Educate! A newsletter on education in Charlotte-Mecklenburg, NC

Jan. 14, 2001

Helms: Community must buy into schools accord

Lawyer Parks Helms isn't known for defying courts. So it may have given some folks pause when, in his State of the County address Jan. 9, Helms said that Charlotte-Mecklenburg's pupil assignment solution "must not be one that is forced upon us by a court."

The county commissioners chairman at the barricades? Definitely not.

"I'm not surprised that a casual reading of my speech might" lead to some misunderstanding, Helms writes. "I want to reassure you that my proposal is to develop a pupil assignment strategy with the concurrence of a broad cross-section of this community. That strategy needs to be consistent with and in complete compliance with the current rulings of the appellate courts.

"We have many thoughtful and creative leaders in this community who understand the importance of designing a pupil assignment plan that reflects the demographics, the educational needs, and the unique and diverse humanity of this community.

"I am persuaded that it is much more likely that we can resolve this among ourselves, as opposed

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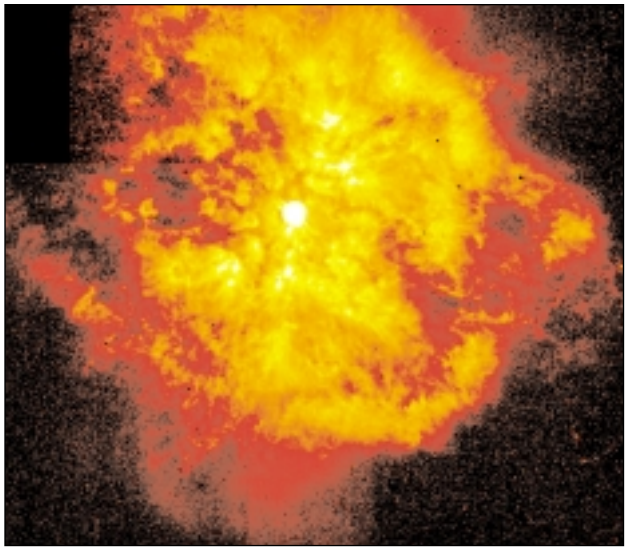
Can science hold a candle to the allure of sports?



NASA

Hubble image of WR124, taken in 1997. See Page 3.

By EDWARD G. SHERBURNE

How can we lift science to the level of sports?

Fabulous careers have been made in research and basic science. But the roster of North Carolina scientists has been weak. North Carolina is now a widely recognized state and Charlotte truly a Queen City. It needs to nurture a widened interest in science education.

Judging from newspapers and the educational culture in Charlotte, emphasis on sports is stronger than emphasis on educational excellence. Science as a subject is scarcely mentioned.

Technology, of course, is important. But technology is not science. The technology we have today is based on the basic research that is a continuum since 1926 when mechanical physics gave way to quantum theory.

The emphasis in cutting-edge science has now moved of course to genetic research and more recently biotechnology. Are our children getting exposure to the cutting edge?

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4th Circuit speaks: Majority's summary, Traxler's dissent

Over the years, the court filings in Swann vs. Mecklenburg have been splendid reading for newcomers and long-time residents alike about how local history shaped school desegregation in Charlotte-Mecklenburg. As part of our educational mission, we conclude today excerpting portions of the Nov. 30 Appeals Court ruling.

Editing principles and other information are listed on page 4.

Last of four excerpts

The appeals court's conclusion:

For more than a hundred years, in fits and starts, our nation has attempted to undo the effects of its shameful heritage of slavery. For nearly fifty years, federal courts have struggled with the task of dismantling legally enforced racial segregation in many of our schools. This task has given rise to one of the preeminent issues of constitutional law in our time. We do not yet know how history will regard the courts' role in adjudicating and presiding over the desegregation of schools. It may be seen as a brief and unfortunate jurisprudential anom-

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Helms: Community must settle issue

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to being required to design a system around parameters created by judges and justices who have no 'sense of community' about Charlotte-Mecklenburg."

The horse may be out of the barn here, of course. The 1997 lawsuit that put pupil assignment back into the courts led to a 1999 District Court ruling. A first decision at the Appeals Court came down Nov. 30 (see Page 1), more rulings are likely at the appeals court, and there is always a chance that the U.S. Supreme Court will weigh in again, as they did in 1971.

Helms

"It is my belief," says Helms, "that if we continue down the appellate path, the U.S. Supreme Court will ultimately enter a ruling that will mandate fundamental changes in the logistics of assigning students to our schools. I would prefer to do what is right without the limitations of any such mandate.

"Please remember that I have made it clear that I believe the past thirty years under Swann vs. Board of Education has been and continues to be successful. However, it is time to make appropriate modifications that take advantage of the social and educational changes that have evolved during this period."

In the long history of the Swann case, the District Court was the one fashioning orders that shaped specific pupil assignment plans. But Helms has history on his side: The most successful of those plans, implemented in 1974, while approved by the court, was essentially the brainchild of a small group of Charlotte-Mecklenburg citizens.

Is it time for such a group of citizens to be at work? Helms doesn't say, though one could hear echoes of the Citizens Advisory Group of the early 1970s in his speech. Here is what Helms said about education in his State of the County speech:

"Right now, community consensus is dramatically needed for our education system. We must have equitable educational opportunities for all of our children. We must have a dependable degree of certainty in student assignment. We must attract and keep good teachers – by providing the working environment, salaries and benefits that teachers deserve.

"It is time for all of Charlotte and Mecklenburg to come together on the issue of education. We need a common goal – agreed upon by every segment of the community – governing boards, civic and religious groups, and individual citizens. We must craft a solution to solve our educational dilemma. This solution must not be one that is forced upon us by a court. We must make our own decision – based upon what's best for this entire community! I stand ready today to work with Superintendent Eric Smith and the Board of Education to craft such a decision.

"By successfully developing and putting into place a workable solution for our schools, we can restore confidence in our public education system. We can enhance educational opportunities for all students. However, this will require each of us to expand our scope of thinking and embrace the possibilities before us."

Embracing the possibilities, however, may be difficult until the courts offer more clarity about the rules under which CMS must proceed. Today, those rules are those fashioned in the late 1960s. It is possible those rules could soon be turned upside down to follow a ruling by District Judge Robert Potter in 1999. More likely, the appeals court will take its time deciding, and nothing will change for awhile.

What to do during this "awhile?" Helms offers one direction:

"For any plan to succeed," he writes, "it must be created and owned by the citizens and families whose lives will be affected."

Conversation over the water cooler, the kitchen table, and at the hall locker could help "each of us to expand our scope of thinking" and prepare the way for action.

Educate! a newsletter of The Swann Fellowship

1510 E. 7th St. Charlotte NC 28204 704-342-4330 SwannFello@aol.com

Six-week running average circulation through last issue: 1,938

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The name: The Swann Fellowship was named for Darius and Vera Swann, who on behalf of their son James became the lead plaintiffs in Swann vs. Mecklenburg in the 1960s. Darius Swann was the first African American Presbyterian missionary ever assigned outside of Africa. His experiences in India led him to appreciate the value of an integrated society for human development.

The vision: As people of faith, our vision is that all children in the Charlotte-Mecklenburg School System will have excellent educational opportunities which are both equitable and integrated.

The background: Formed in 1997 out of several Charlotte religious congregations, the Fellowship focuses on being a witness to the value of diversity, and educating the public on public school issues as they relate to this and allied subjects. The Swann Fellowship is a nonprofit organization exempt under Section 501(c)(3) of the Internal Revenue Code 56-2106776. A copy of the license to solicit charitable contributions as a charitable organization or sponsor, and financial information, may be obtained from the N.C. Department of Human Resources, Solicitation Licensing Branch, by calling 919-733-4510. Registration does not imply endorsement, approval or recommendation by the state.

Plaintiffs in suit told schools not to impose choice plan

Exclusive

In a Nov. 3, 2000 letter to school board attorneys, the lawyer for the Charlotte-Mecklenburg parents opposed to use of race in school assignment essentially warned school officials not to adopt Supt. Eric Smith's neighborhood school choice plan.

The choice plan, which many of those parents in fact support, must first be approved by the U.S. District Court, the letter said. If school officials imposed the plan, it would be illegal.

Thomas J. Ashcraft's letter is but one of the many behind-the-scenes actions taken in the weeks that led up the controversial and spectacularly misunderstood decision by the school board to shelve Smith's plan the night before a long-planned Showcase of Schools.

Days earlier, a panel of the U.S. Court of Appeals had issued a ruling in the case. The ruling overturned major portions of Judge Robert Potter's 1999 findings that would have allowed the choice plan to proceed.

Ashcraft's letter, written before the Appeals Court ruled, raised a different concern:

"Whatever happens in the future," Ashcraft wrote, [his clients] would like to minimize the disruption to all CMS students, including their own children, in the transition to a new student assignment plan. The three main scenarios under which a new pupil assignment plan may occur now appear to us to be as follows:

"1. If the status quo of your appeal and the stay of the district court's September 1999 order, which you sought, continue in effect during however long the appeal takes, including the 2001-02 school year, the Board would remain under court supervision as it has for the last thirty years. Thus, it would be illegal for the Board to implement any new student assignment plan without the prior approval of the supervising court, the U.S. District Court for the Western District of North Carolina.

"2. If the 1999 order were reversed and remanded as your appeal seeks, the board would likewise remain under court supervision, and again it would be illegal to implement a new student assignment plan without court approval.

"3. Finally, if [his clients] prevail in response to the Board's appeal, the plan as currently being implemented would have to comply with all or part of the September 1999 order."

Ashcraft then suggested that school officials plan on giving parties to the lawsuit at least 9 months to study any proposed assignment plan to be sure it met the requirements of any future court ruling.

School board leader Arthur Griffin has told parents a new plan must be approved this summer – 10 or 11 months before school opening in 2002.

The Ashcraft letter, now part of the lawsuit's public record, appears to say that the letter was sparked by a story in The Leader newspaper that reported that Smith wanted the choice plan in place for fall 2001 "regardless of what the courts say."

Can science compete?

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Charlotte needs a large science fair, a push in schools for competition and recognition of winners in the sciences.

It is recognition and status that encourage students.

About the fireball

The picture of WR124 on Page 1 is a hot little reminder of some of the exciting things scientists deal with.

This star is 15,000 light-years away. The fiery explosions on the star are throwing out into space massive blobs of hot gas. Each blob, scientists believe, has the mass of 30 Earths. As the blobs cool, they break up in space and pose no threat.

Sound interesting? Perhaps you are destined for a life devoted to the study of science.

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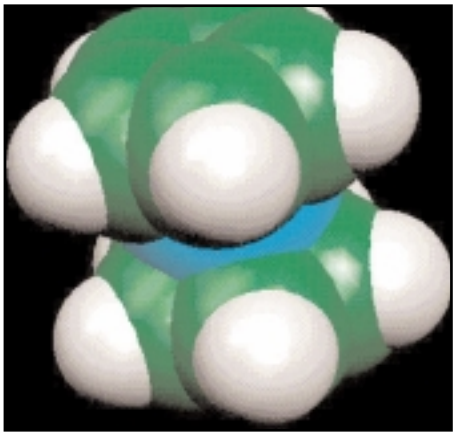
Edward G. Sherburne Jr., 81, recently moved to Charlotte from Washington DC where he headed Science Service and for 25 years worked with thousands of students through the International Science Fairs and the Westinghouse Talent Search (now Intel).



University of Geneva

Ferrocene, the June 1996 Molecule of the Month at the University of Oxford in England, was discovered in the 1950s. In your hand at room temperature, it would not hurt your skin, would look like crystals and would smell of camphor (the smell of Vicks VapoRub). Added to diesel fuel, however, the compound can deliver fuel savings of up to 14% and reduction of fumes by 30% or more.

4th Circuit speaks: The magnets

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aly, justified only by the immediacy of the evil it was intended to uproot; or it may be recognized as the necessarily sustained effort to eradicate deep-seated vestiges of racial discrimination and to vindicate the promise of the Fourteenth Amendment; or it may be viewed in some other way that we cannot now anticipate. Our decision today does not attempt an answer.

But we are certain that the end of this great task must be accomplished in an orderly manner, consistent with and true to its origin. We are certain, too, that if the courts, at some point, come to view the effort to eliminate the vestiges of segregation as having been overly "race-conscious," they must do so with a clear assessment of the historical record.

Race neutrality, of course, represents one of our constitutional ideals. Properly understood, it is an ideal not at all in tension with our obligation as a society to undo the effects of slavery and of the racial caste system that was perpetuated, for more than a century, in slavery's wake. But we must be ever mindful, as we strive for race neutrality, that a reductive and willfully ahistorical conception of race neutrality was, in an earlier era, used as a blunt instrument against the aspirations of African-Americans merely seeking to claim entitlement to full citizenship.

In striking down early civil rights legislation, the Supreme Court embraced this misconceived race neutrality, reasoning, only twenty years after the issuance of the Emancipation Proclamation, that the legislation at issue would illegitimately make black citizens "the special favorite of the laws." Indeed, the system of segregation with which we are concerned was justified at its inception by a particular conception of race neutrality – that a regime of racial separation could be constitutionally justified so long as it applied neutrally and equally to persons of all races.

The first Justice Harlan, dissenting in Plessy, declared our Constitution to be "color-blind," id., 163 U.S. at 559, and in doing so provided one of the most famous and compelling articulations of the constitutional guarantee of equality. But in urging us to be "blind" to race, Justice Harlan did not, as is sometimes suggested, suggest that we be ignorant of it. In Plessy, he was the only member of the Court willing to acknowledge the most obvious truth about segregation: "Everyone knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied or assigned to white persons."

Thirteen years earlier, dissenting in the Civil Rights Cases, Justice Harlan rejected the notion that civil rights legislation made blacks a "special favorite of the laws," and he criticized the majority's reasoning as "narrow and artificial."

We recognize now, as Justice Harlan recognized then, that no simple syllogism can enfold all of history's burdens and complexities. Eliminating race-consciousness from government decision-making must be regarded as among our worthiest constitutional aspirations. But that aspiration surely cannot be so rigid that it refuses to distinguish the "race consciousness" that created a segregated school system and the race-conscious efforts necessary to eliminate that system. While most judges are not historians, we must be willing to acknowledge and confront our history. If we fail to do so, we risk falling into a mode that equates the cure with the disease: civil rights with favoritism, desegregation with segregation. As American citizens, we know better.

We must and do sympathize with those who are impatient with continued federal court involvement in the operation of local schools. Thirty-five years could be considered a long time for a school district to operate under judicial desegregation decrees. However, when the Supreme Court decided Swann in 1971 no one could reasonably have thought that the substantial task described there would be quickly or easily accomplished. CMS, which maintained a separate, decidedly unequal dual educational system for decades - and which mightily resisted

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The following principles have guided our editing of the long Appeals Court document. All legal citations have been removed, as have most of the notes. Where notes were re-inserted in the text, they are in parentheses. The court's discussion and rulings on the injunction, nominal damages, attorney fees and discovery disputes have been eliminated. Locations of text edited for space are marked with three dots. Some small headlines not in the original text have been inserted as an aid to reading. After editing, four big chunks of material emerged:

Dec. 10: History of the case
Dec. 17: Questions of unitary status
Jan. 7: The magnets
Today: Court's conclusion, Judge Traxler's concurrence and dissent.

For copies of excerpts, please message SwannFello@aol.com with the dates. The excerpts will also be available in one piece at a later date.

4th Circuit speaks: The magnets

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desegregation of any sort for years after it became the law of the land – has come a long way. While CMS has now achieved unitary status in certain respects, this record simply does not support a determination that the process of desegregation is at an end. Nor does it support a holding that CMS violated the Constitution when, pursuant to court orders, it undertook judicially approved action to remedy its own long history of racial segregation.

The Traxler dissent

Judge William B. Traxler Jr., of Greenville, S.C., dissented from parts of the Appeals Court ruling. If the full Appeals Court re-hears the case, and reverses the 2-1 majority, it may well be on grounds mentioned by Judge Traxler.

... The present litigation arose in September 1997 when William Capacchione ("Capacchione") filed suit against CMS on behalf of his daughter, Christina, alleging that she had been unconstitutionally denied admission to a magnet school program on account of her race. In 1992, without prior court approval, CMS had adopted a desegregation plan focused mainly on the use of magnet schools. In filling magnet schools, CMS had instituted a black and a non-black lottery to achieve racial balance. If a sufficient number of blacks or whites did not apply and fill the seats allotted to their respective races, then CMS would actively recruit children of the desired race despite lengthy waiting lists made up of children of the other race. If the recruitment drive failed, CMS usually left the available slots vacant. Christina, who is white, was placed on a waiting list and eventually denied admission to a program at the Olde Providence magnet school.

The original Swann plaintiffs moved to reactivate Swann and to consolidate it with Capacchione's suit. They asserted that the vestiges of the dual school system had not been abolished and that the use of race in the magnet admissions policy was necessary for the school district to comply with the prior desegregation orders....

In undertaking a unitary status inquiry, a court must ask "whether the Board ha[s] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." .... Implicit in the Supreme Court's use of the term "practicable" is "a reasonable limit on the duration of . . . federal supervision." ...

Student assignment

...CMS and the Swann plaintiffs correctly point out that the data suggest that in recent years racial imbalance has increased in some schools.... Simply put, the district court's conclusion that the current imbalance is unrelated to the original constitutional violation is not clearly erroneous. Evidence presented at trial indicated that "[o]f the 16 former black schools that are still open, have been desegregated for periods ranging from 22 to 28 years. Of the 3 that currently exceed the +15% black variance, each has been balanced for at least 22 years."... Long periods of almost perfect compliance with the court's racial balance guidelines, coupled with some imbalance in the wake of massive demographic shifts, strongly supports the district court's finding that the present levels of imbalance are in no way connected with the de jure segregation once practiced in CMS.... The evidence presented at trial adequately explained why a few schools have become imbalanced, and I can discern no evidence or omissions that indicate clear error has been committed in this regard....

The Swann plaintiffs also point to school sitings, transportation burdens, and school transfers as

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Sound off! for quality education

Your words in support of a quality, equitable, integrated education can help make the case for community support of Charlotte-Mecklenburg Schools. Pick up your pen! Or get your mouse in motion! Here's information on how to submit your letters to area media.

The Charlotte Post: By e-mail: thepost@clt.mindspring.com; by fax: 704-342-2160; by mail: Editor, The Charlotte Post, 1531 Camden Road, Charlotte, NC 28203-4783.

The Charlotte Observer: By e-mail: opinion@charlotteobserver.com; by fax: 704-358-5022; by mail: The Observer Forum, The Charlotte Observer, P.O. Box 30308, Charlotte, NC 28230-0308.

The Charlotte World: By e-mail: warren.smith@thecharlotteworld.com; by fax: 704-503-6691; by mail: 8701 Mallard Creek Road, Charlotte, NC 28262-9705.

The Leader: By e-mail: editor@leadernews.com; by fax: 704-347-0358; by mail: 800 E. Trade St., Charlotte, NC 28202-3014

Creative Loafing: By e-mail: charlotte@creativeloafing.com; by fax: 704-522-8088; by mail: P.O. Box 241988 Charlotte, NC 28224-1988.

Educate!: By e-mail: SwannFello@aol.com; by fax: 704-342-4550; by mail: 1510 E. 7th St. Charlotte, NC 28204-2410.

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evidence that the growing imbalance is caused by state action rather than private choices, and that CMS has not complied with the district court's orders in good faith. In advancing their argument, the Swann plaintiffs rely chiefly on Martin v. Charlotte-Mecklenburg Board of Education... (1979)....

In Capacchione, the district court correctly observed that "Martin was not a unitary status hearing," and that because "the desegregation plan was still in its fledgling stages, the Court was inclined to keep the pressure on CMS." The Capacchione court [Judge Potter] further observed that post-Martin changes in Charlotte-Mecklenburg counseled looking at the "concerns [of Martin] in a new light." The district court's interpretation of Martin is reasonable and in accord with the rule in this circuit that a district court, as a continuous institution, is "best able to interpret its own orders."... Moreover, the Martin order was issued thirteen years before the Supreme Court made clear in Freeman that the affirmative measures mandated by Green are not meant to remedy "private choices" that lead to resegregation. The state of the law and the understanding of duties upon school districts were far different when Martin was handed down. Hence, a number of assertions in Martin cannot be squared with the present state of the law. ...

School siting

Though the two often pulled CMS in different directions, the record indicates that the board coordinated racial balance and school sitings as best it could under the circumstances. The evidence does not indicate that the abandonment of the ten percent rule or other decisions regarding school siting were the result of a desire to perpetuate the dual school system or circumvent the district court's orders.

CMS and the Swann plaintiffs, citing to prior orders, contend that the board has not done all that it could do in the area of school siting. Erection of such a standard, however, would effectively replace practicability with possibility. The former implies measures that can be reasonably implemented under the circumstances, while the latter omits the reasonableness requirement. For instance, it was possible for CMS to adhere to the ten percent rule while ignoring growth in the far north and south of the county. Youngsters would have been compelled to ride buses for long periods while traveling with the flow of rush hour traffic, but it was nonetheless possible to adhere to the ten percent rule. Of course, the practicability of a refusal to respond to growth in Charlotte-Mecklenburg is another matter.

In the same vein, the Swann plaintiffs contend that school siting decisions were a response to white flight, which is an impermissible reason for failing to comply with a desegregation order. Growth, of course, is far different from flight. And experts offered evidence of "the economic boom in the Charlotte Metropolitan area in the last decade." Charlotte-Mecklenburg is one of the most dynamic areas in the South; it is far different from the Charlotte-Mecklenburg of Swann, and much changed from that of Martin. In light of the growth in the county and a plethora of evidence demonstrating that the board used its best efforts to site schools in order to foster integration, the district court did not commit error when it concluded that there is no "continuing constitutional violation in the area of school siting."

Burdens of busing

... (T)he district court found that in the most recent school year, 15,533 black students and 11,184 non-black students were bused for balancing purposes. As stated earlier, traffic patterns make busing suburban students into the inner city far more difficult than busing inner-city children into the suburbs. Though a disproportionate number of African-American students are bused, the growth and housing patterns support the district court's conclusion that the realities of the current situation should not block a unitary status determination.

Student transfers

Finally, Martin's concern with student transfers appears to have been based on the assumption that CMS would experience average growth. Courts are not omniscient, and the district court in 1979 could not have foreseen the changing demographics that would make student transfers the least of CMS's worries. In the present litigation, the district court observed "that CMS 'kept an eye on [magnet transfers] so that there wouldn't be a run on the bank so to speak from any one school.' " ...This finding is not clearly erroneous, nor can I discern the need for more findings on this issue in light of post-Martin changes.

In sum, the district court's findings on student assignment are "plausible in light of the record viewed in its entirety." The dual system of student assignment in CMS has been eradicated "to the extent practicable." The imbalance existing in some schools is not traceable to the former dual system or to renewed discriminatory actions, but rather is a result of growth and shifting demographics. Consequently, I would hold that the district court's findings on student assignment are

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not clearly erroneous.

Facilities and resources

...(T)he district court noted that none of the prior orders entered in the long history of the Swann litigation had ever found racial disparities to exist with regard to school facilities and concluded that CMS and the Swann plaintiffs bore the burden of establishing discrimination with regard to facilities. ("[I]t would defy logic to place now the burden of proof on the Plaintiff-Intervenors, requiring them to prove that vestiges of discrimination in facilities have been remedied, when the Court originally found no vestiges to exist.") In my view, this erroneous assignment of the burden of proof, which did not affect the manner in which the parties tried the case or otherwise prejudice their rights, is harmless and does not undermine the district court's factual conclusions regarding the facilities factor....

Just as Judge McMillan found thirty years ago, the Court finds today that inequities in facilities exist throughout the system regardless of the racial makeup of the school. These disparities are generally the result of the relative ages of the facilities, combined with an ongoing lack of funding and the need to accommodate unprecedented growth....

Because any error associated with the burden of proof is harmless, the only question that remains is whether the district court's factual findings about the facilities are clearly erroneous. Contrary to the majority's analysis of Dr. Gardner's report and its discussion of "anecdotal accounts of a number of witnesses," I simply cannot conclude that the data and other evidence in the record show the district court's findings on this Green factor to be implausible. ... Though the evidence could have been weighed differently on this factor, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." In 1969, the district court found that there was no constitutional violation in the "quality of school buildings and facilities." The Capacchione court found that this remains true today, and the evidence as a whole indicates that this finding is not clearly erroneous.

Student achievement

The district court found that the existence of an achievement gap between black and white students was not a vestige of the dual system or evidence of discrimination in the current operation of CMS. This was an area of immense disagreement at trial, and the parties presented a mountain of data on this subject. Though the Fourteenth Amendment guarantees equal protection but not equal outcomes, if low African-American achievement is a result of the former de jure system, it must be eliminated to the extent practicable. Conversely, to the extent that low achievement is linked to other factors, it is beyond the reach of the court's authority. Most courts of appeals confronting this issue, including this court, have declined to consider the achievement gap as a vestige of discrimination or as evidence of current discrimination....

The plaintiff-intervenors' expert witness, Dr. Armor, presented evidence indicating that there is no correlation between African-American performance and the racial balance of schools. ...In order to shed light on the true causes of the achievement gap, Dr. Armor turned to socioeconomic factors. The data revealed startling differences between black and white children in CMS.

Average black family income is $31,000 compared to $59,000 for whites, and only 15 [percent] of black parents are college graduates, compared to 58 percent for white parents. A huge poverty gap is also revealed, with 63 percent of black students on free lunch compared to only 9 percent of white students. Finally, 83 percent of white students have both parents at home, compared to only 42 percent for black students.

According to Dr. Armor, the socioeconomic factors plus the second grade scores, which are the earliest available, explain "nearly 80 percent of the reading gap and over 70 percent of the math gap." Former Superintendent Murphy also testified that in his experience "[p]oor students come behind and stay that way. And in Charlotte, a majority of poor students happen to be African-American." Dan Saltrick, former assistant superintendent for instructional services, also testified that in his experience low student test scores related to parental support which in turn was "a matter of . . . socioeconomic levels." While socioeconomic disparities between black and white pupils are troubling, they are not the result of CMS's actions or inactions and therefore are beyond the scope of the original desegregation order.... Accordingly, the district court did not clearly err in finding that the achievement gap between black and white students is not a vestige of past discrimination or evidence of present discrimination.

Good faith

... The district court gave little weight to CMS's assertions that the board had not put forth enough effort, and the evidence presented at trial amply supports the district court in this regard. Former Superintendent Murphy testified that despite a report indicating that CMS was unitary and his belief that CMS "w[as] definitely in compliance," no effort was made to dissolve the court order. Dr. Murphy gave three reasons for the avoidance of a unitary status hearing. First, he advised board members that the

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court hearing would be "a long, drawn-out process which would cost millions of dollars, and that would be money taken away from the instructional program." Second, Dr. Murphy feared that if CMS was declared unitary "we would not be eligible for federal funding for our magnet schools." Finally, Dr. Murphy thought it best to remain under court order so CMS could continue to racially balance schools even though the de jure violation had been remedied.

Dr. Susan Purser, the current associate superintendent of education services of CMS, expressed a similar desire for CMS to remain under court order. Though Dr. Purser testified that she believed that the school board, superintendent, and administration were dedicated to enhancing educational opportunities for all of CMS's students regardless of race, she nonetheless expressed a preference for court supervision. Dr. Purser pointed out that the current "Board has only a limited time, because these are elected positions," and that over time "superintendents will change, [and] the people involved in [CMS] will change." At this point in the cross examination, counsel asked Dr. Purser: "But you don't know what any future School Board or administration will do either way, do you?" Dr. Purser responded: "That's exactly my point." Dr. Purser's testimony and that of Dr. Murphy exemplify why the Supreme Court has stressed that "federal supervision of local school systems was intended as a temporary measure to remedy past discrimination." The district court's desegregation order was not intended to continue after CMS remedied the de jure violation, nor was it intended to suspend the democratic process with no prospect of restoration. Yet it has been institutionalized to the point that CMS officials cannot imagine life without it. Contrary to assertions of the majority, the desegregation order is certainly not viewed as "detrimental" by CMS officials.

Ironically, CMS's clinging to the temporary desegregation order buttresses the district court's finding that it is unlikely "CMS would return to an intentionally-segregative system." If CMS will go to such lengths to keep the court's order in place so that it may continue racial balancing and other policies, it is unthinkable that CMS will attempt to revive the dual system. Accordingly, the district judge's finding of good faith is not clearly erroneous....

Magnet schools

...The crux of the problem with CMS's magnet school plan is its admissions process.... (T)he district court concluded that the use of magnet schools had never been approved and that the rigid racial quotas of the magnet admissions policy were "beyond the scope of the Court's mandate." ... In sum, the magnet admissions policy is not narrowly tailored. The policy is not necessary to dismantle the de jure system, is for an unlimited duration, provides for virtually no flexibility, and burdens innocent children and their families. The inequities of CMS's magnet admissions policy call to mind why strict scrutiny is used in the first place: "Of all the criteria by which men and women can be judged, the most pernicious is that of race." Teaching young children that admission to a specialized academic program with available seats is contingent on their race is indeed pernicious, and CMS's magnet admissions policy can in no way be described as narrowly tailored to achieve the compelling interest of remedying past discrimination.

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- ❑ Teachers, let us know what we should focus our reporting resources on. You know what will help build up the schools.
- ❑ Children, send us your ideas too. Sound off! Send us your photos. And budding artists, take up your wide felt-tip black pens and share with all of us what your eye sees!
- ❑ Message SwannFello@aol.com with your words, your digital photographs and digital artwork. Mail paper submissions to The Swann Fellowship, 1510 E. 7th St., Charlotte, NC 28204-2410.
- ❑ Like photography? We'd like several people willing to share with us pictures taken at local schools. Message us of your interest.
- ❑ The Fellowship has need of several digital cameras to loan to students taking photos for Educate! Obsolete units you are no longer using would be the perfect tax-deductible donation! Please message us of what you could offer.

Quoted

"We must see the need of having nonviolent gadflies to create the kind of tension in society that will help men to rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood."

– Martin Luther King, Jr.
April 16, 1963