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IN THE UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF ALABAMA

EASTERN DIVISION

ANTHONY T. LEE, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

versus

CIVIL ACTION NO. 604-E

MACON COUNTY BOARD OF
EDUCATION, et al.,

Defendants.

TRIAL BRIEF OF THE UNITED STATES

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I. INTRODUCTION

This Court is again asked to consider whether officials of the State of Alabama have misused their authority by preventing local school systems from complying with constitutional requirements, now embodied in the statutes of the United States, that children be free from racial discrimination in attending public schools. Under the issues framed in the pleadings and upon the evidence received during trial, the Court must also determine whether, as an aid to obtaining effective relief, state officials shall now be required not only to desist from interference but will also be directed, in specific terms, how they shall administer certain programs under their control in order to abolish the dual system, to administer specific programs in specific ways, and to report to the Court periodically about their administration.

In this brief, the Government will review the evidence and suggest relief which we believe would be appropriate. Effective relief, in our judgment, must lead to the complete desegregation of each and every individual school system in the State of Alabama.

The evidence shows that Governor Wallace, Superintendent Meadows and the Alabama State Board of Education have prevented local school officials from fulfilling their constitutional obligation to desegregate public schools. It also shows that in the exercise of their extensive control over the operation of local public schools, in the areas of school construction, faculties and transportation, they have actively encouraged and preserved the dual school system based on race, despite their clear legal duty to take every reasonable step within their power to disestablish that dual system and to establish

a nonracial, unitary system of public schools throughout Alabama.

Local school systems in Alabama are not free to comply with federal law so long as these defendants persist in their policies to prevent desegregation. In such circumstances, the traditional judicial approach to desegregation on an individual school district basis is ineffective. So too is the administrative approach by which individual school districts are asked to comply with the law as a condition to the receipt of public funds for the improvement of education.

We will therefore ask the Court to frame a decree which will require the state to administer certain of its programs so as to liquidate the dual systems at the state level and to further the reorganization of each local system in the state into unitary desegregated systems. In addition, we will urge the Court to move quickly to deal with those districts that are not now in compliance with federal law. All of the relief will, we believe, help the local officials throughout the State in meeting their responsibility of providing the best education to all the children in Alabama within the framework of a unitary, nondiscriminatory school system.

II. PROCEDURAL HISTORY

A. Prior Proceedings

This action was filed on January 28, 1963, by Negro parents to desegregate the public schools of Macon County, Alabama. On July 16, 1963, the Court added the United States as a party in order that "the public interest in the administration of justice, of law and order, and of protecting the authority and integrity" of the United States Courts would be represented.

On August 22, 1963, this Court ordered that the public schools in Macon County be desegregated. Thereafter, on three separate occasions during the 1963-64 school year this Court found it necessary to enjoin various forms of interference with the desegregation of schools in Macon County.[1/]

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1 / United States v. Wallace, 222 F. Supp. 485 (September 1963); Lee v. Macon County Board of Education, order of February 3, 1964; United States v. Rea, 231 F. Supp. 772 (February 1964).

On February 2, 1964, plaintiffs filed a supplemental complaint adding as defendants the Alabama State Board of Education, its President, Secretary and members, seeking relief against the continuation of a racially segregated school system throughout the State of Alabama and against interference by the added defendants with the desegregation of the public schools.

On July 13, 1964 this Court, in ruling upon the plaintiffs' motion for a preliminary injunction, found that "the State of Alabama has an official policy, favoring racial segregation in public education," and that "strictly in accord with this official policy, the State of Alabama has operated and presently operates a dual school system based upon race." The Court also found that "the evidence as herein related clearly establishes a persistent course of action by the defendant State officials to interfere with and prevent the carrying out of this Court's order respecting the desegregation of the Macon County public schools, and . . . [that] State officials have in this interference acted wilfully . . . ." The Court further found "that the purpose of the said State officials, as evidenced by their actions already recited, was clearly to prevent or impede any desegregation through their unlawful interference with the city and county school boards' attempting to comply with the law." The Court went on to say that "there must be a recognition on the part of these State officials that in the exercise of their general control and supervision over

all the public schools in the State of Alabama and particularly in the allocation and distribution of State funds for school operations, they have an affirmative duty to proceed with 'deliberate speed' in bringing about the elimination of racial discrimination in the public schools of this State!"'

The Court accordingly enjoined the defendant State officials from:

> (1) Preventing or attempting to prevent, obstructing or interfering with the Macon County Board of Education, its individual members, and the Superintendent of Schools of Macon County in enrolling, admitting, educating or transferring any child in or to a school attended by children of another race;
>
> (2) Preventing or interfering with any student, teacher, or other person authorized by the Macon County Board of Education, from entering, leaving, attending or working in any public school in Macon County attended by children of both the white and Negro races;
>
> (3) Harassing or punishing, in any manner or by any means, any student, teacher or other person on account of his attending or working in any public school in Macon County attended by students of both the white and Negro races, or harassing or punishing any official, agent or employee of Macon County on account of his complying with the orders of this Court requiring the elimination of racial discrimination in the public schools of the county;
>
> (4) Interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;

> (5) Approving, authorizing or paying any tuition grant or grant-in-aid under the provisions of Chapter 4B [Sections 61(13) through 61(21)] of Title 52 of the Alabama Code for the attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color;
>
> (6) Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

On August 31, 1966, the Court allowed the United States to file a supplemental complaint in intervention attacking the validity of Alabama's tuition grant statute. Following a hearing and the submission of briefs, that aspect of the case has been taken under submission and is not involved in the instant proceeding.

B. Present Proceeding

On September 22, 1966, the plaintiffs filed a motion for an order requiring the defendant George C. Wallace to show cause why he should not be held in civil contempt of the order of July 13, 1964, or in the alternative for further relief against the defendant state officials. On September 30, 1966, the Court denied the motion for an order to show cause and set a trial on the alternative prayer for further relief for November 30, 1966. On October 13, 1966, the Court ordered that this action and Civil Action No. 2457-N be tried jointly.

On November 21, 1966, the Court granted the plaintiffs leave to file a supplemental complaint seeking relief against the defendant George C. Wallace in his capacity as Governor. The supplemental complaint alleges that Governor Wallace has continued to interfere with public school desegregation in Alabama since July 13, 1964. The plaintiffs' motion for preliminary injunction against Governor Wallace was also set for November 30, 1966.

Following extensive discovery by all parties, the case came on for hearing on November 30, 1966. At the close of the hearing on December 2, 1966, the Court requested briefs and set oral argument for February 3, 1967.

III. THE MERITS

The obligation of the State of Alabama to disestablish its dual system of schools has so often been stated by the courts as to need no citation of authority. The question here is not the nature of the obligation which the Constitution places on the State, but whether the particular defendants now before this Court have properly used their authority to discharge that obligation, or whether they have misused their authority both by failing to take steps to disestablish the dual system and by deliberately interfering with local officials who have tried to do so.

The defendant State Board of Education, its members, and the defendant State Superintendent of Education have broad power over the public school system of Alabama, and the evidence establishes that they have misused this power, both by omission and commission, in such a way as to maintain the dual system.

Section 262 of the Alabama Constitution provides that: "The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, and compensation shall be fixed by law." The Legislature has created the State Board of Education and has provided in section 14 of the Alabama Code that it "shall exercise, through the state superintendent of education and his professional assistants, general control and supervision over the public schools of the state...." The Legislature has further provided that "The state superintendent of education shall execute the educational policies of the state board of education."[2/]

The State Board is expressly authorized to adopt rules and regulations governing school construction, school sanitation, and physical examination of school children, and and must enforce all rules relating to "school health, compulsory education, and child conservation."[3/] It controls

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2/ Ala. Code, Title 52, §45.

3/ Ala. Code, Title 52, §15.

the grading and standardizing of public schools,[4] the minimum contents of courses of study,[5] and the training and certification of teachers.[6]

The State Board is charged with the duty of "equalizing the public school facilities throughout the State" and administers a fund for that purpose.[7] The State Board and the State Superintendent together exercise a broad power of review of actions of local boards and local superintendents in "matters relating to finance, and other matters seriously affecting the educational interest."[8]

To assist it in carrying out its express powers, the Legislature has granted the State Board a general rule-making power as follows:[9]

> In order to meet emergencies that may arise because of any defect in the language or purpose of this title, the state board of education may make such rules and regulations as will give full force and effect to any or all of its provisions.

The defendants have used their powers in essentially two ways to maintain the dual system. First, they have used

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4/ Ala. Code, Title 52, §16.

5/ Ala. Code, Title 52, §17.

6/ Ala. Code, Title 52, §20.

7/ Ala. Code, Title 52, §33.

8/ Ala. Code, Title 52, §34 and 47.

9/ Ala. Code, Title 52, §31.

their authority as a threat and as a means of punishment to prevent local school officials from fulfilling their constitutional obligation to desegregate schools. Second, they have performed their own functions in such a way as to maintain and preserve the dual system.

A. Actions of the Defendants to Prevent and Intimidate Local School Officials from Desegregating

The conduct of the defendants here in issue is but an extension of a continuous course of conduct by state-level officials in Alabama since the 1954 decision of the Supreme Court in Brown.

On June 8, 1953 the United States Supreme Court propounded a series of questions to the parties in the then pending school desegregation cases,[10] strongly suggesting that the Court would find that racial segregation in the public schools violated the Constitution.

Less than four months later, and before the desegregation cases were argued before the Supreme Court, the Alabama Legislature responded by appointing a committee to prepare

> such legislation . . . as may be required to protect the interests of the State and its citizens in the event of a decision by the Supreme Court of the United States which destroys or impairs the principle of separation of the races in the public schools of this State. [11]

10/ See Brown v. Board of Education, 345 U.S. 972 (1953).

11/ Act No. 894, Senate Joint Resolution, September 19, 1953.

Following the 1954 decision in Brown, the Committee reported on October 18, 1954,[12] and its recommendations are embodied in the Alabama Pupil Placement Act (1955) and in amendment 111 to the Alabama Constitution (1956).[13] Also in 1956, the Alabama Legislature adopted a resolution declaring the decision of the Supreme Court to be "null and void".[14]

In 1957 Negro children applied to attend white schools in Birmingham. One week after their application the defendant Austin R. Meadows, as State Superintendent of Education,[15] wrote their parents, "I urgently recommend that you fully support your local board of education in its decision in the placement of your child in school."[16]

When Governor Patterson left the Alabama Governor's office in January, 1963 he was able to say, "There was no integration in the schools when I took office and there is none today."[17] His successor, Governor Wallace,

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12/ Report of Alabama Interim Legislative Committee on Segregation for the Public Schools, Legislative Document No. 1, Senate, Regular Session, 1955.

13/ See the history of these provisions in Shuttlesworth v. Birmingham Board of Education, 162 F.Supp. 372, 379-381, (1958).

14/ Act No. 42, House Joint Resolution, February 2, 1956.

15/ He was State Superintendent in 1957; see Meadows Dep., Feb. 14, 1964, p. 28.

16/ Shuttlesworth v. Birmingham Board of Education, 162 F.Supp. 372, 374 (1958).

17/ Acts of Alabama, 1963, p. 14.

while unable to make the same boast, repeatedly exercised the power of his office to preserve segregation in the schools.[18] In substance, it has been preserved.

The 1965-66 Annual Reports to the State Department of Education reflect that of the 294,737 Negro children attending public schools in Alabama, only 1,009, or less than three-tenths of one percent, were attending schools with white children.[19] Less complete figures are available for the current school year, but they are complete enough to tell us that most of the Alabama schools are still completely segregated. In the 89 school districts for which we have information, there are 4116 Negroes attending schools with white children in 1966-67.[20]

This court found in 1964 that "the State of Alabama has operated and presently operates a dual system based upon race," and it enjoined the defendant state officials from:

> interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama.

It is against the background of this order that one must consider the pressures which the same defendants have exerted on local school officials during the past two years.

18/ See United States v. Wallace, 218 F. Supp. 290 (1963) (interference with desegregation of University of Alabama); United States v. Wallace, 222 F. Supp. 485 (1963) (interference with desegregation of public schools of Macon and Mobile Counties and Birmingham City); Lee v. Macon County Board of Education, 231 F. Supp. 743 (1964) (interference with desegregation of Macon County public schools).

19/ See Appendix C, Table I. Because of under reporting by some systems the figure may be slightly higher. See the introductory explanation to Appendix C.

20/ See Appendix C, Table I.

In resisting the ruling of the federal courts, the state and its officials had taken two general approaches. First, they protested that the rulings were "illegal." Second, they urged that their conduct was not violative of the rulings once the Pupil Placement Act had been adopted and the segregation continued on a "voluntary" basis. These two apologies for maintaining the status quo, which were used to justify resistance to the courts, were to be reapplied by the defendants to justify resistance to the administrative enforcement by the Department of Health, Education and Welfare, of school desegregation in federally-financed programs.

1. The 1965-66 School Year

Title VI of the Civil Rights Act of 1964, prohibiting discrimination in federally assisted programs, became law on July 2, 1964.[21/] On December 4, 1964, the Secretary of Health, Education and Welfare published regulations for compliance with Title VI programs administered by his Department.[22/] These regulations require, among other things, that any application for Federal financial assistance be accompanied by an assurance that the program will be conducted or the facility operated on a non-discriminatory basis in compliance with the regulations.[23/]

21/ 42 U.S.C. 2000d. "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, or activity receiving federal financial assistance."

22/ 45 CFR §80.1-80.9.

23/ 45 CFR §80.4.

Superintendent Meadows went on record publicly encouraging local school districts to submit assurances of non-discrimination, and "to follow strictly the Alabama Placement Law."[24] On March 4, 1965, he submitted a state-wide assurance of compliance to the Commissioner of Education.[25] According to this assurance the State Department of Education and all school districts were operating without discrimination.[26]

When Commissioner Keppel pointed out to Superintendent Meadows that it was common knowledge that most Alabama school districts were still segregated, and that they would therefore be required under the regulations to file plans of desegregation,[27] Superintendent Meadows reacted, not by encouraging the school boards to comply, but by attacking Dr. Keppel's letter through a release to all Superintendents.[28] In the release he sought to distinguish, just as he did in his testimony before this Court, between "nondiscrimination" and "desegregation", saying that "Title VI nowhere uses the words desegregation or integration or any other synonym of similar meaning." He added that the superintendents should use Dr. Keppel's memoranda on compliance "as you see fit."[29]

24/ Def. Ex. 2, 3. In response to a 1963 inquiry as to what a local school board should do when faced with integration, Dr. Meadows had advised: "It is my recommendation that you apply the Pupil Placement Law for all its worth." Pl. Ex. 44 in the 1964 hearing in this case.

25/ Govt. Ex. 157.

26/ Id., Part D.

27/ Govt. Ex. 4.

28/ Ibid.

29/ Ibid.

On March 19, 1965, barely two weeks after filing his statewide assurance of compliance, Superintendent Meadows told the Alabama Teachers Association:[30/]

> . . . The minority race has a new junior college in Mobile and a new one is being established in Jefferson County . . .
>
> * * *
>
> Every type of education facility available to the majority group in Alabama has been made available to the minority group . . .

His address ended with the following plea:

> . . . Will this Nation let Alabama continue its progress, nurture its fine culture, and further its goal of peaceful existence in the only way it knows to exist or will all of this be destroyed by outsiders who either do not understand or do not care enough for either race in Alabama? [31/]

In April 1965 the Commissioner of Education issued his "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," commonly known as the Guidelines.

The Guidelines required that school systems take immediate steps to desegregate students, faculties, and all school affiliated services, facilities, activities, and programs. School districts that did not plan to desegregate all twelve grades in the 1965-66 school year were required to justify the delay, and the 1967-68 school year

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30/ Pl. Ex. 2.

31/ See further discussion on discrimination in the administration of trade schools and vocational training, infra.

was set as the target date for total desegregation.[32] A good faith start was deemed to require the desegregation of at least four grades in the 1965-66 school year.

As evidence of compliance with the Guidelines and Title VI, school districts which had eliminated all characteristics of a dual system could submit a simple assurance of compliance (HEW Form 441). Other school districts to qualify were required to submit either an acceptable plan of desegregation or a final order of a federal court for the desegregation of the school system.

A number of Alabama school districts, particularly those having a relatively small number of Negro students, decided to desegregate all 12 grades in the 1965-66 school year. The relevant statistics for seven of these districts, whose superintendents testified on deposition, are as follows:[33]

		Students	Teachers	Schools
Lauderdale	White	7703	294	18
(Dep. Thornton)	Negro	719	36	4
Enterprise	White	3083	108	5
(Dep. Snellgrove)	Negro	964	37	2

32/ On June 22, 1965, the Court of Appeals for the Fifth Circuit recognized the Guidelines as "standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964". Singleton v. Jackson Municipal Separate School District, 348 F.2d 729 (5th Cir., 1965).

33/ See Appendix C, Table II.

		Students	Teachers	Schools
Jacksonville	White	1994	68	2
(Dep. Stone)	Negro	183	12	1
Russellville	White	1706	65.5	3
(Dep. Courington)	Negro	291	15	1
Sheffield	White	2505	97	7
(Dep. Brewster)	Negro	607	24	2
Talladega Co.	White	6052	230	14
(Dep. Pittard)	Negro	4148	144	16
Winston Co.	White	3644	137	11
(Dep. Albright)	Negro	20	x	1

The Superintendent of each of these districts received the following telegram dated August 31, 1965 from the Governor:[34/]

> WE HAVE BEEN INFORMED THAT YOUR SCHOOL BOARD HAS VOLUNTARILY SUBMITTED A SO-CALLED COMPLIANCE PLAN COVERING ALL GRADES IN YOUR SCHOOL SYSTEM. AS YOU KNOW, WE HAVE NEVER ASKED ANY SCHOOL BOARD TO VIOLATE ANY PROVISION OF FEDERAL OR STATE LAW. IT IS OUR CONSIDERED JUDGEMENT THAT ANY PLAN FOR SO-CALLED NON-DESCRIMINATION IN ALL GRADES IS BEYOND EVEN THE MINIMUM REQUIREMENTS SET BY THE U S COMMISSIONER OF EDUCATION. IN FACT, THE DEPARTMENT HAS ACCEPTED AS MINIMUM COMPLIANCE SOME PLANS COVERING ONLY FOUR GRADES. IT IS ALSO READILY APPARENT THAT THOSE SCHOOL SYSTEMS WHICH HAVE BEEN REQUIRED TO DESEGREGATE UNDER FEDERAL COURT ORDER ARE NOT REQUIRED TO DESEGREGATE ALL 12 GRADES IN ONE YEAR. WE THINK IT WOULD BE ADVISABLE FOR YOUR SCHOOL BOARD TO RECONSIDER YOUR ACTION IN THE SUBMISSION OF YOUR COMPLIANCE PLAN.

At 8:30 p.m. at night on September 2 they were sent telegrams by Superintendent Meadows asking them to immediately wire the number of Negroes enrolled in white schools and the total number of grades in which they were enrolled.[35/]

On September 3 they received yet another telegram, a "follow-up" telegram from the Governor:[36/]

34/ Govt. Ex. 6 - 11.

35/ Govt. Ex. 13 - 14.

36/ Govt. Ex. 15 - 20.

THIS FOLLOW-UP TELEGRAM COMES AFTER A MEETING OF THE STATE BOARD OF EDUCATION WHICH PASSED A RESOLUTION YESTERDAY EXPRESSING GRAVE CONCERN ABOUT THE FUTURE OF PUBLIC EDUCATION IN ALABAMA IN VIEW OF THE FACT THAT SOME SCHOOL BOARDS HAVE GONE BEYOND THE MAXIMUM REQUIREMENTS OF COURT PRECEDENTS IN EXECUTING COMPLIANCE PLANS. WE AGAIN RESPECTFULLY CALL TO YOUR ATTENTION THAT THE EXECUTION AND ADMINISTRATION OF PLANS BEYOND THOSE REQUIRED IS NOT IN THE INTEREST OF PUBLIC EDUCATION IN THE STATE OF ALABAMA. SUCH WAS ENUNCIATED BY THE SOUTHERN GOVERNORS MEETING IN ATLANTA. IN VIEW OF THE FACT THAT UNDER THE PUPIL PLACEMENT ACT THE ADMINISTRATION AND ASSIGNMENT OF PUPILS IS YOUR PREROGATIVE, WE AGAIN RESPECTFULLY REQUEST THAT YOU TAKE WHATEVER ACTION IS NECESSARY TO SEE THAT THE ADMINISTRATION AND EXECUTION OF THESE PLANS DO NOT GO BEYOND THE REQUIREMENTS OF FEDERAL COURT ORDERS OF FIVE GRADES. WE URGE CAREFUL CONSIDERATION OF THE RESOLUTION PASSED UNANIMOUSLY BY THE STATE BOARD OF EDUCATION, A COPY OF WHICH WILL BE FORWARDED TO YOU AND WHICH WE WHOLEHEARTEDLY ENDORSE. WE ~~RE~~COMMEND THE DILIGENT WORK OF THE GREAT MAJORITY OF LOCAL SCHOOL BOARDS WHO HAVE DONE AN OUTSTANDING JOB UNDER EXTREMELY TRYING CIRCUMSTANCES.

Following the receipt of these telegrams they were invited and "urged" by telegram from Governor Wallace to attend a meeting in Montgomery on September 7.[37/]

In addition to the telegrams the Superintendents received Superintendent Meadows' September 3 release of the State Board of Education's Resolution of September 2 urging school boards "to take no action in the administration and execution of compliance plans which are not required by law or court order and that the Superintendents of Education advise those school systems which have submitted plans not to follow any course of action in the execution of said plans that would go beyond those required by court precedents or the law."

37/ Govt. Ex. 21 - 26.

Superintendent Meadows himself recognized that his joinder in this resolution would violate the preliminary injunction of this Court. A typed note to this effect appears at the end of the copy of the release of this resolution provided to the Government by Superintendent Meadows from his own records.[38] However, none of the copies of the release of this resolution which were in the possession of local superintendents contain this footnote.[39]

Superintendent Thornton of Lauderdale County, who tried to justify his Board's actions in a statement to the Governor, received the following special telegram from the Governor:[40]

> YOUR STATEMENT TO THE GOVERNORS OFFICE ON THURSDAY SEPTEMBER 2 THAT YOU ARE SATISFIED WITH THE PUBLIC SCHOOL SITUATION IN LAUDERDALE COUNTY WHERE MORE NEGRO PUPILS ARE ENROLLED IN THE PREVIOUSLY ALL WHITE SCHOOLS THAN ARE IN EITHER OF THE LARGE CITIES OF BIRMINGHAM OR MONTGOMERY, AND YOUR FURTHER STATEMENT THAT YOU PLAN TO ELIMINATE EVENTUALLY ALL NEGRO SCHOOLS IN THE COUNTY AND TRANSFER THE PUPILS TO WHITE SCHOOLS COULD DO MORE TO DESTROY THE

38/ Govt. Ex. 12. A copy of this resolution, as released by Superintendent Meadows appears in the Notebook.

39/ Govt. Ex. 120 (Russellville); Govt. Ex. 121 (Randolph Co.); Govt. Ex. 122 (DeKalb Co.); Govt. Ex. 123 (Brewton); Govt. Ex. 124 (Sheffield); Govt. Ex. 125 (Shelby Co.); Govt. Ex. 126 (Talladega Co.).

40/ Govt. Ex. 2 (Lauderdale County).

PUBLIC EDUCATIONAL SYSTEM OF ALABAMA THAN ANY ACTION SINCE THE INFAMOUS 1954 DECISION OF THE UNITED STATES SUPREME COURT. THOSE WHO HAVE WORKED DILIGENTLY TO RAISE SUPPORT OF PUBLIC EDUCATION TO A RECORD HIGH LEVEL IN THE HISTORY OF OUR STATE RESENT AND REJECT THIS ATTITUDE. WE CALL UPON YOU TO ALIGN YOUR POLICIES WITH THE MINIMUM REQUIRE - MENTS OF THE LAW AND OF COURT ORDERS. (COPIES OF THIS TELEGRAM SENT TO FLORENCE TIMES, FLORENCE, ALA. ASSOCIATED PRESS, MONTGOMERY, ALA., AND UNITED PRESS INTERNATIONAL, MONTGOMERY, ALABAMA)

During this period, Superintendent Brewster of the Sheffield City school system received a personal telephone call from Mr. Maddox, the Governor's legal advisor. According to Mr. Brewster, Mr. Maddox "was urging that the Board of Education consider recalling its plan and agreement from the Office of Education." 41/

Following these telegrams Governor Wallace called a meeting of Superintendents to discuss his position on school desegregation on September 7. At this meeting Governor Wallace, Lt. Governor Allen, Speaker Brewer, and Superintendent Meadows spoke and personally emphasized that school districts should not go beyond what the courts had said, 42/ and expressed their opposition to the requirements of the Guidelines. 43/

The series of telegrams and correspondence, and the September 7 meeting, had their effect. On September 6, 1965, the Choctaw County Board of Education had met to make

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41/ Brewster Dep., p. 24.

42/ Thornton Dep., p. 35.

43/ Brewster Dep., p. 26.

certain required changes in the plan of desegregation previously submitted to Commissioner Keppel. The Board adjourned this meeting without taking action on the changes in the desegregation plan, pending the outcome of Governor Wallace's September 7 meeting. Following this meeting the Board met at 4:30 p.m. on September 7 and resolved that the plan of desegregation adopted on August 23 be revoked. 44/ The Board resolved:

> That due to the change in conditions, particularly within the past few days, the Board concludes it is for the best interest of the children attending the schools of Choctaw County, Alabama, their safety and welfare, for the continued orderly operation of the schools in the County, and for the prevention of violence which would likely result in serious consequences adversely affecting the orderly operation of the schools, the plan of desegregation of the schools of Choctaw County, Alabama, adopted by this Board on August 23, 1965, be and the same is hereby revoked.

2. The Revised Guidelines and Form 441-B

On March 7, 1966, the Department of Health, Education and Welfare issued its Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964. (1966 Guidelines) 45/ These Guidelines are somewhat more detailed than their 1965 predecessor, and place particular emphasis on performance by local school boards rather than on paper compliance. The Revised

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44/ Govt. Ex. 35.

45/ 45 CFR §181.

Guidelines state specifically that the racial composition of the professional staff of a school system will be considered in determining whether students are subjected to discrimination in educational programs, and that staff desegregation for the 1966-67 school year would have to show significant progress beyond that in the 1965-66 school year.[46] The Revised Guidelines also indicated what progress in student desegregation would normally be expected beyond that of the previous school year, if the Commissioner was to infer, without further inquiry, that a free choice plan was operating effectively.[47]

To assure compliance with the Revised Guidelines, a school board whose desegregation plan had been approved was required as a condition to the continued receipt of federal financial assistance, to execute an assurance (HEW Form 441-B) that it would comply with the Revised Statement of Policies. A school system which had not had its plan of desegregation previously approved was required to submit a plan meeting the requirements of the Revised Statement as well as a Form 441-B. School systems which had previously submitted approved statements that they did not maintain any characteristics of a dual system (Form 441) were not required to submit another form. School districts under court order, of course, could continue to meet the requirements of Title VI by submitting a copy of the order, along with an assurance to comply with the order.

46/ Ibid., §181.13.

47/ Ibid., §181.54.

As of March 7, 1966, at least sixty-nine Alabama school districts were operating under approved desegregation plans,[48] one district had submitted an approved HEW Form 441,[49] and thirteen districts had qualified by submitting final court orders together with the necessary assurances to comply with the orders.[50]

On March 31, Governor Wallace and Superintendent Meadows met with all local school superintendents in Montgomery and on April 6 they again met with a smaller group of superintendents in the Governor's office. On both occasions, the Revised Guidelines and Form 441-B were discussed.[51]

One of the superintendents at the April 6 meeting was from Geneva County. On the same day as the meeting Superintendent Meadows wrote Commissioner Howe asking him to return the executed Form 441-B which Geneva County had sent in on April 5, 1966.[52]

On March 25, 1966, the Coosa County School Board had unanimously instructed its chairman to sign

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48/ This number is computed from the number of school districts who were eligible to qualify for federal financial assistance by filing HEW Form 441-B. See chronology of 441-B action, infra.

49/ Cullman City.

50/ See Appendix A. Court orders had not yet been entered in Choctaw, Wilcox, Lawrence and Crenshaw Counties.

51/ Test. of Meadows. Govt. Ex. 26.

52/ Govt. Ex. 2 (Geneva County).

the Form 441-B. On April 9, 1966, the Board met again and rescinded its action of March 25.[53/]

In Anniston, the City Board of Education had signed its Form 441-B without qualification on March 29, but did not mail it in at that time. On April 15, 1966, Superintendent Hall wrote a letter to Mr. Seeley of HEW, stating that the 441-B had been signed, but requesting HEW to accept a certified copy of the Board's minutes in place of the completed 441-B.[54/] In explaining his request, Mr. Hall wrote:

> This request is made due to the existence in our state of certain factors which may infringe on our ability to carry forward an orderly program if adverse publicity to our School System develops during the political campaigns . . .
>
> Adverse publicity would prevent this developing [a proposed education park] because through the legislature state officials have the authority under the Public School and College Authority to not only determine who the architect will be, but also the extent to which local capital outlay millage will be, or can be, expended for certain purposes . . .

53/ Pl. Ex. 16 (Coosa County). See also the action of the Cleburne County Board of Education, which resolved to file a 441-B on March 21, 1966, and on April 14, 1966, wrote a letter to Commissioner Howe that it would not file a 441-B at this time.

54/ Govt. Ex. 1 (Anniston).

> Our answers to inquiries from the state level will not deny that our Board has complied through the execution of Form 441-B, however we will be in a position to settle the question by indicating that the form has not been filed, but is in our files. This places us in a position to meet either state or local criticism which may arise, but will not interfere with the Board's decision to meet its responsibility under the law.55/

Other school boards went through the formal procedure of signing the 441-B, but asked the Office of Education that they not be required to mail it. As Superintendent Kimbrough of Piedmont City wrote to Commissioner Howe on April 15, 1966:56/

> Due to the political situation in our State, we feel that it is best that we not mail the form at this time, and request that you accept this letter.

Similarly, the Winston County School Board signed a Form 441-B on March 28, 1966, but did not send it in until July 6, 1966, "due to the sensitive civil rights climate in Alabama."57/

55/ The Anniston Board submitted its Form 441-B to HEW on May 5, 1966. Ibid.

56/ Kimbrough Dep., U.S. Ex. 1.

57/ Govt. Ex. 2 (Winston County), letter from Albright to Seeley, dated July 6, 1966. In a telephone conversation June 7, 1966, Superintendent Albright requested that a copy of the Board's resolution be accepted in lieu of the 441-B. He said the 441-B had not been sent in "due to the sensitive political atmosphere in Alabama." Govt. Ex. 2 (Winston Co.), call from Albright to Seeley of June 7, 1966.

On May 13, 1966, the Governor, Lt. Governor, Superintendent of Education, Speaker of the House, and the Alabama Congressional delegation adopted a resolution characterizing the action of the Department of Health, Education and Welfare as "totalitarian methods in the form of threats to deny benefits of educational programs from innocent parties in order to accomplish an illegal purpose" and urging officials to continue to "resist all illegal requirements imposed by the 1966 guidelines such as faculty desegregation and quota or percentage pupil assignments" and "to take appropriate action to effect this resistance including a reconsideration of any action heretofore taken."[58/] Superintendent Meadows released a copy of this resolution to all Superintendents on May 16, 1966.[59/]

The State Board of Education met immediately to commend the May 13 resolution. In its commendatory resolution the State Board recommended that "local superintendents and boards of education withdraw signed guideline agreements which are illegal and which attempt to usurp the powers and duties of local superintendents and boards of education."[60/]

58/ Govt. Ex. 36.

59/ Ibid.

60/ Gov't. Ex. 37

Superintendent Meadows released a copy of this resolution to all Superintendents on May 19.[61/]

Remarks by local Alabama superintendents as reported from office notes of staff members of HEW who spoke with the superintendents during this period are illuminating. On May 6, 1966, the Superintendent of Talladega County told a staff member of HEW, "They feared sending a 441-B since a copy must go to the State Office of Education."[62/] On May 23, the Superintendent of Escambia County said, "He doesn't think they will sign because of State directives not to;"[63/] the Superintendent of Colbert County said "Pressure biggest reason for not signing. Their position is to be in compliance with the Civil Rights Act, not necessarily our Guidelines;"[64/] and the Superintendent of St. Clair said they "Won't sign until Governor Wallace says so."[65/]

61/ Ibid.

62/ Govt. Ex. 2 (Talladega County), call from Eugene Crowder to J. R. Pittard, dated 5/6/66.

63/ Govt. Ex. 2 (Escambia County), call from E. Ellicott to Harry L. Weaver, dated 5/23/66.

64/ Govt. Ex. 2 (Colbert County), call from E. Ellicott to David C. Brown, dated 5/23/66.

65/ Govt. Ex. 2 (St. Clair County), call from C. C. Ring to Hugh W. Williamson dated 5/23/66.

The effect of the Governor's and Superintendent's actions during this period is illustrated dramatically in the decrease in the number of school districts signing unqualified assurances. While thirty-three school districts had filed an unconditional Form 441-B prior to May 18, only four did so after this date.[66/] One of these four, Cleburne County, signed its Form 441-B on May 11, and it was received by HEW on May 18. However, on May 18, the Cleburne County school superintendent wrote to Dr. Meadows that the Cleburne County Board of Education had amended its unqualified form "as requested by your office".[67/]

66/ See chart showing change in 441-B status on P. 38 infra. The chart shows that 37 systems filed amended 441-B's after May 18.

67/ Pl. Ex. 13.

On May 24, Superintendent Meadows sent a letter to each of the superintendents, once again setting forth his position that the 1966 Guidelines were illegal, and urging that full implementation of a Form 441-B assurance would violate sections of the Alabama Code which give local superintendents and school boards authority over employment of teachers and other staff members.[68] He pointed out that he was writing this letter "in accordance with section 262 of the Constitution of Alabama that places the supervision of the public schools under the State Superintendent of Education," and requested a report from each school district by May 30 on the action taken pursuant to his letter.

On May 25, 1966, Superintendent Meadows issued a release to all superintendents calling them to a meeting on June 6 to discuss the Guidelines problem.[69]

On May 27, 1966, the Governor sent yet another letter to school districts urging them to consider again the fact that they were being asked by HEW "to do that which is beyond the law."[70] In his letter the Governor characterized the HEW requirements as "not lawful and that which is not in the best interest of our children."

68/ Govt. Ex. 38-57

69/ Govt. Ex. 58-61 are copies of the release which changes the meeting date from June 7 to June 6. The May 25 release announcing the June 6 meeting which appears in the Notebook as Government Exhibit 58 was inadvertently not offered in evidence.

70/ Govt. Ex. 62-65.

The De Kalb County School Board, on May 27, 1966, voted to rescind the unqualified Form 441-B it had submitted on April 14, 1966; [71] on June 3, 1966, the Florala Board rescinded the Form 441-B it had submitted on March 29, 1966; [72] and on June 3 the Covington County School Board rescinded the Form 441-B it had previously signed and amended "in view of the possible illegality of Form 441-B." [73] Other districts which had already signed but not submitted the 441-B decided to wait until after the June 6 meeting before making a decision. [74] One district reacted by reaffirming its intention not to sign the 441-B. [75] Another district, which had only approximately 20 Negro pupils in the entire system and had decided to consolidate its only Negro school into the "existing white system," expressed a hope to stay within the Governor's and Superintendent's good graces by not filing their signed 441-Bs. [76]

71/ Govt. Ex. 2 (DeKalb County).

72/ Govt. Ex. 1 (Florala).

73/ Pl. Ex. 16 (Covington County), letter from Pierce to Howe dated June 4.

74/ Govt. Ex. 109 (Franklin Co.); Govt. Ex. 110 (Russellville).

75/ Govt. Ex. 106 (Escambia Co.).

76/ Govt. Ex. 118 (Winston Co.).

Seventeen school superintendents who failed to respond promptly with the information requested by Dr. Meadows in his letter of May 24 soon received identical telegrams from Dr. Meadows reading as follows: 77/

> MAY 24th LETTER REQUESTING REPORT, APPROVED BY STATE BOARD OF EDUCATION, ON YOUR BOARD'S ACTION ON NEW GUIDELINES NOT RECEIVED AND SUCH REPORT WILL BE NECESSARY BEFORE ANY FURTHER DISTRIBUTION OF ANY FUNDS TO YOUR SCHOOL SYSTEM.

On June 6 Governor Wallace and Superintendent Meadows held a meeting with superintendents from throughout the State. At this meeting both the Governor and Superintendent, as well as the Lt. Governor Allen, Speaker Brewer, and Mr. Satterfield, stated that the guidelines went beyond the law. The Governor stated he would go to the people and hold mass meetings so that the complying school superintendent would have to explain his actions to his community. 78/ By now it was becoming increasingly clear that Governor Wallace would not be content with merely expressing a legal opinion on the validity of certain provisions of the Guidelines. He was determined to use the authority and prestige of his office to compel local officials to accept his views and resist the requirements of federal law.

On June 8, Brewton City revoked its 441-B. 79/

77/ Pl. Ex. 11; Govt. Ex. 66 (Enterprise); Govt. Ex. 67 (Shelby County). The telegrams were dated June 2.

78/ Govt. Ex. 1 (Tuscaloosa), letter from Ray to Barus and an attached article from June 7 Birmingham News; Govt. Ex. 1 (Tuscaloosa); Telephone call from Conohan to Nelson, dated July 1, 1966; Testimony of Meadows.

79/ Govt. Ex. 1 (Brewton City).

On June 9, Martin Ray, the attorney for the Tuscaloosa City and County school systems wrote to the Office of Education:

> As a result of pressures, applied and threatened, I request that any information with regard to the proposed staff cross-overs by either the Tuscaloosa County or City School System remain confidential; . . .[80]

On June 9, Superintendent Pittard of Talladega County wrote to Mr. Seeley of HEW that on June 6 this Board had voted not to execute a 441-B. He added that "conditions are such that our Board is unwilling to pledge compliance with the 1966 Guidelines at this time."[81] The Board had previously advised HEW that it did intend to comply.[82]

On June 10, 1966, the Governor sent still another telegram to school boards requesting them to state their current status with respect to the Guidelines.[83]

On June 10, 1966, Attorney Merrill in Anniston wrote Mr. Hall, the Superintendent of the Anniston School System:

> If this resolution is acceptable to the Governor and to the Commissioner of Education, its adoption would certainly be the best way out of the pressure pot. [84]

80/ Govt. Ex. 1 (Tuscaloosa), letter to Crowder dated June 9. See also letter of the same date from Mr. Ray to Mr. Fairley of HEW stating: "As a result of present political pressures placed upon local Superintendents and school board members, I have been requested to ask that any information with regard to placed staff assignments invluding any cross-overs be kept confidential."

81/ Govt. Ex. 2 (Talladega Co.).

82/ Ibid.

83/ Govt. Ex. 68-76.

84/ Kimbrough Dep. U. S. Ex. 4.

On June 13, the Russellville Board of Education amended the unqualified Form 441-B it had filed on May 5.[85] The Board had written Dr. Meadows that it was deferring any action on its filed 441-B until after the June 6 meeting.[86]

On June 15, 1966, the Superintendent of the Franklin County Schools wrote Mr. Crowder:

> Will you please put the enclosed amendment with the Franklin County Board of Education's 441-B. As you know, we are having trouble with our State officials over signing the 441-B. [87]

Superintendent Hibbert of Florence City System characterized the situation of the local school board during this period in a letter to Mr. Crowder in the Office of Education, dated July 13, 1966. Mr. Hibbert wrote in part:[88]

> ... About that time the top blew off again in Alabama over the fact that we had signed 441-B. Some Local Boards, including ours, were threatened with called mass meetings to oppose the signing of 441-B. Although our Board was unmoveable on the question of rescinding 441-B, it seemed best not to go beyond our present position for fear that a certain party might cause an explosion in our otherwise peaceful and harmonious community.

Superintendent Brewster of Sheffield, having testified on cross-examination at the taking of his deposition, that neither the Governor nor any member of his staff had ever threatened, coerced, intimidated, or directed him regarding school desegregation, added,

> Of course, everybody that reads the paper and listens to the television news and so forth was aware of the--

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85/ Courington Dep., U.S. Ex. 12.

86/ Govt. Ex. 110. The 441-B was signed on March 21 but it was not received by HEW until May 9. See copy of 441-B in Govt. Ex. 1 (Russellville).

87/ Pl. Ex. 4.

88/ Govt. Ex. 1 (Florence).

I don't know whether threats, but at least the statements the Governor made that he would go into the various communities of the State and hold mass meetings."89/

Remarks made by Alabama superintendents in telephone conversations between them and staff members of HEW after the June 6 meeting also demonstrated the effectiveness of the pressure from Governor Wallace and Superintendent Meadows to prevent local school districts from carrying out effective efforts to comply with HEW's requirements.

The following are verbatim excerpts from the notes made by the staff members of HEW of these conversations:90/

Date of Call	Excerpt from Memorandum
6/7/66	James Ferguson to Superintendent Albright (Winston Co.); Mr. Albright, the Superintendent, stated that he had signed the 441-B form in March, 1966, but due to the sensitive political atmosphere in Alabama he had not sent it in and does not deem it feasible to do so at this time . . . The Superintendent asked that the Board's Resolution be accepted in lieu of the 441-B. When informed that such acceptance could not be granted in this conversation he stated that he would submit excerpts of the resolution to the Office of Education and said that he does intend to submit a 441-B at some later time.

89/ Brewster Dep., pp. 65-66.

90/ A copy of the complete memorandum referred to is in Government Exhibits 1 and 2. These memoranda, which are competent evidence under the Business Records Act, (28 U.S.C. §1732), were offered to show that the defendants' pressure on the local superintendents (proven by the evidence discussed on preceding pages of this brief) impaired the ability of the local superintendents to negotiate freely with HEW. The memoranda were not offered to prove that the defendants made the statements attributed to them in some of the memoranda.

Date of Call	Excerpt from Memorandum
6/7/66	James E. Ferguson to Superintendent Hill (Shelby Co.); Superintendent Hill stated that the School Board has decided to withhold the 441-B as a result of pressure from the Governor of the State.
6/7/66	Carole Winston to Superintendent Kirby (Opelika); the district has made no decision on signing a 441-B because of pressure from the Governor and State Superintendent.

Date of Call	Excerpt from Memorandum
6/8/66	James E. Gerguson to Superintendent Williamson (St. Clair Co.); Superintendent Williamson stated that the school board does not intend to sign a 441-B until the political situation in the State clears up.
6/29/66	James Conahan to Superintendent Pittard (Talladega Co.); J. R. Pittard said that the main reason he hadn't sent in the form was because of intense pressure from the Governor's office; the system said they would comply earlier but then the Governor put on pressure and they had to change their minds. He mentioned that the Governor had even demanded that he (the Governor) receive a copy of all of the district's correspondence (this the Superintendent refused to do). . .
6/29/66	James Conahan to Superintendent Elliott (Tuscaloosa Co.); he said that because of the tremendous pressures in the State from the Governor, his board was unwilling to fill in the teacher desegregation blank on the blue 7002 . . . The Superintendent said he was worried about the possibility of the Governor calling a mass meeting in his city; it would set things back 20 years. . .
6/29/66	E. R. Frost to Superintendent Courington (Russellville); Superintendent Courington indicated that the 7002 forms had not been sent in because the faculty desegregation plans had not been finalized. This was mostly the result of a forecast visit by state officials (Governor Wallace) who would look adversely to faculty desegregation.
7/1/66	Robert Sable to Superintendent Weaver (Escambia Co.); I told Mr. Weaver that his district would undoubtedly be among the next group cited. I asked if there was any help we could give or clarification of the Guidelines. He said that he understood but that they just could not do it with the pressure from the people and the government. They had freedom of choice but they just couldn't reassign teachers . . . He said with the governor and the board feeling the way they do, they just couldn't sign.
7/1/66	Allen Ellis to Assistant Superintendent Cobb (Calhoun Co.); . . . He complained of the political pressure they were getting from Governor Wallace and the lower uneducated elements in their area. He said they were attempting to follow a middle path.

Date of Call	Excerpt from Memorandum
7/1/66	James Conahan to Superintendent Nelson (Tuscaloosa City); Superintendent Nelson noted the tremendous pressure that was being exerted on the Alabama School Officials by the Governor. He said the Governor had called him a few days ago and threatened to hold a mass meeting where the Superintendent would have to explain his actions to the community; he said his job was in very real jeopardy.
7/7/66	James Conahan to Superintendent Pittard (Talladega Co.); he mentioned that the Governor had telegraphed and called and threatened a mass meeting. He said November was election time.
7/7/66	James Conahan to Superintendent Nelson (Tuscaloosa City); I told the Superintendent that his funds were about to be deferred. I read him the pertinent portion of the letter . . . The Superintendent said that the Board will meet Monday night. He said they would try to continue to walk the tightrope between us and the Governor. He said they had to because they needed the money.
7/8/66	Superintendent Mellown (Sumter County); to E. R. Frost . . . He indicated that the Amendment to the 441-B was for two purposes: 1) to try to satisfy the state political pressure groups (State School Superintendent) 2) to not agree to something that they were afraid they could not live up to.
7/8/66	Alan Ellis to Superintendent Terrell (Butler County); this call was made to inform Mr. Terrell in advance that his amendment was ambiguous and hence unacceptable, thus deferring his funds. He told me that he only added it to placate the Governor and that his attorney assured him it was meaningless.
7/9/66	Alfred T. Lile to Superintendent Botts (Pike County); the Superintendent stated that we don't know how much pressure he has been receiving from the State level. "We sent our 441-B Forms . . . and when we did not recall them, we were pressured terribly."

Date of Call	Excerpt from Memorandum
7/11/66	D. Joseph to Superintendent Thornton (Lauderdale Co.) He does not know what the Board will do, pressure from Montgomery counteracting our own.
7/12/66	Goldia Dargan's memorandum of a meeting with Elvin Hill, Superintendent of Shelby County Schools; H. M. Johnson, Chairman, Shelby County Board of Education; Mr. Harrison, Counsel for Shelby County Board of Education, and Mr. Frank Kay, Shelby County School Board member. Mr. Hill wanted to make it clear that he had never made the statement (attributed to him) that he had no intention of signing of 441-B. At one time he thought his Board was ready to do so--had attempted to solicit community support by meeting with both Negro and white groups--but the pressure from Governor Wallace has been tremendous and a large segment of the community has been influenced by such pressure.
7/29/66	Martin Cooper to Superintendent Brown (Colbert Co.) I asked Mr. Brown whether the Board had taken any further action on the 441-B or anything else at the Board meeting last night. He replied that they had talked about it again but have not agreed to sign. When asked why, he replied that the Governor and others had said that the Guidelines go beyond the Civil Rights Act and are therefore not legal.

On July 1, 1966, Superintendent Meadows issued his release on "Segregation." 91/ In this document, which he released to all Superintendents, Dr. Meadows states that "segregation has been used by people of the civilized world for man's greatest advancement"; that "segregation is the basic principle of culture," and that "there can be segregation without immoral discrimination against anyone."

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91/ Govt. Ex. 77-81. See Notebook.

3. The Anti-Guidelines Act and faculty Desegregation Fall 1966

As the opening of the 1966-67 school year approached, the efforts of the defendants to prevent local school districts from executing written assurances that they would comply with the requirements of the federal law had succeeded only in part. By the end of July there were still at least 25 school districts that had not submitted a Form 441-B to the Office of Education and 14 others that had submitted the form with amendments considered unsatisfactory by that office.[92/] However, an increasing number of local school districts were submitting executed assurances to the Office of Education bearing only the qualification that they did not bind themselves to any requirements inconsistent with the Civil Rights Act of 1964--or, as more often stated with greater specificity, inconsistent with §§ 401(b) or 604 of the Act. This latter type of qualification was accepted by the Commissioner of Education. The chart on the following page shows a chronology of the action taken by the local school districts with respect to the Form 441-B.

92/ See Appendix A.

CHRONOLOGY OF 441-B ACTION[93]

Date of Event	Unconditional 441-B Filed	Amended 441-B Filed	Rescinded 441-B
March 31, 1966 Governor's Meeting	Winfield 4-1 Butler Co. 4-2*		
April 6, 1966 Governor's Meeting	Pike Co. 4-8* DeKalb Co. 4-14*	Geneva Co. 4-7** Oneonta 4-8* Cherokee Co. 4-13 Tuscumbia 4-14*	Geneva Co. 4-7[94]
April 15, 1966 First 441-B Deadline	Auburn 4-15 Franklin Co. 4-15* Lee Co. 4-15* Andalusia 4-18 Athens 4-18 Brewton 4-18 Decatur 4-18 Jacksonville 4-18 Ozark 4-18 Sylacauga 4-18 Phenix City 4-22 Roanoke 4-22 Walker Co. 4-22 Cullman Co. 5-1 Daleville 5-1 Anniston 5-5	Jackson Co. 4-15* Fort Payne 4-18 Morgan Co. 4-19** Scottsboro 4-19 Tallassee 4-22** Elmore Co. 4-29** ** Coosa Co. 5-3* Henry Co. 5-5**	
May 6, 1966 Second 441-B Deadline	Carbon Hill 5-6 Piedmont 5-6 Etowah Co. 5-9 Monroe Co. 5-9 Russellville 5-9 Selma 5-9 Enterprise 5-10 Opp 5-10 Sumter Co. 5-10 Alexander 5-11 Dale Co. 5-11* Florala 5-13 Marion Co. 5-13 Cleburne Co. 5-17	Blount Co. 5-6* Eufaula 5-6 Calhoun Co. 5-9** Randolph Co. 5-9 Elba 5-10 Florence 5-10 Lanett 5-10** Lauderdale 5-10 Tuscaloosa Co. 5-12* Coffee Co. 5-13 Covington Co. 5-13 Walker Co. 5-17 Cleburne Co. 5-18*	Marion Co. 5-12[94]
May 24, 1966 Meadows' Letter		Tuscaloosa 5-25 Tallapoosa Co. 5-26** Decatur 5-27	Carbon Hill 5-28 DeKalb Co. 6-1 Covington Co. 6-3* Florala 6-3*
June 6, 1966 Governor's Meeting	Sumter Co. 6-6		
June 10, 1966 Governor's Telegram	Florala 7-7* Winston Co. 7-?	Russellville 6-13* Enterprise 6-14 Fort Payne 6-14 Selma 6-14 Franklin Co. 6-15* Lee Co. 6-16** Phenix City 6-16* Lamar Co. 6-29 Marion Co. 7-11** Brewton 7-12** Lauderdale Co. 7-13* Limestone Co. 7-13* Phenix City 7-13* Autauga Co. 7-14 Enterprise 7-15 Florence 7-15 Jackson Co. 7-15 Sheffield 7-18* Talladega Co. 7-20 Elba 7-22 Eufaula 7-22* St. Clair 7-22 Fayette Co. 7-25** Butler Co. 7-27* Fort Payne 7-28*	Brewton 6-15
July 29, 1966 Meadows' Telegram	Carbon Hill 7-30	Opp 7-29** Tuscaloosa 8-1* Tuscaloosa Co 8-1* Clay Co. 8-2 Sumter Co. 8-3 Fayette Co. 8-4** Dothan 8-8** Cleburne Co. 8-10* Scottsboro 8-10 Fort Payne 8-12* Cherokee Co. 8-16 Covington Co. 8-16 Lamar Co. 8-16 DeKalb Co. 8-17	
August 18, 1966			
September 2, 1966		Randolph Co. 9-2 Opp 9-8** Elmore Co. 10-28**	

93/ This chart is compiled from documents in evidence as Government's, Plaintiff's or Defendants' exhibits. Dates refer to the date that the Form 441-B was received by the Office of Education of the Department of Health, Education, and Welfare, as indicated by the "Received" stamp on the document. If the "Received" date is not available, the date of signing has been used, and is indicated in the chart with an asterisk (*). Amendments which were considered unacceptable by HEW are noted with two asterisks (**).

94/ The Marion and Geneva rescission dates refer to the dates of Dr. Meadows' communications to HEW requesting that the 441-B Forms be returned to the school systems. The Marion Board confirmed its rescission at a Board meeting on June 7, but the record does not show the Geneva Board's actions with respect to the rescission. The record does reflect that an amended 441-B filed by Geneva was not acceptable (Gov. Ex. 2).

On July 29, 1966, Superintendent Meadows sent the following telegram to local superintendents:[95]

> PLEASE REPORT BY RETURN MAIL OR WIRE THE NUMBER OF NEGRO TEACHERS ASSIGNED FOR 1966-67 TO WHITE SCHOOLS, IF ANY, IN TWO CATEGORIES, FIRST, AS TEACHERS AND SECOND, TO SERVE IN THE LIBRARY AND THEN TOTAL.

Some, but not all of the replies to this telegram, are in the record. In advising that no Negro teachers had been assigned to white schools, the Superintendent of Calhoun County said that "If it becomes necessary to use such, efforts will be made to use them in physical education classes and librarians, or assistant librarians."[96] The Superintendent of Talladega County, while reporting that his board anticipated no faculty desegregation, sought to excuse the board for having executed a Form 441-B by adding: "Our Board hopes that you and Governor Wallace will understand our situation and will realize that we have tried to hold out as long as possible."[97] The Superintendent of Decatur reported that "Two Negro teacher aides and one Negro Reading teacher have been assigned to predominantly white schools."[98]

95/ Govt. Ex. 84-91.

96/ Boozer Dep., U.S. Ex. 11B

97/ Pittard Dep., U.S. Ex. 20

98/ Leeman Dep., U.S. Ex. 9

The Superintendent of Lauderdale County reported the assignment of four Negro teachers to white schools.[99] The Tuscaloosa County Superintendent reported that "as of this date, July 29," no Negro teachers had been assigned to white schools.[100] Even these few replies must have indicated to the defendants that a solid front against faculty desegregation could be maintained only with further effort.

On August 2, 1966, the House, and on August 3, 1966, the Senate, of the Alabama State Legislature adopted identical resolutions that each of these bodies was "of the unanimous opinion that every responsible official should continue to resist all illegal requirements imposed by the 1966 Guidelines such as faculty desegregation and quota or percentage pupil assignments and we urge the responsible officials to take appropriate action to effect this resistance."[101]

On August 13, 1966, the Selma Board of Education adopted the following resolution:[102]

> Be it resolved in view of the action of the Legislature of Alabama concerning desegregation Guidelines issued by the Department of Health, Education and Welfare, that pursuant to the plan of desegregation for the City of Selma Schools approved by the United States Commissioner on May 15, 1965, this Board, for the school year commencing September 2, 1966, will accept transfers from formerly all-Negro schools to formerly all-white schools in grades 1 through 8 only.

On August 18, 1966, Governor Wallace appeared before a joint session of the Legislature of Alabama, in special session

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99/ Thornton Dep., U.S. Ex. 12B.

100/ Elliott Dep., U.S. Ex. 40.

101/ Govt. Ex. 83.

102/ Pickard Dep., pp. 21-22. The Selma Superintendent subsequently held a meeting of Negro students, (and their parents) in grades 9-12 who had chosen to attend the white high school. At the meeting he explained that the courts had not ruled on the validity of the guidelines and that the state legislature had declared the guidelines null and void. He told them in the light of these circumstances the Board could not accept their applications. Id., pp. 22-23.

assembled, and urged the enactment of House Bill 446, termed "An act to preserve the integrity of the local public school systems against unlawful encroachment in the administration and control of local schools . . ." In proposing the measure, which he asked to be passed unanimously,[103] the Governor urged that it would "provide a shield of protection against those who are intent upon destroying the public school system as we know it."[104] The Governor asked that the legislature "declare that the guidelines of the U. S. Department of Health, Education, and Welfare are illegal and that those guidelines are null and void in the great State of Alabama." He further proposed that the legislature provide "that any school board which has federal funds withheld for refusing to sign or comply with outlaw [sic] guidelines and compliance forms be appropriated a like amount of State funds."[105]

Superintendent Meadows testified in favor of the new bill before the Committee on August 23, 1966,[106] and the State Board of Education passed a resolution endorsing it.[107] The State Board, in its resolution, emphasized that "the implementation of the requirements made by the Guidelines would seriously impair the educational system of this State" and that "it is in the best interest of the educational system of this State to refuse to abide by any illegal Guidelines . . ."[108]

103/ Gov't. Ex. 92, p. 7.

104/ Ibid, p. 8.

105/ Ibid, p. 7

106/ Pl. Ex. 8.

107/ Gov't. Ex. 93.

108/ Ibid.

The anti-guidelines bill was passed on September 2, 1966 as Act No. 252. It provides that, "Any agreement or assurance of compliance with the Guidelines heretofore made or given by a local county or city Board of Education is null and void and shall have no binding effect." It forbids any local board from entering into any further agreements with any agency of the United States which would "obligate such local city or county Board of Education to adopt any plan for desegregation which requires the assignment of students in public schools in order to overcome racial imbalance or which would authorize any agent of the United States to take any unlawful action with respect to any employment practice." The Act further provides that the Revised Guidelines "are unreasonable, arbitrary, capricious, and unconstitutional and interfere with the performance of the duties imposed upon the local city and county Boards of Education in the State of Alabama to operate and supervise the schools within their jurisdiction for the benefit of the children of school age therein residing."

One effect of Act 252 was to remove from local school boards their freedom to determine, on the basis of their own legal advice, whether the HEW requirements regarding faculty desegregation were valid. What the Governor, the State Superintendent, and the Legislature had been expressing as their opinion for the past several months was now enacted as state law. Further, Section 5 of the Act creates "a state agency to be known as the Governor's Commission" with authority "to aid in and be jointly responsible with the Governor for the administration of this Act."

Apart from attempting to invalidate federal law, the Act gave the appearance of validating the action of the defendants in seeking to hold the line on faculty segregation in Alabama. With the enactment of this statute they now redoubled their efforts in this direction.

On August 24, 1966 the Tuscaloosa County School Board had formally assigned two Negro teachers to two predominantly white schools and four white teachers to two Negro schools.[109/]

The Tuscaloosa County schools opened on Tuesday, September 6 with a Negro teacher at Holt High and one at Tuscaloosa County High School, in addition to four white teachers at Negro schools.[110/] On Thursday, September 8 Dr. Meadows telephoned Dr. Elliott and recommended that the two Negro teachers who had been assigned to predominantly white schools be transferred to other schools.[111/] Dr. Meadows said he was telephoning as a constitutional officer of the state,[112/] and told Dr. Elliott that the assignment of Negro teachers to white schools was "against the law" and "public policy"[113/] of the State of Alabama.

109/ Elliott Dep. p. 118. During the summer, while their plans for faculty desegregation were being executed the Superintendent and County Board of Education felt compelled to keep these facts from the Governor and State Superintendent of Education. Govt. Ex. 1 (Tuscaloosa City), letters from Ray to Fairley and Crowder, dated June 9, 1966; Govt. Ex. 2 (Tuscaloosa) memorandum of call from Conohan to Elliott, dated June 29, 1966.

110/ Elliott Dep., p. 61

111/ Ibid., p. 63

112/ Ibid., p. 68

113/ Ibid., pp. 63, 64

On the next day, Friday, September 9, Governor Wallace told the press that he would use the police power of the state to maintain peace and requested that the two Negro teachers be removed and reassigned forthwith.[114/]

The impact of the Governor's statement upon the Tuscaloosa County school system was immediately apparent. On Sunday evening, the two Negro teachers called Dr. Elliott and asked him to meet with them at 7:30 the next morning.[115/] When the teachers met with their superintendent, they explained that "they were nervous" and "could not go to their jobs that day."[116/] The teachers stayed in Dr. Elliott's office until noon time, and he then told them to go home. Neither of them showed up for work on that day or the next.

On Tuesday, September 13, Dr. Meadows again called and recommended that the Negro teachers be reassigned.[117/]

114/ Ibid, p. 68.

115/ Ibid, p. 119.

116/ Ibid.

117/ A copy of a letter from Dr. Meadows to Mrs. Eloise Wilson, a citizen of Tuscaloosa, (Elliott Dep., U.S. 41A) commending her for her stand against the Tuscaloosa Board's action was sent to Dr. Elliott. Dr. Meadows told her that "[a] strong stand by people like you will help prevent assignment of Negro teachers to white schools". He also said that "[t]he Governor has certainly done everything that anyone can do to prevent what is happening at the Tuscaloosa County School system and we are both trying to do everything that we can to get the teacher assignment changed."

Then, on that same day Mr. Hugh Maddox, Legal Advisor to the Governor, telephoned and according to Dr. Elliott said that "it was the public policy of the State that Negro teachers not teach white children" and that it was contrary to the recently passed Anti-Guidelines legislation.[118/] When Dr. Elliott explained that he was merely complying with the law, Maddox told him that the Supreme Court had not yet so ruled, and went on to explain that the provisions of the Civil Rights Act prohibit interference with local employment policies. Maddox also assured Dr. Elliott that the Federal Government could not cut off funds to the Tuscaloosa County schools and mentioned the police power of the State.[119/] During the conversation, Dr. Elliott informed the Governor's advisor that the two Negro teachers were qualified for their jobs and that if the Negro math teacher left Hold High School, the Tuscaloosa County Board of Education would not be able to find an acceptable replacement from that area of the State.[120/]

On September 22, 1966, Dr. Meadows issued a release which read, in part:

118/ Elliott Dep., pp. 66-67.

119/ Id., U. S. Ex. 50, p. 1.

120/ Elliott Dep., U. S. Ex. 50, p. 3.

> "The boys and girls of this State and their parents deserve the fullest possible support that you as an educational leader and/or policy maker can possibly give in opposing provisions that go beyond the Civil Rights Act of 1964 and the administrative practices which are inconsistent with the best interest of a quality educational opportunity for all of our young people. It is obvious that for even a few school boards to agree to assign teachers and/or pupils not required by Sections 604 and 401(b) jeopardizes all other school systems because Federal officials can say 'Well, if a few do it, the other can do the same thing.' Of course, we are required to follow court orders even though we do not agree with such orders until such orders are either modified, repealed, or declared unconstitutional."[121]/

In the copy of the release which Dr. Meadows sent to Dr. Elliott he added, and personally initialed, a notation saying:

> The governor requests reassignment of Negro teachers so as not to be teaching white children.[122]/

Dr. Meadows called Dr. Elliott again on the morning of October 17 and told Dr, Elliott that, as State Superintendent of Education, he was going to suggest that the State assign two additional white teachers to the Tuscaloosa County system so that children attending the classes taught by Negroes would be free to select another teacher.[123]/ Dr. Meadows suggested that a meeting of the Board of Education be called and he would go to Tuscaloosa

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121/ Govt. Ex. 94.

122/ Elliott Dep., U.S. Ex. 42. The copies of the release in the posiession of other superintendents who retained it, and who were deposed did not have this.notation. Hudson Dep. Ex. 8; Roberts Dep. Ex. 14; Porch Dep. Ex. 17.

123/ Elliott Dep., p. 72-73

to meet with them and help get the Board and Elliott out of the "predicament [they] were in."[124] Dr. Elliott told Meadows that the two Negro teachers were well qualified.[125] Dr. Meadows said if the white teachers were not regularly certified, he would issue emergency certificates for them.[126]

When Dr. Meadows called the Board Chairman, the Board agreed to meet with him on October 18. At the Board meeting, Dr. Meadows repeated the offer he made to Dr. Elliott and said that he had been requested to do so by the Governor.[127]

On October 19, the Board replied to Dr. Meadows, saying it would make no change at this time.

On October 24, Dr. Meadows in a letter to the Tuscaloosa County Board and Dr. Elliott reconfirmed his previous offer, and additionally wrote:

> This is to further announce to you that the Public School and College Authority will approve any priority request for use of the State Board Issue funds allocated to the Tuscaloosa County Board of Education for making classroom space available for the two teachers.[128]

On October 25, 1966, Dr. Meadows issued a release in which, with the Governor's approval, the offer to provide additional teaching units for any school board that

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[124] Elliott Dep., p. 75.

[125] Ibid., p. 74.

[126] See discussion of certification, p. , infra.

[127] Govt. Ex. 96.

[128] Def. Ex. 5.

employed a teacher to instruct children of the opposite race, was made on a state-wide basis.[129/]

The Anti-Guidelines Bill had its effect on other school districts as well. As Superintendent Cunningham of Walker County testified during the hearing, "I recognize that under H. 446 we would not have the right to sign 441-B in its present form. We feel obligated to follow the law."[130/]

When Richard Fairley of HEW asked Superintendent Marshall of Lee County on September 29, 1966, whether his Board would sign an acceptable 441-B, Mr. Marshall replied that it didn't matter because such agreements were null and void by the State law of Alabama. He said "we can't follow the Guidelines. I am not man enough."[131/]

Similarly, Superintendent Burns told Mr. Rich of HEW on October 11, 1966, that the Pickens County Board was not planning to send in any acceptable 441-B because "that would be breaking the law."[132/]

The Calhoun County Superintendent replied to Mr. Maddox's questionaire of October 20 with respect to the signing of the assurance, "After Bill #446 seemed eminent, and final passage, we have not agreed to do anything."[133/]

129/ Govt., Ex. 97.

130/ Tr. p. 54.

131/ Govt. Ex. 2 (Lee Co.).

132/ Govt. Ex. 2 (Pickens Co.).

133/ Pl. Ex. 16 (Calhoun Co.).

The efforts of the Governor and the State Superintendent of Education to prevent faculty desegregation in the traditionally white schools of Tuscaloosa County illustrates the length to which the defendants were prepared to go in achieving the objective of Act 252. Dr. Meadows testified that the measures taken in Tuscaloosa resulted from a petition filed by some 3,000 white parents with the Governor's office and the State Board of Education. That the state officials would take similar measures in other communities where there are similar popular demand was made clear by Dr. Meadows in a release of October 25, 1966 circulated to all city and county superintendents and to the press, radio and TV media.[134/] His release said in part:

> In complete accord and with full approval of Governor George C. Wallace, any county or city board of education will be allocated a teacher unit and apportionment of funds therefor where such board employs a teacher for pupils to transfer from a teacher of the opposite race to a teacher of their own race by freedom of choice of such pupils and their parents. Two such teacher units have already been allocated to a county board of education in which thousands of people filed a petition for such relief, both with the county board of education and the Governor of Alabama.

134/ Govt. Ex. 97.

B. Maintenance of the Dual System by the Defendant State Officials

The determination of Alabama officials to perpetuate the segregated school system has been dramatized by acts of interference with local efforts to desegregate. Thus, public attention has focused upon the Governor standing in the doorway at the University of Alabama, the use of State troopers to prevent Negroes from entering schools in Tuskegee, the enactment of a statute declaring the "Guidelines" invalid, and the demands by a Governor and State Superintendent that two Negro teachers be reassigned to traditionally Negro schools in Tuscaloosa. But the more significant action by State officials in maintaining the dual system are found, not in these dramatic episodes, but in the day-to-day performance by the defendant State officials of their duties in the general supervision and operation of the school system.

The means by which the dual system is maintained were suggested by the Alabama Legislature some 13 years ago, shortly before the Supreme Court decided the Brown case. In noting what changes would have to be made to adjust to a unitary system, the Legislature said:

> The employment, seniority and tenure of teachers, the location and design of schools, the number and routing of school busses, the content and arrangement of the curriculum in every school, the standards of instruction, and practically every other aspect of the educational system of the State are based upon the present separation and would have to be drastically revised if the principal of separation should be invalidated.135/

135/ Act No. 894, Senate Joint Resolution, September 19, 1953.

Although the fear of the Alabama Legislature regarding the "principle of separation" was soon realized, the revisions in the day-to-day operation of the school system which it knew would be necessary have never been made.

1. School Construction and Consolidation

The State Board of Education and State Superintendent of Education, with the assistance of the State Department of Education, play a significant role in building and consolidating public schools throughout the State. The control has continuously been exercised to maintain and perpetuate the dual system,

a. The Extent of Control

The general supervisory power of the State Board and State Superintendent over public education in Alabama, see p. 7 , supra, extends to the construction and consolidation of schools. The State Board is specifically authorized to adopt rules and regulations "for the proper construction of school buildings." 52 Ala. Code §15. The role of the defendant State officials in public school construction and consolidation has been particularly apparent in their program of conducting surveys of the local school systems and in the procedures for financing the construction.

Since 1927, the State Department of Education, either on its own initiative or on request of a local school board, has conducted periodic surveys of the Alabama school systems. See, e.g., Horton Dep., p. 26,

Roberts Dep., p. 73; Newman Dep., p. 62.[136/] These surveys have been undertaken to enable the State Department to make judgments and recommendations regarding the location, construction, expansion and abandonment of school buildings. The surveys have three components: factual information regarding the school system; general standards regarding the minimum enrollment at each school and the minimum acreage required for each school; and judgments or recommendations of the survey staff.

The factual information, obtained from field inspections, interviews, and records maintained by the local boards and State Department, relates to the distribution of student population within the area of the school district; the student enrollment trends at each school within the system; the location, capacity and physical condition of the various school buildings; and the nature and size of the school sites. Horton Dep., pp. 11-14, 26. This information is evaluated in terms of racial policies discussed in some detail in the next section, see infra, p. 66, in terms of commonplace standards regarding the adequacy of the physical structures, and in terms of standards, established by the State Department of Education, regarding the minimum number of students that should attend each school (the minimum-student standards) and the minimum size of school sites (the minimum-acreage standards).

136/ The University of Alabama has also conducted a few public school surveys under the auspices of the State Department of Education. See, e.g., Jackson County Survey Report 1959-60, Govt. Ex. 144(c).

The standards respecting the minimum size of school sites require that for an elementary school (grades 1-6) there be at least 5 acres, plus one acre for every 100 students; for a junior high school (grades 7-9); there be at least 10 acres, plus one acre for every 100 students; and for a senior high school, there be at least 15 acres, plus one acre for every 100 students Horton Dep., p. 14. The minimum-student standards reflect the Department's view as to the number of teachers that should be assigned to each school. The Department has determined that it is educationally desirable that - as a minimum - there be at least one teacher for each grade at the six grades of an elementary school, that there be at least six teachers for a junior high school, and that there be at least six teachers for a senior high school. The minimum number of teachers for each type of school is then multiplied by the number of students the Department has determined should be assigned to each teacher (presently set at between 28 and 30) and the product is the minimum number of students that should attend each school. For an elementary school, a junior high school, or a senior high school, there should be at least 175 students for each; for a combined junior and senior high school (grades 7-12) there should be at least 350 students; and for a combined elementary, junior high, and senior high school (grades 1-12) there should be at least 525 students. See, e.g., Govt. Ex. 144(A) (Calhoun County Survey Report, 1964-65, p. 14).

On the basis of the information gathered in a survey and the standards just discussed, the survey team

makes three types of judgments or recommendations: First, the team classifies all the school buildings and present school sites as either "suitable for permanent use," "suitable for temporary use" or "should be abandoned." Second, it makes recommendations concerning the consolidation of presently existing schools -- whether certain schools should be consolidated and how this should be accomplished. Third, the survey staff recommends school centers by indicating where new schools should be constructed or present facilities expanded. The information, a statement of the standards, and the survey staff's judgments or recommendations are all published by the State Department in a Survey Report after the findings and recommendations of the Survey team are approved by the State Superintendent. Layton Dep., p. 14. Each Survey Report includes maps indicating the distribution of student population throughout the system and the location of the existing schools and the recommended school centers.

The judgments and recommendations contained in the Survey Report carry the imprimatur of the State Department of Education, and are accordingly given great respect by the local school boards. See, e.g., Nelson Dep., pp.10-11. To give the judgments and recommendations even greater force, the State Board has adopted regulations which penalize local school districts that ignore them. Certain of these regulations, governing the accreditation of newly constructed junior and senior high schools, provide that each such school must be located at a center approved by a survey in order to be accredited. Govt. Ex. 151 (Accreditation Standards, May 23, 1966). See, e.g., Thornton Dep.,

pp. 68-69; Albright Dep.p. 36. Other of these regulations, governing the allocation of state funds under the Minimum Program Fund for teachers' salaries, establish a method of calculating the number of teacher units whereby the number earned by a school not approved by a survey will generally be less than those earned by a school having survey approval.[137/] See, e.g., Roberts Dep., pp. 89-90; Weaver Dep., p. 53. The Minimum Program

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137/ Thus, elementary school teacher units are calculated on the basis of one unit for Average Daily Attendance of 31 students for all non-survey approved schools, while the basis ranges from one unit for A.D.A. of 20 students to one unit for A.D.A. of 31 students, depending upon enrollment, for approved schools. The corresponding figures for high schools are one unit for an A.D.A. of 28 students for non-approved schools, and a range of from one unit for A.D.A. of 20 students to one unit for A.D.A. of 28 students for approved schools. This is set forth in following schedule appearing in the "Regulations of the State Board of Education Pertaining to the Annual Apportionment of the Minimum Program Fund;" Govt. Ex. 127, p. 1:

SCHEDULE FOR CALCULATING ELEMENTARY TEACHER UNITS

A.D.A.	A.D.A.Per Teacher Unit
Nonsurvey-approved schools- - - - - - - - - - - - - - - -	31
Survey-approved 1-teacher school- - - - -	1-teacher unit
54 and less with more than 1 teacher- - - - - - - - - -	20
55-84 -	22
85-119 -	24
120-154 -	27
155-194 -	30
195 / -	31

SCHEDULE FOR CALCULATING HIGH SCHOOL TEACHER UNITS

A.D.A.	A.D.A.Per Teacher Unit
Nonsurvey-approved - - - - - - - - - - - - - - - - - - -	28
Survey-approved:	
74 and less -	20
75-109 -	22
110-144 -	24
145-184 -	26
185 / -	28

Fund regulations give further recognition to the Survey judgments and recommendations by specifically providing that in determining the transportation allowance for each school district the "State Superintendent shall have the authority to exclude the attendance of children transported to school centers . . . [that] are unapproved by surveys conducted by the State Department of Education." Govt. Ex. 127, p. 4. Finally, the judgments and recommendations contained in the Survey Reports are of primary importance in the State Superintendent's approval or non-approval of sites for new school construction or additions to existing school plants. As Superintendent Thornton of the Lauderdale County School System, put it: "In my opinion, they are directives to the board of education . . . [since] you must build by the state survey." Thornton Dep., p. 68. See also, e.g., Layton Dep., pp. 26, 136; Snellgrove Dep., pp. 29-32; Stone Dep., p. 83; Weaver Dep., p. 53. This primary reliance on the survey recommendations as a basis for the approval or non-approval of a construction project is explicitly acknowledged in a form prepared and used by the School Plant Consultant of the State Department of Education in responding to requests from local superintendents who seek approval of construction projects. That form states: "In accordance with custom [the State School Architect] will withhold approval of plans until prior approval can be given from the records of the Survey Staff." See, e.g., Boozer Dep., U.S. Ex. 19A.

In constructing a new school building or an addition to an existing school plant, the local school board must

obtain the approval of the State Superintendent as to the location and need for the expansion. State officials and virtually all the local superintendents deposed testified to this. E.g., Killingsworth Dep., p. 5; Brewster Dep., pp. 43-45; Harwell Dep., p. 54; Newman Dep., pp. 47-53; Garner Dep., p. 55; Kirby Dep., p. 28; Kimbrough Dep., p. 41; Leeman Dep., pp. 69-70; Snellgrove Dep., p. 31; Pickard Dep., p. 34; Hargis Dep., p. 29; Pratt Dep., p. 43; Boozer Dep., p. 103; Elliot Dep., pp. 93-94, 171; Hill Dep., pp. 66-67; Richards Dep., pp. 26-28; Pittard Dep., pp. 30-31; Ramsey Dep., pp. 41-42; Weaver Dep., pp. 52-53; Parrish Dep., p. 48; Botts Dep., pp. 21-22; Albright Dep., pp. 30-31.

The need to obtain the approval of the State Superintendent for construction projects derives, in part, from the fact that the principal source of construction funds has been in the recent past, and now remains, state bond issues. In 1959, the Alabama Educational Authority was established for the purpose of issuing $100 million in bonds for construction, 52 Ala. Code §§513(1)-513(13). In 1965, at a time when this bond issue was virtually exhausted, the Alabama Public School and College Authority, consisting of the Governor, the State Superintendent of Education, and the State Director of Finance was established with authority to issue an additional $116 million in bonds. 52 Ala. Code §513(22)-(35). Under each, the approval of the State Superintendent of Education is needed in order for a local school board to obtain funds for the specific project. For instance, the application for funds submitted by the local school board to the Alabama Public School and

College Authority specifically asks whether the State Department of Education has approved the site and center in a survey, see Govt. Ex. 167, and for each application for funds the State Superintendent formally notifies the local board and/or the Governor, who is the president of the Authority, whether the proposed construction is approved or unapproved in the Survey Report or, if no Survey Report is available, arranges an inspection by the staff of the Department. See, e.g., Leeman Dep., U.S. Ex. 16, p. 62; Brewster Dep., pp. 44-45, U.S. Ex. 20; Hill Dep., pp. 66-67, U.S. Ex. 22; Govt. Ex. 144(C) (Escambia County Survey Report 1964-65, March 30, 1966 memorandum to Governor Wallace); Govt. Ex. 144(F) (Walker County Survey Report, 1963-64) (September 14, 1966 letter to Superintendent Cunningham), (approvals) and Govt. Ex. 147, 148 (disapproval). The importance of the State Superintendent's approval or disapproval of the center and location of the school is in no small measure attributable to the fact that he is one of the three members of the Authority itself, and to the fact that he is a statutorily designated member of the Alabama Building Commission, 55 Ala. Code 367(1), which is given extensive supervisory powers over all construction under that bond issue. 52 Ala. Code §513(31) (n) (4),[138] see, e.g., Harwell Dep., pp. 49-50; Courington Dep.,

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138/ That statute provides that "the preparation of all plans and specifications of all plans and specifications for any building constructed wholly or in part with any of the money, and all work done hereunder in regard to the construction, reconstruction, alteration, and improvement of school buildings, shall be supervised by the Alabama building commission, or any agency that may be designated by the legislature as its successor." See also 52 Ala. Code §513(10) (d) (Alabama Educational Authority).

pp. 63-68, 72, 94, 97; Stone Dep., p. 81; Boozer Dep., pp. 105-106; Elliot Dep., 146-147; Leeman Dep., U.S. Ex. 14.

The State Superintendent not only has the power to approve or disapprove a construction project financed by funds from a state bond issue, but is also called upon to approve construction projects financed, in whole or in part, out of state funds distributed to local boards that are not earmarked for other purposes, or funds raised directly by the locality. See, e.g., Leeman Dep., pp. 69-70; Newman Dep., p. 47; Kimbrough Dep., p. 41; Hargis Dep., p. 29; Boozer Dep., p. 103. The State Superintendent's role in school construction is significant even where local funds are used. For example, while funds can be directly raised by local boards of education by issuing warrants, state law specifically provides that such warrants cannot be issued without the approval of the State Superintendent. 52 Ala. Code §§216, 218, 235(4). Layton Dep., pp. 60-61; Brown Dep., U.S. Ex. 8; Albright Dep., p. 31. Moreover, the State Board's and State Superintendent's control over the budgets of the local systems vests them with extensive control over school construction, whether financed through local or state funds. For example, the forms on which budgets are submitted inform the local boards the Rules and Regulations of the State Board "relating to location, planning, and construction of school buildings" must be adhered to in expenditures by local boards for capital outlay. Layton Dep., U.S. Ex. 5, p. 3. Proposed expenditures must be detailed in the annual budget required of each school system, id., p. 9, and in

determining whether to approve capital expenditures, the State Superintendent considers survey recommendations of the State Department of Education. Layton Dep., pp. 67-68. Eligibility of a local system for state funds is conditioned upon the approval of its budget by the State Superintendent, 52 Ala. Code §241, and in view of the fact that about 70% of the cost of public elementary and secondary education in Alabama is borne by the State, Def. Ex. 70, p. 18., the State Superintendent's control over budgets of local systems vests him with broad powers over almost all public school construction. Hence, whether the funds be derived from local or state sources, in constructing a new building or an addition to an existing plant, the local school board must obtain the approval of the State Superintendent as to the location and need for the expansion; and wherever possible, that decision will be based on the judgments and recommendations contained in the Survey Reports.

It should be emphasized that the power of the defendant state officials over construction is not confined to recommending sites, and withholding approval of a project. The Governor and State Superintendent constitute a majority of the Public School and College Authority, and their position vests them with an even more expansive power over the construction -- the power to establish priorities for projects and to make funds more readily available to local school systems where, in their judgment, such funding would be appropriate. The existence of this power is of some significance even though the bond statute purportedly provides for distribution of the funds among the various school districts on a teacher unit basis. For example,

in a letter dated October 24, 1966, Superintendent Meadows, after conferring with Governor Wallace, wrote to the Tuscaloosa County Board of Education offering to allocate two additional teacher units to the system and sought to encourage acceptance of that offer by also announcing in the same letter "that the Public School and College Authority will aprove any priority request for the use of the State Bond Issue Funds allocated to the Tuscaloosa County Board of Education for making classroom space available for the two teachers." Def. Ex. 5.

b. Discriminatory Use of the Control

The record in this case is replete with evidence that the State Board and the Superintendent, with the assistance of their staff in the State Department of Education, have exercised their extensive control over school construction and consolidation in such a manner as to perpetuate the dual system and to interfere with the desegregation process, and that this discriminatory use of control has persisted notwithstanding the Supreme Court's decision in Brown v. Board of Education and this Court's order of July 1964.

On occasion that abuse of power has consisted of direct manipulation of funds. For example, Superintendent Meadows' aforementioned offer regarding construction funds to the Tuscaloosa County Board of Education was intended to perpetuate faculty segregation and to interfere with the efforts of the local board to desegregate the faculty of its schools. In his letter of October 24, 1966, Superintendent Meadows offered to make two additional teacher units available to the County System for the explicit "purpose of employing a white teacher in the Northport High School and a white teacher in the Holt High School on condition that pupils would be given freedom of choice to transfer from the non-white teacher to the newly appointed teacher in each school." It was for the purpose of making "classroom space available for the two teachers" that he assured the County Board that state bond funds would be made promptly available to it on request. Def. Ex. 5. The impact of this offer regarding construction funds must

have been all the greater because of a nearly contemporaneous experience concerning a disapproval of a construction proposal. On September 16, 1966, just one month earlier, Superintendent Meadows wrote to Governor Wallace, Chairman of the Alabama Public School and College Authority, disapproving a plan of the Tuscaloosa County Board to build a new elementary school. Superintendent Elliott strongly objected both to the manner in which the application was processed and to the fact that it was disapproved. Superintendent Elliott testified that no action was taken on the application for several months; that he was obliged to make requests for decisions on the application; that finally he received only "a little form" from the State Superintendent informing him with no explanation that the construction was disapproved; that the School Plant Consultant for the Department, Mr. Horton, called and said that he could not tell him the reason for the disapproval; and that the reason finally offered for the disapproval was based on inaccurate information, Elliott Dep., pp. 135-136; 171-172; 187-188; U. S. Exs. 48 and 49. See also Gillingsworth Dep. pp. 30-31. When Superintendent Elliott received Superintendent Meadow's letter of October 24, the controversy concerning this disapproval had not been resolved.

The racially discriminatory exercise of the control over construction has not been confined to manipulating the availability of funds. For the most part, such direct confrontations between the State officials and local school boards are not to be expected because the local school boards will not be prone, or willing, to transgress the racial

policies of the Governor and the State Board and Superintendent. Where the local school boards refuse to desegregate, the state agencies can, of course, work in cooperation with them, actively assisting the local boards to maintain the dual school system. With respect to school construction and consolidation, this assistance took its more usual and systematic expression in the judgments and recommendations contained in the surveys.

This assistance could easily be rendered because the surveys collected and organized the pertinent information in terms of race, and, in fact, in some instances, the surveys were confined to those schools of a system attended by students of only one race. See, e.g. Thornton Dep. p. 26-30 (1959-1960 Survey of Negro schools; 1962-1963 Survey of white schools). Prior to the 1964-1965 school year, the census, enrollment and average daily attendance tables in the Survey Reports covering all the schools of the system were explicitly designated "white" and "Negro"; separate lists classifying the quality of the buildings and sites were maintained for Negro and white schools and so designated; and maps depicting the distribution of school population, the location of the existing schools, and the location of recommended school centers were separately maintained on a racial basis, and were so designated. See Govt. Ex. 144. The only significant change in surveys conducted commencing with the 1964-1965 school year is that separate surveys have not been conducted and, for the most part, the "white" and "Negro" designations in the separate lists, tables and maps have been eliminated. However, the separation of the

lists, tables and information in the survey reports has not ended. Classification according to race remained without any explicit designation, but it was clearly understood that the "second" list, table or map was not a mistaken duplication, but rather a way of conveying separate information regarding Negro student population and Negro schools. See, e.g., Stone Dep., pp. 72-73; Boozer Dep. pp. 25-26; Weaver Dep. p. 54-55. Dr. Layton, Director of the Division of Administration and Finance of the State Department of Education, admitted as much in open court, but stressed that this system of separate classifications is now "phasing out" -- by which he meant, so we learned, that rather than keeping separate maps for each race, a single set of maps would be kept with different colored dots for each race. Testimony of Dr. Layton. (November 30, 1966).

An analysis of the 85 Survey Reports now in evidence in this case, nearly all of which cover surveys conducted subsequent to Brown v. Board of Education, reveals that the racial information has been used by the survey staffs to insure that the recommendations and judgements on school consolidation and construction will perpetuate the dual system. This is true even of the surveys conducted subsequent to the entry of this Court's order of July, 1964. The discriminatory nature of the recommendations has manifested itself in various ways, and the following examples are merely representative:

(i) Survey recommendations regarding consolidation strictly observe the racially segregated character of the schools. As a result, it is often proposed that consolidation be effected by transporting students many miles to

another school attended by students of the same race, without regard to the capacity or relative suitability of more proximate schools attended by students of the opposite race.

The survey conducted for the Calhoun County Schools for the 1964-1965 school year, which was published in a survey report dated 1965, is illustrative of this type of discrimination. Govt. Ex. 144A. At the time of the survey there were two elementary schools located extremely close to one another in the western part of the district. One was named Hawkins and the other Bynum. Hawkins was attended solely by Negro students and Bynum was attended solely by white students. At the time of the survey, Hawkins had 46 Negro students enrolled, Boozer Dep., p. 17, and was described in the survey as "a small, two-room frame building located near Bynum." Survey, supra, p. 34. The attendance at the school fell far below the standards set by the State Department of Education for an elementary school, and thus the abandonment of Hawkins was called for. The question confronting the survey staff was the school to which the students attending Hawkins should be assigned, or rather the school with which it should be consolidated. The most appropriate school would clearly have been Bynum, which, like Hawkins, had less than the minimum number of students under the announced standards of the Department, and which also had many empty classrooms. The Survey Report described Bynum as follows:

> "Bynum is a brick, L-shaped building with a nice cafetorium. However, Bynum has recently lost a number of students and they now have three or four classrooms not in use." Id., p. 27.

But the survey staff did not recommend that Hawkins be consolidated with Bynum. Instead, it recommended that the students be transported to Calhoun County Training School -- a Negro school with grades 1 - 12, which was several miles from Hawkins in the center of the County. Not only was the County Training School a great distance from Hawkins, but it was also clear that, compared to Bynum, the physical facilities were significantly inferior and that less room was available for the students from Hawkins. The Survey Report states that the County Training School "is located on an inadequate site about which little can be done,"139/ and concludes "that a new elementary site and school is probably a must for County Training."140/ The underlying purpose of this recommended method of consolidation - to perpetuate segregation - is further highlighted by three facts: First, there was another elementary school closer to Hawkins than County Training, although that elementary school, like Bynum, was attended solely by white students. Second, the survey staff recommended that another Negro elementary, this one in the far eastern sector of the County, be abandoned and the children assigned to the already crowded County Training School, even though there were closer schools attended by white students that would be bypassed by the Negro children in travelling to County Training. Third, a 12-grade school located in the vicinity of County Training was not utilized by the survey staff in recommending a method of consolidating the Negro elementary schools, because that school was attended by white students.

139/ Id., p. 33

140/ Id., p. 35

For similar instances of discrimination regarding the method of consolidation recommended by the State Board of Education, see Survey Reports for the following school systems: Clay County, Dale County, Dallas County, Elmore County, Escambia County, Jackson County, Morgan County, Perry County, Russell County, Walker County, and Wilcox County, Govt. Ex. 144 - B,C,E, and F. These surveys were conducted between 1962 and 1966.

(ii) The survey teams have also sought to perpetuate the dual system by refusing to recommend consolidation when consolidation would necessarily have the effect of eliminating segregation. The survey teams were prepared to compromise the minimum-student standards in order to maintain segregation, even though in the judgment of the State Department of Education schools with less than the prescribed number of students are markedly inferior and inadequate.

This course of discriminatory conduct, in which State officials were prepared to subordinate their consolidation policies to the State's racial policies, is most evident in the surveys of school systems in which the total enrollment of students of one race was less than required by the State Department of Education minimum-student standards. For example, during the 1964-1965 school year there were only 202 Negro students enrolled in the Piedmont school system. All these students attended a single school that covered grades 1 - 12, and that had only eight classrooms and approximately the same number of teachers. Consolidation was clearly called for because, under the State Department's standards, a school covering twelve grades should have at

least eighteen teachers and 525 students, see p. 54, supra. It would have been relatively easy to effectuate that consolidation since the white schools in Piedmont enrolled 200 white students from three other systems. Nonetheless, the survey staff failed to recommend consolidation of that school and instead, approved the Negro school and recommended that more classrooms be built for it. Govt. Ex. 144 (I) (Piedmont City Survey Report, 1964-65). One cannot escape the inference that the staff failed to recommend consolidation because it would have necessarily resulted in desegregation.

Refusal to apply the State Department's minimum-student standards when desegregation would necessary result, as was the case with the Piedmont survey, occurs even when the survey team recommends extensive consolidation of the schools in the system attended by students of the race in the majority. For example, in the 1966 survey of the Blount County system, the survey staff recommended that the 20 schools attended by a total of 5,000 white students be consolidated into 7 schools. This would have meant that each white school would be attended by at least by the minimum number of students called for by the State Department's standards. But the staff did not recommend consolidation of the school attended by all the Negro students in the system, even though there were only 84 students in that school, less than one-sixth of the number required under the Department's own standards. Govt. Ex. 144(A) (Blount County Survey Report, 1965-66)

The same discriminatory pattern appeared in all the surveys of systems for which we have student population statistics and for which the total enrollment by students of one race was less than the number considered minimal under the Department's criteria for twelve grades.

The following chart summarizes the evidence with respect to such school systems surveyed since 1959:[141/]

School System	Year of Survey	WHITE No. of Students	WHITE No. of Schools* Actual	WHITE No. of Schools* Approved	NEGRO No. of Students	NEGRO No. of Schools* Actual	NEGRO No. of Schools* Approved
Athens	1965-66	2,314	3	4	389**	1	1
Blount	1965-66	5,005	20	7	84	1	1
Carbon Hill	1959-60	945	2	2	148	1	1
Cherokee	1959-60	3,578	10	6	490	2	1
Cleburne	1964-65	2,270	6	3	205	1	1
Coffee	1959-60	2,348	16	5	449***	1	1
DeKalb	1965-66	8,372	23	9	193	1	1
Ft.Payne	1963-64	1,808	3	3	62	1	1
Greene	1959-60	468	1	1	3,492	17	4
Jackson	1962-63	6,369	35	13	336****	3	1
Marion City	1965-66	589	2	2	486	3	2
Marion County	1959-60	2,089	20	7	165	2	1
Marshall	1959-60	10,894	27 (approx)	9	286	1	1
Oneonta	1965-66	980	2	2	180	1	1
Piedmont	1964-65	1,121	3	3	202	1	1
Tallassee	1963-64	1,532	2	2	489	1	1

* Unless otherwise indicated, the school attended by students in the minority race covers grades 1-12, for which the Department prescribes 525 students as a minimum.
** Covers Grades 1-6
*** The survey recommended that some students attend another system.
**** Covers grades 1-9.

141/ Govt. Ex. 144.

In all but four of the cases covered by the chart, the survey staff failed to recommend consolidation of the schools attended by students whose race was in the minority in the particular system for no other apparent reason than that desegregation would have necessarily resulted. With respect to those four systems, Jackson County, Cherokee County, Marion County and Marion City, the survey team recommended some consolidation of the schools, but not sufficient consolidation was recommended to make the student population of those schools adequate under the minimum-student standards of the State Department for a twelve-grade school. Such consolidation would have required desegregation. In the case of the Jackson County and Athens City systems, the survey team recommended maintenance of school centers for Negroes serving less than twelve grades: twelve-grade schools in accord with the minimum-student standards would have entailed, for those systems, some desegregation.

The above examples all involve surveys of systems where the total number of students of one race is less than the minimum number of students prescribed by the State Department for a school covering grades 1-12. It should be emphasized, however, that this policy of refusing to recommend consolidation where desegregation would necessarily result is not confined to surveys of such systems. For example, in a 1962-1963 survey of the Marengo County School District, which has a sufficient number of students of either race to support a school meeting the Department standards, the staff approved the retention of two twelve-grade schools, each attended by less than the minimum number of students. One had 271 white students and the

other 332 white students. The survey did not recommend consolidation of these two schools with one another because they were too far apart. However, each school was located in the vicinity of a twelve-grade school attended solely by Negroes, both of which were approved as permanent school centers. Nevertheless, the survey refused to recommend consolidation of the white schools with these schools for no apparent reason other than that desegregation would result. The Survey Report contains the usual discussion of the significant advantages of schools attended by at least the minimum number of students, it recommends consolidation of many of the Negro schools, and then adds: "It is difficult to apply the foregoing to the Marengo County School System white schools since there are now only two left. For this reason, Sweet Water and the County High School at Thomaston are approved." Govt. Ex. 144(E) (Marengo County Survey Report, 1963, p. 15.) See also, e.g., Oneonta City Survey Report 1966, Govt. Ex. 144(I); and Lowndes County Survey Report 1966, Govt. Ex. 144(E), for similar refusals to recommend consolidation because desegregation would necessarily result. See Appendix B, Tables I and II.

iii. Survey recommendations pertaining to the location of new schools are designed to perpetuate the dual system. Considerations of economy, convenience, and education are subordinated to the policy of racial separation, and survey approvals of construction sites reflect this policy. A striking instance of such discriminatory conduct is found in the Clarke County survey, conducted during the 1964-1965 school year. At the time of the

survey, there were 23 schools in the system attended by approximately 5800 students, 2400 whites and 3400 Negroes. Consolidation was called for. The survey staff sought to perpetuate the dual system by recommending and approving that in each of the three principal towns of the County (Coffeeville, Grove, Hill and Jackson), two separate schools, each covering grades 1-12, be maintained as permanent centers. This recommendation of <u>two</u> centers in each city can only be explained on racial terms. Even after consolidation, each of the schools in Coffeeville would have less than the minimum number of students for a twelve grade school; and for other cities, the size of student population alone could not explain why the survey team recommended that both schools in each city cover all twelve grades, rather than having one center in each city cover the elementary grades and the other center cover the junior and senior high school grades. Govt. Ex. 144(B) (Clarke County Survey Report, 1965). The survey staff was even more explicit regarding the location of schools with respect to the Lauderdale County System. In 1959-1960, the State Department of Education conducted a survey confined to the Negro schools of that system, and recommended that the ten Negro schools be consolidated into two new schools. The survey staff also recommended that the two schools each cover grades 1-12, and that the one be located in the east end of the County and that the other be located in the west end. Superintendent Thornton testified that these recommendations regarding consolidation and the location were followed, and that new there are two Negro schools covering grades 1-12 in the system,

located where the survey staff advised. Thornton Dep., pp. 26-28. See also Escambia County Survey Report 1965, Govt. Ex. 144(C), Testimony of Dr. Layton (November 30, 1966).

c. The Relief

Because the State Board and Superintendent, with the assistance of the State Department of Education, have used their power over construction and consolidation to perpetuate the dual system, and because this Court's order of July 1964 has not caused the defendants to desist from this discriminatory conduct, the United States urges that additional relief be granted to assure that this control be used to assist, rather than impede, the desegregation of the local school systems. Specifically, we urge this Court to impose restrictions on the method of conducting surveys and the granting of approval of construction sites. We further urge that the State Board and Superintendent be required to embark on an affirmative program to equalize the physical facilities within each school system.

(i) The Surveys

The surveys have played an important role in the development of public education in Alabama, and are likely to do so in the foreseeable future. The evidence discloses that there are at least 800 schools in the State that presently fall below the minimum student standards of the State Department of Education. It also indicates that there are 32 school systems in the State that have fewer Negro students than are required under the minimum-

student standards of the State Department for a twelve grade school, that there is one school system (Macon County) where there are fewer white students than required under the minimum student standards for a twelve grade school, and that there is another school system (Florala) where there are too few whites and Negroes to operate a segregated twelve grade school for either race, that satisfies the Department's minimum student standards. See Appendix B, Tables I and II. For these schools and school systems the consolidation recommendations of the survey staffs will have significant impact on desegregation. This Court should insure that these survey recommendations, unlike those in surveys conducted thus far, do not have the effect of perpetuating the dual system but are used instead to assist in disestablishing that system. This could be accomplished by directing the State Superintendent to continue conducting surveys in the future under instructions that will assure their proper use.

Survey teams should be instructed that they not fail to recommend the consolidation of schools with less than the minimum number of students required under the Department standards for such schools because desegregation would result from the consolidation. For example, the survey teams should not condone the operation of a Negro school that does not meet the Department's minimum student standards because consolidation can only be achieved by assigning the students to schools attended predominantly or exclusively by white students.

Survey recommendations regarding the method or way by which consolidation is to be effected should not be designed to preserve the racially segregated character of the schools, but instead should be designed to achieve desegregation with due regard for geographical proximity of the schools, the student capacity of the schools, and educational factors, such as the teaching staff and facilities available at the schools. Survey recommendations regarding the location, grades and capacity of new school centers, or the sbustantial expansions of existing plants, should not be such as to perpetuate racial segregation, but instead shall be designed to effect desegregation.

The instructions should be stated in each survey report, along with a statement of the other principles guiding those conducting the survey. Moreover, in order to enable the parties and this Court to determine whether these instructions are being followed, the State Superintendent should be ordered to make available to all parties each new survey report and to have the survey staff continue to indicate the race of the students in reporting their residence and the attendance at the various schools of the system in the survey reports.

(ii) Approval of Construction Sites

Buildings and expansions have been located with an eye toward operating a dual system, and their location has made it all the more difficult to achieve desegregation in any of the local school systems. See generally Platt Dep., pp. 12-16. Some of the harm attributable to the discriminatory location of new school buildings and expansions cannot

now be undone, and its effect will be felt for many years to come. But the public school facilities will continue to expand, and new schools will be constructed, and it is therefore imperative that this Court curb, and to the extent possible require the defendants to compensate for, these abuses by the state officials that have continued notwithstanding Brown v. Board of Education and this Court's order of July 1964. The sites of new buildings and expansions should be chosen in a manner to promote desegregation of the local systems. The United States therefore urges this Court to require that approval by the State Superintendent for all sites upon which schools are to be constructed or existing facilities substantially expanded shall be withheld if, judged in light of the capacity of the new building or expansion, the capacity of existing facilities, the residential patterns of the students, and the alternative sites available, the proposed construction will tend to perpetuate a racially segregated pattern of student attendance in the various schools of the system. In addition, this Court should require that the State Superintendent make available to all the parties all information in his possession relating to the approval of a construction site, including all pertinent Survey Reports.

(iii) Equalizing Physical Facilities

The record in this case amply shows that schools to which Negro students have traditionally been assigned are markedly inferior in terms of physical facilities. For example, an analysis of the 85 survey reports in evidence in this case shows that a significantly higher percentage of school buildings and sites of schools attended solely

by Negroes (at the time of the survey) were classified as "should be abandoned", as compared to those school buildings and sites of schools attended by whites. See Appendix B, Tables III and IV. This chart summarizes that analysis:

Buildings

Classification	W	N	%W	%N
Permanent	473	171	54	26
Temporary	239	165	27	26
Should be Abandoned	166	310	19	48
Total	878	646	100	100

Sites

Classification	W	N	%W	%N
Permanent	304	129	43	22
Temporary	279	157	40	27
Should Be Abandoned	122	301	17	51
Total	705	587	100	100

Source: Govt. Ex. 144.

Similarly, an analysis of the insured valuation schedules for 1966-67 compiled by the State Department of Finance reveals that the value per pupil of the school buildings (plus contents) attended predominantly or exclusively by Negro students is $295.40, while that for schools attended predominantly or exclusively by white students is $607.12. Govt. Ex. 172. See Section III-B-5, for other evidence of disparity.

The State Board and State Superintendent are chargeable with knowledge of these gross disparities, especially since they have possession of or access to the records upon which these figures are based and because the budgets of the local system submitted and approved

each year by the State Superintendent require the local board to indicate in detail all the projects for which capital expenditures will be made. See supra, p. 60. But neither the State Board nor Superintendent has taken any meaningful action in connection with their construction program to remove these gross disparities in the physical facilities, although they clearly have the power to do so. See supra, pp. 52 et. seq.

The continuation of these disparities constitutes a denial of equal protection[142/] and their continuation would tend to interfere with desegregation. For example, these disparities impair the effectiveness of freedom-of-choice desegregation plans by discouraging white children from choosing to attend the traditionally Negro schools, and they often result in Negro students being less prepared to meet the academic standards of schools previously maintained for white students. Therefore, this Court should order the State Board and Superintendent to formulate, adopt and implement a detailed plan for the elimination of the gross disparities among the various schools in each local school system.

142/ See, e.g., Sweatt v. Painter, 339 U.S. 629 (1950); Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938); see also 45 CFR §181.15 (1966 HEW Guidelines).

2. Teachers

It is now clear that the desegregation of faculty is a necessary part in the disestablishment of a dual school system based upon race. Bradley v. School Board of Richmond, Virginia, 382 U.S. 103 (1965); Rogers v. Paul, 382 U.S. 198, 200 (1965); Singleton v. Jackson Municipal Separate School District, 355 F.2d 865, 870 (C.A. 5, 1966); Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896, 901 (C.A. 5, 1966); Wheeler v. Durham City Board of Education, 363 F.2d 738, 741 (C.A. 4, 1966); Kemp v. Beasley, 352 F.2d 14, 22-23 (C.A. 8, 1965). It is also clear that effective desegregation of faculty requires more than non-discrimination in the hiring and assignment of new teachers as vacancies occur. The obligation of a school board, as recently stated by the Court of Appeals for the 8th Circuit with reference to the School Board of Little Rock, Arkansas, is as follows:

> [T]he board [should] make all additional positive commitments necessary to bring about some measure of racial balance in the staffs of the individual schools in the very near future. The age old distinction of "white schools" and "Negro schools" must be erased. The continuation of such distinctions only perpetuates inequality of educational opportunity and places in jeopardy the effective future operation of the entire "freedom of choice" type plan.
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> Clark v. Board of Education of the Little Rock School District, ____ F.2d ____ (C.A. 8, Dec. 15, 1966, No. 18368).

It is equally clear that the defendants have not only failed to exercise their authority to eliminate racial discrimination in the assignment of faculty, but have instead exercised their authority to maintain segregated faculties in the public schools of Alabama. The Governor's legal

advisor declared that "it was the public policy of the State that Negro teachers not teach white children" (Elliott Dep. pp. 56-67), and this has been the fact as well as the policy of the State. Of over 28,000 teachers in the State only 76 are teaching in schools to which students of the opposite race have traditionally been assigned.[143] See Appendix C, Table I; Govt. Ex. 156. The figures are:

	White	Negro
Total Number of teachers	19,736	9,776
Number of teachers in school of opposite race	49	27
Percent of total teachers in school of opposite race	0.24%	0.27%

The following discussion describes some of the ways the defendant state officials, through their financial and supervisory control, have played a significant part in maintaining the segregation of school faculties.

a. Allocation of the Minimum Program Fund

Most of the Minimum Program fund is used to pay local teacher salaries,[144] and state law grants the State Board of Education wide discretion in the method of apportioning funds for such salaries. Payments are based on

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143/ This figure includes library personnel.

144/ In 1963-64, $120,916,737 of the $140,292,643 total minimum program costs were allocated to teachers. Stone Dept. U.S. Ex. 16, p. 9.

"teacher units", and the method for allocating teacher units is left by statute to the State Board. Ala. Code, Title 52, §209. A recent change in the Minimum Program regulations reflects the scope of the Board's discretion. While the July 1, 1965 regulations allowed one teacher unit for every 31 elementary pupils, in 1966 the Board lowered the ratio to 1:29. Govt. Exs. 127, 128. Moreover, in order to encourage consolidation of inadequate schools the Board grants more units to small survey-approved schools than to small non-approved schools. See, supra, p. 56. And the Board has granted the following remarkably broad powers to the State Superintendent:

> In order to provide more nearly equal educational facilities for all children, the State Superintendent of Education may approve the allocation of additional teacher units to junior and senior high schools where requested, to carry out the purpose of the pupil placement law, if in his judgment after investigation the circumstances justify such approval.
> Govt. Ex. 127, I.A. 1, p. 2.

The Board and the State Superintendent have not used their power and discretion under the Minimum Program to provide an equal education to all students,[145] but instead they have used it to promote faculty segregation. The most recent misuse of Minimum Program teacher allocations took place in October 1966, when the State Superintendent, in a public release and a letter to Superintendent Elliott, offered additional teacher units to hire white replacements for Negro teachers assigned to white schools. Govt. Ex. 97;

145/ Alabama law requires the Minimum Program to be used "to assist in the promotion of equalization of educational opportunity for all children in the public elementary and high schools." Ala. Code, Title 52, §209.

Def. Ex. 5.[146] This offer shows the extent to which the Minimum Program Fund can be used to influence school boards to segregate - or to desegregate - faculty.

The State Board and State Superintendent have also knowingly allowed Minimum Program funds to support disparate pupil-teacher ratios. For the 1963-64 school year teacher units were computed separately for each race, and the local systems were required to use the funds allocated to each race for that race exclusively. Stone Dep., U.S. Ex. 16, p. 2. The Wilcox County superintendent requested Dr. Meadows to change this system, saying: "I think you can easily see the advantage in a system such as ours where we have allotted only 26 teacher units of one race and 162 of another if we can account for this on an overall basis." Govt. Ex. 138. Dr. Meadows then replied:[147]

> The use of Negro children teacher units to employ white teachers in white schools (1) will result in the courts assigning the Negro children to said white schools, [and] (2) will show Negro teachers and our Negro supporters that the white people in official positions do not intend to treat Negro pupils either justly or fairly and thereby jeopardize their support . . . . (Govt. Ex. 139)

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[146] There seems to be two ways in which the money for such an offer could be made available. Some systems do not use all the units allotted to them and these units can be reallotted. In 1963-64, for example, there were $282,081 in salaries allotted but not paid. Stone Dep., U.S. Ex. 16, p.9. Second, the minimum program allotment for current expense is the amount remaining after making the teacher, transportation, and capital outlay allotments (Govt. Ex. 127, p. 5), and the allotment of extra teacher units can, in effect, be taken from the current expense allotment. Layton Dep., p. 38. Dr. Meadows' October 25, 1966 release (Govt. Ex. 97) says the funds came from "the transfer of pupils from public schools to non-public schools", and under the minimum program regulations the teacher unit money freed by decreasing enrollment would ordinarily be absorbed into current expenses.

[147] The date of Dr. Meadows' letter is October 26, 1964, just three months after the order in this case.

But the following year the rule was abandoned, and local school boards are now permitted to use teacher units earned in Negro schools to hire teachers for white schools.[148] The defendants are accordingly subsidizing discrimination, for the defendants' own records reveal that in 1965-66 the average pupil-teacher ratio in predominantly white schools was 28:1, while the ratio in predominantly Negro schools was 30:1. Govt. Ex. 137; see Appendix C, Tables I and II. It would take at least an additional 617 teachers to bring the Negro schools up to the white pupil-teacher ratio.

In light of this discriminatory abuse of their powers over the Minimum Program Fund, the State Board of Education should now be required to establish rules and regulations, and the State Superintendent required to execute them, for the purpose of eliminating disparities among pupil-teacher ratios of schools traditionally attended by Negroes and those traditionally by whites, and for the purpose of bringing about approximately equal pupil-teacher ratios in each school of the same grade level and of similar size. In addition, these rules and regulations should provide that the teacher units earned by a school should be used at the school that earned them.

b. Vocational Teachers and Teachers of Exceptional Children

The State Superintendent's control over funds for the hiring of vocational teachers and teachers of exceptional children is extensive. Under regulations of the State Board, each of the teacher units for the education of exceptional

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148/ Testimony of Dr. Layton (November 30, 1966). Also compare Govt. Ex. 127 in this hearing with Pl. Ex. 3 in the 1964 hearing. See Botts Dep., p. 43.

children are "allotted on the basis of application made by county and city superintendents when approved by the State Superintendent of Education."[149] Here again this power has been used to maintain faculty segregation and to allot discriminatorily by a disportionate number of units for the education of white children. For example, in Bibb County there is no special education class for Negroes. The local board explained that it could find no Negro teacher for the class, and it made no attempt to hire a white teacher, even though one was apparently available as a result of a white school losing an exceptional teacher unit. As a result, Negro children in Bibb County have no exceptional children teachers but white children have five. Pratt Dep., pp. 44-45. For the State as a whole there is one exceptional teacher unit per 1606 white children, and only one per 2339 Negro children.[150]

The State Board of Education has similar authority to allocate funds to local systems for vocational education and has adopted a similar plan. Alabama Code, Title 52, §§383, 384; Govt. Ex. 133. It is normal practice for the

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149/ Govt. Ex. 136, p. 3. Ala. Code, Title 52, §§534(17) and 534(19) authorizes the State Board of Education to adopt rules and regulations for allotment of exceptional children units on "the recommendation of the state superintendent of education." The Alabama State Plan, Program of Exceptional Children and Youth, is Govt. Ex. 134. There is no requirement in the State Plan that units be used without discrimination on the basis of race.

150/ Govt. Ex. 135 shows the allocation of exceptional children teacher units is 348 for white schools and 126 for Negro schools. Race of the schools was obtained from Govt. Ex. 133. The number of students was obtained from Govt. Ex. 137. Forty-four units are for schools for which the record does not clearly show the racial identity.

State Department to "assist in locating qualified teachers" after granting a vocational unit. Yet the Director of the State Department of Education's Division of Vocational Education does not recall ever including a Negro teacher on a list of available teachers provided to a white school, and he recalls recommending only one white teacher for a Negro school, and then only at the request of the local superintendent. Ingram Dep., pp.80-82. The State Plan provides that in allotting vocational education funds "due consideration will be given to . . . the vocational education needs of all persons of all age groups in all communities of the State." Govt. Ex. 133, pp. 5-6. But the State Director of Vocational Education testified that until very recently the priority lists for applications for teacher units were maintained separately on the basis of race (Ingram Dep., p. 90), and there is presently allotted one vocational unit for every 679 students at white schools, and one for every 1,008 children at Negro schools.[151/] Selma, for example, has been trying unsuccessfully to get a second Home Economics unit for its Negro high school for six or seven years. Although denying this request, the State has granted two units to the system's white high school, which is of comparable size. Pickard Dep., p. 38, and U.S. Ex. 12; Govt. Ex. 166.

151/ Govt. Ex. 166 shows vocational teacher units for 1966-67. The race of each school was determined from Govt. Ex. 153. There are 826 units for white schools and 292-1/2 units for Negro schools. The ratio is obtained by dividing the units for each race into the 1965-66 enrollment for schools of each race, as shown by Govt. Ex. 137.

Just as they have used Minimum Program funds in an attempt to maintain teacher segregation, the defendant state officials have used their discretion in administering vocational education funds to reward non-compliance with federal desegregation requirements and to insulate local school boards from the impact of the sanctions of Title VI of the Civil Rights Act of 1964. For instance, Bibb County received $41,741 for vocational education in 1965-66, of which $7,390 were federal funds. Def. Ex. 70, p. 109. In 1966-67, after federal aid to Bibb County was terminated for non-compliance with Title VI of the Civil Rights Act[152], Dr. Meadows approved Bibb County's budget calling for an increase of some $14,000 in state funds for vocational education, making the new total for vocational education $48,283. Govt. Ex. 143. In this regard, Dr. Meadows assured the Alabama Legislature that "the State has already replaced federal funds in these school systems [not eligible for federal aid] out of funds over and above that necessary for matching Federal funds."[153]

In sum, the State Superintendent, with the assistance of the State Department of Education, has used his extensive control over allocation of state funds for vocational teachers and teachers of exceptional children in such a way as to preserve the dual system and, in at least some instances, the educational needs of the white children have been given priority over those of Negroes.

152/ See United States' Answer to Interrogatory No. 16.

153/ Pl. Ex. 8, p. 3. The Governor told the Bibb County superintendent he was "very anxious" to see further vocational units allotted to Bibb County by the state. Pratt Dep., p. 47. The schools of Bibb County are still completely segregated. See Pratt Dep., p. 18.

There has been no significant change in this policy since the entry of this Court's order of July 1964, and we therefore seek relief to prevent such abuses from recurring and to undo as much of the harm as possible. Specifically, the Court should enter an order providing that the State Superintendent shall not grant or withhold approval of applications for teacher units for vocational teachers or teachers of exceptional children in a manner encouraging segregation or impeding desegregation. Moreover, in order to eliminate disparities, we urge this Court to require that prior to granting any further applications for teacher units for vocational teachers or teachers of exceptional children, the State Superintendent should consider and, where educationally warranted, grant applications for such teacher units submitted prior to September 1966 on behalf of schools traditionally maintained for Negro students. Finally, in light of previous abuses, this Court should require that whatever services are provided by the State Superintendent or the State Department of Education in assisting local schools to find suitable teachers, and in assisting teachers to find suitable positions, shall be without racial discrimination and in such a manner to effect faculty desegregation.

c. Teacher Institutes

Section 339 of Title 52 of the Alabama Code requires that teacher institutes be held annually at such times and at such places as the State Superintendent, after consulting the local superintendents, shall direct. That statute also provides that"[s]eparate institutes shall be held for the whites and negroes." Failure by a teacher to attend the institute causes the teacher to forfeit his contract unless the State Superintendent has excused him, Id., §§340 and 341, and the State Superintendent is to appoint a conductor of the institute. Id., §342.

A year after this Court's order of July 1964 requiring him to encourage desegregation, Dr. Meadows continued to proceed on the assumption that local boards should hold racially segregated institutes. He sent each local superintendent a form on which to indicate where and when the white institute was to be held and where and when the Negro institute was to be held.[154/] He testified that generally separate institutes were held for each race in 1965. For 1966, Dr. Meadows apparently attempted to abdicate his statutory responsibility regarding teacher institutes in order to avoid holding desegregated institutes, as would constitutionally be required, and thus no form indicating where and when the institutes were to be held was sent to local superintendents. Although Dr. Meadows had previously ruled that school-by-school faculty meetings cannot be used as a substitute for system-wide teacher institutes, some

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154 / Govt. Ex. 163. See also Pl. Ex. 1, listing 1964 institutes by race. Dr. Meadows testified that in the past the State Department of Education asked the local systems when the institutes were going to be held. Digest of Testimony, pp. 2-8.

systems have now abandoned system-wide institutes in favor of institutes held in each school, and these institutes, like the faculties of the individual schools, are segregated.[155]

This Court should declare invalid that part of Section 339 of Title 52 of the Alabama Code which provides that there shall be separate teacher institutes for white and Negro teachers. Because system-wide teacher institutes provide a unique opportunity for facilitating faculty desegregation, we also urge this Court to enter an order requiring the State Superintendent to direct that a teacher institute be held on a system-wide basis by all local systems for the 1967-68 school year and for each year thereafter, and after consulting with local superintendents to prescribe the times and places for holding such institutes. The Court should further require that the institutes be conducted without racial discrimination.

155/ Govt. Ex. 164; see, e.g., Ramsey Dep., p. 20; Pratt Dep. p. 29 ("we stopped that when the first Guidelines came out").

d. In-Service Training Programs

The State Department of Education provides teachers with in-service training through conferences and work-shops. See, e.g., Ingram Dep., p. 32. The Director of the Department's Division of Vocational Education testified that he had attended no such conferences or work-shops at Negro schools, that no Negroes have been present at the conferences he attended at white schools several years ago, and that within the last few years he has attended work-shops at Alabama A & M College and Tuskegee Institute at which no white teachers were in attendance. He also testified that his district supervisors are responsible for arranging participation in such work-shops and conferences, but he denied that these supervisors had any instructions from him as to how to bring about participation. Id., at pp. 36-38.

Segregation in such in-service training programs constitutes a denial of equal protection and, in addition, impedes the pace of faculty desegregation in the local systems. This Court should prohibit the State Superintendent, and those under his supervision in the State Department of Education, from conducting racially segregated in-service training programs, and oblige them to arrange participation in those work-shops and conferences so as to bring about desegregation of the schools.

e. Teacher Certification

The defendant state officials have used the teacher certification procedure as another means of perpetuating faculty segregation. State law provides that no person can teach without a certificate, and the State Superintendent is to grant certificates based on the regulations of the State Board of Education. Ala. Code, Title 52, §§322 and 323. The Board had adopted such certification regulations. Bulletin 1953, No. 7, Certification of Alabama Teachers; Bulletin 1966 (unnumbered), Certification of Alabama Teachers. In "cases of emergency" the State Superintendent is authorized by the State to grant provisional certificates for applicants not meeting standards established in the regulations. Ala. Code, Title 52, §328. One such "emergency" occurred in Marengo County when the State Superintendent issued a provisional certificate in order to permit the local superintendent to hire a Negro teacher with only two years of college to teach at a Negro high school, even though the local superintendent had made no attempt to find a white teacher with a college degree to teach there.[156/] Another so-called "emergency" arose when the Tuscaloosa County Board of Education placed two Negro teachers in predominantly white schools. Even though the local school superintendent told the State Superintendent that the teachers were well qualified to do their job, Dr. Meadows not only

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156/ Ramsey Dep., p. 50. We assume that a provisional certificate was granted because the applicant did not meet the Board's standards for certification, which require more than two years of college education. The Director of Secondary Education of the State Department testified that hiring a teacher without a degree "cuts at the very heart of a school." Blair Dep., p. 45.

offered to make funds available for two white teachers to replace them, but also offered to pay for unqualified white teachers to replace the qualified Negro teachers. He "stated he would issue emergency certificates if such teachers were not regularly certified." Elliott Dep., p. 74, Co. Bd. Ex. 11. These abuses of the power to grant emergency certificates not only violate the Constitution, but are contrary to sound educational policy. As the State Department of Education, in its Accreditation Standards published in 1962, stated: "The employment of emergency teachers is discouraged and is not condoned by the State Department of Education." Pl. Ex. 28 in the 1964 hearing, p. 10.

In light of these abuses in the teacher certification procedures, we request that the State Superintendent be ordered to apply certification requirements without regard to the race of the applicant, and not to reduce certification requirements, or grant provisional certificates, for the purpose of perpetuating teacher segregation or avodiing desegregation of the faculty at any school. We also urge that he be required to inform applicants for certification that it is the policy of the school systems throughout the State to desegregate teaching faculties.[157/]

157/ See, e.s, the order in Carr v. Montgomery County Board of Education, 253 F. Supp. 306, 310 (M. D. Ala. 1966):

"In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee."

3. School Transportation

The State Board and Superintendent have extensive control over the school transportation systems operated by the local school boards. This control has heretofore been used in a discriminatory manner to foster the dual system and to interfere with desegregation of the local school systems. It is now appropriate for this Court to order the State Board and Superintendent to use this control to assist the desegregation process.

a. Extent of the Control

School transportation is a traditional, integral and essential part of public education in Alabama, and the general supervisory power possessed by the State Board and Superintendent over public education throughout the State extends to the transportation program of the local school boards. See supra pp. 7-8.

This general control at the state level is buttressed by the significant amount of state financial support to local transportation programs and by specific statutory authority in the State Board of Education to establish local transportation policies and standards. In 1964-65, for example, the State Minimum Program transportation allocation to the local school boards paid for 97 percent of the total cost of local school transportation programs.[158/] [159/]

Section 209 of Title 52 of the Alabama Code establishe

158/ The Minimum Program Fund paid $8,947,622 for transportation (Govt. Ex. 127). Total transportation expenditures were $9,203,408 (Def. Ex. 70, p. 21).

159/ "[T]here shall be apportioned and paid to county boards of education from the minimum program fund the amounts to be determined as hereinafter provided and in accordance with

a general method for computing the minimum program allowance for transportation, and, in addition, empowers the State Board to approve transportation routes submitted by the local

159/ (Cont.)
regulations of the state board of education. This minimum program fund shall be used principally (1) to aid in providing at least a seven months' minimum term for all schools, and (2) to assist in the promotion of equalization of educational opportunity for all children in the public elementary and high schools. The following requirements and procedures, supplemented when necessary by regulations of the state board of education, shall govern the apportionment of the fund:

1. Requirements for participating in the fund.- In order for the public schools of a county, including the independent cities, to share in the apportionment of the minimum program fund, and to receive the maximum benefits therefrom, they shall meet the following conditions: . . . e. As soon as practicable after July 1, 1935, the county board of education shall submit to the state superintendent of education for his approval under the regulations of the state board of education, the following: (1) A proposed county-wide building program which sets out in detail the location of all present and proposed buildings; which indicates proposed educational centers and grades to be taught at these centers, and which provides schools for all children of the county. (2) A proposed transportation program showing the proposed routing of buses and the condition of all roads to be used for transportation. . . .g. The county or independent cities within the county shall meet such other standards as may be set up by the state board of education to promote equal educational opportunity and provide better schools.

2. Determining the cost of the seven months or established minimum program.- In determining the cost of the seven months minimum program or whatever term may be established to be equalized, the state board of education shall proceed to find the following allowable costs for each county, including the independent cities: . . . b. The minimum program allowance for transportation shall be determined as follows for any county: The number of pupils transported on transportation routes approved under regulations of the state board of education shall be multiplied by an amount per pupil which is to be fixed by the state board of education and applied to counties within groups having similar density of population; provided, studies shall be made from time to time to determine whether the cost allowed per pupil or the cost unit should be changed in any or all counties. In determining the amount to be allotted for transportation no allowance shall be made for transporting pupils who live less than two miles from the school they are attending unless such pupils can be shown to be physically handicapped and to require transportation. The total amount allotted any county for transportation shall not exceed a figure determined by the state board of education in terms of the ratio between pupils transported to school and the total number of pupils attending school in that county or some

boards, to establish minimum standards for the buses, and to require the local boards to take "other steps to protect the safety of the children." Most significantly, §209 also authorizes the State Board to adjust the minimum program transportation allowance of the local boards for the purpose of effectuating the State Board's rules and policies. For example, in its regulations promulgated on July 1, 1965, the State Board authorized the State Superintendent, in computing the minimum program transportation allowance for each school district, "to exclude the attendance of children transported to school centers, which centers are unapproved by surveys conducted by the State Department of Education." Govt. Ex. 127. Under this statutory scheme the State Board and Superintendent have extensive control over the school transportation systems operated by the local school boards.

159/ (Cont.)
similar ratio established by the state board of education. Any county which qualifies to have transportation included in its minimum program must provide buses which meet minimum standards established by the state board of education, and must take such other steps to protect the safety of the children as are required under regulations of the state board of education. . . ."

b. Discriminatory Use of the Control

The State Board of Education and Superintendent have used this extensive control to maintain the dual system and to interfere with the desegregation process. For decades the State Board has financed and permitted the operation of bus systems organized on a racially discriminatory basis, where buses have been segregated,[160] the buses provided Negro children have been of a markedly inferior quality[161] there have been duplicating and overlapping bus routes,[162] bus transportation has been provided to permit white children to avoid attending the school closer to his home attended by Negro children,[163] and it has been used to take Negro children living near white

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160/ See, e.g., Pratt Dep., p. 29; Ramsey Dep., pp. 29-30 (busses still segregated, except for one Negro on white bus).

161/ The defendants' records show that in 1963-64 the per pupil expenditures for transportation were $36.11 per white students and $28.84 per Negro; and that in 1965-66 29.5% of the Negro busses (411 of 1394) were over 10 years old, while 11.7% of the white busses (382 of 3253) were over 10 years old, the maximum age that the State Department recommends for school busses. Layton Dep., pp. 48-49. See Appendix C, Table V.

162/ See, e.g., Pratt Dep., p. 29; Weaver Dep., U.S. Exs. 16 and 17; Ramsey Dep., p. 30.

163/ Tr., December 1, 1966, pp. 87-88.

schools to Negro schools miles away.[164/] Neither the Supreme Court's decision in Brown v. Board of Education, nor this Court's decision of July 1964 has brought about any change in this policy, and it has continued to date. In addition, the Board has often taken affirmative steps respecting school

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164/ Opp has no Negro schools. On June 24, 1966 the Opp superintendent wrote Governor Wallace, explaining why he had submitted an amended form 441-B. The letter states:

> 2. Approximately seventy-five Negro pupils living in the Opp area are transported by the Covington County Board of Education to a high school in the Andalusia City system.
>
> ...5. It is the considered judgment of this Board, in view of our unique situation, that we would be in a better position to keep integration and the employment of Negro teachers to a minimum by not being under a court order.
>
> We doubt if any court in the land would require Negro students to travel sixteen miles to another community to attend a segregated all-Negro school in another school system when they could enroll in a previously all-white school. If the court were to prevent the county from transporting Negro pupils from Opp to Andalusia, the Opp High School would pick up about seventy-five Negro pupils at one time. There would be no other school for them to attend.

Pl. Ex. 16. Similarly, the Sylacauga County superintendent discussed the possibility of a court decree:

> I must admit that it would be desirable to be able to shift the responsibility to the courts if we could dictate the terms. We do not know what the court would require....What, then, are some of the changes that we might expect the court to make in our own situation?...As many Negroes live in the immediate localities of Main Avenue, (we transport 108 pupils from this area to Mt. View) and Pinecrest (we transport 36 from this area to Mt. View) we likely would be asked to allow these pupils to attend in the area where they reside. In other words, we wouldn't have to bus students to mix them. All we would have to do would be to stop bussing them.

Porch Dep., U.S. Ex. 7, p. 6.

transportation in order to further its policy of maintaining the dual system. The following are some of the many instances contained in the record where the power over the transportation system has affirmatively been used in such a racially discriminatory manner:

(i) The State Department of Education, under the supervision of the State Superintendent, has advised local school districts regarding the establishment of bus routes to serve the dual school system. For example, the survey conducted in 1964-1965 by the State Department of Education for Russell County recommends that a predominantly white twelve-grade school in Hurtsboro be used exclusively as an elementary school and that the students in grades 7-12 be transported from Hurtsboro to a predominantly white high school in another part of the county with no regard to the capacity of a Negro school serving grades 1-12 in Hurtsboro. Govt Ex. 144 (F) (Russell County Survey 1964-65). These surveys have analyzed and diagrammed, on the basis of race, the bus routes of the students transported, and no recommendation has ever been made to consolidate overlapping and duplicative bus routes, even though such consolidation would have the effect of conserving resources, avoiding inconvenience, and bringing the local school boards into compliance with constitutional requirements.[165/]

165/ For instance of similar affirmative discriminatory conduct, see Govt. Exs. 130, 131, which reveal that in 1940, and again in 1943, the State Board passed resolutions increasing the minimum program transportation allotment by $80 per month for each white teacher position eliminated by consolidation, while making no provision for the elimination of teacher positions due to the consolidation of Negro schools.

(ii) The State Board has given explicit recognition to the use of transportation as an adjunct to the dual school system, and it has computed the minimum program in a manner that made it economically attractive and possible for school districts to operate the transportation on a racial basis. Prior to the 1965-1966 school year, the State Department of Education separately computed the minimum program fund transportation for each school district on the basis of race; the local school board had to report average daily attendance of students being transported on forms calling for separate statistics for white and Negro students, and the pupil density was also measured separately for each race. Layton Dep., p. 46. For the 1965-1966 school year, the State Department of Education formally abandoned this practice, and purported to adopt a unitary method of computation. Ibid. However, it soon became apparent that this unitary method of computation would result in a reduction of transportation allowance for 23 counties. Govt. Ex. 140. For these counties, the integrated computation would have eliminated that portion of the transportation allowance previously attributable to students of one race who were dispersed in residence and small in number. This unitary computation would have reduced the amount of State funds to these counties and thus imposed economic pressure on the local boards to abolish the uneconomical and unconstitutional dual transportation routes. The State Board unanimously acted to remove this pressure. It passed a resolution on March 1, 1966, amending the Minimum Program

regulations "so as to provide that no school system receive less for school transportation for the current year than was received for the 1964-1965 school year."[166]

166/ Govt. Ex. 141. The resolution reads:

> WHEREAS, it is necessary to calculate the State allotment for school transportation to the public schools on the customary density of population cost basis without reference to race; and
>
> WHEREAS, in making this calculation, adequate funds are not available to give school systems having predominately one race as much for transportation for the current year as the school systems had last year and had already budgeted for the current year; and
>
> WHEREAS, it is estimated that there will be adequate funds in other current expenses to shift to school transportation so that no school system will receive less for school transportation than it received last year nor less for current expenses than it received last year:
>
> THEREFORE, BE IT RESOLVED, that the Minimum Program regulations be amended so as to provide that no school system receive less for school transportation for the current year than was received for the year 1964-65.

The regulations stay in effect until changed. Layton Dep., p. 48.

(iii) In an effort to obstruct the effectiveness of an order of this Court of August 1963 requiring enrollment of Negro students in the formerly all-white Tuskegee High School, State Superintendent Meadows, in a letter dated September 19, 1963, "recommended" that Macon County "extend the county school bus transportation service". (Pl. Ex. 4 in the 1964 hearing). This extension would have facilitated white students, who were boycotting Tuskegee High School because of the enrollment of the Negroes, in transferring to the Shorter and Notasulga schools, in which no Negroes had yet enrolled. On January 30, 1964, the State Board passed a resolution specifically ordering the Macon County Board of Education "to provide school transportation for the children attending the Shorter and Notasulga Schools," (Pl. Ex. 47 in the 1964 hearing) and on the same day, Superintendent Meadows telegrammed the resolution to the local superintendent, with the statement that the State Board "directs" that the resolution be carried out. (Pl. Ex. 5 in 1964 hearing.)

c. The Relief

Segregation and racial discrimination in the transporting of students, just as racial discrimination in any other service provided by the local school board, is prohibited by the Equal Protection Clause, without regard to its effect on the desegregation of the schools. However, the manner of operating school transportation can also be a critical factor in the process of disestablishing the traditional dual system. An example is furnished by a case that was recently before this Court:

> The major factor that has prevented the plan adopted by the Barbour County Board of Education from achieving its announced purpose, that is, the desegregation of the county school system, is the fact that a large majority of the students attending the various schools throughout Barbour County are taken to those schools through the medium of school buses that regularly transport children from or near their residences to their schools. With very few exceptions, the school bus transportation system in Barbour County including the routes traveled by the buses, has not been changed for many years. The school bus transportation system in Barbour County was designed, by admission of the parties in this case, to transport children from or near their residences to schools that were then being operated on a segregated basis by reason of race or color. The system continues at the present time to operate in a manner that is designed to service a dual school system based upon race or color. Therefore, the Negro students in Barbour County, Alabama, find themselves with transportation reasonably available only to schools formerly attended solely by Negroes. According to the evidence in this case, this has, to a large extent, impaired the effectiveness of the freedom of choice plan promulgated and adopted by the Barbour County Board of Education. This, together with the criteria outlined above used by the County Board of Education in accepting or denying the choices of Negro students, has resulted in the dual school system based on

> race or color continuing to operate in Barbour County, Alabama, with the exception of token desegregation.[167]

Desegregation will be impeded if transportation continues to be provided for those students who travel many miles to avoid attending a school with members of the opposite race and transportation is not made available to students wishing to attend schools previously attended by members of the opposite race. Accordingly, school desegregation decrees of the federal courts[168] and the HEW Guidelines,[169] require local school districts to provide school transportation on a nondiscriminatory basis.

167/ Franklin v. Barbour County Board of Education, Civ. Action No. 2458-N, M.D., Ala., September 22, 1966. See also Harris v. Crenshaw County Board of Education, Civ. Action No. 2455-N, M.D., Ala., September 23, 1966.

168/ See, e.g., Franklin v. Barbour County Board of Education, supra; Harris v. Crenshaw County Board of Education, supra; Carr v. Montgomery County Board of Education, Civ. Action No. 2072-N, M.D., Ala., March 22, 1966; Harris v. Bullock County Board of Education, 253 F. Supp. 276, 277, M.D. Ala., 1966; United States v. Lowndes County Board of Education, Civ. Action No. 2328-N, M.D. Ala., February 10, 1966; Wright v. County School Board of Greenville County, Civ. Action No. 4263, E.D. Va., January 27, 1966; U. S. v. North Pike Consolidated School District, Civ. Action No. 3807, S.D. Miss., September 25, 1965; Baird v. Benton County Board of Education, Civ. Action No. WC 6513, N.D. Miss., August 3, 1965; U. S. v. Natchez Special Municipal Separate School District, Civ. Action No. 1120(W), S.D. Miss., January 28, 1966 as amended April 15, 1966; Killingsworth v. Quitman Consolidated School District, Civ. Action No. 1302(E), S.D. Miss., August 14, 1965.

169/ The relevant sections of the 1966 Guidelines provide:

> §181.14 Services, Facilities, Activities, and Programs
>
> (2) If transportation services are furnished, sponsored or utilized by a school system, dual or segregated transportation systems and any other form of discrimination must be eliminated. Routing and scheduling of transportation must be planned on the basis of such factors as economy and efficiency, and may not operate to impede desegregation. Routes and schedules must be changed to the extent necessary to comply with this provision.

The abuse of control over operation of the local school transportation system by the State Board and Superintendent makes it appropriate that this Court grant relief designed to prevent such abuses in the future, and to require that the control be used in a manner to assist rather than impede the desegregation process required by federal law. More specifically, the United States urges this Court to order the defendant State officials to require all local school boards, prior to the commencement of the 1967-68 school year, to eliminate racial segregation in school buses, to eliminate overlapping and duplicative bus routes based on race and to establish nondiscriminatory criteria governing the availability of bus transportation to students within the system. For school districts operating under a freedom-of-choice attendance plan these criteria should provide,

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169/ continued

§ 181.51 No Limitation of Choice; Transportation

No factor, such as a requirement for health or birth records, academic or physical examinations, the operation of the school transporation system, or any other factor except overcrowding, may limit or affect the assignment of students to schools on the basis of their choices. Where transportation is generally provided, buses must be routed to the maximum extent feasible so as to serve each student choosing any school in the system. In any event, every student choosing either the formerly white or the formerly Negro school (or other school established for students of a particular race, color, or national origin) nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

at a minimum, that all students will be given the right to transportation to the school he attends if that school is the one nearest his residence that had traditionally been attended by students of the opposite race and if the school is at least two miles[170/] from his residence. This rule seeks to assure that in a school district that generally provides such transportation and chooses to desegregate on the basis of a freedom-of-choice attendance plan the lack of bus transportation shall not become a bar to students choosing to attend a school attended by members of the opposite race. The rule seeks to maximize the freedom or opportunity of all students in the district to choose to attend a school

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170/ This 2 mile figure is derived from the fact that Section 209 of Title 52 of the Alabama Code governing the minimum program allowance, see footnote 159 supra, provides that, "[I]n determining the amount to be allotted for transportation no allowance shall be made for transporting pupils who live less than 2 miles from the school they are attending unless such pupils can be shown to be physically handicapped and to require transportation." In addition, the Minimum Program regulations of the State Board provide that the transportation allowance shall be computed on a basis that includes only the attendance of children in elementary grades who live two miles or more from an elementary school center and the attendance of high school children who live two miles or more from a high school center. Govt. Ex. 127, section II B 1.

from which they were previously excluded because of their race.[171/] It is one of the costs of freedom-of-choice plans, but one required to make those desegregation plans work and, we believe, not too high a price for school systems, such as those in Alabama, that have extensively used the school transportation systems to perpetuate public school segregation, often sacrificing all considerations of efficiency and economy. See supra, pp. 99-100. The State Superintendent should require that all local school boards submit to him for approval their proposed bus routes and criteria governing eligibility for bus transportation and to communicate those approved to the parents and students in their districts in a readily understandable manner; and the State Superintendent should, in turn, make available to all parties, the bus routes and criteria governing the availability of transportation that he has so approved. In addition, we urge this Court to require that all technical assistance regarding

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171/ See § 181.51 of the 1966 HEW Guidelines, quoted in footnote 169, supra. See also provision II (n) in the proposed uniform decree formulated by the Court of Appeals for the Fifth Circuit in United States v. Jefferson County Board of Education, (C.A. No. 23345, December 29, 1966) which reads:

> (n) Transportation. Where transportation is generally provided, buses must be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the formerly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

school transporation rendered by the State Superintendent to the local school districts [172/] be made available for the purpose of assisting them to eliminate overlapping and duplicative routes based on racial considerations and to formulate nondiscriminatory criteria regarding eligibility for transportation. Finally, relief should be granted for the purpose of assuring that racial discrimination is not reflected in the quality of bus service or the condition of the busses operated by the local school districts.[173/]

172/ The State Department of Education already helps school systems establish efficient bus systems. Layton Dep., p. 52.

173/ While the minimum program regulations authorize the State Superintendent, in computing the minimum program transportation allowances for each school district, to exclude the attendance of children transported on dangerous buses, Govt. Ex. 127, that regulation has not been enforced and no meaningful standards have been promulgated by the State Superintendent to eliminate racial disparities in the bus service. Layton Dep., p. 49.

4. Other Discriminatory Action by the Defendant State Officials

Besides the manner in which they have exercised their authority with respect to construction, teachers, and transportation, the defendant state officials have established and continue to operate two systems of trade schools and junior colleges, one for Negro students and the other primarily for white students.

Under Alabama law, the State Board of Education is responsible for the operation and maintenance of all institutions built under the Regional Vocational and Trade School Act of 1947, Ala. Code, Title 52, §451(4) and the Alabama Trade School and Junior College Authority Act of 1963, Ala. Code, Title 52, §509(96). The location of each new trade school or junior college established under the 1947 and 1963 Acts, is determined by the State Board of Education, Ala. Code, Title 52, §509(85) and 451(3).

The operation of these institutions reflects the defendants' continued adherence to the policy of segregated public education. Negroes have six trade schools and two junior colleges; white students have 21 trade schools and twelve junior colleges.[174] Dr. Meadows testified that the Negro trade schools have a set of attendance areas that cover the State (except the southeast), while the white

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174/ Layton Dep., pp. 82-83; Govt. Ex. 153, pp. 33-39. The Educational Directory lists white trade schools, followed by Negro trade schools; junior colleges are listed in the same manner. Govt. Ex. 153.

trade schools have a separate set of attendance areas that overlay those of the Negro schools. Also, both of the Negro junior colleges serve counties served by white junior colleges.[175/]

Not only did the defendants fail to take steps to eliminate the dual nature of the trade school and junior college system after this Court's decree of July 13, 1964, but they continued to open new trade schools based on the dual system. On March 19, 1965, Dr. Meadows said in a speech that two trade schools and a new junior college were being established for the "minority race."[176/] Fourteen white and two Negro trade schools have opened since 1964.[177/]

In addition to this discrimination regarding trade schools and junior colleges, the defendant state officials act so as to foster racially segregated colleges throughout the State. Dr. Meadows sends to white colleges achievement and mental maturity test scores from white high schools, and sends test scores from Negro high schools to Negro colleges with the names and test scores of prospective students.[178/]

175/ Four grade schools of each race are located in the same cities, Mobile, Montgomery, Gadsden, and Tuscaloosa. Wenonah State Technical School (Negro) is in Birmingham, while Bessemer State Technical Institute (white) is in Bessemer. J. F. Drake State Technical Trade School (Negro) is in Huntsville, while the Tennessee Valley State Technical School (white) is in Decatur, 24 miles away. Gov't. Ex. 153, pp. 33-39.

176/ Gov't. Ex. 160.

177/ Compare Pl. Ex. 27 in the 1964 hearing, pp. 30-31, with Gov't. Ex. 153, pp. 36-39.

178/ Blair Dep., pp. 67-69 and 79, U.S. Ex. 31. The colleges--many of them state colleges operated by the defendants--request the Department of Education to send them scores from designated high schools, according to Dr. Blair.

The defendant state officials recognize the dual school system in virtually every record they keep. Not only do they keep racial records that would be useful for legitimate educational purposes (such as race of each student[179] and teacher),[180] but they also keep records that can only serve to perpetuate the dual system. Every time the state school architect receives an architectural contract from a local school system for Dr. Meadows' approval, he begins a file on the project with a slip designating the race of the school.[181] Institute Records (lists of all teachers in the state) not only list the teachers by race, but also list every school with a racial code.[182] The Educational Directory, which in 1964 labelled schools "White" and "Negro,"[183] still lists schools by race, even though the labels have been removed. Every listing in the Directory contains all white schools (or organizations) first in alphabetical order, followed by Negro schools (or organizations) in alphabetical order.[184] Such bifurcation of the listings can be of no use in a unitary school system.[185]

179/ Govt. Ex. 137, Part I, Section VI.

180/ Govt. Ex. 161.

181/ Killingsworth Dep., p. 20; Horton Dep., U.S. Ex. 5.

182/ White school codes are preceded by a zero; Negro school codes are preceded by a one. See Govt. Ex. 161.

183/ Pl. Ex. 27 in 1964 hearing.

184/ Layton Dep., pp. 79-85.

185/ As noted, supra, Dr. Meadows has eliminated racial listings of expenditures; such listings would be of great value in determining what steps were being taken to eliminate the dual school system.

5. Disparity

One by-product of the dual school system is the inequality that often exists between the white and Negro schools. We have already noted that a higher proportion of Negro school buildings and sites than white school buildings and sites have been designated by the State Department of Education as unsuitable for use as schools, and that the per-pupil valuation of school buildings and contents is $607.12 per white pupil as compared to $295.40 per Negro pupil.[186/] We have also pointed out the disparate pupil-teacher ratios and comparable disparities in bus transportation statistics.[187/] It is no longer possible to know the disparities in current per-pupil expenditures because after this Court entered its order of July 1964, the defendants halted the racial reporting of expenditures.[188/] The 1963-64 figures, which are the most recent available, are as follows (See Appendix C):

Expenditures Per Pupil in Alabama

	White	Negro
Vocational Expenses	$ .54	$ .37
Operation of School Plant	11.29	8.04
Maintenance of School Plant	6.42	4.24
Capital Outlay	40.49	31.16
Bus Transportation	36.11	28.84
Total (Other than teacher salaries)	$94.85	$72.65

186/ See Section III, B. 1. of this Brief.

187/ See Section III, B. 2. and 3.

188/ Layton Dep., pp. 113-114.

These figures come from financial statements submitted to the defendants by the local school systems.[189] The expenditures reflected in them were made on the basis of budgets submitted to and approved by the State Superintendent of Education.[190]

Although racial figures on expenditures are no longer available, there are many other indicia of disparities between Negro and white schools. For example, the 1966-67 Educational Directory published by the defendants reflects that over a quarter of the Negro high schools in Alabama are unaccredited, as compared with 3.4% of the white schools.[191]

The accreditation applications also show disparity in the availability of library books, with an average of 8.54 books available for each white pupil and only 6.53 available to each Negro pupil.[192] This disparity is even

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189/ Govt. Ex. 142. The state-wide average still conceals the even worse disparities that occur in individual systems. For example, adding the above expenditures, minus capital outlay, in Barbour County expenditures were $26.08 per Negro pupil and $55.15 per white pupil; if capital outlay is included the figures become $29.71 per Negro and $229.18 per white child. In Clarke County the figures without capital outlay are $41.56 for Negroes and $80.26 for white children and capital outlay is $22.79 per Negro child and $44.39 per white child.

190/ Ala. Code, Title 52, §§236 and 241. See also Layton Dep., pp. 62-68.

191/ See Appendix C, Tables I and III.

192/ See Appendix C, Table III.

greater in the following systems:

System	Library Books Per Pupil	
	W	N
Barbour Co.	12.4	5.5
Butler Co.	12.7	3.7
Elmore Co.	9.1	3.2
Marengo Co.	10.4	4.1
Pickens Co.	13.1	5.3
Sumter Co.	11.5	5.8

Not only library books, but also free text-books, are inequitably distributed. Alabama's free text-book law grants the State Board and Superintendent broad authority to ensure that text-books are equitably distributed.[193/] Nonetheless, in Marengo County the school system provides an average 10.6 text-books for each white child but only 7.9 for each Negro child.[194/]

193/ Act No. 221, 1st Special Session 1965 (April 20, 1965), §19 provides in part: "The State Superintendent of Education shall recommend, and the State Board of Education shall determine uniform measures and factors upon which each local school system's pro-rata share of the state textbook fund shall be computed and allocated, on the basis of total enrollment in each school system and percentages of total enrollment in the higher and lower grades and such other factors as may be relevant to an equitable per pupil allocation to the separate school systems of the State."

194/ Ramsey Dep., U. S. Ex. 10.

C. The Nature of the Relief

The principal question facing the court is not whether relief should be granted, but what specific form of relief against the defendant state officials can be effective to accomplish the desegregation of public schools throughout the State. We have analyzed the various functions and programs of the State Board of Education to aid the court in its consideration of this question. With respect to each function and program of the State Board, the important consideration is whether the court can effectively control that program or function through its order to further compliance with constitutional standards at both the state and local levels.

Upon the record in this case it is clear that Governor Wallace, Superintendent Meadows and the members of the Alabama State Board of Education have, contrary to the oath they took to uphold the Constitution of the United States, actively sought to prevent implementation of a part of the Constitution within the State of Alabama.

In considering relief against their conduct, however, it is inappropriate to think in terms of retribution for their constitutional wrongs. The true task of this Court, as we see it, is to frame an order designed not to deal particularly with the wrongs of the defendants but to accomplish the desegregation of the public schools throughout the State in a manner that best serves the interests of the students and of the communities involved. The questions involved in such an undertaking admit of no simple, and perhaps of no single, answer.

We believe upon the record in this case that the decree of the Court should cover four principal areas.

First, the preliminary injunction against Governor Wallace, Superintendent Meadows, and the Alabama State Board of Education against interference with the efforts of local school systems to desegregate should now be made permanent. No additional discussion should be necessary on this point as the Court has already determined the propriety of such relief and the evidence already reviewed establishes the need for a permanent order.

Second, the Superintendent and the State Board should be enjoined from racial discrimination in educational activities under their direct control. The relief appropriate to many of these activities has already been discussed in the body of this brief. The other aspects not already discussed, such as discrimination in the operation of the state trade schools and junior colleges, are sufficiently clear as to require no discussion.

Third, the decree should deal with the problem of committing each and every local system in Alabama to a desegregation program meeting minimum legal standards. The need for relief directed to this end is clear.

For the 1965-66 school year there were 159 schools in the State attended by both white and Negro students as compared to 1,748 schools attended exclusively by members of one race.[195/] For the current school year, with

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195/ These statistics and those immediately following are based upon the Summary of State-wide Statistics, Table I, Appendix to this brief.

respect to the 89 school systems for which there is information in the record, there are 265 schools attended by both white and Negro students compared to 837 attended exclusively by either white or Negro children. Out of the approximately 39,500 teachers and school library staff members in the Alabama public school systems only 76 were assigned to teach in schools in which their race was a minority of the faculty.

The Survey of School Desegregation in the Southern and Border States, 1965-66, published by the United States Commission on Civil Rights in February, 1966, shows that of all the states, Alabama had the lowest percentage of Negroes attending school with white students for the 1965-66 school year.[196] The figures for the number of Negroes in schools with whites in the five states which were the last to maintain complete segregation after the Brown decision are as follows:

State	Number	Percentage
Alabama	1250	.43
Mississippi	1750	.59
Louisiana	2187	.69
South Carolina	3864	1.46
Georgia	9465	2.66

[197]

196/ The statistics published by the Commission were based upon estimates made by the Southern Education Reporting Service in December, 1965.

197/ The rank of Alabama among these states has apparently not changed for the 1966-67 school year. The Baltimore Sun of December 9, 1966, p. A5, reports that the Office of Education released statistics showing the percentage of Negro students attending

(Cont. on next page)

Thus the defendant state officials could well point to statistics as justifying their conduct -- not legally, but in terms of the practical goal they have sought. This, in turn, could well make more difficult the course of elected officials in other areas who seek to uphold, rather than nullify, the law.

The most important statistics, in terms of defining the scope of the task before this Court, are those relating to the number of school districts in Alabama that are committed neither by court order nor by written assurances to HEW to disestablish their dual systems. A tabulation of these systems by judicial district, appearing in the next pages as Table I, shows that in each of the three judicial districts in Alabama there are the following number of local school systems under court order, in compliance with HEW by virtue of having submitted an acceptable form 441-B, or uncommitted

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(Continued from preceding page)

197/ predominantly white schools in the current school year in these states to be:

State	Percentage
Alabama	2.4
Mississippi	2.6
Louisiana	4.9
South Carolina	6.6
Georgia	12.8

TABLE I

DESEGREGATION STATISTICS*

NORTHERN DISTRICT OF ALABAMA

	1965-66 Enrollment		Negro Students in Predominantly White Schools		Negro Teachers in White Schools
	W	N	1965-66	1966-67	1966-67
Under Court Order					
Bessemer	2838	5298	0	64	0
Birmingham	36091	34969	56	-	0
Fairfield	1832	2159	0	-	0
Gadsden	9436	3408	0	-	0
Huntsville	31231	2599	46	-	0
Jefferson Co.	46865	19035	24	-	0
Lawrence Co.	5247	1902	5	-	0
Madison Co	8516	4089	18	-	0
HEW Plan					
Blount Co.	4988	62	0	0	0
Sumter Co.	959	5082	4	16	0
Clay Co.	2276	652	3	7	0
Lamar Co.	2705	639	0	8	0
Talladega Co.	6052	4148	23	76	0
Tuscaloosa Co.	8127	3746	0	90	2
Sylacauga	2148	1083	9	27	0
Limestone Co.	5801	2040	0	56	0
Athens	2412	433	7	17	0
St. Clair Co.	5151	1322	0	52	0
Tuscaloosa	8258	5979	67	246	1
Walker Co.	9678	1488	13	84	0
Decatur	7128	1321	11	83	3
Anniston**	4641	3273	0	239	0
Piedmont	1140	178	0	17	0
DeKalb Co.	8383	177	0	17	0
Cleburne Co.	2282	225	2	31	0
Tuscumbia	1709	613	0	88	1
Florence	6251	1295	0	187	1
Scottsboro	2329	320	0	63	1
Sheffield	2505	607	0	128	0
Russellville	1706	291	20	75	0
Jacksonville	1994	183	7	55	0
Lauderdale Co.	7703	719	78	217	3
Carbon Hill	940	113	0	38	0
Oneonta	955	170	18	71	0
Etowah Co.	7495	52	0	22	0
Franklin Co.	3681	26	0	13	0
Jackson Co.	7074	228	67	139	2
Cullman Co.	8200	73	46	65	0
Fort Payne	1771	39	26	59	0
Winston Co.	3644	0	6	19	0
Winfield	1090	0	0	0	0
Cherokee Co.	3549	505	0	-	0
Cullman	2869	0	0	-	0
Uncommitted					
Bibb Co.	2385	1427	0	0	0
Marion Co.	4238	159	0	0	0
Shelby Co.	6431	2155	0	0	0
Pickens Co.	2675	3322	0	8	0
Fayette Co.	2947	806	0	4	0
Greene Co.**	561	3333	0	28	0
Calhoun Co.	10683	1611	8	41	0
Talladega	2790	1651	19	58	0
Attalla	1899	688	0	37	0
Colbert Co.	4258	1092	36	94	0
Marshall Co.	13208	314	24	69	0
Muscle Shoals	1525	149	20	62	0
Jasper	1764	0	1	6	0
Mountain Brook	2976	0	0	0	0
Morgan Co.	9292	818	0	-	0
Tarrant	1972	135	0	-	0

*Some of these statistics are incomplete and others may be in error. The government will attempt to obtain complete and correct statistics to furnish to the Court.

**In litigation but not under court order.

DESEGREGATION STATISTICS*

MIDDLE DISTRICT OF ALABAMA

	1965-66 Enrollment		Negro Students in Predominantly White Schools		Negro Teachers in White Schools
	W	N	1965-66	1966-67	1966-67
Under Court Order					
Crenshaw Co.	2336	1353	17	23	0
Macon Co.	486	5195	32	137	0
Barbour Co.	1271	2935	0	-	0
Bullock Co.	847	3026	25	-	-
Lowndes Co.	703	4070	0	-	-
Montgomery Co.	23531	17609	0	-	0
HEW Plan					
Dale Co.	1919	711	0	0	0
Elba	1150	591	0	3	0
Pike Co.	1675	2158	2	14	0
Randolph Co.	1765	1339	2	10	0
Butler Co.	3026	3247	7	29	0
Andalusia	1981	760	11	7	0
Autauga Co.	3966	2471	5	28	0
Coffee Co.	2087	451	4	10	0
Covington Co.	2825	671	0	17	0
Alexander City	2830	1209	2	36	0
Troy	1532	1055	13	47	0
Phenix City	3716	2904	27	143	0
Eufaula	1453	1136	0	59	0
Ozark	3032	941	34	52	3
Enterprise	3083	964	0	66	1
Florala	366	175	0	187	0
Daleville	1060	0	17	14	0
Roanoke	1253	0	0	30	0
Auburn	2149	1370	0	-	0
Uncommitted					
Lee Co.	2048	2069	0	3	0
Geneva Co.	4135	1315	2	3	0
Houston Co.	3862	1719	0	13	0
Tallapoosa Co.	2434	1837	0	16	-
Opelika	2789	1895	0	19	0
Russell Co.	1792	4034	10	64	0
Coosa Co.	1456	1203	0	24	0
Tallassee	1509	486	0	17	-
Elmore Co.	4163	2647	0	123	0
Opp	1349	0	0	10	0
Chambers Co.	3524	3640	0	-	0
Chilton Co.	4844	1222	1	-	0
Dothan	5843	2502	0	-	0
Henry Co.	1829	2007	7	-	0
Lanett	1309	606	0	-	0

*Some of these statistics are incomplete and others may be in error. The government will attempt to obtain complete and correct statistics to furnish to the Court.

DESEGREGATION STATISTICS*

SOUTHERN DISTRICT OF ALABAMA

	1965-66 Enrollment		Negro Students in Predominantly White Schools		Negro Teachers in White Schools
	W	N	1965-66	1966-67	1966-67
Under Court Order					
Choctaw Co.	2400	2832	0	0	-
Mobile Co.	47308	32639	16	-	0
Wilcox Co.	1086	4577	0	-	0
HEW Plan					
Monroe Co.	2572	3811	1	8	0
Selma	3486	3695	22	66	0
Uncommitted					
Conecuh Co.	1983	2505	0	0	0
Marengo Co.	792	3598	0	0	0
Baldwin Co.	10598	3907	0	3	0
Thomasville	777	797	0	2	0
Brewton	982	568	0	6	0
Hale Co.**	1159	4320	6	50	0
Escambia Co.	3780	2685	64	94	0
Marion	567	298	0	11	0
Clarke Co.	2571	3489	8	-	0
Dallas Co.	1913	6323	0	-	0
Demopolis**	1306	1133	0	-	0
Linden	743	801	0	-	0
Perry Co.**	730	3274	10	-	0
Washington Co.	2952	1776	0	-	0

*Some of these statistics are incomplete and others may be in error. The government will attempt to obtain complete and correct statistics to furnish to the Court.

**In litigation but not under court order.

by either of these means to a plan of desegregation:

	N. Dist.	M. Dist.	S. Dist.
Under Court Order	8	6	3
HEW plan	35	19	2
Uncommitted	16	15	14

A district-by-district review of the "uncommitted" school systems as they appear on Table 1 shows that they are not only systems that have refused to make a paper commitment but they are also systems that, by-and-large, have accomplished nothing or very little in desegregating either their students or faculty. These are the districts upon which attention must focus if relief is to be effective and if federal law is to be given equal effect throughout the State. They are districts which, by reason of their non-compliance, have lost or are threatened with a loss of continued federal financial support. Continued non-compliance by these districts will not only perpetuate the denial of constitutional rights to a large segment of the Negro children in the public schools of the State, but will involve a loss of needed financial support to the school systems. These are the school districts most in need of help in effecting a transition to a unitary system.

The first goal is to get these 42 school districts[198/] committed to a satisfactory program of desegregation. Such commitment could be imposed by court order in this law suit. To this end we believe the record in this case would fully support the court in adding each of the school districts as a party-defendant pursuant to Rule 21 of the Federal Rules of Civil Procedure.

198/ Four of the forty-five uncommitted systems are involved in desegregation suits. Since hearings on the merits have recently been held in the Greene County, Hale County and Perry County cases, we do not include them in this discussion. However, we do include Demopolis, where no hearing has been set and no order has been entered.

Each of the 42 delinquent school districts might also become committed to a satisfactory program of desegregation by submitting a plan and assurance to the Commissioner of Education in connection with its continued participation in programs of federal financial assistance. The standards that would apply in determining the sufficiency of these plans would be substantially the same as the standards applicable to a court-ordered plan. See United States v. Jefferson County Board of Education, supra. Inasmuch as the United States, through the Department of Health, Education and Welfare, has a continuing responsibility under Title VI of the Civil Rights Act of 1964 to seek compliance by school districts still receiving federal funds, efforts by the United States to obtain commitments from all but two of these 42 districts, will necessarily continue. We believe it would also be appropriate for this court to use the services of the United States in its role as amicus curiae to seek commitments of voluntary compliance by school officials in Bibb County and Tarrant City, which have had federal funds formally terminated, and to report then to the court regarding its efforts to obtain compliance in these and in the other districts that are not yet committed to a satisfactory plan of desegregation.

A third alternative would be for the individual school districts to submit a satisfactory desegregation plan to the Alabama State Department of Education and for that Department, in turn, to report to this court. Individual school districts would then be added as parties-defendant in this suit only if they failed or refused to submit the plan as required. Because of the time limitations for

obtaining effective relief that would embrace a Spring choice period in March 1967, we suggest that in addition to ordering the Superintendent to obtain the plans, the court direct the United States, as amicus curiae, to contact each of the forty-two districts regarding the adoption of a plan, and to report back to the court within thirty days.

We would hope that whatever method is used to seek commitments of compliance from local school districts, the great majority of these districts would give a commitment to abide by current legal requirements once those requirements had been clearly enunciated by this court in its judgment in this case.

The remaining question that confronts this court in framing appropriate relief is how best to assure that both the defendant state officials and the various local school systems effectively carry out their commitment to abolish the dual system. The necessary prerequisite to any effective compliance review is adequate information. Accordingly, we think it appropriate that the State Superintendent of Education be required to obtain, and make available for inspection by the parties, information and statistics relating to the operation of schools by the local school systems, as well as the operation of his own Department. This will permit a judgment regarding the progress being made in abolishing the dual system. Provisions to this end are included in the proposed decree set forth as Appendix E to this brief. Additionally, we propose that the defendant state officials file and serve

upon the parties reports regarding action they have taken in the areas of school surveys, consolidation, construction, transportation, faculty, and equalization.

Respectfully submitted,

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