

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

BRENDA K. MONROE, et al.,)	
)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
)	
Amicus Curiae,)	CIVIL ACTION NO. 1327
)	
v.)	
)	
)	
BOARD OF COMMISSIONERS OF)	
THE CITY OF JACKSON, TEN-)	
NESSEE, ET AL.,)	
)	
Defendants.)	
)	

MEMORANDUM OF THE UNITED STATES IN
SUPPORT OF ITS PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

Pursuant to the Court's request at the conclusion of the hearing in this cause on August 30, 1972, the United States, amicus curiae herein, hereby submits this memorandum in support of its proposed findings of fact and conclusions of law.

On January 7, 1972, the Court of Appeals for the Sixth Circuit remanded this cause to this Court to consider whether the present elementary school student

1/ Although the United States had participated as amicus curiae in the 1968 appeal to the United States Supreme Court and had also been designated as amicus curiae by this Court's order of December 12, 1969, the United States had never made an appearance in any evidentiary proceeding in this case. However, after the conclusion of the evidentiary hearing in Monroe and United States v. County Board of Education, Madison County, Tennessee, C.A. No. 2284 (Footnote cont'd on next page)

assignment plan meets the judicial standards of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1970), Robinson v. Shelby County Board of Education, 442 F. 2d 255 (6th Cir., 1971); and Davis v. School District of Pontiac, 443 F. 2d 573 (6th Cir., 1971).

At the evidentiary hearing held on August 29-30, 1972, the private plaintiffs orally raised the following additional issues:^{2/}

1. Whether the present junior high school student assignment plan meets current judicial standards and has eliminated all vestiges of the dual school structure with respect to the Jackson Junior High School (Tr. p. 8).

2. Whether the operation of the consolidated Jackson Central-Merry High School meets current judicial standards as to the use of the building and principal assignments. (Tr. p. 8)

3. Whether the school district has failed to assign teachers in the district in accordance with this Court's order of July 30, 1970, and has failed to assign elementary school principals in accordance with this Court's order of May 28, 1969 (Tr. p. 9-10).

4. Whether the school district has failed to hire black teachers in a non-discriminatory manner. (Tr. p. 9)

We are filing this memorandum to assist the Court in evaluating the evidence presented and address the issues raised, and if warranted, to suggest an orderly procedure for resolving the issues.

^{1/} (Footnote cont'd on preceding page)
on August 28-29, 1972, wherein we participated upon request of the Court, the Court also requested our participation in the evidentiary hearing of this case, including the filing of proposed findings of fact and conclusions of law.

^{2/} Although these issues were not raised in the appeal (Footnote cont'd on next page)

I. PROCEDURAL HISTORY

This suit was filed in 1963 by private plaintiffs. On June 19, 1963, the district court found that the City of Jackson School District was a dual school system based on race and granted private plaintiff's motion for summary judgment.

By order of July 30, 1970, the district court ordered the school district to seek the assistance of the Title IV Educational Opportunities Planning Center for the University of Tennessee in revising the elementary school attendance zone lines so as to promote further desegregation.

The Title IV Center submitted its report to the district court on December 15, 1970. Concluding that "no zoning approach based on unitary geographic zones would likely yield significant changes from 1970-71 in terms of the racial composition of any elementary school in the system," the Title IV Center proposed only minor modifications in the existing elementary school attendance zones. However, the report suggested that the use of pairing or the establishment of non-contiguous zones were necessary in order to further desegregate the district.

On March 17, 1971, the district court ordered the implementation of the geographic zoning plan submitted by the school district with the zone modifications suggested by the Title IV Center for the 1971-72 school year.

2/ (Footnote cont'd from preceding page)
of this case and were not dealt with in the Court of Appeals' opinion, we deal with each.

On appeal to the Court of Appeals for the Sixth Circuit, the private plaintiffs contended that the district court was required to order the implementation of either the pairing or non-contiguous zoning plan recommended by the Title IV Center since either alternative would result in greater desegregation of the elementary schools.

On January 7, 1972, the Court of Appeals for the Sixth Circuit remanded the case back to this Court for consideration in light of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1970); Robinson v. Shelby County Board of Education, 442 F. 2d 255 (6th Cir., 1971); and Davis v. School District of Pontiac, 443 F. 2d 573 (6th Cir., 1971) which had been decided after the order of March 17, 1971.

Pursuant to the mandate of the Court of Appeals, an evidentiary hearing was held on August 29-30, 1972.

II. FACTS

1. STUDENT AND FACULTY ASSIGNMENTS

a. High School

The predominantly black Merry Senior High School^{3/} and the predominantly white Jackson Central High School

^{3/} The Merry High School and the Merry Junior High School were housed within the same building, the Merry Junior-Senior High School. (Tr. pp. 57, 64). For the purposes of this memorandum, the high school grades (10-12) will be referred to as Merry Senior High School, and the junior high school grades (7-9) will be referred to as Merry Junior High.

were consolidated to form the Jackson Central-Merry High School for the 1970-71 school year pursuant to the district court order of August 23, 1970. For the 1970-71 school year, the East Campus of the Jackson Central-Merry High School, the former Merry High School,^{4/} served all 10th grade students in the district. (Tr. p. 58). The West Campus of the Jackson Central-Merry High School, the former Jackson Central High School, served all 11th and 12th grade students in the district. (Tr. p. 58).

The Jackson Central-Merry High School has been departmentalized since the 1971-72 school year. All social studies, English and art courses are taught in the East Campus. (Tr. pp. 183, 184). Vocational, music, home economics and gym courses are taught on both campuses. (Tr. pp. 71, 184). The remainder of the courses are taught on the West Campus.

Upon the consolidation of the two high schools, the white principal of the former Jackson Central High School became the administrative head of the Jackson Central-Merry High School. (Tr. pp. 166, 231). The black principal of the former Merry High School became the associate principal of the school. (Tr. pp. 166, 231). Both have co-responsibilities in all administrative affairs. (Tr. p. 166). However, in those matters requiring the designation of one person as head of the school, the white principal is so designated.^{5/} (Tr. p. 166)

^{4/} The East Campus also served all students in grades 7-9 residing in the Merry Junior High School attendance zone for the 1970-71 school year. (Tr. p. 57).

^{5/} The record does not reflect the basis upon which the school district made this designation.

b. Junior High Schools

The I. B. Tigrett Junior High School was constructed in 1956 (Post Trial Exhibit No. 3) and prior to the 1963-64 school year was maintained solely for white students. (District Court order of June 19, 1963). The Merry Junior High School was constructed in 1957 (Post Trial Exhibit No. 3) and prior to the 1963-64 school year was maintained solely for black students. (District Court order of June 19, 1963). The date of construction of the original Jackson Junior High School is unknown. However, it was reconstructed in 1964 (Post Trial Exhibit No. 3) and was built and maintained to serve white students. (District Court order of June 19, 1963).

From the 1963-64 through the 1970-71 school years students were assigned to each junior high school pursuant to the geographic attendance zone lines established for the 1963-64 school year. (Tr. pp. 49, 52, 90). From the 1963-64 through the 1968-69 school years, however, students were permitted to transfer from the junior high school designated for their residence to any other junior high school in the district. The free transfer option was eliminated after the 1968-69 school year. (District Court order of May 28, 1969).

By order of June 23, 1970, the district court approved the closing of the Merry Junior High School and the construction of the Parkway Junior High School for the 1971-72 school year. The district court also approved the establishment of new junior high school attendance zones for the 1971-72 school year. However, only slight changes in the junior high school attendance zones were made for 1970-71 school year. (Tr. p. 56). The student enrollments, by race, for the I. B. Tigrett Junior High School, the Merry Junior High School and the Jackson Junior High School for the 1963-64 through 1970-71 school years were as follows:

<u>Year</u>	<u>Tigrett Jr. H. S.</u>		<u>Merry Jr. H. S.</u>		<u>Jackson Jr. H. S.</u>	
	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>
1963-64	0	640	716	0	1	405
1964-65	0	677	729	0	1	417
1965-66	6	748	632	0	102	426
1966-67	7	762	647	0	133	337
1967-68	8	818	629	0	140	348
1968-69	16	797	627	0	162	368
1969-70	61	906	496	8	327	351
1970-71	45	892	556	36	315	300

The student enrollments, by race, for the I. B. Tigrett Junior High School, the Jackson Junior High School and the Parkway Junior High School for the 1971-72 and 1972-73 school years are as follows:

<u>Year</u>	<u>Tigrett Jr. H. S.</u>		<u>Jackson Jr. H. S.</u>		<u>Parkway Jr. H. S.</u>	
	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>
1971-72	200	373	300	274	340	513
1972-73	314	443	267	245	306	476

c. Elementary Schools

The Alexander Elementary School was constructed in 1951, the Highland Park Elementary School in 1960, the Parkview Elementary School in 1951, and the West Jackson Elementary School in 1940. (Post Trial Exhibit No. 3). The construction date of the original Whitehall Elementary School is unknown. However, the school was reconstructed in 1966 on its original site. (Post Trial Exhibit No. 3). Prior to the 1963-64 school year, each of the above schools was maintained solely for white students. (District Court Order of June 19, 1963, Tr. pp. 92, 124-127).

The Lincoln Elementary School was constructed in 1954, the South Jackson Elementary School in 1936 and the Washington-Douglas Elementary School in 1952. (Post Trial Exhibit No. 3). Prior to the 1963-64 school year, each of the above schools was maintained solely for black students. (District Court Order of June 19, 1963, Tr. pp. 82, 124-127).

From the 1963-64 through the 1968-69 school years, students were assigned to each of the elementary schools on the basis of geographic attendance zones established for the 1963-64 school year. (Tr. p. 52). However, students were permitted to transfer from the elementary school designated for their residence to any other elementary school in the district during these years. The free transfer option was eliminated after the 1968-69 school year. (District Court Order of

of May 28, 1969). The student enrollment, by race, for each elementary school in the district from the 1963-64 through the 1968-69 school years was as follows:

<u>School</u>	<u>1963-64</u>		<u>1964-65</u>		<u>1965-66</u>		<u>1966-67</u>		<u>1967-68</u>		<u>1968-69</u>	
	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>
Alexander	34	617	89	566	147	505	152	497	158	519	183	577
Highland Park	1	516	0	583	3	693	3	765	3	761	3	752
Lincoln	812	0	803	0	724	0	669	0	603	0	559	0
Parkview	0	600	1	597	31	613	45	548	111	478	171	457
South Jackson	534	0	548	0	548	0	492	0	508	0	435	0
Washington-Douglas	415	0	427	0	377	0	480	0	420	0	393	0
West Jackson	0	353	8	402	98	373	83	357	86	332	101	299
Whitehall	4	269	16	282	27	289	39	280	67	311	85	317

The Andrew Jackson Elementary School was opened in the northwest section of the district for the 1969-70 school year pursuant to the district court order of September 13, 1968. The attendance zones for the other elementary schools were not affected by its opening. (Tr. pp. 53, 63).

Slight modifications in the elementary school attendance zones were made for the 1971-72 school year in accordance with the district court order of March 17, 1971. (Tr. pp. 63, 88-90). However, the attendance zones for the 1971-72 and 1972-73 school years are essentially the same as those established for the 1963-64 school year. (Tr. pp. 88-90). In addition, the school district constructed four classroom additions at the Whitehall Elementary School for the 1972-73 school year pursuant to the district court order of April 7, 1972.

The student enrollments, by race, for each elementary school in the district for the 1969-70 through 1972-73 school years are as follows:

<u>School</u>	<u>1969-70</u>		<u>1970-71</u>		<u>1971-72</u>		<u>1972-73</u>	
	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>	<u>W</u>
Alexander	155	415	141	408	204	384	200	355
Andrew-Jackson	0	486	15	495	15	445	24	459
Highland Park	2	549	13	502	10	508	12	473
Lincoln	504	0	569	0	542	6	584	7
Parkview	252	431	235	382	274	349	274	328
South Jackson	350	4	349	8	281	8	266	6
Washington-Douglas	392	3	365	0	273	17	246	4
West Jackson	118	293	147	291	195	243	157	216
Whitehall	77	264	116	264	217	210	244	179

At the present time, approximately 55% of the black elementary school students in the school district attend the predominantly black Lincoln, Washington-Douglas and South Jackson elementary schools. In addition, the three black elementary school principals in the district are assigned to these three predominantly black schools. (Tr. p. 164)^{6/}. The other six elementary schools in the district have white principals. (October 13, 1972 Report to the Court).

In its report of December 15, 1970, the Title IV Center proposed several alternatives for the desegregation of the elementary schools in the district, such as the use of pairing and non-contiguous zones. The school district does not have a transportation system (Tr. p. 163).

The faculty assignments, by race, for each school in the district for the 1972-73 school year appear in Attachment A.

^{6/} The district court order of May 28, 1969, requires the school district to assign principals "in furtherance of a goal removing the former racial identifiability of a school."

2. Hiring

Black students comprise approximately 46% of the student enrollment of the school district for the 1972-73 school year. However, blacks comprise only approximately 30% of the teaching positions in the district.

DISCUSSION

1. Student Assignment

Prior to the 1963-64 school year, the City of Jackson School District operated a segregated school system based on race. The Court of Appeals for the Sixth Circuit, in its opinion of January 7, 1972, remanded this case to the district court to determine whether, in light of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1970), Robinson v. Shelby County Board of Education, 442 F. 2d 255 (6th Cir., 1971) and Davis v. School District of Pontiac, 443 F. 2d 573 (6th Cir., 1971), the present elementary school desegregation plan has eliminated all the vestiges of the former dual system.

In Swann v. Charlotte-Mecklenburg Board of Education, supra, the Supreme Court enunciated the judicial standard for desegregating a dual school system. The Supreme Court stated that

"... school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one race schools... Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden

of showing that such school assignments are genuinely nondiscriminatory. Id. at 12. See also, Northcross v. Board of Education of Memphis, 466 F. 2d 890 (6th Cir., 1972).

The Lincoln, South Jackson and Washington-Douglas elementary schools were constructed and maintained for black students and presently serve approximately 55% of the black elementary students in the district. The Highland Park Elementary School was constructed and maintained for whites.^{7/} These schools have retained their racial identifiability as black and white schools, respectively. The school district has not overcome the Swann presumption by 'showing that such school assignments are genuinely nondiscriminatory.'

The school district takes the position that the school system is unitary (Tr. p. 18). They argue that (1) they cannot achieve any greater desegregation of the elementary schools through the use of contiguous geographic attendance zones (Tr. pp. 14, 90); (2) that the

^{7/} The plaintiffs take the position that the Andrew Jackson Elementary School is a racially identifiable school. It is a predominantly white school; however, the district court approved its construction by its order of September 13, 1968.

residential pattern of the district accounts for the racial composition of the elementary schools (Tr. pp. 13, 80-86); and (3) that the implementation of any alternative assignment plan, including those suggested by the Title IV Center, would result in "white flight" (Tr. pp. 13-14, 95-96, 98).

We do not believe the Board's arguments are legally sufficient where, as here, there is no question that three elementary schools were established and maintained for black children and one elementary school was established and maintained for white children. Below we deal with each argument separately:

(1) Where, as here, a geographic zoning plan may not effectively desegregate a school district, the school district still has a duty to develop a desegregation plan that works. Green v. School Board of New Kent County, 391 U.S. 430 (1968). The Supreme Court in Swann noted that techniques other than contiguous geographic zoning are appropriate tools for dismantling a former dual school system. In United States v. Greenwood Municipal Separate School District, 406 F. 2d 1086 (5th Cir., 1969), the Court held that "Geographic zoning, like any other attendance plan adopted by a school board ... is acceptable only if it tends to disestablish rather than reinforce the dual system of segregated schools." Moreover, in Robinson v. Shelby County Board of Education, *supra*, the Sixth Circuit stated,

"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." Id. at 258.

Therefore, the fact that the Lincoln, South Jackson, Washington-Douglas and Highland Park elementary schools may not be effectively desegregated through the use of contiguous geographic attendance zones does not diminish the school district's duty to develop a method of student assignment which totally dismantles the dual structure of these schools.

(2) As to the school district's second argument, this circuit has long held that geographic zone lines may not, consistent with Fourteenth Amendment mandates, be drawn to conform to the racial composition of the neighborhoods in a school district. Northcross v. Board of Education of Memphis, supra; Robinson v. Shelby County Board of Education, supra; Kelley v. Metropolitan County Board of Education of Nashville, 436 F. 2d 856 (6th Cir., 1970). See also United States v. Board of School Commissioners of the City of Indianapolis, No. 72-1031 (7th Cir., February 1, 1973), wherein the Court of Appeals for the Seventh Circuit stated that "school policy has a substantial impact on residential patterns as well as vice versa."

Therefore, the fact that the Lincoln, South Jackson and Washington-Douglas elementary schools are located in predominantly black residential areas and the Highland Park Elementary School is located in a predominantly white residential area does not justify the school district's present method of student assignment for these schools.

(3) The school district's third argument does not appear to be consistent with the facts of this case. For example, the Alexander, Parkview, West Jackson and Whitehall elementary schools have been able to retain white students even though each has a substantial black student enrollment. Moreover, the "white flight" argument has been specifically rejected by the Supreme Court in this case as a valid reason for delaying desegregation of the school system. Monroe v. Board of Commissioners of the City of Jackson, 391 U.S. 450 (1968).

Based on the record in this case, the school district should be required to submit an alternative student desegregation plan that will eliminate the racial identifiability of the Lincoln, South Jackson, Washington-Douglas and Highland Park elementary schools.^{8/} If the alternative plan proposes the continued racial identifiability of any of the four schools, the school district should include in the plan the facts relied upon to justify their continued existence and further should provide options to fully desegregate the four schools. The projected number of students and faculty, by race, for each

^{8/} The school district may wish to consider the desegregation alternatives suggested by the Court of Appeals for the Fifth Circuit in United States v. T.E.A. (Austin ISD), per J. Bell, 467 F.2d 848, (5th Cir. 1972) (en banc) at 883-889.

school in the district should be included for each plan and option submitted.

The senior high school and the three junior high schools in the district have been completely desegregated in accordance with Swann. At the high school level, the consolidated Jackson Central-Merry High School is fully utilizing the facilities of the former Merry Senior School and the former Jackson Central High School. At the junior high school level, no school is predominantly black.

2. Teacher and Principal Assignments

The teacher assignments, by race, to each school in the district fall within the 10% margin allowed by the district court order of July 30, 1970. As such, the school district is in compliance with the district court order. (See Attachment A).

The three black elementary school principals have been assigned to the three predominantly black elementary schools in the district. It appears from the record that these principals have been assigned in violation of the district court order of May 28, 1969 requiring that principals be assigned in furtherance of a goal of removing the former racial identity of schools.

The plaintiffs contest the assignment of the white former principal of the Jackson Central High School as the administrative head and the assignment of the black former principal of the Merry Senior High School as the associate principal of the consolidated Jackson Central-

RELIEF

Based upon the record in this case, we suggest that the Court grant the following relief:

1. Require the school district to submit an alternative student desegregation plan that will eliminate the racial identifiability of the Lincoln, South Jackson, Washington-Douglas and Highland Park Elementary Schools. If the alternative plan proposes the continued racial identifiability of any of the four schools, the school district should include in the plan the facts relied upon to justify their continued existence and further should provide options to fully desegregate the four schools. The projected number of students and faculty, by race, for each school in the district should be included for each plan and option submitted.

2. Require the school district to assign the elementary school principals pursuant to the district court order of May 28, 1969, for the 1973-74 school year.


3. Require the school district to develop non-racial, objective criteria (similar to the criteria adopted in LaVega, supra) and compare both the former white principal of the Jackson Central High School and the former black principal of the Merry High School in light of the criteria. The individual most qualified should be designated as the head of the consolidated Jackson Central-Merry High School. As an alternative

the school district may rotate the positions between
each individual yearly.

Respectfully submitted,

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ATTACHMENT A

The faculty assignments, by race, for each school in the district for the 1972-73 school year are as follows:

<u>School</u>	<u>B</u>	<u>W</u>	<u>T</u>	<u>%B</u>
Jackson Central-Merry	24	56	80	30.0%
Jackson Junior H. S.	8	19	27	29.6%
Parkway Junior H. S.	11	25	36	30.5%
Tigrett Junior H. S.	10	24	34	29.4%
Alexander Elementary	7	20	27	25.9%
Andrew Jackson Elem.	6	14	20	30.0%
Highland Park Elem.	7	15	22	31.8%
Lincoln Elementary	12	18	30	40%
Parkview Elementary	8	21	29	27.5%
South Jackson Elementary	7	12	19	36.8%
Washington-Douglas Elementary	7	11	18	38.8%
West Jackson Elem.	6	15	21	28.6%
Whitehall Elementary	<u>6</u>	<u>16</u>	<u>22</u>	<u>27.3%</u>
	68	157	225	30.2%