The original documents are located in Box 1, folder "Busing" of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

RBC HAS SEEN

October 30, 1975

DICK:

DR says you should study this before submitting it to the President.

Thanks.

BW

THE WHITE HOUSE

WASHINGTON

October 29, 1975

MR PRESIDENT:

Staffing of the attached memorandum of October 24 from Phil Buchen and Jim Cannon on School Desegregation resulted in the following:

Bob Goldwin:	Extensive comments at TAB A
Bob Hartmann:	"Certainly should be discussed. Re last paragraph of memo to the President and page 6 of Parsons memo, I assume that I would be among the "appropriate staff" to participate in these discussions."
Jim Lynn:	Wants to be listed as "no comment"
Jack Marsh:	Concurs in Buchen-Cannon recommendation.

. A later memo on this subject has now been received from Jim Cannon (TAB B) requesting a definite date for an appointment with the Attorney General and Secretary Mathews.

Jim Connor

THE WHITE HOUSE

WASHINGTON

October 24, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN J.W.B.
JIM CANNON

SUBJECT: School Desegregation

The attached memorandum from Dick Parsons on busing is a thorough discussion which raises a number of significant issues. We thought you would want to see it.

It is the recommendation of the Counsel's Office and the Domestic Council that you approve a meeting between you, the Attorney General, Secretary Mathews, and appropriate staff to discuss a number of the issues and suggested approaches raised by the Parsons' memorandum.

Approve _____

Disapprove _____

Comment _____

Attachment

THE WHITE HOUSE

WASHINGTON

INFORMATION

October 23, 1975

MEMORANDUM FOR: JIM CANNON
PHIL BUCHEN

FROM: DICK PARSONS D.P.

SUBJECT: Busing

As you know, the busing issue is not just heating up, it's hot! I believe that in his public statements on this issue, the President has aligned himself with the clear majority of Americans -- white and black. However, the position we have staked out for ourselves is not without some conceptual and political weaknesses. I believe these ought to be raised with the President for his consideration if they have not been raised already.

This memorandum (a) briefly summarizes the major court cases relating to school desegregation; (b) identifies what I perceive to be the conceptual and political inadequacies of our current position, and (c) suggests some approaches we might want to think about if further movement is deemed appropriate. I raise these not in an attempt to necessarily alter your thinking on the matter, but rather to inform you of the problems which I (and others) have identified.

MAJOR COURT CASES RELATING TO SCHOOL DESEGREGATION

The first major Supreme Court decision in the school desegregation area in this century was Brown v. Board of Education, 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. The Court directed that segregated school systems desegregate "with all deliberate speed." Interestingly, though, the Brown court did not prescribe any specific method for accomplishing desegregation.

In the years immediately following Brown, 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.

In 1968, the Supreme Court decided the case of Green v. New Kent County School Board. 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." As a practical matter, the Green decision was the death knell for freedom of choice, since rarely, if ever, did freedom of choice result in effective school desegregation.

In the summer of 1969, the Court decided Alexander v. Holmes, holding that school districts had a constitutional obligation to dismantle dual school systems "at once." The Court, quoting from Green, reiterated its determination that school systems must develop desegregation plans that "promise realistically to work now." Thus, Alexander clearly set in concrete the Court's position on the issue of timing in desegregation cases.

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. 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.

In June 1973, the Supreme Court rendered its decision in Keyes v. School District No. 1. 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. In such cases, the school board had "an affirmative duty to desegregate the entire system 'root and branch.'"

Finally, in its most recent ruling respecting school desegregation, Milliken v. Bradley, the 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.

Summary & Conclusion

The following emerge as general principles:

- The maintenance of a racially segregated school system, whether by law or by act of an official entity, violates the Fifth and Fourteenth Amendments to the United States Constitution.

- School districts which are de jure segregated have a constitutional obligation to ameliorate segregated conditions by pursuing an affirmative policy of desegregation and the courts have a constitutional obligation to require that such desegregation be accomplished "at once."

- Dismantling a dual school system does not require (and there is no constitutional right to) any particular degree of racial balance; rather, the remedy is to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.

- Busing is a permissible tool to facilitate desegregation because, at least in theory, it is one way to restore the victims of past discrimination to the position they would have occupied but for such discrimination.

Thus, it would appear that the fundamental purpose of busing is not to foster racial integration but to overcome the effects of a past lack of neutrality -- to right a previous wrong, if you will. In thinking about the problem (and about alternatives), it is important to keep this in mind.

INADEQUACIES OF OUR CURRENT POSITION

The President has made it clear that he intends to fulfill his constitutional duty to see that the laws are faithfully executed, including orders of the courts of the United States. Obviously, this is appropriate. The President has also said that he opposes "forced busing" because he believes there is "a better way to achieve quality education for all Americans." I do not challenge the rightness of this position; however, I believe there are some problems inherent in it which we ought to be aware of.

Conceptual Problems

In discussing the busing issue, the terms "desegregation," "equal educational opportunity" and "quality education" are often used interchangeably. In fact, however, while the concepts are interrelated, the terms have very different meanings, and only the first -- "desegregation" -- is truly relevant to busing. *

As you can see from the above discussion of case law, the Supreme Court has addressed itself only to the issue of whether the maintenance of a segregated school system violates the Constitution. That is to say, the Court has focused its attention on a practice which has denied certain Americans equal protection of the laws and has devised a remedy to undo the effects of that constitutional denial. The Court has not imposed an affirmative burden on school districts to provide "equal educational opportunity" or "quality education" for American youngsters. Therefore, to say that we oppose busing because there is a better way to provide "quality education" is really to confuse two separate concepts. Busing was never intended to result in the provision of "quality education" or even "equal educational opportunity." Rather, as pointed out above, it was intended merely to facilitate desegregation by restoring the victims of unlawful discrimination to the position they would have otherwise occupied.

As a conceptual matter, if one opposes busing, for whatever reason, one must either indicate the alternative means by which the constitutional objective (indeed requirement) of desegregation of public school systems can be achieved or simultaneously indicate his opposition to the very objective which busing seeks to facilitate. The alternatives which we have focused on -- i.e., improving teacher/pupil ratios, physical plants and curriculum -- address the broader question of quality

---

* The term "desegregation" refers to the process by which a dual school system becomes, or is required to become, a unitary school system, in terms of racial composition. The term "equal educational opportunity," however, refers to the impact of educational instruction on different student groups, whether integrated or not, and it involves analysis of such issues as allocation of resources, the fairness of testing, ability grouping and restricted learning opportunities, and the effects of language and cultural barriers on delivery of educational instruction. Finally, the term "quality education" refers to the overall effectiveness and value of educational instruction to all students and involves such issues as appropriate teacher/pupil ratios, curriculum design, physical plant improvements, etc.

education, not the question of school desegregation. Having failed to indicate the alternative methods by which we believe school desegregation may be achieved, the question arises: Do we, in fact, oppose desegregation?

I am concerned that, unless we deal with the question of alternatives, our failure to do so will be seized upon by our opponents and portrayed as a tacit admission of opposition to the proposition of school desegregation.

Political Problems

Again, without addressing the rightness of our position, I foresee political difficulties if we do not develop it further. The most obvious of these is the problem we face in the civil rights community.

Many in the civil rights community believe, on the merits, that busing is an important and useful tool. More importantly, there are many more who, while questioning the utility of busing, believe that it is imcumbent upon the President to provide positive leadership in these difficult times. That is to say, since busing is the law of the land, like it or not, he ought to be actively encouraging people to comply with the law and not fueling frustrations with the law by criticizing it. This argument assumes added weight when the criticism is not accompanied by suggestions for alternative action.

We are also beginning to experience difficulty with those who share the view that busing is an inappropriate remedy and who now expect the President to do something about it. In a sense, by increasing our visibility on this issue, we have created an expectation which, at least at this moment, we cannot fulfill. Increasingly, we are being called upon by members of the Congress, by State and local officials and by the public generally to do something about busing.

In this regard, I note it is not enough to point to the Esch Amendments of 1974. First of all, 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), I would only point out that OCR has never required busing on a massive scale and has, since their enactment, observed the terms of the Amendments.

POSSIBLE APPROACHES

In terms of moving forward from here, a number of suggestions and recommendations have been forthcoming. These range from endorsement of a constitutional amendment prohibiting busing on the one hand to creation of a special White House office to facilitate school desegregation, including busing, through the rendering of advice and the granting of additional financial assistance on the other. In between, there are a range of activities which bear closer examination. These include:

- Creation of a special Presidential Commission to study the issue and make recommendations to the President and to the Congress.

- Convening of a White House Conference on School Desegregation to develop ideas for alternative action.

- Development of a constitutional amendment which would not prohibit busing but which would establish the framework within which the courts could require busing to achieve desegregation.

- Instruction to the Attorney General and the Solicitor General to explore the limits of discretion under the current law and, perhaps, to initiate litigation or join in litigation which seeks to modify the current requirements of the Court.

- Lowering our profile (and rhetoric) and simply "toughing it out."

I am not prepared to recommend any one of these approaches to the President at this time. The issue is complex and we would need to do a lot of work in conjunction with Counsel's office, Bob Goldwin, and the Departments of Justice and HEW to pull together a good options paper. I do believe that we have to begin to develop a more complete and rational posture on this issue. I should think that a good first step would be for the President to meet with the Attorney General, the Secretary of HEW and senior staff to discuss where we ought to be heading on this issue.

THE WHITE HOUSE

WASHINGTON

October 24, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN J.W.B.
JIM CANNON Jim

SUBJECT: School Desegregation

The attached memorandum from Dick Parsons on busing is a thorough discussion which raises a number of significant issues. We thought you would want to see it.

It is the recommendation of the Counsel's Office and the Domestic Council that you approve a meeting between you, the Attorney General, Secretary Mathews, and appropriate staff to discuss a number of the issues and suggested approaches raised by the Parsons' memorandum.

Approve _____

Disapprove _____

Comment _____

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 27, 1975 Time:

FOR ACTION:
Robert Goldwin
Robert T. Hartmann
James Lynn
Jack Marsh

cc (for information):
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: October 28, 1975 Time: 3 P.M.

SUBJECT:

Phil Buchen & Jim Cannon memos
on School Desegregation

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
X For Your Comments
X For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

I agree that the President ought to meet with the Attorney General, Secretary Mathews, and appropriate staff to discuss issues raised in the Parsons memorandum, but I do not fully agree with some of the interpretations and arguments put forth in that memorandum.

1. Brown and Good Education
Tens of thousands of pages have been written on the Brown opinion and it is not surprising that opinions differ on its meaning. In my understanding of it, the President is more nearly right than Dick Parsons on the question of the link between desegregation and "quality education." Brown is certainly ambiguous; my reading is that the Court did not limit itself narrowly to the question of segregation. The Court said that segregated schools violate the equal protection clause. Why?

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

Because schools that are segregated by law or official action are inherently unequal. They brand the children of one race with a badge of inferiority. In an admittedly ambiguous way they suggested--and this suggestion has been taken up with strong emphasis ever since--that segregated schools are unequal psychologically and therefore in the quality of educational opportunity they provide minority students.

From the beginning, Brown has stood for more than desegregation, more than psychological equality; Brown has stood for fuller educational opportunity for black students. Blacks and others have fought for integration and busing because they expected desegregated schools to give black children a better education--that is, better facilities, better teachers, everything on an equal basis with whites.

In a narrow legal sense it is correct that the Court did not, and possibly could not, order that black children, or any children, be given a high quality education, or even that they be given an education equal to that of whites, so long as the schools were not segregated. But the President is right, in the broader sense, that Brown has come to mean, in the eyes of almost everyone, that the demand for equal education means a demand for better education for blacks. The hope held forth in the decades since Brown cannot be satisfied by having blacks sit next to whites in poor schools.

2. The President's Alternatives

The President can state his position clearly on some points and suggest alternatives for consideration on other points. I recommend the following:

a. Support unequivocally the Court's principle that school segregation is unconstitutional, and endorse the goal of eliminating it.

b. Declare his determination to see to it that the laws are faithfully executed and that federal court orders are obeyed.

c. Emphasize that busing does not have constitutional status but is a means to a constitutional goal, a remedy that has been tried and that is proving in many important instances to be ineffective in accomplishing desegregation and is disruptive of educational efforts.

d. Urge that the courts not order busing when unconstitutional segregation is found, but rather use other court-ordered means to desegregate, such as pairing of schools, redrawing of boundaries, or simply ending specific acts of discrimination, as appropriate.

e. Suggest that school districts voluntarily strive to avoid coming under court orders by moving effectively on their own to root out unconstitutional discrimination by such means as providing incentives for voluntary integration through grouping schools, special "attraction" schools, majority to minority transfer plans, and sympathetically administered freedom of choice plans.

The argument is made that there is little point in speaking of alternatives for districts already under court order, but I think it is necessary to respond that in many cases the courts have simply gone too far in choosing remedies for the violations that existed. A more modest view of what it might take to correct the discrimination would in many cases lead to a remedy less drastic than busing. There is a middle way between the extremes of doing nothing and court-ordered busing--for which we should be thankful, because both extremes leave us with segregation. The middle way is simply to seek remedies that match the violations. The provisions of the Educational Amendments Act of 1974 (the so-called Esch Amendments) are a good example; they assume what the President assumes, that the courts' remedies are not proportioned to the violations they are designed to correct.

One can take a narrow view or a broad view of what is required to overcome a "past lack of neutrality." It could require only that specific violations be corrected by ceasing, in the future, to assign students by race. Or, on the other hand, it might be thought to require something like affirmative action, to assign students to schools on the basis of race in order to promote integration. Courts in Boston, Denver, and Omaha have followed the latter view, but other courts in other cities have followed the former, more moderate, course. I see no reason why the President should not also follow the more moderate line of reasoning.

There is evidence that some courts now recognize that they have been going too far in their remedies; I have in mind recent decisions in Detroit, Jackson, Montgomery, and Atlanta. The courts seem open to facts and argument, and they are changing. The President should encourage more courts to follow the sensible and more moderate course.

As for the risk that the President will alienate the civil rights groups if he criticizes the courts, I doubt that he could win some of them over even if he adopted their views. I question whether he needs, or has a chance of gaining, their support; it is more important that he follow his own convictions and those of the voters who support him. Besides, the numbers of those who support the courts all the way on this issue are small and dwindling, from all the surveys I have seen or heard about.

If the President states his position clearly and in a generous spirit, he will have the support of the vast majority of the people, including especially those who consider themselves civil rights supporters but are convinced that in these cases the courts have gone too far.

B

THE WHITE HOUSE

WASHINGTON

INFORMATION

October 28, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Busing

I have talked with Attorney General Levi and Secretary Mathews and asked them each to review the busing situation with the objective of seeking alternative remedies.

The Attorney General and Secretary Mathews and I feel it would be appropriate for them to discuss the matter with you, and we have asked for time on Friday, October 31, or Saturday, November 1.

FLASH
PRECEDENCE

UNCLAS
CLASSIFICATION

FOR COMMCENTER USE ONLY

DEX 003

FROM: JACK MARSH

TO: DICK CHENEY FOR THE PRESIDENT

INFO:

DAC _____ GPS _____

LDX _____ PAGES 3

TTY _____ CITE _____

DTG: 281456Z

RELEASED BY: GE

TOR: 281520Z

SPECIAL INSTRUCTIONS:

TO: CINCINNATTI

DELIVER UPON ARRIVAL

1976 OCT 28 14 56

WHCA FORM 8, 22 FEB 74

Dec Flash

THE WHITE HOUSE

WASHINGTON

October 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN PB
JAMES CANNON JC

SUBJECT: The Wilmington Busing Case

Yesterday, the Department of Justice filed a friend-of-the-court brief in the Wilmington busing case (Delaware State Board of Education v. Evans), arguing that the lower court went too far in ordering interdistrict busing between the City of Wilmington and ten suburban school districts. This memorandum provides background on the case and outlines the Department's arguments and reason for intervening.

BACKGROUND

As you know, in March 1975, a three-judge District Court in Delaware concluded that, as a result of a 1968 enactment, the State of Delaware had discriminated against black students in Wilmington in violation of the Constitution and that, to remedy such discrimination, an interdistrict plan for reassignment of students would probably be necessary. This holding was appealed to the Supreme Court and affirmed 5-3. On remand, the three-judge court fashioned an interdistrict desegregation plan which, in effect, combined the City of Wilmington and ten surrounding school districts in northern New Castle County into one school district, and required that every grade in every school in the new district have a student population which was not less than 10 percent nor more than 35 percent Black. The defendants in the case have appealed this order to the Supreme Court, maintaining, among other things, that the District Court went too far in requiring interdistrict busing. The plaintiff-appellees have until November 10 to file their answer.

DEPARTMENT OF JUSTICE POSITION

In its brief, the Department takes two positions. First, the Department maintains that the Supreme Court does not have jurisdiction to hear the appeal from the remedial order of the three-judge District Court, since the three-judge court was improperly convened. The Department argues that the appeal should be heard by the Court of Appeals. The Department goes on to state, however, that the case is an important one in the evolution of constitutional principles pertaining to racial discrimination in the schools and that it should receive the attention of either the Supreme Court or the Third Circuit Court of Appeals as expeditiously as possible.

Secondly, on the merits of the case, the Department argues that the proper approach to school desegregation cases requires a court to seek to determine, as precisely as possible, the consequences of acts constituting illegal discrimination and to eliminate the continuing effects. The Department believes that, in merging Wilmington and the ten surrounding suburban districts into one school district and requiring racial balance in each school, the District Court went beyond this requirement.

The Attorney General and the Solicitor General both felt (a) that this was a proper case for the Department to enter in light of the serious questions presented, and (b) that it was necessary to file their brief at this time in order to give the plaintiffs (i.e., parents seeking a remedy) in the case an adequate opportunity to study the Department's position before filing their response.

The Department's position is consistent with the approach taken in your 1976 busing proposal.

We have attached the story appearing in this morning's Washington Post for your information.

Attachment

U.S. Asks High Court Test On Limits to Busing Orders

10/28/76

By John P. MacKenzie
Washington Post Staff Writer

The Justice Department gave notice yesterday that it welcomes an early Supreme Court test of whether federal judges are ordering too much busing as a cure for segregation in public schools.

In a brief filed with the high court, Solicitor General Robert H. Bork intervened in the controversy in Wilmington, Del., saying a lower court went too far in its order merging city and 10 suburban school districts.

Bork's intervention had been a possibility since last May when Attorney General Edward H. Levi, who is under orders from President Ford to find a good test case on busing, passed up a chance to enter the bitter fight in Boston.

The State of Delaware and the suburban districts are appealing the May 19 decision of a U.S. District Court in Wilmington that a new 80,000-pupil district be formed for northern New Castle County in which each school, whether in the city or outside it, would have a black enrollment of 10 to 35 per cent.

Also before the court are petitions by school districts in suburban Indianapolis seeking reversal of a July 16 decision by the Seventh U.S. Circuit Court of Appeals approving busing between city and suburbs.

Bork, filing his brief as a friend of the court, said the justices might wish to hear the Wilmington and Indianapolis cases together during the current term, which runs until June.

In a third pending school busing case, Bork told the justices on Oct. 6 that he had no objection to Supreme Court review in a long-standing dispute over school discrimination against Mexican-Americans in Austin, Tex. He said busing orders there should be approved because of evidence that city officials "engaged in pervasive acts of discrimination against Mexican-Americans."

SOLICITOR GENERAL ROBERT BORK
. . . intervenes in Wilmington case

Bork's theory is that busing must be limited to correcting specific acts of racial discrimination by city, county and state school officials. Some lower court judges, after finding evidence of racial bias, have held that only large-scale busing orders will effectively remedy the discrimination by establishing a completely desegregated school system.

In Wilmington, said Bork, the lower court's remedy was to seek a "desirable racial mix"—enough blacks in each school to constitute a "viable minority" but not so many as to precipitate "white flight" from the public schools.

"This is not the right way to formulate a desegregation order," Bork said. "The proper approach requires a court to seek to determine, as precisely as possible, the consequences of the acts constituting the illegal discrimination and to eliminate their continuing effects."

The lower court found racial discrimination in certain housing covenants and zoning provisions and a 1969 state law excluding Wilmington from any statewide school redistricting plan. Bork said that even if busing is limited to correcting these violations, there would be "a substantial amount of student reassignment in New Castle County."

Although Bork found it "impossible to say" how much reduction in busing his approach would produce, he went on: "It seems safe to say, however, that it is highly implausible that—but for the acts of racial discrimination—every grade in every school in northern New Castle County would have been between 10 and 35 per cent black," as the lower court ordered.

For technical reasons, Bork said, the Wilmington case ordinarily should be heard by the Third U.S. Circuit Court of Appeals in Philadelphia before reaching the high court. He noted that if the court wants to hear the Wilmington and Indianapolis cases together, it could exercise its power to bypass the court of appeals. That rare procedure was last used in 1974 to expedite final action in the dispute between the Watergate prosecutor and former President Nixon over the White House tapes.

The court could act in the Austin case as early as Monday but is not scheduled to decide until after the election whether to hold full hearings on Wilmington and Indianapolis.

THE WHITE HOUSE

WASHINGTON

June 2, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS

SUBJECT: The Meeting Today on the Attorney General's Proposed Busing Legislation and the Related HEW Proposal

Because of the press of time at the busing meeting today, I thought it best to convey my brief comments in writing.

I believe the basic legislation recommended by the Attorney General is sound because, in effect, it will represent two branches of the Federal Government outlining a remedial approach to be used by the Judicial branch in school desegregation cases. As a result, the legislation should be much more effective than representations by only the Executive branch to the courts.

The Judicial branch is looking for props or guideposts and the Attorney General's proposal appears to satisfy in large part this need. However, I have serious reservations about the Attorney General's mediator and citizens' committee recommendations. In my view, these recommendations will inevitably get the Federal Government "too far out in front". As Jim Cannon observed at the meeting, I think the federal mediator will become the focus of the controversy and local activity may cease while all await the mediator's proposals.

With respect to the citizens' committee, I think it somewhat strange that the Attorney General or the Secretary of HEW picks out for the local community its "leaders" who will then be expected to devise solutions. I would support some variation of HEW's "National Community and Education Commission" which I view as a much more low-key and supportive role for the Federal Government to be employed at the initiative of coalitions within the community.

THE WHITE HOUSE

WASHINGTON

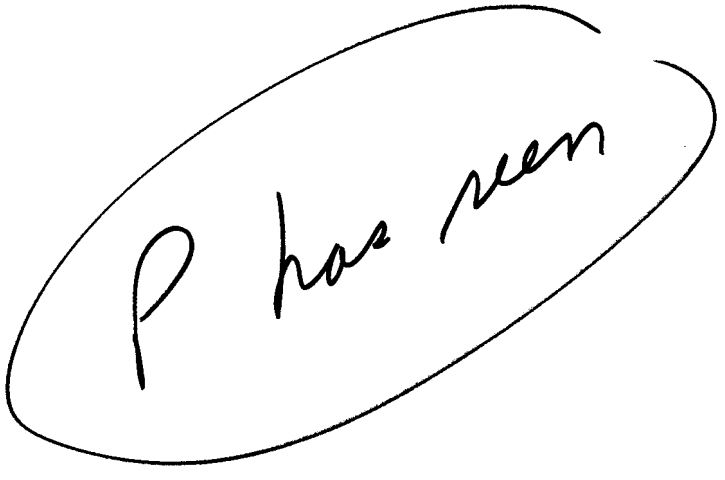
July 3, 1976

MEMORANDUM FOR: DICK CHENEY
RON NESSEN

FROM: JIM CANNON

SUBJECT: Wall Street Journal Article on Busing, June 30, 1976

I thought you might like to know that **Ben Holman**, Director of the Justice Department's Community Relations Service, has written the editor of the Wall Street Journal a flat denial that he made the statement attributed to him in the article of June 30, 1976.



THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

July 2, 1976

James M. Cannon
Domestic Council
The White House
Washington, D.C.

Dear Jim:

Enclosed please find a copy of Mr. Ben Holman's letter to the Editor of The Wall Street Journal. As you and I have discussed, Mr. Holman denies the quotation attributed to him in the busing article on June 30, 1976. Although dated July 1, 1976, the letter was actually dictated by Mr. Holman before I discussed this matter with him yesterday.

Knowing Mr. Holman as I do, I am wholly satisfied with his position in the matter. He is not the kind of public servant who exhibits disloyalty of any kind to his associates and the Department of Justice.

Yours sincerely,

Harold R. Tyler, Jr.

encl.

United States Department of Justice

COMMUNITY RELATIONS SERVICE
WASHINGTON, D.C. 20530

To DSD
after Ford

DIRECTOR

JUL 1 1976

Mr. Glynn Mates
Front Page Editor
The Wall Street Journal
22 Courtlandt Street
New York, New York 10007

Dear Mr. Mates:

An article in the June 30, 1976 edition of The Wall Street Journal attributes a statement to me as Director of the Community Relations Service, U.S. Department of Justice, doubting the constitutionality of the school busing legislation proposed by President Ford. The quotation is not a correct statement of my views.

This letter is intended to clarify the record and my views.

Firstly, the only interview I have held recently with a representative of your newspaper was on June 3--several weeks prior to announcement of the President's proposal. I not only did not make any statement about the proposal, but did not even know at that time what the proposal would be.

Secondly, as a non-lawyer and head of a non-litigative office in the Department, I have no basis on which to formulate judgment on such legislation.

However, I have directed over the years many efforts by my agency (CRS) to mitigate the tensions and difficulties that result from court-ordered school desegregation. As a result of these efforts, I have long held the view that the Federal courts do not provide the most harmonious channel for achieving school desegregation.

It is my firm opinion that legislation is a far preferable way of handling these problems. This is precisely what President Ford and Attorney General Levi are attempting to do in Title I of the proposed legislation, and I strongly endorse their efforts.

Sincerely,

BEN HOLMAN

Ben Holman

THE WALL STREET JOURNAL

Lull in Washington

Policymaking Grinds To a Halt as Politics Envelops White House

Believing Ford Will Lose To Reagan or to Carter, Aides Seek Private Jobs

Air Bags, Clean Air & Flu

By Fred L. Zimmerman
Staff Reporter of The Wall Street Journal

WASHINGTON—Transfixed by the Reagan challenge and sapped by a lame-duck psychology, the Ford administration is doing little more these days than going through the motions of governing.

In departments and agencies throughout the Executive Branch, high posts are vacant, policy decisions are stalled, and officials either are leaving or are looking for jobs on the assumption that a Democratic administration will take over in January.

These are the main findings of reporters in The Wall Street Journal's Washington bureau, who have interviewed dozens of Executive-Branch officials about the state of the administration.

"There's a definite lull setting in all over town," says Bernard E. DeLury, an assistant labor secretary, expressing a view held by many of those questioned.

The interviews point to these other conclusions:

—Much of the bureaucracy is bitter about the campaign attacks of candidates—including the No. 1 bureaucrat, Gerald Ford—on the efficiency of federal employes. "For Ford to go out on the campaign trail and attack the bureaucracy is sheer hypocrisy," says Al Ripskis, an employe of the Housing and Urban Development Department, who puts out a gadfly newsletter.

—There's a widespread feeling in the administration that even if President Ford beats out Ronald Reagan for the Republican nomination, the President will lose the election to Jimmy Carter. "We read the polls just like everybody else," says a Transportation Department official. Mr. Ford's uncertain future is prompting many officials to look for private jobs, and it is making it difficult to recruit outsiders to join the administration.

—In a variety of ways, large and small, the exigencies of the GOP nomination battle have been influencing White House decisions. Some appointments to government jobs, for example, evidently have been tailored to help the President in primary contests. Similarly, his convening of an economic summit meeting last weekend in Puerto Rico was assumed to be aimed, at least partly, at helping him to appear "presidential" during the final weeks of the Ford-Reagan struggle.

—Only in the politically sensitive areas of busing, the economy and military spending does the President seem to be paying much attention to policymaking. On most other issues, officials say the President appears too preoccupied with delegate-hunting to make big decisions. At the State Department, officials complain that the President isn't resolving major disagreements among Secretary Henry Kissinger, Agriculture Secretary Earl Butz and Treasury Secretary William Simon, about such issues as world grain reserves and international commodity agreements. At the Environmental Protection Agency, an official says: "I don't think Ford knows the environment is here."

A Stiff Political Battle

Of course, the President is caught up in perhaps the stiffest political battle an incumbent has ever faced, and it's understandable that he seems preoccupied. "There isn't any question that everybody here is looking over their shoulder at the Reagan challenge," says Russell A. Rourke, a White House deputy to presidential counselor John Marsh. But Mr. Rourke says he isn't discouraged; he argues that if Mr. Ford can win the election, people will begin to see what a good President he is.

As for the complaints within the Executive Branch about Mr. Ford's inattention to governing, another White House official, James E. Connor, dismisses them as merely "the standard rumbling of a bureaucracy, the normal ways of doing business."

In one crucial area, the economy, the President and his aides contend they're doing all the right things, and that there isn't any evidence of policy drift. Indeed, with the economy perking along nicely, Mr. Ford seems to relish opportunities to tie himself publicly to its management. Economic policy gets lots of presidential attention, and Chairman Alan Greenspan of the Council of Economic Advisers has easy access to the Oval Office.

A Basic Attitude

In other areas, it's likely that some of the current inactivity simply reflects the Ford administration's basic attitude toward government. In his 22 months at the White House Mr. Ford has rarely displayed an activist approach to the presidency. His administration never has generated lots of new ideas and programs.

Allowing for that, however, it's possible to discern a slowing of activity by measuring the administration's performance against its own yardsticks of what it set out to accomplish. In foreign policy, for example, separate sets of negotiations with Russia over strategic arms limitations and European troop reductions are stalled, in both cases partly because the White House won't make basic decisions about what the U.S. position eventually should be.

Similarly, the administration has taken public positions on African policy, but is doing little to follow through on those positions—except to agree on arms sales to Kenya and Zaire. Secretary Kissinger has called for repeal of the so-called Byrd Amendment, which allows Rhodesia to export chrome to the U.S. despite a United Nations embargo against the country; but neither Mr. Kissinger nor anyone else in the administration is actively working for repeal.

After announcing with great fanfare a government program to immunize the nation against swine flu, President Ford has seemed to stand aside as the plan drifts into a variety of difficulties. Officials at the Health, Education and Welfare Department who are in charge of the program complain that the President seems to be withdrawing much of his support. "If the decision were to be made today," says a health official, "I don't think we'd have an immunization campaign."

Other administration plans languish. In his State of the Union message, President Ford proposed relaxation of clean-air standards for automobiles. The legislation has made it part-way through Congress, but is stalled now—with no discernible pressure from the White House, to the chagrin of the auto industry. "They're concerned about nothing but uncommitted delegates at the White House," says an auto lobbyist. "They've just dropped any push for the clean-air amendments."

There's some suspicion, too, that the President's political struggle at least partly accounts for the delay in deciding whether to require the installation of air bags as safety equipment on new cars. A decision on the highly controversial issue has been postponed until after the election. A Transportation Department official says politics "probably was one consideration," although he contends that Transportation Secretary William Coleman evidently does need more time to consider the matter before making a recommendation.

Throughout the primary election season, many of the President's decisions appeared to be politically motivated. Just before the North Carolina primary, for example, he nominated Barbara Simpson, a member of the North Carolina Public Utility Commission, to the Federal Power Commission. Just before the New Hampshire primary, he named Warren Rudman, the former Attorney General of New Hampshire, to be chairman of the Interstate Commerce Commission.

A staff member of the Senate Commerce Committee, which must pass on these nomi-

Continued

nations," calls them "absurd" because of their apparent political connection. Mr. Rudman has withdrawn his name in the face of stiff congressional opposition; the Simpson nomination is in trouble.

Similarly, President Ford announced just before the Ohio primary that the Energy Research and Development Administration would build a $2.8 billion addition to a uranium enrichment plant in Ohio. An ERDA official says the announcement was "timed for the President's appearance in Ohio."

The outcome of the Ford-Reagan battle could affect some other presidential decisions. One is whether to sign stiff antitrust legislation that seems likely to pass Congress this year. A Justice Department official predicts that if Mr. Ford gets the Republican nomination he will sign the bill, hoping to attract votes of moderates and liberals who favor tougher antitrust laws. "But if he loses the fight to Reagan," says the official, "his personal philosophy will probably take over and he'll veto the legislation." During the primaries Mr. Ford dodged the issue, a Justice Department official complains, by refusing to respond to the department's requests for his opinion on the legislation.

Meanwhile, vacancies abound throughout the government. Some occur through normal attrition, of course. But there are signs that more officials than usual are leaving the government now because of an assumption that a Democrat will take over in January.

At HEW, an assistant secretary is quitting this week, and two other high officials plan to leave later this month. For months, three other important HEW jobs have been vacant. "Everyone is looking for other jobs," says a man at the Office of Education. Many HEW people say they expect Jimmy Carter to be elected President.

And it's taking longer than normal to fill federal posts, partly because the White House is preoccupied with politics. The Securities and Exchange Commission, which is supposed to have five members, has been operating for three months with only four commissioners, and President Ford hasn't even nominated someone to fill the vacancy --even though he knew since January that the vacancy was going to exist.

Another part of the personnel problem is that recruiters are finding it difficult to persuade outsiders to give up private careers for Washington jobs that may last only a few months. "It's hard to get the best people to come to Washington now," says a Transportation Department official who is trying to fill a top post. "How the hell am I going to get somebody out of industry or law school to come here for a job that might last six months?"

Although busily looking for delegates, President Ford has found time lately to get involved in two governmental areas of considerable political impact besides economic policy: these are busing and military spending.

Last week, the President proposed anti-busing legislation which he and Attorney General Edward Levi have been working on for months. One of the bill's purposes, it's widely assumed, is to endear the President to conservative Republican delegates. Within the administration, many education officials and civil rights experts oppose the legislation. Benjamin Holman, director of the Justice Department's community relations service, says the Ford-Levi plan is the wrong approach and probably will be declared unconstitutional by the Supreme Court.

Ronald Reagan has talked much during the campaign of the need for a stronger military. Perhaps as a result, President Ford got involved last week in congressional work on the defense budget, telephoning Capitol Hill leaders to promote more spending for Navy ship construction. A Navy man at the Pentagon professed amazement at the news of the President's lobbying. "I thought he only had time to call delegates these days," he said.

THE WHITE HOUSE

WASHINGTON

October 6, 1975

~~KATHIE~~

Attached is a draft letter to go to Senator Roth from Phil Buchen.

I need to see the incoming before I go into the President to get him to sign off on it.

DICK

Mr. Buchen would like to get this taken care of today.

K

THE WHITE HOUSE
WASHINGTON

Dick,

This letter is being sent after I talked with Ted Burkett, A.A. to Sen. Roth. I had talked with Sen. Roth in depth earlier this week.

Burkett understood & accepted our decision and he & I will keep in touch in regard to a filing on merits.

Bobbie Kilberg

Mr. Cheney

We're holding this until your office checks this with the President.

Eva

THE WHITE HOUSE

WASHINGTON

October 4, 1975

Dear Senator Roth:

We have reviewed with the Justice Department your request that it file an amicus curiae brief in the Supreme Court in support of the appellants' Jurisdictional Statement docketing an appeal in the Wilmington, Delaware case of Evans v. Buchanan.

The appellants are seeking review of a Three-Judge District Court ruling announced on March 27, 1975, in which the Court ordered that alternative desegregation plans be submitted to it, one plan to limit itself to the present boundaries of the Wilmington school district and the other plan to incorporate other areas of New Castle County. This Order was issued pursuant to the Court's finding: (a) that an historical arrangement for inter-district segregation existed within New Castle County; (b) that there was significant governmental involvement in inter-district discrimination; and (c) that Wilmington was unconstitutionally excluded from consideration for consolidation by the State Board of Education. The Court held unconstitutional the Educational Advancement Act of 1968, which excluded the Wilmington school district from eligibility for consolidation, and ordered the submission of the alternative desegregation plans.

Appellants filed their Jurisdictional Statement on May 12, 1975, and the appellees filed their Motion to Affirm or Dismiss on July 11, 1975. While the Justice Department does, on occasion, participate as amicus in the jurisdictional stage of a case in the Supreme Court, that is not a usual practice. In those cases where it does so participate, however, it is Justice's policy to adhere to Supreme Court procedure which provides that an amicus brief be filed no later than the response by the second party. The purpose of this rule is to give both appellant and appellee an adequate chance to respond to the arguments made in the amicus brief.

In the case of Evans v. Buchanan, the Supreme Court is scheduled to consider its Jurisdictional Statement on or about

October 10th, and it is our opinion that Justice Department participation at this juncture would be inappropriate. Neither side would have an adequate opportunity to answer Justice's arguments unless the Court was requested to delay its consideration of the case. We feel that a request for such a delay would not be warranted.

If the Supreme Court notes probable jurisdiction and accepts Evans v. Buchanan for a hearing on its merits, the Justice Department will consider the filing of an amicus curiae brief on the merits of the case.

Sincerely,

Philip W. Buchen
Counsel to the President

Honorable William V. Roth, Jr.
United States Senate
Washington, D. C. 20510

The Gallup Poll Release THURSDAY, Oct. 2, 1975

DR HAS SEEN

To Dick
Fyo
BCH

FORD'S CALL FOR ALTERNATIVES TO BUSING IN LINE WITH PUBLIC'S VIEWS

By George Gallup

PRINCETON, N.J., Oct. 1 -- President Gerald Ford's call for alternatives to busing as a way to achieve racial integration in public schools is in line with the views of the American people.

While the public has consistently voted against busing as a means to achieve this goal -- by margins of 2-to-1 or greater -- they are found to be amenable to alternative plans which have been proposed as ways to bring about racial integration in public schools.

In the latest survey, about one person in three (31 per cent) says he would favor "changing school boundaries to allow more persons from different economic and racial groups to attend the same schools." About one in five (18 per cent) favors "creating more housing for low-income people in middle-income neighborhoods."

Another 19 per cent do not choose any of these plans

but favor some other way to achieve racial integration, short of busing.

Only 4 per cent in this survey choose busing as the best way to achieve the goal of integrated schools.

BUSING ALTERNATIVES
IGNORED SAYS FORD

The opening of the U.S. school year has been marked by bitter anti-busing clashes across the nation, with particularly violent outbursts occurring in Boston and Louisville.

Ford recently called for the consideration of alternatives to busing, saying that federal courts have tended to ignore a 1974 law (signed by Ford in August 1974) requiring them to consider other proposals "before they actually use the busing remedy."

WHITES, NON-WHITES IN
GENERAL AGREEMENT

Analysis of the survey findings indicates that whites and non-whites hold generally similar views on the best ways to achieve integration. One sharp difference is in the larger proportion of non-whites (32 per cent) than whites (16 per cent) who favor creating more housing for low--income people in middle-income neighborhoods.

Following is the question asked in the survey and the key findings:

"Which, if any, of these ways do you think would be best to achieve integration in public schools in terms of different economic and racial groups?"

	NATIONAL	WHITES	NON-WHITES
A. Create more housing for low-income people in middle-income neighborhoods	18%	16%	32%
B. Change school boundaries to allow more persons from different economic and racial groups to attend the same schools	31	31	31
C. Bus schoolchildren from one school district to another	4	3	6
D. Do something other than A, B or C to integrate the schools	19	20	16
E. I oppose the integration of schools	17	19	5
No opinion	11	11	10

The results reported today closely parallel those recorded in a similar survey taken two years ago, in August 1973, both in terms of the national findings and in terms of the results on the basis of racial background.

The findings reported today are based on a total of 1,592 adults interviewed in person in more than 300

scientifically selected localities across the nation during the period Sept. 12-15.

COMING SUNDAY!

LATEST FORD PERFORMANCE RATING!

* How have economic concerns affected confidence in Ford?
* Have Ford's frequent trips across the country boosted his popularity?
* Is Ford holding Republicans in line?

From Field Newspaper Syndicate
401 North Wabash Avenue,
Chicago, Ill. 60611 cw

September 24, 1975

MEMORANDUM FOR: PHIL BUCHEN
JACK MARSH

FROM: DICK CHENEY

We would like to get a status report on Senator Roth's proposal of the Executive Branch intervene in the case of Evans vs. Buchanan involving a bussing case in Wilmington, Delaware.

We need that as soon as possible.

THE WHITE HOUSE

WASHINGTON

September 23, 1975

Dick
hard to

MEMORANDUM FOR: DON RUMSFELD

FROM: JACK MARSH

The President indicated considerable interest in the attached Roth proposal for intervention in the Deleware case on appeal.

You may recall that he and Griffin has urged intervention in a similar appeal in a Detroit case. He would like to have further information on this matter which is in the General Counsel's area. I have sent a copy of this memo to Phil and also a copy of Roth's letter.

cc: Phil Buchen

WILLIAM V. ROTH, JR.
DELAWARE

4327 DIRKSEN SENATE OFFICE BUILDING
TELEPHONE: 202-224-2441

COMMITTEES:
FINANCE
GOVERNMENT OPERATIONS

United States Senate

WASHINGTON, D.C. 20510

September 18, 1975

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

Dear Mr. President:

It is time the divisive busing issue be laid to rest. It is tragic but true that this issue is dividing the Nation, accelerating the flight of White families from the central cities to the surrounding areas and is a factor in the rapid deterioration of the public schools.

There appear to be only two ways of arriving at a definitive answer on this issue. The first is to persuade the Supreme Court that mandatory busing is not achieving integration, but having the opposite effect. Second, if that cannot be accomplished, then there should be a constitutional amendment forbidding the use of mandatory busing.

I prefer the first route if that is practical. For that reason I urge you to intervene in a case before the Supreme Court to spell out the reasons why it is essential to this Nation and its public school system that busing be no longer used as a court weapon to promote integration. This could be accomplished by having the Department of Justice intervene on behalf of the United States in support of the Appellant's petition for review in the Wilmington, Delaware case, Evans v. Buchanan, 1418, 30 US LW, 3666.

On April 16, 1975, the State of Delaware and local school officials filed a petition for review in the United States Supreme Court from the three-judge district court ruling in Evans v. Buchanan, supra. This case involves a suit to desegregate the schools of Wilmington and surrounding New Castle County, Delaware. Like

Detroit, like Richmond, like Indianapolis, like Louisville, indeed, like almost every major American city, Wilmington has witnessed an increased concentration of Blacks within the city and a White population growth in the suburbs. The consequence of this all but universal demographic pattern has been that the school population of the central city has become predominantly Black and proportional representation of Black and White students within each city school has caused those schools to have a predominantly Black majority.

After a trial on the merits, the district court found that the Wilmington and County school districts were not being operated as unitary systems and called for the submission of plans for remedy within the city as well as plans involving both city and county schools which would necessarily entail the massive cross-district busing of students. The court based its ruling on the most tenuous of judicial reasoning, indicating that past governmental and private housing policies and certain school board actions had led to segregation in the city and suburban schools. The court also pointed to the Educational Advancement Act of 1968 whose purpose was to consolidate very small school districts in rural areas into districts of sufficient size to operate efficiently. Although the statute was segregatory neither in purpose nor effect and embodied what the court acknowledged to be valid educational considerations, it found that by exempting Wilmington--which had historically and continually been operated as an independent school district--from the school reorganization, the State Legislature had impeded desegregation of the Wilmington and New Castle County schools and that this constituted an "interdistrict" violation justifying metropolitan-wide relief.

The district court's ruling in Evans stands in direct conflict with Milliken v. Bradley, 418 U.S. 717 (1974) where the Supreme Court rejected a desegregation plan requiring the busing of students between Detroit and its suburbs. The Wilmington decision is indistinguishable

in law or in fact from Milliken. Yet if the Supreme Court refuses to review the case--as it did earlier this year in similar cases arising out of Indianapolis and Louisville--many fear the result can only be recurrence of disorder and disruption in Wilmington next year on the scale presently being experienced in Boston and Louisville where massive court ordered busing is underway. Furthermore, it could lend impetus to further city/suburban busing orders by lower federal courts who, by the most disingenuous of legal reasoning, have circumvented the limits imposed by the Supreme Court in Milliken.

It is for these reasons, Mr. President, that I ask that the Department of Justice intervene on behalf of the United States in support of the Appellant's petition for review in the Wilmington case. Authority for such action by the Department is provided by 42 U.S.C. 2000h-2 which permits the Attorney General to intervene in cases involving alleged denial of Equal Protection on the basis of race, color, or national origin where he certifies that the case is of "general public importance." That final resolution by the High Court of the issues in this case is of utmost importance to the Nation as has been amply testified to by recent events in Louisville and elsewhere across the country. The Supreme Court has not yet agreed to review the case but it will consider the matter early in the October 1975 term. Justice Department intervention in support of the Appellant's petition for review will serve to focus the Court's attention on the crucial nature of the issues raised and the urgency of hearing the case on the merits. Once the Court agrees to hear the case on its merits, then the Attorney General could intervene to spell out the concerns of the government and the Nation as a whole relative to the use of court-ordered busing as a means of achieving school integration.

I, therefore, respectfully request, Mr. President, that you give this matter your immediate attention.

Sincerely,

Bill

William V. Roth, Jr.
U. S. Senate

THE WHITE HOUSE
WASHINGTON

Benny
HEW.
Dept. of Justice.