The original documents are located in Box 5, folder "Busing (1)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

INFORMATION

October 23, 1975

MEMORANDUM FOR: JIM CANNON
PHIL BUCHEN

FROM: DICK PARSONS

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 in 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 affiamative 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

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* 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.

2. Busing

I have had two good discussions with Secretary Mathews about an attempt to find a better approach to this problem. I talked briefly with Ed Levi and will meet with him tomorrow.

At this point, we believe we must develop a concept based on these premises:

(a) Communities should find solutions on their own rather than have them imposed by the Federal government;

(b) Remedies can best be reached before any court action begins;

(c) Any approach must be in accord with Federal law enforcement responsibilities.

If this meets with your approval, I will continue meeting with both Mathews and Levi to develop specific proposals for you.

Approve_____ Disapprove_____

3. Navigability of Waterways

In the wake of Lake Winnipesaukee, other questions about which waters are navigable have been brought to our attention.

Since the Constitution was written, the definition of navigability has evolved to the point where its application often does not make common sense.

As a result, we believe we should ask Secretary Coleman to review the definition with the possible objective of recommending to Congress a more precise and practical interpretation. This review should include an examination of the Constitutional implications, and the advantages and disadvantages of making any changes in the definition of navigability.

Approve_____ Disapprove_____

2. Food Stamps

No suit has yet been filed to block your administrative reforms which begin to be effective June 1, 1976. We understand that the Food Research and Action Committee has been shopping for a judge and is leaning now toward a Kennedy appointee in northern Minnesota. As soon as the suit is filed, we will schedule your meeting with Attorney General Levi, Solicitor General Bork and Secretary Butz to discuss how we will win the lawsuit.

3. Busing

We are working on three possible approaches to help a community avoid a court order to bus:

a) A "School Mediation Service," somewhat like the Federal Mediation and Conciliation Service for labor-management disputes, which could, at the invitation of local officials, send a mediator to attempt to work out a solution on school desegregation before a Federal Court order to bus. Secretary Usery believes this could work.

b) A Federal "clearing-house" of information and technical assistance, which could be made available to a community at its request to help work out a solution before busing is ordered.

c) A modest Federal fiscal incentive to assist a community leadership group in working out a solution to its school desegregation problems. The federal grant would match funds locally raised and could continue for no more than three years. The incentive funds would also be shut off if a Federal Court ordered busing.

March 23, 1976

To: James Cannon

From: Robin Beebe

Subject: School busing for integration

I shall try, initially, to ignore the question of integration of schools per se and deal only with the issue of busing initially.

Integrity of neighborhoods:

One social problem that we have, as well as that of segregation and accompanying prejudices, is the sense of indiviual alienation and isolation in an increasingly mobile population. Many of the factors documenting this have been thoroughly discussed.

Erosion of a sense of community and neighborhood identity can only aggravate this problem. The neighborhood school does provide an effective focus for community identity.

Parent involvement:

Parent involvement in the education of his child will enhance the value of the child's education. This is particularly true for the young child. Where the child's school is inaccessible to many paretns, their involvement in that important aspect of the child's development must become less vital. It is also possible that because of location, one particular group of parents who live in close proximity to the school may be able to exert a disproportionate amount of influence on school policy.

Community units

Where the students to be bused share a common local government, a common school board, and other civic and community attributes, busing to achieve integration seems most appropriate. The students and their families already have some very important things in common.

The busing of students to other communites seems to me artificial and pointless. The students would have no occasion for spontaneous interaction outside of the

classroom. ~~could never occur.~~ I doubt that anything more than token integration, if that, would occur in the classroom.

Reaction to busing

It appears that violent negative reactions to busing are caused by the deliberate fanning of racial prejudices and fears by some part of the community. The issues then seem to focus on whether or not such red-necked attitudes should be allowed to go unchecked rather than on whether or not busing will indeed lead to effective school integration.

Other negative reactions to busing, particularly on the part of the black community, may be based on the fact that no matter what the ratios may indicate, de facto segregation can take place in an "integrated" school and there seems little point in busing kids only to have that happen.

Clearly, though, busing has to be seen in the larger perspective of school integration as a whole. This might more appropriately be seen in the still larger context of improving economic opportunity for minorities and securing and enforcing some meaningful fair housing laws.

My limited experience here in New York City, which has a substantial number of all-black schools, has destroyed my previously held beliefs that a mixed school population would result in an integrated classroom. It is quite possible to find classes that are 90% white and even 100% non-white in a school which boasts of a racially balanced population. To fulfill legal requirements very superficial requirements may be met. The kids attending the schools are only too aware of the double standards being practiced and often have their basic distrust of promises and rhetoric strengthened.

I cannot endorse superficial solutions and would prefer to see an honest admission of no solution than an inadequate one which is presented as a panacea. At this time American education has plenty of problems, some of which seem more susceptible to solution through the schools than this one, and I would certainly prefer to see some priorities as far as education is concerned, focusing on those.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : James M. Cannon, Assistant to the President for Domestic Affairs

DATE: March 29, 1976

FROM : Edward H. Levi
Attorney General

SUBJECT: Reducing the Impact of Court-Ordered Busing

Your memorandum of March 15 requested my comments on four proposals relating to court-ordered busing in school desegregation cases. I will address those proposals seriatim.

1. The notion of giving greater recognition to school administrators who have successfully implemented voluntary desegregation plans and have also improved the quality of education is an attractive one. A cautionary word is appropriate, however, since voluntary desegregation plans in some communities have proven intensely unpopular. It is quite possible that giving recognition to administrators would, in some cases, intensify opposition and might impair the effectiveness of those voluntary plans. For this reason, the selection of persons to be given recognition should be done very carefully.

2. The proposal for a series of seminars to create a clearing house of information on voluntary desegregation efforts seems unobjectionable.

3. A tripartite review of existing research and data on the effects of court-ordered busing might be quite useful. We do not know whether there is in fact reliable research in existence, but it would be worthwhile to find out. The task of assembling existing research might best be assigned to HEW and the resulting materials should be circulated to the Department of Justice as well as within HEW for review. If existing research materials are inadequate, HEW might contract for research in the area. That, however, is a long-range undertaking, and it should be pointed out that an admission that we know too little about the efforts of court-ordered busing to frame responsible government policy would seem to be in tension with the proposal, in paragraph 4, that we now develop additional legislation on busing.

4. The development of additional legislation to reduce the impact of court-ordered busing seems feasible. There are, however, only a limited number of approaches, and there would appear to be no point in adopting the approach advanced by President Nixon in his 1972 busing bills. The Esch Amendment approach has likewise accomplished little, mainly because it is descriptive of what courts have usually done in past cases.

An approach that seems feasible is a statute defining the constitutional purpose of equitable remedies in school desegregation cases. In Milliken v. Bradley, involving the inter-district remedy in school desegregation cases, the Court noted that "the controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation." Legislation adopting that principle specifically in the context of court-ordered busing might be helpful. The statute could declare that the aim of the court's decree should be to produce that amount of school integration that would have existed but for the de jure segregatory acts. Unlike the bills proposed by President Nixon in 1972, this approach would not confine busing by imposing a numerical formula. It thus avoids the awkwardness of rigid formulae that fail to anticipate widely varied practices and patterns across the nation. Further, the statute would limit the remedy to the scope of the violation, a principle endorsed by the Court in Milliken and which appears self-evidently appropriate. Nevertheless, some lower courts have failed to adhere to that principle. One weakness of this statutory approach lies in the variability of district judges and in the uncertainty whether the Supreme Court would actively review district court decrees. Another problem would be the location of the burden of proof, which may affect the scope of the relief. It should also be noted that even under this approach there will be cases in which, because of the nature of the constitutional violation, some busing will still be required. Legislation may provide the needed assurance that busing may be ordered only where necessary to restore the degree of school integration that would have existed absent de jure discrimination. But particular factual situations may indeed require court-ordered busing to implement that principle.

The bill might also contain a provision that desegregation decrees allow the voluntary transfer by students from schools in which their race was in a majority to schools in which their race was in a minority.

Another factor is the duration of desegregation decrees. It would appear reasonable for a school district which complied with a desegregation decree in good faith to be released from the decree at the end of a specified period, unless it committed new acts of de jure segregation. This would be analogous to the procedure presently followed by the Fifth Circuit. An open question is the length of time, and legislation might address that issue. Perhaps a shorter period could be provided for the busing portion of the decree than for other remedial efforts. Such a provision would probably be upheld by the courts, unless it was interpreted as permitting actions of resegregation by the school board.

I have formed a group to consider the statutory approaches suggested above, as well as other possible alternatives. I should caution that drafting legislation in this area is particularly difficult, since factual situations vary greatly from one school district to another, and the effect of legislation in a particular school district cannot always be completely predicted.

Finally, the question of the appropriate scope of remedies is inevitably presented in school desegregation cases in which the Department of Justice is involved, either as a party or an amicus. In such cases, the Department has an obligation to present to the Court its position on the constitutional requirements regarding desegregation remedies, including busing. It has been the Department's position that school desegregation remedies should be limited to the scope of the constitutional violation, and recently the Supreme Court has appeared to place greater emphasis on that principle. Cases, of course, often have their own unique factual aspects, and busing may well be appropriate, if not required, in certain limited instances. Nevertheless, as I have indicated, some courts have gone beyond the appropriate and justifiable boundaries in employing the busing remedy. The Department will, of course, continue to make the point in appropriate cases that busing is an equitable remedy, that its use should be balanced against other factors, and that it should be limited to the scope of the violation. The Department will also continue in appropriate cases to request clarification of the busing guidelines promulgated in the Swann case. Those guidelines have, I believe, been misinterpreted by some lower courts and have on occasion resulted in confusion. This course may not promise immediate improvement in the state of the law, but any approach adopted will have that difficulty.

THE WHITE HOUSE

WASHINGTON

March 23, 1976

MEMORANDUM FOR: JACK MARSH
JIM CANNON
MAX FRIEDERSDORF

FROM: BOBBIE GREENE KILBERG

Attached at Tab A is a letter which the President received from the Pasadena City Board of Education protesting the Justice Department's brief before the Supreme Court in that city's desegregation case. Though the letter is dated February 24, it did not reach the White House or Phil Buchen until a substantially later date. Both Phil and I have read the Justice Department brief and the Pasadena Board of Education brief, and we have prepared a draft response to the Board of Education members for Phil's signature. (attached at Tab B) In addition, Phil has talked with both Congressmen Rousselot and Moorhead, who hand delivered the Pasadena letter to Vern Loen.

Phil would like an answer to be sent to the Pasadena Board as quickly as possible, and thus we would appreciate your comments on the draft letter by Friday.

In addition to general comments, would you please let us know whether you feel the letter should be signed by Phil or by the President. Please also notice that in the first full paragraph on page 3 there are two different versions of the first sentence, and that in the second sentence of paragraph three on page 1 there is a choice between reference to the President or to Buchen. Please let us know which language you prefer.

Attachments.

cc: Dick Parsons ✓
Roy Hughes

TAB
A

PASADENA UNIFIED SCHOOL DISTRICT
EDUCATION CENTER
351 SOUTH HUDSON AVENUE
PASADENA, CALIFORNIA 91109

BOARD OF EDUCATION
DR. HENRY S. MYERS, JR., PRESIDENT
DR. RICHARD VETTERLI, VICE PRESIDENT
JOHN L. HARDY
JEROME D. MEIER
LYMAN W. NEWTON

RAMON C. CORTINES
SUPERINTENDENT OF SCHOOLS
AND
SECRETARY TO THE BOARD
OF EDUCATION

TELEPHONE
795-6981
AREA CODE 21

February 24, 1976

President Gerald R. Ford
The White House
Washington, D. C.

Dear President Ford:

For nearly six years, the citizens of Pasadena have endured the yoke of forced busing imposed upon them by a Federal Court. They have done so peaceably. There has not been a single demonstration; no protest marches; no mob action; and no violence. Instead, they followed the specific advice of the Court to "go to the ballot box to solve your problem." Three times they soundly rejected pro-busing candidates and elected men who promised to carry the busing appeal to the Supreme Court, if necessary, and it was necessary.

At each step of the drawn out and costly procedure, our small group of attorneys, paid for by the taxpayers of Pasadena, were opposed by a whole battery of high-powered experts from the Justice Department. Before the initial case was brought to trial, a "research" team of five persons from the FBI spent more than a month on location at our Education Center, going over our files and interrogating our personnel in minute detail to build the Government's case against us. Thus for all phases of the legal process, we, the taxpayers, have been obliged to shoulder the cost not only of our appeal but also the costs of our opposition.

You are well aware that the latest nation-wide polls show fewer than 12 per cent of all Americans, white or black, in favor of forced busing. You, yourself, claim to be opposed to it and are looking for a better solution to bring about integration. We, in Pasadena, have found a better way and are seeking, via our Supreme Court hearing in April, to be freed from the rule of the Federal Court to pursue our plan for voluntary as opposed to forced integration. Our voluntarily integrated Fundamental Schools, now being copied across the nation, in two short years have brought about an almost unbelievable improvement in the achievement level of our minority students. Busing was designed to do just that but has failed miserably everywhere it has been tried.

And yet the Justice Department, headed by your personal appointee, Mr. Levi, has again filed a brief against us supportive of the District Court's forced busing program, this time stating that we are not qualified to run our own schools because our compliance with the Federal Court order was done "grudgingly". When our representatives visited Mr. Levi recently in Washington, he and his staff suggested that a solution to Pasadena's problem might be inter-district busing with neighboring communities.

We believe the long-suffering people of Pasadena deserve a straightforward explanation from their President concerning why your Justice Department has taken a position diametrically opposite to that of your own.

Federal Judge Manuel Real once told us, "In this court, I am the boss. The buck stops here." In the United States, Mr. President, we respectfully suggest that you are the boss.

Our hearing before the Supreme Court is set for April 14, 1976. Time is running out. Pasadena's future is at stake. April 14 is the end of the line for us but only the beginning for hundreds of other cities across the Nation. The Pasadena decision will be a landmark one. If it should be unfavorable, Americans everywhere will know their elected officials are not representing the wishes of the majority, and they will have no choice but to proceed nationally as we have done so effectively at the local level to "go to the ballot box".

Your strong influence can make the difference. If you truly believe, along with the overwhelming majority of Americans, that busing is wrong, we ask you to proceed immediately, before it is too late, to exert that influence.

Sincerely,

Henry S. Myers, Jr.

Dr. Henry S. Myers, Jr., President
Pasadena Board of Education

Richard Vetterli

Dr. Richard Vetterli, Vice President

John Hardy

Mr. John Hardy, Member

Jerome Meier

Mr. Jerome Meier, Member

Lyman W. Newton

Mr. Lyman W. Newton, Member

HSM h

TAB
B

DRAFT

THE WHITE HOUSE

WASHINGTON

March __, 1976

Dear Messrs. Myers, Vetterli, Hardy, Meier and Newton:

On behalf of President Ford, I want to thank you for your letter on the case of Pasadena City Board of Education v. Spangler and United States of America, which was personally delivered to the White House by Congressmen Rousselot and Moorhead.

The President has consistently supported the Fourteenth Amendment's constitutional mandate to desegregate our public schools. He also has consistently supported the goal of quality education and firmly believes that the utilization of forced transportation of students as a remedy to achieve the desirable goal of integration is disruptive, counter-productive and detrimental to quality education.

The President has directed both Attorney General Levi and Secretary of Health, Education, and Welfare Mathews to explore and recommend alternative approaches to ending de jure segregation that do not involve forced busing. The Attorney General has informed me [the President] that he will be seeking the most appropriate case possible to present an argument to the Supreme Court that

forced busing, as an equitable remedy which has not worked, should be abandoned in favor of other remedies designed to achieve the constitutional mandate of desegregation.

In specific regard to the Pasadena case, Attorney General Levi and Solicitor General Bork have determined that the facts do not support the utilization of that case as a vehicle for the Supreme Court to reexamine busing as an equitable remedy. Because of the importance of that determination, I would like to quote directly from the Government's brief:

> "The concern about transporting school children to accomplish desegregation is a legitimate one that may call for the further attention of the Court in an appropriate case. But petitioners made no record in the district court that would now permit a reexamination of busing as a remedy on the basis of experience with that remedy here, and in light of accumulated experience in other communities across the nation. The current law of equitable remedies in school desegregation cases supports transportation in a case such as this. . . .
>
> ". . . If, as appears to be the case, petitioners now seek to challenge court-ordered transportation as a futile or damaging response to de jure segregation, they did not focus their case below to that end. Their proof below was not guided by an articulation of the purpose of student transportation under a decree -- whether it is designed to produce the approximate degree of integration that would have existed absent a violation of the Fourteenth Amendment, to repair psychological injury inflicted by the state, to cure

> educational deficiencies traceable to de jure segregation, or perhaps to achieve some other or additional purpose. Accordingly, petitioners failed to prove that transportation lacks utility in achieving the articulated remedial goal. In its present posture, this case is not an appropriate vehicle for the kind of reassessment petitioners ask this Court to undertake."

Given the status of the record in this case, the position of the Justice Department is appropriate [or, Given the status of the record in this case, it cannot be said that the position of the Justice Department is inappropriate.]. However, President Ford firmly intends to continue the pursuit of alternative remedies to the achievement of the dual goals of racial integration and quality education. He believes that both these goals can and should be achieved without the disruption of forced transportation of students. The Administration understands your concerns, and we hope that there will be progress in this area in the near future.

Sincerely,

Philip W. Buchen
Counsel to the President

Dr. Henry S. Myers, Jr, President
Dr. Richard Vetterli, Vice President
Mr. John Hardy
Mr. Jerome Meier
Mr. Lyman Newton
Pasadena Board of Education
351 South Hudson Avenue
Pasadena, California 91109

THE WHITE HOUSE

WASHINGTON

March 12, 1976

MEMORANDUM FOR: THE ATTORNEY GENERAL

SUBJECT: ALTERNATIVES TO BUSING

As you will recall, at the conclusion of our meeting with the President several months ago on alternatives to busing, he directed that I prepare for his review a memorandum giving him our preliminary thoughts on what actions he could initiate to reduce the impact of court-ordered busing on our society. The President has reviewed this memorandum and has indicated that he would like to pursue the following ideas in greater detail:

1. Giving greater recognition to outstanding public school administrators, particularly those who have had notable success at implementing voluntary desegregation and improving the quality of education, by inviting a selected number to the White House to share their perspective and experience with the President.

2. Having the Office of Education in HEW utilize supplemental funds to conduct a series of seminars for public school administrators so that those who have had success in dealing with the desegregation issue may share their experience with their colleagues, in effect creating a de facto clearinghouse on information on voluntary desegregation efforts.

3. Undertaking a tripartite review by the Office of Education and the National Institute of Education in HEW and the Civil Rights Division of the Department of Justice of the existing research and data on the effect of court-ordered busing on our communities, the quality of public education and race relations generally to see if we can sharpen and improve our knowledge in this area.

4. Developing additional legislation which would restrict, to the extent constitutionally permissible, the power of the judiciary to order the massive busing of school children.

In order to more fully develop these alternatives for the President, I would appreciate your views on the appropriateness, practicality and relative advantages and disadvantages of each. Additionally, with respect to the fourth item, I would appreciate your view on what specifically the President could propose within the limits of the Constitution. Of course, I would welcome any new thoughts you might have on this subject.

Since the President is anxious to pursue this matter, I would appreciate your comments by Monday, March 29.

James M. Cannon
Assistant to the President
for Domestic Affairs

THE WHITE HOUSE

WASHINGTON

March 12, 1976

MEMORANDUM FOR: THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SUBJECT: ALTERNATIVES TO BUSING

As you will recall, at the conclusion of our meeting with the President several months ago on alternatives to busing, he directed that I prepare for his review a memorandum giving him our preliminary thoughts on what actions he could initiate to reduce the impact of court-ordered busing on our society. The President has reviewed this memorandum and has indicated that he would like to pursue the following ideas in greater detail:

1. Giving greater recognition to outstanding public school administrators, particularly those who have had notable success at implementing voluntary desegregation and improving the quality of education, by inviting a selected number to the White House to share their perspective and experience with the President.

2. Having the Office of Education in HEW utilize supplemental funds to conduct a series of seminars for public school administrators so that those who have had success in dealing with the desegregation issue may share their experience with their colleagues, in effect creating a de facto clearinghouse on information on voluntary desegregation efforts.

3. Undertaking a tripartite review by the Office of Education and the National Institute of Education in HEW and the Civil Rights Division of the Department of Justice of the existing research and data on the effect of court-ordered busing on our communities, the quality of public education and race relations generally to see if we can sharpen and improve our knowledge in this area.

4. Developing additional legislation which would restrict, to the extent constitutionally permissible, the power of the judiciary to order the massive busing of school children.

In order to more fully develop these alternatives for the President, I would appreciate your views on the appropriateness, practicality and relative advantages and disadvantages of each. I would also appreciate your views on how the President might go about implementing these alternatives, particularly items one, two and three, should he decide to do so. Of course, I would welcome any new thoughts you might have on this subject.

Since the President is anxious to pursue this matter, I would appreciate your comments by Monday, March 29.

James M. Cannon
Assistant to the President
for Domestic Affairs

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

DECISION

February 17, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Alternatives to Busing

This memorandum follows up your recent meeting with Attorney General Levi and Secretary Mathews regarding alternatives to busing. I have asked the Attorney General and the Secretary, as well as members of your staff, for their thoughts on what actions you might initiate to give the Administration a defensible and constructive stance with respect to this problem.

As you will recall, it was the consensus of those who participated in the busing meeting that there is little the Executive Branch can do for a school district once legal action to compel desegregation has been initiated. The focus of our efforts, therefore, should be on helping cities keep themselves out of court in the first instance. The expectation should not be that the Federal government will move in to solve local problems but that it will help local communities with community initiatives. In this regard, the following actions have been suggested:

A. There should be greater Federal involvement in supporting and drawing advice from the professional educators who have been most successful in implementing voluntary desegregation and improving the quality of education. This could be done in a number of ways. You could give recognition to outstanding school superintendents and/or principals by having them come to the White House to share their experiences with you and your staff. Such an act, properly publicized, would greatly boost morale among secondary school administrators.

B. Further, you could direct the Office of Education to utilize supplemental funds to conduct a series of seminars for public school administrators which would enable those administrators who have dealt successfully with desegregation to share their views with their colleagues. Many believe that one reason so many

school districts have not been successful in their efforts to voluntarily desegregate is the inability to draw on the experience of other school districts similarly situated. The creation of a de facto "clearinghouse" of information concerning voluntary desegregation through the use of this type of seminar would address this problem.

C. Existing Federal programs which seek to assist localities to preserve desirable racial/ethnic neighborhoods (e.g., HUD's Neighborhood Preservation Program) should be redirected to have an impact on neighborhoods where further "white flight" would greatly increase the likelihood that local schools would become racially identifiable. Currently, many of these programs utilize noneducation-related priorities and criteria to determine how grant monies are to be expended. While it can certainly be argued that the expenditure of these monies in any neighborhood will ultimately have a favorable impact on local school conditions, it is equally true that some areas have a more pressing need, from the school desegregation point of view, than do others.

Unfortunately, notwithstanding the above, there are probably a number of localities that will ultimately be required to engage in substantial busing to achieve racial balance, given the current state of the law. While you and the Attorney General have agreed that the White House should not direct the Department of Justice to assume any specific position in litigating busing matters, it may be necessary for you to initiate some action designed to help school districts in trouble.

In this regard, it has been noted that a number of assumptions upon which the courts rely to justify busing have, of late, been seriously questioned by scholars and researchers, including Dr. James Coleman. For example, Coleman asserts that court-ordered desegregation, particularly where massive busing is involved, increases rather than decreases actual segregation. That is to say, resegregation is outpacing desegregation in cities where massive busing has been ordered. Other scholars argue that remedies other than busing, such as freedom of choice and open enrollment, were abandoned too soon by the courts and really could work if tried again. These findings and assertions are disputed by other scholars, however.

D. You could direct a tripartite study by the Office of Education, the National Institute of Education, and

the Civil Rights Division of the Department of Justice to report to you on the accuracy of these and similar studies. (Such a study effort might also include taking a look at the effects of forced integration on achievement, race relations, and self-understanding.) This report, in turn, could serve to assist the Department of Justice in making the case to the Court that busing should be abandoned as a useful remedy.

E. It has also been suggested that you could direct the Department of Justice to propose legislation which would effectively accomplish what the Esch Amendments were meant to accomplish but failed to do. There are many who believe that legislation can be drafted which would restrict the power of the Judiciary to order massive busing of school children. While the submission of such legislation to the Congress would be highly controversial and divisive, this is the most direct way to attack the problem.

In a broader context, the following additional possible alternatives have been suggested:

F. In order to encourage voluntary integration, you could direct the preparation of legislation establishing a right of each student to transfer from a school in which his race is in a majority to a school, within or out of his district, in which his race is in the minority. Transportation would be provided and the Federal government would provide financial incentives to encourage white schools to accept these transfers. For schools that remain more than x% black, Congress could provide additional funds to improve education.

G. Courts have shown that they are willing to forego busing if major black groups in a school district express a preference for other remedies. You could direct Justice to investigate different remedies which might convince blacks to forego the busing remedy. These remedies might include an effective open enrollment plan, making more housing available in the suburbs through mortgage assistance or further aid to majority-minority schools.

H. You might appoint a commission to review and assess progress on the broad spectrum of equal rights for all Americans since enactment of the Civil Rights Act of 1964 and to recommend measures to improve its imple-

mentation. The problems of busing and school desegregation could then be dealt with in the broader context of other civil rights issues.

Finally, experience has shown that residents of one locality may react quite differently to court-ordered busing than residents of another. Some cities, such as Charlotte, North Carolina; Jackson, Mississippi; San Francisco, California; Denver, Colorado; and Detroit, Michigan, have had a relatively peaceful experience, while others, such as Boston, Massachusetts; and Louisville, Kentucky, have experienced violence and general defiance of courts.

All of the reasons for these differing reactions may never be known, but it is likely that we can learn more about why certain localities have responded less violently to court-ordered busing than have others. What actions or inactions on the part of local officials led to peaceful acquiescence or violence? What beliefs or fears on the part of local residents helped or hindered their acceptance of the fact that their children would be bused to schools outside of their neighborhoods, and which of these beliefs and fears are justified? What aspects of a court order most inflamed or pacified those who were subject to it?

I. To my knowledge, very little has been done to date to ascertain the answers to these and similar questions. You could direct a joint HEW/Justice task force to look into these questions so that we may learn more about why forced busing sometimes begets violence and sometimes does not. While such a study would not develop any alternatives to busing, it might produce some answers which will enable us to minimize the levels of violence associated with court-ordered busing.

Each of the above "alternatives" has been described in very preliminary fashion and further work would need to be done on any one of them before it could be finally presented for your consideration.

RECOMMENDATIONS

The views of your senior advisers are as follows:

Phil Buchen	Favors Alternatives A, B and C.
Robert T. Hartmann	Favors Alternative B and feels that Alternatives D, E, G and I have merit.
Jack Marsh	Favors Alternatives E, F and I.

Max Friedersdorf	Favors Alternatives A, B, D, E and H.
Bill Seidman	Favors Alternatives B, D (very important) and H.
Paul O'Neill	Has no trouble with "further analysis" of all alternatives, but expressed reservations about Alternatives C, F and G.
Bob Goldwin	Favors Alternatives A, B, E, F (emphatically G and H. Also favors a study as suggested in Alternative D, but not to be carried out by HEW and Justice.
Jim Cannon	Favors Alternatives A,B,C,E, and I

DECISION

Proceed with further analysis of:

Alternative A _____
B _____
C _____
D _____
E _____
F _____
G _____
H _____
I _____

WASHINGTON

cc: Dick Parsons
red tag 3/3/76

February 24, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: — JIM CANNON

FROM: JIM CONNOR JEC

SUBJECT: Alternatives to Busing

The President reviewed your memorandum of February 17 on the above subject and made the following notation:

> "Good beginning. I suggest we pursue A, B, D and E."

Please follow-up with appropriate action.

cc: Dick Cheney

BUSING

THE WHITE HOUSE

WASHINGTON

October 28, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: MAX FRIEDERSDORF

SUBJECT: Presidential Meeting with Senator John Tower on Busing

My notes on the President's meeting yesterday with Senator Tower indicate that the President told Mr. Buchen to ask Justice and HEW to review the busing situation with the objective of seeking alternative remedies, to provide equal access on the part of everybody in such a way that everyone has an opportunity for a good education.

He told Mr. Buchen to work with Matthews and Levy to seek a modification of the busing remedy if at all possible through new administrative techniques.

On the question of busing the President said that "busing is not a good remedy to achieve the Constitutional rights of those affected.

The President several times repeated his opposition to busing and indicated that he believes that it is a deterrent to students of both races obtaining a good education.

Senator Tower advised the President that he had introduced a Constitutional Amendment and that hearings are scheduled in the Senate this week.

The Senator did not press the President for a position on a Constitutional Amendment but said that he was advising the President there was considerable support in the Senate for a Constititonal Amendment to relieve the adverse impact of forced busing to achieve racial balance.

The President indicated that he had not been enthusiastic about a Constitutional Amendment but would not indicate a commitment either for or against a Constitutional Amendment.

Senator Tower was quite specific that the President is not committing himself either way on a Constitutional Amendment and that the chief result of the meeting with the President was the President's instructions for HEW and Justice to seek alternative remedies.

The President also raised the subject and discussed in some detail the column by William Raspberry in the October 27 edition of the WASHINGTON POST which discussed a bill by Congressman Preyer pertaining to busing.

The President and Senator Tower both agreed that this bill reflected some sound thinking and that the President observed that it sounded a great deal like the Esch amendment which the President has supported.

cc: Jack Marsh
Philip Buchen
Jim Cannon

Night Reading

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

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

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* 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.

10/8/75

RE: Meeting of 10/7/75 with President

Governor Carroll:

The most counterproductive expenditure in the country today is forced busing.

President:

It is a position I have held for years. I didn't agree with the Richmond or Charlotte decisions [school desegregation decisions], and I don't agree that it is the way for quality education.

Governor Carroll:

The courts are not considering a viable alternative. Has HEW ever undertaken a survey of the effect of forced busing on school systems? We at the state level, or most effectively, the Attorney General, could force reviews of the busing decisions.

President:

We have got to get judges to use the alternatives listed in the Esch Amendment.

Governor Carroll:

Couldn't the Attorney General bring this to the attention of the courts?

(The President indicated he would have the Attorney General look into this matter).

BUSING

Busing meeting

11/20/75

P - For better solution to quality ed than putting their hands on P & S school children through court ordered busing.

Where are we?

Where might we go

I see no hope of progress w/o teaming up some [illegible] on their [illegible]

Law –

~~[illegible]~~ Miranda case –

Major Bill on Busing very Dead

¶ I do not believe Cons't A. which I think would be passed, is the right approach

Action put off to Congress, or legislative action

Mathews

Inflation mean you don't find good workmanship

forcing schools to become vessels for enormous social change

never going get the most of point to look totally modern

How involve —

22 mayors in cities where in substantial violation

only 2 cy Transport

Most know integrity

in money Teachers

Goodwin -

Comprehensive approach

Pres Commn

[illegible] [illegible] we [illegible] [illegible] [illegible]

and Their interrelation

Where

Parsons

More useful to [illegible]

GB

Mathews

1) what security gains to do

debate - argue about it.

2) What proper

role to you

Mathews:

1) approach

~~own~~ keep em out of court

2) Feds can't solve it -

but can work w/ you

3) community approach

4) NSF instituted.

topic economic education

stabilization secondary leadership

P – don't get [illegible]
get somebody [illegible]

Levi – [illegible] DOJ –
decision on cases

[illegible] [illegible] [illegible]

P – memo summarizing
possible alternatives

Levi – act on his own to
[illegible] effect [illegible] [illegible]