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THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

June 25, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS 

SUBJECT: Private School Discrimination Case



In Runyon et ux., dba Bobbe's School v. McCrary et al., (decided June 25, 1976), the Supreme Court held that 42 USC 1981*/ may be constitutionally applied to prohibit private, commercially operated, non-sectarian schools from denying admission to prospective students because they are Negroes. Justice Stewart wrote the opinion, in which Chief Justice Burger and Justices Brennan, Marshall, Blackmun, Powell and Stevens joined. The latter two also filed concurring opinions. Justices White and Rehnquist dissented.

At the outset the opinion noted that the case did not present any question as to (a) the right of a private social organization to limit its membership on racial or other grounds,**/ (b) the right of a private school to limit its student body to boys, to girls, or to adherents to a particular religious faith, and (c) the right of private sectarian schools to practice racial exclusion on religious grounds.

The Court said that it was well settled that Section 1981 prohibits racial discrimination in the making and enforcing of private contracts and cited three earlier decisions (the Jones case - barring under another Reconstruction statute private racial discrimination in the sale or rental of real or personal property; the Tillman case - holding that a private swimming

*/ The section provides that "All persons . . . shall have the same right . . . to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white persons . . .".

**/ Of course, the Court did not express an opinion on this point.

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club had violated Section 1981 by enforcing a guest policy that discriminated against Negroes; and the Johnson case - holding that Section 1981 prohibits the discrimination in private employment on the basis of race).

In holding that Section 1981 was constitutionally applied by the lower courts, Justice Stewart said that such application did not violate any constitutionally protected rights of free association and privacy, or a parent's right to direct the education of his children. He assumed that parents had a First Amendment right to send their children to educational institutions that promote the belief that racial segregation is desirable, and that children have an equal right to attend such institutions. But it did not follow that a school's exclusionary practice was protected by the same principle. Stewart said that no challenge was being made to the right of parents to send their children to a particular private school rather than a public school. While parents have a constitutional right to select private schools that offer specified instruction, they have no constitutional right to provide their children with private school education unfettered by reasonable government regulation such as Section 1981.

In his concurring opinion, Justice Powell stressed that the schools were "private" only in the sense that they were managed by private persons and did not use public funds. He referred to the fact that the schools extended a public offer to any child meeting minimum qualifications and advertised in telephone directory yellow pages and by general mail solicitations. He said there was no reason to assume the schools had any special reason for exercising an option of personal choice among those who responded to the public offers.

Justice Stevens said that he believed the earlier cases had been incorrectly decided and that, were he writing on a clean slate, he would reverse the lower courts and find that Section 1981 did not prohibit private school discrimination. However, he joined in the Court's opinion in the "interest in stability and orderly development of the law". To overrule the earlier decisions would, in Stevens' view, be a significant step backward in the Nation's movement to eliminate racial segregation.

In their dissent, Justices White and Rehnquist said that Section 1981, on its face, only outlaws any legal rule



disabling any person from making or enforcing a contract, but does not prohibit privately motivated refusals to contract. The dissenters were concerned that the Court's decision would embark it on the treacherous course of deciding whether the statute applied to a variety of associational relationships -- such as black and white social clubs.

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

MEETING WITH MEMBERS OF CONGRESS

Monday, June 21, 1976
11 a.m. (30 minutes)
The Cabinet Room

From: Jim Cannon



I. PURPOSE

To discuss school desegregation with members of Congress.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: This is the fifth in a series of meetings on the issue of school desegregation.

B. Participants: See Tab A.

C. Press Plan: To be announced.

III. TALKING POINTS

1. We are here to talk about school desegregation and, in particular, the impact of court-ordered busing on our educational process.
2. Before going to the substance of the matter, however, I would like to make several things very clear. First, I recognize that a President, any President, has a fundamental responsibility to preserve, protect and defend the Constitution. I fully intend to do so. Second, I am also committed to seeing that every American child's right to a good education is realized. I think these two principles must guide our discussion.
3. It is my own view that some courts have gone too far in requiring massive student transfers simply to achieve racial balance. I think we need to do something about this.
4. I have, therefore, been working with the Attorney General and the Secretary of HEW to develop legislation which will better equip everyone, the schools, the communities, the courts and the Federal government, to deal with unlawful discrimination and to preserve the goal of quality education for all.

5. Each of you has thought a good deal about this matter, and I would greatly appreciate your suggestions.



PARTICIPANTS

Senate

Senator Carl T. Curtis (Neb.)

Senator Robert P. Griffin (Mich.)

Senator Roman L. Hruska (Neb.)

Senator William V. Roth (Dela.)

House

Congressman Marvin L. Esch (Mich.)

Congressman Edward Hutchinson (Mich.)

Congressman John Y. McCollister (Nebraska)

Congressman Robert H. Michel (Illinois)

Congressman Albert H. Quie (Minn.)

Attorney General Edward H. Levi

Secretary F. David Mathews, HEW

Jim Cannon
Jim Cavanaugh
Max Friedersdorf
Jack Marsh
Paul O'Neill
Ed Schmults
Dick Parsons



THE PRESIDENT HAS SEEN...²⁸

THE WHITE HOUSE

WASHINGTON

June 22, 1976

CONGRESSIONAL MEETING ON BUSING

Thursday, June 24, 1976
11:00 a.m. (30 minutes)
The Oval Office

From: Jim Cannon



I. PURPOSE

To advise Congressional committee chairmen of your decision on busing.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background: You wanted to meet with the chairmen of the key committees that will handle your busing legislation prior to sending your formal Message to Congress.
- B. Participants: See list attached at Tab A.
- C. Press Plan: To be announced. Photo opportunity.

III. TALKING POINTS

- 1. We are here to talk about school desegregation and the impact of court-ordered busing on our educational process.
- 2. Before going to the substance of the matter, however, I would like to make several things very clear. First, I recognize that a President, any President, has a fundamental responsibility to preserve, protect and defend the Constitution. I fully intend to do so. Second, I am also committed to seeing that every American child's right to a good education is realized. I think these two principles must guide our discussion.
- 3. It is my own view that some courts have gone too far in requiring massive student transfers simply to achieve racial balance. I think we need to do something about this.

4. I have been working with the Attorney General and the Secretary of HEW to develop legislation which will better equip everyone--the schools, the communities, the courts and the Federal government--to deal with unlawful discrimination and to preserve the goal of quality education for all.
5. Ed Levi, would you please summarize for the group the decisions that we have made on the legislation.

PARTICIPANTS

Congressman Peter W. Rodino Jr. (N. J.)

Congressman Carl D. Perkins (Ky.)

Attorney General Edward H. Levi

Secretary F. David Mathews, HEW

Jim Cannon

Max Friedersdorf

Jack Marsh

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

June 23, 1976

SIGNING OF BUSING MESSAGE

Thursday, June 24, 1976
11:30 a.m. (10 minutes)
The Oval Office

From: Jim Cannon

I. PURPOSE

To sign your Message to Congress on busing.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: After your series of meetings regarding school desegregation and busing, your Message to Congress is prepared for signing and transmittal to Congress, along with draft legislation.

B. Participants: See list attached at Tab A.

C. Press Plan: To be announced. Photo opportunity.

III. TALKING POINTS

To be supplied by Bob Orben.



PARTICIPANTS

Justice Department

Attorney General Edward H. Levi

Ronald G. Carr, Special Assistant to the Attorney General

John J. Buckley, Jr., Special Assistant to the Attorney General

HEW

Secretary F. David Mathews

William A. Morrill, Assistant Secretary, Planning & Evaluation

William H. Taft, General Counsel

Joffre Whisenton, Special Assistant to the Secretary

Staff

Jim Cannon

Max Friedersdorf

Bobbie Kilberg

Jack Marsh

Dick Parsons

Art Quern



THE PRESIDENT HAS SEEN...7

THE WHITE HOUSE
WASHINGTON

JUNE 24, 1976

MR. PRESIDENT:

CO-SPONSORS ON THE BUSING LEGISLATION
THUS FAR INCLUDE THE FOLLOWING:

SENATOR EASTLAND

SENATOR HRUSKA

CONGRESSMEN RHODES

MICHEL

CONABLE

EDWARDS

FREY

VANDERJAGT

QUILLEN

QUIE

HUTCHINSON

DEVINE

MAX FRIEDERSDORF



GRF

June 24, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

THE SCHOOL DESEGREGATION STANDARDS
AND ASSISTANCE ACT OF 1976

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

BACKGROUND

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

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

DESCRIPTION OF THE LEGISLATION

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

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

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

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

PURPOSE OF THE LEGISLATION: LIMITS TO BUSING

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

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

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

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

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

June 24, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We must eliminate discrimination in America.

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

GERALD R. FORD

THE WHITE HOUSE,

June 24, 1976.

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