

Charlotte's Integration Era

The Life and Death of Court-Mandated Busing, 1971-1999

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Abstract

In 1971, Charlotte, North Carolina confronted the problem of desegregating its education system, becoming a pioneer among the de-facto segregated Southern cities of that time. It did so through the creation of a groundbreaking busing program, per the order of *Swann v. Charlotte-Mecklenburg Board of Education*. However, economic growth shortly followed and with this growth came demographic change that profoundly entrenched the residential segregation of Charlotte. In the late 1980s and early 1990s, a movement grew in the newly developed upper-middle class communities of South Charlotte; a movement that advocated for a shift back to neighborhood schools. This grassroots effort was the driving force behind a lawsuit known as *Capacchione v. Charlotte-Mecklenburg Board of Education*, filed in 1997, which challenged the Charlotte Mecklenburg School Board on its practice of using race in pupil assignment for its new magnet school program. This thesis will investigate all aspects of this case, exploring the ways in which the jurisprudence of its verdict played a fundamental role in the resegregation of Charlotte's public school system. To do so, it proceeds by detailing the business history of Charlotte from 1971 onward as it relates to Charlotte's demographics. It then analyzes the actions of both the School Board and the neighborhood schools movement as they became opposing forces in the 1990s. Finally, it interprets the proceedings of the U.S District Court and Fourth Circuit U.S Appellate Court in hearing the case.

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Acknowledgements

My interest in Charlotte's public schools came as a result of the wonderful opportunity I had to teach in a program called Freedom Schools. After attending K-12th grade at a private school in Charlotte and finishing a year at Duke, I returned to deliver my first summer of reading and writing curriculum to a group of a dozen underprivileged children. The classroom I was assigned was the same one in which I had attended the first grade. The stark contrast between the education I had experienced in that classroom and the education my students were given in their own classrooms during the school year was so great that at times it made me feel as if my own community had turned its back on students of color living in poverty. Ever since that summer I have read and researched about the history of education in Charlotte. This work represents the culmination of a project that has become deeply personal for me and has motivated me to become a teacher myself.

I want to extend my deepest thanks to my advisor, Dr. Susan Thorne, whose class on urban poverty constantly opened my eyes to new ways of thinking. I'd also like to thank my academic advisor, Dr. Jan Ewald, for always encouraging me to pursue my passion for history at every turn, no matter where it took me. Special thanks go to the University of North Carolina at Charlotte Special Collections Department, who allowed me to access their incredibly valuable resources as I sought out direction in my work. Lastly, joined by all my fellow honors thesis participants, I want to extend the highest accolades to Professor Dirk Bonker, who fearlessly led us through what for many, including myself, was at times a difficult journey towards finishing our theses.

Finally, I'd like to thank my mom for being my biggest supporter and my confidant throughout my time and Duke, and my dad for always being my sounding board whenever I have anything at all on my mind. I was lucky to have a family that always supported me in my pursuit of learning.

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Introduction

In November of 1996, a five-year-old girl named Christina Capacchione stood in front of the Charlotte-Mecklenburg School Board to represent her family, and many families like it, who had become frustrated with the longstanding tradition of cross-town busing in Charlotte-Mecklenburg Public Schools (CMS). Christina, whose family had moved to Charlotte a few years earlier, declared that one day, when she was all grown up, she wanted to attend Providence High, the high school closest to her neighborhood. She was afraid of being assigned to a school far away, which would require her to ride the bus every morning.¹ In many ways, she was a symbol of the desire for a shift back to neighborhood schools, and away from the race-based pupil assignment quotas which had their roots in the Civil Rights Movement. Throughout the 1970's and 1980's, the Charlotte-Mecklenburg Board of Education was a catalyst for reform in public education. Charlotte was heralded by many as the first major city in the South to achieve a fully integrated public school system. However, as the turn of the century approached, Charlotte's historically progressive pupil assignment strategies crumbled in the wake of the neighborhood schools movement.

This thesis will focus on explaining the remarkable historic contradiction of Charlotte's integration era: that between the creation of court-mandated cross-town busing in Charlotte in 1971 and its destruction in 1999, we observe a CMS School Board that transitioned from actively resisting desegregation in the 1960s to ardently defending it in 1999. In that time, we also witness a city that was once the pillar of progress in integrated education in the South introduce legal precedent that triggered intense resegregation in its schools. What makes this seemingly

¹ See the Capacchione v. CMBE archives, collection title: CMBE Minutes 1996. The testimony of Ms. Christina Capacchione to the School Board in a public forum on November 26th, 1996.

paradoxical transformation so interesting is that the busing movement itself was partially responsible for generating the economic growth and corresponding ideological shift that ultimately rendered it unsustainable within the Charlotte community.

The national movement for integrated schools had its first major victory in 1954, when the U.S Supreme Court ruled in *Brown v. Board of Education of Topeka* that racial segregation in public education was unconstitutional based on the equal protection clause of the 14th Amendment. In response to this decision, Southern cities devised various methods of maintaining segregation in spite of the newly created federal mandate; this practice was known as de facto segregation. In response to de facto segregation, a movement grew throughout major Southern cities to achieve comprehensive racial equity in pupil assignment, and this movement reached critical mass in Charlotte in the late 1960s, when U.S District Court Judge James McMillan upheld and oversaw a novel busing strategy designed to help Black children attend historically segregated public schools. His decision instructed CMS to eliminate any racially identifiable schools, noting that throughout the 1960s, the Charlotte-Mecklenburg Board of Education (CMBE) had facilitated the construction and funding of schools in residentially segregated neighborhoods in order to perpetuate the tradition of racially segregated classrooms.² In 1970, when the busing program began, there were 21,000 African American students within the public schools of metropolitan Charlotte, and of those, 14,000 attended twenty-one schools that were either totally segregated or above 99 percent African American.³ Needless to say, at the outset of busing, CMS faced an enormous undertaking.

² Green v. County School Board of New Kent Count, 291 U.S 430 (1968)

³ Swann v. Charlotte-Mecklenburg Bd. Of Educ. 402 U.S. 1 (1971)

This landmark judicial decision, known as *Swann vs. Charlotte Mecklenburg Board of Education*, was appealed to the Supreme Court and upheld unanimously in a historic opinion handed down by Chief Justice Warren Burger. In the opinion, the Chief Justice described an educational landscape built on discriminatory patterns: a School Board deciding to build new schools in neighborhoods of primarily one racial composition while closing schools in racially balanced neighborhoods; exploiting the underlying institution of residential segregation in Charlotte. Chief Justice Burger identified the fundamental inspiration behind the decision when he stated definitively that, “all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation.”⁴ Thus, in compliance with *Swann*, Charlotte Mecklenburg Schools was placed under court-order to achieve unitary status, which meant a fully integrated public school system based on unilateral, race-based pupil assignment.

The nature of this investigation, therefore, demands not only an exploration into historical actors and events, but also into the legal jurisprudence surrounding issues of educational equity and political jurisdiction, making it essential to explicitly define relevant terminology. Thus, for the purposes of this thesis, *segregation* is defined as the arbitrary separation of people on the basis of their identified race; *desegregation*, then, is the ending or reversal of that practice.⁵

Or, to use Chief Justice Burger’s own words, “desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin... "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.” The Chief Justice is alluding to the concept of integration, a term that is rarely seen in legal decisions, but rather it is used in a social context, as opposed to

⁴ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

⁵ In this paper, often the use of segregation will refer specifically to students and to racial segregation. However, it is important to acknowledge that segregation can be found throughout history in many social institutions on the basis of many human characteristics.

the term desegregation, which is often used in legal matters. Desegregation is a necessary condition of integration, but additionally, *integration* carries with it implicit goals such as leveling barriers to association, creating equal opportunity regardless of race, and developing cultural practices that draw on diverse traditions.⁶

Lastly, court cases such as *Swann v. Charlotte-Mecklenburg Board of Education*, refer to the concept of a ‘unitary’ school system. Chapter Three of this thesis will look closer at what ‘unitary’ meant, legally-speaking, for CMS. For the moment, *unitary status* will be defined as the opposite of a *dual system*. A dual system of education is one that intentionally operates schools for both white and non-white students independently, and a ‘unitary’ school district has successfully desegregated itself to the point where the vestiges, or effects, of the dual system are no longer felt.

The purpose of defining these terms, apart from clarity for the reader, is to indicate that the problem of integrating an education system is vastly more complicated than simply introducing racial minorities into otherwise homogenous schools. Charlotte’s journey to achieving unitary status involved highly complicated relationships: the schools with their changing student bodies, neighborhoods of color with historically white schools, Charlotte’s business leaders with the political activists of the Civil Rights Era, and the Charlotte-Mecklenburg School Board to the legal decisions handed down in court. This thesis ultimately aims to clarify these relationships, to explain how the case of *Capacchione v. Charlotte-Mecklenburg Board of Education* eventually resulted in the resegregation of Charlotte’s public schools.

⁶ Woods, Keith. “Disentangling Desegregation Discourse.”

After the *Swann* decision was handed down in 1971, CMS began to aggressively engage in a variety of desegregation strategies, including manipulating attendance districts, pairing black students living in urban ‘satellite zones’ with historically white, suburban schools, and busing students between the suburbs and the city to maintain a racial balance.⁷ The results were highly successful in terms of achieving the racial quotas that were required by *Swann*, so much so that Charlotte acquired the nickname, “The City that Made It Work.” As Chief Justice Burger astutely noted in his decision, “The remedy for... segregation may be administratively awkward, inconvenient, and even bizarre in some situations, and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided ...(when)... eliminating the dual school systems.”⁸ Charlotte and its School Board had truly adopted progress as its ethos, reaffirming that educational equity and racial desegregation were valuable community goals.

No anecdote illustrates this attitude better than the story of President Ronald Reagan’s visit to Charlotte during his 1984 campaign. During his speech, Reagan condemned busing as a failed “social experiment that nobody wants,” and the otherwise raucous and supportive audience fell silent as Reagan denounced Charlotte’s desegregation program. Charlotte’s proudest achievement, at the time, was its fully integrated school system.⁹

The two decades following the *Swann* decision were marked by frequent tinkering and fine-tuning of the various pupil assignment strategies in order to preserve the busing system. School district boundaries, satellite zones, and busing patterns were in constant flux to accommodate Charlotte’s incredible economic growth and corresponding population growth. However, as Charlotte continued to flourish as a population and expand geographically, the

⁷ Liebowitz, David. “Residential Choice as School Choice.” Pg. 104.

⁸ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

⁹ Mickelson, R. Anne. “Yesterday, Today, and Tomorrow.” Pg. 2.

School Board began to face new challenges. Following the construction of the Southern half of the beltway interstate (I-485) in 1988, the growth of South Charlotte neighborhoods into exclusively white, affluent regions, required the School Board to reevaluate the viability of the busing program. To accommodate for these changes, in the early 1990s, following the appointment of a boisterous superintendent named John Murphy, CMS shifted towards a magnet program of pupil assignment, which will be discussed in detail in Chapter Two.

Many white families that moved to Charlotte in the few years that followed came from across the country and had not lived through a battle for desegregation in the South. Either they were simply accustomed to neighborhood schools or they did not comprehend the institutional consequences of residential segregation. They were ignorant of the costs that Jim Crow segregation had had on the South. And so, for the most part, these families did not naturally support the significant sacrifices required by busing. Native Charlotte families that remembered Jim Crow segregation generally understood the benefits of an integrated and diverse school environment on the quality of an educational experience. This belief fueled busing for two decades but became scarcer and scarcer in suburban Charlotte by the early 1990s.

New attitudes towards busing, held primarily by white, upper-middle class families living in booming South Charlotte neighborhoods, fueled a counter-culture that eventually leveled a legal challenge against the use of race in pupil assignment. The main plaintiff was William Capacchione, father of Christina, and a vocal opponent of the busing initiatives that maintained the new magnet school model.¹⁰ His suit, filed in September of 1997, asserted that Christina, “was unlawfully and unconstitutionally denied admission into a magnet school program due to a

¹⁰ Mickelson, R. Anne. “Yesterday, Today, and Tomorrow. Pg. 3.

rigid racial enrollment quota.”¹¹ CMS made a motion to dismiss the case, asserting that racial quotas were required by the Supreme Court via *Swann*.

At this point, the plaintiffs from *Swann*, along with the National Association for the Advancement of Colored People (NAACP), intervened on behalf of CMS, and the historic *Swann* verdict became the focus of the trial. The issue in question: whether Charlotte-Mecklenburg Schools had achieved unitary status, and, by extension, whether the School Board was still justified in using race as a consideration in pupil assignment. The Charlotte-Mecklenburg School Board, which in 1971 had fought stubbornly to shield its segregated system from busing, was now fighting to protect busing as an essential mechanism for integrating its schools. Whereas in 1971, the Board had fought to prove that its school districts were integrated when in fact they were far from it, the burden fell on CMS, twenty-six years later, to prove that they had not yet eliminated the vestiges of segregation. The *Swann* verdict, the only true legal protection for students of color in Charlotte against the educational inequities of the past, was at stake.

Beyond any doubt, we know that *Capacchione vs. Charlotte-Mecklenburg Board of Education* was a turning point in the struggle for integrating Charlotte-Mecklenburg public schools. As such, this thesis seeks to explain how the Charlotte community reached a point where it suddenly retreated from decades of progressive busing, and what changed in the mid-to-late 1990s, during the build-up to the *Capacchione* decision, that yielded such a paradox. To answer this question, the chapters to follow will analyze the dynamics at play before and during

¹¹ “*Capacchione v. Charlotte-Mecklenburg Schools*.” F.Supp.2d 228 (1999)

the *Capacchione* case, as well as its immediate effects on the demographic compositions of public schools in Charlotte.

The first chapter of this thesis will discuss the life of the busing program in Charlotte prior the rise of the neighborhood schools movement; from 1971 to the early 1990s. Chapter One will begin with the story of how busing came to Charlotte during the movement for integration in education. It will expand on the activism of the Black community, the judicial courage of U.S. District Court Judge James McMillan, and the actions of the School Board that facilitated integration and educational equity during this period. The chapter will then shift its focus to the economic growth of Charlotte in the late 1980s and early 1990s. In particular, it will take into account residential development in South Charlotte, the growth of the banking industry, and corresponding demographic trends associated with such rapid industrial growth. These factors all contributed to the evolution of newly built Charlotte neighborhoods and this residential growth created an increased strain on pupil assignment strategies for the corresponding neighborhood schools. Indeed, as historian Stephen S. Smith demonstrated in his work on Charlotte's business history, the business elite, in the years immediately following *Swann*, played a critical role in the push for integration. However, Charlotte's economic growth eventually led to the demise of the busing program. Therefore, this chapter will continue by comparing the pro-busing stance of the business elite in the early-mid 1980s with the anti-busing stance taken by the new business leadership that emigrated to Charlotte in the following decade. Chapter One will conclude by broadening its scope and examining the national ideological trends at play during this era, specifically neoliberalism. It will contemplate the role that these ideological developments had in the growth of the neighborhood schools movement.

The second chapter of this thesis will focus on the birth of the neighborhood schools movement, from the early 1990s to 1999, when the *Capacchione* case was filed. The intent of Chapter Two is to identify the characteristics of the political rhetoric that fueled the neighborhood schools movement in South Charlotte and to demonstrate how this language manifested itself in the legal positions of the three parties involved in the *Capacchione* litigation. As such, the chapter will begin by analyzing selections of testimony from the concerned South-Charlotte citizens that attended pupil-assignment hearings to determine which of the busing issues became critical leading up to the *Capacchione* case. As a concerned parent explained in a 1997 pupil assignment public forum, “we don’t want our children involved in failed social experiments, we want quality education, and that is best achieved by neighborhood schools.”¹² These testimonies reveal the language used by upper-middle class white families to talk about public education. By emphasizing the rights of their children to neighborhood schools and highlighting the reverse discrimination of the busing program, the neighborhood schools movement was able to shift the historical dialogue surrounding integration. In order to interpret this language from a sociological perspective, Chapter Two will incorporate the writing of Dr. Eduardo Bonilla-Silva, whose scholarship focuses on racism in contemporary America. Of course, the end-result of the neighborhood schools movement, for Charlotte, was complete reversal of its progress of integrating its school system: Charlotte went from a city united behind the goal of achieving a fully integrated school system to a collection of disparate communities that ultimately allowed a switch back to neighborhood schools. Therefore, the chapter will conclude by chronicling the legal proceedings of the *Capacchione* case. It will use news

¹² See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Mr. Jerry Fong to the School Board in a public forum.

coverage by the *Charlotte Observer* as well as primary source materials from various depositions and legal transcripts to establish the legal positions taken by the Plaintiffs, the School Board, and the Plaintiff-Intervenors (*Swann* plaintiffs).

The third chapter of this thesis will explore the details of the decision written by U.S. District Court Judge Robert Potter on the *Capacchione* litigation. Chapter Three will devote time to unpacking the elements of the decision in order to shed light on the lens through which Judge Potter viewed this issue of race-based School Board policy. His mindset, which informed the court's decision to repeal Charlotte's federally-supervised integration programs, mirrored the rhetoric of the neighborhood schools movement. Indeed, by finding in favor of the plaintiffs, Judge Potter institutionalized the biases that they espoused. This chapter will discuss issues of pupil assignment, disparate funding for public schools, school construction and demolition, race-based lotteries, transportation costs, and academic tracking among other issues that were debated in the case. By examining the treatment of each issue by the Court, it becomes clear that institutional bias was not considered in either the District Court or the Fourth Circuit Court of Appeals. In order to reinforce this point about institutional bias, Chapter Three will specifically focus on the issue of academic tracking in the context of a study done by Charlotte historian Dr. Roslyn Arlin Mickelson, who asserted that CMS schools often used different tracking patterns for students of the same academic ability level who were different races.

Ultimately, this thesis will assert that court-mandated busing was a monument constructed to attract growth to the city of Charlotte, and that while it was both created with honest intentions and able to generate positive educational outcomes for the lives of thousands of students, it was never built to last. Charlotte was, of course, so attractive because it offered something different: a vibrant Southern city that lacked the taboo of racial violence. And so,

Charlotte achieved its goal of growth, but the cost was busing and integration, and the loss of the busing program has changed Charlotte-Mecklenburg Public Schools forever. Indeed, the advent of race-neutral student assignment and the end of race-based busing put Charlotte on a path towards a noticeably resegregated public school system. Therefore, this investigation will conclude with a compelling snapshot of what Charlotte Mecklenburg Public Schools looks like today. This conclusion will hopefully provide some clarity on the extent to which the *Capacchione* decision, and the public school resegregation that it caused, has reverberated within the educational community of Charlotte up until today.

Chapter 1

The Beginning of Busing: How Charlotte Became “The City That Made It Work”

Like many public-school districts in the American South during the mid-to-late 1950s, Charlotte-Mecklenburg Schools (CMS) actively resisted the nationwide movement towards educational desegregation, initially refusing to comply with the groundbreaking Supreme Court decision, *Brown v. Board of Education*. In fact, for the three years following *Brown*, many CMS schools simply refused to obey the court order. In 1957, four Black students enrolled in historically white schools for the first time in Charlotte’s history. All of these students, including Dorothy Counts (pictured in Figure 1.1), were met with intense racial hatred when they arrived for their first day of school. The hostilities Ms. Counts endured on the steps of Harding High School demonstrated a clear and pervasive disdain for desegregated education on the part of many of Charlotte’s white communities.



1.1: Photo of Dorothy Counts entering Harding High School followed by taunting white peers.¹

¹ *Where Are They Now?: Dorothy Counts*. The Charlotte Magazine.

In order to technically fulfill the minimum requirements of *Brown v. Board*, Southern school districts assigned select students, then-categorized as racial-minorities, to attend entirely white schools. Charlotte-Mecklenburg Schools acted in kind, using this strategy of ‘tokenism’ to satisfy the letter of the law while simultaneously defying its spirit. Many white schools simply disregarded the order, choosing to maintain the dual system, and many homogenous, Black schools in poorer neighborhoods were simply ignored. Indeed, CMS maintained de facto segregation, using proven methods, for the better part of two decades following the *Brown* verdict.

Thus, it was historically momentous when Charlotte-Mecklenburg Schools became a crucible for progress in the movement towards educational desegregation in the early 1970s. Unexpectedly, Charlotte became the city that pioneered integrative busing. In 1972, the Supreme Court delivered its verdict in a case known as *Swann v. Charlotte-Mecklenburg Board of Education*, which mandated court-supervised busing; the practice of using pupil assignment plans to engineer racially-balanced student bodies that were implemented via the use of school buses. In spite of the recalcitrant reaction on the part of CMS schools and white communities in the decades following *Brown*, the *Swann* verdict was a completely different story: the busing program united Charlotte in a powerful movement towards creating completely desegregated schools.

Busing flourished because of the support and direction provided by a diverse and unlikely coalition of Charlotte’s leadership. In spite of what one might have expected, it was Charlotte’s mostly-white business elite that paved the way for the busing program, utilizing partnerships with the city’s political leadership and the School Board.² In other words, rather than resist the

² Smith, Stephen S. “Boom for Whom?” Pg. 67-68.

changes brought by the busing initiative, an opportunistic business community saw the chance for growth and took it. However, what this meant for the future of CMS integration is that the busing program was unintentionally built on unstable ground, and everything the busing-coalition achieved in the 1970s slowly eroded in the wake of the rapid economic growth it caused. Fast-forward to the late 1990s, and the busing program was crumbling under the pressure of a powerful grassroots movement started by affluent, white families who moved to Charlotte during the previous decade to work, and who lived primarily in newly developed South Charlotte neighborhoods. The case that sealed the fate of busing in Charlotte, *Capacchione v. Charlotte-Mecklenburg Schools*, is a by-product of Charlotte's economic growth. The social transformations of suburban South-Charlotte during Charlotte's integration era, and the neighborhood schools movement that was born as a result, revealed that the busing program was a monument built on sand.

So, in order to understand how Charlotte, in the end, symbolically turned its back on busing, it is important to first analyze the ways that Charlotte grew as a city post-*Swann*. As such, the purpose of this chapter will be threefold: First, to tell the story of how the busing program came into existence in Charlotte-Mecklenburg Schools, specifically focusing on the implementation of busing in the context of residentially segregated Charlotte neighborhoods. Second, to sketch the economic growth of the Charlotte economy post-*Swann*, providing a clearer understanding of the context through which support for busing from the business community was garnered. Third, to examine national sociological trends throughout this period, such as the rise of neoliberalism and the 'silent majority' of Reagan republicanism, both of which fueled an ideological transformation for middle and upper class white families living in suburban Charlotte.

I assert in this chapter that court-mandated busing lacked a reliable foundation from its inception. This is due in part to the reality that Charlotte's white, suburban business class of the 1970's was only prepared to support busing insofar as it posed reciprocal economic benefits. Simply put, suburban Charlotte in the 1990s, a community that had been further isolated by residential and socioeconomic segregation patterns, was not willing to make the same commitment. This residential and socioeconomic isolation led directly to the neighborhood schools movement which led to *Capacchione v. Charlotte-Mecklenburg Schools*, the lawsuit that changed the complexion of Charlotte-Mecklenburg Schools; replacing its hard-earned identity as the pioneer of busing and sealing its fate of intense resegregation as a result of the reintroduction of neighborhood schools.

How Court-Mandated Busing Came to Charlotte

The educational desegregation movement in the South garnered support from an energetic and diverse collection of leaders who were effective in uniting Black communities behind the vision of integrated education. The National Association for the Advancement of Colored People (NAACP) continuously challenged de facto segregation in court throughout the 1950s and 1960s, despite a justifiably wide range of opinions on the matter.³ Indeed, many Black communities in the South were deeply invested in their community schools; their children were under the care of strong, empowering Black educators, they enjoyed little interference from the entirely white School Boards of the time, and there was rigid continuity in educational pathways.⁴ Charlotte's Black leaders, such as Kelly Alexander, were successful in bringing

³ The National Association for the Advancement of Colored People. "NAACP Legal History."

⁴ Dougherty, Karen. "Schools: No Longer Separate, But Still Unequal."

together Charlotte's Black neighborhoods in opposition of the de-facto segregated school system of the 1960s and in support of ushering in the era of busing.

Born in August of 1915, Alexander was a graduate of Booker T. Washington's Tuskegee Institute, and the founder of the local branch of the NAACP in Charlotte. Upon his arrival in Charlotte, Alexander threw himself into the project of dismantling segregation in all its forms.⁵ Alexander, along with his professional associate, Raymond Hawkins, became the recognized leaders of the Black community by 1965, the same year that the *Swann* suit was originally filed in U.S District Court. In that same year, Alexander became the first Black city councilman in Charlotte since the Reconstruction era.

Alexander recruited one attorney in particular for his branch of the NAACP who would go on to fight for educational desegregation on the national stage, and his name was Julius Chambers. Emotionally moved by his father's experiences struggling against racial discrimination, Chambers decided to become a civil rights lawyer, earning his degree from the University of North Carolina (UNC-CH); he was the first Black editor of the university's law review. Upon arriving in Charlotte in 1964, Chambers was a young, energetic NAACP attorney described by many as cool and collected in the courtroom.

Less than two months after he was hired, Chambers received a call from Vera Swann, whose son had been assigned to a segregated school and desired to transfer to a closer school but was denied access based on his race.⁶ By not allowing James Swann the opportunity to transfer schools because he was Black, the School Board demonstrated its clear disregard for *Brown*, revealing that it would not voluntarily aid in the desegregation process. Julius Chambers, and the

⁵ Gaillard, Frye. "The Dream Long Deferred". Pg. 16.

⁶ Gaillard, Frye. "The Dream Long Deferred". Pg. 25.

NAACP, filed suit against the Charlotte-Mecklenburg Board of Education in 1965 on behalf of James and his mother, and nine other plaintiffs. Their suit was a legal challenge to the systemic problem of Black children having been consistently denied the opportunity to transfer schools in CMS on the basis of their race. Emblematically, the suit challenged the de facto segregation that had persisted in Charlotte schools since *Brown*.

Indeed, despite a decade passing since the first Black student had entered a white school in Charlotte, the large majority of Black students still attended homogenous schools as a result of the School Board's direct efforts to maintain a dual system. The school closest to the Swanns' home in Charlotte was Seversville Elementary; with 297 white students and twenty-six black students, it was ninety-two percent white. According to CMS' records, after James' first day at Seversville, he was told that he was at the wrong school and the administration manually re-assigned him to Biddleville Elementary, a traditionally all-black school. The Swanns contended that children were often able to "transfer out of integrated schools, but not allowed to transfer into them, and that the law should be equally binding...otherwise the law is discriminatory."⁷ The case was initially dismissed by U.S District Court Judge Braxton Craven Jr.,⁸ on account of what he recognized as 'steady progress' on the part of CMS. However, the case was revived in 1969 by U.S District Court Judge James McMillan, who ruled that Charlotte Mecklenburg Schools were not desegregated, noting that, "approximately 14,000 of the 24,000 black students still attended schools that were all black or heavily black, and most of the system's 24,000 teachers were white."⁹

⁷ Charlotte Mecklenburg Public Schools. "A Brief History of Charlotte-Mecklenburg Schools."

⁸ Judge Craven was a graduate of Duke University and son of former Duke University President Braxton Craven Sr.

⁹ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

The District Court ordered the School Board to produce a comprehensive plan to facilitate desegregation, and, after reviewing many potential plans, including a famous district realignment known colloquially as ‘The Finger Plan,’ a busing strategy was finally approved. According to the Swann brief, “the plan created a single athletic league, eliminated the previously racial basis of the school bus system, provided racially mixed faculties and administrative staffs, and modified its free-transfer plan into an optional majority-to-minority transfer system.”¹⁰ Most importantly, the plan detailed a comprehensive “feeder system” that would pursue a goal of racial balance in student populations in all schools where this was feasible, there were a few rural exceptions.¹¹ Furthermore, it made it unlawful for the School Board to sign off on pupil assignment programs that allowed for racially identifiable schools, i.e. schools with upwards of ninety percent of a single race.

Judge McMillan’s order was appealed to the Supreme Court, and, in 1971, Chief Justice Warren Burger handed down a unanimous decision, creating a court-order that mandated busing to facilitate desegregation in Charlotte schools. The busing strategy relied on two main guiding tactics: the first, which was used primarily for elementary schools, was called pairing, and it involved matching a traditionally majority-white school with a traditionally majority-Black school, desegregating each by drawing from the pool of students as a whole. Pairing involved busing on both sides of the equation. The second was referred to as satellite zoning, and these zones were primarily, although not exclusively, drawn in low-income, Black neighborhoods. Students from low-income neighborhoods with high concentrations of so-called-minority

¹⁰ Swann v. Charlotte-Mecklenburg Bd. Of Educ. 402 U.S. 1 (1971)

¹¹ Hidden Valley Elementary was a good example of this type of school; due to its location, it was deemed impractical to bus inner-city children as far South as the location of this facility.

students, for example, would be bused into suburban, traditionally majority-white schools in order to satisfy desegregation requirements set down by the order.

There were many peripheral, practical questions that arose when the busing plan was first created. One such concern was finding a legally acceptable racial composition standard for a school's student body. Initially, the courts and School Board settled on the 60-40 rule, aiming for no less than forty percent Black student bodies in previously white-majority schools and the same for white students in previously Black-majority schools. However, as Chief Justice Burger astutely observed, "the use made of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement."¹² This turned out to be an accurate prediction, and often the acceptable racial quota would change from year to year, as the School Board dealt with an ever-changing Charlotte population. By the 1990s, the rule was that the student body ought not to contain a fluctuation of any particular demographic group outside of plus or minus fifteen percent of that group's CMS-wide proportion.

Another of these issues was the amount of time trips on the school bus were allowed to take. According to the *Swann* order, "the trips for elementary school pupils average about seven miles, and the District Court found that they would take "not over 35 minutes, at the most."¹³ This restriction obviously became more problematic due to the sheer size of the Charlotte-Mecklenburg district, which would only continue to expand as new schools were built farther away from the center of Charlotte. Furthermore, as we will see in the second chapter, the burden of busing fell with much more force on the shoulders of African American communities, leading to frustration with the program.

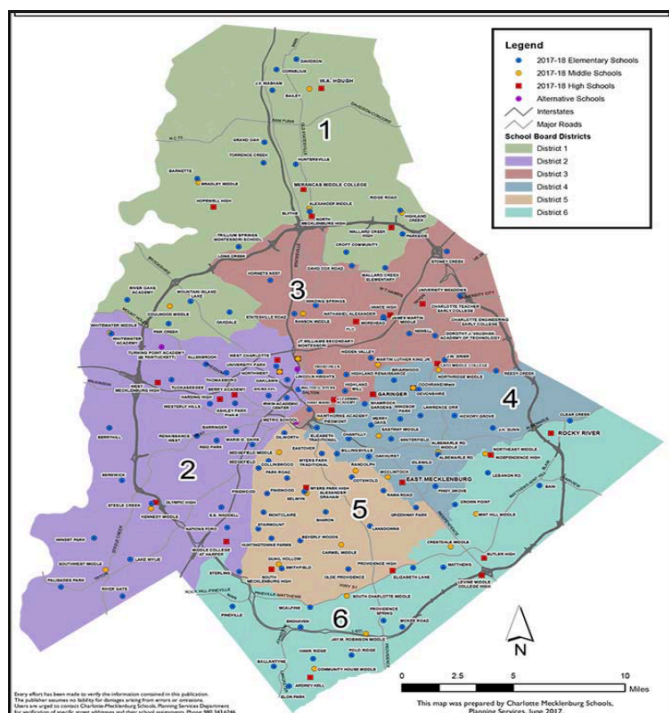
¹² *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

¹³ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

The Charlotte-Mecklenburg School District (CMS)

Before this Chapter moves on to analyzing the implementation of the busing program and Charlotte’s reaction to it, it is important to characterize the Charlotte-Mecklenburg School district itself. The following visualization of the district (Figure 1.2) should provide a clearer understanding of why school desegregation, and eventually busing, was such an enormous undertaking for the School Board.

At the time of *Swann*, the Charlotte-Mecklenburg School System was the 43rd largest district in the nation, encompassing the city of Charlotte and surrounding Mecklenburg County, North Carolina. Stretching 550 square miles, the system served more than 84,000 pupils in 107 schools in 1968-1969 school year. Over time, the size of the region presented many difficulties for the School Board, as we will see in the section about Charlotte’s reaction to the busing decision. In that same year, 71 percent of CMS students were white, and 29 percent were Black.



1.2: A map of the county of Charlotte-Mecklenburg by region. CMS encompasses the entire county.¹⁴

¹⁴ “The Agenda Guide to November Local Elections.” Charlotte-Agenda Magazine.

Figure 1.2 shows a map of the Charlotte-Mecklenburg School District divided into regions, the names of which will be referenced henceforth. According to the *Swann* verdict, “As of June 1969, there were approximately 24,000 black students in the system, of whom 21,000 attended schools within the city of Charlotte. Two-thirds of those 21,000 -- approximately 14,000 black students -- attended 21 schools which were either totally black or more than 99 percent black.”¹⁵

It is also important to note here that at the time that the original *Swann* litigation was filed in the late 1960s, a relatively small proportion of CMS students were considered neither white nor Black. According to education historian Dr. Roslyn Arlin Mickelson, it is, “for this reason, (that) the federal district court orders in *Swann* categorized children as either black or white/other (collapsing whites, Asians, Hispanics, American Indians, and students from other ethnic backgrounds into a single category of white/other).”¹⁶ Chapter Three will briefly explore how the legal view of race in a binary sense during the integration period simplified what was a much more complicated issue of racial and residential segregation in Charlotte.

In terms of the demographic patterns of the CMS district, both the city of Charlotte, and its suburbs in Mecklenburg County, were highly residentially segregated at the time of *Swann* in 1971, as they still are today. As shown in the pictograph below (Figure 1.3), neighborhoods in Charlotte have a history of residential segregation by race. Black neighborhoods at the time of *Swann* were primarily concentrated in Uptown Charlotte, where poverty levels were relatively high and home-values were the lowest in the county.¹⁷ On the other hand, the surrounding suburban areas in South/South-West Charlotte and North Charlotte were populated by majority-

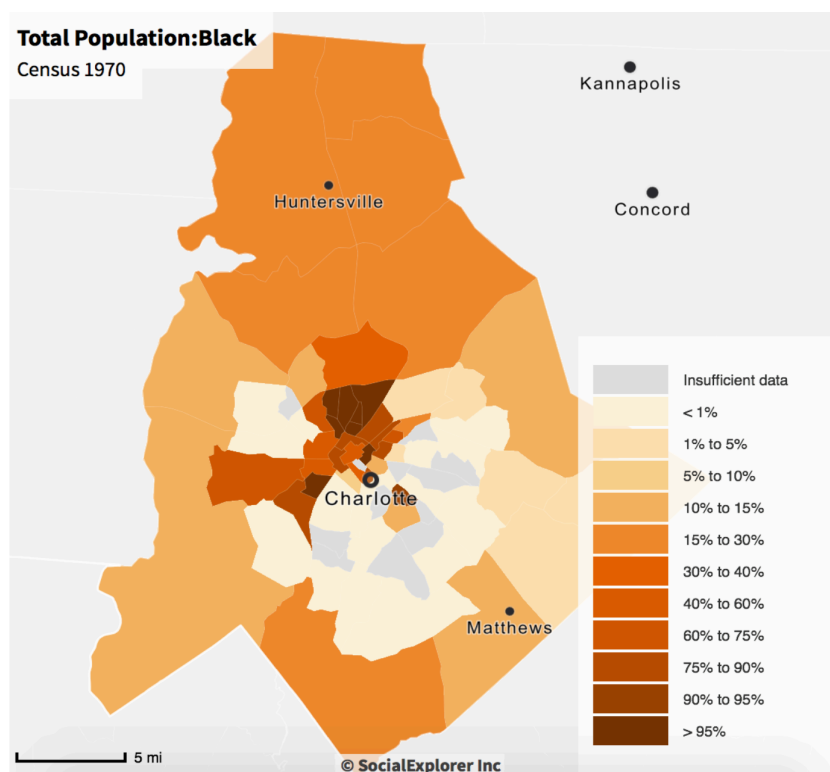
¹⁵ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

¹⁶ Mickelson, Roslyn Arlin. “The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools.” The Civil Rights Project at the University of California – Los Angeles. August 15th, 2002.

¹⁷ Ingalls, Gerald and Isaac Heard Jr. “Developing a Typology of African American Neighborhoods in the American South: The Case of Charlotte.” Pg. 169-173

white, relatively affluent families with much more likelihood of having a high school education.

This trend only intensified as economic growth led to steady population increase.



1.3: Above: Black Population of Charlotte, 1970¹⁸

Furthermore, there was more depth to the residential segregation than can be accounted for by the binary visualization shown in Figure 1.3. Charlotte’s Black neighborhoods grew out of Jim Crow era prejudice beginning in the 1800s, and these effects were still felt well into the 1970s, and in fact still define the residential landscape of the city to this day. According to Gerald Ingalls and Isaac Heard, two urban geography researchers, “African American communities formed in response to white efforts to separate from their black neighbors.” These neighborhoods endure as testaments to the resilience of black communities during a long period of intolerance in Charlotte’s history, and during the era of school desegregation, these

¹⁸ U.S. Census Bureau. Population Density, Total Population: Black, 1970. Prepared by Social Explorer.

communities were highly independent and often isolated, having formed their own identities separate from the rest Charlotte.¹⁹

Naturally, there was a systemic nature to the residential segregation in Charlotte, and not only did it essentially dictate CMS's pupil assignment plans post-*Swann*, but it also became a catalytic element in the creation of the neighborhood schools movement in the early 1990s. Residential segregation grew as an institution in Charlotte, as in many other Southern cities, through years of discriminatory real-estate and financial practices that disadvantaged people of color and concentrated Black and Brown families in particular neighborhoods. Historically, discrimination came in the form of redlining, a practice of categorizing neighborhoods based on racial composition and socioeconomic status. Residential segregation was maintained methodically by restricting non-white families to purchasing homes in already-established low-income neighborhoods made up of low-property-value homes.²⁰

As historians Melvin Oliver and Thomas Shapiro, who study racial inequity in public policy, have explained, African-Americans were, "locked out of the greatest mass-based opportunity for wealth accumulation... (and) African Americans who desired and were able to afford home ownership found themselves consigned to central-city communities...cut off from sources of new investment...their homes and communities deteriorated and lost value in comparison to those homes and communities that FHA appraisers deemed desirable."²¹ Whereas redlining initially seemed to only generate economic disadvantages for people of color, its effects ran much deeper. In terms of public education, residential segregation is the primary reason for busing in the first place, because without a mechanism for reshuffling children into equitable

¹⁹ Ingalls, Gerald and Isaac Heard Jr. "Developing a Typology of African American Neighborhoods in the American South: The Case of Charlotte." Pg. 184

²⁰ This case is made in detail here; Coates, Ta-Nehisi. "*The Case for Reparations*." The Atlantic.

²¹ Oliver, Melvin; Thomas M. Shapiro. *Black Wealth/White Wealth*. via *The Atlantic*.

educational circumstances, neighborhood schools have tended to become single-race schools. Furthermore, schools in primarily Black, low-income communities often replicated their surroundings in terms of poor funding, inadequate facilities, and generally lower quality educational opportunities, with few exceptions.

Although the official practice of redlining had ended long before the busing decision was handed down in the South, the discrimination that inspired the tradition of residential segregation still pervaded all aspects of society, not just real-estate. Prominent writer Ta-Nehisi Coates has described the problem as follows, “legislatures, mayors, civic associations, banks, and citizens all colluded to pin black people into ghettos, where they were overcrowded, overcharged, and undereducated.”²² His last point, on under-education, is a central theme for this investigation, as various institutional biases against Black communities not only posed an intensely complicated problem for Charlotte’s busing system practically, they are also the reason that the bulk of the burden of busing was endured by black children living in inner city satellite zones.

These overt forms of de facto segregation were accompanied by many more profound, less apparent forms. One example was the deliberate construction of new schools in the areas of white suburban expansion farthest from low-income population centers, and the closing of community schools in primarily African-American neighborhoods. The School Board’s development practices maintained a deeper kind of racial separation before the 1970s. According to Chief Justice Warren Burger, “such a policy does more than simply influence the short-run composition of the student body of a new school. It may well promote segregated residential patterns which, when combined with “neighborhood zoning, further lock the school system into

²² Oliver, Melvin; Thomas M. Shapiro. *Black Wealth/White Wealth*. via *The Atlantic*.

the mold of separation of the races.”²³ As a matter of fact, the Chief Justice correctly identified a larger problem facing educational desegregation: residential segregation and the inequities of city development. The issue of school construction practices will be discussed further in the third chapter, but they are important to point out at this stage to allow for a complete understanding of CMS’ common practices during Charlotte’s integration era.

In the long run, CMS’ choices on where to build schools, as well as local government decisions on where to develop during the expansion of Charlotte’s suburbs, were incredibly impactful. As this chapter will discuss in its next section, families moving to Charlotte, made up of primarily white, middle-class parents, populated South Charlotte neighborhoods that were racially and socioeconomically homogenous. These neighborhoods were often the recipients of new school locations, as well as businesses, shopping centers, and other resources, as a result of highly political School Board decisions and development contracts.

Another example of the entrenchment of white communities in South Charlotte was the phenomena of private school construction in newly developed regions in the South of the county shortly after the busing program began. Indeed, the formation of private schools in Charlotte was consistently indicative of a strategic response to desegregation. At best, it was a push for ample options for school choice, and at worst it revealed the intentions of a community that sought to reaffirm discriminatory values by standing firmly against desegregated public schools. In general, private schools became a prominent feature of many Southern cities, where white families continuously moved away from city-centers, often as a result of prejudice against people of color, low-income neighborhoods, and the perceived threat of desegregation in urban spaces.

²³ Swann v. Charlotte-Mecklenburg Bd. Of Educ. 402 U.S. 1 (1971)

In CMS, the affluent communities of Charlotte exacerbated so-called ‘white flight’ through the creation of a cluster of private schools built immediately after *Swann* was passed. These private schools revealed the existence of closely-knit, semi-rural, white communities that refused to abide by the new era of public school busing. These schools are evidence of a pervasive anti-Black sentiment that motivated white, affluent families to unite in search of a segregated option that was no longer offered by the public system as it had been for decades prior. Furthermore, the arrival of new private schools in Charlotte in the 1970s illustrated that the affluent populations of Charlotte were already thinking about alternatives to integration, lending strength to the suspicion that support for busing on the part of these communities might not have been permanent or sustainable.

In terms of the implementation of busing, Chief Justice Burger noted perceptively in his decision that, “the remedy for segregation may be administratively awkward, inconvenient, and even bizarre in some situations,” and this was certainly the case, especially in the early years of the program.²⁴ However, in the years immediately following *Swann*, the Charlotte-Mecklenburg School Board became a powerful engine for progressive social change. Charlotte schools initially reversed many aspects of the dual system through the use of a comprehensive busing plan with the expressed goal of achieving unitary status. Indeed, busing was a resounding success, leading Charlotte to adopt the nickname, “The City That Made It Work,” and the CMS model began circulating around many Southern Cities. Under the busing system, almost every student was bused to a school outside of their neighborhood for at least some part of their academic career, a strategy that allowed the costs of busing to be distributed across the entire

²⁴ *Swann v. Charlotte-Mecklenburg Bd. Of Educ.* 402 U.S. 1 (1971)

district.²⁵ For the next twenty years, various pupil assignment proposals constantly adapted the busing program to accommodate for growth in the education system, but each year CMS successfully upheld the legal standards set down by *Swann*.

Furthermore, and perhaps most importantly, integration was making a difference. According to Dr. Mickelson, “many large, nationally representative samples suggest that average levels of academic achievement for minority *and* white adolescents are higher in integrated schools.”²⁶ Thus, Charlotte’s efforts in busing not only distinguished the city as a progressive icon, they also created stronger educational outcomes for CMS students. In other words, the children of Charlotte were experiencing tangible benefits from integrated classrooms in terms of educational achievement. Chapter Two will explore how the neighborhood schools movement could justify isolating its own children at the expense of the clear advantages of integration, and how the courts could legally substantiate the end of federal supervision over these demonstrated improvements in the public education system.

A Synopsis of the History and Growth of the Charlotte Economy

Charlotte’s busing program under *Swann* grew in conjunction with Charlotte’s economy, and having analyzed the former, the latter now remains. In order to examine the ways in which the business leadership interacted with *Swann* and the busing program, it is important to explain the history of the Charlotte economy.

The *Brown* decision was handed down at a time when Charlotte was beginning its initial phase of modern economic growth and diversification. Historically a textile-town, the working

²⁵ Mickelson, Roslyn Arlin. “Subverting *Swann*.” Pg. 218.

²⁶ Mickelson, Roslyn Arlin. “Subverting *Swann*.” Pg. 220.

class of Charlotte suddenly found itself swept up in the rapid industrial development of the Sun-Belt South, along with cities such as Atlanta, Nashville, and Birmingham. From the mid-1880s to the Great Depression, Charlotte and the surrounding counties of Piedmont North Carolina were the primary producers of cotton-based textiles in the South, positioned on various railways and highways that created the ideal region for importing cotton and exporting yarn and cloth.²⁷

Furthermore, Charlotte was an ideal market for the production of consumer goods; Belk, Inc., and Lance, Inc. are two examples of distributors that prospered in Charlotte at the time. As a result of this unique economic environment, private textile manufacturers, farmers, and businessmen were constantly seeking low-interest loans to build production and manufacturing plants in the surrounding Charlotte cities such as Belmont, Gastonia, and Kannapolis. This demand was satisfied by entrepreneurs and bankers who became the originators of banks such as NCNB (North Carolina National Bank), now called Bank of America, and First Union, now called Wells Fargo. Indeed, Charlotte was a veritable hub of manufacturing and distribution heading into the mid-20th century.²⁸

Immediately following the end of World War II, Charlotte sat poised for growth; a Southern city with good weather, room for geographic expansion, and, most importantly, a burgeoning labor force and a budding banking community. Whereas in past centuries, Charlotte's position far from the coast had put the city at a disadvantage, now its location along railways and highways made it an ideal place for industries such as merchandising, energy, finance, and product distribution, to invest. In this historical moment, two key decisions can be identified as responsible for sparking the primary phase of Charlotte's growth. First, in 1941,

²⁷ Goldfield, David. "A Place to Come To." Pg. 12.

²⁸ Lassiter, Matthew D. "Searching for Respect: From New South to World Class at the Crossroads of the Carolinas." Pg. 26.

then-Mayor Ben Douglas commissioned the construction of a major international airport, an ambitious project for a young city, but a keen investment, as Charlotte began to develop as a veritable ‘hub’ for business travel. Second, the state of North Carolina became the first in America to allow banks to open multiple branches, sanctioning exponential growth of regional banks such as NNCB, which was at this point called NationsBank, and First Union. A combination of looser banking regulations and a newfound accessibility made Charlotte a highly attractive place to bring businesses. On the whole, Charlotte had powerful momentum leading into the 1950s, and its intentional emphasis on economic growth is primarily what shaped the city’s reaction to the *Swann* decision. Charlotte’s pro-growth economic history is important to acknowledge because it sets the stage for future waves of growth in the 1970s and again in the late 1980s, both of which coincide with important moments and changes in Charlotte’s integration era.²⁹

As a result of this economic growth, the private sector amassed considerable power in Charlotte’s local governance beginning in the 1960s. Business leaders had significant influence, particularly when it came to development projects and urban renewal. As a result, corporate involvement was a staple element of the busing program, as business elite were eager to create political alliances with the leadership of the Black community in order to facilitate further growth in Charlotte. In fact, the Chamber of Commerce began actively supporting local government shortly after *Swann* was delivered, providing survey research and assistance to a citizens committee that worked to devise the initial busing plan. This shift was illustrated best by the School Board election of 1972. Whereas in the past election, all three available seats had been won by candidates who were actively in opposition to busing, in 1972 an influential group

²⁹ Goldfield, David. “A Place to Come To.” Pg. 15.

of businessmen known as the ‘Committee for Better Government’ backed several pro-busing candidates with great success. By 1988, no member of the School Board adopted an explicitly anti-busing, anti-desegregation platform, due in part to the support of Charlotte’s diverse coalition of leaders supporting integration.³⁰

However, generally speaking, middle and upper class corporate executives would only support social justice activism insofar as it aligned with development goals. As historian Stephen S. Smith stated, “corporate executives and their spokespeople would...milk the school system’s desegregation accomplishments for all they were worth in the national competition among localities to attract investment capital.”³¹ In hindsight, we can be certain that many businessmen saw desegregation as an opportunity to differentiate their city from others in the South, making it more attractive for potential investors and businesses looking to expand into new markets. Charlotte was often called “The City That Made It Work,” but in the mid-70s it also assigned itself the slogan “A Great Place to Make Money.” These two goals were unified in the two decades after Swann, but as we will see in Chapter Two, when desegregation was no longer in the interest of the business class, the busing program fell apart.

More broadly, the adoption of the busing program by the business class of Charlotte is indicative of a larger trend in America: neoliberalism. Strictly in terms of economics, neoliberalism is defined as an “ideological rejection of egalitarian liberalism in general...and the welfare state in particular.”³² In other words, neoliberalism preferred the control of societal institutions by the private sector, and often sought to dismantle so-called “Keynesian” initiatives such as public housing, redistributive welfare, and socialized healthcare. Advocates of the

³⁰ Smith, Stephen S. “Boom for Whom?” Pg. 67-68.

³¹ Smith, Stephen S. “Boom for Whom?” Pg. 21.

³² Hackworth, Jason. “The Neoliberal City”. Pg. 9.

neoliberal philosophy favored such ideas as economic liberalization, privatization, deregulation, as well as reductions in government spending in order to increase the role of the private sector as the leadership of a society. The spread of the ideology of neoliberalism in America is relevant to the discussion of busing because it characterized the changes in the perception of the busing program by Charlotte's citizens, particularly affluent families. Ironically, neoliberal philosophy was both a part of the busing program's birth and its death: busing worked for twenty years because its support was partly privatized, however, at the point when the private sector no longer desired it, they painted busing as an overextension of the federal government's influence on local public schooling. Chapter Three will further discuss how the neoliberal philosophy of the 1970s and 1980s transformed into a specific rhetorical device referred to as 'abstract liberalism' which informed the language and ideology of the neighborhood schools movement.³³

Within Charlotte's corporate sphere during the 1970's, a rhetorical emphasis on 'corporate citizenship' became prevalent for many firms, defined by social historians Heather Smith and Emily Livingston as improving the community context in which a company is based. This attitude led to powerful public-private partnerships within the Charlotte community as a tool to address challenges of poverty, which naturally tied these relationships to the growing pains of desegregation during the mid 1970s. A major example of this type of public policy is the NCNB's partnership with the Fourth Ward, a neighborhood in uptown Charlotte within walking distance of their headquarters on Tryon Street. The gentrification of the Fourth Ward, funded by both the NCNB and various local banks such as First Union and Southern National, benefited the banks in many ways, portraying them as civic-minded while simultaneously molding the

³³ 'Abstract Liberalism' is a term coined by author, political sociologist, and Duke University Professor, Dr. Eduardo Bonilla-Silva, and will be formally defined in Chapter Three.

downtown neighborhoods into more attractive places to live and do business.³⁴ The language of “corporate citizenship” was deeply motivated by neoliberal ideology, and this new way of thinking motivated a period of deliberate urbanization. Under the guise of urban renewal, commercial interests began to manipulate the zoning of space in downtown Charlotte to create a homogenous, gentrified city-center dedicated to satisfying the needs of Charlotte businesses.

The neoliberal urbanization of the 1970s and 1980s is a principal example of how the business class affected growth in Charlotte. Business leaders realized that the poverty of the inner city was detrimental to attracting employees, new companies, and investment, not to mention that despite desegregation in business in the mid-1960s, there was still a resentment towards the African-American presence Uptown. There is a regional anecdote about banker and CEO of Bank of America, Hugh McColl, that tells the story of how he commissioned the construction of breezeways, called the Overstreet Mall, between the downtown skyscrapers so that he did not have to walk amongst poor, African Americans on the streets outside.³⁵

As a result of discriminatory attitudes and the neoliberal penchant for privatizing urban space, Charlotte’s business class, “remade the central business districts... (and) constructed an economy that reflected (their) interests.”³⁶ Sociologist Randolph Hohle elaborated on this point by demonstrating the various ways that the private sector was able to influence growth: using public funds to construct highways, parks, and affordable housing to embed a language of neoliberalism into spatial boundaries, banks using federally backed FHA loans, and redlining

³⁴ Smith, Heather; Emily Livingstone. “Banking on the Neighborhood: Corporate Citizenship and Revitalization in Uptown Charlotte. Pgs. 145-152.

³⁵ This story does not appear in any official capacity, to my knowledge, it is simply an anecdote that illustrates the perception of Charlotte’s business elite at this time. That being said, Mr. Hugh McColl has since transformed to become a powerful advocate for the poor, Black communities of Charlotte. See the POLITICO article titled, “Hugh McColl’s Last Great Investment.”

³⁶ Hohle, Randolph. “Race and the Origins of American Neoliberalism.” Pg. 116.

recently integrated neighborhoods to create white-private homes in the suburbs.³⁷ Indeed, there was a tangible emphasis on division; creating a partition between the private economy, public homes, and private neighborhoods. In plain terms, wealthy, white business wanted to keep poor, Black and Brown people as far away from their businesses Uptown and their homes in suburban South-Charlotte as they possibly could. In terms of the public education system, effect of the urban renewal process was an ever-increasing strain put on the busing system to maintain standards of integration.

Juxtaposed against the neoliberal outlook of the business class was Mayor Harvey Gantt, who served as a Charlotte city councilman from 1974 to 1983 and as mayor from 1983 to 1987. The first Black student to attend Clemson University and the first Black mayor of Charlotte, Mr. Gantt promoted a mission of creating a prosperous future for Charlotte as a ‘world-class city’ through public works. The mayor believed that by curbing suburban sprawl and redirecting resources and development to the urban core of the city, he could bring Charlotte into the fold. His plan involved regulations on development in Charlotte, a position that the Chamber of Commerce became more and more unlikely to adopt as his two terms went on; the Chamber historically favored growth and expansion of any kind. Although initially Mayor Gantt and banking leaders such as Hugh McColl worked together to build Charlotte to the city it is today, the conflict over growth meant that one side had to win out.³⁸

The period of economic growth during Mr. Gantt’s tenure as mayor contributed to an overarching theme in Charlotte’s history, which was the conflict between controlled vs. unregulated growth. As historian David Goldfield noted, “in Charlotte’s history, there were few

³⁷ Hohle, Randolph. “Race and the Origins of American Neoliberalism.” Pg. 119.

³⁸ Goldfield, David. “A Place to Come To.” Pg. 23-26.

people around to say “no” ... paralyzed decision-making was simply not a part of the way Charlotte did business. The leadership and the newcomers had something in common: they all came from someplace else, they often brought new ideas with them, and they always brought a desire to succeed.”³⁹ Goldfield astutely pointed out that the circumstances of Charlotte’s growth were controlled by an influx of newcomers that Charlotte received in these two critical decades. A feedback loop was created where economic growth brought more business-people into the equation and those new Charlotte citizens then reshaped the way policy worked to foster more economic growth.

Whereas Mayor Gantt believed in the value of shrewdly supervising the growth and development of Charlotte, the newly-arrived, corporate leadership of the 1980s were more likely to accept any and all investment in the Charlotte community, reinforcing the control of the private sector over the growth of the city.⁴⁰ This shift towards privatization, made by the changing business leadership of Charlotte in the late 1980s, was different than the commitment that Gantt might have envisioned. The new business elite desired a city-center dominated by big businesses, a suburban landscape of businessmen and their families, and an isolated poor that did not detract from the ethos of the city.⁴¹

During and immediately after Mayor Gantt’s time in office, there were a few major changes, all occurring between 1988 and 1998, that expedited yet another wave of growth in Charlotte and a corresponding expansion of South Charlotte. The opening of the Blumenthal Center for Performing Arts and the Levine Children’s Hospital were two major additions, both of

³⁹ Goldfield, David. “A Place to Come To.” Pg. 24.

⁴⁰ Lassiter, Matthew D. “Searching for Respect: From New South to World Class at the Crossroads of the Carolinas.” Pg. 35

⁴¹ Lassiter, Matthew D. “Searching for Respect: From New South to World Class at the Crossroads of the Carolinas. Pg. 36-40.

which represented a new wave of investment in Charlotte by young, super-wealthy families. Another was the awarding of a National Football League Franchise in the Carolina Panthers, and a National Basketball Association Franchise, the Charlotte Hornets.⁴² The construction of a major football stadium, along with the introduction of an NBA team, proved that Charlotte was now in the same league as cities such as Atlanta and Washington, D.C. Furthermore, in 1998, NationsBank, under the supervision of then-CEO Hugh McColl, orchestrated the acquisition of BankAmerica Corporation and became Bank of America; this was the largest bank merger in American history.⁴³

These events marked yet another wave of economic growth for Charlotte, once again contributing directly to the feedback loop mentioned earlier. Based on the 2000 census, the population of Mecklenburg County grew by 96 percent from 1970 to 2000; and the Charlotte city population grew by 124 percent.”⁴⁴ There was always a steady influx of new, white-collar families that moved to Charlotte for opportunities in business throughout the decades following *Swann*; these populations booms each corresponded with major waves of economic growth orchestrated by an ambitious Charlotte leadership. Finally, the incredible growth that occurred over the course of the 1980s and 1990s continuously reinforced a neoliberal ideology of shaping the city and community of Charlotte in such a way that benefited certain segments of the population and left others on the outside. This mindset of separation was evident in the neighborhood schools movement.

Understanding the nature of Charlotte’s growth prompts a discussion about where new Charlotte families were coming from. According to Stephen S. Smith, they came from the Rust

⁴² The Charlotte Hornets who then became the Bobcats and then the Hornets again – it’s been quite a ride.

⁴³ Martin, Mitchell. “NationsBank Drives \$62 Billion Merger: A New BankAmerica. Biggest of U.S Banks.”

⁴⁴ Ingalls, Gerald and Isaac Heard Jr. “Developing a Typology of African American Neighborhoods in the American South: The Case of Charlotte.” Pg. 184

Belt, primarily, and settled in new areas that were being developed in South Charlotte, surrounding the newly constructed beltway of I-485. Recommended by Governor Jim Martin in 1988, the initial proposal for this highway included several potential locations. The southernmost of these was chosen due to political savvy on the part of several landowners who generously donated large swaths of their land south of Charlotte for the expressed purpose of developing the remainder into residential and commercial hubs for newly arriving families. These areas, such as Ballantyne and Providence Plantations, became the epicenter for high-end, primarily white neighborhoods.⁴⁵

Simultaneously, according to Ingalls and Heard, “the prosperity of the 1990s...ultimately imperiled African American neighborhoods, especially as *inner city development* and *infill* became buzzwords in the drive to make Charlotte a ‘world-class city’.”⁴⁶ So, while white neighborhoods prospered freely in South Charlotte, African American neighborhoods were under siege by commercial developers attempting to open up new space for growing industry to move in Uptown.

It was this deliberate separation of poor from rich and Black from white that produced insulated communities where ideological ‘echo chambers’ became incredibly powerful. The various political principles of the Charlotte business class, such as private control over growth, the power of private interests over public policy, the rights of individuals to make private decisions for their families; these ideals extended into the social spheres of South Charlotte. In no uncertain terms, the white, affluent businessmen and women of Charlotte rallied behind the shifting political ideology of conservatism in the South, emphasizing the sanctity of the nuclear

⁴⁵ Smith, Stephen S. “School Desegregation and Resegregation.” Pg. 194.

⁴⁶ Ingalls, Gerald and Isaac Heard Jr. “Developing a Typology of African American Neighborhoods in the American South: The Case of Charlotte.” Pg. 167.

family, the prioritization of individual preferences over collective-good, and the freedom from intervention by the federal government in private affairs and local government.

In Charlotte, the CPA (Concerned Parents Association) was organized as a direct reflection of these values, and its mission was to protect suburban families from being affected by integration. In a letter to President Richard Nixon, one concerned Charlotte parent wondered, “how could it be possible in America for a federal judge to punish affluent communities simply because their residents worked hard in order to purchase a home in a respectable neighborhood and rear their children in a safe environment?”⁴⁷ This letter is a clear demonstration of the conservatism that engrained itself in South Charlotte neighborhoods during the integration era. President Nixon had issued a policy statement in March of 1970 favoring neighborhood schools, and indicated that America would not support busing unless the Supreme Court created a mandate, which is, of course, what *Swann* did.⁴⁸ In Nixon and Southern conservatism, white, suburban members of the CPA found an outlet to worry about poor children of color and how they would compromise the moral and educational standards of their neighborhood schools. This mindset, solidified by Nixon’s campaign speech in Charlotte, was a clear façade meant to hide lingering racism in Charlotte during the 1970s.

Conservative views on education were reinforced by President Ronald Reagan in his 1984 campaign when, in a speech in Charlotte, he condemned busing as a failed social experiment. Indeed, two-way busing initiated strong opposition from the ‘Silent Majority’, who were outraged at the thought of the government taking away their children against their will and forcing them to attend schools far from their neighborhood. Whereas Reagan’s comments

⁴⁷ Ingalls, Gerald and Isaac Heard Jr. “Developing a Typology of African American Neighborhoods in the American South: The Case of Charlotte.” Pg. 121.

⁴⁸ Vassar, Evan. “Nixon, The Supreme Court, and Busing.”

elicited an awkward reaction from many Charlotteans who remained ardent supporters of busing, the benefit of hindsight shows that Reagan planted a seed that eventually germinated into the school choice and neighborhood schools movements. The CPA claimed that the rejection of busing was not a question of race, but of Constitutional rights. These primarily white, affluent families had begun, in the mid-1980s, to express discriminatory ideals through the guise of conservative political rhetoric; validating their preferences for segregated schools through the guise of protection from government intrusion. What was simply ideology in 1984 became practice in the late 1990s, when a similar rhetoric was employed by the neighborhood schools movement, and disguised policy inspired by and supportive of institutional racism.

In sum, Chapter One has established an important trend in Charlotte's integration history: periods of economic growth occurred in conjunction with changes in the movement for educational desegregation. The ambitious business and political leaders of Charlotte in the 1970s identified busing as a way to make Charlotte more attractive for prospective industrial growth. Charlotte's business elite were initially highly supportive of the busing program; it served as a mechanism for attracting businesses and enhancing Charlotte's reputation as a young, progressive Southern city on the rise. However, as these businesses grew, their employees, the new business class, never said no to an opportunity for growth, resulting in over-expansion and lopsided development. The turnover of business leadership that occurred in the 1980s resulted in a new group of leaders who did not recognize the value of the busing program; they had forgotten the collective-good that it brought Charlotte. Unfortunately, busing no longer served business interests. This shift left the revolutionary integration program vulnerable to repeal, an inevitability that began in 1998 with *Capacchione v. Charlotte-Mecklenburg Board of Education*.

Chapter 2

The Neighborhood Schools Movement: How South Charlotte Changed the Pupil Assignment Narrative

The prosperous suburban hub of South Charlotte was, at one point, considered rural. The creation of South Charlotte as it looked in the early 1990s was a product of a very deliberate chain of events. As discussed in Chapter One, the re-branding of Charlotte, organized by the business and political leadership, revealed a Southern city that offered something different. This revitalization attracted business, and such rapid industrial growth meant equally rapid suburbanization. As a result, a primarily white business class developed South Charlotte as an affluent community available for incoming company hires and their families. Furthermore, whereas the benefits of Charlotte's economic prosperity might have been, in limited ways, spread across all of Charlotte, the primary beneficiaries concentrated themselves in a veritable 'bubble' of zip codes. This is where the neighborhood schools movement was conceived, and it matured rapidly.

The community-wide debate over busing in Charlotte-Mecklenburg Schools was first picked up by the *Charlotte Observer* in April of 1997 at the tail end of a series of public forum debates held by the School Board. The *Observer* was decidedly optimistic about the diversity of attendance at the meeting, "the forum drew religious leaders and politicians, school board members and professors. Mostly, though, there were regular people...in suits and ties or jeans and T-shirts, a crew of parents, teachers, and real-estate agents."¹ Ironically, according to the article, most showed up to the meeting to urge the community to protect school integration, talking about the need for diversity in education and Charlotte's history of protecting the

¹ Cenziper, Debbie. "Town Forum on Busing, Integration Draws Crowd." *The Charlotte Observer*. April 17th, 1997.

institution of busing as a tool for achieving the goals of *Swann*. This byline highlighted the optimism that Charlotte had just prior to the outset of the neighborhood schools movement; the *Observer* believed that the Charlotte community had the strength to withstand attacks against its busing tradition. In addition, the article identified the grassroots nature of the movement towards neighborhood schools; vocal parents would head over from work to voice their opinions and concerns about pupil assignment.

Even though this article was published before the lawsuit was filed, the neighborhood schools movement had already become prominent by 1997. In fact, Bill Capacchione, the title plaintiff of the *Capacchione v. CMBE* case, was interviewed for the article, claiming that he was simply there to listen. “I don’t send my kids to a magnet program because I believe in neighborhood schools,” he said.² I assert that even at this point, in 1997, the pieces of the puzzle were already in place, and the neighborhood schools movement was simply looking for the perfectly neutral case to file in court. It turned out that later that year Bill Capacchione would bring the movement that very case.

This chapter explores the rise to prominence of the neighborhood schools movement in the context of the economic growth and pupil assignment issues discussed in the previous chapter. As such, it has three objectives: first, to explain how the neighborhood schools movement was popularized, second, to assess the issues that the movement focused on with regard to pupil assignment and how they were retrofitted to disguise an underlying racial bias, and third, to identify a noticeable lack of Black and Brown voices in the dialogue over pupil assignment on the public record. The chapter will begin by classifying the influence of the

² This is actually not a true statement on his part – his deposition revealed that he applied to Olde Providence Communications magnet on behalf of his daughter, Christina, two consecutive years prior to filing a lawsuit. Ironically, she was also admitted via lottery shortly after the suit was filed.

neighborhood schools movement in Charlotte; namely, through a series of hearings over the pupil assignment plan for the 1997-1998 school year. Next, the chapter will summarize the publicly debated issues of busing and the School Board's actions outside of the case in response to this political pressure. Finally, the chapter will elaborate on how people of color were systematically excluded from the conversation on neighborhood schools, and assert that the intense residential segregation of the 1980s created 'echo chambers' in South Charlotte that both allowed a neoliberal, anti-government-intervention viewpoint to grow in popularity and made an inclusive, Charlotte-wide community dialogue impossible.

The Public Forums

Unparalleled economic growth and the renewed attractiveness of Charlotte over the course of the 1980s and early 1990s drew an abundance of white, upper-middle class families into the newly developed suburban landscape. The increased separation and segregation of urban and suburban populations by race and socioeconomic status presented a massive undertaking for the School Board. How would they use the limited combination of satellite zones, busing, and paired schools to accommodate the burgeoning, racially unbalanced landscape in the South of the district? Their answer came in the form of John Murphy, a boisterous public figure elected as chairman of the School Board in 1991, who espoused a platform of modernizing the existing plan; distancing pupil assignment from what he viewed as an outdated mode of allocation.³ In 1992, Murphy proposed a three-point approach to his new pupil assignment strategy. The first objective was to create schools in what Murphy's board referred to as "naturally integrated attendance areas," meaning neighborhoods that were determined to be residentially desegregated

³ Cenziper, Debbie. "How We Got Here." *The Charlotte Observer*. September 11th, 1999.

to the point where racial quotas were no longer necessary as the primary means of pupil assignment. The second was to build additional ‘midpoint schools’ located between identifiably white and Black neighborhoods, designed so that the burdens of desegregation would be borne more equally and satellite zones would become less necessary. The third, and most ardently pursued goal, was to create a network of magnet schools, schools that offered special programs or thematic concentrations and chose students through a lottery system.⁴

The magnet school program was started by Murphy’s School Board as a response to the growing school-choice movement that swept through the nation in the early 1990s. In Charlotte, this ideology manifested itself as commonly used language emphasizing the freedom of educational choice among normal and alternative educational options, the right of a child to attend school in his or her neighborhood, and a rejection of federal oversight of local public school districts. The magnet program allowed families to apply to a handful of schools, entering a lottery system that ultimately determined which families would be admitted. Magnet programs often received enhanced funding packages, as they included features such as AP and IB classes, STEM concentrations, and other specialized programs. As a result, the demand for magnet lotteries was high, especially from white, affluent families who were searching for an alternative to participating in the busing program.

The student selection process of magnet schools functioned differently than that of regular public schools. A regular public school would matriculate a certain number of students from its designated attendance zone and then the rest would be selected from satellite zones in order to balance the legal demands of racial quotas, per the *Swann* order. Magnet schools, in contrast, had slightly different assignment criteria: first, the school would admit all applying

⁴ See the Final Defense Summary in the *Capacchione v. CMBE* archives. Author: Middlebrooks, Gil. Pg. 10.

siblings of current students, then they would take all students from a designated “walk-zone” radius, based on the size of the neighborhood in which the school was located. Finally, after those spots were filled, the remaining students would be pulled from a lottery. However, magnet schools were still subject to the racial quotas imposed on regular schools, so the lottery became the sole mechanism for balancing the racial composition of magnet schools. Often the pre-lottery student population was extremely homogenous.⁵ Take, for example, a case where a public school in South Charlotte was converted into a magnet school. In order to compensate for a naturally high demand from white, affluent families in the surrounding areas, the Board would be compelled to award a corresponding number of the lottery spots to students of color to continue its commitment to integration. The same concept would have also applied to magnet schools established in inner city Charlotte neighborhoods.

Indeed, at the time of their inception, because magnet schools were still subject to the regulations of *Swann*, race was a deciding factor in determining which students were admitted to the schools via the lottery. As a result, many students, both white and non-white, who applied to the magnet schools close to their homes would be assigned, instead, to other public schools, oftentimes bused to schools farther away. Whereas families of color might have become accustomed to these so-called realities of integration, the seemingly ‘discriminatory’⁶ nature of the pupil assignment process presented a frustration for many parents of South Charlotte that moved to the suburbs to fill jobs created by Charlotte’s enormous growth. As historian David

⁵ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 11-24.

⁶ I mean this simply in the literal sense of the word in that it means the opposite of an indiscriminate or arbitrary method. Obviously, many white families felt that their children were racially discriminated against, which is the second reason why I chose to use the word ‘discriminatory’ here. As the reader will discover in subsequent chapters, the magnet schools program was found to be unconstitutional in that it discriminated against students by race; although there were no legal consequences, after all, the CMBE was under Supreme Court Order to use race as a qualifying characteristic in their pupil assignment models.

Goldfield points out, “the major migrations into the region did not occur until the late 1980s...long after the desegregation of schools... Northerners were unaccustomed to integrated schools for the most part. Many northern whites came from suburbs where schools were predominantly white. They associated quality education with white education.”⁷ These parents, new to the region and unfamiliar with the significance of diversity on educational outcomes for Charlotte students, believed that they ought to unequivocally retain the right of choosing their neighborhood school for their children to attend. Families moving into South Charlotte adopted a rights-based notion of thinking about how public schools ought to fill their student bodies. They were mostly unaware of the costs that Jim Crow segregation had inflicted on Charlotte and the important commitment that citizens before them had taken; a promise to use busing as a method of repairing the damage of segregation.

What these new community-members had in mind was a student population that reflected their own neighborhood’s composition; not only did many South Charlotte parents want their children to attend school with the rest of their neighborhood, they wanted their children to *only* attend school with the rest of their neighborhood. Indeed, the language used by the neighborhood schools movement emphasized the *rights* of parents to determine their child’s educational path and the *rights* of children not to be denied a quality education. However, it is equally clear that this suburban population only had white or affluent children in mind, and did not consider the larger community in their assessment of the situation. The concentration of white, upper-middle class families in South Charlotte had created a numbers-problem for pupil assignment, but the ideologies that were manufactured within these insulated communities posed a far larger problem for the School Board.

⁷ Goldfield, David. “A Place to Come To.” Pg. 16.

As a result of the changing residential demographics of Charlotte, which were outlined in Chapter One, the Charlotte-Mecklenburg Board of Education elected to have the responsibility of updating the pupil assignment plan annually. In order to accomplish this task, the Board took into account growth, demographic changes in residential zones, school capacities, and new schools. Each year the Board held public forums to gather a consensus on what issues ought to be addressed in the upcoming school year. Many such forums were full of disagreement, but none was more controversial than the input sessions held from the fall of 1996 to the spring of 1997. Magnet schools had complicated and strained the busing system to the point where parents on either side of the issue were becoming frustrated. These forums began as a platform for concerned parents to voice their opinions about where school zones ought to have been drawn, but ended as a flash point for the neighborhood schools movement.

Originally there were three proposed pupil assignment plans for the 1997-1998 school year, each containing subtle variations from the previous school year, an attempt to account for the demographic changes in Charlotte by using satellite zones and busing. In plainer terms, the previous year's plan was tinkered with slightly, but no major changes were proposed at the outset of the confirmation process. Other major issues at stake that year included the struggles of East-Mecklenburg High School, the overcrowding of Providence High School, and the construction of a new high school in Matthews Township.⁸ Many communities of South Charlotte felt slighted by each plan for a variety of reasons.

One major issue that parents took with busing had to do with educational continuity, a concern predicated on the idea that a major factor in a child's growth and potential educational outcome, as well as their enjoyment of school, comes from stable peer groups and parental

⁸ Matthews Township is a small suburb of South Charlotte that has its own local government and city center.

involvement. This worry was voiced in the 1996 September forum by a parent who lived in South Charlotte, when she stated that, her “primary concern (was) peer continuity... Parents want to be involved, but school assignments were scattered. She said there was a need for community-based schools.”⁹ A parent from Providence Plantations neighborhood in South Charlotte echoed this sentiment when she stated in the same meeting that she had lived in the same house for twenty-one years and her children had attended eight different schools. “Leave my children alone,” she said. She wanted her children kept at Providence High, the school closest to her home. Both these parents demonstrated a fairly pervasive sentiment that continuity of assignment ought to be considered a high priority in the School Board’s plan. These parents clearly felt that neighborhood schools were the way to accomplish this goal and serve their children best. Furthermore, although not a guaranteed assumption, it is most likely that these voices from South Charlotte were white, and it is even more likely that they represent an affluent perspective.¹⁰

In a letter written to the School Board in September 1996, a concerned parent referenced a statement made by then-Secretary of Education Richard Riley, who was convinced that, “parents are the missing link in improving American Education and schools simply must do a better job of reaching out and involving parents.”¹¹ The letter’s author asked that Charlotte’s schools not make it more difficult for parents to be involved in their children’s school lives by busing them twice the distance from home and past their neighborhood school. This sentiment was echoed in a variety of ways; especially from parents who used their own children as

⁹ See the *Capacchione v. CMBE* archives, collection title: *CMBE Minutes 1996*. The testimony of one Ms. Katrina Glass to the School Board in a public forum.

¹⁰ *Ibid.* The testimony of one Ms. Mary Dubin to the School Board in a public forum. It is also important to note that race was not identified in the transcripts of the forums.

¹¹ See the *Capacchione v. CMBE* archives, collection title: *CMBE Minutes 1996*. A Letter from one Mr. BJ Hendrix to the School Board written on September 30th, 1996.

examples of how the system of busing was failing. The neighborhood schools movement as a whole explicitly prioritized the rights of parents to acquire what their children deserved education-wise and did not prioritize any semblance of collective good beyond the insulated neighborhood community. Essentially, this parent epitomized a defining characteristic of the neighborhood schools movement, that it often did not consider the impact that its proposed policies would have on the community at-large.

One major concern voiced consistently in these forums was the length of bus rides. The grounds of this complaint, as pointed out by a parent in the October 1996 public forum, came from *Swann*, which imposed limits “on the time and distance of travel being so great as to either risk the health of the children or significantly impinge the educational process.”¹² This parent suggested that all three of the pupil assignment proposals ignored those limits and that students would have to spend excessive amounts of time on the bus. Another parent, with a child who lived near McAlpine Elementary, in South Charlotte, but was assigned to go to school in West Charlotte, said that his child would be required to travel fourteen miles through one of the worst traffic corridors in the County.¹³ These examples characterized the concerns of many South Charlotte parents, who feared that their children would spend much of the school day on the bus. Parents were so paranoid about time on the bus risking safety, wasting time, denying involvement in extra-curricular activities, lessening parental involvement, and exhausting children. In other words, parents feared that time spent on buses denied their children the opportunity to participate in a full range of what they perceived as an equitable amount of activities during and after the school day.

¹² See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Ms. Karen Pollack to the School Board in a public forum.

¹³ See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Mr. Andy Anderson to the School Board in a public forum.

The views espoused by the parents of the neighborhood schools movement, who were primarily white, upper-middle class citizens of Charlotte, are only part of the story of these pupil assignment hearings. One would think that since Black students bore a disproportionately large burden of busing, both by the numbers and in terms of duration, the voices of Black parents would be present in support of this concern. However, there is a noticeable absence of Black voices in the community forum hearing transcripts; in fact, it is striking. In my view, there are several plausible explanations: perhaps the forums were simply inaccessible to the Black community in terms of scheduling and location, perhaps they were seen as trivial, perhaps the Black and Brown community felt dissuaded by public forums because they saw that their voices were already falling on deaf ears in terms of busing. What is clear is that the neighborhood schools movement spent a considerable amount of time building its clout before a response from the Black community. I assert that this is due in part to the mixed opinions that Black parents might have had about busing. On the one hand, integrated education presented considerable opportunities for positive educational outcomes. However, on the other hand, students of color had been unfairly subjected to disproportionate burdens within the busing system for decades at this point, and many families of color were probably fed up with the institutional discrimination.

Unfortunately for CMS School Board members, complaints were not limited to the forum only. Many parents sent letters to the Board chronicling their child's time on the bus each day. Others would threaten to use their influence to inflict political consequences on School Board members if their children were not assigned to a particular school. Perhaps the most insidious of these letters asked the Board whether or not they were willing and ready, "to accept the BLOOD

of injured students on (their) hands?”¹⁴ Although there is difficulty identifying some of the individuals who wrote the letters, the vast majority of those that are distinguishable originated from South Charlotte neighborhoods and were written by incensed white parents.¹⁵ Once again, reiterating this point; this trend is striking considering the fact that Black children had born a disproportionately large burden of the busing program since its inception in the early 1970s. Indeed, children of color had been busing an hour back and forth to school ever since the busing program began, but it was only when white students began to endure this experience that a movement for neighborhood schools formed. Students of color had not been able to participate in extracurricular activities, had invested time busing to better-funded schools, and had accomplished educational outcomes independent of their parents’ support. Ironically, in this moment South Charlotte parents became worried that their children, white children, would have to endure the same experiences. The important distinction being that these parents viewed the costs of busing as unnecessary rights violations as opposed to necessary burdens for the sake of progress.

Lastly, and perhaps most critically, there was a far more sinister motivation behind South Charlotte parents’ disapproval of the busing program, voiced by a parent representing Huntingtowne Farms Elementary. She described the situation as *dire*: Huntingtowne Farms was losing parents and students to magnet and private schools, causing a lack of parental involvement. Furthermore, she lamented that parents, including herself, were dismayed by the vast socio-economic differences of the student body, and that teachers were lost because they were “drained.” She asserted that the satellite student population, of primarily Black, low-income

¹⁴ See the Capacchione v. CMBE archives, collection title: CMBE Minutes 1996. A Letter from one Mr. Kyle Gyorfy to the School Board; no date was specified.

¹⁵ Most of the letters either identified a specific neighborhood or school, the others provided an address in the letterheads, which were the key to identifying where these letters came from geographically.

students, had increased to the point that Huntingtowne Farms Elementary was becoming “an inner-city school in an upper middle-class neighborhood.”¹⁶ This type of bias, while not explicitly put on public display by many parents, was no doubt a major motivation behind the neighborhood schools movement. In essence, parents were worried that low-income students of color would negatively impact their schools and their children’s educational potential. The parent in this case clearly exhibited prejudice, but most parents in this movement did not.

Indeed, the quote above points to a larger and more disturbing issue at play; that at best, South Charlotte parents did not recognize the educational value of diverse classrooms, and, at worst, they were intolerant of low-income students of color entering their neighborhoods and impacting the lives of their children.¹⁷ The latter was clearly voiced by a concerned parent, who stated that there was a serious problem of *equity* at Hornets Nest Elementary, a school in North Charlotte: the diversity between children was too great. She felt that many children, white children, were being held back because of less-advantaged, Black, children.¹⁸ Her testimony made it clear that the various concerns over busing were gilding the true issue; a new expression of racial prejudice. While few of the voices of the neighborhood schools movement publicly vocalized racism in the traditional sense of the word, their agenda profoundly reinforced institutional racism and found new ways of articulating discriminatory language.

Indeed, one characteristic about the neighborhood schools movement that all these testimonies point to is that its rhetoric was coordinated and self-reinforcing. It developed a common language used to talk about public schools in the context of rights and school choice,

¹⁶ See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Ms. Jean Milikan to the School Board in a public forum.

¹⁷ *Capacchione v. CMBE* – Charlotte Mecklenburg Board of Education Minutes: September 30th, 1996.

¹⁸ See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Ms. Kim Phillips to the School Board in a public forum.

and this language became engrained rhetoric used by almost every South Charlotte resident. Eduardo Bonilla-Silva, a prominent writer on issues of race, refers to their strategic language as ‘abstract liberalism;’ the practice of invoking principles such as equal-treatment or equal-opportunity to justify having the right to live in segregated neighborhoods and send children to segregated schools.¹⁹ Furthermore, as we will see more in the next part of the chapter, the neighborhood schools movement seemed to have substantial motion behind the scenes: it was far more organized than the *Charlotte Observer* gave it credit for back when the story was initially picked up.

In spite of the expansion of the neighborhood schools movement, there were also many voices in Charlotte who supported integrated schools; this group was featured in the public forums as well. One man at the September forum of 1996 urged the Board to keep the integrated school system, saying that neighborhood schools would serve a white population and deny integration. In his opinion, the reason for the overall increase in SAT score performance that Charlotte accomplished during the 1980s and early 1990s was due in large part to integration.²⁰ The busing program was also supported by many letters written to the School Board in 1996 and 1997, one in particular implored the Board to, “continue to strive for integration in our schools.”²¹ The author emphasized socioeconomic diversity, racial diversity, and the importance for children to learn and co-exist with children of other races and cultures. Indeed, messages of unity and hope were interspersed among the surge of segregationist rhetoric. I imagine these

¹⁹ Bonilla-Silva, Eduardo. *Racism Without Races*. Pg. 56.

²⁰ See the Capacchione v. CMBE archives, collection title: CMBE Minutes 1996. The testimony of one Mr. Fred Marsh in the September public forum of that year.

²¹ See the Capacchione v. CMBE archives, collection title: CMBE Minutes 1996. A Letter from one Mrs. Denise Hart to the School Board; no date was specified.

messages of hope and commitment to educational equity are where we see Black and Brown voices insert themselves into this narrative.

A handful of community members were also highly cognizant of the various political elements at play; the debate over pupil assignment was a crucial voting issue for School Board elections in the 1990s. One resident of Providence Plantation, a neighborhood in South Charlotte, who may or may not have supported neighborhood schools, said that real-estate developers had undue influence on the Board, which in turn allowed the pupils of communities such as Ballantyne to attend the high-performing Providence High. She said that the perception was that the Board constantly changed school districts from year to year, implying that this change resulted from pressure applied by powerful, white families in new neighborhoods like Ballantyne.²² Indeed, as the busing program grew older and became more strained, it also took on a political aspect.

Political tensions reached a climax at the end of the 1996-1997 school year, evidenced by the creation of two pivotal committees. One of these groups referred to themselves as the Committee for a Neighborhood School System (CFANSS). This group, made up of primarily white affluent parents who lived in South Charlotte, formed in December of 1996 and vowed to fight the School Board via the introduction of new legislation and, consequently, in the courts. In April of 1997, state legislators from Matthews, a small town in South Charlotte, sponsored a bill to let parents send their children to the closest available public school. Furthermore, dissatisfied with the resistance on the part of the School Board to changing their pupil assignment plan, CFANSS created several political action committees to support incumbents such as Lyndalyn

²² See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. The testimony of one Ms. Cindy Mabel to the School Board in the September forum of that year.

Kakadelis, who ardently supported school choice, and new figures such as Jim Puckett, an avid supporter of neighborhood schools, who won his election as a result of the growing political influence of CFANSS. Kakadelis became the most powerful and outspoken proponent of neighborhood schools on the Board. She was a leading witness in the *Capacchione* trial and became a personal correspondent of Bill Capacchione prior to the case being filed.²³

Another group that formed around this time was a 33-person community task-force given the job of compromising between maintaining integrated schools and limiting the length of bus rides. They ultimately submitted a plan, in April of 1997, that would limit bus rides to 35 minutes while simultaneously accomplishing CMS' integration requirements. The plan made sacrifices when it came to the assignments of some South Charlotte zones to North Charlotte high schools. As a result, the compromise plan did not rally enough political momentum, and was ultimately drowned out by the neighborhood schools movement, presumably to the dismay of the School Board.

The town of Matthews, North Carolina came out of this political moment victorious, and influenced a change in policy. Through the support they had amassed by channeling the pervasive anti-busing sentiment of the surrounding neighborhoods, the Matthews community created a fourth pupil assignment plan, intended to compete with the three existing plans that had been submitted in the fall of 1996. A letter written by the community leaders of Matthews sums up their declaration, "It is resolved that the CMS School Board and Staff abandon all three proposals currently submitted and develop a fourth plan that is reflective of community based schools which would allow the children to attend school closest to them except in situations

²³ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 34.

where they make a voluntary choice to do otherwise.”²⁴ This plan was ultimately accepted, and its adoption for the 1997-1998 school year opened the door for South Charlotte, giving credibility to those who had fought for neighborhood assignment and magnet schools.

Ultimately, the debate that swirled around the inception of the Matthews Plan was the source of the *Capacchione* law suit. The issues at stake in court were far broader than those discussed by the community during the pupil assignment forums or even by the School Board.²⁵ Whereas many parents were critical of the busing program for practical reasons: the extended commute time, the lack of access to their children’s education, the inconsistency of peer groups; the case focused on constitutional issues: whether or not using race as a qualification for access to a magnet public school violated a child’s fourteenth amendment rights, and whether or not Charlotte-Mecklenburg Schools could be considered as having achieved ‘unitary’ status.

Capacchione v. Charlotte-Mecklenburg Board of Education is Filed

The case of *Capacchione v. Charlotte-Mecklenburg Schools* was filed in October of 1997 by Bill Capacchione, an insurance agent who moved to Charlotte from California in the early 1990s with his family. He filed suit against the Charlotte-Mecklenburg School Board when his daughter, Christina, was denied a spot at Olde-Providence Elementary School, a communications magnet, on the basis of the school’s admissions lottery. Christina was instead assigned to McAlpine Elementary for three consecutive years. McAlpine was the school close to her home but one that lacked the perceived superior educational status of the new magnet schools.²⁶

²⁴ See the *Capacchione v. CMBE* archives, collection title: CMBE Minutes 1996. A Resolution from the Town of Matthews to the School Board written on November 25th of 1996.

²⁵ At multiple points in the deposition of Ms. Kakadelis, she confirmed that the Board never considered whether it was unitary until after the case was filed.

²⁶ I say perceived here because according to the deposition of Mr. Capacchione, the test scores at McAlpine Elementary were, on average, higher than Olde Providence in most respects

After being denied twice from the Old-Providence lottery, Bill Capacchione reached out to a group called the Campaign for a Colorblind America, which was cited in a 1999 *Charlotte Observer* article as stating that it fought against, “schemes that classify students by race and then evict them from neighborhood schools simply to reach a predetermined quota”²⁷ This advocacy group had been involved with many similar cases across the country, most notably in Nashville, Tennessee and Little Rock, Arkansas.

It is also important to note that McAlpine Elementary was, and still is to this day, almost entirely white; at points in its history it was exempted from the *Swann* racial quotas due to its distance South and the fact that it lay in an assignment zone that was almost entirely residentially white. There can be no doubt that Bill Capacchione’s case was selected intentionally; the fact that Christina was caught between a majority-white school and a magnet school meant that her situation was far from *appearing* racially-biased. In other words, Christina’s case provided specific characteristics that major figures in the neighborhood schools movement most likely identified as advantageous for a successful lawsuit. However, just because the case did not necessarily exhibit racial bias does not mean that it wasn’t motivated by bias from other sources. In fact, while Bill Capacchione may not have demonstrated racism in his assessment of the pupil assignment process, his case became a legal mechanism for expressing institutional discrimination.

The *Charlotte Observer* introduced the plaintiffs and defendants in an article written in October of 1997. According to the article, and case log, Bill Capacchione initially sought recompense for damages inflicted upon his daughter’s educational experience, and

²⁷ Smith, Celeste. Debbie Cenziper. “Rallies, Praters Open Historic Case – Lawyers Argue Neighborhood Schools vs. Equal Education.” *The Charlotte Observer*. April 20th, 1999.

corresponding negative impacts on her personal life. In addition, he viewed her rejection from Olde Providence Elementary via CMS' race-based magnet lottery system as a constitutional violation. The Capacchione legal team insisted that, "Christina (could) adequately contest the issue of...the notorious use of race in all facets of students assignment...far broader than a single magnet school program...the entire student assignment plan must be tested."²⁸

There were six other families that joined the Capacchiones in their suit, and each shared distinctive characteristics in background and grievance with the title family. The *Observer* provided biographical information on each in an article published on April 11th, 1999, a week before the trial. The first was Karen Bentley, a mother of two whose family had moved to Charlotte from Seattle in 1996 for a job opportunity in pharmaceutical sales. Bentley was quoted expressing her concern about reassignment because of, "the terrible instability that it affords our young people and the fact that in Charlotte-Mecklenburg schools, children are reassigned to meet a racial quota." Another parent, Richard Easterling, lived three miles away from newly constructed Crestdale Middle in Matthews, NC, a township in South Charlotte. Since he lived so close to Crestdale, he assumed his daughter would attend, but she was instead assigned to Randolph Middle School, inciting frustration over 45-55-minute bus rides. "It's affecting her mentally not being able to arrive at school in a relaxed manner and be prepared emotionally to greet each school day," he said.²⁹

Perhaps the most radical of the so-called "Grant Intervenors" was Larry Gavreau, an IBM executive whose family had moved to Charlotte in 1994. Gavreau was convinced that his son was denied access to the Magnet IB school, Davidson Middle, because he was white. "A school

²⁸ Smith, Celeste. "6 Ask Court to Review All Race-Based School Policies." *The Charlotte Observer*. April 10th, 1998.

²⁹ Cenziper, Debbie. Celeste Smith. "Parents Clash On School Policies." *The Charlotte Observer*. April 11th, 1999.

system should provide an educational venue for kids consistent with what they need. My kid didn't get any of that because of his skin color," he said. Mr. Gavreau exemplified the potent rhetoric of the neighborhood schools movement. His use of abstract liberalism to justify race-neutral pupil assignment was an example of how white proponents of neighborhood schools used equal opportunity to oppose racial fairness.³⁰

Another father, Michael Grant, was suing on behalf of his son, who he believed lost the chance to play Major League Baseball because West Charlotte High School hired a Black baseball coach that Grant deemed unqualified. According to Grant, the coach had over-practiced his son to the point of injury. Other than this incident, Grant was frustrated with the 'other kids' who were entering his children's schools, saying, "The other...kids... were not as prepared, so your classes were slowed down with these other students trying to get them up to the same level."³¹ By 'other' it is safe to assume Grant is referring to low-income students of color matriculating into suburban public schools as a result of satellite zones. This quote clearly reveals Mr. Grant's racial prejudice when it came to his son's education.

Examining the plaintiff families reveals many commonalities. Take Clarence Thomas for example, one of the six parents that joined the suit. His family, similar to many others, had moved to Charlotte in the mid-90s for a job opportunity, in Thomas' case he was offered a position as the VP of Sales for a major manufacturing corporation. His family settled down in an upper-middle class neighborhood in Huntersville, a suburb of Charlotte. He expected his children to matriculate into their neighborhood school or the closest magnet school. Instead, as with many other children of families in this situation, their expectations were not met; their children were to

³⁰ Bonilla-Silva, Eduardo. *Racism Without Races*. Pg. 58

³¹ Cenziper, Debbie. Celeste Smith. "Parents Clash On School Policies." *The Charlotte Observer*. April 11th, 1999.

be bused farther away than anticipated. As a result, they decided that their rights had been violated; whether it was because of the long bus rides, the ‘other’ students slowing their children down, their child’s mental health, or a fear that they wouldn’t have the same access to opportunities. There were numerous practical concerns that were expressed by the plaintiffs. This group of families was homogenous, like-minded, coordinated, and entirely unconcerned with the larger fate of *all* families in Charlotte-Mecklenburg Schools or the history of segregation that had necessitated the busing program in the first place.

Lee Parks, an attorney representing the six plaintiffs stated, “They are parents. Despite propaganda . . . they are not racists...They are six people who have provided a voice for the thousands of (Charlotteans) who frankly find themselves at the end of their rope - a 30-year-long rope.”³² First, based on the comments cited above, it is clear that in some cases there was racial prejudice on the part of the plaintiffs. However, even if the plaintiffs were not themselves racist, their legal actions sustained institutional bias in the CMS system and reinforced a history of segregation. As CMS defense attorney Allen Snyder argued, “the legacy of discrimination against African American children in this community has not been completely remedied.”³³ The plaintiffs argued that the pursuit of this remedy had violated the privileges, or ‘rights,’ they believed that they possessed.

Shortly after the suit was filed it became much larger when the original *Swann* plaintiffs entered, referred to here and in the court record as the ‘plaintiff-intervenors’. Technically, since James and Vera Swann had left Charlotte-Mecklenburg, the duty fell to new representatives, in this case Terry Belk and Dwayne Collins, who were suing the School Board to keep

³² Smith, Celeste. Debbie Cenziper. “Rallies, Praters Open Historic Case – Lawyers Argue Neighborhood Schools vs. Equal Education.” *The Charlotte Observer*. April 20th, 1999.

³³ Ibid.

desegregation practices alive. When the NAACP and James Ferguson stepped in to argue on behalf of the Intervenor's point of view, the case transitioned from a localized complaint to the national stage. After the spring of 1998, available evidence could be drawn from data covering integration plans all across the country; the stakes were raised. The *Swann* verdict was also available to use as precedent, supporting the School Board's position, but it was also equally vulnerable to repeal. Thus, the judge would not only decide whether CMS had achieved unitary status, but would also set down a legal example for the requirements of integration for School Boards across the country. The stakes were enormous at the outset of the case: Charlotte's busing tradition, lauded as a progressive monument in the 1970s and 1980s, was now under siege.

Capacchione, and eventually the six other plaintiffs who joined his suit, hired a handful of private firms to handle the case, and the *Observer* took their statement in October of 1997. They stressed that a decision on integration was well overdue; "more than 20 year have elapsed since we've gotten a federal opinion on just what these rules ought to be in terms of desegregating our school system,"³⁴ stated the plaintiff's legal representation, reaffirming the anti-government-intervention stance that they would take on throughout the trial. After the *Swann* plaintiffs entered the case, it became more complicated: the burden of proof now rested on both plaintiff parties. The Capacchione legal team was tasked with proving that CMS had fulfilled the responsibility given to it by *Swann* and created an integrated school system, free of the vestiges of segregation. A similar burden of proof rested on the plaintiff-intervenors to prove that CMS still had work to do. Ferguson-Stein, the firm that represented the plaintiff-intervenors, stated that, "in essence, the suit seeks to prevent any consideration of race in the continuing effort to achieve desegregation in the schools. If the relief sought in that case is granted, that

³⁴ Cenziper, Debbie. "Charlotte Busing Case Rolls Back Into Court." *The Charlotte Observer*. October 10th, 1997.

would mean a return to neighborhood schools and, inevitably, a return to racially segregated schools. We know from the past that separate cannot be equal.”

Mr. Gil Middlebrooks was the chief attorney who represented the School Board. Middlebrooks found himself in a curious position, having to respond to arguments made from one set of plaintiffs who sought to end race-based pupil assignment in favor of neighborhood schools, and another set of plaintiffs, the intervenors, whose legal position was that CMS was still, in limited ways, experiencing the symptoms of segregation and had a responsibility to continue its efforts to desegregate. His position was one of moderation at the outset of the case, stating that, “the board is right in the reasonable, moderate, middle position here...that is always an indication that you are trying to serve all people in the community.”³⁵ His position was complicated further because various members of the School Board were vocal supporters of the neighborhood schools movement, but the Board’s legal position was that it had not yet eliminated the vestiges of the dual system and therefore had not achieved unitary status.

The Judge was U.S District Court Judge Robert Potter, a graduate of Duke Law School and a Reagan nominee for his seat in the Western District of North Carolina. Judge Potter was known for sentencing convicted defendants to the longest possible term of sentence, earning him the nickname “Maximum Bob.”³⁶ Judge Potter was also an outspoken supporter of the neighborhood schools movement. He was a known activist that encouraged the end of the busing program. Needless to say, the plaintiff-intervenors would not have been confident in their ability to overwhelm the judges’ preconceptions. Nonetheless, the NAACP urged the Black community

³⁵ Cenziper, Debbie. “Charlotte Busing Case Rolls Back Into Court.” *The Charlotte Observer*. October 10th, 1997.

³⁶ The Obituary of Robert Potter. *The Charlotte Observer*.

of Charlotte to be in the courtroom each and every day of the trial to show that they supported equity and inclusion in education.³⁷

The Capacchione plaintiffs did not simply challenge the use of race in Christina's particular case, but rather the use of race in any school's pupil assignment model. At stake in the case were the following practices: using a race-based admissions process for magnet schools, refusing student transfer requests based on school race-balance goals, building midpoint schools whose sites were selected for the purpose of achieving racial balance by combining disparate neighborhoods, using irregularly shaped attendance boundaries to accommodate for the racial makeup of student bodies, and creating satellite attendance zones that are not geographically near a school. Essentially, decades of motion in one direction, seemingly towards integration, were on the line.³⁸ Note, also, how Mr. Capacchione's case rests on the same type of complaint that Charlotte saw in the forums of 1996 and 1997; he asserted that his child bore unnecessary costs in her educational lifetime, and that therefore the system had discriminated against her. Throughout the case there was virtually no acknowledgment of the history of segregation in Charlotte on the part of the plaintiffs.

The rhetoric of the plaintiffs in the *Capacchione* case brought to court an underlying theoretical issue: the conflict between individual rights and collective good. The busing program was predicated on a community-wide commitment in Charlotte to the ideals of integration. Supporters of busing knew full-well that the costs would be great, but agreed that the benefits of progress in educational equity and the attempted reversal of years of segregation were worth it. However, it is clear that supporters of the neighborhood schools movement refused to accept this

³⁷ Smith, Celeste. "Black Community Told To Monitor Schools Trial." *The Charlotte Observer*. April 13th, 1999.

³⁸ Smith, Celeste. "6 Ask Court to Review All Race-Based School Policies." *The Charlotte Observer*. April 10th, 1998.

‘collective-good’ outlook. So, theoretically speaking, the case hung on the question of whether or not Christina’s, or any other child’s, right to be selected for school without taking race into account was more or less important than using race as a means of reversing the vestiges of segregation. In order for Christina to have been discriminated against, the plaintiffs would have to prove that the vestiges of the dual system had been completely eliminated.

After months of arduous back and forth on the part of CMS and the plaintiffs over dismissal and settlement, attorney compensation, and discovery, the case was put on the fast track in the spring of 1998, in a historic episode in court. Although neither legal party had originally planned for the issue of unitary status to be on the table, Judge Potter emphatically asked the defense attorney from the bench, “You’re telling me you have not yet achieved unitary status?”³⁹ to which a surprised CMS legal counsel did not have a response. Thus, as a result of pressure applied by Judge Potter, the case set focus on that issue, and the date of fact-finding was set for October 1st, with all depositions to be conducted by the end of the calendar year of 1998. In the words of lead attorney Anita Hodgkiss, who represented the *Swann* plaintiffs, “We were discouraged by the fact that the court raised the unitary status issue on its own, when no party was asking the court to address that.”⁴⁰ Whereas there might have been doubt prior to this point as to whether or not Judge Potter would pursue and render a verdict on a national-caliber issue, now Charlotte knew their schools were on the brink of creating significant legal precedent, one way or another.

³⁹ Smith, Celeste. “Judge Reopens Swann, Widens School Inquiry.” *The Charlotte Observer*. March 6th, 1998.

⁴⁰ Ibid.

The Trial Begins

A non-trivial amount of time was spent deposing witnesses for the trial, the most central of which was Bill Capacchione, who filed the complaint against the School Board. Mr. Middlebrooks spent the majority of this deposition forming a detailed timeline of the events that led to the lawsuit. He established, on the record, that Christina had indeed been denied in consecutive years from Olde Providence Elementary, a communications magnet. After being assigned a spot on the waitlist, her parents decided to send her to McAlpine Elementary for kindergarten and then again for first grade. It is interesting to note, surprisingly, that Christina was admitted via the lottery shortly after the lawsuit was filed, but at that point the family was already in the process of moving back to California.⁴¹

The deposition of Mr. Capacchione also established influential points of contact that changed or reinforced his way of thinking about public schools during the period that Christina was at McAlpine Elementary. Mr. Capacchione indicated that after the second time his daughter was denied from Olde Providence, he reached out to the area's school board member – Lyndalyn Kakadelis. As he recalled, “she told me that she agreed with me, that when she had moved from California, she tried to get her son into the magnet school program and he was denied admission because of the required number of black seats and white seats.”⁴² Indeed, Ms. Kakadelis was a driving force behind the lawsuit, advising Mr. Capacchione on multiple occasions prior to the lawsuit being filed.

Lyndalyn Kakadelis was first elected as a member of the CMS Board in 1995. Having moved to Charlotte shortly before running for elected office, she was able to personally relate

⁴¹ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 66.

⁴² *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 29-30. The rest of this quote is also interesting, although not necessarily relevant to this particular thought: “She told me she threatened to sue them, and two days later she got a telephone call telling her that her son had been accepted into the program.”

with many families in her district, which was located primarily in South Charlotte. Bill Capacchione described her philosophy on public education succinctly in his own deposition, recalling that, “she would give me her views on the way the school system would look if it were hers... she believes in vouchers and school choice – choice opening up instead of having assigned, so it was basically free choice, pretty much go where you want to go.”⁴³ Her position on pupil assignment reflected many families in her district, and the ultimate result of the Capacchione case, a move back to a free choice public education system, was something she felt proud of; she viewed this transition as an accomplishment.

Ms. Kakadelis was not the only influence in Mr. Capacchione’s decision to file suit. Indeed, as mentioned prior, he reached out to an organization known as Citizens for a Colorblind America (CCBA), who he said informed him that his daughter’s situation represented a violation of the equal protection clause of the 14th Amendment. Furthermore, according to Mr. Capacchione, the CCBA gave him the names and contact information for attorneys that would be willing to represent him in court.⁴⁴ Although Ms. Kakadelis and the CCBA may have been the two most influential parties in terms of generating Mr. Capacchione’s legal stance on school choice, he discussed the issue with many other people. Along with the views of Ms. Kakadelis, his thinking also aligned with another School Board member named John Lassiter, whose views he found intriguing when he was exposed to them at School Board meetings. Furthermore, he discussed his opinions with several neighbors, including one Lee Myers, the mayor of Matthews at the time and a former School Board member himself.⁴⁵ The nature of these conversations demonstrated the grassroots elements of the neighborhood schools movement: on many

⁴³ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 37-38.

⁴⁴ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 33.

⁴⁵ *Capacchione v. CMBE*. Deposition of Bill Capacchione Pg. 75.

occasions Mr. Capacchione admitted that he could not recall whether his conversations included any facts, but rather the content focused more on opinions and gut feelings.

One of these opinions was abundantly clear as the deposition lengthened; demonstrated by Mr. Capacchione's responses to this series of questions:

Q: Am I correct that you do not view racial diversity within a student population such as black and nonblack students together as an educational value.

A: In my opinion, if you educate your children properly...they will accept people for who they are and not based on the color of their skin.

Q: Taking that as a given, my question is slightly different in terms of whether exposure to people of another race in the classroom and in the school on a daily basis from your personal point of view has an educational value to it.

A: No.⁴⁶

Mr. Capacchione did not believe that diversity in the classroom was beneficial for his child. In other words, he did not see integration as a goal that warranted the unorthodoxy of forgoing neighborhood zoning practices. Indeed, when pressed in this line of questioning, Mr. Capacchione kept repeating this phrase; "What I know is that my daughter's constitutional rights were violated."⁴⁷ In this moment, Mr. Capacchione epitomized the philosophy of the neighborhood schools movement: using individual liberty as a crutch to prop up institutionalized segregated education. Furthermore, it is not hard to see in this instance that finding CMS unitary was, in many ways, a means to the end for the neighborhood schools movement, whose

⁴⁶ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 73-75.

⁴⁷ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 82.

representative in court did not see any value at all in diverse classrooms and, by extension, in the busing program itself.

The deposition of Lyndalyn Kakadelis was taken by the counsel for Mr. Capacchione, since she was a School Board member at the time and thus was represented by the defense. This was a perverse relationship for the School Board attorneys because her testimony was almost certainly in support of Mr. Capacchione's legal position, but she was represented in deposition by the defendants, whose position fell in stark contrast to her own.

The deposition began by elaborating on Ms. Kakadelis' role as a School Board member. She was the representative for the Fourth District, which, as she corroborated, was made up of mostly white, affluent families.⁴⁸ She then described her position on neighborhood schools, which was much more pseudo-political in nature than Mr. Capacchione's stance. She described the tangible benefits of having consistent parental involvement in everyday school functions, and goes on to blame race-based pupil assignment for directly decreasing the educational performance of schools in her district.⁴⁹ She asserted that because of race-based pupil assignment, there were instances in which schools became either overcrowded or under-utilized because the School Board was incapable of appropriately filling schools due to race constraints.

This deposition proceeded with mixed results for both parties involved. There was notable conflict between the attorneys as to what questions were allowed to be asked; after all, once the suit was filed many conversations that Ms. Kakadelis had while CMS attorneys were present were considered privileged. However, on the whole, Ms. Kakadelis emerged as a vocal supporter of the neighborhood schools movement that essentially corroborated the plaintiff's

⁴⁸ *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 8-9.

⁴⁹ *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 19-29

version of history, that the School Board had considered race at every turn and thus had upheld the court order. Indeed, when asked, “Do you believe that the former dual system in the CMS County, where black children were required to go to one set of schools by law and white to another...has been brought to an end?” Ms. Kakadelis replied with a resounding “Yes.”⁵⁰

Official trial procedures for the case began in court on April 18, 1999, and progressed as a “bench-trial,” meaning that the legal actions were presided over by Judge Potter instead of a jury. The legal arguments of the trial can be addressed according to each party involved. First, the Capacchione plaintiffs, with whom the burden of proof rested, were tasked with demonstrating that the School Board had been successful in eliminating the vestiges of segregation in the school system and that they ought to be released from the court mandated racial quotas that they had abided by for decades. The attorneys that represented the plaintiffs argued that the School Board had wasted time and money preserving racial quotas. Mr. Parks, attorney for the plaintiffs insisted that, “somewhere, somehow, this school board has forgotten that white kids go to these schools, too.” Incendiary remarks like these were not uncommon from the plaintiff’s representation, who seemed to match the neighborhood schools movement in its distaste for integration and lack of respect for Charlotte’s history of racial segregation. Mr. Parks went on to say in this interview, “It’s OK to be white. The race card has been played so many times you’ve got people hanging their heads.”⁵¹ His appeal to reverse discrimination was indicative of the legal position that the plaintiffs took in court.

The Plaintiffs main arguments, supported by various experts, were that the desegregation policies of the School Board had worked up to this point and that they ought to be terminated

⁵⁰ *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 29.

⁵¹ Smith, Celeste; Debbie Cenziper. “Schools Case Rests With Judge.” *The Charlotte Observer*. June 23rd, 1999.

completely. Court records of expert testimony mirror the rhetoric that the parents of the neighborhood schools movement had been using for years; that if you look at school populations, they are technically desegregated in the sense that there are white and non-white students in every school. David Armor was a desegregation expert who wrote a report for the parents. In it, he stated, “this (desegregation) plan effectively desegregated all originally segregated schools, and especially former Black schools, for a significant period of time - most for at least 20 years.” He continued by asserting that the disparities in educational outcomes, cited by the defense and the plaintiff-intervenors, were simply due to socioeconomic factors, which he believed were not reflective of past or present school discrimination. Furthermore, he asserted that schools which were not racially balanced did not reflect ‘intentional segregation,’ but rather a natural pattern in residential demographics.⁵² Mr. Armor’s testimony was an example of what Dr. Eduardo Bonilla-Silva refers to as, ‘naturalization,’ which is the reliance on ‘the way things are’ to justify racial segregation.⁵³

The Charlotte-Mecklenburg School Board summoned experts of their own who testified that the district had not yet achieved integration. “Charlotte-Mecklenburg schools do not provide equal educational opportunities to African American students,” explained Robert Peterkin, director of Harvard University's Urban Superintendents Program. “This is evidenced by a persistent pattern both in access to adequate educational resources and to advanced educational programs and in ...student (achievement.)”⁵⁴ For the most part, the School Board was tasked with proving the middle ground. They proceeded by arguing that the Board had not been

⁵² Morrill, Jim; Celeste Smith. “Racial Disparity is Experts’ Focus in Schools Suit – Reports Draw Different Conclusions About Impact of Desegregation Policy.” *The Charlotte Observer*. Jan 5th, 1999.

⁵³ Bonilla-Silva, Eduardo. *Racism Without Races*. Pg. 64

⁵⁴ Morrill, Jim; Celeste Smith. “Racial Disparity is Experts’ Focus in Schools Suit – Reports Draw Different Conclusions About Impact of Desegregation Policy.” *The Charlotte Observer*. Jan 5th, 1999.

successful in *totally* eliminating the system of discrimination left behind by segregated schools. In other words, that the Board had acted in ways that preserved some discriminatory practices of the past, and in this way the vestiges of segregation persisted. As CMS attorney John Borkowski stated in his closing argument, “When the school board looked...it found that it still had work to do... It (CMS Schools) is not a system that's unfair to white students... It's a system that's principally unfair to Black students.” What he was referring to, in this line of argument, is institutional racism, which was and is expressed in terms of restricted access and constrained achievement within the public-school system for students of color.

The data that the School Board provided for its defense was meaningful. CMS attorney Gil Middlebrooks pointed out the inequities created by the magnet program in particular. When school pairing ended in the early 1990s, the previously paired schools became magnet schools, attracting applicants from the suburbs and displacing the Black students living in those neighborhoods. This forced the creation of satellite zones, which meant that many Black students were assigned to be satellite students for the entirety of their academic careers. Essentially, the creation of magnet schools eliminated any semblance of neighborhood schools in Black neighborhoods. According to Dr. Gordon Foster, expert witness for the defense, “It was basically racially unfair to sort of disenfranchise this whole group of students and send them to all sections of the district in order to set up magnets.” As evidence, Mr. Middlebrooks cited the 1998 school year: sixty-three of sixty-nine satellite zones were in predominantly Black areas, mostly in the center city. CMS had assigned almost a third of the Black students in the district to satellite zones as compared to less than seven percent of all other students.⁵⁵ Essentially, satellites were located entirely in Black neighborhoods: thirty-two out of thirty-six elementary schools, twenty-

⁵⁵ See the Final Defense Summary in the *Capacchione v. CMBE* archives. Author: Middlebrooks, Gil. Pg. 14.

two out of twenty-three middle schools, nine out of ten high schools. Black students made up 75 percent of high school students in satellite attendance areas. The plaintiffs spun this as an unfortunate byproduct of race-based pupil assignment. In other words, just another reason that neighborhood schools benefitted everyone involved. In reality, these pupil assignment actualities were evidence of the vestiges of segregation.

Moreover, according to the representatives from CMS, twenty-eight schools were constructed from 1980 to 1999, twenty-six in areas that were racially identifiable as white, one in an integrated area, and one in a predominantly Black area. Reid Park Elementary, the only school built in a predominantly Black area, was built as a magnet school on property already owned by the district, meaning no investment was necessary and the community surrounding the magnet would not benefit proportionally from its construction. According to expert witness Stephen Smith, “Of the thirteen schools that were predominantly white for the 1998-1999 school year, seven were built after 1980, of those seven, six are located near Highway 51, in the southernmost part of Mecklenburg County.”⁵⁶ As it turned out, *nobody* had complied with the mandate of not building schools in regions with less than 10 percent Black population – in fact, Arthur Griffin, chairman of the School Board for much of the 1980s, thought the restriction had been repealed.⁵⁷

The arguments made by the Plaintiff-Intervenors (the Swann Plaintiffs) generally fell in line with the School Board, both were committed to proving that students still felt the effects of segregation. Whereas CMS was committed to proving that, as an institution, it had deliberately reinforced discriminatory practices, the Swann Plaintiffs were more focused on proving that

⁵⁶ See the Final Defense Summary in the *Capacchione v. CMBE* archives. Author: Middlebrooks, Gil. Pg. 16.

⁵⁷ *Ibid.* Pg. 16.

Black students were suffering as a result of these practices, and that a return to a free choice system would induce mass resegregation in Charlotte-Mecklenburg schools.

Luke Largess, an attorney for the firm Ferguson Stein, deposed Bill Capacchione after Mr. Middlebrooks, and his line of questioning reflects the legal position of the Plaintiff-Intervenors. Mr. Largess stressed the differences between majority-Black and majority-white schools. For example, he noted that majority-white schools in Charlotte were far more likely to employ teachers with master's degrees than majority-Black schools. He proceeded by asking Mr. Capacchione about the phrase, "separate is inherently unequal," referring to *Brown*. In response to this line of questioning, Mr. Capacchione resolutely stated, "I do not believe separate means unequal."⁵⁸ This statement was a powerful declaration of intent on the part of the plaintiffs, clearly challenging the idea of integration as a valuable legal institution.

Mr. Largess proceeded by attempting to clarify Mr. Capacchione's position on magnet schools by situating them in a historical context. He refers to Ms. Dorothy Counts, whose photo appears in Chapter One, and asks whether or not Mr. Capacchione was aware of the upheaval in the community surrounding integration in the 1960s. He asks, "Have you ever seen any figures on the number of black students that went to white schools during the freedom of choice period of the CMS schools during the '60s?" to which Mr. Capacchione responds, "I believe in looking forward and not back."⁵⁹ Mr. Capacchione refused to allow discussion about past segregation several times in his deposition; he held firm to the idea that the current white population of Charlotte should not be required to bear the costs of past mistakes. I assert that this forgetfulness,

⁵⁸ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 97.

⁵⁹ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 106.

the deliberate unwillingness to acknowledge the severe costs of racial segregation in Charlotte, was a tactic that the neighborhood schools movement used to avoid culpability at every turn.

Mr. Largess continued by asking about Mr. Capacchione's opinion on whether or not the CMS school district might resegregate. He asked, "have you seen any research on the educational impact of returning to neighborhood schools in any of the communities around the country that have done that?"⁶⁰ Here he was referring to the potential for resegregation and a corresponding negative impact on students of color. Mr. Capacchione responded by saying that he had not personally seen such figures. In response, Mr. Largess posed the following hypothetical; "If the Board saw evidence that a return to neighborhood schools that were predominantly one race in other communities had had a negative educational impact, do you think that that would be a basis for them hesitating to return to such a plan?" To this question, Mr. Capacchione responded with a simple, "No." When pushed on the issue, he repeated various iterations of the phrase, "I don't think it is ever okay to do pupil assignment based on race." His unwillingness to address the potential effects that a free-choice public education model would have on students of color spoke volumes. In addition, the reliance on race-neutrality was yet another iteration of abstract liberalism that not only appeared in Mr. Capacchione's deposition, but also appeared frequently in the verdict, which will be explored in Chapter Three.

The deposition of Mr. Capacchione by Mr. Largess illuminated two opposing philosophical viewpoints found in this case. The School Board was retrospective, they took into account the actions of the past and whether or not those actions had preserved or eliminated the vestiges of segregation. The plaintiff-intervenors were, in many ways, prospective, examining the future implications of ending the busing program. In other words, evidence showing that free

⁶⁰ *Capacchione v. CMBE*. Deposition of Bill Capacchione. Pg. 111.

choice plans led to segregation indicated to them that the vestiges of segregation had not completely been eliminated. Simply put, the plaintiffs were neither prospective nor retrospective; they did not concern themselves with the future of CMS and the potentially harmful impact their espoused policy might have on students of color, nor did they consider the possibility that historic segregation could still be impacting the lives of students of color via institutional bias.

In sum, examining the pre-trial news coverage and the witness depositions shows that the legal contentions in the trial became a battleground between two ideologies: one, held by the Plaintiffs, a liberally abstract position that held that the preservation of a child's right to a neighborhood education was the only practicable way to organize a school system. The other, held by the plaintiff-intervenors, a progressive position that held that centuries of oppression against people of color had generated institutional bias in the school system, which had not been completely remedied by the short-lived busing system, and that the transition back to a school choice program would simply usher in a new era of segregated schools. The School Board found themselves caught in the crossfire, initially taking a moderate stance but ultimately admitting that, in many ways, it had not successfully rectified the vestiges of segregation that it was tasked with completely eliminating. Each party knew that the outcome of the case would shape the CMS school system, and school systems nationwide, thereafter.

Chapter 3

The Capacchione Verdict: Preserving Institutional Racism in Public Education

The outcome of the *Capacchione v. CMBE* trial was a foregone conclusion by the time it was released in September of 1999. It was public knowledge, throughout the case, that U.S District Court Judge Robert Potter was an outspoken supporter of neighborhood schools who had intentionally pushed for a decision on the unitary status of CMS. Judge Potter found in favor of the Plaintiffs in all key aspects of the decision, and his verdict reflected the influence that the neighborhood schools movement had on him and many citizens of the city of Charlotte. Much of the aforementioned rhetoric that was responsible for the growth of the neighborhood schools movement was reflected in the Judge's legal reasoning and language.

When the verdict was released, the six Plaintiffs were ecstatic, lauding a newfound trust in the system and the fundamental importance an individual can have in pursuing justice in America. "Today, the court gives us a new course, one where our children are no longer labeled as black or white, but simply as children," said parent Larry Gavreau, a plaintiff who proceeded to run for School Board on a platform of neighborhood schooling.¹ On the other side, the plaintiff-intervenors lamented the result as ushering in a 'dark day' for integration in America. Terry Belk, a stand-in plaintiff for the Swann family, had this to say about the verdict:

"This ruling, if left standing, assures continuing inequity and injustice for poor and disadvantaged kids... Basically ... the judge ignored the overwhelming evidence presented by the school system itself. It leads one to believe that the judge made his mind up at the onset of this case."²

¹ Rothacker, Jennifer. "Justice Prevails in the Eyes of Plaintiffs." *The Charlotte Observer*. Sept 11th, 1999.

² Ibid.

After the decision was rendered, Harvard University professor and public policy scholar Gary Orfield claimed that Judge Potter's decision profoundly discouraged educators in the South who believed in integrated schools; “This is a good example of what I call activist conservative judges who are imposing their views over school boards around the country and then filling out their decisions with political rhetoric,” he said.³ All in all, there were mixed views on the validity of the opinion itself, as well as its ramifications for the future of Charlotte-Mecklenburg Schools. Although the system would remain unchanged for the year after the decision, once that school year ended the School Board was completely autonomous in pupil assignment, unencumbered by federal supervision or the goal of integrating schools. It had technically succeeded.

In order to better understand the significance and scope of the decision in *Capacchione v. CMBE*, it is important to begin by analyzing its legal implications. As such, the goal of this chapter is threefold: first, to summarize the verdict in the case of *Capacchione v. Charlotte-Mecklenburg Board of Education*, asserting that Judge Potter intentionally utilizes the broadest possible time-period and inappropriately vague data measurement standards in order to ensure the end of federally mandated CMS compliance. Second, to investigate the plaintiff-intervenor’s federal appeals process to determine if the ideology behind the district court verdict was reflected in the decision of the appeal. Third, and occurring throughout the chapter, to assert that Judge Potter’s decision was a product of the influence of the idiosyncratic rhetoric central to Charlotte’s neighborhood schools movement.

During the *Capacchione* litigation, U.S. District Court Judge Robert Potter was tasked with deciding whether or not CMS had achieved ‘unitary’ status, a legal standard that was clouded in

³ Smith, Celeste. Debbie Cenziper; Jennifer Rothacker, Gary Wright. “Judge to Schools: No Racial Assignment.” *The Charlotte Observer*. September 11th, 1999.

ambiguity up to this point in education jurisprudence. Judge Potter, in his decision, clarified the distinction between a ‘unitary system’ and a system that had been granted ‘unitary status’; the former being a system that fell under court influenced desegregation policy and the latter being a system released from court supervision after complying with desegregation orders to an appropriate degree and for a satisfactory amount of time. Therefore, based on this definition, Charlotte-Mecklenburg Schools in 1999 was a ‘unitary system’, and the outcome of the case would be based on whether or not the Plaintiffs could prove that CMS had complied with the *Swann* order to a degree worthy of granting CMS ‘unitary status’, thereby lifting any court-mandated requirements on pupil assignment and repealing any other process of federal supervision.

The Judge began by evaluating the Constitutional basis for race-conscious desegregation orders, in a sense, situating his decision in legal context. He provided a framework for thinking about situations in which the federal government had been, in the past, legally permitted to intervene in public spheres of influence to enforce desegregation. He began this particular line of reasoning by asserting that, “modern Supreme Court precedent suggests that there is only one compelling state interest that will justify race-based classifications: remedying the effects of past racial discrimination.”⁴ Judge Potter was intentional about this point: he creates a time-frame that compares pre-civil rights era segregation to the then-current state of affairs, suggesting that the baseline for granting ‘unitary status’ ought to be determined by comparing CMS’ degree of racial segregation prior to *Swann* with the state of integration in 1999, ignoring year-to-year trends in favor of what he refers to as “the full picture.”⁵ The alternative, which Potter rejected, would have

⁴ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 11.

⁵ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 83.

been to analyze then-recent trends to determine whether the School Board was consistently fulfilling its responsibilities with regards to desegregation.

Judge Potter's particular brand of federalism, reiterated often in his decision, made it clear at the outset of the case that he intended to facilitate the withdrawal of federal influence on local public school districts. He asserted that, "it must be recognized that there are limits' beyond which a court may not go in seeking to dismantle a dual school system."⁶ Clearly Judge Potter's views on limiting federal influence in local policy were critically important to him, so important that they were worth preserving at the expense of a school board's failure to thoroughly eliminate the remnants of segregated education. Indeed, Judge Potter maintained throughout the case that, "federal supervision of local school systems was intended as a temporary measure."⁷

In justifying this position, Judge Potter referred to factors such as, "demographic, geographic, and sociological complexities" to reinforce the assertion that school boards cannot be expected to completely integrate their schools once the costs become unreasonable, and that the courts should not expect school boards to integrate beyond a practical standard. Once again, similar to the testimony of parents referenced in Chapter Two, the Judge relied on 'the way things are' to justify a tacit acceptance of racial segregation.⁸ Because of these peripheral factors he described, Judge Potter moved to isolate specific standards by which one could measure a School Board's performance in areas of desegregation. He settled on pupil assignment, school growth and construction, facilities and transportation, and faculty composition, among several others. His argument, in essence, was that as long as the Board did not explicitly discriminate by race against Black students, it could not be held accountable for segregation that was perceived to be outside of

⁶ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 16

⁷ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 17.

⁸ Bonilla-Silva, Eduardo. *Racism Without Races*. Pg. 64.

its practical control. While Judge Potter upheld that the Board did not overtly discriminate by race, he failed to acknowledge even the existence of institutional racism in the Charlotte-Mecklenburg education system.

The Judge proceeded in his decision by addressing the various areas of school board policy in which there might have been discriminatory practices over the course of the thirty years after the *Swann* decision. The first area he discussed was the pupil assignment practices of CMS from 1970-1999, asking, simply, whether or not the vestiges of the dual system were *intentionally* maintained by the pupil assignment strategies of the Board. The court used the three criteria outlined in *Swann* to evaluate CMS' level of compliance with the desegregation order with regards to pupil assignment.

The first *Swann* requirement stated that "no school be operated with an all-black or predominately Black student body"⁹ This provision was created to ensure that CMS act intentionally to reverse the *de jure* segregation that existed in Black schools post-*Brown*. The second criteria required, "that pupils of all grades be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same proportion of black and white students,"¹⁰ Educational jurisprudence indicated that this standard, for Black students, was a cap at the ratio of Black students plus fifteen percent. Therefore, if the ratio of Black students in an elementary school was forty percent, which it was in 1980, then a school with over fifty-five percent Black students would be considered in violation of this standard. The third guideline was as follows: that CMS "prevent any school from becoming racially identifiable." This standard required a definition of "identifiable," and it was given by *Swann* as: those schools with a Black

⁹ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 21.

¹⁰ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 21.

student population in excess of seventy-five percent constitute “identifiably Black” and “identifiably white” as those schools with a Black student enrollment of fifteen percent or less.¹¹ Once again, the dialogue surrounding the issue of pupil assignment, even legally, viewed race in a binary sense, indicating a simple-minded assessment of the actual student population, which was becoming more diverse from one year to the next. Students were racially qualified as either Black or Non-Black, which was an oversimplification on the part of the School Board that manifested itself constantly in the legal arguments of the case.

In his assessment of pupil assignment, Judge Potter presented a categorically skeptical view of the experts that testified on racial composition data and how it was effected by pupil assignment policy. He pointed out that expert witnesses testified about compliance based on how they “manipulated the data,” suggesting that he may have already had a conclusion in mind, or at least that he was dubious of the experts, specifically for CMS, in their presentation of data that did not align with his own evaluation of the situation. In particular, and most notably, Judge Potter was unwilling to accept evaluations that only examined then-recent trends. Experts who attempted to point out the changes that had been occurring as a result of the magnet school policy were dismissed offhand. Potter rigidly affirmed that,

Ultimately, the Court must look to the CMS enrollment data to determine the degree of compliance over time. It would be wrong to focus only on a few select years. Dr.

Peterkin, for example, emphasized the two most recent school years, Dr. Stevens only looked at compliance during the 1990s, and Dr. Gordon Foster, a CMS expert, only

¹¹ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 22.

looked at nine out of the last twenty years. This is too narrow a lens to examine CMS's compliance.¹²

By broadening the scope of the evaluation so drastically, the burden of proof on the Plaintiffs became significantly lighter. In other words, it was relatively simple to prove, by the numbers, that the situation post-*Swann* had improved from the situation pre-*Swann* as a result of the School Board's shift in policy. That was exactly what any reasonable observer would have expected. However, it is clear now, and was to CMS' experts at the time, that comparing those numbers did not tell the entire story of desegregation in Charlotte. Once again, institutional bias and historic segregation were overlooked, and the nuances of the magnet program, a policy which at its worst systematically disadvantaged students of color and their neighborhoods, and at its best left the Board with a huge problem in its efforts to integrate, were left out of consideration almost entirely.

Nevertheless, Judge Potter carried this mindset throughout his evaluation of CMS' performance in desegregating its schools. Thus, he concluded on pupil assignment that CMS had complied with good faith and had achieved a level of desegregation necessary to relieve it from the burden of federal court order. In reaching this conclusion, Judge Potter cited numerical data that tracked student body demographic proportions from 1970-1999. He maintained that of the 126 elementary, middle, and high schools that were operating in 1999, only twenty had Black student bodies that were higher than fifteen percent above the districtwide ratio for more than three years, and only thirteen had populations lower than fifteen percent below that ratio. According to Potter, since "relatively few schools in the system have long histories of racial imbalance," there could not have been intentional segregation on the part of the Board. However,

¹² Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 23.

this data did not consider the specific changes that occurred in pupil assignment as a result of the new magnet program, something that the CMS attorneys pointed out in their defense.

Instead, Judge Potter favored the expert testimony provided by the Plaintiff-Intervenors' Dr. David Armor, who analyzed CMS using two common indices¹³ and concluded that it was "severely imbalanced" prior to 1970, then "highly desegregated" up until 1990 and then "well desegregated" for the remaining years.¹⁴ It was clear once again that the Judge favored a far more general comparison, using long periods of time and vague measurements to interpret racial data in bulk. In his decision, Judge Potter acknowledged that, "seven schools have had black populations in excess of seventy-five percent, and this did not occur until 1994." He said, reassuringly, that, "no school ever had a black population exceeding sixty percent until 1988."¹⁵ Judge Potter viewed this as a marker for success. However, the data provided after the introduction of magnet schools clearly indicated a change in the ability of CMS to integrate its system, even a potential failure to do so. What Judge Potter saw as a relatively small number of schools having experienced resegregation in a short amount of time, others saw as an indication that the School Board's magnet school program had undermined a long track record of effective, but not comprehensively successful, pupil assignment policies.

Judge Potter's views on pupil assignment policy can be summed up in his closing argument on this issue, where he stated that, "If, over the course of three decades, a school has had a racially balanced student body for ninety percent of the time or greater, it is certainly reasonable to conclude that CMS has complied fully and satisfactorily with the Court's orders as to that

¹³ These two indices are the Index of Dissimilarity and the Index of Interracial Exposure, which will be discussed further in the next section.

¹⁴ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 24

¹⁵ *Ibid.* Pg. 24

school.”¹⁶ In other words, the few schools that fell out of balance in the 1990’s were not significant when compared to two decades of successful desegregation policy. Judge Potter even went through exception-schools systematically, pointing out in each case that the racial guidelines were not violated until the early 1990s. When discussing formerly *de-jure* white schools, Potter emphasized the fact that, with the exception of a few, most had not fallen out of balance until 1990.¹⁷ He stressed, once again, that the schools in question, those that were racially imbalanced and predominately white for more than three years, were consistently located in the northernmost and southernmost regions of the county where the census tracts are virtually all-white.

Whereas many would see this as a clear indicator that the CMS School Board still had work to do to integrate these schools, Judge Potter viewed this detail as an exemption, tending to let the Board off the hook for its inability to integrate these schools.

Given that the Court's earliest plans allowed some schools with black populations as low as three percent coupled with the fact that the Court never explicitly established a minimum percent black enrollment the Court is hesitant to find that the small black populations at schools in the outermost regions are vestiges of the dual system.¹⁸ This line of reasoning was another example of the ‘just the way it is’ method of thinking about race that repeatedly justified Judge Potter’s acceptance of residential segregation.

Apart from schools located in predominantly white suburbs, Judge Potter also specifically identified two schools in the ‘middle suburban ring,’ Randolph Middle School and East Mecklenburg High School. Both fell out of compliance with desegregation orders in the late 1980s and early 1990s, most likely as a result of demographic changes in their zone, i.e. white families

¹⁶ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 24.

¹⁷ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 31.

¹⁸ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 32.

moving in to these areas. While this issue was taken care of by the Board, who modified pupil assignment to maintain these schools' student-bodies, the fact that these two schools fell out of balance was indicative of a larger trend: the decades of white suburbanization in Charlotte. Judge Potter could have seen these cases as indicators that without the ability to assign pupils based on race, schools like Randolph and East Mecklenburg would resegregate rapidly. However, Judge Potter once again asserted that CMS was not responsible for demographic trends; ignoring the inevitability of resegregation that sat right before his eyes.

His conclusion on pupil assignment prompted the following question: apart of simply maintaining student-body ratios, did CMS pursue racial equity in good faith in other areas? The issue that rang the truest for the defense, for example, is that of school construction patterns. Even if the School Board was able to maintain racial balance within schools, the CMS defense, asserted, about its own practices, that it consistently favored future school construction sites in affluent, white, growing areas of Charlotte. With regards to school siting, the Supreme Court explicitly stated that, "it is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used and do not serve to perpetuate or reestablish the dual system."¹⁹ This provision was created to respond to the institutional practice, post-*Brown*, of closing down schools in racially diverse neighborhoods in order to build new schools in homogenous areas that served primarily white students. Judge McMillan stressed this point in discussing his decision on busing, stating that schools ought to be built with the expressed intention of serving 'both' races.

For Judge Potter, the simple fact that the Board considered many factors, including but not limited to race, was enough to exonerate them from any guilt associated with their lopsided track

¹⁹ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 27.

record of building schools in South Charlotte at the expense of inner-city neighborhoods, knowing full-well the costs these decisions would impose on the students of color who would have to bus to the newly constructed schools. Judge Potter asserted that, based on court testimony, the School Board consistently took into account, “finances, land values, site availability, zoning laws, topography, site size, building capacity, adequacy of public utilities, utilization of adjacent or feeder schools, traffic patterns, and the time and distance to transport students.”²⁰

Potter goes on to stress that in 1992, the Board voluntarily decided to only build schools in zones that had greater than ten percent Black populations. It did not succeed in following this rule, but according to Judge Potter, corroborated by School Board member Lynda Kakadelis, failure was inevitable due to the fast-paced growth of South Charlotte, a primarily white suburb. Despite these so-called obstacles, “the board still was mindful of its racial balancing goals and, at one point, even debated whether to accept a donation of free land for school use because it was located in the predominately white, southern area of the county.”²¹ The Board still accepted the donation of free land, and despite considering the many factors, still maintained construction practices that catered specifically to the growth of South Charlotte.²² However, Judge Potter assessed the Board not based on their actions, but rather on their process. He saw no explicitly discriminatory statements on the part of Board Members when deciding where to construct new schools, which absolved them of responsibility.

Judge Potter went so far as to discuss a hypothetical scenario in which the Board decided to forgo lucrative development deals in South Charlotte and instead build a school in the inner city. He posited that, “the only way to meet the racial balancing requirements in such a situation

²⁰ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 28.

²¹ *Ibid.* Pg. 28.

²² See the discussion of the Nations Ford property in: *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 17.

would be to transport white students in from satellite zones... and experience has shown that it is more difficult to populate inner city black schools with suburban white students than vice versa.”²³

This was a clear example of the institutional discrimination that Judge Potter was often able to look past. For years, the Board had been taking advantage of families of color to the point where it had become inconceivable that they ask the same commitment of white families. In other words, practically speaking, Judge Potter considered it impossible to expect the same type of compliance on the part of wealthy, white families with regards to busing. Judge Potter justified this belief by clinging to the effects of rush-hour traffic, which in theory prevented suburban families from sending their children on buses to inner-city schools. However, this response does not rule out midpoint schools, which the Board neglected to construct despite their advantage in racial balancing and the clear demand for them, demonstrated by their chronic overcrowding.

Next, Judge Potter examined whether or not the transportation system itself, in this case busing, represented a vestige of the dual system. In the *Swann* case, the Court ordered “[that transportation be offered on a uniform non-racial basis to all children whose reassignment to any school is necessary to bring about the reduction of segregation, and who live farther from the school to which they are assigned than the Board determines to be walking distance.”²⁴ In the opinion of Judge Potter, CMS complied fully and satisfactorily with this requirement.²⁵

Knowing what we know about the disproportionate burden that busing placed on Black children, this was a nonsensical conclusion. According to CMS data, in the 1998-1999 school year, 11,184 non-Black students (forty-two percent) and 15,533 Black students (fifty-eight percent) were transported for desegregation purposes.²⁶ Of course, compare those populations to

²³ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 29.

²⁴ *Swann*, 311 F. Supp. At 268

²⁵ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 48.

²⁶ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 30.

the overall populations of Black and non-Black students in CMS and one can clearly see that, by the numbers, Black students were bearing the brunt of busing. Moreover, many white students were busing voluntarily to magnet schools, whereas most Black students were riding buses to balance the racial composition of suburban schools.

Nevertheless, Judge Potter had this to say on the issue of busing: "The court is not prepared...to find that the disproportionate burden of busing on black children is unconstitutional; it may be the only practicable present way to deal with the problem."²⁷ He cited "the reality of the situation" as justification for CMS' busing assignments, but even if practicality was paramount, to say that this solution was the only practicable way to deal with the problem of integration was to deny Charlotte-Mecklenburg schools the chance to solve the problem through the use of other, more equitable, methods. Essentially, with regard to transportation, the Judge relied on residential segregation as a justification for the intense burden of busing placed on black children, asserting that there was nothing that could have practically been done. In other words, the Judge draws practical boundaries around desegregation, implying that at a certain point the pursuit of educational equity was no longer sensible.

In Judge Potter's own words, "it has become impracticable to achieve higher racial balance in the absence of large-scale mandatory busing efforts, which would only impose additional burdens on black students."²⁸ In this moment, Judge Potter actually institutionalizes his own bias: he does not see a solution to integration other than imposing further costs on students of color because the system is designed in that way. It was unfathomable to Judge Potter to find a solution

²⁷ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 30.

²⁸ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 32.

outside of busing Black students, rendering equitable educational outcomes a seemingly impossible feat, and this bias became policy.

This sentiment is echoed in the deposition of Ms. Kakadelis when she discussed the possibility of reaching out to the city council to discuss a program of affordable housing in South Charlotte to mitigate residential segregation and, as a result, the problems of satellite zoning. This line of questioning virtually mirrors Judge Potter's verdict transcript:

Q: Have you concluded that given the residential demographic patterns of the system the school board serves, that absent some change to the residential patterns, these schools cannot maintain a sixty/forty ratio even with the deviation you're currently using?

A: The only way you will be able to do that is taking children and busing them long distances, and so there it can be maintained if children have to ride buses long distances.²⁹

While Ms. Kakadelis does not explicitly specify the race of children having to be bused further distances, it is safe to speculate that she would have been decidedly averse to the white children of her district being bused further to continue to maintain racial balance.

This line of questioning continued with a discussion of potential methods of decreasing residential segregation in the Fourth District. When asked if the Board had considered any community-wide solutions, Ms. Kakadelis responded, "There has been some talk about going to the county and telling the county to do something with the zoning, with providing low-income housing in certain areas. My dilemma is ... you've got to make some generalizations when you're

²⁹ *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 51.

talking about low income and then go directly to race.”³⁰ The plan she was referring to would involve having developers create a certain amount of low income or more moderately priced housing when designing their developments. However, Ms. Kakadelis questioned this idea, once again unable to break from the status quo of her district in terms of residential segregation. The attorney for the plaintiffs prompts her to talk about various ways in which developers could facilitate urban integration.

Q: To somehow require developers to create a certain amount of low income or more moderately priced housing when they do a development?

A: That’s right. But I’ve questioned that because if I’m white and I’m low income and I want to move there, then that won’t help the definition of integration of 40/60 if someone moves in that’s not the right race.

Ms. Kakadelis essentially asserted that there is no sense pursuing residential desegregation through the practice of affordable housing because you can’t predict the race of poor families and that could actually be harmful to the goal of desegregating public school zones. This was yet another instance of willful ignorance of institutional bias, in this case with regards to housing. By not acknowledging that residential segregation is a result of institutional racism and unfair housing practices, Ms. Kakadelis categorically rejected the possibility of reform in this area. This way of thinking was a reflection of the rhetoric of the neighborhood schools movement; perpetuating existing residential segregation by taking race out of the equation. Ms. Kakadelis and Judge Potter viewed residential segregation as nothing more than a practical reality.

An equally trivial depth of consideration was afforded to acknowledging bias within schools themselves as vestiges of the dual system. In this instance, I am referring to the problem of

³⁰ *Capacchione v. CMBE*. Deposition of Lindalyn Kakadelis. Pg. 49-50.

tracking; perhaps the most overt form of racial bias in CMS during this case and in the decades to follow up to present day. Within all public-school systems, tracking is an enormous access problem that primarily affects Black and Latinx students, especially those coming from low-income backgrounds. Tracking is the practice of assigning students to various levels of academic curricula based on their academic achievement and perceived potential. The issue of tracking was discussed at length during the trial, but dismissed offhand by Judge Potter in his verdict.

According to a study done by leading expert on educational history and prominent trial witness for the defense, Dr. Roslyn Arlin Mickelson,

Blacks, Latinos, and Native Americans (in CMS) are found disproportionately in lower tracks where curricula and instructional practices are weaker. Not only are Blacks and other ethnic minorities (other than Asians) more likely than whites to be assigned to lower tracks, but research indicates that Blacks and whites with similar ability learn are in different tracks, especially in racially desegregated school systems.³¹

The process of tracking is a significant source of disparity in achievement scores by race because African-American and Latinx students are selected against when administrators or teachers are deciding which students to place in advanced tracks. In some cases, this can be due to an implicit bias: the selection of academic tracks based on the stigma associated with a students' race, even judging their academic potential based on just their name.

Furthermore, there is evidence that the assignment of teachers to different tracks of classes is disproportionate. Often, the most experienced, or accomplished teachers will be assigned to teach AP/IB classes, while new teachers are usually assigned to teach low-track classes. Teachers

³¹ Mickelson, Roslyn Arlin. "Achieving Equality of Educational Opportunity in the Wake of Judicial Retreat From Race Sensitive Remedies: Lessons from North Carolina." Pg. 1490.

in the highest tracks are often more enthusiastic and provide higher quality lessons, while low-track teachers are less likely to be organized or to promote critical thinking.

Additionally, lessons taught in low-track classes often lack the engagement and comprehensiveness of the high-track lessons. These traits of low-track classes often disadvantage students, typically African-American and Latinx students, because they fail to gain the same exposure to knowledge and skills as compared to upper-track students. This is inequitable if we presume that many low-track students could and would have more successful educational outcomes in an un-tracked system.

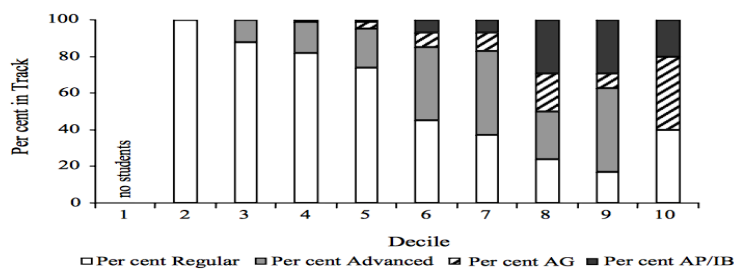


Figure 2.3: 6th Grade Language Battery and English Track Grade 12 — Black Students

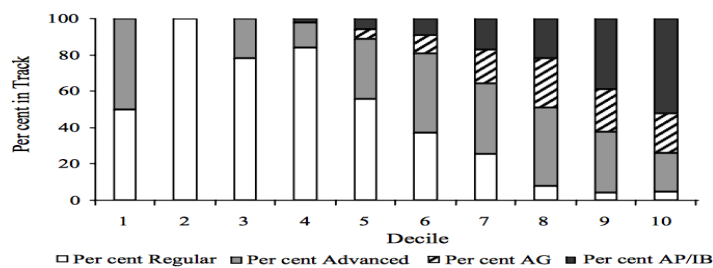


Figure 2.4: 6th Grade Language Battery and English Track Grade 12 — White Students

3.1: The above data and figure comes from a sociological study done by Dr. Roslyn Arlin Mickelson:³²

The above data comes from a study that compared African American students and white students, and both subsets were randomly sampled from Charlotte-Mecklenburg Schools. Each decile represents a range of scores on an achievement test (CAT), a typical metric for measuring a

³² Mickelson, Roslyn. "The Academic Consequences of Segregation and Desegregation in Public Schools."

student's academic ability when placing them in an academic track; the 10th decile represents the highest achieving students. The study demonstrates distinctly different tracking patterns for students in corresponding deciles who are different races. Starting with the 7th decile and moving right, it becomes clear that a significantly higher proportion of white students were placed in the advanced track, the A-G (college preparatory track), and the AP/IB track as compared to black students. In this particular case, roughly ten percent of the African American students in the 10th decile were placed in the AP/IB track, while almost fifty percent of white students in the same decile were placed in AP or IB classes.³³

Judge Potter's response to tracking was one of negation; he denied its existence altogether, stating that, "Specifically, they (the CMS expert witnesses) attacked the practice of ability tracking, which tends to result in predominately black and predominately white classrooms. As discussed further below, no credible evidence was offered to show that CMS has tracked children in a discriminatory manner."³⁴ He argued that since placement in courses is due, in part, to the courses you register for, and that because these choices are based on prerequisites and prior achievement, that tracking cannot possibly be equivalent to segregation. Furthermore, he asserted that all of Dr. Mickelson's research on the topic was fallacious because of a discrepancy between the population data she used and some of the CMS' enrollment figures. In Judge Potter's own words, "her willingness to prop up baseless excuses in an effort to cover up her errors raises serious doubts about her scientific objectivity and creates suspicions as to the rest of her report."³⁵ The benefit of hindsight allows us to corroborate Dr. Mickelson's story, that schools did resegregate in Charlotte and that tracking is a powerful form of second-level segregation.

³³ Mickelson, Roslyn Arlin. "The Academic Consequences of Segregation and Desegregation in Public Schools."

³⁴ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 23.

³⁵ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 60.

Dismissing the entirety of her expert testimony offhand was oversight at best, but more likely it was simply another reliance on the abstract liberal principle of ‘individuals’ with ‘choices’ to justify institutional segregation.³⁶ Furthermore, this same level of scrutiny and doubt was not applied to experts on the other side of this issue, who, as discussed earlier, relied on incredibly vague standards of analysis.

Dr. Stevens, another expert witness who testified to the problem of tracking, was treated in a similar fashion in the verdict. Judge Potter wrote that, “Dr. Stevens, the Swann Plaintiffs' expert, did nothing more than compile raw statistics to show that blacks were underrepresented in gifted programs and overrepresented in learning disability programs.”³⁷ Judge Potter asserted that since there had been no study done to determine whether or not Black students were even interested in the AP Classes, one could not infer that they were being discriminated against. His assumption is clear: that Black students simply did not make the choice, or have any desire, to take AP classes. He failed to see that one potential reason Black students did not register for or matriculate into AP classes was because the public-school system was not designed to afford them that opportunity.

In concluding his decision, Judge Potter discussed the constitutionality of pupil assignment in magnet schools. The Judge was convinced that the racial requirements placed on the lottery were too stringent, and they violated the rights of white students who would otherwise fill empty spots and were instead placed on the waitlist. CMS argued that if it were to relax its standards, schools would resegregate once again and the system would lose its hard-earned diversity. Judge Potter countered that, remarking that, “CMS offers its "diversity" rationale as a justification for using race, but... the emerging consensus is that achieving diversity is not a proper grounds for

³⁶ Bonilla-Silva, Eduardo. *Racism Without Races*. Pg. 56.

³⁷ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 62.

race-conscious action.”³⁸ Indeed, though seemingly nonsensical if one believes diversity is a positive educational factor, legally speaking it was improper the School Board to take race into account in order to achieve diversity, something Judge Potter did not believe was an ‘achievement’ to begin with. The judge went on to say that, “a major problem with the single-minded focus on racial diversity is that it produces diversity in nothing but race. Children are not viewed as individual students but as cogs in a social experimentation machine.”³⁹

On the whole, Judge Potter saw integration as a failed social experiment that violated the rights of white students who did not benefit from having students of color in their classrooms. His decision mirrored the rhetorical devices of the neighborhood schools movement in every aspect, a testament to the dangerous power that this new brand of discriminatory rhetoric brought to the dialogue over public education in Charlotte and in America.

A Synopsis of the Federal Appeal

The *Capacchione* litigation was appealed by the plaintiff-intervenors to the Fourth Circuit of the U.S. Court of Appeals where it was heard in February of 2001 by a panel of eleven judges. In this case, the intervenors became the title plaintiffs, and the case is referred to on the public record as *Belk v. CMBE*. There were four legal issues in question: First, the finding that unitary status had been achieved, second the holding that the establishment of a magnet schools program was an unconstitutional act that justified an award of nominal damages, third, the enjoining of the Charlotte-Mecklenburg School Board from considering race in the future assignment of students

³⁸ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 76.

³⁹ Memorandum of Decision and Order. *Capacchione v. CMBE*. Pg. 76.

or allocation of educational resources, and fourth, the sanctioning the Board for failing to comply with the district court's discovery order.

The first of these issues was obviously the most critical, and on this issue, William B. Traxler, a Judge on the Fourth Circuit, adamantly affirmed the finding of District Court Judge Potter in the judicial opinion. Indeed, the opening statement of Judge Traxler's verdict asserted that, "Unitary status having been achieved, the judgment of the district court vacating and dissolving all prior injunctive orders and decrees is affirmed. The Board is to operate the school system without the strictures of these decrees no later than the 2002-2003 school year."⁴⁰ Judge Traxler echoed a sentiment that was felt amongst supporters of the neighborhood schools movement, that the end of federal supervision of pupil assignment was overdue.

But, Judge Traxler also made a point of expressly distinguishing himself from the majority in one distinct way. He asserted that the School Board, pushed too far and did more than was either required or permitted.

Just as the educational process of the 1960s unconstitutionally deprived black children of educational opportunities solely on account of their race, the magnet schools admissions policy deprives white children of educational opportunities solely on account of their race.⁴¹

Judge Traxler relied on this contrived idea of equal treatment and reverse discrimination to justify his view that magnet schools unfairly deprived white students of educational opportunities, overlooking the fact that white students had enjoyed overwhelming institutional advantages in public school systems across the country for centuries. I argue that the intention of busing was to

⁴⁰ Belk v. Charlotte-Mecklenburg Board of Education. Per Curiam Opinion. Pg. 7.

⁴¹ Belk v. Charlotte-Mecklenburg Board of Education. Per Curiam Opinion. Pg. 8.

integrate, but that while it may have desegregated CMS by the numbers, it did not solve the problems of institutional racism, which are propped up by justifications such as Judge Traxler's. Indeed, the only way to truly dismantle the vestiges of the dual system is to *intentionally* provide safeguards and institutional advantages for students of color. Using the Equal Protection Clause and discussions of reverse discrimination to dismantle desegregation efforts was a sinister byproduct of the neighborhood schools movement, and it was reflected by the Fourth Circuit.

The appeal proceeded by addressing the very same issues in question in the District Court case and its findings are on par with the original jurisprudence. The decision relied heavily on the dissimilarity index, which designates a "substantially desegregated system," as having a score under thirty.⁴² As Judge Traxler noted, CMS's dissimilarity score was sixteen in 1980 and twenty-six in 1995. From this comparison, he inferred that the district quickly desegregated in the 1970s and continued to maintain a "substantially desegregated system" in perpetuity. He did not consider, however, that the significant changes in population and regional demographics in the late 1980s and early 1990s led to a 10-point increase in the dissimilarity index.

In terms of the index of interracial exposure, the Fourth Circuit opinion used a similar mode of interpretation as the District Court. They decided that CMS has made great leaps of progress, which it no doubt had. To be clear, a score of fifty or above indicates a "highly desegregated system," and, as Judge Traxler notes, "schools in CMS typically scored above fifty, whereas before the desegregation order the schools' scores hovered near twenty or below."⁴³ However, the use of such a lenient standard in an assessment of a School Board's ability to *completely eliminate* the vestiges of the dual system is highly questionable. In other words,

⁴² Belk v. Charlotte-Mecklenburg Board of Education. Per Curiam Opinion. Pg. 20.

⁴³ Belk v. Charlotte-Mecklenburg Board of Education. Per Curiam Opinion. Pg. 20.

whereas the standards were set high in 1971 when the busing program began, by the 1990s an acceptable district simply had to outperform its own measurements during a period of de facto segregation; a relatively lenient standard.

In sum, the verdict of the legal appeal of *Belk v. CMBE* in the Fourth Circuit reflected the original jurisprudence in virtually every important aspect, leaving the movement to integrate Charlotte schools via federal supervision all but extinct. The appeal also marked the final legal act, as of today, on the issue of school integration in Charlotte. Ever since the decision was ratified by the Fourth Circuit, the Charlotte Mecklenburg School Board has been acting on its own authority, free from federal supervision and prohibited from using race expressly as a determinant for pupil assignment. As such, the corresponding changes we have seen in the past decade in Charlotte will demonstrate the long-term effects of this historic shift in jurisprudence.

Conclusion

In the 1999-2000 school year, when Christina Capacchione applied to Olde Providence Elementary for the final time, it was approximately sixty percent white and forty percent Black, per the court-mandated ratio specified in *Swann*. In 2001, the federal appeal was passed and Charlotte-Mecklenburg Schools was officially released from federal supervision; it was also unlawful from this point forward for the School Board to use race as a means of integrating public schools in its district. Just six years after the *Capacchione* verdict, in the 2006-2007 school year, Olde Providence Elementary was seventy-seven percent white, approximately seven percent Black, and five percent Latinx students. Another six years brought little change, with a primarily white student body at seventy-four percent with slight increases in students of color at approximately nine percent Black and seven percent Latinx students. Today, in the 2017-2018 '20th day report', a brief of summary statistics filed after the first twenty days of school, race is not even provided as a data measurement.

The demographic transition of Olde Providence is a representative model for the resegregation of Charlotte's public schools post-*Capacchione*. The various modified versions of a freedom of choice plan that Charlotte has instituted for the past eighteen years of pupil assignment, from 2000 to 2018, has created virtually identical outcomes as the freedom of choice plan prior to *Swann*, during the de facto segregation of the 1960s. A Charlotte-Mecklenburg school's student body population now most often reflects the racial and socioeconomic composition of its neighborhood, with few exceptions. Due to residential segregation and the continued practice of academic tracking this means that classrooms are once again deeply segregated, even in the handful of schools that maintain a truly desegregated student body.

The most striking and sorrowful aspects of the resegregation of Charlotte's public school system, in retrospect, are twofold: first, how quickly a community was able to forget about the evils of segregation, and second, how normalized residential segregation has become in Charlotte neighborhoods. This is knowledge that I am able to draw from my own personal experience. I was the first child of a middle-class family that moved to Charlotte in the mid-1990s for a promising job opportunity afforded to my father. I can remember how normalized it was that there was essentially no diversity in my primarily white, middle-class neighborhood. I attended a private school that was founded one year after *Swann*, which was, as expected, comprised almost entirely of white families. It wasn't until I went and sought out information about Charlotte's history that I realized what my community had been a part of, and I can imagine that I am one of few who bothered to seek out that particular history.

One man who never forgot the pain of Charlotte's Jim Crow era was School Board Chairman Arthur Griffin, who was deposed shortly after the *Capacchione* trial had begun. He spoke as one of the only voices that had been working in Charlotte's public education system throughout the entire process of integration. The Chairman was asked, "Is it your opinion that the racial balancing of schools in terms of the court order – is... something that the school system should adhere to in perpetuity?" He responded resolutely, "I think in perpetuity we ought to adhere to trying to eliminate all the vestiges of the dual system...until we get the job done."¹

Chairman Griffin, who was the longest serving member of the School Board at the time, held on tightly to the belief that the cause of integration was worth fighting for. Having lived through de facto segregation as an African-American citizen of Charlotte, he knew the costs that the loss of busing would have on students of color. He was a remnant of a coalition of

¹ *Capacchione v. CMBE*. Deposition of Arthur Griffin. Pg. 49-50.

community-members who had agreed to forgo neighborhood schools in favor of a much harder course, but one that would remedy the egregious violence and hatred of an era they sought to put behind them but never forget. It was in this spirit, of collective-good and racial harmony that the busing idea was born.

Charlotte's integration story is a testament to the power of remembering history as a community, and the damage that ignorance towards that shared history can cause. After all, the busing program is what made Charlotte so prosperous in the first place, and it was a spirit of togetherness, mutual trust, and collective-good that fostered its creation. However, in spite of itself, busing became an example of the immense destructive power wielded by a community that intentionally chooses to forget; a collective consciousness that rejects historical truth in favor of an ignorance that serves as a means to their own ends.

An extended lifespan of institutional racism, the resegregation of the public education system of Charlotte, the loss of educational opportunities for hundreds upon hundreds of students of color; these are the consequences of the actions that an insulated, homogenous group of families created by slipping into an understanding of abstract liberalism and school choice built on a foundation of implicit racial prejudice.

However, I choose to believe that the narrative of public school desegregation is not finished. A generation of students and leaders that makes the effort to look back at history, to remember to bear the burdens of segregation, and to make the conscious choice to act in ways that relieve those burdens; that generation may one day create an education system that works to achieve educational equity for all students.

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