The original documents are located in Box 5, folder "Busing (3)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

June 1, 1976

MEMORANDUM FOR: DICK CHENEY
JIM CANNON

FROM: PHIL BUCHEN

SUBJECT: Meeting by the President with Roy Wilkins and others from the Leadership Conference on Civil Rights

At your request, I was able to reach Roy Wilkins by telephone on Saturday, May 29. I advised him that the President could not meet with his group before the Levi decision was made but that the President did want to hold the meeting. I told Mr. Wilkins I thought I could call this week to advise him on approximately when the meeting could be scheduled.

It occurs to me that we should hold this meeting before the President announces his legislative initiative on busing.

Phil

Jim

THE WHITE HOUSE

WASHINGTON

DECISION

May 25, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Request by Roy Wilkins for a Meeting to Discuss School Desegregation

Roy Wilkins has requested that you meet with a delegation representing the leadership conference on Civil Rights to discuss the Administration's school desegregation posture. It is apparent that he wants to discuss the Boston case.

It is our understanding that the Supreme Court has indicated to the Justice Department that, if it is going to file a brief in the Boston case, it must do so by the end of the week, not later than Friday morning. While your senior advisers are agreed that you should meet with Wilkins and his delegation, we are not agreed as to the timing of such a meeting. There are two options:

1. Meet with Wilkins on Thursday, May 27.

   This would be responsive to Wilkins' request and would afford you an opportunity to explain to him personally your view on this matter, the substance of your conversation with the Attorney General, and your desire to establish a continuing dialogue on school desegregation matters.

   On the other hand, the Attorney General points out that meeting with this group would require you to meet with all other groups involved in the case and "disfigure the Justice Department's decision." Moreover, he states that such a meeting would be "outrageous and shocking." Given the lateness of the hour, if the Justice Department files in the Boston case on Friday morning,

it could and would be interpreted as a slap in the face to the Civil Rights group.

2. Meet with Wilkins after the Justice Department's decision has been made.

   This would preserve the integrity of your decision to allow the Attorney General to determine whether it would be appropriate for the Administration to intervene in the Boston case. It would also allow you to broaden the scope of your discussions with the group to school desegregation in general, in just the Boston case. On the other hand, a refusal to meet with Wilkins before the Boston decision is made will probably evoke substantial criticism of the Administration and you personally from the Civil Rights community. It is possible that this group might even refuse to meet subsequent to a decision to enter the Boston case.

STAFF RECOMMENDATIONS:

Option 1: Marsh

Option 2: Levi, Cannon, Schmults, O'Neill

If you choose Option 2, you may wish to telephone Wilkins to inform him of your decision to meet after the Attorney General has made his decision and to discuss the broad range of issues involved in school desegregation.

DECISION

Option 1: Meet with Wilkins on Thursday, May 27.

YES _____ NO_____

Option 2: Meet with Wilkins after the Justice Department's decision has been made.

YES _____ NO _____

TEXT OF TELEGRAM

President Gerald Ford
White House, D.C.

Urgent that a delegation of our national leaders meet with you to discuss the school desegregation posture of your Administration and its implications. It would be tragic for our nation if this issue became involved in the politics of the Presidential campaign. Tragic, too, if your statements were miscontrued and stiffened resistance to law and order. Mr. President, we are ready to meet with you immediately.

Roy Wilkins, Chairman
Leadership Conference on Civil Rights
2027 Massachusetts Ave., N.W.
Washington, D.C. 20036
and 1790 Broadway, New York, N.Y.

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PMS PRESIDENT GERALD FORD

WHITE HOUSE DC

URGENT THAT A DELEGATION OF OUR NATIONAL LEADERS MEET WITH YOU TO DISCUSS THE SCHOOL DESEGREGATION POSTURE OF YOUR ADMINISTRATION AND ITS IMPLICATIONS. IT WOULD BE TRAGIC FOR OUR NATION IF THIS ISSUE BECAME INVOLVED IN THE POLITICS OF THE PRESIDENTIAL CAMPAIGN. TRAGIC, TOO, IF YOUR STATEMENTS WERE MISCONSTRUED AND STIFFENED RESISTANCE TO LAW AND ORDER. MR. PRESIDENT, WE ARE READY TO MEET WITH YOU IMMEDIATELY

ROY WILKINS CHAIRMAN LEADERSHIP CONFERENCE ON CIVIL RIGHTS 2027 MASSACHUSETTS AVE NORTHWEST WASHINGTON DC 20036 AND 1790 BROADWAY NEW YORK NY

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The White House
Washington

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THE WHITE HOUSE

WASHINGTON

June 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Phil Buchen and Jim Cannon

SUBJECT: Busing Legislation

This memorandum briefly describes the substance of the busing legislation the Attorney General has submitted for your consideration.

DESCRIPTION

As you know, under current case law, where a Federal District Court finds that a school board has acted to foster, promote or perpetuate racial discrimination in a school system, the Court may order the board to take whatever steps might be necessary to convert the entire school system into a "unitary" (i.e., racially balanced) system. The Attorney General's bill (attached at Tab A) proceeds from the premise that the proper role of the courts in fashioning a remedy in a school desegregation case is simply to require the racial composition in the school system that would have existed but for unlawful acts by the school board.

Specifically, the bill would require a Federal District Court to determine the extent to which the racial or ethnic concentration in a school system is attributable to the unlawful action of a State of local school board and to limit the relief to eliminating only that racial or ethnic concentration. The bill would prohibit a court from ordering the transportation of students to alter the racial or ethnic composition of a school unless it finds that the current racial or ethnic composition of the school resulted in substantial part from unlawful acts of the State or local school board and that transportation of students is necessary to adjust the racial or ethnic composition of the school to that which would have existed but for such unlawful acts.

Additionally, the bill provides for a review by the court every three years to determine if the remedy imposed is still appropriate. With respect to forced busing, the bill requires that, except in extraordinary circumstances, no forced busing shall continue for more than five years.

Finally, the bill would authorize the Attorney General to appoint Federal School Desegregation Mediators to assist the court and the parties in school desegregation cases. It would also provide that, before a Federal judge may order busing, he must give notice to ennumerated Federal, State and local officials, who shall create a committee composed of leaders of the community, which committee shall immediately endeavor to fashion a feasible desegregation plan which can be put into effect over a five-year period. Such a plan would be subject to approval by the court.

IMPLICATION

The Attorney General argues in the "draft" message he has prepared for your consideration (attached at Tab B) that the bill will minimize the extent to which Federal courts may order the forced busing of school children. This interpretation is, of course, subject to review by the courts.

One thing is clear, however, and that is that this bill would involve the Federal government in major desegregation litigation by:

- authorizing the Attorney General to appoint Federal School Desegregation Mediators to work with the courts in designing appropriate desegregation plans, and

- requiring the Secretary of Health, Education and Welfare, in concert with other Federal, State and local officials, to appoint (and presumably oversee) the citizens' committees which will be responsible for developing the five-year desegregation plans.

These and other points can be discussed at tomorrow's meeting.

A Bill

To provide for orderly adjudication of school desegregation suits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "School Desegregation Act of 1976."

TITLE I -- Adjudication of Desegregation Suits

Sec. 101. Purpose: Application

(a) The purpose of this Title is to prescribe standards and procedures to govern judicial relief in school desegregation cases brought under Federal law in order (1) to prevent the continuation or future occurrence of any acts of unlawful discrimination in public schools and (2) to assist in the identification and elimination, by all necessary and appropriate remedies, of the present consequences within the schools of acts of unlawful discrimination found to have occurred. This title is based upon the power of the Congress to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States.

(b) The provisions of this title shall apply to all judicial proceedings, and the award or modification of

all judicial relief, after the date of its enactment, seeking the desegregation of public schools under Federal law.

Sec. 102. Definitions

For purposes of this title --

(a) "Local education agency" means a public board of education or any other agency or officer exercising administrative control over or otherwise directing the operations of one or more of the public elementary or secondary schools of a city, town, county or other political subdivision of a State.

(b) "State education agency" means the State board of education or any other agency or officer responsible for State supervision or operation of public elementary or secondary schools.

(c) "Desegregation" means elimination of the effects of unlawful discrimination in the operation of schools on the part of a State or local education agency.

(d) "Unlawful discrimination" means action by a State or local education agency which, in violation of constitutional rights, discriminates against students, faculty or staff on the basis of race, color or national origin.

(e) "State" means any of the States of the Union.

Sec. 103. Liability

A local or State education agency shall be held liable (a) to relief under Section 104 of this Act if the Court finds that such local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination and (b) to relief under Section 105 of this Act if the Court further finds that the act or acts of unlawful discrimination which occurred within thirty years prior to the filing of the suit increased the degree of racial or ethnic concentration in the student population of any school.

Sec. 104. Relief - Orders prohibiting unlawful acts.

In all cases in which, pursuant to section 103(a) of this Act, the Court finds that a local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination, the Court shall enter an order enjoining the continuation or future commission of any such act or acts and providing any other relief that, in the Court's judgment, is necessary to prevent such act or acts from occurring, or to eliminate the effect of such act or acts specifically directed at particular individuals.

Sec. 105. Relief - Orders eliminating the present effects of unlawful acts.

(a) In all cases in which, pursuant to section 103(b) of this Act, the Court finds that the act or acts of unlawful discrimination increased the degree of racial or ethnic concentration in the student population of one or more schools, the Court shall order only such relief, in conformity with sections 213-216 of the Equal Education Opportunity Act of 1974, as may be necessary to eliminate the present effects found, in compliance with this section, to have resulted from the discrimination.

(b) Before entering an order under this section the Court shall receive evidence, and on the basis of such evidence shall make specific findings, concerning the degree to which the racial or ethnic concentration in particular schools affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred. Should such findings not be feasible or useful because of the great number of schools that were or may have been affected, the demographic changes that have occurred over a period of years, or some other circumstance, the Court shall receive evidence, and on the basis of such evidence shall make specific findings concerning the degree to which patterns of racial or ethnic

concentration in the school system affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred.

(c) The findings required by subsection (b) of this section shall in no way be based on a presumption, drawn from the finding of liability made pursuant to section 103(b) of this Act or otherwise, that the degree of racial or ethnic concentration in the schools or any particular school is the result of unlawful acts of discrimination.

(d) The Court shall notify the Attorney General of any proceeding pursuant to subsection (b) of this section to which the United States is not a party, and the Attorney General may, in his discretion, intervene in such proceeding on behalf of the United States to present evidence and take all other actions that he may deem necessary to facilitate enforcement of this Act.

(e) No order entered under this Act or any provision of federal law shall require the transportation of students to alter the racial or ethnic composition of schools unless, pursuant to this section, the Court finds that the racial or ethnic concentration in particular schools, or, if such findings are not feasible or useful, the patterns of racial or ethnic concentration in the school system resulted in substantial part from unlawful discrimination by a local or State education agency, and that transportation of students is necessary to adjust the racial or ethnic composition of particular schools, or patterns of racial

or ethnic concentration in the school system, substantially to what they would have been if the unlawful discrimination had not occurred.

(f) In all orders entered under this section the Court may without regard to this section's other requirements, direct local or State school authorities to institute a program of voluntary transfers of students from any school in which their race is in the majority to available places in one in which it is in the minority.

Sec. 106. Voluntary action; local control.

All orders entered under section 105 shall rely, to the greatest extent practicable and consistent with effective relief, on the voluntary action of school officials, teachers and students, and the Court shall not remove from a local or State education agency its power and responsibility to control the operations of the schools except to the minimum extent necessary to prevent unlawful discrimination and to eliminate its present effects.

Sec. 107. Review of Orders.

Subject to the provisions of section 105(f) of this Act, no requirement of the transportation of students contained in any order entered under section 105 of this Act or subject to that section's provisions shall remain in effect for a period of more than three years from the date of the order's entry unless at the expiration of such period the Court finds:

(1) that the defendant has failed to comply with the requirement substantially and in good faith; or

(2) that the requirement remains necessary to eliminate the effects of unlawful discrimination determined in compliance with the provisions of section 105 of this Act.

If the Court finds (1) above, it may extend the requirement until there have been three consecutive years of substantial compliance in good faith. If the Court finds (2) above, after the expiration of three consecutive years of substantial compliance in good faith, it may extend the effect of the requirement, with or without modification, for a period not to exceed two years, and thereafter may order an extension only upon a specific finding of extraordinary circumstances that require such extension. The Court may, however, continue in effect a voluntary transportation program to implement relief under section 105(f) of this Act. The provisions of this section shall not apply to any plan approved and ordered into effect under section 203.

Sec. 108.

With respect to provisions of its order not covered

by section 107, the court shall conduct a review every three years to determine whether each such provision shall be continued, modified, or terminated. The court shall afford parties and intervenors a hearing prior to making this determination.

TITLE II -- Federal School Desegregation Mediator

Sec. 201. Appointment of mediator.

The Attorney General is hereby authorized to appoint, at such times and for such period as he deems appropriate, a Federal School Desegregation Mediator or Mediators to assist the court and the parties in a school desegregation lawsuit.

Sec. 202. Functions of a mediator.

(a) When a mediator is appointed pursuant to section 201, he shall provide assistance to the court, the parties and the affected community to the ends of (1) full and orderly implementation of the constitutional right to equality of educational opportunity, (2) insuring that desegregation is accomplished in a manner which is educationally sound and (3) seeking to secure community support for proper elimination of unlawful school discrimination.

(b) A mediator may request the assistance of other Federal agencies.

Sec. 203. Type order

It is the sense of the Congress that required transportation of students beyond the nearest school in order to reduce the lingering effects of past unlawful discrimination is an unusual remedy which should be used sparingly. Accordingly prior to ordering such required transportation, the district judge shall give notice to the Attorney General of the United States, to the Secretary of Health, Education and Welfare, to the Governor of the State, the Mayor or other chief executive official of the governing unit involved, and the Secretary of Health, Education and Welfare in cooperation with these officials shall create a Council of citizens composed of the leaders of the community. The Council shall immediately endeavor to fashion a feasible plan which can be put into effect over a five year period, including such matters as the relocation of schools, which can give assurance that such progress will be made toward a removal of the effects of unlawful discrimination over the five year period, with specific dates and goals, so that in the meantime required transportation can be avoided or greatly minimized. Such a plan shall be submitted to the court for its approval. If, during the continuance or at the expiration of a plan approved under this section, the court determines that the plan is inadequate, progress made under such plan shall be taken into account in framing any order under Section 105 of this Act.

MESSAGE TO CONGRESS

I know I am speaking for the vast majority of Americans when I say we desire that the causes and effects of unconstitutional racial discrimination in our school systems must be removed. The process by which these causes and effects are remedied has been a long and difficult one. The goal must be achieved, and I believe substantial progress has been made.

The ultimate aim must be voluntary, whole-hearted compliance with non-discriminatory practices, practices we all accept because they are right. The public school system has been one of America's greatest assets. The desire for quality education is deep in the heart of American parents and children. And the long-standing tradition of local control of the educational system is very important.

The way to achieve the removal of the causes and effects of racial discrimination in the schools is not the same in every locality in which unconstitutional acts of discrimination have occurred. This is because of a variety of factors such as the geographic array of schools in various systems and the special characteristics of individual systems

which properly reflect diverse communities' ideas about the appropriate structure of the educational process.

On the long and difficult road our society has traveled in attempting to remove the causes and effects of racial discrimination there has at times been illegal resistance to the orders of federal courts and at times there has been some violence. This resistance and this violence are illegal. They contradict the Constitution. The federal government certainly will not condone them. The law will be enforced.

During this period it is inevitable that the decisions of federal district judges, faced with the arduous and often unpleasant duties of overcoming resistance, will have elements of artificiality in them. The Supreme Court has written that the remedy "may be administratively awkward, inconvenient, and even bizarre in some situations" (Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 28 (1971)). In many cases, judges have had to do things which under our system of government would better be accomplished by elected officials.

We must realize that what is involved in the effort to put an end to unlawful racial discrimination in the schools is a basic constitutional doctrine. That doctrine has been set forth in a number of decisions of the United States Supreme Court. And it is not surprising that there are certain ambiguities in the statements of the Court -- in the ways in which the doctrine should translate into action, particularly as to the scope of the remedy.

Courts have used various mechanisms for removing the causes and effects of racial discrimination in the schools, and the most controversial of them has been the forced busing of students. In an essential way, the use of busing highlights the ambiguities in the constitutional doctrine as stated by the Supreme Court. In my view, and consistent with the doctrines of the Supreme Court, the purpose of court ordered busing should not be to achieve a racial balance within schools which would not have occurred through the normal enrollment pattern in the absence of unconstitutional acts of school discrimination.

I have always been philosphically opposed to court ordered busing, but I realize that in some cases it is constitutionally required under the opinions of the Supreme Court. But, as Congress recognized in passing the Equal

Educational Opportunities Act of 1974, Pub. L. 93-380, 88 Stat. 514 et seq., 20 U.S.C. (Supp. IV) 1701 et seq., there are other remedies that may be used to achieve the elimination of the effects of racial discrimination and these other remedies should be given priority. These other remedies include voluntary transfer systems, creation or revision of attendance zones or grade structures without requiring student transportation, construction of new schools or the closing of inferior schools, and creation of magnet schools. Busing is not a good mechanism. Many of the federal district court judges who have ordered busing have stated publicly that it is not a desirable mechanism and that it is a mechanism of last resort.

While busing may be constitutionally required, it still makes a great deal of difference to communities and the people in them how much busing will be used, and this in large part depends upon the legal theory upon which the relief for unconstitutional acts of racial discrimination is based. I do not believe we can eliminate all busing, but I do believe we can considerably reduce its use while

still achieving the elimination required by the Constitution of the effects of illegal race discrimination.

Each school case involves two distinct questions. The first is whether the school authorities have committed acts of racial discrimination (the liability question). The second is what relief the court should afford once racial discrimination in the operation of the schools has been established (the remedy question).

Brown v. Board of Education, 347 U.S. 483 (1954), held conclusively that official acts to enforce racial discrimination in the operation of the schools violates the Constitution. The remedy question has not yielded easily to analytical solution. The first problem that arose was how

quickly the remedy must take effect. The second Brown case, 349 U.S. 294 (1955), was the Court's first attempt to grapple with that problem. The Court held (id. at 300) that "[i]n fashioning and effectuating the [desegregation] decrees, the courts will be guided by equitable principles." The second Brown case stated that the remedy must proceed with "all deliberate speed" (id at 301).

That formula proved unsatisfactory when both school systems and courts used "all deliberate speed" as an excuse for inaction. A series of decisions in the 1960's called for more rapid compliance. In 1964 the Court held that "[t]he time for mere 'deliberate speed' has run out" (Griffin v. County School Board, 377 U.S. 218, 234), and in 1968 that "[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now" (Green v. County School Board, 391 U.S. 430, 439 (emphasis in original)).

What is the goal of the remedy that must "realistically . . . work now"? Many judges and courts thought at first

that the proper remedy was to direct school officials to cease their racial discrimination. The illegal practices could be prohibited and stopped. This is a common form of equitable relief.

The courts, however, went further. Some requirement to show there was a good faith abandonment of these practices and that they would not be renewed was no doubt essential. Moreover, it is within the jurisdiction of a court of equity to eradicate the lingering effects of a wrong -- to the extent this is feasible.

This recognition of a need to eradicate the continuing effects of past racial discrimination created problems

that continue to confront the Nation. What are those "effects"? How do we ascertain them? What means must we use to eradicate them? All of these questions go to the nature and scope of the remedy for unlawful discrimination.

We cannot begin to ask whether particular remedial tools -- such as busing to achieve racial balance -- are necessary, when viewed in light of all their advantages and disadvantages, until we are sure what it is that the remedy must accomplish.

The public school system in this country developed as people came together toward the common goal of educating their children in a manner which reflected the shared values of the community. This led to a tradition of diversity in the ways of the educational process, and that diversity in turn embodied our national commitment to individuality and community self-reliance. We also have a strong national commitment to social mobility and equal opportunity. These values find their expression in the constitutional requirement that public officials may not discriminate against individuals on the basis of their race,

color, national origin or sex. Neither the Constitution nor the traditions of the public school system requires that children go to school in their immediate neighborhood. But likewise, neither prohibits, absent illegal official acts of race discrimination, a community from sending its children to a neighborhood school. Only to the extent that unconstitutional official acts of race discrimination in the schools have created an artificial racial balance does the Constitution require remedial steps to create the racial balance in particular schools that would have occurred but for the illegal acts.

Busing is required only if, in fashioning a remedy for the unconstitutional acts, a court must assign students to schools far from home. When are such assignments necessary? That question, so basic to the task of devising a remedy for illegal discrimination, has never received a satisfactory answer from the Supreme Court.

The Court has emphasized that "[t]he objective today remains to eliminate from the public schools all vestiges of state-imposed segregation" (Swann, supra, 402 U.S. at 15). That formula, seemingly so simple, conceals a variety of

ambiguities. These ambiguities become of overriding importance when lower courts must attempt to translate the Supreme Court's generalities into the particulars of a plan for the operation of the schools.

The Supreme Court decision in Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 214 (1973), created an important ambiguity. The Court emphasized (413 U.S. at 203) that "racially inspired school board actions have an impact beyond the particular schools that are the subject of those actions." It therefore established a rule that, once a district court has found acts of unlawful discrimination in some schools of a school system, it should "presume" that unlawful discrimination was practiced throughout the school system -- in other words, that the school system is a "dual school system," for which the remedy is "all-out desegregation." But what is the real effect of this presumption? It means, at a minimum, that the court should assume that acts of discrimination have been pervasive and that they have effects throughout the system. Does it also mean that the court must presume that some observed distribution of the races was caused by the discrimination? That some particular part of the distribution was caused by the discrimination? That all of the distribution was caused by the discrimination? The Supreme Court did not say. Some lower courts have taken the last-mentioned interpretation. They have interpreted what the Supreme Court said in Keyes as support for orders that every

school should mirror the racial composition of the school district.

The ambiguities, standing by themselves, make it difficult to determine what the remedy should be designed to accomplish. The difficulty is compounded by the discretion traditionally accorded to trial courts in the formulation of equitable remedies. Discretion of this sort can cover a multitude of readings of the Supreme Court's precedents; the ambiguous nature of the precedents, combined with the factual complexity of each new case, make it difficult for the district court to devise a remedy and even more difficult for appellate courts effectively to supervise the actions of the district court.

The result of all of this is that many district courts use a finding of some unlawful discrimination as a "trigger" for a holding that all schools must be racially balanced. They define "all-out desegregation" as the elimination of racial distribution in the schools, however caused, and bend their efforts to some kind of racial balance in the schools even if the racial distribution would have occurred without illegal acts of racial discrimination. Such a task naturally requires many students to be assigned to schools far from home and,

hence, must be accomplished by busing.

The goal of the remedy in a school case ought to be to put the school system, and its students, where they would have been if the violations had never occurred. In other words, the goal ought to be to eliminate "root and branch" the violations and all of their lingering effects. Green, supra, 391 U.S. at 438- This articulation of the goal has been approved by the Supreme Court. It is the constitutional goal which the Supreme Court has mandated, but its application has been made difficult by the ambiguities discussed above.

First, the courts have held that the existence of schools attended predominantly by members of one race does not in itself amount to racial discrimination; if it were otherwise, there would be no meaning to the requirement of "state action" as a precondition to a violation of the Fourteenth Amendment. Keyes, supra; Spencer v. Kugler, 326 F. Supp. 1235 (D. N.J.), affirmed, 404 U.S. 1027.

Any legislation should make it clear that "desegregation" means only the elimination of the effects of racial discrimination by state officials.

Second, any legislation should make it clear that the remedy must deal only with the effects of the acts of school officials. Discrimination in other parts of society should be redressed with other tools. For example, Congress has enacted laws to rectify residential discrimination. See 82 Stat. 81 et seq., 42 U.S.C. 3601 et seq. Racial discrimination in housing should be attacked directly and eliminated as speedily as possible from our society. Its effects ought not to be the object of a "collateral attack" in school cases. As the Court has observed (Swann, supra, 402 U.S. at 22-23):

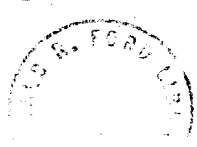
> The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination . . . .
>
> Our objective . . . is to see that school authorities exclude no pupil of racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when these problems contribute to disproportionate concentrations in some schools.

I should emphasize the language that one vehicle can only carry a limited amount of baggage. The schools have to try to fulfill the goal of quality education for all our children, and no goal is more important than this to all of our citizens.

Third, any legislation should make it clear that the remedy should not go beyond the effects of the violations. It should attempt to remedy past wrongs, but not to produce a result merely because the result itself may be attractive. "The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution . . . . As with any equity case, the nature of the violation determines the scope of the remedy" (id. at 16). "[T]he remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." (Milliken v. Bradley, 418 U.S. 717, 746 (1974)). Cf. Franks v. Bowman Transportation Co., No. 74-728, decided March 24, 1976, slip op. 23. The attributes that make a system illegally operated can often be eliminated without an insistence upon a racial composition in each school that in some degree reflects the racial composition of the school district as a whole.

The objective of an order altering the racial or ethnic student composition of schools should be to recreate that student composition of each particular school that would have existed but for the illegal acts of discrimination.

It will sometimes prove impossible or not useful to recreate such conditions in particular schools. This may be so because of the great number of schools that are or may have been affected, changes in demographic patterns, or some other circumstance. In such cases, the objective of the desegregation remedy is to restore as closely as possible a social process that has been deformed by official action. To that end, the courts should attempt to recreate patterns of racial or ethnic integration that would have existed in the absence of illegal acts. Thus, to the degree that a neighborhood school system was in effect at any level of a school system, the court should take into account the extent to which attendance patterns would, in any event, have reflected residential patterns of racial and ethnic concentration. This will often require integration measures primarily at the borders of racial and ethnic areas of concentration. This, combined with appropriate opportunities for transfer, voluntary busing, magnet schools, the appropriate siting of new schools, and other forms of relief provided by the statute, will allow for the resumption of normal and free social processes. Of



course, approximations in achieving this goal must be permissible.

The inclusion in the decree of a provision for voluntary transfer of individual students from any school in which their race is in the majority to one in which it is in the minority can be a useful device to compensate for possible non-apparent additional lingering effects of the discriminatory conduct. In some circumstances, temporary additional remedial measures may also be appropriate to break down officially caused racial identifiability of particular schools. But the necessity for such devices and approximations should not divert the courts from the pursuit of the proper ultimate objective.

Fourth, the remedy ought to be limited in time (Swann, supra, 402 U.S. at 31-32). Any judicial order of this sort strongly interferes with normal social processes and local autonomy. The interference is necessary, but it ought to terminate as soon as the court can reasonably conclude that the object of the remedy has been attained. In some cases (for example, those involving teacher assignments or gerrymandering of attendance zones) a fully effective remedy can be devised and applied expeditiously. It may take longer to overcome the effects of discriminatory school siting and capacity decisions, for an effective remedy may involve school closings and construction. But however long each

component of the remedy may take to achieve, any legislation should ensure that the courts monitor the process and dissolve their orders once the effects of racial discrimination have been ameliorated to the extent possible. It should also ensure that the use of forced busing is, except in extraordinary circumstances, strictly limited in duration.

Under section 5 of the Fourteenth Amendment Congress has an important role in defining the nature of the constitutional prohibition and creating a remedy. Congress has exercised this power in the Equal Educational Opportunities Act of 1974, by establishing a hierarchy of tools and devices to carry out the remedy. But that effort has not proved to be sufficient, and Congress once more must meet the challenge and fulfill its constitutional role.

The legislation that I am transmitting to Congress today will meet that challenge. Last November 20 I met with the Attorney General and the Secretary of Health, Education and Welfare and directed them to devise legislation that would clarify the law in this area and move toward the reduction and eventual elimination of court ordered busing wherever possible. Since that time we have been at work on a bill that will provide that the constitutional goal of eliminating race discrimination in its causes and effects will

be met with the minimum amount of busing required by the Constitution. The legislation I transmit today will sweep away the confusion and ambiguity concerning the goal of the remedy.

The legislation brings certainty to the remedial goal. Instead of the ambiguous word "segregation" it uses "unlawful discrimination," which in turn means racial or ethnic discrimination in the operation of the schools. This makes it clear that the only proper objects of the remedy are to ban such acts and eliminate their effects. "Desegregation" is therefore appropriately defined as the elimination of the effects of unlawful discrimination by school officials.

In order to give meaning to these definitions, the legislation requires courts to hold trials and to make explicit findings of fact concerning the effects of unlawful discrimination. In making these findings, the courts are instructed not to rely on any presumption that the unlawful discrimination caused all (or any particular part) of any observed racial distribution. The effects of the discrimination must be proved as facts; they cannot be presumed. It will no longer be possible for courts to use a finding of unlawful discrimination as a "trigger" for an order to produce system-wide racial balance. Courts will produce only that balance within a school that would have occurred, but

for the unlawful discrimination by school authorities.

The legislation makes it clear, if it was not already clear from other sections, that in a school case only the acts of school officials are to be considered. Racial imbalance caused by voluntary choice, by private discrimination, or by unlawful discrimination other than discrimination in the operation of the schools, is not to be addressed in a school case. School cases should not attempt to cure social problems the genesis of which is outside the schools.

The legislation provides for a review by the judge every three years of the remedies he has imposed. With respect to forced busing, it requires that except in extraordinary circumstances no forced busing can continue for more than five years. These provisions would return the operation of a school system to local authorities at the earliest possible time.

Finally, we must give renewed emphasis to the fact that public schools are and must be of basic concern to local communities. Those efforts should be directed toward bringing local community leaders together so that proper educational procedures can be developed and can gain the maximum community support. The intervention of the federal courts to enforce

the constitutional mandate should as much as possible leave responsibility upon the local community. For this reason the legislation I am proposing places emphasis on the use of mediators and mechanisms that will bring community leaders together to solve their problems. The legislation authorizes the Attorney General to intervene in suits at the remedy stage in order to enforce the statute's objectives, and it authorizes him to appoint mediators to assist the court and the parties in these difficult cases.

Most importantly the legislation provides that before a federal judge orders busing a community council should be formed to endeavor to fashion a feasible plan which could be put into effect over a five year period to make progress toward the removal of the effects of unlawful discrimination. The creation and implementation of such a plan could result in the elimination or substantial minimization of forced busing.

The efforts to restore our public schools to the conditions in which they would have been but for unconstitutional acts of racial discrimination by school officials

should not be met with resistance and fear. We should be united in our attempt to achieve this goal. The legislation I today propose is an important step. To work toward this goal with a minimum of devisiveness can be an exercise in the harmony that we seek to achieve and can lead to the end we all so deeply desire.

THE WHITE HOUSE

WASHINGTON

June 1, 1976

DECISION

MEMORANDUM TO THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Alternatives to Court Ordered Busing

PURPOSE

To offer for your consideration possible alternatives to court ordered busing which the Federal government could make available to a community seeking remedies to school segregation.

ISSUE

Busing has become the most controversial remedy ordered by the Federal courts to facilitate desegregation.

As an appropriate remedy to desegregate, busing was first affirmed by the Supreme Court in 1971, 17 years after the Brown decision. A chronology of the major school desegregation decisions is at Tab A.

The school bus started to become a major element of elementary and secondary education in the 1920's as consolidated school districts replaced the little red school house. Today, more than 21 million school children, 51% of the total school enrollment of 41 million, are bused to school.

Busing for better education has been widely accepted in this country, but decisions by Federal courts to order busing of children against prevailing community opinion are often resisted and accompanied by violence and disorder.

Since most situations in which desegregation is occurring will involve some voluntary or involuntary busing, the need is to find a means by which the Executive Branch can best assist a community to undertake voluntary or cooperative busing plans rather than leaving it to the courts to impose forced busing.

BACKGROUND

On August 21, 1974 you signed the Education Amendments of 1974 which included the "Esch Amendments." These amendments (Tab B) are designed to place legislative limits on the extent to which busing could be ordered by Federal courts or agencies.

Last Fall you directed the Attorney General and the Secretary of HEW to explore better ways to bring about school desegregation than court ordered busing.

In an October 27, 1975 meeting with Senator Tower you directed Phil Buchen to ask Justice and HEW to review the busing situation with the objective of seeking alternative remedies.

On November 20, 1975, you met with Attorney General Levi and Secretary Mathews and requested that they consider and develop:

1. means of helping local school districts stay out of court.

2. alternative remedies and legal theories which a court might find acceptable once a school district was in court.

I have been working with HEW and others in your Administration on item 1 while Phil Buchen has been regularly in contact with the Attorney General on item 2.

On February 17, 1976, we outlined approaches and concepts under consideration. You indicated four which you felt merited further examination.

On April 12, 1976, I reported to you that we were developing approaches based on these premises:

1. Communities should find solutions on their own rather than have them imposed by the Federal government.

2. Remedies can best be reached before any court action begins.

3. Any approach must be in accord with Federal law enforcement responsibilities.

On May 17, 1976, I reported to you that we were in the process of refining and further examining three possible approaches to help a community avoid a court order to bus.

ALTERNATIVES TO COURT ORDERED BUSING

The following proposals have evolved as the most responsible courses of action available to be offered to a community to better enable it to desegregate its schools prior to the initiation of legal action. While it is likely that each of the alternatives would result in some busing the intent is to have such plans be developed by a community itself rather than imposed on it by the courts.

Alternative I: Mediation Service

Establish a Community Mediation Service, somewhat parallel to the Federal Mediation and Conciliation Service, to provide mediation assistance to a community in its efforts to desegregate. As proposed, it would be available to a community both before and after it was under a court order to desegregate. Such service could head off busing by court order by providing assistance to a community, at its request, to develop an acceptable plan to desegregate its schools. If any busing were involved it would result from a community decision assisted by the mediation process, not from a court order.

We believe such a mediation service could be set up by Presidential Executive Order.

Alternative II: Presidential Representative

At the request of a community, the President would designate a nationally known person to be his special representative to insure that the full resources of the Federal government were made available to communities who were initiating efforts, prior to legal action, to desegregate their schools.

This Presidential representative would seek to facilitate the use of the many existing Federal resources and also to involve religions, academic, business and labor groups in the response to a community's request for assistance.

This could be done by Presidential action.

Alternative III: National Community and Education Commission

Secretary Mathews proposes the establishment of a National Community and Education Commission to assist communities in preparing for desegregation activities and for avoiding community violence and disruption. (Tab C)

The bipartisan Commission would be independent of both HEW and Justice and would be composed of nine members who were nationally representative of business, education, labor, community leadership and local government.

The Commission would have a staff of approximately 50 and an annual budget of $2 million.

Its responsibilities would be to work through local community leaders, using existing Federal resources, to encourage and facilitate constructive, comprehensive planning for school desegregation at the local level. Its approach would be to work quietly with a broad spectrum of local leaders --

-- to identify problems before they develop.

-- to informally mediate so that communities themselves can cooperatively devise solutions.

-- to expedite Federal assistance, both technical and fiscal, from existing programs.

-- to encourage assistance from the private sector.

It would specifically not serve as a court-appointed intermediary between parties in a legal suit related to desegregation.

We believe such a Commission could be created by Presidential Executive Order.

DISCUSSION

The various advantages and disadvantages of these alternatives and the related staff comments and recommendations can, we believe, best be covered in the discussion at Wednesday's

meeting with the Attorney General, the Secretary of HEW, Secretary of Labor and other members of your staff.

DECISION

Alternative I: Mediation Service

Approve _____ Disapprove _____

Alternative II: Presidential Representative

Approve _____ Disapprove _____

Alternative III: National Community and Education Commission

Approve _____ Disapprove _____

TAB A

CHRONOLOGY OF SCHOOL DESEGREGATION DECISIONS

A. Brown v. Board of Education (1954)

The landmark Supreme Court decision in the school desegregation area in this century was Brown v. Board of Education (of Topeka), decided in 1954. In Brown, the Supreme Court held that segregation in public schools on the basis of race, even though the physical facilities and other "tangible" factors may be equal, denies children of the minority group the equal protection of the laws in violation of the Fourteenth Amendment. In the Brown decision, the Supreme Court did not prescribe any specific method for accomplishing desegregation.

B. Brown II (1955)

In a follow-up to its 1954 Brown decision, the Supreme Court in 1955 directed that desegregation proceed with "all deliberate speed."

C. "Freedom of Choice"

In the years immediately following Brown, from 1954 to 1964, the courts wrestled with the issue of appropriate remedies in cases of de jure segregation, finally concluding in a number of cases that the "freedom of choice" method of dismantling dual school systems was an acceptable approach. Under freedom of choice, school districts merely gave students -- black and white -- the choice of the schools they wished to attend. The result was a modest degree of desegregation, as some blacks elected to attend formerly white schools. However, rarely did whites choose to attend formerly black schools. The result was that only 1.2 percent of black students in the 11 southern states attended schools with whites in 1963-64.

D. Civil Rights Act of 1964 and Bradley Case

Shortly after passage of the Civil Rights Act of 1964, the Supreme Court stated in Bradley v. School Board of Richmond (1965) that "delays in desegregating school systems are no longer tolerable." The

Civil Rights Act of 1964 provided additional support for the desegregation process through Titles IV and VI. Under Title IV, technical assistance may be given to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools. If efforts to secure a school district's voluntary desegregation failed, administrative enforcement proceedings under Title VI would be initiated.

E. Green Decision (1968)

In April 1968, HEW's Office for Civil Rights directed that, where freedom of choice plans had not effectively eliminated dual school systems, the systems should adopt plans that would accomplish this task. During that year, the Supreme Court strengthened the HEW position in deciding Green v. New Kent County School Board (Virginia). In Green, after noting that in many areas desegregation was not yet a reality, the Court said that the time for mere "deliberate speed" had run out. The Court held that where a freedom of choice assignment plan failed to effectively desegregate a school system, the system had to adopt a student assignment plan which "promised realistically to work now." This was the death, since rarely, if ever, did freedom of choice result in effective school desegregation.

F. Alexander v. Holmes (1969)

In the summer of 1969, the Court decided Alexander v. Holmes County Board of Education (Mississippi), holding that school districts had a constitutional obligation to dismantle dual school systems "at once" and to operate now and hereafter as unitary systems. The Court, quoting from Green, reiterated its determination that school systems must develop desegregation plans that "promise realistically to work now." Thus, Alexander clearly reaffirmed the Court's position on the issue of timing in desegregation cases.

G. Busing - Swann v. Charlotte-Mecklenburg Board of Education (1971)

In the spring of 1971, the Supreme Court handed down the first "busing" decision in the case of Swann v.

Charlotte-Mecklenburg Board of Education (North Carolina). In Swann, the Court held that:

1. desegregation plans could not be limited to the walk-in neighborhood school;

2. busing was a permissible tool for desegregation purposes; and,

3. busing would not be required if it "endangers the health or safety of children or significantly impinges on the educational process."

The Court also held that, while racial balance is not required by the Constitution, a District Court has discretion to use racial ratios as a starting point in shaping a remedy.

H. HEW Responsibilities to Enforce (1973)

The immediate desegregation mandate of Alexander and the insistence in Swann that schools having disproportionately minority enrollment were presumptively in violation were not acted upon by HEW, which permitted these districts to remain "under review." HEW attempted to secure compliance through persuasion and negotiation, and the Title VI enforcement mechanism fell into disuse. These conditions led to the initiation of Adams v. Richardson, in which HEW was charged with delinquency in desegregating public educational institutions that were receiving Federal funds.

This suit alleged that HEW had defaulted in the administration of its responsibilities under Title VI of the Civil Rights Act of 1964. The district court (District of Columbia) stated on February 16, 1973, that, where efforts to secure voluntary compliance with Title VI failed, the limited discretion of HEW officials was exhausted. Where negotiation and conciliation did not secure compliance, HEW officials were obliged to implement the provisions of the Title VI regulations: provide for a hearing; determine compliance or noncompliance; and, following a determination of noncompliance, terminate Federal financial assistance.

The district court's decision was modified and affirmed by the Court of Appeals (D.C. Circuit, 1973). Essentially, the district court order requires that HEW properly recognize its statutory obligations, ensuring that the policies it adopts and implements are consistent with those duties and not a negation of them.

I. Keyes - "Segregative Intent" (1973)

In June 1973, the Supreme Court rendered its decision in Keyes v. School District No. 1 (Denver, Colorado). This was the Court's first decision on the merits in a school desegregation case arising in a State which did not have an official policy of racial dualism in 1954. In Keyes, the Court held that where it could be demonstrated that a school board had acted with "segregative intent" to maintain or perpetuate a "dual school system" this was tantamount to de jure segregation in violation of the Constitution. A finding of de jure segregation as to one part of the system creates a presumption that segregative intent existed in the entire system and in such cases, the school board had "an affirmative duty to desegregate the entire system 'root and branch'".

J. Milliken - Cross District Busing (1974)

In its most recent ruling respecting school desegregation, Milliken v. Bradley (Detroit, Michigan), the Supreme Court refused to require busing between school districts absent a showing that there has been a constitutional violation within one district that produced a significant segregative effect in another district.

TAB B

ESCH AMENDMENTS (1974)

You signed into law on August 1974, Amendments to the Elementary and Secondary School Act which included the Esch amendments which were designed to place legislative limits on the extent to which busing could be ordered by Federal Courts or agencies. The key elements of those provisions are:

A. Remedies to Correct Segregation

When formulating desegregation plans, Federal Courts and agencies must use following remedies in order listed:

(1) Assign students to closest school (considering school capacity and natural physical barriers).

(2) Assign students to closest school (considering school capacity only).

(3) Permit students to transfer from school where their race, color or creed is a majority to one where it is a minority.

(4) Create or revise attendance zones or grade structures without requiring busing beyond that described below.

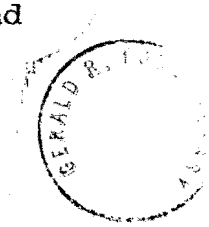
(5) Construct new schools or close inferior ones.

(6) Construct or create "magnet" (high quality) schools.

(7) Implement any other educationally sound and administratively feasible plan.

B. Additional Restrictions on Federal Courts or Agencies

(1) No ordered busing of students beyond school next closest to home.



(2) No ordered busing at risk of students' health.

(3) No new desegregation plans may be formulated to correct shifts in attendance patterns once school system determined non-segregated.

(4) No desegregation plans can ignore or alter school district lines unless such lines were drawn to, or tend to, promote segregation.

(5) No ordered busing shall be effective until the beginning of an academic school year.

C. Rights Granted to Individuals and School Districts

(1) Allows suits by individuals (or Attorney General on individuals' behalf) under the Act.

(2) Permits voluntary busing beyond limits outlined.

(3) Allows reopening of pre-existing Court orders or desegregation plans to achieve Title II compliance.

(4) Requires termination of court-ordered busing if Federal Court finds school district non-segregated.

It should be noted that the priority of remedies set forth in the Esch Amendments is merely a slight elaboration on existing case law. A review of the cases from Swann on up to Boston and Louisville clearly shows that the Courts have always turned to busing as a last resort. Moreover, since several of the prior remedies set forth in the Esch Amendments (such as construction of new schools) would not accommodate immediate desegregation of a school system, it is doubtful that, as a matter of constitutional law, they are binding as to the Courts. Finally, as to the application of the Esch Amendments to Federal agencies (notably the Office of Civil Rights in HEW), it appears that OCR has never required busing on a massive scale and has, since their enactment, observed the terms of the Amendments.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

MAY 20 1976

MEMORANDUM FOR THE PRESIDENT

Pursuant to our conversation, I have prepared for your consideration a proposal to establish a National Community and Education Commission to assist communities in preparing for desegregation activities and in avoiding trauma, violence and disruption. At Tab A I have enclosed a brief discussion of the nature and functions of such a Commission and at Tab B a proposed draft Presidential Executive Order establishing the Commission. I would call to your attention the following two specific issues in terms of this approach.

Implementation Strategy - Executive Order or Legislation

Although the Commission could be established either through legislation or an Executive Order, the Executive Order approach appears preferable for the following reasons:

The chances of Congress considering legislation to implement this proposal in the near future are very slight.

You have the authority and precedent to create an action-type council or commission by Executive Order. As long as the Executive Order does not contradict or supersede any statutes, you may create councils, commissions, and committees to carry out any function from studying a problem to developing programs. You may also give such bodies review and regulatory authority and the power to mediate.

It is common practice for such commissions to receive appropriations from Congress without authorizing legislation. In most cases, the "parent" Department (in this case HEW) requests funds for the commission as a line item in its appropriation.

Although the Executive Order approach does not require Congressional action, it is imperative that consultations with minority members on the appropriate committees be initiated promptly if such a proposal is approved by the Administration. Unless handled carefully, the Democratic Congress could endanger the proposal by arguing that the

Administration is taking away Congress' authority to legislate. Even with an Executive Order, Congress' support and tacit approval is needed to enable the Commission to succeed in its complex mission.

Appropriations Strategy - Commission

To accomplish its mission effectively, the Commission would require a permanent staff of approximately 50 persons, as well as the ability to hire such consultants as it may need for specific projects. Support costs for such an enterprise would be around $2 million annually. As noted above, HEW would request funds for the Commission as a line item in its appropriation. Although funds could be requested through an emergency supplemental or obtained through a reprogramming of present HEW funds, the preferred course of action is a budget amendment which would fund the Commission as of October 1.

I believe the approach suggested herein provides the most viable and effective strategy for the Administration to demonstrate it is truly concerned about the issue of the disruption of communities because of desegregation activities. I would recommend your approval of this approach and the issuance of such an Executive Order after appropriate consultation with the Congress.

Secretary

Enclosures

C

ESTABLISHMENT OF THE NATIONAL COMMUNITY AND EDUCATION COMMISSION

A MAJOR INITIATIVE IN SCHOOL DESEGREGATION

Summary Description

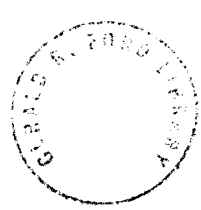
In an effort to encourage and facilitate constructive, comprehensive planning for school desegregation at the local level, it is proposed that the National Community and Education Commission be established by Executive Order. The Commission would be a Presidentially-appointed, bipartisan group of distinguished citizens drawn from business and other professional circles. Its charge would be to assist local communities in carrying out desegregation planning activities designed to build lines of communication, avert disorder, and encourage constructive interracial classroom environments through the example of constructive interracial community environments.

Specific Function

The Commission's chief responsibility would be to advise local community leaders at the earliest stages of desegregation planning. Assistance would be initiated at the request of the affected community, and at that point a determination would be made by one or more Commission members as to what course of Commission activity offered the greatest promise of success within the particular community. In general, however, the orientation of the Commission would be toward working quietly with a broad spectrum of local leaders to identify problems before they develop and to devise solutions which could be carried out locally. While working within a community, the Commission would function primarily in a supportive and advisory role.

In the course of its consultations with the community and the school district, one of the Commission's chief functions would be to inform local leaders of additional sources of desegregation assistance (Federal, State, local and private) and encourage that these sources be investigated. Such sources include direct funding through the Emergency School Aid Act; technical assistance through OE's General Assistance Centers; OE's ten regional offices, and the Justice Department's Community Relations Service; formal mediation service through the Federal Mediation and Conciliation Service; and other forms of aid through the U.S. Commission on Civil Rights, State human relations agencies, and related private agencies.

Although the Commission's activities will overlap to some extent with those of the organizations mentioned above, the Commission should be



able to minimize unnecessary duplication through careful liaison with these other resources. It will be particularly important to work out non-duplicative roles with the Community Relations Service (CRS) since the function of CRS -- helping communities defuse tensions and conflicts arising from inequities or discrimination based on race, color, or national origin -- is notably similar to that of the proposed Commission. The CRS focuses less of its attention on pre-crisis intervention now than it did prior to FY 1974. Budget cuts that year effectively removed CRS from its earlier pre-crisis role, even though some individuals have held that the nature of the CRS function and expertise makes the agency particularly well suited to pre-crisis assistance. Thus, although CRS may not be currently active in some of the Commission's more important roles, its staff probably will have valuable insights and experiences to share with the Commission.

In keeping with its general functions already described, the Commission's role would not be to serve as a court-appointed intermediary between parties in a legal suit related to desegregation. Mediation would be a proper role for the Commission only in instances where it was conducted informally and with the voluntary participation of the major elements of the community. Similarly, the Commission would not be empowered to act for any State or Federal agency in an enforcement or compliance capacity. Moreover, it would not be expected to draw up desegregation-related student assignment plans at the request of a State or Federal agency.

Federal Incentives for Comprehensive Community Planning

The Commission is intended primarily to provide help to school districts which have not yet adopted or been issued a desegregation plan (although districts at other points in the desegregation process certainly would not be precluded from receiving assistance from the Commission). In order to provide support for districts which are conducting comprehensive, community-based planning for desegregation, it is proposed that a specified amount of funds in the Emergency School Aid Act (ESAA) discretionary account be set aside to support local planning activities, including those initiated with Commission involvement.

The ESAA discretionary account (Section 708 (a)) is the only part of the ESAA under which a school district without an eligible desegregation plan may receive funds. Therefore, it would be possible to stipulate by regulation that a community which showed proof of effort to conduct community-wide desegregation planning could receive funding to conduct such planning and other activities authorized under ESAA. The intention would be that this planning would involve all major sectors of the community, including business and housing representatives.

Structure

The Commission would be made up of nine members who would be appointed by the President for three-year terms of office. To provide continuity within the Commission, terms of office for individual members would be staggered at one-year intervals. The Commission chairman would be selected by the President, with the first chairman appointed for a full three-year term. Commission members would be expected to maintain their regular occupations but would be compensated at EL IV for the days they work on Commission activities. To ensure bipartisan representation, restrictions would be placed on the number of Commission members permitted from each political party. The Commission would have the authority to hire staff on an excepted service basis and to retain consultants as needed for specific projects.

DRAFT

EXECUTIVE ORDER

NATIONAL COMMUNITY AND EDUCATION COMMISSION

Throughout the history of our Nation, the education of our children, especially at the elementary and secondary level, has been a community endeavor. The concept of public education began in the community and continuous support for public schools has been provided by the community. Although the States, and to some extent the Federal government, have been providing increasing financial assistance for education, it has become clear that the solution of many of the most pressing problems facing our schools lies within the community which supports those schools.

This fact has particular relevance to the problem of school desegregation. Over the past two decades, communities have been under pressure from the courts, the Department of Health, Education, and Welfare, and in some cases the States, to institute changes in the assignment of students to schools. Too often this has been accomplished without the involvement of the community or with its involvement only after confrontions have occurred and community positions have been established.

The problems that have arisen in the process of school integration have not been due to the inadequacy of law or the lack of appropriate resources. Rather, they can be attributed to the fact that the burden of initiating and enforcing school desegregation has been borne by the courts and the Federal government without the benefit of those forces from within the community that are uniquely able to bring about necessary change in an orderly and peaceful manner.

It is therefore the purpose of this executive order to provide a means to activate and energize effective local leadership in the desegregation process at an early stage in order to reduce the incidence and severity of the trauma that would otherwise accompany that process, and to provide a national resource that will be available to assist communities in anticipating and resolving difficulties encountered prior to and during desegregation.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, it is hereby ordered as follows:

Section 1. Establishment of the Commission. (a) There is hereby established a National Community and Education Commission (hereinafter referred to as the "Commission"), the purpose of which shall be to consult with, provide technical assistance to, and informally mediate between, community groups and State and local governmental organizations (including educational agencies) in order to anticipate and resolve problems and conflicts relating to the desegregation of schools.

(b) Composition of the Commission. The Commission shall be composed of nine members who shall be appointed by the President from among individuals who are nationally recognized and respected in business, education, government and other fields and whose experience, reputation, and qualities of leadership render them uniquely capable of carrying out the purposes of the Commission. No person who is otherwise employed by the United States shall be appointed to serve on the Commission. No more than five of the members of the Commission at any one time shall be members of the same political party.

(c) Terms of members. The term of office of each member of the Commission shall be three years, except that of the members first appointed to the Commission three shall be appointed for a term of one year and three shall be appointed for a term of two years. Any member appointed to fill an unexpired term on the Commission shall serve for the remainder of the term for which his predecessor was appointed.

(d) Chairman; quorum. The Chairman of the Commission shall be designated by the President. Five members of the Commission shall comprise a quorum.

(e) Compensation of members. Each member of the Commission shall be compensated in an amount equal to that paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5313 of title 5, United States Code, prorated on a daily basis for each day spent on the work of the Commission, including travel time. In addition, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government Service.

(f) Executive Director; staff. The Commission shall have an Executive Director, designated by the Chairman with the approval of a majority of the members of the Commission, who shall assist the Chairman and the Commission in the performance of their functions as they may direct. The Executive Director shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Commission is also authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel, including consultants, as may be necessary to enable the Commission to carry out its functions. Such personnel, including the Executive Director, shall be compensated at rates not to exceed that specified at the time such service is performed for grade GS-18 in section 5332 of that title.

Sec. 2. Functions of the Commission. The functions of the Commission shall include, but shall not be limited to:

(1) Consulting with leaders in the community and local groups in determining means by which such leaders and groups can, through early involvement in the development of, and preparation for, school desegregation plans, contribute to the desegregation process in such a way as to avoid conflicts and the invocation of judicial procedures.

(2) Encouraging the formation of broadly based local community organizations to develop a program designed to encourage comprehensive community planning for the desegregation of schools.

(3) Providing advice and technical assistance to communities in preparing for and carrying out comprehensive plans to desegregate the schools, involving the broadest possible range of community interests and organizations;

(4) Consulting with the Community Relations Service of the Department of Justice (established under title X of the Civil Rights Act of 1964), the Office for Civil Rights in the Department of Health, Education, and Welfare, the National Institute of Education, the U.S. Office of Education,

General Assistance Centers (funded under title IV of the Civil Rights Act of 1964), the United States Civil Rights Commission, and State and local human relations agencies to determine how those organizations can contribute to the resolution of problems arising in the desegregation of schools within a community; and

(5) Providing informal mediation services among individuals, groups, and agencies within a community in order to resolve conflicts, reduce tensions, and develop acceptable means of desegregating schools without resort to administrative and judicial processes.

Sec. 3. Limitations on activities of the Commission. It shall not be the function of the Commission--

(1) to prepare desegregation plans;

(2) to provide mediation services under the order of a court of the United States or of a State; or

(3) to investigate or take any action with respect to allegations of violations of law.

Sec. 4. Cooperation by other departments and agencies. (a) All executive departments and agencies of the United States are authorized to cooperate with the Commission and furnish to it such information, personnel and other

assistance as may be appropriate to assist the Commission in the performance of its functions and as may be authorized by law.

(b) In administering programs designed to assist local educational agencies and communities in planning for and carrying out the desegregation of schools, the Secretary of Health, Education, and Welfare and the heads of agencies within that Department shall administer such programs, to the extent permitted by law, in a manner that will further the activities of the Commission.

Sec. 5. Expenses of the Council. Expenses of the Commission shall be paid from such appropriations to the Department of Health, Education, and Welfare as may be available therefor.

Sec. 6. Confidentiality. The activities of the members and employees of the Commission in carrying out the purposes of this executive order may be conducted in confidence and without publicity, and the Commission shall, to the extent provided by law, hold confidential any information acquired in the regular performance of its duties if such information was provided to the Commission upon the understanding that it would be so held.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

MAR 29 1976

MEMORANDUM FOR THE HONORABLE JAMES M. CANNON

Here is a report on the reaction of our best staff in the Department to the options in your memo on "Alternatives to Busing:"

1. Many successful superintendents have been successful because of a low profile. The recognition, while flattering, might well be counterproductive. Civil rights groups could have a field day with suits aimed at proving that the efforts of these individuals really were not good enough.

   Furthermore, since many of the superintendents in such a group would have used busing, the President could be seen as endorsing busing by one group and then, for the same gesture, criticized for tokenism by the other side.

   Of course, as the Commissioner of Education notes, there is some value to reinforcement for people doing a hard job well.

2. DHEW is already doing much of what is suggested in this option. However, since the federal government is seen as the problem, its role as a point of reference or place for assistance is, regrettably, limited--regardless of how fine its services are.

3. The same comment just made applies here, too. More research can always be done, but as you will see from the attached status report, DHEW is already in the midst of a multitude of good studies. And the National Institute of Education predicts that these studies will show busing is "working" in eight out of ten situations.

   There might be some more work done, however, in studies on using community institutions outside the schools to aid in desegregation.

4. The staff advised great caution with this option. They made the point that to attack busing raises the question of alternatives and since there are not many good ones, the Administration would be left with its back to a wall.

Our working papers are available if they would be helpful.

Secretary

Attachments

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

MAR 29 1976

MEMORANDUM FOR THE PRESIDENT

The best advice I can bring together from across the country leads me to recommend a few basic precepts from which to make judgments on a whole host of complex issues and options on the matter of busing and desegregation.

The best policy position would be one with three basic elements:

1. It is important that the President first reaffirm the national commitment to the basic moral principle that segregation is incompatible with any good vision of the future of this country and that no child should be denied the benefits of an equal education because of race. Any position that does not begin at this point and clear the air on it will mire down.

2. Your position on busing can then be restated and expanded by the assertion that because of this moral imperative, we ~~cannot do other than~~ must pursue, with all diligence, the issue of the best means. There is evidence that busing is not an effective means in some situations, and we cannot escape an obligation ~~to find~~ better approaches to the problem. It is important at this point, however, not to go on to try to prove that any of the alternatives we now have is a certain cure either. None is. And there are a great many cases where transportation by buses is working ~~well a~~ according ~~to the research reports~~ we have.

3. The "truth" that nobody is saying is that the solution is quality education in taking an approach much broader than concentrating on busing or any of its alternatives. The first part of that solution is to turn the issue away from just a busing question. The busing debate is really not a constructive debate at all, and the issue must be "depoliticized" as much as possible. Perhaps this issue has met a stalemate in the political processes and must be lifted out of that atmosphere and placed in a nonpartisan, nonpolitical

forum for serious and far-reaching reassessment. The suggestion is that you push for real, useful-- not just rhetorical-- attention to the problem.

4. The other part of the solution is to focus on the problem as it really is, not as it seems to be. The issue is not what means are used to achieve desegregation but who controls that decision and how parental and community concerns are taken into consideration. To reframe the case and to focus on reuniting the community and parents with school control has great potential and is the way the cities have had some success with getting on with desegregation.

5. The public feels that the federal government (whether by the courts or the legislative process) has not only failed to solve the problem but has made it worse. Therefore, any solution from any part of the federal government is likely to fail--even if it were the "right" solution. The only good option for the Executive Branch may be to act as a "helper" and ~~a partner~~ to aid communities in helping themselves.

6. Using the precedent of the government to create a national force that is not governmental (the National Academy of Sciences and the National Council on the Arts and Humanities are examples), perhaps we should consider working with local governments and community groups to create a body from the best of the local community, education and parental leadership, titled perhaps the National Community and Education Council. It could work as a mediating force and provide technical assistance to communities to deal with problems before they become crises. In fact, the evidence from successes in Atlanta and Dallas is that citizen alliances of the type the Council should foster were the decisive forces. As I noted earlier, "success" seems to turn most on how well a community goes about making decisions that come up before the question of busing or any other means. The Council could also help cities to get the whole community, not just the schools, involved in voluntary efforts to prevent unhealthy racial isolation and foster constructive human relations.

The courts might find such a body a welcome referral point (that is, to get ideas but in no sense would it be proper for such a council to be an agent of the courts), and cities or community alliances might find it a source of good ideas and even endorsement.

Another alternative would be to use the occasion of getting the ESA legislation renewed to allow us to encourage many of the activities that the Council would foster without the fanfare of creating a new agency.

In sum, there do not seem to be any solutions that come from dealing with busing directly or even in searching for alternatives. The best chances for success seem to be in pioneering some new ground. Americans traditionally have solved problems not by changing the problem, but by changing their view of the problem.

David Mathews

Secretary

ON-GOING DEPARTMENT STUDIES AND ACTIVITIES RELATED TO DESEGREGATION

The Department has planned or on-going many analyses, evaluations, or research projects related to questions of quality education, urban education, and desegregation. The major ones are listed below:

Office of Education

The desegregation-related studies underway in OE are primarily directed toward the evaluation of OE's desegregation assistance programs and their effects on schools. One special study will look at a small number of districts that are successfully and peacefully desegregating in an attempt to discover the practices that contribute to successful desegregation.

- The evaluation of the Emergency School Aid Act (ESAA) basic and pilot programs is a longitudinal study of the effectiveness of two of the largest components of ESAA in meeting the objectives of the legislation. Special attention is being given to the relative efficacy of alternative school programs in raising student achievement. The study is being conducted through a contract with the System Development Corporation. The report on the first year of the study has been issued with subsequent reports due in May 1976 and May 1977.

- The evaluation of Title IV of the 1964 Civil Rights Act is assessing the effectiveness of this program in delivering training and technical assistance services to desegregating school districts. The study is being conducted by Rand Corporation, with the final report scheduled for release in June 1976.

- The OE study of exemplary desegregated schools is examining evidence showing the degree to which various school practices and programs contributed to successful desegregation. The final report is due in June 1976 from the contractor -- Educational Testing Service.

National Institute of Education

NIE has a number of on-going studies relating to various aspects of school desegregation. In FY 1976 the total amount spent on desegregation research was $682,000. The aim of these studies is to assist in making desegregated education settings exciting and humane places for children and is not to study the effects of desegregation on children. Some of the most policy relevant of these studies are:

- Six ethnographic studies of the cultural milieu and environment of desegregated schools. These studies are being carried on in New York, Pittsburgh, Pontiac, Durham, San Francisco, and Memphis. They are due July 1978.

- A study of status equalization and changing expectation in integrated classrooms. This will be due in 1978 or 1979.

- A study of racial integration, public schools, and the analysis of white flight. Due October 1976.

- A study entitled "Political Protest and School Desegregation: A Case Study of Boston". Due September 1976.

- A study of social impact on school desegregation, dealing with how much school desegregation is possible before it becomes counterproductive. Completed January 1976.

- A study of desegregation research and appraisal. This has resulted in a compendium that updates and evaluates the finding of recent research on integration and desegregation. Completed and at printers.

Assistant Secretary for Planning and Evaluation

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is beginning an analysis of Federal School Desegregation Policy as it has evolved through judicial, legislative, and administrative action in the last twenty

years. The analysis consists of six related studies. The first of these is a legal study that describes the implementation of desegregation actions in the nation's schools. It will systematically describe features of the various desegregation plans implemented in response to Federal actions. It will be due a year from now. Three other studies will investigate the impact of Federal action and different desegregation plans on the racial and socio-economic characteristics of schools and communities, attitudes toward desegregation, and student educational attainment. These studies will be completed in eighteen months. A fifth study will investigate minority participation in Federally-funded education programs. This study is in the design phase and will be completed in eighteen months. A study of Federal policy alternatives will complete the analysis.1/ It is anticipated that all six studies will be completed in approximately eighteen months.

Assistant Secretary of Education

A small scale effort is underway in ASE's Policy Development office to project probable effects of present court cases, to develop new measures of district and regional racial isolation, and to review other policy variables of interest to the Education Division. This work is being conducted as part of a larger policy analysis contract with Stanford Research Institute.

1/ A later effort will review the impact of Federal desegregation policy on postsecondary education. Study components will build upon the analysis developed for elementary and secondary education.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

June 1, 1976

NOTE TO DICK PARSONS

You raised some questions concerning desegregation of Northern school systems. As to the number of Northern districts which may be required to adopt a desegregation plan, we currently survey approximately 1100 Northern districts. One of the criteria used to select a district for our civil rights survey is that it must have a minority enrollment which is at least 10%. This would probably be the maximum number which may be required to desegregate in the future. Of this number, we estimate that approximately 25 will be desegregating for the first time or making substantial additional changes this fall.

Of the 100 largest systems in the country, 49 are in Northern states. Of these, 15 are under a final court order to desegregate, 13 are in active litigation, 3 voluntarily desegregated, and 1 (Des Moines) is under investigation by the Office for Civil Rights.

Of the top 10 school systems, only 2 (New York City and San Diego, California) are not involved in active litigation or under a court order. New York City is composed of 32 community districts, none of which is large enough to rank among the 100.

Of the largest 20 districts, only 2 more (Albuquerque, New Mexico, and Newark, New Jersey) are not in active litigation or under court order. Albuquerque in 1972 had a black population of only 2.6% and, thus, is not a likely candidate for desegregation. Newark, on the other hand, had a black population of 72.3% and, thus, is probably too heavily minority for much desegregation in the future.

I have attached a list of the 100 largest school systems. with the following code:

N - No action pending
F - Final order/voluntary plan (Title VI)
AL - Involved in active litigation
S/ - State involvement
V - Voluntary desegregation
I - Under investigation (Title VI)

(Deleted districts are in the 17 Southern and border states.)

I apologize that this is 1972 data, but I do not believe that the facts have changed all that much.

I have also attached the list of districts which may appeal an order to desegregate to the Supreme Court.

Martin H. Gerry

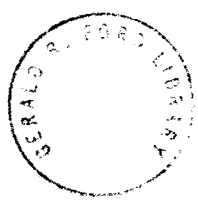


TABLE 3 - A

NEGROES IN 100 LARGEST (1972) SCHOOL DISTRICTS, RANKED BY SIZE
*
NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION
FALL, 1970 AND FALL, 1972 ELEMENTARY AND SECONDARY SCHOOL SURVEY

DISTRICT		TOTAL PUPILS	NEGRO NUM.	NEGRO PCT	NEGROES ATTENDING: 0-49.9% MINORITY SCHOOLS NUMBER	PCT	50-100% MINORITY SCHOOLS NUMBER	PCT	80-100% MINORITY SCHOOLS NUMBER	PCT	90-100% MINORITY SCHOOLS NUMBER	PCT	95-100% MINORITY SCHOOLS NUMBER	PCT	99-100% MINORITY SCHOOLS NUMBER	PCT	100% MINORITY SCHOOLS NUMBER	PCT
NEW YORK,NY																		
N	70	1140359	393516	34.5	63981	16.3	329535	83.7	258655	65.7	227673	57.9	185766	47.2	126879	32.2	46947	11.9
	72	1125449	405177	36.0	67009	16.5	338168	83.5	288753	71.3	246845	60.9	198352	49.0	117392	29.0	26579	6.6
LOS ANGELES, CAL																		
S/F	70	642895	154926	24.1	9121	5.9	145805	94.1	134889	87.1	129039	83.3	122779	79.3	85923	55.5	13551	8.7
	72	620659	156680	25.2	12696	8.1	143984	91.9	133238	85.0	127490	81.4	122732	78.3	99356	63.4	19409	12.4
CHICAGO,ILL																		
S/AL	70	577679	316711	54.8	9502	3.0	307209	97.0	290694	91.8	284013	89.7	270587	85.4	236143	74.6	143900	45.4
	72	553342	315940	57.1	5419	1.7	310521	98.3	293840	93.0	280004	88.6	273657	86.6	252184	79.8	148784	47.1
PHILADELPHIA,PA																		
S/AL	70	279829	169334	60.5	12541	7.4	156793	92.6	135866	80.2	118596	70.0	106782	63.1	78508	46.4	8668	5.1
	72	282965	173874	61.4	11677	6.7	162197	93.3	142147	81.8	131982	75.9	116964	67.3	74830	43.0	24813	14.3
DETROIT,MICH																		
F	70	284396	181538	63.8	10618	5.8	170920	94.2	143946	79.3	134222	73.9	120209	66.2	65349	36.0	24809	13.7
	72	276655	186994	67.6	13441	7.2	173553	92.8	148686	79.5	138167	73.9	127821	68.4	86000	46.0	20751	11.1
~~DADE CO., FLA (MIAMI)~~																		
	70	240447	60957	25.4	13254	21.7	47703	78.3	32352	53.1	25514	41.9	20317	33.3	12550	20.6	7498	12.3
	72	241809	63826	26.4	15066	23.6	48760	76.4	33042	51.8	26579	41.6	19357	30.3	13750	21.5	8710	13.6
~~HOUSTON, TEX~~																		
	70	241139	85965	35.6	7202	8.4	78763	91.6	73373	85.4	63373	73.7	55895	65.0	29734	34.6	7604	8.8
	72	225410	88871	39.4	7824	8.8	81047	91.2	74155	83.4	68080	76.6	59461	66.9	37414	42.1	4184	4.7
~~BALTIMORE CITY, MD~~																		
	70	192458	129220	67.1	12122	9.4	117098	90.6	104688	81.0	102358	79.2	95838	74.2	87731	67.9	55378	42.9
	72	186600	129250	69.3	10025	7.8	119225	92.2	109659	84.8	104571	80.9	98776	76.4	87906	68.0	54047	41.8
~~PR. GEORGES CO., MD (D.C. AREA)~~																		
	70	160897	31994	19.9	13040	40.8	18954	59.2	11190	35.0	6470	20.2	3938	12.3	2375	7.4	724	2.3
	72	161969	40397	24.9	16057	39.7	24340	60.3	15914	39.4	9008	22.3	6534	16.2	2179	5.4	1649	4.1
~~DALLAS, TEX~~																		
	70	164736	55648	33.8	1528	2.7	54120	97.3	52380	94.1	50884	91.4	47246	84.9	37505	67.4	12899	23.2
	72	154581	59638	38.6	8966	15.0	50672	85.0	47427	79.5	47007	78.8	46424	77.8	35820	60.1	7577	12.7
CLEVELAND,OHIO																		
AL	70	153619	88558	57.6	3725	4.2	84833	95.8	80505	90.9	79015	89.2	75162	84.9	60050	67.8	30852	34.8
	72	145196	83596	57.6	4001	4.8	79595	95.2	76719	91.8	75526	90.3	73789	88.3	64904	77.6	32773	39.2
~~WASHINGTON, DC~~																		
	70	145330	137502	94.6	1674	1.2	135828	98.8	133421	97.0	130688	95.0	127792	92.9	95261	69.3	46117	33.5
	72	140000	133638	95.5	488	0.4	133150	99.6	130028	97.3	127115	95.1	124972	93.5	100609	75.3	47709	35.7
~~MEMPHIS, TENN~~																		
	70	148304	76303	51.5	4979	6.5	71324	93.5	68751	90.1	68268	89.5	63749	83.5	56327	73.8	37979	49.8
	72	138714	80158	57.8	5862	7.3	74296	92.7	69235	86.4	65385	81.6	61694	77.0	54015	67.4	35795	44.7
~~FAIRFAX CO., VA (D.C. AREA)~~																		
	70	133368	4214	3.2	4214	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	135780	4509	3.3	4509	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~BALTIMORE CO., MD~~																		
	70	133674	5097	3.8	5097	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	131987	5604	4.2	5291	94.4	313	5.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~BROWARD CO., FLA (FT. LAUDERDALE)~~																		
	70	117324	27230	23.2	14189	52.1	13041	47.9	11201	41.1	10664	39.2	9212	33.8	6069	22.3	4303	15.8
	72	128889	29363	22.8	24634	83.9	4729	16.1	2343	8.0	2343	8.0	527	1.8	527	1.8	527	1.8
MILWAUKEE, WIS																		
F	70	132349	34355	26.0	4197	12.2	30158	87.8	26193	76.2	20740	60.4	15590	45.4	3939	11.5	0	0.0
	72	127986	38060	29.7	5850	15.4	32210	84.6	29849	78.4	27553	72.4	24616	64.7	16349	43.0	3312	8.7
~~MONTGOMERY CO., MD (D.C. AREA)~~																		
	70	125343	6454	5.1	6454	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	126707	8131	6.4	7827	96.3	304	3.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
SAN DIEGO, CAL																		
N	70	128783	16008	12.4	5146	32.1	10862	67.9	9017	56.3	7428	46.4	3522	22.0	0	0.0	0	0.0
	72	124487	16492	13.2	5353	32.5	11139	67.5	8284	50.2	7201	43.7	5909	35.8	74	0.4	74	0.4
~~DUVAL CO., FLA (JACKSONVILLE)~~																		
	70	122493	36054	29.4	9237	25.6	26817	74.4	20747	57.5	19794	54.9	19794	54.9	19794	54.9	13345	37.0
	72	113644	37100	32.6	26121	70.4	10979	29.6	4860	13.1	2903	7.8	1608	4.3	1608	4.3	0	0.0
COLUMBUS,OHIO																		
AL	70	109329	29440	26.9	7614	25.9	21826	74.1	15604	53.0	13313	45.2	7181	24.4	1724	5.9	655	2.2
	72	106588	31312	29.4	9203	29.4	22109	70.6	16131	51.5	11575	37.0	8720	27.8	3589	11.5	0	0.0
~~HILLSBOROUGH CO., FLA (TAMPA)~~																		
	70	105347	20417	19.4	4771	23.4	15646	76.6	12832	62.8	10095	49.4	8426	41.3	5280	25.9	2303	11.3
	72	107540	20367	18.9	19524	95.9	843	4.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
ST. LOUIS, MO																		
F	70	111233	72965	65.6	1827	2.5	71138	97.5	64166	87.9	60371	82.7	58794	80.6	57435	78.7	36316	49.8
	72	105617	72629	68.8	1830	2.5	70799	97.5	67366	92.8	64507	88.8	60238	82.9	53184	73.2	33493	46.1
~~ORLEANS PAR., LA (NEW ORLEANS)~~																		
	70	109856	76388	69.5	5925	7.8	70463	92.2	62567	81.9	60034	78.6	56996	74.6	54293	71.1	37053	48.5
	72	103839	77504	74.6	3807	4.9	73697	95.1	64960	83.8	58777	75.8	57244	73.9	51317	66.2	24539	31.7
INDIANAPOLIS, IND																		
F	70	106239	38044	35.8	7785	20.5	30259	79.5	22925	60.3	21156	55.6	18331	48.2	11971	31.5	3318	8.7
	72	98076	38522	39.3	9667	25.1	28855	74.9	22798	59.2	17798	46.2	16178	42.0	11744	30.5	3121	8.1
BOSTON, MASS																		
F	70	96696	28822	29.8	5174	18.0	23648	82.0	18757	65.1	15205	52.8	11367	39.4	6420	22.3	3172	11.0
	72	96239	31728	33.0	5663	17.8	26065	82.2	20525	64.7	15844	49.9	15403	48.5	6082	19.2	1009	3.2
~~ATLANTA, GA~~																		
	70	105598	72523	68.7	4777	6.6	67746	93.4	63111	87.0	56531	77.9	53863	74.3	47418	65.4	24332	33.6
	72	96006	73985	77.1	4606	6.2	69379	93.8	63600	86.0	59917	81.0	57045	77.1	44835	60.6	33090	44.7

*MINUTE DIFFERENCES BETWEEN SUM OF NUMBERS AND TOTALS ARE DUE TO COMPUTER ROUNDING.

TABLE 3 - A

NEGROES IN 100 LARGEST (1972) SCHOOL DISTRICTS, RANKED BY SIZE
*
NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION
FALL, 1970 AND FALL, 1972 ELEMENTARY AND SECONDARY SCHOOL SURVEY

DISTRICT		TOTAL PUPILS	NEGRO NUM.	NEGRO PCT	NEGROES ATTENDING: 0-49.9% MINORITY SCHOOLS NUMBER	PCT	50-100% MINORITY SCHOOLS NUMBER	PCT	80-100% MINORITY SCHOOLS NUMBER	PCT	90-100% MINORITY SCHOOLS NUMBER	PCT	95-100% MINORITY SCHOOLS NUMBER	PCT	99-100% MINORITY SCHOOLS NUMBER	PCT	100% MINORITY SCHOOLS NUMBER	PCT
~~JEFFERSON CO., KY (LOUISVILLE AREA)~~																		
	70	93454	3382	3.6	2738	81.0	644	19.0	644	19.0	644	19.0	644	19.0	644	19.0	0	0.0
	72	95742	3725	3.9	2731	73.3	994	26.7	336	9.0	336	9.0	336	9.0	336	9.0	0	0.0
DENVER, COL																		
F	70	97928	14434	14.7	6431	44.6	8003	55.4	6426	44.5	5406	37.5	5332	36.9	947	6.6	0	0.0
	72	91616	15729	17.2	7162	45.5	8567	54.5	5999	38.1	5659	36.0	5574	35.4	1110	7.1	0	0.0
~~PINELLAS CO., FLA (CLEARWATER)~~																		
	70	85117	13766	16.2	6264	45.5	7502	54.5	2881	20.9	2749	20.0	2749	20.0	2270	16.5	667	4.8
	72	90182	14313	15.9	14158	98.9	155	1.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
ALBUQUERQUE, NM																		
N	70	83781	2048	2.4	742	36.2	1306	63.8	779	38.0	555	27.1	191	9.3	0	0.0	0	0.0
	72	86658	2221	2.6	910	41.0	1311	59.0	888	40.0	403	18.1	152	6.8	0	0.0	0	0.0
~~DEKALB CO., GA (DECATUR)~~																		
	70	85859	5379	6.3	3793	70.5	1586	29.5	793	14.7	793	14.7	48	0.9	48	0.9	48	0.9
	72	86963	8412	9.7	4308	51.2	4104	48.8	2117	25.2	1572	18.7	1572	18.7	0	0.0	0	0.0
~~ORANGE CO., FLA (ORLANDO)~~																		
	70	85270	15398	18.1	6265	40.7	9133	59.3	8005	52.0	5125	33.3	4090	26.6	2553	16.6	2553	16.6
	72	86407	16060	18.6	6991	43.5	9069	56.5	6069	37.8	3588	22.3	3588	22.3	2894	18.0	2894	18.0
~~NASHVILLE DAVIDSON CO., TENN~~																		
	70	95313	23473	24.6	5877	25.0	17596	75.0	15727	67.0	14643	62.4	11674	49.7	9276	39.5	4942	21.1
	72	85406	23866	27.9	18271	76.6	5595	23.4	611	2.6	0	0.0	0	0.0	0	0.0	0	0.0
~~FT. WORTH, TEX~~																		
	70	88095	23542	26.7	2309	9.8	21233	90.2	18845	80.0	17725	75.3	17289	73.4	15363	65.3	11399	48.4
	72	82268	24416	29.7	5076	20.8	19340	79.2	15895	65.1	15044	61.6	12172	49.9	10901	44.6	2295	9.4
SAN FRANCISCO, CAL																		
F	70	91150	25988	28.5	3681	14.2	22307	85.8	14417	55.5	8239	31.7	6776	26.1	741	2.9	281	1.1
	72	81970	25055	30.6	1312	5.2	23743	94.8	5264	21.0	2110	8.4	1870	7.5	92	0.4	92	0.4
~~CHARLOTTE MECKLENBURG, NC~~																		
X	70	82507	25404	30.8	23050	90.7	2354	9.3	1053	4.1	445	1.8	76	0.3	0	0.0	0	0.0
	72	79813	25821	32.4	25251	97.8	570	2.2	375	1.5	375	1.5	375	1.5	219	0.8	0	0.0
NEWARK, NJ																		
N	70	78456	56651	72.2	1620	2.9	55031	97.1	51685	91.2	48959	86.4	46541	82.2	35843	63.3	11217	19.8
	72	78492	56736	72.3	1300	2.3	55436	97.7	54074	95.3	49333	87.0	47731	84.1	41074	72.4	10455	18.4
CINCINNATI, OHIO																		
AL	70	84199	37853	45.0	6399	16.9	31454	83.1	20661	54.6	14954	39.5	12068	31.9	10266	27.1	5924	15.7
	72	77878	36808	47.3	4258	11.6	32550	88.4	21443	58.3	14391	39.1	12950	35.2	9649	26.2	4047	11.0
~~ANNE ARUNDEL CO., MD (ANNAPOLIS)~~																		
	70	74021	9587	13.0	7547	78.7	2040	21.3	335	3.5	229	2.4	0	0.0	0	0.0	0	0.0
	72	77083	9713	12.6	8617	88.7	1096	11.3	184	1.9	184	1.9	184	1.9	0	0.0	0	0.0
SEATTLE, WASH																		
V	70	83924	10736	12.8	4358	40.6	6378	59.4	2690	25.1	330	3.1	330	3.1	0	0.0	0	0.0
	72	75239	10837	14.4	4808	44.4	6029	55.6	1475	13.6	751	6.9	315	2.9	0	0.0	0	0.0
CLARK CO., NEV (LAS VEGAS)																		
F	70	73822	9567	13.0	5960	62.3	3607	37.7	2870	30.0	2870	30.0	2870	30.0	2472	25.8	515	5.4
	72	75223	10092	13.4	10092	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
JEFFERSON CO., COL (LAKEWOOD)																		
?	70	67675	71	0.1	71	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	74185	144	0.2	144	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~SAN ANTONIO, TEX~~																		
	70	77253	11853	15.3	1099	9.3	10754	90.7	7950	67.1	7124	60.1	6096	51.4	3395	28.6	1310	11.1
	72	72305	11443	15.8	924	8.1	10519	91.9	7995	69.9	6441	56.3	5571	48.7	3500	30.6	487	4.3
~~TULSA, OKLA~~																		
	70	77822	10672	13.7	2933	27.5	7739	72.5	7332	68.7	7332	68.7	6153	57.7	3078	28.8	1887	17.7
	72	71190	10950	15.4	4768	43.5	6182	56.5	3329	30.4	2712	24.8	2305	21.1	426	3.9	0	0.0
PITTSBURGH, PA																		
S/AL	70	73481	29595	40.3	6900	23.3	22695	76.7	17009	57.5	16714	56.5	13596	45.9	9942	33.6	3905	13.2
	72	70080	29274	41.8	6659	22.7	22615	77.3	15612	53.3	14835	50.7	13142	44.9	8521	29.1	3086	10.5
PORTLAND,ORE																		
N	70	76206	7008	9.2	4352	62.1	2656	37.9	1494	21.3	1217	17.4	0	0.0	0	0.0	0	0.0
	72	68632	7307	10.6	4933	67.5	2374	32.5	1146	15.7	635	8.7	367	5.0	0	0.0	0	0.0
~~EAST BATON ROUGE PAR, LA~~																		
	70	64198	24785	38.6	5457	22.0	19328	78.0	17810	71.9	17022	68.7	15612	63.0	13414	54.1	7211	29.1
	72	67342	26184	38.9	5714	21.8	20470	78.2	18404	70.3	17566	67.1	17285	66.0	15177	58.0	6988	26.7
~~PALM BEACH CO., FLA~~																		
	70	66760	18338	27.5	4597	25.1	13741	74.9	7445	40.6	5392	29.4	2184	11.9	462	2.5	0	0.0
	72	67030	19172	28.6	12588	65.7	6584	34.3	2670	13.9	519	2.7	0	0.0	0	0.0	0	0.0
~~MOBILE CO., ALA~~																		
	70	69791	31034	44.5	5658	18.2	25376	81.8	16888	54.4	14618	47.1	12808	41.3	9635	31.0	3141	10.1
	72	66263	30255	45.7	11448	37.8	18807	62.2	14026	46.4	11967	39.6	9906	32.7	9079	30.0	4376	14.5
~~JEFFERSON PAR, LA (GRETNA)~~																		
	70	63572	13201	20.8	6425	48.7	6776	51.3	4791	36.3	4186	31.7	2577	19.5	2577	19.5	2577	19.5
	72	66030	13982	21.2	13005	93.0	977	7.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
OAKLAND, CAL																		
AL	70	67830	38567	56.9	2498	6.5	36069	93.5	28988	75.2	22601	58.6	18465	47.9	5102	13.2	991	2.6
	72	65189	39121	60.0	2678	6.8	36443	93.2	30530	78.0	25165	64.3	19220	49.1	6877	17.6	465	1.2
KANSAS CITY, MO																		
AL	70	70503	35375	50.2	3301	9.3	32074	90.7	29504	83.4	26446	74.8	23342	66.0	20344	57.5	5275	14.9
	72	65414	35578	54.4	3789	10.6	31789	89.4	31614	88.9	29502	82.9	28281	79.5	20279	57.0	10154	28.5
BUFFALO, NY																		
F	70	70305	27069	38.5	7249	26.8	19820	73.2	16172	59.7	15181	56.1	14934	55.2	13168	48.6	1785	6.6
	72	64296	26548	41.3	7568	28.5	18980	71.5	17145	64.6	13658	51.4	13658	51.4	10967	41.3	3220	12.1

*MINUTE DIFFERENCES BETWEEN SUM OF NUMBERS AND TOTALS ARE DUE TO COMPUTER ROUNDING.

TABLE 3 - A

NEGROES IN 100 LARGEST (1972) SCHOOL DISTRICTS, RANKED BY SIZE
*
NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION
FALL, 1970 AND FALL, 1972 ELEMENTARY AND SECONDARY SCHOOL SURVEY

DISTRICT		TOTAL PUPILS	NEGRO NUM.	NEGRO PCT	NEGROES ATTENDING: 0-49.9% MINORITY SCHOOLS NUMBER	PCT	50-100% MINORITY SCHOOLS NUMBER	PCT	80-100% MINORITY SCHOOLS NUMBER	PCT	90-100% MINORITY SCHOOLS NUMBER	PCT	95-100% MINORITY SCHOOLS NUMBER	PCT	99-100% MINORITY SCHOOLS NUMBER	PCT	100% MINORITY SCHOOLS NUMBER	PCT
LONG BEACH, CAL																		
N	70	69927	6349	9.1	2219	35.0	4130	65.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	63838	7100	11.1	3222	45.4	3878	54.6	561	7.9	0	0.0	0	0.0	0	0.0	0	0.0
OMAHA, NEB																		
F	70	63516	11786	18.6	3145	26.7	8641	73.3	7582	64.3	5663	48.0	3069	26.0	825	7.0	0	0.0
	72	63125	12220	19.4	4813	39.4	7407	60.6	6368	52.1	4412	36.1	3251	26.6	0	0.0	0	0.0
TUCSON, ARIZ																		
AL	70	57346	3088	5.4	835	27.0	2253	73.0	1068	34.6	572	18.5	398	12.9	0	0.0	0	0.0
	72	62878	3299	5.2	1171	35.5	2128	64.5	1317	39.9	611	18.5	471	14.3	42	1.3	25	0.8
GRANITE, UTAH (SALT LAKE CITY)																		
N	70	62767	83	0.1	83	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	62606	127	0.2	127	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~EL PASO, TEX~~																		
	70	62545	1887	3.0	1090	57.8	797	42.2	383	20.3	350	18.5	284	15.1	193	10.2	60	3.2
	72	62404	1866	3.0	1307	70.0	559	30.0	322	17.3	261	14.0	227	12.2	12	0.6	0	0.0
~~BREVARD CO., FLA (TITUSVILLE)~~																		
	70	61908	6618	10.7	5876	88.8	742	11.2	742	11.2	742	11.2	742	11.2	0	0.0	0	0.0
	72	62283	6961	11.2	6340	91.1	621	8.9	621	8.9	621	8.9	621	8.9	0	0.0	0	0.0
TOLEDO, OHIO																		
AL	70	61699	16407	26.6	3954	24.1	12453	75.9	9725	59.3	7957	48.5	6187	37.7	4303	26.2	579	3.5
	72	61694	16816	27.3	4277	25.4	12539	74.6	9606	57.1	8813	52.4	5682	33.8	1672	9.9	0	0.0
MINNEAPOLIS, MINN																		
F	70	66938	5935	8.9	3416	57.6	2519	42.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	61565	6510	10.6	4372	67.2	2138	32.8	427	6.6	0	0.0	0	0.0	0	0.0	0	0.0
~~OKLAHOMA CITY, OKLA~~																		
	70	70042	16109	23.0	3442	21.4	12667	78.6	12095	75.1	12095	75.1	12095	75.1	10911	67.7	3672	22.8
	72	60275	15869	26.3	12236	77.1	3633	22.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~BIRMINGHAM, ALA~~																		
	70	61994	33869	54.6	5338	15.8	28531	84.2	24887	73.5	23601	69.7	21831	64.5	18630	55.0	11360	33.5
	72	57729	34290	59.4	4012	11.7	30278	88.3	26084	76.1	25103	73.2	21819	63.6	17945	52.3	12189	35.5
WICHITA, KAN																		
V	70	63811	9362	14.7	6025	64.4	3337	35.6	2950	31.5	2950	31.5	2260	24.1	975	10.4	371	4.0
	72	57254	9367	16.4	9119	97.4	248	2.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~POLK CO., FLA (BARTOW)~~																		
	70	54380	11899	21.9	8622	72.5	3277	27.5	1444	12.1	1353	11.4	619	5.2	0	0.0	0	0.0
	72	57006	12510	21.9	9539	76.3	2971	23.7	1431	11.4	1308	10.5	1308	10.5	0	0.0	0	0.0
~~GREENVILLE CO., SC~~																		
	70	57222	12788	22.3	12594	98.5	194	1.5	72	0.6	0	0.0	0	0.0	0	0.0	0	0.0
	72	56930	12680	22.3	12511	98.7	169	1.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~AUSTIN, TEX~~																		
	70	54974	8284	15.1	1323	16.0	6961	84.0	6507	78.5	6507	78.5	5541	66.9	3548	42.8	1216	14.7
	72	55861	8359	15.0	3173	38.0	5186	62.0	4965	59.4	4623	55.3	3653	43.7	2911	34.8	2278	27.3
~~CHARLESTON, S.C.~~																		
	70	57410	27059	47.1	8332	30.8	18727	69.2	16197	59.9	14539	53.7	12764	47.2	9066	33.5	3675	13.6
	72	55562	26965	48.5	7381	27.4	19584	72.6	16396	60.8	14980	55.6	11453	42.5	9531	35.3	5438	20.2
~~JEFFERSON CO., ALA (BIRMGHM. AREA)~~																		
	70	59717	16776	28.1	3240	19.3	13536	80.7	13159	78.4	13026	77.6	12871	76.7	12871	76.7	8020	47.8
	72	55448	13552	24.4	7593	56.0	5959	44.0	4983	36.8	4983	36.8	4717	34.8	4717	34.8	2941	21.7
FRESNO, CAL																		
AL	70	57508	5133	8.9	1255	24.4	3878	75.6	3441	67.0	2628	51.2	2628	51.2	2073	40.4	16	0.3
	72	54990	5137	9.3	1482	28.8	3655	71.2	3036	59.1	2284	44.5	1766	34.4	482	9.4	0	0.0
AKRON, OHIO																		
N	70	56426	15413	27.3	5624	36.5	9789	63.5	7594	49.3	3661	23.8	2936	19.0	1121	7.3	0	0.0
	72	54329	15679	28.9	5457	34.8	10222	65.2	6089	38.8	3450	22.0	3450	22.0	997	6.4	564	3.6
SAN JUAN, CAL (CARMICHAEL)																		
N	70	55621	217	0.4	217	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	53116	300	0.6	300	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~CADDO PAR, LA (SHREVEPORT)~~																		
	70	53866	26401	49.0	6777	25.7	19624	74.3	17959	68.0	17200	65.1	16419	62.2	13864	52.5	11740	44.5
	72	52336	26064	49.8	6960	26.7	19104	73.3	17119	65.7	16461	63.2	14715	56.5	12368	47.5	9778	37.5
~~KANAWHA CO., W.VA (CHARLESTON)~~																		
	70	52888	3404	6.4	2934	86.2	470	13.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	52250	3331	6.4	2985	89.6	346	10.4	115	3.5	0	0.0	0	0.0	0	0.0	0	0.0
DAYTON, OHIO																		
F	70	56609	23013	40.7	2990	13.0	20023	87.0	17900	77.8	16897	73.4	16897	73.4	13847	60.2	2183	9.5
	72	52162	23254	44.6	3449	14.8	19805	85.2	17119	73.6	16475	70.8	15032	64.6	12849	55.3	5143	22.1
GARDEN GROVE, CAL																		
N	70	52684	110	0.2	110	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	51382	206	0.4	192	93.2	14	6.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~LOUISVILLE, KY~~																		
	70	53197	25674	48.3	3013	11.7	22661	88.3	19884	77.4	17556	68.4	13522	52.7	8527	33.2	1094	4.3
	72	49133	25078	51.0	3675	14.7	21403	85.3	20564	82.0	18502	73.8	16229	64.7	10334	41.2	4636	18.5
SACRAMENTO, CAL																		
V	70	52218	8012	15.3	5273	65.8	2739	34.2	302	3.8	264	3.3	264	3.3	0	0.0	0	0.0
	72	48774	8201	16.8	5236	63.8	2965	36.2	482	5.9	240	2.9	0	0.0	0	0.0	0	0.0
~~NORFOLK, VA~~																		
	70	55117	24757	44.9	8139	32.9	16618	67.1	13827	55.9	11469	46.3	9954	40.2	9299	37.6	6457	26.1
	72	48701	24120	49.5	9317	38.6	14803	61.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
ST. PAUL, MINN																		
F	70	49732	3163	6.4	2043	64.6	1120	35.4	340	10.7	340	10.7	340	10.7	0	0.0	0	0.0
	72	48059	3259	6.8	2178	66.8	1081	33.2	546	16.8	349	10.7	349	10.7	0	0.0	0	0.0
~~ESCAMBIA CO., FLA (PENSACOLA)~~																		
	70	46987	13443	28.6	5548	41.3	7895	58.7	2225	16.6	515	3.8	0	0.0	0	0.0	0	0.0
	72	47947	13459	28.1	6204	46.1	7255	53.9	1937	14.4	957	7.1	0	0.0	0	0.0	0	0.0

TABLE 3 - A

NEGROES IN 100 LARGEST (1972) SCHOOL DISTRICTS, RANKED BY SIZE
*
NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION
FALL, 1970 AND FALL, 1972 ELEMENTARY AND SECONDARY SCHOOL SURVEY

DISTRICT		TOTAL PUPILS	NEGRO NUM.	NEGRO PCT	NEGROES ATTENDING: 0-49.9% MINORITY SCHOOLS NUMBER	PCT	50-100% MINORITY SCHOOLS NUMBER	PCT	80-100% MINORITY SCHOOLS NUMBER	PCT	90-100% MINORITY SCHOOLS NUMBER	PCT	95-100% MINORITY SCHOOLS NUMBER	PCT	99-100% MINORITY SCHOOLS NUMBER	PCT	100% MINORITY SCHOOLS NUMBER	PCT
~~VIRGINIA BEACH, VA~~																		
	70	45245	4793	10.6	4187	87.4	606	12.6	606	12.6	606	12.6	0	0.0	0	0.0	0	0.0
	72	47919	4855	10.1	4855	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~COBB CO., GA (MARIETTA)~~																		
	70	44504	1397	3.1	1397	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	47053	1299	2.8	1299	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~WINSTON-SALEM/FORSYTH CO., NC~~																		
	70	49514	13727	27.7	5077	37.0	8650	63.0	7884	57.4	7822	57.0	7822	57.0	7337	53.4	6015	43.8
	72	46675	14164	30.3	13483	95.2	681	4.8	390	2.8	330	2.3	330	2.3	330	2.3	330	2.3
MT. DIABLO, CAL (CONCORD)																		
N	70	48395	416	0.9	416	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	46457	427	0.9	427	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
FLINT, MICH																		
AL	70	45659	18475	40.5	3512	19.0	14963	81.0	7051	38.2	5621	30.4	4816	26.1	1367	7.4	385	2.1
	72	46115	20493	44.4	3502	17.1	16991	82.9	8984	43.8	5813	28.4	4252	20.7	574	2.8	243	1.2
~~CORPUS CHRISTI, TEX~~																		
	70	46292	2590	5.6	71	2.7	2519	97.3	2176	84.0	1398	54.0	998	38.5	317	12.2	12	0.5
	72	45567	2517	5.5	250	9.9	2267	90.1	1972	78.3	1476	58.6	830	33.0	348	13.8	0	0.0
GARY, IND																		
F	70	46595	30169	64.7	1060	3.5	29109	96.5	27673	91.7	25850	85.7	24009	79.6	19544	64.8	11781	39.1
	72	44830	31200	69.6	1267	4.1	29933	95.9	29149	93.4	28591	91.6	28346	90.9	16971	54.4	7160	22.9
SHAWNEE MISSION, KAN																		
?	70	45289	140	0.3	140	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	44428	170	0.4	170	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
~~RICHMOND, VA~~																		
	70	47988	30785	64.2	3609	11.7	27176	88.3	17485	56.8	13776	44.7	8680	28.2	8680	28.2	2954	9.6
	72	43825	30746	70.2	1962	6.4	28784	93.6	11868	38.6	1488	4.8	200	0.7	34	0.1	34	0.1
ROCHESTER, NY																		
N	70	45500	15082	33.1	6161	40.9	8921	59.1	6661	44.2	3651	24.2	3651	24.2	652	4.3	0	0.0
	72	43347	16440	37.9	5104	31.0	11336	69.0	5289	32.2	4321	26.3	3682	22.4	1581	9.6	622	3.8
FT. WAYNE, IND																		
AL	70	43400	6492	15.0	1921	29.6	4571	70.4	3194	49.2	2634	40.6	512	7.9	0	0.0	0	0.0
	72	43245	6961	16.1	3568	51.3	3393	48.7	2341	33.6	1849	26.6	388	5.6	0	0.0	0	0.0
DES MOINES, IOWA																		
I	70	45375	3751	8.3	2193	58.5	1558	41.5	24	0.6	0	0.0	0	0.0	0	0.0	0	0.0
	72	43226	3913	9.1	2201	56.2	1712	43.8	583	14.9	0	0.0	0	0.0	0	0.0	0	0.0
ROCKFORD, ILL																		
N	70	43116	5300	12.3	2965	55.9	2335	44.1	412	7.8	412	7.8	0	0.0	0	0.0	0	0.0
	72	41364	5636	13.6	2994	53.1	2642	46.9	601	10.7	370	6.6	0	0.0	0	0.0	0	0.0
~~SPRING BRANCH, TEX (HOUSTON)~~																		
	70	39771	22	0.1	22	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
	72	40509	37	0.1	37	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
RICHMOND, CAL																		
N	70	41492	11389	27.4	5730	50.3	5659	49.7	3781	33.2	3405	29.9	3405	29.9	1621	14.2	343	3.0
	72	39952	12106	30.3	4979	41.1	7127	58.9	3406	28.1	3105	25.6	3105	25.6	1667	13.8	291	2.4
JERSEY CITY, NJ																		
N	70	38430	17058	44.4	1877	11.0	15181	89.0	9317	54.6	8130	47.7	6595	38.7	1091	6.4	0	0.0
	72	38616	17548	45.4	1861	10.6	15687	89.4	11272	64.2	8176	46.6	7613	43.4	3332	19.0	0	0.0
~~CALCASIEU PARI, LA (LK. CHARLES)~~																		
	70	38868	10251	26.4	3473	33.9	6778	66.1	6180	60.3	4310	42.0	1062	10.4	0	0.0	0	0.0
	72	38520	10306	26.8	3166	30.7	7140	69.3	6048	58.7	5473	53.1	3410	33.1	624	6.1	164	1.6
~~MUSCOGEE CO., GA (COLUMBUS)~~																		
	70	42010	13074	31.1	1564	12.0	11510	88.0	11214	85.8	10572	80.9	10421	79.7	9601	73.4	8093	61.9
	72	38349	13131	34.2	10311	78.5	2820	21.5	691	5.3	242	1.8	0	0.0	0	0.0	0	0.0
TOTAL (100) DISTRICTS																		
	70	10564504	3396909	32.2	546100	16.1	2850809	83.9	2434965	71.7	225015	65.5	1999173	58.9	1510481	44.5	707377	20.8
	72	10275264	3465635	33.7	701943	20.3	2763692	79.8	2343442	67.6	2118590	61.1	1931474	55.7	1456090	42.0	632340	18.3

*MINUTE DIFFERENCES BETWEEN SUM OF NUMBERS AND TOTALS ARE DUE TO COMPUTER ROUNDING.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

JUN 1 1976

MEMORANDUM FOR THE HONORABLE RICHARD D. PARSONS

Per your request, we have compiled the attached lists of school desegregation cases in the Federal courts which are: 1) on appeal or likely to be appealed; and 2) pending at the district court level. For each case in which an appeal is pending or likely, we have briefly indicated the current status and general issue involved.

Martin H. Gerry
Director
Office for Civil Rights

Attachment

I. Cases in Which an Appeal is Pending or Likely
(*indicates cases to which the United States is a party)

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II. Cases Pending in Federal District Court in which there Has Not Been a Finding of De Jure Segregation

Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Youngstown, Ohio
Kansa City, Kansas
Tucson, Arizona (OCR will institute administrative proceedings)

June 1976

Wednesday

11:30 -- Congressional Meeting begins with photo. Advance text of message made available to press as soon as doors close on meeting.

12:30 -- President reads statement to press. Message sent to the Hill with legislation. Levi, Mathews conduct joint briefing at WH.

Early afternoon -- Senators and Congressmen read statements on camera on the Hill (Griffin, Roth, Quie, McCollister if possible).

Afternoon -- Packet of materials to advocates.

Thursday

A.M. -- Levi, Mathews on one of morning talk shows (Today Show).

P.M. -- Levi, Mathews hit the road to meet with editorial boards of NY Times, WSJ, Post, Christian Science Monitor, LA Times. If Mathews travels alone, he should take Justice rep with him.

Sponsors of busing legislation announced on the Hill.

Friday

Levi should have op ed piece appear in the NY Times (sooner the better). Could be following week in response to negative editorial.

Sunday

Levi, Mathews appear together on one of the talk shows.

Sources that could be very helpful:

The Solicitor General

Former Solicitor General Griswold

Elliot Richardson

Paul Fruend

Some of participants in your meetings

Sources that could be very harmful if they are critical

Senator Brooke

Arthur Flemming

Stan Pottinger

Marvin Esch

[June 1976?]

JMC BUSING NOTES

FIRMNESS

LEADERSHIP

KNOWLEDGE

COMPASSION

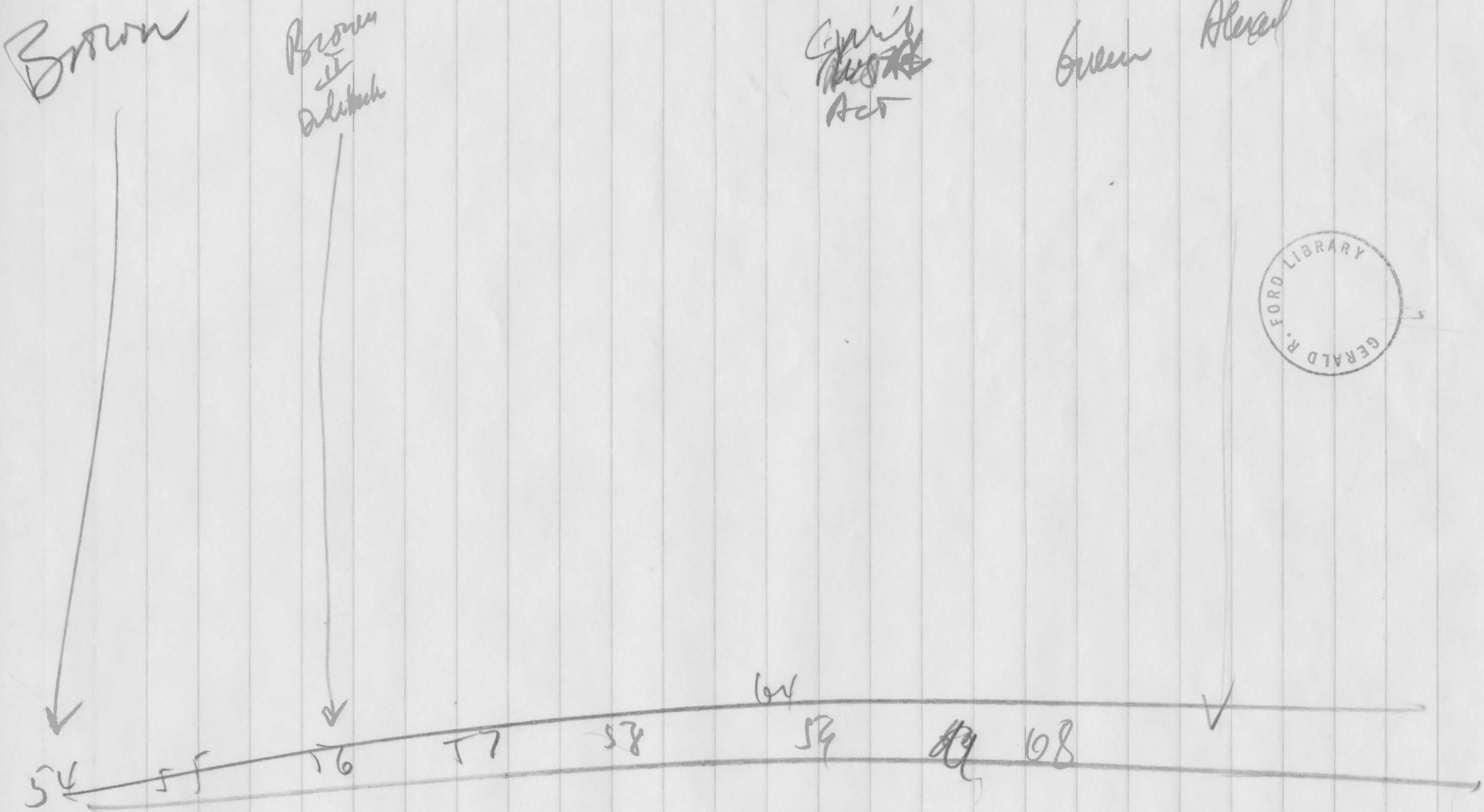
BALANCE

RESPONSIBLE

THOUGHTFUL

Get book

[illegible] of [illegible]
[illegible] Day [illegible]
or ~~[illegible]~~ [illegible]



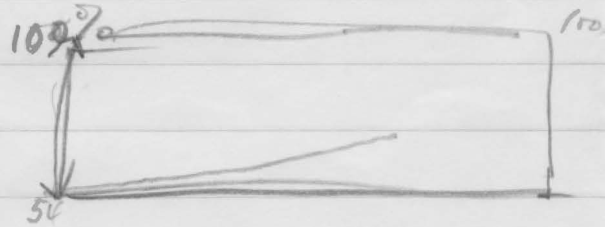
Before Dick

We need —

objective -
equality of opportunity
national ~~purpose~~ purpose
to ~~eliminate~~ wipe
out differences and to
discrimination -
provide an opportunity
for all the
education whatever their
true desire
and ~~resources~~
ability to
~~succeed~~
undertake
and achieve

1) chart of steps to be taken

2) Chart of How far we've gone - how far to go



3) state by - state analysis of known problems

4) Talk w/ Don Rozi

5) " " Prof James Coleman

6) " " Esch

all to
~~3 elements~~ armed forces [illegible]

2 of substance
1 of procedure

1. legislation to clarify remedy & violation

2. find right case

3. admt comments in [illegible] ways to [illegible] design [illegible] not to [illegible] when courts [illegible] to [illegible]

coordinated campaign for an objective — to inform and lead to achieve a greater net product

~~Prepare~~ the is

power pipe that

executive & legislative,

the elected leader

of the nation

~~sum~~ by it result ~~instant~~

The court on

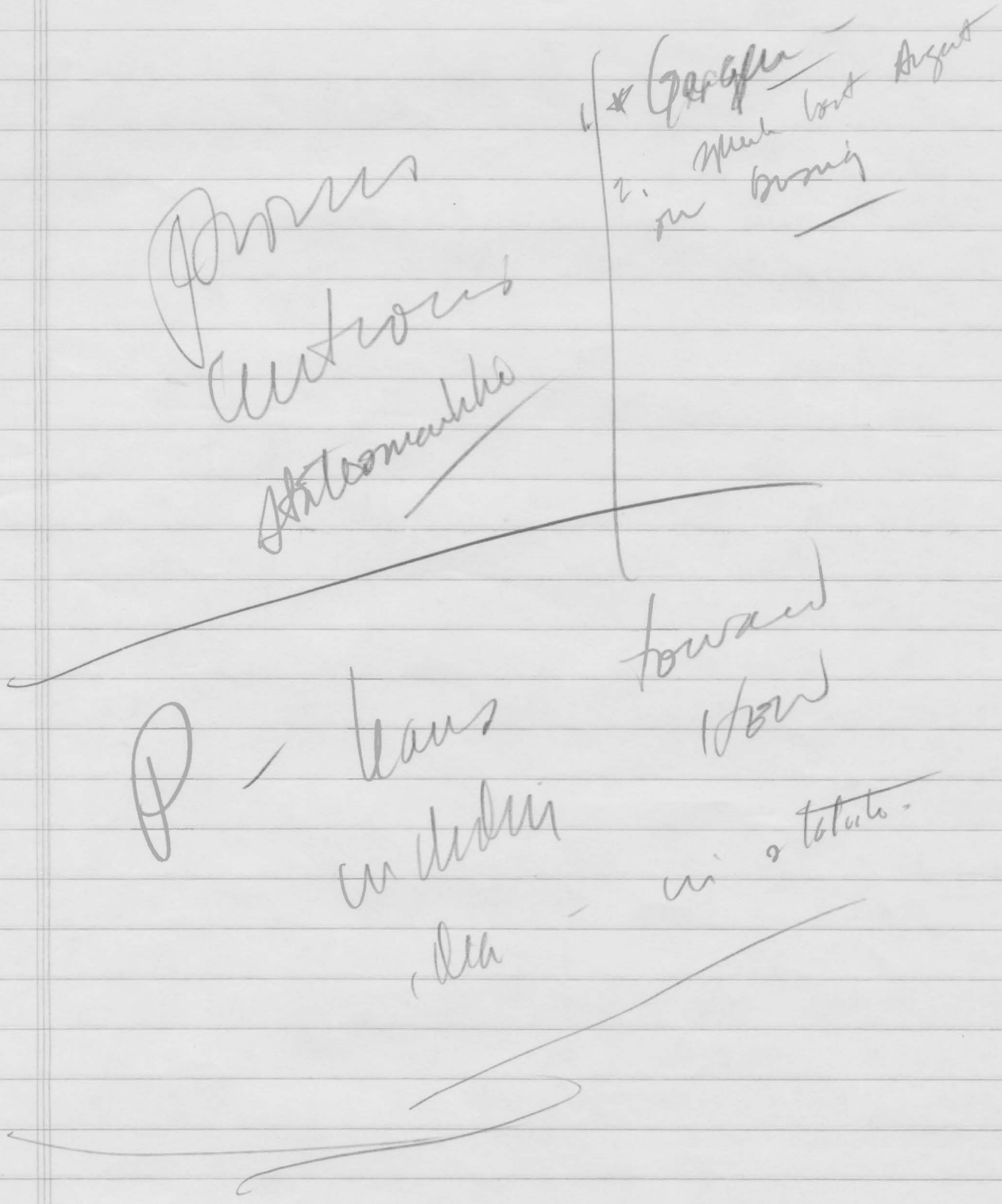
~~what it is~~ the

process of school

desegregation

Dr Conference

Jack



Breach
in meetings

P How do ~~them~~ get to write -

first citizens;
Adm problems ~~let~~ by House

we do want ___

we least children

Translate it into people

We don't want any

inner school bussing

~~them~~ is against

fears and a [poor quality] ~~education~~

~~[illegible]~~ ~~and in~~

in school

crime and violence

---

upwardly mobile society of the

last generation or so wanted

to give kids break — own

home, yard, trees —

better place to bring children up in.

JUNE 1976

BUSING CALENDAR

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2 President met w/Mathews, Levi et al	3	4	5
6	7	8	9	10 President met w/Sec. Coleman	11	12 President met w/county reps who desegregated President met w/academic & school board grp.
13	14 President met w/civil rights group	15	16	17	18 Draft legislation ready Draft message ready	19 President meets w/10 constitutional experts President meets w/educators
20	21 Legislation & Message cleared & ready to be sent President meets w/Republican advisory group	22	23 President meets w/Republican leaders Message to Congress/	24	25	26
27	28	29	30			

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

JUN 1 1976

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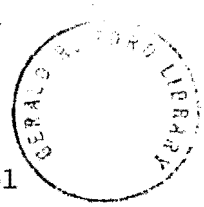

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II. Cases Pending in Federal District Court in which there Has Not Been a Finding of De Jure Segregation

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Cincinnati, Ohio
Columbus, Ohio
Youngstown, Ohio
Kansa City, Kansas
Tucson, Arizona (OCR will institute administrative proceedings)

[June 1976]

Corrected Version

A B I L L

To provide for orderly adjudication of school desegregation suits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "School Desegregation Act of 1976."

TITLE I -- Adjudication of Desegregation Suits

Sec. 101. Purpose: Application

(a) The purpose of this Title is to prescribe standards and procedures to govern the award of injunctive and other equitable relief in school desegregation cases brought under Federal law in order (1) to prevent the continuation or future occurrence of any acts of unlawful discrimination in public schools and (2) to remedy, by only such means as are necessary and appropriate to that end, the degree of concentration by race, color or national origin in the student population of the schools that is attributable to such acts of unlawful discrimination.

(b) The provisions of this Title shall apply to all proceedings for the award or modification of injunctive and other equitable relief, after the date of its enactment, seeking the desegregation of public schools under Federal law, but shall not apply to proceedings seeking a reduction of such relief awarded prior to the date of its enactment except as provided in Section 107 of this Title.

Sec. 102. Definitions.

For purposes of this title --

(a) "Local education agency" means a public board of education or any other agency or officer exercising administrative control over or otherwise directing the operations of one or more of the public elementary or secondary schools of a city, town, county or other political subdivision of a State.

(b) "State education agency" means the State board of education or any other agency or officer responsible for State supervision or operation of public elementary or secondary schools.

(c) "Desegregation" means the elimination of unlawful discrimination on the part of a local or State education agency, and the elimination of the effects of such discrimination in the operation of its schools.

(d) "Unlawful discrimination" means action by a local or State education agency which, in violation of federal law, discriminates against students on the basis of race, color or national origin.

(e) "State" means any of the States of the Union and the District of Columbia.

Sec. 103. Liability.

A local or State education agency shall be held subject (a) to relief under Section 104 of this Act if the Court finds that such local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination and (b) to relief under Section 105 of this Act if the Court further finds that the act or acts of unlawful discrimination have caused a greater present degree of concentration, by race, color or national origin, in the student population of any school than would have existed had no such act occurred.

Sec. 104. Relief - Orders prohibiting unlawful acts.

In all cases in which, pursuant to section 103(a) of this Act, the Court finds that a local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination, the Court shall enter an order enjoining the continuation or future commission of any such act or acts

and providing any other relief necessary and appropriate to prevent such act or acts from occurring.

Sec. 105. Relief - Orders eliminating the present effects of unlawful acts on concentrations of students.

(a) In all cases in which, pursuant to section 103 (b) of this Act, or any other provision of Federal law, the Court finds that the act or acts of unlawful discrimination have caused a greater present degree of concentration, by race, color, or national origin, in the student population of one or more schools, the Court shall order only such relief as may be necessary and appropriate to eliminate the present effects found, in conformity with this section, to have resulted from the discrimination.

(b) Before entering an order under this Section the Court shall receive evidence, and on the basis of such evidence shall make specific findings, concerning the degree to which the concentration, by race, color, or national origin, in the student population of particular schools affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred. If such findings are not feasible, because of the great number of schools that were affected or for some other reason; or if the relief

awarded will not be effective or feasible as applied only to the particular schools that were affected, because of the demographic changes that have occurred over a period of years, or for some other reason; the Court shall receive evidence, and on the basis of such evidence shall make specific findings, concerning the degree to which the overall pattern of student distribution, by race, color or national origin within the school system affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred.

(c) The findings required by subsection (b) of this section shall be based on conclusions and reasonable inferences from evidence adduced, and shall in no way be based on a presumption, drawn from the finding of liability made pursuant to section 103(b) of this Act or otherwise, that the /student distribution, by race, color or national origin in the schools or any particular school is the result of unlawful acts of discrimination.

(d) No order entered under this Act or any provision of Federal law shall require the assignment of students to alter the student distribution, by race, color, or national origin, in the student population of schools unless, pursuant to

this section, the Court finds that the student composition by race, color, or national origin, of particular schools, or the overall pattern of student distribution by race, color, or national origin in the school system, resulted in substantial part from unlawful discrimination by a local or State education agency, and that assignment of students is necessary to adjust the composition, by race, color, or national origin, of particular schools, or the overall pattern of distribution by race, color, or national origin, in the school system, substantially to what it would have been if the unlawful discrimination had not occurred.

(e) In all orders entered under this section the Court may, without regard to the other requirements of this section, direct a local or State education agency to institute a program of voluntary transfers of students to achieve desegregation.

Sec. 106. Voluntary action; local control.

All orders entered under section 105 shall rely, to the greatest extent practicable and consistent with effective relief, on the voluntary action of school officials, teachers, and students, and the Court shall not remove from a local or State education agency its power and responsibility

to control the operations of the schools except to the minimum extent necessary to prevent unlawful discrimination and to eliminate its present effects.

Sec. 107. Review of Orders.

No court-imposed requirement for assignment of students to alter the student distribuion by race, color, or national origin, in schools, other than requirements for voluntary transfers, shall remain in effect for a period of more than three years from the date of entry of the order containing such requirement or, in the case of all final orders entered prior to enactment of this Act, for a period of more than three years from the effective date of this Act unless at the expiration of such period the Court finds:

(1) that the defendant has failed to comply with the requirement substantially and in good faith; or

(2) that the requirement remains necessary to correct the effects of unlawful discrimination determined under the provisions of section 105 of this Act.

If the Court finds (1) above, it may extend the requirement until there have been three consecutive years of substantial compliance in good faith. If the Court finds (2) above, after the expiration of three consecutive years of substantial

compliance in good faith, it may extend the effect of the requirement, with or without modification, for a period not to exceed two years, and thereafter may order an extension only upon a specific finding of extraordinary circumstances that require such extension. The Court may, however, continue in effect a voluntary transfer program to implement relief under section 105(e) of this Act. The provisions of this section shall not apply to any plan approved and ordered into effect under section 203.

Sec. 108.

With respect to continuing provisions of its order not covered by section 107, the court shall conduct a review every three years to determine whether each such provision shall be continued, modified, or terminated. The court shall afford parties and intervenors a hearing prior to making this determination.

TITLE II -- Intervention, Mediation, Community Plan

Sec. 201. Intervention.

The Court shall notify the Attorney General of any proceeding pursuant to subection 105(b) of this title to which the United States is not a party, and the Attorney General may, in his discretion, and if he determines that

the matter is of general public importance, intervene in such proceeding on behalf of the United States to present evidence and take all other actions that he may deem necessary to facilitate enforcement of this Act. In such action, the United States shall be entitled to the same relief as if it had instituted the action.

Sec. 202. Appointment of mediator.

(a) The Attorney General is hereby authorized to appoint, at such times and for such period as he deems appropriate, a Federal school desegregation mediator or mediators to assist the court and the parties in a school desegregation suit.

(b) When a mediator is appointed pursuant to this section, he shall provide assistance to the court, the parties and the affected community to the ends of (1) full and orderly implementation of the constitutional right to equality of educational opportunity, (2) insuring that desegregation is accomplished in a manner which is educationally sound and (3) seeking to secure community support for proper elimination of unlawful school discrimination.

(c) A mediator may request the assistance of other Federal agencies.

Sec. 203. Committee of community leaders.

Whenever the Attorney General of the United States receives the notice required by section 201 of this title, he may, in cooperation with the Secretary of Health, Education and Welfare, the Governor of the State, and the Mayor or other chief executive official of the governing unit involved create a committee composed of the leaders of the community. The committee shall immediately endeavor to fashion a plan to be put into effect over a five year period, including such matters as the relocation of schools, which can give assurance that such progress will be made toward a removal of the effects of unlawful discrimination over the five year period, with specific dates and goals, that in the meantime required transportation of students can be avoided or minimized. Such a plan shall be submitted to the court for its approval and adoption as an order of the court. If, during the continuance or at the expiration of a plan approved and adopted under this section, the court determines that the plan is inadequate, progress made under such plan shall be taken into account in framing any order under Section 105 of this Act.

[June 1976]

THE PRESIDENT HAS SEEN...

Areas in which Busing is working well

(1) Louisville - see attached article

(2) Swann (1971 Supreme Court) court dismissed case July 11, 1975
84,000 total enrollment — 31,000 bussed

(3) Little Rock

- totally balanced system - busing in its 4th year (since 1972)
- entire system subject to busing, 24,000 students

(4) Pulaski County (Arkansas)

- largest in State
- 28,000 students - 18-20% black

(5) Pine Bluff

- 15,000 students - total busing

(6) Waco, Texas

- considerable busing
  case went to Court of Appeals (5th Cir.)
  25,000 - 30,000 students

(7) Districts in Florida - busing working well
e.g. Hillsborough County
Tampa
Broward County

(8) ~~Government's brief in Pasadena - lists nearly at least 50 districts in which busing is running smoothly.~~
St. Petersburg, Florida (80,000 enrollment - 30-35,000 bussed)

Tampa, Florida — over 100,000 pupils (approx. 40,000 bussed)

9) Fort Worth (100,000 pupil — 1973 final order
bitterly fought — all is well)

10) Nashville (95,000 - total enrollment (1970-71)
49,000 - bussed

11) Alabama
Jefferson County
Bessemer

10) Sarasota, Florida — Ct. sd everything fine
dismissed case on 9-3-75

Boston School Case - Morgan v. Hennigan 379 F. Supp. 410
(June 1974)

Developments prior to District Court Decision on Liability

State defendants agreed with virtually all the contentions raised by plaintiffs against city officials in Federal District Court litigation.

(a) Massachusetts Racial Imbalance Law

- State statute passed in 1965 requiring affirmative action to eliminate racial imbalance in Public School Systems whatever the cause (de jure finding not required)

- Statute has been interpreted by Supreme Judicial Court and has been said Statute exceeds requirements of 14th A.

- School Board and State involved in extensive litigation in State Court for Boston's failure to comply with the Statute (most recent case decided March 1974, three months before District Court opinion).

Supreme Judicial Court found Boston School Committee not in compliance with the Statute and the orders of the State Board as of March 1974.

(b) Federal Administrative Proceedings

In April 1974, two months prior to Garrity's decision,

Boston school officials also sanctioned by HEW with HUD and NSF participating in hearings for persistently continuing segregative practices and intentionally creating a dual school system; defendants were found to be in violation of the Civil Rights Act of 1964.

Garrity's Decision on Liability (379 F. Supp. 410 - June 1974)

Massive 74-page decision on liability granted in 14th A by Judge Garrity - after 15 day trial, numerous depositions, stipulations and pre-trial pleadings.

Facts: Students

- Heavy concentration of blacks in some schools and whites in others.
- 96,000 students in system when case filed in 71-72.
- 59,300 or 61% white; 30,600 or 32% black, 6,500 or 7% other.
- 84% of whites attend schools that are more than 80% white
- 62% of blacks attend schools more than 70% black.
- At least 80% of schools segregated in sense that racial composition out of line with that of the Public School System as a whole.

- Of 18 high schools, 5 are in excess of 90% white; 3 are 85% white, 2 are 90% black with white population of less than 2%, 4 are more than 50% black.
  (same pattern in specialized schools; Boston Latin and Girls Latin - 93% and 89% white; Boston Technical - 84% white; Girls Trade - 75% black; Boston Trade - 66% black)

- Of 10 elementary schools ending in Grade 8, 5 are 82% white, one is 94% black, one - 93% minority; of remaining elementary schools (140), 62 are less than 5% black, 2 are 85% or more black.

Faculty and Staff
75% of black teachers are in schools more than 50% black
81 schools never had a black teacher.
Teachers not assigned on basis of residence
Less than 3 of the schools are majority blacks but over 2/3 of the black teachers are sent to them.

Defendants do not dispute central fact that schools are segregated.

School Policies and Practices

(a) Overcrowded white schools; underutilized black schools - whites bussed by black schools with available seats to white schools.

(b) Used of portable classrooms to alleviate overcrowding of white schools when non-segregative methods could have achieved same results.

(c) Facility utilization and construction practices and conversion has been to promote and perpetuate segregation. Specific examples in of 4 schools opinion at 429.

(d) Districting and feeder patterns engaged in for purpose of perpetuating racial segregation. Court found this basically uncomprising attitude to redistricting.

(e) Open enrollment and controlled transfer policies managed with intent to discriminate on basis of race.

(f) Neighborhood school policy was so selective as to amount to no policy at all, e.g. extensive busing, open enrollment, feeder pattern, districting - policy a reality only in areas of the city where residential segregation is firmly entrenched (p. 473).

Findings looking on record as a whole prove that school authorities have carried out systematic program of segregation affecting a substantial portion of the students, schools, teachers, and facilities. Predicate exists for finding of dual system. (Keyes)

District Court decision affirmed by Court of Appeals Morgan v. Kerrigan, 509 F.2d. 580 (1st Cir. 1974).

District Court issued plan on May 10, 1975, Court of Appeals affirmed 530 F.2d. 401 (1976).

Plan

Approximately 20,000 of Boston's 96,000 students are involved in the busing.

Louisville School Case

489 F. 2d. 925 (1973)
510 F. 2d. 1358 (1974)

Style of Case: Newburg Area Council, Inc., et. al. v. Board of Education of Jefferson County, Kentucky et. al.
(challenged practices of Jefferson County School Board with respect to elementary schools)

Companion Case: Haycraft, et. al. v. Board of Education of Louisville, Kentucky et. al.
(Sought desegregation of Louisville school system with a plan that included disregarding Louisville and Jefferson County School District boundaries)

Procedure Posture: District Court (December 1972)
Original class actions separately filed, consolidated but tried separately as to status of each district. In December 1972, District Court dismissed holding that each school district was a unitary system in which all vestiges of State-imposed segregation had been eliminated.

Court of Appeals I

489 F. 2d. 925 (6th Cir., December 1973)
Court of Appeals reversed and held that
(1) Neither Jefferson County School District or Louisville Independent School District was not a unitary system in which all vestiges of State-imposed segregation had been eliminated;

(2) Federal District Court has the power to disregard school district lines within a single county in formulating a school desegregation plan.

U. S. Supreme Court (July 25, 1974)

Cert. granted and Case reversed and remanded for re-consideration in light of Bradley v. Milliken, 418 U.S. 717 (1974), an intervening decision of the Supreme Court in which it held that State-created district lines could not be disregarded in devising an appropriate desegregation plan for the City of Detroit.

Court of Appeals II, 510 F.2d. 1358 (December 1974)

Court distinguished Milliken on several grounds:

(1) In Milliken, unlike Louisville, no evidence of de jure segregation in outlying school districts or of dual school systems.

(2) Milliken remedy would have involved 53 school districts over 3 counties; present case, only three districts in single county.

(3) By statute in Kentucky, county is basic educational unit of State and school district boundaries are merely "artificially drawn school district lines". Also, Kentucky statute expressly authorizes reconsolidation of school district within a single county without the consent of the County School Board. Court of Appeals reaffirmed earlier decision.

Cert. denied (95 Supreme Court 1658)
When case got back to district court, the Jefferson County and Louisville City became single district administered by Jefferson County (Louisville Board resigned). Plan implemented, (75-76 School Year) apparently working well.
(see attached section
School Board has appealed desegregation order.

Facts:

(a) Jefferson County School District:
96,000 students; 4% black
(65% of all students prior to desegregation order bussed to school)
74 elementary schools; 5 Junior High; 18 combined Junior and Senior High; 6 Special Schools

Pre-Brown: Racially segregated school system, a requirement of Kentucky law.

- No high school for black students in County, were bussed to all black high school in City of Louisville (across district lines).

- Black elementary school run by County Board located in one area in county having substantial black population. Pre-Brown Black School surrounded by all-white or virtually all-white elementary schools which remained black until desegregation order.

Three (3) elementary schools contain 56% of black elementary population (argument: existence of small number of one-race schools not in and of itself the mark of a segregative system (Swann); counter - language designed to insure that tolerances are allowed for practical problem of dismantlement where otherwise effective plan has been adopted (Northcross v. Memphis, 466 F.2d. 890 (1972) and Louisville I).

Two (2) of the three black elementary schools were under-utilized whereas nearby racially identifiable white schools were operating over capacity; Board used portable classrooms and double shifts; white students were not assigned to nearby black schools.

(b) Louisville City School District

(about 10,000 students, mostly white, live between boundaries of school district and outer boundaries of the city)

- Boundaries of school district are not coterminus with political boundaries of the city.
  1956-57 - 45,841 students (33,831 white; 12,010 black)
  1972-73 - 45,570 students (22,367 white; 22,933 black)
- Pre-Brown racially segregated system
- Instituted geographic attendance zone plan with open transfer provision in 1956-57 (went to assigned schools unless transfer requested by parents).
- 6 high schools (3 between 94-100% black; one of which was Pre-Brown Black) - two over 97% white (one Pre-Brown)
- 13 Junior High (5 between 95-100% Black; 3 -Pre-Brown 4, 94-99.5% white - 3 Pre-Brown)
- 46 Elementary (19 between 82-100% Black; 21, between 89-100% White - all of which Pre-Brown white)

Large number of racially identifiable schools in a school district that formerly practiced segregation by law gives rise to a presumption that all vestiges of State-imposed segregation have not been eliminated (Swann).

Population shifts and changed racial composition of some schools do not affect the Board's duty to convert fully to a unitary system. The duty to convert was never fully met.

There are separate school districts in a single county and the districts are not unitary systems.
Distinguishable from Richmond 462 F.2d. 1058 (4th Cir. 1972) affirmed sub. nom 412 U.S. 92 (1973) in which political boundaries were the issue and each of the three (3) districts had a unitary school system.

Plan: Two-way busing of 11,300 black and 11,300 white children. Total of 119,000 students in system (country's 12th largest). Black percentage at every school no less than 12 and no more than 40.

[June 1976]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OFFICE OF THE
GENERAL COUNSEL

MEMORANDUM FOR THE HONORABLE BOBBIE KILBERG

SUBJECT: Title I Services in Areas Undergoing Desegregation--Following the Child

During the meeting with the President and community leaders last week, the problem of title I services in school districts undergoing desegregation was discussed. The issue of legislation to correct any problems in this area was also discussed, and we agreed to consider including such a provision in the draft bill the Department has prepared creating the National Community and Education Committee.

After considering the matter, however, we have decided not to include such a provision in the draft bill, because such legislation is already pending before the Congress in a form that we believe can be made acceptable and that will be enacted. The Education Amendments of 1976 (S. 2657), now pending floor action in the Senate, has a provision which is designed to permit title I services to follow children who would otherwise lose their title I eligibility because of the implementation of a desegregation plan. Although the provision in the Senate bill has a number of technical problems, we believe those can be corrected before the bill is passed, and that a provision which will adequately deal with the problems of which we are aware will be included in the final bill.

We have discussed this problem with a number of members of Congress whose districts are affected, and believe there is sufficient concern in the Congress to ensure

the inclusion of such a provision. Although the House passed education amendments (H.R. 12835 and H.R. 12851) do not contain such a provision, we are aware of no opposition to the principle in the House of Representatives.

William H. Taft IV
General Counsel

Private School Case

Gonzalez v. Fairfax-Brewster School et. al, 363 F. Supp. 7200 (E. D. Va. 1973)

McCrary v. Runyan, 515 F.2d. 1082 (4th Cir. 1975)

4th Circuit setting en banc, affirmed by a 4 to 3 vote the district court's holding that petitioner's policy of denying admission to blacks to a private school violated 42 U.S.C. 1981 which grants all persons within U. S. jurisdiction the same right to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings . . . as is enjoyed by white citizens . . . .

Court also held that schools were not "truly private" since admission policies evidenced "no plan or purpose of exclusiveness" on non-racial grounds.

1981 is a limitation upon private discrimination and reaches certain private conduct not involving State action.
See Jones v. Mayers, 392 U.S. 409
Sullivan v. Little Hunting Park, 396 U.S. 229
Tillman v. Wheaton-Haven Recreation, 410 U.S. 431

The Section (1981) is violated by the schools as long as the basis of exclusion is racial,''' the black applicant is denied a contractual right which would have been granted to him if he had been white.

Attached Justice Department Brief

Note: Argument on pps 24-25

We also believe that the court of appeals correctly rejected petitioners' contention that Section 1981 confers no judicially enforceable right in the absence of a showing that the schools would have accepted every white applicant. Section 1981 does not bar schools such as petitioners from using racially non-discriminatory criteria in screening applicants for admission, any more than it would have prevented the employer in *Johnson* from discharging employees found to be performing their duties unsatisfactorily. Under this Court's decisions, Section 1981 does, however, prohibit private contractual discrimination on the basis of race. As the court of appeals stated, Section 1981 "is violated by the school as long as the basis of [the applicant's] exclusion is racial, for it is then clear that the black applicant is denied a contractual right which would have been granted to him if he had been white" (App. 13).[27] Discrimination on the basis of race occurs

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of Section 1981 since, again, the exclusionary principle at issue here is racial, rather than neutral, in nature and, as the court of appeals noted, the schools' "actual and potential constituency * * * is more public than private" (App. 17). Compare *Cornelius* v. *Benevolent Protective Order of Elks*, 382 F. Supp. 1182 (D. Conn.) (three-judge court). It is, of course, settled that the public accommodations provisions of the 1964 Act preserved, rather than superseded, remedies under the 1866 Act. *Sullivan* v. *Little Hunting Park, Inc.*, *supra*, 396 U.S. at 237–238.

[27] It is, of course, no basis for objection that Section 1981 thus coerces private parties to enter into contracts they would not otherwise enter into, in a manner inconsistent with otherwise generally applicable contract principles. That is necessarily the effect of the contract provision of Section 1981, wherever it applies. See *Railway Mail Assn.* v. *Corsi*, 326 U.S. 88, 93–94.

if "persons of like qualifications" are not afforded equal "opportunities irrespective of their [race]." *Phillips* v. *Martin Marietta Corp.*, 400 U.S. 542, 544.

Finally, petitioners' racially discriminatory admission policies are not any less within the reach of Section 1981 because those policies did not prevent respondents from attending a publicly funded school or another private school. The essential fact found by the district court, and concurred in by the court of appeals, is that respondents were denied the opportunity to enter into contracts because of their race. In order to establish a violation of Section 1981, respondents were not required further to prove that that denial absolutely prevented them from attending school, any more than the employee in *Johnson* would have had to prove that he could not secure alternative employment, or the plaintiffs in *Tillman* that they could not gain admission to any other swimming pool, or the plaintiffs in *Jones* that they could not secure alternative housing, as part of their affirmative cases under Section 1981 or Section 1982. Cf. *Missouri ex rel. Gaines* v. *Canada, supra,* 305 U.S. at 348–350.

II

AS APPLIED TO THE PETITIONER SCHOOLS, SECTION 1981 IS A CONSTITUTIONAL EXERCISE OF CONGRESS' POWER TO ENFORCE THE THIRTEENTH AMENDMENT

This Court held in *Jones* v. *Alfred H. Mayer Co., supra,* that Congress has the power under the Thirteenth Amendment to do precisely what Section