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April 19, 1971

MEMORANDUM TO SENATOR STENNIS

From: Lester G. Fant, III

re: Charlotte Mecklenburg and companion cases

The Charlotte Mecklenburg case is in fact six different cases, involving three school Districts consolidated for argument. All of the cases involved law suits brought by private individuals to force desegregation, and the U. S. Government participated ^{AS A PARTY} only as Amicus Curiae. The Defendants in the cases are:

<u>docket number</u>	<u>area affected</u>
281	Charlotte Mecklenburg
349	Charlotte Mecklenburg
444	Charlotte Mecklenburg
498	N. C. Board of Education
420	Clark County (Athens) Ga.
436	Mobile County, Alabama

I. Summary of Proceedings:

A. Charlotte Mecklenburg cases: The case was commenced in 1965, at which time the District Court approved a free-transfer desegregation plan. The present proceeding began in 1968 when the original plaintiff moved for supplementary relief based upon Green v. County School Board 391 U. S. 430 (The S. Ct.'s most recent and most drastic case). After some controversy over the submission over various plans for desegregation, The School Board submitted a plan calling for the closing of 7 schools, the drastic gerrymandering of attendance lines to promote desegregation, combination of busing and athletic programs and other peripheral changes to unify the school system. The Board's plan, however,

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left some schools, which were so deep in Negro residential neighborhoods that they could not be reached by gerrymandering, essentially all black.

On December 1, 1969, the District Court held that the School Board plan was unacceptable, and ordered that an education expert draw up a plan, which was subsequently adopted, with some modifications, by the District Court. This plan called for extensive bussing, and created approximately equal racial ratios in all of the schools in the District.

After some preliminary adjustments and modifications by the Court of Appeals and by the District Court, the Fourth Circuit Court of Appeals, on May 26, 1970 issued its memorable decision vacated the order of the District Court and sent it back for reconsideration. The essence of the Fourth Circuit's opinion was the emphasis on the word reasonable. The Court ruled that where school segregation is caused by residential segregation all that is required of the school authorities is that they do what is "reasonable" to remedy the situation:

We adopt the test of reasonableness-instead of one that calls for absolutes-because it has proved to be a reliable guide in other areas of the law. Furthermore, the standard of reasonableness provides a test for unitary school systems that can be used in both rural and metropolitan districts. All schools in towns, small cities, and rural areas generally can be ~~transformed~~ integrated by pairing, zoning, clustering, or consolidating schools and transporting pupils. Some cities, in contrast, have black ghettos so large that integration of every school is an improbable, if not unattainable goal.

On June 29, 1970, the Supreme Court Granted Certiorari to consider the decision of the Circuit Court of Appeals.

B. Mobile County Alabama: This litigation was begun by private plaintiffs in 1963, and the Government became a party in 1967.

The District Court approved a local plan, prepared by the School Board in 1969 which combined freedom of choice, geographic zoning, and minority to majority transfers. The Fifth Circuit reversed and after several modifications and remands settled on a plan developed by HEW^{FL} and the Dept. of Justice which integrated the entire county system and called for ^{SOME} bussing. The Supreme Court granted Certiorari to Consider the Fifth Circuit's decision.

C. Clark County Georgia At this moment I do not have as detailed information on the procedural history of this case, though I know it involves an appeal from an opinion of the Fifth Circuit requiring substantial bussing in an urban setting.

II Questions presented:

The cases taken together, can be said to present the following issues for decision to the Supreme Court:

A. How do the principles enunciated by the Supreme Court in the Green trilogy, and in Alexander v. Holmes County, which concerned small rural southern towns apply to large metropolitan systems? This is the question that the Supreme Court has never before faced.

B. Where school segregation is caused by residential segregation, to what extent does the Fourteenth Amendment require school boards to achieve a mathematical degree of integration as opposed to "Neighborhood schools"? To what extent must the burdens of alleviating segregation be borne exclusively by the school systems and the school children, as opposed to other governmental agencies, bodies and institutions which could affect the situation?

C. In schools such as these (South) where there has been

"classic dualism" what are the extents of judicial discretion in formulating remedies?

III. The Government's Position

As Amicus Curiae, the Government argument the following points:

A. That there had been clear and deliberate consitutional violations by the School Boards in deciding on the racial composition of the schools, so that the systems came under the rules developed for classic dualistic schools in small towns.

IF THIS ARGUMENT IS ACCEPTED, IT MIGHT DISIMPOUND NORTHERN CITIES

B. The remedies in cities must be different than in small towns because of the practicalities of distance and cast, and so in cities in is not a per se violation to have all white and all balck schools, if they cannot be reasonably disestablished.

C. The distircts should use nieghborhood schools, but within the framework of neighborhood schools they should do everything possible to promote integration:

1. Make each school serve a fewer number of grades, so it could accomodate a wider range of students;

2. permit all students to transfer majority to minority.

3. Close unneded and substandard schools

4. draw lines so they cross racially impounede areas, instead of circling them;

4. Plan constructin of new facilities to serve students
Justice Department
of both races. The ~~xxxx~~ says that good faith use of these techniques, can mean that neighborhood schools fuffill the school districts constitutionla mandates.