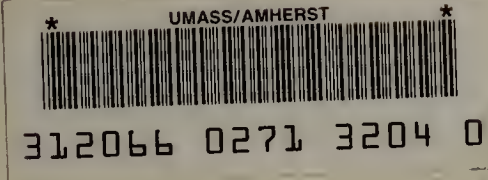


MASS.
ED 21.2: B656

RACIAL FUNDANCE

Dept. of Education.



Report and Recommendations

of

Louis L. Jaffe, Esq.,

Appointed by the State Board of Education
to hold a hearing ordered by the Supreme
Judicial Court in a case shortly entitled:

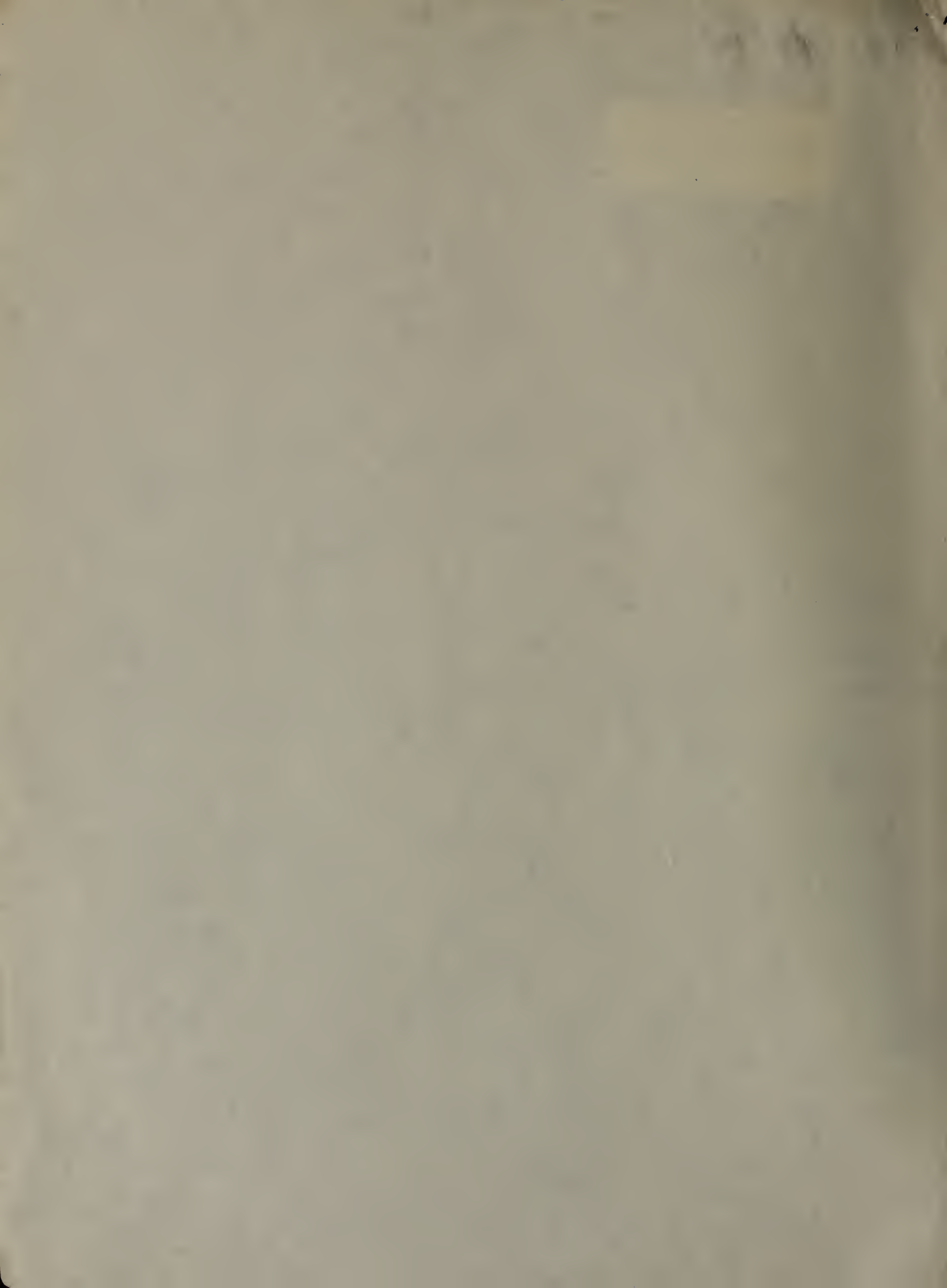
The Boston School Committee

v.

The State Department of Education

Government Documents
AUG 15 1973
University of Massachusetts

May 28, 1973



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

THE BOSTON SCHOOL COMMITTEE
and
THE CITY OF BOSTON,
Petitioners

vs.

THE STATE DEPARTMENT OF EDUCATION
and
THE STATE TASK FORCE ON
RACIAL IMBALANCE IN BOSTON,
Respondents

HEARING OFFICER: Professor Louis L. Jaffe, Esq.
Harvard University Law School
Cambridge, Massachusetts

APPEARANCES:

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and South Boston Residence Group; and Patricia Ranese of Com-
munity School Council; and Virginia Sheyhi of South Boston
Education Committee.

Mary Welby, representing 216 members of the St. Thomas Aquinas
Educational Association and 24 individuals of Jamaica Plain.

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General Introduction

In School Committee of Boston v. Board of Education, 292 N.E.2d 870, the Supreme Judicial Court on February 15, 1973 ordered the State Board of Education (hereinafter, the Board) to begin hearings no later than March 19, 1973 with respect to the duty of the School Committee of Boston (hereinafter Boston or the Committee) and the Board to develop a plan for racial balancing pursuant to and satisfying the provisions of General Laws, c. 71 §37C and 37D and c. 15 §1I. The Court made it clear in this decision and in its earlier decision in the same matter on February 2, 1973, 292 N.E.2d 338, that the parties were under obligation to develop a short term plan for eliminating racial imbalance. By its words and its actions it indicated the urgency of the task. It noted that the statute was passed in 1965 and that in February 1973 there was still no effective plan. The Court observed in the earlier case, 292 N.E.2d 341 et seq., that under the first racial census in October 1965 there were 46 out of approximately 200 schools which were racially imbalanced. In 1967 the Committee submitted a plan approved by the Board called the "First Stage Plan" chiefly relying on new school construction as a long term solution and on Metco, Exodus and open enrollment for short term relief. In June 1968 the "Second Stage Plan" was submitted to and approved by the Board and in May 1969 a "Third Stage Plan," both of which were similar in their general character to the "First Stage Plan." The October 1969 census showed 62 imbalanced schools. The October 1970 census showed 64. On June 15, 1971 Boston submitted its "Fourth Stage Plan" which was rejected by the Board on June 22, 1972. "In effect," said the Court, "the 'Fourth Stage Plan' was a report on Metco and Exodus, a report on the balancing of newly constructed schools, districting for the Lee School, a progress report on the construction program, * * * and a lengthy proposal for 'metropolitanization'." The Superior Court had also found that "the Fourth-Stage Plan, so-called . . . is not a plan to eliminate racial imbalance within the meaning of G.L., c.71, 37-D," Decree of Superior Court, p. 57. The October 1971 census showed that 65 to 67 schools were imbalanced and that 79% of non-white pupils attended imbalanced schools.

At one stage of these proceedings Boston brought an action against the Board alleging that the Board had acted arbitrarily in withholding State school funds from the School Committee under the Racial Imbalance Law. The Board filed a counterclaim demanding that Boston be ordered to file a plan to eliminate racial imbalance. The Superior Court judge upheld the claim of Boston but also granted relief to the Board

directing Boston "to develop a plan of short-term measures toward the end of achieving maximum progress in the reduction of racial imbalance" Decree, p.74. The Supreme Judicial Court affirmed the actions of the trial court in both of these respects. It disapproved of certain specific orders of the Superior Court as being piecemeal attempts to eliminate racial imbalance. It said (292 N.E.2d at 348), "Particularly in light of the fact that the trial judge has ordered development of a comprehensive short-term plan, which is presumably to take effect in the 1973-1974 school year, we think it is inappropriate for the trial judge to attack the problem piecemeal.

"Given the probable complexities of balancing these schools, and the inevitable impact of such redistricting on other schools, we believe that such action should be taken as part of the general plan to be developed by the parties. . . ."

On November 6, 1972 Boston filed with the Board a "Short Range Plan Toward Elimination of Racial Imbalance in the Public Schools 1972-73." In the meantime the Board in October had appointed a so-called Task Force to develop a short term plan. The Board rejected this plan on November 9, 1972, and on November 16, 1972 formally adopted its own recommendations (Ex.30) which were submitted to Boston on the same day. On that day both the Board and Boston were ordered by the trial judge to appear before him on November 17th to review the Board's plan. Subsequently, on November 10, 1972 the Committee met at the request of the judge and voted to reject the Board's plan.

On December 18, 1972 the judge entered an order holding the Board's plan to be in violation of the statute. He found some of the districts to be "too large" and some districts "gerrymandered." There had been, he held, a failure to consider the concept of "neighborhood" and to take safety into account. The Supreme Judicial Court set aside his decision on the ground that the Board of Education rather than a court should make the record on the basis of which either the Board's decisions concerning the Committee's plan or its recommendations were to be evaluated for consistency with the statute.

The Court, as already noted, ordered that hearings should begin no later than March 19, 1973. These hearings said the Court "may deal with the board's plans as presently formulated, or the board may see fit, since more current and more specific data are apparently now available, to create a new and more revised plan. The hearings should also consider the board's rejection of the committee's revised plan (a) by establishing the basis of the board's determination that the plan did not satisfy G.L., c.71, §37D and (b) by establishing the basis of any decision of the board that the committee's factual determinations were not themselves supported by substantial evidence" 292 N.E.2d at 873. The Court noted parenthetically that it saw no reason why the Committee should not take advantage of this period to make a revised plan.

These Hearings

Upon a motion made by Boston these hearings were enjoined by Judge Hennessey for one day and did not begin until March 20, 1973. The Task Force submitted a revised plan (Ex.3). Thereupon Boston moved for an adjournment to study the plan. I continued the meeting for that purpose until March 27th. I also announced that individuals representing organizations or themselves who had on or before March 21, 1973 (II:33)* requested the opportunity to appear would be heard on March 23 and such a hearing was held on the morning of that day. On March 21st I heard motions to intervene of certain associations of parents, 216 members of the St. Thomas Aquinas Educational Assn. and other such associations represented by Mrs. Mary Welby, Esq., similar organizations represented by Mrs. Louise Day Hicks, Esq., and the Boston Teachers' Union represented by Mr. John F. McMahon, Esq. I admitted these three intervenors. I announced that any other persons wishing to do so could submit a statement for incorporation into the record. Approximately 1200 or more statements have been received and incorporated into the record. Further hearings were held on March 27, 28, 29, 30, April 2, 3, 4, 5, 6, 13, 17, 18, and May 1 and 3. All of these hearings were held at the offices of the State Board of Education except the last two on Tuesday May 1 and Thursday May 3, which were held at the Mount Auburn Hospital in Cambridge. At those hearings the principle witnesses for the Task Force were Dr. Harold Hunt, Professor of Educational Administration and now Professor Emeritus of the Harvard Graduate School of Education and chairman of the Task Force, Dr. John A. Finger, Professor of Education of the College of Rhode Island, who served as special consultant to the Board's Task Force, Lee H. Kozol, Esq., vice-chairman of the Task Force, Dr. Charles L. Glenn, director of the Bureau of Equal Educational Opportunity of the Massachusetts Department of Education, secretary to the Task Force.

The principle witnesses for Boston were Mr. John Coakley, Associate Director of the Educational Planning Centre of the Boston School Department and Mr. Anthony Galeota. Mr. John Doherty testified for the Boston School Teachers' Union and Mrs. Mary Welby testified on behalf of her clients.

The Hearing Officer took a view of certain characteristic schools, their location and other physical aspects of the city relevant to the plan.

* These references are to the Records by volume and page number.

Proposed Plans of the Boston School Committee

G.L., c.71, §37D requires the School Committee of each city each year to take a racial census. Whenever the Board finds that racial imbalance exists in a public school it shall notify the Committee. The School Committee shall thereupon prepare a plan which shall "detail the changes in existing school attendance districts, the location of proposed school sites, the proposed additions to existing school buildings and other methods for the elimination of racial imbalance." The most comprehensive plan filed by the Committee was that proposed in June 1971 entitled "Fourth Stage Plan toward the Elimination of Racial Imbalance in the Public Schools" (Ex.1). On November 6, 1972 the Committee filed with the Board a document "purporting" in the words of Mr. Justice Sullivan "to be a short term plan" (Ex.1). On November 9, 1972 the Board rejected this plan.

The statute would appear to require that a plan make detailed changes in school districts so as to eliminate racial imbalance insofar as such districting is consistent with the safety and neighborhood limitations of the statute. The basic position of Boston most fully set forth in the Fourth Stage Plan is that "a substantial percentage of both the black and white community seriously question the feasibility of designing any plan that would satisfy the requirements of the 'Racial Imbalance Act' and at the same time be acceptable to the citizens of Boston. * * * In the light of previously cited population trends affecting urban vs. metropolitan communities, these methods, if restricted to 'in-city' application might provide temporary balancing solutions with the possibility of dramatic sociological side effects which in the long run would impede the goals of the Racial Imbalance Law" (Ex.1, Fourth Stage Plan at: 8-9). Consistently with its theory, the Committee has proposed the building of new schools, the further encouragement of controlled transfer, Metco, "metropolitanization" (a method that does not lie within the powers of the city) and other such devices. This position, though sincerely argued, would appear to be precluded by the statute both as it reads and as interpreted by the Supreme Judicial Court.

The Committee's November 6 submission "purport[ed]" in the words of Mr. Justice Sullivan "to be a short-term plan" (Order of December 19, 1972, p.6). It did not provide for any redistricting whatever. It announced itself, however, as ready to participate in meetings with the Joint Racial Imbalance Task Force to develop recommendations for an Intermediate-High School District Design. It apparently was not ready to hold meetings on the elementary schools. The Board rejected this plan on the ground that "there are numerous situations in Boston where redistricting is clearly permissible and mandatory" (Ex.1, p.5).

A consideration of the revised short-term plan proposed by the Board's Task Force on Racial Imbalance supports the Board's conclusion that there are indeed situations in Boston where redistricting is clearly permissible and mandatory and that therefore a plan which provides for no immediate redistricting (as is the case with both the Fourth Stage Plan and the Short-Term plan of November 6) does not satisfy the statute.

It is argued by the School Committee that the decision of the Board as to the adequacy of the Committee's short term plan submitted on November 6, 1972 is to be determined on the basis of the evidence before the Board on November 9th, the day on which the Board submitted its plan after having rejected the Committee's plan. This strange argument is based on a reading of the decision of the Supreme Judicial Court in its February 15 decision (292 N.E.2d 870), based on some language on page 873 that in reviewing the Board's decisions the Court should do so on the basis of the evidence before the Board when it made the decision. But, of course this language has reference to the hearings which the Court itself was ordering in its February 15th decision. Up to that time there had been no evidentiary proceedings of any sort and it was the purpose of the Court's decision to remedy the defect. The Committee has continued to stand on its earlier submissions and it is those submissions which were to be the subject of an evidentiary test in these very hearings. It would be patently absurd to make a judgment as to the adequacy of the Committee's proposals on the basis of the earlier defective procedures. This argument therefore, must be rejected. The test to be applied to the adequacy of the Committee's earlier but still current proposals must be the record made in these hearings.

The Process of Recommendation by the Board of a Plan

As already indicated above, neither Boston nor the Board until the order of Mr. Justice Sullivan on September 27, undertook seriously to redistrict the city pursuant to the statutory mandate. On that date Mr. Justice Sullivan directed the Board to make specific recommendations for a short-term plan and ordered the School Committee to develop such a plan. He ordered that the Committee should file the plan with the Board on or before November 6 and that the Board was to take appropriate final action either by approval of the Committee's plan or by itself making a proposal no later than November 16, 1972.

In its earlier communication and dealings with Boston with respect to plans for eliminating racial imbalance the Board

recommended that in developing a plan public meetings should be held in school districts and that parents, teachers and administrators should become "involved" (Ex.23): and that public meetings be held in each revised elementary school district to assist in the development of procedures for assigning students to the schools within each district in a way which would achieve racial balance in each school, adopt such procedures for each elementary school district by March 1, 1973, and complete assignments by April 1, 1973 for the academic year 1973-74. Similar suggestions were made by the Board in a communication of October 3, 1972 with specific reference to carrying out the order of Judge Robert Sullivan in the case of Tierney v. Kipp

In the hearing Boston made much of the fact that these recommendations had not been followed by the Task Force or the Board in preparing the present proposals. That claim is, of course, true. But the intervention of judicial action has very much conditioned the nature of the process. Mr. Justice Sullivan, as already indicated, put the parties under a stern timetable when he, on September 27th, ordered that the initial planning process be completed by November 16, 1972. The Supreme Judicial Court gave a somewhat similar structure to the process when on February 15, 1973 it ordered a hearing to be begun on proposed plans not later than March 19 ("which," said the Court, "should be conducted as expeditiously as possible" 292 N.E.2d at 873 and incidentally suggested that within that short period of approximately one month the parties might put forward revised plans. It is also to be noted that Mr. Justice Sullivan contemplated that the short-term plan would be effective and in operation on or before November 21, 1972 though its implementation would be a matter for consideration at a later time and the Supreme Judicial Court presumed that the plan would be one which is "to take effect in the 1973-74 school year" 292 N.E.2d at 3. These estimates may have been too optimistic but they do testify to the fact that all of the judges concerned thought of the process as somewhat more summary than was contemplated by the Board prior to these judicial interventions.

The Task Force argues that it is to be assumed that the judges regarded the present hearings and any proceedings incident thereto as providing opportunity for criticism and positive inputs by the School Committee and other interested persons. There are roughly three types of inputs which are in question. First, general protests from those persons affected; second, more or less specific criticism of proposed plans; third, alternative proposals for redistricting the use of facilities and other aspects of implementation. Motions were made to hold hearings in various parts of the city where presumably large citizen gatherings would manifest their distress. It was and is still perfectly

clear that there are a great number of citizens who object to any plan of redistricting which disturbs the present pattern of school attendance. The prime purpose, after all, as I understand the Supreme Judicial Court, is to develop a redistricting plan as mandated by the statute. It did not seem to me that this objective would be forwarded by a series of neighborhood protest meetings. I therefore denied these motions. I did however, assign a half day in which citizens who had made known on or before March 21, 1973 their desire to make a statement would be heard. I announced that any additional written statements sent to me would be incorporated into the record.

These statements both written and oral, almost without exception, manifest their complete and strong objection to any redistricting plans and, consequently, do not provide a basis for making a determination in this matter. A few of these statements, however, did make specific criticisms of some of the districts and criticisms of this type will be evaluated below. Furthermore, the groups represented by Mrs. Hicks and Mrs. Welby which were admitted as intervenors did effectively represent those opposed to the plan; and the School Committee itself, entertaining as it did a stance hostile to any redistricting, presented in the most meticulous, thorough-going way the position of citizens opposed to the plan.

More to the point is the argument of Boston that the hearing process has not been adequate for the purposes of an informed critique of the plan (VIII:12-25). Boston was able to show, for example, that the Task Force had misunderstood the school capacity figures published annually by Boston's Educational Planning Center. This mistake had led to an overestimate of the capacity of a number of schools which might lead to overcrowding or infeasibility of a proposed district. From the outset of the hearing, the Task Force came in with errata: geocodes omitted, inappropriate assignments, miscalculations of one sort or another. Boston having as it does superior accesses to information concerning the Boston schools was able to point out numerous errors of this sort. The Task Force then responded by making changes in district lines, in school assignments, in alternate suggestions for use of the facilities. The Task Force has taken the position that the hearings are part of an ongoing process of making the plan. The Committee had two related objections to this concept. First, that this fluidity -- though indeed in my opinion very few of these changes are substantial -- precluded adequate critical analysis and second, that "piecemeal changes" (as the Committee called them) were inconsistent with the idea of a plan. The Task Force, it is said, was using band-aids where surgery was necessary. There can be no question that there are many interrelations among the proposed districts and that a choice

of a certain defined area will have consequences for the design of adjacent areas; and if one districting were completely disallowed it might affect the viability of other districting. This, however, would not seem to preclude readjustments within or between districts where errors or inequities are found. Indeed, the very fact of interrelations among the areas would seem to dictate a process of incremental or marginal readjustments as the need for them appears. Surely, it cannot be the case that every time an error appears, the whole plan must be sent back to the drawing board. Indeed it might more appropriately be said, "the hearings have served, in effect, as a 'validation process', with corrections provided by the only agency capable of providing them, the Boston School Department" (Ex.3a, p.12).

It may well be that a more or less formal hearing such as this is not the best method for testing and putting into its final form a plan so complex as that proposed by the Task Force. But the conditions surrounding the formulation of this plan are special. As Mr. Justice Sullivan pointed out, the Committee, because it is in possession of the requisite information, is the better situated to make such a plan. But it has been and continues to be unwilling to perform that task. Were it willing, it would have been possible for it and the Board directly or through a task force to engage in a process of mutual consultation and exchange. As it is, the burden fell upon the Board and its Task Force with very little hope for significant positive contributions by the Committee. The Supreme Judicial Court, apparently sensing this situation, has found it necessary to order a hearing as a way to bring about a plan. This plan then would be based on proposals by the Board's Task Force, criticisms or suggestions for change by affected parties, response by the State or the Task Force to those criticisms and finally, an evaluation of the whole record by the Board itself.

Between the service on the School Committee of the plan on March 12 and the time when the hearing was finally concluded, 52 days will have elapsed in which the plan could be studied. The original Task Force plan, first published on March 12, was submitted at the opening of the hearing on March 20 and marked as Exhibit 3. Alterations and corrections in the Plan, partly in response to Boston's criticism, were submitted on April 30th and marked as Exhibit 3a. Exhibit 3a incorporates most of the changes in the plan as now proposed and thus, except for purposes of comparison, supersedes Exhibit 3. Furthermore, Exhibits 59 and 60 detail the changes which have been made in the plan in part in response to Boston's critiques. In addition to the actual details of the plan, there appears opposite each district a facing page detailing the thinking that went into the formulation of the plan. These details set out in summary form relevant considerations for the determination of the districting question -- these

being the demographic factors of white and non-white, safety hazards and the methods used to overcome them, the neighborhoods involved and the overall distances between school and home (see School Committee of Springfield v. Board of Education, 287 N.E.2d 438, 456 fn. 24.) In addition to these summaries, Dr. Glenn testified in detail as to the methods and thinking used in formulating the elementary school districts (VII:60).

I assume furthermore, that there will be no objection to further additions to the record until such time as the Board has made its decision and that the Board, having as it does an ongoing jurisdiction in this matter, will still be responsive to amendments to the plan even after its adoption or to adjustments worked out through the implementation process.

Boston finally makes the objection that the Task Force plan makes no provision for "mandatory Public Hearings" as required by G.L. c.71, §37D, third paragraph. This provision requires that a school committee shall not alter a school district or districts "without holding a public hearing" giving due notice in "a newspaper of general circulation." Whether there is to be a hearing in each and every district which will in any manner be changed is not stated though logically, that could lead to an infinity of hearings; and how a plan involving more than a single district could be canvassed by such a multiplicity of hearings it is impossible to conceive. But the more pertinent point is that we do not have in question districting by a school committee. It has been found that the Committee failed to propose any plan and under the statute as interpreted by the Supreme Judicial Court, it is now the obligation of the Board of Education to devise a plan. The plan might run in terms of recommendations but surely it is not contemplated that the School Committee may now set up one or a multitude of hearings to decide whether to accept these recommendations. That would indeed be a formula for a perpetual merry-go-round. The very point of these hearings as mandated by the Court would appear to be the substitute (which the statute failed to provide) for the hearings which would be held by the School Committee if that body were minded to redistrict all or parts of the city. In any case, if the Supreme Judicial Court is of the opinion that the hearings which have now been held are inadequate it can remedy the inadequacy by ordering further hearings.

A Description of the Task Force Plan

The plan is divided into 3 parts: elementary, intermediate and high schools.

Elementary Schools

There are 25 exclusively elementary districts and two combined elementary and intermediate districts. The Task Force

estimates that there are currently 48 imbalanced elementary schools (some grades K-5, some K-6) with 20,027 pupils. Since white students are more heavily represented in K than in the elementary grades (K: 31.1% nw, 1: 42.5%nw) the Board's decision to exempt half-day kindergartens from the racial census would very likely result in several more schools being classified as imbalanced (IX:19-26). The Board decided that, consistent with the Supreme Judicial Court's interpretation of the statute, it would not be possible to eliminate all of the imbalanced elementary schools. In areas having a very large number of non-whites there did not always exist a white area sufficiently near, let us say, within 2 to 2 1/2 miles which could be districted together. The Task Force estimates that the plan reduces the number of imbalanced elementary schools from 48 to 21; the number of students attending imbalanced schools would be reduced from 20,000 to 7,000. No attempt has been made to balance the schools in districts 3, 5, 6, 15, 17, 19, 20, 21 and 26.

The Task Force entertains the hope that a certain number of the pupils in imbalanced schools will exercise the option under controlled transfer to go voluntarily to balanced schools. For this purpose they have sought to increase the number of vacant seats in balanced schools. One of the devices used to achieve this purpose is to provide throughout the city a uniform structure for elementary schools of K-5 rather than K-6, a structure that already obtains in a number of Boston schools. This will release the seats that would otherwise be used for the 6th grade. In some cases the suggested change for K-5 rather than K-6 may have been not so much to make available seats for controlled transfer as to provide uniformity (VIII:16-18). It has however, been claimed that use of 6-8 schools in some sections of the city and the maintenance of 7-9 schools in other sections of the city has made it difficult for non-whites to transfer to the predominantly white high schools which are on a 10-12 basis, since the student who has been assigned to a 6-8 school would have to go to a 9-12 school (many of which are non-white) to complete his 9th grade. The Task Force estimates that this will make available 4000 (XIII:140-141) seats. Were the option exercised by 4000, only 3000 students -- a number of them white -- would remain in the imbalanced schools. The Committee pointing out, as will be later developed, that the Task Force has overestimated capacity, believes that the figure of available seats will be considerably less than 4,000. The Task Force may be unduly hopeful as to the potential of controlled transfer. In the school year 1972-73, something over 1900 elementary school pupils were exercising the controlled transfer option (XIII:141) so that even if the Board has overestimated

the available empty seats, there may at least be enough for those who wish to exercise the option. It may be that informational and proselytizing tactics may be improved. In any case, one might estimate that somewhere between 3,500 and 4,500 non-whites will remain in imbalanced schools.

At this point it would be appropriate to make no more than a summary statement as to the geographical character of the districts designed to produce racial balance. The longer axis of a number of them is somewhere either under or over 2 miles. They have been designed to take advantage of a white neighborhood with which to balance a predominantly non-white neighborhood. In some, the non-whites move a considerable distance to the assigned school; in others, the whites. In some districts, some of the schools are equidistant between whites and the non-whites (VIII:109 et seq).

Intermediate Schools

The intermediate schools must accommodate something over 18,000 students. The Task Force states that presently there are 14 junior high schools (7-9) of which 3 are imbalanced, and 4 middle schools (6-8) of which all are imbalanced. 4,520 students attend the 7 imbalanced intermediate schools. There are also 11 elementary schools with grades 7 and 8 and two high schools with grades 7 and 8. As already noted, the plan provides that, for the most part, intermediate schools will be grades 6-8. Under the redistricting, 21 intermediate schools are planned, 3 of which will remain imbalanced (Dearborn, James P. Timilty and Lewis). It is estimated that 1,100 intermediate students would be left in imbalanced schools. The plan estimates that there will be 1,000 seats available for controlled transfer or assignment by the School Department in West Roxbury, Charlestown and East Boston, a figure which the School Committee believes to be too high. At present, 780 intermediate students being provided with transport would appear to have exercised the controlled transfer option (XII:19).

The principles used in balancing are more or less those used in the elementary schools except that the districts are characteristically larger. Seven are between 3.5 and 4 miles at the longest axis. Four are between 2.5 and 3. Ten are between 1 and 2 miles. The greatest distance to be traveled is not necessarily the complete length of the district since the school may not be located at an extremity of the district.

High Schools

There are presently 18 high schools, 10 of which are on a city-wide voluntary basis: the 3 exam schools, 3 city-wide non-exam schools, 2 trade schools and 2 special high schools. The remaining 8 are so-called district schools but there are no stated districts

at
requiring attendance at a particular school (XII:19). 5,064 students attend the 3 exam schools. 2,364 attend the city-wide non-exam schools which are 94.7% non-white. The Boston Trade High School which is city-wide is 73.9% non-white. From this it would appear that a considerable number of students travel to attend high school -- some of them to attend city-wide schools, others to attend district schools not in their district (See XII:20 et seq).

Under the plan, residence will determine attendance except for the exam schools, trade schools, Copley Square and Boston High. It is believed by the Task Force that the ten district schools will be balanced. Two of these districts are approximately 6 miles at their longest axis: the Brighton in which the school is located 1.5 miles from the western extremity making the maximum distance for travel something like 4 miles, and the Hyde Park in which the school is located about midway between the extremities. The remaining school districts are from 2 to 4 miles at their longest axis.

The proposed Task Force plan is thought by the Task Force to differ significantly from the earlier plan disapproved by Judge Sullivan. There are two respects in particular in which this may be true. The Task Force now is in possession of considerable relevant information which was not then available. It has always been a problem that the School Committee is the primary generator and repository of information relevant to school administration. Since the earlier plan, there has become available the whole system of geocodes developed by the Boston Police Department. The city is partitioned into population units denominated geocodes. The geocode information comprehends the numbers of inhabitants, their age and their race. With this information it became possible to devise school districts and make assignments to schools within those districts using geocodes for establishing racial proportions school by school. It is true that this may at times produce rigidities and stand in the way of nicer adjustments to special situations but, on the whole, it gave the Task Force a solid ground for designing racially balanced schools. In its Brief (at page 20) the Committee speaks of the Task Force's "slavish adherence to geocodes." Had the Board used geocodes only as a starting point for district design rather than as a virtual talisman, the proposed districts might have more successfully avoided "the twin proscribed pitfalls" of excessive size and gerrymandering. But, of course, the Task Force has no other information. If the plan is to be improved in this respect, the Committee must come forward with the information.

This information was then used on the basis of a notion of school assignments which the Task Force called by the name of

equity. The notion of equity has, it seems, two aspects. One of these is that children in more or less the same neighborhood situation should go to the same school. Thus, two neighboring children would not find themselves one going to a nearby school and another going to a school one mile away. A neighborhood of non-white children, for example, would all go either to a nearby school or to a school at some distance from their home.

A second derivative of the idea of equity is that the traveling away from home to school would not be done only by non-whites or whites. In a district non-whites of a certain geocode might travel to a distant school. This would mean, of course, that some non-whites would go to school in white neighborhoods; some whites in non-white neighborhoods. To be sure, this principle may cause alarm since the child finds himself within an alien neighborhood, but that would appear to be one likely, though not necessary, consequence of racial balancing. Indeed there are districts where the populations are mixed and where no one need travel to another neighborhood. It will be remembered that the elementary school districts are roughly no more than two miles in length so that the degree of neighborhood displacement is not necessarily very great. And we have already seen as in the Trotter School that particularly at the elementary level, mixings of this sort can be carried out amicably and fruitfully.

Another possible advantage of separating home and school is that the tendency of non-white infiltration to change the character of a neighborhood may be less likely to take place if the non-white school population is separated from its home base. In other words, this device may somewhat stabilize neighborhood living patterns.

* * *

Something should be said of the general charge by the School Committee that in its zeal for racial balancing the Task Force has lost sight of the real goal of quality education. The Task Force has made overly hopeful estimates of school capacity; it has -- at least in a few instances -- been willing to rely on outdated equipment, to bring into being intermediate schools, e.g., the Thompson, which do not have first rate equipment and are not prepared to provide all of the services of accepted educational goals; it has made no provision for special types of education of a technical character, etc. It is no answer, says the Committee, that in the present system there can be found many instances of such deficiencies. In its zeal to come forward finally with a plan, the Task Force may have cut corners, been hopeful here and blind there. But under the best of circumstances

a
a plan involving such a staggering number of variables could only approximate to a beginning. Inevitably, the planners must work with the situation as it exists in all its imperfections. And under the circumstances of Boston's hostility to any plan of general districting, the Task Force could not make the many accommodations that might have been possible if there had been cooperation. Boston claims, of course, that it was given no opportunity to cooperate but the record is fairly clear that it was not under any circumstances prepared to do so. If a plan of general scope is validated by the legal processes of hearings, Board action and the Judiciary, there could be the basis for cooperative activity that would address itself to the solution of the many valid educational problems raised by the School Committee in these hearings.

Does the Plan Make a Significant
Contribution to Racial Balancing?

The Committee contends that given the substantial costs of the plan in terms of disruption of established patterns, busing, defeat of neighborhood expectation, etc., the plan's apparent contributions to racial balance are illusory. It has been noted that the plan estimates a reduction from 20,000 to 7,000 of those attending unbalanced elementary schools. The Committee argues that these gains are illusory. Its critique runs primarily in terms of numbers of schools balanced; the effect on numbers of pupils is not indicated. Of the present 46 unbalanced schools, the Task Force purports to have eliminated 20, leaving 26 unbalanced. According to the Committee there continue to be 30 unbalanced schools. The gist, however, of the Committee's critique is that, as shown by the Task Force plan, 18 schools will have a non-white population between 45 and 50%, and 15 between 40 and 44%. According to the Committee's analysis, 11 schools will have between 45 and 50% non-white and 19 schools will have between 40 and 45%. It is the position of the Committee that these 23 (per the Task Force plan) or 20 (per the Committee's analysis) are so near to being unbalanced that, given certain population trends, they will, according to the statutory definition, very soon be unbalanced. Thus, little or nothing will have been achieved.

The Committee has analyzed population movements in typical black areas from which the balanced schools will in part draw. These show over the last 5 years tremendous increases in the percentage in non-white population. Thus, in the Marshall School

non-white percentage changed from 6 to 44%; in the Lucy Stone, 12 to 44%; in the Taylor, 19 to 41%; in the Lowell Mason, 1 to 29%; and in the Everett, 2 to 17% (XI:97). Analyzing some of the geocodes assigned to the schools in question, it appears that there have been substantial increases in the non-white population within the last year. Thus in the geocodes assigned to the Dever School a 38 to 49% increase of non-whites; in the Lee School, 41 to 45%; and in the Murphy School, 38 to 42% (XI:100 et seq).

Two observations are relevant to these figures. First, in any one school the non-white geocodes have been balanced with geocodes from predominantly white areas. Many of the white geocodes are considerably removed from black areas and may not be affected by the non-white trend. Thus, though the increase of non-whites in the non-white geocodes may increase the percentage of non-white, the increase in the percentage of non-whites in the school will not be at the same rate as the increase in the non-white geocode. The more important observation is that a substantial number of the schools in the so-called precariously balanced category previously had upwards of anything from 72 to 99% non-white. The statute provides that a school with more than 50% non-white is to be classified as an unbalanced school for purposes of the census and redistricting. Clearly it does not follow that a school, let us say of 55% non-white is not, given the purposes of the statute, to be preferred to a school of 75% non-white. And, as noted before, the balancing of the pupil population with predominantly white areas and non-whites from non-adjacent areas may set a brake on the characteristic tendency of schools with a very substantial non-white population to become heavily non-white.

But there is another more fundamental answer to this contention. Despite what may be the immediate or long-term trend of increasing non-white populations in already heavily non-white populated areas, the statute mandates racial balance. It can be said that the statute is an experiment and that the experiment may not succeed. Nevertheless, as I understand the statute and its interpretation by the Supreme Judicial Court, the administrative authorities are under orders to make that experiment.

The Neighborhood Criterion

The most acute problem in designing the districts concerns the degree to which a principle of neighborhood is to operate as a limiting condition. The statute provides that there shall be no transportation of a pupil except with the parents' consent

"outside the school district established for his neighborhood." This provision is ambiguous. It might mean that a pupil must be assigned to a school in his neighborhood. The Supreme Judicial Court, however, did not read the statute so. It spoke, rather, of an attendance district established "for" a pupil's neighborhood. It did hold, however, that "the restriction upon the involuntary busing must be read, at least to some degree, as placing a limitation upon redistricting as well as upon transportation policies." Otherwise "it would be possible to nullify the restriction simply by establishing gerrymandered or excessively large districts." When drawing a district for the purpose of achieving racial balance the district "must bear a reasonable, though not necessarily a fixed, proximity to recognized neighborhoods. A School Committee may, for example, include several neighborhoods and more than one school within an attendance district, but it must not draw district lines in such a way as to create a very large gerrymandered district" 287 N.E.2d at 453-454. The Court also said that "'neighborhood' as used in everyday conversation, suggests a section of a city or town identifiable as such by its history or geography where people are generally known to each other or where they live in some proximity to each other. It will sometimes, but now always, be defined by natural or other physical boundaries or by an electoral or a zoning district. At the very least least however, the word signifies nearness, as opposed to remoteness, from home" (Ibid at 454).

The following points appear to be implied from these rulings and definitions. First, the word "neighborhood" can be variously understood as defined by history, geography, natural or physical boundaries, electoral or zoning lines. Its underlying concept is that people are generally known to each other or live in proximity to each other. "At the very least . . . the word signifies nearness as opposed to remoteness from home" Id at 454, italics added). But granted this rather variable concept of neighborhood, it does not follow that a pupil must be assigned to a school in his neighborhood. A district may include several neighborhoods. From this it must follow that a pupil may be assigned to a school located in a place where the inhabitants are not generally known to him or to his family and which is more distant from his home than would be a school in his neighborhood. The only ultimate limitation is that the district not be "a very large gerrymandered district." Incidentally, it may be pointed out that under the proposed plan pupils in a geocode (with possibly a few exceptions) will go to the same school; this will provide some measure of neighborliness. Ultimately, then, the validity of a district depends on whether it is "very large" or "gerrymandered".

Mr. Justice Sullivan in his findings of January 15, 1973

appeared to regard the Court's ruling that a district might include "several" neighborhoods and "more than one school" as themselves limiting terms. Thus he concluded that a district might not include more than 5 neighborhoods or more than four schools. I do not read either of these phrases as limiting words, or indeed as even capable of being applied in such a fashion. The Supreme Judicial Court's definition of neighborhood is capable of such a variety of applications that any particular area can legitimately be described as containing anything to, let us say fifteen. That fact was made abundantly evident where witnesses for the Board might identify 5 neighborhoods in an area when witnesses for the Committee would find 13 or 14 neighborhoods. As the Task Force notes in Exhibit 20, many of the sections of the city could be subdivided to an almost infinite extent, reflecting the tendency of city dwellers to identify areas a block or two away as being somehow "out of the neighborhood." On this basis, for example, the Jamaica Plain area can be subdivided into fifteen or more "neighborhoods" each of which would be identifiable to a knowledgeable resident. The Task Force, in that document, indicates the approaches it took to the neighborhood concept. I see no way in which a judge or any trier of fact could decide whether one tally was more valid than another. It would, therefore, be next to impossible to determine the validity of a district on the basis of the number of neighborhoods asserted by one or another party to be involved. The test thus, must go back to "very large" or "gerrymandered."

The word gerrymandered, as is well known, refers to an electoral district drawn in a so-called "unnatural," awkward (lizard-like) shape with a view solely to advantage a particular party or candidate for office. An examination of the districts proposed by the Task Force shows that a number of them do indeed have a peculiar shape in the sense that they are not solid squares, oblongs or circles and contain protruberances and sharp contractions and expansions. In practically all of these cases as made clear by testimony of both parties, the intention has been to bring within one district one or more areas with predominantly non-white populations and one or more areas with predominantly white populations. In short, the district has been arranged so as to achieve a racial balance among the included groups. The Task Force has read the prohibition against gerrymandering as, first, excluding districting of non-contiguous areas (with a single exception of one intermediate school where the city of Boston itself is severed by the territory of another municipality); second, as limiting the geographical size of a district and; third, as taking adequate consideration of safety factors. As a practical matter, it

would appear that if drawing lines for the purpose of reducing racial imbalance is prohibited when the resulting shapes do not have a customary regularity, no way has yet been found for reducing racial imbalance in any degree whatever. The word gerrymandered is, in fact, not found in the statute itself and I would conclude that it was intended by the Court as a way of summing up the factors which should govern redistricting to wit: size, as it bears upon distance from home to school, safety, and the promotion of a reasonable measure of balancing.

Mr. Coakley for the School Committee, after describing some 12 or more of the proposed elementary districts and some 10 or so of the intermediate districts, characterized them as gerrymandered. In some of these (e.g., Nos. 1, 7, 8 and 13) there are substantial bodies of parkland, institution-occupied lands, etc. dividing the proposed district. In these cases, as is true of practically all of the districts attacked by the Committee, the aim has been to combine within the district predominantly black and predominantly white neighborhoods of the city. I can see no reason why the mere fact that the district is broken up by largely uninhabited public lands, or lands having few or no pupils, should invalidate a district. It is argued that insofar as the statute is read to require that a district be contiguous -- a principle which the Board has accepted though neither the statute nor the Court explicitly requires strict contiguity -- these districts are not contiguous. If contiguous means, as I understand it to mean, that any point in the district may be reached from any other point in the district without going outside of the district, then these districts are contiguous. In a number of cases, pupils traveling to their assigned school may pass schools nearer to their home, sometimes a school to which they presently go. It is said that this is bad educational policy. I am not quite sure why that is so unless it be that it is brought to the child's attention that he is sent to a further school for the purpose of racial balancing and may resent this fact. But unless a better plan can be devised it would seem to be one of the costs of a racial balancing plan.

The Committee contends also that a number of the districts -- it analyzed 3 such districts (7, 8 and 12) -- are "internally gerrymandered" (XIII:148-149). It made its point by overlaying the proposed district with a map detailing the areas of the district from which the pupils for each school would come (Exs. 46, 47 and 48). Mr. Coakley was particularly critical of the complex pattern of assignments in proposed District 12 (XIII:158-164). Here, 7 schools are used, some as K, some as K-2 and some as K,3-5, with the result that children are not only assigned at varying distances away from home but may, while progressing from K to 5, have to attend as many as 3 schools. This he regarded as peculiarly unfortunate. I am not at all sure that

these changes of scene would matter so much to small children as it would to the administrators who must do the paper work. Furthermore, though it means a change of buildings it does not necessarily mean a change of companions. The entire district moves from the 1-2 school to the 3-5 school; though they may have attended different kindergartens. Furthermore, revisions in the plan -- and suggested revisions -- may cut down the number of split grade plans.

These maps and overlays show quite graphically what the design of the plan almost necessarily involves: that any one school in the district derives its constituency from a number of neighborhoods within the district not contiguous to each other. In this respect, as in so many others, the plan stands or falls with its basic concept.*

Safety and Transportation

The statute directs that any plan of changes in existing school attendance districts must take into account on an equal basis "the safety of the children involved in traveling from home to school and school to home" (GL, c.71 §37D).

The Task Force sought where possible, particularly in designing the elementary districts, to use high traffic streets as boundary lines. But where in order to achieve some degree of racial balance this was not possible, it made provision for busing. Most all of the elementary districts are 2 miles or under.

The Task Force represented (Ex.6) that natural boundaries were used as much as possible to prevent students from crossing major thoroughfares. Safety hazards were identified by the Bureau of Equal Educational Opportunities and proposed elementary districts and lines were refined to maximize pupil safety, keeping in mind that students are currently attending schools from hazardous areas such as the vicinity of the Jamaica way. Large intersections within a proposed district were discussed with the Boston Traffic Department. An all day consultation was had with Registry Inspector Frank Crowe regarding the principles of school safety and safety education programs. On March 9, Patrolman Donald Nelson, Boston Police Department Traffic Analyst, reviewed each district indicating safety hazards and current practices of the Boston School Department and the Boston Police Department in minimizing such hazards. Patrolman Nelson's recommendations are incorporated in the Safety Summary (Ex.6 and Ex.3a, 147 et seq).

*The Teachers' Union questions whether the Board's Emergency Regulations defining Size of Districts and Neighborhood are validly in force. Since the Task Force plan does not rely on them but on the principles laid down by the Supreme Judicial Court, it is unnecessary to decide this question.

The Task Force was of the opinion that in no case was the time or distance of travel so great as to risk either the health or safety of the children or impinge on the educational process (Ex.3a, 2). Safety and transportation determinations as to each elementary district are detailed at 150 et.seq. of Exhibit 3a. The Task Force has not attempted to isolate or detail risks from traversing hostile or high crime areas; nor has it spoken specifically of risks, if such there be, of traversing commercial areas. But it is a fact that risks of this type which existed in the earlier court reviewed plan have been eliminated. For example, in an earlier plan, pupils would have been required to cross Codman Square in Dorchester, but under the revised plan, Talbot Avenue would be the dividing line between districts 10 and 11.

But there is a more general point to be made as to the Task Force treatment of safety considerations. The Committee argues that the Task Force devoted a great deal of time to the planning of racial balancing and very little time to safety planning. This argument entirely misconceives the treatment available for these two subjects. For safety considerations there can be only a general statement of the principles that are to be used in assuring safety. The carrying out of these principles is a matter of detail -- some of which can of course be foreseen -- and a great deal of which has been foreseen, as shown by Exhibit 3a, 150-154. But a great deal more must await the developments of time when it is known in more detail what routes will be used and what conditions will prevail. The Committee refers ironically to this as the "leave it to the Committee" approach (Committee's Brief, p.16). But, says the Committee, this approach is not allowed under the act. In the nature of the situation this argument is unsound since the Committee has a continuing responsibility for safety. And any problem so variable as safety must be one for which there need be a continuing responsibility.

Currently, 1926 elementary students are transported to reduce racial imbalance and 656 for other reasons. This amounts to 4.8% of the students attending K-6. The Task Force estimates that under the plan, 1927 elementary (K-5) students would be transported from 1 to 1 1/2 miles under current School Departmental Policy, though not under State law. An estimated 823 living less than a mile from school might be provided with transportation for safety reasons. This would amount to 6.3% of the K-5 students assigned to schools over 1 mile from their home and an additional 1.7% might require transportation for safety in the implementation of the plan. Kindergarten students are not included since they are assigned to their nearest school without

regard to racial balance, though in some cases they are given an option to go to a more distant school. In sum, about 3,909 or 10.8% of students in grades 1-5 may be transported under the plan for reasons of distance or safety (Ex.3a, 157). This compares with 1,857 currently being transported (Ex.3a, 156-157). Boston estimates a gross figure for elementary schools of 5,630 (XIII:140, Coakley).

On this record it is not possible to determine whether Boston's or the Task Force estimate is right or whether the truth lies somewhere in between. Indeed, it may be that the matter cannot be determined until a plan is put into effect. However, even assuming a higher figure than the Task Force's there is a question how relevant is the total amount of busing under the statute. The statute requires that the child's safety must be assured and his educational opportunity not impaired. The total amount of busing, unless very great distances are in question which is not true at the elementary level, is a matter of cost, and the statute appears to take no specific account of cost in achieving racial balance. Indeed, the state reimburses transportation over 1 1/2 miles at the rate of 100% if such transportation is for the purpose of reducing racial imbalance. There seems to be some question whether this would apply to transportation for safety, at least if the distance is less than 1 1/2 miles. It would seem, however, that transportation for safety resulting from redistricting for the purpose of racial balance would qualify as transportation for the purpose of reducing racial imbalance. The Board, as I understand it, has proposed legislation to clarify this point.

Currently 780 intermediate students are transported to alleviate racial imbalance though large numbers travel substantial distances for other reasons -- it would appear that 2,713 students currently attend intermediate schools outside their zipcode (Ex.3a, 157). Under the plan, 1,567 intermediate students will live more than 2 miles from school (8.6% of the students at this level). Another 1200 (6.7%) living less than 2 miles may require transportation for safety reasons; and 1100 students in imbalanced schools might use transportation under controlled transfer.

Most high school students currently use public transportation. This includes those attending the 3 exam schools and the 3 city-wide high schools (English, Burke, Girls). In addition many travel great distances to attend the so-called district high schools other than the school for which they are entitled to preference. Under the plan this will be eliminated since a student must attend the district high school to which he is assigned.

Estimates of Capacity

Under the proposed plan a student is assigned to a school according to the geocode in which he lives. In devising a district and assigning pupils to schools in that district, it has been necessary to make estimates of the number of pupils in the geocodes assigned to the district and the availability of space in the schools to which they are assigned. Boston has pointed to a great many instances in which geocodes have been omitted, the number of pupils within a geocode underestimated, and the capacity of the schools overestimated. The upshot would be that such a school would be overcrowded. It should be noted that the estimates as to the capacity of the schools come from the School Committee and specifically from its Educational Planning Center (EPC). These figures are contained in a document entitled Boston Public Schools City-wide Enrollments and Capacities (Ex.40).

In estimating school capacities controversy arose whether the School Committee's Official Estimates (Ex.40) should be used. Boston rather curiously made the point that these figures were "emergency" estimates which overestimated school capacities. Rather, there should be used so-called "programmatic" capacities, figures which took account of various enrichment programs which had been developed by the Educational Planning Associates in 1970 (XIII:5-6). It was noted that the Cyril Sargent Report (1962) had advised an 85% utilization factor for regular classrooms; for specialized rooms, 80%; and for chemistry in high schools, 70%. It is figures such as these by which Boston would test the capacity estimates of the plan.

Boston noticed incidentally, that its accreditation has been put in jeopardy by overcrowding in some schools. Significantly, one such was Roslindale High School with a capacity of 1,255 and an enrollment of 1,426. It would appear that this overcrowding is the consequence of students being permitted to "escape" from their assigned district school (XII:20 et seq). Under the plan, of course, this practice would not be tolerated.

It was argued that overcrowding promotes tension and would be particularly undesirable under conditions of novel racial mixing. Be that as it may, it is my opinion that not only is the Task Force justified in using the School Committee's official figures, but practically has no other recourse. These figures, so recently made as 1972, were not at the time characterized as "emergency". Furthermore, the range for judgment and flexibility shown by the figures used for one or another reason over the last 10 years requires that there be an official figure from which common conclusions can be drawn. An examination of pages 163 to 171 of Exhibit 3a shows that since 1962 at least four

different estimates have been made by the School Committee and other authorities. In some 50 instances or more there are enrollments in excess of the official capacity, just as in many others there are enrollments much below capacity. Racial balancing is difficult enough, without requiring it to measure up to new standards which do not otherwise represent the going norms of the system.

Elementary Schools. In its initial plan the Task Force misinterpreted the capacity figures for the elementary schools. Because kindergarteners attend school only 1/2 day -- either morning or afternoon -- it doubled the seats estimated by EPC to be available for kindergarteners but EPC had already taken this into account. On the basis of this mistake and others, Boston argues that the plan's capacity estimates are either unrealistic or contrary to good educational policy. The Task Force has acknowledged its error in the estimates of kindergarten space. In its revision of the original March 12th plan it has sought to rectify this error by retaining buildings which were not used in the plan, through changes in within-district assignments and in a few cases, the suggested use of portable classrooms which it states to be in line with current practice. As a general matter, assignments to kindergarten in the March 12th plan were not considered definitive and the Task Force urges that the School Department work out final kindergarten assignments.

Estimates of capacity are in some measure a function of the pupil-teacher ratio worked out between the Union and the School Committee. This ratio has varied over time. The current elementary ratio is 25:1. In 1962, at the time of the Sargent Report, it was 35:1. It would appear that no particular ratio can be demonstrated to have a definitive educational character. It is assumed that smaller ratios are more effective but there is no proof of it. It is, however, desirable to abide by the provisions of the Teachers Union Contract. Nevertheless, there are instances where the provision is currently being violated as appears from statistics on page 4 of Exhibit 44. The Task Force suggests that ratios as high as 28:1 would be tolerable, and where they would be in excess of that, to bring back into the system unused schools or portable classrooms.

To be sure, legitimate questions can be raised as to the use of makeshifts such as portable classrooms, antiquated buildings and equipment which does not meet current standards. But it is wrong to state that the effect of accepting makeshifts of this sort or other deviations from the best standards are "consecrated (through the imprimatur of a racial balance plan)" Committee Brief, page 24. On the contrary, the plans for racial balancing

are in no sense an attempt to freeze any particular current situation. The objective of racial balancing simply becomes one more of the important recognized criteria for evaluating the school system's performance. Indeed, it can be hoped that the pressures for racial balancing will become one of the additional incentives for long term improvements in facilities and services.

Secondary Schools. At the present time at least 5 of the high schools have enrollments beyond the so-called emergency capacities. Two of these are of rather sizable dimensions: Roslindale, 1,503 as against 1,255 and South Boston, 2,231 as against 1,560. And at least 8 of the 17 high schools have enrollments in excess of the so-called programmatic capacity.

Boston contended that under the plan 6 of the 10 district high schools would be overcrowded using the so-called emergency estimates, and 3 additional schools, if using the so-called "programmatic". The larger source of error, it would seem, is due to estimates of how many would go out of the district to the exam schools. It would appear that the source for establishing these errors, if such they are, is the better information available to Boston. Thus, with respect to the Jamaica Plain High School, the Task Force estimated that 144 would go to the trade schools and 436 would go to the exam schools. Boston's estimates are 86 and 219. The Task Force originally estimated a total enrollment at Jamaica Plain of 665 compared with the stated emergency capacity of 740. Boston estimated that under the assigned geocodes, the enrollment would be 869. The Task Force is responding to these errors by reassigning geocodes. There is appended as Appendix A a statement by the staff of the Task Force specifically detailing the procedures followed in responding to errors concerning capacity.

Boston claims that of the 95,000 more or less students in the school system, 23,000 are unaccounted for by the plan with the consequence that the effects of the plan in terms either of individual school capacity or racial balancing cannot be estimated. 18,000 of these, however, are assigned by the plan to districts but their assignment to specific schools is left to the discretion of the School Committee. Since for the purpose of this point it is assumed that the district is balanced, it would seem that assignments within the district could be handled in such a way as to achieve balance.

It appears that 5,000 are not accounted for by the geocodes because of inadequacies of address or whatnot. This number of persons who are presently attending school, and whose race or address is unknown must therefore be absorbed in one school or another when the plan goes into effect. There are over 200 schools in the system and were the 5,000 persons equally distributed over this number of schools, the error would be something

like 25 per school with a certain number being non-white. It is suggested that the greatest number of those unaccounted for are of intermediate school age with perhaps 2,000 missing. There are 20 intermediate schools so that the error, if the distribution is even, would be 100 per school with a certain number non-white. Thought of this way, the dimensions of the error do not seem to be of substantial proportion. In any case, miscalculations of this sort are of the kind that can only be worked out at the implementation stage. It has already been pointed out that there are serious over capacities and under capacities and any plan which attempts to deal with the total school population must begin with a certain roughness which can only be smoothed out as and when the plan is put into effect.

Evaluation of the Elementary District Plan

In evaluating the Elementary District Plan, I begin with my opinion that racial balancing is most valuable and most feasible at the elementary level. The object of racial balancing of course, is to teach children to accept, both on a work and social basis, persons of other races than their own, and, indeed beyond mere acceptance, to work and play together. It seems obvious that the earlier this process starts, the more likely it is to succeed. And, as a corollary, the longer the child has been isolated from other races and learned to suspect them, the more difficult it is to achieve the purposes in view. I was taken by the School Committee on a view of some of the schools and school districts. We visited the Trotter School and though our visit was cursory and brief, I was impressed with the apparently easy and relaxed relations that existed among the children. It may seem something of a paradox that by far the greatest protest against racial balancing comes from parents of elementary school children, since (as I would see it) at this level they have most to gain and the least to lose in the way of hostile confrontation and resulting tension. Of course, it is for small children that parents feel the greatest need of protection. And this explains their alarm. But that alarm, I would suggest, is not realistically grounded and derives from experiences arising out of integration at later stages of the educational process.

As already indicated, the plan provides for 27 elementary districts which range in length or breadth from a little over 2 to 1 mile. In eight of them, no attempt has been made to balance. Nine remain imbalanced, though one of these is nearly

balanced (Prince, 52.5% non-white, Ex. 3a, 53). The net result is that of the approximately 20,027 elementary school children currently in 48 imbalanced schools some 13,000 are placed in balanced schools with the remaining 7,000 still in unbalanced schools. It is hoped that the number in the unbalanced schools will be reduced by controlled transfer. Though the Task Force estimated the number of seats available for that as 4,000, Boston estimates it at much less. I have already considered above Boston's attack on the Task Force reading of its achievement at racial balancing. The general scheme seems to me a sound one and consistent with the statute. In my discussion of the neighborhood principle as it applies to the design of elementary school districts, I have already given my reasons for concluding that all of the districts are consistent with that principle.

As already indicated above, Boston claims that as a result of various types of error the proposed enrollments exceed capacity in a number of cases. I have also considered above the claim by Boston that the proposed enrollments will tax the schools beyond their capacity. It would appear from the concessions of the Task Force that some of these claims are valid and it has sought to mend them by suggesting the retention of schools which under the earlier version of the plan would be retired and put into a so-called school bank.

The issue of capacity is to some extent related to the Task Force disposition of kindergarten children. Halfday kindergarten programs have been exempted altogether from the plan pursuant to the Board regulations. Nevertheless, in determining elementary school capacity, it has been necessary to take into account kindergarten needs and to make tentative assignments of kindergarteners. These assignments, however, are not as firm as the assignments to elementary schools. Leeway is given subject to the exercise of control by the School Administration. The parent may elect to have his child remain in the present kindergarten for another year or shift to some other, possibly nearer, kindergarten than that proposed by the plan's assignments. This, it is claimed by Boston, makes it very difficult precisely to estimate the likely enrollments in any one district. I would appear that a solution of the problem is to permit such choices only where there is, in fact, available space in the kindergarten of choice.

The Task Force response and readjustments to capacity problems are recapitulated in Appendix A. The devices included the use of schools which under the original plan had been put into a reserved school bank, the use of portable or demountable units and other expedients. An examination of Exhibit 3a will show that the assignments to elementary districts are consistent with

the official capacities of the schools to be used.

One important objection raised to the plan has been the fact that in some 6 or 7 of the plans, pupils are assigned to a certain school in grades 1-2 and to another in grades 3-5. In most instances they will attend kindergarten in the same school to which they are assigned for grades 1 and 2. But there are at least 7 cases, the Faxon School (Ex.3a, 35), the Marshall (p.45), the Holland and Dever (p.49), the Hawthorne, Emerson and Mason (p.59), where their kindergarten will be associated with schools to which they are assigned for grades 3-5. Furthermore, as noted, there is some leeway for parents to adopt another kindergarten than that to which they are assigned. Thus, in these districts some students may, in progressing through grades K-5, attend 3 schools; the remainder will attend 2 schools. (Note that the number of districts with split grades will be reduced from 6 to 4 if the plan discussed below, proposed by the Hennigan group, is adopted.) It is argued that this changing of schools will disturb and disorient the children. Though this may be true, I have no way of determining how seriously small children will be affected by changes of this sort. As I have indicated above, they will move from one school to the other with their classmates from the prior school and this may be sufficient to reassure them. It may well be that the School Board with its superior informational resources can work out in each of these areas a distribution that will work without difficulty. In any case, I do not feel justified in disallowing the elementary school plan on this ground, though a solution may be found in a better solution of the related problem of split-grade schools.

Boston has particularly criticized the split-grade device (1-2, 3-5) on two grounds. The first is that some children may make as many as 3 changes between kindergarten and 5th and a number of them at least 2 changes. A second criticism is that a change might be from an open to closed space school or vice versa, and that this may be educationally confusing. These problems are most acute in districts 1, 2, 12, and 14 (IX:120-122). The plan proposed by the Hennigan group would eliminate the problem in Districts 1 and 2. In District 12, the Marshall, and in District 14, the Holland are new open space schools which, as it happens are at present racially balanced. Perhaps with the greater information available for pupil assignment in the hands of the School Committee, plans can be worked out for Districts 12 and 14 which preserve the Marshall and Holland programs of grades 1-5 in their present state of balance. This reworking might also eliminate the split grade device used in both of these districts. I therefore recommend that Districts 12 and 14 be studied further before being put into effect. This, it is true, may have an impact

on other districts and insofar as this is so, they too would have to abide by the possible consequences of further consideration. This leaves among open schools only the Lee which under the plan is already on a 1-5 basis.

I have suggested that Districts 12 and 14 be restudied with a view to saving the Marshall and the Holland in their present fairly satisfactory open space, balanced schools. This may in turn lead to a reconsideration of the questioned split grade device. This, as I have noted, may affect adjacent districtings and may in some measure make it difficult to put the entire plan into effect simultaneously. However, the Supreme Judicial Court foresaw this possibility. In its February 15 Boston decision the Court said:

"[W]e note that while the complexity of working out a comprehensive solution to the problem of racial imbalance is considerable, the evidence suggested that certain partial solutions involving either particular grade levels or particular geographical areas, may be easier to reach. We find nothing in the statute to prevent the parties from developing partial plans as a way of expediting the reduction of racial imbalance while they continue to work for an overall solution." 292 N.E.2d 870 at 874.

This Hearing Officer is in no position to make decisions as to the levels of inclusiveness necessary for effecting one or another part of the plan. There will be cases where obviously desirable solutions should be implemented at the cost of some undesirable consequences. There will be others where the cost is higher than necessary and where better solutions can be foreseen if further study is undertaken. The consequences of what is presently undertaken may teach lessons as to what is workable. In sum, though I have for the most part recommended the adoption of the Task Force plan with only a few exceptions, I do not by that recommendation mean to foreclose other delays, restudies or adjustments such as sound educational policy may dictate, always keeping in mind that the statutory objective of racial balancing not be unduly sacrificed by a too easy expediency.

The Trotter

The Trotter is the elementary unit of the so-called Model demonstration subsystem. It is located in a non-white area but is racially balanced. Its success is in some measure due to the zeal and devotion of black parents in the area. The plan assigns students to the Trotter by geocode. This may result in excluding from the school some who are presently there. It was made clear at the hearings that it would be feasible to continue the present assignments thus rewarding those families who have participated

in the experiment. This grandfathering device could be applied to all who are currently there but it might include as well siblings who in normal course would have later gone there. This can be worked out by the School Committee which has the necessary information.

The Hennigan Community
School Council Plan

A group of concerned parents, the Hennigan Community School Council, has developed a substitute plan for the Jamaica Plain children assigned under the Task Force plan to districts 1 and 2 (Public Hearing Ex.21). These parents solicited the assistance of Dr. Charles Glenn of the State Board. According to their statement he provided them with all necessary information but did not himself sponsor the plan. It was stated by Boston at the hearing that Dr. Glenn refused to cooperate in the same way with other groups in other parts of the city. His defense was that these parents were seriously committed to a plan for integration, whereas no other group seemed to do anything more than protest. The Task Force plan was based on a split-grade solution (1-2, 3-5) and among other things, except for kindergarten, Hennigan was no longer to be used as an elementary school. The Hennigan School is a new school especially built as an integrated elementary school. The Hennigan plan merges the 2 districts, eliminates the split-grade device, and returns the Hennigan to its intended use. In addition to these gains it will in the opinion of the sponsors of the plan reduce the amount of necessary transportation. It will free the James Curley and enable it to be used with the Mary Curley as part of an intermediate school complex. The combination of the two Curley schools as an intermediate complex, rather than the use of the Hennigan with the Mary Curley, would reduce the need for retooling. This cooperative community venture in planning for racial balance is very encouraging and I recommend it, subject to any technical deficiencies that it may involve. Incidentally, I received on May 2, 1973 from one John J. Kenney signing himself a "white parent" (Public Ex.22) a whole-hearted endorsement of this plan. He notes that originally he voted against it but that on further consideration he is in favor of it though it involves a change of school for his children. He came to this conclusion because he realized that his was an integrated district in which the black, Spanish and white children "have as much love for one as the other."

The School Committee has responded to the Hennigan Plan by admitting the worthiness of its objectives, e.g., the maintenance of the racially-balanced James M. Curley Elementary School and -- of course -- the fact of community input. But still it complains of "the process." We cannot know that its proponents are thoroughly representative; we do not know their number or their degree of involvement. And, its major point: it does not proceed from a

coordinated process of planning for the whole city. How we may ask again and again is there to be specific community involvement in each and every district and at the same time a plan which will arise for the whole city from these unruly processes? Is it all finally to be fed into a Giant Computer and come out Minerva-like from its Jovian Brain? The Hennigan project testifies to the significance of local leadership if there is to be finely tuned calibration at the local level. And it is in Jamaica Plains alone that such leadership has so far emerged.

Evaluation of the Intermediate Districting Plan

The plan provides for 21 intermediate (grades 6-8) districts, two of these, Charlestown and East Boston being elementary districts as well. No attempt is made to change the racial constituency of the Charlestown and East Boston schools. There are presently 14 junior high schools (grades 7-9) of which 3 are imbalanced and 4 middle schools (grades 7-8) of which all are imbalanced. 4,520 pupils attend the 7 imbalanced schools. There are also 11 elementary schools with grades 7 and 8 and 2 high schools with grades 7 and 8. The Task Force estimates that with full implementation of the plan, about 1,100 intermediate students would be left in imbalanced schools.

The number of imbalanced schools will be reduced from 7 -- or by the Boston count, 6 (XIII:65-68) -- to 3; 10 will be in the class denominated by Boston as "precariously balanced"; 8 will be below 40%. But 5 of the now heavily imbalanced schools ranging from 81% to 100% will be balanced under the formula of the statute, the projected figures running from 41% to 46%. The number of pupils in unbalanced schools will be reduced from 4,520 to 1,097. As already indicated there are questions whether the Task Force has overestimated capacities and underestimated enrollments. This claim has been discussed above and I conclude that adjustments can or will be made as the situations mature.

In the original plan there were 3 intermediate schools requiring the use as an annex of an elementary school with consequent problems of conversion. Boston objected particularly to two of these, the Thompson and the Shaw. A third not mentioned in the hearing is the Dearborn. The plan has now been revised so that the Shaw no longer requires an annex. This leaves the Thompson and the Dearborn. In the initial plan, the Thompson required the conversion of two elementary school buildings to become annexes to the main building. Questions were raised

as to the adequacy of these arrangements and the time it would take to complete them. It appeared that the capacity of the previous elementary schools was translated into intermediate school capacity without taking into account intermediate school requirements such as science, workshops, gymnasiums, etc. and that in any case, the work to be done might not be completed before the beginning of the next school year. Mr. Galeota testifying for Boston gave his opinion that the capacities of the Pauline Shaw and the Bradford were overestimated. The Task Force has reduced the estimated capacity of the Pauline Shaw from 660 to 500 and the Bradford from 332 to 250 (Ex.3a, 161). The Thompson, being an intermediate school, already has the usual extra facilities and the Task Force is of the opinion that with this downward readjustment of capacities, the additional facilities could be built in to these annexes (Ex. 3a, 161; VI:68).

This leaves only the Dearborn, the problems of which, if any, were not mooted at the hearing. The Dearborn Intermediate, as is true of the Dearborn Elementary school, is in an area which is predominantly non-white and neither the plans for the elementary school nor the intermediate school seek to achieve racial balance. The plan for the intermediate school notes that there will be 240 seats if necessary in the Dearborn elementary. It notes also that while the Dearborn school has served intermediate grades for a number of years, this cannot be viewed as a desirable situation. It further appears from Exhibit 58 that the Dearborn Intermediate has neither science nor gymnasium space.

In some of the districts the furthest traveling distance from home to school is 3 miles or more (Edison-3 1/2; Taft-3 1/2; Curley-3; Lewenberg-3 3/4 Thompson-4; Irving-2 3/4). These districts are all drawn in order to bring into a mix whites at one end and blacks at the other end. The Task Force is aware of the distance factor which it has considered, under the heading Safety Hazards, in connection with each of the Intermediate Schools. With respect to the Edison, it notes that intermediate students from the Roxbury South End currently attending the Edison routinely use public transportation without incident. It suggests, however, that this traditional pattern should be supplemented with assigned MBTA or chartered routes, in line with current practice for non-white elementary students from Dorchester attending Brighton elementary schools (Ex.3a,11). In connection with the Taft, it states that public transportation can be used with traditional safety precautions and assigned routes may be needed (Ex.3a,1). In connection with the Curley the Task Force indicates that Center Street and the Arborway trolley line serve to tie the district together and will facilitate

transportation of students and thus, their safety. But assigned routes may be needed from the south and west of the Jamaica way to improve transportation and safety (Ex.3a,74).

In connection with the Lewenberg, the Task Force notes (Ex.3a,82) that students living west and south of Cummins Highway will need assigned or chartered transportation, except insofar as they use existing MBTA routes which run between Hyde Park and Roslindale and Mattapan. In connection with the Thompson the Task Force states that students from the area west of Blue Hill Avenue would be provided with assigned or chartered transportation because of the distances involved and the safety hazards caused by the Truman Highway (Ex.3a, 84).

In the case of the Irving, the furthest distance is 3 3/4 miles. There is a considerable green belt between the northerly and the easterly areas of this district from whence come non-white students. The transportation of these students would require assigned or chartered busing (Ex.3a,81).

I have some doubts as to the Gavin (Ex.3a,105) and to a lesser degree, as to the Hurley (Ex.3a, 103). The Gavin provides for busing non-whites out of the South End into South Boston, the Hurley, for busing whites from South Boston to the South end of Boston. South Boston is and has been a separate area of the city, though not quite so distinctly apart as Charlestown and East Boston. Its people are intensely hostile to blacks (XIII:118). Almost no blacks have elected to go into available space in South Boston either under their district assignment which gives them a preference or under controlled transfer. At one point, it is said, blacks going into South Boston were stoned. The general plan leaves the South Boston elementary schools as they are and I am raising questions also about the South Boston-Girls High School complex as will be seen below. I conclude, therefore, that these parts of the plan should be restudied. This may thus be another area where a partial approach to the solution of the balancing problem would be appropriate.

Evaluation of the High School Districting Plan

The Task Force high school plan establishes 10 district high schools. The 3 exam schools, the trade schools and the Copley High school in the model demonstration subsystem are left untouched. These 10 district schools are currently characterized as district schools. Students living within the districts are entitled to preference, but students from other districts

are permitted to attend if there is space. The Roslindale High School with a capacity of 1,255 has presently 1,503 students, apparently for the most part whites who have left the district to which they would normally be assigned. Under the plan, students in a district must go to the school in that district except, as I believe, that under the control transfer plan they would be permitted to go to a school in which their race was in a minority.

Two of the schools, East Boston and Charlestown, are left pretty much as they are. The projected enrollment of non-whites in East Boston High School is 13.6% as against 4.9%, the projected enrollment of Charlestown is 4.1% as against 4.9%. At present, as already indicated, 4 of the district high schools are unbalanced: Dorchester - 57.9% non-white; Burke - 99.7%; English - 88.4%; Girls - 100% (Ex.3, 108). The plan would eliminate all unbalanced schools though 6 would be in the class denominated by Boston as "precariously balanced." I have already concluded above that this result does achieve the stated purposes of the statute.

Boston has made the claim that in some of the district schools the enrollment would exceed capacity because the Task Force has overestimated the numbers of students who would leave the district for the trade and exam schools. There is more or less general agreement on the total number attending high schools. If the assignments are excessive in some of the schools, they can be readjusted by reassigning the excess to district schools in the adjacent areas. Problems of this sort, if not worked out by the plan can be worked out in the implementation phase. It has already been noted that enrollments in excess of capacity already exist in some of the schools, e.g. Roslindale, South Boston, Charlestown. If anything, the plan can be used to reduce these discrepancies.

For the most part, the districting principle on which the high school assignments are based follow rational lines. Each of them uses as its school the high school associated generally with that district or additional space in a nearby facility. Thus, the Brighton school makes use of the Taft elementary which is nearby. The Hyde Park makes use of the Rogers which is approximately 1/3 mile from the main school. The Dorchester may make use of the Leen which is a few blocks away. In these cases, the student assigned to the annex would probably have to use the main building for portions of their program and it is argued that the movement involved is not ideal. But this argument does not seem very important. The ten or fifteen minutes or so spent in walking from one building to another does not in itself seem to have any educational disadvantage and the risks involved in moving about would not seem to be of a different character than those in getting from home to school and back. The School Committee has itself used this device in

South Boston as, for example, in South Boston where the Hart and the Dean are presently used as annexes of a local junior high.

There is however one proposed district high school, the South Boston Girls High School complex which departs from this principle and, at least in the present proposed form, strikes me as a questionable solution of the balancing problem. The current South Boston plus the nearby Hart and Dean are coupled in the plan with Girls High which is some 2 miles away in Roxbury and rather sharply divided from South Boston by the South Eastern Expressway. The plan contemplates busing non-whites from Roxbury to South Boston and whites from South Boston to Roxbury. In raising questions as to the Gavin and Hurley Intermediate (see p.32 supra) I have already remarked on the special character of South Boston. I conclude therefore that this part of the plan should be restudied. I am aware, of course, that this may require adjustments in other parts of the high school redistricting plan which will have to be worked out by the Task Force or the Board.

The maximum travel distance in the English High School area of 5 1/2 miles is quite high -- the nearest to it being 3 1/4 miles in the Brighton area. It is pointed out however (Ex.3,77) that the district reflects feeder patterns to a considerable extent. 321 students from Roxbury and 73 from Jamaica Plain attend English and 165 from Jamaica Plain, 222 from Roslindale, and 316 from West Roxbury attend Boston Latin -- across the street from English High School. These students use public transportation and assigned transportation. It would, I suppose, be necessary to increase the assigned transportation, particularly for those attending from Roslindale which is at the furthest distance from the school. Though there is presently contention as to whether the new tower being built behind the present English High School will be used as the English High School or the Girls Latin, it is my understanding that funds were advanced by the State on the theory that it would be used as an integrated district high school. It is, therefore important that there be assigned to this school available geocodes of a predominantly white population. The future of English High as a racially balanced school drawing on a fairly large district has become a symbol for measuring the sincerity of the City's commitment to racial balance.

The School Committee argues that at the present time various high schools offer certain vocational programs which can be pursued only at that school and that no provision is made in the plan for locating these programs or at least for determining the balance and capacity of such a program located at a particular school. This would seem to be simply one more of the adjustments that must be made in the implementation phase of the plan. There is surely no way at present in which the impact of a specific

vocational program at a specific high school can be determined. I will take the occasion here as I have before of making the point that the absence of specific provisions for specific vocational education, special remedial programs, etc. is one that can only be remedied in the implementation stage. A great deal was made throughout the hearing of the many needs for conversion by the plan of a failure to take into account their cost and of their effect on the time that it will take to put the plans into operation. It turns out, as a matter of fact that the amount of conversion at least at the beginning is very much less than initially appeared and that the amount of makeshift that it implies is of no greater dimension than the makeshifts inevitably involved in all complicated systems.

The Task Force (Ex.3, 69) suggests that students in the trade schools which are predominantly black (Boston Trade 73.9%; Girls Trade 68.7%) take their academic subjects (3 periods a day) with English High School students. Boston has raised a question whether, given the difference in goals and character of students pursuing vocational education and students who are potentially college-oriented, their integration will work well (IV:116-122). This seems to me a serious question but it is not one upon which I feel competent to make a recommendation. There is evidence, as I understand it, for the proposition that moderate mixtures of a disadvantaged group with a more advantaged group may improve the motivation of the disadvantaged and not detract from the advantaged. Whether this proposition is well-founded and whether it is applicable here I do not know. However, the question is a serious one and should be considered by the Board.

Implementation of the Plan

There was considerable evidence and discussion during the hearing concerning the time needed for implementation of the plan. Dr. John Finger testified that if the plan is ordered into effect by June 1, 1973 it could be put into effect in the next school year (IV:146). This opinion was hotly contested by Boston and, inferentially I would suppose, by the Boston Teachers Union. Anthony L. Galeota, the Chief Structural Engineer for Boston testified, for example, that the conversion of an elementary school to an intermediate school would take many months. He estimated that it would take at least 32 weeks to carry out structural changes (VI:15). He noted further that in an elementary school the water closets are only 13" high and to

convert to intermediate they would have to be replaced with water closets 15" high. Plumbing fixtures, he noted, are at a premium. He had ordered some last October which had not yet been received. It would not, in his opinion, be possible to use the 13" toilets in the intermediate schools (VI:33). It should be noted that under the revised plan, there is only one conversion from elementary to junior high school-- the Thompson (Ex.3a, 85). It may indeed be the case that this conversion cannot be completed by the opening of the school year, even though all possible and legal short cuts available in an emergency situation were used. If that were so, alternative solutions would have to be explored until the time the conversion could be completed.

A similar conclusion must be reached as to providing in any particular school any furniture deficits, of which the most important is chairs. The present policy is to replace screwdown chairs with movable chairs. Were such chairs not in stock, it would be necessary to buy them. This might take time. There would be a considerable amount of work involved in unscrewing the screwed down chairs and desks where they are no longer needed (VI:35).

Mr. Doherty, president of the Teachers' Union, testified that the plan might require many reassignments of teachers and that this would take time (IX:118-121).

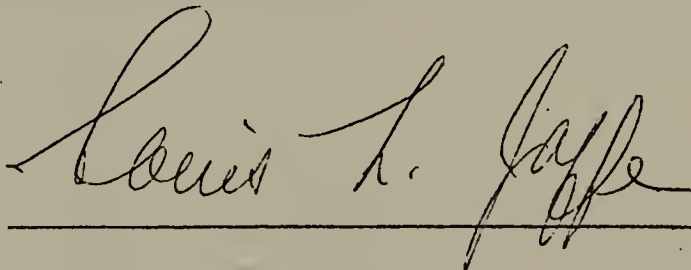
There can be no question that putting this plan or any part of it into effect will require a great deal of work of an administrative character. Some of this work will be complicated by legal and contractual requirements. The short of it is that no one is in a position, and certainly not the Hearing Officer, to estimate the time it would take to put the plan into effect. Mr. Finger testified that in his opinion if the plan were finalized by June 1st, it could be put into effect by the following school year. But we do not know when the plan will be finalized. It will take time for the Board to complete its task and then, assuming it recommends a plan, there is a considerable likelihood that the Supreme Judicial Court will be asked to review the plan. Only after this will it be known whether there is a plan and if there is, what the job of implementing it will entail.

I would therefore recommend at this point at least that no specific time schedule be set for implementing the plan. Rather, the Board should decide that the plan is to be carried out forthwith in the sense that the School Committee should proceed with proper dispatch to implement the plan as soon as possible. If Boston does not succeed in putting the plan into effect in the next school year, it will then have to convince the Board or the Supreme Judicial Court, if that Court issues a decree, that it has proceeded in good faith to do the best that it could.

Conclusions and Recommendations

My general conclusion is that the Task Force plan as defined and explicated in Exhibit 3a is consistent with chapter 71 of the General Laws, sometimes called the Racial Imbalance Law, and with the authoritative interpretation of that legislation by the Supreme Judicial Court in *School Committee of Springfield v. Board of Education*. Furthermore, I find that the plan would be a reasonable exercise of the discretion granted under that law to the State Board of Education. The plan seems to me to be based on concepts and principles which have been properly derived from that statute and the interpretation put upon it by the Court.

I do however, have certain qualifications to these general conclusions. I believe first, that in place of the Task Force's proposed elementary districts 1 and 2, there be accepted the proposals of the Hennigan Community School Council. As I understand it, an acceptance of these proposals will produce some changes in other parts of the plan dealing both with elementary districts and the proposal of the Task Force to make the Hennigan an intermediate school. I suggest also the revision of the assignments in connection with the Trotter so that parents who have participated in the development of that school can continue to send their children to it. I have also raised questions as to the design of elementary school districts 12 and 14. One reason for that being the preservation of the Marshall and the Holland in their present form. Another would be an attempt to discover ways of eliminating the split grade device. I have also raised questions as to the Gavin and Hurley intermediate schools and the South Boston Girls High complex. More generally, I have suggested that the Board should feel free to adopt partial solutions to avoid solutions which entail questionable educational consequences. In such situations, the problem for the Board will be whether such partial solutions would make it difficult to put into effect plans which make an important and immediate contribution to the solution of racial balance.



Louis L. Jaffe, Hearing Officer

PROCEDURES FOLLOWED IN MAKING CORRECTIONS ON ELEMENTARY

DISTRICTS

1. All districts have been adjusted to reflect errors submitted in errata sheets.
 2. Adjustments for kindergarten overenrollment have been made in the following districts:
 - District 3 - transfer geocode 291 (1-5: 11w, 49nw; K: 0w, 18nw) from Hale district to Dudley/Dillaway district. New totals.
 - District 4 - geocodes 584-6, 604-6 kindergarten students (63w, 10nw) assigned to Hennigan. New totals. This adjustment eliminates overcrowding in the Farragut.
 - District 6 - transfer geocode 320 (1-5: 2w, 92nw; K: 1w, 14nw) from Garrison to Dickerman/Brooks/Winthrop. New totals.
 - District 7 - Utilize Irving Colony as annex to the Sumner (Irving capacity 230).
 - District 11 - transfer geocode 391 (1-5: 28w, 0nw; K: 9w, 1nw) from Richards to Kenny School. New totals.
 - District 25 - overcrowding would warrant using portable classrooms to accommodate some Hawthorne students.
 - * *
 3. Addition was checked in those cases where EPC had arrived at totals conflicting with those in the plan.
 4. Adjustments were made on the basis of information forwarded by EPC:
 1. Duplicate geocodes: in many cases this was a matter of clerical error in listing geocodes; deletions were made in the appropriate district for those cases in which figures added in had been duplicated.
 2. Missing geocodes: geocodes on this list fall into three categories: a) those listed as missing but which are accounted for in the original plan; b) those included in the calculations but which, through clerical error, were omitted from the typed lists of geocodes; c) those actually overlooked in the plan. Corrections and adjustments have been made in the latter two instances. Additionally, four of the geocodes listed as missing have not been located on the map.
- * * District 13 - retain the Bowditch School, across district line, for excess capacity

PROCEDURES FOLLOWED IN MAKING CORRECTIONS ON INTERMEDIATE DISTRICTS

1. All errata submitted by the state were incorporated into the plan.

Discrepancies pointed out in Coakley's testimony were re-checked.

When the re-check indicated the state's original projected enrollment was in error, the district enrollments were adjusted. When the re-check revealed no major discrepancy (not more than 10 pupils) no changes were made in the original district enrollment. The following schools were changed:

Mc Cormack	754 total; 473 white; 281 non white (37.3%)
Michelangelo	288 total; 156 white; 132 non white (45.8%)
Taft	384 total; 190 white; 574 non white (33.1%)
Edison	763 total; 480 white; 283 non white (37.6%)
Edwards	542 total; 470 white; 72 non white (13.3%)
Shaw	742 total; 713 white; 29 non white (3.9%)

2. The approximately 1000 6-8 graders attending the Latin Schools and Boston Technical had not been deducted from district enrollments in the original state plan. A correction was made, using the following procedure:

First, there are approximately 800 geocodes, with 1000 students affected, one should expect 1 student per geocode to attend the Latins and Tech.

This would be true if such students were distributed randomly throughout the

PROCEDURES FOLLOWED IN MAKING CORRECTIONS ON HIGH SCHOOL DISTRICTS

1. All errata submitted by the state were incorporated into the plan.
2. Coakley prepared a refined analysis of out of district enrollment for each high school for the exam schools, the trade schools and Copley Square and Boston High School. The state incorporated those refined figures into the plan, superceding the estimates previously made by the state which were based on zipcode data.
3. Some districts required adjustment due to the impact of the refined out of district enrollment. The changes are:
 - Dorchester: delete 406-412; 420-426; 442
 - Roslindale: delete 546-548; 553-554; 496
 - Hyde Park: add 406-412; 420-426; 442 ; 546-548; 553-554; 496
 - Jamaica Plain: delete 578-579; 303-304
 - English: add 578-579; 303-304
4. When the above districts were changed, precise counts were made of the out of district exam school enrollments. Figures for projected enrollments reflect these calculations. EPC's estimates of out of district enrollment were adjusted by the addition or subtraction of out of district enrollment for the affected geocodes. Thus for each high school, projected enrollment should be fairly accurate and reflect the out of district enrollment with some precision.

city. Any geocode with more than 1 student going out of district is greater than random. A check was made through the out of district enrollment printout provided by EPC by geocode to determine which districts had more than 1 student attending the exam schools. A list of geocodes with more than 1 student attending exam schools at this level was prepared; the list was then related to the district for each intermediate school to determine which schools would be affected by the out of district enrollment. This procedure accounted for 807 pupils. The balance of 200 are distributed randomly throughout the city and are not included in the estimates of 6-8 out of district enrollment for each school (with the exception of the Holmes, Wilson, Lewenberg and Thompson, for which precise estimates were made.) An assumption was made that all out of district students were white as a predominant proportion of them are white.* These students, assumed to be white, were subtracted from the district school to which their geocode had been assigned. The resultant figure was included in the plan and termed "projected enrollment."

The impact of the out of district intermediate students was assessed. Two schools remained overcrowded: Lewenberg and Holmes. Two schools were very close to imbalance: Thompson and Wilson.

3. An adjustment was made between the Lewenberg and Thompson districts to decrease the enrollment at the Lewenberg and to increase the white enrollment at the Thompson. A second adjustment was made between the

Wilson and the Holmes which decreased enrollment at the Holmes and increased white enrollment at the Wilson. The changes in the districts are:

Thompson: add 495; delete 427

Lewenberg: add 427; delete 495

Holmes: delete 368; 377

Wilson: add 368; 377

5. A final re-check was conducted, totalling the districted 6-8 graders in the four adjusted districts; making an exact count of the out of district pupils for those districts and arriving at a precise projected enrollment.

* Boston Latin 92.6% white in 1972-73