



3. Two years after this Court approved the District's desegregation plan in 1969, the Supreme Court held that district courts have broad equitable powers that they may invoke in school desegregation cases to remedy past wrongs. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). In response to the Supreme Court's ruling, the Fifth Circuit reviewed several cases and directed school districts to develop and implement revised desegregation plans conforming with the expanded scope of remedies outlined in *Swann*. *See, e.g., Gaines v. Dougherty County Bd. of Educ.*, 465 F.2d 363, 364 (5<sup>th</sup> Cir. 1972) (remanding case to the district court to develop such a revised desegregation plan); *Stout v. Jefferson County Bd. of Educ.*, 448 F.2d 403, 404 (5<sup>th</sup> Cir. 1971) (same); *see also Stout v. Jefferson County Bd. of Educ.*, 466 F.2d 1213, 1216 (5<sup>th</sup> Cir. 1972) (approving part of school district's revised desegregation plan as consistent with *Swann*, and disapproving remainder of plan).

4. On December 14, 1974, the United States filed a motion for supplemental relief, arguing that the District was violating federal law and the Fourteenth Amendment to the United States Constitution by continuing to operate one-race or virtually one-race schools. *See December 1974 Motion for Supplemental Relief at 5*. This Court ordered the District to implement a strict neighborhood student assignment system, but did not order the District to implement other remedies to further desegregation in its schools, and did not address whether the District's November 7, 1969 desegregation plan was consistent with the Supreme Court's decision in *Swann*. *See July 21, 1975 Order at 4-5 (App. at 54-55)*

5. The District, through its student assignment, school construction, facilities and staff assignment practices, continues to operate Seminary as a racially identifiable white school and Hopewell as a racially identifiable black school. Upon information and belief, the District has failed to fulfill its desegregation responsibilities in the following ways (among others):

- a. Student Assignments – The District has continued to operate Seminary and Hopewell with racially identifiable student enrollments since this Court's 1966 desegregation order.

In the 2002-03 school year, white students comprised 48% of the District-wide student enrollment, but 91% of Seminary's and 6% of Hopewell's enrollment. *See* Memorandum of Authorities in Support of United States Motion for Further Relief at 10-11.

b. School Construction – The District has been completing school construction projects without regard to whether the projects further or hinder desegregation. In the 2002-03 school year, the District built a seven classroom addition at Seminary, to serve approximately 161 students. That same school year, the District built a six classroom addition at Collins Elementary, to serve approximately 46 students in general education classes, as well as an additional number of special education students. The District completed both projects without considering the impact of the projects on desegregation. *See id.* at 11-12.

c. Facilities – The District provides facilities at Seminary that are superior to facilities serving similar functions at other schools in the District. Those facilities include: athletic field house; band hall; high school gymnasium; baseball field; and elementary school gymnasium. Seminary, along with Collins High, also has the best science laboratory in the District. *See id.* at 12.

d. Staff Assignments – The District consistently has maintained an identifiably white staff at Seminary and an identifiably black staff at Hopewell since this Court's 1966 desegregation order. In the 2002-03 school year, white personnel comprised 54% of all on-site staff (*e.g.*, secretaries, cafeteria workers, teacher assistants, custodians, etc.) in the District as a whole, but 83% of the on-site staff members at Seminary. That same school year, black personnel comprised 46% of all on-site staff in the District, but 85% of such staff at Hopewell. Similarly, in the 2002-03 school year, white personnel comprised 55%

of all bus drivers in the District, but 100% of Seminary's bus drivers and 33% of Hopewell's bus drivers. *See id.* at 12-13 & nn. 10-11.

6. The District impermissibly is using race as a factor to select students who will participate in certain extracurricular activities or receive certain awards. At Collins High and at the Mount Olive Attendance Center, students must elect a black homecoming queen and a white homecoming queen. At Seminary, students must elect a black homecoming maid and a white homecoming maid for each grade. Many schools in the District also use race as a factor when students select "class favorites" for the student yearbook in categories such as "most beautiful" and "most handsome." *See id.* at 14.

7. Vestiges of discrimination remain in the District insofar as (among other things): Seminary continues to be racially identifiable as a white school; Hopewell continues to be racially identifiable as a black school; and many schools discriminate by using race to select students for extracurricular activities and awards.

8. The District has failed to implement practicable measures to address vestiges of discrimination in its schools in areas such as student assignments, school construction, facilities, staff assignments and extracurricular activities, and thus has failed to fulfill its desegregation responsibilities.

9. The United States attempted to resolve these issues with the District, but was unable to do so. Unless this Court grants the relief requested in this Motion, the District will continue to disregard its desegregation responsibilities. *See supra* ¶¶ 7-8.

**WHEREFORE**, for the reasons set forth herein and in the accompanying Memorandum of Authorities, the United States respectfully requests that this Court grant the United States' Motion for Further Relief, and order the District to: (1) formulate, adopt and implement a plan approved by this Court that promises realistically to work now to eliminate the vestiges of discrimination, to the extent practicable, in student assignments, school construction, facilities and staff assignments in the District

(and particularly at Seminary and Hopewell, which remain racially identifiable), and in extracurricular activities; and (2) provide, after this Court approves such a desegregation plan, periodic reports to this Court and to the United States about the District's progress in desegregating its schools to the extent practicable.<sup>2</sup>

Respectfully submitted,

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This the 24<sup>th</sup> day of November 2003.

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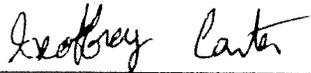
<sup>2</sup> After the District files its response to the United States' Motion for Further Relief, and the United States files any reply thereto, this Court may wish to convene a status conference to discuss the appropriate way to set this matter for discovery, consideration and resolution.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of November 2003, I served a copy of the following pleadings to counsel of record, by depositing a copy of the same in overnight express mail, postage prepaid, at the addresses listed below:

United States' Motion for Further Relief;  
Memorandum of Authorities in Support of United States' Motion for Further Relief;  
Appendix to United States' Motion for Further Relief; and  
Notice of Appearance.

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