**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TENNESSEE**
**WESTERN DIVISION**

A Procedural History of

# Robinson v. Shelby County Board of Education

## Case No. 63-4916

June 1963 – June 2007

Prepared for Presiding Judge

The Honorable Bernice Donald

by

Chambers Staff

June 15, 2007

Last revised on 6/27/07

The following history, while comprehensive, is not intended to be exhaustive. Certain events having little or no impact on the case have been omitted. In particular, all mention of the numerous plaintiff-intervenors, other than the United States, who have come and gone over the case's forty-four year history, has been excluded. The history also dispenses with formal rules of citation; complete dates for each event link to the docket sheet, but otherwise citations to the record have not been provided.

**Robinson v. Shelby County Board of Education**

**Procedural History**

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# Timeline

**June 12, 1963**: Complaint filed against Shelby County Board of Education by public school students.

**March 17, 1964**: Court adopts County's desegregation plan allowing any child meeting certain requirements to request transfer to any school in same general area, with consultation and permission of principal.

**May 5, 1966**: U.S. intervenes and asserts that the Shelby County plan violates current legal and administrative standards.

**May 20, 1966**: Consent decree entered amending the Board's desegregation plan. New plan requires County to take reasonable steps to eliminate existing racial segregation of faculty, including filling all faculty vacancies by reassigning present faculty, implementation of mandatory "exercise of choice plan" for student assignment, and elimination of segregation and discrimination in facilities, transportation, athletics, extra-curricular activities, etc.

**January 19, 1967:** Court determines that County has failed to comply with its order and orders County to take remedial measures, including employment or assignment of teacher of the race over-represented in a school only where a teacher of the opposite race could not be transferred or employed without seriously impairing the educational program. County required to report, prior to any deviation from this teacher assignment requirement, detailing efforts to transfer or employ teacher of opposite race. Annual reports also required in August and October detailing faculty composition by race of each school, assignment by race for coming year, and number of such vacancies filled by teachers of over-represented race.

**July 17, 1968:** Court rules that, in light of Green v. New Kent County, County's existing plan is inadequate and beginning in 1969 the proportion of white to black teachers in each school to not vary more than 10% from the proportion of white to black teachers in the entire system. County also ordered to maintain in each school, so far as feasible, a ratio of black to white students within 10 percentage points of the composition of the system as a whole.

**April 6, 1970**: Court departs from its prior determination that under Green the student composition of each school must be reflective of the student population in the system as a whole. The Court determines that so long as attendance zone lines are "honestly drawn," i.e., zones not gerrymandered to preserve segregation, a school system should not be considered in violation of its constitutional obligations. The Court also decides that the integration of high school faculty should be treated with greater flexibility than the rest of the system due to a shortage of certified black high school teachers in certain subjects. The Court further requires that all future building plans by the Board are subject to Court approval.

**May 10, 1971:** The Sixth Circuit Court of Appeals remands this Court's April 6, 1970 opinion for reconsideration. The appeals court rejects this Court's reasoning regarding the scope of the Board's constitutional obligations, stating that "the Supreme Court has recognized the affirmative duty of the lower courts to require the eradication of the effects of past unlawful discrimination." "Where there has been a history of state-imposed segregation of the schools, it is not sufficient to adopt a plan which, out of context, might be seen as nondiscriminatory but which does not do as much to disestablish segregation as an alternative proposal which is feasible and pedagogically sound."

**May 28, 1971:** On remand, this Court holds that it is required to effectuate a unitary school system in Shelby County, using busing and pairing and grouping of non-contiguous schools where appropriate. The Court orders that the County file a new plan for the complete dismantling of any remaining vestiges of segregation, stating that, while fixed ratios of pupils in particular schools are not required, efforts should be made, in designing the plan, to reach toward the establishment of the system-wide pupil racial ratio in the various schools so that there will be no basis for contending that one school is racially different from the others. "These results are to be brought about by the use, as necessary, of all available practicable techniques, including but not limited to restructuring attendance zones, paring of attendance zones, restructuring of grade levels as between various schools, and use of transportation."

**August 11, 1971**: the Court adopts the Board's new plan as amended by the Title IV Center, incorporating some of the features of the DOJ's plan and the proposals of various intervenors. The Court states that a system can be said to be unitary when the schools are no longer racially identifiable. The Court further states that while the ratio of white to black pupils in a school relative to that of the system as a whole is highly important, it is not constitutionally required that each school in the system have approximately the same ratio of whites to blacks as does the system as a whole and some all-black (or white) or nearly all-black (or white) schools may exist in a desegregated system. According to the Court's decision, where a school board's plan proposes the continuation of schools that are all or predominantly of one race, there is a presumption that the racial composition of such schools is a vestige of *de jure* segregation, which places the burden on the school board to show that such assignment of pupils is genuinely nondiscriminatory. The Court also notes that racial identifiability depends on how the community thinks of the school, in addition to objective factors.

**March 1979:** Court rules that Plaintiffs should be awarded reasonable attorney's fees and out-of-pocket expenses.

**April 16, 1984:** Court enters a consent order dismissing the petition for award of attorney's fees, noting that a settlement had been reached.

**April 9, 1986:** Court denies County's petition to construct 10 permanent additional classrooms at Lucy Elementary School, stating that the County had failed in its constitutional obligation since it had given no consideration to how the improvement plan

would impact the existing desegregation plan. The Court determines that the planned construction would perpetuate Lucy as a predominantly white school contiguous to a number of underutilized schools, each having significantly greater black student enrollment. The Court concludes that the Board had apparently accorded its concept of "community pride" a higher standing than its constitutional duty to eliminate all vestiges of segregation within the Shelby County school system.

**August 1989:** Court sends to all parties a memorandum noting the declining percentage of black faculty members in the District. Court seeks a response to the question of whether the reports submitted by the Board indicated "an employment practice or policy within the Shelby County Schools which achieves a gradual but definite decline in the number of black teachers employed by the school system."

**July 3, 1990:** Court orders the Board to submit supplemental annual reporting regarding minority faculty recruiting practices.

**August 14, 2006**: Board and Plaintiffs file a joint motion to dismiss the case, dissolving the order of the Court and declaring the Shelby County School System a unitary system. The parties aver that "all requisite functions and duties to be implemented by the Shelby County School system" as mandated by the Court have been fulfilled.

**January 16, 2007**: hearing held on the joint motion to dissolve the permanent injunction.

## Summary

On **June 12, 1963**, twenty-one public school students filed a class action against the Shelby County Board of Education seeking a judgment declaring the County's operation of the schools system to be unconstitutional. Plaintiffs also sought a permanent injunction preventing the County from maintaining a segregated public school system and a court order directing the County to present a complete plan for the desegregation of its school system.

The Board denied that its school system was unconstitutional but produced a written desegregation plan as demonstration of its sincerity of purpose in integrating the Shelby County Schools. The plan allowed any Shelby County public school student, subject to certain academic, financial, and social adjustment qualifications, to transfer from their formerly segregated school to any other school in the same general school area by applying to and obtaining the recommendation of his or her school principal. The plan deferred until later any attempt to integrate the faculty.

On **March 17, 1964, t**he Court adopted the Board's plan to integrate the schools over Plaintiffs' strenuous objections and rejected Plaintiffs' alternative plan because it compelled racial balance in the schools and, in the Court's view, was impractical and unworkable due to the inherent "serious and insurmountable problems, including the transportation of students."

Following the passage of the Civil Rights Act of 1964, which authorized the U.S. Attorney General to bring lawsuits against school districts that were resisting the law, the United States entered the case as plaintiff-intervenor in **1966**. The U.S. forcefully argued that the Board's plan was contrary to recent case law and HEW procedural guidelines.

The government observed that after two years under the plan the school system remained almost completely segregated.

Soon thereafter, the Court entered a consent decree amending the Board's desegregation plan and requiring the County to take reasonable steps to eliminate existing racial segregation of faculty by, among other measures, filling all faculty vacancies by reassigning presently employed faculty members to such vacancies in a manner that would correct the effects of past segregation. The order also mandated implementation of an exercise of choice plan requiring all students to submit a choice of school form each year. Failure to submit the form would result in assignment to the nearest school to the student's home where space was available. Students and parents were to exercise their choice free of any influence by any official, teacher, or employee of the school system. The amended plan also, for the first time, required that no student be segregated or discriminated against in any school-sponsored service, facility activity or program, including transportation, athletics, or other extra-curricular activity.

After a single semester under the new plan, in **January 1977,** the United States complained that the Board had failed to comply with the consent order. Specifically, the government asserted that since the order was entered virtually all vacancies and new teaching positions had been filled by teachers new to the system and that all positions had been filled on a racial basis, with white teachers being assigned to white schools and black teachers being assigned to black schools.

The government also asserted that the Board had violated the administrative requirements of the student desegregation plan by failing to notify black students whether their applications to attend their school of choice had been accepted. In addition, the U.S.

asserted that Defendants had failed to offer black students whose applications to attend previously all-white schools had been denied on grounds of over-crowding the right to elect another school of their choice, including a previously all-white school, but had in some instances requested them to enroll in "the school nearest to them," in most instances an all-black school. In some parts of the county, Defendants had also allegedly failed to take reasonable steps to inform black students electing to attend desegregated schools with respect to the availability of transportation and the times and places where it was to be secured. The U.S. claimed that, as a result of these violations of the Court order, the County school system continued to be almost totally racially segregated: approximately 198 black students (1.3%) attended predominantly white schools, and no white students attended black schools.

The Board admitted the facts alleged in the government's motion and, following a hearing on the show cause order, on **January 19, 1967**, the Court determined that Defendants had not complied with the permanent injunction and ordered the Board to take the following remedial measures:

- Reassignment, with notice and option to decline, to the school of choice of black students who were denied enrollment in their school of choice.
- Adoption and implementation of a plan for giving each student full notice of the availability of transportation, the location of school bus routes, and bus stops and schedules, prior to the commencement of each school year.
- Assignment and reassignment of teachers in a manner whereby the abilities, experience, specialties, and other qualifications of both white and black

teachers in the system will as much as possible be distributed evenly among the various schools of the system.

  - Faculty to be deemed desegregated when the ratio of white teachers to black teachers is the same, give or take 10 percentage points, as the ratio of white to black teachers in the system as a whole.

- Each faculty vacancy to be filled by transferring from within the system a teacher whose race is under-represented (according to the above ratio) in the faculty in which the vacancy exists. A teacher of the race that is over-represented in the school shall be employed by or assigned to vacancy **only if a teacher of the opposite race can neither be transferred nor employed without seriously impairing the education program.**
- Development and implementation of a program to recruit white teachers for employment in schools traditionally staffed by black teachers and black teachers for employment in schools traditionally staffed by white teachers. No teacher shall be employed who is unwilling to teach students of another race and to serve on a faculty which includes teachers of another race.
- **Transfer for the coming year of faculty to schools in which their race is under-represented in all cases in which the transfer can be accomplished without seriously impairing the educational program.**
- Reporting requirements:
  - **Prior to filling any faculty vacancy with a teacher of a race that is over-represented in the faculty of the school in which the vacancy**

**exists, report required detailing efforts to transfer or employ teacher of opposite race**

- Report on **August 1 of each year** detailing faculty composition by race of each school, assignments by race for the coming year, number of vacancies filled, number of such vacancies filled by teacher of overrepresented race.
- Report on **October 1 of each year** supplementing and updating August 1 report.

In **June 1967**, the Board petitioned the Court to modify its requirement that the County achieve and maintain a specific ratio of faculty on grounds that the prevailing law relating to teacher desegregation "does not go to the extent of requiring a particular race ratio before a system can be found in compliance." The Court dismissed the motion as without merit.

In **August and October 1967**, the Board submitted the first of its regular faculty reports. The County reported that 54 white teachers (6 of whom subsequently resigned) and 74 black teachers had been transferred to schools in which the predominant race was not their own. This is in contrast to the Court's requirement that such transfers for the 1967-68 school year be made **in all cases in which the transfer can be accomplished without seriously impairing the educational program.** With a faculty population, almost entirely segregated, of around 1500, the County saw it appropriate to transfer only 128 teachers for the new school year. The result was that the County made only very modest gains in faculty desegregation.

The October 1967 report notes that the total student population of the County school district for the 1966-67 school year was 36,487 (14,240 (39%) black, 26,247 (61%) white). In 1967-68, the total was 42,077 (13,605 (32%) black, 28.742 (68%) white).

The January 19, 1967 order required the Board to file,"[p]rior to filling any faculty vacancy with a teacher of a race that is overrepresented in the faculty of the school in which the vacancy exists, **a report detailing the efforts of the defendants to transfer or employ a teacher of the opposite race and the reasons why the defendants have concluded that the employment of a teacher of the race already over-represented is necessary to avoid seriously impairing the education program**." It appears from the record that this reporting requirement was completely disregarded and that no such report has ever been filed.

The August and October reports were intended to report vacancies filled by teachers of an overrepresented race only after the above reporting requirement was met. Instead, the Board ignored this initial requirement and then reported in August and October vacancies filled by teachers of overrepresented race without comment or explanation as if it was complying, rather than defying, the Court's mandate.[1] In October 1967, the Board reported that of 200 vacancies filled, 188 were filled by a teacher of overrepresented race.

Following the Supreme Court's 1968 decision in Green v. New Kent County, which placed on school boards the burden "to come forward with a plan that promises realistically to work, and promises realistically to work now," Plaintiffs filed a motion for

[1] This practice continued into the late 1980s, when the Board, without explanation, ceased reporting altogether the number of vacancies filled by teachers of overrepresented race..

further relief, requesting an order requiring that Defendants submit a new desegregation plan in light of Green. Quoting Green, Plaintiffs declared that freedom of choice plans are constitutionally unacceptable where "there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary nonracial school system."

The United States filed a parallel motion for further relief, echoing Plaintiffs' request for a desegregation plan for assignment of pupils to schools based on unitary, non-racial, geographic attendance areas and/or on the consolidation or pairing of schools, to be fully effective at the commencement of the 1968-69 school year. The motion also asked for the total desegregation of all faculties pursuant to the order of this Court of January 19, 1967, to be fully effective at the commencement of the 1968-69 school year.

On **July 17, 1968**, the Court issued a memorandum decision and order in response to the motions for further relief wherein the Court recognized that as a result of Green and other recent Supreme Court decisions "integration of pupils and faculty is the legally required end result, if feasible, of all desegregation plans," as opposed to mere racial neutrality with respect to the assignment of pupils to schools. "[T]hese decisions require . . . that segregated schools be affirmatively disestablished and that no school should be recognizable as a 'white' or 'Negro' school, if feasible. These recent decisions also make it clear that such action must be taken forthwith, though not necessarily almost instantaneously."

In recognition of the late date, the Court ruled that beginning with the 1968-69 school year, as to grades one through six, the proportion of white to black teachers in each school was to vary not more than 10 percentage points from the proportion of white

to black teachers who are teaching in such grades in the entire system. By the beginning of the 1969-70 school year, the proportion of white to black teachers in each school was to not vary more than 10 points from the proportion of white to black teachers in the entire system.

Defendants were also required to prepare a plan for integration of pupils, to be effective beginning with the school year 1969-70, under which, to the extent feasible, no school in the system would be identifiable as a "white" or "Negro" school. The Court ordered that Defendants, in their plan for the assignment of pupils, so far as feasible, maintain in each school operated by the Shelby County system a ratio of black to white students within 10 percentage points in each school of the ratio of black to white students in the system as a whole. Defendants were also required to seek the aid of the Title IV Education Center of the University of Tennessee in preparation of such plan.

The Board's October 1968 faculty report purported to detail the County's compliance with the Court's order relating to the proportion of white to black teachers required in each school at the beginning of the 1968-69 school year. The report did not establish a baseline faculty composition against which each school's faculty was to be compared. By the Court's own calculation, the systemwide composition was 34% black, 66% white. Grades one through six were to achieve this percentage, give or take 10 percentage points, by the beginning of the 1968 school year. This would yield an acceptable range of 24-44% black. Applying this range to the figures supplied by the County, the County appears to have been in compliance in 31 out of 41 schools identifiable as elementary schools.

The County submitted to the Court a revised desegregation plan pursuant to the Court's order. According to the plan's preamble, while the amended plan "will result in a reduction of all negro schools from 23 to 7, and will increase the number of integrated Negro students from less than 1,000 to more than 9,000 of the 14,000 Negro student population, it was determined that the elimination of the remaining 7 all-Negro schools for the 1969-70 school year could not feasibly be accomplished. Growth and development patterns, and shifting race distribution clearly indicate, however, that the 7 remaining all-Negro schools can and will be phased out over a period of the next five years." The preamble claimed that the Board "is now in substantial compliance with the orders of the Court regarding the desegregation of faculties one through six." The Board cited numerous problems relative to attaining any particular race ratio among its faculty in the individual high schools, however, and requested that the Court relieve it of the obligation of seeking to meet any particular race ratio among high school faculty at these schools, so long as substantial high school faculty desegregation takes place and no high school faculty assignments are made on the basis of race.

The Educational Opportunities Planning Center of the University of Tennessee filed with the Court an "Interpretation and Critique" of Defendants' proposed desegregation plan. The Center observed that under the Board's revised plan the number of black students in desegregated schools would increase significantly, as well as the ratio of black students to white students in some schools which would be integrated. However, large numbers (61% of all black students, and 73% of black high school students) would remain in segregated schools. One-third of all elementary schools in the system would be

completely segregated. A majority of the black students in the system as a whole would be assigned on a racial basis under the plan.

The Center observed that under the plan some white children lived closer to a segregated black school than to the predominantly white school to which they would be assigned and, similarly, some black children lived closer to a segregated white school than to the predominantly black schools to which they would assigned. The proposed plan therefore required more transportation of students than would a plan based on non-racial, unitary geographic zones for all students

Despite the desegregation accomplished, the Center concluded that a dual school system would still persist. The Center also observed that there would be six high schools with total enrollment of 400 or less. According to the Center, most education authorities maintained that these schools would have enrollments too small to permit well-rounded educational programs. Thus, optimal use of plants would not be achieved under the proposed plan.

Plaintiffs filed objections to the County's proposed plan, asserting that the plan recreates dual over-lapping school zones based on race and fails to eliminate, where feasible, the all-black schools previously established under the segregated system. Plaintiffs further asserted that the plan was based on the unconstitutional requirement that no school shall have a minority of white students, and that it failed to provide for desegregation of high school grades and created artificial barriers to desegregation of faculty and staff. Finally, Plaintiffs noted that the plan provided for the continued operation of every major black school as an all-black school for the upcoming year: the

only all-black schools eliminated were those three small schools which were closed under the plan and the all-black schools eliminated from the system as the result of annexation.

The United States filed its own objections to the plan, asserting that Defendants' plan failed to comply with the Court's orders. The government observed that at the elementary and high school levels the plan utilizes two methods of assigning pupils to schools: unitary, geographic zoning were used primarily in predominantly white suburban areas, and in areas of the county where black residents predominate dual attendance zones were used in which a child's school assignment is determined by his race. The unitary zones would result in five all-white elementary schools, one all-black elementary school, seventeen predominantly white elementary schools, and four predominantly white high schools. The dual zones would result in seven all-black elementary schools, nine majority white elementary schools, five all-black high schools, and five predominantly white high schools.

Under the plan, according to the government, approximately 60% of the school system's black students would be assigned to particular all-black schools solely on grounds of race. For those students, the plan reinstitutes a method of pupil assignment epitomizing the unconstitutional dual system defendants are obligated to dismantle: dual, overlapping, gerrymandered attendance zones assign all the white students living in large areas of the county to majority white schools and all black students living in those same areas to totally black schools. The government attributed this perpetuation of the complete racial identification of their student bodies to a conscious effort on the part of the Board of Education. "Defendants must bear the burden of demonstrating why they have rejected feasible alternatives which would promise more effective and prompt relief,

i.e., unitary zoning for all schools accomplishing the immediate desegregation of each school, or due to the location, size, and nature of existing facilities, pairing as a more effective alternative." "Because certain teacher shortages are the result of past inadequacies of course offerings in negro schools, Defendants have an especially heavy burden to achieve full faculty desegregation."

In **May 1969**, the Court issued an opinion and order regarding the proposed plan, in which it noted that for the 1969-70 school year there will be 34,912 students in the county system, of which approximately 72% will be white and 28% black. Under the proposed plan the percentage of black pupils attending desegregated schools would increase from 5% during 1968-69 to around 50% during 1969-70. It further appeared to the Court that the ratio of white to black teachers in each elementary school during the coming year will be the same, within a tolerance of 10%, as the ratio in the system as a whole, which is two-to-one. The Court noted that such teacher desegregation, under the proposed plan, would not occur in the high schools; it appeared that the ratio for white to black teachers in the predominantly white schools would be about five to one and in the all black schools will be about one to five. However, the Court concluded that there is a dearth of certified black high school teachers in such subjects as Latin, French, physics and biology and further that a lower percentage of black pupils than of white pupils elect such subjects, creating a special problem in desegregation of high school faculties, and the problem cannot be ameliorated until more desegregation of pupils in the high schools is accomplished. Finally, the Court concluded that although the Board's plan would not, as a long-term plan, meet the requirement of Green, given the late date of objections and

in view of the considerable progress made in desegregating the schools it was proper to approve operation under the plan during the coming year.

Later that same year, the Court entered an addendum to its opinion and order. The Court declared that the County's position that the continuance of all-black schools was necessary due to the prevalent racial segregation in the County represents a misunderstanding of the import of its prior order. Simply because the prescribed proportion cannot feasibly be obtained is not an excuse for not effecting the desegregation that is feasible. "In the situation with which we are now concerned unitary zones are required and the fact that white pupils will either move or attend private schools is irrelevant." The Court held that the law requires that these white pupils be presented with the options of attending these schools, or moving, or attending private schools.

The Court further held that while problems unique to high schools exist, the Board must recognize that, to the extent feasible, such secondary school faculties must be desegregated so that the ratio of white to black teachers in each such school will be within 10% of their ratio in the system as a whole. The Court ordered that, on or before January 15, 1970, the Board must file a plan for desegregation, to be effective with the 1970-71 school year, that meets the requirements of this order.

In response to Plaintiffs'"Motion to Require Adoption of Unitary System Now," the Court ruled on **December 15, 1969,** that the Supreme Court's recent decision in Alexander v. Holmes County Board of Education did not require the immediate abandonment of the existing plan where there had already been accomplished great

progress in desegregation in pupils and faculty and, more importantly, there is no alternative plan in existence.

On **April 6, 1970,** the Court issued an opinion on the motions of plaintiffs and the United States for further relief. The court departed from its prior determination that under Green, integration of pupils was legally required, if feasible, to the extent that the races would be as nearly balanced in each school as in the entire school system, requiring a unitary geographical zone for each school with very limited transfers. The Court quoted a concurring opinion by the Chief Justice of the Supreme Court in Northcross v. Board of Education of Memphis, Tenn., ("a unitary system [is] one 'within which no person is to be effectively excluded from any school because of race or color.') and the Sixth Circuit Court of Appeals in the same case ("The United States Supreme court has not announced that [a percentage quota] is the only way to accomplish a 'unitary system.').

Stating that "[w]e have expressed our own view that such a formula for racial composition of all of today's public schools is not required to meet the requirement of a unitary system," the Court concluded that "neither our Court of Appeals nor the Chief Justice believes that the Supreme Court has decided that the Constitution requires that a 'particular racial balance must be achieved in the schools . . .' Accordingly, our best judgment is that, as of now, a school system that has honestly drawn unitary geographical zone lines, that is, zones not gerrymandered to preserve segregation, and that severely limits transfers, is not a 'dual system' with respect to pupils." The Court further stated that "any proposal of the defendant Board that is constitutional must be approved. In short, it is not for this court to determine the wisdom or lack of wisdom of a particular

proposal of the defendant Board; it is for us to determine only whether or not it is constitutional."

The Court rejected, by disregarding it, the implicit contention of the Attorney General and Plaintiffs that the Constitution requires that all feasible steps be taken to balance the races in each school.

The Court held that its prior order to integrate elementary school teachers will remain in effect. With respect to secondary school teachers, the Court required only that generally such teachers be employed and discharged without consideration of race and that to the extent feasible, in the light of the qualifications of the teachers and the need for teachers of particular qualifications in the school, such teachers should be assigned and transferred so that the ratio of white to black teachers in each school will be, within a tolerance of 10%, the same as in the system as a whole.

The Court also directed that "[t]he school board will file notice of all future building plans with the Clerk and furnish counsel for the original plaintiffs and the Attorney General with copies of such notices." The Court declared that counsel for Plaintiffs and the Attorney General would have 30 days from the mailing of any such notice to state their objections.

On appeal, the Sixth Circuit Court of Appeals remanded the April 6, 1970 opinion for reconsideration in the light of its opinion and the recent opinions of the Supreme Court. To the district court's statement that "a school system that has honestly drawn unitary geographical zone lines, that is, zones not gerrymandered to preserve segregation, and that severely limits transfers, is not a 'dual system' with respect to pupils," the appeals court stated that "[a]lthough this may be a correct statement of the duty imposed

upon a school district which has not practiced racial segregation, it does not apply here where there has been a long history of segregated education. In this case, the Supreme Court has recognized the affirmative duty of the lower courts to require the eradication of the effects of past unlawful discrimination."

The Court of Appeals quoted Green: **"**[T]he court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which be shown as feasible and more promising in their effectiveness."

The Court of Appeals also quoted the lower court: "All that is required of defendant in the area of zoning is that it take affirmative action to maximize integration in all feasible ways so as to promote the immediate establishment of a unitary school system." The Court held that the absence of a finding that the approved zones were racially gerrymandered or that the Board acted in bad faith does not excuse the District Court from ordering revision of the attendance zones to insure the Board's compliance with its affirmative duty. "Where there has been a history of state-imposed segregation of the schools, it is not sufficient to adopt a plan which, out of context, might be seen as nondiscriminatory but which does not do as much to disestablish segregation as an alternative proposal which is feasible and pedagogically sound."

On remand, this Court held on **May 28, 1971** that in light of the Court of Appeals decision and the Supreme Court's decision in Swann v. Charlotte-Mecklenburg Board of

Education and Davis v. Board of School Commissioners of Mobile, unanimously holding that "pairing and grouping of non-contiguous school zones is a permissible tool" and local school authorities may be "required to employ bus transportation" in order to achieve the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation," the Court was required to order the effectuation of a unitary school system in Shelby County.

The Court ordered that Defendant file within two weeks a plan for the complete dismantling of any remaining vestiges of segregation in this school system, extending to all facets of school operation. The Court demanded that the plan meet the following standard: while fixed ratios of pupils in particular schools are not required, efforts should be made, in designing the plan, **to reach toward the establishment of the system-wide pupil racial ratio in the various schools so that there will be no basis for contending that one school is racially different from the others.** "These results are to be brought about by the use, as necessary, of all available practicable techniques, including but not limited to restructuring attendance zones, paring of attendance zones, restructuring of grade levels as between various schools, and use of transportation."

In **June 1971,** the Board presented its revised desegregation plan with which it purported to comply with Swann and the Circuit Court's opinion. **"With the implementation of this proposed plan, the defendants know of no reason why the Shelby County School System should not be classified as a unitary system and this case dismissed."**[2]

[2] While the County stated that its school system should be classified as unitary, until the 2006 motion presently before the Court it never formally moved the Court for such recognition.

The United States filed objections to Defendants' proposed plan and to that plan as modified by the Educational Opportunities Planning Center. According to the government, both plans failed to remove the racial identity of several schools in that system for the coming school year, causing a significant portion of the system's students to attend schools which continue to be designed to serve primarily black or white students. The government asserted that educationally sound and administratively feasible alternative methods of desegregation, such as redrawing zone lines to maximize desegregation, pairing or clustering of schools and non-contiguous zoning, are available which, if employed, would promise to immediately disestablish the dual school system.

On August 11, 1971, the Court issued a memorandum decision regarding the proposed plan and the various amendments and objections. The Court first reflected on the impact of the Swann decision. According to the Court, under Swann the proper aim is to do away with state-imposed school segregation. Where a school board's plan proposes the continuation of schools that are all or predominantly of one race, there is a presumption that the racial composition of such schools is a vestige of de jure segregation, which places the burden on the school board to show that such assignment of pupils is genuinely nondiscriminatory.

State-imposed school segregation and its vestiges have been done away with when the school system has become "unitary" and a system can be said to be unitary when the schools are no longer "racially identifiable." While the ratio of white to black pupils in a school, as compared with the ratio in the system as a whole[3], is a highly important factor in determining whether a school is racially identifiable, it is not constitutionally required that each school in the system have approximately the same

[3] The Court noted that at that time the system wide ratio was 7 to 3.

ratio of whites to blacks as does the system as a whole and some all-black (or white) or nearly all-black (or white) schools may exist in a desegregated system.

In addition to the racial composition of the student bodies, other important indicia of a unitary system are the racial composition of faculty and staff in each school and the facts with respect to desegregation of extra-curricular activities and transportation. Equitable principles are to be applied in fashioning the remedies to bring about a unitary system, including imposition of approximate pupil and faculty racial ratios; use of gerrymandered zones and non-contiguous zones; pairing and clustering of schools; and busing of pupils.

In selecting the remedies to be used, the necessity for and the feasibility of the remedy should be the considerations. So long as a school remains racially identifiable, it is absolutely required that optional majority to minority pupil transfers be allowed with necessary transportation paid for the school board. Once a school system has reached a state of "constitutional grace," i.e., has been desegregated, later segregation not caused by policies of state agencies need not be treated.

The Court noted that during the earlier hearing, a DOJ expert gave the opinion that the history of the school is an important factor in determining racial identifiability. Thus even if a school has a predominantly black student population it may be identifiable as a "white" school because it has historically been a white school. Similarly, a school that has historically been black and has been desegregated with only a minority of whites can nevertheless be accepted as not racially identifiable if the whites do not flee and remain in the school and therefore the school is stable. Thus racial identifiability depends at least in part on how the community thinks of the school.

Any argument against the feasibility of busing was greatly undercut by the fact that the Shelby County system has bused pupils for a long time and has bused as many as 20,000 pupils. In the days of segregation it bused blacks past white schools and whites past black schools. The cost and burden of busing should be weighed against the real necessity of such busing in bringing about a unitary system.

The Court observed that the DOJ's plan would come closer than the Board's plan, as amended by suggestions of the Title IV Center, to creating a racial ratio in each school that approximates the ratio in the system as a whole. However, it would also require substantially more busing, though it was not clear how much more. The Court deemed it clear that the additional buses could not be obtained for the coming year because they are generally unavailable and that to carry out the DOJ's plan at this time it would be necessary to stagger the daily starting time of the schools.

The Court therefore adopted the Board's plan as amended by the Title IV Center, incorporating some of the features of the DOJ's plan and the proposals of various intervenors.

Notably, the Court rejected one DOJ proposal to extend the zone of Barrett-Bolton High School to include some whites in a neighboring community, thus reducing the percentage of blacks from 2/3 under the Board's plan. The Court rejected the DOJ modification because the high school didn't need to be "treated." "The contemplated racial composition of these schools would be the same if there had never been de jure segregation applicable to the area they serve. Thus the racial composition of these schools cannot be said to be a vestige of state-imposed segregation."

The Court further found that because Capleville, Woodstock and Arlington elementary schools were "probably stable" they did not need to be treated, even though they had majority black populations (75%, 67%, 60% respectively). Similarly, the Court rejected the DOJ plan for treating Barret's Chapel Elementary: it did not require treatment because its population was reflective of that of the surrounding area.

The Court approved the Board's zoning of elementary schools with virtually all white student populations, most notably Egypt Elementary (95% white). The Court rejected the Plaintiffs' contention that these schools cannot be left heavily white and must be treated. "Their theory appears to be that blacks must be sent to these schools, not because of any advantage to the blacks in going to school with whites and not even to enforce the right of the black pupils to go to a school that is not racially identifiable, but only to enforce the claimed right of black pupils to go to a school in a system in which none of the schools is racially identifiable."

In **September 1974**, Plaintiffs moved the Court to enter an order awarding to Plaintiffs all costs of this action since its inception, including all out-of-pocket expenses and reasonable attorneys' fees for all legal services. The motion was amended in 1978 and in **March 1979** the Court ruled in favor of Plaintiffs, finding that the Court may proceed to determine the amount of costs and attorneys' fees to which plaintiffs are entitled. On **April 16, 1984**, the Court entered a consent order dismissing the petition for award of attorney's fees, noting that a settlement had been reached.

In **July 1977,** the United States objected to Defendant's proposed construction of a vocational education facility on the Bolton High School site. The U.S. requested that Defendants close the Bolton facility as soon as students currently attending there could be

accommodated in the other high school facilities in the system. As reasons, the U.S. asserted that although blacks comprised only 22% of Shelby County's student population, 75% of the students at Bolton High were black. The government further asserted that Bolton High was substantially inferior to the other high school facilities in the system and that while all the other county high school have been completely rebuilt of substantially renovated since 1971, Bolton, built in the 1920s, has remained the same. Furthermore, its student population of 367 made it impossible for Bolton to offer as extensive an academic program as the other high schools in the county, which were larger in size.

Plaintiffs concurred, calling Bolton "the last remaining bastion of educational inequality at the high school level in the Shelby County School System." A few weeks later, Plaintiffs equivocated, stating that feedback from the community surrounding Bolton High had raised the question of whether the continuation of Bolton High might be in the community's best interest, in promoting "racial harmony" and providing a "better educational situation." Plaintiffs recommended that the Court conduct a hearing on the matter.

Defendants filed a statement of disagreement with the DOJ's assertion that Bolton was an inferior facility. In addition to the proposed new vocational education facility, the Board anticipated spending an additional one-half million dollars during the 1978-79 fiscal year to further upgrade the physical plant.

The Court entered a consent decree approving construction of a vocational building at Bolton High School. Consent was conditioned upon defendant's commitment to substantial construction of new facilities and improvement of old facilities at Bolton High designed to make Bolton comparable in size and quality to other high school

facilities. Defendants agreed to not seek construction of an additional high school in this area until these improvements to Bolton are made. When Bartlett and Millington High reached full capacity, additional students were to be assigned to Bolton. As enlargement of Bolton High occurred, every reasonable effort was to be made to make the racial composition of the student body reflective of the racial composition of the school system as a whole.

In **April 1985**, the U.S. filed objections to the plan to construct ten additional classrooms at Lucy Elementary. The U.S. claimed that the proposal not only adversely affected the status of desegregation in the district but also ignored available options that would further desegregation in this district, which had never suggested that it had fully implemented its desegregation plan nor moved this court that it be declared unitary. The government asserted that the decision to construct additional classrooms at Lucy as a means of relieving overcrowding avoided the utilization of unused classroom space at contiguous elementary schools with significant minority enrollment. "Although the defendant has reassigned students to contiguous schools to relieve overcrowding in situations where both the sending and receiving schools were overwhelmingly white, the defendant had refused to use reassignment as an alternative at Lucy. The U.S. concluded that, in essence, the Defendant's plan to remedy overcrowding at Lucy favors an approach that ensures racial isolation over feasible alternatives that promote desegregation. "Defendant's acquiescence to the Lucy community's desires, the community having expressed opposition to the possibility of reassignment, cannot justify the defendant's failure to consider the negative impact of its proposal for construction of additional classrooms on desegregation at Lucy."

The Court denied Defendant's petition to construct 10 permanent additional classrooms at Lucy Elementary School, stating that the Shelby County Board of Education had apparently failed in its constitutional duty since it had given no consideration of how the improvement plan would impact the existing desegregation plan. The Court determined that construction of 10 additional permanent classrooms at Lucy Elementary School would perpetuate Lucy as a predominantly white school contiguous to a number of underutilized schools, each having significantly greater black student enrollment. The Court concluded that the Board had apparently accorded its concept of "community pride" a higher standing than its constitutional duty to eliminate all vestiges of segregation within the Shelby County school system.

In **November 1987**, the Board petitioned for approval of a modification of the desegregation plan to allow the acquisition of land and construction of a new high school in East Shelby County, between Germantown and Collierville, in order to alleviate the overcrowded conditions in the involved areas. The County projected that the proposal would have no adverse effect on desegregation efforts and that the new school would have a racial composition nearly identical to that of the County system as a whole.

Plaintiffs filed objections to the proposed high school construction. They asserted that projected enrollment for the new high school was 8% black, yet the county-wide student population was **14% black**. As a result, Plaintiffs maintained that the construction would "further create racial isolation unless a different and more racially integrative student assignment plan can be worked out."

In a supplementary memorandum supporting the proposed construction, the Board stated, "The Shelby County School System has made every effort to operate a unitary

school system. All students are assigned to the school serving the zone in which they reside, and zone lines are drawn to maximize desegregation within reasonable distances. It would, therefore, seem that a racial composition of 92.7% White and 7.3% Black would exhibit good faith on the part of the school system."

The U.S. filed a response to the construction proposal, in which it stated that it did not oppose the construction of the new high school. However, the United States expressed opposition to Defendants' plan including modifications to the Bartlett High School attendance area in the attendance area proposed for the high school because the Court's 1977 consent order required "that overcrowding at Bartlett or Millington High Schools be relieved through reassignment of students to Bolton High, accompanied by whatever new construction that might be needed at Bolton in order to make Bolton comparable in size and quality to other high school facilities in the system. Because the task of making Bolton comparable has not yet been completed, any adjustment in Bartlett's attendance area not involving reassignment to Bolton should not be considered."

The Board subsequently amended its proposal to delete from the new high school zone the area currently within the Bartlett high school zone in order to comply with the commitment previously made with reference to the Bartlett-Bolton high school situation.

In **August 1989**, the Court sent to all parties a memorandum noting the declining percentage of black faculty members in the Shelby County School District. The Court sought a response from the parties to the question of whether the reports submitted by the Board "indicate an employment practice or policy within the Shelby County Schools

which achieves a gradual but definite decline in the number of black teachers employed by the school system."

The County asserted that the decline in the percentage of black faculty members in the Shelby County school district was explained in part by the decline in the number of black persons entering the teaching profession nationwide.

The U.S. noted that over the past twenty years the percentage of black teachers in the Shelby County School District has fallen steadily, from 30% to 19%.[4] The U.S. also presented data indicating that from 1972 to 1989 the number of white teachers had more than doubled, from 629 to 1278, while the number of black teachers was virtually unchanged (272 to 301).

The government asserted, based on information provided by the County, that the Board's job offer rate was lower for black teachers than white teachers and that in the most recent school year the Board had "recruited almost 10 times as many white applicants as black applicants" (760 white applicants compared to 79 black applicants.

In determining whether these statistics reflect actual discrimination, the U.S. argued, the proper starting point for analysis is a comparison between the racial composition of the school's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market. The U.S. referred to the 1980 Census which reported that of the 11,921 members of the labor force in Shelby County (as a whole) employed as elementary and secondary school teachers, 61% are white and 39% are black.

"The Memphis City Schools and the Shelby County Schools draw from the same labor pool. Yet, as of September 21, 1989 the Memphis City Schools had received 593

[4] This percentage has continued to fall since this debate occurred: from 19% in 1989 to 15% at present.

applications from blacks and 718 applications from whites while for the 1989-90 school year the Shelby County School Board received 70 application from blacks and 760 applications from whites." Although both schools attracted similarly large numbers of white applicants, "the Memphis City Schools recruit 8.5 times as many black applicants as does its neighbor the Shelby County School District."

Ruling out one possible explanation for the discrepancy, the U.S. notes that "Memphis offers a starting salary of $20,100.00, which it estimates to be slightly below the salary offered by the Shelby County School District."

The U.S. cited statistics that indicated that the discrepancy is in large part the result of a less proactive approach to recruiting minority candidates: In 1988-89, the Shelby County Board visited and corresponded with 24 colleges and universities of which 9 where historically black. In comparison, the Memphis School System visited and corresponded with approximately 80 schools of which approximately 20 were historically black institutions. The U.S. also alluded to some anecdotal evidence of discriminatory conduct against black teachers by the County.

The government concluded that "the Shelby County School Board should be required to examine the districts' recruitment and hiring policies and practices and to explain fully its relative inability to hire black teachers in proportion to the number of black teachers in the relevant market." The U.S. maintained that while "the evidence is not sufficient to justify an order that the Board alter its current hiring policies, it is also our view that [] enhanced recruitment measures [] can be lawfully adopted and should be voluntarily adopted by the Board, and that the Board's efforts in this regard should be included with its other faculty information." The "enhanced recruitment measures"

suggested included hiring a recruiter for minority personnel; continued contact by mail or in person with a larger number of predominantly and historically black educational institutions; and the establishment of a more centralized hiring committee that could assist in identifying additional minority candidates for faculty vacancies.

Plaintiffs noted that the Memphis City School District had been able to maintain a 50-50 black-white teacher ratio in spite of the fact that blacks are entering the teaching profession in lesser numbers than they have historically. Among other measures, Plaintiffs recommended more detailed reporting of teacher employment statistics by race at critical points in the school year.

On **July 3, 1990**, the Court ordered the Board to submit supplemental annual reporting regarding minority faculty recruiting practices.

On **August 14, 2006**, the Board and Plaintiffs filed a joint motion to dismiss the case, dissolving the order of the Court and declaring the Shelby County School System a unitary system. The parties averred that "all requisite functions and duties to be implemented by the Shelby County School system" as mandated by the Court have been fulfilled.

On **November 22, 2006**, a status conference was held. The parties agreed on the following course of action: the parties were to submit a proposed Public Notice to the Court within five days, which the Court would review and revise if needed. Notice was to be published in local publications twice. Notice was to instruct interested parties to submit, in writing, a response by January 10, 2007. Persons or entities with relevant concerns were to be heard at the January 26 hearing.

On **January 16, 2007**, a hearing was held on the joint motion to dissolve the permanent injunction. Extensive testimony was offered by Defendants as to why the County was in compliance with the Court's orders and the injunction should be dissolved.

# Comprehensive History

## Beginnings: 1963-64

On **June 12, 1963**, twenty-one public school students filed suit against the Shelby County Board of Education ("the Board"), the Shelby County Quarterly Court, and the Shelby County Commission under 42 U.S.C. § 1983 for violations of Plaintiffs' due process and equal protection rights resulting from the operation by Defendants of a compulsory racially segregated school system. Plaintiffs alleged that, nine years after the Supreme Court's *Brown vs. Board of Education* decision, the Board had "failed and refused to formulate or adopt any plan for the immediate desegregation of the public school system of Shelby County, Tennessee." Plaintiffs sought a declaratory judgment declaring the County's operation of the school system to be unconstitutional. Plaintiffs also sought a permanent injunction enjoining Defendants from maintaining or operating a segregated public school system and a court order directing Defendants to present a complete plan for the desegregation of the Shelby County school system.

In their answer, Defendants denied they had violated Plaintiffs' constitutional rights and claimed that they had "moved expeditiously but with proper regard, care and caution for the overall peace and tranquility of the community toward compliance with the decisions of the Supreme Court." As evidence of their good-faith efforts, Defendants stated that "applications by Negro citizens for admission to at least one public school, the enrollment of which has heretofore been all white, have been received for the 1963-1964 school season, and, if the scholastic and other administrative requirements of the Board of Education are met, these pupils will be enrolled. Defendants further asserted that the Shelby County

Board of Education had "evolved a plan of desegregation for the county school system which they sincerely believe will bring the operation of the Shelby County school

system into full and complete compliance" with the law. This plan had "not as yet been reduced to writing since it was not contemplated by the defendants that any written plan or program would be necessary."

On **August 30, 1963**, the Shelby County Board of Education submitted a statement to the Court asserting that Plaintiffs' suit was "unnecessary since a plan for desegregation of the Shelby County Schools has been developed, but there has no request from any parent or student to cause this plan to be effected." The Board further stated that it "felt that it should not initiate and force on the community schools an integration program which no one had requested." The statement concluded with a presentation of the County's desegregation plan "with the hope that a plan approved by this Court will eliminate any criticism of the Shelby County Board of Education as to its sincerity of purpose in integrating the Shelby County schools."

The Board's initial plan is summarized as follows:

- Any child attending any Shelby County School may request transfer to any other school in the same general school area as the school presently attending.
- Such request should be made by the parent or guardian of the child to the principal of the school presently attending.
- First grade children should first register at the formerly segregated school which has their name as a result of the School Census Enumeration or pre-school clinics which here held in May 1963, so as to account for all known children who are six years old.
    - These children could then apply to change to another school just as could children with a past school record.

- The principal of the formerly segregated negro school shall counsel with and advise the child and his parents as to whether it is desirable and in the best interest of the child to change to a formerly segregated white school.
- To qualify for transfer, the child must meet the following requirements:
    - If guilty of misconduct, recommendation by principal required.
    - Acceptable grades
        - "This could prevent the teacher at the school to which the child is changing from being blamed for student failures."
    - Sufficient economic ability of parent
        - To "prevent embarrassment to child and affect his acceptance or rejection by other children in the school to which he is changing."
    - Sufficient social adjustment and emotional stability
        - "since the Supreme Court's decision ordering integration of schools was based on the sociological and psychological needs of negro children"
- "After the principal of the formerly segregated negro school has counseled with the parents and child who desires to change schools, and the principal recommends him, his name shall be sent to Superintendent of the Shelby County Schools who will make arrangements for the child to change schools."
- "The Superintendent will contact the principal of the school to which the child wishes to change and determine transportation by school bus, if the child is more than one and one-half miles from the school and determine teacher assignment for the child after considering pupil-teacher ratios of the sections of the grade level of

the child. After these arrangements have been completed, the child will be notified as to the date to change school."

- "Teacher integration is included in the plan for the future, but first, student integration should be initiated."

Plaintiffs objected to Defendants' desegregation plan, stating that it revealed "a basic misconception of the responsibility imposed by the second Brown decision." Specifically, Plaintiffs noted that the plan

- left undisturbed pupil assignments initially made on the basis of race, and continuing the policy of initial assignments on the basis of race
- passively requires students to request transfers before any consideration is given to school desegregation
- makes no attempt to reorganize the school system on a racially neutral basis

Plaintiffs proposed an alternative plan for desegregation with the following features:

- School racial make-up reflective of the Shelby County student population as a whole
    - Assignment and reassignment of student to accomplish this goal commencing in 1964-65 school year.
- Uniform pupil-teacher ratios
- Uniform holidays throughout the school system
- Employment or re-assignment of professional staff without regard to race
- All in-service training or educational courses provided to professional staff without regard to race

- Abolition of all forms of racial discrimination in teachers' meeting, projects, recreational facilities, lounges, etc.
- Removal of all directives designating facilities for one race or the other

On **March 17, 1964**, the Court, Marion Boyd presiding, issued an order adopting the Board's desegregation plan. The order stated that "[t]he Court on the record made is of the opinion the plan proposed by the defendant Board of Education to integrate the Shelby County schools is in all respects a sound one. It, without doubt, is proposed in perfect good faith by the board, which has wide discretion in these matters under the law and is, as far as the Court can tell in full compliance with the letter and the spirit of the law." The Court viewed with particular favor the "complete freedom of choice" afforded the County's student, without consideration of race or color.

The Court rejected Plaintiffs' proposed alternative because it compelled racial balance in the schools, was impractical and unworkable in view of the inherent "serious and insurmountable problems, including the transportation of students, among others."

On **April 16, 1964**, Plaintiffs filed an appeal of the Court's order. The appeal was subsequently abandoned and on August 5, 1964, the Court filed a consent order reaffirming its March 17, 1964 order approving the Board's plan of desegregation.

**The Government Intervenes: 1966-67**

On **May 5, 1966**, the United States filed a motion for leave to intervene as a plaintiff in the action and for leave to file a motion for supplemental relief, pursuant to § 902 of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2. The parties consented to the intervention and motion was granted. In the motion, the government observed that since the Court entered its March 17, 1964 order, "the Supreme Court, the Sixth Circuit Court

of Appeals and other federal courts have rendered decisions imposing upon the defendant school district greater obligations with respect to desegregation than did rulings of appellate courts prior to this Court's decision." Specifically, at the time the order was entered, the Court "did not have the benefit of the procedural guidelines set forth by the Department of Health, Education and Welfare's Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964."

"After two years of operation under its plan of desegregation the public schools of Shelby County remain almost completely segregated. In the 1965-66 school year, Shelby County had a total enrollment of 39,314 students. Out of 14,750 Negro pupils (38% of the total) in the system, 39 were attending schools with whites, an increase of one student over the number for the previous year. A substantial number of these Negro pupils attending school with whites are the dependents of Negro personnel stationed at the Millington Naval Base, whose right to attend the school of their choice had been established by an agreement with the Department of Defense independently of the Shelby County desegregation plan and prior to its adoption."

The government asserted that the Shelby County plan as drawn and as operated did not meet current legal and administrative standards for desegregation of public education in the following particulars:

- Shelby County still maintains dual attendance zones based on race and all students are initially assigned to particular schools on the basis of their race.
    - Opportunity to transfer is subject to onerous administrative steps and vague criteria. The plan makes these criteria explicit[ly] applicable to Negro children.

- The plan fails to provide for adequate notice to parents of their rights under the plan.
- The plan fails to provide for adequate teacher and staff desegregation.
- The plan does not provide for adequate steps to eliminate discrimination based on race or color with respect to all services, facilities, transportation and programs, including athletics, student organizations, and other activities sponsored by or affiliated with schools of the system.

On **May 20, 1966**, a consent decree was entered amending the Board's desegregation plan. Under the decree, the County was required to take reasonable steps to eliminate existing racial segregation of faculty that has resulted from the past operation of a dual school system. Specific requirements under the decree included

- Employment, promotion and dismissal of teachers and other professional personnel solely based on qualifications and without regard to race or color.
- In recruitment of professional personnel, communication that the school system is racially integrated and personnel are subject to assignment in best interest of the system without regard to race or color.
- Solicitation and encouragement of teachers presently employed in the system to accept transfer to schools in which the majority of the faculty members are of race different from their own.
- **Filling all faculty vacancies by reassigning presently employed faculty members to such vacancies in a manner that will correct the effects of the past pattern of assignments based upon race.**

- Division of the County school system into five non-racial, geographic attendance areas containing at least one formerly Negro and one formerly white high school, based on utilization of buildings, proximity of pupils to school to be attended and natural boundaries.
- Implementation of an exercise of choice plan with the following features:
    - All students, whether new or continuing, are required to exercise a free choice of schools each year, during the month of March preceding the school year for which the choice is to exercised.
    - Any student who fails to exercise this choice of school to be assigned to the school in his attendance area nearest his home where space is available.
    - On or before March 1, the Board will arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. Copies of the notice must also be given at that time to all radio and television stations serving the community. Copies shall also be posted in each school in the system and at the office of the superintendent.
    - On March 1, an explanatory letter and choice form shall be distributed to each parent with a return envelope.
    - Once a choice has been submitted, and the choice period having expired, it may not be changed and is binding for the entire school year.
    - No choice will be denied for any reason other than overcrowding. If granting all choices submitted would cause overcrowding of a particular

school, students choosing the school who live closest to it will be assigned to that school.

- Transportation to be provided to all pupils without regard to race or color, subject to provisions of state law.
- At no time shall any official, teacher, or employee of the school system influence any parent or student in the exercise of a choice, or favor or penalize any person because of a choice made.
- No student shall be segregated or discriminated against on account of race or color in any school-sponsored or affiliated service, facility, activity or program, including transportation, athletics, or other extra-curricular activity.

On **January 16, 1967**[5], the United States filed an application for, and was granted, an order to show cause why Defendants should not be adjudged in civil contempt for failure to comply with the terms of the permanent injunction of May 20, 1966. In support of its motion, the government asserted that from the date of the injunction to date of the government's motion, virtually all vacancies and new teaching positions had been filled by teachers new to the system. The government further asserted that all of the vacancies and new positions had been filled by the assignment of teachers on a racial basis, with white classroom teachers being assigned to vacancies and new positions in previously all-white schools and Negro teachers being assigned to vacancies and new positions in all-Negro schools. As a result of Defendants' failure to take reasonable steps to solicit and encourage previously employed teachers (523 Negro and

[5] On or before January 16, 1967, Judge Bailey Brown took over the case.

943 white) to accept transfers to schools in which the majority of the faculty members were of a different race from that of the teacher to be transferred, the government averred, there had been no significant staff or faculty desegregation in County during the current school year.

As to student integration, the government noted that at the conclusion of two years of desegregation, 100% of the white students remained in previously white schools and more than 98.7% of the Negro students remained in all-Negro schools. The government maintained that Defendants had failed to comply with the notification procedures required by the decree, with the result that many Negro students who wished to attend desegregated schools or whose parents wished them to attend such schools, in fact continue to attend Negro schools. The government also noted that Defendants had failed to provide notification to students as to whether their applications had been accepted. As a result of the failure to receive such notification, Negro students did not know that they were entitled to attend the school which they had selected, and continued to attend previously all-Negro schools. According to the motion, Defendants had also failed to offer Negro students whose application to attend previously all-white schools had been denied on grounds of over-crowding the right to elect another school of their choice, including a previously all-white school, but had in some instances requested them to enroll in "the school nearest to them," in most instances an all-Negro school. In some parts of the county, Defendants had also allegedly failed to take reasonable steps to inform Negro students electing to attend desegregated schools with respect to the availability of transportation and the times and places where it is to be secured. Finally, Defendants had permitted students to attend schools other than those which they elected

to attend during the choice period, in violation of the "Choices Once Made Cannot Be Altered" provision of the Court's decree. As a result of these violations of the decree, the County school system continued to be almost totally racially segregated.

Defendants stipulated to the facts alleged in the government's motion and, on **January 19, 1967**, following a hearing on the show cause order, the Court determined that Defendants had not complied with the permanent injunction and ordered Defendants to bring themselves into compliance as follows:

- Reassignment, with notice and option to decline, to the school of choice of Negro students who were denied enrollment in their school of choice.
- Adoption and implementation of a plan for giving each student full notice of the availability of transportation, the location of school bus routes, bus stops and schedules, prior to the commencement of each school year.
- Desegregation of the faculty in accordance with the following schedule and procedures:
    - Faculty to be deemed desegregated when the ratio of white teachers to Negro teachers is the same, give or take 10%, as the ratio of white to Negro teachers in the system as a whole.
    - Each faculty vacancy to be filled by transferring from within the system a teacher whose race under-represented (according to the above ratio) in the faculty in which the vacancy exists. A teacher of the race that is over-represented in the school shall be employed by or assigned to vacancy only if a teacher of the opposite race can neither be transferred nor employed without seriously impairing the education program.

- Development and implementation of a program to recruit white teachers for employment in schools traditionally staffed by Negro teachers and Negro teachers for employment in schools traditionally staffed by white teachers. No teacher shall be employed who is unwilling to teach students of another race and to serve on a faculty including teachers of another race.
- Complete review within 120 days of the order of all personnel files of teachers and other professional staff for purpose of identifying teachers and other staff members to be reassigned to schools in which their race is underrepresented.
    - **Transfer for the coming year of faculty to schools in which their race is under-represented in all cases in which the transfer can be accomplished without seriously impairing the educational program.**
- Achievement of at least some desegregation of regular classroom teachers in each school in upcoming school year.
- Assignment and reassignment of teachers in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will as much as possible distributed evenly among the various schools of the system.
- The County to be deemed in compliance with order as to desegregation of faculty when goal ratio is achieved and maintained for a full school year.

- Reporting requirements:
  - **Prior to filling any faculty vacancy with a teacher of a race that is over-represented in the faculty of the school in which the vacancy exists, report required detailing efforts to transfer or employ teacher of opposite race**
  - Report on **August 1 of each year** detailing faculty composition by race of each school, assignments by race for the coming year, number of vacancies filled, number of such vacancies filled by teacher of overrepresented race.
  - Report on **October 1 of each year** supplementing and updating August 1 report.
  - Report within 120 of present order describing program of recruitment required by order.

On **May 22, 1967**, in response to the 120 day program development and reporting requirements of the January 19 order, the County reported the following:

- Faculty vacancies occurring within the second semester had been filled in 11 of 14 instances by the transfer of teachers whose race was underrepresented in the schools where the vacancies occurred. The remaining vacancies had been filled by the employment of teachers whose race was underrepresented.
- Letters had been sent to the teacher placement bureaus of 56 colleges and universities situated within reasonable proximity to this locality, stating that Shelby County is seeking white teachers for placement in

schools heretofore staffed by Negroes and is seeking Negro teachers for schools heretofore staffed by white teachers.

- Applicants for teaching positions consistently advised by letter and in person that their employment is contingent upon their willingness to accept assignment in a school in which their own race is underrepresented.
- The County stated that it had commenced but not completed the required complete review of personnel files for the purpose of reassignment, "due to the enormity of the task and the limited number of employees."
  - No request for additional time was made, and no further mention of the required review was ever made by the parties or the Court
  - Teachers presently in service had been notified that they were subject to reassignment in the 1967-68 term as may be needed to gain the required ratio of white teachers to Negro teachers on each school faculty.
    - The training, experience, and service records of teachers presently employed were being reviewed before reassignments are made for 1967-68.
- No faculty vacancy had been filled with a teacher of the race that was overrepresented in the faculty of the school in which the vacancy occurred.

On **June 16, 1967**, the County filed a petition to modify the January 19, 1967 decree, complaining that the requirement to achieve and maintain a specific ratio of

faculty in each school placed "out of proportion to other factors involved in teacher placement the color of a particular teacher's skin." The County asserted that the prevailing law relating to teacher desegregation "does not go to the extent of requiring a particular race ratio before a system can be found in compliance." On **July 19, 1967**, after a hearing on the matter, the Court denied the motion as without merit.

On **August 1, 1967**, the County submitted its first required annual August report. In addition to vacancies reported filled in May, the County reported that 54 additional white teachers (6 of whom subsequently resigned) and 74 Negro teachers had been transferred to schools in which the predominant race is not their own.[6]

On **September 29, 1967**, the County submitted its first required annual October supplemental report.[7] The report contained a list of 200 teachers employed through September 29, 1967 to fill vacancies for the 1967-68 school year. Of these only 12 were of an underrepresented race.[8]

**In the Aftermath of Green v. New Kent County: 1968-70**

On **June 27, 1968**, following the Supreme Court's decision in Green v. New Kent County, which placed on school boards the burden "to come forward with a plan that promises realistically to work, and promises realistically to work now," Plaintiffs filed a

[6] Contrast this to the requirement that such transfers for the 1967-68 school year be made **in all cases in which the transfer can be accomplished without seriously impairing the educational program.** With a faculty population, almost entirely segregated, of around 1500, the County saw it appropriate to transfer only 128 teachers. The result was only very modest gains in faculty desegregation.

[7] The report notes that the total student population of the County school district for the 1966-67 school year was 36,487 (14,240 (39%) black, 26,247 (61%) white). In 1967-68, the total was 42,077 (13,605 (32%) black, 28.742 (68%) white).

[8] Note that the January 19 order requires that "Prior to filling any faculty vacancy with a teacher of a race that is overrepresented in the faculty of the school in which the vacancy exists, a report detailing the efforts of the defendants to transfer or employ a teacher of the opposite race and the reasons why the defendants have concluded that the employment of a teacher of the race already over-represented is necessary to avoid seriously impairing the education program." **It appears from the record that this reporting requirement was completely disregarded and that no such report has ever been filed.**

motion for further relief, requesting an order requiring that Defendants submit a new desegregation plan in light of Green. Quoting Green, Plaintiffs declared that freedom of choice plans are constitutionally unacceptable where "there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary nonracial school system."

Plaintiffs sought a survey of the school system, including a map showing each school and the area of residence, by race and grade; complete descriptions of each school's facilities; a list of all sites currently owned or which district plans to acquire, their sizes and intended use; present construction plans, etc. Plaintiffs also sought a plan for the assignment of all students for the coming school year on the basis of a unitary system of nonracial geographic attendance zones or a plan for the pairing and consolidation of grades or schools, or both. Finally, Plaintiffs sought an order requiring Defendants to request the assistance of the Title IV education Center of the University of Tennessee in preparation of the plan.

On July 17, 1968, the United States filed a parallel motion for further relief, echoing Plaintiffs' request for desegregation plan for assignment of pupils to schools based on unitary, non-racial, geographic attendance areas and/or on the consolidation or pairing of schools, to be fully effective at the commencement of the 1968-69 school year. The motion also asked for the total desegregation of all faculties pursuant to the order of this Court of January 19, 1967, to be fully effective at the commencement of the 1968-69 school year.

On **July 17, 1968**, the Court issued a memorandum decision and order in response to the motions for further relief wherein the Court recognized that as a result of Green

and other recent Supreme Court decisions "integration of pupils and faculty is the legally required end result, if feasible, of all desegregation plans," as opposed to the mere racial neutrality with respect to the assignment of pupils to schools. [T]hese decisions require . . . that segregated schools be affirmatively disestablished and that no school should be recognizable as a "white" or "Negro" school, if feasible. These recent decisions also make it clear that such action must be take forthwith, though not necessarily almost instantaneously."

In recognition of the late date, the Court ruled that beginning with the 1968-69 school year, as to grades one through six, the proportion of white to Negro teachers in each school was to vary not more than 10% from the proportion of white to Negro teachers who are teaching in such grades in the entire system. By the beginning of the 1969-70 school year, the proportion of white to Negro teachers in each school was to not vary more than 10% from the proportion of white to Negro teachers in the entire system. On August 15, 1968, Defendants were to consider the ratio of Negro to white teachers as said ratio will exist, after omitting those teachers who, under planned assignments, will be taken into the city system by annexation from the ratio of negro to white teachers to be assigned in grades one through six for the 1968-69 school year. The resulting ratio was to be the basis for the assignment of teachers in the remaining portion of the system for the 1969-70 school year.

On or before January 1, 1969, Defendants were required to prepare a plan for integration of pupils, to be effective beginning with the school year 1969-70, under which, to the extent feasible, no school in the system would be identifiable as a "white" or "Negro" school.

On **August 15, 1968** the Court extended this deadline to January 15, 1969. Defendants were allowed to omit from their survey and plan that portion of the county school system which lies within the area to be annexed by the City of Memphis on December 31, 1968. The Court also ordered that Defendants, in its study and plan in the assignment of pupils for the 1969-70 school year, so far as feasible, maintain in each school operated by the Shelby County system a ratio of negro to white students within 10 percentage points in each school of the ratio of Negroes to white students in the system as a whole. Defendants were also required to seek the aid of the Title IV Education Center of the University of Tennessee in preparation of such plan.

On **August 1, 1968** and **October 2, 1968**, the County filed its second annual reports. The reports indicated that the vast majority of vacancies during the year were filled by race over-represented on faculty, despite the Court order to the contrary. Again, the County failed to file the required report detailing efforts to transfer or employ teacher of opposite race.

The October report also purported to detail the County's compliance with the Court's July 19, 1968 order relating to the proportion of white to Negro teachers required in each school at the beginning of the 1968-69 school year. The report does not establish a baseline faculty composition against which each school's faculty is to be compared. By the Court's own calculation, the system-wide ratio was 34% black, 66% white. Grades one through six were to achieve this by the beginning of the 1968 school year, give or take 10%, by which the Court appears to mean a variation of 10 percentage points in either direction. This would yield an acceptable range of 24-44% black. Applying this

range to the figures supplied by the County, the County appears to have been in compliance in 31 out of 41 schools identifiable as elementary schools.

On **January 15, 1969**, the County submitted to the Court a revised desegregation plan pursuant to the August 15 order. According to the plan's preamble, while the amended plan "will result in a reduction of all negro schools from 23 to 7, and will increase the number of integrated Negro students from less than 1,000 to more than 9,000 of the 14,000 Negro student population, it was determined that the elimination of the remaining 7 all-Negro schools for the 1969-70 school year could not feasibly be accomplished. Growth and development patterns, and shifting race distribution clearly indicate, however, that the 7 remaining all-Negro schools can and will be phased out over a period of the next five years." The preamble claimed that the Board "is now in substantial compliance with the orders of the Court regarding the desegregation of faculties one through six." The Board cited numerous problems relative to attaining any particular race ratio among its faculty in the individual high schools however and requested that the Court relieve it of the obligation of seeking to meet any particular race ratio among high school faculty at these schools, so long as substantial high school faculty desegregation takes place and no high school faculty assignments are made on the basis of race.

The County described problems arising from the fact that high school teachers, unlike teachers at lower grades, are certified by subject area. These problems, the County asserted, necessitated that transfers must be made according to the need for the subject matter expertise of each teacher.

The Board stated that "sound educational practices dictate that high school students be permitted to remain in their present schools so far as possible until graduation. Thus, the revised plan was designed to permit students in high school to elect to remain in the schools which they are presently attending.

The Board's projections for the 1969-70 school year reveal that only at a tiny minority of schools did the County aim to achieve the racial balance reflective of the County school population as a whole as mandated by the August 15, 1968 order.

On **April 11, 1969**, the Educational Opportunities Planning Center of the University of Tennessee filed with the Court an "Interpretation and Critique" of Defendant's proposed desegregation plan. The Center observed that under the Board's revised plan the number of black students in desegregated schools would increase significantly, as well as the ratio of black students to white students in some schools which would be integrated. However, large numbers (61% of all black students, and 73% of black high school students) would remain in segregated schools. One-third of all elementary schools in the system would be completely segregated. A majority of the black students in the system as a whole would be assigned on a racial basis under the plan.

The Center observed that under the plan some white children lived closer to a segregated black school than to the predominantly white school to which they would assigned and, similarly, some black children lived closer to a segregated white school than to the predominantly black schools to which they would assigned. The proposed plan therefore requires more transportation of students than would a plan based on non-racial, unitary geographic zones for all students

Despite the desegregation accomplished, the Center concluded that a dual school system would still persist. The Center also observed that there would be six high schools with total enrollment of 400 or less. Most education authorities would maintain that these schools would have enrollments too small to permit well-rounded. Thus, optimal use of plants would not be achieved under the proposed plan.

On **April 11, 1969**, Plaintiffs filed objections to the County's proposed plan, asserting that the plan recreates dual over-lapping school zones based on race and fails to eliminate, where feasible, the all-Negro schools previously established under the segregated system. Plaintiffs further asserted that the plan is based on the unconstitutional requirement that no school shall have a minority of white students, it fails to provide for desegregation of high school grades and it creates artificial barriers to desegregation of faculty and staff. Finally, Plaintiffs noted that the plan provides for the continued operation of every major Negro school as an all-Negro school for the upcoming year: the only all-Negro schools eliminated are those three small schools which are closed under the plan and the all-Negro schools eliminated from the system as the result of annexation.

On **May 2, 1969**, the United States filed its own objections to the plan, asserting that Defendants' plan failed to comply with the Court's orders. The government observed that at both the elementary and high school level, the plan utilizes two methods of assigning pupils to schools: unitary, geographic zoning used primarily in predominantly white suburban areas, and, in areas of the county where Negro residents predominate, dual attendance zones in which a child's school assignment is determined by his race. The unitary zones would result in five all-white elementary schools, one all-Negro elementary school, seventeen predominantly white elementary schools, and four

predominantly white high schools. The dual zones would result in seven all-Negro elementary schools, nine majority white elementary schools, five all-Negro high schools, and five predominantly white high schools.

Under the plan, according to the government, approximately 60% of the school system's Negro students would be assigned to particular all-Negro schools solely on grounds of race. For those students, the plan reinstitutes a method of pupil assignment epitomizing the unconstitutional dual system defendants are obligated to dismantle: dual, overlapping, gerrymandered attendance zones assign all the white students living in large areas of the county to majority white schools and all Negro students living in those same areas to totally Negro schools. The government attributed this perpetuation of the complete racial identification of their student bodies to conscious effort of the Board of Education.

The government argued that not only does the plan fail to fulfill the Board's affirmative duty to disestablish all-Negro schools, it represents a reaffirmation by the Board of an unconstitutional pattern of deliberate racial isolation of Negro school children. "Defendants must bear the burden of demonstrating why they have rejected feasible alternatives which would promise more effective and prompt relief, i.e., unitary zoning for all schools accomplishing the immediate desegregation of each school, or due to the location, size, and nature of existing facilities, pairing as a more effective alternative."

"The Board may not constitutionally establish zone lines coextensive with the limits of small pockets of racially segregated housing. To the extent feasible, zone lines must be drawn to counteract rather than reinforce the school segregation that would result

from residential segregation." "The plan is based on the assumption that forcing white minorities into predominantly Negro schools will not work because the white population will migrate from the unitary zones surrounding predominantly Negro schools. That speculation can have no effect to avoid the constitutional imperative to desegregate. "

The government concluded that Defendants are constitutionally required to take active steps to achieve faculty desegregation, including the reassignment of teachers presently employed by the system. "Because certain teacher shortages are the result of past inadequacies of course offerings in negro schools, Defendants have an especially heavy burden to achieve full faculty desegregation."

On **May 26, 1969**, the Court issued an opinion and order regarding the proposed plan, following a hearing on the matter held May 12-16. The Court noted that for the 1969-70 school year, there will be 34,912 students in the county system, of which approximately 72% will be white and 28% Negro. Under the proposed plan the percentage of Negro pupil attending desegregated school would increase from 5% during the 1968-69 to around 50% during 1969-70. It further appeared to the Court that the ratio of white to black teachers in each elementary school during the coming year will be the same, within a tolerance of 10%, as is the ratio in the system as a whole, which is a two to one ratio. The Court noted that such teacher desegregation, under the proposed plan, would not occur in the high schools; it appears that the ratio for white to Negro teachers in the predominantly white schools will about five to one and in the all negro schools will be about one to five. However, the Court concluded that there is a dearth of certified Negro high school teachers in such subjects as Latin, French, physics and biology and further that a lower percentage of Negro pupils than of white pupils elect such subjects,

creating a special problem in desegregation of high school faculties, and the problem cannot be ameliorated until more desegregation of pupils in the high schools is accomplished. Finally, the Court concluded that although the Board's plan will not, as a long-term plan, meet the requirement of Green, given the late date of objections and in view of the considerable progress made in desegregating the schools, it was proper to approve operation under the plan during the coming year. The Court stated that it would soon issue a fuller opinion setting out precisely why the defendant Board's plan does not meet the requirements of Supreme Court precedent and indicating specifically what is required at a later date.

On **October 1, 1969**, the Court entered an addendum to its May 26 opinion and order. The Court declared that the County's position that the continuance of all-Negro schools was necessary due to the prevalent racial segregation in the County represents a misunderstanding of the import of its prior order. Simply because the prescribed proportion cannot feasibly be obtained is not an excuse for not effecting the desegregation that is feasible. "In the situation with which we are now concerned unitary zones are required and the fact that white pupils will either move or attend private schools is irrelevant." The Court held that the law requires that these white pupils be presented with the options of attending these schools, or moving, or attending private schools.

The Court further held that while problems unique to high schools exist, the Board must recognize that, to the extent feasible, such secondary school faculties must be desegregated so that the ratio of white to Negro teachers in each such school will be within 10% of their ration in the system as a whole. The Court order that, on or before

January 15, 1970, the Board must file a plan for desegregation, to be effective with the 1970-71 school year, that meets the requirements of this order.

On **December 15, 1969**, in response to Plaintiffs' "Motion to Require Adoption of Unitary System Now," the Court ruled that the Supreme Court's recent decision in Alexander v. Holmes County Board of Education did not require the immediate abandonment of the existing plan where there has already been accomplished great progress in desegregation in pupils and faculty and, more importantly, there is no alternative plan in existence.

On **April 6, 1970,** the Court issued an opinion on the motions of plaintiffs and the United States for further relief. The court departed from its prior determination that under Green, integration of pupils was legally required, if feasible, to the extent that the races would be as nearly balanced in each school as in the entire school system, requiring a unitary geographical zone for each school with very limited transfers. The Court quoted a concurring opinion by the Chief Justice of the Supreme Court in Northcross v. Board of Education of Memphis, Tenn., ("a unitary system [is] one 'within which no person is to be effectively excluded from any school because of race or color.') and the Sixth Circuit Court of Appeals in the same case ("The United States Supreme court has not announced that [a percentage quota] is the only way to accomplish a 'unitary system.').

Stating that "We have expressed our own view that such a formula for racial composition of all of today's' public schools is not required to meet the requirement of a unitary system," the Court concluded that "neither our Court of Appeals nor the Chief Justice believes that the Supreme Court has decided that the Constitution requires that a 'particular racial balance must be achieved in the schools . . .' Accordingly, our best

judgment is that, as of now, a school system that has honestly drawn unitary geographical zone lines, that is, zones not gerrymandered to preserve segregation, and that severely limits transfers, is not a 'dual system' with respect to pupils." The Court further stated that "any proposal of the defendant Board that is constitutional must be approved. In short, it is not for this court to determine the wisdom or lack of wisdom of a particular proposal of the defendant Board; it is for us to determine only whether or not it is constitutional."

The Court rejected, by disregarding it, the implicit contention of the Attorney General and Plaintiffs that the Constitution requires that all feasible steps be taken to balance the races in each school. For example, the Title VI Center and the Attorney General proposed pairing two schools located two miles apart, White's Chapel, an all-Negro school, and Coro Lake, 342 white pupils and 151 Negro pupils, assigning the lower elementary grades to one school and the upper elementary grades to the other. The result would have been a slight majority of white pupils in both schools. The Court concluded that the Board's unitary zones were not unconstitutional and therefore must be approved, notwithstanding the fact that a feasible alternative was available to affect far greater desegregation.[9] Another example was the proposed closing of Ellendale elementary (240 white and 66 Negro pupils) and transferring them to Shadowlawn (37 white and 382 Negro pupils) resulting in a black majority combined school. Again the

[9] The Court's determination appears to have been influenced by the fact that both of these schools were to be annexed into the city in 1971.

Court concluded that since the proposal of the Board was not unconstitutional, it must be approved.[10]

The Court rejected partially the Board's proposal to allow all secondary pupils who will be in the 10th, 11th, and 12th grades next year to continue in their present schools irrespective of the zones in which they live. The Court adopted instead the suggestion of the Center that only 12th grade pupils be allowed to continue in their present schools.

"No pupil will be allowed to attend a school outside the zone in which the pupil lives except for valid administrative or educational reasons and then only if the pupil is not by the transfer avoiding a school in which the pupil would be in a racial minority and attending a school in which the pupil would be in a racial majority." The Court held that its prior order to integrate elementary school teachers will remain in effect. With respect to secondary school teachers, the Court required only that generally such teachers be employed and discharged without consideration of race and that to the extent feasible, in the light of the qualifications of the teachers and the need for teachers of particular qualifications in the school, such teachers should be assigned and transferred so that the ratio of white to Negro teachers in each school will be, within a tolerance of 10%, the same as in the system as a whole.

On **May 7, 1970**, the Court entered an order implementing its opinion of April 6, 1970, ordering that the Board operate for the 1970-71 school year in accordance with the terms of that opinion. Additionally, the order directed that "[t]he school board will file notice of all future building plans with the Clerk and furnish counsel for the original

[10] Decisive in the Court's determination were the facts that the two schools were one and one-half miles apart, that most of the Ellendale pupils lived nearby the Ellendale school and walked to school, and that the building served as community center for the Ellendale neighborhood.

plaintiffs and the Attorney General with copies of such notices." On April 30, 1971, the Court ruled that counsel for Plaintiffs and the Attorney General would have 30 days from the mailing of any such notice to state their objections.

On **October 1, 1970**, the Board filed it fourth annual October report. Unlike in past reports, the great majority of vacancies appear to have been filled by race under-represented on faculties

**In the Aftermath of Swann v. Mecklenburg: 1971-73**

On **May 10, 1971**, the Sixth Circuit Court of Appeals remanded the April 6, 1970 opinion for reconsideration in the light of the Court of Appeals opinion and the recent opinions of the Supreme Court. To the district court's statement that "a school system that has honestly drawn unitary geographical zone lines, that is, zones not gerrymandered to preserve segregation, and that severely limits transfers, is not a "dual system" with respect to pupils," the appeals court stated that "[a]lthough this may be a correct statement of the duty imposed upon a school district which has not practiced racial segregation, it does not apply here where there has been a long history of segregated education. In this case, the Supreme Court has recognized the affirmative duty of the lower courts to require the eradication of the effects of past unlawful discrimination."

The Court of Appeals quoted Green: **"[T]he court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand**

**and in light of any alternatives which be shown as feasible and more promising in their effectiveness."**

The Court of Appeals also quoted the lower court: "All that is required of defendant in the area of zoning is that it take affirmative action to maximize integration in all feasible ways so as to promote the immediate establishment of a unitary school system." The Court held that the absence of a finding that the approved zones where racially gerrymandered or that the Board acted in bad faith does not excuse the District Court from ordering revision of the attendance zones to insure the Board's compliance with its affirmative duty. "Where there has been a history of state-imposed segregation of the schools, it is not sufficient to adopt a plan which, out of context, might be seen as nondiscriminatory but which does not do as much to disestablish segregation as alternative proposal which is feasible and pedagogically sound."

On **May 28, 1971**, on remand, this Court held that in light of the Court of Appeals decision and the Supreme Court's decision in Swann v. Charlotte-Mecklenburg Board of Education and Davis v. Board of School Commissioners of Mobile, unanimously holding that "paring and grouping of non-contiguous school zones is a permissible tool" and local school authorities may be "required to employ bus transportation" in order to achieve the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation," the Court is required to order the effectuation of a unitary school system in Shelby County.

The Court ordered that Defendant file within two weeks a plan for the complete dismantling of any remaining vestiges of segregation in this school system, extending to all facets of school operation. The Court demanded that the plan meet the following

standard: while fixed ratios of pupils in particular schools are not required, efforts should be made, in designing the plan, **to reach toward the establishment of the system-wide pupil racial ratio in the various schools so that there will be no basis for contending that one school is racially different from the others.** "These results are to be brought about by the use, as necessary, of all available practicable techniques, including but not limited to restructuring attendance zones, paring of attendance zones, restructuring of grade levels as between various schools, and use of transportation."

Under the order Educational Opportunities Planning Center at UT was to file its own plan and if Plaintiffs wish to file their own plan, they could apply to the Court to obtain the services of an education expert to prepare a constitutional plan with reasonable costs to be considered as assessable costs against the defendant.

On **June 9, 1971,** the Board presented its revised desegregation plan with which it purported to comply with Swann and the Circuit Court's opinion. **"With the implementation of this proposed plan, the defendants know of no reason why the Shelby County School System should not be classified as a unitary system and this case dismissed."**[11]

On **June 21, 1971**, the United States filed objections to Defendant's proposed plan and to that plan as modified by the Educational Opportunities Planning Center. According to the government, both plans failed to remove the racial identity of several schools in that system for the coming school year, causing a significant portion of the system's students to attend schools which continue to be designed to serve primarily black or white students. The government asserted that educationally sound and

[11] While the County stated that its school system should be classified as unitary, until the 2006 motion presently before the Court it never formally moved the Court for such recognition.

administratively feasible alternative methods of desegregation, such as redrawing zone lines to maximize desegregation, pairing or clustering of schools and non-contiguous zoning, are available which, if employed, would promise to immediately disestablish the dual school system.

On **June 23, 1971**, the Court entered a memorandum decision and order. The Court determined that it could not dispose of the remand simply on the basis of the plan tendered by the Board, as it would be amended by the suggestions of the Title IV Center, plus some limited amendments suggested by the original plaintiffs and the Department of Justice, because the demands of the latter two parties would require wholly new plans. Therefore, Plaintiffs and the DOJ would be required to file their own new and entire plans by July 15, 1971. Furthermore, Plaintiffs and the DOJ (but not Defendants) were required to file with their plans a brief on the question whether all situations in which Negroes are in the majority are conclusively to be presumed to have resulted from state-imposed school segregation or whether a factual investigation is necessary to determine whether, and to what extent, such situations are attributable to state-imposed school segregation.

Neither Plaintiffs nor the DOJ responded to the Court's order with a full-fledged plan of their own. On **July 15, 1971**, the United States filed proposed modifications to the Board's desegregation plan. These modifications included minor modifications to attendance zones and a 5% increase in busing with an additional cost of $52,447. On **July 22, 1971**, Plaintiffs filed a response to the plan filed by the U.S. Plaintiffs stated that the government's modifications of the Board's modified plan had the apparent potential for complete dismantling of Shelby County's dual high school system and constituted the

very minimum required by Swann. Plaintiffs noted that while the elementary school zoning modifications would be an improvement, the plan would leave eight schools substantially disproportionate in their racial composition. "Plaintiffs are not satisfied that all feasible and more effective alternatives have been explored or presented. This shortcoming reflects, at least in part, the U.S.'s primary concern with schools which are disproportionately black to the exclusion of any concern with schools which remain disproportionately white." Plaintiffs asserted that Swann requires close scrutiny of schools which remain disproportionately black or white. Although Plaintiffs viewed the plan is flawed, because the school year was fast approaching, they recommended that the Court should order adoption of the U.S.'s plan for the 1971-72 school year. Plaintiffs further requested that the Court should grant plaintiffs' motion for an expert at the Board's expense, so that plaintiffs may present to the Court, as expeditiously as possible, any feasible and more effective alternatives or modifications for implementation at the earliest possible date.

On **July 22, 1971**, the Board filed its objections to the DOJ's plan. The Board complained that the "plan" failed to comply with the court's order of June 23, 1971 to file a wholly new and entire plan and failed to provide a building program, as required by the court order. The Board further asserted that the proposed modifications did not accomplish the objective of decreasing the number of predominantly black schools and ignored natural boundaries, engaging in the most flagrant form of gerrymandering in establishing zone lines. "Such lines could not possibly stand on a permanent basis and would guarantee the necessity of chasing future race ratios in contravention of language contained in Swann."

On **July 28, 1971**, Plaintiffs' motion to require Board to pay for expert to prepare plan was denied.

On **August 11, 1971**, the Court issued a memorandum decision regarding the proposed plan and the various amendments and objections. The Court first reflected on the impact of the Swann decision. According to the Court, under Swann the proper aim is to do away with state-imposed school segregation. Where a school board's plan proposes the continuation of schools that are all or predominantly of one race, there is a presumption that the racial composition of such schools is a vestige of de jure segregation, which places the burden on the school board to show that such assignment of pupils is genuinely nondiscriminatory.

State-imposed school segregation and its vestiges have been done away with when the school system has become "unitary" and a system can be said to be unitary when the schools are no longer "racially identifiable." While the ratio of white to black pupils in a school, as compared with the ratio in the system as a whole[12], is a highly important factor in determining whether a school is racially identifiable, it is not constitutionally required that each school in the system have approximately the same ratio of whites to blacks as does the system as a whole and some all-black (or white) or nearly all-black (or white) schools may exist in a desegregated system.

The Court stated that although Plaintiffs and the DOJ contend that even if, as a result of desegregation procedures, there are no longer any schools in the system that are identifiably black but there remains a school whose pupils are all or nearly all white, this school must be "treated" with some black pupils if it is feasible to do so, the Court does not believe that the Supreme court held the equal protection clause to be that "quixotic in

[12] The Court noted that at that time the system wide ratio was 7 to 3.

purpose." In addition to the racial composition of the student bodies, other important indicia of a unitary system are the racial composition of faculty and staff in each school and the facts with respect to desegregation of extra-curricular activities and transportation. Equitable principles are to be applied in fashioning the remedies to bring about a unitary system, including imposition of approximate pupil and faculty racial ratios; use of gerrymandered zones and non-contiguous zones; pairing and clustering of schools; and busing of pupils.

In selecting the remedies to be used, the necessity for and the feasibility of the remedy should be the considerations. So long as a school remains racially identifiable, it is absolutely required that optional majority to minority pupil transfers be allowed with necessary transportation paid for the school board. Once a school system has reached a state of "constitutional grace," i.e., has been desegregated, later segregation not caused by policies of state agencies need not be treated.

The Court noted that during the earlier hearing, a DOJ expert gave the opinion that the history of the school is an important factor in determining racial identifiability. Thus even if a school has a predominantly black student population it may be identifiable as a "white" school because it has historically been a white school. Similarly, a school that has historically been black and has been desegregated with only a minority of whites can nevertheless be accepted as not racially identifiable if the whites do not flee and remain in the school and therefore the school is stable. Thus racial identifiability depends at least in part on how the community thinks of the school.

Any argument against the feasibility of busing is greatly undercut by the fact that the Shelby County system has bused pupils for a long time and has bused pupils for a

long time and has bused as high as 20,000 pupils. In the days of segregation it bused blacks past white schools and whites past black schools. The cost and burden of busing should be weighed against the real necessity of such busing in bringing about a unitary system.

The Court observed that the DOJ's plan would come closer than the Board's plan, as amended by suggestions of the Title IV Center, to creating a racial ratio in each school that approximates the ratio in the system as a whole. However, it would also require substantially more busing, though it was not clear how much more. The Court deemed it clear that the additional buses could not be obtained for the coming year because they are generally unavailable and that to carry out the DOJ's plan at this time it would be necessary to stagger the daily starting time of the schools.

The Court therefore adopted the Board's plan as amended by the Title IV Center, incorporating some of the features of the DOJ's plan and the proposals of various intervenors.

Notably, the Court rejected one DOJ proposal to extend the zone of Barrett-Bolton High School to include some whites in a neighboring, thus reducing the percentage of blacks from 2/3 under the Board's plan. The Court rejected the DOJ modification because the high school didn't need to be "treated." "The contemplated racial composition of these schools would be the same if there had never been de jure segregation applicable to the area they serve. Thus the racial composition of these schools cannot be said to be a vestige of state-imposed segregation."

The Court further found that because elementary schools Capleville, Woodstock and Arlington were "probably stable" they did not need to be treated, even though they

had majority black populations (75%, 67%, 60% respectively). Similarly, the Court rejected the DOJ plan for treating Barret's Chapel Elementary: it did not require treatment because its population was reflective of area population generally.

The Court approved the Board's zoning of elementary schools with virtually all white student population, most notably Egypt Elementary (95% white). The Court rejected the Plaintiffs' contention that these schools cannot be left heavily white and must be treated. "Their theory appears to be that black must be sent to these schools, not because of any advantage to the blacks in going to school with whites and not even to enforce the right of the black pupils to go to a school that is not racially identifiable, but only to enforce the claimed right of black pupils to go to a school in a system in which none of the schools is racially identifiable."

A report filed with the HEW, dated **October 14, 1971** indicates that the racial composition of the County school district is as follows: Faculty: 30% black, 70% white; Students: 31% black, 69% white.

On **September 21, 1972**, the Court of Appeals affirmed the desegregation plan approved by this Court August 11, 1971.

On **November 15, 1972**: Plaintiffs moved to have Judge Brown recuse himself and refrain from any further participation in this case on grounds that the judge "has a personal bias or prejudice against plaintiffs and the class they represent, and against the organization which supports plaintiffs in this litigation (NAACP Legal Defense Fund), and in favor of the defendants herein." On April 10, 1973, Judge Brown denied the motion for recusal.

**A Period of Relative Repose**

On August 20, 1974, the Court entered a consent order amending the desegregation plan for the 1974-75 school year. Attendance zones for Spring Hill, Egypt Elementary and Shadowlawn were altered to deal with overcrowding at Spring Hill. The racial composition of the schools was not changed substantially. Racial projection 1974-75 (% black):

- Arlington: 68
- Barrett's Chapel: 71
- Bartlett: 14
- Capleville: 19
- Collierville 1-4: 45
- Collierville 5-8: 39
- Egypt: 2
- Ellendale: 26
- Elmore Park: 13
- Germantown: 15
- Harrold: 26
- Jeter: 23
- Lucy: 23
- Millington Central: 16
- Millington East: 13
- Millington Middle: 20
- Millington South: 14
- Mt. Pisgah: 47
- Riverdale: 16
- Shadowlawn Middle: 16
- Spring Hill: 16
- Woodstock: 23
- Bartlett High: 19
- Bolton High: 76
- Collierville High: 43
- Germantown High: 27
- Millington High: 27
- Raleigh-Egypt High: 11

On September 27, 1974, Plaintiffs moved the Court to enter an order awarding to Plaintiffs all costs of this action since its inception, including all out-of-pocket expenses and reasonable attorneys' fees for all legal services.

- The Board's October 1974 report showed that only a small fraction of vacancies were filled by race over-represented on faculty. Out of 614 teachers, 33% were black. The percentage by school was as follows:
    - Arlington: 33%
    - Barrett's: 34%
    - Bartlett: 31%
    - Capleville: 30%
    - Collierville I: 30
    - Collierville II: 36
    - Egypt: 33
    - Ellendale: 44
    - Elmore: 32
    - Germantown: 33
    - Harrold: 29
    - Jeter: 37
    - Lucy: 27
    - Millington Central: 30
    - Millington East: 31
    - Millington Middle: 32
    - Millington South: 33
    - Mt. Pisgah: 33
    - Riverdale: 30
    - Shadowlawn: 32
    - Spring Hill: 36
    - Woodstock: 35
    - Bartlett High: 22
    - Bolton High: 38
    - Collierville: 22
    - Germantown High: 26
    - Millington High: 28
    - Raleigh-Egypt High: 25

On March 28, 1975: the Court entered a consent order approving an agreement between Memphis and Shelby Boards for 1975-76 school year and approving certain construction notices for the 1976-77 school year. The agreement established 11 attendance and boundary zones between the County and the City systems. In certain annexed areas, students were allowed to attend their old County school. Two of the eight

construction notices were objected to by Plaintiffs and were not approved. The other six did not entail any change in the present attendance boundaries.

On **August 1, 1975**, faculty report filed by the Board . Unlike in recent reports, a large majority of vacancies were filled by race over-represented on faculty, without explanation, at several schools.

**October 1, 1975** faculty report filed by Board again indicated a large portion of vacancies filled by race over-represented on faculty.

On **February 2, 1976,** Plaintiffs objected to aspects of defendant's construction notice, including proposals to construct a new elementary school building in the Bartlett area and a new elementary school building in the Germantown area, because proposals would have the effect of accommodating a significantly large number of white families who, in an effort to avoid desegregation, have and will continue to relocate from the jurisdiction of the Memphis City School system to the jurisdiction of the Shelby County system, particularly the Bartlett and Germantown areas. According to Plaintiffs, the proposals would have an adverse impact upon the desegregation already accomplished within the Shelby County school system and frustrate effectuation of the Northcross desegregation plan. Quoting Evans v. Buchanan, 393 F.Supp. 428 (D. Del. 1975): "The growth of identifiably black schools mirrored population shifts in [a neighboring county]. To a significant extent these demographic changes, i.e., net outmigration of white population and increase of city black population in the last two decades, resulted not exclusively from individual residential choice and economics, but also from assistance, encouragement, and authorization by governmental policies." Because of the "acknowledged segregative effect of school construction and location decisions on

population residential patterns," the Robinson and Northcross Plaintiffs asked that the Court not approve the proposals to construct new elementary schools in the Germantown and Bartlett areas until and unless Defendant demonstrates that said proposals will not have an adverse impact upon desegregation of the Memphis City School system.

On **February 19, 1976**: Court entered consent order approving Defendants construction plans. Court noted that Plaintiffs had withdrawn objection on condition that plaintiffs be allowed to participate in drawing of the attendance zones that determine pupil assignment to the new schools.

On **October 1, 1976**, faculty report was filed by Board. Again, a large portion of vacancies filled by race over-represented on faculty. Racial composition of faculty 10/1/76: Total: 30% black; Elementary: 31%; High School: 27%.

On **May 17, 1977**: Court entered consent order approving Board's construction notices. Court noted that Plaintiffs have consented and withdrawn objections to construction of a 12 room classroom addition at Riverdale on condition that Plaintiffs be provided with summary totals, by race, of all transfers from the Memphis City School System to schools in the Shelby County system, and copies of all correspondence from residential developers to staff of the Shelby County Department of Education (and staff responses thereto) pertaining to likelihood of school construction and facilities expansion.

On **July 5, 1977,** the United States objected to Defendant's proposed construction of a vocational education facility on the Bolton High School site. The U.S. requested that Defendants close the Bolton facility as soon as students currently attending there can be accommodated in the other high school facilities in the system, in any event no later than the beginning of the 1978-79 school year. As reasons, the U.S. asserted that

- Although blacks comprise only 22% of Shelby County's student population, 75% of the students at Bolton High are black
- Bolton High is substantially inferior to the other high school facilities in the system
- While all the other county high school have been completely rebuilt of substantially renovated since 1971, Bolton, built in the 1920s, has remained the same
- Its student population of 367 has made it impossible for Bolton to offer as extensive an academic program as the other high schools in the county, which are larger in size
- The distances which the students who reside in the northeastern portion of the current Bolton zone would have to travel to Millington High School or Bartlett High School would be approximately the same as the distances now traveled by students who are assigned to Millington who live in the southwestern portion of the Millington zone and by students assigned to Collierville who live in the northeastern section of the Collierville who live in the northeaster section of the Collierville zone near the Bolton/Collierville boundary line.

On **July 5, 1977,** Plaintiffs filed a memorandum in support of the U.S.'s proposal to close Bolton and transfer its students elsewhere. Plaintiffs stated that the Court should "use its broad equitable powers to close the Bolton High School, the last remaining bastion of educational inequality at the high school level in the Shelby County School System."

On **July 25, 1977**, Plaintiffs equivocated, stating that feedback from the community surrounding Bolton High had raised the question of whether the continuation of Bolton High might be in the community's best interest, in promoting "racial harmony" and providing a "better educational situation." Plaintiffs recommended that the Court conduct a hearing on the matter.

On **July 29, 1977**, Defendants filed a statement of disagreement with the DOJ's assertion that Bolton was an inferior facility. In addition to the proposed new vocational education facility, the Board anticipated spending an additional one-half million dollars during the 1978-79 fiscal year to further upgrade the physical plant.

On **July 29, 1977**, the Court entered a consent order amending certain boundary lines and making grade level and pupil assignment adjustments. Projected racial ratios for the affected schools were set forth as follows:

- Capleville, K-8: 70 black, 833 white
- Ross Road, K-8: 76 black, 603 white
- Altruria, K-5: 38 black, 371 white
- Bartlett, K-5: 59 black, 678 white
- Ellendale, K-5: 41 black, 444 white
- Elmore Park, K-5: 42 black, 402 white
- Shadowlawn Middle, 6-8: 125 black, 807 white
- Dogwood, K-7: 49 black, 453 white
- Farmington, K-7: 56 black, 665 white
- Germantown, K-6: 49 black, 594 white
- Germantown Middle, 7-8: 34 black, 571 white

o As part of the consent order, the Board assumed the responsibility of maintaining the same race ratio in the new Dogwood Elementary School as exists in the Farmington Elementary School, and if such ratios cannot be maintained for any reason with the boundary lines as established

herein, it must make boundary line adjustments or pupil assignments by grades as may be necessary to accomplish this end.[13]

On **August 1, 1977,** Faculty report was filed by the Board. Vacancies were filled overwhelmingly by race over-represented on faculty. Racial composition 8/11/77: Total: 30%; Elementary: 31% black; High School: 27% black

On **September 12, 1977**, the Court entered a consent decree approving construction notices, including erection of a vocational building at Bolton High School. Consent conditioned upon defendant's commitment to substantial construction of new facilities and improvement of old facilities at Bolton High designed to make Bolton comparable in size and quality to other high school facilities. Defendant will not seek construction of an additional high school in this area until these improvements to Bolton are made. When Bartlett and Millington High reach full capacity, additional students will be assigned to Bolton. As enlargement of Bolton High occurs, every reasonable effort will be made to make the racial composition of the student body reflective of the racial composition of the school system as a whole.

On **October 1, 1977**, faculty report indicated very few vacancies filled by race over-represented on faculty (report adds to caption "above or below 10 percent "reasonable leeway," perhaps suggesting that past reports were too stringent in their definition of "race over-represented." Racial composition of faculty, 10/1/77: Total: 28% black (285/1004); Elementary: 30% black; High: 24% black.

On **June 27, 1978**, Plaintiffs objected to certain construction proposals, including construction of a new high school and new elementary school in the Germantown area,

[13] Thus the Court adopted 8% black as a model ratio for at least one elementary school, deviation from which would mandate changing boundaries to reestablish this ratio.

construction of a new elementary school in the Ridgeway area, and construction of a new elementary school in the Lucy area. Plaintiffs generally complained of a lack of detail in the proposals. Plaintiffs also requested that Defendant be required to meet with plaintiffs before submitting to the Court proposed amendments to the desegregation plan. Any petition requesting approval of amendments should contain a certification that such meetings with plaintiffs' counsel have been held and that it was impossible to reach agreement, thus necessitating the filing of such petition.

On **June 30, 1978,** a conference was held in chambers with counsel for plaintiffs in Robinson and Northcross, defendants in Robinson and Northcross, and the U.S. present. The Court ordered that further consideration of defendants' petition for approval of construction notices and amendments to the present desegregation plan for the 1978-79 school year be stayed pending Judge McRae's determination in Northcross.

On **August 1, 1978**, faculty report indicated majority of vacancies filled with those of race under-represented on faculty. Racial composition, 8/10/78: Total: 29% black (312/1043); Elementary: 31% black; High: 24% black.

On **August 11, 1978**, the Court entered a consent order approving portions of petition for amendments to desegregation plan. Attorney Richard Fields signed for Plaintiffs.

On **October 1, 1978**, faculty report indicated vast majority of vacancies filled with those of race under-represented on faculty. Racial composition, 10/1/78: Total: 29% black (299/1047); Elementary: 31% black; High: 22% black.

**Plaintiffs Seek an Award of Fees and Costs**

On **December 12, 1978**, Plaintiffs filed an amended motion for award of costs, including out-of-pocket expenses and reasonable attorneys' fees. Citing the Civil Rights Attorney's Fees Awards Act of 1976 (§ 1988) as authority, Plaintiffs asserted that "in cases brought to enforce, inter alia, § 1983, the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." Plaintiffs further asserted that Congress expressly had decided that § 1988 should apply to school desegregation cases and that the Sixth Circuit had held that § 1988 is to be applied to "pending cases."

In a Memorandum and Order on **March 19, 1979**, the Court ruled in favor of Plaintiffs, finding that Plaintiffs may amend their original motion for costs and attorney's fees; that the statutes upon which plaintiffs relied were retroactive in effect; that Plaintiffs are a "prevailing party" within the meaning of such statutes; and that the Court may thus proceed to determine the amount of costs and attorneys' fees to which plaintiffs are entitled. On **April 25, 1979**, the Court denied Defendant's motion to alter or amend the order.

On **August 7, 1979**, the Court approved grade level changes and boundary changes to the desegregation plan. The Court noted that although no response has been filed by the plaintiffs or plaintiff-intervenors, counsel for all parties have been in communication with each other and have reached accord with reference to the proposed administrative changes.

On **August 15, 1979**, faculty report indicated that a small minority of vacancies were filled with those of race over-represented on faculty. Racial composition of faculty, 8/11/79: Total: 29% black (307/1047); Elementary: 31% black; High: 21% black.

On **October 3, 1979**, faculty report indicated a considerable number of vacancies were filled with those of race over-represented on faculty. Racial composition of faculty, 10/1/79: Total: 28% black (307/1116); Elementary: 30% black; High: 21% black.

In **1980**, Judge Horton became the presiding judge in the case.

On **August 14, 1980**, faculty report indicated the racial composition of faculty, 8/13/80, as Total: 27% black (311/1140); Elementary: 30% black; High: 22% black.

On **August 22, 1980,** the Court entered a consent order approving administrative changes to desegregation plan. Changes involved the establishment of boundaries for two new schools, a change in location for an existing school, and a grade level change at an existing school. Defendants asserted that changes will have no material adverse effect upon the status of desegregation within the system. Plaintiffs did not desire to file objections. New elementary schools: Crump Road: 9.2% black; Kirby Parkway: 14% black. Affected schools: Germantown Elementary: 6.9% black ➔ 6.8%; Ross Elementary: 9.7% black ➔ 10.1%; Germantown Middle: 7.2% black ➔ 6.1%; Collierville High: 24.5% black ➔ 25.7%; Germantown High: 8.7% black ➔ 7.1%.

The **October 8, 1980** faculty report indicated that no vacancies were filled with those of race over-represented on faculty. Racial composition of faculty, 10/1/80, Total: 27% black (312/1152); Elementary: 29% black; High: 21% black.

On **July 8, 1981**, the Court entered a consent order approving administrative changes to desegregation plan involving grade level changes at six existing schools. Defendants asserted that changes would have no material adverse effect upon the status of desegregation within the system. Plaintiffs filed no objection.

The **August 3, 1981** faculty report indicates that no vacancies were filled with those of race over-represented on faculty. It appears that Board has simply ceased reporting this statistic. Racial composition of faculty, 8/12/81: Total: 28% black (316/1142); Elementary: 30% black; High: 23% black.

The **September 30, 1981**, faculty report indicates no vacancies filled with those of race over-represented on faculty. Racial composition of faculty, 10/1/80: Total: 27% black (316/1152); Elementary: 29% black; High: 21% black.

The **August 2, 1982** faculty report indicates no vacancies filled with those of race over-represented on faculty. Racial composition of faculty, 8/1/82: Total: 27% black (318/1161); Elementary: 29% black; High: 23% black.

The **October 1, 1982** faculty report indicates no vacancies filled with those of race over-represented on faculty. Racial composition of faculty, 10/1/82: Total: 27% black (321/1174); Elementary: 29% black; High: 24% black.

The **August 1, 1983** faculty indicated the racial composition of faculty, 8/16/83 as Total: 27% black (317/1175); Elementary: 28% black; High: 24% black.

The **September 30, 1983** faculty report indicated the racial composition of faculty, 10/1/83 as Total: 27% black (317/1183); Elementary: 28%; High: 23% black

On **January 16, 1984**, the Court approved construction program for the 1983-84 school year, proposal for which was submitted 9/28/83. The program included construction of an addition to Altruria Elementary School: projected enrollment 1212 (3% black); construction of an addition to Collierville Middle School: projected enrollment 900 (17% black); construction of an addition to Ellendale Elementary School: projected enrollment 1142 (6% black); construction of an addition to Germantown

Middle School: projected enrollment 900 (6% black); construction of an addition to Ross Elementary School: projected enrollment 1250 (11% black). No objections were filed by Plaintiffs or Plaintiff-intervenor.

On **April 16, 1984**, the Court entered a consent order dismissing petition for award of attorney's fees, noting that a settlement had been reached.

**The Government Reasserts Itself**

The **August 21, 1984** faculty report indicated the racial composition of faculty, 8/1/84, as Total: 26% black (313/1220); Elementary: 27% black; High: 23% black

The **October 1, 1984** faculty report indicated the racial composition of faculty, 10/1/84, as Total: 25% black (310/1240); Elementary: 26% black; High: 22% black.

The **August 21, 1984** faculty report indicates the racial composition of faculty, 8/1/84, as Total: 26% black (313/1220); Elementary: 27% black; High: 23% black

The **October 1, 1984** faculty report indicates the racial composition of faculty, 10/1/84, as Total: 25% (310/1240); Elementary: 26%; High: 22% black.

On **February 12, 1985,** the Board petitioned for approval of the acquisition of a new school site in the Bartlett area, renovation of Lucy Elementary School and construction of additional classrooms at Lucy Elementary, present enrollment 410 (9% black); Riverdale Elementary School, projected enrollment 1000 (10% black); Farmington Elementary School, projected enrollment 950 (4% black); Dogwood Elementary School, projected enrollment 1104 (3% black).

On **April 1, 1985**, the U.S. filed objections[14] to the plan to construct ten additional classrooms at Lucy Elementary. The U.S. claimed that the proposal not only adversely

[14] Plaintiffs filed no objection but joined with the Plaintiff-Intervenor in objecting in the hearing.

effected the status of desegregation in the district but also ignored available options that would further desegregation in this district, which has never suggested that it has fully implemented its desegregation plan nor moved this court that it be declared unitary. The government asserted that the decision to construct additional classrooms at Lucy as a means of relieving overcrowding avoided the utilization of unused classroom space at contiguous elementary schools with significant minority enrollment. "Although the defendant has reassigned students to contiguous schools to relieve overcrowding in situations where both the sending and receiving schools were overwhelmingly white, the defendant has refused to use reassignment as an alternative at Lucy. Instead the defendant placed portable classrooms at Lucy and now proposes that permanent classrooms be constructed in replacement, in spite of the fact that classroom space is available at nearby Woodstock, Millington South, and Millington East Elementary Schools." According to the U.S. when school officials were asked why reassignment of Lucy students to contiguous space was not proposed, counsel was informed that when reassignment was discussed, parents of Lucy students expressed a preference for preserving their community identity by keeping Lucy students together rather than having them reassigned to contiguous schools.

The government maintained that school districts which operate under an unsatisfied duty to eliminate a dual system, bear a continuing duty to do all that is in their power to eradicate vestiges of the dual system.[15] Desegregation is not automatically achieved once a constitutionally acceptable plan is adopted.[16] School authorities must implement the plan in good faith and refrain from subsequent action inconsistent with

[15] Davis, 721 F.3d 1425 (5th Cir. 1983)
[16] Davis, 674 F.2d 684, 689 (8th Cir. 1982)

achieving the "racially neutral attendance pattern"[17] that the plan was designed to establish. Proposed revisions or amendments to a desegregation plan must be judged on the basis of their effect upon desegregation in the district and whether they will contribute to the establishment of a unitary system of education.[18] "Accordingly the defendant's recommended modifications must be appraised in light of present conditions and experience, to assure that they will not frustrate the goal of unitariness for the district's public school system."[19] The U.S. concluded that, in essence, the Defendant's plan to remedy overcrowding at Lucy favors an approach that ensures racial isolation over feasible alternatives that promote desegregation.

On **November 21, 1984**, the Board presented to the U.S. the following statistics on the County's public school composition:

- Altruria: 45 black; 1150 white (4% black)
- Arlington: 97 black; 144 white (40% black)
- Barret's: 277 black; 168 white (62% black)
- Bartlett: 47 black; 658 white (7% black)
- Capleville: 429 black; 166 white (72% black)
- Collierville Elem: 216 black; 1014 white (18% black)
- Collierville Middle: 107-554 (16%)
- Crump: 73-926 (7%)
- Dogwood: 23-1023 (2%)
- Ellendale: 75-1067 (7%)
- Elmore Park: 116-671 (15%)
- Farmington: 68-863 (7%)
- Germantown Elem: 58-904 (6%)
- Germantown Middle: 49-808 (6%)
- Harrold: 148-327 (31%)
- Jeter: 14-248 (5%)
- Lucy: 27-389 (6%)
- Millington Central 98-380 (21%)
- Millington East 104-459 (18%)
- Millington Middle: 98-409 (19%)

[17] Pasadena v. Spangler, 427 U.S. 424, 437 (1979)
[18] Davis, 674 F2d 687; Robinson, 330 F.Supp. 837, 842 (W.D. Tenn. 1971)
[19] Davis, 674 F.2d at 689; Clark, 705 F.2d 265, 271 (8th Cir. 1983)

- Millington South: 132-355 (27%)
- Mt. Pisgah: 228-790 (22%)
- Northaven: 54-360 (13%)
- Riverdale: 82-830 (9%)
- Ross: 114- 1132 (9%)
- Shadowlawn Middle: 95-895 (10%)
- Woodstock: 269-477 (36%)
- **Total Elementary: 3143-17157 (15%)**
- Bartlett High: 167-1761 (9%)
- Bolton High: 143-163 (47%)
- Collierville High 186-714 (21%)
- Germantown High 69-2216 (3%)
- Kirby High: 220-912 (19%)
- Millington Central High 276-1208 (19%)
- Shadowlawn L.C.: 93-91 (50%)
- **Total High School: 1154-7065 (14%)**

On **June 6, 1985**, the Board petitioned for approval of boundary changes in the Bartlett-Bolton attendance area and the grade level change in the Ellendale Elementary School. On **July 2, 1985**, the United States requested that defendant supplement its petition to include projected changes in the racial composition of the two schools involved. The changes were projected to alter the racial composition of Bartlett and Bolton as follows: Bartlett: 9% black ➔ 8% black; Bolton: 48% black ➔ 35% black

The **August 1, 1985** faculty report indicates a continued steady decline in black representation on the faculty, corresponding to the decline in the black student population in the County. Racial composition of faculty, 8/1/85, Total: 23% black (300/1283); Elementary: 25% black; High: 21% black.

On **September 5, 1985**, the U.S. submitted proposed findings of fact and conclusions of law as to the proposed construction of 10 additional classrooms at Lucy Elementary School. The U.S. stated that under the school desegregation plan implemented pursuant to this Court's 1971 order, Lucy was projected to have an enrollment of 75% white and 25 black. Since 1978, when Defendant first began to place

portable classrooms at Lucy, enrollment at Lucy has increased approximately 30%. In addition the percentage of white students enrolled at Lucy has increased to almost 94% from 87 % in 1978. The government asserted construction of ten additional classrooms at Lucy will serve to perpetuate Lucy as a predominantly white school contiguous to a number of underutilized schools, each having significantly greater black student enrollment.

The government further asserted that because of parent opposition to reassignment, the Board agreed to continue to place portables at Lucy, regardless of the effect on desegregation. Citing hearing transcripts, the U.S. stated that Past Superintendent Harvey did not believe that it was his responsibility to consider the effect on desegregation of his proposal to construct additional classrooms at Lucy. Instead Harvey believed that it was his responsibility and the responsibility of the Shelby County Schools to avoid disappointing parental expectations regarding the school that their child will attend, even when to do so would mean that adequate consideration was not given to the district's primary obligation to consider the impact of its actions on desegregation in the district.

The government noted that in both the Lucy and Mt. Pisgah situations, Mr. Harvey chose the more segregative alternatives to relieve overcrowding. It also asserted that Board members routinely accepted then Superintendent Harvey's proposals for amendments to the district's desegregation plan without independent investigation by the Board.

The government maintained that as a non-unitary school district, the district bears a continuing duty, under Swann, to eliminate all vestiges of the dual system and to refrain

from taking actions which serve to reestablish the dual system. Adoption and implementation of a constitutionally acceptable desegregation plan did not automatically desegregate the Shelby County Schools. School officials must implement the plan in good faith and refrain from subsequent action inconsistent with achieving the "racially neutral attendance pattern" that the plan was designed to establish. It is the court's duty, recognized by this Court in 1971, to retain jurisdiction of this case to consider the effect of future plans by the school board, including construction plans, on resegregation of the district. Defendant's proposed amendments or revisions to the approved desegregation plan, therefore, must be judged in light of their effect on desegregation in the district and whether they will contribute to the establishment of a unitary system of public education. Defendant's acquiescence to the Lucy community's desires, the community having expressed opposition to the possibility of reassignment, cannot justify the defendant's failure to consider the negative impact of its proposal for construction of additional classrooms on desegregation at Lucy.

On **September 6, 1985,** the Board presented its proposed findings of fact and conclusions of law. According to the Board, assuming that boundary line changes could be made to move all portable classroom students from Lucy to Woodstock, such action would, at the maximum, increase the white/black ratio at Woodstock by less than 5%, while it could further reduce the limited black population at Lucy, a possibility which would certainly be counter-productive. The Board asserted that while the School board has a continuing obligation to refrain from any activities designed to re-establish an unconstitutional dual system, whether that activity takes the form of rezoning, construction of schools, or faculty placement, it is equally clear that the Board is under no

obligation to "chase" shifting racial percentages which cannot be shown to be vestiges of the prior dual system or occasioned in any manner by any discriminatory act on the part of the Board.

On **September 13, 1985**, the Board petitioned for approval of modifications to the plan of desegregation for the 1986-87 school years including 10 classroom addition and renovation kitchen and cafeteria at Mt. Pisgah Elementary School; 16 additional classrooms at Bolton High School; acquisition of 15 acre site at Raines and Ross Road for construction of middle school; acquisition of 15 acre site in Bartlett for new elementary school. The Board asserted that the modifications would have no adverse impact on desegregation efforts and the petition was unopposed.

On **November 4, 1985**, the Court approved all proposed modifications of plan for 1985-86, except the 10 additional classrooms at Lucy, objected to by plaintiffs and plaintiff-intervenors.

On **February 14, 1986** and **March 4, 1986**, the Court approved Defendants' petition for approval of modification to desegregation plan for 1986-87 and 1987-88

On **April 8, 1986**, the Court denied Defendant's petition to construct 10 permanent additional classrooms at Lucy Elementary School, stating that the Shelby County Board of Education had apparently failed in its constitutional duty since it had given no consideration of how the improvement plan would impact the existing desegregation plan. The Court determined that construction of 10 additional permanent classrooms at Lucy Elementary School would perpetuate Lucy as a predominantly white school contiguous to a number of underutilized schools, each having significantly greater black student enrollment. The Court concluded that the Board has apparently accorded its

concept of "community pride" a higher standing than its constitutional duty to eliminate all vestiges of segregation within the Shelby County school system.

On **July 10, 1986**, the Board filed an alternative plan to alleviate overcrowding at Lucy, transferring 177 white and 15 black students to nearby Woodstock and Millington. The projected result: Woodstock: 38.5% black ➔ 32.1% black; Millington South: 26.9 ➔ 24.6; Lucy: 6.4% ➔ 8.4%. The U.S. expressed approval of the Board's new Lucy plan.

The **August 1, 1986** faculty report shows a racial composition of faculty, 8/1/86, Total: 23% black (292/1369); Elementary: 21% black; Middle: 25% black; High: 21% black.

The **October 1, 1986** faculty report shows a racial composition of faculty, 10/1/86, Total: 21% black (298/1389); Elementary: 21% black; Middle: 26% black; High: 20% black.

On **April 21, 1987**, the Court entered a consent Order approving additional classroom construction at Oak Road Elementary School, Kirby High, and Ross Middle School. The Court noted that "Plaintiff-Intervenor does not desire to file objections to the proposed construction." It is apparently assumed by now that Plaintiffs will have no objections.

The **August 1, 1987** faculty report shows a racial composition of faculty, 8/1/87, Total: 21% black (311/1467); Elementary: 21% black; Middle: 23% black; High: 21% black. **The report no longer includes a column providing the number of vacancies filled by race over-represented on the faculty.**

The **October 1, 1987** faculty report shows a racial composition of faculty, 10/1/87, Total: 21% black (315/1500); Elementary: 20% black; Middle: 23% black; High: 21% black.

On **October 12, 1987**, the Board of County Commissioners of Shelby County, Tennessee, passed a resolution that the County Mayor should request that the Memphis City School Board and the Shelby County School Board meet with parties to the federal court litigation in order to seek solution and actions that would lead toward the elimination of practices and policies that preclude the designation of both the school systems as unitary systems, thereby providing the opportunity to dismiss the currently existing federal court desegregation cases.

On **November 19, 1987**, the Board petitioned for approval of a modification of the desegregation to allow the acquisition of land and construction of a new high school in East Shelby County, between Germantown and Collierville, in order to alleviate the overcrowded conditions in the involved areas. The County projected that the proposal would have no effect adverse effect on desegregation efforts and that the new school would have a racial composition nearly identical to that of the County system as a whole.

On **January 11, 1988**, Plaintiffs filed objections to the proposed high school construction. Plaintiffs asserted that projected enrollment for the new high school is 8% black, yet the county-wide student population is 14% black. As a result, Plaintiffs maintained that the construction would "further create racial isolation unless different and more racially integrative student assignment plan can be worked out." Plaintiffs noted that since Defendants' petition was filed the City of Memphis has voted to annex the Hickory Hills area of the county, which includes part of the attendance area served by

Kirby High School. Plaintiffs speculated that, as a result, a new high school may no longer necessary. Plaintiffs further questioned whether the annexation might result in an even greater racial imbalance at the new high school than that initially projected.

In a supplementary memorandum supporting the proposed construction, dated **March 8, 1988**, the Board stated, "The Shelby County School System has made every effort to operate a unitary school system. All students are assigned to the school serving the zone in which they reside, and zone lines are drawn to maximize desegregation within reasonable distances. It would, therefore, seem that a racial composition of 92.7% White and 7.3% Black would exhibit good faith on the part of the school system."

On **April 6, 1988**, the U.S. filed a response to the construction proposal, in which it stated that it did not oppose the construction of the new high school. However, the United States expressed opposition to Defendants' including modifications to the Bartlett High School attendance area in the attendance area proposed for the high school. The 1977 consent order required "that overcrowding at Bartlett or Millington High Schools be relieved through reassignment of students to Bolton High, accompanied by whatever new construction that might be needed at Bolton in order to make Bolton comparable in size and quality to other high school facilities in the system. Because the task of making Bolton comparable has not yet been completed, any adjustment in Bartlett's attendance area not involving reassignment to Bolton should not be considered.

On **April 12, 1988**, the Board amended its proposal to delete from the new high school zone the area currently within the Bartlett high school zone in order to comply with the commitment previously made with reference to the Bartlett-Bolton high school situation.

On **May 2, 1988**, the Court entered a consent order approving the Board construction plan for the new East Shelby County high school.

On **July 11, 1988**, the Court entered a consent order approving the construction of an 18 room addition to Bolton High School with an increase in size of the kitchen/cafeteria.

The **August 1, 1988** faculty report gives the racial composition of faculty, 8/1/88, as Total: 20% black (304/1545); Elementary: 19% black; Middle: 21% black; High: 19% black.

On **September 16, 1988**, the Board petitioned for approval of the construction of new elementary school in Cordova on land owned by the Board. The Board asserted that the proposal would have no racial effect upon the system.

The **October 1, 1988** faculty report gave the racial composition of faculty, 10/1/88, as Total: 19% black (303/1561); Elementary: 19% black; Middle: 19% black; High: 20% black.

On **January 9, 1989**, the Court entered a consent order approving the construction of new elementary school in Cordova. "Although no formal response to the petition has been filed by the plaintiffs or plaintiff-intervenor, the court has been made aware of the fact that extensive negotiations between the parties have been taking place, and it now appears, by statement of counsel, that all issues have been resolved so that the petition may, by consent, be approved."

On **June 27, 1989**, the Court entered a consent order approving construction of new elementary school in Bartlett and the fixing of zone lines for the new Houston high school.

The **August 1, 1989** faculty report gave the racial composition of faculty, 8/1/89, as Total: 19% black (301/1597); Elementary: 19% black; Middle: 19% black; High: 18% black.

**Debate Over the Decline in the Percentage of Black Teachers**

On **August 17, 1989**[20], the Court sent to all parties a memorandum noting the declining percentage of black faculty members in the Shelby County School District. The Court sought a response from the parties to the question of whether the reports submitted by the Board, "for the reporting period of August 1, 1985, to August 1, 1989, indicate an employment practice or policy within the Shelby County Schools which achieves a gradual but definite decline in the number of black teachers employed by the school system." In response, the United States asked the Shelby County School Board to provide specific information concerning its hiring practices.

The docket sheet shows that on **September 25, 1989** Defendants filed a response to the Court's memorandum. This document is missing from the record. According to the U.S.'s reply, the response explained in part the decline in the percentage of black faculty members in the Shelby County school district by citing a decline in the number of black persons entering the teaching profession nationwide.

The **October 1, 1989** faculty report gave the racial composition of faculty, 10/1/89, as Total: 19% black (303/1616); Elementary: 19% black; Middle: 18% black; High: 18% black.

On **October 2, 1989**, the U.S. filed a response to the Court's inquiry. The U.S. noted that over the past twenty years the percentage of black teachers in the Shelby

[20] The Memorandum is not in the Court's files. The Court's statements regarding its existence and contents are gleaned from the commentary found in related documents.

County School District has fallen steadily, from 30% to 19%. The U.S. also noted that from 1972 to 1989 the number of white teachers had more than doubled, from 629 to 1278, while the number of black teachers was virtually unchanged (272 to 301).

The government asserted, based on information provided by the County, that the Board has been hiring teachers at a lower percentage than the percentage of applications that they receive from black teachers and that in the most recent school year the Board had "recruited almost 10 times as many white applicants as black applicants" (760 white applicants compared to 79 black applicants.

In determining whether these statistics reflect actual discrimination, the U.S. argued, the proper starting point for analysis is a comparison between the racial composition of the school's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market. The U.S. refers to the 1980 Census which reports that of the 11,921 members of the labor force in Shelby County employed as elementary and secondary school teachers, 61% are white and 39% are black.

"The Memphis City Schools and the Shelby County Schools draw from the same labor pool. Yet, as of September 21, 1989 the Memphis City Schools had received 593 applications from blacks and 718 applications from whites while for the 1989-90 school year the Shelby County School Board received 70 application from blacks and 760 applications from whites." Although both schools attract similarly large numbers of white applicants, "the Memphis City Schools recruit 8.5 times as many black applicants as does its neighbor the Shelby County School District."

Ruling out one possible explanation for the discrepancy, the U.S. notes that "Memphis offers a starting salary of $20,100.00, which it estimates to be slightly below the salary offered by the Shelby County School District."

The U.S. cited statistics that would indicate that the discrepancy is in large part the result of a less proactive approach to recruiting minority candidates: In 1988-89, the Shelby County Board visited and corresponded with 24 colleges and universities of which 9 where historically black. In comparison, the Memphis School System visited and corresponded with approximately 80 schools of which approximately 20 were historically black institutions. The U.S. also alluded to some anecdotal evidence of discriminatory conduct against black teachers by the County.

The government concluded that "the Shelby County School Board should be required to examine the districts' recruitment and hiring policies and practices and to explain fully its relative inability to hire black teachers in proportion to the number of black teachers in the relevant."

On **October 5, 1989**, Plaintiffs responded to the Court's inquiry. Plaintiffs noted that Memphis City School District had been able to maintain a 50-50 black-white teacher ratio in spite of the fact blacks are entering the teaching profession in lesser numbers than they have historically. Plaintiffs cited three factors which dissuade black applicants from applying in greater numbers:

- Shelby County Schools only recruited at six historically black institutions in the immediate geographical vicinity and did not recruit at Fisk, Morehouse, Spellman or Xavier – all schools that have black students from Shelby County in attendance

- In 1989-90, unlike previous years, new black faculty were virtually all assigned to schools where the black student population was the highest.
- Final approval of new teacher hiring rests with the individual school principals, who are predominantly white.
    - Plaintiffs recommended that hiring be centralized, with significant black participation in the selection process at the Board level.

On **March 9, 1990**, the Court entered a consent order approving zone lines for the previously approved elementary school in Cordova.

On **June 6, 1990**, the U.S. filed a reply to the response by the County to the Court's memorandum. The U.S. asserted that while "the evidence is not sufficient to justify an order that the Board alter its current hiring policies, it is also our view that [] enhanced recruitment measures [] can be lawfully adopted and should be voluntarily adopted by the Board, and that the Board's efforts in this regard should be included with its other faculty information." The "enhanced recruitment measures" suggested included hiring a recruiter for minority personnel; continued contact by mail or in person with a larger number of predominantly and historically black educational institutions; and the establishment of a more centralized hiring committee that could assist in identifying additional minority candidates for faculty vacancies.

In Plaintiffs' reply dated **June 8, 1990**, they suggested the following additional steps to increase minority recruitment: more detailed reporting of teacher employment statistics by race at critical points in the school year; a centralized hiring committee as suggested by the U.S.; and a geographically broader advertising program, not only to recruit graduating senior but also more experience black teachers.

On **July 3, 1990**, the Court ordered the Board to submit supplemental annual reporting regarding minority faculty recruiting practices.

**Unchallenged Proposals Become Routine and Black Faculty Representation Continues to Decline**

On **July 3, 1990**, the Court entered a consent order approving zoning changes Germantown, Kirby and Houston High Schools and grade level changes in the Lucy Elementary zone. The Court determined that the changes have little, if any, effect whatsoever on the status of desegregation in the County and noted that Plaintiffs and Plaintiff-Intervenor have not objection to the changes.

The **August 1, 1990** faculty report showed the racial composition of the faculty to be as follows: Total: 20% black (332/1680); Elementary: 20% black; Middle: 19% black; High: 18% black.

The **October 1, 1990** faculty report showed the racial composition of the faculty to be as follows: Total: 20% black (339/1711); Elementary: 20% black; Middle: 20% black; High: 19% black. The report included a recruitment supplement. Of 93 black student interviewed on campus, 22 (24%) were made offers; of 206 students interviewed on campus, 12 (6%) were made offers. Of 107 black applicants interviewed through the central office, 34 (32%) were made offers; of 610 white applicants interviewed through the central office, 162 (27%) were made offers. Spring recruitment was conducted at 33 colleges including 21 historically black institutions.

On **May 24, 1991**, the Court entered a consent order approving construction of a new middle school to accommodate student in the Dogwood and Farmington zones and grade changes between Chimney Rock and Mt. Pisgah Schools. The changes were not

expected to have any adverse impact upon the status of desegregation in the system and were approved by all counsel.

The **July 31, 1991** faculty report showed the racial composition of the faculty to be as follows: Total: 20% black (347/1749); Elementary: 20% black; Middle: 20% black; High: 19% black.

The **October 1, 1991** faculty report showed the racial composition of the faculty to be as follows: Total: 19% black (343/1768); Elementary: 20% black; Middle: 20% black; High: 18% black. Of 128 black student interviewed on campus, 13 (10%) were made offers; of 267 students interviewed on campus, 3 (1%) were made offers. Of 230 black applicants interviewed through the central office, 15 (7%) were made offers; of 718 white applicants interviewed through the central office, 181 (25%) were made offers. Spring recruitment was conducted at 45 colleges including 24 historically black institutions. The Board reported continued difficulty in recruiting minority candidates, including financial difficulties faced by the system.

On **December 19, 1991**, the Court entered a consent order approving construction notices for two new elementary schools, in Collierville and the Elmore Park/Oak areas. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **December 23, 1991**, the Court entered a consent order approving, pursuant to agreement with the City Board of Education, the retention of newly annexed students in the Cordova area in the County system for a period of two years to enable the Board of Education of the City of Memphis to construct new facilities and otherwise provide for

the accommodation of this influx of new students. The involved students were attending Chimney Rock, Mt. Pisgah and Riverdale elementary schools and Houston and Germantown junior and high schools.

On **January 27, 1992**, the Court entered a consent order approving a construction notice for a new elementary school in the Holmes Road and Germantown Extended area to accommodate the relocation of students residing primarily in the Ross and Southwind elementary school zones and the Kirby Middle school. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

The **August 1, 1992** faculty report showed the racial composition of the faculty to be as follows: Total: 19% black (354/1858); Elementary: 20% black; Middle: 19% black; High: 17% black.

The **October 1, 1992** faculty report showed the racial composition of the faculty to be as follows: Total: 19% black (352/1864); Elementary: 19% black; Middle: 20% black; High: 17% black. Of 163 black student interviewed on campus, 34 (21%) were made offers; of 248 students interviewed on campus, 6 (2%) were made offers. Of 293 black applicants interviewed through the central office, 45 (15%) were made offers; of 1177 white applicants interviewed through the central office, 186 (16%) were made offers. Spring recruitment was conducted at 45 colleges including 19 historically black institutions. The Board reported continued difficulty in recruiting minority candidates, including financial difficulties faced by the system.

Attached was an undated Commercial appeal article describing the decline since the 1970 of minority teachers in the workforce. The article states that during the 1990-91

school year, 188,064 black students made up 22.5% of Tennessee's public school population. In contrast, black teachers represented only 10.9% of the teachers in public schools. According to the article, form 1977 to 1987, the number of bachelor's degrees in education conferred on blacks decreased by 67.1% and the number of black teachers in U.S. public schools decreased from 164,400 in 1971 to 152,283 in 1986. The article also notes that 80% of Memphis City School students and 50% of Memphis City School teachers are black, compared to 18% black students and 19.5% black teachers in the Shelby County School system.

On **February 17, 1993**, the Court entered a consent order approving grade level and zone line changes for three new schools (Kate Bond, Shelton Road and Holmes Road). The Court noted that the construction was not expected to have any adverse impact upon the status of desegregation in the system. Unlike in prior consent orders, no mention was made of approval of the parties involved in the litigation.

On **April 13, 1993**, the Court entered a consent order approving the site location for future elementary school construction to accommodate anticipated population growth in the Collierville. The Court noted that the proposed school was not expected to have any adverse impact upon the status of desegregation in the system.

On **April 13, 1993**, the Court entered a consent order allowing newly annexed Cordova eighth grade student to remain in the County system for the 1993-94 school year. The Court noted that the request was not expected to have any adverse impact upon the status of desegregation in the system.

The **August 1, 1993** faculty report showed the racial composition of the faculty to be as follows: Total: 18% black (350/1914); Elementary: 20% black; Middle: 17% black; High: 16% black.

The **October 1, 1993** faculty report showed the racial composition of the faculty to be as follows: Total: 18% black (362/1958); Elementary: 19% black; Middle: 19% black; High: 16% black. Of 144 black student interviewed on campus, 28 (19%) were made offers; of 364 students interviewed on campus, 28 (8%) were made offers. Of 136 black applicants interviewed through the central office, 16 (12%) were made offers; of 650 white applicants interviewed through the central office, 139 (21%) were made offers. Spring recruitment was conducted at 53 colleges including 22 historically black institutions. The Board reported continued difficulty in recruiting minority candidates, including financial difficulties faced by the system.

On **March 7, 1994**, the Court entered a consent order approving construction notices for a new elementary school in the Collierville area, two new middle schools Bartlett and Hacks Cross Road areas, a new gymnasium at Bolton High School, and the transfer of location of locations for Collierville Middle and High Schools. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

The **August 1, 1994** faculty report showed the racial composition of the faculty to be as follows: Total: 18% black (375/2030); Elementary: 20% black; Middle: 18% black; High: 17% black.

The **October 1, 1994** faculty report showed the racial composition of the faculty to be as follows: Total: 19% black (382/2051); Elementary: 20% black; Middle: 18%

black; High: 17% black. Of 121 black student interviewed on campus, 35 (29%) were made offers; of 296 students interviewed on campus, 20 (7%) were made offers. Of 128 black applicants interviewed through the central office, 46 (36%) were made offers; of 710 white applicants interviewed through the central office, 231 (33%) were made offers. Spring recruitment was conducted at 57 colleges including 20 historically black institutions.

On **March 21, 1995**, the Court entered a consent order approving grade levels and zone lines for three new schools, New Appling, Lowrance and Harpers Ferry Roads. The changes were not expected to have any adverse impact upon the status of desegregation in the system.

The **August 1, 1995** faculty report showed the racial composition of the faculty to be as follows: Total: 17% black (374/2189); Elementary: 18% black; Middle: 17% black; High: 15% black.

On **July 25, 1995**, the Court entered a consent order approving a grade level change at Northaven Elementary School. The changes were not expected to have any adverse impact upon the status of desegregation in the system.

On **September 25, 1995**, the Court entered a consent order approving the site location for future construction of high school construction to accommodate anticipated population growth in the Cordova-Countrywood-Bartlett area. The construction was not expected to have any adverse impact upon the status of desegregation in the system.

The **October 1, 1995** faculty report showed the racial composition of the faculty to be as follows: Total: 18% black (383/2153); Elementary: 19% black; Middle: 18% black; High: 16% black. Of 85 black student interviewed on campus, 11 (13%) were

made offers; of 241 white students interviewed on campus, 29 (12%) were made offers. Of 177 black applicants interviewed through the central office, 31 (18%) were made offers; of 825 white applicants interviewed through the central office, 274 (33%) were made offers. Spring recruitment was conducted at 48 colleges including 15 historically black institutions.

On **March 25, 1996,** the Court entered a consent order approving construction notices for a 24 classroom addition at Bolton High. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **May 13, 1996**, the Court entered a consent order approving construction notices for two elementary schools, in Cordova and the North Basin area of Bartlett reserve. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

The **August 1, 1996** faculty report showed the racial composition of the faculty to be as follows: Total: 17% black (406/2344); Elementary: 18% black; Middle: 19% black; High: 16% black.

The **October 1, 1996** faculty report showed the racial composition of the faculty to be as follows: Total: 17% black (389/2268); Elementary: 18% black; Middle: 18% black; High: 16% black. Of 188 black student interviewed on campus, 24 (13%) were made offers; of 369 white students interviewed on campus, 81 (22%) were made offers. Of 33 black applicants interviewed through the central office, 26 (79%) were made offers; of 289 white applicants interviewed through the central office, 204 (71%) were

made offers. Spring recruitment was conducted at 48 colleges including 15 historically black institutions.

On **February 4, 1997**, the Court entered a consent order approving attendance zone changes to the new Cordova elementary school and altering zones and/or grade structures for Riverdale and Chimneyrock elementary schools and Mt. Pisgah Middle School. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **February 4, 1997**, the Court entered a consent order approving zone lines for the new Cordova high school and adjusting boundaries of other neighboring high schools. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

**At some time between February and August 1997**, Judge Donald took over the case.

The **August 1, 1997** faculty report showed the racial composition of the faculty to be as follows: Total: 16% black (374/2301); Elementary: 18% black; Middle: 17% black; High: 13% black.

On **August 12, 1997**, the Court entered a consent order approving a construction notice for a new elementary school in the Millington area. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **August 12, 1997**, the Court entered a consent order approving a construction notice for a new middle school in the Collierville area. The construction was not expected

to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

The **October 1, 1997** faculty report showed the racial composition of the faculty to be as follows: Total: 17% black (397/2376); Elementary: 18% black; Middle: 17% black; High: 15% black. Of 169 black student interviewed on campus, 22 (13%) were made offers; of 369 white students interviewed on campus, 76 (21%) were made offers. Of 392 black applicants interviewed through the central office, 19 (5%) were made offers; of 825 white applicants interviewed through the central office, 217 (26%) were made offers. Spring recruitment was conducted at 45 colleges including 13 historically black institutions.

On **February 4, 1998**, the Court entered a consent order approving a construction notice for a new elementary/middle school in the northeast corner of the Memphis-Arlington area. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **February 4, 1998**, the Court entered a consent order approving attendance zone changes related to the new elementary school on Rivercrest Lane and altering zones for Bartlett and Ellendale Elementary Schools. The construction was not expected to have any adverse impact upon the status of desegregation in the system.

The **August 1, 1998** faculty report showed the racial composition of the faculty to be as follows: Total: 17% black (365/2206); Elementary: 18% black; Middle: 16% black; High: 15% black.

On **September 21, 1998**, the Court entered a consent order approving attendance zone changes related to the new elementary school on Sycamore Road in Collierville area. The construction was not expected to have any adverse impact upon the status of desegregation in the system.

The **October 1, 1998** faculty report showed the racial composition of the faculty to be as follows: Total: 16% black (402/2476); Elementary: 18% black; Middle: 15% black; High: 15% black. Of 186 black students interviewed on campus, 28 (15%) were made offers; of 383 white students interviewed on campus, 96 (25%) were made offers. Of 171 black applicants interviewed through the central office, 17 (10%) were made offers; of 435 white applicants interviewed through the central office, 156 (36%) were made offers. Spring recruitment was conducted at 44 colleges including 12 historically black institutions.

On **January 29, 1999**, the Court entered a consent order approving attendance zone changes related to the new middle school in the Collierville area and zone changes and grade structures for Collierville Elementary and Tara Oaks Elementary. The changes were not expected to have any adverse impact upon the status of desegregation in the system.

On **April 14, 1999**, the Court entered a consent order approving realignment of North Area school in two phases. The changes were not expected to have any adverse impact upon the status of desegregation in the system.

The **August 1, 1999** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (323/2178); Elementary: 17% black; Middle: 13% black; High: 13% black.

The **October 1, 1999** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (348/2334); Elementary: 17% black; Middle: 14% black; High: 13% black. Of 131 black students interviewed on campus, 19 (15%) were made offers; of 212 white students interviewed on campus, 76 (36%) were made offers. Of 129 black applicants interviewed through the central office, 33 (26%) were made offers; of 306 white applicants interviewed through the central office, 155 (51%) were made offers. Spring recruitment was conducted at 33 colleges including 10 historically black institutions.

On **December 20, 1999**, the Court entered a consent order approving construction notice for a new elementary school on Seed Tick Road in Lakeland. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **March 3, 2000**, attorneys for Plaintiffs and attorneys for the Memphis City School Board filed a joint motion to allow Memphis City School Board to join in the litigation as Plaintiff-Intervenor and for further relief. Specifically, they sought a ruling by the Court on the existing division of education funds between the Shelby County schools system and the Memphis City school system which they asserted was detrimental to minority populations of public school students in Memphis and Shelby County and especially impacted those minority children who were economically disadvantaged.

On **March 10, 2000**, the Court entered a consent order approving attendance zone changes related to the new elementary school in the Collierville area and zone and/or grade structure changes fro Crosswind, Dogwood, Tara Oaks and Farmington Elementary Schools, and Collierville, Houston, and Schilling Farms Middle Schools.

On **March 20, 2000**, responded to the March 3 motion asserting that the motion should be denied without the necessity of a hearing or further proceedings because, among other reasons, the subject matter of the motion was outside the scope of the case at bar.

On **May 26, 2000**, a hearing was held on the March 3 motion for further relief. There is no indication in the record that the matter was ruled on.

The **August 1, 2000** faculty report showed the racial composition of the faculty to be as follows: Total: 16% black (362/2361); Elementary: 16% black; Middle: 17% black; High: 13% black.

The **October 1, 2000** faculty report showed the racial composition of the faculty to be as follows: Total: 16% black (373/2402); Elementary: 17% black; Middle: 17% black; High: 13% black. Of 165 black students interviewed on campus, 32 (19%) were made offers; of 301 white students interviewed on campus, 74 (25%) were made offers. Of 194 black applicants interviewed through the central office, 14 (7%) were made offers; of 526 white applicants interviewed through the central office, 98 (19%) were made offers. Spring recruitment was conducted at 50 colleges including 14 historically black institutions.

On **April 12, 2001**, a status conference was held "on budget issues related to construction plans." The Court entered a consent order approving construction notice for western Cordova area. The construction was not expected to have any adverse impact upon the status of desegregation in the system, and was approved by all counsel involved in the litigation.

On **May 17, 2001**, the Court entered a consent order approving attendance zone changes for certain Germantown and Southeast area schools. The construction was not expected to have any adverse impact upon the status of desegregation in the system.

On **May 30, 2001,** the Court entered consent orders approving boundary changes for certain Bartlett, Lakeland/Arlington and Millington area schools. The construction was not expected to have any adverse impact upon the status of desegregation in the system. Plaintiff-Intervenor (the U.S.) did not sign the consent orders. An attached exhibit shows the following projections as to racial composition of the affected schools: Dogwood Elementary: 3% black ➔ 2% black; Germantown Elementary: 39% black ➔ 7%; Germantown Middle: 34% black ➔ 5% black; Houston Middle: 3% black ➔ 3% black; Highland Oaks Elementary: 77% black ➔ 77% black; Southwind Elementary: 62% ➔ 60% black; Southwind Middle: 71% black ➔ 69% black; Germantown High: 30% black ➔ 33% black. The Board asserted that "much of the effect of racial demographic shifts, particularly in the Germantown Area Schools, is due to the incidence of students leaving SCS to attend Memphis City Schools, pursuant to the Hickory Hill Annexation by the City of Memphis.

The **August 1, 2001** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (361/2379); Elementary: 16% black; Middle: 16% black; High: 13% black.

The **October 1, 2001** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (361/2437); Elementary: 16% black; Middle: 15% black; High: 13% black. Of 226 black students interviewed on campus, 29 (13%) were made offers; of 443 white students interviewed on campus, 115 (26%) were made offers.

Of 273 black applicants interviewed through the central office, 18 (7%) were made offers; of 558 white applicants interviewed through the central office, 109 (20%) were made offers. Spring recruitment was conducted at 45 colleges including 10 historically black institutions.

On **October 4, 2001**, Plaintiffs' counsel (Mr. Fields) filed in open court a motion for a temporary restraining order to halt the Shelby County Board of Education from taking possession of property located on Bailey Station Road that was involved in a circuit court condemnation action. The motion raised issues of possible fraud and collusion in the selection of the school site in question. The Court granted the temporary restraining order, denying Plaintiffs' request to stay the circuit court October 5, 2001 hearing but, upon agreement by Judge McCarroll, enjoining the entry of any decision, order or judgment as a result of such hearing, pending further orders of this Court. On **October 15, 2001,** Plaintiffs withdrew the motion for a temporary restraining order.

On **October 4, 2001**, the Court entered a consent order approving purchase of land for a proposed new high school in the Bolton and Cordova attendance zones. The construction was not expected to have any adverse impact upon the status of desegregation in the system.

On **April 18, 2002**, the Court entered a consent order approving boundary changes for Chimney Rock, Macon-Hall, and Riverdale Elementary Schools and Mt. Pisgah Middle School, and setting boundaries for the new West Cordova Elementary and Middle Schools. The changes were not expected to have any adverse impact upon the status of desegregation in the system.

On **June 11, 2002**, the Court entered a consent order approving construction of a new high school in the Arlington area. The Court entered the order on grounds that neither the Plaintiffs nor Plaintiff-Intervenor had filed objections to the petition after receiving notice of the filing of the petition, and that the time for the filing of such objections had expired.

The **August 1, 2002** faculty report showed the racial composition of the faculty to be as follows: Total: 14% black (338/2362); Elementary: 15% black; Middle: 15% black; High: 12% black.

The **October 1, 2002** faculty report showed the racial composition of the faculty to be as follows: Total: 14% black (353/2448); Elementary: 15% black; Middle: 15% black; High: 13% black. Of 137 black students interviewed on campus, 21 (15%) were made offers; of 306 white students interviewed on campus, 100 (33%) were made offers. Of 253 black applicants interviewed through the central office, 29 (11%) were made offers; of 492 white applicants interviewed through the central office, 208 (42%) were made offers. Spring recruitment was conducted at 50 colleges including 7 historically black institutions.

A status conference was held on **July 10, 2003**. The Court heard statements from the parties concerning Southwind Elementary and Middle Schools, Sycamore, Schilling Farms, Germantown Elementary and Middle, and Houston and Arlington schools concerning student ratios and expansion plans and modification plans for the schools. The Court also heard statements concerning building a school in Millington. The Court entered a consent orders approving attendance zone changes for Germantown and Houston High Schools; construction notice for a new elementary school in Millington

area; and boundary changes for Southwind and Germantown Middle Schools which additionally affected Southwind Elementary, Germantown Elementary, Sycamore Elementary and Schilling Farms Middle Schools. The changes and construction were not expected to have any adverse impact upon the status of desegregation in the system.

The **August 6, 2003** faculty report showed the racial composition of the faculty to be as follows: Total: 14% black (352/2428); Elementary: 15% black; Middle: 16% black; High: 12% black.

The **October 1, 2003** faculty report showed the racial composition of the faculty to be as follows: Total: 14% black (358/2511); Elementary: 15% black; Middle: 16% black; High: 12% black. Of 216 black students interviewed on campus, 24 (11%) were made offers; of 588 white students interviewed on campus, 117 (20%) were made offers. Of 478 black applicants interviewed through the central office, 39 (8%) were made offers; of 882 white applicants interviewed through the central office, 144 (16%) were made offers. Spring recruitment was conducted at 52 colleges including 12 historically black institutions.

On **August 3, 2004**, a status conference was held. The Court entered consent order approving changes of zone boundaries for Altruria Elementary, Appling Middle, Arlington High, Cordova High, Bolton High, Houston High, Kate Bond Elementary and Shadowlawn Middle justified on the basis of "new school construction, overcrowding, and transitioning areas, annexation, and contractual undertakings with the Memphis City School Board." The Court also entered a consent order approving construction notice for a new elementary school in the eastern Bartlett/Brunswick area. The changes and

construction were not expected to have any adverse impact upon the status of desegregation in the system.

The DOJ's representative's signature on a routine consent order on **August 4, 2004** represents the government's last involvement in this case other than the U.S.'s February 16, 2007 response to the Court's January 29, 2007 order to show cause.

The **August 16, 2004** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (358/2423); Elementary: 15% black; Middle: 17% black; High: 12% black.

The **October 1, 2004** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (358/2437); Elementary: 15% black; Middle: 17% black; High: 12% black. Of 116 black students interviewed on campus, 10 (9%) were made offers; of 243 white students interviewed on campus, 47 (19%) were made offers. Of 341 black applicants interviewed through the central office, 50 (15%) were made offers; of 670 white applicants interviewed through the central office, 270 (40%) were made offers. Spring recruitment was conducted at 52 colleges including 13 historically black institutions.

The **August 31, 2005** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (372/2490); Elementary: 15% black; Middle: 18% black; High: 12% black.

The **October 10, 2005** faculty report showed the racial composition of the faculty to be as follows: Total: 15% black (381/2505); Elementary: 15% black; Middle: 19% black; High: 13% black. Of 217 black students interviewed on campus, 40 (18%) were made offers; of 427 white students interviewed on campus, 151 (35%) were made offers.

Of 373 black applicants interviewed through the central office, 38 (10%) were made offers; of 635 white applicants interviewed through the central office, 166 (26%) were made offers. Spring recruitment was conducted at 69 colleges including 15 historically black institutions.

The report indicated that as of Fall 2005, 64% of the system's students were Caucasian, 29% were African American, 3.4% were Asian, 2.8% were Hispanic, and .8% were comprised of other ethnic groups.

No faculty report was submitted for **August 2006.**

**The County Seeks a Declaration of Unitary Status**

On **August 14, 2006**, the Board and Plaintiffs filed a joint motion to dissolve order of the Court and declare the Shelby County School System a unitary system. The parties averred that "all requisite functions and duties to be implemented by the Shelby County School system," as mandated by the Court have been fulfilled.

The **October 13, 2006** faculty report (submitted to the Court on January 23, 2007) showed the racial composition of the faculty to be as follows: Total: 15% black (319/2116); Elementary: 16% black; Middle: 20% black; High: 9% black. Of 217 black students interviewed on campus, 40 (18%) were made offers; of 427 white students interviewed on campus, 151 (35%) were made offers. Of 373 black applicants interviewed through the central office, 38 (10%) were made offers; of 635 white applicants interviewed through the central office, 166 (26%) were made offers. Spring recruitment was conducted at 69 colleges including 15 historically black institutions.

On **November 22, 2006**, a status conference was held. The parties agreed on the following course of action: the parties were to submit a proposed Public Notice to the

Court within five days, which the Court would review and revise if needed. Notice was to be published in local publication twice. Notice was to instruct interested parties to submit, in writing, a response by January 10, 2007. Responses were to be addressed to the Court, Attorney Fields, Attorney Winchester, and the Department of Justice. Persons or entities with relevant concerns were to be heard at the January 26 hearing.

On **January 26, 2007**, a hearing was held on the joint motion to dissolve the permanent injunction. Minute Entry for proceedings held before Judge Bernice B. Donald Extensive testimony was offered by Defendants as to why the County was in compliance with the Court's orders and the injunction should be dissolved. An amicus curiae appearance was entered by Javier M. Bailey on behalf of Operation Rainbow Push. The Court allowed Operation Rainbow Push to be heard at the end of the hearing.

On **February 5, 2007**, the Court entered an order requiring the Board to produce additional statistical data. The Board complied.