

S. Ross

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHARLES E. MILLER, JR., et al.,)
)
Plaintiffs,)
)
v.)
)
)
SCHOOL DISTRICT NUMBER 2,)
CLARENDON COUNTY, SOUTH CAROLINA,)
et al.,)
)
Defendants,)
)
UNITED STATES OF AMERICA, by)
NICHOLAS deB. KATZENBACH,)
Attorney General,)
)
Plaintiff-Intervenor.)
)

CIVIL ACTION
NO. 8752

PLAINTIFF-INTERVENOR'S
TRIAL BRIEF

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CHARLESTON DIVISION

CHARLES E. MILLER, JR., DAVID L.
MILLER, ANETTE L. MILLER, VERNA
G. MILLER, FRANCES D. MILLER,
RUSSELL A. MILLER and MARILYN E.
MILLER, minors, by CHARLES E.
MILLER, SR., their father and
next friend;

and
OSCAR W. JOHNSON, a minor, by
ALLEN LEE, his grandfather and
next friend;

and
MAGGIE LEMON, JOSEPH R. LEMON,
JR. AND BILLIE A. LEMON, minors,
by JOSEPH R. LEMON, SR., their
father and next friend;

Plaintiffs,

v.

SCHOOL DISTRICT NUMBER 2,
CLARENDON COUNTY, SOUTH CAROLINA,
a public body corporate;

and
R. E. WELLS, JR., Chairman of the
Board of Trustees of School
District No. 2, Clarendon County;
R. BLEASDALE, T. B. RHAME, LEROY O.
PHILLIPS and JAMES E. GAMBLE,
Members, Board of Trustees of
School District No. 2, Clarendon
County, South Carolina

and
W. H. WELDON, Superintendent of
School District No. 2, Clarendon
County, South Carolina,

Defendants.

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

Plaintiff-Intervenor,

CIVIL ACTION
NO. 8752

PLAINTIFF-INTERVENOR'S
TRIAL BRIEF

I

NATURE OF THE ACTION

This action was commenced on August 17, 1965. The complaint sought preliminary and permanent injunctive relief against conduct of the defendants which allegedly denies the plaintiffs and members of their class the equal protection of the laws under the Fourteenth Amendment to the United States Constitution on account of race or color. The complaint sought a Decree enjoining the Defendants from:

1. Operating a compulsory bi-racial school system;
2. Continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color;
3. Assigning pupils to schools on the basis of race and color of the pupils;
4. Assigning teachers, principals and other professional school personnel to schools on the basis of the race and color of the person to be assigned and the race and color of the children attending the school to which such personnel are to be assigned and
5. Approving budgets, making available funds, approving employment and construction contracts, and approving policies, curricula and programs which are designed to perpetuate or maintain or support compulsory segregated schools.

The Court granted the United States leave to intervene on February 18, 1966. On February 24, 1966 the Court heard testimony and the United States and the Defendants entered certain documents in evidence. On this day, the plaintiff

and plaintiff-intervenor were given 15 days within which to file thier briefs, the defendants given 15 days thereafter to file their brief and the plaintiff and plaintiff-intervenor 5 days thereafter to file a reply.

II

THE PARTIES

The plaintiffs are Negro school children attending the schools of School District Number 2, Clarendon County, South Carolina, suing by their next friend on behalf of themselves and on behalf of all others similarly situated.

The defendants are the Board of Trustees for School District Number 2, Clarendon County, its members and officers and the Superintendent of School District Number 2, Clarendon County.

The plaintiff-intervenor is the United States of America.

III

THE DEFENDANTS HAVE MAINTAINED A DUAL SCHOOL SYSTEM BASED ON RACE

At the pre-trial conference held in this case on February 22, 1965, the Defendants stipulated that "The Public School Systems of School District Number 2, Clarendon County, South Carolina, is now and has been in the past a dual school system based on race."^{1/}

^{1/} Pre-trial Transcript at p. 10.

Nothing more need be said in this section except to point out that this means all aspects of school life in the District have racial characteristics. Students, classes, teachers, professional staff, extra-curricular activities and interscholastic athletics are all "Negro" or all "white". The complete separateness was emphasized by the testimony of Superintendent Weldon, who repeatedly referred to the white schools as "our" schools and to the Negro schools as "their" schools.^{2/}

IV

THE NEGRO SCHOOL SYSTEM IN DISTRICT TWO IS INFERIOR TO THE WHITE SCHOOL SYSTEM

- A. District Two Has Invested Substantially Less In The Education Of Each Negro Student Than It Has In The Education of Each White Student.
1. The per pupil value of the white schools (including buildings, land and equipment) is substantially greater than the per pupil value of the Negro schools.

The 1963-64 Annual Report from the District Superintendent to the County Superintendent (Pl.-I. Ex.8), shows that the per pupil value of the Negro schools in

^{2/} Testimony of Superintendent Weldon at pp. . (page references to Mr. Weldon's testimony are omitted, the transcript of the trial not being available at this time.

Clarendon County District Two was \$397.28 as compared to the white schools' value of \$1,005.58 per pupil.^{3/}

This Annual Report was the last one that listed the value of the schools by race,^{4/} but more recent racial figures are available in the February 1966 schedule of insured valuation of each school (Pl.-I. Ex. 10), which show the insured valuation of the white schools as being \$790 per pupil and of the Negro schools, \$372 per pupil.^{5/}

<u>3/</u>	<u>White School System</u>	<u>Negro School System</u>
Value of Bldgs.	\$ 1,246,725.84	\$ 1,181,551.80
Value of Grounds	51,675.05	9,223.80
Value of Furniture and Fixtures	61,495.35	75,314.59
Total	<u>\$ 1,359,896.24</u>	<u>\$ 1,226,090.19</u>

Per Pupil value is based on 10 day enrollment figures for 1963-64 (Pl.-I. Ex. 9):

White Enrollment 1,351

Negro Enrollment 3,212

Per Pupil Value:

White School System

$$\frac{\$ 1,359,896.24}{1,351} = \$ 1,006.58$$

Per Pupil Value:

Negro School System

$$\frac{\$ 1,266,090.19}{3,212} = \$ 397.28$$

^{4/} Testimony of Superintendent Weldon at p. . .

^{5/} These figures are derived by adding up the total values of the school buildings only (i.e., the garage, maintenance shop, etc. were omitted) shown in Pl.-I. Ex. 10 and by dividing this figure by the current enrollment shown in Defendants' Answers to Plaintiffs' Interrogatory No. 1.

2. The School District's per pupil expenditure for Negro students has been substantially less than it has been for white students.

a. Total expenditures

Total disbursements for the fiscal year July 1, 1961 to June 30, 1962 are as follows: 6/

	<u>White School System</u>	<u>Negro School System</u>
Elementary	\$ 119,673.74	\$ 218,499.04
High School	145,805.09	109,864.61
Total	<u>\$ 265,478.83</u>	<u>\$ 328,363.65</u>

And for the fiscal year July 1, 1962 to June 30, 1963: 7/

	<u>White School System</u>	<u>Negro School System</u>
Elementary	\$ 184,340.05	\$ 239,305.26
High School	220,597.49	133,424.75
Total	<u>\$ 404,937.54</u>	<u>\$ 372,730.01</u>

Thus, in the 1962-63 school year, 8/ current expenditures were \$305.91 per white student and \$119.89 per Negro student. 9/

6/ Pl.-I. Ex. 3.

7/ Pl.-I. Ex. 4.

8/ As is the case with the Annual Reports, expenditures by race are no longer kept. 1962-63 is the last year for which a racial breakdown on the figures is available. Testimony of Superintendent Weldon at p. .

9/ These figures were derived by dividing the total disbursements shown in Pl.-I. Ex. 4 by the 10-day enrollment figures for each race as shown in Pl.-I. Ex. 9 as follows:

White Students

$$\frac{\$ 404,937.54 \text{ (disbursements)}}{1,327 \text{ (enrollment)}} = \$ 305.91$$

Negro Students

$$\frac{\$ 372,730.01 \text{ (disbursements)}}{3,109 \text{ (enrollment)}} = \$ 119.89$$

b. Expenditures other than Teachers' Salaries

The exclusion of teachers salaries from the above figures further demonstrates the wide gap between expenditures for the education of white children and those for Negro children:

	<u>White School System</u>	<u>Negro School System</u>
Total Disbursements	\$ 404,937.54	\$ 372,730.01
Less Teachers Salaries	235,219.12	314,890.25
	<u>\$ 169,718.42</u>	<u>\$ 57,839.76</u>

Other than teachers' salaries, the expenditures for operation of the schools was \$18.60 per Negro pupil and \$127.80, or seven times as much, for each white pupil.^{10/}

^{10/} The expenditure figures are contained in Pl.-I. Ex. 4 and the enrollment figures in Pl.-I. Ex. 9. A further breakdown of the figures for the 1961-1962 and 1962-1963 are as follows:

Total disbursements for instructional materials and expenses for the fiscal year July 1, 1961 to June 30, 1962:

	<u>White School System</u>	<u>Negro School System</u>
School Libraries and Audio	\$ 1,376.48	\$ -----
Visual Materials		
Teaching Supplies	489.06	82.50
Expenses (Instruction)	1,913.83	250.00
	<u>\$ 3,779.37</u>	<u>\$ 332.52</u>

And for the fiscal year July 1, 1962 to June 30, 1963:

	<u>White School System</u>	<u>Negro School System</u>
School Libraries and Audio	\$ 715.54	\$ 663.30
Visual Materials		
Teaching Supplies	865.27	116.20
Expenses (Instruction)	2,544.15	424.91
	<u>\$ 4,124.96</u>	<u>\$1,204.41</u>

Per Pupil expenditures for Instructional Materials and Expenses:

White School System (1962-63)

$$\frac{\$ 4,124.96}{1,327} = \$ 3.11$$

Negro School System (1962-63)

$$\frac{\$ 1,204.41}{3,109} = \$.39$$

c. Expenditures for library and instructional materials for the years 1964-65 and 1965-66.

Current figures for expenditures on library and instructional materials by race are found in the applications for accreditation submitted by the District's elementary schools: ^{11/}

	<u>Per Pupil Expenditures</u>			
	<u>Instructional Materials and Equipment</u>		<u>Library Materials</u>	
<u>Negro Elementaries</u>	<u>1964-65</u>	<u>1965-66</u>	<u>1964-65</u>	<u>1965-66</u>
Manning Training	\$.33	\$.50	\$ 1.00	\$ 1.00
Jordan	.60	.75	.50	.75
Wilson	2.50	3.00	1.50	2.00
 <u>White Elementaries</u>				
Manning	8.00	9.00	2.00	4.00
Manning Primary	5.00	6.00	.45	.50

B. Educational Opportunities for Negro Students In District Two are Inferior to Those Available to White Students

1. Negro students are provided with inferior library facilities.

There are two libraries in the Manning school complex (white) one at Manning Elementary School and one at Manning High School. ^{12/} The elementary school library serves grades 5-7 with a current enrollment of 295 ^{13/} and contains 6 books per pupil. The high school library serves grades 8-12 with an enrollment of 433 ^{14/} and contains over 9 books per pupil. ^{15/}

^{11/} Pl.-I. Ex. 1 (c), (e), (f), (g) and (h). This data for Alcolu and Paxville Elementaries (Negro) was not included in the applications for those schools (Pl.-I. Ex. 1 (d) and (i)).

^{12/} Testimony of Superintendent Weldon at p. .

^{13/} Defendants' Answers to Plaintiff's Interrogatory No. 1.

^{14/} Ibid.

^{15/} Pl.-I. Ex. 1 (a).

In contrast to the above, there is only one library in the Manning Training School complex (Negro), located in the high school section.^{16/} This library serves all Negro students in grades 1-12 with a current enrollment of 1,366^{17/} and contains 3.3 books per student.^{18/}

Of the other schools in the system for which figures are available, Manning Primary (white) which serves grades 1-4, has 2 books per pupil,^{19/} Jordan Elementary (Negro) serving grades 1-8, has 1 book per pupil,^{20/} and Wilson Elementary (Negro) serving grades 1-8, has only one-half book per pupil.^{21/}

2. Negro students are provided with inferior teaching aids and equipment.

The results of the disparity in expenditures discussed above in Part IV A. 2, can be seen in some of the specific differences testified to by Superintendent Weldon.

a. Language courses

Mr. Weldon testified that he had installed in the white high school special language teaching equipment, consisting of four tables with earphones attached so that students could listen to examples of the language they are being taught. No similar equipment is available to students in the Negro high school.^{22/}

^{16/} Testimony of Superintendent Weldon at p. .

^{17/} Defendants' Answer to Plaintiff's Interrogatory No. 1.

^{18/} This figure is derived by dividing the enrollment into the number of books (4,480) shown in Pl.-I. Ex. 1(b).

^{19/} Pl.-I. Ex. 1(g).

^{20/} Pl.-I. Ex. 1(e).

^{21/} Pl.-I. Ex. 1(c).

^{22/} Testimony of Superintendent Weldon at p. .

b. Commerce course

Even though there are almost twice as many students in the Negro high school as there are in the white high school, there are 33 typewriters in the white school and only 24 in the Negro school. Furthermore, those at the white school are of a newer vintage than those at the Negro school. ^{23/}

c. Home Economics

Again in this area, there is more equipment for fewer students at the white high school. Mr. Weldon testified that there are ten sewing machines at the white high school. He did not know how many were at the Negro high school - only that there were less. ^{24/}

3. Negro high school students are provided with an inferior curriculum.

The following table sets forth the courses of study being offered at the two high schools in District Two for the 1965-66 school year. ^{25/} Those courses available at one school but not the other are underlined.

^{23/} Testimony of Superintendent Weldon at p. .
See also, Pl.-I. Ex. 13 (inventories).

^{24/} Testimony of Superintendent Weldon, at p. .

^{25/} Pl.-I. Ex. 1(a) and (b).

Manning High School (White)

Language Arts

General (grade 8)
English I, II, III, & IV
Business English

Social Studies

History, Am. (grade 8)
World History
History, U.S. & Constitution
Citizenship (Civics)
Economics
Phycology

Fine Arts

Music, General (grade 8)
Chorus or Glee Club
Band

Industrial and Practical Arts

Industrial Arts (General shop)
Mechanical Drawing
Agriculture (Introductory)

Mathematics

General (grade 8)
Math, General I & II
Algebra I
Algebra II
Algebra III
Math, Business (General)
Geometry, Plane
Trigonometry
Introduction to Algebra
(grade 8)

Science

Science, General (grade 8)
Science, Gen. (1st Credit Course)
Physical Science
Biology
Chemistry
Physics

Foreign Languages

Latin I
Latin II
Spanish I
Spanish II
Spanish III

Manning Training High School (Negro)

Language Arts

General (grade 8)
English I, II, III & IV
Business English

Social Studies

History, Am. (grade 8)
World History
History, U.S. & Constitution
Geography, World
Citizenship (Civics)
American Government
Economics
Phycology

Fine Arts

Chorus Glee Club

Mathematics

General (grade 8)
Math, General I & II
Algebra I
Algebra II
Math, Business (General)
Geometry, Plane
Advance Mathematics

Science

Science, General (grade 8)
Science, Gen. (1st Credit Course)
Biology
Chemistry

Foreign Languages

French I
French II

Manning High School
(White) Continued

Health & Physical Education
Driver Education
Physical Education (boys)
(grades 7, 8, 9)
Physical Education (boys)
(grades 10, 11, 12)
Physical Education (girls)
(grades 7, 8, 9)
Physical Education (girls)
(grades 10, 11, 12)

Business Education
Shorthand I
Typing I & II
Bookkeeping I

Vocational Education
Agriculture I, II & III
Home Economics I, II & III
Auto Mechanics

Manning Training High
School (Negro) Continued

Health & Physical Education
Driver Education
Physical Education (boys)
(grades 7, 8, 9)
Physical Education (girls)
(grades 7, 8, 9)

Business Education
General Business
Shorthand I
Shorthand II
Typing I & II
Typing Personal

Vocational Education
Agriculture I, II & III
Home Economics I, II & III
Masonry Bricklaying

Although the enrollment at the white high school is 433, or 363 less than the Negro high school, ^{26/} there are ten more courses available at the white school.

4. Negro students are provided with an inferior lunch program.

a. Schools without hot lunch programs

The four rural Negro elementary schools in District Two, which serve grades 1-8 with a total enrollment of 1,304 students ^{27/} do not have the facilities for a hot lunch program. These students may purchase a bag lunch. All white children in the system attend a school serving hot lunches. ^{28/}

^{26/} Defendants' Answer to Plaintiffs' Interrogatory No. 1.

^{27/} Defendants' Answer to Plaintiffs' Interrogatory No. 1.

^{28/} Testimony of Superintendent Weldon at pp. .

b. Schools providing hot lunches

The Manning Training schools for Negroes serve hot lunches, but less than 30% of the students participate in the program, whereas at the white schools, all of which serve hot lunches, 80% of the students participate. This situation exists despite Superintendent Weldon's testimony that the District receives fifteen cents from the State for each lunch served to a Negro child and five cents for each lunch served to a white child. ^{29/} From this, it can reasonably be assumed that the hot lunches available to Negro students are inferior to those available to white students. ^{30/}

5. Special education for retarded children is provided for white students only.

At the pre-trial conference in this case on February 22, 1966, the Defendants' stipulated that "Special education classes are conducted for retarded white children only." ^{31/}

^{29/} Testimony of Superintendent Weldon at pp. .

^{30/} Mr. Weldon testified that he did not know how much students at any school were charged for lunch and that he "left that up to the individual principals." Another inference that could possibly be drawn from these figures is that the Negro students cannot pay for the lunches and therefore do not eat. However, Mr. Weldon also testified that his District has a program of free lunches for poor students, which obviously is not working if this latter inference is accepted.

^{31/} Pre-trial Transcript at p. 13.

6. Negro students must attend classes which are substantially larger than classes attended by white students.

The following table sets forth the number of students currently enrolled, the number of teachers and the pupil-teacher ratios in each of the nine schools in Clarendon County District Number Two: ^{32/}

<u>Schools</u>	<u>Teachers</u>	<u>Pupils</u>	<u>Teacher-Pupil Ratios</u>
Manning High School (W)	23	433	18.8:1
Manning Elem School (W)	14	295	21.1:1
Manning Primary School (W)	<u>15</u>	<u>317</u>	<u>21.1:1</u>
Total (W)	52	1,045	20.1:1
Manning Training High School (N)	34	796	23.4:1
Manning Training Elem. School (N)	19	570	30:1
Alcolu Elementary School (N)	16	509	31.8:1
Jordan Elem School (N)	9	240	26.6:1
Paxville Elem School (N)	10	289	28.9:1
Wilson Elem School (N)	<u>10</u>	<u>266</u>	<u>26.6:1</u>
Total (N)	98	2,670	27.2:1

The average teacher in the Negro school has seven more students than the average teacher in the white schools. ^{33/}

^{32/} Figures taken from Defendants' Answers to Plaintiffs' Interrogatory No. 1.

^{33/} Pl.-I. Ex. 1(a) and (b), which are the accreditation application for the white high school and the Negro high school respectively, show the student load for each teacher in the school. None of the white teachers and three of the Negro teachers have above the maximum daily pupil load (150) acceptable under the "Standards For Accredited High Schools of South Carolina," Pl.-I. Ex. 24 at p. 45.

7. Negro teachers generally have attained a lower rating on the National Teachers' Examination than white teachers.

34/

National Teacher Examination Ratings

<u>White School System</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>No Grade</u>	<u>Total Staff</u>
Manning High School	18	4	0	1	23
Manning Elem School	12	2	0	0	14
Manning Primary School	<u>10</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>15</u>
	<u>40</u>	<u>11</u>	<u>0</u>	<u>1</u>	<u>52</u>
	77%	21%	--	2%	100%

Negro School System

Manning Training High School	6	22	4	1	33
Manning Training Elem School	1	17	2	0	20
Alcolu Elem School	3	10	3	0	16
Jordan Elem School	1	7	1	0	9
Paxville Elem School	0	3	7	0	10
Wilson Elem School	<u>3</u>	<u>6</u>	<u>1</u>	<u>0</u>	<u>10</u>
	<u>14</u>	<u>65</u>	<u>18</u>	<u>1</u>	<u>98</u>
	14% ✓	66% ✓	18% ✓	1%	100%

8. Negro high school students are able to participate in substantially fewer extra-curricular and athletic activities than white high school students.

There are twice as many school clubs and activities at the white high school (including a senior class trip) than there are at the Negro high school. ^{35/} The white high school ^{36/} has a band, the Negro high school does not.

^{34/} Data contained in Pl.-I. Ex. 1 (c), (e), (f), (g), (h) and (i) and in Pl.-I. Ex. 14.

^{35/} Pl.-I. Ex. 5, 6 and 7

^{36/} Testimony of Weldon at p. .

The white high school has a separate gymnasium and auditorium, while in the Negro high school these two facilities are combined. The white high school has a lighted athletic stadium with concrete stands; the Negro high school has an athletic field without lighting or stands of any kind. ^{37/}

9. The Negro schools of School District Number Two have an inferior accreditation standing when compared with that of the white schools.

a. The high schools

Accreditation was requested and received for Manning High School (white) from the Southern Association of Secondary Schools. No request for this accreditation was made for Manning Training High School (Negro). ^{38/}

Both high schools applied to the State for accreditation (Pl.-I. Ex. 1(a) and (b)) and both were accepted with minor deficiencies noted; however, the deficiencies of the Negro High School exceeded those of the white high school. ^{39/}

^{37/} Id. at pp. . Mr. Weldon also testified that only the white high school has an athletic laundry facility and that the white school had a student newspaper; he did not know whether the Negro school has a newspaper or not this year.

^{38/} Stipulation, Pre-trial Transcript at p. 13; Testimony of Superintendent Weldon at p. .

^{39/} Pl.-I. Ex. 2. Each school had one non-degree teacher. In addition, the following deficiencies were noted on the form for the Negro high school:

1. Written approval of school's sanitation should be secured from County Health Dept. immediately.
2. It appears that you have no elective program of P.E. for grades 10-12. Please explain.
3. Library expenditure for 1964-65 inadequate.
4. One teacher overloaded. Nice improvement in this area.
5. Librarian required to have at least 24 hours in library science. No improvement since last report.

b. The elementary schools

Both Manning Elementary and Manning Primary applied for and received State accreditation with minor deficiencies noted. None of the five Negro elementary schools even applied for accreditation.^{40/}

10. Other areas of discrepancy.

a. Transportation

Some white children living closer to the schools in the City of Manning ride the bus while Negro children do not.^{41/}

b. School Principals

The only elementary school in the system that is run by an assistant principal is Manning Training Elementary (Negro), which has an enrollment of 570 pupils. Manning Primary and Elementary Schools (white), with enrollments of 295 and 317 respectively, each have a full time principal.^{42/}

In addition, the principal at one Negro elementary school teaches full time, and two other Negro elementary principals teach half of the time. All other principals devote full time to administration.^{43/}

C. The Effect of Inferior Educational Opportunities For Negro Students is to Leave them Less Prepared To Continue their Education in College.

1. Few Negro graduates from District Two schools enter college as compared to white graduates.

Of the 122 Negroes who graduated from Manning Training High in 1963, only 15 (or 12%) were admitted to

^{40/} Pl.-I. Ex. 1 (c), (d), (e), (f) and (i); Pl.-I. Ex. 2; testimony of Superintendent Weldon at p. .

^{41/} Stipulation, Pre-trial transcript at p. 13.

^{42/} Testimony of Superintendent Weldon at p. .

^{43/} Data contained in the Application for Accreditation in Pl.-I. Ex. 1.

college, ^{44/} whereas 33 of the 64 graduates (or 52%) of Manning High (white) for that year entered college. ^{45/}

2. Those Negro students who do go to college are ill-prepared and must take sub-freshman courses.

The effect of the inferior educational opportunities afforded Negroes in Clarendon County District Two can be seen in the State's report on the number of high school graduates entering college who have to take sub-freshman courses. Of the District's 33 white students who graduated in 1963 and entered college, only one took a sub-freshman course and three took advanced courses; ^{46/} on the other hand, 10 of the District's 15 Negro graduates for this year took sub-freshman courses and none took advanced courses. ^{47/}

^{44/} Pl.-I. Ex. 25, Ninety-Seventh Annual Report of the State Superintendent of Education, State of South Carolina, 1964-1965 at p. 299.

^{45/} Id. at p. 280.

^{46/} Ibid.

^{47/} Id., at p. 299. Similar comparisons can be made for past years. See, e.g., the 1961-62 Annual Report, which shows that 10 of the 16 Negroes who graduated in 1960 and entered college took sub-freshman courses while only two of the 32 white students in the same category did so. (pp. 307, 327).

THE RELIEF

A. Introduction

The decree issued by the Court in this case should put the District School Board on a definite course toward eliminating the racial character of its schools as well as remedying the effects of past discrimination. Thus, the Plaintiff-Intervenor seeks relief of two kinds: (1) the requirement of a meaningful freedom of choice plan coupled with a positive start in the desegregation of teachers and staff, and (2) a requirement that the School Board initiate a remedial educational program for students to erase the inequities that have arisen from past racial discrimination.

B. Plan of Desegregation1. Students

"Freedom of choice" plans for the desegregation of public schools have been generally accepted by the District and Appellate Courts in the Fourth Circuit. But, as Judge Butzner stated recently in Wright, et al., v. County School Board of Greensville County, Virginia, Civil Action No. 4263, decided January 27, 1966, "Freedom of choice is a term frequently used when speaking of school desegregation. It has several meanings which should not be confused." ^{48/}

The plan proposed by the Defendants in this case ("Exhibit A" attached to their answer) purports to give all students a "full, free and unrestrictive opportunity" to select another school within the District. However, this

^{48/} The opinion is attached to this brief as Appendix A.

plan goes on to include several limiting criteria which curtail the plan's effectiveness as an instrument of school desegregation.^{49/} Based on the evidence in this case and the current requirements of the law in this Circuit, the suggestions set out below are offered as points that must necessarily be included in a plan that will aid the School Board in carrying out its duty to desegregate the schools.

These guidelines are based in large part on the "Revised Statement of Policies For School Desegregation Plans Under Title VI of the Civil Rights Act of 1964," published in March 1966 by the Office of Education, U. S. Department of Health, Education and Welfare.^{50/} The standards

^{49/} The plan provides that applications for transfer will be considered in light of the following:

- (1) The preference indicated by the pupil's application.
- (2) Whether the educational program of the pupil can be met by the school to which assignment is sought.
- (3) The capacity of the school to which assignment is sought.
- (4) The availability of space in schools other than the school from which and to which entry is sought.
- (5) The distance the pupil lives from such school.

In addition, the plan does not provide for the distribution of choice forms to all students; does not provide for notice other than in the newspaper; provides for the racial assignment of those students who do not make a choice; and does not provide for a non-racial system of priorities should choices result in overcrowding. These points are discussed below.

^{50/} This publication will be referred to herein as the "HEW Statement of Policies" and is attached to this brief as Appendix E. Also attached, as Appendix F is "Texts of Notices, Letters and Choice Form Prescribed by the Commissioner of Education, For Use With School Desegregation Plans", published in March, 1966 by the Office of Education, U. S. Department of Health, Education and Welfare.

set out in this Statement for a school system adopting a freedom of choice plan of desegregation are in substantial agreement with recent District Court cases in this Circuit,^{51/} although no one case deals with a plan containing all the specific details covered by the HEW Statement of Policies. It is of great importance to the orderly progress of desegregation that school systems under court order be required to meet the minimum standards promulgated for systems that desegregate voluntarily. As the Fifth Circuit has stated:

If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than HEW guides, school boards may turn to the federal courts as a means of circumventing the HEW requirements for financial aid. ^{52/}

It is also important that a plan of desegregation contain operational details in order to give the school board a clear, unambiguous picture of what they must do to satisfy the requirements of the law and to avoid the necessity of repeated trips to the district court to litigate specific questions that can be eliminated in advance by careful planning.

^{51/} See Kier, et al., v. County School Board of Augusta County, Virginia, et al., Western District of Virginia, Civil Action No. 65-C-5-H, decided January 5, 1966 (attached to this brief as Appendix B) and Wright, et al., v. County School Board of Greenville, Virginia, et al., Eastern District of Virginia, Civil Action No. 4263, decided January 27, 1966 (attached to this brief as Appendix A).

^{52/} Singleton, et al., v. Jackson Municipal Separate School District, et al., 348 F. 2d 729, 731 (5th Cir., 1965). See also Price, et al., v. Denison Independent School District, 348 F. 2d 1010, 1013 (5th Cir., 1965).

a. Who may exercise choice

A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student should be controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice.

b. Choice period

The period for exercising choice should be in the Spring of the year preceding the school year for which choice is to be exercised and should be at least a month long. No student or prospective student who exercises his choice within the choice period should be given any preference because of the time within the period when such choice is exercised.

c. Mandatory annual exercise of choice

Each student should be required to exercise a free choice of schools annually. A failure to exercise a choice within the choice period should not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice should be, if necessary, subordinated to the choice of students who exercised their choices before the expiration of the choice period. Any student who has not exercised his choice of schools within a week after school opens should be assigned to the school nearest his home where

space is available, under standards for determining available space which should be applied uniformly throughout the system.^{53/}

A mandatory choice provision was approved recently in Wright, et al., v. County School Board of Greensville County, Virginia, et al., supra, in which the Court noted that in another recent District Court case in Virginia the Court disapproved a plan which did not contain a provision for annual mandatory choice in all grades.^{54/}

There are several benefits in a mandatory choice provision. It greatly reduces the possibility of intimidation and coercion of Negroes who wish to choose a formerly white school, since the annual choice becomes a routine act which all students must perform. Also, it reduces substantially the problems raised by the provision in the Defendants' proposed plan that all students not making a choice be assigned to the school they attended last year. This provision merely preserves past racial assignments and therefore runs counter to the Board's obligation to remove all vestiges of the existing racial system.

d. Distribution of explanatory notice and choice form

On the date the choice period opens, an explanatory notice and a simple choice form should be sent home with each child in the school system. Extra copies

^{53/} See Singleton, et al., v. Jackson Municipal Separate School District, et al., Fifth Circuit, No. 22527, decided January 26, 1966, in which the Court said that the failure to provide for the non-racial assignment of students who do not designate a choice is one of the inherent weaknesses" of freedom of choice plans.

^{54/} Bell v. School Board of the City of Stanton, Virginia, Western District of Virginia, Civil Action No. 65-C-H, decided January 5, 1966.

of the explanatory notice and the choice form should be freely available to parents, students, and prospective students at each school in the system and at the office of the Superintendent.

In addition, general notice as to workings of the plan should be published in a newspaper of local circulation immediately preceding and during the choice period.^{55/}

e. Return of choice form

The person completing the choice form should have the option of returning the choice form by mail, in person, or by messenger, to the principal of any school in the school system.

f. Choices not on official form

It should also be possible to exercise the choice by submission in like manner of any other writing which contains information sufficient to identify the student and which indicates that he has made a choice of a school.

g. Choice forms to be binding

Once a choice form has been submitted it should be binding for the entire school year, and should not be changed except in cases of compelling hardship.

h. Preferences in assignment

In assigning students to schools, no preference should be given to any student for prior attendance at a school, and no choice should be denied for any reason other

^{55/} Suggested forms of published notice and notice to parents and students are set out in "Texts of Notices, Letters and Choice Form Prescribed By the Commissioner of Education For Use With School Desegregation Plans" published by the Office of Education, U.S. Department of Health, Education and Welfare, attached to this brief as Appendix F.

than overcrowding. In case of overcrowding at any school, preference should be given on the basis of the proximity of the school to the homes of students choosing it, without regard to race or color.

The Defendants' proposed plan not only fails to contain a provision such as this, but contains other provisions that conflict with it. Under the Defendants' plan, students' choices could be denied because of the distance they lived from the school chosen or the availability of space at a school other than the one they were in and the one chosen.^{56/} These limitations do not conform with the concept of "unrestricted" freedom of choice as set out in the Bradley case^{57/} and in the Health, Education and Welfare Statement of Policies.^{58/}

^{56/} D. Ex. 1. Defendants' plan also subjects a students' choice to the following limitation: "Whether the educational program of the pupil can be met by the school to which assignment is sought." It is submitted that this criterion is too vague and that its inclusion in a plan of desegregation could only lead to unnecessary haggling over the merits of individual cases.

^{57/} Bradley v. School Board of the City of Richmond, Virginia, 345 F. 2d 310 (4th Cir., 1965), vacated and remanded on other grounds, 34 U.S. L. Week 3170 (U.S. Nov. 15, 1965). The Court noted, at page 315, that the District Court had allowed a capacity limitation to stand in the Board's plan, but that no choices had been rejected on that ground, thus obviating the necessity of the Court's reviewing it.

^{58/} The March 1966 Health, Education and Welfare Statement of Policies is attached to this brief as Appendix E. See §181.49. Assignment According to Choice.

The absence of restrictions is crucial in a freedom of choice plan, especially when such restrictions can only be used to maintain the status quo. In Clarendon District Number Two there is only one school to which a white student in a certain grade can be assigned and for which a Negro student wishing to attend a desegregated school may exercise a choice.^{59/} Thus, a denial of choice on the grounds of distance or space availability in other schools can only result in a Negro student remaining in an all-Negro school.

The capacity limitations set out in the Defendants' plan also falls short of acceptable standards because it does not provide for the non-racial assignment of students should the exercise of choices result in a situation where all students who choose a particular school can not be accommodated there. Without this provision, the effect of previous racial assignments will remain no matter what the choice of the students may be. For example, in a school system where all schools were previously filled to capacity, no changes could be made; in a system like Clarendon County Number Two, where there is extra room in all but one school, the number of desegregating students would be limited to the present difference between enrollment and capacity

^{59/} Manning Primary serves grades 1-4, Manning Elementary serves grades 5-7 and Manning High School serves grades 8-12.

in each school, limiting freedom of choice to 305 Negro students if no white students choose to go to the previously all Negro schools.^{60/}

^{60/} See Defendants' Answers to Plaintiffs' Interrogatories 1, (d), (e) and (h), which show the following enrollments and capacities in the District Two Schools:

All-Negro Schools

<u>School</u>	<u>Capacity</u>	<u>Enrollment</u>	<u>Difference</u>
Manning Training High	900	796	-104
Manning Training Elem.	600	570	- 30
Alcolu Elementary	500	509	/ 9
Jordan Elementary	300	240	- 60
Paxville Elementary	300	289	- 11
Wilson Elementary	<u>300</u>	<u>266</u>	<u>- 34</u>
TOTAL	2900	2670	-230

All-White Schools

Manning High	500	433	- 67
Manning Elementary	400	295	-105
Manning Primary	<u>450</u>	<u>317</u>	<u>-133</u>
TOTAL	1350	1045	-305

i. Transportation

Busses should 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 the school nearest his residence should be transported to the school to which he is assigned, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation.

j. Officials not to influence choice

No official, teacher, or employee of the school system should require or request any student to submit a choice form during the choice period other than by the explanatory notice and the choice form. After the expiration of the choice period, the school system should make all reasonable efforts to obtain a completed choice form from each Student who has not exercised a choice. However, at no time should any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choice made or schools to which individual students are assigned should not be made public.

Finally, an acceptable freedom of choice plan must contain positive provisions that will promote the thorough desegregation of the schools as the Fourth Circuit has said:

"A freedom of choice system, to warrant approval, must operate to prevent discrimination and not merely to correct conditions which have been deliberately created by unlawfully discriminatory procedures. (Emphasis by the Court)"^{61/}

^{61/} Wheeler v. Durham City Board of Education, 346 F.2d 768 (4th Cir., 1965).

2. Teacher Desegregation^{62/}

In a recent decision in the Western District of Virginia the Court emphasized the necessity of teacher desegregation in a system implementing a freedom of choice plan:

School authorities who have heretofore operated dual school systems for Negroes and whites must assume the duty of eliminating the effects of dualism before a freedom of choice plan can be superimposed upon the pre-existing situation and approved as a final plan of desegregation. It is not enough to open the previously all-white schools to Negro students who desire to go there while all-Negro schools continue to be maintained as such. Inevitably, Negro children will be encouraged to remain in "their school," built for Negroes and maintained for Negroes with all-Negro teacher and administrative personnel . . . The duty rests with the School Board to overcome the discrimination of the past, and the long established image of the "Negro school" can be overcome under freedom of choice only by the presence of an integrated faculty. ^{63/}

The duty is clear and the meaning of an "integrated faculty" is simple - Negroes teaching in previously all-white schools and whites teaching in previously all-Negro schools. This is the only way the now-forbidden racial characteristics of the schools may be eliminated.

In what manner and how soon must this goal be reached? In the above case, the Court held that a plan that did not

^{62/} It is clear that students have standing to raise the issue of teacher segregation in that racial assignments constitute a denial of the constitutional rights of the students. Bradley v. School Board of the City of Richmond, Virginia, 345 F. 2d 310, 320 (4th Cir., 1965).

^{63/} Kier, et al. v. County School Board of Augusta County, Virginia, et al., Western District of Virginia, Civil Action No. 65-C-5-H, decided January 5, 1966. The Opinion is attached to this brief as Appendix B. This statement appears on page 16 of the Opinion.

"specifically indicate that teachers will be assigned to each school regardless of race "^{64/} it is not satisfactory.

In another recent case in the Eastern District of Virginia,^{65/} the Court stated that "a satisfactory freedom of choice plan must include provisions for the employment and assignment of staff on a non-racial basis."^{66/} The Court went on to say: "Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date."^{67/}

These recent cases are applications of the Supreme Court's decision in the Bradley case. The Court vacated and remanded the decision of the Fourth Circuit, stating that "there is no merit to the suggestions that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plan is entirely speculative."^{68/}

^{64/} Opinion, Appendix B at p. 17. But see Wheeler v. City of Durham Board of Education, Middle District of North Carolina, Civil Action No. C-54-D-60, decided January 19, 1966.

^{65/} Wright, et al., v. County School Board of Greenville County, Virginia, et al., Eastern District of Virginia, Civil Action No. 4263, decided January 27, 1966. The Opinion is attached to this brief as Appendix A.

^{66/} Opinion, Appendix B at p. 14.

^{67/} Id., at p. 15.

^{68/} Bradley v. School Board of the City of Richmond, Virginia, 34 U.S. L. Week 3170, 3171, November 15, 1965.

The Fifth Circuit applied the Bradley decision in Singleton, et al., v. Jackson Municipal Separate School District, et al., No. 22527, decided January 26, 1966, holding it is "essential that the plan [of desegregation] provide an adequate start toward the elimination of race on a basis for the employment and allocation of teacher, administrators, and other personnel."

Other District Courts have ordered faculty desegregation. See, e.g., Dowell v. The School Board of the City of Oklahoma City Public Schools, et al., (W.D. Okla., Sept. 7, 1965) and such orders have been upheld. Board of Public Education of Duval County v. Braxton, 326 F. 2d 616 (5th Cir., 1964).

The ground rules for teacher desegregation must be the immediate non-racial hiring and assignment of teachers, but in addition school officials must make a diligent search, among potential teachers and among their present faculties, for teachers who are able to make the transition.

If teacher assignments over the years had not been made on a racial basis, it can be assumed that approximately two-thirds of the teachers in each school would be Negroes, since throughout the system there are currently 98 Negro teachers and 52 white teachers. But now there are no teachers at all teaching at a school in which they are in the minority on the faculty. The officials of District Two have an obligation to eliminate existing racial segregation of faculty. It is suggested that until the present situation is restricted, the following steps should be taken by the School District in carrying out their responsibilities:

a. Teachers and other professional personnel should be employed solely on the basis of qualification and without regard to race or color.

b. In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees should be informed that Clarendon County, District Two, operates a racially integrated school system and that the 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 staff member.

c. The Superintendent of Schools and his staff should take affirmative steps to solicit and encourage teachers presently employed in the School System to accept transfers to other schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred. Such transfers should be made by the Superintendent and his staff in all cases in which the teachers are qualified and suitable, apart from race or color, for the positions to which they are to be transferred.

d. In filling faculty vacancies which occur prior to the opening of each school year, presently employed teachers of the race opposite the race that is in the majority of the faculty at the time of the vacancy should be preferred in filling such vacancy. Such vacancies should be filled by a teacher whose race is the same as the majority race of the faculty only if no suitable teacher of the opposite race is available for transfer from within the school system.

e. Newly employed teachers should be assigned to particular schools without regard to their race or color, provided, that if there is more than one newly employed teacher who is qualified for a particular position and the race of one of these teachers is different than the race of the majority of the teachers on the faculty where the vacancy exists, such teacher should be assigned to the vacancy in preference to those whose race is the same.

C. Remedial Programs

The United States introduced evidence in this case to show that as a result of prior discriminatory practices the educational opportunities for Negro students in Clarendon County District Number Two are inferior to those for white students. (See Part IV, supra.) The Defendants objected to the admission of this evidence on the grounds that it is not relevant. We submit that this evidence is relevant not only because the inferiority of the Negro schools demonstrates the urgent need to proceed as quickly as possible toward elimination of the racial characteristics of the schools, but also because it will assist the court in framing appropriate relief to remedy the inequities of the past. A remedial program for students and teachers can do much to make up for previous deprivations caused by the dual system and at the same time make the transition to a desegregated system easier for all concerned.

This form of relief is both necessary and appropriate. Precedent can be found in Judge Clayton's order in United States v. Carroll County Board of Education, et al., Northern District of Mississippi, Civil Action No. GC6541, issued

September 3, 1965, in which he ordered school officials to improve and add to existing facilities, to maintain pupil-teacher ratios at the same level and to redistribute equipment in order to bring the Negro schools up to the standards of the white schools.^{69/} Also, in United States v. Lowndes County Board of Education, et al., Middle District of Alabama, Civil Action No. 2328-N, issued February 10, 1966, the Court ordered the defendants to:

Design and provide remedial educational programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Public School System of Lowndes County, Alabama.^{70/}

In the period of change from a dual system based on race to a single, non-racial system, certain steps should be taken to upgrade both the facilities and the program of education in what are now all-Negro schools. This can be accomplished either by adding to the Negro schools that which they do not have and which the white schools do have or by combining the facilities of the two schools for the purposes of particular programs. For example, an automobile mechanics course is taught at the white high school but not at the Negro high school. The expense of adding a similar facility to the Negro school would be great, and the advisability of having two such facilities when the schools are completely desegregated is doubtful. Thus, the automobile mechanics class for the two schools should be combined. On the other hand, the shortage

^{69/} The Court's Order is attached to this brief as Appendix C.

^{70/} The Court's Order is attached to this brief as Appendix D.

of books in the libraries at the Negro schools can be overcome by adding new books rather than taking them from the white schools.

The specific areas in which the evidence shows there is a need for remedial relief are as follows:

1. Course offerings

The Table on pages 11 and 12, supra sets out the courses available at each high school that are not offered at the other. There is a substantially broader variety of courses available to white students.

The plaintiff-intervenor recognizes that whether certain elective courses are offered or not will depend on the number of students who desire to take them and the teachers available with training in a particular field. For these reasons, it is suggested that beyond the operation of freedom of choice for students and a start on teacher desegregation as described above, steps be taken to assure that, beginning with the next school term, the student and teacher resources of the two high schools be combined in such a way as to insure that all students have the opportunity to take any of the courses that are presently offered at each of the high schools. For example, Latin is offered only at the white school and brick masonry is offered only at the Negro school. Since the two schools are only a few blocks from each other,^{71/} arrangements should be made to transport students and/or teachers from one school to the other for these classes, as an alternative to the institution of the class at each school. Absent the present

^{71/} See Map, Pl.-I, Ex. 20.

integration of the high schools into one facility, these or other interim steps must be taken to provide an equal opportunity for all students.

2. Expenditures

Immediate steps should be taken to assure that the per pupil expenditures for materials of instruction, library books and teaching aids are equalized throughout the school system.^{72/} The tables in Part IV A, supra show the disparity in these areas that presently exists between the Negro and white schools.

3. Library books

In addition to equalizing current expenditures for library books and materials, it is necessary for the School Board to remedy the existing deficiency in the number of books per pupil in the Negro school libraries. The State standards for accreditation set as a minimum requirement 7 books per pupil on the elementary level^{73/} and 5 books per pupil on the high school level.^{74/} For the 1965-1966 school year one Negro elementary school had only one-half book per pupil and another had just one,

^{72/} In the 1964-65 school year, the per pupil expenditures at Manning Training Elementary (Negro) for materials of instruction and library materials were \$0.33 and \$1.00 respectively (Pl.-I. Ex. 1(f)), whereas at Manning Elementary (white) these expenditures were \$8.00 and \$2.00 respectively, (Pl.-I. Ex 1(g) and (h)) The State Standards for Accredited Elementary Schools (Pl.-I. Ex. 21) require an annual expenditure of \$5.00 per pupil for instructional materials and \$2.00 per pupil for library materials (page 9).

^{73/} Standards for Accrediated Elementary schools of South Carolina, 1965. Pl.-I. Ex. No. 21 at p. 9. These standards require an increase to 8 books per pupil by September 1966, 9 books by September 1965 and 10 books by September 1968.

^{74/} Standards for Accredited High Schools of South Carolina, 1965. Pl.-I, Ex. No. 24 at p. 52.

whereas Manning Elementary had six.^{75/} The disparity is similar throughout the school system^{76/} and should be rectified by the beginning of school next fall.

4. Facilities

The Negro schools are behind the white schools in both academic and athletic facilities. As a practical matter, some deficiencies, such as the lighted athletic stadium cannot be rectified by adding to the Negro school; therefore, arrangements should be made to make such facilities available to Negro students on the same basis they are made available for white students, both for regular and extra-curricular activities. Other deficiencies, such as the shortage and poorer quality of typewriters in the commerce course at the Negro school, can be eliminated by the purchase of typewriters. Similar adjustments can be made concerning sewing machines^{77/} for the home economics course and mechanical equipment for language instruction.^{78/}

5. Pupil-teacher ratios

Along with its program of desegregating the teaching staffs, the School Board should take appropriate measures to equalize the teaching loads in the various schools. The average class in the Negro elementary schools has 8.2 more students than the average in the white elementary schools. On the high school level, the difference is 4.6 pupils per class.^{79/} This difference is a product of prior segregation

^{75/} Pl.-I. Ex. 1 (c), (e) and (f).

^{76/} See Part IV B, supra.

^{77/} See Part IV B, supra.

^{78/} See Part IV B, supra.

^{79/} These figures are derived from the enrollment and teacher statistics given in Defendants' Answer to Plaintiffs' Interrogatory Number 1.

and cannot be justified. When school officials assign or reassign teachers for fall classes, the goal of approximately equal pupil-teacher ratios in all schools serving the same grade levels should be linked to the goal of teacher desegregation.

Respectfully submitted,

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March 10, 1966

CERTIFICATE OF SERVICE

I certify that, on the 10th day of March 1966, I served the foregoing Brief, together with the attached Appendices, by mailing copies thereof by United States Air Mail Special Delivery, to the attorneys for the defendants at the following addresses:

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