

In the  
Supreme Court of the United States

UNITED STATES OF AMERICA,  
Petitioner,

vs.

SCOTLAND NECK CITY BOARD OF  
EDUCATION, et al.,  
Respondents.

\* \* \* \* \*

PATTIE BLACK COTTON, et al.,  
Petitioners,

vs.

SCOTLAND NECK CITY BOARD OF  
EDUCATION, et al.,  
Respondents.

No. 70-130

No. 70-187

Washington, D. C.  
February 29, 1972  
and  
March 1, 1972

Pages 1 thru 64

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Washington, D. C.,

Tuesday, February 29, 1972.

The above-entitled matters came on for argument at  
2:46 o'clock, p.m.

## BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM O. DOUGLAS, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice

## APPEARANCES:

LAWRENCE G. WALLACE, ESQ., Deputy Solicitor General,  
Department of Justice, Washington, D. C. 20530;  
for Petitioner in No. 70-130.

ADAM STEIN, ESQ., 157 East Rosemary Street, Chapel  
Hill, North Carolina 27514; for Petitioner in No.  
70-187.

WILLIAM T. JOYNER, ESQ., Post Office Box 109, Raleigh,  
North Carolina 27602; for the Respondents.

C. KITCHIN JOSEY, ESQ., Scotland Neck, North  
Carolina; for the Respondent Board of Education.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in United States against Scotland Neck City Board of Education, 70-130; and 70-187.

Mr. Wallace, you may proceed.

ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.,

ON BEHALF OF PETITIONER UNITED STATES

MR. WALLACE: Mr. Chief Justice, and may it please the Court:

This consolidated case and the next case to be argued were decided together by the Court of Appeals for the Fourth Circuit, sitting en banc, and presents similar issues. Each case involves a predominantly black, predominantly rural school district, which has been operating a dual system of racially segregated schools.

In each case, instead of proceeding to desegregate the entire district, as the unit in which it had been operating, the State has sought to split the district in two by carving out a small, more white and more urban enclave to operate as a separate school district.

In the present case, involving the schools of Halifax County, North Carolina, the United States filed suit alleging that the splitting of the district unconstitutionally impeded the disestablishment of the dual system, and additional plaintiffs subsequently intervened and are now before the Court



in the companion case, which has been consolidated with ours.

The next case to be heard, which involves the schools of Greensville County, Virginia, was brought by private plaintiffs, and the United States did not participate in the case at any stage of the proceedings until this Court granted certiorari. The United States has now filed a brief amicus curiae in support of the petitioners in that case.

In each case the split-off was held unconstitutional by the District Court, and the Court of Appeals reversed by a divided vote. Our position is that the Court of Appeals applied the wrong standard and reached the wrong result in both cases.

There was also a third case, decided on the same day by the Court of Appeals, in which that Court, by a differently divided vote, upheld another District Court order enjoining another similar split-off in North Carolina, and no petition for certiorari was filed in that case, and it is not before this Court.

Now, the facts of the present case can conveniently be summarized by reference to the very readable foldout maps that appear in this large-sized Appendix filed by the petitioners in the companion case, the consolidated case.

If the Court please, I'd like to turn first to the map at page 4-B, which is a map of Halifax County, the county at issue here. It's a largely rural area, which is some 40

miles across at its widest point.

Scotland Neck --

Q This is the whole county, now?

MR. WALLACE: This is the whole county depicted in this map. And Scotland Neck, the town which has been carved out by this new legislation, appears in the southeastern portion, where Scotland Neck School is labeled. There's a little rectangle around Scotland Neck School and Brawley School, and the limits of the town of Scotland Neck are within that rectangle, that irregularly shaped figure, in lighter lines.

The shaded areas in the northern portion, labeled Weldon and Roanoke Rapids, are two separately administered school districts, each of which is several times more populous than the town of Scotland Neck. Those have been administered as separate districts right along.

The rest of the county has been operating as a single school district, known as the Halifax County Administrative Unit, and Scotland Neck has been included in that school system since 1936.

And until 1965 all of the schools in that county system were completely segregated by race. In 1965 a freedom of choice plan was instituted, but very little desegregation resulted from that. For example, during the 1967-68 school year, the last one under unmodified freedom of choice, all of

the white students still attended the four traditionally white schools. And 97 percent of the black students attended the other all-black schools.

The district at that time was 77 percent black.

Q When you speak of the district now --

MR. WALLACE: The entire district, that's the Halifax County School District.

Q And the Halifax County School District, at that time, was the entire county with the exception of Weldon and Roanoke Rapids?

MR. WALLACE: That is correct, Your Honor. That is the way it has been operating since 1936.

Q Yes.

MR. WALLACE: And at that time, also, more than 90 percent of the students in that county system were transported to school by school buses, the record shows.

In the summer of --

Q What's the total attendance in numbers, in round figures? Do you have that?

MR. WALLACE: It's a little more than 10,000, Your Honor. I think it's 10,655, if I recall.

In the summer of 1968, shortly after the Green trilogy of decisions in this Court, the Department of Justice notified the county school board here, pursuant to the 1964 Civil Rights Act, that operation of its schools did not comply

with constitutional requirements.

Negotiations followed between the Department and the Board, and the Board agreed, in the course of those negotiations, to adopt a plan for disestablishing the dual system, to be effective by the fall of 1969, and to take some interim steps for the 1968-69 school year, and the student assignments which are -- well, the grade assignments reflected on this map reflect that interim agreement with the Department of Justice.

The agreement was widely publicized in the local press, and because of this agreement the government did not file suit at that time.

In the meantime, the county school board had asked the North Carolina Department of Public Instruction to determine how the board could meet its desegregation obligations and to recommend an organizational plan designed for the best possible education of the children in the county system.

And the Department, during 1968, studied the county system and in September of that year recommended both a long-range plan involving the construction of two new high schools and a so-called interim plan using the existing facilities. And that interim plan is depicted on the next foldout map, at page 8-B of this Appendix.

It provided for assignments on the basis of four geographic zones, these numbered districts, divided by broken lines, with a pairing of grades between some of the schools,

including Scotland Neck School and Brawley School, the schools in the immediate vicinity of the town of Scotland Neck. Less than a mile apart from each other, these two school buildings.

Under this interim plan, some white students would have been assigned to each of the formerly all-black schools, and none of the four traditionally white schools would have a white majority assigned to it.

The county school board did not adopt the interim plan, and in February of 1969 it also repudiated its agreement with the Department of Justice to come forward with a plan for disestablishing the system by that fall, and instead voted to return to freedom of choice as the assignment method.

And shortly thereafter, in March of 1969, the North Carolina Legislature enacted a local law, Chapter 31 of the 1969 Session Laws of North Carolina, providing for a new school district to be bounded by the corporate limits of the town of Scotland Neck, and for a supplemental tax assessment to finance the schools there, on approval by the town's voters, who did approve in a special election conducted in April of 1969.

The complaint in the present suit was then filed in June.

If implemented, Chapter 31 would have carved out of the county system, which had 10,655 students, as I mentioned, a small enclave in which 695 students resided. Of these 695



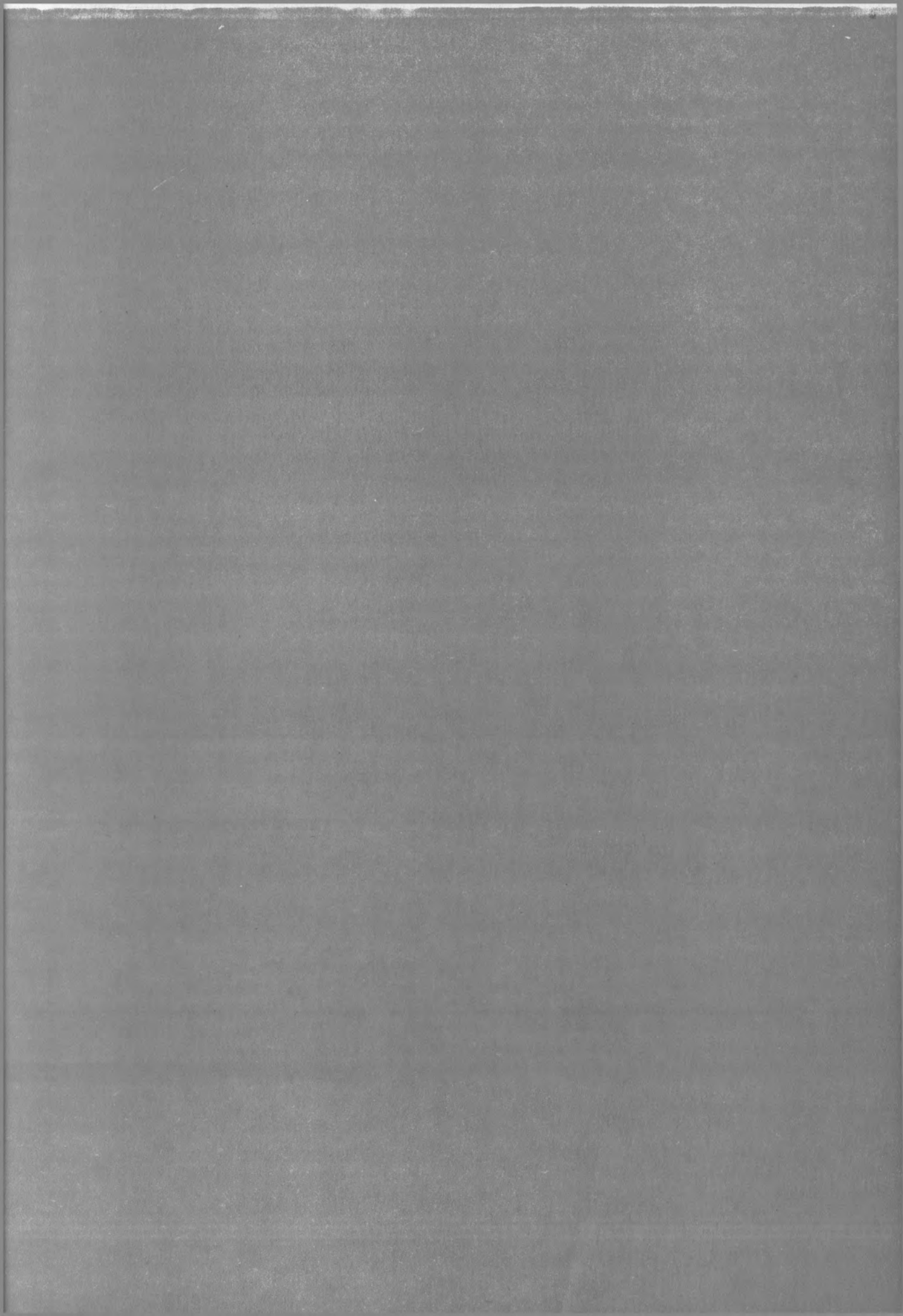
students, 57 percent were white and 43 percent black, in contrast to the county system's over-all student population which was 22 percent white and 77 percent black, one percent Indian.

The Court of Appeals deemed it significant that the removal of the 695 students from the county system would shift the over-all ratio by only three points, to 80 percent black and 19 percent white. But this seems to us an unrealistic way to look at the effect of Chapter 31, because it is apparent from the map before us that in most of the county, Districts 2, 3, and 4, there would be no effect from Chapter 31, or only a very negligible effect. And that Chapter 31's impact would be concentrated in District 1, and in that district would touch mostly the Scotland Neck and Brawley Schools.

And that impact is shown on the next map that appears, to which I will return tomorrow, when the argument is resumed.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wallace.

[Whereupon, at 3:00 o'clock, p.m., the Court was recessed, to reconvene at 10:00 o'clock, a.m., Wednesday, March 1, 1972.]



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EDUCATION, et al.,	:	
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Respondents.	:	
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Washington, D. C.,

Wednesday, March 1, 1972.

The above-entitled matters were resumed for argument  
at 10:09 o'clock, a.m..

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM O. DOUGLAS, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES: [Same as heretofore noted.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll resume consideration of No. 70-130, United States against Scotland Neck; and 70-187.

Mr. Wallace, you may proceed whenever you're ready.

MR. WALLACE: Thank you, Mr. Chief Justice, and may it please the Court:

I pointed out yesterday that with a dual school system still in effect in Halifax County in 1969, 15 years after Brown, the county turned away from the recommendations of the State Department of Public Instruction and from its agreement with the Department of Justice, both of which looked toward disestablishment of that dual school system. And instead, through Chapter 31 of the 1969 Session Laws, there was carved out a small separate school district for Scotland Neck.

While, as a mathematical matter, the removal of these 695 students could have only a limited effect on the racial percentages of the county system as a whole, the effect would be very substantial in the immediate vicinity of Scotland Neck, and I was about to turn to the foldout map in this large-sized Appendix filed by the petitioners in the consolidated case, at page 12-B, where there is some indication of what the effect of Chapter 31's implementation would be in the immediate vicinity of Scotland Neck, within District 1 of the State's Interim Plan.

And the impact, particularly, is on the student

assignments to the Scotland Neck School and to the Brawley School, the two Grade 1 to 12 schools that have been conducted by this county system, less than one mile apart from each other; Brawley being an all-black school and Scotland Neck the traditionally white school.

The assignment figures printed on this map were compiled by the County Board of Education. The map was submitted by the County Board as an exhibit to a motion of theirs, and if Chapter 31 had been implemented, these figures show that the Brawley School would be more than 90 percent black, while the Scotland Neck School would be 57 percent white and 43 percent black.

By contrast --

Q I don't -- the -- what is it? A total of 366 --  
I'm now talking about Brawley --

MR. WALLACE: Brawley --

Q -- with 9 white children and 350 --

MR. WALLACE: No, those are the figures for Bakers School, Mr. Justice.

Q Oh, I see. All right.

MR. WALLACE: The Brawley figures are underneath:  
805 Negro, 83 white.

Q Right.

MR. WALLACE: So more than 90 percent of the assigned students --



Q A total of 888. And what's the C-944?

MR. WALLACE: That's the capacity of the school.

Q Capacity. I see.

MR. WALLACE: And the total is 888. Well, it's slightly less than 90 percent. I'm sorry. My mathematics are slightly off there.

But close to 90 percent of the students would be black at Brawley; and at Scotland Neck it would be 57 percent white and 43 percent black.

By contrast, under the Interim Plan, which the State Department of Public Instruction had recommended, the assignments to Brawley would be slightly less than 70 percent black and those to Scotland Neck more than 66 percent black. A very similar ratio.

Q And the county as a whole is about -- 70/30?

MR. WALLACE: 77 percent black; 23 percent --

Q 77/23; and one percent Indian?

MR. WALLACE: That's correct.

And there was also a transfer plan adopted by the Scotland Neck City Board of Education, but struck down as unconstitutional by the Court of Appeals, which would have increased the disparity under Chapter 31 even more; on the basis of the first applications filed, the Scotland Neck School has gone up to 74 percent white.

The Chapter 31 has not gone into effect, because the

Court of Appeals stayed its mandate, pending this Court's decision. And the schools are now operating under a modified version of the State Interim Plan, which we have described in some detail on page 14 of our brief, Footnote 25.

Now, the vice of Chapter 31, as we see it, is very similar to the vice of the North Carolina Anti-Busing Law, struck down by this Court last term in North Carolina Board of Education v. Swann.

Chapter 31 would substantially impair, would be an obstacle to disestablishment of the dual school system in the Scotland Neck-Brawley area of this county school system. It would fence off most of the black students in that area from the traditionally white-only Scotland Neck School, and would fence off most of the whites in that area from the nearby, formerly all-black, Brawley School.

As the District Court said, it seffect would be to create a refuge from desegregation for white students of the Halifax County School System.

And the resulting projected 90 percent black enrollment at Brawley and 57 percent white enrollment at Scotland Neck School seems to us to bring into play a presumption against schools that are substantially disproportionate in their racial composition, that this Court last term said, in the other Swann case, applies in the context of disestablishing a dual system.

The Court of Appeals held that so long as this modification of the racial balance falls short of resegregation and is accomplished by means of the creation of a new school district, the Court should not interfere if there are legitimate educational purposes, and the primary purpose is not racial.

But we see nothing warranting this novel and difficult to apply test in the mere fact that the zoning here was accomplished by a new district line rather than by ordinary school assignments zone lines.

Q Mr. Wallace, do you disagree with the assessment of the courts below as to the purpose for which this was done, or are you saying, conceding that they're correct as to the purpose, nonetheless the legal result which you urge follows?

MR. WALLACE: Well, we think this inquiry into primary purpose is a very difficult one, is really irrelevant to how the case should be decided.

The District Court said it could not say which of the purposes it found was the primary purpose. The Court of Appeals, nonetheless, proceeded to apply its primary purpose standard, actually announced in the companion case, which is the next to be argued, the Emporia case.

We don't see that the fact that a new district line has been interposed rather than the ordinary method of assigning students within the district should bring a different test into play, than the test this Court has applied right

along in the context of school desegregation cases.

Last term, for example, the Court held, in Davis v. School Commissioners of Mobile County, that it was error for a Federal Court, in remedying a dual school system, to treat the eastern part of metropolitan Mobile an isolation from the rest of the school district. If a different result would have been required, had the State interposed a new district line cutting off that eastern portion, the principle of that case and of many of the Court's desegregation cases, would indeed be evanescent.

Q Well, Mr. Wallace, if, in the Mobile case, those had been two separate school districts, obviously the result would have been quite different.

MR. WALLACE: But what was before the Court was a single school district --

Q Yes. And what's before here -- before the Court here is quite a different problem. It's not quite so simple as you --

MR. WALLACE: Well, that's the question, whether it is really a different problem.

Q Yes.

MR. WALLACE: Because the State has now put a new district line in, while this district was in the process of being desegregated, and in the process of having the school system disestablished.

That's why I say the case would be the same if Alabama had put that line in in the metropolitan Mobile area.

Q With the same historical, contextural, and --

MR. WALLACE: Well, that's correct.

Q -- environment that this case has, you mean?

MR. WALLACE: That's correct. That the cases would be very similar, then, and if a different result would have been required in Mobile, had that change in State law been made, --

Q Well, that's the question before us, isn't it?

MR. WALLACE: And that's the question before the Court. But I was pointing out that it would mean that the principle that we thought was established in the Mobile case would be one that could easily be avoided.

Q I'm not sure I have your response clearly in mind, Mr. Wallace. But, see if I can get it. If, in the Mobile case, the area on the far side of the railroad tracks, that had been treated as a separate unit by the courts in the Fifth Circuit, if in that case that part of Mobile had been separated by lawful process, from the City of Mobile itself, then would we have factually a possible case to use here?

MR. WALLACE: A very similar case. If, in the course or in the process of desegregating that system, disestablishing the dual system that had been operating throughout that area, the State had interposed a new district line, cutting off that portion, a rather similar problem to this case would be



presented. That was the analogy that I was pointing out.

Q And that would be physically the same, however, factually in the two cases the change in Mobile would have had a very drastic impact on the school compositions, would it not?

MR. WALLACE: Well, that is certainly true.

Q Much more so than here?

MR. WALLACE: Much more so throughout the area as a whole.

Here the impact is very drastic on the relatively small number of students in the immediate area of Scotland Neck.

Q Do you call it very drastic here? What is the percentage impact?

MR. WALLACE: Well, the black students in that area have, by law, been excluded the only white-only school there, the only traditionally white school, and now 90 percent of them --

Q But that's not drastic in --

MR. WALLACE: -- would still be excluded.

Q Not drastic in numbers, though?

MR. WALLACE: Not in -- well, we're dealing only with a small number of students in this case. That's the fact of the case. The State chose to separate out an extremely small, little school district here. So naturally we're not talking about large numbers. But we're talking about

individuals with constitutional rights here.

Well, in our view, the test should be that of this Court's Green decision, when, in disestablishing a dual school system, more promising courses of action are open to the State, the State has a heavy burden to justify its choice of a less effective method.

Essentially the test would be whether a school assignment zone would have been properly drawn this way, in the absence of splitting the district up. Because the district was in the process of disestablishing a dual system.

And we think it plain that the burden on the State, under the Green case, has not been satisfied here. It is relevant, first of all, that the new Scotland Neck School District, with only 695 students, is far smaller than the State's own standards concerning the desirable and minimally acceptable size for school districts.

At page 12 of our brief we have set out the evidence in the record on that.

And this is made even more anomalous by the fact that both Halifax County and the Town of Scotland Neck are losing population, are decreasing in size, according to the 1960 and 1970 Census figures. It's not normally the situation where you'd be breaking up rather than consolidating school districts.

The purposes found by the District Court for Chapter 31 also fall far short, in our view, of an adequate justifica-

tion. More local control over the schools, if desired, can be achieved without selecting out so abnormally small a new district with so great a racial effect on the desegregation process in the immediate vicinity.

And the need for increasing school expenditures does not, in our view, justify fencing off the only traditionally white school and most of the white students from the other schools in the surrounding area, and making the improvements only in that school.

The only other purpose found by the District Court was prevention of anticipated white flight from the public schools. In Monroe v. Board of Commissioners, one of the three cases of the Green trilogy, this Court emphatically rejected the contention, and it was strongly made there, that fear of white flight can justify perpetuation of some aspects or vestiges of the dual school system. That holding, we believe, was soundly based on the teaching of Brown and of Cooper v. Aaron that community acceptance is not to be the measure of the constitutional rights of schoolchildren.

There's no reason that we can see to depart from that holding here. The respondents emphasize that they have submitted post-trial affidavits of school enrollment figures to show that considerable white flight has materialized in this district.

Q Am I correct in my recollection, Mr. Wallace,

that in the Charlotte-Mecklenburg opinion last term, we said that the danger of white flight is something that a District Court could quite appropriately recognize and try to prevent in its desegregation decree? The danger of resegregation.

MR. WALLACE: Of resegregation --

Q Which is what white flight causes. Am I wrong? I just don't remember it. I thought that I -- my recollection is that there were -- that the opinion addressed itself to that problem in passing.

MR. WALLACE: I thought that that was in the other context, that it wouldn't be an adequate remedy to set up a situation whereby anticipated rather minor changes in residential patterns would lead to quick resegregation.

Q I don't have all of the rather complicated facts in last year's -- in that school board in mind, and I haven't re-read it; but the transfer of those students out to the high school on the periphery of the community was approved by this Court as an appropriate action that the District Judge took. And his purpose in taking that action was to, as I remember it, to prevent white flight, which leads to resegregation. That's what resegregation means, isn't it?

MR. WALLACE: Well, that's -- I thought resegregation was largely a matter of action that the State has taken, that leads to resegregation.

Q Well, maybe we miss and maybe we don't agree on

the meaning of that rather new word, but I thought that it was a word that described a phenomenon, i.e., white flight, and the result of white flight.

Q Mr. Wallace, assume there had been no new school district here at all formed, but in the process of drafting a remedy the District Court had simply said that there would be an attendance district in exactly the same shape as Scotland Neck. Now, why would that have been improper?

MR. WALLACE: Well, because, as here you have these two traditionally 1 through 12 schools located only three-quarters of a mile apart. The blacks had all been assigned to one; the whites all attended the other.

The process of trying to desegregate and to dis-establish the duality of these two schools under this Court's decision is a process of trying to break down this overwhelming historical racial identification of the two schools.

It seems to us that when one of them is, because of the peculiar configuration of the assignment zone that's drawn, left with a 90 percent black population, and most of the blacks are excluded from the assignment zone to the white school, and the white school is going to be predominantly white, that hasn't broken down the racial identification of the two schools --

Q But you aren't --

MR. WALLACE: -- when other alternatives are readily



available. That was proposed in Green.

Q You aren't proposing any general rule, however, that in no circumstances, when a county is adopting a desegregation plan where the county is 80 percent black and 20 percent white, that there never could be, under such a plan, a school attendance zone with 50/50 white?

MR. WALLACE: Not at all. We're not contending for any principle of racial balance from one school to another. It's not a requirement --

Q It's just a peculiar fact --

MR. WALLACE: -- it's the particular facts here.

Q -- in Scotland Neck?

MR. WALLACE: There are obviously alternative means available that would be more effective in disestablishing the dual identification of these schools, as the white school and the black school. And no adequate justification has been shown for adopting this less effective method, which seems to us to perpetuate the duality.

Q Mr. Wallace, am I correct: Many years ago Scotland Neck was a separate district?

MR. WALLACE: Prior to 1936.

Q But you have an historical fact here which is not often present. Suppose it never had been enveloped into the county system, would your case be different today?

MR. WALLACE: I think it would raise very different

issues about the propriety of -- as a remedial matter of extending the remedy across long-established and long-observed district lines. Here the State has interposed a new district line within a district that was in the process of disestablishing its dual system.

Q You feel it would be a different case?

MR. WALLACE: It would be a different case. That doesn't necessarily mean a different result, but it's not a case that we are addressing here.

Well, in conclusion, I would just like to say, about the submissions that the respondents have made, the post-trial white flight that has occurred: of course this is -- we don't know where these children have gone, or for how long, or what they would have done had Chapter 31 been implemented. This is all assuming that these affidavits are accurate. But basically we believe that these affidavits should not affect the decision here, and that it is as important for this Court today, as it always has been, to reject the proposition that the course of appellate decision in school desegregation cases can be influenced by community resistance to desegregation decrees.

Whether that resistance has taken the form, as it has in some instances, of bus burnings or boycotts, or, as it purportedly happened here, taken the form of withdrawal of some of the students from the schools.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wallace.

Mr. Stein -- you're Mr. Stein?

MR. STEIN: Yes, sir.

MR. CHIEF JUSTICE BURGER: Well, Mr. Wallace had 25 minutes and you had 20 to begin with. I think he went somewhat over in time, so that has cut into the time allotted to you, Mr. Stein.

Mr. Marshal, have you separated out -- I think there's only about ten minutes left, is there not?

THE MARSHAL: Yes, sir; that was their agreement, when I spoke to them before Court, when I gave Mr. Wallace --

MR. CHIEF JUSTICE BURGER: Yes. You have about ten minutes left. I wanted to be sure we had that clear.

ORAL ARGUMENT OF ADAM STEIN, ESQ.,

ON BEHALF OF PETITIONERS IN 70-187

MR. STEIN: Mr. Chief Justice, may it please the Court:

I represent the petitioners in 70-187, Pattie Black Cotton and others, who intervened as plaintiffs in the District Court. They are black children and their parents, who had traditionally attended the Brawley School, and are the children who are most immediately affected in terms of their constitutional rights.

We think that what is most important about this case

is the facts, and we agree with the government that the most important facts in the case are those which show the impact of Chapter 31 in the Scotland Neck area.

The map behind me is an enlargement of the map referred to before at page 12b of the Appendix, which shows that impact.

Q It's -- specifically it's the impact on Brawley is it?

MR. STEIN: It's the impact on Brawley --

Q As well as on Bakers?

MR. STEIN: As well as on all the formerly black schools in the area.

Under segregation --

Q But isn't it primarily, when you talk about the Scotland Neck area, that involves the Scotland Neck area, doesn't it?

MR. STEIN: Yes, Mr. Justice Stewart.

Under segregation, the Scotland Neck School served this entire area for grades 1 to 12. Black, --

Q For white children?

MR. STEIN: For white children. Black children at the high school level from the same area went to the Brawley School. The other four schools were black elementary schools feeding into the Brawley School. And in the immediate area of Scotland Neck, black children went to Brawley School.

And in that situation the town lines of Scotland Neck had nothing whatsoever to do with pupil assignments. Therefore, you can see that the white children in the whole area, half of them, about 400 came into town, crossed the town lines; black children in the town crossed town lines to go to the Brawley School, located just across the town boundary. And indeed, all the white children in the city, in the elementary grades, also crossed the town lines because the junior high school campus of the Scotland Neck School was located just outside of the town line, down here, about the same distance from the main campus of the Scotland Neck School as the Brawley School is.

It was this situation which the State Department of Public Instruction, in its plan, sought to remedy. And the remedy proposed there was a very simple, neutral kind of assignment plan.

That is, instead of having two high schools to serve exactly the same area, one for white and one for black, and both of them too small under State standards, the Scotland Neck School traditionally serving 300 white children and the Brawley School traditionally serving about 600 children, the State proposal consolidated those schools.

So the plan, as modified, said that all of the children in this area, which was then designated District 1, would go to grades 10 through 12 at the Scotland Neck School, children in grades 8 and 9 would go to the Brawley School, and



the elementary children would be assigned according to neutral attendance zones as shown on the map.

Thus, there is an impact as well as the difference between what would happen at Brawley and Scotland Neck, because the elementary children who attend schools where the ratios reflect the residential patterns of the outlying areas, some more -- of varying ratios, would, under the State plan, go to high school at schools where the ratios would reflect the entire area.

However, if Chapter 31 is implemented, then they would go to the Brawley School, a school which was traditionally black and which would have a very much more -- much blacker ratio than the neighboring Scotland Neck. And if -- we would think that if there were pressures towards whites to flight in this situation, that they would certainly be accentuated on those white children, half of the children in the area, whoc would know that under Chapter 31 they would never be attending the traditionally white school.

I pointed out that the boundary lines were always ignored as to pupil assignment. We pointed out in our brief that, indeed, the boundary lines of the Halifax District were ignored to promote segregation, white, black, and Indian children regularly crossing the Halifax County lines.

Now, we think that the major impact of Chapter 31 can be seen in the impact on the Brawley School and on the

Scotland Neck School, the white and black schools, are clearly identifiable as white and black schools after Chapter 31 is implemented.

We would like to point out that a principal feature of this plan, of the secession, was the transfer tuition arrangement. That was known by the Legislature. That was publicly expressed in the newspaper. Representative Gregory from the area, who was the proponent, spoke of this in the press. There was no secret about that.

And the plan was to collect all the white children into the Scotland Neck School, and that, in fact, is what had happened when this case came on for the preliminary injunction hearing in the summer of '68. Something like 98 percent of the white children in the area, who had always gone to Scotland Neck School, were again going to go to the Scotland Neck School.

So the plan was for all of them; without the transfer, it's for half of them. But the impact, we say, is very substantial, nonetheless; and it's particularly substantial in terms of the interests of my clients who live in that area.

Q Well, we needn't -- for you to prevail, do we have to disagree with the Court of Appeals on whether the Legislature had any knowledge or considered the transfer plan?

MR. STEIN: No, Mr. Justice White. I don't think that that needs to be reached. But how was --

Q Maybe the 50/50 figure rather than the 90 percent figure is adequate for your argument, isn't it?

MR. STEIN: We certainly think so. But what we would say is that there is more. There are more facts suggesting --

Q Well, the Court of Appeals has found against you, didn't they?

MR. STEIN: But that was a finding contradicting a finding by the District Court.

Q Nevertheless, the Court of Appeals found contrary to what you're telling us?

MR. STEIN: That's right, they did.

And I would point out that the unit proposed here is by far -- would be by far the smallest school administrative unit in the State of North Carolina.

When Chapter 31 was passed, it was the first new unit to be created since 1953. And since 1953 there has been a great movement of consolidation of units in the State, serving State policies which hold that small units are inefficient, expensive, and don't produce quality education.

I would just ask the Court to take a look at the maps, so that you can see what the plan looks like visually. We would suggest that it is very awkward to create the segregation we complain of; that is, the Brawley zone looks like a doughnut, surrounding the Town of Scotland Neck.

We had understood that awkwardness and inconvenience

might be appropriate in moving towards disestablishing the dual system, but we would suggest that an awkward assignment arrangement is certainly inappropriate where that promotes continued segregation.

In conclusion, I would say that we think, as the United States has argued, that this case is controlled by the decision last term in North Carolina Board of Education v. Swann, and we would urge reversal of the Court of Appeals and affirmance of the District Court's injunction.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Stein.

Mr. Joyner.

ORAL ARGUMENT OF WILLIAM T. JOYNER, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. JOYNER: Mr. Chief Justice, and may it please the Court:

I had intended to emphasize the two basic facts that we think are very important here: No. 1, the quality of the community's report; and, No. 2, the proof of the unrealistic nature of the district plan, in that it has failed of its purpose as shown by experience.

Then I wanted to go into the analysis of the two plans presented to the District Court.

In view of the other arguments, and in view of some questions from the bench, I would like to speak on what I think is our position.

It's our position, No. 1, that as between the plans before the District Court, one I call the Scotland Neck plan and the other the District Court plan, even if there had been no danger of white flight, the Scotland Neck plan was superior as a desegregation measure and should have been chosen by the court.

If there's any doubt about that, it's our second position that as between the two plans, the Scotland Neck plan promised realistically to work and to work now, largely because of the community support.

The District plan would almost fail from the start.

Now, let me lay this as the foundations of our argument:

As I understand it, there is a great difference between desegregation and integration. And that the jurisdiction of the Court to take what is almost apparently a 180-degree turn from Brown, which says it's unconstitutional to assign by race or color. We say that it is unconstitutional not to assign by race, and that the answer is that there is found a remaining vestige of the evil of law-imposed segregation.

And that remaining vestige must be uprooted; and that the measure adopted to destroy that remaining vestige must have a realistic opportunity to succeed.

Now, let us see what the remaining vestige is in this case.



There's no evidence in this case of any effect or remaining vestige of State-imposed segregation except two things: In Scotland Neck, with a resident population of -- student population of 400 white and 300 black. In 1968-69, or before that, only approximately 39 black students had exercised their freedom of choice.

And about 325 white children resident outside of Scotland Neck had exercised their choice to come in to Scotland Neck.

Now, it's entirely possible, and we do not contest the fact, that because of that failure of freedom of choice was a mental attitude, a reluctance to enter a school in which the other race, another race was highly predominant. And that that mental attitude was in part, we concede, a remaining vestige of State-imposed segregation.

That was the thing to be attacked. And that the question to be decided by the District Court was whether the Scotland Neck plan or the District plan was better designed to change that mental attitude to be a corrective measure.

Our basic position is that the District Court had the opportunity to accept the Scotland Neck plan or reject it, and it rejected it; it had the opportunity to accept it. And had they accepted it, there would have been one school in the district that was truly a unitarian school.

Now, the opponents have said: You had a white school

in Scotland Neck and a black school in Brawley. We contend that that is not correct, that you cannot designate 57/43 as a white school, and that the probabilities are tremendously strong that the attendance would be approximately 50 percent.

Now --

Q It would have been -- it would be -- it would be the only school in the county, would it not, --

MR. JOYNER: Yes, sir.

Q -- that would not be majority Negro.

MR. JOYNER: Right.

Q That's correct, isn't it?

MR. JOYNER: And we say that that, with the community support, has a tremendous chance of success; and if it succeeds, it can be a marvel or it can be proof to the public that blacks and whites can work together successfully and in harmony to give quality education.

Now, a good deal has been said about the Brawley-Scotland Neck situation, and I want to address myself to that, that seems to be the principal contention of the other side.

Now, what was the failure, what was the wrong that was done? The wrong that was done by State-imposed segregation with reference to Brawley was that Scotland Neck was using the Brawley School to take care of the black residents, pupils in Scotland Neck.

Q To do what?

MR. JOYNER: To -- for the -- in State-imposed segregation the school in Scotland Neck was attended only by whites, and the black peoples living in Scotland Neck went to Brawley. And Scotland Neck did make use of Brawley to that extent. It didn't have to put up two schools within its borders.

Now, if that is the wrong, then that wrong was completely cured by the statute. Because by the statute and after the First Further Answer filed by the Scotland Neck Board, the plan of the board announced in that answer and proclaimed by advertisement was to take all of those 300 black students that had been going to Brawley, most of them as a part of the remaining vestige of State-imposed segregation, and assign them to Scotland Neck. And to assign to Scotland Neck its resident whites.

And the transfer situation doesn't enter into the constitutionality at all, because the board announced in its answer and in its advertisements that the transfers in and out would be according to a plan approved by the court.

Now, the statement was made here that the Brawley people were excluded from Scotland Neck. They're not excluded from Scotland Neck at all. They have the right of freedom of choice to come in to Scotland Neck in accordance with such plan as the District Court may approve.

Now, something has been said about presumptions. As

I understand the Swann case, there are two types of presumptions. No. 1, that there is a presumption based on disparity of racial imbalance; that there is a remaining vestige. That is a presumption.

Well, that presumption has been followed here, because we have accepted that and we have sent forward a plan adopted by the statute to correct that situation, so that presumption has been met.

There's another presumption, and that is a presumption of bad faith on the part of members of an organization where there has been State-imposed segregation.

Now, we contend that that presumption has been overcome by the unchallenged great weight of the testimony, not -- there's no contradictory testimony as to the good faith of the members of this community.

Let me run very briefly over that.

In the testimony of Mr. Powell -- I can give you that, it's in the Appendix -- a resident of Scotland Neck, a black member of the Board, he testified that he came back from New York, where he had an important job, a good-paying job in the Post Office Department, to accept employment in Rocky Mount and to live in Scotland Neck, some 16 miles away --

Q How many miles?

MR. JOYNER: Twenty, 20 to 25 miles from Rocky Mount.

And significantly he said he came back in almost these words: Because he wanted to find better schools for his children. Because you could have more influence on the schools in a small community. And because the people of Scotland Neck were interested in improving the quality of their schools.

That's also in evidence in the deposition of Mr. Henry Lee Harrison, taken by the government, that the people of Scotland Neck have never rebelled against desegregation, they have never fought it, they have never had any incidents; they have had excellent race relations. But they've been tremendously concerned about the quality of their schools.

And one of the concerns about the quality of the schools was the threatened -- or the white flight. The white flight, flight of white students.

Let me emphasize that I think the record supports the conclusion that their fear of white flight and the occurrence of white flight was not due to a reluctance to associate with members of the other class. That fear of white flight was that it would impair the quality of the schools. And the white flight is occasioned and caused primarily by the fear of the declining quality of the schools.

Now, he testified that the people in Scotland Neck did not think white flight was any answer to the situation. They do not think --

Q Well, white flight in this case would not have



been a move to the suburbs or to a different area, it would have been sending children to private schools, is that it?

MR. JOYNER: That's right. And the private schools, they think that private schools are not the answer, that private schools pose a great threat to the public schools. That wherever there is massive white flight by any group of children from the public schools, the public schools must be impaired.

Now to run very briefly over some of the things. The question of transfers, as I said, is out. The suit against -- this suit was started in June. In August there was filed a -- no, in August, I believe it was the 16th, this defendant, Scotland Neck City Board of Education, was made a defendant, joined as a party for the first time and it had to appear before Judge Larkins and Judge Butler on a motion for preliminary injunction in four days.

It filed a very hastily prepared answer. They got into the court and they found that there was a very serious attack on the question of transfers. And they were so anxious to establish a quality school that they did not see fit to undertake any litigation on that.

With permission of the court, they filed a further amended answer, and they said plainly in that amended answer, which is Exhibit A to our brief, that we propose to operate a school that will embrace all of the students, black and white,

resident in Scotland Neck, and transfers in and out will be made in accordance with a plan to be approved by the court.

And in that First Further Answer they requested the court to retain jurisdiction in order that it could supervise those transfers.

And in Judge Larkins' opinion, he said that they anticipated -- would anticipate no trouble in handling those transfers.

The injunction put a freeze on the money that had been collected as a special tax. The committee got permission of the court to advertise or to solicit for contributions to defend the lawsuit.

The Board then published an advertisement, a three-page advertisement, in which it gave a blueprint of its proposed operations. It made it public. It announced to the public that it was their intention to do what the First Further Answer said, and it was their intention to conduct a unitary school without any prejudice whatsoever between blacks and whites, and to conduct a school in which there would be no discernible lines drawn between them.

That also is a blueprint of good faith that was published by the group.

More on the question of good faith: When the case came up for final hearing before Judge Larkins and Judge Butler, Scotland Neck examined Mr. Shields, the Chairman of the

Board, and he testified as to the quality of the race relations in the community. He testified as to the intent of the Board. He was examined by Mr. Josey about everything that was said in that advertisement -- which, by the way, is Appendix B in our brief.

And he testified that he and every member of the Board truly meant what they said, and that they continued to have those purposes.

He was turned over to the other side to examine, and his examination is in Exhibit C to our brief, and at the end of his examination about the intent of the Board -- that's on page 50 of our brief, in our Exhibit C -- Mr. Josey said: All right, your witness.

Mr. Kennedy, representing the Department of Justice, said: No questions, Your Honor.

Judge Larkins asked him one question: Did you receive any response to this?

And the answer was he received a very favorable response.

There were no other questions.

Mr. Josey then had sworn the other four members of the Board, and he asked each of them if they had heard the testimony of Mr. Shields, and they said -- they didn't answer in that way. He asked if they had heard the testimony and agreed with what he said, and agreed with the advertisement

and what he said about the advertisement, would they hold up their hand. Everyone of them held up their hands, as shown by the record on page 50 and 51 in our brief addendum, addendum to the record.

And again Mr. Josey tendered them for cross-examination and there was not a question asked.

They are committed to the policies set forth in that advertisement.

I also point out with reference to that, that in this case there was not introduced by the opponents, by the petitioner here, one witness who questioned the good faith of the Board. And what it said in its First Further Answer or in what it said in its advertisement.

As a matter of fact, there was not introduced one witness resident in Scotland Neck or the Scotland Neck area that complained of the Scotland Neck plan or expressed opposition to it.

Now, let me go back -- well, the conclusion I would draw from that is, No. 1, that that uncontradicted evidence, unchallenged evidence, and there is no evidence in the case to the contrary, proves completely the good faith of these men who are trying to achieve quality education in Scotland Neck, and overcomes the presumption of evil referred to in the Swann case of a desire to perpetuate segregation, or any evil of that kind.

Q Mr. Joyner, I'm interested in what you think about this: Let's assume for the moment that all of this county had been either all-black or all-white or at least so much one way or the other that there really wouldn't make much difference. Would Scotland Neck still have made itself into a separate scholl district because of the desire for quality education and in the sense that by making itself a separate school district it could insure that more money would be spent on its schools than if it were part of the county?

MR. JOYNER: Your Honor, that's not merely a question of opinion by me, but there is ample evidence in the record to that effect, and there's no evidence to the contrary.

I'll let Mr. Josey answer that with more certainty than I do.

But in my opinion, based on the record, there is no question but that Scotland Neck would have asked for a special district entirely irrespective of desegregation, because they were not getting sufficient money to support their school. They needed more money. And Judge Larkins says in his opinion that they had not been getting what they regarded, and what the court found --

Q And why not?

MR. JOYNER: -- supported the evidence, an equal break from the county.

Q Why not?



MR. JOYNER: The county controlled most of the funds. And the county did not have a special tax, and they did -- the -- as I understand it, Mr. Josey can answer this better than I can, they get from the county an allotment by pupil, and they would do that if they were a special district; but the thing that they wanted was the special tax. That would enable them to employ better teachers --

Q Well, now, in North Carolina, after Scotland Neck becomes a city, does it remain subject to the county school tax? Does the property in the city remain subject to the county school tax?

MR. JOYNER: So I understand. It remains subject to -- the property in Scotland Neck will pay a county school tax that goes to the county, and Scotland Neck's proper proportion part is sent back to Scotland Neck. But this tax would be in addition to that.

Q You mean that -- you mean the additional --

MR. JOYNER: So this district doesn't take any money off -- any property off the tax for county support.

Q Did they give up?

MR. JOYNER: Sir?

Q Did Scotland Neck, in the separate school district, give up any State resources by this action?

MR. JOYNER: I'm not sure that I understand that.

Q Well, grants from the State. Were there any

grants which they received from the State or from the county system?

MR. JOYNER: Oh, I understand that the county school tax, which is paid by the -- on the -- it's a property tax on the property throughout the county, including Scotland Neck. And that Scotland Neck receives not the portion of the tax that it pays, but it does receive from the county an allocation for each student enrolled in the Scotland Neck School.

And that would still continue, that tax would still be paid, and Scotland Neck would still have a special tax.

Let me just say one thing about Brawley.

This Court has said that the objective is to uproot all vestiges of remaining segregation.

Brawley primarily is a rural school, it's for rural students; Scotland Neck primarily is a school for the children in that area of the city.

Now, the use of Brawley, as I have said, is that it took care of the Scotland Neck students. But now Scotland Neck is not sending a one to Brawley, Scotland Neck is enrolling -- under the Scotland Neck plan, would enroll every one of them in its own schools.

And that is the value of that plan -- and my time is nearly up, so I have to be quite brief. The plan is a complete establishment of a unitary school in Scotland Neck. And there will be no black students sent from Scotland Neck to Brawley.

And Brawley still has a freedom of choice to enter the Scotland Neck schools. But -- and the other two things I'm saying:

No. 1, that the Scotland Neck plan as being a better plan than the District plan does set up one school that can be a model, and it doesn't assign a single student to its schools outside of the community in which they live. They all would come in. So the plan would not cause the irritations and the resistance that the Brawley plan would cause.

I haven't time to go into this, Mr. Josey may go into it, but it's in our brief.

We contend that the -- and this part of it is set forth specifically in our brief -- that the elements of advantage the Scotland Neck plan would have, even if there would be no white flight.

Bear in mind it's our view that the white flight is caused by the loss of confidence of the people in maintaining the quality of their schools, that they fear that to get a quality education they must go to private schools; and that's the danger that exists everywhere.

But, as a matter of fact, whether that's true or not, the Scotland Neck plan is preferable because the Scotland Neck plan certainly would have a greater opportunity of deterring white flight than would the District plan.

And I think that my time has just about expired, and

I would like to turn the rest of it over to Mr. Josey.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Joyner.

Mr. Josey.

ORAL ARGUMENT OF C. KITCHIN JOSEY, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. JOSEY: Mr. Chief Justice, and may it please the Court:

I would first like to refer to the question that Mr. Justice White adverted to concerning the tax structure and the effect if the Scotland Neck bill was declared unconstitutional.

The tax is levied uniformly throughout the county on an ad valorem basis, then each separate school unit, administrative unit, is assigned their proportion of that county-based tax on a per-pupil ratio.

Now, in addition, each separate school district, and I think this is true throughout the country, in most cases, have an additional or supplementary tax which they, themselves, levy, and which they, themselves, receive. So therefore separate units, separate administrative units can and do get a supplementary tax plus, by law, must get their per-pupil basis of the county tax.

Now, that's one of the problems that this school in Scotland Neck faced from the very beginning, from 1936 until date. They did not receive their per-pupil ratio of the county tax. That was one of the problems.

Q Well, why didn't they? I thought you said --

MR. JOSEY: Because they were not a separate unit, they were part of the county, and the County School Board, once they, the county school system, gets their per-pupil basis of the county tax, then of course -- and this is proper -- the school board can spend that money within its unit.

Q Yes.

MR. JOSEY: Any way it wants to.

Q Spend a lot more money on this school than on that?

MR. JOSEY: Yes, because -- and of course in the early days, in 1936, Scotland Neck had prior to that time been a city and they had built their own schools. And they were in better shape, frankly, than the schools throughout the county. And for ten years, fifteen years or so, those funds that would normally have gone to Scotland Neck went to the other parts of the county. And we raise no point about it.

Q Well, Mr. Josey, then Scotland Neck's complaint was not simply that Halifax County was not raising enough money over-all for education, but that of the money it did raise Scotland Neck wasn't receiving as much per-pupil or per-school as other areas in the county?

MR. JOSEY: That's part of it, but, Your Honor, it is true that Halifax County schools, as a whole, did not receive an adequate amount. We are the first to admit that.



Q Is there any North Carolina procedure to make them do it?

MR. JOSEY: I'm not sure -- there is no procedure that I know of to make them tax their people like they should.

Q I didn't say that. To make them give the amount of money per-pupil that was involved.

MR. JOSEY: Mr. Justice Marshall, I don't think so, and I'm not sure that that would be the proper --

Q Well, is that a violation of the law or not?

MR. JOSEY: Well, it -- I think over a period of time we may be able to bring a lawsuit and enforce, and make them give us at least more than we've gotten. However, --

Q Well, you say this has been going on since '36?

MR. JOSEY: It has. It has.

Q Well, how long does it take to get a lawsuit started?

MR. JOSEY: Well, I think we could have; I don't believe that --

Q Well, why didn't you think of this plan in '37?

MR. JOSEY: Well, of course, the reason I assume that they went into the city -- went out of the city system because during the Depression we just didn't have, we couldn't levy that supplementary tax, and we fell back into the county system. In fact, many units did throughout the State, because of an over-all State law that permitted them to go into the

county system, unless they requested to stay out. Now, that -- and this, of course, has been the problem.

As a matter of fact, the classrooms in Scotland Neck, the main classroom buildings, one was built in 1903 and the other was built in 1923.

Q Well, your major complaint seems to be that the county was not collecting enough money from taxation to run a good school system; that's it, right?

MR. JOSEY: Twofold. That is fundamental -- the first.

Q Well, all right, let's stop with that. And you couldn't, you didn't have enough votes to remedy it at the polls, I gather?

MR. JOSEY: That's correct. We were a very small part of the county. The county is approximately 55,000 in population, and we're approximately 3,000.

Q I take it that from here on Scotland Neck wouldn't be very enthusiastic about raising -- if the Scotland Neck plan were adopted, and there was a separate school district there, Scotland Neck wouldn't be too enthusiastic about raising the overall county tax rate for schools, because as long as this can't stop them, that property remains subject to taxation.

MR. JOSEY: Well, of course, I think we would. And I think we have shown in our -- in the facts of this case, that

we would be interested. Because we would not -- we are limited --

Q But you would be getting -- you'd be getting back more from the county.

MR. JOSEY: Well, we'd be getting our share of it, our per-pupil ratio, which we've never gotten.

Q I see. All right.

MR. JOSEY: Now, the other question I think that came up with Mr. Joyner was: Did we, in fact would we have, had it not been for integration and the forced integration, have asked for a city separate unit. As a matter of fact, in this case and in the facts of this case, it is shown that in 1965, and as early as 1963, the plans were laid for separate unit. And in the Legislature of North Carolina in 1965, and this was focourse before Green, and this was a time when there was, admittedly, no integration of the schools there, and no thought that it would have to be integrated.

We went to the Legislature and introduced a bill, and it passed the House, and the Senate -- and this is in the record. It was felt very strongly that the rural residents in the vicinity of Scotland Neck defeated that bill because they didn't want to raise their tax. The people in Scotland Neck have been fighting this problem certainly for many years.

Q Mr. Josey, there's nothing unique about this in any part of the country, is there? Isn't it generally true that

the people in the towns are prepared to spend more money for education and other services than people in the rural areas?

MR. JOSEY: I certainly think that's true, and it's been true --

Q It's just as true in the northwest part of the country, I should think, as in the southeast.

MR. JOSEY: Yes, sir. It certainly is true in our area. I've been a School Board attorney for some time. And it -- for instance, in the 1967 county school bond election, the only school bond election that's ever passed in North Carolina -- in Halifax County since 1936. The school board people and the school -- the leaders in the whole county, after a vigorous campaign by the school authorities, this bond issue passed with a scant countywide majority of 388 votes; countywide.

In general, the rural areas of the county voted against this bond issue. And this is in Appendix 933.

Q Mr. Josey.

MR. JOSEY: Yes, sir.

Q Under North Carolina law, does the school board, County School Board members have some discretion as to how they will spend money collected by the county tax among the various schools? They aren't required to make a flat per-pupil allocation and spend exactly that on each school per year?

MR. JOSEY: That's correct. They do not. And, of

course, as I explained to Mr. Justice Marshall, I think they have to do that, because, after all, some places in the county and no doubt, and I think this is true, Mr. Justice Marshall, in our county there's no question that in 1936, 1940, 1945, maybe 1950, the Negro schools were in deplorable condition. And I am convinced that most of the money, certainly in those early days, went for the improvement of Negro schools.

There were holes in the floors; the pot-belly stoves, and those -- there have been considerable improvements.

Q You don't have to spell it out for me.

[Laughter.]

MR. JOSEY: Well, I'm sure -- so, in the first ten years, fifteen years, the people of Scotland Neck knew that, and the people of Scotland Neck did not complain. And I'm confident that that's the reason, and basically no lawsuit was brought.

But this thing kept up for over thirty years.

Q Mr. Josey, how is the Board of Supervisors of the County elected?

MR. JOSEY: They are elected by a countywide vote. And this is another problem, Your Honor. You see, there are two city systems in our county already: the City of Roanoke Rapids, which is very much larger than any other city; the city of Weldon and surrounding area has a city system, and they -- those two city systems together basically have 50 per-



cent of the vote in the whole county.

Q Is Wilson in the same area?

MR. JOSEY: No, sir. It's in -- Wilson is in Wilson County, which is adjacent to us.

Q Do the residents of those two cities vote for the County Board of Supervisors members?

MR. JOSEY: They do, and that's very unfortunate. But they, you see, can swing, and they do swing the vote to the County Board of Education members up in that area of the county. We have --

Q Is the County School Board elected by popular vote?

MR. JOSEY: It is.

Q If I could --

Q Do they come from districts or from the county at large?

MR. JOSEY: There are no physical districts. It's been traditional as to generally where they run from; but there is no district. It's a Statewide -- it's a countywide vote. We have had one member on that board out of five or six or seven -- seven-member board, I believe, for about, since 1936. And one member out of seven or eight just does not have the power to get accomplished what --

Q You have a countywide vote both for the Board of Supervisors and the School Board?

MR. JOSEY: Now, we -- when you say the Board of Supervisors, I assume you mean the County Commissioners?

Q I'm thinking about the tax, whatever body it is that levies the tax.

MR. JOSEY: Yes. That's the County Commissioners. And when you said Board of Supervisors, I didn't quite appreciate that; ours are called County Commissioners, which I assume you're referring to. Those are elected by districts, on a population basis.

But, you see, we are in the end of the county that is very sparsely populated and we do have one, we do have one member of the Board of County Commissioners. He doesn't live in Scotland Neck, he lives out on a farm outside.

And there again, you see, the rural -- he's a farmer, and he's the one that's going to suffer the taxes.

Q Well, didn't you tell Justice Powell that the County School Board is also elected?

MR. JOSEY: It's elected, yes, sir; countywide but not by districts.

Q Yes, county at large.

Q It's elected at large and your Commissioners are elected by districts, and Scotland Neck is in one district?

MR. JOSEY: Yes, sir.

Q How many members of the Board of County Commissioners are there?

MR. JOSEY: There're five. Well, they just changed it this past Legislature to six, which weighted it again in the populous area up near Roanoke Rapids.

Q Well, have there been bond issue proposals in the last twenty years?

MR. JOSEY: There have, and the only one that passed was the 1957 bond issue. And there have been others, but they have been defeated.

Q Well, how -- have the two major cities that you're talking about as controlling 50 percent of the vote, I take it the bond issues must have been defeated in those cities, or they would have carried?

MR. JOSEY: When those two cities and those two systems, particularly Roanoke Rapids, when it gets ready for some money on a bond issue, then we're going to be able to pass it. And if they say no, they're not ready for it -- and, after all, they are getting a supplement, you see.

Q And how about the school, is the school tax a separate item on the tax bill? I mean, is it figured separately? Does the School Board certify to the County Commissioners a certain assessment?

MR. JOSEY: Yes, that's correct.

Q So the Commissioners don't have the -- maybe they have the power, but effectively it's the School Board that sets the tax rate?

MR. JOSEY: Oh, no, it's the County Commissioners. And there the County Commissioners sets the rate of -- and they set the budget.

Q They don't listen to the School Board as to how much --

MR. JOSEY: Well, they listen, but how much attention they'll pay to them, Mr. Justice White, is very problematical.

As a matter of fact, the County Commissioners, immediately after the 1957 bond issue, instead of leaving the capital outlay, school tax rate, at 60 cents on the 100, instead of doing that, which they had promised the School Board they were going to do, they reduced it down to 27 cents. And it's never gotten back up. It's up to 29 cents now. So it's less than half of what it was in 1956, because of this school bond issue, and in that issue.

Q Do you know how much money per-pupil is spent, let's say, in the major cities you're talking about, those two, do you know how much per-pupil is spent?

MR. JOSEY: We had those figures, and they are somewhere in -- I'm not sure about the average.

Q Is it substantially more than per-pupil outside?

MR. JOSEY: There's no question about it.

[Laughter.]

There's no question about it, the cities put more into education than the rural areas. And that's, I'm sure,

true throughout the --

Q So that the people in those two cities are taxing themselves for schools at a higher rate than the people in the county?

MR. JOSEY: There's no question about it, yes, sir.

And, you see, this bill that is now before this Court levies a 50-cents-per-100 on property value in the city of Scotland Neck. That's the highest percentage by North Carolina law that the Scotland Neck citizens could --

Q That would be in addition to the county tax?

MR. JOSEY: Yes, sir, that would be in addition to the county tax.

Q Is that comparable to the extra rate in the other two -- in the major cities?

MR. JOSEY: It's more than any of the other two cities. It's more than any -- in the 1957 bond issue, the -- even though Scotland Neck voted for it and had almost half of the total county majority, if Scotland Neck had been a separate unit at that time it would have gotten \$190,000. That is, based on the per-pupil ratio.

As a matter of fact, not one dollar of those funds were ever spent in the town of Scotland Neck. Not one dollar.

Then in 1963 there was a State bond issue, and that's the only State bond issue, capital outlay State bond issue. The Halifax County schools got approximately one million dollars,



Not one dollar of this money was ever spent in the town of Scotland Neck.

And of course at that time the people began, as Mr. Justice Marshall suggested, to get disappointed and upset, and they then, in 1963, drew up a bill, and they introduced it in the Legislature.

Now, some of the -- the people have had a long fight with their schools. They've made every effort to upgrade their schools. They have certainly not been -- I'm not saying that they were real happy with the Brown decision, I'm not saying that they were happy with the Green decision, but the town of Scotland Neck and its citizens, and I think it's abundant evidence to that effect, certainly were willing to face that problem realistically.

Q What's Scotland Neck going to do with a school the size that the school will be without the transfer plan?

MR. JOSEY: Well, if Your Honor please, there are schools in the State of North Carolina that are approximately similar in size, who, in accordance with all rankings -- and this was part of the record -- are in the top in the State.

Now, as a matter of fact, Halifax County schools is 160 -- out of 160 units is the bottom in the whole State.

Q You mean qualitywise?

MR. JOSEY: In number of students that go on to college. That's just one indication of the academic rating of

the schools of Halifax County; is 160 out of 160.

Q But what's the capacity of the school that you have in Scotland Neck?

MR. JOSEY: Approximately 750, approximately the same amount that we have proposed for the students. So with 700 --

Q Without the transfer plan, without that, how many students will there be?

MR. JOSEY: Approximately 700.

Q Well, with the transfer plan, how many? A thousand?

MR. JOSEY: Well, with the transfer plan, I --

Q But your transfer plan has been stricken down?

MR. JOSEY: It's been stricken.

Q And so the whites who were going to come in, or anybody else who was going to come in, won't be coming in?

MR. JOSEY: I'm sure that's true. There will be a very limited amount of transfers.

Now, the District Court, in its opinion, stated that it would have no difficulty with this transfer, that it could, and it proposed two or three different possibilities. One, that would let one black, one white come in. In other words, keep the balance.

Q Well, will the --

MR. JOSEY: But I don't know that the transfer plan is necessary at all. Just lock them in and lock them out.

Q Well, I know, but will your 50 cents -- can you -- I suppose you had planned on a thousand students?

MR. JOSEY: I assume that there --

Q Well, if they planned on a thousand students and it would take 50 cents to run the school with a thousand students, what are you going to do with only 700 enrolled? Is it cheaper or --

MR. JOSEY: Well, that would be that much more per-pupil.

Q -- more expensive?

MR. JOSEY: In other words, we weren't going to get, but --

Q I know, but you were going to charge for the --

MR. JOSEY: Well, that charge would certainly not take care of the education of students.

Q So you're going to save money?

MR. JOSEY: We'll have more per-pupil, that's correct.

A summary, which we contend describes attitudes and the hopes of the people of the town of Scotland Neck, is candidly expressed in the deposition of Frank Shields, Chairman of the Scotland Neck City Board of Education, in answer to a question propounded by the government's attorney. And I'd like to quote him. That's Appendix page 436.

"I think that the people in Scotland Neck, both Negro and white, are moderates. In my talking to people,

they have felt that integration was inevitable. I would have to say that the thinking of -- I don't like the word progressive. But the people that really consider problems ahead of their actual taking place have felt like we ought to be making some preparation for the two races attending the same school. And I have personally felt that when you involve something as large as this county, that there is going to be a lot of rough road head. Now we have not had any demonstrations here; we have not had any boycotts here; as far as I know there has been no friction between the two races, but I could not say that about any other community in Halifax County.

"And I personally have felt that if folks right down here could go ahead and integrate and get it over with and get on back to education, that it would be effort well spent. I was aware of, and was in agreement with, Mr. Harrison when he asked for an integrated high school down here."

And that was in 1966, before Green.

"I felt, and I wasn't by myself; there were others that felt, well, in this way we can go ahead; we will be right; we can go ahead with education. So I am sure that in our discussions, and I felt like this was, we had tried very method that I knew of to try, within the county, to try to go ahead and in this end of the county -- I'm not talking about independently -- but for us to go ahead and move on into integration. And I felt like this setting up this school system would

bring us in compliance with the law and we could go ahead without interruption toward education."

We contend that the two-judge District Court, after several days observing this type of witness, and after sharply questioning them personally, concluded that the Scotland Neck city system could and would be operated in a completely non-discriminatory manner, and for the betterment of the education of its students.

In its findings of fact it quoted the Halifax County School Superintendent as saying that the interim plan, which the Court eventually ordered, could still be implemented if the constitutionality of the Scotland Neck district was upheld.

"And that Halifax County would still get the same amount of money per-pupil from the State and from local sources in the county, and that the county would have an even better pupil-teacher ratio in certain areas of instruction."

The Court further added, quote: "If the school district itself was found to be constitutional it would not be difficult to fashion an acceptable transfer plan by either limiting transfers in and out such that the black-white ratio would be the same after accepting transfers, or by accepting an equal number of blacks and whites." End of quote.

We earnestly contend --

Q This is this voluntary transfer business?



MR. JOSEY: No, this would not be voluntary, this is -- there would be no transfer authorized --

Q You mentioned it.

MR. JOSEY: -- except by the District Court. And I assume that they -- that we have agreed in our answer that whatever plan that we would have of transfers, it would be submitted to the Court and here he indicates one possibility would be --

Q Well, the only question I'm asking is --

MR. JOSEY: Yes, sir.

Q -- is this voluntary or not?

MR. JOSEY: It's not voluntary on our part. We --

Q I didn't mean voluntary on your part. I meant voluntary on the students' part. Which we've passed a few decisions about, that voluntary plan.

MR. JOSEY: No, this would definitely not be a free transfer plan, Your Honor, as I see it. It would be whatever the Court demanded or required in accordance with the decisions that this Court has set down.

I'm not sure what it would be, and I'm not sure that the District Court knows yet.

But we earnestly contend --

MR. CHIEF JUSTICE BURGER: Your time has expired. Just draw it to a close, counsel.

MR. JOSEY: All right.

We earnestly contend that the North Carolina Legislature and the public school leaders of the community of Scotland Neck have presented a plan which will best accomplish, in a realistic manner, the letter and spirit of the mandate to dismantle the remaining vestiges of law-imposed segregation, root and branch; and will, at the same time, improve the quality of education.

What more does the law demand of its citizens?

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:33 o'clock, a.m., the case was submitted.]

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