
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-610

COLUMBUS BOARD OF EDUCATION, et al.,
Petitioners,

v.

GARY L. PENICK, et al., *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

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BRIEF FOR RESPONDENTS

Questions Presented

Respondents do not accept the statement of Questions Presented as framed by Petitioners, because the assumptions reflected in the questions are inaccurate, with respect to the status of the Columbus school system (where “mandatory [i.e., state-imposed] segregation by law has [*not*] long since ceased”), with respect to the evidence (there is much more in the record than “evidence of discrete and isolated constitutional violations”), and with respect to the basis for the rulings below (which were not based solely on “legal presumptions”). However, we forsake the semantic exercise of rewording the questions. As Petitioners have described their claims in their brief, and in light of the record made at the trial of this matter, the issue to be

determined by this Court is: what do plaintiffs in a school desegregation action need to prove in order to be entitled to meaningful (usually systemwide) relief?

Statement of the Case

The prior proceedings in this matter are, by and large, accurately described at pages 3-7 of Petitioners' Brief, with the exception of certain characterizations of the parties and the actions of the trial court. The most important of these is Petitioners' contention that the July 29, 1977 Order of the district court (Pet. App. 97) required "development of a new systemwide racial balance remedy plan" or "that every school in the Columbus system be racially balanced." The trial judge did not require racial balance; he did reject the plans proposed by the Columbus Board of Education because "the Columbus defendants did not shoulder the burden of showing that the amended plan's remaining one-race schools are not the result of present or past discriminatory action on their part as required by *Swann, supra*, 402 U.S. at 26" and because "adequate justification for the retention of one-race schools must be supplied by the defendants. They have not done so." (Pet. App. 102-03; see also, *id.* at 105.)

Additionally, we do not understand why Petitioners refer to counsel for Respondents as "NAACP lawyers" (Pet. Br. 4, 5). Among counsel for respondents during the course of proceedings in this matter have been salaried attorneys employed by several different organizations, including the NAACP (as well as attorneys in private practice); but the NAACP is not a party to the case and the identification of counsel is without significance.

Statement of Facts¹

Introduction

In school desegregation matters, as in other constitutional cases, the facts are critical to an informed judgment. Petitioners have confined their recitation of facts (Pet. Br. 7-39) to the specific examples of segregative actions enumerated in the trial court's opinion and to other evidence which Petitioners believe weighs in their favor.² The mass of evidence considered by the district judge in reaching the conclusion that there had been systematic, systemwide segregation in the Columbus public schools is hardly ad-

¹ The form of citations employed throughout this Brief is as follows: The opinions below, reprinted in the Appendix to the Petition for Writ of Certiorari, are cited "Pet. App. ____." That portion of the testimony and evidence printed in the Appendix is cited "A. ____." Because of the volume of the testimony and exhibits in the trial court, every effort was made to limit the amount of material designated for inclusion in the printed Appendix, *see* Sup. Ct. Rule 36(2). The major portions of plaintiffs' proof of segregation by Columbus school authorities have been included in shortened, excerpted form. Nevertheless, at various places throughout this Brief it has been necessary to refer to additional evidence in the record. Where reference is made to oral testimony at the hearings on liability held between April 19 and June 17, 1976, it is cited "L. Tr. ____." Where reference is made to oral testimony at the hearings on remedy held in 1977, it is cited "R. Tr. ____." Exhibits not reprinted in the Appendix will be identified as introduced at either the liability or remedy hearings, respectively, through use of the letters "L" and "R" and will be cited in accordance with Sup. Ct. Rule 40(2); for example, "Pl. L. Ex. ____, L. Tr. ____." In accordance with the request of the Clerk of this Court, the trial exhibits were not transmitted as part of the record; however, some of the most important trial exhibits have been withdrawn from the district court and lodged with the Clerk of this Court so that they will be available for inspection if desired. *See* note 6 *infra*.

² On occasion, Petitioners err in their description of the record evidence or propose inapposite comparison of exhibits which are not compatible. These misstatements are noted as appropriate in the course of the factual summary which follows.

verted to.³ For this reason, we believe that a full presentation in our Brief of the record evidence which supports Respondents is necessary.

There is an additional ground why complete factual documentation is indispensable in this instance. Some of the legal questions posed by Petitioners, we contend, do not actually arise on this record. Their presence in this case is traceable to misconceptions about the evidence and to language used (perhaps too loosely) by the Court of Appeals. For example, this case does not involve the application of legal presumptions to proof of only "isolated" constitutional violations (*compare* Pet. Br. 3). An accurate evaluation of the judgments below requires an adequate factual exposition.

The district court had before it an unprecedented amount of information about the policies and practices of Columbus public school authorities, from formation of the district in the 1820's through the date of trial. A significant portion of the historical pre-1954 evidence was documentary—and the documentation was maintained by the school system's own historian. (A. 254-55.).⁴ In addition, wit-

³ In some instances Petitioners seem to contest the district court's school-specific findings as expressed in the opinion (*e.g.*, Pet. Br. 22-24). Petitioners also contest the overall finding of systemwide segregation made by the trial court on the basis not only of the incidents detailed in his opinion but also of the entire record (*see* Pet. App. 94-95). Since those findings were explicitly affirmed by the Court of Appeals (*e.g.*, Pet. App. 172-73, 198-99), debating the evidence here would seem to be precluded by the "two-court" rule. *See Berenyi v. Immigration Serv.*, 385 U.S. 630 (1967). However, because Petitioners' argument may be construed as a claim that the findings are "clearly erroneous" on the part of both courts below, *see Brainard v. Buck*, 184 U.S. 99, 105 (1902), the "two-court" rule may not bar their review. But this underscores the importance of examining the entire record.

⁴ Petitioners deprecate the testimony of Myron Seifert (Pet. Br. 39, 69 n.35) but they fail to identify him as a school system employee who collected and maintained historical material about the Columbus school system as part of his official duties (A. 255). Nor

nesses testified from personal recollection dating back at least to 1916 about the school system's discriminatory practices; this testimony was basically undisputed by Petitioners.⁵

For both legal and factual reasons, the pre-1954 history of the Columbus public school system is of significance in this case. First, the district court explicitly found that

. . . the Columbus school system cannot reasonably be said to have been a racially neutral system on May 17, 1954. The then-existing racial separation was the direct result of cognitive acts or omissions of those school board members and administrators who had originally intentionally caused and later perpetuated the racial isolation, in the east area of the district, of black children and faculty at Champion, Mt. Vernon, Garfield, Felton and Pilgrim

. . . As a result, in 1954 there was not a unitary school system in Columbus. (Pet. App. 11.)

The Court of Appeals upheld this finding (Pet. App. 159-60). Hence, unless both courts below were wrong, when

have Petitioners ever denied the accuracy of the facts and occurrences about which he testified, nor presented record evidence to refute his testimony.

⁵ Petitioners now characterize this testimony as "subjective" and of "little probative value" (Pet. Br. 39) but they never rebutted it and have never denied that the events took place. *See, e.g., Taylor v. Board of Educ. of New Rochelle*, 191 F. Supp. 181, 184 (S.D.N.Y. 1961). In contrast, after one of plaintiffs' witnesses described an incident involving reassignment of his child from one school to another in 1952, an incident which he interpreted at the time as demonstrating racial discrimination (L. Tr. 2026-36), Petitioners produced class rosters, monthly school enrollment reports, newspaper clippings, pupil census cards (L. Tr. 4612-33), and a woman who was employed for less than a single school year in 1952 as a substitute teacher by the Columbus public schools (L. Tr. 4713-21) in order to demonstrate that this action did not have a racial purpose or effect.

Brown II was decided in 1955, the Columbus board was "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," *Green v. County School Bd. of New Kent County*, 391 U.S. 430, 437-48 (1968); see also, *Keyes v. School Dist. No. 1*, 413 U.S. 189, 203 (1973). Second, the pre-1954 actions are also relevant because many of the devices and techniques utilized by the Columbus school authorities prior to *Brown* to maintain segregation are identical or similar to actions taken in later years. The pre-1954 violations are thus persuasive evidence of the system's intent in implementing decisions after that date which entrenched or extended pupil and faculty segregation in its schools. Cf. *Keyes v. School Dist. No. 1*, *supra*, 413 U.S. at 207, citing 2 J. Wigmore, *EVIDENCE* (3rd ed. 1940).

For the period 1957 through 1975, because more of the official records were extant, the operations of the school system were examined and analyzed in even greater detail before the district court. Directories indicating the exact location of every school attendance boundary and optional attendance area during those years permitted the preparation of demonstrative exhibits which allowed the trial court to evaluate visually the impact of pupil assignment devices used by the system. Maps of the district showing the residential distribution of the white and non-white population of Columbus in 1950, 1960, and 1970, as recorded by the U.S. Census, both aided that evaluation and also corroborated the testimony of witnesses about Columbus residential patterns at the time when school zones were established and modified.⁶ Beginning with the 1964-65 school year,

⁶ These demonstrative exhibits, Pl. L. Exs. 250-52, L. Tr. 3897 (base maps), Pl. L. Exs. 261-320, L. Tr. 3898 (attendance zone

both enrollment and faculty and principal assignment data, by race, were available.

In 36 trial days of hearing on liability, covering more than 6000 pages of transcript, more than 70 witnesses and 750 exhibits were presented by the parties. Based upon all of the evidence, the trial court concluded that

the Columbus Public Schools were openly and intentionally segregated on the basis of race when *Brown I* was decided in 1954. The Court has found that the Columbus Board of Education never actively set out to dismantle this dual system. The Court has found that until legal action was initiated by the Columbus Area Civil Rights Council, the Columbus Board did not assign teachers and administrators to Columbus schools at random, without regard for the racial composition of the student enrollment at those schools. The Columbus Board even in recent times, has approved optional attendance zones, discontinuous attendance areas and boundary changes which have maintained and enhanced racial imbalance in the Columbus Public Schools. The Board, even in very recent times and after promising to do otherwise, has abjured workable suggestions for improving the racial balance of city schools. (Pet. App. 61.)

. . .

. . . The evidence in this case and the factual determinations made earlier in this opinion support the finding that those elementary, junior, and senior high schools in the Columbus school district which *presently* have a predominantly black student enrollment have been substantially and directly affected by the

overlays), and Pl. L. Exs. 336-38, L. Tr. 3899 (new construction overlays) have been lodged with the Clerk of this Court and are available for the Court's inspection.

intentional acts and omissions of the defendant local and state school boards. (Pet. App. 73.) (emphasis added.)⁷

After this Court's opinion in *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406 (1977) was announced, the district court repeated its findings:

. . . Viewing the Court's March 8 findings in their totality, this case does not rest on three specific violations, or eleven, or any other specific number. It concerns a school board which since 1954 has by its official acts intentionally aggravated, rather than alleviated, the racial imbalance of the public schools it administers. These were not the facts of the Dayton case.

Systemwide liability is the law of this case pending review by the appellate courts. 429 F. Supp. at 266. *Defendants had ample opportunity at trial to show, if they could, that the admitted racial imbalance of the Columbus Public Schools is the result of social dynamics or of the acts of others for which defendants owe no responsibility.* This they did not do, 429 F. Supp. at 260. (Pet. App. 94-95) (emphasis supplied.)

Despite this rather clear statement, Petitioners insist upon arguing this case as if the conclusions of *current*, systemwide impact of their own segregatory actions are based solely on the *examples* of such actions set out at length in the trial court's opinion, combined with "legal presumptions." They repeatedly refer to "remote and isolated" acts of segregation, and attempt to support this thesis by lifting from its context a single sentence used by

⁷ The district court's findings with respect to the State of Ohio defendants were remanded by the Court of Appeals (Pet. App. 208) and are thus not at issue in this Court.

the Court of Appeals in its opinion affirming the district court's judgment:

These instances can properly be classified as isolated in the sense that they do not form any systemwide pattern. (Pet. App. 175.)

Not only does this language of the Court of Appeals refer explicitly only to a *portion* of the evidence before the district court, *compare* Pet. App. 166-74, but it is a characterization not made by the trial court. As we show below, the evidence in this case demonstrates the consistent adoption of segregative devices by the Columbus school authorities up to the very eve of trial. The Court of Appeals' statement must be read in light of the record to mean only that the Columbus school authorities did not succeed in segregating every black student from every white student through the segregative pupil assignment devices discussed under the heading of "Gerrymandering, Pupil Options, Discontiguous Pupil Assignment Areas, Etc." (Pet. App. 174), especially since the Court of Appeals' opinion goes on to recognize that this evidence was most significant because it indicated that the board's selective invocation of the "neighborhood school" concept was but a pretext for a policy of segregation (Pet. App. 175).

Consideration of all of the evidence may not be necessary to interpret the remark in perspective, but meticulous appraisal of the record is crucial because of the pivotal significance accorded the Court of Appeals' language in Mr. Justice Rehnquist's stay opinion, Pet. App. 213:

. . . In both cases the Court of Appeals employed legal presumptions of intent to extrapolate systemwide violations from what was described in the Columbus case as "isolated" instances. [citation omitted] The Sixth Circuit is apparently of the opinion that pre-

sumptions, in combination with such isolated violations, can be used to justify a systemwide remedy where such a remedy would not be warranted by the incremental segregative effect of the identified violations. . . .

Even if we are wrong about the meaning of the Sixth Circuit's sentence in context, this Court must carefully weigh the trier of fact's determination in light of the entire record. For if the evidence supports the judgment which the Court of Appeals affirmed, then that judgment must be allowed to stand and the remedial decrees of the trial court implemented. *See Massachusetts Mut. Life Ins. Co. v. Ludwig*, 426 U.S. 479 (1976), and cases cited.

A. Pre-1954 Operation of the Columbus Public Schools.

1. *Demography.* The Columbus district radiates in all four directions from the downtown intersection of Broad and High Streets. The shortest and narrowest of its four "arms" lies to the west, across the Scioto River; to the east, prior to 1950 the district extended around three sides of the City of Bexley (which it now entirely surrounds). To the north, it included a wide band of territory on both sides of the Olentangy River; and to the south was a slightly narrower and shorter extension. As the district court's opinion recites, the Columbus district has significantly increased in area since 1950 (Pet. App. 12). In particular, since that time the district has expanded substantially to the east, southeast, and northeast. (*Compare* Fig. 3, Pl. L. Ex. 59, L. Tr. 3882, at 7 [1950 Ohio State University study] *with* Pl. L. Exs. 320, 252, L. Tr. 3897, 3898 [overlay of 1975 senior high school attendance areas over 1970 census].) The arena of concern during the pre-*Brown* years is accordingly the smaller unit. (*See also*, Fig. 14,

Pl. L. Ex. 58, L. Tr. 3882, at 111 [1939 Ohio State University study].)

Prior to 1954 the black population of the city was located generally in the central and east-central portions of the district (see, for example, the 1950 census map, Pl. L. Ex. 250, L. Tr. 3897). The Columbus Board of Education constructed its first all-black schools in this area, and the evidence of pre-1954 constitutional violations in this case concerns that area almost exclusively. For the convenience of the Court in following the summary of that evidence, a line drawing of the area to the east and north of the Broad-High intersection is reproduced on page 13.⁸

2. *Early history: compulsory segregation.* The evidence demonstrates that racial segregation of students and teachers has been a recurrent theme in public education in Columbus since free schooling was first made available. Prior to 1848, free blacks were excluded from the public schools (though they were also exempted from contributing property taxes used for education) (Pl. L. Ex. 351, L. Tr. 3902, at 3). Thereafter, Ohio mandated separate "colored" schools in any district having 20 or more black children (*id.*). Following the Civil War, the pattern of segregation was continued. Black elementary students in Columbus were assigned to separate schools; a Board of Education plan to house all Negro students in a facility on Sixth Street, no matter what their place of residence or the distance they had to travel to get there, provoked opposition

⁸ This drawing was prepared by tracing from the map at Pl. L. Ex. 376, L. Tr. 3907, at 8, and adding indications of the approximate locations of the American Addition and Eleventh Avenue School, both to the north. School names are in italics and locations indicated by heavy dots.

from a black leader (A. 256-58; Pl. L. Ex. 351, L. Tr. 3902, at 113-14). Compulsory segregation in public education was upheld against a Fourteenth Amendment challenge by the Ohio Supreme Court in 1871⁹ (Pet. App. 7-8) and the state legislature reaffirmed this holding in 1878 when it adopted a permissive school segregation statute, 75 Ohio L. 513 (Pet. App. 8).

In the meantime, the Columbus School Board rebuilt a facility for Negro grade school students (the Loving School), named for the Board member who had shown the greatest concern for the education of Negro children even though he was highly critical of its location and adequacy (A. 258-59; Pl. L. Ex. 351, L. Tr. 3902, at 16; *see also*, Dr. Loving's later report of the building's defects, A. 264-66; Pl. L. Ex. 351, L. Tr. 3902, at 33).

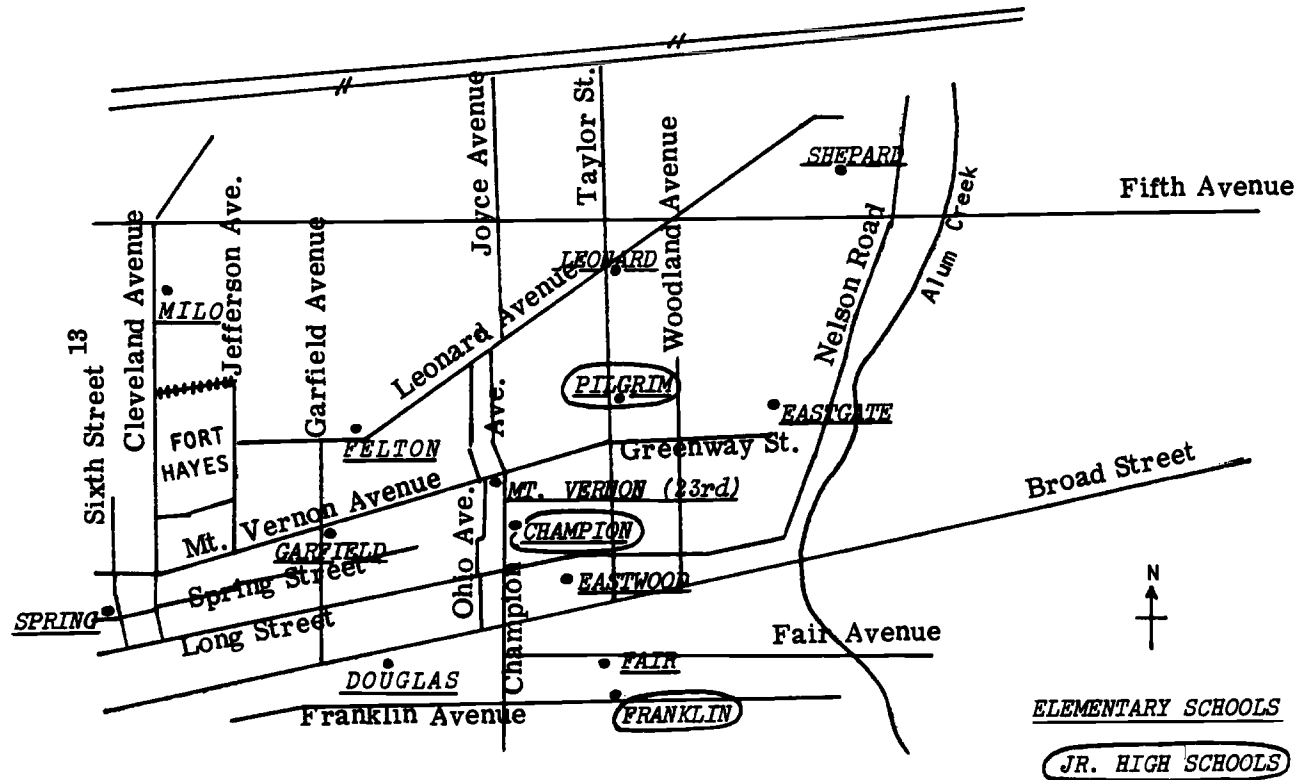
3. *Segregation ended and reinstated.* In 1881 the Board was finally persuaded to close the Loving School (A. 266, 270-71; Pl. L. Ex. 351, L. Tr. 3902, at 44-45). For almost three decades thereafter, the Columbus schools were officially not segregated—although the subject of a return to the practice of racially separate schools arose repeatedly (*see* A. 271-72, Pl. L. Ex. 351, L. Tr. 3902, at 46, 49-51). The system also hired a few black teachers during this time.¹⁰

⁹ *State ex rel. Garnes v. McCann*, 21 Ohio St. 198 (1871).

¹⁰ Columbus operated not only a twelve-grade elementary and secondary system, but also a "Normal School" to prepare high school graduates for teaching careers (*see* A. 178), but the first black to complete high school in the city did not receive a diploma until 1878 (A. 262; Pl. L. Ex. 351, L. Tr. 3902, at 26; Pet. App. 8).

Approx. location of 11th Avenue School

Approx. location of American Addition



By 1907 the Board of Education was again under community pressure to restore school segregation; it requested an opinion from the City Solicitor concerning the legal permissibility of such a course (A. 365-67; Pl. L. Ex. 351, L. Tr. 3902, at 58) and was eventually advised that explicit segregation was invalid under Ohio law¹¹ (L. Tr. 3169-70). However, the Board decided to purchase a site and construct a new facility on Champion Avenue (A. 273-76). This decision was widely viewed as a means of effectuating segregation: when first announced, it resulted in presentation of a petition to the school board from Negroes who feared that this was the Board's purpose (A. 370-72);¹² and it was reported in the press as a "Clever Scheme to Separate Races in Columbus Schools" (A. 272-73, 370). By January, 1910, when construction of the facility was nearly complete, a newspaper story reported, "Negroes to have fine new school" staffed entirely with black teachers (A. 276-79, 372).

Despite the protests, the newspaper stories proved accurate. The Champion Avenue School was located midway between two existing facilities (the Twenty-Third Street [now Mount Vernon Avenue] and Eastwood Avenue Schools), approximately three blocks from each. (*See* p. 13 *supra*.) An attendance area for the school was created from the former Twenty-Third Street and Eastwood Avenue zones such that more than 90 percent of the resi-

¹¹ In 1887 the Legislature repealed Ohio's permissive segregation statute, 84 Ohio L. 34, and despite its earlier *McCann* ruling before the statute was enacted, the Ohio Supreme Court ruled that the repeal made segregation illegal in the state. *Board of Educ. v. State*, 45 Ohio St. 555, 16 N.E. 373 (1888); *see* Pet. App. 8.

¹² In 1907, the school board's request for an opinion on segregation from the City Solicitor also produced a protest petition from the black community, in which it was alleged that "the boundary lines of certain school districts in this city [had already so] been drawn as to segregate colored children . . ." (A. 367-70).

dences within the zone were occupied by black families, compared to less than four percent in the new areas for the other two schools (A. 377-78; L. Tr. 3310-15).¹³ Black teachers were reassigned from other schools to Champion (A. 179-80); in 1916, a black applicant was told that Champion was the only school in the system at which Negro teachers would be hired (A. 180; *see also id.* at 188). Champion was the only school in Columbus which had a black principal (L. Tr. 176-77).

4. *Extending segregation: grade restructuring, optional zones, faculty replacement, boundary changes, and gerrymandering.* As the black population in Columbus grew, the educational authorities embarked upon a series of actions to maintain a high degree of racial separation in the public schools. In 1922, the same year that Pilgrim Junior High School opened, ninth grade students were withdrawn from 23rd Street and added to Champion's enrollment despite protests that this would further reduce most Columbus black children's opportunity for an integrated educational experience (A. 378-79; L. Tr. 3324-28). In 1925, as the black population expanded westward toward the business center, the Board created the so-called "Downtown Option". Students residing within this large area (which included the zone of the former Spring Street School, which was integrated in 1921, L. Tr. 136-37) could elect to attend any

¹³ A black parent brought suit against the Board, challenging the zone established for Champion as part of a plan to operate a segregated school in violation of Ohio law. The complaint pointed out, for example, that the northern boundary of the Champion zone was an alley immediately adjacent to the site of the 23rd Street School (A. 373-76). The Board claimed that construction of a new facility was made necessary because of overcrowding and because junior high school grades were being established at the 23rd Street School (*see* A. 178), which Champion would feed (L. Tr. 3306). The state Circuit Court dismissed the suit, holding that it had no authority to interfere with the Board's administration of the school system (A. 376-77).

of the surrounding schools, which varied widely in their racial compositions. White students could thus avoid attending the closest facilities if they happened to be integrated or predominantly black (A. 478-86).¹⁴ By 1928, many black students were attending the Twenty-Third Street School; it was renamed the Mt. Vernon Avenue School and its white principal and faculty were replaced with a principal and staff of black teachers (A. 315).

That same year, the Champion facility was enlarged (L. Tr. 3349). Attendance areas for Champion and Mt. Vernon were altered in 1931 with a concomitant reduction in size of the Eastwood zone. The Champion boundaries were expanded eastward to Taylor Street and south to Long Street to add black residences formerly in the Eastwood zone, and a portion of the Eastwood area south of Long Street and east of Ohio Avenue was added to Mt. Vernon School (L. Tr. 3351-57). (*See* p. 13 *supra*.) Eastwood's enrollment further declined in 1932, when students in several grades residing in the Eastgate subdivision were housed in a portable building in that area (A. 383-84). Then in 1933, the Eastwood facility was shut down entirely. White students residing in the eastern portion of its former zone were assigned to a "school" composed solely of portable buildings located in the predominantly white Eastgate subdivision across Woodland Avenue,¹⁵ while white students in the western end of its zone (as altered in 1931)

¹⁴ The "Downtown Option" was paralleled by an optional attendance area, or "neutral zone", at the junior high school level (L. Tr. 3345-47).

¹⁵ As early as 1925, the Board had created a similar "portable school," this one staffed entirely with black teachers, for black students living in the "American Addition" well to the north (*see* p. 13 *supra*), rather than accommodate these children at nearby Leonard Avenue Elementary. Black junior high school students living in this area were required to attend Champion rather than the closer schools with junior high grades—Pilgrim and Eleventh Avenue. Not until 1937 did the school system provide these stu-

were assigned to the predominantly white Fair Elementary School south of Broad Street (A. 384-86). None of the white former Eastwood pupils were reassigned to Champion or Mt. Vernon (A. 181). (*Cf.* L. Tr. 150-51.)¹⁶

In 1932 the Garfield Elementary School was converted from an all-white to an all-black faculty and principal (A. 315). That year also, the Board detached the virtually all-white Eastgate and Shepard Elementary areas from the nearby Pilgrim junior high school zone and, despite vehement protest about segregation (L. Tr. 3936-38), transferred them to the more distant Franklin Junior High, to the south below Broad Street (A. 380-83). This action removed a significant number of white students from Pilgrim and signaled its expected transformation into a school for black children. The transformation was completed in 1937 when an all-black faculty was transferred to the Pilgrim school (A. 184-85). It was made an elementary-level facility, and Champion became a junior high school serving graduates of the newly created black elementary schools (Mt. Vernon, Garfield and Pilgrim) (A. 387-89).¹⁷ Franklin

dents with transportation to Champion. (L. Tr. 3334-43.) The all-black elementary grades in portables remained in the American Addition until a new Superintendent of Schools arrived after 1949. He found deplorable conditions and directed that the students be housed in vacant classrooms at Leonard (A. 574-75).

¹⁶ Looking back on this sequence of events in 1941, the Vanguard League (an integrated civic group, *see* A. 194-95; L. Tr. 182) complained that the low enrollment at Eastwood which was used to justify its closing was the result of the 1931 zone changes. The League recommended that Eastwood be reopened (A. 386-89; Pl. L. Ex. 51H-5(b), L. Tr. 3994.)

¹⁷ The 1938 attendance zone maps at Figs. 13-14, pp. 107, 111 of the 1939 Ohio State University facilities study, Pl. L. Ex. 58, L. Tr. 3882, indicate that the zone for Champion Junior High also included the Felton Elementary area. Although the exact racial enrollment of Felton at this time is not known, by 1943 it was a heavily black school and a black principal and staff were reassigned there (*see text infra*).

Junior High (south of Broad Street), on the other hand, served the still-white Fair, Douglas, Eastgate, and Shepard elementary schools although Shepard and Eastgate were well north of Broad (*compare* Figs. 13 and 14, Pl. L. Ex. 58, L. Tr. 3882, at 107, 111). Both Champion and Pilgrim were provided with used furniture and books (A. 182-84; L. Tr. 162-63), and black children living in the vicinity of other elementary schools were assigned to those two schools (A. 184; note 15 *supra*). White students living within their attendance zones, however, were permitted to enroll in other schools (A. 191).

After Pilgrim was changed to a grade school, the attendance zone for Fair Elementary retained the former Eastwood areas reassigned to Fair in 1933, and also extended far north of Broad Street, very close to Pilgrim—now also an elementary school (*see* Fig. 14, Pl. L. Ex. 58, L. Tr. 3882, at 111). It was gerrymandered to exclude black students from Fair (Pet. App. 9), as vividly described in a 1944 pamphlet of the Vanguard League,¹⁸ “Which September?” (Pl. L. Ex. 376, L. Tr. 3907 at 7):

School districts are established in such a manner that white families living near “colored” schools will not be in the “colored” school district. The area in the vicinity of Pilgrim school, embracing Richmond, Parkwood, and parts of Greenway, Clifton, Woodland, and Granville streets, is an excellent example of such gerrymandering. A part of Greenway is only one block from Pilgrim school, however, the children who live there are in the Fair Avenue school district, twelve and one half blocks away!

A more striking example of such gerrymandering is Taylor and Woodland Avenues between Long Street

¹⁸ *See* note 16 *supra*.

and Greenway. Here we find the school districts skipping about as capriciously as a young child at play. The west side of Taylor Avenue (colored residents) is in Pilgrim elementary district and Champion Junior High. The east side of Taylor (white families) is in Fair Avenue elementary district and Franklin for Junior High.

Both sides of Woodland Avenue between Long and Greenway are occupied by white families and are, therefore, in the Fair Avenue-Franklin district. Both sides of this same street between 340 and 500 are occupied by colored families and are in the Pilgrim-Champion, or "colored" school, district. White families occupy the residences between 500 and 940, and, as would be expected, the "white" school district of Shepard-Franklin applies.

In 1943 yet another school (Felton) was officially converted into a black school by replacing its entire white faculty and administrative staff with blacks (A. 195, 313-15; Pet. App. 9-10). Thus by the end of World War II, five schools in east Columbus had been created and identified as black schools by Board action. At the same time, a facility (Eastwood) which would have been integrated, had it remained open, was closed and its attendance area divided among black (Mt. Vernon and Champion) and white (Eastgate portable and Fair) schools. The area of east Columbus within which the five black schools had been created and maintained was hardly insubstantial; in 1950 it included the major share of black residences in the city (*see* Pl. L. Ex. 250, L. Tr. 3897).

Yet desegregation of these schools within the constraints of the operational practices of the Columbus school system was possible at all times. By drawing zone lines on a

north-south basis across Broad Street prior to 1954—as the school board was willing to do when Eastwood was closed in 1933, in order to provide white students living east of Woodland Avenue with an alternative to predominantly black Champion or Pilgrim—desegregated student bodies at all of the schools in the area could have been achieved and maintained. Particularly if the same techniques utilized to preserve segregation had been employed to avoid it (conscious shaping of attendance boundaries and transportation of pupils, as was done in the case of the American Addition pupils), a stable situation in which the existence of racially isolated white and black schools would not have provided an incentive for residential relocation (*compare* A. 240-41) could have been created. Certainly there was no educational impediment to such possibilities. For the school system's willingness to have children living in the "Downtown Option" area—or in the American Addition—travel long distances to reach their classes¹⁹ refutes any possible claim that desegregation was infeasible prior to 1954. Furthermore, as suburban areas were annexed to Columbus in the decades following *Brown*, school authorities more and more frequently made use of pupil transportation (busing) to get pupils to school facilities.²⁰ However, pupil transportation was eschewed when it would have resulted in desegregation.²¹

¹⁹ This is graphically apparent on the overlay of the 1957-58 elementary school zones, Pl. L. Ex. 261, L. Tr. 3898.

²⁰ *See*, for example, the Willis Park Elementary zone in 1958-59, Pl. L. Ex. 262, L. Tr. 3898. By the time of trial, the system transported more than 9,000 pupils daily exclusive of transfers under its voluntary desegregation program (A. 233-34). *See also*, A. 229-31, 400.

²¹ From 1956-75, Columbus did transport classes from crowded schools to those with space available (A. 401-02). In many instances, white pupils were bused from one white school to another white school, and black pupils from one black school to another,

Throughout the period, black faculty were assigned in rigidly segregated fashion, only to schools with black students (A. 188-89). There were no black principals of predominantly white schools or white principals of predominantly black schools (A. 402-06; L. Tr. 176-78; Pet. App. 10). When a new Superintendent of Schools arrived on the scene in 1949, he found systemwide faculty segregation (A. 573-74). Racial designations appeared on substitute teacher assignment cards (A. 225-26; Pl. L. Exs. 494B, 494C, L. Tr. 3921) and on enrollment reports submitted by teachers (A. 685-87) and black substitute teachers were assigned only to schools with black students (A. 187-88; L. Tr. 168-70).

In sum, when *Brown I* was decided, the Columbus school system was riven with segregation. In the preceding 45 years the Board of Education disregarded complaints that its actions were discriminatory and segregative. Taking advantage of grade structure alterations, population growth, and other systemwide patterns, it had utilized construction, transportation, school closings, boundary changes, grade restructuring, faculty and administrative staff assignments to designate schools as intended for

despite the availability of receiving schools which were not similarly racially identifiable (L. Tr. 3601-3620). At other times, this sort of transportation had no racial consequences or could have had an integrative effect (L. Tr. 5339-78). However, when black students were sent to predominantly white schools, they were moved with their teacher in class groupings, remained on the rolls of the sending school, and did not participate in academic activities with the students at the receiving schools (A. 612-13). Sometimes they were separated for recess and other functions as well (A. 701-14). The Columbus system was insensitive to the humiliating connotation of keeping black students confined to a separate classroom with a black teacher in an otherwise predominantly white facility (A. 400). From 1969-70 until 1973-74, for example, classes from Sullivant (61% to 70% black) were transported on an intact basis to Bellows (4% to 9.5% black) rather than adjusting the boundary, pairing the schools, etc. (A. 639-40).

only black or white students. White students living in east-central Columbus were “protected” from having to attend school with black children through precise gerrymandering and optional zone techniques. The stigma of black undesirability was reinforced by overcrowding and inferior materials, equipment and facilities at black schools, and by the absence of black administrators anywhere in the system except at black schools. As the district court aptly put it, “. . . the Columbus school system cannot reasonably be said to have been a racially neutral system on May 17, 1954” (Pet. App. 11).

B. Post-Brown Administration of the Schools.

Even after this Court announced that compelled segregation of the public schools was unconstitutional, *Brown v. Board of Education*, 347 U.S. 483 (1954), Columbus school authorities continued to employ a wide variety of techniques to maintain significant, if not total, separation of the races in its public schools. Because the enrollment of the system grew sizably both as a result of the post-World War II “baby boom” and also as the geographic size of the district more than tripled through annexation of adjacent territory, the school plant consistently grew as well. The combination of residential relocation within the pre-1954 area of the district and settlement of the suburbs meant that numerous boundary adjustments, school site and construction decisions, grade structure modifications, and staff-faculty assignments had to be made each year. The result was a high degree of school segregation (see Pl. L. Exs. 461A-461D, L. Tr. 2135-36; A. 775-87, L. Tr. 3909 [PX 383]; Pl. L. Exs. 409A-409D, 448A-448D, 450A-450D, L. Tr. 3910, 3911), which defendants ascribed solely to their pursuit of “neighborhood schools.” Plaintiffs sought to demonstrate, to the contrary, that the only consistent policy of the school system was one lead-

ing to increased segregation; that the Board used an ever-changing concept of “neighborhood schools” to entrench that segregation; and that every manner of exception to “neighborhood schools” was tolerated in the interest of segregation. The district court found “that the evidence clearly and convincingly weighs in favor of the plaintiffs” (Pet. App. 2).

1. *Demography.* Between 1954 and the present, the Columbus school district has expanded along all four geographic axes. Although there has been a nearly continuous series of annexations of small parcels of territory, several major additions can be identified which account for much of the total growth of the system. Annexations from 1954 to 1955 included the airport, two small parcels to the south, and a large tract to the south of the City of Whitehall.²² None was densely settled at the time.²³

By 1959, additional areas to the far north, around the airport, immediately south of Columbus, to the east and south of Whitehall, and at the edge of the district’s western projection across the Scioto River, had been added, increasing its size by more than half.²⁴ In a small annexed area to the northeast, the Columbus district purchased a site, constructed a building, and opened a new elementary school (Arlington Park) in 1957.²⁵ The major acquisition was in 1957, involving a large section to the south of the district and including several school buildings previously operated by Marion-Franklin Township.²⁶ See Fig. 1, Pl. L. Ex. 62, L. Tr. 3882, at 7.

²² See Fig. 1, Pl. L. Ex. 61, L. Tr. 3882, at 7.

²³ *Id.* at 2, 5.

²⁴ Pl. L. Ex. 62, L. Tr. 3882, at 5.

²⁵ *Id.* at 48.

²⁶ *Id.*

Few significant additions took place between 1959 and 1964, except for an area north of McKinley Avenue along the northern edge of the city's projection toward the west.²⁷ The same situation prevailed in 1969; a substantial amount of territory to the west, north and northeast had been annexed by the City of Columbus but not added to the school district.²⁸ The major subsequent growth was to the northeast, in 1971. *Compare, e.g.* Pl. L. Exs. 312, 320, L. Tr. 3898 [overlays of senior high school zones in 1967-68, 1975-76].

The same period of time witnessed school-age population increases both within the "old" district and in the annexed areas. To serve this burgeoning school enrollment, Columbus undertook an ambitious school construction program.²⁹ Between 1950 and 1975, a total of 103 new schools was built (Pet. App. 21). Not all of these were to serve either the annexed territory or areas of residential population increase; the number includes reconstructions of schools on the same site (*e.g.*, Garfield and Franklinton) and replacements of portables with a permanent facility (*e.g.*, Fairmoor and Eastgate). Finally, the district made extensive renovations and building additions at almost every school in the system during this period (*see* Pl. L. Exs. 22, 23, L. Tr. 3881, 3991). For new facilities, attendance

²⁷ *Compare* Fig. 1, Pl. L. Ex. 64, L. Tr. 3882, at 8 *with* Fig. 1, Pl. L. Ex. 62, L. Tr. 3882, at 7.

²⁸ *Compare id. with* Fig. 1, Pl. L. Ex. 63, L. Tr. 3882, at 13.

²⁹ Columbus also consistently altered the capacities of its existing facilities to reflect changing policy objectives chosen by the Superintendent or the board. For example, the policy decisions to create and site remedial classes, or to reduce pupil-teacher ratios, had implications for building capacities. The choice and timing of such decisions was almost always within the control of school officials, who could opt to proceed integratively or segregatively. The decision to site special programs at a particular school, for example, was simultaneously a decision not to use that school's space to relieve overcrowding at another, opposite-race, school.

zones had to be established and existing zones modified (see A. 631, 398). As many as sixty boundary changes a year were recommended to the school board for approval (A. 242, 577; see A. 234-37). The exact location of the building and the pupil capacity for which it is designed limit the zone-drawing opportunities (along with administrative decisions about pupil transportation) (A. 322-23, 643-44). Hence, Columbus' multifaceted building program between 1950 and 1975 presented the school board with more than a thousand instances in which decisions would have an impact on the racial composition of school enrollments.³⁰

At the same time, shifts in the residential location of Columbus blacks were occurring, in patterns which were apparent and well delineated. Between 1950 and 1960, for example, the black population settled in substantial numbers to the south of Broad Street in the east-central portion of the city which was the locus of most pre-*Brown* segregation. (Compare Pl. L. Ex. 251, L. Tr. 3897, with Pl. L. Ex. 252, L. Tr. 3897.)³¹ By 1960, blacks predom-

³⁰ This is not a case in which the school board has suggested by way of defense that it attempted to avoid segregation but was undone by population shifts which it had been unable to anticipate. The school system's employees who had responsibility for the establishment and alteration of recommended attendance zone boundaries testified that they had never sought to avoid segregation or racial imbalance (e.g., A. 406; cf. A. 577, 598-99 [Ohio State study teams never instructed to consider race]). Even after the school board in 1967 adopted a formal policy of considering racial balance when drawing attendance zones (Pet. App. 16; see A. 684-85), the policy was disregarded when it might otherwise have feasibly been applied to schools already in existence or previously planned (A. 361, 606).

³¹ The census maps for 1950, 1960 and 1970 were based on block data, which results in a more accurate representation of population movement than use of figures aggregated into larger census tracts (A. 192). Census "blocks" are not, however, identical to city blocks and where land is devoted to institutional use or density is sparse, census "blocks" may be as large as tracts (L. Tr. 281-83).

inated in the area of the Eastgate school established in 1933 and were a substantial, but not majority proportion, of the residents in the Shepard zone (*id.*).

The black population also moved northeast toward the Linden area. Where there had been comparatively few blacks living north of 5th Avenue in 1950 (*see* Pl. L. Ex. 250, L. Tr. 3897), by 1960 there were substantial numbers south of 17th Avenue—especially east of the Pennsylvania Railroad lines (*see* Pl. L. Ex. 251, L. Tr. 3897). At least prior to the passage of the Fair Housing Act of 1968³² (and in reality for most if not all of the period thereafter), widespread racial discrimination limited and channeled the residential mobility of Columbus blacks. Realtors could describe with precision what areas or streets were “approved” for Negro residence at any given time (A. 244-46; L. Tr. 1504-21, 2148-56; *cf.* L. Tr. 1298-1305). The minority population also increased in the areas immediately adjacent to small Negro settlements which had existed in 1950 in the middle of the district’s western projection, and to what was the extreme south of the district prior to the 1957 annexation from Marion-Franklin Township (*see* Pl. L. Exs. 250, 251, L. Tr. 3897).

These trends continued and accelerated in the 1960’s (*see* Pl. L. Ex. 252, L. Tr. 3897 [1970 census]; L. Tr. 288). Thus, not only the activity in the area east and north of the High-Broad intersection, but also most of the other school construction and zoning decisions made by the school board had a direct and immediate impact on the minority composition of the Columbus public schools. As the district court found (Pet. App. 25):

This opportunity [to bring about integration rather than segregation through school construction and

³² 42 U.S.C. §§3601 *et seq.*; *see also*, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

zoning without pupil transportation] existed, and continues to exist in those areas of the city where the population shifts from one race to another. An examination of the census maps for the years 1950, 1960 and 1970 discloses a general pattern of high density (50 to 100%) black population in the center of the city fringed by areas of lesser, but still substantial (10% to 50%), black population. The remainder of the city is predominantly white, although there are pockets of white population within the central city area, and pockets of black population in the outlying areas.

Unfortunately, these opportunities to avoid segregation were not seized. Instead, the consistent result of school board policy and action since 1954 has, with rare exception, been to keep blacks in black schools where they are located in established areas of black residence, and to protect whites from attending schools with substantial black student populations for as long as possible in areas into which blacks were moving.³³ Despite the growth of the system in absolute terms and the redistribution of white and minority population, there has been little change in the patterns of school segregation (Pl. L. Exs. 458, 460, L. Tr. 2135-36).³⁴

³³ This was the pattern of school board actions in the Park Hill area held segregative in *Keyes v. School Dist. No. 1, Denver*, 303 F. Supp. 279, 289 (D. Colo. 1969), *aff'd* 445 F.2d 990 (10th Cir. 1971), *vacated and remanded on other grounds*, 413 U.S. 189 (1973); see 413 U.S. at 199 n. 10 and accompanying text. See also, *Milliken v. Bradley*, 418 U.S. 717, 725-26, 738 n. 18, 745 (1974).

³⁴ These exhibits indicate that in 1964, 36.3% of Columbus' black student enrollment was in schools over 90% black, and in 1975, the corresponding figure was 30.2%. At the elementary grade level, the percentage of black students in schools at least 90% black in 1964 was 38.1%; in 1975-76 it had declined only to 34.6%. Segregation actually *increased* during the middle of that time span;

2. *Post-Brown actions leading to segregation.* In his opinion on liability, the district judge remarked that

[t]he complexity and the sheer volume of the evidence presented in this case have delayed this opinion long past the point at which the Court would have preferred to have rendered a decision.

(Pet. App. 2.) Based upon his extensive and thorough review of that evidence, as noted above (pp. 7-8 *supra*) the district court found system-wide intentional segregation having pervasive current effects. Because the district court's opinion elaborates only upon *examples* of post-1954 discrimination by the school authorities, rather than setting out *every* act at *every* school (*e.g.*, Pet. App. 21, 29, 61; *cf.* Pet. App. 94),³⁵ this case has been portrayed as one involving only isolated segregative acts. (*E.g.*, Pet. Br. 19, 22). See discussion, pp. 3-10 *supra*. In the factual summary which follows, we attempt to sketch the overwhelming nature and broad compass of the evidence which supports the trial judge's ultimate findings.³⁶ In the dis-

in 1970-71 51.7% of black elementary pupils and 45% of all black pupils were in virtually all-black schools. Pl. L. Ex. 459, L. Tr. 2135-36.

³⁵ See *Keyes v. School Dist. No. 1, supra*, 413 U.S. at 200.

³⁶ The evidence may be placed in three categories according to its treatment by the district court. *First*, certain evidence was fully described in the trial judge's opinion, such as that involving the patterns of faculty and principal-assistant principal assignments. (See Pet. App. 14-15, 60-61). *Second*, a large body of evidence was not summarized in detail in the opinion; but instead, representative examples were set out. (See Pet. App. 20-42.) This evidence included not only other examples of those segregative devices appearing in the internal headings of the court's opinion (school construction, optional attendance areas and boundary changes, discontinuous attendance areas, the Innis-Cassady alternatives) but also other practices of the sort described (school-to-school transportation to relieve overcrowding, *see* note 21 *supra*; rental of non-school facilities for the same purpose, other boundary line shifts,

strict court and Court of Appeals' opinions, this evidence was grouped by administrative technique; this method of presentation necessarily fragmented an either geographic or chronological overview of segregation in the Columbus public schools, and it may have contributed to the picture of the evidence as a group of "isolated instances." Below, we attempt a somewhat different organization of the evidence in order to show the extent to which segregation was practiced throughout all geographic areas of Columbus and during all of the more than score of years between *Brown I* and the trial of this matter.

a. *Faculty and staff assignment policies.* As noted above, Columbus school faculties were rigidly segregated in 1949. Former Superintendent Fawcett testified that by the time he left his post in 1956, a start toward elimination of this practice had been made with assignments of at least one opposite-race teacher at each of approximately 38 schools (A. 575). However, little alteration of the overall assignment pattern appeared prior to 1973. Although the proportion of black faculty systemwide increased in the decades after *Brown*, most continued to be assigned to schools where there were large numbers of black students. A glance at statistics showing which schools had substantial proportions of black faculty between 1964 and 1973 (racial statistics are unavailable on a systemwide basis prior to 1964) gives a clear indication, with few exceptions, of the schools with significant black populations. See A. 775-801, L. Tr. 3909. Each of the 25 Columbus schools which has had a majority-black faculty between 1964 and the time of trial had a majority-black pupil enrollment at the time, with

grade restructuring, etc. *Third*, certain evidence presented by the plaintiffs was found to lack "sufficient impact to be helpful in the resolution of the issues" (Pet. App. 20 n.2). In this brief, therefore, we limit discussion to the first two categories.

only two exceptions: Mohawk Elementary in 1966, and Heimandale. Indeed, every school whose faculty has been 30% or more black since 1964 was majority-black at the time, except for Mohawk, Lincoln Park in 1968, and Heimandale; the latter school was disproportionately black in comparison to adjacent facilities (*see* pp. 48, 62-63 *infra*. A. 775-801, L. Tr. 3909. *See also* note 164 *infra*).

In many instances, a school's increase in black faculty paralleled its increase in black student enrollment. (A. 775-801, L. Tr. 3909.) For example:

	1964	1965	1966	1967	1968	1969	1970	1971	1972
Alum Crest									
% Black Students	50.0	70.0	80.0	72.9	67.3	77.0	78.6	86.4	78.5
% Black Faculty	33.0	40.0	40.0	50.0	42.9	40.0	46.2	87.5	77.8
Deshler									
% Black Students	7.0	11.0	20.0	35.1	39.1	46.6	51.2	53.8	59.6
% Black Faculty	—	4.2	8.3	—	7.7	12.5	12.5	20.6	16.2
Beery Jr.									
% Black Students	22.3	20.0	35.0	39.6	54.1	61.4	66.9	67.2	68.9
% Black Faculty	—	—	3.1	7.5	10.8	7.5	20.9	19.5	27.3
Linmoor Jr.									
% Black Students	60.0	70.0	75.0	84.4	88.7	89.6	92.5	95.0	97.2
% Black Faculty	—	8.3	15.9	24.3	26.8	25.8	27.4	34.5	32.2
Roosevelt Jr.									
% Black Students	39.6	43.0	45.0	55.8	55.5	55.1	68.2	69.6	74.4
% Black Faculty	5.1	8.8	8.6	9.5	12.5	15.2	19.1	23.3	34.7
Linden-McKinley									
% Black Students	12.1	15.0	34.0	45.0	49.4	55.8	62.2	79.9	89.6
% Black Faculty	—	1.4	2.8	6.1	7.9	10.9	15.4	27.3	44.4

These faculty allocation practices were reinforced by the assignment of black principals and assistant principals. At the time of *Brown* all black principals were assigned to predominantly black schools; no black held a high school principalship. (Pet. App. 10; *see* p. 21 *supra*; A. 402-06.) Fourteen years later, 11 of 13 black principals were still at schools more than 70% black (Pl. L. Ex. 448A, L. Tr. 3911).

A black had finally reached the post at a senior high school—but was working at East, then 98.9% black (A. 785; Pl. L. Ex. 448B, L. Tr. 3911). As late as 1968, no black principal was assigned to a majority-white school (Pl. L. Exs. 449A, B, C, L. Tr. 3911). In 1972-73, 20 out of 24 black principals were assigned to schools with student enrollments more than 70% black (Pl. L. Ex. 450A, L. Tr. 3911).³⁷ All three black principals of high schools in 1972-73 were placed at such predominantly black facilities (Pl. L. Ex. 450B, L. Tr. 3911). The Division of Administration was aware of this pattern but made no recommendation that it be altered when the assignment of principals was annually reconsidered (A. 316-18, 401-06).

In 1972, as a result of complaints filed by the Northwest Columbus Area Council for Human Relations and the Columbus Area Civil Rights Council, the Ohio Civil Rights Commission commenced enforcement proceedings against the school district for faculty segregation. In 1973, the Commission and the school district reached a settlement agreement contemplating reassignment of faculty to each school in racial proportions generally corresponding to the systemwide representation of minority faculty members. (See Pl. L. Exs. 223, 229, 230; A. 253-54.) Recent school-by-school figures reflect the reassignments made pursuant to that agreement (see A. 789-801, L. Tr. 3909). However, the Ohio Civil Rights Commission proceedings did not involve the question of assignments for principals and assistant principals, and Columbus did not take voluntary steps having a substantial impact. At the time of trial, 22 of 30 black principals, and 6 of 15 black assistant princi-

³⁷ The assignment of assistant principals reflected much the same patterns. In 1968-69, 2 of 6 black assistant principals were at schools having enrollments greater than 70% black (Pl. L. Ex. 448A, L. Tr. 3911). For 1972-73, the corresponding figures were 10 of 15 black assistant principals (Pl. L. Ex. 450A, L. Tr. 3911).

pals, were still at schools more than 70% black (Pl. L. Ex. 409A, L. Tr. 3910; *see* A. 317-18.)

b. *Application of the "neighborhood school" policy.* Throughout the post-1954 period of expansion within the Columbus school system, the school board claimed to be proceeding in its school construction and attendance zoning actions on the basis of the "neighborhood school" principle. According to this thesis, school authorities were guided by a set of racially neutral principles and any segregation among the student bodies of the public schools resulted from patterns of housing segregation over which the school authorities had no control and to which they did not contribute (Pet. App. 49-50). This claim raised both a factual and a legal issue. The factual question is whether the post-*Brown* actions of the Columbus school board are consistent with any meaningful elucidation of the "neighborhood school" principle. The legal issue is whether a school board which is aware of patterns of severe residential segregation resulting from racial discrimination may constitutionally choose to superimpose upon this grid of known residential segregation a "neighborhood school" policy of pupil assignment with predictable school segregation results. Relevant to this legal issue are the matters of the school authorities' knowledge about residential patterns and the alternative courses of conduct realistically open to them. Evidence on all of these subjects appears in the record of these proceedings.

As it has been formulated throughout this case, the "neighborhood school" principle involves the location of facilities and establishment of attendance areas such that most pupils may walk to school (A. 227-28). At least since 1950, Columbus has used a specific set of desirable maximum "walking distances" as a guide: usually $\frac{3}{4}$ mile for elementary school students, $1\frac{1}{2}$ miles for junior high school

students, and 2 miles for senior high school students (*see* Pl. L. Ex. 59, L. Tr. 3882, at 73; Pl. L. Ex. 60, L. Tr. 3882, at 61; Pl. Ex. 61, L. Tr. 3882, at 55; Pl. L. Ex. 62, L. Tr. 3882, at 56; Pl. L. Ex. 63, L. Tr. 3882, at 76; Pl. L. Ex. 64, L. Tr. 3882, at 62). However, as articulated in the studies done jointly with Ohio State University educational consultants commissioned by the school system to help document school construction needs to be financed by bond issues (A. 550, 559), the “neighborhood school” concept is not inflexible. The studies consistently noted that schools could successfully serve wider areas where transportation was available (Pl. L. Ex. 60, L. Tr. 3882, at 61; Pl. L. Ex. 61, L. Tr. 3882, at 55; Pl. L. Ex. 62, L. Tr. 3882, at 56; Pl. L. Ex. 63, L. Tr. 3882, at 76; Pl. L. Ex. 64, L. Tr. 3882, at 62). They also recommended that transportation of pupils be continued in appropriate instances. *E.g.*, Pl. L. Ex. 59, L. Tr. 3882, at 87 [American Addition; Eastgate].

The “neighborhood school” concept as it is now practiced does not have a long history in Columbus.³⁸ The 1938 school zones are considerably larger than most attendance areas today (*compare* Figs. 12-14, Pl. L. Ex. 58, L. Tr. 3882, at 105, 107, 111 *with* Pl. L. Exs. 278, 299, 320, L. Tr. 3898). Yet in 1950 the authors of the Ohio State study commented that:

Except in areas of recent residential expansion, Columbus schools are in general well located with respect to distances which pupils must travel in order to attend them.

³⁸ In their Brief, Petitioners claim that the “neighborhood school policy” as now practiced in Columbus “has consistently [been] adhered to . . . since before 1900” (Pet. Br. 17 at n.7). However, Petitioners cite no record evidence to support this statement. *See text infra.*

(Pl. L. Ex. 59, L. Tr. 3882, at 72.) Pupils have always been transported to school within Columbus and in the surrounding township school systems which operated facilities later annexed by the city (A. 233-34).³⁹ Former Superintendent of schools Novice Fawcett testified simply that the "neighborhood school" philosophy was adopted in 1950 because, he assumed, that was the general direction in which the system was headed (A. 556).

The notion of building walk-in schools, together with the contemporaneous adoption of maximum school size goals (see Pl. L. Ex. 62, L. Tr. 3882, at 56) had profound consequences for the racial composition of newly constructed facilities in Columbus. Smaller schools drawing primarily students who lived within walking distance were more likely to contain uniracial populations. Since blacks in particular were subject to widespread discrimination which sharply curtailed their freedom to select places of residence outside informally designated areas of Columbus (see A. 244-46; L. Tr. 1484, 1513, 2145-56; cf. L. Tr. 2463-65, 1794-1800), even a scrupulously neutral application of these criteria⁴⁰ would predictably incorporate residential segregation into school zoning.⁴¹

Successive Columbus Boards of Education chose to adhere to the "neighborhood school" philosophy as a par-

³⁹ Note, for example, the size of the zones for the Clarfield and Courtright elementary schools annexed from Marion-Franklin Township, Pl. L. Exs. 261, 262, L. Tr. 3898. Obviously, most of the students attending these facilities were transported.

⁴⁰ As we demonstrate below, this is not what occurred in Columbus. The so-called "neighborhood school" philosophy as practiced in Columbus was so fluid, so subject to exception and manipulation, as to fail to exist altogether.

⁴¹ Cf. *Brewer v. School Bd. of Norfolk*, 397 F.2d 37 (4th Cir. 1968); *Sloan v. Tenth School Dist. of Wilson County*, 433 F.2d 587 (6th Cir. 1970).

adigm of how the school system should function even though made well aware of the segregative consequences. For example, in the early 1960's, a former Vanguard League official communicated on several occasions with the Board president to point out that schools planned for new subdivisions would be all-white schools unless developers made an affirmative commitment to open housing (A. 197-202). In 1964, the opening of Monroe Junior High as a 100% black school in the east-central part of the city drew sharp protests over segregation (A. 602-03). An NAACP official who became President of the Gladstone Elementary PTA recounted his vain efforts to get the school board to construct a facility of adequate size in a location where it could be integrated (A. 212-14). Many local organizations called the attention of the school board to increasing pupil segregation in the school system, including the NAACP (A. 203-12; L. Tr. 937-50), the Urban League (L. Tr. 2190-2206), the League of Women Voters (L. Tr. 1995-2000, 2010-13), and the Columbus Area Civil Rights Council (L. Tr. 238-40). In 1968, an independent Ohio State University study requested by the Board (Pl. L. Ex. 194, L. Tr. 3885, at 2-3) reported:

Foremost among th[e] problems [in Columbus] is de facto [*sic*] racial and socioeconomic segregation in the schools. Twenty-five percent of Columbus school enrollment is Negro. However, in 38 schools Negroes constitute more than 50 per cent of the student body, in 30 schools more than 75 percent, and in 15 schools more than 95 per cent. . . .

(*Id.* at 21; see A. 606-07). The Cunningham Report, as the document became known, recommended a policy of "managed integration," "at least until genuine open housing is achieved in the metropolitan area" (Pl. L. Ex. 194, L. Tr. 3885, at 90). This report followed close on the heels

of a detailed set of recommendations for integration presented by the NAACP in 1966 to the "Intercultural Council," an advisory body created by the Board of Education (A. 208-09; Pet. App. 16). The recommendations called for contiguous pairings and reshaping of attendance zones (A. 209-12) without long-distance transportation of pupils. Indeed, the rebuttal to these recommendations which was prepared by the school system (Pl. L. Ex. 477, L. Tr. 3917) included a series of 13 maps dramatically illustrating examples of contiguous and virtually contiguous attendance areas for schools of substantially differing racial makeup in Columbus.

None of these recommendations was acted upon (A. 203-08; L. Tr. 2203-06, 2220, 2226, 2255). Although the board in 1967 adopted a policy of taking race into account when siting new facilities (Pl. L. Ex. 53, L. Tr. 3882), it continued to adhere to its segregative version of the "neighborhood school" plan. The new policy also was not applied to the zoning or rezoning of existing facilities (A. 359-60, 606). In 1970 and 1971, both a former Vanguard League official and the Housing Opportunity Center of Columbus wrote on several occasions to the board president and to the school board requesting that, if the system was to continue constructing "neighborhood schools" in newly developing subdivisions, it take steps to insure that blacks would have the opportunity to reside in those areas. In response to one such letter, it was suggested that the school board sought to minimize costs by purchasing sites before development was completed, and that other matters should be the responsibility of the city and not the school district (A. 197-202, 249-51). The following year, a majority of the school board voted, along racial lines, not to establish a site advisory committee which would advise the school board of the "probable composition of neigh-

borhoods" and "the probable effects of locating a school on a particular site," as well as seek open housing commitments from developers and lenders with respect to new housing in areas which might require additional school construction (A. 359-60, 646-48; Pl. L. Ex. 44, L. Tr. 3881).

There can be little argument, then, that the Columbus school board has steadfastly maintained a verbal commitment to the so-called "neighborhood school" approach to pupil assignment even though it was aware that this would produce a high degree of racial segregation; and even though it was aware of alternative assignment mechanisms which had been endorsed by leading educators. The district court considered this fact as one element of the case:

. . . Substantial adherence to the neighborhood school concept with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn. (Pet. App. 49.)

c. *Deviation from the "neighborhood school" system.* In this section we describe, generically, important operational techniques employed by the Columbus school system in the years after *Brown* which were departures from the principle of "neighborhood schools." In numerous instances the result was to create or exacerbate school segregation—and in many of these cases, no educationally grounded rationale for the assignment device could be articulated. In those instances, the only basis on which use of the pupil assignment scheme could be explained was a racial one (as plaintiffs' expert witness Dr. Gordon Foster testified; *e.g.*, A. 474-76, 483, 505).

Several examples of these administrative practices were extensively described in the district judge's opinion (Pet. App. 26-42). The court did not limit its findings only to these specified examples, however (*see* Pet. App. 94). Rather, the district judge's consideration of the entire record was informed by the strong evidence of discriminatory intent revealed by the examples set forth in the opinion as well as from other actions about which proof was presented:

. . . The Columbus Board even in very recent times, has approved optional attendance zones, discontinuous attendance areas and boundary changes which have maintained and enhanced racial imbalance in the Columbus Public Schools. The Board, even in very recent times and after promising to do otherwise, has abjured workable suggestions for improving the racial balance of city schools.

Viewed in the context of segregative optional attendance zones, segregative faculty and administrative hiring and assignments, *and the other such actions and decisions of the Columbus Board of Education in recent and remote history*, it is fair and reasonable to draw an inference of segregative intent from the Board's actions and omissions discussed in this opinion. (Pet. App. 61.) (emphasis added.)

We describe in detail in the next section how the administrative decisions of the board and staff created, aggravated or perpetuated racial segregation in the public schools. Here we briefly describe four major devices, other than school construction and faculty assignments, utilized for this purpose.

Optional attendance areas. According to the "neighborhood school" principle, facilities are located within walking

distance of the residences of pupils who are assigned to them by drawing attendance zones. The board's witnesses contended that this permits efficient loading of buildings, avoids the cost of pupil transportation, and permits close identification between students, parents (the "school community"), and the school. (*See* A. 228, 628; Pl. L. Ex. 477, L. Tr. 3917.) To maximize optimal use of each facility, boundaries should remain flexible enough to be adjusted in response to changes in residential density (Pl. L. Ex. 59, L. Tr. 3882, at 40 [1950 Ohio State facilities study]).

In Columbus, an exception to these principles was made when optional zones were created. Students living in such zones could choose to attend any of two or more facilities to which the option applied. Optional areas therefore created greater uncertainty about pupil enrollment prior to the actual start of classes than was the case where fixed zones were established.⁴² They could also weaken the desired identification between home and school. And where the choice offered was between schools of substantially differing racial composition, these devices could serve as potent means of segregating school enrollments.⁴³

Optional zones proliferated in the Columbus system during the post-*Brown* era. Former Superintendent Fawcett recalled them mostly as a means of providing flexibility to deal with overcrowding in "neighborhood schools,"⁴⁴ and did not think they had a racial dimension (A. 576). However, the school system administrator who dealt with zon-

⁴² *Cf. Moses v. Washington Parish School Bd.*, 276 F.Supp. 834 (E.D. La. 1967).

⁴³ *See* cases cited in note 33, *supra*; *cf. Goss v. Board of Educ. of Knoxville*, 373 U.S. 683 (1963).

⁴⁴ This was not the sort of flexibility called for by the 1950 Ohio State facilities study, which had recommended rezoning (Pl. L. Ex. 59, L. Tr. 3882, at 40).

ing on a day-to-day basis found them useful only as temporary devices when new schools were being opened, to preserve continuity for students; they were a “gamble” if used to relieve overcrowding (A. 634-35). He eliminated most optional attendance areas during his tenure because they served no purpose (A. 635-36) and found it “very difficult . . . to grasp the reasons” why his predecessors had created the optional zones in the first place (A. 636). These zones existed between long-established schools, or were maintained long past the transition period when new schools were opened—and many seemed to have no purpose other than to permit students to choose between white and black schools. The district court’s opinion describes the “Near-Bexley,” Highland-West Mound and Highland-West Broad options at length. Evidence of optional zones having substantial racial effect was also introduced with respect to Franklin and Roosevelt Junior High Schools, the “Downtown Option” (*see* pp. 15-16 *supra*), Fair and Pilgrim Elementary Schools, Pilgrim, Eastwood and Eastgate Elementary Schools, Main and Livingston Elementary Schools, Linmoor and Everett Junior High Schools, Central and North High Schools, and the East and Linden McKinley High Schools. *See* text *infra*.

Discontiguous attendance areas. This term refers to geographic portions of a school’s attendance zone which are unconnected to other portions of the zone and which may be a considerable distance from the school facility to which they are assigned. In most instances pupils living in discontiguous attendance areas require transportation in order to reach their classes.⁴⁵ Hence the maintenance of dis-

⁴⁵ Optional attendance zones, described in the preceding paragraphs, may be contiguous to the schools they serve, as in the case of the optional zones between Highland, West Broad and West Mound Elementary Schools discussed in the district court’s opinion, *see* Pet. App. 85, or they may be discontiguous, as in the

contiguous areas is inconsistent with the "neighborhood school" concept. While it may be necessary as a temporary measure (for example, when rapid population growth overcrowds all school facilities and construction of additional facilities cannot be completed in a timely fashion), in other circumstances it may serve as a tool to maintain segregated schools. When space is in fact available at nearby schools which are predominantly of one race but students of another race in a discontinuous zone are bused further to schools in which the enrollment is predominantly of their own race, courts have drawn an inference of segregative intent.⁴⁶

The district court's opinion uses the Moler and Heimandale-Fornof discontinuous zones as examples of the Columbus system's use of these devices (Pet. App. 33-35). In addition, there was uncontradicted evidence of discontinuous assignments of American Addition and Arlington Park junior high school students; and of discontinuous assignments of elementary school pupils to the Barnett School in the 1960's, and to the Linden School in the late 1950's and early 1960's. *See* note 15 *supra* and text *infra*.

Segregative relocation of classes in other schools. Closely related to discontinuous zoning is the practice of maintaining formal contiguous zone lines for an overcrowded facility but transporting one or more classes (along with their teachers) to another school after the pupils have assembled

case of the "Near-Bexley" options, *see* Pet. App. 82-84. Usually, when the discontinuous area is an optional zone, the pupil is responsible for providing transportation. On the other hand, the Columbus school system furnished transportation in the case of non-optional "discontinuous areas."

⁴⁶ "Satellite" or "island" zoning, which utilize discontinuous assignment areas, are common *desegregative* techniques. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 8-9, 27-29 (1971).

at a central pickup point (usually the "neighborhood" school). During the post-*Brown* era when the student population of the district was rapidly expanding, Columbus made extensive use of this technique (see A. 401-02, 612).⁴⁷

Often, classes from a school predominantly of one race were transported past schools predominantly of the other race to "same-race" facilities (L. Tr. 3601-13). In other instances, students were sent to schools of differing racial composition (L. Tr. 5339-78); however, classes from the separate schools were maintained intact rather than being integrated (L. Tr. 3612-21; see also, A. 701-14). While the trial court's opinion did not focus on the segregative consequences of the district's intact class transportation, neither did it exclude evidence of such practices from its consideration.

Rental facilities. Another way in which overcrowding can be accommodated is by the leasing of non-school system facilities. When such facilities are available at locations close to the overcrowded schools, they make assignments without additional transportation possible. However, if space is available elsewhere in the school system but the rental device is still employed, it may result in avoidable segregation of pupils. Taken together, a system's choices about how to deal with overcrowding through a combination of intact class transportation and renting can have very significant consequences for pupil segregation or integration. In the 1970's, Columbus used rented facilities segregatively when integrative reassignments would have been possible, especially if other, same-race intact class arrangements had been modified. See text *infra*. Testi-

⁴⁷ In 1950, the Ohio State facilities study had recommended shifting the boundaries of adjacent schools in order to deal with such situations, rather than intact class relocation. See Pl. L. Ex. 59, L. Tr. 3882, at 40.

mony about the segregative use of rental facilities was received and reviewed by the district court in reaching its conclusions as to systemwide intent and liability.⁴⁸

Construction and boundary establishment. Even the most elaborate "neighborhood school" theory leaves a great deal of discretion to school officials with respect to the construction of facilities and the setting of boundaries for attendance areas.⁴⁹ The recommended walking distances are merely general guides, and transportation is often required. (A. 229-31, 361-62). It is the establishment of the zone line, in fact, which defines the "neighborhood" (A. 323). Although obstacles such as highways and railroad tracks are considered (A. 627), even at the elementary school level in Columbus zones have always crossed such barriers.⁵⁰ As population density changes, established "neighborhood school" zones may be subdivided, or capacity expanded through an addition or separate primary grade center which may "contain" students of one racial group at the school (see A. 319-20). Schools may be constructed at the request of private developers (A. 401; *see also*, A. 601; L. Tr. 1485) or sites selected even before development starts (A. 562, 601-02). The choices which are made among all of these factors each time a school is to be

⁴⁸ *See also* note 36 *supra*.

⁴⁹ That discretion may, of course, be exercised to accomplish either segregation (as in the matter of gerrymandering the Fair Elementary boundary in 1937, *see* pp. 18-19 *supra*), or integration (as in the case of the boundaries for Southmoor Jr. High School established in 1968, *see* p. 71 *infra*).

⁵⁰ For example, the 1937 Fair and Douglas Elementary zones crossed Broad Street, *see* Fig. 14, Pl. L. Ex. 58, L. Tr. 3882, at 111; the 1957-58 elementary school zones for Fornof and Clarfield crossed railroad tracks along which they were subsequently aligned (*compare* Pl. L. Exs. 251, 261, 266, L. Tr. 3897, 3898); since 1970, the Barrett Junior High Zone has crossed the Scioto River (*see* Pl. L. Exs. 252, 294, 299, L. Tr. 3897, 3898).

built, or a zone line established or modified, may have much to do with the racial distribution of pupils among a district's school buildings.⁵¹

The district court's opinion recognized the critical importance of school construction and zoning (Pet. App. 20-25). The evidence in the record on these subjects goes far beyond the two examples selected by the court for discussion in the body of its opinion. *See text infra*.

⁵¹ The school board's principal defense during the liability trial was that it had constructed facilities at locations recommended in the periodic facilities needs surveys commissioned by the board from Ohio State University (*e.g.*, A. 571). The district court did not find this explanation persuasive. The evidence indicates that the principal function of the studies was to document anticipated population growth so that voters in bond campaigns could be assured that the school board was not proposing unnecessary school building (*e.g.*, A. 550, 559). The system used the University's technical expertise, for example, in defending a reduction in the rated pupil capacities of its secondary grade level facilities based on a system developed by an Ohio State faculty member (A. 582-83). However, the Ohio State studies were limited in scope and they were hardly the independent product of outside researchers. The basic methodology was for school system administrators to have the major responsibility. They would gather data and prepare a draft report, subject to general supervision from University representatives (Pl. L. Ex. 59, L. Tr. 3882, at iii; P. L. Ex. 61, L. Tr. 3882, at iii; Pl. L. Ex. 62, L. Tr. 3882, at iii; Pl. L. Ex. 63, L. Tr. 3882, at iii; Pl. L. Ex. 64, L. Tr. 3882, at iii. *Compare* Pl. L. Ex. 194, L. Tr. 3885, at 2-3). Basic constraints such as desirable school size and walking distances were established by the school system subject to Ohio State's agreement that they were not educationally unsound (A. 597).

While the reports included recommendations for construction on specific sites, they did not purport to suggest how pupils should be assigned to those facilities but only to document the need for additional capacity in certain areas of the district. Moreover, the studies did not include any consideration of means either to desegregate the schools or to avoid reinforcing the existing segregation (A. 577, 599). The record is clear that Ohio State could have provided valuable assistance toward dismantling the segregated system had it been asked (*see* Pl. L. Ex. 194, L. Tr. 3885). The Columbus system studiously avoided asking for this assistance.

d. *The 1950's*. In the 1950's, the growth of the black population and its territorial expansion outside the area north of Broad and east of High Street presented the Columbus school system with opportunities to afford a desegregated education. Instead, the same techniques used prior to *Brown* to extend segregation (see pp. 15-21 *supra*) were employed anew.

For example, although the "Downtown Option" area still included many white residences (A. 479-80), the option permitting white students to avoid attending predominantly black schools east of High Street remained in effect until 1975, with only minor modifications (A. 480-84).

Additional optional zones were created in areas of racial transition. In 1951, the gerrymandered Fair Elementary zone north of Broad Street was modified to create an optional area between Fair and Pilgrim (A. 501). When the Eastwood School was reopened in 1954, the boundary for Fair was reestablished at Broad Street (see Fig. 2, Pl. L. Ex. 61, L. Tr. 3882, at 17) and the option changed to one between Pilgrim and Eastwood; in 1955, following construction of the permanent Eastgate facility, it was altered to allow students to select any of the three (see Pl. L. Exs. 261, 250, L. Tr. 3897, 3898), and in 1960 it was again limited, this time to Pilgrim and Eastgate (A. 501-03).⁵² Plaintiffs' expert witness Dr. Gordon Foster could discover no capacity problem which these optional zones could have been designed to ease and concluded that the purpose was to facilitate white students' avoidance of Pilgrim as the black population moved eastward (A. 503).

⁵² Interestingly, the first Ohio State facilities study had recommended retention of portables at Eastgate because the site was isolated on the north and west by railroad tracks (Pl. L. Ex. 58, L. Tr. 3882, at 116). The optional zones established in the mid-1950's crossed the tracks.

The black population was also growing in the area south of Broad Street (*compare* Pl. L. Exs. 250, 251, L. Tr. 3897). In 1954, the board established an optional area between Main and Livingston Elementary Schools which was retained for eight years although neither school had more severe capacity problems than the other; in 1964, Main was 77% non-white but Livingston only 27% non-white (A. 485-87, 489). In 1955, an optional zone was established between the Franklin and Roosevelt Junior High Schools (*see* Pl. L. Ex. 281, L. Tr. 3898). This optional area had previously been a part of the Franklin zone and was returned to Franklin in 1961; during the period of its existence, Franklin was under capacity and Roosevelt was first overcrowded and subsequently less underutilized than Franklin. The optional zone was in a racially changing area and it permitted white students formerly assigned to Franklin to attend Roosevelt during the residential transition. In 1964, Roosevelt was 40% non-white; Franklin was 86% non-white. (A. 458-64).

Also in 1955, the Franklin Junior High zone was modified in the area north of Broad Street. The Shepard Elementary zone was reassigned to newly opened Eastmoor Junior High School while the Eastgate elementary area remained assigned to Franklin.⁵³ (*See* Pl. L. Exs. 261, 281, L. Tr. 3898.) The 1960 census shows blacks to have been moving much more rapidly into the Eastgate area than into Shepard (Pl. L. Ex. 251, L. Tr. 3897). In 1964, Franklin was 86% non-white and Eastmoor 30% non-white (A. 783, L. Tr. 3909).

Four years later, the board created another set of optional zones (the "Near-Bexley" option) in this part of the city. The area of Columbus to the east of Alum Creek,

⁵³ Both had been assigned to Pilgrim Junior High prior to 1932. *See* pp. 17-18 *supra*.

formerly a part of the Fair Elementary, Franklin Junior High and East Senior High zones, was made optional for those schools or Fairmoor Elementary and Eastmoor Junior-Senior High (*compare* Pl. L. Exs. 261, 281, 302, L. Tr. 3898, *with* Pl. L. Exs. 263, 283, 304, L. Tr. 3898; *see* maps at Pet. App. 82-84).⁵⁴ The 1960 and 1970 census maps, based on block data, show the optional zone to be virtually all-white, in contrast to the rest of the Fair Elementary zone, for example. (Pl. L. Exs. 251, 252, L. Tr. 3897). Dr. Foster concluded that the options, which were still available at the time of trial, were racial in nature. (A. 449-58; *see also*, Pet. App. 26-29).

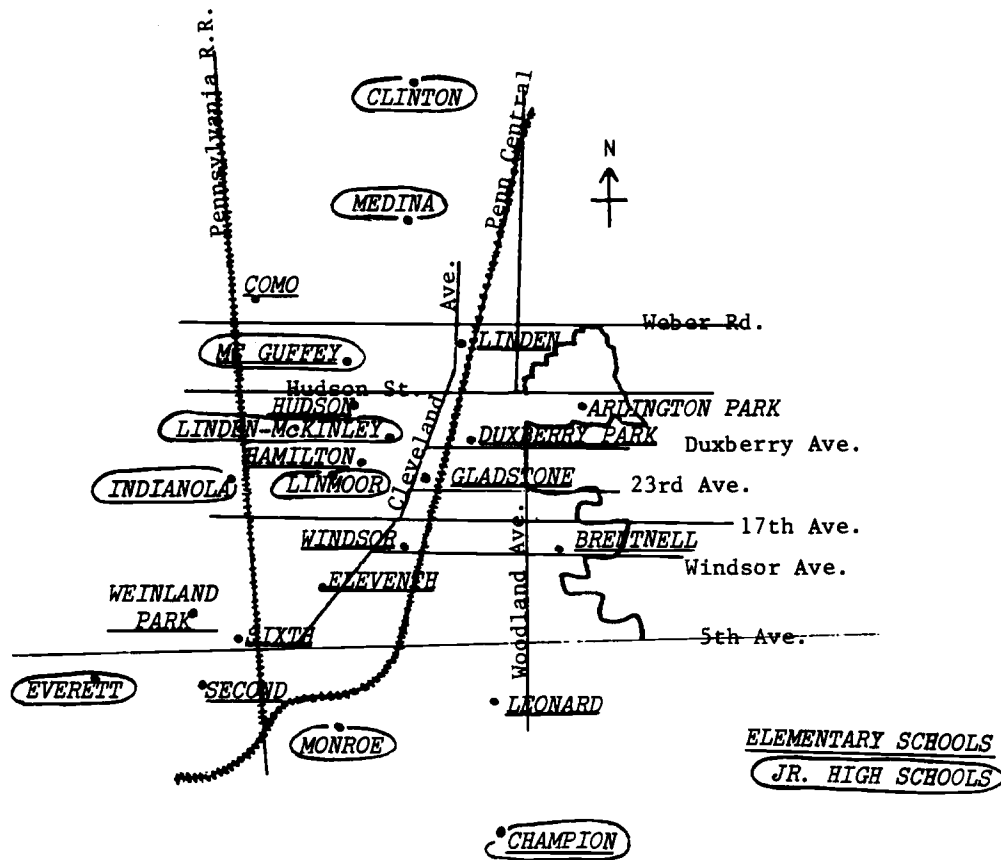
In the western part of the school district, the board also took steps to retain segregation. As the concentration of blacks in the "Hilltop" area west of the Columbus State School expanded (*compare* Pl. L. Exs. 250, 251, L. Tr. 3897), major changes were made in the boundaries of the school which previously served the area, Highland Elementary. (*See* map at Pet. App. 85.) First, in 1955 the portion of the zone which had extended north of Broad Street west of the State Hospital for nearly twenty years (*see* Fig. 14, Pl. L. Ex. 59, L. Tr. 3882, at 111) was made optional between the Highland and West Broad schools until 1957-58, when it was rezoned completely to West Broad. The receiving school was far more crowded than Highland, so the optional zone and boundary shift did not solve any capacity problems. Second, the board in 1955 established another optional zone, this one between Highland and West Mound elementary schools. It lasted until 1961-62 when it was permanently placed in the West Mound attendance area. While it did relieve slight overcrowding

⁵⁴ Between 1961 and 1963 the option included Johnson Park Junior High School in addition to Franklin (A. 454).

in Highland in some years, it also involved a predominantly white portion of Highland's attendance area and a predominantly white receiving school, West Mound. In 1964, Highland was 75% black, West Broad 100% white, and West Mound 85% white. There were available, feasible alternatives which would not have produced the same, predictable, segregative result (A. 469-78; *see also*, Pet. App. 29-33.) Highland remained significantly different from adjacent schools in racial composition at the time of trial (*see* A. 775-82, L. Tr. 3909).

Across the river in the southern portion of the school district, a 1957 annexation brought the Heimandale and Fornof elementary schools into the system (Pl. L. Ex. 62, L. Tr. 3882, at 48). Their attendance areas included, at the time of annexation, a discontinuous zone within Heimandale but assigned to Fornof (A. 504; *see* Pl. L. Ex. 261, L. Tr. 3898). The census maps for 1960 indicated that the discontinuous zone coincided with blocks on which whites lived in greater proportions than in most of the rest of the Heimandale area (*see* Pl. L. Exs. 261, 251, L. Tr. 3897, 3898). Columbus kept the discontinuous area in effect until 1963; in 1964, when enrollment statistics are first available, Heimandale was 40% black and Fornof less than 1% black. (A. 504-06; *see also*, Pet. App. 34-35).

To the northeast of the central business district, movement of the black population into areas formerly occupied by whites, together with annexation of predominantly white suburban areas, also resulted in new school construction, rezoning, and segregation. (A map of this part of the school district showing approximate locations of schools and streets appears on the opposite page; the demonstrative exhibits—maps and overlays—to which reference is made have been lodged with the Clerk and are available for the Court's reference.)



In 1957, the Arlington Park area was annexed to the Columbus school district. The system had previously purchased a site in the area and opened a new elementary facility in 1957. It enrolled no black students in 1964, when data are first available (A. 776, L. Tr. 3909).⁵⁵

Before the annexation, territory within the Columbus district just west of Arlington Park, as far south as Windsor Avenue, was zoned to Linden Elementary, less than 1% black in 1966, even though it was closer to the Eleventh Avenue school, 79% black in 1964, or to the Leonard School, 94% black in 1964 (*id.*). (See Fig. 2, Pl. L. Ex. 61. L. Tr. 3882, at 17.) The area just to the south, taking in the American Addition, was sent to Leonard. After the annexation, the Arlington Park School was zoned to take a portion, but not all, of what had formerly been the southern end of the Linden zone (*see* Pl. L. Ex. 261, L. Tr. 3898). The remainder, bounded by Joyce Street on the west, Windsor Avenue on the south, Woodland Avenue on the east, and 23rd Avenue on the north—again, just north of the American Addition—was assigned to Linden as a discontinuous area (*see* Pl. L. Exs. 261, 251, L. Tr. 3897, 3898). No white students living in this area were sent to either Eleventh Avenue or Leonard Elementary Schools even though capacity was available and Arlington Park was overcrowded.⁵⁶

⁵⁵ Unfortunately, because of a typesetting error, Pl. L. Exs. 383 and 385, L. Tr. 3909, as they were reprinted at A. 775-801, did not distinguish between years for which no statistics were available and years in which a school had either no black students or no black teachers. Both blank spaces and horizontal slashes were set as horizontal lines. Counsel have deleted the extra lines from the Court's copies and filed a copy of the original exhibits with the Clerk. Remaining lines on these pages indicate "zero" values.

⁵⁶ The following table, and others appearing in the footnotes in this section, are based on the grades 1-6 capacity and enrollment

This discontinuous zoning ended in 1959-60 with the opening of two new schools, Duxberry Park and Windsor. However, zone lines for these schools were drawn in a way which maintained racial separateness. The 1960 census indicates the main growth of black residential areas in the previous decade to have been between Cleveland Avenue, on the west, and the Penn Central railroad tracks, on the east (*compare* Pl. L. Exs. 250, 251, L. Tr. 3897). A small zone for Windsor was carved out of the Eleventh Avenue area westward from the railroad tracks; it was subsequently enlarged slightly and extended north to 17th Avenue (Pl. L. Exs. 263, 284A, 264, L. Tr. 3898), then a racial dividing line (A. 246). In 1964, Windsor was 91% black (A. 782, L. Tr. 3909). The Duxberry Park school zone took in the 1957-58 Linden discontinuous area, the territory adjacent to the Arlington Park annexed area, and a small plot north of 17th Avenue previously zoned to

figures in the Ohio State University facilities needs studies. In several instances, Petitioners make claims about the utilization of school facilities which they attempt to support by referring to the enrollments listed in Pl. L. Exs. 1 and 2, L. Tr. 3881, and the capacity figures in the Ohio State studies (*e.g.*, Pet. Br. 33). This comparison is improper for elementary schools since the enrollments in Pl. L. Exs. 1 and 2 include kindergarten figures but the Ohio State capacities are based on classrooms available for grades 1-6. *See, e.g.*, P. L. Ex. 61, L. Tr. 3882, at 49, 50. *See also, e.g.*, note 83 *infra*.

<i>School</i>	<i>1957-58 Enrollment*</i>	<i>1956 Capacity**</i>
Eleventh Avenue	776	792
Leonard	250	264
Linden	852	924
Arlington Park	402	384*

* Pl. L. Ex. 62, L. Tr. 3882, at 25, 26

** Pl. L. Ex. 61, L. Tr. 3882, at 49, 50

Although Linden had adequate space in 1957 to relieve overcrowding at Arlington Park, the following year it was well over capacity with an enrollment of 1,026, while Eleventh (803) and Leonard (261) were at far more comfortable levels.

Eleventh (Pl. L. Exs. 261, 263, L. Tr. 3898). In 1964, Duxberry Park was 30% black (A. 777, L. Tr. 3909).

At the junior high level, additional capacity was provided in the northeast when Linmoor Junior High opened in 1957. Although Linmoor was phased in one grade at a time, and Linden-McKinley's junior high school capacity was subsequently replaced in the 1960's,⁵⁷ the school's opening was the occasion for a series of zone alterations which had marked and long-term racial consequences. First, during the period when both Linmoor and Linden-McKinley were operating as junior high schools, a boundary was fixed such that Linden-McKinley served areas north of Hudson Avenue and east of the railroad tracks, including the Duxberry Park elementary zone (*see* Pl. L. Exs. 263, 283, L. Tr. 3898). The Linden-McKinley building, however, was actually located within the Linmoor zone (A. 494). Linmoor included the Cleveland Avenue corridor of increasing black concentration (*id.*).⁵⁸ Second, there appears to have been no reason why Linden-McKinley could not have been phased out as a junior high school upon the completion of Linmoor. Linmoor could then have served a zone which extended east beyond the railroad tracks and north beyond Hudson Street (as Linden-McKinley had previously done (*see* Fig. 3, Pl. L. Ex. 61, L. Tr. 3882, at 18)).⁵⁹

⁵⁷ Linden-McKinley became a senior high school only in 1964. Medina and McGuffey junior highs were opened to the north of Linden-McKinley and Linmoor, whose northern boundary was then maintained along Hudson Street—the racial demarcation line above 17th Avenue. *See* pp. 77-80 *infra*.

⁵⁸ The American Addition still sent its junior high school students to Champion, although it was located much closer to Linden-McKinley (*id.*).

⁵⁹ As the following table indicates, there was sufficient capacity *without* Linden-McKinley at Linmoor and adjacent junior high schools prior to the opening of Medina in 1960. Only in 1959-60

The immediate result of maintaining junior high grades at Linden-McKinley was to "underutilize" Linmoor and make possible the addition to its zone, in the guise of an optional attendance area, of territory to the south which had not been a part of the Linden-McKinley zone before Linmoor was constructed. This removed a predominantly black area from another junior high (Everett) and laid the groundwork for its inclusion in newly constructed, all-black Monroe Junior High School in 1964. The patterns thus established persisted at the time of trial.⁶⁰

Third, a year after the opening of Linmoor, an optional attendance area between Everett and Linmoor was established (*see* Pl. L. Ex. 282, L. Tr. 3882). Formerly the optional area had been a part of the Everett zone in 1956-57 and, for the seventh grade, a part of the Linmoor zone in 1957-58 (A. 491-92). The optional area was predominantly black according to the 1960 census (A. 493). It was not needed to relieve overcrowding at Everett, which was well under capacity (*see* note 59 *supra*). Dr. Foster concluded that its function was to allow the remaining whites living in the area to avoid a junior high school assignment

would there have been any overcapacity—and it would then have been very slight.

<i>School</i>	<i>1959 Capacity*</i>	<i>Junior High Enrollment**</i>			
		<i>1956-7</i>	<i>1957-8</i>	<i>1958-9</i>	<i>1959-60</i>
Linden-McKinley	—	1,164	995	825	690
Linmoor	1,000	—	270	661	1,021
Everett	1,300	1,326	1,077	968	878
Indianola	950	885	854	793	824
Champion	900	735	713	684	675
Clinton	900	601	667	771	991
Total	5,050	3,711	4,576	4,702	5,079

* Pl. L. Ex. 62, L. Tr. 3882, at 52-53.

** Pl. L. Ex. 62, L. Tr. 3882, at 25; Pl. L. Ex. 64, L. Tr. 3882, at 31.

⁶⁰ In 1975-76, Medina was 24% black, Linmoor 96% black, Monroe 99% black, and Everett 26% black (A. 783, L. Tr. 3909).

with the substantial numbers of black students attending Linmoor (A. 493). The optional zone was expanded in 1959 (*id.*) and continued until the opening of Monroe Junior High School in 1964 (*see pp. 79-80 infra*).

Also related to the Linmoor opening was the treatment of Arlington Park junior high school students. (A. 494-97.) When the area was first annexed, junior high school students were assigned to Linden-McKinley in a contiguous zone (*see Pl. L. Ex. 261, L. Tr. 3898*). As the number of Linden-McKinley senior high students increased, capacity problems seemed imminent. In 1959-60, Arlington Park junior high students⁶¹ were assigned, in a discontinuous zone, to Linmoor. Since Linmoor's attendance area also included the Cleveland Avenue corridor of increasing black concentration⁶² this assignment would have been integrative.⁶³ However, just as the Everett-to-Linmoor rezoning was made optional after a year (permitting whites to avoid Linmoor), the Arlington Park assignment was revoked in 1960. At that time, another new junior high school (Medina) was opened north of Hudson Avenue, taking a portion of the Clinton and Linden-McKinley zones (*see Pl. L.*

⁶¹ The elementary school serving this area was virtually all-white in 1964 (A. 776, L. Tr. 3909).

⁶² It also included predominantly black areas at its southern extremity which had formerly been assigned to Everett Junior High, *see p. 53 supra*.

⁶³ In 1959-60 Linmoor was slightly over its rated capacity (*see note 59 supra*). The following year, even though Arlington Park junior high pupils were removed from the school, *see text infra*, Linmoor was still slightly over capacity with an enrollment of 1,011 (Pl. L. Ex. 64, L. Tr. 3882, at 31). However, as we have previously noted, Linmoor was filled during these years by the inclusion of areas formerly in the Everett zone. Thus, not only did this shaping of attendance areas reduce integration at Everett and lead eventually to the opening of a new all-black junior high school at Monroe in 1964; it also provided a justification for maintaining the assignment of white Arlington Park pupils to white junior high schools (*see text infra*).

Ex. 284, L. Tr. 3898). Arlington Park junior high students were reassigned to Linden-McKinley in 1960-61 and 1961-62. The following year, the Medina zone was pushed even further northward by the conversion of the McGuffey school into a junior high (*see* Pl. L. Ex. 286, L. Tr. 3898). Although McGuffey (southern boundary at Hudson Avenue except for the Duxberry Park zone, *see* Pl. L. Exs. 265, 286, L. Tr. 3898), was closer, as was Linmoor, Arlington Park students were now assigned again as a discontinuous area—this time to Medina (*id.*). They were still so assigned at the time of trial (Pl. L. Ex. 299, L. Tr. 3898). In 1964, Linmoor, was 60% black and Everett was 35% black; McGuffey was 7% black in 1965; Medina was less than 1% black in 1966. By 1975, Linmoor was 96% black, Everett 26% black, and McGuffey 44% black; Medina was 24% black (A. 783, L. Tr. 3909). The defendants' only explanation for the assignments of Arlington Park junior high youngsters was that "it was decided" to handle them in the fashion described (A. 623-24).

Finally, during the 1950's the Columbus school system continued practices which perpetuated the racial isolation of students in the pre-1954-segregated area east of High and North of Broad Street, in addition to the Fair-Pilgrim, Fair-Eastgate-Eastwood, and "downtown" options. When black schools became overcrowded, their pupils were transported to other black schools.⁶⁴ A school construction pro-

⁶⁴ For example, in 1955-56, all sixth graders in the Garfield and Felton zones were sent to Pilgrim, while two classes from East Columbus were sent to Broadleigh (Pl. L. Ex. 61, L. Tr. 3882, at 25 nn. 15, 21). White elementary schools with available space for the overflow of sixth graders included Avondale, Bellows, Crestview, Deshler, Fairmoor, Glenmont, Heyl, James Road, Ninth. Northridge, Oakland Park, and Olentangy (*id.* at 23-24; A. 775-82, L. Tr. 3909). In 1964, Broadleigh was 2% and East Columbus 26% black (*id.*). Felton, Garfield and Pilgrim were all established as black schools prior to 1954, *see* pp. 17-20 *supra*, and remained overwhelmingly black in 1964 (*id.*).

gram in the area rebuilt Garfield on the same site in 1953, which was the functional equivalent of redrawing the same, heavily black attendance boundaries (A. 322), replaced Mount Vernon with Beatty Park in 1954, and created two new black facilities by further subdividing the area to create attendance zones for the Clearbrook (1957) and Maryland Avenue (1958) schools (Pl. L. Exs. 22, 23, 399, L. Tr. 2135-36, 3881, 3991; *see* Pl. L. Ex. 261, L. Tr. 3898).⁶⁵ Both of the latter schools were closed by 1973.

e. *The 1960's*. This decade saw a continuation of construction, attendance zoning, grade structure, and pupil transportation practices which ignored the possibilities for achieving racially mixed enrollments and instead contributed to further racial separation in the Columbus public schools. Year by year, and throughout the City, school authorities built schools, constructed additions, made assignments and shifted pupils so as to change integrated schools into racially segregated ones.

In the central city area, where optional zones such as those between Main and Livingston Elementary Schools, or Franklin and Roosevelt Junior High Schools, had been employed to allow white students to "escape" schools affected by the residential movement of blacks south of Broad Street (*see* p. 46 *supra*), the decade opened with the construction of Kent Elementary School in 1960. The new facility drew its enrollment from areas previously included in the Fairwood and Main elementary zones and, to

⁶⁵ Both schools were relatively small (*see* Pl. L. Ex. 384, L. Tr. 3909). Clearbrook served the portion of the Douglas zone north of Broad Street (predominantly black in 1950, Pl. L. Ex. 251, L. Tr. 3897) for grades 1-3 (L. Tr. 2885). In 1964, when racial enrollment figures were first collected, Clearbrook was 85% black and Maryland Park was 98% black (A. 775-82, L. Tr. 3909). The creation of these primary school centers contained black student populations which would otherwise have attended more racially mixed schools (A. 319-21); for example, in 1964 Douglas was only 54% black while Clearbrook was 85% black.

a lesser degree, in the Livingston and Ohio zones; the 1960 census indicated the new Kent area was predominantly minority (A. 489). Kent added capacity in an increasingly black part of Columbus south of Broad Street but north of Livingston Avenue; after it opened, the northernmost boundary for the underutilized but virtually all-white Deshler Elementary to the south remained fixed at Livingston, separating white and black pupils (A. 488-89). In 1964, Kent was 75% black and Deshler only 7% black (A. 777, 779, L. Tr. 3909).⁶⁶ Dr. Foster concluded that the siting and size of Kent perpetuated Livingston and Deshler as heavily white schools in an area of racial transition (A. 489).

In 1960 an optional attendance area was established between Central Senior High and North High. The optional zone (heavily white in 1960, *see* Pl. L. Exs. 305, 251, L. Tr. 3897, 3898; A. 464-65), was basically congruent with the lower portion of the Kingswood Elementary area (11% black in 1964, A. 779). It was formerly assigned to Central High and was reassigned to Central, which served the near-

⁶⁶ As the table indicates, Ohio, Main and Fairwood were overcrowded in 1959, but Deshler had a significant amount of space. Livingston, a predominantly white school, was also overcrowded and received an addition in 1960, Pl. L. Ex. 22, L. Tr. 3881. If Kent had been built as a larger facility and located further to the south, both it and Deshler, as well as Fairwood and Main, might have been zoned to include substantial numbers of both black and white students (*see* Pl. L. Ex. 284A, L. Tr. 3898).

<i>School</i>	<i>1959 Capacity*</i>	<i>Enrollment**</i>		
		<i>1959-60</i>	<i>1960-61</i>	<i>1961-62</i>
Main	352	662***	633	661
Livingston	416	469	502***	533
Ohio	544	849	683	696
Fairwood	512	636	616	645
Kent	372 (1964)**	—	272	300
Deshler	704	583	608	577

* Pl. L. Ex. 62, L. Tr. 3882, at 49-50.

** Pl. L. Ex. 64, L. Tr. 3882, at 32-33.

*** Addition constructed in 1960, Pl. L. Ex. 22, L. Tr. 3881.

western portion of the district, in 1975 (*see* Pl. L. Exs. 284A, 304, 305, 320, L. Tr. 3898; A. 464-66). Since there were no capacity problems at Central which could account for the loss of territory, Dr. Foster concluded that the option was designed to permit white students in the Kingswood area to attend the "white" North High School (A. 466).^{67, 68} A similar option was established in 1962 between East High (95% black in 1964-65) and Linden-McKinley High (12% black in 1964-65) (A. 466-69).

Typical of the manner in which construction, zoning and transportation decisions could be combined with far-reaching segregative consequences is the history, in this decade, of the area to the south of Columbus annexed in 1957 from Marion-Franklin Township. (A drawing of the area with schools and main streets located approximately appears on the opposite page; as previously noted, the demonstrative exhibits are available to the Court.)

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<i>School</i>	<i>Capacity</i>			<i>Enrollment</i>				
	1959*	1964**	1969***	1959-60**	1960-61**	1964-65**	1969-70†	1975-76†
Central	1,900	1,900	1,650	1,710	1,475	1,635	1,319	1,225
North	1,900	1,750	1,600	1,979	1,900	1,425	1,420	1,489

* Pl. L. Ex. 62, L. Tr. 3882, at 52.

** Pl. L. Ex. 64, L. Tr. 3882, at 31.

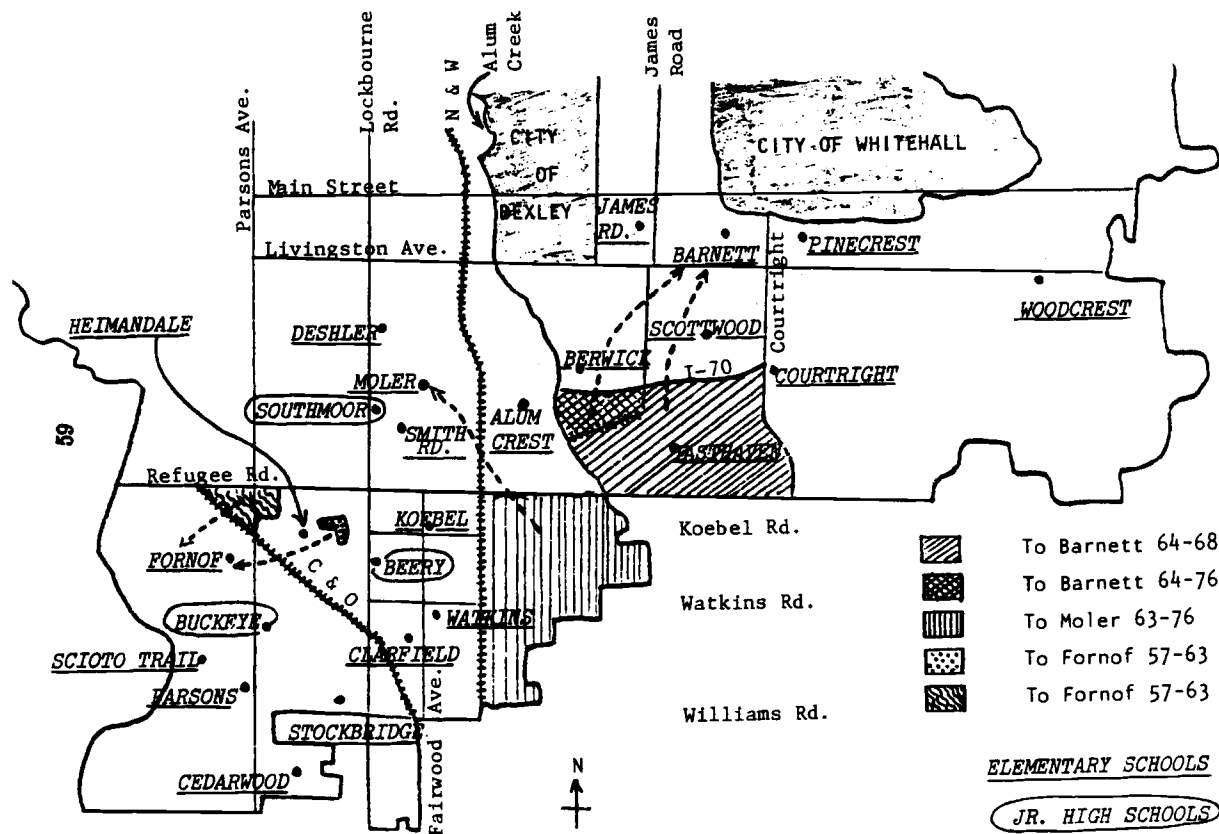
*** Pl. L. Ex. 63, L. Tr. 3882, at 40, 73.

† Pl. L. Ex. 384, L. Tr. 3909.

<i>School</i>	<i>% Black Enrollment††</i>			
	1964-65	1969-70	1974-75	1975-76
Central	27.0%	30.4%	33.5%	30.1%
North	7.2%	9.6%	14.1%	17.9%
Kingswood	11.0%	4.8%	5.5%	8.5%

†† A. 779, 785, L. Tr. 3909.

⁶⁸ The discussion of this optional area in the school board's brief is typical. Petitioners state that it "was not racially motivated" (Pet. Br. 28 n. 12) but cite in support of this assertion only two exhibits, each of which is a map showing the location of the option. They also say that the area was equidistant between the schools (in contrast to, for example, the Pilgrim-Fair option, *see* p. 45 *supra*); but they provide no administrative or educational justification, based on capacity or anything else, for its existence.



At the time of annexation, before Columbus built any schools or changed attendance boundaries, five elementary schools served the area: Scioto Trail, Fornof, Heimandale, Clarfield, and Smith Road (*see* Pl. L. Ex. 261, L. Tr. 3898; *compare* Fig. 2, Pl. L. Ex. 61, L. Tr. 3882, at 17). In 1950, few blacks lived in the annexed territory (*see* Pl. L. Ex. 250, L. Tr. 3897); by 1960 there were three areas with identifiable concentrations of black residence: along Alum Creek to the northeast of the railroad tracks—assigned to Smith Road; to the south of Watkins Road and west of Fairwood Avenue—assigned to Clarfield; and within the Heimandale zone.⁶⁹ Both the Clarfield and Smith Road attendance areas in 1957-58 included large, predominantly white areas (*see* Pl. L. Exs. 261, 251, L. Tr. 3897, 3898). For example, Clarfield extended along Williams Road, the southern border of the system, west across the railroad tracks (*id.*). However, black students were soon isolated into more compact zones.

In 1959, Columbus opened the Stockbridge Elementary School and drew its zone from Clarfield and Scioto Trail (Pl. L. Exs. 261, 263, L. Tr. 3898). White residential areas immediately to the south of the Heimandale zone (and including the area north of Williams Road, west of Lockbourne and east of Parsons which had previously been assigned to Clarfield) were now sent to Stockbridge.⁷⁰ The following year, additional capacity to accommodate white

⁶⁹ As previously noted (p. 48 *supra*), whites living on designated streets within the Heimandale area were zoned discontinuously to Fornof; Columbus maintained this discontinuous assignment for six years following the annexation. Heimandale's capacity was little more than half that of the other schools operated by the township. *See* Pl. L. Ex. 62, L. Tr. 3882, at 25-27.

⁷⁰ An alternative would have been to enlarge Heimandale (*see* note 69 *supra*) and send white students in newly developing residential areas there.

students living west of the railroad tracks which formed Stockbridge's eastern boundary was provided by the construction of the Parsons Elementary School, which took the southern portion of the Scioto Trail zone (Pl. L. Exs. 263, 284A, 251, L. Tr. 3897, 3898).

The Clarfield zone was also reduced on the east. In 1961-62, Watkins Elementary School was opened, substantially reducing the size of the Clarfield zone⁷¹ but leaving the blocks with the greatest black population density in 1969 in Clarfield (*see* Pl. L. Exs. 264, 251, L. Tr. 3897, 3898).^{72, 73} Rapid population growth in the Watkins zone required further changes in 1963-64. First, Watkins ceded a small area south of Watkins Road and east of Fairwood Avenue to Clarfield (*compare* Pl. L. Exs. 265-266, L. Tr. 3898). This area was that portion of the Watkins zone

⁷¹ Watkins was built as a larger school than Clarfield or Stockbridge. *See* Pl. L. Ex. 64, L. Tr. 3882, at 32-34.

⁷² The Watkins boundary ran north of Watkins Road to the west of Fairwood Avenue, and south of Watkins Road to the east of Fairwood Avenue. This boxed areas of black residential concentration west of Fairwood but south of Watkins into the Clarfield zone even though both attendance areas included within them territory which crossed both thoroughfares (Pl. L. Exs. 264, 251, L. Tr. 3897, 3898).

⁷³ Although Clarfield was overcrowded in 1959, Watkins' opening cut its enrollment to less than half its capacity during the next two years; however, white students from the now-overcrowded Stockbridge facility were not reassigned to Clarfield—instead, four additional classrooms were built at Stockbridge in 1961 (A. 511):

<i>School</i>	<i>Capacity</i>		<i>Enrollment**</i>			
	<i>1959*</i>	<i>1964**</i>	<i>1959-60</i>	<i>1960-61</i>	<i>1961-62</i>	<i>1962-63</i>
Clarfield	448	434	489	514	241	294
Watkins	—	527	—	—	405	558
Stockbridge	320	434	350	361	386	413

* Pl. L. Ex. 62, L. Tr. 3882, at 49, 54.

** Pl. L. Ex. 64, L. Tr. 3882, at 32-34.

immediately across from the black population concentration in 1960 (*see* Pl. L. Exs. 266, 251, L. Tr. 3897, 3898) and it had become predominantly black by 1970 (*see* Pl. L. Exs. 266, 252, L. Tr. 3897, 3898).⁷⁴ Second, the entire portion of the previous Watkins zone south of Refugee Road and east of the Norfolk and Western Railroad tracks was detached and assigned to Moler Elementary as a discontinuous zone.⁷⁵

The same year, 1963-64, significant changes affecting Heimandale and Fornof were also made. Prior to that time, the Fornof zone extended across the railroad tracks in its northeast corner to include a small square parcel south of Refugee Road, north of Frank Road and east of Parsons Road (*see* Pl. L. Exs. 261, 265, 251, L. Tr. 3897, 3898). In 1960 that parcel included significant black population (*see* Pl. L. Ex. 251, L. Tr. 3897). These black residences were removed from the Fornof zone in 1963 when a six-room addition to Heimandale was completed, and the boundary between the schools shifted west to the railroad tracks. Fornof was greatly under capacity after the zone shift while Heimandale remained crowded, even after con-

⁷⁴ This change boosted Clarfield's enrollment to 530 in 1963-64 (Pl. L. Ex. 64, L. Tr. 3882, at 32), making the assignment of white students living west of the railroad tracks to Clarfield impossible. *See* note 73 *supra*.

⁷⁵ This discontinuous area is discussed in the district court's opinion (Pet. App. 33-34) and is described in greater detail at pp. 64-67 *infra*. The Board errs in suggesting (Pet. Br. 32) that students in the discontinuous area were transported to Smith Road Elementary School until 1963. The exhibits cited by Petitioners all deal with annexations, not school assignments. On the other hand, the official boundary description sheets (Pl. L. Exs. 258C, 258D, L. Tr. 3897) and the overlays prepared from the directories (Pl. L. Exs. 264, 284A, L. Tr. 3898) show that these students were reassigned from Smith Road to Watkins when the latter opened in 1961.

struction of the addition;⁷⁶ in 1964-65, Fornof was 0.2% black and Heimandale 40% black (A. 778, L. Tr. 3909).⁷⁷

Further changes in elementary school attendance in the 1957 annexation area south of Refugee Road were made during the following three years. In 1964, what remained of the Watkins zone was halved from east to west along Koebel Road; the area north of Koebel Road and south of Refugee was assigned to the new Koebel Elementary School. The 1970 census indicates that this configuration placed an area of high black residential concentration south of Koebel Road in the Watkins zone while leaving Koebel predominantly white (*see* Pl. L. Exs. 267, 252, L. Tr. 3897, 3898); this was reflected in the enrollment disparity between the schools (A. 779, 782, L. Tr. 3909).⁷⁸ Elementary school capacity for white students west of the Heimandale zone was supplemented by the construction of additions to Parsons in 1964 (A. 512) and Scioto Trail in 1965 (A. 513); also in 1965 the Cedarwood Elementary School opened to serve the southern portion of the Parsons zone (*see* Pl. L. Ex. 267, L. Tr. 3898). Finally, in 1966 an addition was

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<i>School</i>	<i>Capacity</i>		<i>Enrollment</i>			
	1959*	1964**	1962-63**	1963-64**	1964-65†	1965-66†
Fornof	480	403	477	345	336	340
Heimandale	224	403	281	438	466	459

* Pl. L. Ex. 62, L. Tr. 3882, at 49.

** Pl. L. Ex. 64, L. Tr. 3882, at 32.

† Pl. L. Ex. 63, L. Tr. 3882, at 41-42.

⁷⁷ The Heimandale-Fornof discontinuous zone (*see* p. 48 *supra*) was also ended effective 1963-64.

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<i>School</i>	<i>% Black*</i>						
	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70	1970-71
Watkins	24.0%	62.0%	64.0%	73.5%	75.1%	76.4%	77.1%
Koebel	—	—	—	11.3%	10.7%	34.5%	39.2%

* A. 779, 782, L. Tr. 3909.

constructed at Clarfield (A. 514) and a small black area shifted from Watkins to Clarfield (*see* Pl. L. Exs. 268, 252, L. Tr. 3897, 3898). Clarfield was made the largest elementary school in the entire area south of Refugee Road, with a capacity of 667 (Pl. L. Ex. 63, L. Tr. 3882, at 68), in order to house these black students even though Fornof remained underutilized⁷⁹ and white students living east of the N and W railroad were bused to overcrowded Moler.^{80, 81}

Plaintiffs' expert witness, Dr. Gordon Foster, described the 1959-66 activities in this portion of the district in some detail (A. 504-15). He concluded that alternative zoning configurations existed—especially in light of the crossing of physical barriers at various times in the past—and that the entire set of schools could have been integrated through simple pairing involving the territory west of the Chesapeake and Ohio railroad tracks (the Heimandale-Fornof boundary) and that to the east (A. 513-14); *see also*, A. 517).

⁷⁹ *See* note 76, *supra* and accompanying text.

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<i>School</i>	<i>1964 Capacity*</i>	<i>Enrollment**</i>			<i>% Black***</i>		
		<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>
Clarfield	434	545	690	668	70%	80%	84.9%
Watkins	538	670	480	467	62%	64%	73.5%
Moler	310	421	457	459	0.3%	2.5%	3.9%
Fornof	403	340	323	310	0.3%	—	1.2%

* Pl. L. Ex. 64, L. Tr. 3882, at 55-57.

** Pl. L. Ex. 63, L. Tr. 3882, at 41-43.

*** A. 775-82, L. Tr. 3909.

⁸¹ Thus, if a school had been constructed, perhaps east of the N & W railroad tracks and the Clarfield, Watkins and Koebel zones readjusted, the discontinuous transportation to Moler could have been eliminated and schools in the area integrated. In one of the desegregation proposals developed more than a decade later by the school system's staff, the attendance areas for Koebel and Watkins, and the Moler discontinuous area would have been clustered (R. Tr. 192). Another would have combined the Moler discontinuous area, Clarfield, and Stockbridge (R. Tr. 206).

Thus far, we have described (for elementary schools) the disposition, in the 1960's, of the portion of the 1957 Marion-Franklin annexation which lay south of Refugee Road. We now turn to the area north of Refugee Road; the two are connected by the Watkins-Moler discontinuous busing.

As we previously noted, by 1960 there was an identifiable grouping of black residences north of Refugee Road between the N&W railroad tracks and Alum Creek which was included in the Smith Road school attendance area (*see* Pl. L. Exs. 284A, 251, L. Tr. 3897, 3898). At the same time Watkins Elementary opened (*see* pp. 61-62 *supra*), Columbus also completed construction of a new facility in the Smith Road area. This school, Alum Crest Elementary, was zoned from north to south, all the way from Livingston Avenue to Refugee Road. It withdrew the grouping of black residences from the Smith Road school (*see* Pl. L. Exs. 264, 251, L. Tr. 3897, 3898).⁸² In 1963, another elementary school (Moler) was opened to the north; it drew its attendance zone from the southern portion of Deshler and the northern part of Smith Road, but it did not cross

⁸² Capacity figures indicate that Smith Road was overcrowded in 1960 (*see* note 83 *infra*); its enrollment was reduced by both the opening of Alum Crest and the movement of its southern boundary to Refugee Road in conjunction with the opening of Watkins (*see* Pl. L. Exs. 284A, 264, L. Tr. 3898). Of course, the zone line between Smith Road and Alum Crest need not have been fixed so as to separate white and black students. In 1964-65, Alum Crest was 50% black and Smith Road was all white, A. 776, 781, L. Tr. 3909. (It is clear that only the Alum Crest zoning removed minority population from Smith Road: the area south of Refugee went to Watkins in 1961; in 1963, the portion of that area east of the N&W tracks was transported to Moler, 0.2% black in 1964. The remainder was all-white in 1960, Pl. L. Ex. 251, L. Tr. 3897, and most of it was zoned to Koebel in 1964, at which time Koebel was all-white, A. 779, L. Tr. 3909. Another portion of the pre-1961 Smith Road zone was withdrawn to create Moler in 1963—but as noted, that school was 0.2% black in 1964.)

into the elongated Alum Crest zone (*compare* Pl. L. Exs. 265, 266, L. Tr. 3898). From the very day of its opening, Moler also received students from the Watkins discontinuous zone (*see* p. 62 *supra*) even though this overcrowded the building⁸³ and even though space was available at adjacent Alum Crest.^{84, 85} In 1964, Smith Road and Moler were all-white schools, while Alum Crest was 50% black (A. 776, 779-81, L. Tr. 3909). By 1970, the black community had expanded southward in the Alum Crest zone east of the N&W railroad while Smith Road and Moler, to the west, remained predominantly white (*see* Pl. L. Exs. 272, 252, L. Tr. 3897, 3898). Alum Crest school was 77% black,

School	Capacity		Enrollment						
	1959*	1964**	1960-61**	1961-62**	1962-63**	1963-64**	1964-65†	1965-66†	1966-67†
Smith Rd.	480	434	531	383	468	336	403	266	304
Watkins	—	527	—	405	558	538	615	670	480
Alum Crest	—	310	—	199	220	256	330	297	254
Moler	—	310	—	—	—	††	396	421	457

* Pl. L. Ex. 62, L. Tr. 3882, at 50.

** Pl. L. Ex. 64, L. Tr. 3882, at 32-34.

† Pl. L. Ex. 63, L. Tr. 3882, at 41-43.

†† Omitted from Pl. L. Ex. 64, L. Tr. 3882, at 33. Total enrollment 352 (Pl. L. Ex. 384, L. Tr. 3909); total capacity 310 plus 2 kindergarten rooms (Pl. L. Ex. 64, L. Tr. 3882, at 56).

⁸⁴ Rooms at Alum Crest were rented to an organization which provided instruction for retarded children rather than having white students assigned to them (A. 696). The 1959 Ohio State facilities study had recommended that the system help the Council for Retarded Children obtain a site between Broad Street and Livingston Avenue, south of Fort Hayes (Pl. L. Ex. 62, L. Tr. 3882, at 72).

⁸⁵ The school board suggests that Alum Crest was overcrowded in 1963 and 1967-68 (Pet. Br. 32-33). As to 1963, the reference is to grades K-6 enrollment and grades 1-6 capacity (*see* note 56 *supra*). *Compare* note 83 *supra*. As to the latter year, Petitioners seek to compare 1967-68 enrollment in grades K-6 to a reduced grades 1-6 capacity figure not established until 1969, in Pl. L. Ex. 63, L. Tr. 3882; *see* note 29 *supra*.

Moler was 12% black, and Smith Road 1.3% black in 1970 (A. 776, 779-81, L. Tr. 3909). Dr. Foster concluded that the discontinuous transportation to Moler was for racial purposes (A. 507-08, 517), as did the district court (Pet. App. 33-34).

The Alum Crest school was also affected by yet another discontinuous zone established in the 1960's. An area immediately to the east, across Alum Creek, was joined to the school system in 1959 in an annexation of territory to the south of Bexley and Whitehall (*compare* Pl. L. Exs. 262, 263, L. Tr. 3898). It is shown on the census maps for 1950, 1960 and 1970 as being less than 10% black (*see* Pl. L. Exs. 250, 251, 252, L. Tr. 3897), although it was not heavily populated when first annexed (L. Tr. 5384). It was shifted among the attendance areas of several schools prior to 1964-65.⁸⁶ Commencing in 1964 and continuing through 1967-68, the area was zoned discontinuously to Barnett Elementary, a school which had opened that year, located in a very small attendance zone between Pinecrest and James Road Elementary Schools (*see* Pl. L. Exs. 267-70, L. Tr. 3898). Barnett enrolled no black students prior to the 1969-70 school year (A. 776, L. Tr. 2909). In 1968, the

⁸⁶ In 1959-60, the boundaries for Berwick, Scottwood and Courtright were extended due south to encompass the area (*see* Pl. L. Ex. 263, L. Tr. 3898). The following year, the Berwick and Scottwood zones' southern boundaries were moved northward and the Courtright zone extended as far west as Alum Creek to take in much of the area (*see* Pl. L. Ex. 284A, L. Tr. 3898). In 1961-62, the Courtright zone was also reduced in size; the area in question found itself now split between Berwick and Woodcrest schools (the latter being at the eastern extremity of the school district, to the east of the City of Whitehall) (*see* Pl. L. Ex. 264, L. Tr. 3898). The next year (1962-63), the Berwick zone was further contracted to the north and the entire area assigned to Woodcrest (*see* Pl. L. Ex. 265, L. Tr. 3898). Finally, in 1963-64, the entire area was re-assigned to Courtright (*see* Pl. L. Ex. 266, L. Tr. 3898).

school system constructed and opened the Easthaven Elementary School, which absorbed most of the discontinuous area within its attendance zone; however, a remaining portion along Alum Creek just south of the Berwick zone continued to be sent to Barnett at the time of trial (see Pl. L. Exs. 271, 278, L. Tr. 3898). Throughout the period, space continued to be available at Alum Crest,⁸⁷ the predominantly black school just across the creek.^{88, 89} The school system official responsible for pupil assignments testified that students east of Alum Creek were bused to Barnett because it had space available (L. Tr. 5383-85). However, this was true only because Barnett's capacity was never used to relieve overcrowding at adjacent elementary

⁸⁷ See note 83 *supra* and Pl. L. Ex. 384, L. Tr. 3909, which shows a consistently declining enrollment at Alum Crest after 1968.

⁸⁸ The following figures are from A. 775-801, L. Tr. 3909:

Year	<i>Alum Crest</i>		<i>Barnett</i>		<i>Easthaven</i>	
	% Black Students	% Black Faculty	% Black Students	% Black Faculty	% Black Students	% Black Faculty
1964-65	50.0	33.3	—	—	—	—
1965-66	70.0	40.0	0	0	—	—
1966-67	80.0	40.0	0	0	—	—
1967-68	72.9	50.0	0	0	—	—
1968-69	67.3	42.9	0	0	0	0
1969-70	77.0	40.0	2.0	0	0	0
1970-71	78.6	46.2	1.9	0	0.6	6.7
1971-72	86.4	87.5	5.1	8.3	0.7	11.8
1972-73	78.5	77.8	3.4	0	3.0	10.0
1973-74	79.2	50.0	3.7	18.2	3.9	8.0
1974-75	78.7	25.0	4.1	20.0	4.9	13.0
1975-76	78.7	16.7	10.4	0	9.2	13.1

⁸⁹ At least from 1967 on, access to Alum Crest was very convenient via the Interstate 70 bridge across Alum Creek. See Fig. 8, Pl. L. Ex. 63, L. Tr. 3882, at 31. See also, A. 637-38. One of the desegregation plans developed by the staff in 1977 would have clustered the Easthaven, Alum Crest and Moler zones (R. Tr. 194A).

facilities⁹⁰ (*compare* Pet. Br. 31 n.17). This discontinuous zone, like that involving the Watkins area, represented an administrative choice to bus white children beyond the closest school where that school has a substantial black population.⁹¹

Thus, between 1959 and the time of trial, through a combination of new construction, selective additions to schools, movement of attendance zone boundary lines, creation of discontinuous areas and pupil transportation, elementary students within an enormous area in the south and southeastern portions of the Columbus district were assigned to schools in which they were largely separated on the basis of race. Much the same thing occurred at the junior high level.

In 1957, the Beery (or Marion-Franklin, as it was called in some years) Junior High School served the entire 1957 annexation area, as far east as Alum Creek (*see* Pl. L. Ex.

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<i>School</i>	<i>1964 Capacity*</i>	<i>Enrollment</i>				
		<i>1963-64*</i>	<i>1964-65**</i>	<i>1965-66**</i>	<i>1966-67**</i>	<i>1967-68**</i>
Barnett	341***	—	263	313	366	377
James Rd.	403	407	457	470	439	412
Pinecrest	620	688	906	835	781	712
Scottwood	589	596	737	789	656	602
Alum Crest	310	256	330	297	254	293

* Pl. L. Ex. 64, L. Tr. 3882, at 32-34, 55-57.

** Pl. L. Ex. 63, L. Tr. 3882, at 41-43.

*** Pl. L. Ex. 64, L. Tr. 3882, at 57, 60.

⁹¹ Obviously, Alum Crest could not have accommodated students from *both* the Watkins and Barnett discontinuous zones. However, we have previously suggested (note 81 *supra*) that the Watkins-Moler discontinuous area could have been part of an overall realignment to desegregate all of the schools south of Refugee, and west of the N&W tracks. Similarly, assignment of white students across Alum Creek instead of to Barnett, combined with realignment of the Alum Crest, Moler and Smith Road boundaries, *see* text at notes 83-84 *supra*, could have created stable desegregation north of Refugee Road.

281, L. Tr. 3898). Residential increase within this area made the provision of additional capacity necessary and another junior high school (Buckeye) was opened in 1963.⁹² Buckeye was located in a virtually all-white area near the Fornof and Scioto Trail schools and its eastern boundary set along the Chesapeake and Ohio railroad tracks (*see* Pl. L. Exs. 287, 251, L. Tr. 3897, 3898). This had the effect of excluding from the new school all of the areas annexed from Marion-Franklin Township having any significant black population. In 1964-65, Beery was 22% black, while Buckeye was all white (A. 783, L. Tr. 3909).

Beery was over capacity at least from 1961-62 through 1964-65, while Buckeye was underutilized in 1963-64 and 1964-65 (*see* note 92 *supra*). Yet no adjustment of the boundaries was made. Instead, Beery received an addition, raising its capacity, in 1965 (Pl. L. Ex. 22, L. Tr. 3881) and actually picked up a small piece of territory (between Lockbourne Road and the C&O tracks) in the southeast corner of the Buckeye zone (*see* Pl. L. Exs. 251, 289, L. Tr. 3897, 3898). Both schools were operated below capacity in 1965-66 (note 92 *supra*). The following year, both facilities were about twenty students above capacity; an addition was placed at Buckeye which allowed it to remain underutilized in 1967-68. Although Beery was overcrowded in 1967-68, again there was no adjustment of the zone boundary with Buckeye (*see* Pl. L. Exs. 290, 291, L.

School	Capacity			Enrollment							
	1959*	1964**	1969†	61-2**	62-3**	63-4**	64-5†	65-6†	66-7†	67-8†	68-9†
Beery (Marion-Franklin)	600	***	900	800	846	767	831	848	921	995	806
Buckeye	—	700	900	—	—	528	573	652	722	742	823

* Pl. L. Ex. 62, L. Tr. 3882, at 25.

** Pl. L. Ex. 64, L. Tr. 3882, at 31.

*** Capacity figures given only for Marion-Franklin Jr.-Sr. High combined, *see* Pl. L. Ex. 64, L. Tr. 3882, at 31. Total capacity was 1900; total enrollment in 1962-63 was 1562; total enrollment in 1963-64 was 1654. *Id.* Beery had an addition in 1965 (Pl. L. Ex. 22, L. Tr. 3881).

† Pl. L. Ex. 63, L. Tr. 3882, at 40, 73.

Tr. 3898; Pl. L. Ex. 22, L. Tr. 3881; note 92 *supra*). That year, Beery was 40% black, Buckeye 0.1% black (A. 783, L. Tr. 3909).

In 1968, the effects of the siting and zoning of Buckeye were really felt. Beery's capacity problems were relieved by the opening of another junior high school, this time north of Refugee Road. This school—Southmoor Junior High—was held up as a model application of the school board's 1967 policy of considering race affirmatively in locating and zoning new schools to promote desegregation. Indeed, its zone included predominantly black areas assigned at the elementary level to Alum Crest, and predominantly white areas assigned to Smith Road (*see* Pl. L. Exs. 271, 292, 252, L. Tr. 3897, 3898), and its first enrollment was almost exactly one-third black, close to the system-wide proportion (A. 784, L. Tr. 3909). Less publicized was the fact that the change withdrew a large, predominantly white area from the Beery zone on its northeast; such areas to the southwest were already excluded by the Buckeye boundary along the C&O Railroad tracks. Between 1967-68 and 1968-69, Beery jumped from 40% black to 54% black, while Buckeye declined marginally from 0.1% black to 0.0% (A. 783-84, L. Tr. 3909). In 1971, Buckeye was 1.3% black; Beery, 67.2% black; and Southmoor, 41.5% black (*id.*). As Dr. Foster pointed out, Marion-Franklin High School still served the entire area, east and west of the C&O tracks, at the time of trial and an alternate boundary between Beery and Buckeye which crossed the tracks would have avoided the junior high segregation problem which still existed (A. 517). In 1975-76, Buckeye was 2% black; Beery was 70.3% black (A. 783, L. Tr. 3909). One of the staff-developed desegregation plans in 1977 proposed to assign to Beery students from the existing attendance areas for Watkins, Heimandale,

Fornof, Scioto Trail, Reeb, and Lincoln Park; and to assign to Buckeye students from the Moler discontinuous area, Clarfield, Koebel, Stockbridge, Parsons and Cedarwood (R. Tr. 197).

The pattern described in the south-southeastern portion of the district was replicated in the Linden area, another part of the district in which both white and black populations continued to grow in the 1960's.⁹³ Decisions about construction,⁹⁴ school zoning, grade structure and pupil transportation played important roles in shaping the racial composition of student enrollments. As the black population expanded northward from 5th to 11th, 11th to 17th Avenue, and 17th Avenue to Hudson Street (*see* A. 246), existing school zone boundaries moved northward, new black schools were built to the south, and new white schools to the north. (*See* map, p. 49 *supra*, in connection with this discussion.)

In 1961, the Board acted to deal with population increases southwest of the Ohio State Fairgrounds in a manner similar to that used in 1957 for Douglas Elementary—construction and zoning of an all-black primary school (*see* p. 56 and note 65 *supra*). Sixth Avenue Elementary School was opened for students in grades 1-3 with a zone drawn from north to south, taking in the easternmost portion of the Weinland Park Elementary School zone and the northeast corner of the Second Avenue zone (*see* Pl. L. Exs. 261, 264, L. Tr. 3898).⁹⁵ The area thus drawn for the Sixth Avenue facility had been predominantly black since 1950,

⁹³ The events of the 1950's in this part of the school district are set out at pp. 48-55 *supra*.

⁹⁴ The examples of segregative construction in the district court's opinion are from this geographic area (Pet. App. 21-24).

⁹⁵ Students in grades 4-6 within the area attended either Weinland Park or Second Avenue, depending on the old zone boundaries.

in contrast to most of the remainder of the Weinland Park and Second Avenue zones (*see, e.g.*, Pl. L. Exs. 261, 250, 251, L. Tr. 3897, 3898). By the year for which enrollment figures are first available, 1964-65, Sixth Avenue was 91% black; Weinland Park and Second Avenue schools were 30% and 28% black, respectively (A. 781-82, L. Tr. 3909). This attendance configuration was continued through the 1973-74 school year, after the filing of this lawsuit. In that year, Sixth Avenue was 95% black, Weinland Park was 31% black, and Second Avenue was 17% black (*id.*). After Sixth Avenue was closed, the Weinland Park and Second Avenue zones were returned to the pre-1961 state (*compare* Pl. L. Exs. 263, 278, L. Tr. 3898). Weinland Park's enrollment was then 47% black; Second Avenue's did not change appreciably (A. 781-82, L. Tr. 3909). Thus for thirteen years, black students in grades 1-3 in this area were assigned to a heavily black school created by school officials through subdivision of existing "neighborhood school" attendance areas. Dr. Foster pointed out that this result could easily have been avoided by drawing attendance boundaries for Sixth Avenue in different directions,⁹⁶ but no explanation for the board's choice of the segregative alternative was ever suggested (Pet. App. 24).

As the black population of Columbus expanded northward to the east of Cleveland Avenue, the school system opened Brentnell Elementary School in 1962. Its attendance zone took in portions of the previous areas for Shepard, Arlington Park, Eleventh Avenue, Duxberry Park and Leonard Elementary Schools (*see* Pl. L. Exs. 264, 265,

⁹⁶ Of course there was no educational or logistical reason which compelled the elongated, north-to-south zoning of Sixth Avenue. Before 1961 and after 1973, students were assigned on an east-west basis to Weinland Park and Second Avenue in grades 1-3.

251, L. Tr. 3897, 3898).⁹⁷ In 1964, Brentnell was 75% black; Duxberry Park was 30% black; and Arlington Park was 0% black (A. 776-77, L. Tr. 3909). During the rest of the decade, the school district opened three small facilities south of Hudson Street as predominantly black schools, while continuing to add capacity in areas north of Hudson which were predominantly white (see Pl. L. Exs. 268-273, 251, 22, 399, L. Tr. 2135-36, 3881, 3897, 3898).

In 1965, Gladstone Elementary opened, located between Hamilton Elementary and Duxberry Park (see Pl. L. Ex. 268, L. Tr. 3898). It was a small school⁹⁸ with a small zone, and one which was predominantly black from the

⁹⁷ The Arlington Park area transferred to Brentnell was a tract (well to the south of Arlington Park itself), which had been annexed to the district in 1958-59 and assigned to the Arlington Park school (see P. L. Exs. 261, 262, L. Tr. 3898). The Leonard contribution was the former American Addition area, see note 15, and p. 50 *supra*. From Duxberry Park the new school received the area between Windsor Avenue on the south, 23rd Avenue on the north, Joyce Street on the west and Woodland Avenue on the east—the same area which had been discontinuously zoned to Linden from 1957-59, see p. 50 *supra*. The change moved Duxberry Park's southern bound (east of the railroad track) northward, away from advancing black residential settlement, from Windsor Avenue to 23rd Avenue; and it limited Arlington Park's zone to areas north of Hudson Street and Mock Road (*compare* Pl. L. Exs. 264, 251, L. Tr. 3897, 3898 *with* Pl. L. Exs. 265, 251, L. Tr. 3897, 3898). To the west of the Penn Central railroad in the Cleveland Avenue corridor, the Duxberry Park zone did dip below 23rd Avenue and take in predominantly black areas, but these were removed in 1965 when Gladstone Elementary opened (see text *infra*).

⁹⁸ The 1964 Ohio State facilities study had suggested construction of a school with ten classrooms and a kindergarten on a site which the school board had arranged to purchase, Pl. L. Ex. 64, L. Tr. 3882, at 65. However, even after an addition in 1968, Pl. L. Exs. 22, 399, L. Tr. 3882, Gladstone had only nine classrooms, see Pl. L. Ex. 63, L. Tr. 3882, at 69. It was one of the smallest elementary schools in the area (*id.*). See also A. 212-13. A larger facility could have opened less racially isolated.

start.⁹⁹ Gladstone's opening realigned the southern boundary of Duxberry Park northward in the area west of the Penn Central Railroad (*see* note 97 *supra*); its zone was fashioned entirely from the former Duxberry Park area (*see* Pl. L. Exs. 267, 268, L. Tr. 3898) and reduced the black student population in Duxberry Park.¹⁰⁰ Dr. Foster described Gladstone as a school built to "contain" the expanding black pupil population south of Hudson Street and noted that boundary shifts or pairing with schools north of Hudson Street¹⁰¹ (which were all-white at the time) could have resulted in integrating all of these schools (A. 522; *see also*, A. 214).¹⁰²

⁹⁹ In 1966-67, the first year for which figures are available, Gladstone was 78% black. After that school year, Gladstone was consistently above 90% black (A. 792, L. Tr. 3909; *see* note 104 *infra*). Prior to construction of the school, the chairman of the NAACP's Education Committee and others warned that it would be a segregated school, to no avail (A. 212-14).

¹⁰⁰ In 1965-66, Duxberry's student body was 40% black compared to 30% in 1964-65; it dropped to 33% in 1966-67 before rising again as Columbus' black population moved northward (A. 777, L. Tr. 3909). Clearly, Duxberry Park would have approached or exceeded majority-black status in 1965-66 had Gladstone not drawn away substantial numbers of black pupils.

¹⁰¹ Elementary school attendance areas had long crossed Hudson Street. For example, the Linden zone crossed Hudson in 1965 between Dresden Street and the Penn Central tracks, extending as far south as Duxberry Avenue—the northern boundary of Gladstone Elementary (*see* Pl. L. Exs. 268, 251, L. Tr. 3897, 3898). Ten years earlier, both the McGuffey and Linden zones crossed Hudson, with Linden's zone extending far to the south below Windsor Avenue (*see* Fig. 2, Pl. L. Ex. 61, L. Tr. 3882, at 17). In 1953, the Ohio State study recommended that crowding in Hamilton Elementary School be dealt with by involving the McGuffey and Linden schools north of Hudson (Pl. L. Ex. 60, L. Tr. 3882, at 65).

¹⁰² The district court opinion found that Gladstone could have been constructed nearer Hudson Street and zone lines drawn in a north-south fashion to achieve the same result (Pet. App. 22).

Instead of adopting such a course, Columbus constructed another very small school¹⁰³ in the vicinity and opened it in 1966 with a zone stretching in a thin band south of Hudson Street across the top of the Hamilton zone (*see* Pl. L. Exs. 268, 269, 251, L. Tr. 3897, 3898). The area was heavily black by 1970 (*see* Pl. L. Exs. 269, 252, L. Tr. 3897, 3898; A. 523-24). Hudson's opening relieved an over-capacity problem at Hamilton and ended the intact transportation of four classes from Hamilton to Arlington Park (A. 633)—assignments which would have been integrative had pupils from the sending and receiving schools been assigned to classes together (*see* note 21 *supra*): in 1966 Hamilton was 61% black, while Arlington Park was all white (A. 776, 778, L. Tr. 3909). Dr. Foster concluded that Hudson, like Gladstone, was constructed to contain the black population south of Hudson Street (A. 525-26; *see also*, A. 207).^{104, 105}

¹⁰³ In 1969, Hudson was the same size as Gladstone, *see* Pl. L. Ex. 63, L. Tr. 3882, at 69; *see also* note 98 *supra*.

¹⁰⁴ The following table is prepared from A. 775-82, L. Tr. 3909:

<i>School</i>	<i>% Black Student Enrollment</i>						
	<i>1964-65</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>	<i>1968-69</i>	<i>1969-70</i>	<i>1970-71</i>
Linden	0	0	0.1	2.4	3.5	8.3	10.6
McGuffey	0	0	0.1	5.9*	6.7	12.4	20.4*
Como	0	0	0	0.3	0	0	0.2
Hudson	—	—	—	41.9	54.3	62.4	69.2
Hamilton	27.0	48.0	61.0	85.0	90.3	93.0	93.4
Gladstone	—	—	78.0	91.2	92.2	96.7	97.4
Duxberry Pk.	30.0	40.0	33.0	45.8	50.4	74.4	80.4

* Combined elementary-junior high enrollment.

¹⁰⁵ Not only Gladstone and Hudson, but also the white schools north of Hudson Street were overcrowded at this time (*see* table below). Instead of constructing small, segregated schools, the Columbus system could have built larger facilities to relieve ca-

Finally, the same year (1966-67) another small, all-black school having the same capacity as Hudson and Gladstone was built further to the south, drawing its attendance area from the Eleventh Avenue and Milo zones (*see* Pl. L. Exs. 268, 269, L. Tr. 3898). Lexington was 100% black in the 1967-68 school year, when the first statistics are available, and has been a virtually all-black school since that time (A. 779, L. Tr. 3909).

As was the case in the southern area of the school district, these developments at the elementary grade level were paralleled in the junior high schools. We have previously described how an attendance boundary was established in 1957 between Linmoor and Linden-McKinley junior high schools which ran from west to east along Hudson Street and north to south along the Penn Central tracks, separating black and white areas between 17th Avenue and Hudson Street (*see* p. 52 *supra*). In 1960, the Medina Junior High School opened north of Hudson Street with a zone encompassing all-white residential areas (*see* Pl. L. Exs. 283, 284, 251, L. Tr. 3897, 3898). Arlington Park junior high students were re-assigned to Linden-McKinley (*see* text following note 63, *supra*), which now served a smaller zone extending north

capacity needs on both sides of Hudson Street (*see* note 101 *supra*) in an integrative fashion.

<i>School</i>	<i>Capacity</i>		<i>Enrollment**</i>			
	<i>1964*</i>	<i>1969**</i>	<i>1964-65</i>	<i>1965-66</i>	<i>1966-67</i>	<i>1967-68</i>
Linden	837	812	947	958	1009	1045
McGuffey	744	696	878	877	855	864
Como	558	464	616	600	603	599
Hudson	—	261	—	—	359	369
Hamilton	837	841	1244	1274	1064	1068
Gladstone	—	261	—	312	365	352
Duxberry Park	434	406	784	506	410	398

* Pl. L. Ex. 64, L. Tr. 3882, at 55-56.

** Pl. L. Ex. 63, L. Tr. 3882, at 41-42, 69-70.

and south of Hudson Street (*see* Pl. L. Exs. 284, 251, L. Tr. 3897, 3898). In 1962-63, Columbus created another junior high north of Hudson Street by building an addition and extending the grade structure of McGuffey Elementary school from K-6 to K-9 for this purpose (*see* Pl. L. Exs. 22, 399, 286, 251, L. Tr. 2135-36, 3881, 3897, 3898). Medina's southern boundary was moved northward to Weber Road and Arlington Park junior high students assigned discontinuously to Medina (*see* pp. 54-55 *supra*). McGuffey was given a zone running south of Weber to Hudson Street plus the Duxberry Park elementary area east of the Penn Central tracks. Linmoor's attendance area expanded eastward and junior high grades at Linden-McKinley were eliminated (*see* Pl. L. Exs. 286, 287, 251, L. Tr. 3897, 3898).

The net effect of these changes from 1957 to 1963 was that white junior high students living north of Hudson Street were consistently provided with an alternative to attending classes with substantial numbers of black students. Although Linmoor was constructed to permit the entire Linden-McKinley facility to be used for senior high grades, and although it could, together with other adjacent facilities, have assumed all of Linden-McKinley's junior high enrollment when it opened (*see* note 59 *supra*), the school board retained Linden-McKinley junior high until two additional white junior high schools could be constructed north of Hudson Street.¹⁰⁶ Only then was Linmoor's zone expanded to take in the remainder of the Linden-McKinley zone.

¹⁰⁶ Indeed, there was so much junior high capacity built north of Hudson that in 1963-64, the eastern portion of Crestview junior high school's zone was made optional to McGuffey, and then added permanently to the McGuffey zone the following year (*see* Pl. L.

Substitution of Linmoor Junior High for Linden-McKinley in the area south of Hudson Street, at least as that area was enlarged through the addition of territory formerly assigned to Everett (*see* note 60 *supra* and accompanying text), was inadequate to house all junior high students. By 1962, Linmoor was overcrowded (*see* note 106 *supra*). This helped to justify the construction of Monroe Junior High school to the south, near Fort Hayes (*see* map, p. 13 *supra*) in 1964. Monroe was zoned to include areas formerly sent to Champion and also the portion of the Everett-Linmoor optional area with the greatest concentrations of black population (*see* Pl. L. Exs. 287, 288, 251, 252, L. Tr. 3897, 3898). This completed the series of events shaping the racial composition of junior high schools in the area in 1964-65, the first year for which figures are reported:

Exs. 287, 288, L. Tr. 3898). This occurred even though Linmoor, directly to the south of McGuffey, was overcrowded:

School	Capacity		Enrollment					
	1959*	1964**	1959-60**	1960-61**	1961-62**	1962-63**	1963-64**	1964-65†
Linmoor	1000	1050	1021	1011	1023	1083	1106	1098
McGuffey	—	700	—	—	607	610	660	694

There was no overcrowding at Crestview; in addition, Indianola Junior High School—to the south of Crestview and west of Linmoor—was under capacity (*see* note 59 *supra*) and could have housed the students sent to McGuffey:

Crestview	700	1100	738	788	882	913	990	1028
Indianola	950	950	824	828	888	894	895	819

* Pl. L. Ex. 62, L. Tr. 2882, at 52-53.

** Pl. L. Ex. 64, L. Tr. 3882, at 25.

† Pl. L. Ex. 63, L. Tr. 3882, at 40.

<i>School</i>	<i>% Black, 1964-65</i>	
	<i>Students</i> ¹⁰⁷	<i>Faculty</i> ¹⁰⁸
Medina	0	0
McGuffey	0	0
Linmoor	60.0 ¹⁰⁹	0 ¹¹⁰
Monroe	100.0	39.4 ¹¹¹
Champion	100.0	97.3
Everett	35.0 ¹¹²	7.1
Indianola	13.7 ¹¹³	0

The opening of Monroe under the circumstances described drew protests about segregation (A. 602-03), but as was the case with elementary schools, a combination of school siting, underutilization or overcrowding of existing

¹⁰⁷ A. 783-84, L. Tr. 3909.

¹⁰⁸ A. 798-99, L. Tr. 3909.

¹⁰⁹ Since the Monroe zoning removed many black students from the Linmoor zone to an all-black school, it is apparent that the disparity between Linmoor and McGuffey or Medina in 1964 would have been even greater than shown in this table following the closing of Linden-McKinley as a junior high school.

¹¹⁰ *But see* p. 30 *supra*.

¹¹¹ Figure shown is for 1965-66, first year reported.

¹¹² As described above, Monroe took the most heavily black portion of the area which had been assigned to Everett prior to 1957-58, and made optional between Everett and Linmoor from 1958-59 to 1963-64. (*See* text following note 60, *supra*.) Thus one of the long-term effects of retaining Linden-McKinley after 1957 was to remove a black area permanently from the Everett Junior High zone. (*See* note 60 *supra* and accompanying text.) Because a portion of the optional area was returned to Everett, Dr. Foster noted that the transfer had some integrative effect with respect to the school (A. 488-500).

¹¹³ *See* note 59 *supra*.

facilities,¹¹⁴ drawing boundaries along racial residential demarcation lines, and faculty assignment resulted in deliberately segregated black and white junior high schools throughout the east-central and northern areas of the Columbus school district in the 1960's. Dr. Foster reviewed the entire history and characterized the series of actions as being designed to contain the black population toward the central city and to protect white students from advancing black population movement to the north and northeast (A. 499-500).

Any consideration of the 1960's must also take into account the lack of response of the school board to the repeated requests from citizens' groups during this decade that the problems of school segregation be addressed and solved. *See* pp. 35-36 *supra*. This was in marked contrast to the inventiveness displayed by school officials in pursuit of segregation, as described above. *Cf.* A. 406.

f. *The 1970's.* By 1970 the period of greatest enrollment growth in the Columbus system had peaked. Few new schools were built after 1970 and few additions to existing facilities were constructed (*see* Pl. L. Ex. 399, L. Tr. 2135-36). The massive construction and zoning programs of the 1950's and 1960's had created or perpetuated racial separation in the district; now there was much less change of zone lines. However, on the occasions when significant opportunities for desegregation occurred, they were rejected. Enrollment declines began to result in the closing

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School	Capacity		Enrollment				
	1964*	1969**	1963-64*	1964-65**	1965-66**	1966-67**	1967-68**
Monroe	700	600	—	586	749	757	610
Linmoor	1050	1250	1106	1098	1148†	1205	1343
Champion	800	800	949	628	615	623	669
Everett	1300	1100	1091	895	979	906	945
Indianola	950	950	895	819	915	827	890

* Pl. L. Ex. 64, L. Tr. 3882, at 25.

** Pl. L. Ex. 63, L. Tr. 3882, at 40, 73.

† Building addition in 1965.

of schools (for example, Sixth Avenue, Maryland Park, and Clearbrook), but there were still many instances of overcrowding at individual schools in the years immediately preceding the trial. Most of these were not handled by shifting boundaries. Rather, Columbus transported entire classes of students to schools with available space,¹¹⁵ or housed them in leased, non-school facilities. These practices reinforced segregation because of the manner in which they were carried out. As we have previously remarked (*see* note 21 *supra*), these occasions could have resulted in considerable desegregation if classes had been housed in schools which were predominantly of the opposite race (*see, e.g.,* A. 640-41) and if, once there, the students had been assigned to classes along with the students at the receiving schools rather than being kept separate. In addition, the enforced isolation of black students within separate rooms and classes at predominantly white schools made "integration," Columbus-style, a humiliating experience. We describe the evidence very briefly.

Dr. Foster identified numerous instances of intact school-to-school transportation in the late 1960's and early 1970's, and he pointed out that any potential for integration was frustrated by the failure to mix students from the sending and receiving schools in classes (L. Tr. 3601-27). The school system's witness identified some instances in which classes were transported to opposite race facilities, but admitted that they were taught all academic subjects on a separated basis (L. Tr. 5339-78). The result was that even when pupils of different races were sent to the same facility, the school district kept them in segregated classes. A rebuttal witness for the plaintiffs described one such example in 1973, when a predominantly black class from South Mifflin was sent to East Linden School and kept

¹¹⁵ *See* note 47 *supra*.

entirely separated from the predominantly white student body of the receiving school at recess and in the cafeteria as well as during the teaching of academic subjects (A. 701-14). Although Petitioners sought to characterize such practices as temporary expedients (A. 612), they admitted that the device was used for a considerable period of time in at least one instance when it had clearly segregative effects: From 1969-70 through 1973-74, classes were transported from the predominantly black Sullivant School and taught in separate rooms at the adjacent, predominantly white Bellows School in the western portion of the district.¹¹⁶ As Dr. Foster pointed out, a boundary change or pairing of the two schools would have resulted in desegregation as well as relief for overcrowding (A. 639-40).

With respect to rentals, Dr. Foster analyzed the use of leased facilities to house students assigned to seven overcrowded, predominantly black schools from 1970 to 1975: Kent, Sullivant, Highland, Hamilton, Cassady, South Mifflin Elementary, and Mifflin Jr.-Sr. High School (A. 437-69). In each instance, he identified predominantly white schools in the district which, according to the district's figures, had capacity to house these students (*id.*). In response, the district's witness pointed out that many of the rental facilities were close to the schools whose overcrowding they relieved, and also that some of the predominantly white schools identified by Dr. Foster as alternate assign-

¹¹⁶ During the years in question, the student and faculty characteristics at these schools were as follows (A. 776, 781, 790, 795, L. Tr. 3909):

<i>Year</i>	<i>Sullivant</i>		<i>Bellows</i>	
	% Black		% Black	
	<i>Students</i>	<i>Faculty</i>	<i>Students</i>	<i>Faculty</i>
1969-70	61.4	44.0	4.1	6.7
1970-71	60.1	41.7	5.5	8.3
1971-72	60.7	41.7	6.9	9.1
1972-73	65.5	39.1	9.4	8.3
1973-74	70.2	33.3	9.5	16.7

ments were themselves participating in intact transportation of classes from other, predominantly white, schools (A. 608-12; *see* A. 775-82, L. Tr. 3909). In effect, the district intentionally selected that combination of techniques to deal with overcrowding (intact class busing, transportation of children, and use of rental facilities) which resulted in the continuation of racial segregation.

The school board's knowledgeable selection of segregative pupil assignments was expressed, in typical fashion, in 1975 shortly before the trial of this case, when several new facilities were built. In 1971 the Mifflin school district, encompassing a large plot of territory in the northeast, adjacent to the Linden area, was annexed to the Columbus district along with the East Linden, Cassady and South Mifflin Elementary Schools and the Mifflin Jr.-Sr. High School (A. 363). The former Mifflin Township boundaries for these schools were maintained until 1975 (L. Tr. 762-63),¹¹⁷ while overcrowding in these buildings was accommodated through the use of rented space (*see* A. 437-45). In 1975 construction of the new Innis Elementary School, to the north and west of Cassady in a predominantly white area (*see* Pl. L. Exs. 278, 252, L. Tr. 3897, 3898) was completed. The board was given a choice of two options for assignment of pupils to the school, both of which were endorsed as educationally sound by the Super-

¹¹⁷ The East Linden zone was just to the north of Arlington Park; the South Mifflin zone was between Arlington Park and Brentnell. Cassady received students from a large geographic area to the east of all these zones (*see* Pl. L. Ex. 277, L. Tr. 3898). The racial composition of these schools between 1971 and 1974 was as follows (A. 775-82, L. Tr. 3909):

<i>Year</i>	<i>% Black Students</i>		
	<i>E. Linden</i>	<i>S. Mifflin</i>	<i>Cassady</i>
1971-72	3.8	74.3	31.8
1972-73	6.0	79.9	43.9
1973-74	10.7	83.4	47.9
1974-75	15.3	85.5	55.5

intendent and the staff (A. 234-37; L. Tr. 2314): pair Innis and Cassady, using one school for the primary grades and the other for grades 4-6, or establish a zone line between them, using each as a K-6 school. The Cassady PTA and community groups endorsed the pairing concept to maintain integration (*see* A. 250) and the Columbus system had used primary grade centers in the past at Clearbrook, Sixth Avenue, Hudson and Colerian (A. 319-20, 323-25, 633, L. Tr. 2885; *see* pp. 56 n. 65, 72-73, 76, *supra*). Either alternative would involve pupil transportation because of the distances (L. Tr. 759).

The board selected the straight zoning alternative (*See* Pl. L. Exs. 277, 278, L. Tr. 3898) with the result that in 1975-76, Innis was 27.3% black but Cassady was 89.3% black (A. 776, 779, L. Tr. 3909).¹¹⁸ The district court found the construction, siting and zoning of Innis "ironic" in light of the Board's public posture in connection with a 1971 bond issue which raised the money for that construction (Pet. App. 38-42); in the "Promises Made" document utilized to explain the bond issue, the board promised that

New buildings will be located whenever possible to favor integration. In such areas, school attendance

¹¹⁸ Petitioners seek to defend this choice on the ground that it preserved the "neighborhood school" concept (Pet. Br. 25-26). This claim illustrates the slippery nature of the concept and the board's selective use of the term to rationalize segregative decisions. "Neighborhood" attendance zones vary widely in size, depending on population density and the prior decisions of school authorities with respect to siting and size of school facilities (*see* pp. 33-34, 43-44 *supra*). Grade structure can also be varied, as Columbus claimed it did with respect to the Sixth Avenue School in order to preserve "walk-in" availability for students (*see* Pet. Br. 22-23). While it was a part of the Mifflin Township school system and from 1971 to 1975, Cassady Elementary functioned as a "neighborhood" school for the entire area which the board subdivided in 1975 (*see* Pl. L. Ex. 277, L. Tr. 3898). Whatever other justifications for the board's decision there might be, conformity to the "neighborhood school" concept is simply not a plausible one on this record.

boundary lines or organizational changes will be made to improve the opportunity for schools to be integrated without resorting to unreasonable gerrymandering.

(Pl. L. Ex. 49, L. Tr. 3882 [emphasis in original].) But it was not surprising; in 1972 the school board rejected a motion to establish a school site advisory committee (Pl. L. Ex. 44, L. Tr. 3881; A. 646-48; see pp. 36-37 *supra*) and the following year it declined to seek the assistance of the Ohio State Board of Education in achieving desegregation (Pl. L. Ex. 45, L. Tr. 3881; A. 357-58). At the same meeting in which the Innis-Cassady decision was reached, the board rejected the more integrative zoning alternative presented for the new Independence High School (A. 235-36).

g. *Summary.* As this rather extensive description of the major evidence before the district court indicates, Columbus followed a course of conduct after *Brown v. Board of Education* which was consistent only in its maintenance of segregated public schooling. Throughout all of the time period and in every geographic area of the district, the school board and administration maintained racially segregated faculties and schools in spite of requests from the community that segregation be ended. Every conceivable administrative or operational tool was pressed into service in the cause of segregation; but the school board drew a firm line against using the same techniques to eliminate the racial isolation of Columbus students. There was both overall population growth and relocation of blacks and whites within the Columbus district for most of the period following *Brown*. It is difficult to determine precisely how the Columbus school system might have responded to these changes in a "neutral" fashion. The history of the administration of the Columbus schools since the founding of the district shows that virtually no

such “neutrality” ever prevailed. What is clear is that the board and staff actively intervened through every means at their command to maintain racially separate schools wherever possible, and for however long a period possible, in the face of this residential movement.

Based on this evidence and after evaluating all relevant facts, the trial court found that the Columbus Board was motivated by segregative intent in its overall operation of the Columbus public schools (Pet. App. 61). The racially neutral “neighborhood school” may have been the occasional motto and the primary defense of the board at trial; however, it proved only a superficial mask for an unrelenting policy of segregation practiced in all aspects of the administration of the district (*id.* at 60-61).

C. Impact on Current Segregation of Schools

The district court ruled that the school system’s policy and practices of segregation, as demonstrated by the evidence, had a pervasive, systemwide and current impact on the racial composition of the Columbus schools (Pet. App. 60-61, 68, 94-95, 100, 102). This conclusion was well supported by the record.

First, as we have summarized above, the school authorities in Columbus had engaged in a consistent, multifaceted course of conduct creating, perpetuating or aggravating racial segregation in literally scores of schools, from at least the early 1900’s down to the date of the trial. Viewing that conduct as a whole, plaintiffs’ expert witness was of the opinion that it revealed a consistent attempt to contain black students in largely separate schools:

Q. . . . Dr. Foster, from your examination of the records, in particular the exhibits in the cause, the examination of depositions, the maps and overlays, the demographic data which you have studied, the racial