke; 2. Some Negro schools are located at State-disapproved centers and thus cannot earn as many teacher units; Pl. Exs. 4 and 5, state approvals and regulations of the minimum program fund, respectively; 3. Negro absences are higher than white absences, thus reducing the Negro ADA, on which teacher units are based; however, even when one divides the number of teachers into the Average Daily Attendance (rather than Net Enrollment, as we have done), the pupil-teacher ratio is 21.7 for white students and 25.9 for Negroes. See introduction to Appendix C.

<sup>40/</sup> Pl. Exs. 12 and 20.

<sup>41/</sup> Ibid.

I did hear that one teacher [at Camden Academy] had 84 pupils in a class. I decided that was a matter for the principal and that he must have some reason for it.

The load for teachers in the elementary department at Camden Academy is 50.3 students per teacher. It is over 40 at Boykin and at Annie Manie, as well as at <sup>42/</sup>Tates Chapel, all Negro schools.

There are eleven Negro classes with over 50 children in the same room, containing a total of 662 children, as compared with one white classroom with 52 children. 995 of the 2,564 Negro elementary children, but no white children, are enrolled in classes where more than one grade is being taught. At Tates Chapel Junior High School (Negro), for example, one lady teaches 66 students in grades one and two, while another teacher has 55 children in the third and fourth grades. Less than half the Negro fourth graders - 213 of 446 - have a teacher who teaches no other grade. <sup>43/</sup>

In the Negro high school grades the students suffer not so much from high pupil teacher ratios, <sup>44/</sup> but rather from the fact many of their teachers have less training

---

<sup>42/</sup> See Table II. That Table also shows crowded elementary classrooms at one white school (Wilcox County High School has 37.4 pupils per teacher) and at four more Negro schools (36.7 at Yellow Bluff, 37.7 at W. J. Jones, 38.5 at Pine Hill, and 38.8 at Snow Hill.)

<sup>43/</sup> Pl. Exs. 20 and 12, attendance reports and teacher directories.

<sup>44/</sup> There are 23.4 pupils per teacher in the high school grades at the seven Negro high schools, 17.1 at the four Negro junior high schools, and 17.6 at the white schools. Appendix C, Table II.

than the white teachers. Six Negro high school teachers, as well as five Negro elementary teachers, have unranked, "Defense" certificates.<sup>45/</sup> In 1964-65, one white teacher had only a Defense certificate, but the Board of Education decided "he would not be re-employed for another year due to his low type of certificate which reflected on the school's accreditation."<sup>46/</sup> Twelve Negro high school teachers have only elementary certificates, as compared with two white high school teachers.<sup>47/</sup> Eleven of the 39 white teachers for whom records are available have Type A certificates, denoting master's degrees, while only 20 of 132 Negro teachers have Type A certificates.<sup>48/</sup>

### 3. Fewer Books

#### a. Library books

Annie Johnson, from Lower Peach Tree (Negro), testified:

We don't have a library. One classroom has some books; there are three sets of encyclopedias and about nine dictionaries.

Jean Mason, from Annie Manie (Negro), testified:

The library has the World Book Encyclopedia and the Reader's Digest. It has no fiction books. We use the library when a class is scheduled to go into it. You get permission from the principal to use it alone. There is no librarian.

---

<sup>45/</sup> Pl. Ex. 23, Institute Records.

<sup>46/</sup> Pl. Int. Primm Ex. 6, p. 9, board minutes; the released teacher's type of certificate appears in Pl. Ex. 23.

<sup>47/</sup> Pl. Ex. 23.

<sup>48/</sup> Pl. Ex. 23, 1965-66. We are assuming that a type A certificate denotes a master's degree, an assumption borne out by a comparison of the Institute Records, Pl. Ex. 23, with the accreditation reports in Pl. Ex. 22.

There are nine other unaccredited Negro schools, for which no information concerning libraries is available. Even the accredited Negro schools, however, offer a low number of library books. The highest number of books per high school pupil at a Negro school (10.5 at W. J. Jones) is less than half the lowest number of books per high school pupil at a white school (21.6 at Pine Hill.)<sup>49/</sup> Superintendent Kelly claimed the library facilities at the Negro Camden Academy were "much better" than at the white Wilcox County High School, but stated it was hard to tell which had more books. In fact, there are 6,499 books in the white school's library (36.7 per high school pupil) and 2,498 at Camden Academy (8.2 per high school pupil). The average number of library books per high school pupil at the three white schools is 30.8; at the four accredited Negro schools it is 8.3.<sup>50/</sup>

b. Textbooks

While the defendants' discrimination in providing library books is serious, it is easier to comprehend than the discrimination in providing free, state-owned textbooks.

As of June, 1966, there were 18,719 textbooks in the Negro schools (excluding the five Negro schools for which no inventory is available) and 10,974 textbooks

---

<sup>49/</sup>See Appendix C, Table III A, Library Books Per Pupil.  
<sup>50/</sup>Ibid.

in the white schools, a per pupil average of 10.5 for white students and 6.2 for Negro students.<sup>51/</sup> The deficiencies in the Negro schools are greatest in the elementary grades. For example, while there was at least one science book and 7 reading books for every white first grader, there was only one science book for every five Negro first graders and one reading book for each Negro first grader.<sup>52/</sup> Distribution of science texts to first graders is revealing, in that there had been no such books in Wilcox County in December 1965.<sup>53/</sup> From an equal start, then, at zero, white children moved up to 120 science texts (1.4 per pupil) while Negroes stopped at 83 (.2 per pupil).

#### 4. Poorer Curriculum

Father W. L. Furman, a mathematician from Spring Hill, testified that four Negro schools do not have four-year math programs and that he knew of only one Negro school, W. J. Jones, that does.<sup>54/</sup> At least two of the three white schools do, he added. Superintendent Kelly testified that all the white schools have modern math.

---

<sup>51/</sup> Appendix C, Table III B, Textbooks Per Pupil.

<sup>52/</sup> Appendix C, Table III C, Science Texts and Readers.

<sup>53/</sup> Pl. Ex. 21 A, Textbook inventories.

<sup>54/</sup> Testimony of Father W. L. Furman. Boykin, Lower Peach Tree, Annie Manie, and Camden Academy are the Negro schools Father Furman listed.

There are further course deficiencies in some of the Negro schools, particularly at Lower Peach Tree. "There is no course in physics at Lower Peach Tree High School. There is no home economics, no agriculture, no shop."<sup>55/</sup> There is no history course, either.<sup>56/</sup>

Generally speaking, however, the defendants offer courses of the same name to both Negro and white students. And they appear to be prepared to add fourth-year math courses at the Negro schools.<sup>57/</sup>

The real problem is not so much deficient course offerings as it is deficient courses. Annie Johnson went to Lower Peach Tree:

I've taken biology. The only animals we conducted any experiments with were frogs. The students would go out to the pool and catch the frogs. We didn't dissect the frogs. We look at them in the classroom. There is no lab.

---

<sup>55/</sup>Testimony of Annie Johnson, confirmed by Pl. Int. Primm Ex. 7, lists of courses at unaccredited schools.

<sup>56/</sup>Pl. Int. Primm Ex. 7.

<sup>57/</sup>See Pl. Ex. 22, accreditation reports, Pl. Int. Primm Ex. 7, and Testimony of Father W. L. Furman. The accreditation reports are not absolutely reliable. For example, fourth-year mathematics is simply called "mathematics" at W. J. Jones and Moore Academy while it is called Advanced Algebra and Trigonometry at Wilcox County High School. In addition, there are accreditation reports for only one year in evidence, so there may be some courses taught in alternate years, at the smaller schools particularly, that have been omitted. See testimony of W. J. Jones.

Jean Mason went to Annie Manie:

Chemistry is available, but there are only four spots for experiments. Two students work at each spot. There were 48 students in my chemistry class; while eight conduct experiments, the other 40 watch and take notes. We had experiments only on Fridays.

One reason for the low-quality science classes is a simple lack of supplies and equipment. Row upon row of bottled chemicals, flasks, crucibles, balances, tuning forks, batteries, voltmeters, and bunsen burners greet a visitor to the science rooms at the white high schools.<sup>58/</sup> At the Negro schools one sees a closet or five desk drawers that contain a dozen or so jars of chemicals (Boykin and Lower Peach Tree).<sup>59/</sup> and storage rooms with less than half the shelf space and chemicals the white schools have (Camden Academy and Wilcox County Training School).<sup>60/</sup> As ex-superintendent Jones put it, "The science labs would vary as to the adequacy of the facilities they had."

##### 5. Lower Accreditation

Ex-superintendent Jones testified the school board hired extra teachers so that the white schools could be accredited, and the state has accredited each of them for all junior high and high school grades (7-12).<sup>61/</sup> In part because the school board did not do the same thing for the Negro children, and in fact turned away free Negro teachers, three of the seven Negro high schools are unaccredited, all four Negro junior high

---

<sup>58/</sup>Pl. Ex. 7, pages 3, 4, 9, and 10.

<sup>59/</sup>Pl. Ex. 6, pages 31 and 51-53.

<sup>60/</sup>Pl. Ex. 6, pages 23 and 36.

<sup>61/</sup>Pl. Ex. 2B, Educational Directory, State of Alabama.

schools are unaccredited, and one of the accredited Negro schools is accredited only for grades 9-12.<sup>62/</sup>

#### 6. Older, Crowded Buses

The 26 oldest school buses are assigned to Negro schools.<sup>63/</sup> Of those 26 buses, at least ten had initially been assigned to white schools, then given to the Negroes when the white children got newer buses.<sup>64/</sup> For example, bus 31 is a 1948 Chevrolet. From 1955, the first year for which records are in evidence, to 1958, it carried white children to Pine Hill High School. In 1958, bus 31 began to carry Negro children to Pine Apple School, and the white children at Pine Hill High School began to ride bus 64, a 1958 Chevrolet. Bus 49, a 1953 Chevrolet, has a similar history, serving white students at Camden until 1962, when they received two new-model buses, and serving Negroes at Snow Hill since then. No Negro buses have been transferred to white schools.<sup>65/</sup>

---

<sup>62/</sup> Ibid. Camden Academy, Snow Hill, Wilcox County Training School, and W. J. Jones are the accredited Negro schools. The Training School is accredited only for grades 9-12. Pl. Ex. 22 accreditation reports. Camden Academy is accredited by the Southern Association of Colleges and Secondary Schools, as well as by the State Department of Education, a fact Mr. Jones said the Presbyterians made possible.

<sup>63/</sup> Pl. Ex. 1C, Transportation Reports. This figure is for 1964-65, the last year for which reports are available.

<sup>64/</sup> See Appendix C, Table VIII A, White Buses Transferred to Negro Schools.

<sup>65/</sup> Pl. Exs. 1C and 28, Transportation Reports.



While the defendants have assigned the oldest 26 buses to Negro schools, they have given 13 of the newest 25 buses to white students.<sup>66/</sup> The average age of the 17 white buses in 1965 was 5.5 years, compared with 11.4 years for the 44 Negro buses.<sup>67/</sup> No white bus was over 11 years old.<sup>68/</sup>

In addition, to the inconveniences that go with old buses,<sup>69/</sup> Negro students must contend with crowded buses. While white students ride in buses with empty seats, Negroes travel identical routes standing in the aisles.<sup>70/</sup> Bus 30, a 1948 Chevrolet with a capacity of 48, carries 115 Negroes to Wilcox County Training School, in one trip. Bus 39 transports 100 children at a time. Over half the trips Negro buses make are overcrowded. Ten Negro buses have to make two, even three trips every morning; no white bus makes a second trip.<sup>71/</sup>

---

<sup>66/</sup> Pl. Ex. 1C.

<sup>67/</sup> Table VIII B, Summary of Transportation Reports, 1964-65.

<sup>68/</sup> Pl. Ex. 1C.

<sup>69/</sup> Jean Mason testified his 1946 Chevrolet bus had mechanical difficulties.

<sup>70/</sup> No white student rides an overloaded bus although one private car, with a capacity of 6, transports 9 white students. See Pl. Exs. 26 and 27, which show the overlapping bus routes. See also Table VIII B and Testimony of Annie Johnson.

<sup>71/</sup> Table VIII B. If buses were redistributed equally, as requested in our proposed decree, it should be possible to add second and third trips to existing routes to avoid overcrowding.

C. The Defendants Continue to Discriminate Against Negroes

While some of the defendants, all of whom are white, have been in office over a period of years, the Superintendent has held his position only since July 1, 1965. <sup>72/</sup> For that reason we note particularly the types of discrimination the defendants have practiced against Negroes during the past twelve months.

1. Defendant Kelly Has Acted to Keep the Wilcox County School System Segregated

The defendants have not taken one step toward desegregating the schools of Wilcox County. With the exception of the last-minute, unconstitutional proposal their amended answer contains, <sup>73/</sup> the defendants have never adopted a plan for desegregation. <sup>74/</sup> They have refused hundreds of thousands of dollars of federal government aid in order to maintain two racial school systems.

Advancing the most specious of reasons for his actions, defendant Kelly has rejected all applications of Negroes to attend white schools in Wilcox County. He has refused even to receive Negro applications for 1966-67. <sup>74a/</sup>

---

<sup>72/</sup> Testimony of Guy Kelly; although their testimonies are not summarized in Appendix C, defendants Edward B. Hale and L. Y. Sadler testified to having been members of the Wilcox County Board of Education for, respectively, 10 and 3 1/2 years.

<sup>73/</sup> See Part V.A.1, *infra*, for a discussion of defendants' proposal, which appears in Paragraph A of the Amendment to Defendants' Answers, filed June 21, 1966.

<sup>74/</sup> Testimony of Guy Kelly.

<sup>74a/</sup> Ibid.

Finally, as Mr. Kelly testified, "Yes, my office sent the letter in Pl. Ex. 9. We sent them 'to the parents and guardians of Negro children' throughout the county." The letter's operative paragraph bears repeating.

In an effort to prevent the destruction of the school system of Wilcox County as we know it and realizing what is best, we are asking that you promote and encourage your children to continue in the schools in which they are now attending. In our honest opinion, integration or desegregation is not good for education; it is against sound educational principles and works to the disadvantage and to the detriment of both races. It is our further opinion that in all this controversy the person who has invariably suffered is the child.

2. The Defendants Continue to Spend Less Per Negro Student Than Per White Student

It is difficult to be precise because financial records are no longer kept by race. However, the records and testimony available indicate that the defendants continue to spend more per white child.

Purchase orders for 1965-66 indicate that for instructional supplies the defendants spent \$2,884 in white schools and \$2,131 in Negro schools, a per pupil average of \$2.75 for white students and 48 cents for Negroes. <sup>75/</sup> Seven of the fifteen Negro schools received no instruction supplies at all, while each of the white schools received at least \$400 worth.

---

<sup>75/</sup> See Appendix C, Table V, 1965-66. Per Pupil Expenditures, 1965-66. The Court reserved its ruling on the admissibility of Pl. Ex. 23, the Purchase Orders.

The purchase orders also show that the defendants are still spending less per pupil for maintaining Negro schools than for maintaining white schools - \$1.43 per Negro to \$2.77 per white student. <sup>75a/</sup> The \$1.43 represents an increase for Negro schools, but Annie Johnson testified that Lower Peach Tree High School still has no janitor and that students still do the cleaning at the school.

Minutes of the Board of Education show that the defendants have made some significant expenditures on behalf of Negroes and whites that are not listed in the purchase orders. <sup>75b/</sup>

3. The Defendants Provided Fewer Textbooks in 1965-66 to Each Negro Child Than to Each White Child

Part IV.B.3.b, above, details the discriminatory operation of the free textbook program in Wilcox County. This discrimination was instituted and carried out by the present superintendent. In the first year of the program's existence, and of his administration, Mr. Kelly oversaw an operation that distributed over two-thirds again as many textbooks to each white child as to each Negro child - textbooks that cost the county nothing.

4. The Defendants Continue to Provide Proportionally Fewer Teachers, with Less Training, for Negro Students

As noted above in Part IV.B.2, the pupil-teacher ratio in the Negro schools for Wilcox County is almost

---

<sup>75a/</sup> Ibid.

<sup>75b/</sup> Pl. Int. Primm Ex. 6. See, e.g., page 31, which shows over \$8,000 is to be spent for projects at Negro schools, and p. 24, which shows that something over \$1,000 is to be spent for repairs at Wilcox County High School.

one third greater than it is in the white schools - 29.5:1 to 22.3:1. Mr. Kelly knew specifically that there were 84 Negro children in one classroom, <sup>76/</sup> but did nothing more about it than write a letter to the Mobile Press Register. In that letter he said that he did not see how there could be 84 students in one classroom and that "it is entirely possible that the County will have to release 24 Negro teachers next year." <sup>77/</sup>

In their 1965-66 budget, the defendants allocated for teachers a per pupil average of \$147 for Negroes and \$179 for white children. <sup>78/</sup> The lower figure for Negroes results not only from the higher pupil-teacher ratio in Negro schools, but also from the lower certificates of many Negro high school teachers. <sup>79/</sup>

5. The Defendants Discriminate Against Negro Employees

We do not propose to deal exhaustively with the evidence concerning the Negro teachers whom the defendants fired in 1965, as this is the primary concern of Plaintiff-Intervenor Gordon and the other intervening teachers.

---

<sup>76/</sup> Testimony of Guy Kelly.

<sup>77/</sup> Pl. Ex. 31.

<sup>78/</sup> Pl. Int. Primm Ex. 6, p. 32, Board minutes, shows \$188,056 budgeted for white teachers and \$648,880 budgeted for Negro teachers.

<sup>79/</sup> See Part IV.B.2, supra.

The evidence is undisputed, however, that: although the excuse for firing most of the Negro teachers was a reduction in teacher units, the defendants had not been using all their available Negro teacher units prior to 1965; that they retained and hired new teachers, both white and Negro, with less training or experience than the fired teachers; and that the defendants state they contemplate firing additional Negro teachers in 1966-67.<sup>80/</sup>

Defendant Kelly volunteered that Negro bus drivers receive \$25 less per month than white bus drivers. He claimed that when he first came to work he did not know the salaries were different and that, in fact, he had granted both Negro and white bus drivers equal pay raises of \$13.50 per month - to \$88.50 a month for Negroes and \$113.50 a month for white drivers.<sup>81/</sup> In fact, Mr. Kelly had little to do with the raise, as the State Legislature required it.<sup>82/</sup>

---

<sup>80/</sup> Testimony of W. J. Jones; Testimony of Guy Kelly; Pl. Ex. 31, letter to Mobile Press-Register concerning possible firing of Negro teachers; Pl. Int. Primm Ex. 6, p. 43, minutes of defendant Board, which contains the text of a proposed bill to abolish teacher tenure in Wilcox County.

<sup>81/</sup> Testimony of Guy Kelly.

<sup>82/</sup> See Pl. Int. Primm Ex. 6, p. 19, minutes of the Board, in which the Board states it is granting a pay raise to bus drivers "in order to meet the requirements imposed by Legislative Act." See also, Pl. Ex. 5, Regulations of the State Minimum Program Fund, which require local boards of education to raise salaries for all bus drivers by at least \$120 per year (Wilcox County gave \$121.50) or forfeit state aid.

V

RELIEF

The evidence in this case establishes without qualification that the defendants have not only segregated Negroes from white persons in the Wilcox County schools, but also that they have provided Negro students with an inferior education. Therefore, the plaintiff seeks two types of relief:

(1) The requirement of a true freedom of choice plan for desegregating students,<sup>83/</sup> coupled with a positive start in the desegregation of teachers and staff, and (2) a requirement that the defendants offer equal educational opportunities to Negro and white students and initiate a remedial educational program to compensate for the inferior education they have given Negroes.

With those goals in mind, we are submitting to the Court the proposed decree in Part VI, infra. In support of the proposed decree, we offer the following legal positions and arguments. The substantive requirements of the proposed decree derive from the Fourteenth Amendment and the decisions of

---

<sup>83/</sup> The United States would certainly have no objection to a nonracial, geographic zone plan for desegregation, but we assume the defendants would choose to use a transitional free choice plan. Singleton v. Jackson Municipal Separate School District, 355 F.2d 865 (C. A. 5, 1966) (hereinafter referred to as Singleton II).

the courts. The administrative details derive largely from the 1966 HEW Guidelines. <sup>84/</sup> In most respects, it is identical to the Proposed Decree we filed in the Fifth Circuit in connection with the Jefferson County <sup>85/</sup> and other school cases.

A. Plan of Desegregation

1. Students

"Freedom of choice" plans for the desegregation of public schools have been accepted by the District Courts and the Court of Appeals in the Fifth Circuit. But the Court of Appeals has attached the absolute condition that dual geographic zones be eliminated as a basis for assignment in the grades the plan covers.

[A] necessary part of any [freedom of choice] plan is a provision that the dual or biracial attendance system, i.e., separate attendance areas, districts or zones for the races, shall be abolished contemporaneously with the application of the plan to the respective grades when and as reached by it. <sup>86/</sup>

In their amended answer the defendants propose a plan for desegregation that ignores the requirement that they do away with dual attendance zones. They propose first to avoid all progress

---

<sup>84/</sup> "Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964," U.S. Department of Health, Education and Welfare, March 1966.

<sup>85/</sup> United States v. Jefferson County Board of Education, Case No. 23345, C.A. 5, brief and proposed plan filed April 22, 1966.

<sup>86/</sup> Lockett v. Board of Education of Muscogee County, Georgia, 342 F. 2d 225, 228, 229 (C. A. 5, 1965).



toward desegregation for still one more year,<sup>87/</sup> pending results of a testing program. Then, the defendants seem to propose, all present (racial) assignments would be continued, except that a child could transfer to another school if his intelligence quotient were equal to or greater than the mean I.Q. of the school he desired to attend.

This is precisely the type of plan the Fifth Circuit's Court of Appeals considered and rejected three years ago in Calhoun v. Latimer.

No standard requiring that a transferee score a grade on scholastic ability and achievement tests equal to the average of the class in the school to which transfer is sought may be utilized . . . .<sup>88/</sup>

The fallacy of a plan such as the defendants proposed "is that many of the Negro pupils overlap many of the white pupils in achievement and aptitude but are nevertheless to be segregated on the basis of race."<sup>89/</sup>

---

<sup>87/</sup> This further delay, beyond the twelve years defendants have already waited since Brown v. Board of Education, 347 U.S. 483 (1954), is simply impermissible. Stell v. Savannah - Chatham County Board of Education, 318 F.2d 425 (C. A. 5, 1963).

<sup>88/</sup> 321 F.2d 302, 317 (1963). More recently, on June 7, 1966, the Court of Appeals stayed an order the District Court entered April 1, 1966, in Stell, C. A. No. 1316, S.D. Ga., in which the District Judge had ordered the Board of Education to "maintain and enforce distinctions based upon age, mental qualifications, intelligence, achievement and other aptitudes upon a uniformly administered program."

<sup>89/</sup> Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55, 62 (C. A. 5, 1964). The Stell case dealt with a lower court's order that permitted continued, complete desegregation, but the Court's reasoning is applicable here.

The basic flaw in the defendants' proposal, however, is not so much that it would classify students improperly, but rather that it would continue the present system of initial assignments by race. It is not open to the defendants to make or continue any assignments or enrollments based on race in desegregated grades.<sup>90/</sup>

As the Court states in Stell, if the defendants choose to adopt a freedom of choice plan, the only criteria for assigning students in desegregated grades are: (1) the choice of the student, and, (2) if schools are crowded, geography.

This freedom of choice, with schools no longer being designated as white or Negro, in the grades to which the plan of desegregation has reached means that each child in the system may attend the school he chooses to attend, without regard to race so long as space is available in the school, and where it is not available to all it is to be awarded on the basis of the proximity of the residence of the pupil to the school.<sup>91/</sup>

---

<sup>90/</sup> If the defendants were to propose a "track" system of assignment, whereby students would be assigned to schools solely on the basis of, for example, test scores, this would be a different case. They have not done so, however, and it would be inappropriate to deal here with such a proposal. Rather, they propose that all students be allowed to remain in their present schools, regardless of test scores, but that outsiders (i.e., Negroes) be allowed to transfer in only if their test scores were at least as great as the median (not the lowest) test score at that school.

<sup>91/</sup>Stell, 333 F. 2d at 65.

It is no longer appropriate to speak of a "transfer" plan in desegregated grades. When assignments are based only on choice or geography, there is no need for transfers to further the process of desegregation in the covered grades.<sup>92/</sup>

Having considered the defendants' proposal, we would now speak to what we contend are the appropriate provisions of a plan for desegregating students.

a. Speed of desegregation

The Fifth Circuit Court of Appeals spoke clearly in the first Singleton case of the need to desegregate all grades by the fall of 1967.<sup>93/</sup> The question in this case is how many and which grades should be desegregated for the school year 1966-67.

---

// Of course, there will always be a need for a system of transfers for reasons unconnected with race, such as change of residence within a school district. In addition, it is still appropriate to speak of "transfers" to further the progress of desegregation in grades not yet reached by district-wide desegregation. Singleton II, supra; see Part V.A.1.c, infra.

93/ Singleton v. Jackson Municipal Separate School District, 348 F 2d 729 (C. A. 5, 1965).

Although most school districts in Alabama will have begun desegregating at least eight grades by this fall,<sup>94/</sup> at least one court order has permitted desegregation of seven grades this year and five the next.<sup>95/</sup> It is more appropriately left to the defendants to determine which particular seven or eight grades are to be desegregated this year; grades 1, 7, 10, and 12, however, should be among them.<sup>96/</sup>

---

<sup>94/</sup> This Court can judicially note, as a matter of common knowledge, that most Alabama school districts began to desegregate in 1965, under the impetus of the guidelines of the Department of Health, Education, and Welfare. Those guidelines set 1967 as a target date for total desegregation and set four grades as the normal minimum required start in the first year; the natural course for many districts has been to desegregate four grades a year. "General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," 1965, § V.E.4.a.(1).

<sup>95/</sup> United States v. Lowndes County Board of Education, C. A. No. 2328-N (M.D. Ala., 1966) (hereinafter referred to as Lowndes County).

<sup>96/</sup> See Gaines v. Dougherty County Board of Education, 334 F. 2d 983 (C.A. 5, 1964), in which the Court held that desegregation must proceed from the top down, as well as the bottom up. The seventh and tenth grades are similar to the first grade in Wilcox County in that a large number of Negro pupils attended schools last year with only six or nine grades and will be entering new schools this fall.

b. Detailed choice program

In our proposed decree we have requested detailed instructions to the defendants concerning the operation of free choice plan. The details are important for two reasons. First, they resolve in advance the questions experience teaches cause additional litigation. Second, the defendants have shown they anticipate a Court order and are already attempting to defeat a free choice plan of desegregation. The letter they sent to all Negro parents, urging them to help maintain a dual school system,<sup>97/</sup> had no other purpose.

c. Limited desegregation in grades not covered by the first year's plan of desegregation

The free choice plan should apply, regardless of their grade, to students coming into the system for the first time and to students who last year attended schools that will not be open this year.

The Fifth Circuit has held repeatedly that no student new to the system may be segregated because of his race.<sup>98/</sup> The reason for the rule is that no student should be required to enter a segregated school.

For the same reason, students who last year attended schools that will not operate this fall should have a choice of schools this year. Mr. Kelly stated that when it closed Burson and Yellow Bluff the Board of Education would send the students to other Negro schools. We seek relief against this type of renewed segregation.

---

<sup>97/</sup> Pl. Ex. 9, reproduced at p.10, supra.

<sup>98/</sup> Singleton II, supra; Birmingham, supra.

In the second Singleton case, the Court recognized the right of every child, as an individual, not to be segregated by race, regardless of his grade.

The school children in still-segregated grades in Negro schools are there by assignment based on their race. This assignment was unconstitutional. They have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race. <sup>99/</sup>

The right enumerated above is the individual's right, and if he wishes to enjoy it he must actively seek its benefits. This contrasts with the desegregated grades, in which, the school officials - not the individual students - are responsible for bringing about desegregation.

d. Services, facilities, activities, and programs

Desegregation means desegregation; it is no more lawful to segregate students in the same school on the basis of race than it is to segregate students in different schools. Thus, buses, athletics, and similar services and activities of each school must be available equally to members of all races.<sup>100/</sup> And when rules ordinarily applicable to those activities would preserve segregation - such as the type of rule common in athletic associations, making transfer students ineligible for competition for a year following transfer - those rules must be suspended.

---

<sup>99/</sup> 355 F. 2d at 869.

<sup>100/</sup> Lowndes County, supra.

## 2. Faculty and Staff

### a. Employment

In the second Singleton case, the Court of Appeals stated,

In view of the necessity that the Jackson school system be totally desegregated by September 1967, we regard it as essential that the plan provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel. 101/

In an earlier day it may have been permissible to defer consideration of faculty segregation. 101a/

That day has passed. On November 15, 1965, the Supreme Court ordered a full evidentiary hearing on the specific issue of teacher desegregation in Richmond, Virginia. "Delays in desegregating school systems," the Court declared, "are no longer tolerable." 101b/

Less than two weeks ago, the Fourth Circuit Court of Appeals held that proof of faculty segregation entitled the plaintiffs to relief. 101c/

### b. Dismissals

Part IV.C.5, above, summarizes some of the undisputed testimony concerning the dismissal of nine Negro teachers in 1965.

Regardless of whether this and other evidence in the record herein prove the dismissals were related to the former teachers' civil rights activities, the

---

101/ 355 F. 2d at 870.

101a/ Augustus v. Board of Public Instruction of Escambia County, Florida, 306 F. 2d 862 (C.A. 5, 1962).

101b/ Bradley v. School Board of City of Richmond, 382 U. S. 103 (1965).

101c/ Wheeler v. Durham City Board of Education, Case No. 10,460 (C. A. 4, July 5, 1966).

evidence certainly proves racial discrimination against both Negro teachers and students. With this evidence in the record, it is imperative that qualified Negro teachers receive the protection of this Court's order.

B. Equalization of Schools

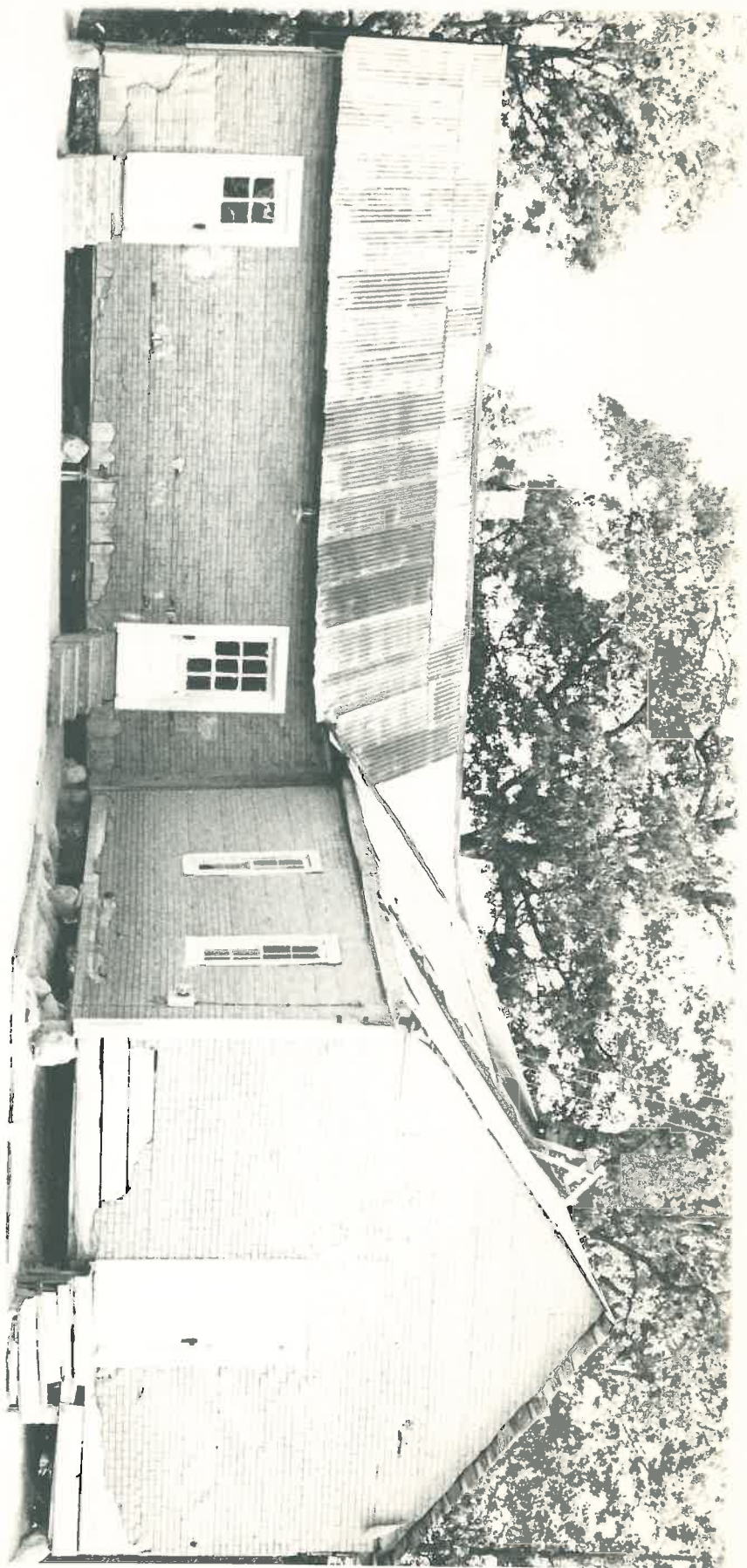
The evidence in this case proves that the school system for Negroes in Wilcox County is not only separate, but also unequal. Both types of discrimination are violations of the Fourteenth Amendment and must be remedied.

It will never be possible completely to right past wrongs. However, we propose relief that would have two purposes: To insure that in the future all children in Wilcox County - including those who choose to attend the schools presently maintained for Negroes - will receive equal educational opportunities; and to help Negro children overcome deficiencies in their past education.

1. Inferior Schools

Three of the Negro schools in Wilcox County - Burson, Lower Peach Tree, and Yellow Bluff - are simply too deficient physically to be salvageable, and they should be closed. The same is true of particular buildings at Camden Academy (the industrial arts building), Snow Hill Institute (the elementary and athletic building), and Tate's Chapel Junior High School (the second classroom building). Pictures of the schools and buildings which we submit the Court should require the defendants to close appear on the succeeding pages. Information concerning the facilities at these schools, and their insurance values, appears in Tables VI and VII, Appendix C. The Board does not insure Burson or Yellow Bluff; neither does it insure the frame buildings at Snow Hill or Tate's Chapel.





Pl. Ex. 6, p.1

Yellow Bluff



Pl. Ex. 6, p.11

4th, 5th, and 6th Grade Classroom  
Burson

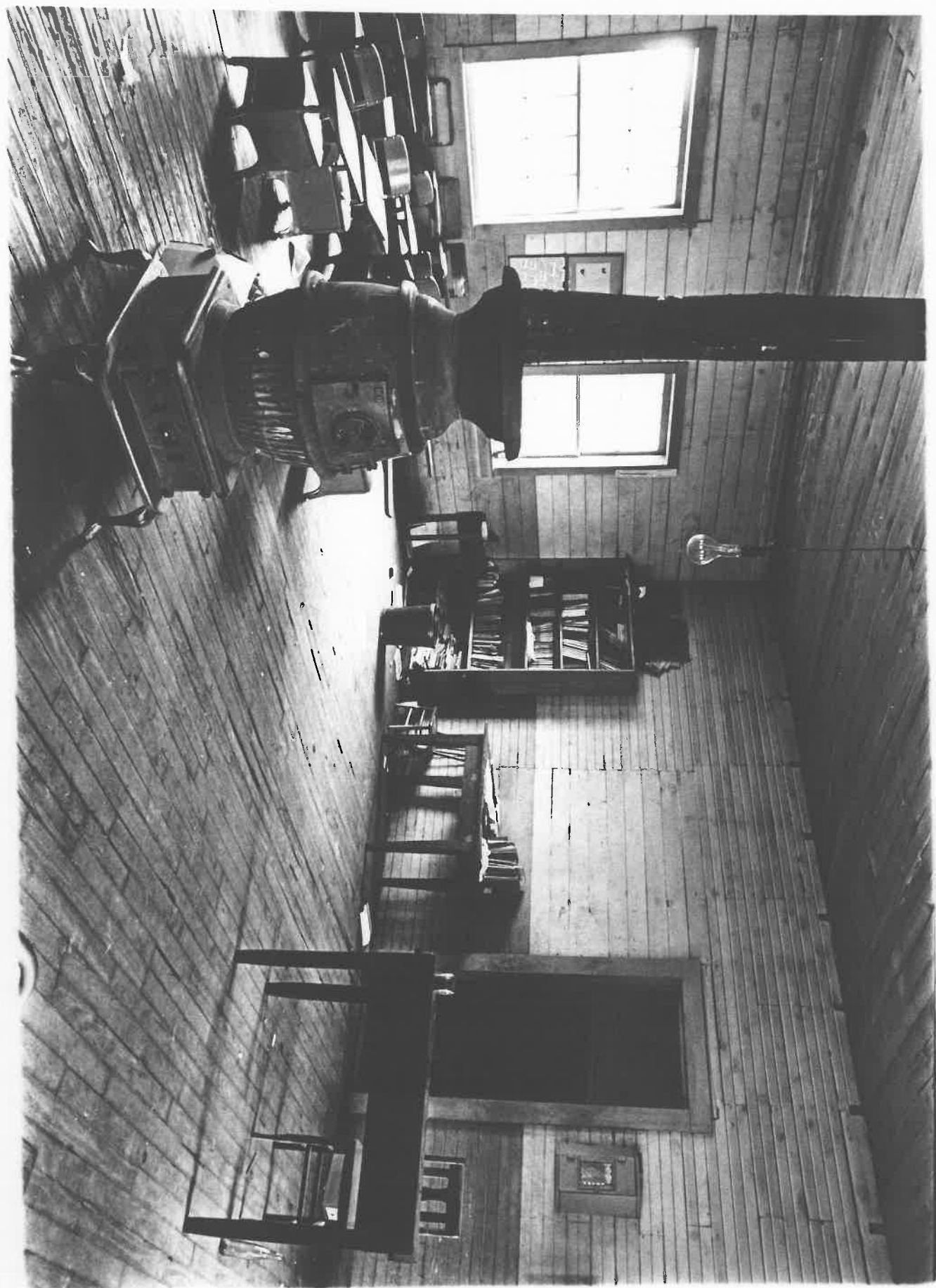




Pl. Ex. 6, p.46

Elementary Building, rear, Lower Peach Tree





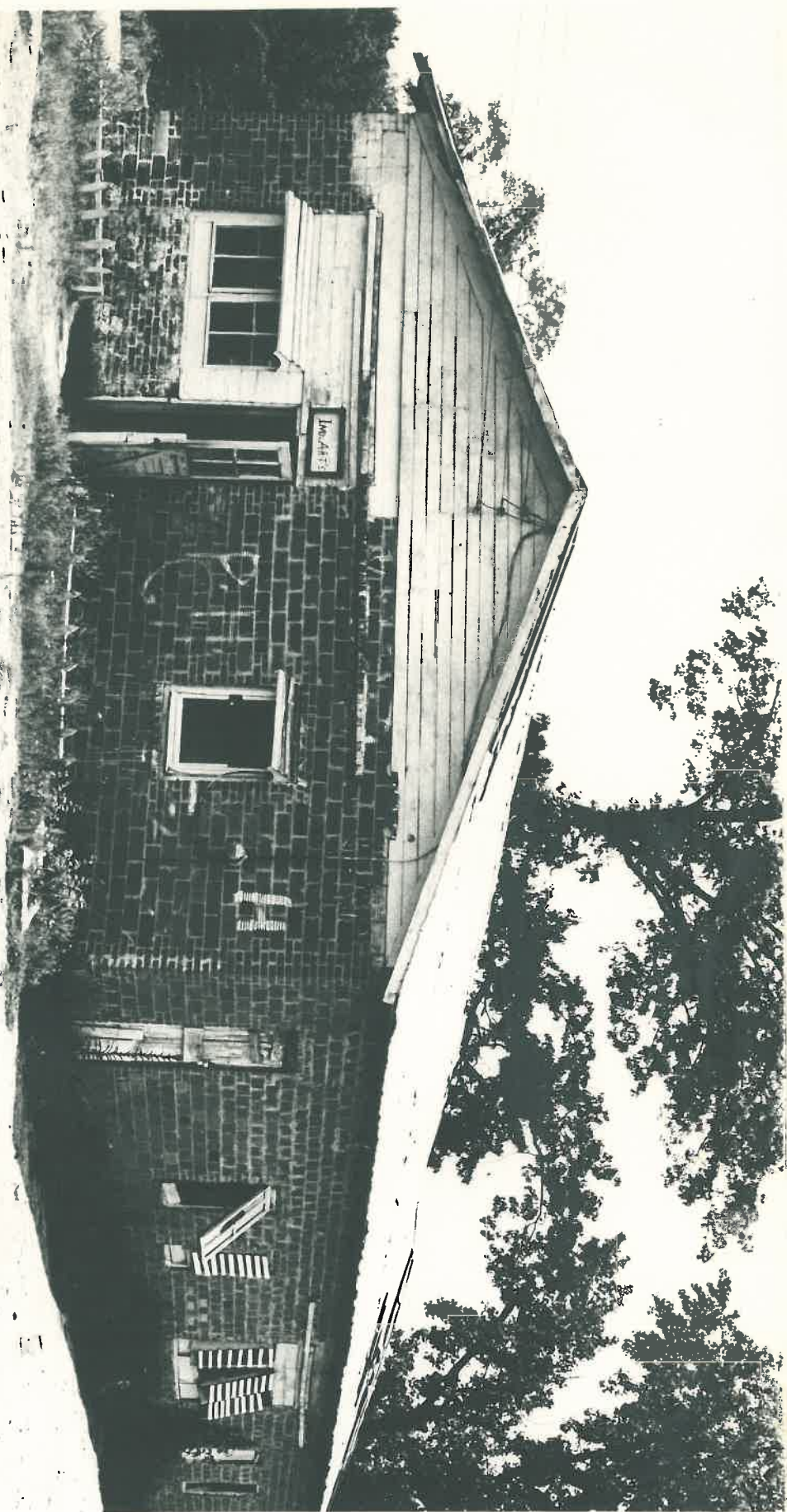
Pl. Ex. 6, p.44

First Grade Classroom, Snow Hill





Pl. Ex. 6, p. 16  
Classroom Building, Tate's Chapel



Pl. Ex. 6, p. 21

Industrial Arts Building, Camden Academy

The defendants may contend that our proposed relief is unnecessary, in that they have already indicated their intention to close Burson, Lower Peach Tree, and Yellow Bluff. Defendants' past actions, as well as their present statements, indicate that a Court order is appropriate to insure prompt action.

Consolidation of white schools in Wilcox County has proceeded more rapidly than has consolidation of Negro schools. When W. J. Jones became superintendent, there were 46% as many white schools as Negro schools; now there are only 20% as many.<sup>102/</sup> In 1964, the State Department of Education recommended that the Wilcox County Board of Education close seven Negro schools and one white school.<sup>103/</sup>

After giving the parents a year to attempt to bring about an increase in enrollment, and after the parents failed, the Board closed the one white school (Catherine).<sup>104/</sup> The defendants did close four of the seven Negro schools in 1964,<sup>105/</sup> but three - in-

---

<sup>102/</sup> Testimony of W. J. Jones. There were 46 white schools and "about 100" Negro schools when Mr. Jones became superintendent. There are now 15 Negro schools and 3 white schools.

<sup>103/</sup> Pl. Ex. 4, State survey; Pl. Exs. 24 and 25 show the recommendations on maps.

<sup>104/</sup> Pl. Int. Primm Ex. 6, Minutes of Board of Education.

<sup>105/</sup> Cf. Pl. Ex. 25 (1964 map) with Pl. Ex. 1a (1965 attendance reports.)



cluding Burson and Yellow Bluff - remain open. The  
defendants closed no Negro schools in 1965. <sup>106/</sup> One  
of the Board members claimed the reason for not  
closing Burson, Yellow Bluff, or Lower Peach Tree  
was patron resistance, <sup>107/</sup> but ex-superintendent  
Jones testified the reason was the Board's inability  
to arrange transportation. Sixty-seven parents from  
Lower Peach Tree petitioned the Board during 1965  
and 1966 to have their children sent to school in  
Pine Hill, complaining that the school at Lower Peach  
Tree had no science room, library, gym, water toilets,  
or, in two rooms, heaters. <sup>108/</sup>

The State further recommended abandoning frame  
buildings at Tate's Chapel, Lower Peach Tree, and  
Wilcox County Training School. All are at Negro  
schools and all are still in use. The survey labeled  
the frame elementary building at Snow Hill as "substan-  
dard"; it is still in use. <sup>109/</sup>

---

<sup>106/</sup> Testimony of Guy Kelly. The State recommended  
closing Prairie, apparently because of low enrollment.  
It may be educationally sound to consolidate small  
schools, but the Government does not propose to ask  
the Court to enter this area of school administration.  
We seek a Court order to close only those schools and  
buildings whose facilities are so far below the stand-  
ard for white schools as to be beyond equalization.

<sup>107/</sup> Edward Hale testified to this; his testimony is  
not summarized in Appendix A.

<sup>108/</sup> Pl. Ex. 14, Petitions for desegregation

<sup>109/</sup> Pl. Ex. 4, pp. 13 and 24, survey; Pl. Ex. 6,  
photographs. By contrast, the survey recommended  
abandoning the old brick building at the white school in  
Camden. Mr. Kelly stated it is now used only for band  
and perhaps some music classes, but for no other classes.  
The survey also recommended temporary use of a frame  
building at the Camden white school; the Board has since  
replaced that with a new, \$72,000 brick veneer vocational  
building.

Defendant Kelly testified that there are plans for closing Burson and Yellow Bluff, both elementary schools, but that the plans are not yet final. The Board of Education has not approved the plans.<sup>110/</sup> The plans at Burson are indefinite enough that Mr. Kelly stated the defendants had not decided whether to send the children to Snow Hill or W. J. Jones (both Negro). Mr. Kelly has moved some books from Yellow Bluff,<sup>111/</sup> but as of June 16 or 17, 1966, there were still books present at both Burson and Yellow Bluff.<sup>112/</sup> Neither the Board nor Mr. Kelly has notified the parents or the teachers that either school would be closed.<sup>113/</sup>

The relief the plaintiff seeks - closing unsalvageable Negro schools - is a fairly new type of remedy in school cases. The emphasis in most such cases has been on the inherent inequalities of racial segregation, rather than the more tangible inequalities the facts show have existed between the Negro and white school systems in Wilcox County. For that reason, few reported cases have dealt with unequal facilities. Nevertheless, there can be no question of the Court's authority to grant the requested relief. The Fourteenth

---

<sup>110/</sup> Mr. Hale testified to this; see note <sup>107/</sup>

<sup>111/</sup> Testimony of Guy Kelly.

<sup>112/</sup> Pl. Ex. 6, pages 6, 10, and 11, show books in pictures at both schools. FBI Agent London Howard testified he took the pictures in Pl. Ex. 6 on June 16 and 17; his testimony is not summarized in Appendix A.

<sup>113/</sup> Testimony of Guy Kelly; Mr. Hale's testimony; see note <sup>112/</sup>

Amendment has been violated, and the Court has power to stop the violation and to correct its bad results. Recent District Court cases support that proposition.<sup>114/</sup>

## 2. Unequal Facilities and Opportunities

Some of the disparities in the treatment the defendants have accorded white and Negro students are listed in Part IVB, above. There is no legal justification for any of the disparities, and there is no practical reason certain of them cannot be corrected immediately. Each Negro child who attends grades that remain segregated in 1966-67, as well as each child in a desegregated grade who chooses to remain in a Negro school should enjoy approximately as many and as new library books, textbooks, science supplies, and school buses as do white children. Similarly, there must be more teachers for Negro elementary children, and high school teachers with inadequate training for high school teaching should be retrained, or assigned on a nonracial basis to classes for which they are qualified. Negro and white bus drivers should receive equal pay. Per pupil expenditures for maintenance should be approximately equal.

---

<sup>115/</sup>Schools were ordered closed in four cases decided this year in the Middle District of Alabama: Lowndes, supra; Carr v. Montgomery County Board of Education, C. A. No. 2072-N; Harris v. Bullock County Board of Education, C. A. No. 2328-N; and Lee v. Macon County Board of Education, C. A. No. 604-E.

The type of relief the Government seeks herein to redress past wrongs has been granted in four recent District Court cases in Mississippi. In Carroll County, for example, Judge Clayton ordered equalization of physical facilities, equipment, libraries, teacher-pupil ratios in each grade, quantity and quality of equipment for commercial courses, and salaries of professional personnel.<sup>114/</sup> Judge Cox has ordered similar relief.<sup>115/</sup>

### 3. Remedial Programs

Father W. L. Furman testified that it would create substantial problems to put students who had received deficient educations in mathematics into advanced mathematics classes. He testified further,

Yes, remedial programs could be designed to help ease the transition. I believe remedial programs could be used to ease the transition in any subject, not just mathematics.

The Lowndes County decree, supra, ordered the defendants to fashion such remedial programs. And Judge Hemphill has said in Clarendon County, South Carolina,<sup>115a/</sup>

Because the weaknesses of a dual school system may have already affected many children, the court would be remiss in its duty if any desegregation plan were approved which did not provide for remedial education courses.

---

<sup>114/</sup> United States v. Carroll County Board of Education, C. A. No. GC 6541 (N.D. Miss., 1966).

<sup>115/</sup> Anderson v. Canton Municipal Separate School District, C. A. No. JC 3700 (S.D. Miss. 1965) (plumbing facilities); Judge Clayton also granted equalization relief in Baird v. Benton County Board of Education, C. A. No. 6531 (N.D. Miss., 1965) (curricula and per pupil expenditures), and in Cowan v. Bolivar County Board of Education, C. A. No. 6531 (N.D. Miss., 1965) (pupil-teacher ratios, facilities, salaries, and curricula).

<sup>115a/</sup> Miller v. School District No. 2, Clarendon County, South Carolina, C. A. No. 8752, District of South Carolina (June 14, 1966).

With hundreds of thousands of dollars in federal funds available to them, <sup>116/</sup> the defendants should be able to make a determined start toward overcoming the results of the deficiencies in the educations they have provided to Negroes in Wilcox County. The defendants are certainly in a better position than the Court or the Attorney General to establish details of a remedial program. We would suggest only that, while the primary emphasis should be on those students who have not yet finished school, the defendants also owe a debt to and should consider training programs for the adult Negroes of Wilcox County, including the teachers who received their pre-college education there.

C. Reports to the Court

In school cases, as in voting cases, statistics speak with authority. It is essential to have them to determine the extent of compliance with the Court's decree. The reporting relief we request in this case is analogous to the orders this Court entered in the Dallas and Perry County voting cases. <sup>117/</sup>

---

<sup>116/</sup> Title I of the Elementary and Secondary Education Act of 1965 contemplates substantial grants for 1966-67 and 1967-68. 20 U.S.C. §241b. The grants are determined on the basis of state expenditures for schools and the number of poor children in each county. Since according to the 1960 census, Wilcox County has 4,279 children aged 5 to 17 whose families earn less than \$2,000 a year, it is potentially a major recipient of federal aid.

<sup>117/</sup> United States v. Atkins, C. A. No. 2584 (1965); United States v. Scarborough, C. A. No. 2881 (1965).

## VI

### PROPOSED DECREE

It is hereby ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they hereby are permanently enjoined from discriminating on the basis of race or color in the operation of the Wilcox County school system and shall take steps to eliminate the effects of past racial discrimination in the operation of the system, all in accordance with the following provisions:

#### I

##### SPEED OF DESEGREGATION

Commencing with the 1966-67 school year, grades 1, 7, 10, 12, and at least three others, to be designated by the defendants; shall be desegregated and pupils assigned to schools in those grades without regard to race or color in accordance with the provisions of this decree. Commencing with the 1967-68 school year, all grades will be desegregated.

#### II

##### EXERCISE OF CHOICE

The following provisions shall apply in each desegregated grade:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and Negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice for the 1966-1967 school year shall commence on August 15 and end on September 1, 1966. In years following, the period for exercising choice shall commence on March 1, and end on March 31, preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the superintendent.



(f) Mailing of Explanatory Letters and Choice Forms.

On the first day of the choice period there shall be distributed by first class mail an explanatory letter and a choice form to the parent or other adult person acting as parent of each student who will be entering a desegregated grade in the following year, together with a return envelope addressed to the superintendent. The text for the explanatory letter and choice form shall conform as nearly as possible to the sample letter and choice form appended to this decree (Appendices A and B).

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students and the general public at each school in the system and at the office of the superintendent.

(h) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the superintendent.

(i) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information

sufficient to identify the student and indicates that he has made a choice of school.

(j) Choice Forms Binding. Once a choice form has been submitted, and the choice period having expired, the choice is binding for the entire school year and may not be changed except in cases where compelling hardship is shown by the student.

(k) Preferences in Assignment. In assigning students to schools, no preference shall be given to any student for prior attendance at a school, and no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color.

(l) Second Choice where First Choice is Denied. Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available.

(m) Transportation. If school bus transportation is provided, buses will be routed to the greatest extent which is reasonable in light of the geographic distribution of students, so as to serve each student choosing any school in the system.

(n) Official not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choices made or schools to which individual students are assigned shall not be made public.

### III

#### NEW STUDENTS AND STUDENTS FROM SCHOOLS TO BE CLOSED

Each new student and each student from schools to be closed pursuant to paragraph VI(a) of this decree shall be required to exercise a choice of schools before enrollment. Each such student shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each shall be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period shall be given at least one week to do so.

### IV

#### TRANSFERS

(a) Transfers for Special Needs. Any student who requires a course of study not offered at the school to which he has been assigned, or who is physically handicapped,

may be permitted, upon his written application, to transfer to another school which is designed to fit or offer courses for his special needs.

(b) Transfers for Students in Non-Desegregated Grades. Any student entering a grade to which the choice provisions of this decree do not yet apply, shall have the right to transfer to any school from which he would otherwise be excluded on account of his race or color.

#### V

##### SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by, or affiliated with, the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

#### VI

##### SCHOOL EQUALIZATION

(a) Schools and Buildings To Be Closed. The defendants shall no longer conduct classes at Burson Elementary School, at Yellow Bluff Elementary School,

or in the wood frame buildings at Lower Peach Tree High School, Snow Hill Institute, or Tate's Chapel. As soon as practicable, and in no event later than September 1, 1967, the defendants shall discontinue the use for any classes or school-sponsored activities of the buildings enumerated in the preceding sentences and of Lower Peach Tree High School and the industrial arts building at Camden Academy.

(b) Inferior Schools. In schools heretofore maintained for Negro students, the defendants shall take all reasonable steps necessary to provide physical facilities, equipment, courses, and instruction of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent possible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. Excepting materials the defendants or other parties demonstrate with appropriate records or other evidence that the defendants or other governmental agency did not provide or help to provide, library books, textbooks, science equipment, and school buses shall, to the extent possible, be distributed so as to bring about approximate equality of numbers and condition of such materials at each school in the system, in relation to enrollments at each school. If for any reason it is not feasible to improve sufficiently any

school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice.

(c) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

## VII

### FACULTY AND STAFF

(a) Faculty Employment. Race or color shall not be a factor in the hiring, assignment, reassignment, salary, promotion, demotion or dismissal of teachers and other staff members, including bus drivers, except to correct the effects of past discriminatory assignments.

(b) Dismissals. Teachers and other professional staff members may not be dismissed, demoted, or passed over for retention, promotion or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy.

If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the past assignment of any teacher or staff member, where such past assignment was based upon race or color, shall not be considered in determining whether he shall be released.

(c) Past Assignments. The defendants shall take steps to assign and reassign teachers and other professional staff members to eliminate past discriminatory patterns.

#### VIII

##### REPORTS TO THE COURT

(a) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before September 15, 1966, and in each subsequent year on or before June 1, a report tabulating by race the number of choice applications received for enrollment in each grade in each school in the system, and the number of choices granted and the number denied in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices denied for each such reason.

(b) Report After School Opening. The defendants shall serve upon opposing counsel and file with the Clerk of the Court fifteen days after the opening of schools for the fall semester each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system should indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.



(iii) A description of any steps or programs instituted by the defendants pursuant to paragraph VI of this decree. The report for 1966-1967 may be filed at the same time as the report required by paragraph VIII(a) of this decree. A supplementary report on the program of redistributions required in paragraph VI(b) and the remedial programs required in paragraph VI(c) of this decree shall be served upon opposing counsel and filed with the Clerk of the Court on or before October 1, 1966.

APPENDIX A

WILCOX COUNTY BOARD OF EDUCATION  
CAMDEN, ALABAMA

Dear Parent:

Grades in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, who is entering a desegregated grade must make a choice of schools. If a child is entering the ninth or a higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form.

The form on which the choice should be made is attached to this letter. It should be completed and returned by September 1, 1966. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent at any time between August 15 and September 1. No one may require you to return your choice form before September 1 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen.

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

## Appendix B

### CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and it does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, Camden, Alabama, by September 1, 1966. A choice is required for each child.

Name of child \_\_\_\_\_  
(Last) (First) (Middle)

Address \_\_\_\_\_

Name of Parent or other  
adult serving as parent \_\_\_\_\_

If child is entering first grade, date of birth:

\_\_\_\_\_  
(Month) (Day) (Year)

Grade child is entering \_\_\_\_\_

School attended last year \_\_\_\_\_

Choose one of the following schools by marking an X beside the name.

| <u>Name of School</u>                                 | <u>Grade</u> | <u>Location</u>  |
|---|--------------|------------------|
| <input type="checkbox"/> Alberta                      | 1-9          | Alberta          |
| <input type="checkbox"/> Annie Manie                  | 1-12         | Annie Manie      |
| <input type="checkbox"/> Boykin                       | 1-12         | Boykin           |
| <input type="checkbox"/> Camden Academy               | 1-12         | Camden           |
| <input type="checkbox"/> Canton Bend                  | 1-6          | Camden           |
| <input type="checkbox"/> Coy Public                   | 1-9          | Coy              |
| <input type="checkbox"/> Lower Peach Tree             | 1-6          | Lower Peach Tree |
| <input type="checkbox"/> Moore Academy                | 1-12         | Pine Apple       |
| <input type="checkbox"/> Pine Hill High School        | 1-12         | Pine Hill        |
| <input type="checkbox"/> Pine Hill Junior High School | 1-9          | Pine Hill        |
| <input type="checkbox"/> Prairie                      | 1-6          | Prairie          |
| <input type="checkbox"/> Snow Hill Institute          | 1-12         | Snow Hill        |
| <input type="checkbox"/> Tates Chapel                 | 1-9          | Coy              |
| <input type="checkbox"/> Wilcox County High School    | 1-12         | Camden           |
| <input type="checkbox"/> Wilcox County Training       | 1-12         | Millers Ferry    |
| <input type="checkbox"/> W. J. Jones                  | 1-12         | Pine Apple       |

Signature \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 To be filled in by Superintendent:

School Assigned \_\_\_\_\_

## VII

### CONCLUSION

Two factors have stood in the way of progress toward compliance with school-desegregation law in Wilcox County.

It is only realistic to state that one factor is the large numerical preponderance of Negro students in Wilcox County, students who have received inferior educations. The courts have fashioned, and we propose, two types of relief to ease the transition from a dual school system to a constitutional school system. Rather than requiring nonracial, geographic attendance zones, the courts have approved free-choice plans, so long as they do not involve assignments based on race. In addition, courts recently have concentrated on equalization of facilities and remedial programs. The defendants' witness, Father W. L. Furman, is confident remedial programs can be designed to "ease the transition."<sup>118/</sup>

The second factor that has stood in the way of progress toward compliance with the law in Wilcox County is the intransigence of the defendants, or at least of the dominant defendants. Despite even a request from the board of trustees of the largest white school in the county that the defendants comply with the law,<sup>119/</sup> they have refused to make a single good-faith effort to desegregate the schools of Wilcox County.

---

<sup>118/</sup> Testimony of Father W. L. Furman.

<sup>119/</sup> Pl. Int. Primm Ex. 6, p. 11, minutes of the Board of Education.

We have prepared the proposed decree that pre-  
cedes this conclusion in the belief that it will set  
the proper course of action for the defendants, while  
leaving to school authorities the items of school  
administration and policy that are properly theirs.

Respectfully submitted,

VERNOL R. JANSEN  
United States Attorney

JOHN DOAR  
Assistant Attorney General  
FRANK M. DUNBAUGH  
ALEXANDER C. ROSS

---

CHARLES QUAINANCE  
Attorneys  
Department of Justice  
Box 751  
Selma, Alabama 36701

July , 1966

CERTIFICATE OF SERVICE

I certify that, on July , 1966, I served the foregoing Brief, together with the attached Appendices, by mailing copies thereof, postage prepaid, to the attorneys for the defendants and the intervenor-plaintiffs at the following addresses:

Mr. McLean Pitts  
Attorney at Law  
Pitts & Pitts  
Selma, Alabama 36701

Honorable Gordon Madison  
Assistant Attorney General  
State of Alabama  
Montgomery, Alabama 36100

Mr. Peter A. Hall and  
Mr. Orzell Billingsley, Jr.  
Attorneys at Law  
Suite 510  
1630 Fourth Avenue North  
Birmingham, Alabama 35203

---

CHARLES W. QUAINANCE  
Attorney  
Department of Justice  
Washington, D. C.