

III.

ALTERNATIVE MOTION FOR PARTIAL SUMMARY  
JUDGMENT

If, contrary to all of the foregoing authority, this Court holds the doctrines of exhaustion and abstention are not applicable to the case at bar, defendants respectfully submit that partial summary judgment must be granted in their favor on the question of federal constitutionality of the "neighborhood school policy" in accordance with case law promulgated since Brown.

In response to defendants' alternative motion for partial summary judgment, plaintiffs have amended their Amended Complaint by deleting the word "integrated" in Paragraphs Ninth and Twelfth of the Amended Complaint and Paragraph C of the Prayer for Relief, and inserting the word "desegregated" in lieu thereof.\* In their answer, plaintiffs therefore contend that "defendants' motion for a partial summary judgment is moot." They make no other argument or reply.

That defendants' motion is not moot is readily apparent.

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\*Plaintiffs have also moved to make the same amendment as to Paragraph Second.

6 Moore's Federal Practice 2056 states that:

" \* \* \* if during the pendency of a motion for summary judgment, the adverse party amends his pleadings as of course or is permitted to do so by the court, the amendment need not defeat the pending motion, unless the amendment is substantial and real and not a mere change in form."

In considering whether an amended complaint would defeat a motion for summary judgment, Nathan H. Gordon Corp. v. Cosman, 232 App. Div. 544, 249 N.Y.S. 544 (1931), stated:

"The question is whether this pleading is, under all the circumstances here present, possessed of virtue to defeat the motion. The mere service of a new pleading, if it be merely colorable, will not of itself suffice." 249 N.Y.S. at 547.

And in Severson v. Fleck, 148 F.Supp. 760, 767 (D. N.D. 1957), a motion to amend the complaint in response to a motion for summary judgment was denied where the proposed amendment would not "obviate the objections raised by the defendants' motion."

Plaintiffs' amendment herein, tendered as a wooden horse awaiting the cover of darkness, not only fails to obviate the objections raised by defendants' motion but specifically does not answer part (b) of that motion:

"(b) denying plaintiffs' prayer for an injunction requiring defendants to provide plaintiffs and others of their class with a racially integrated school system and enjoining defendants from enforcing against plaintiffs and others of their class rules and resolutions requiring public school pupils to attend the school in the attendance area in which each resides."

Though purporting to do so by their amendment, plaintiffs have far from abandoned their claim that defendants have an affirmative duty to provide them with an integrated or racially balanced school system.

Paragraph Fifth of the Amended Complaint yet alleges that as a result of the existence of areas in large cities inhabited principally by members of minority racial groups "the public schools in such neighborhoods in such cities are segregated, reflecting the segregated pattern of the neighborhood. The utilization of the 'neighborhood school' policy in such areas must, of necessity, produce segregated schools." Moreover, an analysis of plaintiffs' replies to interrogatories, as discussed in the introductory section of this brief, indicates a deliberate attempt by plaintiffs to avoid decision on the issue of alleged racial imbalance caused solely by residential patterns while simultaneously maintaining such issue as the foundation and springboard of this litigation. Defendants protest such chicanery. After contending in their answer to defendants' motion before this Court that the motion for partial summary judgment is now moot, plaintiffs reassert two paragraphs later

the very contention toward which defendants' motion is directed:

"Plaintiffs complain of the administrative acts of the Defendants within the framework of valid laws, which acts result in the knowledgable containment of Negro children in racially segregated schools, and the administrative and unconstitutional neglect of the defendants in failing to abandon a rigid adherence to a neighborhood school policy with respect to the school system of the City of Chicago, which City is claimed by the plaintiffs to be ghettonized [sic] or racially segregated geographically."

Nowhere in this paragraph is there an allegation that defendants have assigned plaintiffs to any school, or denied them admission, solely or even partially on the basis of race, nor is there an allegation that adherence to the "neighborhood school policy" has been discriminatorily or arbitrarily employed by defendants.\*

Defendants submit that plaintiffs in this paragraph are using "segregated schools" to connote racial imbalance created by residential patterns. And defendants further submit that plaintiffs in their pleadings and memorandum unquestionably allege that defendants have a constitutional

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\*Plaintiffs have, now, hedged on this question by virtue of their response to Interrogatories 12 and 33.

duty to cure such imbalance, that is to say, a constitutional duty to provide plaintiffs with a school system that is racially integrated.

It is precisely this issue upon which defendants seek summary judgment. Defendants' citation of cases and analysis of law as set forth in part III (pages 19 to 29) of their original brief are unchallenged by plaintiffs.

Defendants also seek summary judgment, as set forth in part (b) of their motion, on the constitutionality of the "neighborhood school policy." Plaintiffs continue to maintain such policy to be unconstitutional. For the reasons set forth in part III of their original brief, defendants respectfully submit that such is not the law. As was said in Brown v. Board of Education, 139 F.Supp. 468 (D. Kans. 1955), a hearing on whether the desegregation plan submitted had complied with the Supreme Court mandate:

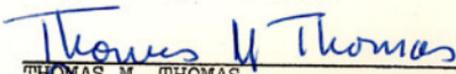
"It was stressed at the hearing that such schools as Buchanan are all-colored schools and that in them there is no intermingling of colored and white children. Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.

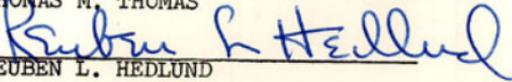
"If it is a fact, as we understand it is, with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live." Id. at 470.

As can be seen from Appendix I and II, attached hereto, the Parker and McCosh elementary school attendance areas could not be redrawn in any manner that would rectify the racial imbalance which the 1960 United States Census Report indicates to exist in these schools. If, as plaintiffs allege, defendants are compelled to "integrate" these schools and others similarly situated, then the "neighborhood school policy" (or "attendance area system"), Board Order 66240, Rule 6-7 and §34-18(7), can no longer be enforced. Defendants contend that such a requirement is demanded neither by the United States Constitution nor by Brown v. Board of Education, 349 U.S. 294 (1955).

For such reasons, defendants respectfully submit that their Motion for Partial Summary Judgment should be granted.

Respectfully submitted,

  
THOMAS M. THOMAS

  
REUBEN L. HEDLUND

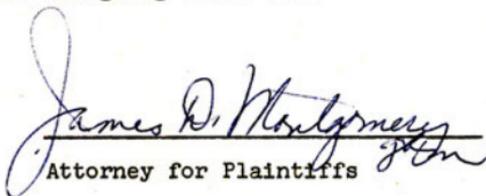
OF COUNSEL:

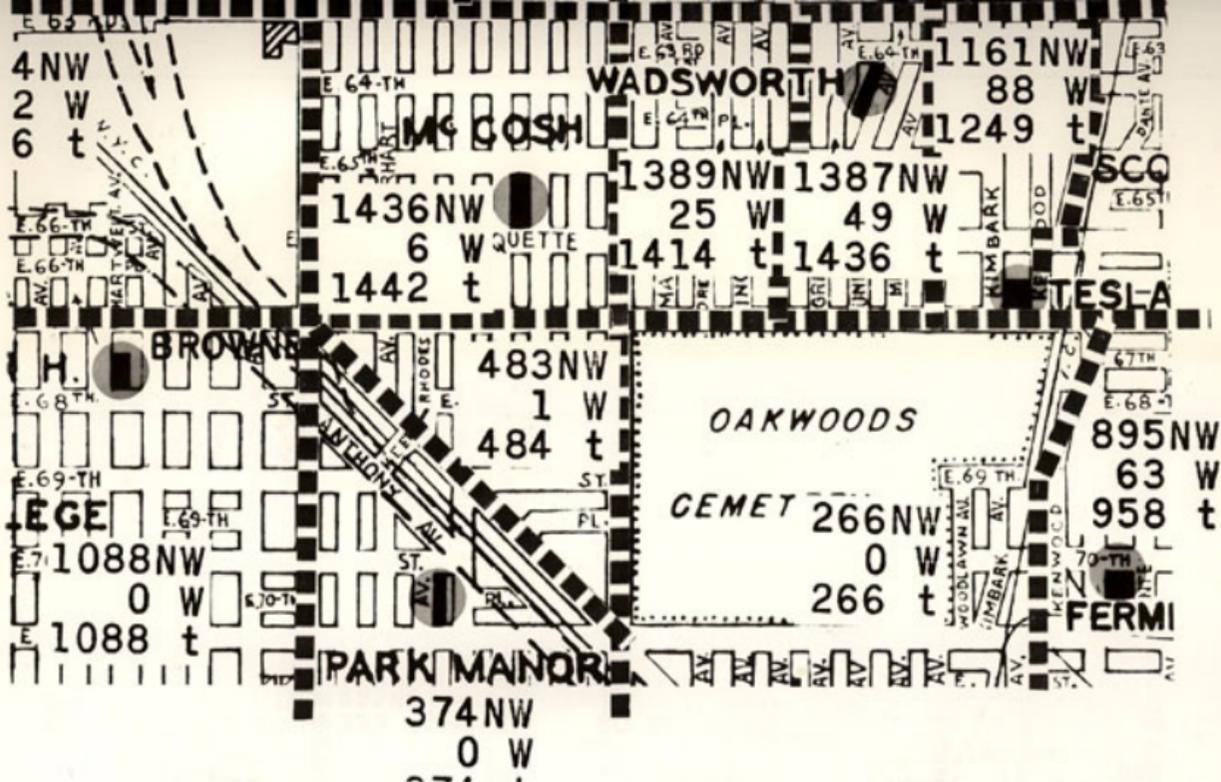
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PROOF OF SERVICE

RECEIVED a copy of the foregoing brief this  
15<sup>th</sup> day of May, 1962.

  
Attorney for Plaintiffs



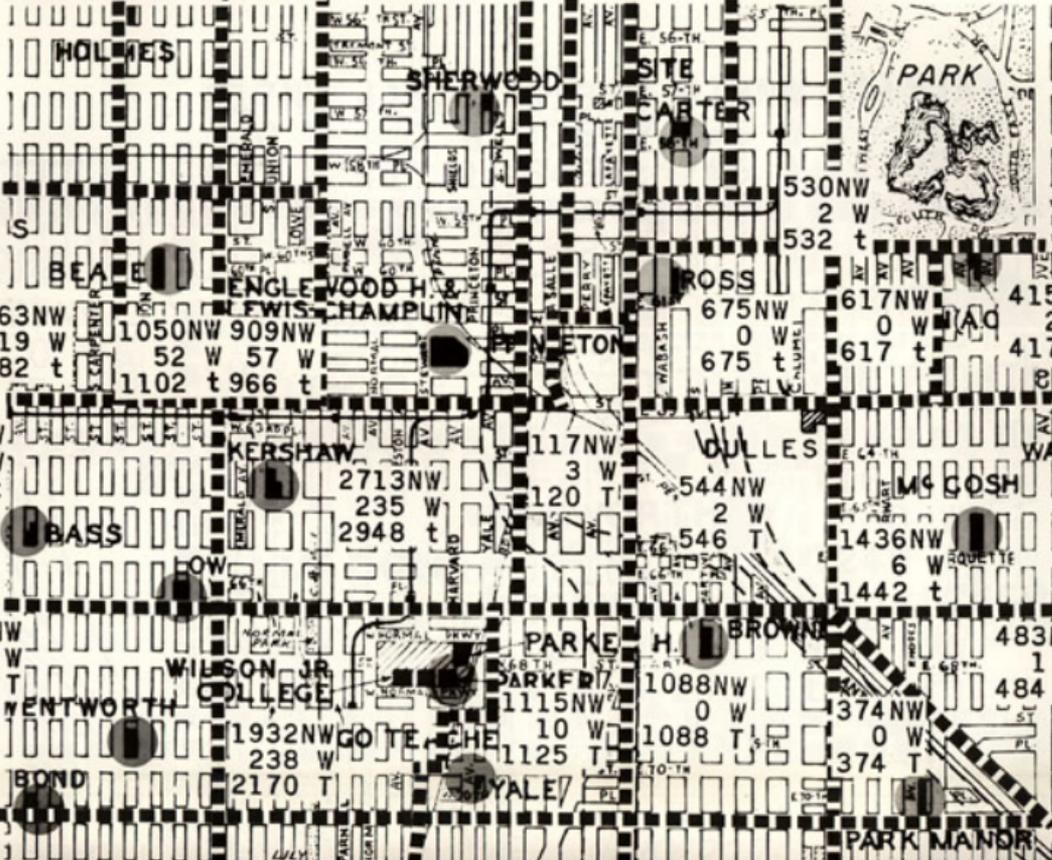
Shaded circles represent public elementary schools.

1960 Census figures are for 5-14 year-old children and are taken from Chicago Planning Dept. Information Bulletin, Population and Housing Characteristics: 1960 (March, 1961). Data contained therein is based on advanced data made available by the United States Bureau of the Census.

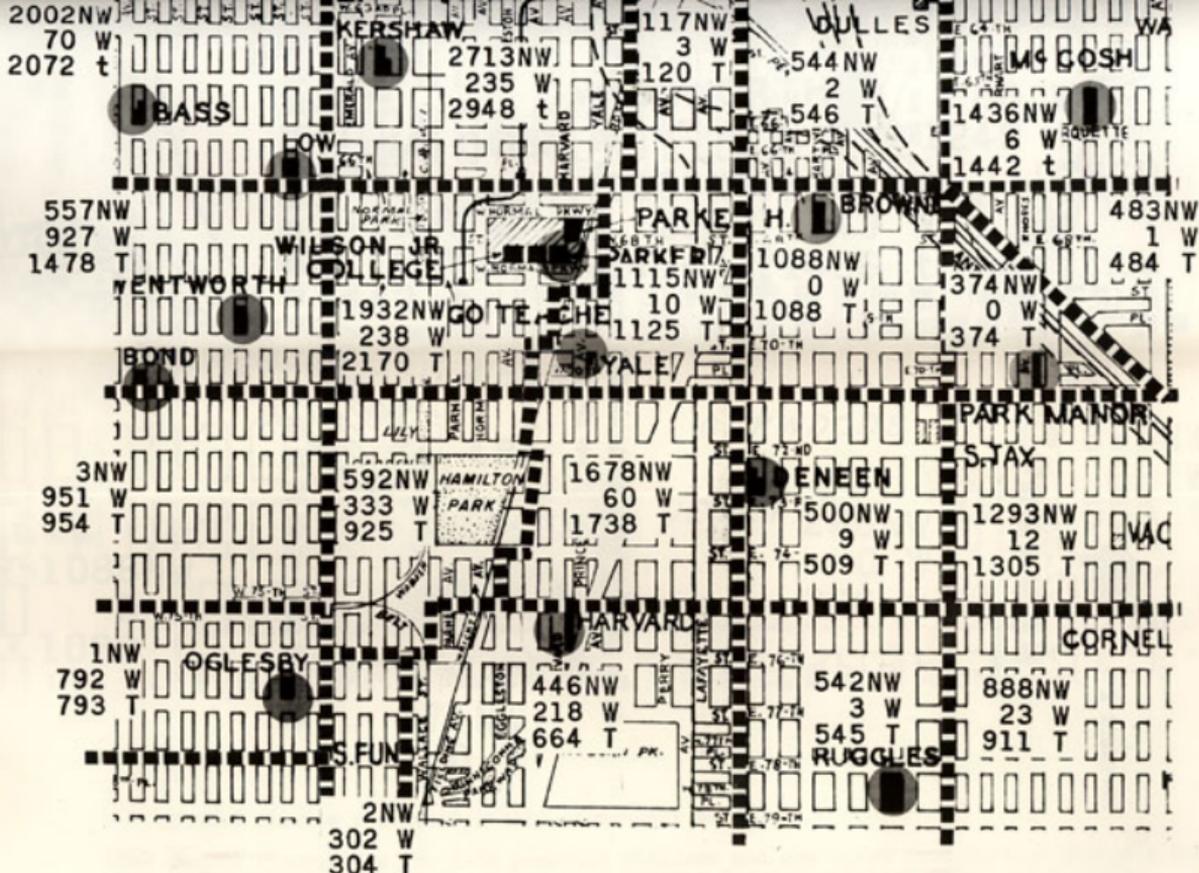
NW=Non-White; W=White; T=Total



197NW 41NW 81NW 3004NW 624NW 614NW 674NW 1054NW  
679 W 738 W 414 W 53 W 1 W 2 W 1 W 0 W  
876 t 779 t 495 t 3057 t 625 t 616 t 675 t 1054 t



1263NW 19 W 1050NW 909NW 1282 t 52 W 57 W 1102 t 966 t  
2002NW 70 W 2072 t  
2713NW 235 W 2948 t  
557NW 927 W 1478 T  
WENTWORTH  
BOND  
1932NW 238 W 2170 T  
117NW 3 W 120 T  
544NW 2 W 546 T  
1088NW 0 W 1088 T  
374NW 0 W 374 T  
415NW 2 W 417 t  
675NW 0 W 675 t  
617NW 0 W 617 t  
530NW 2 W 532 t  
530NW 2 W 532 t  
544NW 2 W 546 T  
1436NW 6 W 1442 t  
483NW 1 W 484 T  
374NW 0 W 374 T  
PARK MANOR



Shaded circles represent public elementary schools.

1960 Census figures are for 5-14 year-old children and are taken from Chicago Planning Dept. Information Bulletin, Population and Housing Characteristics: 1960 (March, 1961). Data contained therein is based on advanced data made available by the United States Bureau of the Census.

NW=Non-White; W=White; T=Total

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Tuesday, July 31, 1962

Present: Honorable Julius J. Hoffman,  
District Judge

JAMES WILLIAM WEBB, JR. and  
ANDRE WEBB, minors, by JAMES R.  
WEBB, their parent and next friend

and  
RENEE PAYNE and MAURICE PAYNE,  
minors, by JOHNSON PAYNE, their  
parent and next friend

and  
LAURENCE L. JOHNSON, minor, by  
NORMA JOHNSON, his parent and next  
friend

No. 61 C 1569

and  
ALMA LOUISE COGGS and HARRIETTE COGGS,  
minors, by DR. LOUIS H. COGGS, their  
parent, and next friend

and  
MICHAEL TOMPKINS, minor, by DR. C. A.  
TOMPKINS, his parent, and next friend

and  
LINDA MONTGOMERY, minor, by JAMES D.  
MONTGOMERY, her parent and next friend

and  
GAIL BAKER and PETER BAKER, minors, by  
ERNEST BAKER, their parent and next friend

and  
GREGORY HUNTER and CLINTON HUNTER, minors,  
by WILLIAM H. HUNTER, their parent and  
next friend

and  
JAMES ADAMS and DEBORAH ADAMS, minors,  
by SUSAN ADAMS, their parent and next  
friend

and  
ANTHONY WOODS, EARL WOODS and KEITH WOODS,  
minors, by BONITA WOODS, their parent and  
next friend

and

View of Presiding Judge, Honorable JULIUS J. SUFFMAN

ROSE MARIE OLIVER, JAMES OLIVER, MILLICENT OLIVER, MILTON OLIVER and CERSHNDRA OLIVER, minors, by RUTH OLIVER, their parent and next friend

and

CAROLYN and JANE WILLIAMS, minors, by WILLIAM WILLIAMS, their parent and next friend

and

DENISE and LEON WILBURN, minors, by LEON and DOROTHY WILBURN, their parents, and next friend

and

LEROY and KEVIN TRICE, minors, by VIRGIL and YVONNE TRICE, their parents and next friend

and

HAROLD JACKSON, minor, by MARY JACKSON, his parent and next friend

and

LAWRENCE BROWN, minor, by DORATHEA BROWN, his parent and next friend

and

CARLOS L. PICKETT, minor, by CARLOS PICKETT, his parent and next friend

-vs-

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO and BANJAMIN C. WILLIS, and general superintendent of schools of the City of Chicago

This cause coming on for decision on the motion of the defendants to dismiss the amended complaint, the Court having considered the briefs and arguments of counsel and other papers filed herein and being fully advised in the premises it is

ORDERED that said motion to dismiss be and it hereby is allowed and that said amended complaint be and it hereby is dismissed.

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN

Cause No. 6101569

Date 7-31-62

Title of Cause James William Webb, Jr, et al vs Bd of Education City of Chicago, et al

Brief Statement of Motion Decision on Motion of Def. to dismiss amended Complaint

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

NOTICES MAILED

8-2-62

J. Hoffman

Judge Hoffman

- Reserve space below for notations by minute clerk

Motion of Def. to dismiss Amended Complaint allowed.  
Amended Complaint dismissed.

