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THE WHITE HOUSE

WASHINGTON

June 8, 1976

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MEMORANDUM FOR: MIKE DUVAL
FROM: DAVE GERGEN *DS*
SUBJECT: Carter vs. Ford on Busing

From the beginning of his campaign, Governor Carter has pointed to "The Atlanta Plan" as a model of how school busing problems should be solved.

In the attached analysis, George Van Cleve shows that the Atlanta plan represented essentially a compromise agreement reached by black and white leaders in that city after protracted legal proceedings.

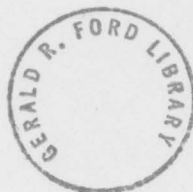
He also argues:

-- Contrary to his campaign assertions, Carter had virtually nothing to do with the development of the plan.

-- While the plan did not require much busing (less than 3 percent of the school population), it also did not achieve much integration (83 of 141 Atlanta schools remained all black; only 8 were desegregated, per Newsweek). To call it an alternative to busing is very misleading. What it really did was give blacks far more administrative positions in the school system-- an advance that local blacks were willing to accept but one that did not please the NAACP.

-- There is some resemblance between the Carter and Ford positions because they both favor community-based efforts to defuse the issue of busing, but the Ford plan now under consideration goes further because it also provides specific guidance to courts in the event that communities can't reach a resolution.

Attachment



June 4, 1976

MEMORANDUM FOR: DAVE GERGEN
FROM: GEORGE VAN CLEVE
SUBJECT: ATLANTA SCHOOL DESEGREGATION PLAN

I. THE ATLANTA PLAN

The "Atlanta Plan" was instituted in 1973 pursuant to a negotiated settlement of a fifteen year long lawsuit brought by black plaintiffs against the Atlanta City School Board. The plan consisted of four major elements:

- (1) Voluntary transfer was to be allowed by any pupil from a school where his race was in the majority to a school where his race was in the minority;
- (2) Faculty and staff were to be moved throughout the system in order to have the faculty/staff racial composition reflect system composition;
- (3) No school was to be less than 30% black; and
- (4) Disputes concerning the administration of the plan were to be handled in the first instance by a biracial Citizens Committee formed at settlement and, if necessary, resolved by the court.

According to Congressional Quarterly, April, 1974, the plan required transportation of some 2,761 students (2000 black, 800 white) out of a total elementary/secondary enrollment of approximately 100,000, and provided that the top school administrative staff would be at least 50% black and that a black school superintendent would be appointed. According to Newsweek, July 30, 1973:

It [the plan] will leave 83 of the city's 141 schools all-black, while increasing the number of desegregated schools by just eight.

When the Atlanta lawsuit began, the Atlanta school system was 70% white and 30% black. By 1973, according to the District Court, the



system was 79% black and 21% white. Total system enrollment dropped by 17,000 (mostly whites) between 1968 and 1973, to approximately 95,000. Atlanta is highly residentially segregated, and it was the opinion of the District Court that given the racial composition of the school population massive busing would be required in order to achieve any substantial integration. The District Court specifically refused to order such busing on the ground that it would cause more white flight. On appeal, the Fifth Circuit Court of Appeals sustained the decision on the condition that any plan decided upon contain the first two elements described above. The NAACP Legal Defense Fund, co-counsel for plaintiffs in the lawsuit, refused to sign the settlement agreement entered into on remand, and unsuccessfully appealed it. The national NAACP suspended the members of the Atlanta NAACP who negotiated the settlement.

Conclusion -- The "Atlanta Plan" is a political compromise worked out by the Atlanta black leadership with the Atlanta School Board when it became evident that the court would not order any significant busing to take place. It is clear that the school system was not integrated in any meaningful way by the plan. The plan does not represent an alternative to busing in the sense that it achieves goals busing would not achieve (see discussion, III infra).

II. Carter Involvement

Carter's current position on busing differs from the position he took while Governor of Georgia. Currently, Carter opposes forced busing, but does not support a constitutional amendment to ban it. He says instead that he supports the Atlanta "voluntary plan." While Governor of Georgia, in 1972, Carter said that if the state legislature did not pass a resolution calling on Congress to call a constitutional convention to consider an antibusing amendment he would support a one-day school boycott (Atlanta Constitution, 2/17/76).

Carter's role in the 1973 settlement remains unclear. He "has claimed nationally that he was active in hammering out Atlanta's school de-segregation plan..." (Atlanta Constitution, 1/15/76). However, all available evidence suggests he had little or nothing to do with it. A lengthy New Yorker analysis (March 17, 1973) of the settlement does not mention his name. Nor does a column about the settlement which appeared in Christian Century (August 29, 1973) or the letter written in response to that column (Christian Century, October 3, 1973). Nor does the Newsweek report on the settlement (July 30, 1973) mention Carter. According to Bill Shipp of the Atlanta Constitution (1/15/76), Carter:



...allocated \$25,000 from the governor's emergency fund to help implement the Atlanta plan. He made a public show of keeping his daughter, Amy, in the public school system. And he did indeed act as an observer. He also issued statement after statement condemning any attempt to stall the negotiations.

The author claimed he had documentation to support these statements. Carter himself said about his role:

What I did, primarily, was let my staff attend and monitor the meetings at which the plan evolved. I issued a public expression of full support for whatever plan would be evolved. I pledged the state's participation in the costs. At a critical stage in the negotiations, I went as Governor to give my reassurance. (Time, 2/2/76)

Time claimed it had received corroboration of Carter's statements.

III. Administration Bill and Atlanta Plan: Some Comparisons

The points of contact between the Atlanta plan and the Administration bill are Sections 105(f) and 203 of the bill, and parts one and four of the plan (discussion, infra). However, the fact that certain possible remedial steps permitted or required of the court by the administration bill resemble remedial steps taken in Atlanta should not be allowed to obscure the fact that the bill specifies when a court may legally order busing in the first place, an issue of critical significance with regard to which the entire Atlanta plan is totally irrelevant. This point might be restated as follows:

The Administration bill will not allow school desegregation (including a busing remedy) unless certain narrowly defined types of acts have been committed. The Atlanta plan is, as it would have to be, silent on what types of acts can trigger desegregation action by a court. Once it is found by the court that illegal acts have been committed:

- (1) The court may not order busing until a Citizens council has been formed and has had the opportunity to formulate a desegregation plan (Section 203). The Atlanta District Court was not legally required to establish such a committee, although it did. The fourth part of the Atlanta plan, arbitration and reporting by the Council, while not required by the bill, could be adopted by any court sua sponte or by the parties;
- (2) The court may require the school district to allow voluntary transfer between schools without regard to other limitations in section 105 (Section 105 (f)). This is, I think, identical to

part one of the Atlanta plan;

- (3) The court may order busing only to the extent required to remove effects of the unlawful acts. The "Atlanta plan", even if written into law by adoption of (1) and (2) above, does not speak to this issue.

The "Atlanta plan" does nothing:

- (1) to define the problem;
- (2) to legally limit court action on the problem; or
- (3) to suggest alternative remedies which might cope with the problem other than those already to be found in the bill.

CONCLUSION

In view of the reasons for and results of the adoption of the Atlanta plan, it is somewhat surprising that (outside of the South) Carter wants to take credit for it. And there is not much evidence supporting his assertion that he deserves the credit. The plan itself does almost nothing to solve the basic problems raised by the busing issue, and everything worthwhile it does do is incorporated in better fashion in the Administration bill.



June 24, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

THE SCHOOL DESEGREGATION STANDARDS
AND ASSISTANCE ACT OF 1976

The President today is sending legislation to Congress to improve the Nation's ability to deal with elementary and secondary public school desegregation.

BACKGROUND

The proposed legislation is the result of an eight-month review of school desegregation. In November, 1975, President Ford directed Attorney General Levi and Secretary Mathews to consider ways to minimize court-ordered busing. The President also stressed the need to assist local school districts in achieving desegregation before court action commenced.

Recently, President Ford has held a series of meetings with outside sources to discuss the recommendation resulting from the review. These meetings have included school board representatives, academic and educational experts, community leaders who have dealt with desegregation on the local level, civil rights leaders, members of Congress, and Cabinet officers.

DESCRIPTION OF THE LEGISLATION

The School Desegregation Standards and Assistance Act of 1976, in order to maintain progress toward the orderly elimination of illegal segregation in our public schools, and to preserve -- or, where appropriate, restore -- community control of schools, would:

1. Require that a court in a desegregation case determine the extent to which acts of unlawful discrimination have caused a greater degree of racial concentration in a school or school system than would have existed in the absence of such acts;
2. Require that busing and other remedies in school desegregation cases be limited to eliminating the degree of student racial concentration caused by proven unlawful acts of discrimination,
3. Require that the utilization of court-ordered busing as a remedy be limited to a specific period of time consistent with the legislation's intent that it be an interim and transitional remedy. In general, this period of time will be no longer than five years where there has been compliance with the court order.

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4. Establish a National Community and Education Committee which will assist, encourage, and facilitate community involvement in the school desegregation process. This Committee will be composed of citizens from a wide range of occupations and backgrounds, with particular emphasis on individuals who have had personal experience in school desegregation activities. Committee members will assist on request communities which are, or will be, engaged in the desegregation of their schools by sharing ideas and recommendations for anticipating and resolving conflicts.

In addition to providing advice and technical assistance, the Committee will be authorized to provide grants to community groups for the development of constructive local participation that will facilitate the desegregation process. The Committee will be composed of not less than 50 nor more than 100 members. Ten of those, appointed by the President for fixed terms, will serve as an Executive Committee and will appoint the balance of the Committee.

PURPOSE OF THE LEGISLATION: LIMITS TO BUSING

The President indicated that where Federal court actions are initiated to deal with public school desegregation, busing as a remedy ought to be the last resort and ought to be limited in scope to correcting the effects of previous violations.

He proposes that Congress join with him in establishing guidelines for the lower Federal Courts in the desegregation of public schools.

The President also indicated his belief that each community should choose the alternative of voluntarily desegregating its public schools.

He proposes the establishment of a committee composed of citizens who have community experience in school desegregation activities and who are willing to assist other communities voluntarily desegregate their schools.

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EMBARGOED FOR RELEASE
UNTIL 11:45 A.M. (EDT)
WEDNESDAY, JUNE 24, 1976

June 24, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I address this message to the Congress, and through the Congress to all Americans, on an issue of profound importance to our domestic tranquility and the future of American education.

Most Americans know this issue as busing -- the use of busing to carry out court-ordered assignment of students to correct illegal segregation in our schools.

In its fullest sense the issue is how we protect the civil rights of all Americans without unduly restricting the individual freedom of any American.

It concerns the responsibility of government to provide quality education, and equality of education, to every American.

It concerns our obligation to eliminate, as swiftly as humanly possible, the occasions of controversy and division from the fulfillment of this responsibility.

At the outset, let me set forth certain principles governing my judgments and my actions.

First, for all of my life I have held strong personal feelings against racial discrimination. I do not believe in a segregated society. We are a people of diverse background, origins and interests but we are still one people -- Americans -- and so must we live.

Second, it is the duty of every President to enforce the law of the land. When I became President, I took an oath to preserve, protect and defend the Constitution of the United States. There must be no misunderstanding about this: I will uphold the Constitutional rights of every individual in the country. I will carry out the decisions of the Supreme Court. I will not tolerate defiance of the law.

Third, I am totally dedicated to quality education in America -- and to the principle that public education is predominantly the concern of the community in which people live. Throughout the history of our Nation, the education of our children, especially at the elementary and secondary levels, has been a community endeavor. The concept of public education is now written into our history as deeply as any tenet of American belief.

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In recent years, we have seen many communities in the country lose control of their public schools to the Federal courts because they failed to voluntarily correct the effects of willful and official denial of the rights of some children in their schools.

It is my belief that in their earnest desire to carry out the decisions of the Supreme Court, some judges of lower Federal Courts have gone too far. They have:

- resorted too quickly to the remedy of massive busing of public school children;
- extended busing too broadly; and
- maintained control of schools for too long.

It is this overextension of court control that has transformed a simple judicial tool, busing, into a cause of widespread controversy and slowed our progress toward the total elimination of segregation.

As a President is responsible for acting to enforce the Nation's laws, so is he also responsible for acting when society begins to question the end results of those laws.

I therefore ask the Congress, as the elected representatives of the American people, to join with me in establishing guidelines for the lower Federal Courts in the desegregation of public schools throughout the land --- acting within the framework of the Constitution and particularly the Fourteenth Amendment to the Constitution.

It is both appropriate and Constitutional for the Congress to define by law the remedies the lower Federal Courts may decree.

It is both appropriate and Constitutional for the Congress to prescribe standards and procedures for accommodating competing interests and rights.

Both the advocates of more busing and the advocates of less busing feel they hold a strong moral position on this issue.

To many Americans who have been in the long struggle for civil rights, busing appears to be the only way to provide the equal educational opportunity so long and so tragically denied them.

To many other Americans who have struggled much of their lives and devoted most of their energies to seeking the best for their children, busing appears to be a denial of an individual's freedom to choose the best school for his or her children.

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Whether busing helps school children get a better education is not a settled question. The record is mixed. Certainly, busing has assisted in bringing about the desegregation of our schools. But it is a tragic reality that, in some areas, busing under court order has brought fear to both black students and white students -- and to their parents.

No child can learn in an atmosphere of fear. Better remedies to right Constitutional wrongs must be found.

It is my responsibility, and the responsibility of the Congress, to address and to seek to resolve this situation.

In the twenty-two years since the Supreme Court ordered an end to school segregation, this country has made great progress. Yet we still have far to go.

To maintain progress toward the orderly elimination of illegal segregation in our public schools, and to preserve -- or, where appropriate, restore -- community control of schools, I am proposing legislation to:

1. Require that a court in a desegregation case determine the extent to which acts of unlawful discrimination have caused a greater degree of racial concentration in a school or school system than would have existed in the absence of such acts:
2. Require that busing and other remedies in school desegregation cases be limited to eliminating the degree of student racial concentration caused by proven unlawful acts of discrimination:
3. Require that the utilization of court-ordered busing as a remedy be limited to a specific period of time consistent with the legislation's intent that it be an interim and transitional remedy. In general, this period of time will be no longer than five years where there has been compliance with the court order.
4. Create an independent National Community and Education Committee to help any school community requesting citizen assistance in voluntarily resolving its school segregation problem.

Almost without exception, the citizens' groups both for and against busing with which I have consulted told me that the proposed National Community and Education Committee could be a positive addition to the resources currently available to communities which face up to the issue honestly, voluntarily and in the best spirit of American democracy.

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This citizens' Committee would be made up primarily of men and women who have had community experience in school desegregation activities.

It would remain distinct and separate from enforcement activities of the Federal Courts, the Justice Department and the Department of Health, Education and Welfare.

It is my hope that the Committee could activate and energize effective local leadership at an early stage:

- To reduce the disruption that would otherwise accompany the desegregation process; and
- To provide additional assistance to communities in anticipating and resolving difficulties prior to and during desegregation.

While I personally believe that every community should effectively desegregate on a voluntary basis, I recognize that some court action is inevitable.

In those cases where Federal court actions are initiated, however, I believe that busing as a remedy ought to be the last resort, and that it ought to be limited in scope to correcting the effects of previous Constitutional violations.

The goal of the judicial remedy in a school desegregation case ought to be to put the school system, and its students, where they would have been if the acts which violate the Constitution had never occurred.

The goal should be to eliminate "root and branch" the Constitutional violations and all of their present effects. This is the Constitutional test which the Supreme Court has mandated --- nothing more, nothing less.

Therefore, my bill would establish for Federal courts specific guidelines concerning the use of busing in school desegregation cases. It would require the court to determine the extent to which acts of unlawful discrimination by governmental officials have caused a greater degree of racial concentration in a school or school system than would have existed in the absence of such acts. It would further require the court to limit the relief to that necessary to correct the racial imbalance actually caused by those unlawful acts. This would prohibit a court from ordering busing throughout an entire school system simply for the purpose of achieving racial balance.

In addition, my bill recognizes that the busing remedy is transitional by its very nature and that when a community makes good faith efforts to comply, busing ought to be limited in duration. Therefore, the bill provides that three years after the busing remedy has been imposed a court shall be required to determine whether to continue the remedy.

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Should the court determine that a continuation is necessary, it could do so only for an additional two years. Thereafter, the court could continue busing only in the most extraordinary circumstances, where there has been a failure or delay of other remedial efforts or where the residual effects of unlawful discrimination are unusually severe.

Great concern has been expressed that submission of this bill at this time would encourage those who are resisting court-ordered desegregation -- sometimes to the point of violence.

Let me here state, simply and directly, that this Administration will not tolerate unlawful segregation.

We will act swiftly and effectively against anyone who engages in violence.

I assure the people of this Nation that this Administration will do whatever it must to preserve order and to protect the Constitutional rights of our citizens.

The purpose of submitting this legislation now is to place the debate on this controversial issue in the halls of Congress and in the democratic process -- not in the streets of our cities.

The strength of America has always been our ability to deal with our own problems in a responsible and orderly way.

We can do so again if every American will join with me in affirming our historic commitment to a Nation of laws, a people of equality, a society of opportunity.

I call on the Congress to write into law a new perspective which sees court-ordered busing as a tool to be used with the highest selectivity and the utmost precision.

I call on the leaders of all the Nation's school districts which may yet face court orders to move voluntarily, promptly, objectively and compassionately to desegregate their schools.

We must eliminate discrimination in America.

We must summon the best in ourselves to the cause of achieving the highest possible quality of education for each and every American child.

GERALD R. FORD

THE WHITE HOUSE,

June 24, 1976.

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