

No. 23335

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant-Intervenor,

DORIS ELAINE BROWN, ET AL.,
Appellant,

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, ET AL.,
Appellees.

Appeal from the District Court of the United States
Northern District of Alabama

Record on Appeal

Received U. S. Court of Appeals, New Orleans, La.,
Jan. 20, 1966.

Filed, U. S. Court of Appeals, Jan. 20, 1966, Edward
W. Wadsworth, Clerk.

SOUTHERN DIVISION DOCKET C.A. 65-366

TITLE OF CASE: DORIS ELAINE BROWN and DELORES ELOISE BROWN by Sam Brown, their father and next friend, ET AL.

UNITED STATES OF AMERICA, Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF THE CITY OF BESSEMER; J. HOWARD McENIRY, President of the City Board of Education of Bessemer, Alabama; DR. JAMES O. KNUCKLES, Superintendent of Education of the City of Bessemer, Alabama; and JOE TERRY, CHARLES A. LONG, JR., ROBERT MILL-SAP, JACK WISCHMYER, EDNA MORTON, and RICHARD PATTERSON, as members of the City of Bessemer Board of Education, and their successors in office,

BASIS OF ACTION: Class Action for violation of Civil Rights Act, Action for preliminary and permanent injunction enjoining defendants from continuing their practice of discrimination against plaintiffs by operating a compulsory biracial school system in Bessemer, Ala.

ATTORNEYS:

For Plaintiff: David H. Hood, Jr., 2001 Carolina Ave., Bessemer, Ala.; Oscar W. Adams, Jr., 1630 4th Ave. North, Birmingham, Ala.; Norman C. Amaker, Jack Greenberg, 10 Columbus Circle, New York, N. Y. 10019; Macon L. Weaver, U. S. Attorney and Brian K. Landsberg, Atty., Dept. of Justice, for Plaintiff-Intervenor.

For Defendant: J. Howard McEniry; McEniry, McEniry, & McEniry, 1721 4th Ave., N., Bessemer, Ala.; Reid B. Barnes, Lange, Simpson, Robinson & Somerville, 317 North 20th St., Birmingham, Ala.

FILINGS—PROCEEDINGS

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- May 24 Complaint filed—Page
Motion of plaintiffs for preliminary injunction filed—Page
Summons and complaint, with motion for preliminary injunction attached, issued—delivered to Marshal with copies for service on defendants.
- June 16 Summons and complaint with motion for preliminary injunction attached, returned, executed on all defendants, except Charles A. Long, Jr. and Richard Patterson, on May 25, 1965—and on Charles A. Long, Jr. on June 3, 1965—Richard Patterson not yet served—out of city until after July 1st—and filed.
Notice of Motion and Motion of the United States of America to intervene as plaintiff herein, with complaint in intervention and motion for preliminary injunction attached filed—Writ to serve copies on defendants issued—delivered to Marshal—Page
- June 18 Answer of defendant, City of Bessemer Board of Education, its Members and the Superintendent of Education to the complaint, filed—copy served by counsel—Page

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- June 21 Answer of the defendants to the motion to the complaint in intervention, with copy of the answer of the defendant City of Bessemer Board of Education, its members and the Superintendent of Education to the complaint attached, filed—copy served by counsel—Page
- June 24 Notice to defendants that plaintiff will take the deposition of defendant, Dr. James O. Knuckles, Supt. of Education of the City of Bessemer, Ala., on June 21, 1965, at 9:00 A.M., at 409 Federal Building, Birmingham, Ala., before Carmen Zegarelli, court reporter, etc. filed July 14, 1965.
- June 28 Writ to serve certified copies of Notice of Motion to Intervene as a plaintiff with complaint in Intervention attached, returned, executed on June 25, 1965, on The Board of Education of the City of Bessemer, Alabama, by serving Joe L. Terry, President of said board, filed.
- June 30 Memorandum Opinion of the Hon. Seybourn H. Lynne in this cause, filed—copies mailed attorneys—Page
- Order in conformity with the Memorandum Opinion of the Court contemporaneously filed herewith, restraining and enjoining the defendants, City of Bessemer Board of Education, the present members of said Board, Joe L. Terry, Jack Wischmeyer, Charles A. Long, Jr., Robert M. Millsap, and Richard Patterson,

and Dr. James O. Knuckles, Superintendent of Schools of the City of Bessemer, and their agents, servants, employees, successors in office and those in concert with them from requiring segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the Supreme Court in *Brown v. Board of Education of Topeka*, 349 U.S. 294; and requiring said persons to submit to this Court not later than July 9, 1965, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of the City of Bessemer, Alabama, public school system, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year commencing September, 1965, and thereafter, of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including the admission of new pupils entering the first grade, or coming into the city for the first time, on a non-racial basis; and that on or before the date of the filing thereof, a copy of said plan be served by defendants in the manner provided by the Federal Rules of Civil Procedure, by mail or otherwise, upon the attorneys for plaintiffs in this action, and that any objections to said proposed plan which plaintiffs may decide to make be filed and served upon the attorneys for defendants on or before the 19th day of

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July, 1965; and hearing on such objections as may be filed will be had before this court in Birmingham, Alabama, at 1:00 p.m., on July 29, 1965, filed and entered (Lynne)—copies mailed attorneys—Page

- July 1 Summons and complaint with motion for preliminary injunction attached, returned executed on Richard Patterson, on June 30, 1965, and filed.
- July 9 Plan submitted by the City of Bessemer Board of Education for desegregation of City of Bessemer School System, pursuant to the ORDER of the United States District Court, dated June 30, 1965, filed—Page
- July 15 Objections of plaintiffs' to defendants' Plan for Desegregation filed—copy served by counsel—Page
- July 19 Objection of United States of America, plaintiff intervenor to Plan for Desegregation, filed—copies served by counsel—Page
- July 30 Order approving plan for desegregation and ordering it into effect as against the objections made by plaintiffs and plaintiff-intervenor with the following modifications: 1. It is ordered that paragraph number 1 of the said Plan be and is modified by eliminating the words and figures "4th, 7th and 10th grades," where said words and figures appear in said paragraph and by substituting in lieu thereof the words and figures "7th, 10th and 12th

grades"; and also by eliminating from said paragraph the words and figures "August 13, 1965," where said words and figures appear in said paragraph, and by substituting in lieu thereof the words and figures "August 20, 1965." 2. It is further ordered that paragraph number 3 of said Plan be and is modified by eliminating the words and figures "2nd, 5th, 8th and 11th grades (as well as for the 4th, 7th and 10th grades)," where same appear in said paragraph, and by substituting in lieu thereof the words and figures "2nd, 3rd, 8th and 11th grades (as well as for the 7th, 10th and 12th grades)." 3. It is further ordered that paragraph number 4 of said Plan be and is modified by eliminating the words and figures "3rd, 6th, 9th and 12th grades" where said words and figures appear in said paragraph and by substituting in lieu thereof the words and figures "4th, 5th, 7th and 9th grades."—and requiring defendant to publish an advertisement in a newspaper of general circulation in the City of Bessemer, on each of 3 days prior to August 20, 1965, such chosen days to be spaced as regularly as is practicable, the first publication to be made promptly (within a day or two) following the rendition of this Order and notice thereof, stating the times, places and method of filing application for assignment or transfer of pupils under said Plan, with copy of form of notice prescribed to be given attached, filed and entered (Lynne)—copies mailed attorneys—Page

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- Aug. 5 Notice of Appeal by United States of America, Plaintiff-Intervenor, to the United States Court of Appeals for the Fifth Circuit from Order approving plan entered herein on July 30, 1965—certified copies mailed attorneys for defendants—Page
- Aug. 9 Notice of Appeal by plaintiffs, Doris Elaine Brown, et al., to the United States Court of Appeals, Fifth Circuit, from the order and judgment entered on the 30th day of July, 1965, approving the school plan offered by the Board of Education of the City of Bessemer, Alabama, filed—certified copies mailed attorneys for defendants—Page
- Aug. 18 Certified copy of order of United States Court of Appeals issued as and for the mandate, vacating and remanding this cause to the District Court for further consideration in the light of *Singleton v. Jackson Municipal Separate School District, et al.*, and *Price v. Denison, et al.*, which were decided by the United States Court of Appeals, filed—Page
- Aug. 20 Motion of United States of America, plaintiff-intervenor, for Order in conformity with the mandate of the Court of Appeals for the Fifth Circuit in this cause, filed—copy served by counsel—Page
- Aug. 27 Amendment to Plan for desegregation of City of Bessemer School System operating under the supervision of City of Bessemer Board of Ed-

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- ucation, filed—copies served by counsel—Page
- Aug. 27 Order overruling objections of plaintiffs and plaintiff-intervenor to the amended plan of desegregation this date filed by defendants, and approving the amended plan for desegregation, and requiring defendants to restudy such plan in mature consideration and report their conclusions in writing to the Court on or before December 31, 1965, and retaining jurisdiction of this cause for the purpose of entering such other or further orders as may be necessary or proper, filed and entered (Lynne)—copies mailed attorneys—copies delivered to U. S. Attorney—copy mailed Dr. James O. Knuckles—2 signed certified copies mailed St. John Barrett, attorney, Department of Justice, Washington, D. C.—Page
- Sept. 8 Appeal Bond of the plaintiffs filed (\$250) filed—Page
- Oct. 25 Notice of Appeal by the United States of America, plaintiff-intervenor, from the order overruling the objections of plaintiffs and plaintiff-intervenor to the amended plan of desegregation entered herein on Aug. 27, 1965 filed—certified copies mailed attorneys—Page
- Nov. 23 Order extending the time within the record on appeal in this case may be filed and docketed with the U. S. Court of Appeals, Fifth Circuit, to fifty days from the 4th day of Decem-

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ber, 1965 filed and entered (Grooms) copies mailed attorneys—certified copy mailed Clerk, U. S. Court of Appeals, New Orleans, La.—Page

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- Jan. 5 Statement of defendants pertaining to order of Aug. 27, 1965, assuming that no report as directed in said order is due to be filed or submitted pending disposition of the appeal unless further directed by order of the Court etc. filed—copy served by counsel—Page
- Jan. 10 Transcript of proceedings before the court on June 30, 1965 and on July 29, 1965, filed by Court Reporter Wester (2 volumes).

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

DORIS ELAINE BROWN and DELORES ELOISE BROWN, by Sam Brown, their father and next friend;

EARLENE GAINES, by Irene Gaines, her mother and next friend;

HERCULES MILLSAP II, SHARON MILLSAP and LINDA MILLSAP, by their mother and next friend, Josephine Millsap;

WILBURN JONES, JOY DIANNE JONES, DAVID EARL JONES and EDDIE STEPHENS, JR., by Elizabeth Stephens, their mother and next friend;

GWENDOLYN DAVIS, by Merdis Davis, her mother and next friend—and in behalf of themselves and all other Negroes similarly situated.

Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE CITY OF BESSEMER; (J. HOWARD McENIRY), President of the City Board of Education of Bessemer, Alabama; (DR. JAMES O. KNUCKLES), Superintendent of of Education of the City of Bessemer, Alabama and JOE TERRY, CHARLES A. LONG, JR., ROBERT

CIVIL ACTION
No. CA 65-366

MILLSAP, JACK WISCHMYER,
EDNA MORTON, and RICHARD
PATTERSON as members of the City
of Bessemer Board of Education, and
their successors in office,

Defendants.

Filed in Clerk's Office, Northern District of Alabama,
May 24, 1965, William E. Davis, Clerk, U. S. District Court.
By Mary L. Tortorici, Deputy Clerk.

COMPLAINT

This is a proceeding for a preliminary and permanent injunction enjoining the City of Bessemer Board of Education and its members and the Superintendent of Education from continuing their policy, practice, custom and usage of discriminating against the Plaintiffs and others similarly situated by operating a compulsory biracial school system in Bessemer, Alabama in violation of rights secured to the minor plaintiffs by the Constitution and Laws of the United States of America, as hereinafter more fully appears.

I.

Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1343(3), this being a suit in equity authorized by law, 42 U.S.C. §1983, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof, to redress the deprivation, under color of State law, statute, ordinance, regulation, custom, or usage of rights, privileges and immunities secured by the Constitution of the United States of America, specifically the Fourteenth Amendment, and by 42 U.S.C. §1981 providing for the equal

rights of citizens and all persons within the jurisdiction of the United States.

Jurisdiction is further invoked under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

II.

This is a class action brought by the adult plaintiffs for the minor plaintiffs pursuant to Rule 17(c) of the Federal Rules of Civil Procedure on behalf of themselves and other adults and minors similarly situated, pursuant to the provisions of Rule 23(a) (3) of the Federal Rules of Civil Procedure. The members of the class are adult Negro citizens and their minor children residing in Bessemer, Alabama. The members of the class on behalf of whom plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this court, but there are common questions of law and fact involved, common grievances arising out of common wrongs and common relief is sought for each plaintiff and each member of the class. Plaintiffs adequately represent the interests of the class.

III.

Plaintiffs are: Doris Elaine Brown and Delores Eloise Brown, by Sam Brown, their father and next friend; Hercules Millsap II, Sharon Millsap, and Linda Millsap, by their mother Josephine Millsap as next friend; Earline Gaines, by Irene Gaines, her mother and next friend; Wilburn Jones, Joy Dianne Jones, David Earl Jones, and Eddie Stephens, Jr., by Elizabeth Stephens, their mother and next friend; Gwendolyn Davis, by Merdis Davis, her mother and next friend. Plaintiffs are all members of the Negro race and are citizens of the United States residing in Bessemer, Alabama. The minor plaintiffs and other Negro citizens

similarly situated are attending or are eligible to attend the public schools of the City of Bessemer, which are under the jurisdiction, management and control of Defendant Board.

IV.

Defendant City of Bessemer Board of Education maintains, operates, and supervises the public schools of Bessemer, Alabama under color of the authority vested in it by the Constitution and laws of the State of Alabama. Defendant J. Howard McEniry is president of the Board of Education; Defendant Joe Terry is Vice-President of said Board of Education; Defendants Charles A. Long, Jr., Robert M. Millsap, Jack Wischmyer, Edna Morton, and Richard Patterson are members of the Board. Defendant Dr. James O. Knuckles, is Superintendent of the City Schools and among other duties executes the policies of the defendant Board and acts as secretary thereof.

V.

Defendant Board, acting under color of the authority vested in it by the laws of the State of Alabama, has pursued and is presently pursuing a policy, custom, practice and usage of operating a dual public school system in Bessemer, Alabama on a basis that discriminates against plaintiffs and other Negroes similarly situated because of race and color, in that:

(a) One system of schools is constructed, operated and maintained exclusively for white pupils.

(b) All Negro students in Bessemer, Alabama are initially assigned to schools limited exclusively to Negro students—all white students in Bessemer, Alabama are assigned to schools limited exclusively to white students.

(c) Teachers, principals, and other professional per-

sonnel are assigned to schools by the defendant Board on the basis of race, with Negro personnel assigned only to Negro schools and white personnel assigned only to white schools.

(d) A dual scheme or pattern of school zone lines or school attendance area lines based upon race and color is maintained by defendant Board.

(e) Extra-curricular school activities are limited to participation by Negro students only or by white students only.

(f) Defendant Board has in the past and is presently planning and undertaking construction of new school facilities, formulation of new school budgets, and disbursement of school funds on a racially segregated basis and with the purpose and effect of maintaining a biracial school system in the City of Bessemer, Alabama.

On March 23, 1965, a petition asking for changes in the above mentioned practices, policies and customs of the Board was presented to the Bessemer Board of Education. No answer to this petition has been received.

VI.

Acting under color of the Alabama School Placement Law, Alabama Code Title 52, Sections 61 (1) - (12), defendant Board has continued to maintain and operate a system of assigning school children in the City of Bessemer, Alabama, on the basis of race, and has used the provisions of the statute to deny admission of Negro children to schools which they would attend if they were white.

Defendant Board has not employed the Alabama School Placement Law as a means of abolishing state imposed racial distinctions nor has it offered to plaintiffs and other Negro children by means of the School Placement Law, a genuine

method for securing attendance at non-segregated public schools.

VII.

The actions of the defendants herein alleged, are in violation of plaintiffs' rights and of the rights of other Negroes similarly situated which rights are secured by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1981 and the Civil Rights Act of 1964, 42 U.S.C. §2000.

VIII.

Plaintiffs, and those similarly situated, suffer and are continuing to suffer irreparable injury by reason of the acts and practices complained of herein. They have no plain, adequate, or complete remedy to redress these wrongs other than this suit for injunctive relief. Any other remedy would be attended by such uncertainties and delays as to deny substantial relief, involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience to the plaintiffs and those similarly situated.

WHEREFORE, plaintiffs respectfully pray that this Court advance this cause on the docket and order a speedy hearing of this action according to law, and, after such hearing, enter a preliminary and permanent decree enjoining the defendants, their agents, employees, successors and all persons in active concert and participation with them:

(1) From refusing to permit plaintiffs and members of the class to transfer during the first semester of the 1965-66 school year to schools which they would attend if they were white.

(2) From operating a biracial school system in Bessemer, Alabama.

(3) From assigning students to schools of Bessemer, Alabama on a basis of race and color.

(4) From subjecting Negro children seeking assignment, transfer, or admission to criteria, requirements and prerequisites not required of white pupils seeking assignment, transfer, or admission to the schools of Bessemer, Alabama.

(5) From assigning teachers, principals, and other professional school personnel to the schools of Bessemer, Alabama on the basis of race and color.

(6) From programming and supporting extra-curricular school activities which are limited solely to members of one race or the other.

(7) From undertaking any new construction, planning and approving school budgets, and disbursing funds on racial basis.

In the alternative, plaintiffs pray that this court enter a decree directing the defendant Board to present a complete plan for the reorganization of the school system of the City of Bessemer, Alabama into a unitary, non-racial system by the creation of single non-racial geographic zones or attendance areas for all grades in the system pursuant to which children, both Negro and white would be assigned to the school closest to their residence as a matter of right, including a plan for the assignment of pupils on a non-racial basis, the assignment of teachers, principals, and other school personnel on a non-racial basis, and the elimination of any other discrimination in the operation of the school system based solely on race and color.

Plaintiffs pray that this Court will order and decree complete desegregation of all grades in all public schools in

the City of Bessemer, Alabama immediately and forthwith, including pupils, teachers, professional personnel, and all other areas of activity in the public school system of Bessemer, Alabama.

Plaintiffs pray that should this Court direct the defendants to produce a plan for desegregation of the City of Bessemer, Alabama school system, this Court will retain jurisdiction of this case pending approval and full implementation of defendants' plan.

Plaintiffs pray that this Court will allow them their costs, herein, reasonable counsel fees, and grant such other, further, additional or alternative relief as may appear to the Court to be equitable and just.

DAVID H. HOOD, JR. [Sig.]

DAVID H. HOOD, JR.
2001 Carolina Avenue
Bessemer, Alabama

OSCAR W. ADAMS, JR. [Sig.]

OSCAR W. ADAMS, JR.
1630 Fourth Avenue North
Birmingham, Alabama

NORMAN C. AMAKER [Sig.]

NORMAN C. AMAKER
JACK GREENBERG
10 Columbus Circle
New York, New York 10019
Attorneys for Plaintiffs.

STATE OF ALABAMA
JEFFERSON COUNTY

Before me the undersigned authority in and for said

State and County personally appeared one, Sam Brown, Irene Gaines, Josephine Millsap, Elizabeth Jones, and Merdis Davis, parents of the within named minor plaintiffs, who being by me duly sworn, depose and say that the facts set out in the within complaint are true and correct to the best of their knowledge, information, and belief and were given by them voluntarily.

MR. SAM BROWN
MRS. IRENE GAINES
MRS. JOSEPHINE MILLSAP
MR. AND MRS. E. A. STEPHENS
MRS. MERDIS R. DAVIS
Parents

Certified and sworn to before me this the 19th day of May, 1965.

ED WARD, III [Sig.]
Notary Public

ED WARD, III, Notary Public State at Large. My Commission Expires January 11, 1969.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
June 16, 1965, William E. Davis, Clerk, U. S. District Court.
By Jewel M. Massey, Deputy Clerk.

NOTICE OF MOTION AND MOTION
TO INTERVENE AS A PLAINTIFF

TO ALL PARTIES AND TO ALL ATTORNEYS OF
RECORD:

Please take notice that on Wednesday, June 30, 1965,
at 10:00 A.M., or as soon thereafter as counsel may be
heard, in the courtroom of the United States District Court
for the Northern District of Alabama, United States Post
Office Building, Birmingham, Alabama, the United States
will move this Court for leave to intervene as a plaintiff in
this action and for leave to file a Complaint in Intervention
which is attached hereto.

This motion will be made pursuant to Section 902 of
the Civil Rights Act of 1964 and Rule 24 of the Federal

Rules of Civil Procedure. It will be based upon all of the
pleadings and other documents on file in this case, upon the
attached Complaint in Intervention and upon the Certificate
of the Attorney General attached hereto.

NICHOLAS DEB. KATZENBACH [Sig.]
Attorney General
JOHN DOAR [Sig.]
Assistant Attorney General
MACON L. WEAVER [Sig.]
United States Attorney
DAVID L. NORMAN [Sig.]
Attorney
Department of Justice.

ALLOWED—
June 21, 1965
LYNNE, Judge.

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

<p>DORIS ELAINE BROWN, et al., <i>Plaintiffs,</i></p> <p>UNITED STATES OF AMERICA, <i>Plaintiff-Intervenor,</i></p> <p>v.</p> <p>THE BOARD OF EDUCATION OF THE CITY OF BESSEMER, et al., <i>Defendants.</i></p>	}	<p>CIVIL ACTION No. 65-366</p>
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Filed in Clerk's Office, Northern District of Alabama,
June 16, 1965, William E. Davis, Clerk, U. S. District Court.
By Jewell M. Massey, Deputy Clerk.

COMPLAINT IN INTERVENTION

The United States, as intervenor, alleges as a claim against the defendants:

1. This is a complaint in intervention filed by the United States under Section 902 of the Civil Rights Act of 1964 (78 Stat. 241, 266-267).

2. On May 24, 1965, the plaintiffs filed their complaint in this case under 42 U.S.C. 1983 seeking injunctive relief against alleged conduct of the defendants denying them the equal protection of the laws on account of race or color, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1981.

3. The Attorney General has certified that this case

is of general public importance and his certificate is attached to this complaint in intervention.

4. The plaintiffs herein are Negro citizens of the United States who presently reside in Bessemer, Alabama and are presently enrolled in or eligible to attend Bessemer public schools.

5. Defendants are the City of Bessemer Board of Education, its members, and the Superintendent of the Bessemer public school system. The defendants are charged by Alabama law with the responsibility of operating the public school system in the City of Bessemer.

6. In operating the public school system of the City of Bessemer, the defendants maintain a dual set of schools in which one set of schools is maintained for Negro students and another set for white students.

7. The schools maintained by the defendants for Negro students are staffed by teachers and administrative personnel who are Negro. The schools maintained by the defendants for white students are staffed by teachers and administrative personnel who are not Negro.

8. In the schools maintained for Negro students, the defendants offer educational opportunities inferior to those provided in the schools maintained for white students.

WHEREFORE, the plaintiff-intervenor prays that the court enter an order enjoining the defendants, together with their agents, employees, successors and all those in active concert or participation with them, from maintaining a dual system of schools based upon race or color, from failing to offer and provide equal educational opportunities to all students in all schools without regard to their race or color, and from otherwise maintaining in the operation of the Bessemer schools any distinctions based upon race or color.

Plaintiff-intervenor further prays that this Court grant such additional relief as the needs of justice may require, including the costs and disbursements of this action.

NICHOLAS deB. KATZENBACH [Sig.]
Attorney General

JOHN DOAR [Sig.]
Assistant Attorney General

MACON L. WEAVER [Sig.]
United States Attorney

DAVID L. NORMAN [Sig.]
Attorney, Department of Justice.

CERTIFICATE OF THE ATTORNEY GENERAL
OF THE UNITED STATES

NICHOLAS deB. KATZENBACH, Attorney General of the United States, certifies that, in his judgment, the case of *Doris Elaine Brown, et al., v. The Board of Education of the City of Bessemer, et al.*, Civil Action No. 65-366, which has been commenced in the United States District Court for the Northern District of Alabama, Southern Division, seeking relief from the denial of the equal protection of the laws based on race or color, is of general public importance.

This certification is made pursuant to the provisions of Section 902 of the Civil Rights Act of 1964.

Signed this 16th day of June, 1965.

NICHOLAS deB. KATZENBACH [Sig.]
Attorney General.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
June 16, 1965, William E. Davis, Clerk, U. S. District Court.
By Jewel M. Massey, Deputy Clerk.

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION

TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____,
at _____ or as soon thereafter as
counsel may be heard, in the courtroom of the United States
District Court for the Northern District of Alabama, United
States Post Office Building, Birmingham, Alabama, the
United States will move the Court for a preliminary injunc-
tion enjoining the defendants, together with their agents, em-
ployees, successors and all those in active concert or partici-
pation with them, from maintaining a dual system of schools
based upon race or color, from failing to offer and provide
equal educational opportunities to all students in all schools

without regard to their race or color and from otherwise maintaining, in the operation of the Bessemer schools, any distinctions based upon race or color.

This motion is based upon the complaint in intervention, all other papers or pleadings on file in this case, and on oral testimony and other evidence to be adduced at the hearing on this motion.

John Doar/B.K.L. [Sig.]

JOHN DOAR
Assistant Attorney General

MACON L. WEAVER [Sig.]
United States Attorney

David L. Norman/B.K.L.

DAVID L. NORMAN, *Attorney*
Department of Justice

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

DORIS ELAINE BROWN and
DELORES ELOISE BROWN, by
SAM BROWN, their father and next friend,
et al

Plaintiffs

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al

Defendants

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
June 18, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

ANSWER OF THE DEFENDANT,
CITY OF BESSEMER BOARD OF EDUCATION
ITS MEMBERS AND THE SUPERINTENDENT
OF EDUCATION TO THE COMPLAINT

As to the plaintiffs whose names are set out in paragraph III of the complaint as being minor plaintiffs attending or eligible to attend the public schools of the City of Bessemer, the defendants admit that children bearing those names are now attending the City of Bessemer public schools.

It is admitted that the City of Bessemer Board of Education maintains, operates and supervises the schools of Bessemer as alleged in paragraph IV of the complaint. However, some of the persons named therein as being members of the Board

of Education are not actually members of the Board. The members of the Board are:

Mr. Joe L. Terry
 Mr. Jack Wischmeyer
 Mr. Charles A. Long, Jr.
 Mr. Robert M. Millsap
 Mr. Richard Patterson

As to the allegations of paragraph V of the complaint, the defendants assert that there has been no application or request in any form in behalf of any Negro pupil or child seeking attendance of such Negro pupil or child at any school attended by white children and that, while there has been a petition filed, the defendants deny that any such petition was filed by any parent of any child eligible to attend the Bessemer City Schools or attending the Bessemer schools or by any child eligible to attend the Bessemer Schools or attending the Bessemer schools. It is also denied that there has been any application or request in behalf of any Negro pupil or any principal or teacher or other person that any Negro principal be assigned to duty in any school attended by white children.

There are now enrolled in the schools in the City of Bessemer, under the administration of defendant, a total of 5,138 Negro pupils and a total of 2,781 white pupils, of which 1,350 Negro pupils attend the high school grades, ninth, tenth, eleventh and twelfth grades, and 911 white pupils attend the high school grades. In the elementary grades, grades one through eight, there are 3,788 Negro pupils and 1,870 white pupils.

Defendants assert that while it is true that there are no Negro children or pupils attending any school under the jurisdiction of the defendant board which is attended by white children or pupils, the defendant board, its members and

superintendent deny that it would refuse because of race or color to consider any application or request of or in behalf of any Negro child or pupil to attend a school attended by white children.

The defendant board, its members and superintendent assert that actually the system which exists as far as attendance of the Bessemer school system is concerned, is one of voluntary segregation between the races. Defendant board, its members and superintendent assert that there has been no initial assignment of children on the basis of race, but assert that such an assignment has been purely a voluntary one on the part of each child and parent and not at the request of the defendant board, its members or superintendent.

Defendants, therefore, deny that it has discriminated against children in the attendance of the Bessemer city schools on the ground of race or color, in violation of the 14th Amendment of the Constitution of the United States.

J. HOWARD McENIRY [Sig.]
 1721 Fourth Avenue, North, Bessemer

REID B. BARNES [Sig.]
 317 North 20th Street, Birmingham

Attorneys for Defendants, The Board
 of Education of the City of Bessemer,
 et al.

McEniry, McEniry & McEniry
 1721 Fourth Avenue, North
 Bessemer, Alabama

Lange, Simpson, Robinson & Somerville
 317 North 20th Street
 Birmingham, Alabama

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Answer has this day been served by United States Mail, postage prepaid on Messrs. David H. Hood, Jr., Oscar W. Adams, Jr., Norman C. Amaker and Jack Greenberg, attorneys of record for the plaintiffs, at their respective addresses.

This 17th day of June, 1965.

REID B. BARNES [Sig.]
Of Counsel for Defendants

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

DORIS ELAINE BROWN, et al,
Plaintiffs

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al,
Defendants

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
June 21, 1965, William E. Davis, Clerk, U. S. District Court.
By Jewel M. Massey, Deputy Clerk.

ANSWER OF DEFENDANTS TO MOTION TO
COMPLAINT IN INTERVENTION

The defendants, by way of answer to the complaint in intervention, hereby adopt the answer filed in their behalf to the original complaint and attach a true copy thereof to the within answer as Exhibit A.

J. HOWARD McENIRY [Sig.]
1721 Fourth Avenue, North, Bessemer

REID B. BARNES [Sig.]
317 North 20th Street, Birmingham

Attorneys for the Defendants, The
Board of Education of the City of
Bessemer, et al.

McEniry, McEniry & McEniry
1721 Fourth Avenue, North
Bessemer, Alabama

Lange, Simpson, Robinson & Somerville
317 North 20th Street
Birmingham, Alabama

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Answer in Intervention together with attached copies of the answer to the original complaint (attached as Exhibit A) have this 21st day of June, 1965, been served upon Honorable Macon L. Weaver, U. S. Attorney, representing the intervenor, for his use and for the use of the Attorney General of the United States and his office.

REID B. BARNES [Sig.]
Attorney for defendants

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

DORIS ELAINE BROWN and
DELORES ELOISE BROWN, by
SAM BROWN, their father and
next friend, et al

Plaintiffs

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al

Defendants

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
June 21, 1965, William E. Davis, Clerk, U. S. District Court.
By Jewel M. Massey, Deputy Clerk.

ANSWER OF THE DEFENDANT,
CITY OF BESSEMER BOARD OF EDUCATION
ITS MEMBERS, AND THE SUPERINTENDENT
OF EDUCATION TO THE COMPLAINT

As to the plaintiffs whose names are set out in paragraph III of the complaint as being minor plaintiffs attending or eligible to attend the public schools of the City of Bessemer, the defendants admit that children bearing those names are now attending the City of Bessemer public schools.

It is admitted that the City of Bessemer Board of Education maintains, operates and supervises the schools of Bessemer as alleged in paragraph IV of the complaint. However, some

of the persons named therein as being members of the Board of Education are not actually members of the Board. The members of the Board are:

Mr. Joe L. Terry
 Mr. Jack Wischmeyer
 Mr. Charles A. Long, Jr.
 Mr. Robert M. Millsap
 Mr. Richard Patterson

As to the allegations of paragraph V of the complaint, the defendants assert that there has been no application or request in any form in behalf of any Negro pupil or child seeking attendance of such Negro pupil or child at any school attended by white children and that, while there has been a petition filed, the defendants deny that any such petition was filed by any parent of any child eligible to attend the Bessemer City Schools or attending the Bessemer schools or by any child eligible to attend the Bessemer Schools or attending the Bessemer schools. It is also denied that there has been any application or request in behalf of any Negro pupil or any principal or teacher or other person that any Negro principal be assigned to duty in any school attended by white children.

There are now enrolled in the schools in the City of Bessemer, under the administration of defendant, a total of 5,138 Negro pupils and a total of 2,781 white pupils, of which 1,350 Negro pupils attend the high school grades, ninth, tenth, eleventh and twelfth grades, and 911 white pupils attend the high school grades. In the elementary grades, grades one through eight, there are 3,788 Negro pupils and 1,870 white pupils.

Defendants assert that while it is true that there are no Negro children or pupils attending any school under the jurisdiction of the defendant board which is attended by white

children or pupils, the defendant board, its members and superintendent deny that it would refuse because of race or color to consider any application or request of or in behalf of any Negro child or pupil to attend a school attended by white children.

The defendant board, its members and superintendent assert that actually the system which exists as far as attendance of the Bessemer school system is concerned, is one of voluntary segregation between the races. Defendant board, its members and superintendent assert that there has been no initial assignment of children on the basis of race, but assert that such an assignment has been purely a voluntary one on the part of each child and parent and not at the request of the defendant board, its members or superintendent.

Defendants, therefore, deny that it has discriminated against children in the attendance of the Bessemer City Schools on the ground of race or color, in violation of the 14th Amendment of the Constitution of the United States.

J. HOWARD McENIRY [Sig.]
 1721 Fourth Avenue, North, Bessemer

REID B. BARNES [Sig.]
 317 North 20th Street, Birmingham

Attorneys for Defendants, The Board
 of Education of the City of Bessemer,
 et al

McEniry, McEniry & McEniry
 1721 Fourth Avenue, North
 Bessemer, Alabama

Lange, Simpson, Robinson & Somerville
 317 North 20th Street
 Birmingham, Alabama

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Answer has this day been served by United States Mail, postage prepaid on Messrs. David H. Hood, Jr., Oscar W. Adams, Jr., Norman C. Amaker and Jack Greenberg, attorneys of record for the plaintiffs, at their respective addresses.

This 17th day of June, 1965.

REID B. BARNES
Of Counsel for Defendants

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

DORIS ELAINE BROWN, et al,
Plaintiffs

UNITED STATES OF AMERICA,
Plaintiff-Intervenor

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al,
Defendants

CIVIL
ACTION
No. 65-366

MEMORANDUM OPINION

By agreement of the attorneys of record for the respective parties hereto, this action was submitted for judgment of the court on plaintiffs' prayer for final injunctive relief on the original complaint, the complaint in intervention of the United States of America, the answers of defendants, and the oral testimony in open court of Dr. James O. Knuckles, Superintendent of Schools for the City of Bessemer, together with the exhibits thereto.

Brought as a class action by Negro citizens presently attending the public schools of the City of Bessemer, Alabama, and in behalf of other Negro citizens similarly situated, the original plaintiffs, in essence, pray for a complete desegregation of the City of Bessemer public school system with all of its appurtenances to be accomplished by an affirmative injunction requiring, among other things, defendants to submit for approval of the court a plan for the assignment of pupils, teachers, principals, and other school personnel on a non-racial basis.

Defendant, City of Bessemer Board of Education, comprised of five members, is responsible for the operation of all public schools within the City of Bessemer, Alabama. There are 10 schools in the system, attended by approximately 8,206 pupils, 5,286 of whom are Negro and 2,920 white. Two hundred eighty-two teachers are employed by the Board, of whom 170 are Negroes.

It was conceded that defendants historically and consistently have operated a dual public school system. Throughout the 1964-1965 term Negro pupils exclusively attended 4 schools, namely, Jackson S. Abrams, accommodating grades 1 through 12; George Washington Carver, accommodating grades 1 through 12; and Dunbar and Hard, each accommodating grades 1 through 8.

On the other hand, white pupils exclusively attended Bessemer High School, accommodating grades 10 through 12; Bessemer Junior High School, accommodating grades 7 through 9, and Jonesboro Elementary, Arlington Elementary, Westhills Elementary, Vance Elementary and Jonesboro Annex, each accommodating grades 1 through 6.

For the past two years the above-mentioned white schools in the system have been operated on the six-three-three plan, the first six grades comprising the elementary school, the next three grades comprising the junior high school, and the last three grades comprising the senior high school. On the other hand, the Negro schools have been operated on the seven-five plan.

There are areas within the City of Bessemer where white and Negro pupils are mixed as to residences and other areas where Negro pupils reside closer to schools presently attended only by white pupils than to schools attended only by Negroes.

No Negro teacher has ever been assigned to a school attended by white pupils, and no white teacher has ever been assigned to a school attended only by Negro pupils. Negro administrative personnel function only with reference to schools attended by Negroes, while white administrative personnel are primarily concerned with the affairs pertaining to schools attended only by white pupils.

While the evidence is undisputed that no application has ever been filed seeking the transfer of a Negro pupil to any school within the system attended by white pupils, as authorized by the Alabama School Placement Law, the Court of Appeals for the Fifth Circuit, in its opinion ordering the issuance of an interlocutory injunction in *Armstrong, et al v. Bd. of Ed., Birm., Ala., et al*, 323 F.2d 333 (5th Cir. 1963), held: "The burden of initiating desegregation does not rest on Negro children or parents or on whites, but on the School Board." Thereafter, the court explicitly stated: "Nothing contained in this opinion or in the order directed to be issued by the district court is intended to mean that voluntary segregation is unlawful; or that the same is not legally permissible."

It was conceded that the defendant Board, although having discussed the matter, has never formulated any definitive plan of desegregation. Moreover, it affirmatively appears that neither the Superintendent nor the Board has given notice to students, parents, teachers and other appropriate school personnel calculated to inform them of the rights of Negro parents and pupils to apply for transfer to schools attended by white pupils.

For obvious reasons it would be premature for the court to rule at this time with reference to the assignment of teachers, principals, supervisors, or other professional school personnel. The court expressly disclaims the expression of any

opinion as to whether a Negro pupil, as opposed to other persons who would be immediately affected, has standing to seek such relief. Such questions can be more appropriately considered by the Board and by the court if necessary at some future date.

A separate order, granting a part of the relief for which plaintiffs pray, will be filed and entered herein. As a caveat, the plan to be submitted pursuant to such order, insofar as timing is concerned, should parallel that submitted by the Board of Education of the City of Birmingham required by the opinion and mandate of the United States Court of Appeals for the Fifth Circuit in *Armstrong, et al v. Bd. of Ed., Birm., Ala., et al*, 333 F.2d 47 (5th Cir. 1964).

Done, this the 30th day of June, 1965.

SEYBOURN H. LYNNE
Chief Judge

Filed in Open Court June 30, 1965

(Seal)

A true copy, William E. Davis, Clerk, U. S. District Court, Northern District of Alabama. By M. Claire Parsons, Deputy Clerk.

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

DORIS ELAINE BROWN, et al,
Plaintiffs

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al,
Defendants

CIVIL
ACTION
No. 65-366

INJUNCTION AND ORDER

In conformity with the memorandum opinion of the court contemporaneously filed herewith:

It is ORDERED, ADJUDGED and DECREED by the court that the defendants, City of Bessemer Board of Education, the present members of said Board, Joe L. Terry, Jack Wischmeyer, Charles A. Long, Jr., Robert M. Milsap, and Richard Patterson, and Dr. James O. Knuckles, Superintendent of Schools of the City of Bessemer, and their agents, servants, employees, successors in office and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the Supreme Court in *Brown v. Board of Education of Topeka*, 349 U. S. 294.

It is further ORDERED, ADJUDGED and DECREED that said persons be and they are hereby required to submit to this court not later than July 9, 1965, a plan under which the said defendants propose to make an immediate start in the desegregation of the schools of the City of Bessemer, Alabama, public school system, which plan shall effectively provide for the carrying into effect not later than the beginning of the school year commencing September, 1965, and thereafter, of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including the admission of new pupils entering the first grade, or coming into the city for the first time, on a non-racial basis.

It is further ORDERED that, on or before the date of the filing thereof, a copy of said plan be served by defendants in the manner provided by the Federal Rules of Civil Procedure, by mail or otherwise, upon the attorneys for plaintiffs in this action, and that any objections to said proposed plan which plaintiffs may decide to make be filed and served upon the attorneys for defendants on or before the 19th day of July, 1965. Hearing on such objections as may be filed will be had before this court in Birmingham, Alabama, at 1:00 p.m., on July 29, 1965.

ORDERED, this 30th day of June, 1965.

SEYBOURN H. LYNNE
Chief Judge

Filed in Open Court June 30, 1965

SEYBOURN H. LYNNE
Judge

(Seal)

A true copy, William E. Davis, Clerk, U. S. District Court, Northern District of Alabama. By M. Claire Parsons, Deputy Clerk.

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

DORIS ELAINE BROWN, et al
Plaintiffs

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al,
Defendants

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama, July 9, 1965, William E. Davis, Clerk, U. S. District Court. By M. Claire Parsons, Deputy Clerk.

PLAN FOR DESEGREGATION OF
CITY OF BESSEMER SCHOOL SYSTEM
OPERATING UNDER THE SUPERVISION OF
CITY OF BESSEMER BOARD OF EDUCATION

The City of Bessemer Board of Education proposes the following plan, pursuant to order of Court:

1. All applications filed by the parents at the office of the Superintendent of Education (Located at 412 North 17th Street), in accordance with regulations of the Board on or before August 13, 1965, for assignment or transfer for the

4th, 7th and 10th grades, to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board pursuant to its regulations as far as is practicable, so that a decision may be made for either approval or rejection of such applications for the term commencing on September 1, 1965, without discrimination as to race or color.

2. Negro children entering the first grade in the City of Bessemer School System will report on the first day of September, 1965, at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only by white children or only by Negro children) :

Carver Elementary School
Dunbar School
Hard School
22nd Street School

White children entering the first grade in the City of Bessemer School System will report on the first day of September, 1965 at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only by white children or only by Negro children) :

Arlington School
Jonesboro Elementary School
Vance School
Westhills School

All applications for assignment in behalf of children entering the first grade, Negro or white, will be acted upon

promptly. It is the present purpose of the Board to follow a similar administrative plan for future years as to children entering the first grade, the day of reporting to correspond to the day of the school opening.

3. Applications filed by the parents at the office of the Superintendent of Education (located at 412 North 17th Street), in accordance with regulations of the Board during the period commencing May 1 and ending May 15, 1966, for assignment or transfer for the 2nd, 5th, 8th and 11th grades (as well as for the 4th, 7th and 10th grades) to a school attended by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board pursuant to its regulations as far as is practicable, so that a decision may be made for either approval or rejection of such application for the term commencing in September, 1966, without discrimination as to race or color.

4. Applications filed by the parents at the office of the Superintendent of Education (located at 412 North 17th Street), in accordance with regulations of the Board during the period commencing May 1 and ending May 15, 1967, for assignment or transfer for the 3rd, 6th, 9th and 12th grades (as well as for all other grades except the first grade) to a school attended by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board pursuant to its regulations as far as is practicable, so that a decision may be made for either approval or rejection of such application for the term commencing in September, 1967, without discrimination as to race or color.

5. Except as provided above, all pupils in all grades of the Bessemer System will remain assigned to schools to which

they are assigned or will be assigned to schools in accordance with the custom and practice for assignment of pupils that has prevailed in the school system prior to the entry of the judgment of the District Court in this case on June 30, 1965, such method of assignment being necessary in order to prevent a disruption of the school system and to maintain an orderly administration of the schools in the interests of all pupils.

6. It is the present purpose of the Board to follow a similar administrative plan for assignment or transfer in years following the school year commencing in the fall of 1967, for all grades except entrance into the first grade.

7. It is the considered determination and judgment of the Board that the foregoing provisions for desegregation subject to individual applications as herein provided are for the best interests of the education of the children of both races.

8. Notice of the time for making or filing all applications for assignment or transfer will be published in a newspaper or newspapers in the City of Bessemer promptly after the final approval of this plan, or any amendment thereto if directed by the Court, or in such other manner as shall be prescribed by the Court. The form of notice proposed to be given is as follows:

TO THE STUDENTS OF THE CITY OF BESSEMER SCHOOL SYSTEM OPERATING UNDER THE SUPERVISION OF THE CITY OF BESSEMER BOARD OF EDUCATION, THE PARENTS OF SUCH STUDENTS, THE TEACHERS AND OTHER SCHOOL PERSONNEL:

Notice of the plan of desegregation of the Board of Education of the City of Bessemer Schools, pursuant to the order of the United States District Court dated June 30, 1965, is

hereby given. The outline of such plan (as far as the year commencing on September 1, 1965 is concerned) implemented by Court order as follows:

1. All applications filed by parents at the office of the Superintendent of Education (located at 412 North 17th Street), in accordance with regulations of the Board on or before August 13 for assignment or transfer for the 4th, 7th and 10th grades to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board so that action may be taken thereon on such applications for the term commencing on September 1, 1965, without discrimination as to race or color.

2. Negro children entering the first grade in the City of Bessemer School System will report on the 1st day of September, 1965 at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended by white children or only by Negro children):

Carver Elementary School
Dunbar School
Hard School
22nd Street School

White children entering the first grade in the City of Bessemer School System will report on the first day of September, 1965, at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only by white children or only by Negro children):

Arlington School
 Jonesboro Elementary School
 Vance School
 Westhills School

All applications for assignment in behalf of children entering the first grade, Negro or white, will be acted upon promptly.

J. HOWARD McENIRY [Sig.]
 REID B. BARNES [Sig.]
 Attorneys for defendants

Of counsel:

McEniry, McEniry & McEniry
 1721 Fourth Avenue, North
 Bessemer, Alabama

Lange, Simpson, Robinson & Somerville
 317 North 20th Street
 Birmingham, Alabama

A true copy of the foregoing Plan has been served by mail, postage prepaid, upon Messrs. David H. Hood, Jr., Oscar W. Adams, Jr., Norman C. Amaker and Jack Greenberg as attorneys for plaintiffs and upon Messrs. John Doar, Macon L. Weaver and David L. Norman as attorneys for the United States, Plaintiff-Intervenor, this 9th day of July, 1965.

REID B. BARNES [Sig.]
 Attorney for Defendants

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
 THE CITY OF BESSEMER, et al.,
Defendants

CIVIL
 ACTION
 No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
 July 15, 1965, William E. Davis, Clerk, U. S. District Court.
 By M. Claire Parsons, Deputy Clerk.

PLAINTIFFS' OBJECTIONS TO DEFENDANTS'
 PLAN FOR DESEGREGATION

1. Defendants' plan requires Negro children and their parents or guardians to apply for transfer from "Negro" to "white" schools "in accordance with existing regulations" which place onerous and burdensome requirements on Negro children and their parents and guardians. The plan contemplates a screening process with Negro children having to "pass muster" to enter white schools from the Negro school that the dual system has put them in. Thus the duty to desegregate that is on the defendants is avoided and has instead been shifted to Negro children and their parents or guardians.

2. What the plan proposes with respect to the first grade is particularly objectionable since Negro children are

first required to register at "Negro" schools and then apply to attend white schools. Hence, there is a complete absence of nondiscriminatory initial assignment which can only be accomplished by assigning children, Negro and white, to the schools nearest their homes on the basis of fairly drawn unitary nonracial geographic zones.

3. Plaintiffs object to defendants' failure to include the 12th grade as one of the grades to be initially desegregated in order to insure Negro students now in school "some measure of desegregation before graduation." Under recent decisions of the 5th Circuit, desegregation must proceed from both ends of the school ladder (assuming there is some justification for delaying completion of the process) simultaneously.

4. The plan does not provide for abolition of the dual system since there are no provisions for coalescence of the present dual zones based on race into single zones based only on such factors as population, capacity, geography, residence, etc.

5. The plan proposes nothing with respect to desegregation of adult teaching and supervisory personnel.

6. The plan fails to provide for the desegregation of the racially based dual system of busing Negro and white children to school nor does it take into account the effect of the transportation pattern on the system of dual zoning and does not purport to abolish either.

7. Defendants' plan, by failing to propose destruction of the dual system by coalescence of the dual zones, permits excessive overcrowding in the Negro schools as compared with the white schools to continue.

8. Defendants' plan, by failing to propose destruction of the dual system by coalescence of the dual zones, fosters

continuing discrimination in regard to the proposed plans for school construction.

9. Defendants' plan, by failing to propose destruction of the dual system by the coalescence of the dual zones, continues in effect the unnecessary financial burden borne by both races but which falls more heavily on Negro parents, that is the result of operating a dual system of schools.

10. Defendants do not in their plan, justify the proposed delay in completing the desegregation process.

NORMAN C. AMAKER [Sig.]

JACK GREENBERG

10 Columbus Circle

New York, New York 10019

OSCAR W. ADAMS, JR.

1630 Fourth Avenue, North

Birmingham, Alabama

DAVID H. HOOD, JR.

2001 Carolina Avenue

Bessemer, Alabama

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This will certify that on this 14th day of July, 1965, I served copies of the foregoing Plaintiffs' Objections to Defendants' Plan for Desegregation upon J. Howard McEniry, Esq., 1721 Fourth Ave., North, Bessemer, Alabama and Reid B. Barnes, Esq., 317 North 20th Street, Birmingham, Alabama, attorneys for the defendants, and upon John Doar, Assistant Attorney General and Macon L. Weaver, United States Attorney, as attorneys for the United States, Plaintiff-

Intervenors, by mailing copies to their respective addresses via United States mail, postage prepaid.

NORMAN C. AMAKER [Sig.]
Attorney for Plaintiffs

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
July 19, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

OBJECTIONS TO PLAN FOR DESEGREGATION

The United States, plaintiff-intervenor, objects to the proposed plan for desegregation of the school system of the City of Bessemer submitted by the defendants pursuant to this Court's order of June 30, 1965, on the following grounds:

1. The proposed plan provides for an inadequate rate of desegregation.
 - a. The proposed plan does not provide for the desegregation of each grade in the Bessemer school system by September 1965.
 - b. The proposed plan fails to provide for the desegregation of the twelfth grade by September 1965.

c. The proposed plan fails to provide for the "feeding" of students to the next school level without regard to race.

d. The proposed plan fails to provide for initial assignment to all grades without regard to race, with respect to students newly enrolling in the school system.

e. The proposed plan makes no provision for the enrollment, in schools attended by white students, of Negro students who attend schools offering inferior educational opportunities.

f. No provision is made for the enrollment of Negro students, in schools attended by white students, for the purpose of taking any course of study not offered in the school or schools attended by the Negro students.

2. The scope of the proposed plan for desegregation fails to meet the requirements of a good faith start toward desegregation.

a. The proposed plan perpetuates the original racial assignment of children in grades 4, 7 and 10 and imposes on their parents the burden of obtaining transfer to schools in which white children are automatically enrolled without a requirement of transfer.

b. The proposed plan fails to provide for initial non-racial assignment of all first graders who do not exercise their choice of school or who cannot be enrolled in the school of their choice because it is filled to capacity.

c. The proposed plan fails to provide that if the number of students who choose to attend a school exceeds the school's capacity, assignment to the school will be based on proximity of the student's residence to the school.

d. The proposed plan fails to provide for the abolition

of the dual attendance zones based on race as to each grade to which the plan will apply, or in any way provide for the ultimate elimination of dual attendance zones.

e. The proposed plan fails to provide for the desegregation and non-discriminatory hiring, placing, and retention of teachers and administrative personnel.

3. The proposed plan is procedurally inadequate.

a. The time limit within which Negroes may apply for transfer is unreasonably short.

b. The proposed plan fails to fix a reasonable limit on the time within which applications for transfer must be acted upon.

c. The notice to parents required by the proposed plan does not state simply and clearly, in terms understandable by laymen, the procedures for desegregation; nor does the plan provide for each parent to be notified individually of its provisions.

d. The notice to parents required by the proposed plan fails to include an assurance that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under the plan.

e. The proposed plan requires Negroes entering the first grade to go to Negro elementary schools and white children entering the first grade to go to white elementary schools in the vicinity of their residence to make application for assignment to another school.

These objections are based upon the pleadings, papers, and other documents heretofore filed in this case, upon the record of testimony and other evidence presented to this Court in the hearing of June 30, 1965, and upon the testi-

mony and other evidence to be offered by plaintiff-intervenor at the hearing upon these objections.

MACON L. WEAVER [Sig.]
 United States Attorney
 ST. JOHN BARRETT [Sig.]
 BRIAN K. LANDSBERG [Sig.]
Attorneys
Department of Justice

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
 THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
 ACTION
 No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
 July 19, 1965, William E. Davis, Clerk, U. S. District Court.

MEMORANDUM OF POINTS AND AUTHORITIES
 IN SUPPORT OF OBJECTIONS TO PLAN
 FOR DESEGREGATION

1. a. The proposed plan does not provide for the desegregation of each grade in the Bessemer school system by September 1965.

Delay in desegregation must be justified by a showing by the defendant of administrative difficulties. *Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955); *Goss v. Board of Education of the City of Knoxville, Tennessee*, 373 U.S. 683 (1963). No such administrative difficulties are alleged by the defendants to justify the delay embodied in their plan.

1. b. The proposed plan fails to provide for the desegregation of the twelfth grade by September 1965.

The twelfth grade should be included in the first year in any plan for desegregation, so that each student in the school system will have some opportunity to enjoy a desegregated education during his school career. *Gaines v. Dougherty County Board of Education*, 334 F.2d 983 (C.A.5, 1964).

1. c. The proposed plan fails to provide for the "feeding" of students to the next school level without regard to race.

1. d. The proposed plan fails to provide for initial assignment to all grades without regard to race, with respect to students newly enrolling in the school system.

The Fifth Circuit has held that students new to the system must be assigned on a non-racial basis to grades not reached by the plan. *Bivins v. Board of Public Education & Orphanage for Bibb County, Georgia*, 342 F.2d 229 at 231 (C.A.5, 1965).

The proposed plan fails to provide for initial assignment without regard to race both where a student newly moves into the Bessemer area and where he changes from one school level to another.

1. e. The proposed plan makes no provision for the enrollment, in schools attended by white students, of Negro students who attend schools offering inferior educational opportunities.

1. f. No provision is made for the enrollment of Negro students, in schools attended by white students, for the purpose of taking any course of study not offered in the school or schools attended by the Negro students.

The Equal Protection Clause of the Fourteenth Amendment requires that any plan for desegregation include a provision permitting any Negro student to change schools, regardless of grade, if courses and facilities at a white school are not available to him at the Negro school. *Sweatt v. Painter*, 339 U.S. 629 (1950); *Missouri ex rel. Gaines v. Canada*,

305 U.S. 337 (1938); *Boyce v. County Board of Education of Humphreys County, Tennessee*, 7 R.R.L.R. 372 (M.D. Tenn. 1961). The record already contains evidence that Negroes in Bessemer have been and are provided with educational opportunities and facilities which are inferior to those provided white students.

2. a. The proposed plan perpetuates the original racial assignment of children in grades, 4, 7, and 10 and imposes on their parents the burden of obtaining transfer to schools in which white children are automatically enrolled without a requirement of transfer.

To provide machinery by which Negroes can apply for and be assigned to desegregated grades in white schools is not to provide for the desegregation of a school system. As the Court said in *Northcross v. Board of Education of Memphis*, 302 F.2d 818, 823, "Negro children cannot be required to apply for that to which they are entitled as a matter of right." Nor does such machinery serve to carry the burden of correcting past discrimination to prevent its being "frozen" into the future. *Taylor v. Board of Education of City School District of New Rochelle*, 191 F.Supp. 181, 186 (E.D. N.Y., 1961), *aff'd* 294 F.2d 36 (C.A.2, 1961).

A minimum procedure would be a freedom of choice plan under which all students must choose the schools they desire to attend. *Stell v. Savannah-Chatam County Board of Education*, 333 F.2d 55, 65 (C.A.5, 1964).

2. b. The proposed plan fails to provide for initial non-racial assignment of all first graders who do not exercise their choice of school or who cannot be enrolled in the school of their choice because it is filled to capacity.

2. c. The proposed plan fails to provide that if the number of students who choose to attend a school exceeds the school's capacity, assignment to the school will be based on proximity of the students' residence to the school.

Assignment of students on the basis of race must be avoided in any plan for desegregation. The proposed plan should therefore provide for the initial non-racial assignment of first graders who do not make a choice or whose choice cannot be complied with because of overcrowding. *Goss v. Board of Education of Knoxville, Tennessee*, 373 U.S. 683 (1963); *Bush v. Orleans Parish School Board*, 308 F.2d 491 (5th Cir. 1962).

2. d. The proposed plan fails to provide for the abolition of the dual attendance zones based on race as to each grade to which the plan will apply, or in any way provide for the ultimate elimination of dual attendance zones.

The Fifth Circuit has held:

The dual or bi-racial school attendance system . . . shall be abolished as to each grade to which the plan is applied and at the time of the application thereof to such grades, and thereafter to additional grades as the plan progresses. *Armstrong v. Board of Education of Birmingham*, 333 F.2d 45 at 51 (C.A. 5, 1964); *Bivins v. Board of Public Education & Orphanage for Bibb County, Georgia*, 342 F.2d 229 at 231 (C.A. 5, 1965).

The record already establishes that dual or separate school attendance zones based on race exist in Bessemer. No provision is made in the proposed plan for their abolition.

2. e. The proposed plan fails to provide for the desegregation and non-discriminatory hiring, placing, and retention of teachers and administrative personnel.

In order to secure to students the full benefit of a desegregated education, it is necessary to provide teachers and administrative personnel without regard to race in each school and to assure teachers that they will not be dismissed as a result of desegregation. *Board of Public Instruction of Duval County, Florida v. Braxton*, 326 F.2d 616 (C.A.5, 1964);

Price v. The Denison Independent School District Board of Education, Civil Action No. 21632 (C.A.5, July 2, 1965). Superintendent Knuckles has already testified that Negro teachers in Bessemer are as capable as white teachers. No difficulty in desegregation of faculties has been suggested, other than an adverse community feeling toward faculty desegregation.

3. a. The time limit within which Negroes may apply for transfer is unreasonably short.

Negroes must be provided an ample opportunity to exercise their rights under the plan. *Armstrong v. Board of Education of Birmingham, supra* at 52. The two week period within which Negroes may apply for transfer does not meet this requirement and should be extended.

3. b. The proposed plan fails to fix a reasonable limit on the time within which applications for transfer must be acted upon.

In *Armstrong v. Board of Education of Birmingham, supra* at 52, the Court said:

Applicants will not be required to submit to undue delay in the consideration of their applications. . . .

The proposed plan provides that applications of Negroes entering the first grade are to be acted upon "promptly." The vagueness of the time limit permits delay.

3. c. The notice to parents required by the proposed plan does not state simply and clearly, in terms understandable by laymen, the procedures for desegregation; nor does the plan provide for each parent to be notified individually of its provisions.

3. d. The notice to parents required by the proposed plan fails to include an assurance that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under the plan.

Negro parents must be made fully aware of the procedures for desegregation. To this end it is necessary that notice of such procedures be given each parent individually as well as published in newspapers. To insure that such notice is understandable to laymen, it should be written in simple and clear language. As stated in *Stell v. Savannah-Chatham County Board of Education*, 333 F.2d 55 (5th Cir. 1964), the notice must be "in such manner and terms as to bring home to Negro students notice of the rights that are to be accorded them." The present notice contains legal phrasing which may be confusing to laymen.

3. e. The proposed plan requires Negroes entering the first grade to go to Negro elementary schools and white children entering the first grade to go to white elementary schools in the vicinity of their residence to make application for assignment to another school.

The registration requirement for children entering the first grade, to be applicable under the proposed plan for all future years, will guarantee the perpetual initial assignment of Negro first graders on the basis of race and will permanently place the burden of re-assignment on Negroes by preventing the elimination of bi-racial school attendance zones for the first grade. *Armstrong v. Board of Education of Birmingham, supra*.

MACON L. WEAVER [Sig.]
United States Attorney

ST. JOHN BARRETT [Sig.]

BRIAN K. LANDSBERG [Sig.]
Attorneys,
Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Objections to Plan for Desegregation and Memorandum of Points and Authorities in Support of Objections to Plan for Desegregation, by personally delivering a copy of each of the above documents to the law office of Reid B. Barnes, Lange, Simpson, Robinson & Somerville, Attorneys at Law, Exchange Security Bank Building, Birmingham, Alabama, attorney for the defendants, and Oscar W. Adams, Jr., Attorney at Law, 1630 4th Avenue North, Birmingham, Alabama, attorney for the plaintiffs, on this the 19th day of July 1965.

JONATHAN B. SUTIN [Sig.]
Attorney for Plaintiff-Intervenor

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
July 30, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

ORDER ON HEARING OBJECTIONS TO
PLAN OF DESEGREGATION

This cause came on to be heard on the objections of the plaintiffs and plaintiff-intervenor to the plan of desegregation heretofore submitted by the defendants, and the objections being duly considered by the Court, the following order is made:

It is ORDERED, ADJUDGED and DECREED that the plan for desegregation be and is approved and ordered into effect as against the objections made by the plaintiffs and plaintiff-intervenor with the following modifications:

1. It is ordered that paragraph number 1 of the said Plan be and is modified by eliminating the words and figures "4th, 7th and 10th grades," where said words and figures

appear in said paragraph and by substituting in lieu thereof the words and figures "7th, 10th and 12th grades"; and also by eliminating from said paragraph the words and figures "August 13, 1965," where said words and figures appear in said paragraph, and by substituting in lieu thereof the words and figures "August 20, 1965."

2. It is further ordered that paragraph number 3 of said Plan be and is modified by eliminating the words and figures "2nd, 5th, 8th and 11th grades (as well as for the 4th, 7th and 10th grades)," where same appear in said paragraph, and by substituting in lieu thereof the words and figures "2nd, 3rd, 8th and 11th grades (as well as for the 7th, 10th and 12th grades)."

3. It is further ordered that paragraph number 4 of said Plan be and is modified by eliminating the words and figures "3rd, 6th, 9th and 12th grades" where said words and figures appear in said paragraph and by substituting in lieu thereof the words and figures "4th, 5th, 6th and 9th grades."

4. It is further ordered that the defendants be and are required to publish an advertisement in a newspaper of general circulation in the City of Bessemer, on each of three days prior to August 20, 1965, such chosen days to be spaced as regularly as is practicable, the first publication to be made promptly (within a day or two) following the rendition of this order and notice thereof, it being allowable that the last publication be made one or two days prior to August 20, 1965. The notice shall state the times, places and method of filing application for assignment or transfer of pupils under said Plan. A copy of the form of notice prescribed to be given is attached to this order as sufficient for the purposes stated herein.

5. The time, manner and form of notices for school

years subsequent to the school year commencing in September, 1965, shall be in accordance with further orders or directions of this Court.

DONE and ORDERED this 30th day of July, 1965.

SEYBOURN H. LYNNE [Sig.]
United States District Judge

[Seal]

A true copy, William E. Davis, Clerk, U. S. District Court, Northern District of Alabama. By M. Claire Parsons, Deputy Clerk.

TO THE STUDENTS OF THE BESSEMER PUBLIC SCHOOL SYSTEM, OPERATING UNDER THE SUPERVISION OF THE CITY OF BESSEMER BOARD OF EDUCATION, THE PARENTS OF SUCH STUDENTS, THE TEACHERS AND OTHER SCHOOL PERSONNEL:

Notice of the plan of desegregation of the Board of Education of the City of Bessemer, pursuant to the order of the United States District Court dated July ..., 1965, is hereby given. The outline of such plan (as far as the year commencing in September, 1965, is concerned) implemented by Court order, is as follows:

1. All applications filed at the Office of the Superintendent of Education (located at 412 North 17th Street) in accordance with regulations of the Board on or before August 20, 1965, for assignment or transfer for the 7th, 10th and 12th grades, to a school heretofore attended only (or in any case predominantly) by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board, so that action may be taken thereon on such applications for the term com-

mencing in September 1965, without discrimination as to race or color.

2. Negro children entering the first grade in the Bessemer system will report on the 1st day of September 1965, at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only, or predominantly, by white children, or only by Negro children):

Carver Elementary School
Dunbar School
Hard School
22nd Street School

White children entering the first grade in the Bessemer system will report on the 1st day of September, 1965, at the school named below which is in the vicinity of the child's residence at the time. Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only or predominantly, by white children, or only by Negro children);

Arlington School
Jonesboro Elementary School
Vance School
Westhills School

All applications for assignments in behalf of children entering the first grade, Negro or White, will be acted upon promptly.

SUPERINTENDENT AND CITY OF BESSEMER
BOARD OF EDUCATION, BESSEMER, ALABAMA

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
Aug. 5, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

NOTICE OF APPEAL

Notice is hereby given that the United States of America, Plaintiff-Intervenor above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from Order approving plan entered herein on July 30, 1965.

MACON L. WEAVER [Sig.]
United States Attorney

E. RAY ACTON [Sig.]
Assistant United States Attorney

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
Aug. 9, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs above named, Doris Elaine Brown, et al., hereby appeal to the United States Court of Appeal for the Fifth Circuit, from the order and judgment entered by this court on the 30th day of July, 1965, approving said school plan offered by the Board of Education of the City of Bessemer, Alabama.

DAVID H. HOOD, JR. [Sig.]
Attorney for Plaintiffs,
2001 Carolina Avenue
Bessemer, Alabama

OSCAR ADAMS [Sig.]
1630 4th Avenue, North
Birmingham, Alabama

NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE

By:

JACK GREENBERG AND
NORMAN C. AMAKER

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

CITY OF BESSEMER
BOARD OF EDUCATION, et al.,
Appellees,

No. 22862

Filed, U. S. Court of Appeals, Aug. 17, 1965, Edward
W. Wadsworth, Clerk.

Filed in Clerk's Office, Northern District of Alabama,
Aug. 18, 1965, William E. Davis, Clerk, U. S. District Court,
By M. Claire Parsons, Deputy Clerk.

Appeal from the United States District Court for
the Northern District of Alabama

(August 17, 1965)

Before HUTCHESON, RIVES and JONES, Circuit Judges
BY THE COURT:

IT IS ORDERED that the judgment of the district
court be and it is hereby vacated and the cause is remanded
to the district court for further consideration in the light
of Singleton v. Jackson Municipal Separate School District,
et al., ___ Fed. 2d ___, No. 22527, decided by this Court on
June 22, 1965, and Price v. Denison Independent School Dis-
trict Board of Education, et al., — Fed. 2d ___, No. 21632,
decided by this Court on July 2, 1965.

The disposition made by this order renders unnecessary the consideration of other matters submitted to this Court by motions.

[Seal]

A true copy. Test: Edward W. Wadsworth, Clerk. U. S. Court of Appeals, Fifth Circuit. By G. F. Ganucheau, Deputy. Aug. 17, 1965, New Orleans, Louisiana.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

MOTION FOR ORDER FOLLOWING REMAND

Filed in Clerk's Office, Northern District of Alabama, Aug. 20, 1965, William E. Davis, Clerk, U. S. District Court. By M. Claire Parsons, Deputy Clerk.

Plaintiff-intervenor respectfully moves the Court to enter an order forthwith in conformity with the mandate of the Court of Appeals for the Fifth Circuit in *United States v. Board of Education of the City of Bessemer*, No. 22862 (5th Cir., August 17, 1965), and as reasons therefor states:

1. On July 30, 1965 this Court entered its order in this case modifying and approving as modified, the plan for desegregation submitted by the defendants.

2. On August 17, 1965 the Court of Appeals vacated the foregoing order and remanded the case to this Court.

3. In remanding the case to this Court, the Court of Appeals directed that the plan for desegregation submitted by the defendants be further considered by this Court in light of *Singleton v. Jackson Municipal Separate School District*, No. 22527 (5th Cir., June 22, 1965) and *Price v. The*

Denison Independent School District Board of Education,
No. 21632 (5th Cir., July 2, 1965).

4. In vacating this Court's order and remanding the case for further consideration, the Court of Appeals clearly did not intend the defendants to be free of an outstanding court order to desegregate the Bessemer public school systems, but obviously intended that relief be granted beyond that contained in this Court's order of July 30, 1965.

For the above reasons, plaintiff-intervenor requests that an order be entered forthwith incorporating the terms of the order heretofore entered on July 30, 1965, but modified and supplemented by the relief prayed in the motion of the United States for an injunction pending appeal. A copy of that motion is attached.

MACON L. WEAVER [Sig.]
United States Attorney

BRIAN K. LANDSBERG [Sig.]
Attorney,
Department of Justice

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO.

UNITED STATES OF AMERICA,
Appellant,

vs.

CITY OF BESSEMER BOARD OF EDUCATION, et al.,
Appellees.

MOTION FOR AN INJUNCTION PENDING APPEAL
OR, IN THE ALTERNATIVE, FOR AN EXPEDITED
HEARING

The United States of America, Appellant herein, respectfully moves the Court for an injunction pending appeal, or in the alternative, for a hearing on the merits of this appeal at the earliest practicable date.

PROCEEDINGS BELOW

On May 24, 1965, the plaintiffs, Negro students eligible to attend the Bessemer, Alabama public schools, filed a complaint in the United States District Court for the Northern District of Alabama for an injunction requiring the appellees, City of Bessemer Board of Education and its superintendent, to desegregate the city public schools. On June 16, 1965 the appellant intervened. On June 30, 1965 the District Court entered an order enjoining the appellees from maintaining segregated schools and ordering the appellees to file a plan for desegregation with the Court by July 9, 1965. On July 19, 1965 the plaintiffs and the appellant filed objection. On July 30, 1965 the District Court modified the plan for desegregation and approved it as modified. Copies of the order approving the plan as modified and the text of the plan are attached to this motion.

On August 5, 1965 the appellant filed a notice of appeal from the District Court's order of July 30, 1965.

THE DESEGREGATION PLAN

The desegregation plan as approved by the District Court provides for the desegregation of the 1st, 7th, 10th and 12th grades for the 1965-66 school year; the 2nd, 3rd, 8th and 11th grades for the 1966-67 school year; and the 4th 5th, 6th and 9th grades for the 1967-68 school year.

The methods provided for desegregating the 7th, 10th and 12th grades for the 1965-66 school year is to be through the action of the appellees in processing applications filed by the parents of school children requesting transfer from one school to another. All other students in these grades will remain assigned to schools to which they are now assigned. As to the first grade, parents, on the first day of school, are to take their child to the school in their vicinity which was formerly attended solely by children of their race. At that time the parents may apply for assignment of the child to any school, and the appellees are thereafter to rule on such application. Students whose parents fail to make such application will be enrolled in the school to which they report.

The plan makes no provision, other than in the desegregated grades, for the enrollment on a non-racial basis, of students who have newly moved into the school district. Those students who newly moved to the school district after August 20, 1965 will not be permitted to apply for transfer even if they are in a desegregated grade.

The plan makes no provision, other than in the desegregated grades, for a Negro student to transfer to a school presently attended by white students in order to take a course unavailable to him in the Negro school. The attached table

shows that course offerings in Negro high schools are substantially less extensive than in white schools.

The plan contains no provision for a first step during the 1965-66 school year, toward the desegregation of school faculties and staffs.

The plan contains no criteria to be used in ruling an application for transfer or assignment.

ERRORS BELOW

In its appeal, appellant will urge that the appellees failed in the hearing below to sustain their burden of establishing administrative difficulties justifying delay in desegregating the schools and that, in fact, the record shows a complete lack of such administrative difficulties. We will also urge that the disparities between the white and Negro schools require desegregation without delay. Appellant will urge that the elimination of the dual school system requires the desegregation of faculty and staff. We will also attack as inadequate the notice of the plan to be given to parents of children in the Bessemer schools.

On its appeal the appellant will also argue that the use of a transfer system super-imposed upon initial racial assignments will permit vestiges of racial discrimination to remain in the school system for a full twelve years, and that such a system is contrary to prior holdings of this Court.

For purposes of injunctive relief pending appeal, however, appellant urges only those points which bear upon the operation of the schools for the 1965-66 school year and which, unless rectified by such injunction, will be irreparable.

THE RECORD BELOW

At the hearing on the merits and at the hearing on ob-

jections to the desegregation plan the appellant presented evidence to show that immediate desegregation of all grades presented little or no administrative obstacles, that the plan failed to constitute a good faith start toward desegregation and that the appellees have been offering to Negroes educational opportunities substantially inferior to those provided white children. Immediately relevant to the relief sought in this motion are the following:

a. *Course offering*

The attached table shows that course offerings in Negro high schools are substantially less extensive than in white schools. Former Negro students in the Bessemer system testified of unsuccessful efforts to take a course not offered at Carver High School but offered at the white high school.

b. *Teacher desegregation*

The appellee Superintendent of Bessemer Schools testified that an interchange of ideas between white and Negro teachers would be helpful as the schools desegregate but that there are no plans for desegregating joint faculty meetings during the 1965-66 school year. He testified that the Board has hired 20 new teachers for the 1965-66 school year to be assigned to particular schools on a racial basis and that there are still five vacancies to be filled.

c. *Criteria for assignment*

The Superintendent testified that the Alabama Pupil Placement Law criteria would be used in ruling on applications for assignment of transfer. These criteria, some seventeen in number, are set forth in section 61(4) of Title 52 of the Alabama Code.

OPERATIONS OF SCHOOLS FOR THE
1965-66 SCHOOL YEAR

Public schools are scheduled to open in Bessemer for the fall semester of the 1965-66 school year on September 1, 1965.

Unless restrained by order of this Court pending disposition of the appeal in this case, the appellees, in their operation of the public schools of the City of Bessemer for the 1965-66 school year will (1) make initial racial assignments in all grades; (2) make racial assignments of students newly moved into the school district; (3) deny Negroes in grades 2 through 6, 8, 9, and 11 the right to attend the presently white schools in order to take a course unavailable in the schools they are presently attending; and (4) fail to take any steps toward the desegregation in grades 2 through 8 and 10.

WHEREFORE, the United States respectfully moves the Court to issue an order enjoining appellees, pending this appeal from:

(1) failing to eliminate all aspects of racial discrimination in the assignment of children to schools in the desegregating grades and, in particular—

(a) to fix the places for registration of 1st graders without regard to the race or color of the pupils and without regard to the race or color of other students attending the school to which assignment is sought;

(b) in the event that the choice of all students for a particular school cannot be accommodated because of limited capacity to assign priorities strictly on the basis of proximity of residence and without regard to any prior attendance;

(c) to assign, without regard to their race or color, those students who fail to exercise a choice or whose choice for reasons unrelated to race cannot be granted.

(2) using the race or color of any student newly moved into the school district as a factor in assigning him to a particular school;

(3) failing to permit Negro students in all grades to transfer to a school now attended by white students in order to take a course otherwise unavailable to such Negro students;

(4) failing to assign teachers or other personnel newly employed for the 1965-66 school year to particular schools without regard to their race or color and without regard to the race or color of the students attending such schools, and,

(5) failing to conduct school faculty meetings and in-service training programs without segregation or other discrimination based upon race or color.

Respectfully submitted,

JOHN DOAR
Assistant Attorney General
ST. JOHN BARRETT, *Attorney*
Department of Justice
HAROLD H. GREENE, *Attorney*
Department of Justice

AUGUST 1965

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
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Defendants,

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
Aug. 27, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

AMENDMENT TO PLAN FOR DESEGREGATION OF
CITY OF BESSEMER SCHOOL SYSTEM OPERATING
UNDER THE SUPERVISION OF CITY OF BESSEMER
BOARD OF EDUCATION

The City of Bessemer Board of Education hereby amends its plans for desegregation previously submitted pursuant to court order (the order approving said plan having been recently vacated by the United States Court of Appeals for the Fifth Circuit) such amendment being now made and submitted pursuant to and because of the mandate of the United States Court of Appeals:

A. The terms of modification contained in the order of the United States District Court approving the original plan are hereby adopted as a part of said plan and of this amendment.

B. In addition to the 1st, 7th, 10th and 12th grades,

the 4th grade is also desegregated for the school year commencing in September, 1965 under the following terms and conditions: All applications (forms for which may be obtained at the office of the Superintendent of Education located at 412 North 17th Street, Bessemer) filed by the parents at said office of the Superintendent on or before September 1, 1965 for assignment or transfer for the 4th grade to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed, will be processed and determined by the Board promptly so that a decision may be made thereon without discrimination as to race or color, and in order that the pupils may be assigned as soon as possible for attendance at a school during the school year commencing in September, 1965.

C. The words "(as well as for the 7th, 10th and 12th grades)" contained in Paragraph 3 (as first modified by the court order) are deleted and the following words substituted in lieu thereof "(as well as the 4th, 7th, 10th and 12th grades)."

D. Assignments for the 1st grade for school years following the school year commencing in September, 1965, are to be made under the same terms as are prescribed in Paragraph 2 of the original plan, except that there will necessarily be a variation each year in the time for reporting and registration. The time of registration will be specified in the notice to be given to parents and students; such notice otherwise to be similar to that prescribed in the order of the District Court of July 30, 1965 (later vacated by the United States Court of Appeals) as far as the 1st grade is concerned. For the years subsequent to the school year commencing September, 1965, notices as to all other grades to be desegregated under the original plan (as modified and amended)

will be published in a newspaper of general circulation in the City of Bessemer, Alabama three times during the month of April in each year. Notice of the plan of the desegregation of the 4th grade for the school year commencing September, 1965, specifying the method of obtaining forms of application and the place and time limit of the filing thereof as above provided in this amendment will be published in a newspaper of general circulation in the City of Bessemer, Alabama on each of three consecutive days commencing no later than August 29, 1965.

E. Students entering the Bessemer School System for the first time, and desiring to attend a school, the majority of whose students are of a race different from the applicant, shall obtain applications from the school of their choice which shall be completed, delivered to and promptly processed by the Superintendent without regard to race or color.

F. Insert Paragraph 5 of the original plan as the last paragraph of this amended plan.

J. HOWARD McENIRY,
REID B. BARNES,
Attorneys for defendants.

McENIRY, McENIRY & McENIRY
1721 4th Avenue North
Bessemer, Alabama

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317 North 20th Street
Birmingham, Alabama
Of Counsel

A true copy of the foregoing Amendment to Plan has been served upon Messrs. David H. Hood, Jr., Oscar W.

Adams, Jr., Norman C. Amaker and Jack Greenberg as attorneys for plaintiffs and upon Messrs. John Doar, Macon L. Weaver and David L. Norman as attorneys for the United States, Plaintiff-Intervenor this 29th day of August, 1965.

REID B. BARNES,
Attorney for defendants.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,
vs.
THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Filed in Clerk's Office, Northern District of Alabama,
Aug. 27, 1965, William E. Davis, Clerk, U. S. District Court.
By M. Claire Parsons, Deputy Clerk.

This cause, coming on to be heard, was submitted upon objections filed in behalf of plaintiffs and plaintiff-intervenor to the amended plan for desegregation proposed by defendants following receipt of the mandate of the United States Court of Appeals for the Fifth Circuit, dated August 17, 1965.

While such amended plan is admittedly skeletonized because of the time factor involved, the court has considered it in the light of *Singleton v. Jackson Municipal Separate School District, et al.*, _____ Fed. 2d _____, (5 Cir., June 22, 1965) and *Price v. Denison Independent School District Board of Education, et al.*, _____ Fed. 2d _____, (5 Cir., July 2, 1965). Aided by the oral testimony and the assurances of counsel in oral argument, supplying many of the operational minutiae missing in the formal plan, the court is persuaded that such amended plan is due to be approved.

Strenuous objections to the feature of the plan dealing with the initial assignment of pupils to the first grade have apparent merit. It was readily conceded that confusion would result from a departure from such plan just four days before the opening of school. Defendants are required to restudy such plan in mature consideration of the objections this date advanced and report their conclusions in writing to the court on or before December 31, 1965.

It is accordingly ORDERED, ADJUDGED and DECREED by the court that the objections of plaintiffs and plaintiff-intervenor to the amended plan of desegregation this date filed by defendants be and the same are hereby overruled and that such plan be and the same is hereby approved.

It is further ORDERED, ADJUDGED and DECREED by the court that jurisdiction of this cause is retained for the purpose of entering such other or further orders as may be necessary or proper.

Done, this 27th day of August, 1965.

SEYBOURN H. LYNNE,
Chief Judge.

[Seal]

A True Copy. William E. Davis, Clerk, U. S. District Court, Northern District of Alabama. By M. Clarie Parsons, Deputy Clerk.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,
vs.
CITY OF BESSEMER BOARD OF
EDUCATION, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

APPEAL BOND

We hereby acknowledge ourselves security for all costs of appeal in the above styled case, returnable to the United States Fifth Circuit Court of Appeals of the United States of America.

And for the payment of the above bond in the amount of Two Hundred and Fifty (\$250) dollars, we hereby waive our right of exemptions to personal property under the Constitution of the United States of America and the Constitution of the State of Alabama.

Mr. and Mrs. Sam Brown [Sig.]
Clora Mae Hardy [Sig.]
David H. Hood, Jr. [Sig.]
Jean Gaines [Sig.]
Oscar W. Adams, Jr. [Sig.]

Filed in Clerk's Office, Northern District of Alabama,
Sept. 8, 1965, William E. Davis, Clerk, U. S. District Court.
By Mary L. Tortorici, Deputy Clerk.

Taken and approved this the 8th day of September,
1965.

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

<p>DORIS ELAINE BROWN, et al., <i>Plaintiffs,</i></p> <p>UNITED STATES OF AMERICA, <i>Plaintiff-Intervenor,</i></p> <p>vs.</p> <p>THE BOARD OF EDUCATION OF THE CITY OF BESSEMER, et al., <i>Defendants.</i></p>	}	<p>CIVIL ACTION No. 65-366</p>
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NOTICE OF APPEAL

Notice is hereby given that the United States of America, Plaintiff-Intervenor above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from Order overruling objections of plaintiffs and plaintiff-intervenor to the amended plan of desegregation, entered herein on August 27, 1965 by the District Court.

Macon L. Weaver, [Sig.]
United States Attorney

E. Ray Acton [Sig.]
Assistant United States Attorney

Filed in Clerk's Office, Northern District of Alabama,
Oct. 25, 1965, William E. Davis, Clerk, U. S. District Court.
By Mary L. Tortorici, Deputy Clerk.

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

<p>DORIS ELAINE BROWN, et al., <i>Plaintiffs,</i></p> <p>UNITED STATES OF AMERICA, <i>Plaintiff-Intervenor,</i></p> <p>vs.</p> <p>THE BOARD OF EDUCATION OF THE CITY OF BESSEMER, et al., <i>Defendants.</i></p>	}	<p>CIVIL ACTION No. 65-366</p>
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Filed in Clerk's Office, Northern District of Alabama,
Nov. 23, 1965, William E. Davis, Clerk, U. S. District Court.
By Margaret M. Hoehn, Deputy Clerk.

ORDER OF EXTENSION

Upon motion of the United States Attorney, pursuant to Rule 73(g), Federal Rules of Civil Procedure, and for good cause shown;

It is hereby ORDERED that the time within which the record on appeal in this cause shall be filed with the United States Court of Appeals for the Fifth Circuit at New Orleans and the time within which the appeal shall be there docketed be and the same hereby is extended fifty days from the 4th day of December, 1965.

DONE, this the 23rd day of November, 1965.

H. H. Grooms [Sig.]
United States District Judge

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

Birmingham, Alabama
June 30, 1965

Filed in Clerk's Office, Northern District of Alabama,
Jan. 10, 1966, William E. Davis, Clerk, U. S. District Court,
By Mary L. Tortorici, Deputy Clerk.

BEFORE:

SEYBOURN H. LYNNE, Judge.

APPEARANCES:

MR. OSCAR W. ADAMS, JR., Masonic Temple Building,
Birmingham, Alabama, and MR. DAVID H. HOOD, JR.,
2001 Carolina Avenue, South, Bessemer, Alabama,
for the plaintiffs.

MESSRS. ST. JOHN BARRETT, BRIAN LANDSBERG and
CARL GABEL, Civil Rights Division, Department of Justice,
Washington, D. C., for the plaintiff-intervenor.

Mr. REID BARNES, of the firm of Lange, Simpson,
Robinson & Somerville, and MR. J. HOWARD Mc-

CIVIL
ACTION
No. 65-366

ENIRY, JR., of the firm of McEniry, McEniry & Mc-
Eniry, 1721-4th Avenue, North, Bessemer, Alabama,
for the defendants.

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<i>Witness</i>	DE	CE	RDE	RCE
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PROCEEDINGS

THE COURT: In the case of Doris Elaine Brown and
others as plaintiffs vs. the Board of Education of the City
of Bessemer, and the intervening plaintiff, United States
of America, what says the plaintiffs?

MR. ADAMS: The plaintiff is ready, Your Honor.

THE COURT: What says the intervenor?

MR. BARRETT: The intervenor-plaintiff is ready.

MR. ADAMS: Your Honor, there are a few documents
which have been subpoenaed in court and we have not even
had an opportunity to examine them. I think in the in-
terest of proceeding orderly in this case, if we could get
some time before we go into it to look them over and maybe
mark them as exhibits, I would think it would save us time.

THE COURT: All right.

What says the defendant?

MR. BARNES: The defendants are ready, Your Honor,
and we have already produced what we had to the attorney
for the intervenor. We certainly have no objection what-
ever to allow anybody to inspect the records.

THE COURT: Now, gentlemen, before we proceed I think we had better set the record straight.

On June 21 when I allowed the complaint in intervention, I had a conference with the attorneys for the parties in this case in my chambers and at that time, in trying to fix a trial date, I conferred over telephone with the attorneys representing the intervening plaintiff, and this date was agreed upon. I had in that conference referred to the pendency of the suit of the City of Bessemer Board of Education versus Anthony J. Celebrezze, 65-180, a suit for declaratory judgment with respect to the validity of the regulations issued by the Department of Health, Education and Welfare.

Previously on May 11 I had recused myself in that case for the reason stated in the order recusing myself. I want to renew the offer I made at that conference that I am perfectly willing to withhold any decision in this case, the case I called for trial, until after the motion to dismiss in Case 65-180 has been heard and disposed of. But I think in the interest of conserving time I would prefer to go forward this morning with the evidence in this case since the attorneys are all present and after the noon recess if anybody would like to insist that the other motion be held first, I will be glad to defer any decision until that motion is heard.

I have arranged with the Chief Judge of the Circuit to designate a judge that will hear that motion and dispose of it before Judge Grooms returns from Europe.

I would like to have some expression from the attorneys with reference to the motion to dismiss the case.

I will take a recess now to permit the attorneys to ex-

amine the documents. I don't know how many there are but I assume thirty minutes would be adequate.

MR. BARNES: May it please the Court, I think a great many admissions will be made here that should expedite this hearing. I have no way of judging what will satisfy the gentlemen but I think that is certainly a possibility if not a probability.

We have not made any requests for what Your Honor mentioned and you might give us time to consider that. We have not made a request for the holding of the decision in this case.

THE COURT: I know you haven't but I want the record to be true. I would suggest this: We take a recess until eleven o'clock for the purpose of inspecting the records and identifying them and for the purpose of conferring with each other about admissions which would shorten the hearing.

MR. BARNES: All right. In order to expedite the matter Dr. Knuckles will be required to explain the records to them.

THE COURT: If he will do that it will be helpful.

MR. BARNES: And after he finishes I might want about ten minutes with him.

THE COURT: All right, we will recess in the courtroom until eleven o'clock.

(Court was in recess from 10:10 a.m.
until 11:05 a.m.)

THE COURT: Gentlemen, are you ready to proceed?

MR. ADAMS: Yes, sir, the plaintiff is ready.

MR. BARRETT: Yes, sir.

MR. ADAMS: We call as our first witness Dr. Knuckles.

DR. JAMES O. KNUCKLES,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. ADAMS:) Please state your name to the Court, please?

A James O. Knuckles.

Q Dr. Knuckles, what is your occupation?

A I am Superintendent of Schools of the City of Bessemer.

Q How long have you held that position?

A Since January 1, 1958.

Q Can you tell us, Doctor, the names of the members of the Board of Education of—the Bessemer Board of Education, City of Bessemer?

A Presently they are Joe L. Terry, President of the Board; Jack Wischmeyer, Vice-President of the Board; Charles A. Long, Jr., Robert Millsap, and Richard Patterson.

Q Dr. Knuckles, before you became Superintendent of the Board of Education—Superintendent of the Bessemer school system, what was your occupation?

A Assistant to the Superintendent in Charge of Instructions for the City Schools of Clarksville, Tennessee.

Q How long had you held that position?

A Seven years.

Q I believe, Dr. Knuckles, we asked you to bring into

court zone and attendance maps of the Bessemer school system.

Did you bring those?

A I did to the extent they were available.

Q And I believe you have undertook to mark various documents requested by us and requested by the government in a fashion which would conform with the subpoena issued by the government, is that correct?

A Yes, sir.

Q I believe you have, in answer to the government's request, No. 2, the documents shown, attendance zones for each school for the year '64-65, and do you have the zone maps which show the zoning of Negro pupils in the various schools in the Bessemer system?

A We brought one, yes, sir.

Q I will show you this document and ask you to tell us what it is.

A This is a map of the City of Bessemer which shows essentially the elementary school zones, showing the location of the Negro elementary schools, two of which schools offer instructions also in the junior and senior high school level. All Negro schools are represented on this map that shows the school zones for the elementary school.

Q And that is Negro elementary schools?

A It is.

Q Would you name the Negro elementary schools, Dr. Knuckles?

A Carver School, Hard School, Abrams School, and Dunbar School.

Q I believe some of those schools also have high school grades in them.

A Abrams School and Carver School also have secondary schools on those campuses.

Q Will you tell us, Dr. Knuckles, what grades are covered in the Carver School?

A Carver School accommodates grades 1 through 12, essentially all the southern end of the city.

Q And Dunbar School?

A Dunbar School accommodates grade 1 through 8 and Hard School 1 through 8, Abrams School 1 through 12. They have the secondary enrollment for the north end of the city.

Q These zone lines essentially are for the elementary schools instead of high schools?

A That is correct. Hard and Dunbar Schools feed into Abrams School.

Q Actually you have how many Negro High Schools in the Bessemer system?

A Two.

Q And those schools are named what?

A Abrams and Carver.

Q Did you also bring to court a comparable map showing the zone lines for the white schools?

A Yes, I did.

Q I will show you this map, Dr. Knuckles, and would you tell us what that map is?

A This map essentially is the same as the previous map

showing the City of Bessemer and shows the lines making a distinction between the elementary attendance zones for the white schools, schools which have elementary enrollment grades 1 through 6.

Q Tell us what schools are located on this map?

A Arlington, Vance, Westhills School, and Jonesboro School. There are two buildings in the Jonesboro area and they serve grades 1 through 6.

Q Would you tell us, Dr. Knuckles, what grades each school has?

A In each instance these schools serve grades 1 through 6.

Q And they also have high school grades in them?

A They do not.

Q Do you have a map showing the white high school in the City of Bessemer?

A I do not.

Q Are there any white high schools in the City of Bessemer?

A Yes, sir, one white high school and one white junior high school.

Q Give us their names.

A Bessemer High School and Bessemer Junior High School.

Q And all of these schools contain only the elementary grades on this map?

A That is correct.

Q Dr. Knuckles, if we could superimpose one map on the other, that is, the Negro School map on the White School map you have in front of you, would there be any overlapping in the school zones?

A Yes, there would.

Q Are there neighborhoods in Bessemer, in the City of Bessemer that the Bessemer School System serves that has—that have a mixture of Negroes and whites in them?

A Yes, sir, there are.

Q Could you tell us what those neighborhoods are?

A The area presently being accommodated by Hard School has both Negroes and whites. The Arlington School area has some mixture of the two races. In the Vance School area there is some mixture. In the Carver School area there is some and the Jonesboro area there is some. In the Dunbar and the Abrams area I believe there is little, if any. I am not sure there is any in either of those areas.

Q Do you know what area represents the highest concentration of intermixture of races?

A I would suspect the Hard School area at this time.

Q These maps you have before you, these are current maps being used at the present time?

A To the best of my knowledge, we are still following these maps. They have been in effect for a long time and the schools, in terms of capacity, have served in this way and they are—the buildings are full and we have lived with the lines as they have existed for some several years.

Q Were these lines in existence substantially as they are at the present time when you became superintendent?

A Substantially, yes, sir.

Q Do you have any idea how long they existed before you became superintendent?

A I am sorry, I do not.

MR. ADAMS: Your Honor, we would like to offer these maps. I believe, according to the government's, it would be No. 2. This would be Plaintiff's Exhibit 2 and we will, for convenience, list the Negro Zone Map Plaintiff's Exhibit 2A and the White Zone School Map Plaintiff's Exhibit 2B.

(Plaintiff's Exhibit 2A and Plaintiff's Exhibit 2B marked for Identification.)

MR. BARNES: We don't have any objection to them. These maps, Your Honor, are—while zones have been placed on them, Dr. Knuckles has told us these are maps we need constantly, and we would like to have the privilege of marking them and preserving them and having them available for making reproductions.

MR. ADAMS: Judge, we will agree to make reproductions and I believe the process of reproduction is underway now.

MR. BARRETT: They are extracting some information from these maps and reproducing it on other maps.

MR. BARNES: They are exhibits and at any further proceeding they will be available.

THE COURT: All right.

Q Dr. Knuckles, what is the plan of the organization of the Bessemer School System?

A Officially 6-3-3.

Q Could you explain what you mean by 6-3-3?

A This is the official plan approved by the Board of Education. We have not been able to build enough schools to place appropriate grades in appropriate schools to put this

plan completely in effect. We have plans approved that will enable us to move to this end within the next year, utilize funds that will become available from the State Bond Issue. Elementary schools will serve grades 1 through 6, Junior High Schools 7 through 9, and the Senior High School 10 through 12.

Q Can you tell us how many schools are in the Bessemer School System?

A There are ten schools. There are eleven school buildings as such. I am counting eleven because the annex school at Jonesboro is about three blocks from the main building. But it serves as the Jonesboro School. There are ten schools operating.

Q What geographic area does the Bessemer School System serve?

A Only the City of Bessemer.

Q There is no overlapping of the Bessemer School System with the Jefferson County School System?

A There is no overlapping.

Q Could you tell us how many students there are in the Bessemer School System?

A You have before you the actual data. There are approximately 8100 pupils. I have the enrollment figures for the years '53-54 up through '64-65, and during this year the current enrollment is 82,006.

THE COURT: Is that 82,006?

A No, 8206.

Q What year was that?

A The year just closed, '64-65 school year.

Q Which is the highest enrollment you have had?

A Yes, sir.

Q I believe you have marked the information you were looking at No. 3 in conformity with the list under the government subpoena which asks for the pupil census map and documents showing the residence of each pupil and the school attended.

Is this in response to that particular request in the subpoena?

A This document you just referred to is regarding the census data.

Q You list in here the number of white students and Negro students and the total from 1953 to 1965, is that correct?

A That is correct.

MR. ADAMS: We offer that as Plaintiff's Exhibit 3.
(Plaintiff's Exhibit 3
marked for identification.)

Q I will let you refer to this copy.

For the year 1965, how many Negro pupils were there in the Bessemer School System?

A There were 5286.

Q And how many white pupils?

A 2920.

Q Dr. Knuckles, in determining which students are assigned to the school for the first time, what method does the Board use?

A The Board has no official policy on this. We have followed the community practice of allowing students to re-

port to neighborhood schools. I suppose the information is passed more by word of mouth in the neighborhood as to which school the first grader might report to when he first goes to school.

Q Do you ever have phone calls from parents inquiring as to the school the child should go to?

A From time to time we do.

Q Do you have any policy with reference to how you handle that information, that is, do you refer to your zone map, or how do you do that?

A I have answered the question several different ways. There are two schools essentially serving this area and the white children have generally reported to a given school and the Negro children in this area have reported to a given school.

Q And the personnel under you use those zone maps to determine which particular school?

A The school principal uses them and on many occasions we have schools become overloaded and we have to appeal from time to time to patrons to transfer their children to another school so that we might align the class loads to offer better instructions to the children involved.

Q These zone maps you refer to we have introduced today, are they supplied to the principals of various schools?

A They are.

Q What instructions did you give to the principals with reference to the maps?

A I suppose the general instructions were that they have been offered—these are the lines we have followed for some time. Principals have to use their own discretion in allowing

children on the line or across the line, if there are reasons that seem to warrant the child crossing over the line to attend a school on the other side of the line. Principals have used their judgment in allowing this to happen. We have attempted to educate the children and place them in the school where we have had adequate space and facilities to serve them.

Q But substantially the pattern is to conform with the lines you have drawn?

A Substantially, yes, sir.

Q Have you ever had, Dr. Knuckles, a Negro student ask for an application or file an application to transfer to a so-called white school?

A To my knowledge, no.

Q And vice versa?

A No, sir.

Q You have not?

A We have not had a white student file an application for attendance to a Negro school, to my knowledge.

Q Do you have any busing system in the Bessemer System?

A Not in the school system.

Q Do you have any of any kind?

A The Board of Education has none and furnishes no transportation.

Q But you indicate there might be some transportation system.

A Well, there is a local bus line that runs through the City of Bessemer, the Birmingham Transit Company lines, that

now loop from Birmingham to Bessemer and back. There are buses that run but the Board of Education has no control over them and puts no money in the financing of students whatsoever.

Q Do you have any agreements of any type with the private buses?

A None whatsoever.

Q Do you know anything about any policy they have with reference to transporting students in the Bessemer School System?

A They offer some identification cards through our office to be distributed to pupils. If they fill them out and indicate they are pupils, they get a student's rate to ride the bus. This is the only thing.

Q Your office makes some indication that they are students?

A We pass the identification cards to the principals and they pass them to the students who say they need a ride so that they can get the student rate.

Q Do you know whether there is a certain number of fares required by the Transit Company before a bus service will be supplied any particular area to take students to a certain school?

A I know of no minimum number.

Q In other words, you are not too familiar with that side of the operation?

A No, sir, this is not part of the Board of Education operation.

Q I believe you have been asked to bring the map showing

the number of students in the Bessemer School both Negro and white. Dr. Knuckles, can you tell us what this map is (indicating)?

A This is a map of the City of Bessemer and indicated on the map are red dots showing the location as best our people could pin it down of the Negro pupils enrolled in school during this past year. And there are green dots indicating the residential location of the white pupils enrolled in school during this year. I have indicated by an "X" in the various blocks where schools are located and I believe all schools are marked and names written out in the blocks where the school is.

Q Now, how often do you bring this map up to date?

A This is a map they completed this Spring for my use and for the school system's use—the Board of Education's use for the next few years. A map such as this in the school system is redone every four or five years.

Q But you do say this was completed in the Spring of this year?

A It was.

Q So it would be accurate up to the Spring of this year?

A It would.

MR. ADAMS: I would like to offer this map as Plaintiff's Exhibit 3B.

(Plaintiff's Exhibit 3B
marked for Identification.)

MR. BARNES: No objection. I would like for it to be in the same category of the other exhibits. This is something they need all the time.

THE COURT: Right.

Q I believe on that map you did indicate the names of the various schools and where they are located by an "X" mark?

A That is correct.

Q You have been asked, Dr. Knuckles, and I think you have brought the forms for application of transfer, what we would call documents used by pupils seeking to transfer from one school to another which is indicated by our request No. 3, but I think it is indicated by government's request No. 18.

I believe you have put them all in folders. Will you explain what they are to the Court?

A The forms I am looking at are primary enrollment forms and there is a copy of the transfer form in there. If you refer to the folder dealing with transfer data, this is No. 17.

Q No. 17?

A Yes. In this folder we have an application for transfer and this was adopted by the Board of Education last Fall after school began. Prior to that date the students or the parents on behalf of the student, who wish to transfer, transfer or re-assignment, would ask for the transfer in the Office of the Superintendent. Most requests have been in writing. This form contains a written request by the parent asking the transfer or re-assignment of a given child. In most cases the letters have been answered in writing and the answers from the superintendent are attached hereto. The response to their request. There are several requests that were answered as indicated by telephone. Requests were made and held for the summer months until school started and until we could count the pupils and know whether the school might accommodate a few more pupils. Then we approved some assignments at that time and we felt we could expedite

it more efficiently by doing it over the telephone than by letter.

Q Do you have any objection to our offering this in evidence and do you need them back?

A We need those for our records. We have no objection to your examining them and copying them.

THE COURT: I think it might be well to state at this point for the record that any exhibit offered in evidence—with reference to any exhibit offered in evidence, a copy may be substituted.

MR. ADAMS: We offer this, Your Honor, as Plaintiff's Exhibit No. 17, and with the understanding that Dr. Knuckles may withdraw it and we will reproduce it.

(Plaintiff's Exhibit No. 17
marked for identification.)

Q Are there any fixed times set by the Board or by your office as to when a pupil may apply for the transfer from one school to another?

A No, there are no fixed times.

Q In other words, you are saying any time his mother or father might make application to transfer—

A This is the policy we followed in the past. We would consider it if we felt there were circumstances that would warrant the transfer.

Q Would you say that you—you say you have received applications for transfer in the past. You have any criteria set up by the Board you use to determine whether or not a pupil is entitled to transfer?

A No fixed criteria, but we refer to the factors mentioned in the Pupil Placement Law.

Q In other words, you don't have any official statement or criteria used by the Board but you use the criteria in the Alabama Pupil Placement Law?

A We have referred to this from time to time and—but that has not become a part of any fixed statement, guide or decision whether or not a transfer would be rejected or approved.

Q Dr. Knuckles, would you agree that the—probably the most fundamental concern of your office in transferring usually is proximity to school and proximity to the neighborhood?

A Restate your question.

Q In other words, would you say the primary concern in going over an application for transfer, the primary concern of the Board of Education is whether or not the pupil lives close to the particular school which serves his neighborhood?

A This is a primary concern.

Q You wouldn't say the primary concern?

A I would not.

Q You do have a school system that is geared to placing students in schools that are closest to their neighborhood, is that correct?

A Geared to this, yes, sir.

Q Do you have very many students who are at the present time passing by schools which are closest to their neighborhood?

A I am sure we have some.

Q Do you have any of your white students, Dr. Knuckles, who are passing by Negro schools to go to white schools?

A I expect there are some.

Q And vice versa?

A And vice versa, yes, sir.

Q From an administrative point of view, Dr. Knuckles, would it always not be easier to place those students in the area closest to their neighborhood? These students who are passing by schools to go to other schools?

A From a purely administrative point of view, it might be, but my primary concern is for education rather than pure administration.

Q Education-wise what is your feeling about, say, a white student passing a Negro school and not placing that particular pupil in a Negro school?

A We have followed for some time the general policy of freedom of choice. I feel as long as this policy can be upheld, this is the better policy.

Q Well, I will state my question a little differently. You say your primary concern is with the education of the students and not in administration of the schools. Education-wise, would it be more detrimental in your opinion for that particular student, white student, who passes the Negro school, to go to a white school than to be assigned by the Board to the school which is closest to his home? Would that be detrimental in your opinion?

A I think almost every case is an individual case. In dealing with pupils in the school, pupil assignment to schools, we take into consideration something about the ability, their background, achievement level, and the ambition and so forth of the pupil. I think every case would have to be answered on its merits.

Q In other words, you couldn't answer in general terms?

A I wouldn't attempt to generalize on that, no, sir.

Q Dr. Knuckles, has the Board of Education of the Bessemer School System done anything to desegregate the school system?

A This is a difficult question to attempt to answer. I think they have done a great many things to improve the educational program for the youth of the City of Bessemer, but to make a move specifically to mix where mixing wasn't asked for, I would say no, the Board has not made a move that parents have not asked for.

Q And no parents have asked for any such move?

A Not until this suit was brought.

Q Before this suit was brought, you never received any requests to desegregate the schools?

A Not a request from the parents, we have not.

Q Did you receive a request from anybody?

A We received a petition, several statements made in the petition raising questions about the desegregation of schools.

Q Do you have a copy of that with you?

A A copy has been filed with the gentleman here from the Justice Department.

Q Dr. Knuckles, this is a copy of the minute book of the Board of Education, is it not?

A It is.

Q I will show you this page. Is that a copy of the petition presented to the Board?

A I am not acquainted with this. This apparently comes

before my time as Superintendent of the Schools in Bessemer. I am not acquainted with it at all. It is attached to a page August 15, 1955, and I had no connection at that time with the school system and I answered the question to the best of my knowledge. I didn't know this.

Q In other words, there could have been an application on the part of parents to desegregate the schools that you knew nothing about?

A That is correct.

Q But this is a copy—that is the minute book of the Board of Education, is it not?

A It is.

Q Dr. Knuckles, you did receive some petitions, did you, or did you not, signed by the Bessemer Branch of the N.A.A.C.P., Colored Masonic Lodge, Bessemer Civic League, Bessemer Voters League, Bessemer Business, Professional Men and Women, asking for desegregation of the schools, did you not?

A I did.

Q Would that be a copy of that petition?

A Yes, sir, this is a copy.

Q Do you have any idea what was done with that after you received it?

A This was presented to the Board of Education for discussion at the next regular Board Meeting following receipt of this petition, and there is a letter attached here from Mr. J. Howard McEniry, attorney who was retained by the Board of Education as counsel for the Board, and Mr. McEniry was authorized to answer for the Board and a copy of his letter is attached.

Q The date of Mr. McEniry's letter is May 19, 1965, addressed to Attorney David Hood, is that correct?

A That is correct.

Q Did you receive more than one petition or just one?

A A petition was handed to the Board Attorney, I believe, by hand at an earlier date and you have the copy you hold in your hand, I believe.

Q This is it here (indicating)?

A I believe that is it.

MR. ADAMS: Your Honor, we would like to offer this as Plaintiff's Exhibit 19 with leave for them to be withdrawn and copies reproduced by the plaintiffs, and the intervenors.

(Plaintiff's Exhibit No. 19
marked for identification.)

MR. ADAMS: In line with our agreement, Your Honor, all matters will be withdrawn and copied later and we would like to offer in evidence as Plaintiff's Exhibit 7, the minute book of the Bessemer School System and particularly the petition which—I don't believe there are page numbers in this book, which was considered by the Board of Education on August 15, 1955. This can be withdrawn. There is another volume that we would like to offer too. First will be Plaintiff's Exhibit 7A and the second will be Plaintiff's Exhibit 7B.

(Plaintiff's Exhibit 7A and
Plaintiff's Exhibit 7B
marked for identification.)

Q Is this a copy of the minute book of the Board of Education of Bessemer?

A It is.

Q This would be Plaintiff's Exhibit B.

MR. BARNES: Are you offering the whole book?

MR. ADAMS: Yes, but it can be withdrawn.

MR. BARNES: May it please the Court, I don't have time to look through here, but they are offering the whole minute book, and I object to offering the entire book.

THE COURT: Just a relevant page might be offered. It has been admitted it is a page from the regular minute book?

MR. BARNES: Yes, sir, this is the one—

MR. ADAMS: I didn't know what the government had found in that one, but I will withdraw that one, Judge.

THE COURT: All right, fine.

MR. ADAMS: In other words, we will just take Plaintiff's Exhibit 7A.

THE COURT: That is the other minute book?

MR. ADAMS: Yes, sir.

MR. BARNES: Do I understand they have offered as 7A the petition on file and not the entire book?

MR. ADAMS: That is August 15, 1955.

THE COURT: That's right.

Q Dr. Knuckles, did you bring to court—under government's subpoena No. 13, document showing the number of teachers at each school during the school year 1964-1965?

A I did. It is a Schoolteacher's Directory.

Q Is this the document (indicating)?

A It is.

Q And it is a small teacher's directory of the Bessemer City Schools?

A Yes.

Q And it contains the names and addresses of all teachers in the Bessemer City Schools?

MR. ADAMS: We would like to offer that as Plaintiff's Exhibit No. 13.

(Plaintiff's Exhibit 13
marked for identification.)

Q I imagine you have others like this? We can keep this one?

A You may.

Q How many teachers do you have, Dr. Knuckles, if you know, total white and Negro?

A About 300 certificated persons in the school system.

Q Are there teachers in the system who are not certificated?

A Not teachers. All teachers hold certificates. We have some non-classified personnel or rather non-certificated. Cafeteria personnel, maintenance personnel, custodian personnel, and clerical, they don't hold certificates.

Q And the number of teachers, total, in the Bessemer School System is what figure?

A Those holding certificates approximately 300.

Q How many are Negroes?

A There are approximately 180 something Negro teachers, principals and supervisors.

Q Could you break them down a little bit more, Dr.

Knuckles, and let us know, without including supervisory personnel and members of your staff, how many persons, both Negro and white, actually instruct children in the classrooms? Do you know that?

A We can subtract ten principals. We operate ten schools. I can't give you the figure as I will have to go back and do some counting. But the number would approximate 285—approximately 285 total doing classroom teaching. This is in the field of vocational education and academic area.

Q Of that number would you have a judgment how many are Negroes?

A I would guess there are about 175 of them are Negroes and the other 110 I would guess are white. Those are about the numbers.

Q And you say you have how many principals of schools?

A Ten schools and have a director of vocational education in supervisory attendance, and an assistant superintendent, and ten people in direct administrative assignments in the schools.

Q Do you have any Negroes in a supervisory capacity other than principals?

A Yes, sir.

Q What capacity do they hold?

A We have one assigned as director of education of educational services for the four large Negro schools.

THE COURT: We will recess now. Court will be in recess until 1:00 o'clock.

(Court was in recess from 12:05 p.m. until 1:05 p.m.)

THE COURT: All right.

Q (BY MR. ADAMS:) Dr. Knuckles, when we stopped for recess I believe we were talking about Negro supervisory personnel. Do you have any Negroes in a supervisory capacity in the Bessemer School System?

A Yes.

Q Could you tell the Court what their function is?

A One man, Walter Branch, has been appointed by the Board of Education as Director of Education. He is in administrative charge of the Negro schools, of the instructional program, and actually all phases of the operation. He gives direction, guidance, and leadership to those schools as Director of Education for the Board of Education. He is responsible directly to the Superintendent.

Q How long has he been in such a position?

A Oh, for only a few months. During this year that position was approved by the Board.

Q Did you have a comparable position before his appointment?

A We did not.

Q Does he have an assistant in that job?

A No, he doesn't.

Q And would you say his activities and responsibilities are limited to the Negro schools?

A Presently, they are, yes.

Q You do, I think, from what you have testified, operate a dual system of schools, that is one set of schools for Negroes and one set for whites, is that correct?

A That is correct.

Q Other supervisory personnel who are Negroes, could you tell me their names and duties and responsibilities?

A We have one other man who works between two schools in the area of the Vocational Education Program between Abrams High School and Carver High School.

Q What is his name?

A Henry Varner.

Q How long has he held that position?

A I am not sure whether two or three years. But the position has been in the city school system for several years prior to my coming to Bessemer.

Q Do you have other Negroes in a supervisory capacity?

A None other than the supervising principals. All our principals are supervising principals, meaning they are non-teaching principals.

Q As compared with white schools, how many persons do you have in the Bessemer School System who are white persons who hold supervisory positions?

A We have two, one supervisor of attendance, really truant officers, Miss Franklin, who works with all schools and has for a number of years. The other position is held by Mr. S. C. Porch, supervisor of vocational education for the entire system, and Mr. Porch was in that position when I came there and his work is limited primarily to the secondary schools in that they are the only schools we offer vocational and technical programs.

Q Does the Board of Education of Bessemer have a central office or a physical building which houses its operation?

A Yes, sir.

Q Where is that?

A 412 North 17th Street, Bessemer.

Q Are there any Negroes in any clerical positions located in that building?

A No.

Q Is the office of Mr. Branch at the present time in that building?

A Presently, no.

Q Where does he have his office?

A At Abrams School. This is our newest high school. He was located there prior to his appointment and we did have space there at the time and discussed the location with him and it was agreed for the time being the best location for the work he had to do would be in this particular school. Mr. Branch is particularly good in working with teachers and he felt he would like to be close to them for the time being. We have talked about bringing his office to the Board of Education but haven't yet. We have plans to.

Q Speaking of—talking about these problems involving administration of the school system, has the Board ever discussed the question of desegregating the Bessemer School System on its own?

A Yes, the Board discussed it many times.

Q Was there a general conclusion that ran through the discussions as to what should or should not be done?

A I don't believe I could conclude there was a general conclusion. There were a great many problems cited and a great many possibilities and I guess there were no general conclusions reached simply because the request had not come

from parents at the time for the assignment of Negro children to schools other than those they were attending.

Q Is it your understanding, Dr. Knuckles, that it is incumbent on the parents to take the first step to desegregate schools?

MR. BARNES: We object to that.

THE COURT: I will sustain the objection.

Q I believe you have some statistics here as far as teacher turnover is concerned. I don't know what exhibit that is. We asked for it under No. 5. Is that a comparable request of the government?

A No, it isn't.

Q Do you have that with you? Yearly rate of teacher turnover?

A Yes, I have.

Q For the year 1964-1965, Dr. Knuckles, could you tell us the percentage of teacher turnover in the Bessemer School System?

A Yes, the rate of turnover approximately 11.82 percent.

Q For '63-64, what is that percentage?

A 11.85 percent.

Q Do you have any teachers in the Bessemer School Systems who have less than a college degree?

A Yes, we have some.

Q How many?

A I believe we have listed eight on this page that we have with the Board of Education who have less than a college degree.

Q Are any of these in the Negro schools?

A Only one.

Q What school is that person in?

A Carver School.

MR. ADAMS: I would like to offer this memorandum which was prepared in response to our request for this information.

Is that right?

A That is correct.

MR. ADAMS: We would like to offer this as Plaintiff's Exhibit No. 20.

(Plaintiff's Exhibit No. 20
marked for identification.)

Q Dr. Knuckles, has the Board or have you, together with the Board, or has the Board on its own, considered the problem of integrating the teaching staff of the Bessemer School System?

A The problem has been discussed, yes.

Q And do you have any problems so far as integrating the teaching staff, both Negro and white, of the Bessemer School System? That is, any administrative problems or difficulties in bringing about that result?

A I would expect there are—there will be some administrative problems. We haven't done this yet and I am only guessing but I would expect some problems to arise.

Q What problems do you expect?

A I would expect some problems to arise with teachers especially when teachers are subject to being assigned to teaching situations for which they might not apply. That

is, subject to being assigned to situations they would not of their own accord volunteer for or choose or ask for.

Q Do you have a central office for the application of teachers who seek employment in the Bessemer School System?

A The general office of the superintendent.

Q And have you considered, Dr. Knuckles, the feasibility of assigning teachers as they apply in the Bessemer School System regardless of race, to wherever there might be a vacancy in the school system?

A Restate the question.

Q Have you considered the feasibility of placing teachers, any teacher, who had not been in the school system before, in positions in the school system where there was a vacancy regardless of race?

A You ask if we consider it feasible? I would have to answer in the affirmative. Yes, we have discussed this. It has been discussed.

Q And what conclusions did the Board reach?

A No conclusions have been reached so far as I can tell.

Q Do you know of any reason why this could not be done in the Bessemer School System?

A This is a matter of personal opinion. I feel community pressure for one thing on the part of assignments on the basis on which you are talking about, the desire on the part of the teacher. For the most part they apply for specific positions. Our own concern is attempting to place the best person according to our interpretation and this is a subjective judgment and attempt to evaluate applicants for jobs. We want, of course, a certificate. This is a professional certificate issued by the State Department of Education

coming to a teacher who has an earned degree from an accredited institution for teacher training. We are concerned that teachers come with recommendations and we make sure our teachers do come with good strong recommendations and come with good records of college work, good background, and they come with favorable recommendations if they are experienced teachers. We are concerned with all things and all things are considered in an attempt to place the person the best suited for a given position in a school in which the atmosphere and environment would be conducive to learning. We have, under the circumstance, done about the best we could, taking all of these things into consideration and some very practical circumstances into consideration.

Q The Negro schoolteachers in your system, have you made the same or similar qualifications as for white teachers?

A That is correct.

Q You kind of touched on those qualifications, but would you, Dr. Knuckles, tell us briefly what the qualifications are that a teacher must meet before they are employed by the Bessemer School System?

A Basically a college degree, and a certificate issued by the State Department of Education. The college work must have been in an institution of higher learning and teacher training that is approved and accredited by our Regional Accrediting Association. They come with us many times with certificates and transcripts of their college work and recommendations. The certificate is essential. It is essential that we have a vacancy about which to work. We want recommendations favorable and if the teacher had prior teaching experience, we want some evidence this has been successful ex-

perience. We are interested in learning about the teacher before employing the teacher and we are interested in learning something about the teacher's ability to communicate both orally and in writing. We are interested in their having some skill and facility in the use of the English language. We think it is essential to communicate with children. We are interested in their knowing something about children and the patterns of growth and development and psychology of learning.

Putting them altogether we make a subjective judgment as to the best applicant for a given job. We have not administered tests and do not attempt to measure teachers in an objective way in achievement and ability.

Q Would you say that all Negro teachers you have employed in the Bessemer School System have met the minimum requirements of the Board of Education?

A They have.

Q If you eliminate the resistance of the community and the resistance that they may or may not have to go into a white school to teach, would they be qualified to teach in a white school?

A If you eliminate the resistance and this is a great big "if". If they meet the basic qualifications as to degrees and certificates and favorable recommendations from their college professors and previous employers and good college records, if they meet those qualifications and any others that we have, they would be employed, yes.

Q That is true also of the white teachers, they meet the qualifications to teach in Negro schools if it were not for the other factors you mentioned?

A They do.

Q And the extra curricular programs, Dr. Knuckles, under the auspices of the Board of Education which are programmed for white only and some programmed for Negroes only—

A Let me say this. In secondary schools in our community as well as all over the country, courses are offered primarily on the basis of students registering and giving interest in those courses. When there is enough interest to require that course being offered we attempt to offer the course. If the request comes from the principal or the superintendent that we need a teacher to set up a certain program, we have tried in every instance to offer such courses. At the same time we are talking about extra curricular activities, they get into the schools on the same basis and that is on the basis of interest of the pupils and the parent-teacher associations. The program of extra curricular activities in the schools are up to these pupils within the schools. They are not dictated by the Board of Education or directed by the Board of Education. The Board has reports from time to time having to do with the programs in the various schools but the Board nor the Superintendent dictate nor necessarily endorses the extra curricular activity. This is the reason for the difference in the extra curricular activities.

Q The Board doesn't initiate extra curricular activity programs?

A That is correct.

Q Did you bring with you information concerning planned pupil capacity and enrollment in each school?

A Yes, sir, we prepared something in response to your inquiry.

Q You have it before you?

A Yes.

Q Dr. Knuckles, could you take just a moment and make an "X" by the schools on that report which are Negro schools?

A These are broken down in divisions, elementary, junior high and senior high divisions.

Q Is this information comparable to anything the government asked for?

A I don't believe so.

MR. ADAMS: We would like to offer that as Plaintiff's Exhibit 21.

Plaintiff's Exhibit 21
marked for identification.)

Q Dr. Knuckles, does the Board of Education plan any new construction or new schools at the present time?

A Yes, plans are in the mill and working and some tentative plans have been drafted by an architect for future projects.

Q Will you tell us about that? What future projects there are? Whether Negro or white.

A Presently it appears the Bessemer Board of Education's share of the State Bond Issue that passed this Spring for construction of school facilities, Bessemer's share will be approximately \$460,000, more or less. Out of this \$460,000 the Bessemer Board has offered their approval for the following. Renovation of Dunbar School so that this school can operate as a junior high school, and for this we set aside \$100,000.

At Abrams School some renovation, \$10,000. Additional rooms at Abrams School, two rooms, \$20,000.

A new junior high school building on the Carver campus and this is primarily due to the heavy enrollment at Carver and the availability of property. The Board owns sufficient property at Carver to enable them to expand. The new junior high school building at Carver \$190,000.

To enlarge the Bessemer Junior High School physical education facilities, two classrooms, \$50,000.

We have set aside funds for possible construction of an elementary school in the north end of town to serve the Broadmoor area and the immediate north end of town which section of the city is considerably removed from the downtown section and from any of the schools that exist. The Board has set aside \$90,000 for the possible construction of a school in that area.

That adds up to \$460,000.

Q Dr. Knuckles, this Broadmoor new elementary school, is it the plan of the Board that will be a white school?

A I don't know it has been designated or whether it would be especially white. We know a school is needed there because the pupils are there. Possibly this is in the plans that the Board has to try to meet in placing a school where it will serve the pupils.

Q Are there Negroes or whites in that community?

A I don't recall whether there are Negroes that live in that immediate area or not. That is a section of the city that is a dog leg in a sense where Bessemer extends to the north toward Birmingham.

Q Is it predominantly white?

A I believe it is predominantly white for the city part.

Q But in the county you would think it is predominantly Negro?

A I believe there are Negroes living immediately across the line that are county residents.

MR. ADAMS: I would like to offer this memorandum if there is no objection, Mr. Barnes.

MR. BARNES: No objection.

Plaintiff's Exhibit 11
marked for identification.)

MR. ADAMS: That's all, Your Honor.

THE COURT: Mr. Barrett, do you have any questions?

MR. BARRETT: Yes, sir.

MR. BARNES: We are on the final hearing now and I frankly, as I said once before, apparently all the battles have been fought and I would infer from the testimony Dr. Knuckles has given, which I personally consider fair and forthright, that this Court will issue an injunction and call for a plan which is the usual process since we are here on final hearing. If that is done and a plan is submitted I presume there will be objections allowed to that plan and if so, I might inquire do we then prefer that testimony be allowed as to the sufficiency? It appears we are now—while I have not made objections it appears we are now getting—anything we go forth with would be superfluous and related to the adequacy of the plan rather than whether the Court will issue an injunction and call for a plan.

THE COURT: Let me make this statement. I don't believe I requested the parties to stipulate that the issue in this case might be submitted for judgment of the Court on the prayer for final injunctive relief. Does anybody have any objection to that?

MR. ADAMS: The plaintiff don't.

MR. BARNES: Whether we are now on final hearing?

THE COURT: That's right. I think it was said with that idea in mind although the intervenor wasn't here at the conference.

Do you have any objection, Mr. Barrett, to submitting on the prayer for final injunctive relief as distinguished from temporary—

MR. BARRETT: I think not, Your Honor, but I would rather wait to the conclusion of the hearing before making a definite statement. If this was a trial on the merits we would have presented considerably more evidence than we are prepared to present today.

THE COURT: Mr. Barnes' suggestion appeals to me. He has stated that the evidence to this point requires the granting of injunctive relief which would take the form of requiring the submission of a plan.

MR. BARRETT: Well, first it is our position that there is no occasion for this Court to request the defendants to submit a plan. A plan necessarily involves delay. The burden is on the school board to show a delay is justified. The school board could have come in today with a plan. They could have had a plan in their answer and could have prepared a plan anytime in the last ten years. It is our position that it is not appropriate for the Court at this point on the record here to allow them time to develop a plan but should instead grant injunctive relief on the now pending motion.

MR. BARNES: May it please the Court, Mr. Acton at the time you called the Justice Department was there at that time and I served him with an answer to the interven-

tion and I am frank to state I understood this was the final hearing. I don't know that it makes any particular difference except when you talk about delay, from the standpoint of the Bessemer Board, we would rather have it on final hearing than on temporary injunction. I am frank to say that was my understanding.

THE COURT: That was my understanding. I am going to require a very prompt submission of a plan. I think in the Jefferson County case I heard the case on the 22nd and required the plan to be submitted by the 30th. That was a period of eight days. I must be candid and say I am going to require the submission of a plan within that approximate period of time. Regardless how far we go, as to whether that plan will be approved or not, I give everybody an opportunity to be heard on that.

MR. BARNES: If that is the case, frankly I would be greatly surprised if there is any Court would follow any other procedure regardless of the wishes or inclinations of the Department of Justice. We expected that to happen and that being true, I would like to make a point of inquiry that if we are going to have further hearings and going into evidence of the sufficiency of a plan, I would like to inquire whether there is any particular need now, in face of the admissions being made and the statement I have made, for us to spend any further substantial time on the issue of whether or not the Court will issue an injunction and order a plan.

THE COURT: I am not going to foreclose anybody from making a record if they want to.

MR. BARNES: No, sir, I am not putting that in the form of an objection.

THE COURT: I understand. In view of what I have

said, I had two mandates from the Fifth Circuit in the Armstrong case and I expect to follow the mandate, approximately, from the Fifth Circuit in this case as I did in the Jefferson County case. That's all I have to go by. It is not the law of this case but it is the law of this district up to this point. I don't want to foreclose any points of argument or putting on any evidence beyond saying this, that when the plan is submitted, and I will not allow more than ten days for the submission of a plan, in other words, the plan would have to become effective in September, 1965, at the beginning of this school term.

MR. BARRETT: If the Court please, we would like to examine the superintendent and it will be directed to the issue whether or not a delay is justified.

THE COURT: You may ask whatever questions you want.

MR. ADAMS: One point, Judge, the stipulation we had for Br. Barnes, I think, might be appropriate at this time. He agreed the plaintiffs were in the Bessemer School System and were properly plaintiffs.

MR. BARNES: I think one is probably five years old.

THE COURT: It is stipulated they have standing to maintain a class action.

MR. BARNES: Yes, sir.

CROSS EXAMINATION

Q (BY MR. BARRETT:) Mr. Knuckles, I would like to ask you a question about your response to the subpoena duces tecum, Item 8, and the subpoena refers to all correspondence with the Alabama Department of Education, or with its agents, since 1952, including all data submitted for

use in the annual report of the Alabama Department of Education.

Did I understand correctly that correspondence answering to that description is disbursed among a large number of the files in your office and the Board's office and because of the difficulty of collecting it that that is not available today?

A That is correct.

Q Those items could be located, is that correct?

A That is correct.

Q The next item, No. 9, refers to all books of account showing items of expenditure for each school since 1960, and all documents showing receipt and use of Federal funds since 1952.

Do I understand correctly that those items are physically located at the various school sites in your system?

A The books of account are. The documents showing receipt of Federal funds would be financial reports and would be included in the annual financial report from the Board of Education to the State Board of Education.

Q But those are not broken down according to school?

A No, sir.

Q Do the records at each school have the figures by school?

A The record at each school would have—would be the record of items of expenditure for that particular school.

Q Would that indicate just what funds expended could be attributed to the various Federal programs?

A No, the records within the schools would not indicate or reflect at all the Federal funds expended for the school.

That funds have been expended by the Board of Education and the Board's records would only indicate where the Federal funds might have been expended. Some will go through the lunchroom accounts but the Board has central records for all lunchroom accounts.

Q Would the Board's records show how much has been expended under the National Defense Education Act at a particular school?

A This could be compiled. I don't know that we have it readily available. The schools have made their request for purchases under Title 30 of the National Defense Education Act.

Q And they have justified them item by item?

A That is correct. And also for the past about three years the schools themselves put up local school funds as matching funds to Federal funds. We have faced in this state some lean years because of shortage of state funds. Pro-ration in this state has become an ugly word and consequently the Board of Education, as most other Boards, did not have funds to match Federal funds. Local schools have had funds from various sources, P.T.A. projects, and that sort of thing, and the local school funds have been used primarily in the matching of Federal funds.

Q Those records could be obtained from the various schools?

A Yes, sir, from the individual school records. However, our schools are closed. We operate two summer schools at the secondary level and the school secretary only works ten months and we haven't had any personnel to go back and dig out the records. We received this request this past Friday.

MR. BARRETT: If the Court please, I have a map of the City of Bessemer in my hand on which have been marked the Attendance Zone Lines that appear on the Plaintiff's Exhibit—I believe it was 2A and 2B, which has previously been admitted in evidence but for the convenience of everyone, we superimposed them on this larger map and I will ask this to be marked and admitted in evidence as Intervenor's Exhibit 1.

MR. BARNES: We have no objection.

THE COURT: That is received in evidence as Intervenor's Exhibit 1.

(Intervenor's Exhibit No. 1
marked for identification.)

Q Mr. Knuckles, I draw your attention to Intervenor's Exhibit 1 and ask you if that appears to depict generally the attendance zone lines for the Negro elementary schools and for the white elementary schools as your Board follows them and as they appear on the diagram you brought into court?

A It appears to, yes, sir.

Q And the green lines mark boundaries between the white elementary school districts or attendance areas?

A Yes, sir.

Q And the orange lines are boundaries between the Negro attendance areas?

A That is correct.

Q Now, calling your attention particularly to the area in the northeast section of the city, where there is a Negro attendance area indicated, what school serves that area?

A Hard School.

Q That is a Negro school and attended by Negroes?

A Yes, sir.

Q Is it a relatively new school?

A It is.

Q It replaced an old school that had been in the same area roughly?

A Roughly, yes, sir.

Q What is the area immediately to the west of that school?

A There is an industrial complex, Pullman Standard Car Manufacturing Plant.

Q What do they do?

A They make standard freight cars.

Q Freight cars?

A Yes, sir.

Q Do you have any idea how many people are employed? How big that operation is?

A It is a large operation but I do not know the number of people employed.

Q Are there trains going in and out of that area?

A Yes, sir, there are some.

Q There are railroad tracks along the school property, is there not?

A Yes, where the orange line goes.

Q How many times would you say you visited that school in the last year?

A Several.

Q Is it fairly noisy?

A It is not.

Q It isn't?

A No, sir. I will tell you why. The school is on a high piece of ground and we considered this factor before placing the school there. The site had been prepared before I went there. I have been on the school ground many, many times. There is a huge industrial complex across the road and the school is above the level of this and if you are in the school building you would not even guess there is any industrial plant near there. The noise is negligible within the school building.

Q Inside the building?

A Inside the building, and it isn't distracting when you are on the grounds.

Q Directly across from the Pullman Standard Manufacturing plant there is another school?

A That is correct.

Q That school is also immediately adjacent to the property of the plant but on the other side?

A Yes, sir.

Q What school is that?

A Dunbar School.

Q That is a Negro school?

A Yes, sir.

Q And it is now serving what grades?

A One through eight.

Q Is that an older school than Hard?

A It was constructed in 1922. It has been added to but the main building was constructed in 1922.

Q Is that fairly noisy at that location?

A To the best of my remembering there are no outstanding problems related to noise. The school is some distance from the industrial plant and there is noise but this has never been brought to my attention by the teachers or the principal working in these schools that this was a particular problem.

Q How many times would you say you visited that school?

A I have visited that school many times.

Q Would you term it an attractive school?

A No, it isn't an attractive school.

MR. BARRETT: If the Court please, I have a series of photographs that I will ask be numbered as a group in the interest of time.

(Intervenor's Exhibits 2A through 2E marked for identification.)

Q How many classrooms in the Dunbar School?

A I believe there are about 25 classrooms in the main building, and there is an annex to the building that has seven classrooms in it.

Q Mr. Knuckles, I will show you Intervenor's Group Exhibit 2 and ask you if those are photographs of the Dunbar School?

A Yes, sir, those are photographs of the Dunbar School.

Q Do they fairly show its condition as it is today?

A One appears to have a lot of broken glass on one side of

the gymnasium. There has been considerable glass breakage at that school building and we have replaced broken glass as the glass is broken and this picture seems to depict considerable broken glass in this picture of the gymnasium. I haven't seen it with this many spots on the windows indicating broken glass.

Q How recently were you out there?

A I have been out there within the last ten days.

Q You have?

A I have.

MR. BARNES: Is that the first ones you have actually introduced?

MR. BARRETT: I haven't actually offered them in evidence yet. I will make an offer now.

I believe you testified that the School Board planned to do some remodeling on the school?

A That is correct.

Q And how much was the plan to set aside for that school?

A Set aside for the time being \$100,000 for that particular school.

Q That money has not been—is not yet available for that purpose?

A That is correct.

Q When might it be available?

A We were told yesterday by the Finance Department in Montgomery that the money would be available later and they will allow us to go ahead with the architect and the

planning and get things underway to the contract stage of the school construction.

Q I take it the renovation itself would not be done for this coming Fall semester?

A It was our intention to do it but we could not get a release of the money from the authorities in Montgomery. We are going ahead as far as our maintenance funds will permit to do the essential maintenance prior to school opening in September.

MR. BARRETT: If the Court please, I have another group of photographs that I will ask to be marked for identification.

(Intervenor's Exhibit 3A through 3G marked for identification.)

Q Mr. Knuckles, just to the west of the Dunbar attendance zone another school or school complex appears on the map. What schools are those?

A Abrams School and it accommodates grades 1 through 6. There is an older school on the campus that has been there for 15 or 18 years called 22nd Street School, but it is a part of the Abrams School which houses grades 1 through 6.

Q Are those schools also, or is that school site also along the railroad track?

A There is a railroad track near that site. There are railroad tracks near a great many of the schools in the City of Bessemer.

Q There are railroad tracks along every side of a Negro school, is that correct?

A That seems to be a fact with the exception of Dunbar, and Dunbar is near the complex of the Manufacturing Plant,

but there isn't a railroad in the immediate vicinity of Dunbar.

Q I will show you Intervenor's Exhibit 3, a group of photographs, and ask you if those appear to be photographs of what was called the 22nd Street School, part of the Abrams School now.

A These are photographs of the elementary school on the Abrams School site, what was called the 22nd Street School.

Q What is that school constructed of?

A Frame structure.

Q Are any of the white children in the Bessemer School system housed in frame structures? Taught in frame structures?

A Not at the present. I would like to say this: Several schools have been built in recent years. Several structures that looked considerably worse than some of your pictures have been replaced. We could have furnished some real interesting structures that have been replaced where white children were in school as late as two years ago. One structure that had been condemned several years ago had to be used until two years ago. We graduated from some of those, thank goodness, and we have plans for the improvement of those structures we have now that are not satisfactory.

Q Mr. Knuckles, calling your attention particularly to Exhibit 3A, the portion of the building that appears in the right of that photograph, what was that portion of the building originally designed for?

A I believe it was designed for an auditorium at the time.

Q What is it being used for now?

A Classrooms.

Q By what means are the various classroom areas divided in that wing?

A There are frame partitions throughout this auditorium structure that divides it into eight classrooms.

Q And those divisions go perhaps three-quarters of the way to the ceiling?

A That is correct. It is a high-ceiling building.

Q What type of illumination is there in that part of the building?

A Lights suspended from the ceiling. I am not sure what the wattage or the foot candles of light is available. It is a building that needs to be—needs more adequate lighting. No question about that.

Q The lights are bare globes, aren't they, that hang from the ceiling?

A Perhaps you are correct on that.

Q I will show you Exhibit 3C for Identification and that is a picture at the same building?

A That is correct.

Q And 3D?

A That is correct, that is the same building.

Q Is it fair to say that the paint is peeling pretty badly in that building?

A Peeling pretty badly, yes, sir.

Q And the windows are in a bad state of repair?

A There is glass breakage. There is glass breakage in this building every year. We have considerable glass breakage in

this building. We replace the glass and keep them replaced through the school year.

Q I call your attention to 3E and F for Identification, and ask you if cardboard has not been placed in some of the broken windows? The cardboard appears considerably rain-stained, is that correct?

A That is right.

Q Mr. Knuckles, the other Negro attendance center is down at Carver, is that correct?

A That is correct.

Q And that serves generally the entire area of the city south of 14th Street?

A That is correct.

Q Are there any wooden frame buildings being used as classrooms on the Carver site?

A Yes, sir, there are.

Q Were any moved there from other sites?

A It is possible they were. They were there when I moved to Bessemer January 1, 1958.

Q Isn't it a fact a seven-room wooden frame building, seven-classroom building, is located directly in front of the brick high school, was moved from the old Hard School and is part of the old Hard School?

A No, sir, that is not a fact.

MR. BARRETT: I have a group of photographs I would like to have marked for identification.

(Intervenor's Exhibits 4A and 4B
marked for identification.)

Q That wooden frame building I referred to on the Carver site, what kind of illumination does it have?

A Regular drop cords, and single bulbs.

Q What type of heat?

A Coal stoves. Heating stoves.

Q One in each room?

A Yes.

Q Whose responsibility is it to refuel the stoves?

A It is the assigned responsibility of one of the janitors.

Q I will show you Intervenor's Exhibit 4A and 4B and ask you if those are photographs of the wooden frame building on the Carver site we have just been discussing?

A Yes, sir, these are photographs of the frame building on the Carver site.

Q Do you regard that building as providing adequate classroom facilities?

A I do not.

Q Is there another frame building on the Carver site?

A You have pictures there. One seven-room building on the upper—toward Second Avenue. There is, I believe, a three-room building on the back and there is a small residence on the back that the Board of Education owns and it touches a long building on the back that serves as a cafeteria and it is a frame building.

Q Intervenor's 4A for Identification shows a building other than the seven-room building?

A That is correct.

Q How many rooms does it have?

A Essentially, I believe, three. It may be serving now as—I believe one partition has been opened up.

Q What is it used for?

A I believe they have an industrial arts class operating in part and I am not sure what class occupies the wing on the far side of the building.

Q Is it a band room?

A It could be.

Q How is it heated?

A Heated by coal stove.

Q The cafeteria is also a wooden frame building?

A It is.

Q What grades does the cafeteria serve at Carver?

A The entire school, 1 through 12.

Q What grades are taught in the seven-room frame building in front of the Carver School?

A I am not sure which grades. I believe the 7th and 8th. But I am not positive.

Q Carver is located, I believe you have already testified, near railroad tracks. Isn't it a fact it is also immediately adjacent to an automobile junkyard?

A A junkyard has grown up there, yes, sir. But you could cite the fact that Bessemer High School is one block from the track the same as Carver. One is one side of Second Avenue and one is on the other side of Second Avenue and one track runs parallel to each of them.

Q You are referring to the high school there between Second and Third Avenue?

A Yes, sir, and going up further, the Arlington white school is one block removed from a railroad track.

Q Arlington is in a better class residential area, is it not?

A It is an older residential area in the City of Bessemer. You could judge it to be a better class if you choose. It is immediately near some very poor residences also.

Q Mr. Knuckles, you have testified that the Board has formally decided to go on a 6-3-3 system?

A That is correct.

Q What are the advantages of a 6-3-3 system?

A We attempt to offer good basic education in the elementary grades. In all basic areas. In the junior high school area we hope to give the pupils an opportunity or to give them some exploration before they get in high school, at which time they might specialize. We hope to open doors to pupils to get into areas of industrial arts and home economics and some elective areas. There are no electives in the 7th and 8th grade. Electives begin in grade 9. Junior High School is the area that bridges between the gap of the old elementary and secondary school that is completely departmentalized. Rather than make the jump, one single jump, where they have been with teachers all day long and then go to where they are assigned to four or five or six teachers, we bridge the gap more slowly in running them through junior high school. In the 7th and 8th grades they are with three, I believe, in the 7th and 8th grades as many as four teachers. And the 9th grade they go into departmental organization. Junior high school is really an exploratory level for pupils going through public school. Before they were

pushed into situations where decisions have to be made and in many instances they are not prepared to make decisions.

Q Mr. Knuckles, in your judgment, will the system you described, for instance, improve educational opportunities for students?

A It will.

Q At the present time are all the white schools operated on 6-3-3 system?

A At the present time, yes, sir.

Q Are the Negro schools?

A No, sir.

Q Mr. Knuckles, you have testified that the School Board and the school personnel have used school attendance zones. Is it fair to say that absent exceptional circumstances, under the circumstances as you and your personnel have carried it out, if a child lived in a particular attendance area, he would automatically attend the school designated for that attendance area? Say a white child lived within the green lines here of the Jonesboro School, he would attend Jonesboro?

A This has been the practice for a long number of years and continues to be the practice today.

Q And the purpose of these lines are to equalize the school population or at least distribute it fairly among the available school facilities?

A That is correct.

Q And use the capacity to its best advantage and provide the best education for the child?

A That is correct.

Q And those lines can be redrawn as school capacity changes, is that correct?

A They could be, yes, sir.

Q And they have been redrawn in the past as school capacity has changed?

A They have.

Q Isn't it a fact that you and the Board have administratively transferred the pupils who live in a particular area from one school to another as the school was built or as a school was added to or particular facilities were abandoned?

A Yes, that is true.

Q You have transferred whole grades at a time from one school to another?

A We have had to to capitalize on the facilities available and place the pupils within adequate buildings.

Q What administrative steps are necessary to do that? What have you done in the past when you administratively transferred a group of children from one school to another?

A We have used different approaches. In some instances where pupils have had to be transferred during the school year, principals have appealed to pupils and patrons, and we have done a great deal through the volunteering of parents to just move their children, transfer them at some expense because of transportation involved. It has been a burden on some. In other instances where we have built schools, and I want to say this for the record, that schools have been built where sites could be secured. This has been a problem. You mentioned some apparently along railroad tracks. Some of those sites have been there for some time and others had to go where the sites were available and this is a factor in any community.

We could not secure permission from the State Department of Education in the rebuilding of Vance School. The school was condemned for a number of years and we had to use it. We could not get the permission of the State Board of Education to rebuild a larger school on that site because we didn't have adequate land on which to build the school. So we built at the time only what our finances would allow. We built a six-room school and later added four rooms. This school is what the State Department of Education told us we could build. It occupies approximately a half a block. So, the six rooms we built would not accommodate the enrollment there in ten years. We had to call on a great many people to go a considerable distance to another school in order to pull the enrollment down to get it down below classes of forty. We had some classes forty and forty-five and forty-nine, and one or two that got over fifty. We appealed to the patrons and leveled off a class by appealing to them and some we just had to arbitrarily assign them to another school. I did this with the backing of the Board of Education.

Q Did I understand that you and the Board made decisions as to what had to be done for education of the children in the administration of the school system and did your best to enlist public acceptance of this change?

A To the degree we thought necessary, yes, sir.

Q You didn't have a public hearing before making the decision?

A No, this didn't affect the whole community. It affected some families and we appealed to them and explained it to them and we got the cooperation of most and the rest settled for the assignments we made.

Q It wasn't necessary to make any particular adjustment with respect to those that were adamant?

A No, it wasn't.

Q You carried it through on what your decision had been?

A To the best of my knowledge.

Q Mr. Knuckles, you have in the past granted some transfers from one attendance zone to another if parents requested it?

A That is correct.

Q And some action on those has been offered in evidence?

A Yes, sir.

Q Is it fair to say you granted that request more or less as a matter of course as long as there was capacity in the school to which they were transferring?

A I think that is true. We attempted to accommodate people where we didn't overburden the school, the classes or the teachers.

Q I notice quite a number of requests relating to Westhills.

A Yes, sir.

Q That is a nice, new elementary school?

A Yes, sir.

Q And the persons in the Westhills attendance area have asked their children be sent there, is that correct?

A I believe the requests you referred to, most of them have come from people living outside the Bessemer district who are sending their children in the city and paying tuition.

Q You allowed quite a number of requests?

A When we opened it in September and found our city enrollment would not overcrowd the school, we attempted to accommodate the folks who have had to pay tuition. We have told them the residents in the city would be served first.

Q You have also granted transfers from one attendance zone within the city to another within the city on request and where the capacity of the school to which they were transferring would grant it?

A Yes, sir.

Q What factors did you consider in acting on those requests?

A The class load from whence the students was asking to be moved and the class load at that particular grade and the teacher teaching the class in the school where the parent or the child was seeking to go, and if we had adequate room and the patron seemed to have circumstances that would warrant the moving of a student, we were willing to grant the transfer or assignment. We have always frowned on and discouraged transferring during the school year. We have made some sit out the remainder of the year even though they have moved. But where there is a hardship we try to take that into consideration.

Q Isn't it fair to say your general policy was to accommodate the desire of the parents as long as there was no reason, such as crowding, in the school they sought to transfer to?

A That's right. As long as we felt we were not doing something to take away or restrict the educational program.

Q But all other things being equal you tried to accommodate the preference of the parent?

A Yes, sir.

Q In connection with a transfer, did you administer any tests to the child?

A No.

Q Did you consider whether he was fast or a slow learner?

A Yes, we did.

Q In what way did you consider that?

A We talked to the school principal where the student or the parent requested a transfer because we want to know the circumstances, whether there is a behavior problem, or whether the student or parent want the student to move because of a personality clash. We don't want that. We do take into consideration the achievement of the student and take into consideration the class into which we move him. We would not want to move a student into a class that we felt it would be detrimental to the student.

Q In some schools is there higher achievement of students than other schools?

A Not primarily, no, sir.

Q In your judgment, say Vance or Arlington, would each teach the whole gamut of students as far as ability and achievement is concerned?

A I think that is true.

Q Equally equipped to do it?

A Yes, sir.

Q You couldn't say that a child was better placed in Vance or Arlington for any particular reason relating to his own personality or level of achievement, is that correct?

A Substantially, yes, sir.

THE COURT: Take a ten-minute recess.

(Court was in recess from 2:30 p.m. until 2:45 p.m.)

THE COURT: All right.

Q (BY MR. BARRETT:) Dr. Knuckles, I believe you testified the number of classrooms in Hard and Dunbar Schools?

A Yes, sir.

Q How many classrooms are there on the—in the elementary division of Abrams? What we have referred to as the 22nd Street School?

A I believe nineteen.

Q How many in Abrams combination junior and senior high school?

A I believe there are approximately 28 classrooms in the building.

Q Would you give us the number of classrooms in each of the other—in Vance?

A Ten.

Q Arlington?

A Fourteen.

Q Bessemer High School?

A Bessemer High School has approximately 28.

Q Bessemer Junior High School?

A Bessemer Junior High School has 29.

Q And Carver Elementary?

A Twenty-five.

Q Carver Junior and Senior High School?

A Including the frame building there are about 27 rooms available for secondary instructions.

A Jonesboro?

A Fifteen classrooms.

Q How many in the annex?

A Ten in the annex.

Q Jonesboro Annex is the oldest and perhaps less attractive school being attended by white children, is that right?

A I suppose the least attractive. I believe Arlington is approximately the same age, though. It was built in 1907 or 1908.

Q It is a solid masonry school?

A Yes, sir.

Q But the site other than the area, the amount of land, the location is good, isn't it?

A No, it isn't.

Q What is bad about the location?

A It is restricted in a great many respects. The site is much too small. In fact, we can say something about the sites, if you would like, about all the schools.

Q I would like to get straight on the Jonesboro Annex. As far as the characteristic of the neighborhood is concerned, there is nothing unacceptable about that?

A No, sir, as far as I am concerned.

Q What classes are taught in the annex?

A The sixth grade and five classes of special education for exceptional children.

Q Jonesboro itself is a modern, attractive school?

A Yes, sir.

Q So that children attending Jonesboro and Jonesboro Annex ordinarily would expect to spend five or six of their academic life in Jonesboro and only the sixth grade in the annex?

A Yes, sir.

Q How many classrooms are at Westhills?

A Six.

Q That again is a very modern, very attractive, well-equipped school?

A It is.

Q The same could be said for Vance?

A With the exception of the limited site. It occupies less than half a block for the school building and the play area.

Q But the building itself is modern and attractive?

A It is.

Q Mr. Knuckles, you have testified in answer to some of my questions about transfers from one zone to another. Have they been initiated normally by either a letter or telephone call?

A Yes, sir.

Q No particular form being used?

A No form.

Q And there has been no time limit for submitting them to the Board?

A No, but I did tell you we have discouraged transfers during the school year.

Q After school is started?

A Yes, sir.

Q I believe you said the Board adopted a form sometime last year, is that correct?

A Yes, sir.

Q And one of those forms is already in evidence as part of the contents of that folder (indicating)?

A Yes, sir.

Q What action did the Board take to adopt the form? Was it at a Board Meeting?

A It was at a Board Meeting, yes, sir.

Q Should it be reflected in the minutes of the Board?

A I would expect it is in the minutes of the Board. I believe it is.

Q It was a Board decision? It wasn't your decision?

A That is correct.

Q When was that decision made?

A I am sorry, I don't remember the exact date. I would have to search the minutes to find it.

Q Was it last year?

A It was last Fall sometime.

Q Was it before or after school had opened for the Fall semester?

A I believe I stated before I remembered it being after school began last Fall.

Q At that time you were not particularly anticipating any transfer applications in any numbers?

A That is correct.

Q Children were already in school?

A Yes.

Q What was the reason for adopting the use of the form, if you recall?

A I suppose the general reasons were there had been so much talk and speculation and so much anxiety regarding the particular concern here this afternoon that we felt it would be better for the school system to have a specific record and specific procedure through which all children would go when they requested transfer from one school to another school. We have had no formal requests for transfer since it was adopted.

Q The concern you referred to is concerning the desire of applicants of Negro schools for transfer to white schools?

A This is our concern but we were concerned with better system of records so that we could answer more definitely how many requests we had and what disposition had been made of the requests.

Q Did you contemplate using the forms for the initial assignment of children or merely children seeking to transfer from one school to another?

A We contemplated using them for requests of transfer from one school to another.

Q Would you use them for the parents like the ones we

have been talking about, say white parents living in the Arlington attendance area wanting their children to go to Westhills?

A Following the date of the adoption of the form they will execute that form. This is the proper procedure.

Q You have had no transfers since that time?

A Not to my knowledge. None approved by this superintendent.

Q Other than the concern you have referred to about the desegregation problem, was there any reason for keeping more complete records regarding transfers than you had been keeping in the past?

A I think there was a reason for us to attempt to be more efficient in our record keeping in all respects. Disregarding the concern for desegregation, we have improved our procedures in a great many respects with no reason to focus the spotlight on it. We think records need to be improved. It means that we are revising and upgrading and refining procedures and forms and materials with which we work constantly.

Q Has the Board acted on any other aspect relating to the desegregating problem other than adopting these forms? Anything else that they have done as bearing on it? I mean something that has specific bearing.

A I don't know of any specific act as directly bearing other than the acceptance, approving programs, and approving expenditures and budgets, and things of this nature, that help us provide adequate programs of education.

Q In adopting the form was not a change made in the criteria to be applied in determining whether a transfer would be granted?

A Generally, no.

Q It was just a matter of keeping more complete and accurate records of the transfers and the Board's action?

A That is correct.

Q Other than that it was contemplated that transfers would be granted or denied on the same basis and on the same terms they had been in the past?

A I think that is true.

MR. BARRETT: If the Court please, I have a publication of the United States Bureau of the Census entitled—it is a city block survey of Bessemer, Alabama, from the 1960 Census, official document, and I will ask that it be marked for identification as Intervenor's Exhibit 5.

(Intervenor's Exhibit 5
marked for identification.)

MR. BARRETT: We have also for the convenience of the Court and counsel a display we have prepared setting some information contained in the document. What this display shows and the map itself was prepared by the Bureau of Census and this is a copy. It shows the areas of the city in which more than 90 percent of the inhabitants are Negro, and those are the darkest areas as they appear. They show the area cross-hatched where fewer than ten percent of the residents are Negroes and the gray area are areas in which Negroes are more than ten percent and less than 90 percent.

I will ask that the map be marked as Intervenor's Exhibit No. 6.

(Intervenor's Exhibit No. 6
marked for identification.)

MR. BARRETT: I might add we have superimposed

on the map the location of the white and Negro schools in Bessemer and superimposed the attendance zone lines that have been a matter of discussion in the courtroom.

MR. BARNES: I understand that is on the actual census taking?

MR. BARRETT: Yes, in 1960. You will note on each square, which is a city block, is a percent of Negro population which also appears in the book.

MR. BARNES: You have prepared that from the census itself?

MR. BARRETT: That is correct, it shows no more than —

MR. BARNES: The record will show how accurate it is. I don't propose to make an objection.

THE COURT: All right.

Q Mr. Knuckles, I will direct your attention to Intervenor's Exhibit 6 and particularly to an area that is indicated as being predominantly white area north of Hard School.

Are there children in that area?

A Yes, sir.

Q Quite a number of children?

A Yes, sir.

Q Maybe some 30 or 40 school children?

A Perhaps.

Q Those school children attend what school? Arlington?

A I expect they do.

Q Your map shows some 30 or 40 children?

A I don't know what children they are. If they attend Bessemer schools, they are in Arlington or Bessemer High School or Bessemer Junior High School.

Q In any three events they would go directly by Hard School to go to the school they are attending? That would be directly on the route?

A I expect it would.

Q Directing your attention to the area of Carver, there are some almost completely white neighborhoods inhabited by almost entirely white families?

A I believe the spot map would be more accurate on that. Where the red dots are. They are pretty well mixed. This is the area you are pointing out. For the most part it is mixed but perhaps there are blocks there are white children and no colored children.

Q Some of those children in the Jonesboro attendance area then would go—they do go really by Carver if they take the most direct route to Jonesboro School?

A Yes.

Q And they also cross a railroad track and some more than one railroad track to get to Jonesboro School?

A I believe that is correct.

Q Have there been any recent annexations to the City of Bessemer?

A Yes, there have been.

Q When was the last annexation approximately?

A In March, 1965.

Q What area was annexed?

A The area extending from Jonesboro southeastward, I guess, out into Jefferson County, taking in the communities of Greenwood, Morgan, and Hopewell. There might be another community. These communities have petitioned for several months for annexation because they were asking specifically for city services, primarily water.

Q Do you know how many school children approximately in that annexation were added to your school district?

A I am not sure because the Jefferson Board of Education—annexation took place this Spring and the Jefferson Board and the Bessemer Board will negotiate a settlement and reach some agreement as to the title of the buildings in the months ahead. This has not become an immediate problem of ours at this point.

Q Dr. Knuckles, do you have sections for fast learners?

A At the senior high school level, 9th through 12th, we have attempted to establish special instructions in English, Science and Math, for those students who can perform such work. We have guided them into the program at the completion of the 8th grade primarily on the basis of past performance, achievement, test scores, and grades, and ambition, and teacher recommendation. If they have performed at grade level or above, we recommend the college preparatory class and if they have performed some below their appropriate grade level, we have recommended a general program for them.

This we attempt to do not only for the white schools but in the Carver and Abrams High School.

Q Do you have it in Bessemer now?

A Yes, sir.

Q In the two colored schools?

A Yes, sir.

Q Do you have remedial classes for various slow learners?

A We have special education for retarded children and schools for educatable mentally retarded, and two classes one for physically handicapped and two classes in the white in Negro schools for educatable mentally retarded.

Q Dr. Knuckles, what is the practical importance, if any, to the high school graduate of accreditation or non-accreditation by the Southern Association?

A This proposition, I guess, is open to discussion and debate. In years past accreditation with the Southern Association meant automatic admittance to a great many colleges and universities over the country. But that is not true today. Most colleges and universities have turned to test programs and do their own testing and do their own screening and so forth. Now, accreditation is no guarantee any more that a student will be admitted to college.

Q It can be a help, though?

A There is one major advantage that proved to be a practical thing. The Southern Association established standards that a school must adhere to before being admitted. They lay out requirements for libraries, materials, equipment, size, and minimum kind of equipment, and size for laboratory space, and other things. These standards are imposed on the Boards of Education and if the Boards of Education maintain the standard, they keep their accreditation. This means or has meant a greater outlay of funds to a school that has been accredited as against the funds to a school that has not been accredited. For the most part today, though, the State Department of Education does the evaluation and accreditation

of high schools within the State. Our secondary schools are approved and accredited by The State Department of Education. Our secondary schools are approved and accredited by the State Department of Education, all three of them.

Q Isn't it a fact that some colleges and universities require a higher score on entrance examinations before admission—before admitting a student from a non-accredited high school than from an accredited high school with the Southern Association?

A I am not aware this is a fact.

Q You have produced in response to the government's subpoena photocopies of applications for accreditation by the three high schools in Bessemer, is that correct? Are these in this folder I just handed you?

A Yes, sir, they are.

MR. BARRETT: I will ask that the folder and its contents be marked as Intervenor's Exhibit 7.

(Intervenor's Exhibit 7
marked for Identification.)

Q Dr. Knuckles, do these accreditation applications set forth the pupil-teacher ratio for each school?

A I believe they do.

Q Will you tell us what the pupil-teacher ratio is for the Bessemer High School as reflected in its accreditation application?

A You will have to permit me to do some digging.

Q I will call your attention to the second page of the application, Item 1. Does that give the pupil-teacher ratio?

A Yes, it does.

Q What is it?

A 19.08.

Q What are the figures for Carver and Abrams?

A I am sorry, I can't give them to you on the same basis. The computation is not on the same basis. That is the Southern Association report and these are reports that go to the State Board of Education. These are forms required by the State Board of Education and Bessemer High School is the only high school that has been accredited by the Southern Association. Abrams has applied and have gone through the year of study and they are ready for evaluation and will be evaluated this coming year. Carver has asked for application and hopes to be evaluated the year following. These are reports we filed and the computation is not the same. In some instances vocational teachers are included in the State Department reports and they are not included in the Southern Association reports.

Q The inclusion of vocational teachers in the State Department reports then would give a more favorable figure per pupil-teacher ratio?

A More objective figure. We have vocational teachers in each institution.

Q It would be more favorable to the school or it would give a lower figure if you included more teachers?

A Yes.

Q What figure is shown on the accreditation application for Abrams?

A 25.25.

Q What is the figure for Carver?

A 25 plus.

Q Without including the vocational teachers in the computation, that figure would be even higher?

A Yes, it would.

Q Does the accreditation application refer to the library or the number of books in the library?

A Yes, it deals with that.

Q I will ask you to look at the application for Bessemer High School and tell us how many books are in the library as reflected by that application?

A It indicates 8785 volumes available at Bessemer High School.

Q How many students are there in the school?

A Presently fewer than 700.

Q It shows here 668?

A Right.

Q And that worked out to be about 15.13 books per student? Would that seem about right?

A If you worked it out, yes, sir, I am sure it is.

Q Does the application show the library books available in the two Negro schools?

A I am sure it does but I will have to dig to find it. Total number of titles, 5020 at Abrams.

Q What is the enrollment?

A At Abrams I would have to look back at my secondary enrollment again. 626 for the secondary students in that school.

Q What is the number of the books in the library at Carver?

A 3347.

Q Does the application indicate the number of books per pupil that amounts to?

A I am not sure it does.

Q Would you give us the enrollment figure?

A Secondary Carver, 785. I read you the wrong one for Abrams. Secondary enrollment at Abrams is 1064.

Q Does the application show course offerings in the different schools?

A I am sure they do.

Q You have the application for Carver in your hand?

A Yes, sir.

Q Where does it show the course offerings?

A Well, perhaps it doesn't at that.

Q It shows both the required courses and the electives?

A Yes, sir.

Q And the same information is contained in the application for Abrams?

A That is correct.

Q And the same general information is contained in the application for Bessemer High School, is that correct?

A Should be, yes, sir.

Q And that is on a page entitled "Program of Studies"?

A Yes, sir.

Q Is it fair to say in each high school class, Bessemer High

School has several times the selection of courses that are offered at the two Negro high schools?

A I can't say this because I will give you example. At the 9th grade level there are four subjects required of all students. All students are required to take English, Social Studies, Science, and Mathematics in the 9th Grade. In addition they are presently required to take physical education. That would be five subjects and that is the same in all schools and the maximum number of periods in any day, I believe, at the senior high school is six periods. There is only room for one elective above this in the 9th grade. The students are required to take five courses and they may have one elective if they are capable. No student is required to take more than five courses.

Q And this applies to all three high schools?

A The graduation requirements for completion of high school applies to all three.

Q Whatever the difficulty or reason is in giving a large number of electives, it is a fact the white school offers many times the variety than do the two colored schools, is that correct?

A It is correct to say there are more electives available at Bessemer High School than the other two schools. I have mentioned before electives have come into the program because of requests or interest and from pressure groups in the community. This is true at Bessemer High School and Abrams and Carver. The Board of Education has not restricted the offering of courses in the schools. We have attempted to provide personnel to offer courses that have been requested on the basis of interest expressed in them.

Q Does that boil down to the—can it be stated this way, that the availability of courses to a particular student in a

particular school then depends not so much on an individual situation as it does on the community pressure that is on the school he is attending?

A The community pressure has a great deal to do with it and the group requests. If there are enough students, enough interested in a given course, or a given program, we have attempted to offer that kind of program and offer that kind of instruction.

Q And as long as a pupil remains in that school he won't get the courses until the community pressure justifies it as you have outlined to us?

A Yes, sir. We feel that the teachers and principals that have been assigned to work with those students are capable and competent and we feel they will look out for their interest and we feel they represent them and will request materials and facilities with which to work, and the Board of Education will supply the personnel with which to do the job.

Q Is Latin taught in the Negro schools?

A No, sir, and neither is it in the white schools.

Q It was last year?

A No, sir, not last year.

Q Was Spanish taught?

A Yes, sir.

Q Taught in either of the Negro schools?

A I don't believe it was. French was.

Q How many years of French was taught at the white high school?

A Two, I believe.

Q How many in either of the Negro schools?

A Two.

Q French 1 and French 2?

A Yes, sir.

Q Is Journalism taught in the Negro schools?

A I don't think so.

Q Did they publish a yearbook in either of the Negro schools?

A I don't know the answer to that question.

Q Do they publish yearbooks at Bessemer High School?

A They do.

Q Dr. Knuckles, you have produced in response to the subpoena some tabulations of the insured valuation of the various school properties, is that correct?

A Yes, sir.

Q And that is in this folder No. 11 and No. 12?

A Yes.

Q I will show you photostat copies of "Statement of Values," page one. Is that information on the insured valuation of both the school property and the contents of the property?

A It is.

MR. BARRETT: I will ask these several sheets stapled together be marked for identification.

(Intervenor's Exhibit 8
marked for identification.)

Q Dr. Knuckles, has your school system participated in

some Federal programs, specifically the National Defense Education Act, Title 3, and Title 5, the vocational education program?

A Yes, we have.

Q Specifically what courses or programs in your school have received support from any of those Federal programs?

A I would suspect all science classes in the school system from at least the middle elementary grades to the senior high school have benefitted. The same is true to a lesser extent in the mathematics classes. We have purchased material and equipment for use in both mathematics and science, and at the secondary level, and also purchased materials in the field of modern foreign language.

Q Have you received such aid for the school year just ended?

A Yes, sir.

Q Are those same studies going to be offered this next year?

A Yes, sir, the basic course of study will be offered, yes, sir.

Q Have you budgeted for those courses next year?

A No, sir, not in any category yet.

Q Are those Federal programs that you have participated in, they are continuing programs, are they not?

A I am not sure in what sense you mean this.

Q I mean the provision under which you get the assistance continues in effect from year to year?

A I would say yes to your question.

Q Has your school system participated in them during the period you have been with the school system?

A Have the programs been in effect? Yes, sir. The National Education Act has not been in effect during the entire time. The lunchroom program and the vocational program, the school system has participated in those programs a long number of years.

Q Do you have to file an application each year to participate?

A You have to file an application each year to participate in the lunchroom program. There have been no formal applications for the continued participation in the N.D.E.A.

Q None are necessary?

A No application on an annual basis. We file an application with the State Department of Education and that goes to Montgomery and they are reviewed and approved and we go on a population basis. Each project is approved for a school and for a given amount.

Q Have you submitted such information on any project for the coming school year of '65-66?

A No, sir.

Q In the ordinary course when would you submit that?

A It has to be done for the lunchroom program—

Q I mean the N.D.E.A.

A We would not do that until school begins in September. For the most part the teachers will not be back on the job until school begins about the first of September.

Q If such funds are available for those programs, do you anticipate that the school will again avail itself of them?

A I expect if they are available the school—the various schools will apply for such funds.

MR. BARRETT: No further questions. I would, however, ask that the exhibits we have had marked for identification be admitted in evidence.

THE COURT: All exhibits from one through eight identified are admitted in evidence.

MR. BARNES: May I inquire about the ones on the Board, whether you identified those and offered them in evidence.

MR. BARRETT: Yes, they have been marked.

THE COURT: Exhibit 6.

CROSS EXAMINATION

Q (BY MR. McENIRY:) Doctor, I would like to go over with you the school buildings and the school grounds in the Bessemer area. There are, you testified, two colored high schools?

A Correct.

Q On what acreage do they sit? They each have approximately ten acre campuses around them, is that right?

A Abrams School is approximately that, yes, sir, and Carver School is nearer 17 acres.

Q And Bessemer High School, the white school, is that one square block?

A Yes, sir.

Q And the building occupies almost the entire block?

A Yes, sir.

Q How many railroads are there within two blocks of Bessemer High School?

A Two railroad lines. One is maybe one block and the other is an elevated line—

Q Both main lines of the Atlantic Coastline and the Southern Railway?

A Yes, sir, within two blocks of Bessemer High School and each is about two blocks from Bessemer Junior High School.

Q And at Abrams you have one set of railroad tracks going down on only one side of Abrams?

A Yes, sir. And this is a rail yard and not trains going through. Not passenger trains moving through there.

Q Is there any highways going alongside either of these three schools?

A There is a busy state highway that comes down the east side of Bessemer High School and a junior high school is approximately one block from the highway.

Q And those are both white schools?

A Yes, sir.

Q Doctor, as to the age of the schools in Bessemer, I believe you have testified the oldest school was either Jonesboro or Vance School and that Vance was built in 1907?

A You mean Arlington?

Q I mean Arlington, about 1907.

A Yes, sir.

Q Both of those schools are continually in use and in use today?

A Yes, sir.

Q Other than that what would be the oldest school in Bessemer?

A Dunbar was built in 1922 and Bessemer High School in 1923.

Q The grammar school that was replaced by Westhills and Vance, how old was that school?

A It had been built after the turn of the century but I am not sure of the date.

Q Isn't it a fact there was actually cracks down both sides of that building and steel rods were holding it together and that building was condemned on more than one occasion prior to being torn down?

A That is correct.

Q And it was only torn down when the Board of Education took the students out of it because they were afraid it would cave in?

A Yes, sir.

Q And a new grammar school was built to replace it?

A Yes, sir.

Q What did that cost?

A Vance cost approximately \$110,000 and Westhills School cost about \$125,000.

Q What other moneys have been spent since you have been in Bessemer on school buildings, white schools?

A The only other funds spent on white school buildings was approximately \$125,000 on necessary renovation of Bessemer High School for the electrical system and the heating systems that had been pointed out as unsafe. That's all

that has been spent for white schools since I have been in Bessemer.

Q How much has been spent on colored schools?

A I came there January 1, 1958, and a bond issue was approved in September, and Hard School was built at an approximate cost of \$325,000, and Abrams High School on this site, the high school, was built at a cost of about—above \$500,000, and \$100,000 put into an addition to Carver School. That added up to above \$800,000 going into the Negro schools at that time.

Of the one hundred million dollar bond issue the Bessemer School System received a little over \$500,000 as its share. Out of that—

Q Has the 6-3-3 system been put into effect by the Board of Education for next year?

A Yes, sir.

Q And to adequately do it, it will take the building of a junior high school on the Carver campus?

A Yes, sir.

Q And this will replace the wooden buildings Mr. Barrett was talking about?

A Yes, sir. That has been planned for some time. The previous money would not allow replacement of the building but these funds will. It is planned and approved.

Q And then there will be exactly the same type of situation in the white and colored schools?

A Yes, sir.

Q And the census report filed with the 1960 census, are you familiar with the fact that the City of Bessemer has

increased in size about one-half the size and that no longer accurately reflects the population of the City of Bessemer?

A Yes, sir.

Q During that same time, through annexation, the population has grown about 20 percent?

A Yes, sir.

Q That no longer accurately reflects the census of the City of Bessemer?

A Correct.

Q Up until last year had the Board of Education during your time ever given a nickel to anybody's library?

A No, Sir.

Q Isn't it a fact that the State Board of Education gave \$2,000 each to Abrams and Carver to help them?

A Outright appropriation to help them stock their library.

Q But what I am getting at is the books in the Bessemer High School library were bought by the patrons and students in the high school? The Board of Education didn't give them money to buy the volumes?

A That is true.

Q But they have given these two high schools \$2,000 that they have not given Bessemer High School?

A That's right.

Q The course offerings you testified to when Mr. Adams was examining you, the courses other than those required are by demand of students?

A That is correct.

Q If you have a demand for French, you teach French and the instructors are furnished and if you have a demand for Latin, you would teach Latin and did teach Latin until about two years ago?

A Yes, sir.

Q And that is also true of many other extra curricular activities?

A Yes, sir.

Q And the pressure is pressure put on the students by parents to go down and say, "I want such and such course"?

A That's right.

Q And that is true whether it is Abrams or Carver?

A Yes, sir.

Q But in the grammar school, everything is set?

A Yes, sir.

Q On the yearbook question, does the Board of Education put a nickel into the Bessemer High School Yearbook?

A No, sir.

Q And Carver and Abrams could get out and get their own yearbook, couldn't they?

A Yes, sir.

Q Of these valuations that were introduced, these are not and do not attempt to reflect the value of the buildings down there?

A No, sir.

Q They are replacement costs and you show the replacement cost of Bessemer High School at \$986,000 and that is an estimate of the cost of replacing the building?

A Yes, sir.

Q Doesn't include and is not supposed to be the cost of—the present value of the building?

A This is to the request that was made, and in talking to the attorneys we talked about what could be brought that would have bearing and that is what we produced.

Q And this has nothing to do with land values or actual building worth?

A That is correct.

Q Those figures give what it would cost to replace the buildings?

A Yes, sir, that's right.

Q The character of the neighborhoods around the schools, the homes around the Jonesboro School, probably were built about the turn of the century, is that right? It is an old section of town?

A I think you are right.

Q The same thing is true with all the schools in the City of Bessemer except the Westhills area?

A Yes, sir.

Q That is Lakewood and Skyview, and those are the three new residential areas?

A Yes, sir, that's right.

Q Dr. Knuckles, I think your testimony was clear that there have been no applications since you have—for any transfer by a white to a colored school or a colored to a white school?

A That is correct.

Q And consequently none have been turned down?

A That is correct.

Q And since you have been there have there been any applications from any white teachers to teach in colored schools?

A There has been none.

Q Have there been any applications by any colored teacher to teach in a white school?

A To my knowledge, no.

MR. McENIRY: I believe that's all.

REDIRECT EXAMINATION

Q (BY MR. ADAMS:) Dr. Knuckles, is it possible for the Board or the Superintendent to draw any sort of lines, if there were an order in this courtroom requiring the schools to be desegregated, which would have no consideration for race as a factor in locating students in the various schools, elementary or high schools?

MR. McENIRY: I did not understand that question.

Q I asked Dr. Knuckles if this Court would order that the schools in the Bessemer School System be desegregated, could the Board of the Superintendent draw neighborhood zone lines which would accommodate the various schools without regard to race or color?

MR. McENIRY: I object to that as purely speculative, whether they could.

THE COURT: I think the question answers itself. It is obvious it could be done.

MR. ADAMS: All right, that's all I want to ask.

THE COURT: Is that all?

MR. BARNES: Yes, sir.

THE COURT: Gentlemen, have you made up your minds whether you want to go ahead and act on this without regard to the other case?

MR. BARRETT: Is this the final hearing?

THE COURT: Yes.

MR. BARRETT: We will stipulate the Court may decide—may enter final judgment on the basis of the record in this hearing. On the other point we see no reason for the Court to delay decision in this case for any further proceedings in the Bessemer against Celebrezze case.

MR. ADAMS: We take that same position.

THE COURT: Gentlemen, I will get out my formal order with findings of facts. It will be exactly like the order in the Jefferson County case and the Birmingham case, and it will require that a plan which will meet the minimum standards of the plan in the Armstrong case. We are here a year later but we still make them completely parallel so far as the operation is concerned.

I will require the plan to be submitted to the Court by the Bessemer Board on or before July 9, and I will allow ten days for the filing of objections or exceptions, and on July 29 at 1:00 p.m. I will hear the objections and exceptions.

The reason I am giving you this is I don't have time to sit down and dictate my order in full, but you are advised when you receive it, it will require a plan to be submitted on July 9 and require objections and exceptions to be filed within ten days and hearing set for one p.m. on July 29, on the objections and exceptions.

I might say for the benefit and guidance of the parties that insofar as any plan to deal with the assignment of teachers, that is a matter for consideration by the Board and may be for the ultimate consideration of this Court, and I will not require any of that to be included in this. The order will follow and parallel the Armstrong case.

MR. McENIRY: You mean we must catch up with Birmingham this year?

THE COURT: I think you should catch up with Birmingham by the end of the Birmingham plan. I am not going to tell the Board what kind of plan to submit but I am telling you the minimum plan the Court will accept.

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Ray C. Wester, Official Court Reporter of the United States District Court, Birmingham, Alabama, do hereby certify that I reported in shorthand the foregoing proceedings of said hearing at the time and place stated in the caption hereof; that I later reduced my shorthand notes to typewriting, or under my supervision, and the foregoing pages, numbered three through 123, both inclusive, contain a true and correct transcript of the proceedings as herein set out.

I further certify that I am neither of counsel nor of kin to any parties to said cause, nor in any manner interested in the result thereof.

Ray C. Wester [Sig.]

OFFICIAL COURT REPORTER.

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

DORIS ELAINE BROWN, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF BESSEMER, et al.,
Defendants.

CIVIL
ACTION
No. 65-366

Birmingham, Alabama
July 29, 1965

Filed in Clerk's Office, Northern District of Alabama,
Jan. 10, 1966, William E. Davis, Clerk, U. S. District Court.
By Mary L. Tortorici, Deputy Clerk.

BEFORE:

SEYBOURN H. LYNNE, Judge.

APPEARANCES:

MR. DAVID H. HOOD, JR., 2001 Carolina Avenue,
South, Bessemer, Alabama, for the plaintiffs.

MESSRS. ST. JOHN BARRETT, BRIAN LANDS-
BERG, Civil Rights Division, Department of Justice,
Washington, D. C., for the plaintiff-intervenor.

MR. REID BARNES, of the firm of Lange, Simpson,
Robinson & Somerville, and MR. THOMAS McENIRY,
of the firm of McEniry, McEniry & McEniry, 1721-
4th Avenue, North, Bessemer, Alabama, for the de-
fendants.

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PROCEEDINGS

THE COURT: Gentlemen, the case of Doris Elaine Brown and others as original plaintiffs, United States of America as the plaintiff-intervenor, versus the Board of Education of the City of Bessemer and others, set for hearing this afternoon on objections to the plan for desegregation filed by the City of Bessemer pursuant to the order of this Court entered in connection with its injunction on the 30th day of June, 1965. I think the record should show at this point that both Mr. Amaker and Mr. Adams, representing the original plaintiffs, along with Mr. David Hood, each has communicated to me the fact that they didn't have adequate time within which to prepare their objections and I told them in the event a record should be made in this case, that is to say, in the event of an appeal from my final order, I would afford them time to supplement that record with any materials which they wanted to put in it. I think the record should also show that any evidence offered here this afternoon by the United States as intervenor will

be received also as evidence in behalf of the original plaintiffs in support of their objections when those objections are filed.

You understand that, David?

MR. HOOD: Yes sir. If Your Honor please, there will be no necessity for filing a written motion?

THE COURT: No, I think I discussed with you awhile ago that situation and I just simply—the situation is simply this, the original plaintiffs applied for additional time. This is my next to the last day in Birmingham before I go on my vacation for the first time in three years and I will not be back until the third day of September, which will be too late for consideration of objections or alterations, and we will go forward on that basis.

What says the plaintiff-intervenor?

MR. BARRETT: Ready to proceed.

THE COURT: What says the defendants?

MR. BARNES: We are ready.

THE COURT: I might say for the record that all the testimony and all the exhibits to the testimony which the Court received on the original hearing for the injunction is re-offered in this case and that evidence is admitted for the purpose of the hearing of these objections.

MR. HOOD: Yes, sir.

MR. BARNES: May it please the Court, Mr. Thomas McEniry is here instead of Mr. J. Howard McEniry.

THE COURT: Yes, I spoke to him as he came in.

MR. REID: Mr. McEniry will be more familiar with the school system than I am and while we will try to shorten

it I would like to ask that both of us be permitted to ask questions of the witnesses with one of us taking the lead.

THE COURT: That is all right.

MR. BARNES: And also I never have invoked the Rule and don't invoke it now, but Mr. Clark, who is Assistant Superintendent, is here, and I assume that Dr. Knuckles will be placed on the stand and I would like to have Mr. Clark sit here with us.

MR. HOOD: That is all right.

THE COURT: All right, the Rule is not invoked.

Who will you have?

MR. BARRETT: I would like before calling the first witness to offer into evidence Exhibit 7 which was marked for identification at the prior hearing. The Court may recall these are the minutes of the Board of Education contained in two volumes. The first volume had the original petition that was filed with the Board in May, 1955, and reflects the inaction of the Board on that petition.

The succeeding Board minutes show that nothing was done with reference to that petition all the way to the time when the second petition was filed just recently. That petition also is contained in the Board minutes. There are minutes in the intervening period that reflect administration of the school system in that it shows revision of the attendance zone areas, the transfer of students and teachers, all of which we think has a direct bearing on what the Board is or is not able to do at this time.

THE COURT: Have those exhibits been marked for identification?

MR. BARRETT: They have. I believe the two volumes were marked 7A and 7B.

THE COURT: Are they in court now?

MR. BARRETT: We have photocopies of each.

MR. BARNES: They have copies of what has been introduced in evidence.

THE COURT: All right.

MR. BARRETT: We will offer the exhibits in evidence.

THE COURT: They are received as Exhibits 7A and 7B.

MR. BARRETT: Yes, sir, these are the minutes of the Board and they include certain petitions that were filed with the Board.

MR. BARNES: We object to the entire minutes the last time, and I object to them now for that reason, they encumber the record.

THE COURT: Do you have particular portions of the minutes you consider relevant?

MR. BARRETT: Yes, there are particular portions and they will be testified about during the course of the testimony today. I might say, however, that in my view none are irrelevant because it shows lack of action as well as particular items of action and that, of course, can be shown only by reviewing it and seeing no action was taken on these petitions.

THE COURT: I would say this, that in the event there is an appeal that this will not have to be printed but that the original exhibit will be sent down.

MR. BARRETT: Next, if the Court please, I will ask that photostat copies of monthly attendance reports of the Bessemer Schools for May, 1965, be marked Plaintiff-Intervenor Exhibit No. 9, and we offer them in evidence. The

original documents were subpoenaed from the defendants.

(Plaintiff-Intervenor's
Exhibit 9 marked for
Identification.)

MR. BARRETT: If the Court please, the next item is a volume, a photographic copy of the school inventory of the Bessemer Schools for 1964-1965 school year. This was subpoenaed from the defendants and I will ask it be admitted in evidence as Plaintiff-Intervenor Exhibit 10.

(Plaintiff-Intervenor's
Exhibit 10 marked for
Identification.)

MR. BARNES: Is this a new exhibit?

MR. BARRETT: Yes, sir.

If the Court please, we prepared a number of tables from certain statistical and other information that has already been admitted in evidence and we would like to submit them to the Court for convenient reference. We are not offering them as exhibits. The first is a table which shows the enrollment by grades, race, and school, in the Bessemer School System. Each table shows the source of the particular information set forth.

Table 2 sets for the capacity and enrollment of each school in the Bessemer School System. Table 3 gives the course offerings in the high schools of the Bessemer School System. This information is drawn from the accreditation reports which were admitted in evidence from the past hearing.

Table 4 is the pupil-teacher ratio in each of the schools. These were computed from the information contained in the documents subpoenaed from the defendants.

MR. BARNES: And admitted in evidence.

MR. BARRETT: Yes, sir, they were.

Table 5 gives the assessed valuation for insurance valuation of the various Bessemer School buildings.

Table 6 gives the valuation of the school inventory according to race attending the school, computed to the amount of inventory per child.

Table 7 is another table on the inventory, this one giving the value of the inventory per pupil for each school.

Table 8 sets forth the number of library books, enrollment, and books per pupil ratio in each of the high schools.

Table 9 summarizes certain of the information in the transfer applications that were produced in court at the last hearing by the defendants. The Court may recall these were generally, I think, in the form of a letter from a parent to the Superintendent or to the School Board requesting the transfer of the child from one attendance zone to another and indicated the action taken on the request.

THE COURT: All right.

MR. BARRETT: The United States will call Mr. William Stormer.

MR. WILLIAM STORMER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) State your name, please.

A William L. Stormer.

Q Where do you live?

A Alexandria, Virginia.

Q What is your occupation?

A Specialist in School Facilities, Statistics, United States Office of Education, Department of Health, Education and Welfare.

Q Mr. Stormer, how long have you been employed in that capacity?

A Two and a half years approximately.

Q What is your field?

A School Plant Planning and Development Evaluation.

Q Have you been working on any particular project or job during the period of time you have been employed by the Department of Health, Education and Welfare?

A The last two and a half years I have been working on the project to evaluate and estimate the need for school facilities throughout the nation and states—in particular states.

Q What education have you had in your field of specialty?

A 1954 I received a Master's Degree at the University of Wyoming at which time I had written a paper on the relationship of school finances or finances and school instruction. During 1957 and 1958 I was with Ohio State University School Plant Division, and during the years 1959 up until taking this job with the United States I was Director of School Plant Planning and Studies for the State Department of Education for West Virginia.

Q Are there any professional societies in that field?

A National Council and School Housing Construction.

Q About how many members are there?

A About 350.

Q What is the purpose of the society?

A To improve the provisions within local communities of school facilities.

Q Are you a member?

A Yes, sir.

Q Mr. Stormer, are you familiar with the texts in your field of specialty?

A Yes, sir.

Q Do you keep current with the professional writings in the field and in the educational journals and other sources?

A Yes, sir.

Q Mr. Stormer, are there systems—have systems been devised for grading or rating school facilities on a comparative basis?

A Yes, sir, several systems.

Q About when were such systems originated?

A Originated back in the early 1900's, and improved and developed since that time.

Q Is there any common factor to the systems or any general principle or method on which they operate? Do they have anything in common?

A I would say yes they have every factor in common.

Q Generally speaking how are schools rated in plant facilities?

A Examination of sites, building structure, type of structure, classrooms, special instructional space such as for mathematics and science and general use of facilities.

Q Are those factors reduced to some numerical basis?

A Yes, sir, in most scales the items are weighted according to their general importance.

Q Have you participated in the formulation of these systems?

A Yes, in the work which I have immediately been engaged in we were developing a general rating system for evaluating school facilities in the nation, a rating scale which will allow us to predict the condition of facilities of a state and the nation.

Q Had you participated in the inspection and rating of particular schools in the field?

A Yes, sir.

Q How many schools would you say you visited for that purpose in your career?

A Roughly two or three hundred.

MR. BARRETT: If the Court please, I believe that Mr. Stormer is qualified to testify as an expert on the subject of rating, evaluating school facilities and I tender him on voir dire examination on the question of his qualifications.

MR. BARNES: Have you examined the Bessemer Schools?

A Yes, sir.

MR. BARNES: Seen all of them?

A Yes, sir.

MR. BARNES: In conjunction with Dr. Knuckles?

A With his cooperation. I visited with Mr. Clark and Mr. Branch.

MR. BARNES: All right.

Q When did you go to Bessemer?

A The first and second of July.

Q What was your purpose?

A To look at the schools, examine the schools, and evaluate them.

Q When did you arrive on July 1st in Bessemer?

A I arrived approximately—I began visitations to the schools in the afternoon of July 1st.

Q How many schools did you visit on that day?

A Three.

Q Did you visit other schools the next day?

A Actually four.

Q Four the first day?

A Yes, sir.

Q How many the second day?

A Seven and repeated a visit to one school.

Q Did that take you to all schools in the system?

A To the best of my knowledge, yes, sir.

Q What did you look at in each of the schools?

A Approaching the school I looked at the general site, location, neighborhood, buildings, position on the site, whether one or two story or brick or masonry or frame, and inside the building I looked generally at the classrooms where English, Social Studies, Math were taught, and the special facilities such as science and so forth. Each of these I was looking for primarily the general condition of the classroom,

types of floors, walls, ceilings, lighting and equipment used for instructional purposes in terms of the program that appeared to be offered.

Q Overall about how many items were on your check list or whatever you call it?

A Approximately 180.

Q Did you arrive at some grading or rating for each of the schools?

A Yes, sir.

Q And did you express it in numerical terms?

A Yes, sir.

Q Will you tell us in the order in which you rank them, the names of the schools you visited, whether they are attended by white or Negro, if you were informed, and the numerical score you gave each school?

Do you have a mimeograph of those?

A Yes, sir.

MR. BARNES: I think that is too general. If he wants to explain the reason for it, that is all right, but I think it is too general.

THE COURT: I would like to see the mimeograph. Do you have a copy of it?

Q Do you have copies?

A I have this copy (indicating).

Q The longer mimeograph sheet you delivered to me after your visit, is that correct?

A Yes, sir.

THE COURT: I will overrule.

MR. BARRETT: Pardon me.

THE COURT: I will overrule.

Q Can you recall the scores and rankings without reference to your mimeograph?

A I don't believe so. I can recall some of them.

MR. BARNES: You say you don't have a copy of this?

MR. BARRETT: I can furnish you one at the recess. We can also make Mr. Stormer available later if you wish to examine him after you look at this.

MR. BARNES: After today?

MR. BARRETT: No, sir, after he steps down from the witness stand, but today.

THE COURT: Let's go ahead.

Q Do you recall my question?

A Generally you asked me to give the rating of the building, name of the building, ratio, attendance, and numerical score.

Q Yes, sir.

A From the mimeograph Jonesboro Elementary School, attended by white pupils, numerical score 84.

Q Are you reading these in the rank in which you put them?

A Yes, sir.

Q This is the first one?

A I am reading them in the rank order and of the composite numerical score.

No. 2 is Westhill Elementary attended by white pupils,

77. No. 3, Vance Elementary attended by white pupils, 72. Hard Elementary and Junior High School attended by Negro pupils, 77. Arlington Elementary attended by white pupils, 61. Jonesboro Annex attended by white pupils, 55. Carver Elementary attended by Negro pupils, 50. Dunbar Elementary Junior attended by Negro pupils, 32. Abrams Elementary or 22nd Street Elementary School attended by Negroes, 25.

Secondary schools, rating No. 1, Bessemer Junior High School attended by white pupils, 80. Bessemer Senior High attended by white pupils, 71. Abrams High School attended by Negroes, 66. Carver High School attended by Negroes, 52.

MR. BARRETT: I have no further questions.

CROSS EXAMINATION

Q (BY MR. McENIRY:) May we have the mimeograph, please?

Mr. Stormer, I see you rate Abrams and Carver as the two lowest schools, secondary schools.

A Yes, sir.

Q Can you describe those schools as far as their facilities?

A Yes, I believe I can. Do you want it in general terms?

Q Yes.

A Abrams School is a recent construction, approximately 1963, if I can recall correctly. Reasonably modern structure. It is situated on a questionable site in terms of its general location. Residential-industrial area. Building is of masonry construction and provides adequate classrooms, doesn't—provides three science—has general science room, biology room, combination physics-chemistry situation. The

physics-chemistry laboratory is reasonably good. The storage facility is questionable in my estimation, particularly in the chemistry-physics area.

It has a typing room, a machine bay, and on the other side is a general business education and bookkeeping and secretarial science.

Has combination gymnasium-auditorium but no band facilities.

Q In your judgment, what is the big factor in awarding them the low grade?

A The low grade is general appointment, lack of storage preparation—students preparation area.

May I refer to my notes on that?

Q Do you need this (indicating)?

A It may jog a few memories.

Q Was the site a very questionable factor in the low grade?

A I would say it contributed generally. I wouldn't say the most important but it was a weighted factor. The building construction itself is post and beam concrete construction. It has some deterioration to it because of settling and lack of expansion joints, but—

Q It is new construction?

A Yes, but it has some difficulties.

Q Now, Carver School, is the site—

A The site is approximately the same, in fact, a little bit less, I think, than Abrams. It is supplemented—even though the main site is less, you have to bring it slightly because there is a park across the street and also a junkyard, and I

believe a Phillips Gas Station, and storage area across the street.

Q Is this a big contributing factor?

A Site is a factor in this, yes, sir. In addition, it is my understanding that the wooden frame buildings which are out in front of the structure and to the rear, I would say left from where I am sitting now, or the Junior High School facilities, this rating would be considerably lower if these facilities were in this rating. This is partially my neglect. I would have rated it even less. The newer portion which is 1963, taking the gymnasium and down the wing heading towards the original structures on the site, you have science and mathematics.

Q Was it apparent to you that more money had been spent on the Negro Schools recently than whites?

A Yes, I would say the newest schools I observed were Vance and Westhills.

Q Actually the site contributed greatest to the downgrading of the Negro Schools?

A Sites, yes, sir.

Q MR. McENIRY: That's all.

CROSS EXAMINATION (CONTINUED)

Q (BY MR. BARNES:) Mr. Stormer, I notice with reference to your elementary schools, for example, you have Hard, what do you call one of your factors is site. Were you at the last hearing in this case?

A Yes, sir.

Q Do you recall the railroad tracks being mentioned going by some of the schools?

A I believe I do.

Q Did you take that into consideration in lowering the ratings of the Negro schools?

A Yes, sir, and also took it into consideration in the white schools.

Q Which is the closest to the railroad track as far as both white and Negro?

A I would say Arlington, being a white school, is closest to a railroad track.

Q What about Hard School, the Negro school?

A It is slightly above the dirt road and the railroad tracks and, I believe, the Pullman Plant—overlooks the Pullman Manufacturing plant.

Q You took that into consideration?

A Yes, sir.

Q I notice you have Vance Elementary School, and that is far removed from a railroad track, is it not?

A Yes, it is.

Q You have here—

A I presume it is. I didn't notice one.

Q What about any plants around there?

A My impression is Vance is residential and commercial business area.

Q According to your ratings you have Vance which you say is not close to a railroad, and in a residential section, and you gave greater weight to that?

A I gave weight but I don't know you can say greater weight.

Q I mean you give weight to it?

A Yes, sir.

Q And you have already given what you consider the disadvantage of Hard School from its location near the railroad track and near the Pullman plant. You have Vance at 72 and Hard rated 67. I think I have read it correctly?

A Yes, sir, that is correct.

Q What about Arlington Elementary School, where is that located?

A Arlington is, as I recall, approximately a block or two blocks off of the main business district off on a railroad and, if I remember correctly, I was surprised to hear a rather loud train go by. It is not what I consider business or residential. The same kind of general locality as Vance really.

Q You have Arlington Elementary graded 61 and then Hard School, a Negro school 67.

A Yes, sir.

MR. BARNES: That's all.

CROSS EXAMINATION (CONTINUED)

Q (BY MR. McENIRY:) Are you familiar with the senior high school for whites, Bessemer Senior High School?

A Yes, sir.

Q Built on one city block, is it not?

A Yes, sir.

Q And the building itself consumes almost the entire block?

A Almost, yes, sir.

Q And it is about a block from the railroad track too, isn't it?

A This I am not sure. I would assume one or two blocks. I recall it being previously mentioned. I didn't notice the railroad when I was there in terms of traffic going by.

Q The classrooms at both Abrams and Carver, the building structures were apparently new or of recent construction?

A With the exception of the frame Junior High School facilities at Carver.

Q They appeared to be of much more recent construction than the senior high school?

A Yes, sir, the senior high school was built approximately in the 20's.

Q And is equal as far as date of construction with the junior high school?

A You talking about Hard and Abrams being equal in date of construction with Bessemer Junior?

Q Yes.

A Approximately, yes, sir.

Q What about the site of the junior high school?

A The site of the Junior High School was situated adjacent to a park with considerable physical education activity area.

Q That contributed greatly to it getting a higher mark, is that right?

A Yes, sir.

Q If schools could be built adjacent to or in a park, that would add to the site?

A Yes, sir, in current thinking with cost of land so expensive and schools are situated in cities, if you could buy the land close to parks and supplement the land you are able to purchase by using the park, you do a better job.

Q If a school is located in a residential section, would you say the type of residential section affects the rating?

A The type?

Q Yes, whether your finer residential sections are good, clean residential sections.

A Well, the paving or unpaving of streets would affect it in my rating, yes, sir.

Q And the homes surround it would?

A The homes surrounding it not appreciably. You might have some qualifications if you have a ramshackled situation or had extremely high tenement rows and this would detract.

MR. McENIRY: Your Honor, that's all we have at this time.

THE COURT: Mr. Stormer, I am not quite sure I understand these numerical ratings. Are they based on one hundred as perfect?

A There is a modification here, Your Honor. The scale actually throws an ideal score of one thousand and the 19 broad items within one thousand are given weighted values. In using this particular scale I modify it in terms of elementary schools where it gives you a value for two-story buildings having fire resistant stairwells and if it is a one-story building I deleted that from the potential score and didn't enter a score for it so that the one thousand potential available in the score itself was cut down by items that were not applicable to the individual school.

THE COURT: Let's take the Jonesboro Elementary School, which is, as I understand, had the highest numerical rating in the Bessemer system, 84.

That was 84 out of what?

A Out of one hundred.

THE COURT: Would all the others be—

A Be comparable.

THE COURT: So one hundred is the top rating?

A Yes, sir, in the modification it would be.

CROSS EXAMINATION (CONTINUED)

Q (BY MR. McENIRY:) Mr. Stormer, these are relative positions, these ratings, are they not? Two men equally qualified looking at the same building may come up with wide and divergent—

A This may be true in some areas. In rating buildings there may be some divergents within the scale itself but the general categories we agree.

MR. McENIRY: That's all.

THE COURT: All right.

REDIRECT EXAMINATION

Q (BY MR. BARRETT:) Mr. Stormer, if the same man is rating all of the buildings concerned in the survey, are his idiosyncrasies, if he has any, apt to change the ranking of those schools as distinguished from the absolute score?

A Would his idiosyncrasies change—

Q I don't mean idiosyncrasies in the sense of being— I mean any standards that may be personal to him, would

they even out in determining the ranking of the various schools?

A Yes, sir.

Q On cross-examination you have testified that questions relating to the site of a school were a significant or major factor in scoring the school. Were there other categories other than site that you considered in scoring the school?

A Yes, sir.

Q How many?

A Nineteen major categories.

Q And within each category there are a number of particular items?

A There are a number of sub-categories.

MR. BARRETT: I have no further questions.

THE COURT: All right, next witness.

(Witness Excused)

MR. BARNES: Could I inquire whether this memo has been actually introduced in evidence?

THE COURT: It has not been—it has not been offered in evidence.

JOHN N. MAUTER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) State your name, please.

A John N. Mauter.

Q Where do you live?

A 1564 Steiner Avenue, Southwest, Birmingham, Alabama.

Q Are you employed?

A I am.

Q What is your employment?

A Secretary with the Jefferson Board of Health.

Q Does the Board of Health inspect school buildings, that is, eating facilities?

A Yes, sir.

Q Does that inspection cover the buildings in Bessemer?

A Yes, sir.

MR. BARRETT: If the Court please, I have eleven one-sheet documents each entitled "Food Establishment Inspection Report Score Card and Legal Notice" and I will ask that the eleven sheets be marked as a group exhibit.

(Exhibit 11A through 11K
marked for identification.)

Q Did you produce these documents in court in response to a subpoena issued by the government?

A Yes, sir.

Q Are they records from your department?

A They are, yes, sir.

Q Do they relate to the health inspection of the eating facilities of the Bessemer Schools?

A Yes, sir.

Q For what year?

A I believe 1965, the month of May. Made on different

dates. I don't remember the exact dates but the month of May, 1965.

Q Do these sheets that make up Plaintiff-Intervenor Exhibit 11 for identification set forth the results of those inspections?

A Yes, sir.

MR. BARRETT: I will ask that the exhibit be received in evidence.

We have no further questions.

CROSS EXAMINATION

Q (BY MR. McENIRY:) Mr. Mauter, what can you tell me about these letters numbered on here are arrived at?

A Yes, sir.

Q Is cleanliness, general upkeep of the establishment an important factor?

A Yes, sir.

Q Is it the most important factor?

A No, sir, not the most important, no, sir.

Q Is it a fact that the low grades you find in here for some Negro schools were contributed to by that factor?

A Yes, sir.

Q I will ask you whether you are familiar on one occasion they found a dead rat in the Hard School lunchroom?

A Yes, sir.

Q That had remained there from the last inspection?

A I don't remember that, sir.

CROSS EXAMINATION (CONTINUED)

Q (BY MR. BARNES:) Mr. Mauter, what we are really talking about is the lunchrooms in the schools, are we not?

A Yes, sir.

Q These reports that we have here?

A This is the lunchroom only.

Q Do you know how they are run? Whether they are run independently of the school and employees paid out of the proceeds of the lunchroom and not employees of the school at all?

A That is my understanding.

Q They are not school administrated?

A No, sir.

MR. BARNES: That's all.

THE COURT: You may be excused.

(Witness Excused)

CLARENCE O. DAVIS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) State your full name, please.

A Clarence Oliver Davis, Bessemer, Alabama.

Q By whom are you employed?

A The City of Bessemer.

Q In what capacity?

A Fire Chief.

Q Mr. Davis, does the Bessemer Fire Department inspect the school buildings in the city for their fire safety?

A They do.

Q Do you do it on a regular basis?

A Not as regular as it should have been.

Q How often do you do it?

A The program I have going now I try to get around every two or three months.

Q You inspect all the schools?

A Yes, sir.

Q You keep records of your inspections?

A Simple records.

Q Have you produced the records in court here today of your most recent inspection of the schools?

A Yes, sir, I believe you have them there.

Q I will show you these eleven sheets and ask you if these are your records of the inspections.

A They are Fire Department records.

MR. BARRETT: May these be marked as a group exhibit? That would be No. 12.

(Plaintiff-Intervenor
Exhibit No. 12A through 12K
marked for Identification.)

MR. BARNES: Have you offered them yet?

MR. BARRETT: No, sir.

Chief Davis, I would like to ask you about the form

you use. I notice there is a column with the initials VN at the top. What does that mean?

A Where that is checked that means there was a verbal notice given on that.

Q And WN means written notice?

A Yes, sir.

Q I notice on the first sheet which relates to Bessemer High School of August 21, 1963, the condition was noted as good, is that right?

A Right.

Q And you gave a verbal notice, is that right?

A This officer gave it.

Q I mean the department.

A Yes, sir, according to his notation.

Q The succeeding spaces under condition are not filled in. Does that mean the condition of good remained unchanged on those inspections?

A I couldn't answer that. This is another man here (indicating) that followed this man and he may have neglected to check it. And also it would be a matter of opinion with them.

Q Apparently "good" was filled in only on the top, the first time?

A This man here (indicating) did that. There was two of them on this inspection (indicating).

Q And on the sheet for Dunbar School, the inspection of January 30, 1964, indicates the condition was bad, is that correct?

A According to the man whose initials are here (indicating).

Q What is the effect of a bad rating?

A Well, I couldn't answer for what his opinion was, whether it is general or specific or what he has noted.

Q Does it result in any particular action other than advising the school authorities?

A If he can't clear it up on the inspection. I have been on the job since 1956 and I have been trying to get a genuine program going with hard and fast inspections. If you notice, there are several men's initials on there and I just now this year got a man rated as in inspector.

MR. BARRETT: I will ask that Exhibit 12 be admitted in evidence and I have no further questions.

CROSS EXAMINATION

Q (BY MR. BARNES:) Chief, on direct examination Mr. Barrett, the attorney for the intervenor, asked you only about two schools here, did he not? At any rate, you have Bessemer High School and that is a senior high school, is it not?

A Correct.

Q And you have here "good"?

A Yes, sir, that is what the inspector put.

Q Now then, on the second inspection here by B.W., that is a different inspector?

A Yes, sir.

Q He doesn't have good or anything. He has written down here "Need recharge on all extinguishers."

A Yes, sir.

Q And something about "Clean up around stage."

A Yes, sir.

Q On the third inspection he has got "All extinguishers need recharging"?

A Yes, sir.

Q What about Bessemer High School as a fire hazard?

A Well, I hope it don't get started.

Q Tell us what you mean by that.

A Well, I consider it the most hazardous of any school in the city. It is the most hazardous because of its construction and the way it is laid out.

Q And you are including all schools?

A Yes, sir.

Q All right, I will go through this as briefly as I can. Here is Westhills Elementary. That is a white school?

A Yes, sir.

Q And the only condition you have here is that it is new. You don't have anything else on there, good or bad?

A No, sir.

Q The same thing on Carver High School and that is a colored high school?

A Yes, sir.

Q Negro school?

A Yes, sir.

Q You don't have anything on there with reference to the

condition? In other words, you have a few minor things that need checking?

A Yes, sir.

Q They reported it, as far as the inspector was concerned, neither good nor bad?

A It wasn't noted either way.

Q You do have Vance elementary school and that is a white school, and you have got it marked okay?

A Yes, sir.

Q And here is Abrams School and that is a colored school?

A Yes, sir.

Q And the inspector marks that as good?

A Yes, sir.

Q And here is another, Hard, and that is a colored school?

A Yes, sir.

Q You have here by the inspector on the condition as good?

A Yes, sir, so far as I know.

Q That is what you are going by?

A Yes, sir.

Q And the rest of them—I have got them all mixed up, but at any rate—

MR. McEniry you have anything further? That's all I have.

Q (BY MR. McENIRY:) Chief Davis, Arlington School and Jonesboro Annex, what is their condition? How do you rate them as far as a fire hazard?

A Well, they are both old schools and structurally possibly, both being two-story, they would be a possible hazard.

Q Would you give us any other school that you consider a fire hazard?

A And Dunbar is two-story and the old section of Carver I would put on the same par.

MR. McENIRY: That's all.

MR. BARRETT: That's all.

(Witness Excused)

MR. WILLIAM THOMAS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

Q (BY MR. BARRETT:) State your full name, please.

A William Thomas.

Q What is your address?

A 1323 6th Avenue, North, Bessemer.

Q Are you employed?

A I am.

Q What is your employment?

A I am a brick inspector at the Harbison-Walker Refractory Company, Bessemer Plant.

Q Do you have a family?

A Yes, sir.

Q What does your family consist of?

A Four boys and a wife.

Q Are you Negro?

A I am.

Q How long have you lived in Bessemer?

A All my life.

Q Would you give us the names and age of each child?

A William Thomas, age 31, Harold Thomas 26, and Morris L. Thomas, 17.

Q Where did they go to school?

A In the Bessemer System.

Q Which of your children were in school in 1955 shortly after the Supreme Court of the United States decided a case relating to school segregation?

A I believe Morris was the only one in the city system and possibly Harold.

Q Where did Morris attend?

A Carver.

Q Where did Harold attend?

A Carver and Dunbar.

Q During the time your children were attending the public schools, did you interest yourself in the type of education they were getting?

A I certainly did.

Q Did you visit the school?

A Yes, sir, I did.

Q Did you talk to the teachers?

A I did.

Q Talk to the principal?

A I did.

Q Specifically in and around 1955 did you visit Carver?

A Yes, sir, I did.

Q Do you know what grades were being taught at Carver at that time?

A I believe they were going to the eighth grade. I am not sure.

Q Would you tell the Court what condition the school was in at that time?

MR. BARNES: We object to the condition in 1955.

THE COURT: I will overrule.

A Well, the condition of Carver, the grounds were muddy when it rained, no sidewalks, lighting in some buildings was bad, I mean the drop bulbs, and some of the buildings had coal stoves, and where they did have a heating system, furnace and boiler, there were many times when this would be out of order and the children would be cold and sometimes would have to come home because of no heat.

The desks were seconds as well as the heating system.

Q What do you mean were seconds?

A Had been used when they were brought in from some other building. When they come in there they had been used. They were seconds. I am not saying there were not any new ones but quite a few were seconds. And then for the most part the football togs were handed down from some school. They were seconds too.

I believe this is about the time when they built the new auditorium. The children were not allowed to use the audi-

torium for their affairs and the windows were in bad order most of the time at Carver.

There were quite a few other things that I can't remember.

Q What was the condition at Dunbar?

A Dunbar was—about everything I said for Carver, only worse. The heating system at Dunbar was very bad and it definitely was a secondhand boiler and the desks were more secondhand if not all. The auditorium, I would say, was just a frame and the floor was bad and it was awful cold, and during the school season the panes, broken panes, stayed out which was a little bit unusual. I mean if it was broken it wasn't replaced right immediately. I watched it pretty closely.

Q Did you participate in the preparing and presenting of a petition to the School Board with respect to the educating of colored children in the Bessemer Schools?

A I did.

MR. BARRETT: If the Court please, I have a Zerox copy of the petition which appears in the Board Minutes, but for the convenience of court counsel I will ask it be marked separately as an exhibit. Give it Plaintiff-Intervenor Exhibit No. 13.

(Plaintiff-Intervenor Exhibit No. 13
marked for Identification.)

MR. BARNES: That is a copy of what has already been introduced in evidence?

MR. BARRETT: That is correct.

Mr. Thomas, I will show you Plaintiff-Intervenor's Exhibit 13, which is a copy of a petition addressed to the

School Board and the Superintendent of Schools at Bessemer and signed by a number of people. Did you sign that petition?

A I did.

Q Did you have children in school at the time you signed the petition?

A I did.

Q Do you know any of the other people who signed it?

A Yes, sir.

Q Did they have children in school at that time?

A I am not sure about one, but all the rest did.

Q Which one are you not sure of?

A Mrs. Tommie Burrell. I am not sure she had children in school at that time.

Q Did you present the petition to the School Board?

A We did.

Q Did you receive any response to your petition?

A Well, this petition, no.

Q To your knowledge, was any action taken in response to this petition in connection with the operation of the Bessemer Schools?

A With that petition, as far as I remember, no answer and no action taken.

Q After you submitted that petition to the school board, was a meeting held?

A I am not sure if it was after the petition or before the petition, but there was a meeting held.

Q Where was that held?

A At the Board of Education building in Bessemer.

Q Anyone there representing the school system?

A The Superintendent of the schools.

Q What was the purpose of the meeting?

A As far as I understand, to hear the grievance from the group of citizens, Negro citizens.

Q What grievance do you mean?

A The condition of the schools that I just stated, and I am sure this was—the same thing I just stated and I believe the main thing was better schools at the time of this meeting.

Q Was there any discussion regarding the segregation—racial segregation of schools?

A I am not sure about this particular meeting there were discussions about segregation.

Q Mr. Thomas, are any of your children still attending school?

A One, Morris.

Q How old is Morris?

A Seventeen.

Q What school did he attend last year?

A Carver.

Q What class?

A Eleventh grade.

Q Would you like for him to attend any other school in Bessemer?

A I would like for him to attend Bessemer High.

Q Has Morris been a good student?

A He has pretty good marks. And he hasn't been in trouble.

Q Do you have any plans to send him to college, if you can?

A Yes, I do.

Q Mr. Thomas, have you more recently signed a petition that was submitted to the School Board?

A I have.

Q Did that petition ask for the desegregation of schools in Bessemer?

MR. BARNES: We would like to identify when it was written.

MR. BARRETT: It has been previously admitted in evidence as Exhibit 19.

MR. BARNES: Well, it speaks for itself.

MR. BARRETT: If I may, I will show the witness another copy of the same petition. I believe I asked that the original be brought back in. I think it was returned to the defendant.

MR. BARNES: Perhaps you did. We brought it back.

Q Mr. Thomas, I will show you this letter from David H. Hood, Jr., addressed to Dr. James O. Knuckles, Superintendent of Education, to which is attached a petition stamped "Received May 7, 1965, Bessemer Board of Education" and a copy of a second petition which is undated but which is signed by a number of persons, apparently on behalf of named organizations.

I will ask you if you participated in the preparation and the plan to submit these two petitions to the school board?

A I did.

MR. BARRETT: I have no further questions.

CROSS EXAMINATION

Q (BY MR. BARNES:) With reference to the first petition, is your name signed to that?

A No, it isn't.

Q With reference to the other petitions attached to it, is your name on that?

A My name is not on that. Someone signed for the organization.

Q You didn't sign either one?

A I participated in the preparation of that but the organization signed it. I directed somebody to sign it.

Q But you didn't sign it yourself?

A No, sir.

MR. BARNES: That's all.

MR. BARRETT: Nothing more, Your Honor.

THE COURT: You may be excused.

(Witness Excused)

MORRIS THOMAS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) State your full name, please.

A Morris L. Thomas.

Q Where do you live?

A 1323 6th Avenue, North, Bessemer.

Q Are you the son of William Thomas, who just testified?

A I am.

Q Did you attend Carver High School last year in the City of Bessemer?

A Yes, sir.

Q Where were you born?

A Bessemer.

Q Have you lived there all your life?

A Yes, all but one year. One year '56-57 I lived in Boston.

Q Did you go to school in Boston?

A I did.

Q Were there other Negroes in the classes you attended?

A Yes, sir.

Q Were there white students in the classes?

A Yes, there were.

Q Mr. Thomas, in the elementary grades at Carver, what building were you—did you attend class in?

A I was in the main elementary department building where the auditorium is now.

Q That is a brick building?

A Yes, it is.

Q During your junior high classes what building or buildings did you attend class in?

A I had classes in the frame building and in one of the brick buildings. The first addition.

Q I will show you Intervenor's Exhibit 4-B and ask you if you attended classes in that building?

A During junior high school?

Q Yes.

A Yes, I did.

Q What courses did you take in that building?

A I believe I took science in the 8th grade.

Q I will show you Intervenor's Exhibit 4-A, and ask you if you took any classes in that building?

A Yes, I did.

Q What classes did you take?

A Mathematics.

Q With respect to the first building, the first photograph I showed you, which I believe is 4-B, what sort of heating was that in that building?

A We used coal stoves.

MR. BARRETT: If the Court please, I ask that this photograph be marked as the next numbered exhibit for identification.

(Plaintiff-Intervenor's Exhibit No. 14
marked for Identification.)

Q Mr. Thomas, I would like you to look at Plaintiff-Intervenor's Exhibit 14 for identification, and ask you if that photograph fairly represents the interior of the classrooms in that building?

A Yes, it does.

Q Is that the type of stove in the building?

A Yes, sir, it is.

Q Were the stoves changed at any time while you were attending school in that building?

A Yes, sir, but I don't remember the exact year but they had some coal stoves in the old building and put in some more coal stoves in that building.

Q They replaced coal stoves with another coal stove, is that right?

A Yes, sir.

Q Does this photograph show the type of lighting in the building when you attended?

A Yes, it does.

Q What was the heat like from the stoves? How did they heat?

A Some students would make the fire in the stoves and after they had been started awhile the bottom of the stove turned hot and if you were on the side of the stove you would have to move because it was too hot and on the other side of the room it was too cold.

Q Did you participate in any athletics at Carver?

A In the 10th grade.

Q What?

A Football.

Q Any lockers for the football equipment?

A No, sir.

Q What did you do with your equipment?

A We brought it to and from school and during the day

we had a room for it where you could put it, otherwise we just kept it with us.

Q Did you take chemistry?

A Yes, sir.

Q What year?

A The last school year.

Q Did you have a textbook?

A Yes, sir.

Q Did you have a workbook too?

A Yes, sir.

Q Did the workbook contemplate doing experiments?

A Yes, sir.

Q Did you do all the experiments in the workbook?

A We did about three.

Q And how long was the course?

A Nine months.

Q A full year?

A Yes, sir.

MR. BARNES: What grade is that, if I may interrupt?

MR. BARRETT: 11th grade.

While you have been in Carver in the high school grades, has a yearbook been published?

A No.

Q A school paper?

A We had one, I believe, last year or year before last. They

started a paper and we had one edition last year and year before we had one edition but that's all.

Q Is journalism taught in the school?

A No, sir.

Q Have you decided on what courses to take next year?

A Yes, I have.

Q What courses?

A I would like to take physics, advanced mathematics, English, History, physical ed and typing.

Q Do you have any plans for your future education?

A Yes.

Q What are those plans?

A I would like to go to college and go into law.

Q Would you like to attend any school in Bessemer other than Carver?

A I would like to attend Bessemer High.

Q If you attended Bessemer High, would you take course other than the ones you mentioned?

A Yes, I would drop physics and take a foreign language.

MR. BARRETT: No further questions.

CROSS EXAMINATION

Q (BY MR. BARNES:) The last picture you introduced here, can you see it?

A Yes, sir.

Q That is not the school you are going to now?

A Yes, sir, I believe that is the same room I had classes in last year.

Q You were in the 10th grade last year?

A 11th grade.

Q You talking about this past year?

A Yes, sir.

Q Last year you were in the 11th grade which means you were in high school at Carver?

A Yes.

MR. BARNES: I believe that's all.

(Witness Excused)

THE COURT: Take a ten-minute recess.

(Court was in recess from 3:00 p.m. until 3:10 p.m.)

THE COURT: Next witness.

RHODA E. BARGE,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

Q (BY MR. BARRETT:) State your full name, please.

A Miss Rhoda E. Barge.

Q Where do you live?

A 730 Fourth Avenue, Bessemer, Alabama.

Q Do you live with your family at that address?

A Stay with my grandmother and my mother is working.

Q Are you Negro?

A Yes, I am.

Q Where were you born?

A Bessemer, Alabama.

Q Have you lived your whole life there?

A No, I haven't.

Q Where else have you lived?

A I stayed at Fort Campbell, Kentucky.

Q When were you there?

A Approximately from 1952 to 1954.

Q Why were you there?

A Because that is where my father was stationed in the Army.

Q Did you go to school at Fort Campbell?

A Yes, sir, I did.

Q What grade?

A First and Second and approximately a month of the third.

Q Were there both white and Negro children in the class?

A Yes, sir.

Q What school did you attend in Bessemer?

A Only Carver Elementary and Junior High and Senior High.

Q Miss Barge, there has been testimony that some of the buildings at the Carver School site are wooden construction. Did you attend classes in any of those buildings?

A Yes, sir, I did.

Q What classes did you take in those buildings?

A Social Studies, English, Physical Education, Mathematics, and just regular courses.

Q Were the rooms in those buildings heated by coal stoves at the time you were there?

A Yes, sir.

MR. BARRETT: If the Court please, I will ask this small photograph be marked for identification.

(Plaintiff-Intervenor's Exhibit 15
marked for Identification.)

Q Miss Barge, I will show you Plaintiff-Intervenor's Exhibit No. 15 for identification, which is a photograph of the interior of the building or interior of the room. Did you take classes in that room?

A No, sir, not as such. I took classes in that room but they had it boarded off. This part (indicating) I didn't take classes in but the other section of the room I did.

Q It was the same room but divided by a partition?

A Yes, sir.

Q What courses did you take in that room?

A Second year algebra.

Q What was being taught in the other part of the room, if anything?

A I couldn't say, I really don't remember what was being taught.

Q Was that room heated by a coal stove?

A Yes, sir.

Q What type of lighting did it have?

A They had some drop bulbs from the ceiling.

Q Were there lavatories in these two wooden buildings that had classrooms?

A I believe there was a boy's lavatory but the girls always went to the other building.

Q Was there hot and cold running water in the lavatories at Carver?

A No, sir, only cold water.

Q Was that true of both the wooden buildings and the other buildings?

A Yes, sir.

Q That is in the lavatories.

A Yes, sir.

Q Did you take chemistry?

A Yes, I did.

Q When did you take chemistry?

A The 11th grade.

Q Did you have a workbook?

A Yes, sir.

Q Did it call for experiments?

A Yes, sir.

Q Did you perform experiments yourself?

A Yes, sir, some.

Q In the class?

A Approximately about one or two, yes, sir.

Q How long was the course?

A Nine months.

Q Did you take physics?

A Yes, sir.

Q When did you take physics?

A The 12th grade.

Q Did you have a workbook there too?

A No, sir, used some other workbooks from last year.

Q Was there writing in them?

A No, sir.

Q Did you perform any of the experiments during your year of physics?

A One by myself and I helped with some but only one by myself.

Q What was that?

A On the bouyancy of water.

Q That is the only experiment you performed?

A By myself, yes, sir.

Q How many did you perform with other people?

A I assisted in bringing some apparatus in and helping set it up for some experiments, but I never did one on my own.

Q Did you take any language?

A Yes, sir.

Q What language?

A French.

Q Did you take more than one year of French?

A No, sir, only one year.

Q Did you seek to take more French? Did you try to take more?

A Yes, sir.

Q What did you do?

A We went to the office to see if we could have two years.

Q Why did you want more than one year?

A Some colleges require it.

Q Did you get a second year of French?

A No, sir.

Q Have you been accepted by a college?

A Yes, sir.

Q What college?

A I have been accepted by Tuskegee Institute.

MR. BARRETT: I have no further questions.

CROSS EXAMINATION

Q (BY MR. BARNES:) You made the statement about your parents but I didn't understand what it was. I didn't hear. Where did you say your parents live?

A I stay with my grandmother and my mother, but at certain times my mother works out of town.

Q Is your father living?

A Yes, sir.

Q Where does he live?

A He stays in Indiana.

Q You haven't been to school in Indiana?

A No, sir.

Q But you have been in Kentucky?

A Yes, sir.

Q And your mother lives in Bessemer?

A Yes, sir, she does.

Q The last pictures you were shown, the small picture, that is in the Carver Junior High School?

A I don't know whether you would consider it that or not. It is in the back of the original school.

Q That is the frame building?

A Yes, sir.

Q And those frame buildings you were in what class?

A The 7th, 8th and some portion of the ninth and tenth. I took physical education in one of the old ones before the new building was completed.

Q When was the new building completed?

A One portion was completed when I was in the 8th grade but I never attended classes there and the rest was added on it while I was in the 10th grade.

Q You went to school in the new building?

A Started on school in the 11th grade in the new building. In the 9th grade I attended classes but it was sort of a mess.

Q The new building was completed while you were in the 10th grade?

A Yes, sir.

Q At any rate the new building is what you call Carver? Is that not the brick building? The senior high school?

A Yes, sir.

Q And you have been accepted at Tuskegee Institute?

A Yes, sir.

MR. BARNES: That's all.

THE COURT: Is that all?

MR. BARRETT: Nothing further.

THE COURT: You may be excused.

(Witness Excused)

MANGANESE McCALL

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) State your full name, please.

A Manganeese McCall.

Q Where do you live?

A 1311 First Avenue, Bessemer, Alabama.

Q How old are you?

A Eighteen.

Q Are you Negro?

A Yes, sir, I am.

- Q Do you live with your family?
- A Yes, sir.
- Q How long have you lived in Bessemer?
- A All my life except for two years.
- Q You were born in Bessemer?
- A Yes, I was.
- Q Where else did you live?
- A I lived in Detroit, Michigan.
- Q When was that?
- A During the years 1951 and 1952, I believe.
- Q Did you attend school?
- A Yes, sir, the first grade.
- Q Were there both white children and colored children attending your classes?
- A Yes, sir.
- Q What schools have you attended in Bessemer?
- A Just Carver Elementary, Junior High and Senior High School.
- Q How close do you live to Carver?
- A I live eight blocks from the school.
- Q Has that been true during the time you attended?
- A Yes, sir.
- Q How far do you live from Bessemer High School?
- A One block.
- Q Did you take chemistry at Carver?

- A Yes, sir.
- Q When did you take chemistry?
- A Junior year in high school.
- Q Did you have a workbook?
- A Yes, sir.
- Q What did the workbook call for? It have problems or questions?
- A Mostly questions pertaining to experiments performed in the classroom but we never performed any experiments.
- Q Did you take physics?
- A Yes, sir.
- Q When did you take physics?
- A This year, '64-65 and senior high school.
- Q Did you take a full year?
- A Nine months.
- Q Did you perform any experiments in physics?
- A No, we never performed any experiments. We watched while a few were performed but we never had a chance to perform any ourselves.
- Q Did you take any language?
- A Yes, sir, French.
- Q How much French did you take?
- A One year.
- Q Did you want to take more French?
- A Yes, sir.

Q Did you do anything about it?

A Well, during our junior year in high school we asked could we have two years of French but they couldn't arrange it where we could have advanced French, so we didn't have it.

Q What further education do you plan?

A I plan to attend school in September at Florida A & M.

Q What sort of course are you going to take?

A School Nursing.

Q Any language required for that?

A The school requires me to have at least two years of a foreign language but I only have one year.

Q Will you have to make it up?

A Yes, sir.

MR. BARRETT: I have no further questions.

CROSS EXAMINATION

Q (BY MR. BARNES:) What grade are you in this year?

A I didn't understand.

Q What grade are you in now?

A I graduated in May.

Q The last school year?

A Yes, sir.

Q And that was from Carver?

A That's right.

Q You heard these other two young people testify, haven't you?

A Yes.

Q Rhonda Barge and Mr. Thomas?

A Yes, sir.

Q And they went to Carver, did they not?

A Yes, sir.

Q And you say that—about your performing no experiments in chemistry and physics, but the experiments were performed by the pupils?

A Those students who could afford to buy the materials and perform them.

Q You have to have a workbook?

A No, not necessarily, but those experiments were the ones that Miss Barge was talking about, and I think she did it during the Science Fair, and she bought her own materials.

Q You wouldn't know about Mr. Thomas?

A No, sir, I didn't go to class with Mr. Thomas.

MR. BARNES: I believe that's all.

THE COURT: You may be excused, Miss McCall.

(Witness Excused)

DR. JAMES O. KNUCKLES

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (BY MR. BARRETT:) Dr. Knuckles, I would like to

clear up a point. I will show you Plaintiff-Intervenor Exhibit 15, which is the interior of a classroom in one of the wooden buildings on the Carver site.

Can you tell us what that portion of the room that appears in the photograph is used for? What classes?

A I believe this is a room in which they offer Industrial Arts.

Q Is the band room also in this same building?

A I don't know that. I don't know where the band practices at Carver.

Q To the best of your knowledge, there isn't a regular band room in any portion of the building, the brick building?

A Not a soundproof room as such, no, sir.

Q Mr. Knuckles, in the last hearing you produced certain maps that had school attendance zones marked on them, is that correct?

A That is correct.

Q Has the school attendance zone system that those maps represent been used in the Bessemer School System throughout your connection with the system?

A The zone lines have changed because of new construction.

Q But the system has been used?

A It has been in use, yes, sir.

Q In your judgment, has it been a convenient means of distributing the school population among the various schools?

A It has played a part, yes, sir.

Q That is a means you have used?

A It is a means we have used by tradition and custom.

Q Have you considered during this time using a different means up until the immediate present?

A Yes, sir, we considered a great many things.

Q What other ways of distributing the school population among the various schools did you and the Board consider?

A The freedom of choice plan as presented to this Court. A plan that would allow the pupils to go essentially to the neighborhood schools nearest the place of their residence.

Q When did you first consider using that system of enrolling children in particular schools?

A You asked when did we first consider it? It has been talked about a great many times and over a great many months and years.

Q It has not, however, been put into effect, at least until you submitted this plan to this Court, is that right?

A That is correct.

Q You have used the attendance zone system throughout that time, is that right?

A Primarily, yes, sir.

Q Does the attendance zone system have any advantages administratively?

A Yes, sir, some advantages, but also some disadvantages.

Q Will you please tell the Court what the advantages are and what the disadvantages are?

A By the drawing of lines you can dictate the attendance

of pupils. You can assign them arbitrarily to schools but those same lines hamper you when the population begins to shift and go across the lines and you have empty school rooms and you find pupils are prohibited to a degree from crossing those lines. You have got to make exceptions. If the population shifts and new demands are made on schools in a new neighborhood, you find the lines are obstructions rather than real help in helping place the pupils in facilities available for the education of the pupils.

Q Doesn't it boil down to this, if you are going to use attendance zone lines, in order to serve their purpose, you have to change them from time to time?

A That's right.

Q How much trouble is there in changing them?

A Well, you have a great deal of counting and trying to keep up with addresses and location of pupils so that the lines will allow a sufficient number of pupils to go to a given school to adequately load the school but not to overload the school. And there is difficulty even in a city the size of Bessemer to keep up with the moving in the city and we have a great deal of moving from one school to the next. We have pupils who appear at school in September and many times we ask them where they attended school the previous year and many of them moved in this year. That caused us difficulty and we have had to ask from time to time—make arbitrary assignments and have had to ask pupils to return to the schools they previously attended although they are closer, and have been closer for some time to a new school in which they attempt to enroll.

Q You have produced another map of the school district on which are plotted the residence of the students as of a particular date?

A Yes, sir.

Q That is a big job preparing that?

A Yes, sir.

Q Is the preparation of that the biggest chore in connection with maintaining meaningful school attendance zone lines?

A No, sir, I wouldn't say so.

Q What other parts of the job are more time-consuming?

A I am sorry, you will have to be more explicit on that.

Q Other than making that map, what work is involved in apportioning the children among the various attendance areas or the setting of the attendance areas or in determining where the lines should be?

A Of course, you understand you have to start from a point. The students are at a given point on somebody's school rolls or in files some place. They are not just dots on the record. They have records and past history and those records have to be dealt with and have to be transferred.

Take the situation as we find it with students presently enrolled in the schools, and this is a process we have gotten into by years of attempting to educate them—we have grown into this so all of this has to be taken into consideration if you attempt to set up new lines. You advise the pupils and you may count the dots and say, "We are going to move one hundred dots to the left or to the right" but it is difficult to look at the dots under the present system and tell whether they are in the first grade or the tenth grade or the seventh grade or in one grade or the other.

There are twelve grades represented in our public school program and you got to know whether they are junior high school level or senior high school level, or a given grade

level. It isn't as easy as dividing a map and counting the dots and saying, "We will assign four hundred dots to X building and so many to another building."

Q Did I understand correctly that if you change the attendance zone lines that results in shifting some pupils from attendance in one school to another school? That much is true?

A That's right.

Q In doing that you have to shift certain record from one school to another school?

A Yes, sir.

Q And you may have to make adjustments in the number of teachers assigned to the schools involved?

A Yes, sir.

Q You may have to adjust the number of textbooks assigned to each school in order to correspond with the number of students you shift?

A Yes, sir.

Q You don't have school transportation to worry about? That isn't a factor?

A That's right.

Q It is true all of these difficulties, if they are difficulties, at least all of these administrative details or actions that have to be taken, come after the decision is made to shift the zone lines, is that right? I mean the work is after you shift the zone line?

A As you put it, this is true, the work comes after the decision is made but I am sure you would take them into consideration before the decision is made.

Q Surely, I don't mean to suggest otherwise, but I would like to ask you whether there is any other work or administrative effort that goes into shifting the zone lines other than the preparation of the spot map you have described and the drawing of the lines themselves?

A Well, there is the need, of course, of attempting to keep the patrons informed as to the necessity of shifting lines from time to time. It works an inconvenience many times on people to tell them that we are filled to capacity in this area and we are going to have to ask you to take your children in grades 1 through 6 to another school that might be further away. These patrons own an interest in the public schools and they have a right to be kept up to date and we ought to try to help them understand why these things are necessary.

Q As a practical matter you have to consider whether the patrons of the school will accept willingly or perhaps even violently object to the way you draw zone lines?

A Yes, sir.

Q Beyond that are there any difficulties or problems that have to be considered in connection with the drawing or redrawing of attendance zone lines?

A There are a great many practical problems such as natural barriers, busy highway and railroads. You realize you don't circle out six square blocks and say you will get enough children to fill a certain school to capacity. These things have to be taken into consideration and they are. You can't move them and you have to work around them. You have to take them into consideration and we are concerned about the safety of the children and we hope we are adequately concerned about attempting to place the schools within walking distance of students in our city.

Q Are there any other things that must be considered other than those you have mentioned that occur to you at the present time?

A I am quite sure there are others I am not thinking of at this time.

Q But none occur to you at this time?

A That's right.

Q Have you during each of the years you have been with the school system considered the propriety of the already existing zone lines at some time prior to the opening of each school year?

A Yes, sir.

Q Have you on occasion revised them?

A Yes, sir.

Q Administratively how long do you need to revise the zone lines, once you have made the decision it is desirable and should be done?

A You can advise them in short order if you ignore the need for trying to help people to understand why it is necessary. It doesn't take long to sit down and look at a map and draw the map and say "We must move some pupils to this school from this school." You attempt to draw lines and try to move them and sometimes you make a lot of people unhappy. This ought to be done over a period of time and with due thought, if it is done properly and correctly, for all concerned.

Q But the mechanics of doing it is not a significant problem, is that true? I mean the mechanics of laying it out and determining whether a boundary runs on one street or the other?

A It can be done as you suggested in short order if you wish to do it that way.

Q And once you have made the decision, when you have made the decision to change it, you have done it in short order?

A There have been instances it has been done in short order.

Q Even after the school semester is started, is that correct?

A This has been necessary.

Q And you have done it?

A We have.

Q And to do this has involved the transfer of teachers?

A Yes, sir.

Q It has involved using at one location rooms that had not been just before used as classrooms, is that right?

A I believe that is correct.

Q And it has involved on occasion the disuse or abandonment of other classrooms in another area?

A I am not sure about the abandonment of classrooms. For the most parts our transfers have been for reasons of overcrowded conditions at a given point and have attempted to move students and teachers to new locations.

Q What about Muscoda School? Did you close classrooms there?

A Yes, this was a matter of economics.

Q But you closed them after school—after the school semester started?

A Yes, sir, we had facilities available in another school and we were having financial difficulty during that year and we closed those rooms—we had three rooms in this small school and we closed them and moved the children to one of the larger schools and moved the teachers and consequently we saved the operational cost of that building.

Q Mr. Knuckles, isn't one of the advantages of the attendance zone system of placing children in school that you know before the school opens how many children are going to go to a particular school so that you can predict the teaching and textbook needs?

A I would like to say yes, but there are some circumstances I have faced in the past that even with the zone lines we have had to face enrollments in September that we didn't expect and we didn't—could not have know that so many would have moved within the city and faced overcrowded conditions that we could not account for.

Q But at least the attendance zone system is a means of minimizing those problems, isn't it?

A In one sense, I suppose so.

Q Is there another sense in which it isn't?

A In the one sense if everybody stays fixed, you can predict where they are going to be next year but people don't stay fixed.

Q But you have some indication—

A Some indication, yes, sir.

Q You told us the Board determined to switch to the freedom of choice system, is that correct?

A That is correct.

Q What are the advantages of that system?

A The advantages of that system, as I see it at this point, and for our purpose in this country are those who are presently going to neighborhood schools they feel they have justification for requesting to attend other schools, they feel the programs are different or feel the programs are better and the courses are more numerous. All of those who feel this is true will have an opportunity to request transfer and/or assignment to another school. They will not be bound to attend the school nearest to them under this freedom of choice program.

Q Does this involve any difficulties?

A I am sure it will involve some difficulties. I am sure there will be some occasions where there will be more requests to attend a given school than the capacity will permit.

Q What difficulties will that cause?

A There will be many people that will be disappointed and of necessity there will be some assignments that will not be in keeping with the first choice of those requesting transfer or assignment.

Q Other than the anticipated disappointment of some parents who don't get the choice they would prefer, do you anticipate any administrative difficulties with the freedom of choice system?

A I anticipate problems regarding education and the education of children in attempting to provide the best we can for them under any system we devise. I am sure there will be administrative problems and there will be some instances where we will have to make arbitrary assignments and this will not be easy to do and will not be accepted readily in

some instances. We have had to do it in the past and will have to do some in the future.

Q Again I think you are talking about the feelings of the parents in the community. What I am asking you is whether there are any administrative difficulties with the freedom of choice as such apart from the question of desegregation? I mean just as a matter of education.

A Well, in the freedom of choice arrangement you could—there would be some instances where some schools would be tremendously overcrowded where some others would have adequate space available where people would not choose the school. This presents an administrative problem.

Q Aren't you telling us again in order to use all of your school space in the most efficient manner, you cannot give everyone their first choice and in refusing anyone their first choice you will have disappointed parents and an unsatisfied community?

A No, I am not telling you that. You can give more choices if you give freedom of choice than you can if you draw arbitrary lines and force the people in schools.

Q Mr. Knuckles, as I understand it, the freedom of choice the Board contemplates is the freedom of choice up to the capacity of the school, is that correct?

A That is a practical assumption, yes, sir. You can't go beyond the capacity of the school building.

Q You don't plan to double the size of one school and abandon another school?

A I simply said it would be difficult to do that unless you had an abundance of money.

Q The way you plan to do it is to allow freedom of choice

up to the capacity of the school and do you anticipate any administrative problems in that system other than what arises from disappointing the parents and the community feeling?

A I am sure I can't anticipate all the problems. I am reasonably sure there will be problems I cannot see.

Q Can you tell us of any particular problems you anticipate?

A In the freedom of choice system?

Q In the system you plan to use. Other than the parents and the community problems.

A We will face difficulties regarding assignment of teachers. We will have teachers assigned to school X and we will have enough requests for attendance at school X to require other teachers to be assigned. This will necessitate either transferring teachers from another school or the appointment of new teachers.

Q If you use the present school capacity you will use the same teaching staff in numbers?

A I am not suggesting that in every school we have teachers appointed for every teaching station. That all schools have all capacities used.

Q Tell me, Mr. Knuckles, about it from the question of race and desegregation, purely as a matter of school administration, can you say that the attendance zone system is any better than the freedom of choice or vice versa?

A This is debatable.

Q Do you have any judgment on it?

A I have an opinion on it but I cannot divorce my feeling and my conclusions from the practical feelings I face. You

see apart from these. We are not apart from them and I have to face them.

Q As a school administrator can you tell me which is the best system apart from the question of race? If you don't have an opinion, you don't have an opinion.

A If you could divorce and say the practical circumstances don't exist, I would assume that the freedom of choice plan would be better. I believe it would be better. This is assuming you have adequate facilities and adequate funds to provide the materials with which to work and hire personnel and you don't run into shortages and you don't have to face problems of transferring teachers and/or equipment.

Q When you say it is better, you mean it is better educationally, it gives the most to all the kids that you can?

A Generally, yes, sir.

Q Is it in your judgment administratively easier or more difficult?

A It is preferable.

Q But is it more work for the personnel to administer the school system? Is it harder to do?

A I suppose it is harder to do. I suppose the government we live under is possibly—there are some flaws or drawbacks, but we prefer a democracy to a dictatorship and we could look at the two side by side and say a dictatorship would be more efficient and I would prefer a freedom of choice arrangement over the other.

Q Even though it involves more administrative difficulties?

A Yes, sir.

Q In your judgment, does it involve more administrative effort or difficulty or whatever you want to call it?

A I am sure it does. Perhaps it does.

Q You are willing to undertake it?

A Yes, sir.

Q Is it fair to say at this time in the past you and the Board, in making your switch from the attendance zone system to the freedom of choice, you are willing to assume more of an administrative burden in order to make the change?

A We have gone on record to that extent.

Q Is that a fair statement of what it amounts to?

A That is correct.

Q Mr. Knuckles, there are teachers meetings in your school system?

A Yes, sir.

Q What purpose do they serve?

A They serve several purposes. Primarily for the teachers themselves, for professional growth and advancement, programs the teacher associations plan, and others are held primarily called by the principals or assistant superintendent or the superintendent for the discussion of problems with the teachers, for the issuing of instructions and for the in-service education of the teacher.

Q Are any meetings on a system-wide basis or beyond the teachers of a particular school?

A Yes, sir.

Q How frequently are those meetings held?

A Generally monthly.

Q Where are they held?

A The various schools. If it is a meeting called by the superintendent, we make arrangements with a school principal to meet at a particular school and another time at another school, but we go from school to school.

Q Are there meetings in which the teachers participate or just sit and listen?

A They do some of both.

Q Do you consider it a process that is advantageous to the school system?

A Yes, sir.

Q And its purpose is to improve the teaching program?

A Yes, sir.

Q I take it one of the reasons for doing this is the exchange of ideas between schools and the teaching at different schools can be stimulated and it can provide avenues for the exchange of experience?

A That is correct?

Q Do the teachers from the presently Negro schools attend the same meetings with those from the presently white schools?

A The large meetings they have not. They have smaller meetings where we have representatives from the several schools.

Q But in general.

A Not the general meetings. Our principal meetings, ad-

ministrative meetings have been joint meetings and held together for a large number of years.

Q Do you or the Board contemplate any change in that this coming year?

A We have talked about it and we see that the time is on us when it will be necessary. We see that there is some wisdom and some practical advantage to our moving toward joint meetings. We have not done it to this point primarily because of community feeling and attention that has existed but we have come a long way. We have made progress and I expect we will continue to make progress. We have made no concrete plans.

Q No decision has been made?

A That's right.

Q Don't you think that the desegregation of schools, teaching and desegregation of classes is the sort of thing in which an exchange of information and viewpoints between teachers of both races could be particularly helpful?

A Yes, sir.

Q Mr. Knuckles, will there be any new teachers employed in the school system this coming fall?

A Yes, sir.

Q Can you tell us how many?

A No, sir, I can't tell you. I can estimate. Perhaps 20 or 25 new to the system.

Q At what school levels?

A At all levels really.

Q Will some of the new teachers be Negroes?

A Yes, sir.

Q And some white?

A Yes, sir.

Q Can you tell us approximately the proportion?

A If it falls true to past experience, probably as many as two-thirds new teachers will be white and about one-third Negroes. This is pretty close to the turnover rate in recent years.

Q Have these new teachers as yet been assigned to particular schools?

A Those that have been recommended to the Board and appointed—employed by the Board have been assigned.

Q How many are there in that category?

A I suppose four-fifths of the total number, twenty of the twenty-five have been employed and assigned.

Q But you have still five vacancies that have to be filled?

A Approximately five, yes, sir.

Q Have the Negro teachers that are already assigned been assigned to the presently Negro schools?

A Yes, sir.

Q And the white teachers to the presently white schools?

A That is correct.

Q Has there been any consideration of a change of the practice of making such racial assignment of new teachers in the school system?

A Yes, sir, there has been consideration and discussion.

Q Has any decision been reached?

A No final decision on this point.

Q Absent a decision the practice followed in the past will be followed in the future, is that correct?

A We find no difficulty with it at this point. Teachers come to us with recommendations and we talk to them about specific jobs. We talk about a given job at a given school and the teacher visits the school and he is employed for a specific job, and this is a practice we are following this year and have been for some time.

Q It has been the practice to interview a white applicant for a job in the school attended by white children, is that right?

A That is true.

Q And you interview the Negro applicant in connection with a job in the school attended by Negroes?

A That is correct.

Q I would like to show you Plaintiff-Intervenor's Exhibit 7B, and turning to the page that has the minutes of the Board meeting of August 17, 1964, I will call your attention particularly to the passage that starts with the language "The Superintendent distributed for the Board's consideration—" and read on through the words "—behavior and citizenship."

First I would like to ask you if the reference to the Superintendent is referring to you?

A It is.

Q Would you read that please?

A This is dated August 11, 1964, "The Superintendent distributed for the Board's consideration copies of application

forms for requests of transfers of students. In the discussion as to the procedure to follow if requests are made, the plan outlined below is the one agreed upon:

"1. Principals at all white schools will be instructed that if any applications for transfers are received, Negro or white, (that principals question) persons making the request be referred to the superintendent.

"2. The superintendent will verbally inform all students seeking transfers that the application for transfer will have to be initiated by the parent, in person, at the Superintendent's office.

"3. A form, properly filled out, with the principal's recommendation, will, when received, by the Superintendent, be reviewed by the Board.

"4. All actions of the Board will be based upon the main objective to be attained, the continuation of a program of quality education, with assignments being made in accordance with the Pupil Placement Law.

"As agreed upon by the Board of Education, the form to be presented to the parents by the principal will omit race and will include space for standard test scores, school grades earned, and the school record of behavior and citizenship."

Q Is that the procedure set out in that passage from the minutes, the procedure that will be used under the plan submitted to this Court?

A That came from the discussion to adopt a form. They didn't have a form to use at the time. We accepted requests for transfers and some came verbally and we asked them when they made verbal requests to put it in writing. In the absence of a standard form we secured forms from other

school systems and attempted to draft a form we thought would fit our situation. Most school systems had various things asking for test scores and recommendations from the principals and we were interested in—if a child requested transfer we ask that the principal comment on the child's behavior and conduct and citizenship. We do have requests for transfer for behavior purposes. We don't want to lay it on this basis. We thought at the time—the Pupil Placement Law mentions a great many factors Boards of Education may take into consideration in making transfers. We thought it might be wise to have a place for the test scores and so forth. We have never had a request for transfer since then to use the form. Never been used. We have it on hand. You asked that it be brought up here and be shown. It is the only form we have and no specific decision at this point by the Board to say that it will be completed in all detail, test scores and all things will be placed in it.

Q Mr. Knuckles, do you contemplate using this form under the plan that has been submitted to this Court?

A Under the present circumstances I suggest this is the only plan we have. The details have not been agreed upon and no proposal that we would stick specifically to the detailed information this form seems to ask for.

Q Do you have any other form at this time?

A No other form at this time.

Q Do you contemplate using this form under the plan?

A Yes, we do.

Q So that as far as you know, this will be the form that will be used under the plan submitted to this Court?

A So far as I know, that is likely to be the form. I expect

some amendments. We will forego requests for test data and so forth.

Q At the time of this meeting was it contemplated you would start using the form?

A If we had requests for transfers, we would.

Q What about prior to the opening of school?

A We would accept written applications but we couldn't approve the applications until we had a look at the enrollment and then we would attempt to approve as many as we could to go ahead and use the letters of written requests for transfers until the opening of school.

Q What would be the occasion of using these forms at that time?

A We felt we needed to standardize and simplify the procedure. It would be a little easier to keep track of them and keep records.

Q But you didn't use them, did you?

A They didn't have any requests after putting the form in use after the opening of school.

THE COURT: What was the date of those minutes?

MR. BARRETT: October 17, Your Honor.

THE COURT: There appears to be only one application for transfer by a white student after that time and that was August 18.

MR. BARRETT: That is correct.

Mr. Knuckles, I would like to show you this letter that is part of Exhibit 17, Petitioner-Intervenor's Exhibit 17, and you will notice this letter is dated August 18, 1964, the day after the Board Meeting?

A Yes, I suggested to you here that we agreed to use a letter until the opening of school.

THE COURT: I think that is the test. I think we are belaboring a point now.

Q I will show you another item from Exhibit 17 and this is a mimeograph form entitled Bessemer City Schools Request for Assignment Blank and filled out are names of pupils and parents and addresses.

Is that a form prepared by the Bessemer City Schools?

A I am sorry, I don't know who mimeographed the form.

Q Was it used by the Bessemer City Schools?

A This form—this request came in on this form and I replied to it in the letter attached.

Q Have you ever seen another copy of this form? Do you have any idea where it came from?

A I am not sure this form has ever been used. I don't think it has ever been adopted officially.

Q Have you ever seen it or heard about it on any other occasion?

A I think more than one request was made on such a form.

Q I believe you are right. Here is another one dated September 1, 1964, on this same form.

Other than these two forms, have you ever seen or heard about the existence of such a form?

A This is a mimeographed form which says, "Request for Assignment Blank."

Q I would like to know if you had any acquaintance or awareness of this form?

A The form is not an official form of the Bessemer City School System and as I said before I am not sure where it was made and for what purpose.

Q Mr. Knuckles, I am not asking you whether you are aware it was made and for what purpose, but I am asking you this question: Were you aware of the existence of the form?

A I am sure I have been aware of the existence of the form. I wrote letters in response to each form.

Q Had you ever seen one of these forms prior to responding to the earlier one of these? In other words, prior to September 3, 1964?

A I have seen a great many forms in my work. I am not sure I have seen one of these before. I am not sure where they came from, and for what purpose. I have seen this form and I have a letter attached to them.

Q Can you say you have not previously seen them?

A I will not say I have not. I say I don't know if I have seen them before or not.

Q Can you state they were not prepared by the Bessemer City Schools or by someone employed by the Bessemer City Schools?

A No, I cannot. I don't know who prepared them. To my knowledge, they were not officially adopted as forms to be used by the Bessemer City School System.

Q Mr. Knuckles, are any personnel of the Bessemer School System authorized to devise and use such forms as this without your knowledge and consent?

A This is a mimeographed form and we have many mimeographs in the schools and many times they mimeograph forms

when they run out of forms. Any form that is produced under the heading of Bessemer City School System should be cleared through the office of the Superintendent.

Q It is fair to say a form such as this should not have been used in the Bessemer School System without your knowledge and consent?

A That's right.

Q Did anyone ask your permission to use such a form as this?

THE COURT: Gentlemen, I have fifteen minutes to devote to testimony. I am particularly anxious to have the answer to one question from Mr. Barnes on behalf of the Board. I have gone over the plan which has been submitted and I don't find that that plan is acceptable to the Court because it leaves off the 12th grade. What I want to ask, and I want to ask about the problem because I don't know about it, my thought is that 1965 should embrace the first, seventh, tenth and twelfth grades. As I understand it, the 6-3-3 plan has been officially adopted and I am wondering now about 1966 embracing the second, third, eighth and eleventh grades, and 1967 the fourth, fifth, sixth and ninth grades. I want to find out whether there are practical objections which I know nothing about which I want the answer to that.

Take a five-minute break.

(Court was in recess from 4:26 p.m. until 4:31 p.m.)

THE COURT: All right, Mr. Barrett.

Q Dr. Knuckles, I would like to ask you some questions about the plan that has been submitted to the Court. The plan states in paragraph one, "All applications filed by the students at the office of the Superintendent of Education

in accordance with regulations of the Board—" We will stop right there.

What regulations does that refer to?

A There are general regulations under which we have operated for a long time. The Board does have some responsibility and some—

Q Let me just ask you are there any particular regulations you are referring to?

A The only particular thing we refer to I mentioned before, we had adopted the form—

Q In other words—

A —which we never had used and which I suggested we would amend and alter in some instances. I don't think there is any feeling on the part of the Board that we need to get too detailed information, testing data, etc. and I am sure the form will be offered in some respects.

Q In any event it doesn't contemplate the use of this form entitled "Request for Application Form"?

A It does not.

Q It goes on and says, "—on or before August 13, 1965—"

The on or about August 13 refers back to the application filing, is that correct?

A As I understand it, yes, sir.

Q "On or about August 13, 1965, for assignment or transfer for the fourth, seventh and tenth grades to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed."

Do I understand correctly that is the procedure in ap-

plying when a white student asks to transfer from one white school to another?

A I don't believe you are right. I don't know that the wording on this blank exempts them from applying. It is our expectation all students in these grades that request transfer or assignment to a different school will use this procedure.

Q You will agree, will you not, that the language is somewhat not appropriate to express that purpose?

THE COURT: I think that is correct.

MR. BARNES: That speaks for itself.

THE COURT: I think this plan after the first paragraph only refers in cases where Negro pupils apply to transfer to schools heretofore attended only by white pupils in these classes and vice versa. I think that is the plan.

Q Is that the way you expect to administer the plan?

A Yes, sir.

Q So that the procedure will be used only when a Negro applies to attend a white school or a white applies to attend a previous Negro school.

A In these grades.

THE COURT: That's right.

Q Then it goes on to say that these applications "will be processed and determined by the Board pursuant to its regulations as far as practicable."

Now, do I understand correctly that that means that the Pupil Placement criteria will be applied in transferring these particular applicants referred to in this paragraph?

A It is my understanding the Pupil Placement Law stands

as the law. The factors are factors that can be weighed and considered by the Board and the Superintendent in approving or rejecting requests for transfers.

Q And that is what this language refers to?

MR. BARNES: May it please the Court, I would like to object to that.

THE COURT: I will sustain the objection.

I want to ask a question at this point, of Mr. Knuckles.

I want to know whether the Board understands that in passing on these applications for transfer or assignment contemplated by this plan, that while the criteria of the Alabama Pupil Placement Law may be considered, that no application for assignment or transfer can be denied on the ground of race or color.

A We understand that, sir.

THE COURT: And you expect to follow that?

A We expect to follow that.

Q Paragraph 2, Dr. Knuckles, relates to the enrollment of children in the First Grade and says, "Negro children entering the first grade in the City of Bessemer School System will report on the first day of September, 1965, to the school named below which is in the vicinity of the child's residence at the time."

Those schools named below are schools presently attended by Negro children?

A That is correct.

Q And it goes on to say "Upon such registration—"What are you referring to by "registration"? What paper has to be filled out?

A Enrollment card filled out.

Q Was that used in the past?

A Yes, sir.

Q Has it in the past been made out at the school where the child enrolled?

A Yes, sir.

Q Has it been made out by the parents?

A I believe the teachers make it out with the parents giving the information.

Q Then it goes on to say, "Upon such registration an application may be made by the parents for the child's assignment to any school (whether formerly attended only by white children or only by Negro children)."

When you say "parents," do you mean both parents?

A I think we would accept an application by either parent or guardian of the child.

Q It says, "Application may be made."

Does that mean a child can enroll without making such application?

A No, it says the parent is permitted to apply for another school.

Q That means he will be permitted to apply for a school other than a Negro school?

A Yes, sir.

Q Suppose he doesn't apply, where will the child attend school?

A At this particular school.

Q This plan directs him to apply to this school?

A In all practical purposes to a neighborhood school.

Q That is a neighborhood school for Negroes?

A In most instances the schools named are nearest to at least the majority of the pupils who have been attending them.

Q Is it fair to say if the parents do not make out such application his child will be assigned—enrolled in the Negro School?

A I think it is fair to say that.

Q In paragraph 5 it states "Except as provided above, all pupils in all grades of the Bessemer System will remain assigned to schools to which they are assigned or will be assigned to schools in accordance with custom and practice for assignment of pupils that have prevailed in the school system prior to the entry of the judgment of the District Court—"

Am I correct that in essence will assign particular schools on the basis of race?

A Most of the pupils in Bessemer with the exception of the first graders are presently assigned to schools they are enrolled in and their records are there.

Q Even in the grades you are desegregating you contemplate they will attend the schools that heretofore has been for their race unless a transfer application is filed and approved?

A That is correct.

Q What about students who move into the school system from some place like Detroit?

A In what respect?

Q They move in say in—say a family moves in and have a third grade and a seventh grade child and that parent doesn't make out a transfer application, the child hasn't been in school, how will that child be assigned?

A They will appear at a school to enroll and will abide by the same regulations. If a child asks to transfer to the school of another race and it is after the deadline date, I would assume that he, like other children who let the deadline pass for this time, just wait until his grade is open at another time.

Q Dr. Knuckles, a white child moving into the school district and is due to enter the seventh grade will automatically go into the seventh grade without making out any papers at all in a white school?

A A Negro child would do the same thing in a Negro school. We are proposing in this instance to follow the custom that has been followed for some time in the interim period.

Q But we are talking about a grade you are desegregating.

THE COURT: I have got two more minutes.

A We have laid out some deadlines that will assist us in placing pupils and teachers and we will have to adhere to the deadlines.

Q Dr. Knuckles, as I read the plan, no specific provision is made for the manner of assigning children who do not—who cannot get their first choice of school by reason of limited school capacity. Suppose a Negro child applies in one of the desegregated classes, seventh grade, to attend Bessemer Junior High School but there isn't room, how will that child be assigned?

MR. BARNES: May it please the Court, I don't think he knows until the Board passes on it.

THE COURT: I will sustain the objection.

Q If a Negro child applies for the Bessemer Junior High School in the seventh grade, a desegregated grade, and lives closer to Bessemer Junior High School than white children who also seek enrollment in the Junior High School, is there any decision which will have priority under the plan? Which will have priority if there isn't room for both?

A That question has not been determined.

Q You don't know?

A That is correct.

Q It has not been provided for in the plan, is that correct?

MR. BARNES: The plan speaks for itself, Your Honor.

THE COURT: It hasn't been spelled out in the plan, that's right.

Q A form of notice, the language of the notice is set forth in the plan for the parents. Is it your intention to mail that notice to the parents?

A No, it will be publicized in the newspaper.

Q In more than one edition of the paper?

A I am sure it will.

Q No decision has been made whether it will be in more than one?

THE COURT: I require more than one. I am going to modify this plan.

Q Do you plan to permit enrollment of Negroes in the

high school grades in the Bessemer Junior High and high school in order to attend courses not available in Carver and Abrams? If the grade has not been desegregated under this plan?

A I think that is a legitimate reason for making a request for transfer of assignment, yes, sir.

Q And it will be considered even though the child is in a grade that has not yet been reached by the plan?

A I think we will live with and operate under the provisions laid out in this plan during the interim period.

Q And that is your answer to that question?

A Yes, sir.

MR. BARRETT: I believe the two minutes are up, Your Honor.

THE COURT: I haven't given you gentlemen any time. Dr. Knuckles, you discussed at the recess my question about the revision of the three steps in the desegregation plan with respect to the grades?

A Yes, sir.

THE COURT: Is there any practical objection to that re-arrangement?

A No, we would not make any practical objection.

THE COURT: For the same reason which I gave at the time of my action in the Jefferson County case and because I think this plan does meet the requirements of the cases which I have dealt with and the recent Fifth Circuit cases as modified, I am going to overrule all objections to the plan which the government filed to the plan as modified by my order, in 1965 the first, seventh, tenth and twelfth, and

1966, second, third, eighth, eleventh, and 1967, fourth, fifth, sixth and ninth, and I am going to advance the date for the—as stated in the plan for the filing of application for transfer into these grades from the 13th day of August, 1965, until the 20th day of August, 1965, and I am going to require the advertisement in a newspaper of general circulation in the City of Bessemer exactly as the plan of Jefferson County—I do not have the plan before me, but I think there were three publications required, and as modified the plan is approved and I will enter a formal written order of approval tomorrow. But I would like for counsel, Mr. Barnes and Mr. Barrett, to get together and I am not going to ask Mr. Barrett to prepare an order overruling his objections but I will examine the order Mr. Barnes will prepare so that that plan will be approved as modified.

All right, gentlemen, court is adjourned.

(Court was adjourned at 4:50 p.m.)

CERTIFICATE

STATE OF ALABAMA
JEFFERSON COUNTY

I, Ray C. Wester, Official Court Reporter of the United States District Court, Birmingham, Alabama, do hereby certify that I reported in shorthand the foregoing proceedings at the time and place stated in the caption hereof; that I later reduced by shorthand notes to typewriting, or under my supervision, and the foregoing pages, numbered three through 114, both inclusive, contain a full, true and correct transcript of the testimony and said proceedings as herein set out.

I further certify that I am neither of counsel nor of

kin to any parties to said cause, nor in any manner interested in the result thereof.

Ray C. Wester
OFFICIAL COURT REPORTER.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 23335

UNITED STATES OF AMERICA,
Appellant-Intervenor,

DORIS ELAINE BROWN, et al.,

vs.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, et al.,

Appellees.

APPELLANT-INTERVENOR'S DESIGNATION OF
PORTIONS OF RECORD
TO BE PRINTED ON APPEAL

Filed, U. S. Court of Appeals, Jan. 31, 1966. Edward W. Wadsworth, Clerk.

Pursuant to Rule 23(a) of the Rules of this Court, the following portions of the record on appeal are hereby designated by appellant-intervenor for printing:

1. Complaint, filed May 24, 1965.
2. Notice of Motion and Motion of United States of

America to intervene as plaintiff herein, with complaint, in intervention and motion for preliminary injunction, attached, filed June 16, 1965.

3. Answer of defendant, City of Bessemer Board of Education, its Members and the Superintendent of Education to the complaint, filed June 18, 1965.

4. Answer of defendants to the motion to the complaint in intervention, with copy of answer of defendant, City of Bessemer Board of Education, attached, filed June 21, 1965.

5. Memorandum Opinion of Hon. Seybourn H. Lynne, filed June 30, 1965.

6. Order in conformity with the Memorandum Opinion, filed June 30, 1965.

7. Plan for desegregation of City of Bessemer School System operating under the supervision of City of Bessemer Board of Education, filed July 9, 1965.

8. Objections of plaintiffs to defendants' Plan for Desegregation, filed July 15, 1965.

9. Objections of United States of America, plaintiff-intervenor, to Plan for Desegregation, filed July 19, 1965.

10. Order approving Plan for Desegregation and ordering it into effect as against the objections made by plaintiffs and plaintiff-intervenor with modifications, filed July 30, 1965.

11. Notice of Appeal by United States of America, Plaintiff-Intervenor, to United States Court of Appeals, Fifth Circuit, filed August 5, 1965.

12. Notice of Appeal by plaintiffs, Doris Elaine Brown,

et al., to United States Court of Appeals, Fifth Circuit, filed August 9, 1965.

13. Certified copy of order of U. S. Court of Appeals issued as and for the Mandate, vacating and remanding this cause to the District Court for further consideration, etc., filed August 18, 1965.

14. Motion of plaintiff-intervenor, United States of America, for Order in Conformity with the Mandate of the Court of Appeals for the Fifth Circuit, filed August 20, 1965.

15. Amendment to Plan for Desegregation of City of Bessemer School System operating under the supervision of City of Bessemer Board of Education, filed August 27, 1965.

16. Order overruling objections of plaintiffs and plaintiff-intervenor to the amended plan of desegregation and approving the amended plan, etc., filed August 27, 1965.

17. Appeal Bond (\$250.00), filed September 8, 1965.

18. Notice of Appeal by the United States of America, plaintiff-intervenor, from order overruling the objections of plaintiff and plaintiff-intervenor, to the amended plan of desegregation, filed October 25, 1965.

19. Order extending the time within which the record on appeal in this cause may be filed with the U. S. Court of Appeals, Fifth Circuit, filed November 23, 1965.

20. Transcript of proceedings of June 30, 1965.

21. Transcript of proceedings of July 29, 1965.

22. Plaintiffs' exhibits 3, 17, 20 and 21.

23. Intervenor's exhibits 1, 2A-E, 3A-G, 4A and B, 6, 8, 9, 11A-K, 12A-K, 14 and 15.

Inasmuch as the record filed in this court fails to contain certain exhibits withdrawn from the files of the district court with the consent of the parties, the United States wishes to reserve the right to amend this Designation by supplementing the items to be designated for printing.

Respectfully submitted,

JOHN DOAR,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant-Intervenor's Designation of Portions of Record to be Printed on Appeal has been served by official United States mail in accordance with the rules of this Court to each of the attorneys for the appellants and the appellees addressed as follows:

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Dated: January 27, 1966

/s/ Joel M. Finkelstein
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