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THE WHITE HOUSE
WASHINGTON

To: Ron Nessen
From: Bobbie Kilberg

Per our conversation, attached is a short memo on the Runyon case [private segregated schools].

JSP:JW:js
DJ 169-79-29

3 MAY 1976

MEMORANDUM FOR THE ATTORNEY GENERAL

On April 26, 1976, the Supreme Court heard oral argument in Runyon v. McCrary, which involves the issue whether 42 U.S.C. §1981 prohibits private commerically operated schools from denying admission to black children on account of race. We did not participate in the oral argument, but the Solicitor General filed a brief as amicus curiae on April 8, 1976, as we had recommended. A copy of that brief is attached hereto.

In our brief, we argue that the Civil Rights Act of 1866, 42 U.S.C. 1981, which confers on "all persons ... the same right ... to make and enforce contracts ... as is enjoyed by white citizens," reaches private nonsectarian schools which are operated for profit and which solicit students from among the general public. We contend that the contracts at issue in these cases are "at the core of those covered by Section 1981," and we analogize contracts with private schools to contracts for private employment and membership in a private pool association, which have been held by a unanimous Court to be subject to Section 1981. You may recall that those decisions follow the reanalysis of the 1866 Act in Jones v. Mayer, 392 U.S. 409 (1968).

We also argue that requiring these schools to admit prospective students without regard to race would not offend any of their constitutional rights or the constitutional rights of their clientele. We note that these are not religious schools, and that

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no religious practices would be affected if the Court adopts our position. Nor would a proscription against racial discrimination preclude the teaching of any doctrine or affect the curricula of the schools. We emphasize the fact that both of the defendant schools extend to the general public offers to contract for the receipt of services, and that this is done through advertisements in the "yellow pages" and mass mailings addressed to "Resident." As the court of appeals held, "their actual and potential constituency is more public than private."

Ron, This is not a necessary part of case - i.e. the nature of the advertising could be different

Our position in Runyon would not affect the viability of admission policies of religious schools or schools operated on other than a commercial basis.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

SUMMARY OF ARTICLE BY
DR. JAMES S. COLEMAN, SOCIOLOGIST
N.Y. TIMES MAGAZINE AUGUST 24, 1975

1. 1966 Coleman Report on lack of equality of educational opportunity concluded that children from disadvantaged backgrounds did somewhat better in schools that were predominantly middle-class than in schools that were homogeneously lower-class. It was the economic and social class background of schoolmates rather than racial background that made the difference. However, since a high proportion of blacks came from economically disadvantaged backgrounds, the implication of the Report was that their opportunity to receive the kind of educational resources that came from being with middle-class schoolmates would necessitate racial integration.

2. Coleman now says that conclusion of the Report was that equal educational opportunity was augmented by school integration but did not require school integration. Coleman challenges the decisions of the courts that equal educational opportunity can be provided only by integrated schools.

3. In many of the school systems that have undergone desegregation, one cannot find any beneficial effect or achievement. However, sum total of evidence suggests that school integration does, on the average, benefit disadvantaged children. Benefit is not very large, not nearly as great as the effects of the child's own home background.

4. 1975 Coleman study shows, on the basis of preliminary results, that as the proportion of blacks rises in a school, the proportion of whites leaving the school also rises. Thus, it is not only the rate of desegregation that needs to be watched; it is also the actual proportion of blacks in the system . This

effect shows up in Northern and Southern cities. Coleman believes that a real factor in white flight to suburbs is school desegregation as well as other big-city ills. This desegregation may occur more in the North than in the South because the North has more suburbs available for people who can afford it to move to. However, 1975 study also showed that middle-sized cities, in contrast to large cities, did not experience much white flight.

5. If in Boston or Detroit, middle-class whites flee to the suburbs and lower-class white children are integrated with lower-class black children, Coleman's 1966 study indicates that there would be no educational benefit.

6. Coleman remains a proponent of integration but believes that we should pursue policies that stem the flow of whites rather than help create a black central city. If we continue on our present course, integration in the future will be much more difficult to attain.

7. Busing is one of the policies which Coleman sees as counter-productive because it pushes whites into the suburbs.

8. Coleman agrees with the courts that in violation of the 14th amendment some school districts, such as Detroit, have strengthened segregation in the system by gerrymanding school districts or by the way new school buildings are located and by other techniques. This denies equal protection to black children because they have been systematically excluded from attending certain schools. Courts in such cases have imposed a remedy that requires a racial balance in all the schools of the system and that can be achieved only through busing. Coleman disagrees with this remedy and suggests instead that the aim should be to eliminate the specific segregation that occurred, i.e. eliminate the gerrymanding and redraw the school district lines to increase integration. This could be done in a number of ways: through voluntary busing, through building of new

schools, through reassigning of schools to different grade levels. This would leave some segregation but Coleman argues that equal protection does not require that all segregation be eliminated and that total elimination would not be desirable.

9. Coleman opposes the Boston court decision because the remedy is to use busing to eliminate all segregation in the city rather than eliminate just that segregation which was caused by specific actions of the Boston school district.

10. Coleman cites two long-range efforts that he views as important: (1) increase in income of blacks, and (2) elimination of residential discrimination.

11. Coleman believes that there are a lot of social ills that cannot be corrected by the courts and de facto segregation is one. There are other governmental means at our disposal. If one insists on integration now, busing is the only way. Coleman argues that a stable solution will take time and should be centered around governmental and private action to make the central city attractive for middle-class whites, to make the suburbs available to middle-class blacks, and to provide jobs for lower-class blacks.

12. Coleman proposes an experiment with a voucher system in which each central-city child gets per-pupil funds to attend any school in the metropolitan area outside his own district. He sets some restrictions for the program: it would not be subject to a local veto; whites could not move from black schools to white schools; and the move should not increase racial imbalances.

13. Coleman believes that integrated schools could be made more attractive to middle-class whites. For example, giving integrated schools larger budgets than non-integrated schools; keeping integrated schools open from the time parents went to work until the time they came home; providing enriched educational programs in integrated schools.