The original documents are located in Box C42, folder "Presidential Handwriting, 6/10/1976 (1)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

June 10, 1976

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR JEC

SUBJECT: Busing

The President reviewed your memorandum of June 5 on the above subject and made the following notation:

"Please keep for future reference"

cc: Dick Cheney

Attachment:

Jim Cannon's letter of June 5 with blacknotebook containing report by Secretary Coleman dated 6/2/76
Plus Miscellaneous News Clippings on Busing

THE WHITE HOUSE
WASHINGTON

Jim Cannon

Please keep for
future reference.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 2, 1976

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

I regret that I will be unable to attend the meeting scheduled for 3:00 p.m. today to discuss remedies directed toward abolishing racial discrimination in the public schools of the nation.

Previously scheduled appointments in California and Ohio performing duties related to my Department, and campaigning activities requested by the President Ford Committee, prevent my attending this very important meeting to express my concerns. Therefore, for your immediate attention, I am enclosing a short memorandum briefly setting forth considerations of public policy and legal precedents in this difficult area which I know you will examine closely.

Mr. President, although I fully understand the severe time constraints under which you labor, I believe the enclosed memorandum will help you in making your decision. I have also enclosed relevant portions of decisions of the Supreme Court and other courts in which this very issue of scope of remedy in school desegregation cases is painstakingly analyzed.

I am aware that discussions, such as the one you will be having this afternoon, might initiate new approaches to a long-standing difficult problem. The complex, thorny issues of remedy being raised in Boston, Louisville, Wilmington and other school desegregation cases are not new issues, but have been raised and wrestled with by others. Their deliberations as reflected by these opinions may help you in yours. Actually, I feel that District Courts have handled this matter with great restraint and improper intrusion will be counter productive. I urge you to read the memorandum and enclosures.

Respectfully yours,

William T. Coleman, Jr.

Enclosures

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 2, 1976

MEMORANDUM FOR THE PRESIDENT

A proposed statute prohibiting the Federal Courts from granting a remedy broader than the proven violations in a school desegregation case, is, I believe unwise as a matter of sound public policy, is ill-timed and flies in the face of sound legal principles.

I urge you to consider the following:

(1) Nature of the Violation

Racial discrimination in the public schools is constitutionally prohibited by the equal protection clause of the fourteenth amendment. Where plaintiffs prove that a current condition of segregated schooling exists where a dual system was compelled either by statute or by a systematic program of segregation sponsored or aided by official actions, the State has an affirmative duty to eliminate "all vestiges of State-imposed segregation". Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971), and to take whatever steps "necessary to convert to a unitary system in which racial discrimination would be eliminated "root and branch". Green v. County School Board, 391 U.S. 430, 437-438 (1968).

This is the constitutional mandate and equity courts are charged with the responsibility of eliminating the effects of past discrimination and preventing future discrimination. To remedy these effects the district courts are obligated to fashion remedies which are pragmatic and enforceable to accomplish the greatest amount of system-wide desegregation taking into account the practicalities of the situation. (Swann, supra, 402 U.S. at 15-16).

The language in Swann that "(A) an objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process" is not language limiting the broad remedial powers of an equity court, Swann, supra, 402 U.S. 1, 30-31. Considerations of age, health, distance and educational objectives are practical, common sense concerns which should be, and have been, weighed by the courts in exercising their remedial powers.

(2) Nature of the System-wide Remedy

In enforcing the anti-trust laws, as well as in other areas, (e.g., voting rights, labor law) the Federal Courts have, because of practical necessities of enforcement, ranged beyond the narrow area of proven violations and enjoined licit as well as illicit conduct in order to enforce the law. See, e.g., United States v. United Shoe Machinery Corporation, 391 U.S. 244 (1968); United States v. U. S. Gypsum Co., "Acts entirely proper when viewed alone may be prohibited", 340 U.S. 76, 88 (1950; United States v. Bausch & Lomb Optical Co., "Equity has the power to eradicate the evils of a condemned scheme by prohbition of the use of admittedly valid parts of an invalid whole", 321 U.S. 707, 724 (1944).

In applying the above principle to school desegregation cases, the Supreme Court has recognized the duty of Federal Courts to look beyond proven violations in remedying the effects of segregation in the public schools.

> In short, common sense dictates the conclusion that racially inspired school board actions have an impact beyond the particular schools that are the subjects of those actions. Keyes, supra, 413 U.S. 189, 203 (1973).

Further, the High Court has clearly stated in the Denver School Case, that "a finding of illicit intent as to a meaningful portion of the item under consideration has substantial probative value on the question of illicit intent as to the remainder". Keyes, supra, at 208.

The piecemeal approach of trying to cure segregation at only those schools where there is proof of a deliberate policy of segregation and leaving other schools segregated is so impractical as to promise no real reform of segregated situations. In the school desegregation context it is clear that

> Infection at one school infects all schools. To take the most simple example, in a two-school system all blacks at one school means all or almost all whites at the other. U.S. v. Texas Education Agency, 467 F2d 848, 888 (5th cir. 1972) (Wisdom, J. cited by majority in Keyes, supra at 201).

Further, such a limitation on a system-wide remedy is clearly inappropriate where the segregation is part of a policy which inevitably affects all students and schools, white or black, either directly or indirectly.

(3) Piecemeal Approach: Impractical and Ineffective

The proposed statute would place an impossible burden on plaintiffs in school desegregation cases, a burden not shared by plaintiffs in other cases (see paragraph 2) in which equity courts enjoin both legal and illegal actions to remedy violations. The courts have, correctly in my view, rejected the argument that the shares of segregation attributable to public and private action can somehow mystically be divined.

> Respondent argues, however, that a finding of state-imposed segregation as to a substantial portion of the school system can be viewed in isolation from the rest of the district . . . . We do not agree. We have never suggested that plaintiffs in school desegregation cases must bear the burden of proving the elements of de jure segregation as to each and every school or each and every student within the school system (Keyes, 413 U.S. 189, 200 (1973) (emphasis supp.).

This argument favoring a piecemeal approach to what is a system-wide violation of constitutional dimension was made and rejected in the United States Court of Appeals for the First Circuit in the Boston School Case. Morgan v. Kerrigan, 530 F2d 401, 415-419 (1st cir. 1976).

In an opinion written by the Chief Judge on behalf of a unanimous court, Judge Coffin said:

> It is of course the rights of individual students that are in question . . . Even if the Court could reliably determine that 40 percent of a school's segregation was caused by official action and 60 percent by private residential patterns, it could not bifurcate an individual student. The result would inevitably be that some victims of the School Committee's official policy would be forced to continue a segregated education. Morgan v. Kerrigan 530 F2d 401, 419 (1976)

It should also be considered that as a matter of public policy such a statute "requiring a district court to preserve intact every scrap of segregated education that somehow can be separated from governmental causation is to involve the Federal Courts, the Executive, and Congress in planning continued segregation and in perpetuating the community and administrative attitudes and psychological effects which desegregation should assuage". Morgan, supra at 418.

Such a statute would accelerate white flight and will really irritate beyond repair those white students who were caught in such an arbitrary net. Suppose it was proven that twenty blacks had applied for South Boston High and were denied because of race. I assume that South Boston High would then be a school which could be embraced in the court's remedy. But if no black had applied to Boston Latin (the primer High School in Boston) it could not be part of the remedy. Now, of course, the present parents or students would have cause of action against either high school, yet the children of one would be bussed, the other not. This would really cause discontent.

(4) North Carolina Anti-busing Statute

The United States Supreme Court struck down a statute enacted by the North Carolina Legislature which provided that no student shall be assigned to attend any school on account of race or for the purpose of creating a racial balance and further provided that involuntary busing in contravention of the provision was prohibited. North Carolina State Board of Education v. Swann, 402 U.S. 43, 45-46 (1971). The High Court found that the "color blind" requirement of the legislation "would render illusory the promise of Brown" and that the statute would "hamper the ability of local authorities to effectively remedy constitutional violations" and would contravene the implicit command of Green, supra, to take whatever steps necessary to eliminate all vestiges of discrimination in the public schools "root and branch".

ATTACHMENTS

TAB A Morgan v. Kerrigan 530 F.2d 401 (1976) (Boston School Case) pages 415-419

TAB B Keyes v. School District No. 1, Denver, Colorado 413 U.S. 189 (1973) pages 200-213

TAB C North Carolina Board of Education v. Swann 402 U.S. 43 (1971)

TAB D Petitioners' Brief in Keyes pages 71-79

TAB E Rowan article, Washington Star, May 28, 1976