

Colloquy

fits to be derived from desegregation can be submerged because of lack of popular support or acceptance.

Court: The Court is not going to entertain evidence on whether these things are popular or not. There is ample evidence of the unpopularity of the constitution in Mecklenburg County and I don't need expert opinion on that subject.

Mr. Waggoner: We would like to tender his answer.

[75] Court: I think his answer is adequately on the record.

Mr. Waggoner: May we tender his answer?

Court: Oh, yes, you may supply it later.

Mr. Waggoner: May he finish his answer that he was on, Your Honor?

Court: No, sir. I overruled the objection. You may supply the answer later for the record.

Mr. Waggoner: At the conclusion of his testimony?

Court: Any time you like.

Mr. Waggoner: May we do it now?

Court: I have instructed you not to call for any more evidence on the question of whether the people of Mecklenburg County like or don't like what the law requires. Now, if he wants to supply the answer to the Reporter privately, all right. I'm instructing you, Mr. Waggoner, not to proceed any further with comment on what people like or don't like about the law of the land.

Mr. Waggoner: If the Court please, we are not proceeding on what the people like or don't like about the law of the land. What we are proceeding on is in the area of education, the benefits. I think this is

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something to be taken into account. If an educator says that the acceptance—

[76] Court: You may supply the answer after this witness has testified, Mr. Waggoner, but I don't want to hear any more on this subject.

Q. Dr. Self, the Court has expressed interest in the amount of time that would be required to implement a plan for desegregation this spring, have you given any thought and study to this? A. Yes, we have, Mr. Waggoner. The staff has attempted to devise what we call a planning network which would list the various events and activities that must unfold if the Charlotte-Mecklenburg schools are desegregated.

Q. Do you have a chart prepared indicating the steps that must be accomplished in the order? A. I do.

Mr. Waggoner: If the Court please, we would like for the witness to be permitted to use this rather long chart to illustrate the testimony. It's not large enough for everyone to see and perhaps if the witness could move close to the Court, he could describe what he's talking about.

Court: Go ahead. I think I can follow all right.

Mr. Chambers: May we see a copy of what we're talking about now?

Court: Do you have only one copy of this?

Mr. Waggoner: We have only one copy. v

[77] Mr. Chambers: We'd like to note another objection for the record. Mr. Waggoner, we submit, persists in trying to make this a popularity showing. We think that if he has pertinent evidence about the time schedule needed to desegregate that that

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might be of some interest to the Court. But we submit that that, too, has been foreclosed in the decisions of the Fourth Circuit and the decisions of the Supreme Court. The courts explicitly held what the obligations of the School Board were and that doesn't include . . .

Court: Mr. Waggoner, you may go ahead and offer the exhibit if you think it's pertinent but I will be far more interested in getting a timetable sometime next week on implementation of the Court order than I am in evidence on the implementation of the Board plan or anything else as a theoretical matter at this point. Let me see the outline, do you have it? (Paper writing is handed to the Court.) You may certainly offer it and I'll accept it, but I think it will be time better spent if it's with some dates before us so the staff will know what job they're trying to do when.

Mr. Waggoner: That's the reason I wish to use the witness, Your Honor, to supply the dates.

Court: How much discretion do you think the Court has [78] on this in light of what the Chief Judge of this Circuit said about Greenville?

Mr. Waggoner: The Court has the discretion that it will not order an impossible or vain act. This dates through all the cases in the history of the law that I know, that the Court does not order a vain or useless act. They have ordered the Greenville and Darlington school districts to desegregate now. They said come up with a plan and whether or not the plan will produce actual and total mixing on the deadline is speculative at this point.

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Court: Well, Mr. Waggoner, don't you understand that I'm going to allow just as much time as I believe the law will permit me to allow?

Mr. Waggoner: I feel certain that . . .

Court: And I cannot be controlled by whether it's somewhat disturbing or not. If you think the evidence will help, go ahead, but I'm already on your side from that standpoint and I think you know it. The problem is how far I can go in good conscience to extend the deadline which the Chief Judge of the Circuit has already put into effect in his hometown on three weeks notice.

Mr. Waggoner: Mr. Chambers has already indicated that he thinks March 1st is the latest this should be [79] accomplished.

Court: Let's don't conduct a hearing that that's controlling upon the Court nor that this evidence that you have here can be controlling.

Mr. Waggoner: Well, with Mr. Chambers commuting to Richmond these days on . . .

Court: Let's leave personalities out of the case.

Mr. Chambers: I object to that. Regardless of whether I go to Richmond or Washington I don't think it's pertinent to this case.

Court: Did I miss something funny? I was talking.

Mr. Waggoner: Well, the point I was making, Your Honor, Julius jokingly, Mr. Chambers jokingly asked me if I was prepared to be in Richmond tomorrow to meet with the Court of Appeals. So I feel if he is insistent upon his deadline there may be some application and it is our desire to protect our

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record, so that we do have something on which you base your order.

Court: Let me get a little information from Dr. Self that I missed while you were asking about these plans. Dr. Self, looking at the Board's proposal with regard to senior high schools, as I understand it Dr. Finger has not presented any proposed change with regard to the Board's plan except that he proposed **【80】** that there be a transfer of some three or four hundred students from the central part of town out to Independence which is almost entirely white under the lines drawn by the Board.

A. This is true. This move causes a slight ripple effect in terms of adjusting other lines to capacity, but that's the major difference.

Court: Now, with regard to junior high schools, am I correct—leaving aside the problems of transportation right now, which may cut through the whole thing—with regard to the junior high schools am I correct that there again Dr. Finger's plan starts with the basic school attendance zones that the Board had prepared and that the main difference between those two plans is that the Board plan leaves Piedmont High School still substantially black, 90% or so, and that he has drawn a plan which does not leave any all black or nearly black schools?

A. That's correct.

Court: And is it correct that the Board plan could be, if it were decided there ought to be a change in

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the Board plan, the choice would be between rezoning or transporting children back and forth, to and from Piedmont or closing Piedmont and reassigning those students to some of the outlying white junior high [81] schools.

A. That would be the alternative. The plan really revolves around Piedmont. If you say that the Board plan permits preponderance of black in Piedmont, do something about it, and if you do something about Piedmont you affect all the other schools as well. If you are considering closing Piedmont, I would have to say it's not a very good alternative because we're talking about the use and Dr. Finger projects the use of two junior high schools that are not now in existence. That's J. H. Gunn, in which the Clear Creek elementary youngsters are being housed while the new building is being built, and Carmel Road, which is under construction and will open next fall, which is another way of saying that we're tight capacitywise at the junior high school level and it would make it more difficult to close Piedmont.

Court: If the Court felt that under the decisions of the higher court in this area, if the Court felt that Piedmont could not be maintained as a nearly black school and if you assume the decision is made that that cannot be maintained, would you in that event feel that Dr. Finger's plan for the junior highs would be preferable to closing Piedmont?

A. I believe so, yes, sir.

Court: I'm not asking you to make the decision whether Piedmont can or cannot be maintained, but

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【82】 simply assuming it would have to be changed in its school population. That was the assumption of the question.

A. Yes, sir.

Court: Now, with reference to the elementary schools, is it correct to say that the Board's plan goes as far as you can go under the restrictions that all the school zones must be contiguous and that you not contemplate any substantial plans for transportation?

A. It is correct to say that.

Court: And is it correct to say that the Board's plan was drafted upon the premise that there was no duty to eliminate all of the black schools or at least that the plan might reasonably present that question for appellate review? I'm not trying to ask you another legal question, let me rephrase it. The plan for elementary schools is frankly drawn upon the assumption that there is no duty to eliminate all of the all black or nearly all black schools.

A. I believe the Board started out on a more positive assumption than that, Your Honor. I think they wanted to determine whether restructuring attendance lines could have a significant impact in terms of reaching better racial balance.

Court: And they found it could have a significant impact and it has had as reflected in the plan of the 【83】 Board.

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A. That's correct.

Court: So with regard to all three levels of school population the plan proposed to the Court by the Board represents a very drastic improvement in the situation from the standpoint of progress towards racially indistinguishable schools.

A. That's correct, they do.

Court: Just how was the plan that is represented in the map and the figures of Dr. Finger, how was that plan arrived at with regard to the elementary? Did he start with substantially those attendance zones which when drawn by Mr. Weil and the Board's staff did result in the desegregation of a great many of the schools? Are those incorporated in what is referred to as the Finger plan?

A. They are, yes, sir.

Court: And the fundamental difference in those two plans starts after the Finger plan includes essentially those rezoned areas which have resulted in the desegregation of a great many schools.

A. That's right.

Court: And then the problem of what to do about the other schools has been dealt with by pairing or grouping black inner-city schools with outlying white [84] schools and providing for transportation.

A. That's correct.

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Court: If children are assigned from a city school to a rural or a perimeter area school do they receive transportation under the present arrangement?

A. They do and the converse to that is true. If a child who resides in the county is moved to a city school, he is provided with transportation.

Court: I suppose the transportation estimates are still rather rough at this stage and there is no way to tell exactly what the net result of any one of these plans would be as far as ultimate increase in transportation costs.

A. I believe, Your Honor, that the transportation estimates are as accurate as we can possibly make them at this time.

Court: As near as you can tell it involves some 10,000 children elementary with some margin for error?

A. The 10,000 figure that I used in earlier testimony had to do with the paired elementary schools. I think there would be some additional transportation for the satellite zones in the junior high and for the senior high.

Court: Well, now, I have some recollection from previous testimony that the county pays somewhere around eighteen or \$20.00 a year per pupil and the state cost for transportation is about eighteen or \$20.00 a year [85] per pupil as a long range proposition for bus transportation.

A. I think the figure used in the earlier testimony was

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around \$19.00. I believe the figure this year is slightly higher than that.

Court: But if you add up all the costs, wherever the money comes from, it runs somewhere between thirty-seven or -eight and \$40.00 a year per pupil for transportation.

A. I believe I'd have to let Mr. Morgan give specific data on that, sir.

Mr. Waggoner: May I continue, Your Honor?

Court: Yes. Thank you, Mr. Waggoner.

Q. Dr. Self, with reference to the required steps and the time required to perform the various functions to implement the Board plan, do you have an opinion satisfactory to yourself as to the steps needed? A. Mr. Waggoner, the planning network for the secondary schools is predicated upon the statement that you made in testimony in court on Monday, which anticipates an actual merging of student bodies three weeks prior to the close of school. The elementary plan assumes that we will attempt to move, if implementation is ordered, as quickly as possible and here we are concerned with whether or not we are dealing with an elementary school around which a new attendance line has been **[86]** drawn or with an elementary school which is associated with the pairing technique. If we're talking about the attendance line restructuring, then we have more or less an administrative logistic problem which must be handled and I think we can move fairly readily. But if we're talking about the paired schools, then transportation enters the picture and our efforts to determine how we could

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respond to this transportation need has not been too encouraging.

Q. Can you give us some of the specific tasks that must be performed aside from transportation? A. I might say that the planning network was devised for use by our office. It was not intended as a part of the testimony. We were trying to prepare ourselves for the task. While it looks fairly complicated, there are two basic elements to the planning network. The rectangular shape on the planning network is simply a listing of the events which must take place. The Circle diagrams which run all over the page are the activities that must be performed by school personnel before that event can ever take place. The first event on the map is approval of the maps by the Board. That would mean approval of the maps as they are presented here with the final polishing being done, adaptation to the natural geographic lines. Of course, I don't think the Court is interested in all the administrative staff has to do to get it ready for the Board to approve.

【87】 Q. How long do you anticipate that would take? A. We think that could be done by February 17.

Court: What is this you say could be done by then?

A. The approval of the maps by the Board, the refinement of them and placed before the Board for approval.

Q. These refinements, you say, would not vary substantially from the ratios of these lines now established, is that correct? A. We would have to see that it did not vary substantially from the racial balance. That was the object of restructuring the line to begin with. I'm talking now about the elementary schools which would be desegregated through use of restructured attendance lines.

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Mr. Chambers: Your Honor, I assume we don't have to continue to note our objection. We would like to note objections to this testimony.

Court: All right. The objection is overruled.

A. The next three events occur simultaneously and we set aside March 6 for this task. The three tasks are preparation of the community, assignment of pupils and assignment of teachers. The next four events occur simultaneously and we have set those down for April 1. They are transfer of pupil records, preparation of the building, students reporting to school and have the revised transportation schedules in operation.

Q. Now, as I understand the chart that you have has a lot of **【88】** sub-tasks that must be performed to reach these events that you speak of, is this correct? A. They do. I think that we might emphasize that regardless of the date that is set, all of these tasks will have to be performed one way or another.

Q. Are the events and sub-tasks that must be performed accurate as they appear on that chart to the best of your knowledge? A. I must emphasize that they are judgment items. We have had to look at the task that was ahead and make some judgment as to how quickly we could perform them, how quickly all of the jobs could be done.

Mr. Waggoner: If the Court please, we would like at this time to offer the elementary chart as an exhibit.

Court: Let me ask a question about the last couple of minutes of testimony. Are you talking now about the elementary system or all three systems?

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A. In our staff work, Your Honor, we have, just to keep things straight, divided the elementary schools from the secondary schools and one group of people worked on the schedule for implementation of any order that would effect the secondary schools. Another group worked on the elementary school task and in working with the elementary schools, we divided them, sub-divided them into two categories, those elementary schools affected by simply altering the attendance lines and those elementary schools that would be involved in pairing.

【89】 Court: These working schedules that you're talking about, do they relate to which group of schools do they relate to? All three types of schools?

A. They do, yes, sir.

Court: You're handling these problems separately with a separate administrator and staff for senior high and junior high and elementary but you're working towards the same timetable for all of them?

A. No, sir. We are following a varying time schedule. The time schedule that I went through a moment ago had to do with the elementary schools desegregated by attendance lines. It's necessary to separate them in your thinking because. . . .

Court: That's what I'm trying to do.

Q. Dr. Self, with reference to the secondary schools, is there more difficulty in making the change of school for the students than there is in the elementary level? A. Yes, there is. I think it's related to the nature of the secondary school program and courses of study.

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Q. Could you elaborate? A. May I do so simply through reciting the events that need to unfold?

Q. Yes, if you will.

Court: Let me go back to the elementaries for a minutes, Dr. Self. Assuming you had all the necessary transportation available, is it fair to say that the [90] easiest job as an administrative matter is the job that involves the grouping or clustering schools where the pupils are not being reassigned geographically but simply being taken as a school grade from one part of town to another?

A. From an administrative point of view, yes.

Court: And the hangup there is whether or not transportation can be had.

A. Can be had and can be supported financially.

Court: Now, the matter of redrawing the attendance zones and transferring children from one school to another where no serious transportation problem is involved is more difficult administratively but still something you think can be done, can be completed in a couple of months, perhaps by April 1.

A. Yes, it can. I think that it may be completed because of the skill or knowhow that we have acquired in the use of the computer.

Court: All right. Well, I think I've got my bearings now on what you've just told us.

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Q. If you will, with reference to secondary schools describe the events. A. The first event. . . .

Q. Is this with reference to junior high schools? A. Junior and senior. The first major event is the same one as [91] for the elementary school, the adoption of the official maps by the Board of Education. We think that we can work our way through to the point where these can be presented to and approved by the Board by February 25th. At the same time that this work is going on with the maps, we would need to develop our staffing plan, our pupil assignment process and the curriculum that was to be offered in the schools in question. Simultaneously with that we would be attempting to develop or modify our transportation system. The next big event in terms of our pupils—and I think these are the common thread that go through all of this—is the assignment of pupils for the 70-71 term and we say that this can be done by March 25th and that pupils and parents can be notified about that immediately thereafter. The next major event is the assignment of teachers which can be done by May 1st. The teacher assignment to secondary schools is dependent a great deal upon the courses which the pupils have registered for because that tells you whether you need Social Studies teachers or math teachers and the like.

Court: Is your thinking in terms of starting the 1970-71 school year immediately after the shift over as far as the junior high and senior high are concerned?

A. Yes, it is.

Court: What are you thinking about the pupils who [92] are seniors in high school?

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A. We would propose to advance the graduation date for the seniors in high school and, in effect, make room in the senior high schools so that we could move the rising 9th graders up to become a part of the new senior high school the last three weeks of the school term. At the same time this would give us room in the junior high schools to actually promote and involve the 6th grade students as a part of the junior high. So what we would really be doing would be organizing for the next school term.

Court: All right, go ahead.

A. There are four events actually which we are envisioning as occurring on May 26th and this would include event #1, teachers report to new assignments, event #2, students report to the new school assignments, event #3, the master schedule and the student schedule will have been completed, event #4, the bus transportation system would be operative.

Q. Dr. Self, the chart you have just read from contains the events and the sub-tasks that must be performed to reach those, is that correct? A. The events only. The sub-tasks, of course, I have not read.

Q. Are they sub-tasks required to reach the events according to the best of your knowledge or information? A. Yes, sir. There are quite a few of them.

Mr. Waggoner: If the Court please, we would like to [93] introduce these as Exhibits 5 and 6 to illustrate the testimony of the witness.

Mr. Chambers: Objection.

Mr. Horack: Excuse me, they are 13 and 14.

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Mr. Chambers: Your Honor, again we are missing some exhibits. You've got 13 and 14 now?

Mr. Horack: Yes. These were marked earlier at the Judge's request.

Mr. Waggoner: If the Court please, Exhibit 13 is the planning network for desegregation of elementary schools and Exhibit 14 is the planning network for desegregation of secondary schools.

Mr. Chambers: Your Honor, we'd like to point out for the record that we have not seen either one of those exhibits.

Court: We are still operating under a somewhat unusual set of circumstances here.

Q. Dr. Self, have you given consideration to the planning network required for pairing these schools? A. Yes, we have.

Q. Would you describe the network for the events that you must reach to accomplish that desegregation? A. To save the time of the Court, Mr. Waggoner, the planning network is essentially the same as that for the elementary schools affected by restructuring attendance lines. The [94] handicapping feature is the transportation so while you can draw the planning network, it's difficult to put dates on it until such time as you clear the question of transportation entirely.

Q. Dr. Self, with reference to transportation you testified that the pairing alone would require the transportation of something in the neighborhood of 10,000 children. Dr. Finger's plan proposes transporting all students irrespective of where they live if they reside a mile and a half from their school. Do you know approximately how many stu-

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dents would have to be transported additionally under Dr. Finger's plan?

Mr. Chambers: Objection.

A. Mr. Waggoner, I believe Mr. Morgan can answer the questions regarding transportation with more clarity.

Q. All right. Does your budget have funds for acquisition of a substantial number of buses? A. No, sir.

Mr. Waggoner: We have no further questions at this time.

Court: I don't mean to try to make a tough job seem easy but I do want to be sure I have a simple little accurate picture of what you have said to me. As I understand it, you think it would be administratively possible or practicable to complete the reassignment of the elementary students who are being relocated by [95] rezoning by the 1st of April or thereabouts.

A. Yes, sir.

Court: And the reassignment of the students who are to be relocated by pairing or clustering, if that is directed, will be dependent in any given case on what transportation can be arranged.

A. That's true, sir.

Court: Is it correct to say that the pairing and clustering of schools is a method which can be set up for any particular group or cluster of schools as a small amount of transportation does become avail-

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able without waiting for the same thing to take place with respect to all the other pairs or clusters?

A. It's correct to assume that. I think we said earlier that the pairing arrangement usually identified one black school and two or three whites. If you had a limited amount of transportation available, you could move with those schools and move then with other clusters of schools as additional transportation became available.

Court: And your present recommendation would be to the Board that the transition for the junior and senior highs not actually take place until towards the end of May?

A. That would be my recommendation, yes, sir.

Court: You use the date May 26, what is the present [96] scheduled time for the completion of the conventional school year?

A. June 9.

Court: So this would give what, a full week?

A. It would give two, if I'm not mistaken.

Court: Well, you've got five more days in May. That's two weeks by the calendar, but is the graduation not usually removed by a few days from the end of the actual school year?

A. Yes, sir, usually the commencement exercise precedes the end of the school year.

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Court: Have you got a calendar there?

A. No, sir. I looked for one and I do not have one.

Court: I was wondering when Easter is. Isn't it quite early in April this year?

Marshal Beam: 29th of March.

A. I have a calendar here now.

Court: April 1 is the Wednesday after Easter.

A. That's correct.

Court: At the present time by the number, just about half of the elementary students, black elementary students who are going to schools that are very nearly or all black or entirely black, are they not? Have you ever run a total on that?

A. I'm sure that we have although I find it very hard to keep all [97] the figures in my mind, Your Honor.

Court: How many students, Dr. Self, not in exact amounts but approximately, of the elementary students will be involved in the defective desegregation that will result from restructuring the elementary attendance lines?

Mr. Waggoner: If the Court please, I might direct his attention to Page 23 of the Weil report.

A. Let's see if we can piece this together. From Page 23 we can get an approximation of the number of students in the elementary schools as being approximately 45,000. The

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children who would be involved in the pairing arrangement in the schools that I listed earlier would total 22,000.

Court: You mean they would be involved in it as persons attending those schools, not necessarily persons being transported.

A. That's right, they would be. In other words, all of the paired schools the total pupil population would be approximately 22,000. That would mean that in school A, which was a 1 through 4 school that the white pupils there would be in the school and counted in the 22,000. The black children would be bused in. Vice versa on the 5 through 6 schools. If you take 22,000 from the 45,000 you get a very rough approximation that 23,000 of our youngsters are in the zoned schools and about 22,000 are in the paired schools.

【98】 Court: Do counsel for the plaintiffs have any questions of Dr. Self?

Mr. Chambers: Just one or two, Your Honor.

Cross Examination by Mr. Chambers:

Q. Dr. Self, were you present at the Board meeting where you decided to employ Systems Analysis to prepare this plan for you? A. Yes, sir.

Q. Do you recall what instructions, if any, you gave Systems Analysis to follow in the preparation of these plans? A. Yes, sir, and the instructions are part of the report.

Q. Did you instruct Systems Analysis not to consider pairing or clustering of any schools? A. We did.

Q. Did you agree to a contract price per hour or per day for the work by Systems Analysis? A. Yes, we did.

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Q. What price was that?

Mr. Waggoner: Objection.

Court: Overruled.

A. The price varied according to the individuals who would be employed.

Q. Would you tell us the price per day or per hour for the work by Systems Analysis?

[99] Mr. Waggoner: If the Court please, this is totally irrelevant to the considerations before the Court. I think it's some attempt on the part of the plaintiffs to try to embarrass the Board in some way.

Court: Well, I believe lawyers and consultants all ought to be paid whether hired by the Board or appointed by the Court. I saw in his report, though, I believe that he had 200 days of work on it. I guess that's a good deal more than Jack Finger has been able to put on it in the last few weeks, isn't it? I don't think that's relevant.

Q. How much did you pay Systems Analysis, Dr. Self?

Mr. Waggoner: Objection.

Mr. Chambers: I'd like to get that in the record, Your Honor.

Court: Overruled. How much have you paid them up to now?

A. I don't really recall the exact figure, Your Honor. I can make an approximation.

Court: Give us your approximation.

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Mr. Waggoner: Objection.

Court: Well, go on.

A. I'd say approximately ten to \$11,000.00.

Court: So far. Do you think you got your money's worth?

[100] A. Yes, sir.

Court: Did having Dr. Finger here help in some ways to move along towards the solution of a very knotty bunch of problems?

A. Yes, sir.

Q. Now, on the high school map where you were talking about Piedmont, as I recall, just taking West Charlotte, for instance, your line proposed extends out to the county line, is that correct? A. That's correct.

Q. Now, I believe under the present state law you would be providing bus transportation for basically all of the students in the county coming into West Charlotte. A. That's true.

Q. It would just be the students now in this small area here who would not be receiving bus transportation? A. That's right.

Q. I believe that for East, as another example, your line goes up into the inner city but because East is in the county these students, too, would be receiving bus transportation. A. That's correct.

Q. The same thing would be true of South, I believe you talked about, too. A. That's right.

Q. In fact, you contemplate quite a bit of bus transporta-

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tion [101] under your plan. A. Within the attendance area, yes, sir.

Q. The same would be true of the junior high schools.

A. That's right.

Q. I think you told the Court a moment ago a kid residing in the city, assigned to a school in the county would receive bus transportation. A. Yes.

Q. Or assigned to a school annexed to the city subsequent to 1957. A. Until that date in April where all of this is supposed to reach a climax in the court.

Court: That's a different court.

Mr. Chambers: I understand, Your Honor.

Q. And vice versa for the kids in the county coming into inner-city schools. A. Transported?

Q. Yes. A. Yes.

Q. So under both plans, in order to desegregate the schools, you would require some bus transportation for the students. A. Yes.

Q. Now, Dr. Self, in preparation of your plan how did you intend to provide bus transportation for these students who under the state law would be entitled to bus transportation, if you [102] had to implement it this year? A. Well, the larger number of pupils we have under consideration here are at the secondary level and you notice in our planning network what we were intending to do was to assign the pupils, register them, build a master schedule and postpone the actual movement of the student into the school until that date of May 26. This has the effect of postponing the need for the buses until that time.

Q. Did you plan to get the buses by that time? A. We are investigating every possible means of acquiring buses.

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Q. Was it your intent to inform the Court you were going to have bus transportation by that time?

Mr. Waggoner: Objection, if the Court please. Our plan has stated it proposed implementation in 1970, September.

Court: He's simply asking what the testimony was. My notation as to the testimony that gives rise to the question is that on the 26th of May the transportation system would be operating as far as the junior and senior high schools are concerned. That's what you said, I believe, wasn't it?

A. That's true. We set the date. It's our intent to either if we have the buses we will use them; if we don't, we'll try to implement some other technique such as staggering the opening of school, pressing activity buses into service, or something **[103]** of that nature, or perhaps use contract transportation.

Q. You did intend to have bus transportation by that time, did you not? A. Yes.

Q. Where were you planning to get the money for that? A. We would have to approach the County Commissioners and petition them for the money to purchase any additional buses needed and then, of course, we would overature the State to pick up the operational costs.

Q. In fact, you had intended to go back to the County Commissioners to get additional funds for buses. A. This amount of busing, yes, sir.

Q. Now, how many buses did you contemplate you would need under your plan? A. I don't have that detail. I think we'll have to have that testimony supplied by Mr. Morgan.

William C. Self—for Defendant—Cross

Q. Do you have any idea of how much money you would need to provide buses under your plan? A. No.

Q. Have you, in fact, or the Board consulted with the County Commissioners about the availability of additional funds? A. I have not.

Q. To your knowledge has this been done by the Board? A. If it has, it has not been done in formal board session.

Q. To your knowledge has it been done? [104] A. I think there have been conversations between Board members and members of the County Commissioner.

Q. Isn't it a fact, Dr. Self, that the Board has advised you that they might make funds available for bus transportation? A. No, sir, they have not.

Q. The County Commissioners have not?

Court: Mr. Chambers, I think this further pursuit of the transportation question is also irrelevant because as I read what the courts are saying, the fact it may cost some money is not a legal reason to do or not to do anything about it.

Mr. Chambers: All right, I'll pursue another subject.

Q. Dr. Self, how do you buy buses in the State for this system? A. I buy the buses through the State Department of Public Instruction.

Q. Does the State Department of Public Instruction maintain distribution centers around the State? A. I do not know.

Mr. Waggoner: If the Court please, we might shorten this. We have a man who is with the State Department here today to testify and he can give precise answers.

William C. Self—for Defendant—Cross

Court: Well, I always learn when I keep my mouth shut but I really think that within the limits of what we're talking about here are the things I have to do that won't be helped by knowing a lot of detail about [105] transportation, I really do.

Mr. Chambers: I'll withdraw the question, Your Honor, and go to another area.

Court: Dr. Self, am I correct in my recollection that the budget of the school system for this year is fifty million dollars?

A. Closer to forty-five million, I think, Your Honor.

Court: Does that include money supplied by the State?

A. Yes, it does.

Court: As well as local.

A. A combination of all sources, State, Federal and local.

Q. Looking at your time schedule that you introduced, Exhibits 13 and 14, why would it take until February 17 and February 25 to get Board approval of a map? A. The major reason can be found in the activities which precede that event. The work must be parceled out among a large number of people. The principals must be involved in this. It virtually will be necessary in some cases to ride the districts and actually make a visual survey where the computer did draw the lines and to take into account any hardships as far as transportations are concerned, and things like that. The time is not for Board approval. The time would be in the preparation of the maps where we would feel confident in recommending the maps to the Board for approval.

William C. Self—for Defendant—Cross

Q. Are you suggesting that those maps are not the maps for the [106] Board? A. They are the maps of the Board but in approving that—and I believe that's contained in the study as well—it is admitted that they will have to be examined very carefully with a view toward eliminating any discrepancies that have not yet been found.

Q. If the Court were to order implementation of the Finger plan, would you have to redraw those lines? A. Yes, sir.

Q. You don't think they are accurate? A. They are accurate, the lines are accurate. Our major problem is to adapt the grid line to an identifiable natural geographic marker. It may be necessary to even go so far as to say this line goes between these two houses.

Q. Why would it be necessary to wait until March 25th before actual assignment of pupils? A. Because of the various activities that must be accomplished prior to that event.

Q. Why did you figure on starting a new year for the secondary students rather than transferring them now? A. For the most part because their curriculum in the new school would stand a pretty good chance of being altered from the course of study that they had in the old school. We figured it would be better to move the seniors on out to get over the problem of whether or not they would graduate from the school [107] they had attended, to make room in the senior school to accommodate the rising 10th grade class and start them off on a new year.

Q. If the Court were to order you to integrate the schools by March 1st, would you be able to accomplish it? A. If the Court would order us to integrate by March 1st, all the activities and events that you see outlined before you

William C. Self—for Defendant—Cross

would have to be accomplished in one way, shape or form before it could be done.

Q. In your opinion could it be done? A. No.

Court Reporter's Note: At this point in the proceedings there was applause from some of the spectators.)

Court: Any more demonstration and the courtroom will be cleared.

Q. Could it be done by April 1st? A. I think that we get back to comment that the judge offered in opening this case on Monday. He wanted the minimum amount of time but at the same time the amount of disruption to be considered. If you disregard the amount of disruption that would be caused to secondary pupils with April 1st transfers, I suspect it could be done administratively.

Court: Mr. Chambers, I think you've got a can-do man here and that's why I wanted his serious recommendations on the very practical problems that have got to be [108] dealt with. Let me ask another question about the technique of drawing some of these pupil attendance lines. How about turning to the junior high map. If you examine the Board's map for the rezoning of the junior high attendance lines, you find some of them with corridors a half-mile wide and five miles long, reaching from a suburban area into an inner-city pocket. From the standpoint of administration and ease and economy of transportation which is easier, to have a pocket of people in the center of town who are close together and easy to identify and have them transported by the most convenient route to some suburban school, or

William C. Self—for Defendant—Cross

in the opposite direction, as the case may be? Is that not more convenient than having a half-mile wide corridor which may have to attend the school several miles away?

A. Yes, sir. I think that the net effect in terms of your transportation system is that you probably would have one or two pickup points in that satellite zone and then express the bus to the school. Whereas in the corridor you would probably have a number of on route pickup points.

Court: Is that transportation problem compounded by the fact that the streets in Charlotte are laid off sort of slantwise or catercornered and these corridors run diagonally across the major thoroughfares?

[109] A. Well, I'm not sure whether that's the case in point. I think certainly our transportation problems, operating within the city limits, are going to be quite different from the transportation problems in the rural areas.

Court: Mr. Hicks, what's the name of that junior high on the lower left center which has a finger extending?

Mr. Hicks: Smith.

Court: Taking Smith Junior High as an illustration, doesn't the corridor extending north into the center of town from Smith Junior High extend as far as the satellite zone that Dr. Finger has set up for Smith Junior High?

A. Basically it does, yes, sir?

William C. Self—for Defendant—Redirect

Court: That's true of Sedgefield and a number of others, is it not?

A. Yes, sir.

Court: It has to be true to get substantially the same result, doesn't it?

A. That's right.

Court: Is this part of the problem that needs to be worked out whichever one of these plans is used?

A. Yes, sir. Quite frankly, we do not have a perfect answer to the question of natural geographic lines versus grid lines. Grid lines give us the ability to manipulate data by the [110] computer and it has the disadvantage of not being visible to people so they can say I am in this school zone or that school zone. The natural geographic boundary has the advantage of being clearly identifiable by the citizenry but at the same time does not lend itself to mass manipulation of pupil data.

Court: I think I have run out of questions. Do you have any more, Mr. Waggoner?

Redirect Examination by Mr. Waggoner:

Q. With reference to Smith Junior High, is it not true that the junior high attendance districts are substantially larger than the elementary districts? A. Yes, they are.

Q. So there's not quite a parallel between the Smith Junior High and the elementary cross-busing, is there, because you're dealing with different age students? A. Of course, you're dealing with different age students and if

D. J. Dark—for Defendant—Direct

you're speaking about a single school, you do not have the cross-busing. If you're talking about the school system, bringing into account the present all black junior highs, you're talking about two-way busing in that whites would be bused into Northwest, Williams, Kennedy.

Mr. Waggoner: I have no further questions.

Mr. Chambers: We have no further questions.

【111】 Court: Thank you, Dr. Self.

Mr. Horack: If Your Honor please, we'd like to call Mr. J. D. Morgan.

Court: I'm going to run out of time in about a half-hour, Mr. Horack. Are you going to run out of witnesses by then?

Mr. Horack: I'd seriously doubt it.

If Your Honor please, in compliance with your suggestion earlier we had various exhibits which we went ahead and had marked. Mr. Chambers, you want these now?

Mr. Chambers: Are those all of them?

Mr. Horack: It's Exhibits 5 through 12 with the exception of 8 and 9 which I do not have copies. 5 through 12 are all offered in evidence.

* * * * *

【137】 *Direct Examination by Mr. Horack:*

Q. State your name, please. A. My name is D. J. Dark.

Q. What is your position? A. My position is Director of the Division of Transportation, State Board of Education.

Q. And your office is in Raleigh? A. Yes, it is.

Q. I hand you Defendant's Exhibit #8 and ask you what it is and whether you are familiar with its contents.

D. J. Dark—for Defendant—Direct

Court: What is it?

Mr. Horack: It's a letter from the State Superintendent Craig Philips to Dr. Self.

Court: Let Mr. Dark testify about what he knows. I'll read the letter and see if it's competent. Did he write the letter?

A. No, I assisted in the preparation of it.

Q. Mr. Dark, although that letter is over the signature of Dr. Craig Philips have you indicated you did write it?

A. Well, I did not write it. I had a part in its preparation.

Q. Do you agree with the analysis of Dr. Craig Philips as set forth herein as it relates to the availability of buses and financing for them?

Mr. Chambers: Objection.

[138] A. Yes, I do with one clarification. The availability of buses . . .

Court: The question is, Mr. Dark, do you know the facts in the letter, whatever they are?

A. Yes, I do.

Court: Use the letter to refresh your memory and go ahead and testify.

Q. The letter says there are 75 at a maximum, at the very outside, 75 buses can be made available. If you agree with that statement, please do so, if you do, and explain why.

A. I agree. That is the largest number that we felt like that could be made available to Mecklenburg County until a new contract was let and a new order for buses placed.

D. J. Dark—for Defendant—Direct

Q. When is the earliest time that a new contract can be let? A. We hope that one can be let by March 27.

Q. After a new contract is let and an order is placed for buses, from your experience stemming from the past how long does it take to obtain a bus from a manufacturer after it's once ordered? A. Approximately six to seven months. This means that if conditions are favorable. If conditions are unfavorable it will take longer.

Q. Is there currently any unusual strain on the bus manufacturers as far as the amount of orders they are receiving? A. The usual rush period is from approximately March through September. At this time most manufacturers have as many [139] orders as they can fill during that period. The reason for this rush period, school administrators are purchasing buses. So to have them delivered prior to the opening of school, many orders have already been placed.

Q. The testimony has indicated that under the board's plan 104 buses will be required. How long would it take to fulfill the need for those 104 buses? A. I would say they could be delivered by October or November, in the fall.

Q. Under Dr. Finger's plan 297 buses are required . . .

Mr. Chambers: Objection.

Q. . . . purely on the basis that State law busing is provided and confined to that, how long would that take?

Mr. Chambers: Objection, Your Honor.

Court: Overruled.

A. That number could be delivered in about the same length of time.

D. J. Dark—for Defendant—Direct

Q. And you state that 75 buses is the maximum number that can now be made available to this system? A. That are in possession of the State Board of Education.

Mr. Horack: This is a letter, Your Honor, it's Defendant's Exhibit #9, a letter from the Supervisor of Purchases to the Charlotte-Mecklenburg Board of Education, of which you do not have a copy, Mr. Chambers.

【140】 Q. Please read that letter and tell me whether you agree with the statement set forth therein. A. This letter is addressed to the Charlotte-Mecklenburg Board of Education, Post Office Box 149, Charlotte, North Carolina, Attention: Mr. J. R. Cameron. Gentlemen:

Mr. Chambers: I object to the reading of this letter. There is no foundation that Mr. Dark had any connection in the preparation of it.

Court: The letter is from whom?

A. This letter, Your Honor, is from Mr. A. W. Allers. He's Purchasing Agent, an Assistant Purchasing Agent for purchasing contracts.

Court: Objection is sustained.

Mr. Horack: That's all, Your Honor.

Mr. Chambers: Your Honor, I know the Court wants to leave but we would certainly have some examination of Mr. Dark. My understanding of the testimony presently is that it's concerned with purchasing new buses and we would like to examine him

D. J. Dark—for Defendant—Cross

relative not only to the new buses and present availability, but . . .

Court: Go ahead and examine him. I said a while ago I was going to take his testimony.

Cross Examination by Mr. Chambers:

Q. Mr. Dark, is there a distribution center for buses in the [141] State of North Carolina? A. Usually there are one or two distribution centers, depending on the number of manufacturers who are awarded contracts.

Q. Does the State Board of Education itself maintain a distribution center? A. No.

Q. Is there a center in Winston-Salem, North Carolina? A. This center is maintained by Wayne-Devco Corporation from Richmond, Indiana.

Q. Does the State have anything to do with it? A. Yes, it's on the State, well, it's on the Winston-Salem-Forsyth County school bus garage.

Q. And isn't it under your supervision as Director of Transportation for the State of North Carolina? A. After the buses are delivered to us, it becomes under our supervision, yes.

Q. Aren't there some buses there right now? A. Yes, there are some there.

Q. Tell the Court how many buses are there right now. A. There are approximately eighty buses there.

Q. Where is the other center for distribution in the State? A. At the present time?

Q. Yes, sir. A. Perley A. Thomas Car Works.

Q. Where is that? [142] A. High Point, North Carolina.

Q. Is that directly under your supervision also? A. That's under the Perley A. Thomas Car Works' supervision. However, they build buses for the State of North

D. J. Dark—for Defendant—Cross

Carolina and turned over to the State Board of Education.

Q. Don't you have some there right now, Mr. Dark? A. Yes, we do.

Q. Tell the Court how many you have there. A. I'm not sure how many is at High Point. I can tell you the total number that we have in North Carolina.

Q. What's the total number? A. At the present time on hand we have 412 buses.

Q. The other center I believe is in Wilson, isn't it? A. No center in Wilson. At the present time we have a few buses parked in Nashville, North Carolina.

Q. That's the eastern district distribution center. A. It is at the present time, but it could be in Salisbury, it could be in Wilson. At the present time that isn't a distribution center except at the present time we're storing a few buses there.

Q. What you do is just store these buses around at these areas we just talked about? A. We have for this year, yes.

Q. And you can sell those buses to any school board in the State? A. We could but we're not in a position to.

[143] Q. You can sell them to any school district in the state, can't you? A. Let me explain my answer.

Q. Would you say yes or no and then explain it? A. I don't think it's a yes or no question.

Court: The question is are you free to sell the buses to any local board that can pay for them.

A. Your Honor, we have obligations to a hundred counties in North Carolina.

Court: I think he's trying to find out if you can sell these buses to anybody you take a notion to sell them to.

D. J. Dark—for Defendant—Cross

A. No, sir, they can only be sold to the Boards of Education.

Court: Any Board of Education you choose to sell to, that's the question.

A. That is correct. However, may I substantiate that?

Court: Yes, sir.

A. When we said 75 buses to Charlotte-Mecklenburg, we promised or committed to them 12% of the buses we have on order and they are operating 3% of the buses in North Carolina. It seems that we extended our help there as much as possible. Let me go along further. At the present time there are approximately 10,000 buses in North Carolina in dire need of replacements. These buses that I've told you about have been purchased for replacements. It means that if 75 are sold to [144] Mecklenburg County, the children will have to suffer for lack of replacement buses that ride these other 1087 buse.

Court: How many buses do you buy and sell to county boards a year?

A. We had anticipated approximately 100 for this year.

Court: To all of them?

A. Yes, sir. We have anticipated about that number for next year.

This is an extraordinary situation.

Q. Mr. Dark, what would prevent you from replacing these buses you're talking about replacing in October

D. J. Dark—for Defendant—Cross

when you get the new order? A. We plan to place an order after July 1st. We've spent the money that's available for bus purposes up to July 1st.

Q. You do plan to purchase some more for this coming school year and you say they would be available in October or November, didn't you? A. That is correct.

Q. You've got 400 and some buses and you say some of them you intend to use to replace existing buses. A. That's correct.

Q. What would prevent you from using those buses you have now for Charlotte-Mecklenburg and replacing these other buses in October or November? A. We also have obligations to other counties all over the State who need capital outlay buses just like Mecklenburg County, [145] desegregated schools, and what have you.

Q. Do you have an order for those buses? A. No, but we will have.

Q. You don't have presently? A. Not at the present time.

Q. What do you do with buses that you replace? A. They are priced for sale eventually and sold.

Q. Don't you keep some on hand? A. Yes, we do.

Q. How many of those do you have on hand? A. We have 375.

Q. On hand now? A. On hand.

Q. I believe the State statute permits the Board to purchase a bus to operate or contracting service with some other service, is that correct? A. That is correct.

Q. In other words, Charlotte-Mecklenburg school system could contract with the City Bus Lines to operate buses in the city, could it not? A. It could if it had sufficient funds.

Q. Well, the State would pay the funds, as I understand

D. J. Dark—for Defendant—Cross

it, as long as they satisfied the State requirements. A. The State will pay per capita cost of that amount on the basis of what the cost is to Mecklenburg County to operate [146] their buses.

Q. You're familiar with General Statute 115-189? A. Is that the statute that has to do with contract transportation?

Q. That's right. A. Will you read that all the way through?

Q. Are you also familiar with 115-190, that's also dealing with contract transportation. A. I'm not familiar with all the numbers.

Mr. Waggoner: If he'd show the book to the witness, he could identify them. I can't recall these statutes either.

Mr. Chambers: I don't mind showing him the book.

Q. You're looking at 115-190? A. That's correct. That's the one I was talking about.

Q. It does provide for the State paying for transportation of students whose transportation is contracted?

A. On what basis? Read the whole statute.

Q. You read it. A. I just told you that.

Mr. Horack: Your Honor, I don't think the witness ought to be asked to interpret the general statutes.

Court: What was the question?

Mr. Chambers: I was asking the witness only, Your Honor, what practice the State had followed with [147] respect to contracting bus services.

D. J. Dark—for Defendant—Cross

Court: Objection overruled. What practice does the State follow in contracting bus services?

A. At the present time the State does not contract any transportation and so far as I know very little, if any, is contracted other than Special Education with transit bus companies. A contract as you mentioned in the law there, with the transit bus company or any other company, would be done by local boards of education rather than the State Board of Education and the statute specifies that the local unit could use any State money that it would generally use for the operation of its buses, regular buses. It also specifies that local boards can supplement the amount necessary if they prefer contracts to pay these contracts.

Q. Mr. Dark, the only thing I'm asking is under the present practice of the State wouldn't the local board be able to contract to provide transportation with the City Bus Company where the children would qualify for bus transportation under the State law? A. Under the law, they would.

Q. And their transportation expenses would be paid for by the State of North Carolina. A. Not necessarily in total.

Q. Well, whatever the State would allow for transportation, is that correct? [148] A. Whatever they would cost on a per pupil basis on the regular transportation.

Q. So your agreement with this letter of February 3rd would have to be taken subject to what you have just testified to? Do you recall this letter of February 3, 1970? A. What's your question?

Q. I think you said you agreed that only 75 buses would be available. A. That is correct.

Q. But you also said you had 400 and some buses new

D. J. Dark—for Defendant—Cross

and 400 and some used buses? A. I can qualify that by saying we have obligations to one hundred counties.

Court: Answer the question and then qualify it.

A. Yes.

Court: You've got about 400 new buses and 375 old buses?

A. Yes.

Court: Are those the figures you said?

A. Yes. Could I qualify those? Insofar as the used buses, if they had been in such shape . . . first let say these buses that have been replaced and the ones that I have mentioned that need to be replaced are thirteen and fourteen years old. They have been in service that long. Had they been in such shape that we would have wanted to continue them in operation, we [149] wouldn't have replaced them in the first place, we wouldn't have authorized them being replaced. And your second question is what?

Q. I just wanted to follow that up a little bit. As I recall, the State practice was to take these buses back and doctor them up and then resell them to other groups?

A. They are priced for sale but they are sold as is where they are.

Q. And several groups buy them and use them? A. And recondition them, that's correct.

Mr. Chambers: I have nothing further at this time.

Court: Anything else?

D. J. Dark—for Defendant—Redirect

Redirect Examination by Mr. Horack:

Q. Mr. Dark, are these buses that have been retired and obsolete, why are they obsolete? Don't they include junked buses and you say typically they are about twelve to fourteen years old? A. Yes, they are at least that.

Q. Are these buses suitable for bringing into a system such as Charlotte-Mecklenburg and put into a bus transportation system like ours? A. In my opinion they would not be.

Q. Would we have an assurance that those buses when they're being driven from wherever they are now to Charlotte that they'd make it? **[150]** A. I wouldn't guarantee it.

**Motion for Hearing on Plans for Desegregation of
Charlotte-Mecklenburg Public Schools**

(Filed February 6, 1970)

The Defendants, the Charlotte-Mecklenburg Board of Education and the individual Board members, respectfully move the Court that:

1. Before issuing any Order in response to the Plaintiffs' "Motion for Immediate Desegregation of the Public Schools in Charlotte and Mecklenburg County" (dated January 19, 1970) a hearing be held at a time to be fixed by the Court regarding the "Plan for Desegregation of Schools" filed by the Charlotte-Mecklenburg Board of Education on February 2, 1970, and the Plan filed or to be filed by Dr. John A. Finger, Jr. in response to the December 1, 1969 Order of the Court.

2. At said hearing the Defendants be heard and permitted to introduce evidence relating to the "Board Plan" and the "Finger Plan" and the implementation of these Plans.

3. Dr. John A. Finger, Jr. be present at said hearing and available for examination by the Defendants regarding each of the above-mentioned Plans.

4. In the alternative, if said hearing is not held as requested in this Motion, the Defendants be permitted to tender pertinent evidence regarding the two Plans and related matters.

In support of this Motion the Defendants show the Court that the hearing and evidence referred to herein is necessary for a full explanation and evaluation of each of the two Plans and with reference to the implementation re-

*Motion for Hearing on Plans for Desegregation of
Charlotte-Mecklenburg Public Schools*

quested in the above-mentioned Motion heretofore filed by
the Plaintiffs.

WHEREFORE, the Defendants respectfully pray the Court
that it grant the request of the Defendants as set forth in
the foregoing Motion.

This 4 day of February, 1970.

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Order dated February 5, 1970

On December 2, 1969, this court appointed Dr. John A. Finger, Jr., of Providence, Rhode Island, to study the Charlotte-Mecklenburg school system and advise the court how the schools could be desegregated. The defendant school board, by order of December 1, 1969, had been extended a fourth opportunity to submit a plan if they wished. Dr. Finger went to work; the school staff worked with him; and they have produced some extremely useful information and reports, which will be referred to in this order as the Board plan and the Finger plan.

Hearings on the plans were conducted on February 2 and February 5, 1970.

The Board plan, prepared by the school staff, relies almost entirely on geographic attendance zones, and is tailored to the Board's limiting specifications. It leaves many schools segregated. The Finger plan incorporates most of those parts of the Board plan which achieve desegregation in particular districts by re-zoning; however, the Finger plan goes further and produces desegregation of all the schools in the system.

Taken together, the plans provide adequate supplements to a final desegregation order.

The court would like again to express appreciation to Dr. Finger for the intelligence, resourcefulness and tact with which he has pursued his difficult assignment, and to Dr. William Self, Superintendent of the schools, and to his able staff, for the excellent work done by them in their difficult role of helping prepare one plan to comply with what the court believes the law requires, and simultaneously preparing another plan to suit the majority of the School Board who, at last reckoning, still did not appear to accept the court's order as representing the law of the land.

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The court is also grateful to the Board's outside consultant, Mr. Weil, of Systems Associates, Inc., whose two hundred days of work and whose computer studies formed the building blocks, or points of departure, for much of the work of the others.

Recent appellate court decisions have hammered home the message that sixteen years of "deliberate speed" are long enough to desegregate tax supported schools. On October 29, 1969, in *Alexander v. Holmes County*, 369 U.S. 19, the Supreme Court ordered numerous Deep South school districts to be completely desegregated by January 1, 1970; schools in Atlanta, Miami and parts of Chicago have been ordered totally desegregated; the Supreme Court in January ordered February 1, 1970, desegregation of 300,000 pupils in six Gulf Coast states; the Fourth Circuit Court of Appeals in *Nesbit v. Statesville*, — F.2d. — (December 2, 1969), ordered elimination by January 1, 1970, of the racial characteristics of the last black schools in Durham, Reidsville and Statesville, North Carolina; and in *Whittenberg v. Greenville, South Carolina*, the Fourth Circuit Court of Appeals, in an opinion by Chief Judge Clement F. Haynsworth, Jr., has just last month ordered the desegregation by February 16, 1970, of the 58,000 students in Judge Haynsworth's own home town. Judge Robert Martin of Greenville, pursuant to that mandate, on February 2, 1970, ordered all the Greenville schools to be populated by February 16, 1970, on a basis of 80% white and 20% black.

In the *Greenville* opinion the court said:

"These decisions leave us with no discretion to consider delays in pupil integration until September 1970. Whatever the state of progress in a particular school

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district and whatever the disruption which will be occasioned by the immediate reassignment of teachers and pupils in mid-year, there remains no judicial discretion to postpone immediate implementation of the constitutional principles as announced in *Green v. County School Board of New Kent County*, 391 U.S. 430; *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19 (Oct. 29, 1969); *Carter v. West Feliciana Parish School Bd.*, — U.S. — (Jan. 14, 1970)."

These decisions are binding on the United States District Court for the Western District of North Carolina. Unless that were true, the Constitution would mean whatever might be the temporary notion of whichever one of 340-odd federal judges happened to hear the case. This is a matter of law, not anarchy; of constitutional right, not popular sentiment.

The order which follows is not based upon any requirement of "racial balance." The School Board, after four opportunities and nearly ten months of time, have failed to submit a lawful plan (one which desegregates all the schools). This default on their part leaves the court in the position of being forced to prepare or choose a lawful plan. The fairest way the court knows to deal with this situation was stated clearly in the December 1, 1969 order, as follows:

"In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to

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understand that variations from that norm may be unavoidable.”

THEREFORE, and in accordance with the specific, detailed, numbered guidelines of this court's order of December 1, 1969, IT IS ORDERED:

1. That the defendants discontinue the operation of segregated schools.
2. That the defendants take such action as is necessary to desegregate all the schools—students and faculty.
3. That desegregation of faculty be accomplished, as previously ordered, by assigning faculty (specialized faculty positions excepted) so that the ratio of black and white faculty members of each school shall be approximately the same as the ratio of black and white faculty members throughout the system.
4. That teachers be assigned so that the competence and experience of teachers in formerly or recently black schools will not be inferior to those in the formerly or recently white schools in the system.
5. That no school be operated with an all-black or pre-dominantly black student body.
6. That pupils of all grades be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same proportion of black and white students.
7. That transportation be offered on a uniform non-racial basis to all children whose attendance in any school

Order dated February 5, 1970

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 the cost is not a valid legal reason for continued denial of constitutional rights.

8. That if geographic zones are used in making school assignments, the parts of a zone need not be contiguous.

9. That the defendants ~~maintain a continuing control over the race of children in each school, just as was done for many decades before *Brown v. Board of Education*, and maintain the racial make-up of each school (including any new and any re-opened schools) to prevent any school from becoming racially identifiable.~~

10. That "freedom of choice" or "freedom of transfer" may not be allowed by the Board if the effect of any given transfer or group of transfers is to increase the degree of segregation in the school from which the transfer is requested or in the school to which the transfer is desired.

Order dated February 5, 1970

11. That the Board retain its statutory power and duty to make assignments of pupils for administrative reasons, with or without requests from parents. Administrative transfers shall not be made if the result of such transfers is to restore or increase the degree of segregation in either the transferor or the transferee school.

12. That if transfers are sought on grounds of "hardship," race will not be a valid basis upon which to demonstrate "hardship."

13. That the Board adopt and implement a continuing program, computerized or otherwise, of assigning pupils and teachers during the school year as well as at the start of each year for the conscious purpose of maintaining each school and each faculty in a condition of desegregation.

14. That the defendants report to the court weekly between now and May 15, 1970, reporting progress made in compliance with this order; and that they report thereafter on July 15, August 15, September 15 and November 1, 1970, and on February 1 and May 1, 1971.

15. That the internal operation of each school, and the assignment and management of school employees, of course be conducted on a non-racial, non-discriminatory basis.

16. 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,

Order dated February 5, 1970

Jr., are *illustrations of means or partial means to that end*.¹ 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*.

17. The choice or approval or partial approval of any proposed desegregation plan is subject to all the requirements and restrictions of the preceding sixteen paragraphs, as well as to any later requirements or restrictions set out in this order.

18. Subject to the above, the Board’s pupil assignment plan for senior high school pupils is approved, with one

-
1. The following are exhibits to this order:
 - A. The Board’s map of proposed senior high school attendance zones.
 - B. The Board’s list of proposed senior high school populations.
 - C. The Board’s map of proposed junior high school attendance zones.
 - D. The Board’s list of proposed junior high school populations.
 - E. Dr. Finger’s map of proposed junior high school attendance zones.
 - F. Dr. Finger’s list of proposed junior high school populations.
 - G. The Board’s map of proposed elementary school attendance zones.
 - H. The Board’s list of proposed elementary school populations.
 - I. Dr. Finger’s map of proposed elementary school attendance zones.
 - J. Dr. Finger’s list of proposed elementary school populations.
 - K. Dr. Finger’s list of pairing and grouping of elementary schools and grades.

Order dated February 5, 1970

exception. This exception is that black students, some 300 in number, should be assigned from map grids 294D, 295C, 295D, and 318A, to attend Independence High School.

19. Although the Board junior high school plan is inferior in design and results to Dr. Finger's plan, it is a purely "home grown" product and the court would like to approve it, if it can be brought into compliance with law by desegregating Piedmont Junior High School, and by adding transportation as above indicated, and by increasing the black attendance at several outlying schools. The Board may if it wishes consider (1) re-zoning; (2) two-way transporting of pupils between outlying schools and Piedmont; (3) closing Piedmont and assigning the pupils to Albemarle Road, Carmel, McClintock and Quail Hollow. Unless the court has been notified in writing by noon of February 6, 1970, of an affirmative decision adopting one of these choices by formal Board action, the junior high schools are directed to be desegregated according to Dr. Finger's plan, as illustrated by exhibits E and F.

20. The Board's plan for elementary schools, illustrated by exhibits G and H, cannot be approved because (1) it retains nine schools 83% to 100% black, serving over half the black elementary pupils, and (2) it leaves approximately half the 31,500 white elementary students attending schools that are 86% to 100% white; and (3) it promises to provide little or no transportation in aid of desegregation, even though the plan's zones in some cases are apparently five or six miles long. The Board plan for elementaries openly rejects the duty to eliminate all the black schools.

The Finger plan uses many of the same basic attendance lines as the Board plan; however, it does not stop short of

ERRATA

Order dated February 5, 1970

the constitutional requirements, and by pairing and clustering groups of schools it achieves full desegregation of the elementary schools. The school staff worked out the details of this plan and are familiar with it. Its attendance zones are illustrated on the map, exhibit I; its elementary school populations are listed in exhibit J; and the pairing and grouping of the outlying and inner-city schools, grade by grade, are shown in detail on exhibit K. Subject to the qualifications previously stated, the Board is directed to follow the Finger plan with reference to elementary schools.

21. **THE TIME TABLE:** Deadlines to complete various phases of the program required in this order are as follows:

SENIOR HIGH SCHOOLS.—Seniors may remain in their present schools until the end of the school year; the Board may make any decision they deem wise about allowing seniors to transfer before graduation to schools where their race will be in the minority. *Eleventh and tenth graders* will be transferred to their new schools not later than the 4th day of May, 1970.

JUNIOR HIGH SCHOOLS (Grades 7, 8, 9).—Complete desegregation shall be accomplished not later than the 1st day of April, 1970.

ELEMENTARY SCHOOLS (Grades 1-6).—Complete desegregation shall be accomplished not later than the 1st day of April, 1970.

FACULTY.—Complete desegregation of the various faculties shall be accomplished by the various times set out above for desegregation of the student bodies.

Order dated February 5, 1970

22. MODIFICATIONS.—The intention of this order is to put on the Board the full duty to bring the schools into compliance with the Constitution as above outlined, but to leave maximum discretion in the Board to choose methods that will accomplish the required result. However, it is directed that leave of court be obtained before making any material departure from any specific requirement set out herein. The court will undertake to rule promptly on any such requests for deviation from prescribed methods.

23. APPEAL.—The court claims no infallibility and does not seek to prevent appeal from all or any part of this order, and will allow the making of any record needed to present on appeal any contention the parties desire to make, and will do what this court can to expedite such appeal. However, in accordance with *Whittenberg v. Greenville, supra*, this order will not be stayed pending appeal, and immediate steps to begin compliance are directed.

24. All evidence in the cause and all findings and conclusions in previous orders which support or tend to support this order are relied upon in support of this order.

25. Jurisdiction of this cause is retained for further orders.

This the 5th day of February, 1970.

James B. McMillan
United States District Judge

Order dated February 5, 1970

the constitutional requirements, and by pairing and clustering groups of schools it achieves full desegregation of the elementary schools. The school staff worked out the details of this plan and are familiar with it. Its attendance zones are illustrated on the map, exhibit I; its elementary school populations are listed in exhibit J; and the pairing and grouping of the outlying and inner-city schools, grade by grade, are shown in detail on exhibit K. Subject to the qualifications previously stated, the Board is directed to follow the Finger plan with reference to elementary schools.

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FACULTY.—Complete desegregation of the various faculties shall be accomplished by the various times set out above for desegregation of the student bodies.

22. MODIFICATIONS.—The intention of this order is to put on the Board the full duty to bring the schools into compliance with the Constitution as above outlined, but to leave maximum discretion in the Board to choose methods that will accomplish the required result. However, it is directed

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Exhibit B

Senior High Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
East Mecklenburg	1700	2040	215	1925	2140	10%	360	1716	2076	17%
Garinger	1874	2249	492	2148	2640	18%	721	1914	2635	27%
Harding	1202	1442	612	720	1332	45%	395	692	1087	36%
Independence	1047	1256	101	1111	1212	9%	23	1241	1264	2%
Myers Park	1679	2015	224	1767	1991	12%	426	1883	2309	18%
North Mecklenburg	1158	1390	446	1185	1631	28%	440	998	1438	31%
Olympic	807	968	351	512	863	41%	201	687	888	23%
South Mecklenburg	1523	1828	90	2024	2114	5%	482	1846	2328	21%
West Charlotte	1593	1912	1641	0	1641	100%	597	1045	1642	36%
West Mecklenburg	1374	1649	141	1444	1585	9%	494	998	1492	33%
Total	13,957	16,749	4,313	12,836	17,149		4,139	13,020	17,159	

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DESEGREGATION PLAN for 1970-71

Junior High Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Road	948	1138	63	995	1058	5%	19	753	772	2%
Alexander	874	1049	328	761	1089	30%	303	698	1001	30%
Cochrane	1190	1428	72	1544	1616	5%	571	1150	1721	33%
Coulwood	704	845	101	770	871	12%	313	551	864	36%
Eastway	1093	1312	61	1356	1417	4%	375	971	1346	28%
Alexander Graham	996	1194	101	1028	1129	8%	261	888	1149	23%
Hawthorne	850	910	550	472	1022	54%	276	704	980	28%
Kennedy	801	961	802	9	811	99%	325	510	835	39%
McClintock	923	1100	84	1288	1372	6%	25	1048	1073	2%
Northwest	1068	1282	1032	1	1033		296	675	971	30%
Piedmont	631	757	408	55	463	89%	758	84	842	90%
Quail Hollow	1238	1486	129	1421	1550	9%	138	1144	1282	11%
Randolph	972	1170	279	710	989	28%	307	683	990	31%
Ranson	851	1021	246	548	794	31%	295	558	853	35%
Sedgefield	777	930	167	809	976	17%	234	612	846	28%
Smith	1093	1312	51	1436	1487	4%	330	957	1287	26%
Spaugh	826	1091	262	839	1101	24%	346	752	1098	32%
Williams	801	967	1081	0	1081	100%	336	722	1058	32%
Wilson	1044	1253	60	1145	1205	5%	346	795	1141	30%
Carmel	558	670					2	555	557	0%
J. H. Gunn (Wilgrove)	558	670					49	470	519	9%
Total	18,796	22,546	5,877	15,187	21,064		5,905	15,280	21,185	

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Exhibit F

DESEGREGATION PLAN for Charlotte-Mecklenburg Schools
Junior High Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Road	948	1136	63	995	1058	5%	292	696	988	30%
Alexander	874	1049	328	761	1089	30%	335	690	1025	33%
Cochrane	1190	1423	72	1544	1616	5%	370	964	1354	27%
Coulwood	704	845	101	770	971	12%	245	566	813	30%
Eastway	1093	1312	61	1356	1417	4%	351	839	1190	30%
Alexander Graham	996	1194	101	1028	1129	8%	359	938	1297	28%
Hawthorne	850	910	550	472	1022	54%	290	677	967	30%
Kennedy	801	961	802	9	811	99%	184	606	790	23%
McClintock	923	1100	84	1288	1372	6%	386	925	1311	30%
Northwest	1068	1282	1032	1	1033		336	736	1072	31%
Piedmont	631	757	408	55	463	89%	243	538	781	32%
Quail Hollow	1238	1486	129	1421	1550	9%	339	1050	1389	25%
Randolph	972	1170	279	710	989	28%	402	832	1234	33%
Ranson	851	1021	246	548	794	31%	264	583	847	31%
Sedgefield	777	930	167	809	976	17%	171	641	812	21%
Smith	1093	1312	51	1436	1487	4%	350	929	1279	27%
Spaugh	826	1091	262	839	1101	24%	324	807	1131	29%
Williams	801	967	1081	0	1081	100%	308	727	1035	30%
Wilson	1044	1253	60	1145	1205	5%	230	570	800	29%
Carmel	558	670					142	444	566	24%
J. H. Gunn	558	670					49	475	524	9%
Total	18,796	22,546	5,877	15,187	21,064		5,970	15,255	21,225	

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School	1970-71 Capacity		1969-70 *				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
	Albemarle Rd.	432	484	4	510	514	1%	4	469	473
Allenbrook	540	605	61	452	513	12%	59	496	555	11%
Ashley Park	621	696	27	574	601	4%	155	421	576	27%
Bain	702	786	33	735	768	4%	25	706	731	3%
Barringer	486	544	843	16	859	98%	203	320	523	39%
Berryhill	836	936	98	639	737	13%	247	574	821	30%
Beverly Woods	540	605	68	684	752	9%	8	648	656	1%
Billingsville	594	665	596	0	596	100%	113	325	438	26%
Briarwood	540	605	6	680	686	1%	2	663	665	0%
Bruns Ave.	675	756	759	10	769	99%	624	73	697	90%
Chantilly	432	484	0	472	472	0%	142	303	445	32%
Clear Creek	324	363	48	229	277	17%	43	266	309	14%
Collinswood	621	696	111	443	554	20%	224	448	672	33%
Cornelius	459	514	181	235	416	44%	182	265	447	41%
Gotswold	540	605	23	537	560	4%	128	449	577	24%
Davidson	324	363	104	186	290	36%	102	174	276	32%
Marie Davis	756	847	662	0	662	100%	666	82	748	88%
Derita	783	877	150	678	828	18%	152	595	747	20%
Devonshire	648	726	0	903	903	0%	0	925	925	0%
Dilworth	648	726	90	317	407	22%	241	376	617	39%
Double Oaks	675	756	836	0	836	100%	825	3	828	100%
Druid Hills	486	544	472	3	475	99%	465	20	485	96%
Eastover	648	726	42	559	601	7%	157	478	635	25%
Elizabeth	405	454	314	125	439	72%	112	294	406	28%
Enderly Park	513	575	3	371	374	1%	119	238	357	33%

* Not including Special Education in self-contained classes

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DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
First Ward	702	786	805	0	805	100%	770	7	777	99%
Hickory Grove	459	514	70	533	603	12%	74	556	630	12%
Hidden Valley	648	726	0	1100	1100	0%	1	1077	1078	0%
Highland	297	333	69	305	374	18%	76	237	313	24%
Hoskins	297	333	13	212	225	6%	124	219	343	36%
Huntersville	675	756	145	531	676	21%	130	554	684	19%
Huntingtowne Farms	594	665	7	603	610	1%	3	614	617	0%
Idlewild	567	635	47	581	628	7%	59	549	608	10%
Irwin Ave.			292	0	292	100%	*			
Amay James	378	423	462	3	465	99%	90	169	259	35%
Lakeview	378	423	346	89	435	80%	119	285	404	29%
Lansdowne	756	847	75	802	877	9%	79	719	798	10%
Lincoln Heights	648	726	711	0	711	100%	903	6	909	99%
Long Creek	702	786	267	468	735	36%	259	523	782	33%
Matthews	945	1058	86	802	888	10%	81	837	918	9%
Merry Oaks	486	544	0	442	442	0%	0	557	557	0%
Midwood	459	514	9	437	446	2%	116	401	517	23%
Montclair	675	756	0	718	718	0%	1	781	782	0%
Myers Park	432	484	22	444	466	5%	150	314	464	32%
Nations Ford	621	696	43	669	712	6%	177	548	725	24%
Newell	594	665	74	438	512	14%	64	436	500	13%
Oakdale	540	605	69	517	586	12%	202	460	662	31%
Oakhurst	594	665	5	616	621	1%	92	504	596	15%
Oaklawn	594	665	584	0	584	100%	597	3	600	99%
Olde Providence	540	605	80	512	592	14%	83	461	544	15%

*distributed to surrounding schools

833a

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
Park Road	540	605	44	548	592	7%	41	571	612	7%
Paw Creek	594	665	27	609	636	4%	83	602	685	12%
Paw Creek Annex	270	302	30	271	301	10%				
Pineville	486	544	136	356	492	28%	123	379	502	25%
Pinewood	648	726	0	674	674	0%	0	900	900	0%
Plaza Road	459	514	80	340	420	19%	181	350	531	34%
Rama Road	648	726	1	815	816	0%	3	744	747	0%
Sedgefield	540	605	3	548	551	1%	223	364	587	38%
Selwyn	486	544	31	617	648	5%	32	459	491	7%
Shamrock Gardens	486	544	0	515	515	0%	84	496	580	15%
Sharon	459	514	72	361	433	17%	91	421	512	18%
Starmount	648	726	25	712	737	3%	67	833	900	7%
Statesville Road	648	726	333	522	855	39%	160	553	713	23%
Steele Creek	378	423	5	509	514	1%	195	475	670	29%
Thomasboro	729	816	0	690	690	0%	135	777	912	15%
Tryon Hills	486	544	309	164	473	65%	200	342	542	37%
Tuckaseegee	540	605	58	578	636	9%	57	510	567	10%
University Park	648	726	825	1	826	100%	735	132	867	85%
Villa Heights	810	907	902	83	985	92%	877	170	1047	83%
Westerly Hills	405	454	46	539	585	8%	144	332	476	30%
Wilmore	378	423	222	210	432	51%	153	250	403	38%
Windsor Park	648	726	1	748	749	0%	1	782	783	0%
Winterfield	648	726	48	688	736	7%	52	653	705	7%
Total	40,391	45,239	13,010	31,278	44,288		12,885	31,523	44,408	

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DESEGREGATION PLAN for Charlotte-Mecklenburg Schools

Elementary Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Rd.	432	434	4	510	514	1%	162	338	500	32%
Allenbrook	540	605	61	452	513	12%	135	341	476	23%
Ashley Park	621	696	27	574	601	4%	175	426	601	29%
Bain	702	786	33	735	768	4%	25	706	731	3%
Barringer	486	544	843	16	859	98%	203	320	523	39%
Berryhill	836	936	93	639	737	13%	247	574	821	30%
Beverly Woods	540	605	68	684	752	9%	186	446	632	29%
Billingsville	594	665	596	0	596	100%	113	325	438	26%
Briarwood	540	605	6	680	686	1%	256	479	735	35%
Bruns Avenue	675	756	759	10	769	99%	252	540	792	32%
Chantilly	432	484	0	472	472	0%	142	333	475	30%
Clear Creek	324	363	48	229	277	17%	43	266	309	14%
Collinswood	621	696	111	443	554	20%	224	406	630	36%
Cornelius	458	514	181	235	416	44%	182	265	447	41%
Cotswold	540	605	23	537	560	4%	128	404	532	24%
Davidson	324	363	104	136	290	36%	102	174	276	32%
Marie Davis	756	847	662	0	662	100%	193	532	725	27%
Derita	783	877	150	678	828	18%	167	625	792	21%
Devonshire	643	726	0	903	903	0%	333	624	957	35%
Dilworth	648	726	90	317	407	22%	241	376	617	39%
Double Oaks	675	756	836	0	836	100%	234	496	730	32%
Druid Hills	486	544	472	3	475	99%	158	303	461	34%
Eastover	648	726	42	559	601	7%	157	445	602	26%
Elizabeth	405	454	314	125	439	72%	132	304	436	30%
Enderly Park	513	575	3	371	374	1%	150	270	420	36%

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DESEGREGATION PLAN for Charlotte-Mecklenburg Schools

Elementary Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
First Ward	702	756	805	0	805	100%	265	686	951	28%
Hickory Grove	459	514	70	533	603	12%	272	439	711	38%
Hidden Valley	643	726	0	1100	1100	0%	310	679	989	31%
Highland	297	333	69	305	374	18%	76	237	313	24%
Hoskins	297	333	13	212	225	6%	139	244	333	26%
Huntersville	675	756	145	531	676	21%	130	554	684	19%
Huntingtowne Farms	594	665	7	503	610	1%	205	414	610	33%
Idlewild	567	635	47	581	628	7%	190	410	600	32%
Irwin Avenue			292	0	292	100%	*			
Anay James	373	423	462	3	465	99%	105	194	299	35%
Lakeview	378	423	346	39	435	90%	139	280	419	33%
Lansdowne	756	847	75	802	877	9%	207	496	703	29%
Lincoln Heights	648	726	711	0	711	100%	241	456	697	35%
Long Creek	702	786	267	468	735	36%	239	523	782	33%
Matthews	945	1058	36	302	880	10%	31	837	913	9%
Merry Oaks	486	544	0	442	442	0%	106	236	342	31%
Midwood	459	514	9	437	446	2%	116	440	562	21%
Montclair	675	756	0	718	718	0%	250	504	784	36%
Myers Park	432	484	22	444	466	5%	150	445	595	25%
Nations Ford	621	696	43	669	712	6%	177	582	759	23%
Newell	594	665	74	438	512	14%	74	546	620	12%
Oakdale	540	605	69	517	586	12%	250	460	710	35%
Oakhurst	594	665	5	616	621	1%	197	534	731	27%
Oaklawn	594	665	584	0	584	100%	226	594	820	28%
Olde Providence	540	605	80	512	592	14%	145	351	496	29%

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* Assigned from area to increase desegregation
 Oakhurst 105B
 Shamrock Gardens 90B
 Thomashoro 95B

DESEGREGATION PLAN (Cont'd)

Elementary Schools

School	197071 Capacity		1969-70							
	Base	+20%	B	W	T	%B	B	W	T	%B
Park Road	540	605	44	548	592	7%	148	359	507	29%
Paw Creek	594	665	27	609	636	4%	160	395	555	29%
Paw Creek Annex	270	302	30	271	301	10%	83	209	292	28%
Pineville	486	544	136	356	492	28%	123	379	502	25%
Pinewood	648	726	0	674	674	0%	283	697	980	29%
Plaza Road	459	514	80	340	420	19%	181	350	531	34%
Rama Road	648	726	1	815	816	0%	273	493	766	36%
Sedgefield	540	605	3	548	551	1%	223	364	587	38%
Selwyn	486	544	31	617	648	5%	150	309	459	33%
Shamrock Gardens	486	544	0	515	515	0%	174	511	685	25%
Sharon	459	514	72	361	433	17%	123	245	368	33%
Starmount	648	726	25	712	737	3%	217	441	658	33%
Statesville Road	648	726	333	522	855	39%	160	553	713	23%
Steele Creek	378	423	5	509	514	1%	195	475	670	29%
Thomasboro	729	816	0	690	690	0%	230	770	1000	23%
Tryon Hills	486	544	309	164	473	65%	107	262	369	29%
Tuckasegee	540	605	58	578	636	9%	119	300	419	28%
University Park	648	726	825	1	826	100%	260	461	721	36%
Villa Heights	810	907	902	83	985	92%	265	668	933	28%
Westerly Hills	405	454	46	539	585	8%	144	332	476	30%
Wilmore	378	423	222	210	432	51%	153	250	403	38%
Windsor Park	648	726	1	748	749	0%	272	561	833	33%
Winterfield	648	726	48	688	736	7%	261	537	798	33%
Total	40,391	45,239	13,010	31,278	44,288		12,964	31,386	44,370	

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ELEMENTARY SCHOOLS TO BE PAIRED

Present School and Count	1 - 4		5 - 6		Total Pupils
	B	W	B	W	
Albemarle Road	2	338	2	174	516
Allenbrook	0	341	0	156	497
Beverly Woods	1	446	1	249	697
Briarwood	4	477	2	220	703
Bruns Avenue	526	0	246	0	772
Marie Davis	431	59	193	26	709
Devonshire	0	624	0	276	900
Double Oaks	585	2	232	0	819
Druid Hills	310	2	158	1	471
First Ward	533	0	262	0	795
Hickory Grove	54	329	16	208	607
Hidden Valley	0	677	0	302	979
Huntingtowne Farms	0	414	0	195	609
Idlewild	0	410	0	163	573
Lansdowne	2	496	1	291	790
Lincoln Heights	456	0	239	0	695
Merry Oaks	0	236	0	119	355
Montclair	0	504	0	217	721
Oaklawn	405	0	193	0	598
Olde Providence	2	351	1	146	500
Park Road	0	300	0	160	460
Paw Creek	16	395	11	214	636
Paw Creek Annex	27	209	3	53	292
Pinewood	0	697	0	346	1043
Rams Road	3	493	0	244	740
Selwyn	0	284	0	188	472
Sharon	0	245	0	117	362
Starmount	19	441	6	278	554
Tryon Hills	218	110	91	54	473
Tuckaseegee	49	300	19	171	539
University Park	550	0	260	0	810
Villa Heights	683	114	264	48	1109
Windsor Park	0	515	1	233	749
Winterfield	0	494	0	199	693
Total	4,876	10,303	2,201	4,998	22,378

Exhibit K.

The Charlotte-Mecklenburg Schools

ELEMENTARY SCHOOLS PAIRED

Grade 1-4					Grade 5-6			
<u>Schools</u>	B	W	T	%	<u>Schools</u>	B	W	T
Huntingtowne Farms Sharon Starmount	545	1100	1645	33	Bruns Avenue	252	540	792
Park Road Pinewood	431	1056	1487	29	Marie Davis	193	532	725
Briarwood Devonshire	589	1103	1692	35	Double Oaks	234	496	730
Hidden Valley	310	679	989	31	Druid Hills	158	303	461
Beverly Woods Lansdowne Olde Providence	538	1293	1831	29	First Ward	265	606	951
Albemarle Road Idlewild Merry Oaks	458	984	1442	32	Lincoln Heights	241	456	697
Allenbrook Paw Creek Paw Creek Annex Tuckaseegee	497	1245	1742	29	Oaklawn	226	594	820
Hickory Grove	272	439	711	38	Tryon Hills	107	262	369
Montclair Rama Road	553	997	1550	36	University Park	260	461	721
Selwyn Windsor Park Winterfield	683	1407	2090	33	Villa Heights	265	668	933
Total	4,876	10,303	15,179			2,201	4,998	7,199

**Motion to Add Additional Parties Defendant
and for Further Relief**

(Filed February 13, 1970)

On February 5, 1970, this Court entered an order directing the Charlotte-Mecklenburg Board of Education and the individual members of the Board to proceed immediately to desegregate the public schools of Charlotte-Mecklenburg County. The Court directed that students be assigned to the various schools under plans presented and adopted by the Board and a plan prepared by the Court's consultant, Dr. John A. Finger. The order provided for changing attendance zones of some schools, pairing of some schools, and transportation of students living beyond "walking distance" from the schools to which assigned. The order further directed that the plan be implemented for elementary schools no later than April 1, 1970 and for secondary schools no later than May 4, 1970. The School Board was specifically directed to begin immediately with steps to implement the plan.

Prior to the filing of the order on February 5, 1970, Tom B. Harris, G. Don Roberson, A. Breece Breland, James M. Postell, William E. Rorie, Jr., Chalmers R. Carr, and Robert T. Wilson, on their behalf and on the behalf of the Concerned Parents Association, an unincorporated association, brought a proceeding in the Superior Court of Mecklenburg County, by their attorney, William H. Booe, to obstruct and prevent the School Board from implementing the orders directed by this Court. They obtained from the Superior Court of Mecklenburg County an *ex parte* order specifically enjoining the Superintendent from implementing the order of this Court directing the Board to pay the expenses and fees of the Court consultant.

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Following the order of February 5, 1970, Tom B. Harris, G. Don Roberson and others of the Concerned Parents Association have sought and are seeking by various means to obstruct and prevent implementation of the Court's orders. On February 12, 1970, they obtained from the Honorable William K. McLean, Judge Presiding in the Superior Court of Mecklenburg County, an order enjoining the School Board from spending any funds to purchase and operate school buses as directed by this Court.

The Honorable Robert H. Scott, Governor of the State of North Carolina, on February 11 and 12, 1970, objected to the Court's order and directed that no public funds, state or local, be expended for the purpose of implementing the order. The Honorable Dr. A. Craig Phillips, State Superintendent of Public Instruction, and the North Carolina State Board of Education, defendants herein, joined with the Governor in objecting to the Court's order and in directing that no public funds be used for the purpose of implementing the order.

On February 6, 1970, Honorable James Carson, a member of the Mecklenburg Delegation to the North Carolina House of Representatives, threatened to and is preparing to file similar proceedings in the State Court of North Carolina to obstruct and thwart the enforcement of the Court's orders.

These parties, along with divers others, are seeking to obstruct and prevent implementation of the Court's orders directing compliance by the school authorities with their constitutional obligations.

Despite the Court's directive to the School Board to proceed forthwith with all necessary steps to implement the order, the School Board, the State Superintendent and the

*Motion to Add Additional Parties Defendant and
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State Board of Education have failed to do so. Plaintiffs are advised that no efforts have been made to secure the necessary buses for transporting students as directed by the Court. Plaintiffs are also advised that such buses as may be necessary can be ordered and manufactured by the time directed by the Court for implementation of the plan. The failure of the School Board to act now in securing the necessary facilities for transportation may prevent desegregation of the schools in the time directed.

Plaintiffs are advised, believe and so allege that the activities and conduct of the defendants and each of them are pursuant to a design to thwart, impede and prevent desegregation of the public schools of Charlotte-Mecklenburg County and that the acts, activities and conduct of the defendants were calculated and intended to incite disobedience of the law and the overthrow of law and order and to coerce, intimidate, and compel school officials from performance of their constitutional responsibilities to desegregate the public schools of this system.

In order to insure full implementation of the Court's order within the time directed, plaintiffs, by their undersigned counsel, respectfully move the Court that the following parties be added as parties-defendant in this proceeding:

Honorable Robert H. Scott, Governor of the State of North Carolina;

Honorable A. C. Davis, Controller of the State Department of Public Instruction;

Honorable William K. McLean, Judge of the Superior Court of Mecklenburg County;

Tom B. Harris, G. Don Roberson, A. Breece Breland, James M. Postell, William E. Rorie, Jr., Chalmers R. Carr,

*Motion to Add Additional Parties Defendant and
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Robert T. Wilson, and the Concerned Parents Association,
an unincorporated association in the Mecklenburg County;
James Carson and William H. Booe.

Plaintiffs further pray the Court for a temporary and permanent injunction dissolving the injunctive orders of the Superior Court of Mecklenburg County entered in the proceeding of Tom B. Harris, et al. v. William C. Self, et al., 70 CVS 1097, and temporarily and permanently restrain any further proceedings in the action.

Plaintiffs further pray the Court for a temporary and permanent injunction against all defendants and all other parties having notice of the Court's order enjoining all parties in this action and all parties having notice of the orders of this Court from initiating or proceeding with any action in any State Court which has the purpose or effect of interfering with outstanding orders in this cause.

Plaintiffs further pray that the Court enter a temporary and permanent injunction restraining the Governor, the State Board of Education, the Controller of the State Department of Public Instruction, and the State Superintendent of Public Instruction from denying State funds or taking any other steps which would prevent or tend to prevent the implementation of the orders of this Court.

Plaintiffs further pray the Court for a temporary and permanent injunction directing the local Board of Education, its members individually, the Governor of the State, the State Board of Education, the State Superintendent of Public Instruction and all other persons having an authority or responsibility in the administration of the public schools in Charlotte-Mecklenburg County to proceed forthwith with all necessary steps to implement the orders of

*Motion to Add Additional Parties Defendant and
For Further Relief*

this Court, including the provisions requiring transportation of students living more than “walking distance” from the schools to which they are assigned. Plaintiffs further pray the court for a temporary and permanent injunction restraining all defendants from taking any steps or action which would inhibit or prevent or tend to prevent compliance with the order of this Court.

Plaintiffs further pray the court that they be allowed their costs in this proceeding and reasonable counsel fees.

Plaintiffs further pray that the court direct the United States Marshal to personally serve a copy of the complaint, the amended complaint, and all orders, including the injunctive order prayed for herein, upon all defendants named herein.

Respectfully submitted,

CONRAD O. PEARSON
203½ East Chapel Hill Street
Durham, North Carolina

CHAMBERS, STEIN, FERGUSON &
LANNING
216 West 10th Street
Charlotte, North Carolina

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
10 Columbus Circle
New York, New York 10019

**Notification and Request for Designation of
Three-Judge Court**

(Filed February 20, 1970)

Several orders, starting April 23, 1969, have been entered by this court dealing with pending motions for desegregation of the Charlotte-Mecklenburg schools. The orders of December 1 and December 2, 1969, and February 5, 1970, are attached as Exhibits A, B and C to this motion.

The December 2, 1969 order appointed Dr. John A. Finger, Jr. to assist the court in the preparation of a plan for the desegregation of the schools. The February 5, 1970 order directs the schools to be desegregated according to various principles described or referred to in the order, including the requirement erroneously advertised as "involuntary bussing to achieve racial balance" which reads as follows:

"That transportation be offered on a uniform non-racial basis to all children whose attendance in 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."

A suit has been filed in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, No. 70-CVS-1097, entitled "TOM B. HARRIS, G. DON ROBERSON, et al., Plaintiffs, vs. WILLIAM C. SELF, Superintendent of Charlotte-Mecklenburg Schools, and CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Defendants," and pursuant to allegations made in that action, Judge W. K. McLean, of the Superior Court of North Carolina, has entered an order temporarily restraining the School Board

*Notification and Request for Designation of
Three-Judge Court*

and the Superintendent from paying Dr. Finger's bills until they have been approved by the Board of Education, and ordering that "the defendant Charlotte-Mecklenburg Board of Education and its agents, servants and employees be and they hereby are enjoined and restrained from expending any money from tax or other public funds for the purpose of purchasing or renting any motor vehicles, or operating or maintaining such, for the purpose of involuntarily transporting students in the Charlotte-Mecklenburg School System from one school to another and from one district to another district."

The complaint, the amended complaint and the two orders of Judge McLean dated February 12, 1970, are attached hereto as Exhibit D.

The Governor of North Carolina has made a public statement, Exhibit E, and has written a letter to the Department of Administration, Exhibit F.

The State Superintendent of Public Instruction, a party to this case, has made a public statement, Exhibit G.

Reports received from the School Board on February 12, 1970 and February 19, 1970 fail to mention Judge McLean's order, and fail to indicate that the Board have appealed or intend to appeal Judge McLean's order; and these reports also reveal no action by the Board or school staff addressed to the transportation problem. It appears that whether the action of Judge McLean and the other state officials do or do not directly conflict with this court's orders, the practical effect of those actions is or may be to delay or defeat compliance with the orders of this United States Court.

The plaintiffs have filed a motion to make additional parties, and have requested this court to enter orders dis-

*Notification and Request for Designation of
Three-Judge Court*

solving Judge McLean's restraining orders and directing the Governor, the State Department of Instruction and the "Concerned Parents Association" and their attorneys and others not to interfere further with the compliance of the School Board with the orders of this court.

Some of the issues raised by this situation may involve the constitutionality of a state statute and others may be matters cognizable by a single judge.

It appearing to the court that pursuant to Title 28, U.S.C.A., this matter should be heard and determined by a district court of three judges.

Now, THEREFORE, it is respectfully requested that the Chief Judge of the United States Court of Appeals for the Fourth Circuit designate two other judges, at least one of whom shall be a circuit judge, to serve with the undersigned district judge as members of the court to hear and determine the action.

This the 19th day of February, 1970.

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

Tender of Evidence *Nunc Pro Tunc* and Objections

(Filed February 24, 1970)

Defendants, the Charlotte-Mecklenburg Board of Education, and the individual members of the Board of Education, pursuant to the oral statements of the Court during the hearing on February 5, 1970, and pursuant to the order of the Court dated February 5, 1970, hereby tender, nunc pro tunc, evidence which would have been offered by the defendants for the consideration of the Court which was excluded by reason of the time limitations imposed by the Court or by formal rejection of the evidence hereby tendered by rulings of the Court. The evidence tendered is disclosed in the following affidavits:

1. Affidavit of Dr. William C. Self, Superintendent of the Charlotte-Mecklenburg public schools.

2. Affidavit of Mr. J. D. Morgan, Assistant Superintendent of business services of the Charlotte-Mecklenburg public schools.

3. Affidavit of Mr. Louis W. Alexander, Assistant Director of the Division of Transportation of the North Carolina Board of Education.

4. Affidavit of Mr. Herman J. House, Director of Traffic Engineering of the City of Charlotte, North Carolina.

5. Affidavit of Mr. Robert L. Deaton, Assistant General Manager of Charlotte City Coach Lines, Inc.

In addition to the foregoing, the defendants tender pertinent portions of the report and recommendations of the Court appointed consultant, Dr. John A. Finger, which report and recommendations do not appear of record at this

Tender of Evidence Nunc Pro Tunc and Objections

time. Accordingly, these defendants deem it appropriate to tender same as a portion of the record in this cause.

The defendants renew their objection to the refusal of the Court to permit full evidentiary hearings with respect to the two plans presented to the Court and offered into evidence on February 2, 1970, and further object to the refusal of the Court to consider all evidence prior to entry of its order on February 5, 1970.

Respectfully submitted this 24th day of February, 1970.

/s/ WILLIAM J. WAGGONER
WILLIAM J. WAGGONER
WEINSTEIN, WAGGONER, STURGES,
ODOM AND BIGGER
1100 Barringer Office Tower
Charlotte, North Carolina

/s/ BENJ. S. HORACK
BENJ. S. HORACK
ERVIN, HORACK AND McCARTHA
806 East Trade Street
Charlotte, North Carolina

/s/ BROCK BARKLEY
BROCK BARKLEY
Law Building
Charlotte, North Carolina

**Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools**

(Referred to in Foregoing Tender of Evidence)

William C. Self, being duly sworn, deposes and says:

1. I am the Superintendent of the Charlotte-Mecklenburg public schools and am responsible for the administration and operation of the school system.

2. At the hearing conducted on February 5, 1970, I would have testified as follows in the event the Court had permitted more time or had permitted answers to certain questions posed by the School Board attorney. Such testimony would have been as follows.

3. The administrative staff explored the possibility of pairing one or more of the predominantly black schools with neighboring predominantly white schools. This alternative was rejected since such a move would have caused the paired schools to become predominantly black in a short period of time. Pairing of a predominantly black school with an adjoining desegregated school would produce a predominantly black school body in both schools. Many schools in the system have quickly changed from white to black. Since 1954-55 school term, eleven (11) schools have experienced such a turnover. Schools which have changed from all white to predominantly black during this period are Barringer, Bethune, Elizabeth, First Ward, Lakeview, Seversville, Zeb Vance, Villa Heights, Wesley Heights, Hawthorne and Piedmont. These schools or their successors experienced a more rapid shift to predominantly black once their racial ratio reached approximately 35 to 40 per cent black. Any pairing arrangement between contiguous schools would exceed this percentage.

*Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools*

4. The Board of Education plan for further desegregation represents utilization of racially gerrymandered lines to the greatest extent possible in seeking maximum racial balance and at the same time preserve a bare semblance of the neighborhood school concept.

5. Further desegregation of the Charlotte-Mecklenburg public schools should take into account the educational advantages to be gained. As an educator, I cannot justify an abrupt mid-year desegregation move on educational grounds for the amount of disruption, inconvenience, and hardship to the educational processes would nullify such advantages for the vast majority of black and white students. A better procedure would be to schedule the moves near the end of the regular school term. This would allow the school administration to bring one school year to a close and to plan the new operation as if it were the beginning of another school term. Such a move would allow for general orientation of students and teachers to their new surroundings and would also have the effect of relieving uncertainty about next year's school assignment. Such change should not take place earlier than the last two weeks of school which is ample time to complete orientation.

6. As a professional educator, I am quite aware of the fact that opinions of children, parents and the community with reference to an educational program often offer positive or negative contributions to such programs. Their opinions may so affect the educational system that the benefits to be derived from a particular program will be submerged and thereby impaired to the point that the program offers a negative value because of the absence of

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*Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools*

popular support or acceptance. This would apply with equal force to the opinions of parents, students and the community to further desegregation or to the time for implementation thereof. In any event, substantial efforts will be made to gain community acceptance of any action which must be taken.

This the 24th day of February, 1970.

William C. Self

(Sworn to February 24, 1970)

**Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
Public Schools**

(Referred to in Foregoing Tender of Evidence)

J. D. MORGAN, being duly sworn, deposes and says that:

1. I am Assistant Superintendent for Business Services of the Charlotte-Mecklenburg Public Schools, and am responsible for the administration and operation of the school bus transportation system of the Charlotte-Mecklenburg Schools.

2. All statistical data and information attached hereto or referred to herein were prepared by me or under my direct control and supervision, are incorporated as a part of this Affidavit and correctly set forth the facts and estimates to which they refer.

3. I am thoroughly familiar with the bus transportation system for the Charlotte-Mecklenburg Schools as it is presently being operated and with the Board Plan and the Finger Plan for desegregation which were in evidence at the February 5, 1970 hearing and referred to in the Court's Order of the same date. I have made a careful, detailed analysis of both of those Plans and alternate proposals, particularly with reference to their effect upon transportation of students, bus routes and schedules, transportation costs, availability of facilities and related matters.

4. Under North Carolina law and applicable regulations as they apply to the Charlotte-Mecklenburg School System any school child is entitled to free transportation to and from the school he attends if he resides more than 1½ miles

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
Public Schools*

from his school and (a) if he resides in the part of Mecklenburg County located outside the Charlotte city limits as they existed immediately prior to the 1957 annexation or (b) if he resides in the City and attends a school located within that portion of the County. Based on December 1, 1969, records, 22,545 children were being transported pursuant to the State law by a fleet of 267 school buses. In addition, the System is presently furnishing with local funds 13 buses to transport the 738 black students who accepted assignments to outlying white schools when certain inner city schools were closed last year. In the aggregate, the Charlotte-Mecklenburg Schools has a fleet of 280 buses which now transport daily 23,283 students.

5. The Board Plan proposed to provide transportation for those children who are eligible under the present State law. The Finger Plan proposes to provide transportation for all students not within walking distance of their school, regardless of the location of their residence or the schools they attend. The Board has accepted the State standard for walking distance as being less than 1½ miles. Either of the proposed plans for desegregation will require buses and expenditures in *addition* to the 280 buses presently being used to transport 23,283 students. A summary of pertinent data, including the *additional* children, buses and costs which would be required under each desegregation proposal is as follows:

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
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	<i>Board Plan</i>	<i>Finger Plan</i>
No. of Children Bussed	4,935	23,384
No. of Buses	104	526
No. of Trips Daily	104	526
Aver. No. Trips Daily	1	1
Aver. No. Pupils Per Trip	47	44
Aver. No. Miles Daily	30	30
Total Mileage Daily	3,120	15,780
Aver. Per Pupil Cost Annually	\$ 29.29	\$ 31.26
Cost of Buses	\$589,889.56	\$2,947,048.94
Cost of Parking Lots, Etc.	56,200.00	337,400.00
Cost of Operating	175,627.92	888,271.98
Cost of Personnel	42,960.00	177,120.00
	\$864,677.48	\$4,349,840.92
Total Cost		

From the foregoing it will be observed that, compared with existing transportation, the Finger Plan adopted by the Court will double the number of children bussed (an increase from 23,283 to a total of 46,667) and almost triple the number of buses required (an increase from 280 to 806). Supporting details for this summary are shown on attached Schedules Nos. 1 and 2. In each instance the additional requirements tabulated above are based upon the System's experience regarding the number of students who actually use such transportation—rather than the much larger number who are eligible therefor.

6. For the most part, the school buses are driven by high school students recruited by the high school principals and are paid the \$1.60 per hour minimum wage prescribed by

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
Public Schools*

State law for student drivers. Student drivers are presently in very short supply as are also the extra substitute relief drivers which we must have in case of the illness or absence of regular drivers. A student driver parks his bus at his home overnight. In order to minimize unnecessary mileage, wherever possible a student driver is assigned a bus route that begins near his home. On the morning of each school day he starts his student pick ups near his home and continues on his route until he deposits the children at the school served by the route. All buses, by State law, must be routed within a mile of a student's home. In most instances, it is necessary for a bus to be routed off main streets and roads to pick up points less than a mile for two reasons: First, to insure safety in loading and unloading students and secondly, to provide for better traffic safety and flow for the general public. If a bus route is not too long, the driver will be assigned a second route or trip. This trip begins after unloading at the first school so that he can pick up a second load of children for another school. At present, the daily trips per bus providing State transportation average 1.8, reflecting the double use of about four fifths of the buses. If the route distance is too long or requires a long time because of congested or city traffic, a bus may be able to make only one trip. At the end of his morning run the student driver will park his bus and proceed to his high school. After school, the process is repeated in reverse. At present each bus averages about 40.8 miles per day, which includes both the morning and afternoons runs. In order to complete their runs most student drivers miss one instruction period.

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
Public Schools*

7. Bus routes are arranged to make maximum use of the capacity of the buses. However, in spite of our best efforts, sometimes the children on a route destined for a particular school are insufficient in number to utilize the full capacity of a bus. State regulations allow the rated seating capacity of a bus to be exceeded by not more than 25%. When the full capacity of a bus is utilized on a particular route, normally the children on the morning run who cannot get a seat are those who board the bus last. This is normally within a short distance of their school. On the afternoon run at the close of school the same is true in reverse. For the sake of the safety of our children, we try to minimize the need for standing in the aisles—particularly by elementary children. The risk of student injury is substantially increased when the children are required to stand up for long periods or in heavily congested traffic.

8. Due to senior high schedules, length of time required on some routes and point of bus route termination, we are unable to use student drivers. Therefore, we employ some adult drivers who are paid the prescribed minimum wage of \$1.95 per hour. Even greater difficulty is experienced in finding and retaining competent and reliable adult drivers. Because the system is responsible for the welfare of its students (particularly young children and girl students) great care must be exercised in screening candidates and investigating their moral character and past records as well as their driving abilities. Since adult employment is not provided on a full workday basis (but only for the few hours in the morning and afternoon) and because of the low pay, reliable adult drivers are hard to find and keep.

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
Public Schools*

Unlike student drivers who park their buses at school, substantial additional bus mileage is incurred when at the end of a morning or afternoon run adult drivers must return empty buses to the central bus depot until they are picked up for the next run.

9. Both student and adult drivers must obtain a special school bus driver's license. At least five days are required to obtain such a license and to train the prospective drivers for the operation of their buses, instruct them in safety and operating rules and regulations and familiarize them with their bus schedules and routes.

10. Safe, convenient parking areas must be provided for the loading and unloading of bussed children and the parking of these buses during school hours in order that they may be serviced with gas, oil and minor repairs. The Charlotte-Mecklenburg System is already hard pressed to provide such areas. School buses load and unload through a door at the right front of each bus. Safety of children is the key consideration. Parking areas must be arranged so children alighting from or boarding a school bus can do so without being endangered by the movement of other buses or traffic. Attached Schedule No. 3 explains the pertinent considerations, layouts, traffic flow, areas and other matters involved in providing these necessary bus parking areas. Parked school buses are not permitted to block dedicated or public streets and rights of way. Safe ingress and egress must be provided for buses entering and leaving public streets and roads. Bus parking areas should provide sufficient space to allow maintenance and service trucks

*Affidavit of J. D. Morgan, Assistant Superintendent for
Business Services of the Charlotte-Mecklenburg
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to gas and oil the parked buses during school hours. Depending upon the length of the bus route, some buses require servicing every day and some every other day. Because of terrain, limited school sites and similar factors, some schools cannot accommodate bus parking areas. In such situations, parking areas must be purchased or leased or the buses must be taken back to a central bus depot until needed for the next run. Playgrounds cannot be used for bus parking areas without curtailing the physical education program and without likely damage to the parked buses. Attached Schedule No. 1 shows school by school the students to be transported and the buses and parking areas required to provide the additional State law transportation prescribed under the Board Plan and the attached Schedule No. 2 shows the same information under the Finger Plan. In each instance, these schedules show whether the required parking area is presently non existent (N), unsatisfactory (U) or satisfactory (S). Attached Schedule No. 3 documents the costs involved in providing bus parking. Apart from the cost of any needed land acquisitions, a \$56,200 capital outlay will be required to provide *additional* bus parking under the Board Plan and \$337,400 *additional* under the Finger Plan for those schools where bus parking areas are available.

11. Among the 23,384 *additional* students that must be transported under the Finger Plan will be 5,150 white 5th and 6th graders bussed into, and 5,150 black 1st, 2nd, 3rd and 4th graders bussed out of, the center city to eliminate the 9 predominantly black elementary schools which remain under the Board Plan. Also included are the students

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which must be bussed under the Finger Plan to eliminate Piedmont Junior High as a predominantly black school. A careful evaluation has been made of the bus trips and routes which would be required to achieve these objectives of the Finger Plan or any alternate plan which has as its purpose the elimination of these ten predominately black inner city schools. This evaluation reveals that bus trips to and from the center city schools will average 15 miles one way (30 miles round trip) and many of them will require a travel time of $1\frac{1}{4}$ hours one way ($2\frac{1}{2}$ hours round trip). A child involved in $2\frac{1}{2}$ hours daily bus travel will spend 452.5 hours in a school bus during his 181 day school year. Prolonged travel is not only costly in terms of dollars and cents, but in terms of the time expended by children, parents, teachers, principals and other school administrative personnel, which will most definitely affect the instructional programs and the on-going operation of the school system. The transportation of students into and out of the center city will necessarily involve bus routes through the heavily congested parts of the inner city and perimeter areas. From a safety standpoint this is undesirable. Under North Carolina law, traffic going both ways must come to a halt when a school bus stops. The stop-and-go schedules of school buses transporting 23,384 *additional* children will seriously clog the already over burdened city and perimeter thoroughfares.

12. The average 15 mile trip (30 miles per day) into and out of the center city to eliminate these predominantly black schools under the Finger Plan will preclude the use of student drivers, because the trips will be too long and too time-consuming to permit them to operate the buses and main-

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tain their own class schedules at the high schools they attend. As a practical matter, adult drivers will have to be employed to do the job. The estimated operating costs documented in attached Schedules Nos. 1 and 2 are based entirely on the use of student drivers. As indicated above, reliable and competent adult drivers are already in short supply and involve much more empty bus mileage than do student drivers. Even if adult drivers could be found, it is estimated that the operating costs of providing the transportation required by the Finger Plan would exceed the amounts shown on those Schedules by 40% to 60%, mainly because of the increased salaries and the additional mileage that would be required.

13. School buses for the Charlotte-Mecklenburg Schools (as well as those for the other North Carolina school systems) are procured through the State Board of Education's Division of Transportation. Under State law, when an additional bus is purchased it must be paid for entirely with local funds. At present the average cost of a school bus is \$5,387.64, but it is anticipated that there soon will be a significant increase in this figure. Assuming student drivers, the maximum life of a school bus is about 12 to 15 years. If adult drivers are used the life of a bus is much less because of the increased mileage. The wear and tear on a school bus is greater than that of most buses because of the roads they travel, the stop-and-go driving involved in student pickup routes and the hard usage occasioned by the young children they transport. The State pays for replacement buses. When school buses are retired they are either junked or sold at public auction. There is very little,

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if any, use left in a bus that has been retired. The repair and upkeep of such buses is prohibitive and usually they are unfit and unsafe for the transportation of school children.

14. Contingent upon availability of funds, at the present time only 75 additional new buses could be procured from the State and of these, 27 are required as past-due replacements for our existing fleet. If the State has other new buses on hand they have been allocated to some or all of the 99 other North Carolina County school systems which also need overdue replacements. March 27, 1970, is the earliest date that State contracts can be let for the purchase of additional buses. As stated above, 104 additional buses will be required under the Board Plan and 526 under the Finger Plan. Spring and summer is a rush time for bus manufacturers because this is when schools all over the country customarily place their orders for new buses. Under normal conditions it takes about 120 days before the first bus chassis is delivered to the body fabricator and about 45 days thereafter before the completed bus is delivered and ready for use. With the exception of the 75 buses referred to above, the first of the buses needed to provide the transportation required by either of the Plans would not be delivered to our system until the Fall of 1970 and it is expected that an order placed to satisfy the requirements of the Finger Plan would not be completed until the Spring of 1971. In the meantime, we will have a continuing need for replacements.

15. Some suggestion has been made that, in order to meet the proposed demands of the Finger Plan, the

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Charlotte-Mecklenburg Schools could use some or all of the several hundred retired obsolete buses that are stored in various areas of the State pending the arrival of new buses. These old buses are either junk or near junk. On average, they have been used 12 to 15 years and are unserviceable for school purposes or they would not have been declared obsolete and scheduled for replacement in the first place. With coaxing and care some of them can be made to run, but they are totally unsuitable for use to transport school children in a system as large and as complex as ours. Their performance would be completely unreliable—even with maximum attention to repairs and maintenance. They would not hold up under the strain and requirements of the long routes and urban congestion involved in our system. Quite apart from the mechanical unreliability of these resurrected replacements, many of them are unsafe. We cannot afford to put our children on buses which are discards and whose reliability and safety are suspect.

16. We have investigated the possibility of working out contract arrangements with Charlotte's public transit system, Charlotte City Coach lines, Inc., to provide some of the transportation that will be required under the desegregation proposals. City Coach Lines is willing to help the schools in any way it can, but is able to provide only 5 buses to assist any desegregation effort. These buses can carry an average of 65 children each—making a total of 325. This total could be increased to some degree if the schools went on staggered schedules to make greater use of the available equipment.

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17. It is observed that 280 buses are now being used to transport 23,283 school children but that 526 more buses will be required for the *additional* 23,384 pupils who must be transported under the Finger Plan. There are very obvious reasons why this is so. The existing 280 bus fleet now transports the 23,283 predominantly County children on comparatively short runs, allowing many of the buses to serve more than one school by making more than one trip—the buses now averaging about 1.8 trips daily. By way of contrast, the Finger Plan requires massive cross-bussing and satellite bussing to and from the center city and outlying areas. Under the Finger Plan the average one-way run will be about 15 miles (much of it in congested city and suburban traffic) and some of the routes will involve travel time of approximately 1¼ hours—too far and too long to permit the multiple use of buses to serve several schools as is frequently possible under our existing setup. The initial capital expenditure for buses required to implement the Finger Plan could be reduced by 35% to 50% if schedules for the opening and closing of the various schools were staggered. However, as previously noted, this would necessarily require the use of adult drivers—which would increase operational costs by 40% to 60%, due mainly to increased drivers' salaries and additional mileage. The extensive staggered school schedules that would be necessary to minimize the number of buses required under the Finger Plan give rise to many practical problems—causing inconvenience and hardship for children and parents and disruption of school activities. It is anticipated that under any program of staggered school openings and closings (that significantly reduce bus re-

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quirements) some children would have to leave home as early as 6:40 a.m., and others would not get back home until 5:00 p.m.

18. As already observed, the Charlotte-Mecklenburg School System is now operating a complex and costly transportation system as required by State law for about 27% of its total 84,000 students. Under the Court's Finger Plan almost 55% of these students will be bussed daily. This will serve only to compound drastically the burden, expense, hardship, inconvenience, hazards, expenditure of unproductive time and the added administrative problems occasioned by any bussing program. The extra costs of the Finger Plan will make serious inroads upon our ability to finance and maintain quality facilities and instructional programs for our youngsters.

19. The implementation of the Finger Plan presupposes not only the availability of the buses, but also the availability of the funds (either locally or from the State) with which to finance the capital outlay and operational costs occasioned by the *additional* transportation necessary to effect the racial balances that the Plan seeks to achieve. We have no indication that these funds will be forthcoming—either locally or from the State.

20. Neither the Finger Plan nor any other plan which has as its objective the elimination of the predominately black 9 elementary and 1 junior high schools in the center city can be implemented without a massive bussing program. It is unrealistic to assume that any such plan

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can be put into effect during this school year. We do not have the buses and we cannot get them. Even if we had the buses, we have no reasonable prospect of recruiting and training the student and adult drivers to operate them. Even if the buses and drivers were available, we have no prospects of obtaining the necessary financing.

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

(Sworn to July 13, 1970.)

BOARD OF EDUCATION PLAN
CHARLOTTE-MECKLENBURG SCHOOLS

1. Cost of Buses	\$ 589,869.56
2. Cost of Parking Area	56,200.00
3. Cost of Operation	175,027.92
4. Personnel	42,900.00
5. Total Cost First Year	\$ 864,677.48

BOARD OF EDUCATION PLAN
SENIOR HIGH SCHOOL

1. Clerical Outlay		
A. 30 buses @ \$5,037.64		\$151,629.20
B. Equipment		750.00
C. Service Vehicles		
Service Trucks - 2		5,000.00
Gasoline Delivery Trucks - 1		5,000.00
2. Cost Operation		
	Daily	Annual
1. Drivers' Salaries	\$153.90	\$ 27,855.90
2. Gas, oil, grease, anti-freeze	27.90	5,043.90
3. Mechanics' Salaries	33.70	7,004.70
4A. Repair Parts	7.20	1,303.20
4B. Tires and Tubes	-	-
	<u>\$230.40</u>	<u>\$ 41,702.40</u>
TOTAL		
	\$230.40	\$ 41,702.40
Depreciation @ .055 per mile	<u>49.50</u>	<u>8,959.50</u>
GRAND TOTAL	<u>\$279.90</u>	<u>\$ 50,661.90</u>
3. Personnel		
A. Supervisory - 1		\$ 6,200.00
B. Clerical - 1		6,200.00

BOARD OF EDUCATION PLAN
 JUNIOR HIGH SCHOOL

1. Capital Outlay

A. 53 Buses @ \$5,307.04	\$177,752.12
C. Equipment	625.00
D. Service Vehicles	
Service Trucks -	2,500.00
Gasoline Delivery Trucks - 1	3,000.00

2. Cost of Operation

	Per 1/2	Annual
1. Drivers' Salaries	\$165.25	\$ 30,641.45
2A. Gas, oil, grease, anti-freeze	30.65	2,554.65
3. Mechanics Salaries	42.57	7,705.17
4A. Repair Parts	7.52	1,433.32
4B. Tires and Tubes	-	-
TOTAL	\$255.44	\$40,872.64
Depreciation @ .055 per mile	54.45	9,855.45
GRAND TOTAL	\$307.89	\$55,728.09

3. Personnel

A. Supervisory - 1	\$ 8,200.00
B. Clerical - 1	6,120.00

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BOARD OF EDUCATION
ELEMENTARY SCHOOL

1. Capital Outlay		
A. 41 Buses - \$5,097.64		\$200,393.21
B. Equipment		500.00
C. Service Vehicles		
Service Trucks - 2		5,000.00
Gasoline Delivery Trucks - 1		5,000.00
2. Cost of Operation		
	Daily	Annual
1. Drivers' Salaries	\$210.33	\$ 38,063.73
2A Gas, oil, grease, and anti-freeze	33.13	6,901.53
3 Mechanics' Salaries	52.09	9,573.09
4A Repair Parts	9.04	1,731.04
4B Tires and Tubes	-	-
Total	\$314.65	\$ 56,993.28
6. Depreciation @ .055 per mile	<u>27.65</u>	<u>12,244.65</u>
GRAND TOTAL	\$342.53	\$ 69,247.93
3. Personnel		
A. Supervisory - 1		\$ 6,200.00
B. Clerical - 1		6,120.00

ADDITIONAL TRANSPORTATION REQUIRED
 BOARD OF EDUCATION PLAN OF DISCRETION
 SENIOR HIGH SCHOOLS

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SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	COST
East Mecklenburg	273	7	S	
Garinger	78	2	N	\$ 3,400.
Harding			N	
Independence			S	
Myers Park			N	
North Mecklenburg			S	
Olympic			S	
Second Ward				
South Mecklenburg	600	15	U	\$ 6,000.
West Charlotte	53	2	U	\$ 800.
West Mecklenburg	198	5	U	\$ 2,000.
Change in Attendance Areas		10		
Total	1202	41		\$12,200.
Less reduction to prevent duplicate use of school buses		<u>11</u>		
Net number of buses		30		

ADDITIONAL TRANSPORTATION REQUIRED
 BOARD OF EDUCATION PLAN OF DESEGREGATION
 JUNIOR HIGH SCHOOLS

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SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING	COST
Ibemarle Road			S	
Alexander			S	
Cochrane	534	10	U	\$4,000.
Cochrane Randolph	59	1	S	
Doukwood	220	4	S	
Eastway			U	
Alexander Graham			U	
Hawthorne			N	
Irwon Avenue				
McClintock			S	
Northwest			N	
Piedmont			N	
Quail Hollow			S	
Ransom			S	
Sedgfield			N	
Smith	400	8	S	
Spaugh			N	
Williams			N	
Wilson	164	3	U	\$1,200
York Road			N	

Change in Attendance Areas	12	
Total	1388	38
Less reduction to prevent duplicate use of school buses		<u>5</u>
Net number of buses		33

\$5,200.