out transportation, but we were figuring that and the game has changed so much with me to get up one set of figures to present and then come back to another one, I'd have to go back and dig all those out to see who would be eligible. We did figure it up one time, those we estimated would be eligible by State, but how that would apply to what I have done here, rezoning, I'd have to go back and figure that all up again.

Q. The only thing I'm asking you is under your present operation what percentage of the students who are eligible for transportation take advantage of it. A. I do not know.

Q. Do you have any approximate figure? A. I do know this, that there are large numbers of children [129] that are eligible for transportation that if they did exercise their right to ride the bus, there would be a considerable increase in the numbers riding. For example, you mentioned East Mecklenburg. East Mecklenburg has approximately 2100 children. I believe our reports show that only about 600 of them ride the bus. So there are 25, I believe we stated, that are in the area eligible—maybe I'm getting tangled with South Mecklenburg here—but, anyway, approximately 25 eligible in the present area . . . not eligible for transportation, excuse me. And of the balance, if we use 2100 and take 25 from that and that leaves you 2075, only approximately 600 of those children are not exercising that right. I use that as an example to show you if all the children did exercise the privilege of riding that there would be a considerable increase in our present transportaton under the State law. We find that this will vary from area to area. The percentage riding at South Mecklenburg will be greater than the ones riding from East Mecklenburg, and we can come on to West Mecklenburg and all the schools and you would find this to be true. This is where

I came at it a minute ago, saying that the children in rural areas and other economically deprived areas of our present system, that more of those children ride than do youngsters in the more affluent areas.

Q. Do you have an average? A. No, sir, I don't.

[130] Q. Well, if we took the number of students from these lists that you have supplied to determine those eligible and used your monthly reports to get the average number of students who are transported, we can determine the average number of students in the system who are eligible for transportation but who provide other means for getting to and from school. A. Yes, sir, we'd have to do that with the principals school by school in order to get that.

Q. The monthly reports would show that, wouldn't they? A. No.

Q. They don't show the number of students transported each month? A. They show the number of children but they don't show the number eligible.

Q. I know, but we can take your list of the pupils in the school who are residing within a mile and a half radius of the school and subtract that from the total number assigned to determine the total number eligible, could we not? A. Yes. On the original 23,384 we took off of the senior high schools where we fairly well knew the senior high schools, which was the easiest for us to do, and applied a percentage to get that 23,384. Otherwise that number would have been much larger than the figure I showed. We did apply that to the senior high schools because these are youngsters who drive to school.

Q. You didn't apply it to these later figures that you submitted [131] to the Court. A. The rezoned figures, no, because it was an entirely different picture then because you begin to get into areas where youngsters do not have the means of furnishing their own transportation.

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Q. Mr. Morgan, isn't East Mecklenburg and South Mecklenburg still there and don't you still have these same exceptions in the East Mecklenburg and the South Mecklenburg rezoned attendance areas? A. The areas that are presently in East Mecklenburg you're saying? Mr. Chambers, look here. What I'm saying is you'll find these children down in this area here. . . .

Q. You're going to the southern part? A. The southern part of East Mecklenburg's area. You'll find a very high percentage of these youngsters riding the bus to school, whereas when you get in closer to East Mecklenburg you will find youngsters driving to school or parents are dropping them off at school on their way to work. That's the only way I know to explain it.

Q. Well, the point is you did not apply the formula that you indicated you used in your earlier reports which considered students eligible but who did not ride the bus in the figures that you submitted to the Court of the number of students who would be entitled to bus transportation under the Court ordered plan. [132] A. The 23,384 would be a much higher figure because from senior high schools only we tried to make sure we were trying to use the same thing and not inflate the figures. We used those percentages —and I'll say this—for only those children in the areas I described to you. When we begin to move out into areas where we knew they used transportation, we applied maybe 95% of them would ride.

Q. Did you apply any sort of formula like that to the figures you submitted to the Court on March 17? A. We used the same basis for figuring those that we did originally.

Q. You applied the percentage formula? A. Yes, sir.

Q. For East Mecklenburg? A. Yes, sir.

Q. I thought when we went through East Mecklenburg the other day to determine that you'd have about 469 who

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live in the rezoned area, 4 who were now transported and 465 who would be eligible. A. That's what I was trying to explain to you here. In this rezoned area of East Mecklenburg we took these children in this area originally in the 23,384 and we applied about a 95%. See this area right here. In these grids up here we said that approximately 95% of those children would use transportation in the 23,384. In this 19,000 figure here that [133] we used, we used the same, we went on the same basis.

Q. You applied 95% or 100%? A. 95%.

Q. Would you show me on the affidavit you submitted on March 17 where you applied only 95% A. Well. . . .

> Mr. Horack: Mr. Chambers, he didn't say that he had said that in his affidavit, I don't believe.
>
> Mr. Chambers: Well, that's all I've been asking him about.
>
> Mr. Horack: He's explained to you, as I understand, how he arrived at the figures submitted, and it was on a school by school experience basis.

Q. Let me ask this question. Mr. Morgan, in the affidavit you submitted to the Court did you list as additional students to transport 100% of the students eligible in all of the areas? A. In the rezoned areas?

Q. Yes, sir.

> Mr. Horack: He said 95%.

A. I said we applied the same principles to those that we did utilizing the entire area. Down here we may have said only 35% would use it down in here.

Q. Let's take East Mecklenburg and let's apply your formula. We didn't go through counting the grids but let's

count the [134] grids in East Mecklenburg and use your printout chart and see how you applied 95%.

> Mr. Horack: I object to this line of questioning, Mr. Chambers. Mr. Morgan assuredly is not a statistician and it's already been represented that he worked together with a staff of 11, 12 or more people with computers that worked out this data and I don't think it's fair to put him in the middle of all this detailed data when admittedly he is not a statistician and require him to come up with a specific figure. Therefore, I object to this approach and really should have interposed that same objection on some of the same matters and techniques when we were convened yesterday.
>
> Mr. Chambers: Mr. Horack, Mr. Morgan testified that they had determined the number of eligible pupils in the rezoned area, those additional ones that would be added to the area and had applied a formula of 95% of these pupils in the inner-city who would take advantage of it and would elect to be transported rather than provide their own means of transportation. He has also testified that in the area nearer to East Mecklenburg that most of those students, although eligible, [135] provide their own means of transportation and that they had applied a formula for those students, too. The only thing we asked Mr. Morgan is to show us how he applied that formula.

A. The thing, Mr. Chambers, that I'm having difficulty with here is determining those grids that a part of them are in the area and I testified that the printout that they

have on house by house, or student by student in the grids that the school he attends is coded there.

Q. Mr. Morgan, for the 95% formula you indicated you were concerned with the inner-city children in the northern part of the East Mecklenburg school district. This, I thought, would be concerned with the students from grid 377A north. A. It would also be concerned, Mr. Chambers, in inner-city, of the children here.

Q. You're talking about grid 458A? A. That portion of it.

Q. But you just testified that students in this area generally provide their own means of transportation to school. A. Well, I didn't testify that particular area. I said in the area as a whole. You'll have to know the particular areas and know where that is in order to know whether they do or not.

Q. Do you know that area? A. Yes, sir, it's just off of Sharon Amity.

[136] Q. Isn't that the section where students generally provide their own transportation? A. Off of McAlway and those streets in there, not altogether, no, sir.

Q. You testified a moment ago that you had about 2000 students under the old zone at East Mecklenburg who were eligible for transportation and you transport only 600. A. I believe the records will show that.

Q. And you said that because you were adding the northern section of that attendance zone that you thought that about 95% of the students would elect to be transported by public transportation. A. I said of the rezoned area to East Mecklenburg. There are other areas in there other than these areas that have been rezoned.

Q. I understand that but you testified that in the area immediately northwest of East Mecklenburg that those

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students generally provide their own transportation. A. I didn't say all of them would.

Q. I understand. We have a figure of one-third of the students in the old attendance zone who have elected to be transported by public transportation; two-thirds provide their own means of transportation. A. I'll have to go back. I came up here with a total of 577 and I have here, lived in rezoned area 469; 4 are now being [137] transported; 465 that are being rezoned. As I counted the area, I didn't count all the blocks that you mentioned, Mr. Chambers, because part of that is already in the East Mecklenburg area. See, I didn't count 377. Here is the East Mecklenburg area at the present time so I didn't count that. You said 377, I didn't count that.

Q. Are 345C, A, and 320 C and A, are these presently in the zone? A. Yes, sir . . . . no, no. And 319B and D.

Q. Mr. Morgan, just looking at the map, you say that 600 students are electing to be transported in the old zone and you say that most of these students are coming from the southeastern part of the zone. A. No, no, I didn't say that. I said that a larger number of children in this southeast, south of the school will utilize transportation more than they will in the area immediately around East Mecklenburg and I did not include areas on farther out because we have found they use transportation more than those that live immediately around the school where the parents drive by the school or take them.

Q. Let me ask you this, Mr. Morgan. Apparently presently only one-third of the students in East Mecklenburg who are eligible for transportation elect to ride public buses, 600 of 2000.

Mr. Horack: You mean school buses.

Q. School buses, yes. Is that correct? [138] A. Yes.

Q. In your report that you submitted to the Court on March 17 you said that 469 students lived in the rezoned area, additional students. A. Yes.

Q. Is that correct? A. Yes.

Q. 469 new students were added to the rezoned area, is that correct? A. Yes.

Q. What percentage of those students did you determine under the formula that we have talked about under the present system would elect to provide their own means of transportation? A. All right. 100% because 465 and 4 makes 469.

Q. So you say you are not applying any percentage formula to the affidavit you submitted on March 17. That's all I asked you before. A. I see what you mean now. No, I took the number of children.

Q. You used the percentage of 100%? A. Right.

Mr. Chambers: I have no further questions.

By Mr. Horack:

Q. Mr. Morgan, it's a fact, is it not, that in assembling all this data in these two recent submissions in response to the Court's request as contained in the order that I believe was [139] dated March 6 you did have a group of people working with you to ferret out all this information and to check and cross check it, did you not? A. I had a total, I believe, of eleven people who worked with me in compiling all of the data. Some of those worked on the maps for the Court. Others worked with me on the counting of the rezoned children and the other data that was required.

Q. In your affidavit you gave an estimate of the total

amount of man hours that were employed. I ask you what that figure was and if that represents all of the time that ultimately was used on this project. A. At the time I gave you that, Mr. Horack, there were other hours put in after that were not included in the hours I gave you. I believe I gave you some approximately 600 man hours and I believe that some of us worked some additional time which brought it to about 675, as I recall, total hours, of the people who worked with me plus the secretaries who we used on various occasions to help us, doing the typing and working the reports out.

Q. Would it be fair to describe this as being a very laborious process?

Mr. Chambers: I object to that.
Mr. Horack: Well, strike it.

Q. Mr. Morgan, refer to the cover page of item 2. I direct your attention to the column entitled now transported which shows [140] a grand total of 9,016. Would you please tell us whether you anticipate the children represented by that total figure, that they will travel a greater or lesser distance than they are now traveling? A. I have stated here that a substantial number of them will travel a greater distance.

Q. Would you explain why? A. Well, using the high school map. . . .

Q. I direct your attention to the West Charlotte area under the Court plan. If you think that would be truly representative, please comment on that or if you don't think it will, pick out another one. Pick out whichever one you think best illustrates whatever you have to say. A. The children here presently being transported to

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Independence and the children in the area that have been rezoned from Garinger to West Charlotte will travel a greater distance to school than they would have to . . . . they'll travel a greater distance farther to West Charlotte than they would to Garinger or Independence. You can see by the map the distance to these two schools and so you see they are traveling . . . . I don't know how much distance—it would have to be calculated—but it's a considerable distance to West Charlotte.

Mr. Chambers: I object to the word considerable.

Q. What effect, if any, would these greater distances have on costs of bus operations and time of students traveling? [141] A. Well, it's additional mileage which, of course, is going to take more money for operation.

Q. I direct your attention to the map that was colored up and submitted to the Court, map #1, attendance areas for elementary schools.

Mr. Chambers: Showing the paired schools?

Q. That's right, showing the paired schools, and when we began our deposition yesterday we were measuring as the crow flies with a ruler the various distances between the respective paired schools. Comment, if you will, what effect of the distance the bus must travel and the distance the children must be transported with reference to the areas that lie beyond the school, using Olde Providence as an example. A. The children in Olde Providence that are paired with the youngsters in First Ward, the fifth and sixth grade youngsters traveling to First Ward, of course, will travel a much greater distance but, by the same token, the children in grades 1 through 4 paired with the young-

sters in Olde Providence will, by the same token, have to be transported much farther.

Q. What I'm asking you to comment on, using Olde Providence Elementary as paired up with First Ward as an example, how will it effect the distance traveled for those 4th and 5th graders who will be cross-bused to First Ward who live in the various southern portions of what is shown in brown as the [142] Olde Providence area on this map. A. Well, Mr. Horack, it's the 5th and 6th grade youngsters.

Q. Excuse me, 5th and 6th grade youngsters. A. A 5th or 6th grade youngsters that is on Highway 51 that's picked up by bus there and travel to Ray Road. . . .

Q. Are you pointing to the more southernly margin? A. I'm pointing to the most extreme margin, yes, sir. That are picked up on 51 and travel to Olde Providence must then travel on the nearest route to get to First Ward.

Q. So that extra distance would be in addition to whatever the measured distance is between the two schools, two paired schools involved, is that correct? A. Yes.

(Off the record at this point by consent.)

Q. There were certain inner-city children—is that beginning with the 1969-70 school year? A. Yes, sir.

Q. Who were transported from the certain inner-city schools out to certain outlying schools located predominantly in the white suburban area. Would you please tell us what your conclusions are from having made that study of the number of buses and the distances now being traveled by those buses? First of all identify the inner-city schools previously attended by those children and the schools in the predominantly white areas to which they are

now being transported. [143] A. This information came from the fourth month bus report for those youngsters who were assigned by the Board which was approved by the Court for closing and assigned to outlying schools. There were a total of 30 buses that traveled for that month 1,051 3/10 miles. I divided the 30 buses into that to get the average daily mileage per bus.

Q. And what was the daily average per bus? A. 35 miles daily.

Q. Is that round trip? A. Yes, sir.

Q. So half of that would be a one-way trip and it would 17½ miles one way, is that correct? A. Yes, sir.

Q. I ask you to identify the inner-city schools previously attended by these children and also the schools to which they are now being transported.

(Off the record at this time by consent.)

Q. I believe I have a list and I would read them off to you, Mr. Morgan, and you will simply tell me whether I'm correct or not.

Mr. Chambers: If it was showing the time. . . .

A. I can give the schools from memory and then I'll stand to check myself.

Q. First of all the inner-city schools. A. The schools were Fairview, Bethune, Zeb Vance, Isabella [144] Wyche, Alexander Street, Ervin Avenue and Metropolitan Senior High School.

Q. To what outlying schools are these children now being transported? A. They were assigned to Olde Providence, Beverly Woods, Sharon, Selwyn, Park Road, Idlewild.

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Q. By referring to one or more of the maps already in evidence, using the same ruler technique employed earlier in this deposition yesterday, you could measure by a rule as the crow flies the distance between these inner-city schools and the outlying schools to which the children are now being transported, could you not? A. Yes.

Q. Would such a crow fly rule measurement be indicative of the actual distance traveled by one or more these 30 buses to which you referred? A. In some schools yes, in some schools no.

Q. Why not in some schools? A. Well, because the children do not travel from school to school. They travel from their home to the school.

Q. Do they travel as the crow flies, as the straight line rule would measure? A. No, but they have to travel the nearest and safest route for them to follow.

Q. Is that or is that not normally a longer distance than the [145] crow flies? A. Yes.

Q. You testified that in computing your figures to ascertain the number of additional buses which will be required, namely, a total of 422, you have based this on what we refer to as a 54-capacity bus, is that correct? A. Yes, sir.

Q. What, if anything, do you have to say with reference to the use of 54-passenger or larger capacity buses in the in-town areas, inner-city areas? A. Well, . . .

Q. As far as the suitability of large buses or small buses or whatever. A. We will find many instances of where it would probably be necessary to use smaller buses. I indicated yesterday that there would be 36-, 48-passenger buses and there would also be occasions when we would be able to use the larger capacity bus, the 67-capacity bus, but our estimates are that it will average out to a

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54. It could be that when we get deeply involved with inner-city transportation that we will find it necessary for maneuverability in the inner-city to use a smaller bus. We are experiencing this now, where we could use to advantage smaller buses although we have 54 capacities now running in these 30 buses we are presently using. So until the routes are established and the determination of [146] where the children live and how will be the safest and best way to serve these youngsters, we will not know exactly what capacity buses are needed on each route, but I'm fairly confident it will average out to a 54-passenger bus. And if I might interject something else here, Mr. Horack, I have never said that what we're doing in our present transportation system is the safest and best way of transporting children. If we had the money and could afford the additional buses, I would seat every child that rides a bus and we would put a seat belt on that bus.

Q. You mean on the child. A. A seat belt on the bus so the child could buckle himself in because I think it's not only in the inner-city area but all over that I feel this is a much needed safety piece of equipment needed on our buses.

Q. How would you relate what you have just said to the desirability or undersirability of allowing children to stand on buses? A. I don't consider it the safest and best way for children to ride and I have so indicated that I have never felt that and although we try with our present system to have children seated, we try to only have those standing that have to stand the shortest distances.

Q. Who would be those who would stand the shortest distance? A bus at the beginning of the pickup route of the bus, I [147] presume the bus is empty when it starts and it fills up as it goes along, is that correct?

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A. Yes. An example of an undesirable situation where we need to do something about it was the example Mr. Chambers pointed out this morning of the number of children riding those two loads to Randolph Junior High School where we have 68 children on a bus. This is not desirable, but. . . .

Q. Why do you permit it? A. Well, Randolph is a fairly compact area and the children that get on last have the shortest distance to ride and we do not have buses to solve all those problems.

Q. Why don't you get the buses? A. Well, it's a matter of funds.

Q. Along this same line, would you care to comment, please, with reference to the standup problem, if it is a problem, comparing junior and senior children standing up on the one hand and elementary children on the other from a safety standpoint.

Q. Well, from the safety standpoint I consider it more dangerous, of course, for elementary children to stand than I do either junior or senior high school.

Q. Why? A. Well, they are smaller youngsters; there are discipline problems on the bus, they are pushing and shoving and horseplay that should not go on. However, it does go on and the [148] youngster is not as conscious of safety as the older child is.

Q. What you're saying is that you have a great number of situations as far as over-capacity, having too many children on a bus, under the existing setup? A. In many cases we do and we work throughout the entire year to adjust routes and adjust loads to make it safer for the children.

Q. Would what you have just described account for the differences in the load figures as they appear from

month to month in the principals' monthly bus reports? A. Yes, sir.

Q. Would you care to give us your views on the wisdom or lack of it of having children stand on long interrupted, perhaps even express bus routes from the outer area schools into the paired schools?

> Mr. Chambers: I object to that question. I don't know of any discussion that we had on direct examination dealing with students standing and I understand that Mr. Morgan has estimated that the 54-passenger bus would be able to seat all the students that he said were needed to transport. He used 40 students for the senior high schools and he said he used a range of 54 for the junior high school grades.
>
> [149] Mr. Horack: Well, we'll let him answer the question and then . . .
>
> Mr. Chambers: I can't stop you from asking the question. I just wanted to note my objection in the record so we wouldn't have anyone misled.
>
> Mr. Horack: Would you read the question back, please?

(The Court Reporter reads the question on Line 13, Page 148.)

A. I don't think it's wise. I don't think it's wise on relatively short runs to have them stand.

Q. Are there any special factors in the inner-city that might lead you particularly to this conclusion? A. Well, the nature of the city traffic, the congestion in the inner-city, the number of vehicles that are encountered in an inner-city area where the traveling public is coming back

and forth. There is a concern on my part as to that and it is for that reason that I said we have some presently operating that I do not consider safe and our reports will show that you will find in these buses that are now operating in the inner-city, those 30 buses I mentioned, that where we had one bus serving Park Road and Selwyn, as soon as we could readjust loads and use another bus we put another bus on there to reduce the load to that particular school. It was such a problem that the principals reported to me at both schools that they had a problem with children standing and [150] it was the only safe thing to do to split these loads up and we finally were able to shift around and use another bus to relieve this load. So it's not just these that we're talking about for the future, it's those we now presently have that I am concerned about as well and we're making every effort to reduce the numbers on those so that as few as possible, if any, will have to stand.

Q. Turning to another subject, I want to be sure I'm clear on this point. Reference was made to the principals' monthly reports that in some instances show a third trip that carries one or maybe sometimes it's two or three passengers. Did I understand you correctly to say that those undoubtedly were instances where the passenger was a driver being transported to the school? Explain that. A. Our report shows third trips.

Q. By our report you're talking about the principals' monthly reports? A. I'm speaking of the principals' monthly report. There has to be an accounting to show the mileage driven and how many students transported, and so forth, and by necessity it has to show it somewhere for the record. So we record it as another trip but actually . . .

Q. Is that required for the State reports? A. It is required for the State reports. But if we are going to secure

drivers, they cannot drive to a school and stop [151] and not have any way to get to school. So we let a bus go from that point on to the senior high school to where they are assigned and it just simply shows up as a third trip. If you look at the mileage, you can see it's a relatively short mileage. It's 2 miles or 3 miles or 2½ miles from the elementary or junior high school to the senior high school.

Q. Now, heretofore in various submissions to the Court your affidavits have referred to the number of trips traveled by a bus or the average number of trips traveled by a bus. Did you count as a trip the type of trip you have been referring to here included in the State reports to the State when they are only carrying the driver? Was that included as a trip in your previous computations? A. I don't know, sir. Mr. Horack, I might add this to it, that you will see on some principals' reports showing a third trip on them, showing three trips. Now, it can very easily be that one bus is serving two schools and it will drive to one school and deposit youngsters and then will go on to the other school and deposit the balance of them and then it will make a third trip on to another school. But all of these are schools that are very close together where it's permissible to do this. In the accounting of it the principal should have shown that as one trip but it shows up in some instances as two trips.

Q. Referring to the cost figures set forth as item 2 in the [152] information recently submitted to the court, I direct your attention to the drivers' salaries listed under a caption cost operation, using the senior high pages as an example. Did I understand you to state that those computations were based upon one driver per each additional bus? A. Yes.

Q. Do they include any supplemental or substitute drivers? A. Their salaries are computed on an hourly basis.

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Q. I know, but this represents the estimate of the cost involved in providing drivers' salaries and I understood you to say that those salaries are based upon one driver per bus, is that correct or not? A. Yes, it's based on one.

Q. Is there any figure in here in the estimated cost of providing this additional transportation that takes into account any additional or supplemental or substitute drivers? A. Well, if a driver does not drive the bus for those hours he is not paid for it. His substitute is paid in his stead. Now, if you're getting at field trips and extra trips such as that, there is no computation in here on that. If it's extracurricular activities and all that, we have not accounted in this. This is based upon the hours required to drive to the schools and not for extracurricular. If a driver does not drive and a substitute driver drives in his place, the regular driver is not paid for the hours he does not work.

[153] Q. So that would not involve any additional cost is what you're saying? A. No, sir.

Q. Do you have in our existing operation substitute drivers or a need for them? A. Yes, sir.

Q. Do you have any approximation as to how many additional are needed? A. Somewhere in previous testimony or documents I worked it out and I stated that there were so many substitute drivers required each month but I do not have that figure. It will vary from month to month; it will vary from day to day; whether a youngster is sick, whether he has some conflict in the school program and he has to get a substitute to take his place. There are many variances where we have to use substitute drivers and this can amount to probably, with our present fleet, close to a hundred substitute drivers that are needed to fill vacancies from day to day.

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Q. Do you presently have a full complement of these extra hundred relief drivers that you say are needed? A. Not all the time, no, sir.

Q. Again with reference to drivers' salaries, how is a driver paid? Is he paid for the period when he is actually transporting children or is he paid . . . what basis is he paid on? A. The driver is paid from the time he cranks up his bus.

[154] Q. You mean in the morning? A. From the time he starts his bus until he terminates the bus and the children are unloaded and he makes his count and takes the report into the principal.

Q. What about at the end of the day? A. The same way, from the time he enters the bus and cranks the bus up and until he gets to his home and parks his bus. He's paid for that time, and is paid on the minimum wage for student drivers. Adult drivers, we have paid them according to our classified salary schedule.

Mr. Horack: I believe I'm through.

Mr. Chambers: I just want to ask one or two things.

By Mr. Chambers:

Q. To show possibly some exceptions to your third trip, I show you the principal's monthly report for December 1, 1969, through January 9, 1970, the bus driven by Frankie Stroud, and it shows a total of four trips. It looks like he carries 45 students on the first trip to Davidson, 5 students on the second trip to Cornelius, 11 elementary and 6 high school students to Alexander on the third trip and 29 students to north on the fourth trip. A. All right. First of all, this is an 82 maximum capacity bus. On the first trip

there are 45 children that get off at Davidson. On that bus he has picked up also 5 children who [155] are dropped off at Cornelius. You know Cornelius is just a short distance from Davidson and so the bus drives on down and deposits those children and then picks up a load of youngsters that are going to Alexander and to North Mecklenburg. North Mecklenburg is only, oh, 2/10 of a mile or so from Alexander. So what he is doing, this shows four trips, Mr. Chambers, and that's what I was trying to point out. This should really be two trips.

Q. It shows on the report to the State that he carries 46 students on the first trip, 34 on the second trip, 36 on the third trip and 29 on the fourth trip. A. Right, and what he's actually doing, these children right here, the bus turns in and drops them off at Alexandar and goes on down to North Mecklenburg.

Q. Would you look at the bus driven by David Gorman. A. That is a 75 capacity bus. On the first trip to Long Creek they transport 55 youngsters, well, 56. I don't know whether the driver is included in that or not—could be. And the next trip shows a total of 60 children going to Alexander and then other children that have come in on buses to Alexander are then transferred on that bus just to go on to North Mecklenburg. It's only about two minutes or so from the school there.

Q. Well, the 40 students are going to North Mecklenburg, they wouldn't be bus drivers, would they? [156] A. No, sir, they would be children that had come in on other buses from the remote area to that.

Q. I show you another bus that seems to make a trip to Myers Park High School to deliver 29 students and then two more trips to Selwyn elementary school, the first trip carrying 42 and the second one carrying 27. A. I'm trying

to figure out, Mr. Chambers. Look at this. It shows bus 17 and 16 here. In parenthesis it shows two buses here. No, that's the age of the drivers. I'm trying to find out the number of the bus and why.

Q. Anyway, we can't quite explain whatever appears as the third trip is delivery of drivers. A. No, sir, and it would not be and I can't . . . I'd have to go back to the principal and driver to see what they have done here.

Q. I just had one question about something that appears. This is also the fourth month report for Smith Junior High School. This shows a first trip, the bus driven by M. Hance, with 84 students. A. A 90 capacity bus. They no longer make those buses. That is one of the cab over the engine. I guess you'd refer to it as a transit type bus. As I say, we no longer get that size bus. It shows a maximum capacity of 60 with 84 on it . . . a maximum capacity of 90 with 84 on it.

> Mr. Chambers: I have nothing further. I'd like [157] to get a copy of this and include it as an exhibit to Mr. Morgan's deposition.

(Exhibit attached to all copies of deposition.)

* * *

CERTIFICATE

I, Evelyn S. Berger, Notary Public/Reporter, do hereby certify that J. D. Morgan was duly sworn by me prior to the taking of the foregoing deposition; that said deposition was taken and transcribed by me; and that the foregoing 157 pages constitute a true, complete and accurate transcript of the testimony of the said witness. I further certify that the persons were present as stated on the caption.

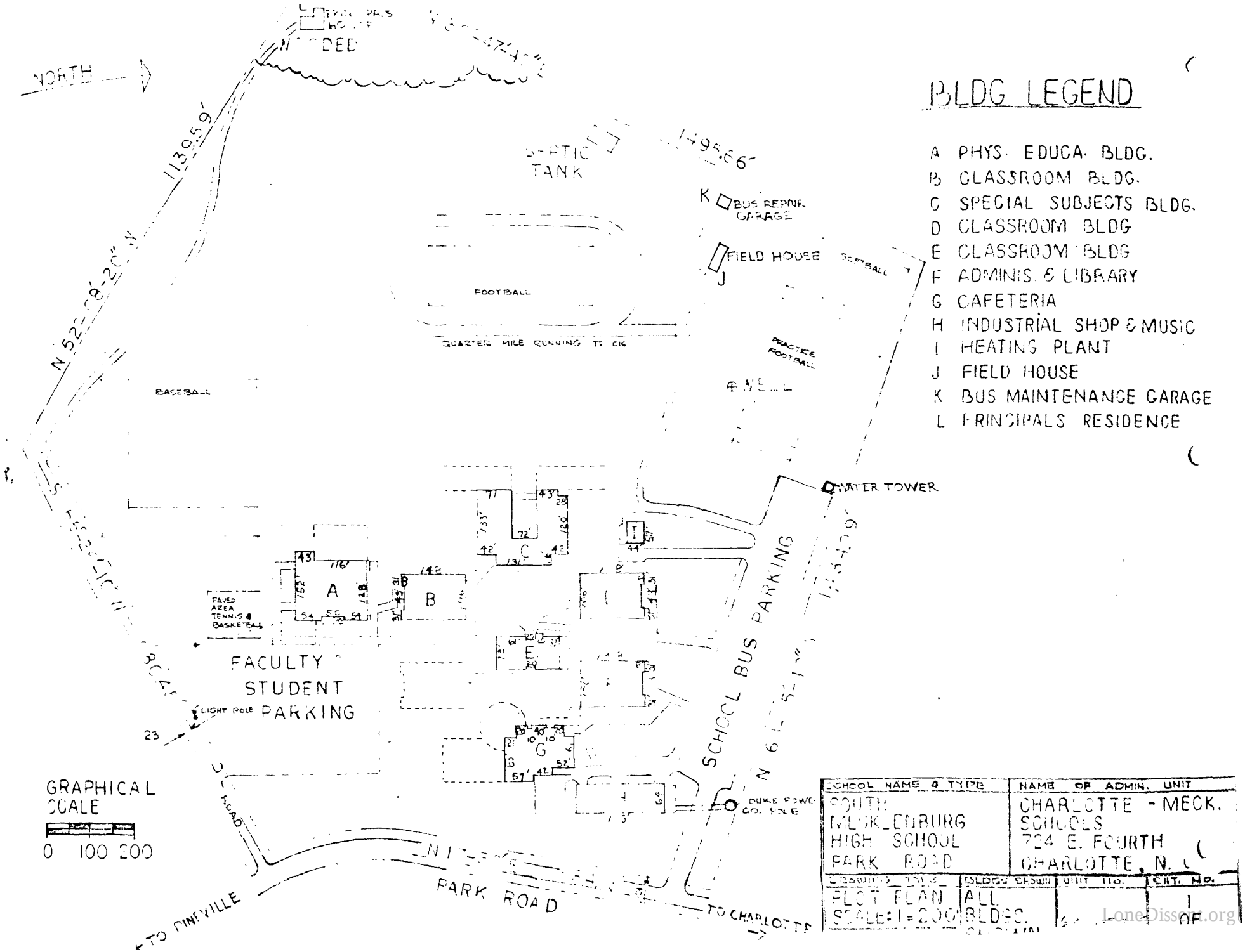
I further certify that I am not of counsel for, or in the employment of any of the parties to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto subscribed my name this 3rd day of April, 1970.

/s/ EVELYN S. BERGER
Notary Public in and for
County of Mecklenburg
State of North Carolina

Exhibit Attached to Foregoing Deposition

(See Opposite) ☞



BLDG LEGEND

A PHYS. EDUCA. BLDG.
B CLASSROOM BLDG.
C SPECIAL SUBJECTS BLDG.
D CLASSROOM BLDG
E CLASSROOM BLDG
F ADMINIS. & LIBRARY
G CAFETERIA
H INDUSTRIAL SHOP & MUSIC
I HEATING PLANT
J FIELD HOUSE
K BUS MAINTENANCE GARAGE
L PRINCIPALS RESIDENCE

GRAPHICAL SCALE
0 100 200

SCHOOL NAME & TYPE	NAME OF ADMIN. UNIT
SOUTH MECKLENBURG HIGH SCHOOL PARK ROAD	CHARLOTTE - MECK. SCHOOLS 724 E. FOURTH CHARLOTTE, N. C.

DRAWING TYPE	BLDGS SHOWN	UNIT NO.	SHT. NO.
PLOT PLAN SCALE: 1" = 200'	ALL BLDGS.		1 OF

Plaintiff's Exhibit, March 20, 1970

(See Opposite) ☞

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS [1]

SCHOOLS		DISTANCE					NUMBER OF TRIPS [4]	TRAVEL TIME	
(b)		(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
te	Black	Inches on Map [2] (a↔b) (1"=4000')	Miles (a↔b) (c x 4010/5280)	25% of [3] Miles (25% x d)	Miles by Road (d + e)	Total [3] Distance Traveled (f x h)		Time [5] 12 MPH in Minutes (f x 5)	Total Time in Minutes (h x i)
ingtowne s		9 5/8	7.3	1.8	9.1	72.8	8(4/4)	45.5	360
on	Bruns Avenue	8 7/8	6.7	1.7	8.4	33.6	4(2/2)	42	168
mount		9 1/8	6.9	1.7	8.6	94.6	11(5/6)	43	473
Road		.3 1/8	2.4	.6	3.0	21.0	7(4/3)	15	105
wood	Marie Davis	3 1/2	2.7	.7	3.4	44.2	13(7/6)	17	221

he figures contained in the chart are as supplied by the defendants. Plaintiffs contend that the estimate as to the number children to be transported, the number of buses required and the factor (column "e") added to determine distance tc be ly inflated. Plaintiffs further contend that the average speed of the buses (12 MPH) is grossly underestimated.

ap is Item 6a of Defendants' Submission of March 16, 1970.

Dr. J. D. Morgan testified in deposition on March 18, 1970, that an accurate estimate for the distance for a bus trip en schools can be determined by measuring the distance on the map, point to point, and adding 25%.

he information is contained in Defendants' Submission of March 17, 1970. The number of trips equals the number of buses, use each bus is scheduled to make only one trip. The number of buses projected for transporting black students and the number of buses from the white schools to the black schools are given. The latter figure is apportioned between the schools based upon the number of buses projected for the black students and is the second figure within the parenthesis. total number of buses projected for each cluster is as given in the Defendants' Submission.

Dr. J. D. Morgan testified in deposition on March 18, 1970 that the estimated average speed for the all new buses transporte r the order to be 12 MPH. If the buses average 20 MPH rather than 12 MPH, the average travel time would be reduced to 20.2 tes.

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Briarwood	Double Oaks	5 1/2	4.2	1.1	5.3	58.3	11(5.6)	26.5	231.5
Devonshire		7	5.3	1.3	6.6	79.2	12(6/6)	33	396
Hidden Valley	Druid Hills	3 7/8	2.9	.7	3.6	43.2	12(6/6)	18	2.6
Beverly Woods	First Ward	7 1/2	5.7	1.4	7.1	71	10(5/5)	35.5	355
Lansdowne		8 3/4	6.6	1.7	8.3	91.3	11(6/5)	41.5	456.5
Olde Providence		11	8.3	2.1	10.4	52	5(3/2)	52	260
Albemarle Road	Lincoln Heights	10 1/4	7.7	1.9	9.6	76.8	8(4/4)	48	384
Idlewild		10	7.6	1.9	9.5	57	6(3/3)	47.5	285
Merry Oaks		5 3/4	4.4	1.1	5.5	22	4(2/2)	27.5	110
Allenbrook	Oaklawn	5	3.8	1.0	4.8	33.6	7(4/3)	24	168
Paw Creek		8	6.1	1.5	7.6	53.2	7(4/3)	38	266
Paw Creek Annex		7 7/8	6.0	1.5	7.5	15	2(1/1)	37.5	75
Tuckaseegee		7	5.3	1.3	6.6	39.6	6(4/2)	33	198

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Hickory Grove	Tryon Hills	8 1/8	6.2	1.6	7.8	78	10(4/6)	39	390
Montclaire	University Park	10 1/8	7.7	1.9	9.6	96	10(4/6)	48	480
Rama Road		10 5/8	8.1	2.0	10.1	111.1	11(5/6	50.5	555.5
Selwyn	Villa Heights	6 1/2	4.9	1.2	6.1	54.9	9(4/5)	30.5	274.5
Windsor Park		4 1/4	3.2	.8	4.0	40	10(5/5)	20	200
Winterfield		4 3/8	3.2	.8	4.0	36	9(4/5)	20	180
						1374.4(k)	203(l)		6312 (m)

Average Distance Per Trip in Miles (k/l) = 6.8 Miles

Average Time Per Trip in Minutes (m/l) = 33.6 Minute

Defendants' Response to Plaintiffs' Exhibit

(Filed March 21, 1970)

Submitted herewith is Defendants' Response to Plaintiffs' Supplemental Exhibit of March 20, 1970, in the form of an Affidavit by J. D. Morgan and John W. Harrison, Sr.

The information which the Plaintiffs' Supplemental Exhibit purports to refer to was the Deposition of J. D. Morgan taken at the instance of the Plaintiffs on March 19 and 20, 1970. The Defendants have not received and hence have not examined the transcript of that Deposition and enter an objection to a consideration by the Court of the Plaintiffs' Supplemental Exhibit of March 20, 1970, for the above-mentioned reason and also for the reason that it completely ignores the explanations, the data and information given by Mr. Morgan on that occasion. The Defendants submit that no consideration can be given to the self-serving, piece meal accounts of the Plaintiffs.

Respectfully submitted, this 21 day of March, 1970.

/s/ William J. Waggoner
William J. Waggoner

/s/ Benj. S. Horack
Benj. S. Horack
Attorneys for Defendants

Response to Plaintiffs' Supplemental Exhibit of March 20, 1970

J. D. MORGAN and JOHN W. HARRISON, SR., being duly sworn deposes and says that:

1. J. D. Morgan is Assistant Superintendent for Business Services and John W. Harrison is Director of Transportation for the Charlotte-Mecklenburg schools, and as such are thoroughly familiar with the bus transportation requirements that will be necessary to provide transportation between the clustered elementary schools under the Court approved Plan.

2. Mr. Morgan has read and analyzed the Plaintiffs' Supplemental Exhibit of March 20, 1970, and says that the statements, the purported calculations and conclusions set forth therein are gross distortions of the true facts as they relate to the transportation requirements which will be necessary with reference to the paired and clustered schools. Both Mr. Morgan and Mr. Harrison reaffirm that the estimates and projections previously submitted by the Defendants are correct.

3. Attached to and made a part hereof is a tabulation of the number of daily miles (round trip) travelled by each of the indicated 30 buses that are now transporting the innercity children to schools in the outlying areas to promote desegregation for the school year 1969-70. These innercity children are those who previously attended innercity schools that were closed pursuant to prior orders of the Court. Prior Orders of the Court identify these school children and the schools to which they are now being transported. The identity of the trip made by each of the buses

(and the specifics relating thereto) are shown on the principal's monthly bus reports which are already in evidence at the instance of the Plaintiffs, the same being the monthly reports for the period from December 1, 1969 through January 7, 1970. The routes, traffic conditions and travel time for these 30 buses are comparable to the transportation that will be necessary in connection with the paired schools, and forms a reliable basis for the estimates and projections regarding the transportation for the paired and clustered schools under the Court Plan. The specifics shown on the above-mentioned principals' monthly bus reports with reference to each of these 30 buses is included herein by reference.

4. Also attached hereto and made a part hereof is a correct summary of data relating to accidents involving the 30 school buses transporting the above-mentioned inner-city children.

5. The purported data and tabulations set forth in the Plaintiffs' March 20, 1970 Supplemental Exhibit are inaccurate and distorted. They are based upoon "crow-fly" ruler measurements of distances between the paired schools with an arbitrary add on of 25%. Although the 25% add on may sometimes be used as a rule of thumb for hasty measurement of map distances, it does not accurately reflect the bus route distances between two schools particularly as the distance relates to the streets and traffic arteries that must actually be travelled in order to transport the students from one school to another school. Further, the Plaintiffs' calculations completely ignored the bus distance involved in picking up students in outlying areas of an attendance zone in order to transport them first, for example, to Olde Providence, before resuming the journey to, for ex-

ample, First Ward. Using Olde Providence-First Ward pairing as an example, a 5th or 6th grade child who lives a mile from Olde Providence will require 20 minutes walking time to get to Olde Providence Elementary, will expend about 5 minutes boarding a bus at that location, 52 minutes in transit to First Ward and another 5 minutes getting off the bus at First Ward—a total of an estimated 82 minutes. Using the same example for a 5th or 6th grader who lives more than 1 mile from Olde Providence, such a child must be bussed into Olde Providence before resuming his journey to First Ward. The foregoing is a typical example of the time factors and problems which will be involved in transporting children to and from the paired schools. Of course, the same factors are involved in reverse with reference to, for example, the First Ward 1st through 4th graders who will be picked up and transported to the outlying schools.

6. The figures and tabulations set forth by the Plaintiffs in their Supplemental Exhibit of March 20, 1970, are solely and entirely their own, not those of the School Board or its staff.

/s/ J. D. Morgan
J. D. Morgan

/s/ John W. Harrison, Sr.
John W. Harrison, Sr.

Severally Sworn to and Subscribed before me this 21 day of March, 1970.

/s/ Vivian Kesta
Notary Public

My commission expires:
April 2, 1971.

Tabulation

March 20, 1970

Thirty buses that are serving innercity children to promote desegregation for 1969-70 school year travelled 1051.3 miles daily for an average of 35.0 miles daily per bus.

DESEGREGATION BUSES

BUS NO.	DAILY MILES
23	43.2
86	34.0
116	44.0
171	51.5
174	20.0
175	73.3
176	33.1
183	22.6
283	42.0
304	50.0
309	30.0
310	30.0
311	33.0
312	44.0
315	38.0
208	41.3
302	25.1
303	30.0
305	33.0
306	26.0
307	24.6
308	33.0
313	35.0
314	21.1

Tabulation (Continued)

BUS NO.	DAILY MILES
285	23.5
301	33.6
299	46.0
317	20.0
300	37.6
181	32.8
	1051.3

CHARLOTTE-MECKLENBURG SCHOOLS

TRANSPORTATION DEPARTMENT
March 20, 1970

DATA RELATED TO ACCIDENTS INVOLVING SCHOOL BUSES FOR THE 1969-70 SCHOOL YEAR THROUGH MARCH 18, 1970 FOR A TOTAL OF 126 SCHOOL DAYS

I. Thirty school buses transporting children from inner city to promote desegregation for the 1969-70 school year travelled an average of 1,051.3 miles daily for a total of 132,463.8 miles year to date. This same thirty buses have been involved in seventeen reportable accidents. This is an average of .57 accidents per bus, and an average of one accident per 7,792 miles travelled.

II. Two Hundred and Fifty-Five buses travelled an average of 9,635.8 miles daily for a total of 1,214,110.8 miles year to date. These same 255 buses have been involved in 57 reportable accidents. This is an average of .22 accidents per bus, and an average of one accident per 21,300 miles travelled.

JWH:rvc

Supplementary Findings of Fact dated March 21, 1970

Pursuant to the March 5, 1970 order of the Fourth Circuit Court of Appeals, the court makes the following supplemental findings of fact:

1. Paragraph seven of this court's order of February 5, 1970, as amended, reads:

> "7. 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. Estimates of the number of children who may have to be transported have run as high as 10,000 or more. Since the cost to the local system is about $18 or 20 a year per pupil, and the cost to the state in those areas where the state provides transportation funds, is about another $18 or $20 a year per pupil, the average cost for transportation is apparently less than $40 per pupil per year. The local school budget is about $45,000,000 a year. It would appear that transporting 10,000 additional children, if that is necessary, and if the defendants had to pay it all, would add less than one per cent to the local cost of operating the schools. The significant point, however, is that cost is not a valid legal reason for continued denial of constitutional rights."

2. A bird's-eye picture of the indispensable position of the school bus in public education in North Carolina, and especially in the school life of grades one through six (elementary students) is contained in a summary by the de-

fendant Dr. Craig Phillips entitled "RIDING THE SCHOOL BUSES" (Plaintiffs' Exhibit 15), published January 1, 1970, which reads as follows:

> "The average school bus transported 66 students each day during the 1968-69 school year; made 1.57 trips per day, 12.0 miles in length (one way); transported 48.5 students per bus trip, including students who were transported from elementary to high schools.
>
> "During the 1968-69 school year:
>
> 610,760 pupils were transported to public schools by the State
>
> 54.9 percent of the total public school average daily attendance was transported
>
> *70.9 percent were elementary students*
>
> 29.1 percent were high school students
>
> 3.5 students were loaded (average) each mile of bus travel
>
> The total cost of school transportation was $14,293,-272.80, including replacement of buses: The average cost, including the replacement of buses, was $1,541.05 per bus for the school year—181 days; $8.51 per bus per day; $23.40 per student for the school year; $.1292 per student per day; and $.2243 per bus mile of operation." (Emphasis added.)

In Mecklenburg County, the average daily number of pupils currently transported on state school busses is approximately 23,600—plus another 5,000 whose fares are paid on the Charlotte City Coach Lines.

Supplemental Findings of Fact dated March 21, 1970

3. Separate bus systems for black students and white students were operated by the defendant Mecklenburg County Board of Education for many years up until 1961. Separate black and white bus systems were operated by the combined Charlotte-Mecklenburg Board from 1961 until 1966 (Defendants' answers to Plaintiffs' requests for admissions, Nos. 1 and 8, filed March 13, 1970).

4. Pertinent figures on the local school transportation system include these:

Number of busses	280
Pupils transported on school busses daily	23,600
Pupils whose fares are paid on Charlotte City Coach Lines, Inc.	5,000
Number of trips per bus daily	1.8
Average daily bus travel	40.8 miles
Average number of pupils carried daily, per bus	83.2
Annual per pupil transportation cost	$19—$20
Additional cost (1968-69) per pupil to state	$19.92
Total annual cost per pupil transported	$39.92
Daily transportation cost per pupil transported	$0.22

5. Information about North Carolina:

Population	4,974,000
1969-71 total state budget	$3,590,902,142

1969-71 total budgeted state funds for public schools	$1,163,310,993
1968-69 amount spent by state on transportation (including replacement busses)	$14,293,272.80
1969-71 appropriation for purchase of school busses	$6,870,142
Average number of pupils transported daily, 1968-69	610,760
Average number of pupils transported daily per bus—statewide	66

6. The 1969-70 budget of the Charlotte-Mecklenburg school system is $57,711,344, of which nearly $51,000,000 represents operational expense and between $6,000,000 and $7,000,000 represents capital outlay and debt service. These funds come from federal, state and county sources, as follows:

Federal	State	County	Total
$2,450,000	$29,937,044	$25,324,300	$57,711,344

The construction of school buildings is not included in these budget figures (see Plaintiffs' Exhibit 6).

7. State expenditures in the past ten years have usually not equalled appropriations. There has been a sizeable operating surplus in the state budget for every biennium since 1959-60 (State Budget, page 86).

8. The state superintendent of public instruction in his biennial report (Plaintiffs' Exhibit 12) for the years 1966-68 recommended that "city transportation should be pro-

vided on the same basis as transportation for rural children as a matter of equity."

9. The 1969 report of the Governor's Study Commission on the Public School System of North Carolina (Plaintiffs' Exhibit 13) recommended that transportation be provided for all school children, city as well as rural, on an equal basis. Signatory to that report was one of the present defendants, the state superintendent of public instruction.

10. The basic support for the public schools of the state comes from the State Legislature.

11. Some 5,000 children travel to and from school in Mecklenburg County each day in busses provided by contract carriers such as Charlotte City Coach Lines, Inc. (Morgan's deposition of February 25, 1970, page 36).

12. Upon the basis of data furnished by the school board and on the basis of statistics from the National Safety Council, it is found as a fact that travel by school bus is safer than walking or than riding in private vehicles.

13. Traffic is of course heavy all over the 540 square miles of the county. Motor vehicle registration for 1969 was 191,165 motor vehicles (161,678 automobiles and 29,487 trucks).

14. Many children eligible for transportation do not accept that transportation. Estimates have been made that this number of those who do not accept transportation is in the neighborhood of 50% of those who are eligible.

Supplemental Findings of Fact dated March 21, 1970

15. Approximately 5,000 children in the system attend school outside the school zone in which they reside. Although requested of the defendants by the court on March 7, 1970, information as to where these children go to school has not been forthcoming and the defendants have indicated that it is impossible to produce it.

16. As the state transportation regulations* are understood by the court, the state will bear its share (about half) of transportation costs for children who live more than 1½ miles from their school, as follows:

(a) All rural children, wherever they attend school;

(b) All perimeter children (those living in territory annexed by the city before 1957), wherever they attend school; and

(c) All inner city children assigned to schools in either the perimeter or the rural areas of the system.

17. The defendants submitted information on the number of children who live within 1½ miles of the schools which are to be desegregated by zoning. This information shows that East Mecklenburg, Independence, North Mecklenburg, Olympic, South Mecklenburg and West Mecklenburg high schools, and Quail Hollow and Alexander junior high schools, with total student populations of 12,184, have in the aggregate only 96 students who live within 1½ miles from the schools. Some 12,088 then are eligible for transportation. These same schools among them provide bus transportation for 5,349 students. This information illustrates the importance of the bus as one of the essential

* General Statutes of North Carolina, Chapter 115, §180-192.

elements in the whole plan of operation of the schools. It also shows the wide gap between those entitled to transportation and those who actually claim it. There is no black school in the system which depends very much upon the school bus to get the children to school. The total number of children transported in October, 1969, to schools identifiable as black was 541 out of total population in those black schools of over 17,000. Black schools, including the new black schools, have been located in black areas where busses would be unnecessary. Suburban schools, including the newest ones, have been located far away from black centers, and where they can not be reached by many students without transportation.

18. Bus travel in both urban and rural areas takes time. An analysis of the records of bus transportation, based upon the reports of school principals, is contained in the extensive exhibits bearing Plaintiffs' Exhibit numbers 22, 23, 24, 25, 26 and 27. For the month of October, 1969, by way of illustration, these principals' reports when analyzed show that out of some 279 busses carrying more than 23,000 children both ways each day:

> The average one way trip is one hour and fourteen minutes;
>
> 80% of the busses require more than one hour for a one way trip;
>
> 75% of the busses make two or more trips each day; Average miles traveled by busses making one round trip per day is 34½; and
>
> Average bus mileage per day for busses making two trips is 47.99.

Supplemental Findings of Fact dated March 21, 1970

19. It was the testimony of Dr. Self and Dr. Finger, and the courts finds as a fact, that transportation provided by the school board's plans, which include narrow corridors several miles long and in places only one-half mile wide, proceeding in straight lines diagonally across streets and other obstacles, would be more expensive per capita than transportation under the satellite zone plan. The court plan calls for pick-ups to be made at a few points in each school district, as testified to by Dr. Self, and for non-stop runs to be made between satellite zones and principal zones. There will be no serious extra load on downtown traffic because there will be no pick-up and discharge of passengers in downtown traffic areas.

20. The court finds that from the standpoint of distance travelled, time en route and inconvenience, the children bussed pursuant to the court order will not as a group travel as far, nor will they experience more inconvenience than the more than 28,000 children who are already being transported at state expense.

21. On July 29, 1969 (pursuant to the court's April 23, 1969 order that they frame a plan for desegregation and that school busses could be used as needed), the defendants proposed a plan for closing seven inner-city black schools and bussing 4,200 students to outlying schools. The plan was approved. It had some escape clauses in it, and the defendants in practice added some others; but *as presented,* and as approved by the court, the "freedom of choice" contemplated was very narrowly restricted; and bussing of several hundred students has taken place under that plan.

22. Evidence of property valuations produced by the defendants shows that the value of the seven school proper-

ties closed under the July 29, 1969 plan, and now for the most part standing idle, was over three million dollars.

23. The all-black or predominantly black elementary schools which the board plan would retain in the system are located in an almost exclusively Negro section of Charlotte, which is very roughly triangular in shape and measures about four or five miles on a side. Some are air-conditioned and most are modern. Virtually none of their patrons now ride busses; the schools were located where the black patrons were or were expected to be. These schools, their completion dates, and representative academic performances of their sixth grade graduating classes are shown in the following table:

The information shown in the first three columns below was taken from answers to interrogatories, Nos. 1-f, 1-g and 1-h, filed October 25, 1968.

GRADE 6 AVERAGE ACHIEVEMENT TEST SCORES, SHOWN IN GRADE EQUIVALENT (such as 6.2 = 6th grade, 2nd month), 1968-69.

SCHOOL	YEAR BUILT	YEARS OF ADDITIONS	NO. OF MOBILE UNITS	WORD MEANING	PARAGRAPH MEANING	SPELLING	LANGUAGE	ACM (MATH)	ACN (MATH)	ADD (MATH
BRUNS AVENUE	1968	--	0	4.1	4.1	4.7	4.1	4.0	4.7	4.1
MARIE DAVIS	1951	1953 1957 1959	0	4.3	4.4	4.8	4.1	4.5	4.8	4.1
DOUBLE OAKS	1952	1955 1965	1	4.0	4.0	4.6	3.6	3.9	4.4	3.7
DRUID HILLS	1960	1964	0	4.0	4.2	4.5	3.9	3.9	4.5	4.1
FIRST WARD	1912	1950 1961 1968	0	4.0	4.1	4.8	3.6	3.9	4.6	4.1
LINCOLN HEIGHTS	1956	1958	5	4.4	4.4	4.9	4.2	4.3	4.8	4.1
OAKLAWN	1964	--	0	4.4	4.5	5.2	4.7	4.5	4.9	4.4
UNIVERSITY PARK	1957	1958 1964	5	4.4	4.7	4.8	4.3	4.4	4.8	4.4
VILLA HEIGHTS	1912	1934 1937	3	4.3	4.4	4.7	3.6	4.4	4.7	4.2

Supplemental Findings of Fact dated March 21, 1970

Supplemental Findings of Fact dated March 21, 1970

24. Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact, that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion.

25. In the court's order of April 23, 1969, a suggestion was made that the board seek consultation or assistance from the office of Health, Education and Welfare. The board refused to do this, and as far as the court knows has not sought help from HEW.

26. Some 600 or more pupils transfer from one school to another or register for the first time into the system during the course of each month of the typical school year. It is the assignment of these children which is the particular subject of the reference in paragraph 13 of the order to the manner of handling assignments within the school year.

27. No plan for the complete desegregation of the schools was available to the court until the appointment of Dr. John A. Finger, Jr. and the completion of his tactful and effective work with the school administrative staff in December 1969 and January 1970. Dr. Finger has a degree in science from Massachusetts Institute of Technology and a doctor's degree in education from Harvard University, and twenty years' experience in education and educational problems. He has worked in a number of school desegregation cases and has a rare capacity for perception and solution of educational problems. His work with the staff had

the catalytic effect of freeing and inducing the staff to work diligently in the preparation of plans that would accomplish the result required, and which would be cohesive and efficient from an educational point of view.

28. Hearings on the "Finger" plans and on the board's proposed plans were conducted on February 2 and February 5, 1970. These plans may best be understood if they are considered in four divisions:

29. *The plan for senior high schools.*—The plan ordered to be put into effect May 4, 1970 is the board's own plan for desegregation of the senior high schools in all particulars except that the order calls for the assignment to Independence High School of some 300 black children. The board contends the high school plans will call for additional transportation for 2,497 students and will require 69 busses. The court is unable to accept this view of the evidence. All transportation under both the board and the court plan is covered by state law.

30. *The plan for junior high schools.*—A plan for junior high schools was prepared by the board staff and Dr. Finger and was submitted to the court as Dr. Finger's plan. The board submitted a separate plan. Both plans used the technique of re-zoning. The school board's plan after all of their re-zoning had been done left Piedmont Junior High School 90% black and shifting towards 100% black. The plan designed by Dr. Finger with staff assistance included zoning in such a way as to desegregate all the schools. This zoning was aided by a technique of "satellite" districts. For example, black students from satellite districts in the central city area around Piedmont Courts will be assigned to Alexander Graham Junior High,

which is predominantly white. Black students from the area around Northwest Junior High School (all-black) will be similarly transferred to Wilson Junior High, northwest of the air port. These one-way transfers, essentially identical in nature to the board's July 29, 1969 plan, will result in the substantial desegregation of all the junior high schools, which are left under this plan with black student populations varying from 9% at J. H. Gunn to 33% at Alexander and Randolph.

The court order did not require the adoption of the Finger plan. In paragraph 19 of the order the board were given four choices of action to complete the process of desegregating the junior high schools. These choices were (1) Re-zoning; (2) Two-way transporting of pupils between Piedmont and white schools; (3) Closing Piedmont and assigning the black students to other junior high schools; or (4) Adoption of the Finger plan.

The board elected to adopt and did adopt the Finger plan by resolution on February 9, 1970.

The defendants have offered figures on the basis of which they ask the court to find that 4,359 students will have to be transported under the junior high school plan and that 84 busses will be required. The court is unable to find that these contentions are borne out by the statistics and other evidence offered.

Dr. Self, the school superintendent, and Dr. Finger, the court appointed expert, both testified that the transportation required to implement the plan for junior highs would be less expensive and easier to arrange than the transportation proposed under the board plan. The court finds this to be a fact.

Two schools may be used to illustrate this point. Smith Junior High under the board plan would have a contigu-

ous district six miles in length extending 4½ miles north from the school itself. The district throughout the greater portion of its length is one-half mile wide and all roads in its one-half mile width are diagonal to its borders. Eastway Junior High presents a shape somewhat like a large wooden pistol with a fat handle surrounding the school off Central Avenue in East Charlotte and with a corridor extending three miles north and then extending at right angles four miles west to draw students from the Double Oaks area in northwest Charlotte. Obviously picking up students in narrow corridors along which no major road runs presents a considerable transportation problem.

The Finger plan makes no unnecessary effort to maintain contiguous districts, but simply provides for the sending of busses from compact inner city attendance zones, non-stop, to the outlying white junior junior high schools, thereby minimizing transportation tie-ups and making the pick-up and delivery of children efficient and time-saving.

It also is apparent that if the board had sought the minimum departure from its own plan, such minimum result could have been achieved by accepting the alternative of transporting white children into and black children out of the Piedmont school until its racial characteristics had been eliminated.

In summary, as to junior high schools, the court finds that the plan chosen by the board and approved by the court places no greater logistic or personal burden upon students or administrators than the plan proposed by the school board; that the transportation called for by the approved plan is not substantially greater than the transportation called for by the board plan; that the approved plan will be more economical, efficient and cohesive and easier to administer and will fit in more nearly with the

transportation problems involved in desegregating elementary and senior high schools, and that the board made a correct administrative and educational choice in choosing this plan instead of one of the other three methods.

31. *The plan for elementary schools.*—The elementary school desegregation program is best understood by dividing it into two parts: (a) The 27 schools being desegregated by zoning; and (b) The 34 schools being desegregated by grouping, pairing and transportation between school zones.

32. *The re-zoned group.* Two plans were submitted to the court. The school board plan was prepared for the board by its staff. It relied entirely upon zoning with the aid of some computer data supplied by Mr. Weil, a board employed consultant. It did as much as could reasonably be accomplished by re-zoning school boundaries. It would leave nine elementary schools 83% to 100% black. (These schools now serve 6,462 students—over half the black elementary pupils.) It would leave approximately half the white elementary students attending schools which are 86% to 100% white. In short, it does not tackle the problem of the black elementary schools in northwest Charlotte.

The "Finger plan" was the result of nearly two months of detailed work and conference between Dr. Finger and the school administrative staff. Dr. Finger prepared several plans to deal with the problem within the guidelines set out in the December 1, 1969 order. Like the board plan, the Finger plan does as much by re-zoning school attendance lines as can reasonably be accomplished. However, unlike the board plan, it does not stop there. It goes further and desegregates all the rest of the elementary schools by the technique of grouping two or three outlying schools with one black inner city school; by transporting black

students from grades one through four to the outlying white schools; and by transporting white students from the fifth and sixth grades from the outlying white schools to the inner city black school.

The "Finger plan" itself in the form from which in principle the court approved on February 5, 1970, was prepared by the school staff and was filed with the court by representatives of the school board on February 2, 1970. It represents the combined thought of Dr. Finger and the school administrative staff as to a valid method for promptly desegregating the elementary schools, if such desegregation is required by law to be accomplished.

This plan was drafted by the staff and by Dr. Finger in such a way as to make possible immediate desegregation if it should be ordered by an appellate court in line with then current opinions of appellate courts.

The testimony of the school superintendent, Dr. Self, was, and the court finds as a fact, that the zoning portion of the plan can be implemented by April 1, 1970 along educationally sound lines and that the transportation problems presented by the zoning portion of the plan can be solved with available resources.

The court has reviewed the statistics supplied to it by the original defendants with regard to elementary schools to be desegregated by re-zoning. These schools have been zoned with compact attendance areas and with a few exceptions they have no children beyond 1½ miles distance from the school to which they are assigned. Although some transportation will be required, the amount is not considerable when weighed against the already existing capacity of the system. The court specifically finds that not more than 1,300 students will require transportation under this portion of the program and that the bus trips would be so

short and multiple bus runs so highly practical that 10 school busses or less will be adequate.

33. *The pairing and grouping of 34 elementary schools.* —This part of the plan as previously described would group an inner city black school with two or more outlying white schools and assign children back and forth between the two so that desegregated fifth and sixth grades would be established in the presently black schools and desegregated grades one through four would be established in the presently white schools. The estimate of Dr. Finger and Dr. Self, the superintendent, was that this program would require transporting roughly 5,000 white pupils of fifth and sixth grade levels into inner city schools. The board in its latest estimate puts the total figure at 10,206. Just what is the net additional number of students to be transported who are not already receiving transportation is open to considerable question.

34. *The Discount Factors.*—The court accepts at face value, for the most part, the defendants' evidence of matters of independent fact, but is unable to agree with the opinions or factual conclusions urged by counsel as to the numbers of additional children to be transported, and as to the cost and difficulty of school bus transportation. The defendants in their presentation have interpreted the facts to suggest inconvenient and expensive and burdensome views of the court's order. Their figures must be discounted in light of various factors, all shown by the evidence, as follows:

(a) Some 5,000 children daily are provided transportation on City Coach Lines, in addition to the

23,600 and more who ride school busses. These have not been considered in the defendants' calculations.

(b) Not all students eligible for transportation actually accept it. The board's estimates of transportation, however, assume that transportation must be provided daily for all eligible students.

(c) Not all registered students attend all schools every day. The board's figures appear to assume they do. Statewide, average daily attendance is less than 94% of initial registration.

(d) The present average number of students transported round trip, to and from school, per bus, per day, is more than 83. The board's estimates, however, are based on the assumption that they can transport only 44 or 46 pupils, round trip, per bus, per day when the bus serves a desegregation role.

(e) Busses now being used make an average of 1.8 trips per day. Board estimates to implement the desegregation plan contemplate only one trip per bus per day!

(f) The average one-way bus trip in the system today is over 15 miles in length and takes nearly an hour and a quarter. The average length of the one-way trips required under the court approved plan for elementary students is less than seven miles, and would appear to require not over 35 minutes at the most, because no stops will be necessary between schools.

(g) The board's figures do not contemplate using busses for more than one load of passengers morning or afternoon. Round trips instead of one-way trips morning and afternoon could cut the bus requirements sharply.

(h) The number of busses required can be reduced 35% to 50% by staggering the opening and closing hours of schools so that multiple bus trips can be made. This method is not considered in the board's estimates, according to testimony of J. D. Morgan, bus superintendent.

(i) Substantial economies may reasonably be expected when all phases of the bussing operation have been coordinated instead of being considered separately.

(j) In estimating how many children live more than a mile and a half from schools, and therefore are entitled to transportation, the board's transportation people have used some very short measurements. As the court measures the maps, very few of the students in the re-zoned elementary schools, for example, live more than 1½ miles from their assigned schools. If the board wants to transport children who live less than 1½ miles away they may, but if they do, it is because of a board decision rather than because of the court's order.

(k) Transportation requirements could be reduced by raising the walking distance temporarily from 1½ to perhaps 1¾ miles. This has apparently not been taken into account.

(l) Testimony of J. D. Morgan shows that busses can be operated at a 25% overload. Thus a 60-passenger bus (the average size) can if necessary transport 75 children. Some busses in use today transport far more.

35. *Findings of Fact as to Required Transportation.*— After many days of detailed study of maps, exhibits and

statistics, and after taking into account all the evidence, including the "discount factors" mentioned above, the court finds as facts that the maximum number of additional children who may conceivably require transportation under the court ordered plans, and the maximum numbers of additional busses needed are as follows:

	Net Additional Transportees	*Number of Busses Needed*
Senior Highs	1,500	20
Junior Highs	2,500	28
Elementaries:		
Re-zoned	1,300	10
Paired and Grouped	8,000	80
Totals	13,300	138

36. These children (all but a few hundred at Hawthorne, Piedmont, Alexander Graham, Myers Park High School, Eastover, West Charlotte and a few other places), *if assigned to the designated schools, are entitled to transportation under existing state law, independent of and regardless of this court's order respecting bussing.*

37. The court also finds that the plan proposed by the board would have required transportation for at least 5,000 students in addition to those now being transported.

38. *Separability.—Each of the four parts of the desegregation plan is separable from the other.* The re-zoning of elementaries can proceed independent of the pairing and grouping. The pairing and grouping can take place independent of all other steps. *The implementation of the*

pairing and grouping plan itself can be done piecemeal, one group or several groups at a time, as transportation becomes available. It was planned that way.

39. *The Time Table.*—The February 5, 1970 order followed the time table requested by the defendants. At the February 2 hearing, the school board attorney requested until April 1, 1970 to desegregate the elementary schools (T. 20); he requested that high school seniors be allowed to graduate where they are (T. 21); he proposed continuing junior high students and grades 10 and 11 in their present schools until the third week before the end of school (T. 21). The request of Dr. Self, the school superintendent, was identical as to elementaries and 12th graders; he preferred to transfer 10th and 11th graders about two weeks before school was over (T. 95). Availability of transportation was the only caveat voiced at the hearing.

40. The February 5 order expressly provided that "racial balance" was not required. The percentage of black students in the various parts of the plans approved vary from 3% black at Bain to 41% black at Cornelius.

41. *Cost.*—Busses cost around $5,400.00 each, varying according to size and equipment. Total cost of 138 busses, if that many are needed, would therefore be about $745,-200.00. That is much less than one week's portion of the Mecklenburg school budget. Busses last 10 to 15 years. The state replaces them when worn out.

Some additional employees will be needed if the transportation system is enlarged.

Defendants have offered various estimates of large increased costs for administration, parking, maintenance, driver education and other items. If they choose to incur

excess costs, the court can not prevent it. However, the evidence shows that school bus systems in Charlotte and other urban North Carolina counties tend to operate at lower costs per student than rural systems. Adding a larger number of short-range capacity loads should not tend to increase the present overall per capita cost of $40 a year.

It is the opinion and finding of the court that the annual transportation cost per student, including amortization of the purchase price of the busses, will be at or close to $40.00, and that the total annual cost, which is paid about half by the state and half by the county, of implementing this order, will not exceed the following:

For zoned Elementaries	(1,300)	$ 52,000
For paired Elementaries	(8,000)	320,000
For Junior Highs	(2,500)	100,000
For Senior Highs	(1,500)	60,000
		$532,000*

41. *Availability.*—The evidence shows that the defendant North Carolina Board of Education has approximately **400 brand new school busses and 375 used busses in storage,** awaiting orders from school boards. None had been sold at last report. The state is unwilling to sell any of them to Mecklenburg because of the "anti-bussing" law. No orders for busses have been placed by the school board.

If orders to manufacturers had been placed in early February, delivery in 60 or 90 days could have been anticipated. The problem is not one of availability of busses

* The local system's share of this figure would be $266,000.00, which at current rates is only slightly more than the annual interest or the value of the $3,000,000.00 worth of school properties closed in 1969.

but of unwillingness of Mecklenburg to buy them and of the state to furnish or make them available until final decision of this case.

This the 21 day of March, 1970.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

Supplemental Memorandum dated March 21, 1970

Pursuant to the order of the Fourth Circuit Court of Appeals, filed March 5, 1970, this memorandum is issued.

Previous orders cover more than one hundred pages. The motions and exhibits and pleadings and evidence number thousands of pages, and the evidence is several feet thick. It may be useful to reviewing authorities to have a brief summary of the case in addition to the supplemental facts on the questions of transportation.

Before 1954, the schools in Charlotte and Mecklenburg County were segregated by state law. The General Assembly, in response to Brown v. Board of Education, adopted the Pupil Assignment Act of 1955-56, North Carolina General Statutes, §115-176, which was quoted in the April 23, 1969 order and which is still the law of North Carolina. It provides that school boards have full and final authority to assign children to schools and that no child can be enrolled in nor attend a school to which he has not been so assigned.

"Freedom of choice" to pick a school has never been a right of North Carolina public school students. It has been a courtesy offered in recent years by some school boards, and its chief effect has been to preserve segregation.

Slight token desegregation of the schools occurred in the years following *Brown*. The Mecklenburg County and the Charlotte City units were merged in 1961.

This suit was filed in 1965, and an order was entered in 1965 approving the school board's then plan for desegregation, which was substantially a freedom of choice plan coupled with the closing of some all-black schools.

There was no further court action until 1968, when a motion was filed requesting further desegregation. Most

white students still attended "white" schools and most black students still attended "black" schools. The figures on this subject were analyzed in this court's opinion of April 23, 1969 (300 F.Supp. 1358 (1969)), in which the background and history of local segregation and its continuing discriminatory nature were analyzed at length. In that order the court ruled that substantial progress had been made and that many of the alleged acts of discrimination were not proved.

However, certain significant findings and conclusions were made which have been of record without appeal for eleven months. These include the following:

1. The schools were found to be unconstitutionally segregated.

2. Freedom of choice had failed; no white child had chosen to attend any black school, and freedom of choice promoted rather than reduced segregation.

3. The concentration of black population in northwest Charlotte and the school segregation which accompanied it were primarily the result of discriminatory laws and governmental practices rather than of natural "neighborhood" forces. (This finding was reaffirmed in the order of November 7, 1969.)

4. The board had located and controlled the size and population of schools so as to maintain segregation.

5. The plan approved and put into effect in 1965 had not eliminated unlawful segregation.

6. The defendants operate a sizeable fleet of busses, serving over 23,000 children at an average annual cost (to state and local governments combined) of not more than $40 per year per pupil.

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7. Transportation by bus is a legitimate tool for school boards to use to desegregate schools.

8. Faculties were segregated, and should be desegregated.

9. Under *Green* v. *New Kent County School Board,* 391 U.S. 430 (1968), there was now an active duty to eliminate segregation.

The board was directed to submit a plan to desegregate the schools.

The order produced a great outcry from school board members and others. It also produced a plan which called for the closing of Second Ward, the only black high school located near a white neighborhood; and it produced no rezoning, no elimination of gerrymandering, and only minor changes in the pupil assignment plan. It did produce an undertaking to desegregate the faculties. The plan was reviewed in the court order of June 20, 1969, in which the court approved the provision for offering transportation to children transferring from majority to minority situations and directed the preparation of a plan for pupil desegregation.

The court also specifically found that gerrymandering had been taking place; and several schools were cited as illustrations of gerrymandering to promote or preserve segregation.

In June of 1969, pursuant to the hue and cry which had been raised about "bussing," Mecklenburg representatives in the General Assembly of North Carolina sought and procured passage of the so-called "anti-bussing" statute, N.C. G.S. 115-176.1. That statute reads as follows:

"§115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited. —No person shall be refused admission into or be excluded from any public school in this State on account of

race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creed, colors or national origins from the community.

"Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

"*The provisions of this article shall not apply* to a temporary assignment due to the unsuitability of a school for its intended purpose nor *to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment* .

"The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible

to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)"

The board's next plan was filed July 29, 1969, and was approved for 1969-70 by the order of August 15, 1969. The August 15 order contained the following paragraph:

> "The most obvious and constructive element in the plan is that the School Board has reversed its field and has accepted its affirmative constitutional duty to desegregate pupils, teachers, principals and staff members 'at the earliest possible date.' It has recognized that where people live should not control where they go to school nor the quality of their education, and that transportation may be necessary to comply with the law. It has recognized that easy methods will not do the job; that rezoning of school lines, perhaps wholesale; pairing, grouping or clustering of schools; use of computer technology and all available modern business methods can and must be considered in the discharge of the Board's constitutional duty. This court does not take lightly the Board's promises and the Board's undertaking of its affirmative duty under the Constitution and accepts these assurances at face value. They are, in fact, the conclusions which necessarily follow when any group of women and men of good faith seriously study this problem *with knowledge of the facts of this school system and in light of the law of the land.*"

The essential action of the board's July 29, 1969 plan was to close seven inner-city black schools and to re-assign their pupils to designated white suburban schools, and to

transport these children by bus to these suburban schools. In addition, it was proposed to re-assign 1,245 students from named black schools to named suburban white schools and provide them transportation.

The total of this one-way transportation of black students only to white schools under this plan was stated to be 4,245 children.

No problem of transportation or other resources was raised or suggested.

The evidence of the defendants is that the property value of the schools thus closed exceeds $3,000,000. For the most part, that property stands idle today.

The "anti-bussing" law was not found by the board to interfere with this proposed wholesale re-assignment and "massive bussing," of black children only, for purposes of desegregation.

The plan, by order of August 15, 1969, was approved on a one-year basis only, and the board was directed to prepare and file by November 17, 1969, a plan for complete desegregation of all schools, to the maximum extent possible, by September 1, 1970.

The defendants filed a motion asking that the deadline to prepare a plan be extended from November 17, 1969, to February 1, 1970. The court called for a report on the results of the July 29, 1969 plan. Those results were outlined in this court's order of November 7, 1969. In substance, the plan which was supposed to bring 4,245 children into a desegregated situation had been handled or allowed to dissipate itself in such a way that only about one-fourth of the promised transfers were made; and as of now only 767 black children are actually being transported to suburban white schools instead of the 4,245 advertised when the plan was proposed by the board. (See defendants'

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March 13, 1970 response to plaintiffs' requests for admissions.)

The meager results of eight months of planning were further set out in this court's November 7, 1969 order, as follows:

"The Situation Today

"The following table illustrates the racial distribution of the present school population:

Schools Readily Identifiable as White

% White	Number of Schools	Numbers of Students White	Black	Totals
100%	9	6,605	2	6,607
98–99%	9	4,801	49	4,850
95–97%	12	10,836	505	11,341
90–94%	17	14,070	1,243	15,313
86–89%	10	8,700	1,169	9,869
	57	45,012	2,968	47,980

Schools Readily Identifiable as Black

% Black	Number of Schools	Numbers of Students White	Black	Totals
100%	11	2	9,216	9,218
98–99%	5	41	3,432	3,473
90–97%	3	121	1,297	1,418
56–89%	6	989	2,252	3,241
	25	1,153	16,197	17,350

Schools Not Readily Identifiable by Race

% Black	Number of Schools	Numbers of Students White	Black	Totals
32–49%	10	4,320	2,868	7,188
17–20%	8	5,363	1,230	6,593
22–29%	6	3,980	1,451	5,431
	24	13,663	5,549	19,212
Totals:	106	59,828	24,714	84,542

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Some of the data from the table, re-stated, is as follows:

Number of schools	106
Number of white pupils	59,828
Number of black pupils	24,714
Total pupils	84,542
Per cent of white pupils	71%
Per cent of black pupils	29%
Number of "white" schools	57
Number of white pupils in those schools	45,012
Number of "black" schools	25
Number of black pupils in those schools	16,197
Number of schools not readily identifiable by race	24
Number of pupils in those schools	19,212
Number of schools 98-100% black	16
Negro pupils in those schools	12,648
Number of schools 98-100% white	18
White pupils in those schools	11,406

"Of the 24,714 Negroes in the schools, something above 8,500 are attending 'white' schools or schools not readily identifiable by race. *More than 16,000, however, are obviously still in all-black or predominantly black schools.* The 9,216 in 100% black situations are considerably more than the number of black students in Charlotte in 1954 at the time of the first *Brown* decision. The black school problem has not been solved.

"The schools are still in major part segregated or 'dual' rather than desegregated or 'unitary.'

"The black schools are for the most part in black residential areas. However, that does not make their segregation constitutionally benign. In previous opinions the facts

respecting their locations, their controlled size and their population have already been found. Briefly summarized, these facts are that the present location of white schools in white areas and of black schools in black areas is the result of a varied group of elements of public and private action, all deriving their basic strength originally from public law or state or local governmental action. These elements include among others the legal separation of the races in schools, school busses, public accommodations and housing; racial restrictions in deeds to land; zoning ordinances; city planning; urban renewal; location of public low rent housing; and the actions of the present School Board and others, before and since 1954, in locating and controlling the capacity of schools so that there would usually be black schools handy to black neighborhoods and white schools for white neighborhoods. There is so much state action embedded in and shaping these events that the resulting segregation is not innocent or *'de facto,'* and the resulting schools are not 'unitary' or desegregated.

"FREEDOM OF CHOICE

"Freedom of choice has tended to perpetuate segregation by allowing children to get out of schools where their race would be in a minority. The essential failure of the Board's 1969 pupil plan was in good measure due to freedom of choice.

"As the court recalls the evidence, it shows that *no white students have ever chosen to attend any of the 'black' schools.*

"Freedom of choice does not make a segregated school system lawful. As the Supreme Court said in *Green* v. *New Kent County,* 391 U. S. 430 (1968):

> "'* * * If there are reasonably available other ways, such for illustration as zoning, promising speedier and

more effective conversion to a unitary, nonracial school ysstem, "freedom of choice" must be held unacceptable.'

"Redrawing attendance lines is not likely to accomplish anything stable toward obeying the constitutional mandate as long as freedom of choice or freedom of transfer is retained. The operation of these schools for the foreseeable future should not include freedom of choice or transfer except to the extent that it reduces segregation, although of course the Board under its statutory power of assignment can assign any pupil to any school for any lawful reason."

(The information on the two previous pages essentially describes the condition in the Charlotte-Mecklenberg schools today.)

Meanwhile, on October 29, 1969, the Supreme Court in *Alexander* v. *Holmes County,* 396 U. S. 19 (1969), ordered thirty Mississippi school districts desegregated immediately and said that the Court of Appeals

> "... *should have denied all motions for additional time* because continued operation of *segregated schools* under a standard of allowing all deliberate speed for desegregation is no longer constitutionally permissible. *Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. Griffin* v. *School Board,* 377 U.S. 218, 234 (1964); *Green* v. *School Board of New Kent County,* 391 U. S. 430, 439, 442 (1968)." (Emphasis added.)

Because of this action and decision of the Supreme Court, this court did not feel that it had discretion to grant the requested time extension, and it did not do so.

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The board then filed a further desegregation plan on November 17, 1969. The plan was reviewed in the order of December 1, 1969. It was not approved because it rejected the goal of desegregating all the schools or even all the black schools. It proposed to concentrate on methods such as rezoning and freedom of choice and to discard any consideration of pairing, grouping, clustering and transporting or other methods. It proposed to retain numerous all-black schools.

The performance results, set out in previous orders, show that the all-black schools lag far behind white schools or desegregated schools.

The court, in an order dated December 1, 1969, reviewed the recent decisions of courts and laid out specific guidelines for the preparation of a plan which would desegregate the schools. A consultant, Dr. John A. Finger, Jr., was appointed to draft a plan for the desegregation of the schools for use of the court in preparing a final order. The school board was authorized and encouraged to prepare another plan of its own if it wished.

Dr. Finger worked with the school board staff members over a period of two months. He drafted several different plans. When it became apparent that he could produce and would produce a plan which would meet the requirements outlined in the court's order of December 1, 1969, the school staff members prepared a school board plan which would be subject to the limitations the board had described in its November 17, 1969 report. The result was the production of two plans—the board plan and the plan of the consultant, Dr. Finger.

The detailed work on both final plans was done by the school board staff.

The high school plan prepared by the board was recommended by Dr. Finger to the court with one minor change.

This change involved transporting three hundred inner city black children to Independence High School. As to high school students, then, the plan which was ordered by the court to take effect on May 4, 1970 *is* the school board's plan, with transportation added for three hundred students. The proportion of black children in the high schools varies from 17% to 36% under this plan.

For junior high schools, separate plans were prepared by Dr. Finger and by the board. The board plan would have used zoning to desegregate all the black junior high schools except Piedmont, which it would have left 90% black. The Finger plan employed re-zoning as far as appeared feasible, and then provided for transportation between inner city black zones and outlying white schools to desegregate all the schools, including Piedmont.

The court offered the school board the options of (1) rezoning, or (2) closing Piedmont, or (3) two-way transport of students between Piedmont and other schools, or (4) accepting the Finger plan which desegregates all junior high schools.

The board met and elected to adopt the Finger plan rather than close Piedmont or rearrange their own plan. The Finger plan may require the transportation of more students than the board plan would have required, but it handles the transportation more economically and efficiently, and does the job of desegregating the junior high schools. The percentage of black students in the junior high schools thus constituted will vary from 9% to 33%.

The transportation of junior high students called for in the plan thus adopted by the board pursuant to the court order of February 5, 1970, is essentially the same sort that was adopted without hesitation for 4,245 black children when the seven black inner city schools were closed in 1969.

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For elementary schools the problem is more complicated. Dr. Finger prepared several plans to desegregate the elementary schools and reviewed them with the school staff. It was apparent that even the gerrymandering considered by the board could not desegregate all the elementary schools, and that without transportation there is no way by which in the immediate future the continuing effects of state imposed segregation can be removed. Dr. Finger prepared a plan which proposed re-zoning of as many schools as could be desegregated by re-zoning and which then proposed pairing or grouping of schools. By pairing or grouping, a black school and one or more white schools could be desegregated by having grades one through four, black and white, attend the white schools, and by having grades five and six, black and white, attend the black school, and by providing transportation where needed to accomplish this.

The original Finger plan proposed to group black inner city schools with white schools mostly in the south and southeast perimeter of the district.

The school staff drafted a plan which went as far as they could go with re-zoning and stopped there, leaving half the black elementary children in black schools and half the white elementary children in white schools.

In other words, both the plan eventually proposed by the school board and the plan proposed by Dr. Finger went as far as was thought practical to go with re-zoning. The distinction is that the Finger plan goes ahead and does the job of desegregating the black elementary schools, whereas the board plan stops half way through the job.

In its original form the Finger plan for elementary schools would have required somewhat less transportation than its final form, but would have been more difficult to

put into effect rapidly. The pressure of time imposed by decisions of the Supreme Court and other appellate courts had become such that there was concern lest there be an order from one of the appellate courts for immediate February or March desegregation of the entire system. The school staff therefore, based on Finger's guidelines, prepared a final draft of his plan incorporating pairing, grouping and transporting on a basis which would better allow for early implementation with a minimum of administrative complications, in lieu of his original plan.

The result is that the plan for elementary schools which is known as the "Finger plan" was prepared in detail by the school staff and incorporates the thought and work of the staff on the most efficient method to desegregate the elementary schools.

The time table originally adopted by this court in April of 1969 was one calling for substantial progress in 1969 and complete desegregation by September 1970. However, on October 29, 1969, in *Alexander* v. *Holmes County*, the Supreme Court ordered immediate desegregation of several Deep South school systems and said that the Court of Appeals *"should have denied all motions for additional time."* The Supreme Court adhered to that attitude in all decisions prior to this court's order of February 5, 1970. In *Carter* v. *West Feliciana Parish*, —— U. S. —— (January 14, 1970), they reversed actions of the Fifth Circuit Court of Appeals which had extended time for desegregating hundreds of thousands of Deep South children beyond February 1, 1970. In *Nesbit* v. *Statesville, et al.*, 418 F.2d 1040, the Fourth Circuit Court of Appeals on December 2, 1969, ordered the desegregation by January 1, 1970, of schools in Statesville, Reidsville and Durham, North Carolina. Referring to the *Alexander* v. *Holmes County* decision, the Fourth Circuit said:

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> "The clear mandate of the Court is immediacy. *Further delays will not be tolerated in this circuit.*" (Emphasis added.)

In that opinion the Court directed this district court to adopt a plan on December 19, 1969, for the City of Statesville, effective January 1, 1970, which *"must provide for the elimination of the racial characteristics of Morningside School by pairing, zoning or consolidation. . . ."* As to Durham and Halifax, Virginia, courts were ordered to accomplish the necessary purpose by methods including pairing, zoning, reassignment or *"any other method that may be expected to work."*

In *Whittenburg* v. *Greenville County, South Carolina,* —— F.2d —— (January 1970), the Fourth Circuit Court of Appeals, citing *Holmes County* and *Carter* v. *West Feliciana Parish,* said:

> "More importantly the Supreme Court said emphatically it meant precisely what it said in *Alexander* that general reorganization of school systems is requisite now, that *the requirement is not restricted to the school districts before the Supreme Court in Alexander, and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970.*" (Emphasis added.)

As to *Greenville,* in a case involving 58,000 children, the Court said that

> "The plan for *Greenville* may be based upon the revised plan submitted by the school board *or upon any other plan that will create a unitary school system.*" (Emphasis added.)

The Court further said:

> "*The District Court's order shall not be stayed pending any appeal which may be taken to this court,* but, in the event of an appeal, modification of the order may be sought in this court by a motion accompanied by a request for immediate consideration."

Upon rehearing the Fourth Circuit Court of Appeals said on January 26, 1970:

> "*The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court.* Any other course would be fraught with consequences, both disastrous and of great magnitude. *If there are appropritae exceptions,* if the District Courts and the Courts of Appeals are to have some discretion to permit school systems to finish the current 1969-1970 school year under current methods of operation, *the Supreme Court may declare them, but no member of this court can read the opinions in* CARTER *as leaving any room for the exercise by this court in this case of any discretion* in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year.
>
> "For these reasons the petition for rehearing and for a stay of our order must be denied." (Emphasis added.)

The above orders of the Supreme Court and the Fourth Circuit Court of Appeals are the mandates under which this court had to make a decision concerning the plan to be adopted and the time when the plan should be implemented.

Supplemental Memorandum dated March 21, 1970

This court conducted hearings on February 2 and February 5, 1970, upon the content and the effective date of the plans for desegregation of the Charlotte-Mecklenburg schools. On February 2nd, Mr. Waggoner, the attorney for the school board, requested the court to adopt a time table under which the elementary schools would be desegregated immediately after Easter (about April 1st) and the junior highs and senior highs would be desegregated in May, about the third week before the end of school. Dr. Self, the school superintendent, requested essentially the same time table.

Dr. Self testified that the job could be done as to all students in the times requested if transportation could be arranged; and he and Mr. Waggoner indicated that by staggering hours of school and by effective use of busses the transportation problem might be solved.

The Supreme Court in *Griffin* v. *Prince Edward County,* 377 U. S. 218 (1964), had held that a school board could and should validly be required by a district court to reopen a whole county school system rather than keep it closed to avoid desegregation, even though levying taxes and borrowing money might be necessary.

In view of the decisions above mentioned and the facts before the court, it appeared to this court that the undoubted difficulties and inconveniences and expense caused by transferring children in mid-year to schools they did not choose would have to be outweighed by the mandates of the Supreme Court and the Fourth Circuit Court of Appeals and that this court had and has a duty to require action now.

On February 5, 1970, therefore, a few days after the second *Greenville* opinion, this court entered its order for desegregation of the schools.

Supplemental Memorandum dated March 21, 1970

The time table set in the February 5, 1970 order is precisely the time table suggested by Mr. Waggoner, the attorney for the defendants, in the record of the February 2, 1970 hearing.

Paragraph 16 of the February 5, 1970 order reads:

> "The duty imposed by the law and by this order is the desegregation of schools and the maintenance of that condition. The *plans* discussed in this order, whether prepared by Board and staff or by outside consultants, such as computer expert, Mr. John W. Weil, or Dr. John A. Finger, Jr., are *illustrations of means or partial means to that end.* The defendants are encouraged to use their full 'know-how' and resources to attain the *results* above described, and thus to achieve the constitutional end by any means at their disposal. The test is not the method or plan, but the *results.*"

The above summary is an outline only of the most significant steps which have brought this case to its present position. Details of all the developments mentioned in this summary appear in previous orders and in the lengthy evidence.

Pursuant to the direction of the Circuit Court, this court has made and is filing contemporaneously herewith supplemental detailed findings of fact bearing on the transportation question.

This the 21st day of March, 1970.

/s/ James B. McMillan
James B. McMillan
United States District Judge

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

The defendants, the Charlotte-Mecklenburg Board of Education and the individual Board members, object and except to certain supplementary findings of fact entered by the Court on March 21, 1970, and further move for amendment and clarification thereof.

The findings objected and excepted to and for which clarification is needed are set out below with paragraph numbers corresponding to those of the supplementary findings of fact.

1. The Court's order of February 5, 1970, contains a finding that is not supported in the record. The Court finds that the average cost for transportation per year per pupil is approximately $40 per year with local funds and state funds bearing approximately half the cost. This is at variance with the evidence in this matter. This finding should be amended to reflect that the approximate annual cost of transporting a pupil, without regard to depreciation or certain administrative costs, is slightly in excess of $20 per year for which the local school system receives almost total reimbursement from the state which receives a portion of its funds from the taxpayers of Mecklenburg County.

2. This finding relating to transportation to public schools by the state during the 1968-1969 school year reflects that 70.9 per cent elementary and 29.1 per cent high school students account for all transportation. The record is silent with reference to junior high schools and it is submitted that grades 7 and 8 are also included with the elementary students. In other words, the reporting in plain-

tiffs' Exhibit 15 is based on an 8-4 school system whereas the Mecklenburg system is based on a 6-3-3 system. It would therefore appear that of the 55 per cent of the average daily attendance in public schools transported, approximately 50 per cent would represent grades 1 through 6.

The finding "—plus another 5,000, whose fares are paid on the Charlotte City Coach Lines." leaves the impression that the public school system reimburses students riding on buses operated by the Charlotte City Coach Lines. There is no evidence to support this finding and it is not true in fact.

4. The statement "pupils whose fares are paid on Charlotte City Coach Lines, Inc.—5,000" is inaccurate for the reasons stated in Paragraph 2 above.

The line "additional costs (1968-1969) per pupil to state —$19.92" should be changed to "reimbursement to school system (1968-1969) per pupil by state—$19.92."

The line "total annual cost per pupil transported—$39.92" should be changed by amending the figure to approximately $20.00.

6. The Court makes the finding with reference to the 1969-70 budget of the Charlotte-Mecklenburg school system, but fails to further find that all funds are fully committed to fixed line items of the budget and that the school system has no surplus; in fact, the budgetary request was substantially reduced by the County Commissioners. (Report to the Court with reference to compensatory education requests). Furthermore, that upon official request of the Board of Education for additional funds with which to acquire transportation equipment, the Board of County Com-

missioners of Mecklenburg County has advised the Board of Education that no additional funds will be available for the operation of schools during the current fiscal year which expires on June 30, 1970, and therefore, approximately five-sixths of the budget had been expended at this time.

7. This paragraph leaves the implication that state funds could be used for capital outlay. To clear up this implication, the Court should find that state law requires local school boards to pay for additional school buses required and that the state will replace them upon obsolescence some twelve to fourteen years later, and further that the state will pay approximately $20 per year toward transportation of each child eligible under state law.

11. The finding of the Court with reference to transportation of 5,000 children by contract carriers is erroneous. Mr. Morgan in his deposition of February 25, 1970, on page 36, plainly stated that students were being transported on Charlotte City Coach Lines at a reduced fare. Mr. Morgan then inquired of Deaton that in the event a contract could be entered for transportation of students, would Charlotte City Coach Lines transport on the same reduced fare, to which Mr. Deaton replied in the negative. See also affidavit of Robert L. Deaton, Assistant General Manager of Charlotte City Coach Lines, Inc. dated February 10, 1970.

16. This paragraph should be amended to reflect that the state will bear approximately $20 of the annual transportation cost of each student eligible for transportation under state regulations.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

18. The clause "80 per cent of the buses require more than one hour of a one-way trip;" should be amended to 77 per cent.

The clause "75 per cent of the buses make two or more trips each day;" should be amended to reflect 62 per cent of such buses.

The clause "average miles traveled by buses making one round trip per day is 34.5;" should be amended to reflect such average miles of 29.8 per day.

The clause "average bus mileage per day for buses making two trips is 47.99" should be amended to reflect such average bus mileage at 43.5 miles per day.

For clarity, this paragraph should contain an explanation that each morning and afternoon mileage would represent one-half of the round trip mileage.

19. Clarification is requested with respect to the following sentence in Paragraph 19: "The Court plan calls for pick-ups to be made at a few points in each school district, as testified to by Dr. Self, and for non-stop runs to be made between satellite zones and principal zones." It was the understanding of the defendants that the method of pick-up and delivery of students would be left to their discretion. Clarification is requested to determine whether or not this is a specific directive of the Court amending its prior orders.

The Court should further clarify Paragraph 19 to find that in accordance with the affidavit of Mr. Herman Hoose dated February 24, 1970, that school buses will materially add to the congestion and safety of the traveling public on congested city streets.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

20. This finding should be amended to reflect that only 23,000 children are being transported at state expense at the present time. It should further reflect that although the distance of travel is not substantially greater for the children to be transported under the Court-ordered plan, their transportation will occur in congested city traffic which will require substantially longer time than transportation in the outlying rural transportation system now principally employed by the school system.

21. This paragraph should be amended to reflect the true facts as follows: "On July 29, 1969, (pursuant to the Court's April 23, 1969, order that they frame a plan for desegregation and that school buses could be used as needed), the defendants proposed a plan for closing seven inner-city black schools and transferring students from overcrowded schools and assigning them totaling some 4,200 students to outlying schools. Students not wishing to attend the outlying schools were permitted to attend sursounding schools (transcript August 5, 1969, page 21) and Irwin Avenue Elementary (amendment to plan of July 29, 1969). The plan was approved and has resulted in the transportation of approximately 1,300 inner-city students to outlying schools which required the utilization of 30 buses. Transportation time for these 30 buses requires approximately one hour and fifteen minutes one way.

26. Clarification is requested of the sentence "It is the assignment of these children which is the particular subject of the reference in Paragraph 13 of the order to the manner of handling assignments within the school year." Does the

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

Court direct the Board to utilize these students in making assignments for the conscious purpose of maintaining each school in a condition of desegregation? Shall such students be assigned to schools only where assignment of their race would improve or maintain a condition of desegregation in the school to which assignment is made?

27. Clarification is requested with reference to the credence and reliability the Court attributes to the efforts of the school staff in developing the plans for desegregation.

28. The term "hearings" should be amplified to reflect that the Court repeatedly stated that evidence regarding transportation costs and other transportation data was irrelevant. (Transcript of hearing, February 5, 1970, pages 112-114, 128-130, 134, 150 and 151.)

29. Clarification is requested with reference to the sentence "All transportation under both the Board and the Court plan is covered by state law." Does the Court by this sentence amend its order of February 5, 1970, as amended by order of March 3, 1970, to the extent that the Board will not be required to furnish transportation to students who have been reassigned and whose attendance is necessary for the desegregation of the school of their attendance where they would not be furnished transportation under the applicable state law at state expense?

30. The sentence, "These one-way transfers, essentially identical in nature to the Board's July 29, 1969 plan, will result in the substantial desegregation of all the junior

high schools, which are left under this plan with black student populations varying from 9 per cent at J. H. Gunn to 33 per cent at Alexander and Randolph." As pointed out above, the Board in its July 29, 1969, plan as explained by Dr. Self (transcript, August 5, 1969, pages 21 and 22) provided one-way transfers only to those students who accepted and did not elect to go to surrounding schools or Irwin Avenue Elementary.

The Court should acknowledge that the four choices given to the School Board were, in reality, not choices at all. The Board had explored choice #1, rezoning, and found that Piedmont Junior High School could not be converted from a predominantly black school by such method; two-way involuntary transportation of pupils between Piedmont and white schools contravenes the Board's idea of what the Constitution requires; alternative #3 relating to closing of Piedmont was rejected by the Board among other reasons for the reason that the junior high schools are substantially overcrowded; the remaining alternative for the adoption of the Finger plan kept open the option of the Board to seek an appellate determination with respect to involuntary transportation of students out of their school district. The Board did not adopt the Finger plan, rather it was imposed by default in not electing alternatives #1, #2 and #3.

32. The sentence "It would leave nine elementary schools 83 per cent to 100 per cent black" should be clarified to indicate that there are white students who will be assigned to each of these nine elementary schools, leaving no all black schools.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

The sentence "In short, it does not tackle the problem of the black elementary schools in Northwest Charlotte" should be clarified to point out that although rezoning accomplished substantial desegregation in some predominantly black elementary schools in northwest Charlotte, nine schools remained which were 83 to 99 per cent black.

The portion of the sentence appearing at the top of page 16, ". . . the transportation problems presented by the zoning portion of the plan can be solved with available resources" is unsupported in the record. The defendants specifically object to the finding of the Court contained in the last paragraph of Paragraph 32 as there are many thousands of students who reside beyond one and one-half miles distant from the school to which they are assigned with respect to rezoned schools. The finding of the Court with reference to transportation requirements of 1,300 elementary students requiring ten buses is wholly unsupported by the record.

33. The sentence "The estimate of Dr. Finger and Dr. Self, the Superintendent, was that this program would require transporting roughly 5,000 white pupils of fifth and sixth grade levels into the inner-city schools" should be amended to reflect that conversely, roughly 5,000 inner-city blacks would be transported to the outlying suburban schools.

The sentence "The Board in its latest estimate puts the total figure at 10,206," should be amended to reflect that this figure represents approximately 5,000 white and 5,000 black students.

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The sentence "Just what is the net additional number of students to be transported who are not already receiving transportation is open to considerable question" is unsupported in the record. Both plaintiffs' evidence through Dr. Finger and the Board through Mr. Morgan and Dr. Self are the only evidence in the record relating to this information and there is no dispute about the approximate number of students to be transported in the paired and grouped schools under the cross-busing feature.

34. Subparagraph A again carries the implication that some 5,000 children daily are provided transportation on City Coach Lines by the school system. This is erroneous as these children provide their own transportation and funds on City Coach Lines which offers a student discount.

Subparagraph B is erroneous to the extent that it assumes a substantial discount of students accepting transportation. The record clearly discloses that the elementary paired schools are so remote that transportation can be expected to be almost 100 per cent. This likewise holds true for transportation of students who live in the satellite districts. This leaves approximately 6,000 students who live in rezoned areas and even if substantially discounted would not materially affect the transportation requirements of the Court order.

Subparagraph C leaves the implication that transportation should be afforded based on average daily attendance. This overlooks the fact that transportation space must be available for all students entitled to transportation as all eligible students may or may not desire transportation on a given day.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

Subparagraph D relating to number of students transported round trip per day per bus is more than 83 students. This overlooks utilization of each bus on 1.8 trips per day, thereby resulting in bus loading of approximately 44 to 46 students per trip. This further overlooks the fact that larger buses may be employed in the county than proposed under the transportation of students in smaller buses in congested traffic.

Subparagraph E relating to the one trip per bus per day under the Board estimate clearly recognizes that buses may be utilized with respect to the paired schools for only one trip unless operational costs are increased 40 to 60 per cent by resorting to adult drivers. The same holds true with reference to satellite schools. With reference to rezoned areas containing some 6,000 students, double utilization of some of the buses would not appreciably affect the Board estimates.

Subparagraph F. The average one-way trips required under the Court plan are estimated at less than seven miles. It is submitted that this is unsupported in the record as the Court completely ignores lines of travel routes upon the streets as they exist and further ignores the actual experience of the school system as reflected on the principals reports with respect to the buses identified in the affidavit of Mr. J. D. Morgan and John W. Harrison, Sr. dated March 21, 1970. The actual time being reflected by the record for transportation is approximately one hour and fifteen minutes.

Subparagraph G relating to staggering of school opening and closing, particularly with reference to zoned and paired schools, would reflect the following type schedule.

The first bus would begin picking children up at 6:45 a.m., deliver the students to the first school at 8:00, then begin picking up students for the second school, deliver them to school at 9:15, then the driver would prior to 2:30 return to the first school to pick up the children to return them home and they would reach home by 3:45. The bus then would go to the second school and pick up children and would get them home at approximately 5:00. Obviously, the school administration would have to go to adult drivers who would increase the operational cost by 40 to 60 per cent (J.D. Morgan depositions and affidavit).

Subparagraph J reflects a misunderstanding with respect to the requirements of North Carolina law for furnishing transportation. Students who reside more than one and one-half miles by the nearest convenient travel route and live in eligible areas are furnished transportation. By running a series of samples, the school administration determined that a radius of one and one-quarter miles would average out to the nearest line of travel being one and one-half miles (J. D. Morgan affidavit and deposition).

Subparagraph K relating to increasing the walking distance would contravene state law with respect to furnishing transportation and would not appreciably reduce the number of students eligible for transportation.

Subparagraph L relating to overload is possible under present transportation circumstances. Only those students near the end of the bus run are permitted to stand and ride a relatively short distance. Standing in congested city traffic over long distances would be most unsafe in operating the transportation system.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

35. Transportation estimates of the Court are unsupported in the record and reflect utilization of discount factors in Paragraph 34 which are not valid. The Board estimates were prepared from demographic charts reflecting the location of students to be transported and the record in this cause contains no such chart for the use of the Court in reaching its estimate. Furthermore, the busing estimates contravene the only reliable evidence in the record, the experience of the transportation system.

36. Finding of the Court that the transportation will be provided under state law is irrelevant as the taxpayers of this county contribute their tax dollars to Raleigh in support of public education. State funds are merely a return of a portion of the funds they have paid to the state for public education.

38. The four parts of the desegregation plan are not separable. There is some overlapping between elementaries which are paired or rezoned which will require assignment of children on one basis or possibly both bases if the total plan is implemented.

The February 5, 1970, order, directs total and complete implementation of all elementary school desegregation as ordered at one time. The Board seeks clarification with respect to whether or not it was contemplated that pairing and grouping should be implemented piecemeal as suggested by this paragraph.

39. This finding is an erroneous characterization of statements of counsel for the defendants and also the

Superintendent. A transcript of the hearing held on February 2, 1970, at page 20 states:

> "Assuming that the Finger plan must be implemented, it is believed that within the next six to eight weeks, *we could begin phasing* in elementary schools into the new zones and perhaps provide *some* of the pairing and groupings that Dr. Finger proposes. We would propose that the junior and senior high schools be deferred until the last three weeks of school and high school senior complete the school year at the school of their present attendance."

(Transcript February 2, 1970, page 21, line 23)

> "One problem that this time table overlooks is that we do not have the means for transporting the students nor is there likelihood that it will be available before the end of this school year."

40. Although the February 5 order provided that "racial balance" was not required, it was the effect of the order. Otherwise, the results of the Court ordered plan would not have achieved approximate "optimal" ratios in all but a handful of schools in the system.

41. The cost estimate of the Court overlooks the undisputed testimony that the bus cost is being increased by approximately $400. Furthermore, the number of buses and the total reached by the Court are based upon an erroneous assumption as indicated above.

The Court fails to address itself to the very substantial problem of obtaining drivers for these buses.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

The cost referred to by the Court as "excess costs" are not out of any desire on the part of the Board of Education to increase costs; rather, they are the direct and proximate result of the order of the Court.

Again, attention is called to the fact that the Court has overstated per capita costs by approximately $20.

The annual transportation cost per student, including amortization, is based upon erroneous premises and overlooks substantial factors, such as the actual number of students to be transported (19,285), the number of buses (422, costing $2,369,000), cost of parking areas ($285,000), cost of operation (annual recurring $587,000), additional personnel expense (annual recurring $166,000), all of which is carefully documented in submission to the Court on March 17, 1970, for a total initial first-year expense of $3,407,000, excluding depreciation or amortization.

42. The Court overlooks testimony of local and state officials, which is uncontradicted that the maximum number of buses to be made available to Mecklenburg County would be 30 buses to replace ancient equipment (12 to 15 years old) now being operated and scheduled for removal from service, plus 40 additional buses which would cost approximately $200,000, which funds the Board of Education does not have and has been informed by the County Commissioners is not forthcoming.

Furthermore, the Court should find that the 375 used buses in storage as indicated in the record are unsafe and inadequate for transporting children served by this system.

The finding should further reflect that although no order has been placed, the Board of Education has been advised

of the number of buses available from the state, namely 75, provided funds are available. Furthermore, under state law, school systems are not permitted to purchase equipment on credit. G.S. 115-52.

The finding with reference to delivery of buses in sixty to ninety days is erroneous. The record clearly discloses that the first chassis would be available in approximately ninety days and a substantial period of time would be required to fabricate and attach the body of the bus to the chassis for ultimate delivery.

It is quite apparent from the foregoing that the Court has given credence to most information submitted by the Board of Education and for some reason rejects transportation information prepared by a staff thoroughly familiar with the transportation requirements of our system, which staff has many years of experience with the special needs of our Charlotte-Mecklenburg school system. It is noteworthy that the Court's estimates closely parallel those of Dr. John Finger who admittedly spent very little time preparing his estimates. (Finger deposition dated March 11, 1970, pages 74 and 75)

WHEREFORE, the original defendants request the Court to amend its supplementary findings of fact dated March 21, 1970, to conform to the record in this matter as more particularly set forth above.

Objections and Exceptions to Supplementary Findings of Fact of March 21, 1970, and Motion for Modification and Clarification Thereof

Respectfully submitted this 25th day of March, 1970.

/s/ William J. Waggoner
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Attorneys for Defendants

Order dated March 25, 1970

In the original order of April 23, 1969, and in the order of August 15, 1969, the projected time for completion of desegregation of the schools was set for September 1970. The court did not then consider and never has at any time considered that wholesale mid-year or mid-term transfers of pupils or teachers were desirable. Furthermore, it was contemplated by all parties that this time table would allow time for orderly development of plans as well as for appeal by all who might wish to appeal.

On October 29, 1960, in *Alexander* v. *Holmes County,* the Supreme Court ordered the immediate desegregation of schools involving many thousands of Mississippi school children. In *Carter* v. *West Feliciana Parish,* —— U. S. —— (January 14, 1970), the Supreme Court reversed the Fifth Circuit Court of Appeals and set a February 1, 1970 deadline to desegregate schools in Gulf Coast states involving many thousands of children. In *Nesbit* v. *Statesville,* 418 F.2d 1040, on December 2, 1969, the Fourth Circuit read *Alexander* as follows:

> "The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit."

In *Whittenburg* v. *Greenville County, South Carolina,* —— F.2d — —(January 1970), the Fourth Circuit Court of Appeals read *Alexander* to say that

> ". . . general reorganization of school systems is requisite now, that the requirement is not restricted to the school districts before the Supreme Court in *Alexander,* and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970.

* * *

Order dated March 25, 1970

> "*The District Court's order shall not be stayed pending any appeal which may be taken to this court, . . .* (Emphasis added.)

On January 26, 1970, on re-hearing, the Fourth Circuit Court of Appeals said:

> "The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court. . . . no member of this court can read the opinions in *Carter* as leaving any room for the exercise by this court in this case of any discretion in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year."

The petition of Greenville for a stay of the order was again denied, and the Greenville schools were desegregated as of February 16, 1970.

The last *Greenville* decision was ten days old at the time of this court's order of February 5, 1970. These were the mandates under which it was ordered that the Charlotte-Mecklenburg schools should be desegregated before the end of the spring term, and that the mandate should not be stayed pending appeal.

Since that time, several suits have been filed in state court seeking to prevent implementation of the February 5, 1970 order, and decision by the three-judge court now considering the constitutionality of the "anti-bussing" law, North Carolina General Statutes, §115-176.1, does not appear likely before April 1, 1970. The appeal of the defendants in the *Swann* case to the Fourth Circuit Court of Appeals is not scheduled to be heard until April 9,

1970, and there is no way to predict when a decision on that appeal will be rendered. There is also no way to predict when a final decision by the Supreme Court will be made on any of these issues, nor what the final decision may be.

Furthermore, notwithstanding the *Holmes County, Greenville, Carter* and *Statesville* decisions, the Fourth Circuit Court of Appeals has now rendered a stay as to certain portions of the February 5, 1970 order, and a petition to vacate that stay has been denied by the Supreme Court. The Fourth Circuit Court of Appeals and the Supreme Court have now demonstrated an interest in the cost and inconvenience and disruption that the order might produce—factors which, though bussing was not specifically mentioned, appear not to have been of particular interest to either the Fourth Circuit Court or the Supreme Court when *Holmes County, Carter, Greenville* and *Statesville* were decided.

The only reason this court entered an order requiring mid-semester transfer of children was its belief that the language of the Supreme Court and the Fourth Circuit above quoted in this order, given its reasonable interpretation, required district courts to direct desegregation before the end of this school year.

The urgency of "desegregation now" has now been in part dispelled by the same courts which ordered it, and the court still holds its original view that major desegregation moves should not take place during school terms nor piecemeal if they can be avoided.

Thereforefore, IT IS ORDERED, that the time table for implementation of this court's order of February 5, 1970 be, and it is hereby modified so that the implementation of the various parts of the desegregation order will not be

required until September 1, 1970, subject, however, to any different decisions that may be rendered by appellate courts and with the proviso that the school board may if they wish proceed upon any earlier dates they may elect with any part or parts of the plan.

This is the 25th day of March, 1970.

/s/ JAMES B. MCMILLAN
James B. McMillan
United States District Judge

Further Findings of Fact on Matters Raised by the March 26, 1970, Motions of Defendants dated April 3, 1970

On March 26, 1970, the defendant school board filed "OBJECTIONS AND EXCEPTIONS TO SUPPLEMENTARY FINDINGS OF FACT OF MARCH 21, 1970, AND MOTION FOR MODIFICATION AND CLARIFICATION THEREOF." The court has reviewed the questions raised in that document and makes further findings of fact with reference to certain of its numbered paragraphs as follows:

¶¶ 1, 4, 16, 40. The annual school bus cost per pupil transported, including everything except the original cost of the bus, parking arrangements and certain local administrative costs, for the 1968-69 year, was $19.92. The state reimburses the Charlotte-Mecklenburg school system approximately this $19.92 per pupil. The April 23, 1969, and February 5, 1970, findings of fact estimated the original cost and periodic replacement of the busses themselves at $18 to $20 per pupil per year, which, added to the $19.92, resulted in the estimate of $40 as the total annual per pupil transportation cost. That estimate assumed that the local schools would have to pay for periodic *replacement* of busses as well as for their original purchase. Since it is now clear from the deposition of D. J. Dark that the replacement of worn out or obsolescent busses is *included* in the $19.92 figure, the overall estimate of $40 per pupil per year is far too high. Instead of a *continuing* annual local per pupil cost of $18 or $20 to supply and replace busses, as the court originally understood, the local board will have to bear only administrative and parking expenses, plus the original, one-time purchase of the busses. This cuts the annual cost of bus transportation from nearly $40 per pupil per year as originally estimated, to a figure closer

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to $20 per pupil per year, and reduces the capital outlay required of the local board to the one-time purchase of about 138 busses at a cost of about $745,200.00, plus whatever may prove to be actually required in the way of additional parking facilities. Paragraphs 1, 4, 16 and 40 of the supplemental findings of fact are amended accordingly.

¶¶ 2, 4, 11, 34. Although the evidence concerning the 5,000 children currently transported by City Coach Lines lacks clarity, the court agrees with the defendant that it should not be inferred that they are the source of payment for this transportation, and the court specifically corrects the previous finding so as to delete any reference to the source of payment for this transportation.

¶ 21. The school board's July 29, 1969 plan (see pages 457-459 of the record on appeal) proposed the transfer and transportation of over 4,200 black children. The court on November 7, 1969, on the basis of the then evidence, found that the number actually transferred was 1,315. The affidavit of J. D. Morgan dated February 13, 1970 (paragraph 4, page 770 of the record on appeal), indicated that the number of these students being transported was 738, requiring 13 busses. The findings of fact proposed by the defendants gave the number as "over 700." The J. D. Morgan affidavit of March 21, 1970, indicated that the number of busses was 30 instead of 13. From this conflicting evidence the court concluded that "several hundred" was as accurate as could be found under the circumstances.

¶ 33. Paragraph 33 is amended as requested by adding after the word "schools" in the eleventh line of the paragraph:

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"—and about 5,000 black children, grades one through four, to outlying white schools."

¶ 34(f). The average *straight line* mileage between the elementary schools paired or grouped under the "cross-bussing" plan is approximately 5½ miles. The average bus *trip* mileage of about seven miles which was found in paragraph 34(f) was arrived at by the method which J. D. Morgan, the county school bus superintendent, testified he uses for such estimates—taking straight line mileage and adding 25%.

As to the other items in the document, the court has analyzed them carefully and finds that they do not justify any further changes in the facts previously found.

This the 3rd day of April, 1970.

/s/ James B. McMillan
James B. McMillan
United States District Judge